

UN Mediation and the Politics of Transition after Constitutional Crises

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Cover Photo: A Kyrgyz opposition supporter hands a national flag to a fellow demonstrator standing on a military truck during an anti-government protest in Bishkek, Kyrgyzstan, on April 7, 2010. ©VYACHESLAV OSELEDKO/AFP/Getty Images.

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Executive Summary

Recent coups d'état, unconstitutional changes of government, and other constitutional crises have confronted the UN with a number of recurrent challenges. Chief among them is the need to ensure a principled, coherent, and effective response that will prevent the escalation of violence and facilitate a country's return to constitutional order. However, the lack of comparative research on transitional arrangements, clear policy guidance, and policy options—let alone mechanisms for strategic coordination—makes this difficult. While the UN has many decades of experience in helping to mediate and implement peace agreements after civil wars, it has comparatively less experience dealing with non-civil war transitions, and the experience that it does have has not been systematically recorded or analyzed.

This study examines the UN's experience in dealing with five cases of unconstitutional changes of government between 2008 and 2011: in Kenya, Mauritania, Guinea, Madagascar, and Kyrgyzstan.

International actors seeking to respond to constitutional crises face a basic dilemma: condemn the parties responsible, thus taking a principled stance that may limit capacity to respond; or remain silent, risking criticism but maintaining access and room for maneuver that may prove instrumental in helping to resolve the crisis. In recent years, regional and subregional organizations have adopted norms rejecting departures from constitutional rule. The UN has not.

Regardless what form the constitutional crisis takes, its resolution almost always involves some kind of transitional political arrangements to bridge the period until a sustainable political settlement is reached or constitutional order restored. Increasingly, some form of international mediation is involved in helping parties reach an agreement on the nature of the transition. Only a decade ago the UN rarely undertook mediation in cases of coups and other constitutional crises. However, in recent years, it has been involved in several such cases, usually in partnership with regional and subregional actors.

In each of the cases studied, international mediation played an important role in moving the actors towards compromise, and the UN was vital to these mediation efforts. Despite a relatively weak

mandate to act in cases of constitutional crisis, the UN system has provided crucial technical and political expertise during such crises. Ironically, regional organizations that have led the way in developing stronger norms in support of constitutional order are often relatively thin on specialized technical staff to accompany these processes. UN capacity and legitimacy are thus likely to lead to a continued role for the organization in responses to these types of crises. In many of the cases, the UN's ability to field technical experts to advise mediators and parties to the crisis proved extremely valuable.

The cases also reveal a remarkable ability of the UN to work collaboratively and effectively with regional and subregional organizations in mediation efforts. Intergovernmental organizations often face real difficulties in working together. Yet, these cases show how successful the UN, the AU, the EU, the OSCE, and ECOWAS have become in responding to political crises through joint or collaborative efforts. The cases also reveal a range of possibilities for UN mediation support: the UN can act as primary mediator; provide support to regional, subregional, or bilateral mediators; or provide electoral and technical assistance or financial and logistical support.

Nevertheless, it is important to recognize the limits of international mediation efforts. Where determined leaders come to power with widespread popular support through mass mobilization against an unpopular president, internal support for their cause may trump even strong external pressures. International mediators can influence the menu of options for transitional political arrangements, and even the selection process; however, such influence is uncommon. The content of transitional arrangements and electoral systems tend to be shaped heavily by precedent. International mediation, however, can influence electoral processes and the creation of special commissions of inquiry into violence or elections, often on the basis of technical advice.

In particular, commissions of inquiry offer opportunities to facilitate the restoration of constitutional order without sacrificing justice. In Guinea, Kenya, and Kyrgyzstan, commissions of inquiry were formed to investigate incidents involving mass violations of human rights.

Such commissions helped create an authoritative account of past events. They also helped assure the

public that justice had not been entirely set aside, and that some public account of the parties' responsibility would be forthcoming. They facilitated the mediation process by "bracketing" the heated controversies over these disputed events, removing them from the purview of immediate negotiations, and entrusting them to a body that would offer a more impartial and reliable account. Despite their flaws, these commissions facilitated greater public acceptance of the transitional arrangements in all three cases.

The cases suggest that the use of power-sharing mechanisms to resolve either unconstitutional ousters of elected presidents or electoral disputes raises questions for legitimacy, democracy, and state-society relations. In particular, such mechanisms risk undermining the legitimacy of the constitution and elections, risk undermining incentives to participate in future elections, and introduce the moral hazard of encouraging others within the country and externally to adopt unconstitutional tactics. National and international actors, therefore, confront tensions between the short-term resolution of a constitutional crisis and long-term support for constitutional and legitimate political processes.

The cases also suggest that electoral disputes pose more risks for legitimation than unconstitutional ousters of duly-elected governments. First, the electoral processes themselves are directly impugned, further undermining the legitimacy of electoral processes as mechanisms of representation, expressions of policy preferences, and tools for holding rulers accountable. Second, elections become problematic remedies for restoring constitutional order after an electoral dispute. The experiences of Zimbabwe and Côte d'Ivoire in recent years underscore these difficulties, along with Kenya. Time and effort is required to restore faith in electoral processes after electoral disputes, making non-electoral remedies, such as temporary power sharing, more likely in the short run. Third, if power sharing is adopted as a remedy for electoral disputes, it may endure for a few years. Power sharing after electoral disputes effectively kicks the can down the road in terms of resolving not just who has the legitimate right to rule, but what process of selecting rulers will be widely acceptable to the main groups in society. While unconstitutional ousters can also encounter this problem, it is

intrinsic to electoral disputes.

Finally, the report offers several recommendations to the UN to ensure that preventive diplomacy and mediation support are coherent and adequately resourced:

- DPA's Mediation Support Unit (MSU) and its Standby Team of six thematic experts have become a hub of accumulated knowledge and have been successfully deployed in several cases. These capacities are relatively new, and should be strengthened and institutionalized.
- UN regional offices made singular contributions to the mediation efforts in several of the cases, particularly Guinea, Mauritania, and Kyrgyzstan. Such offices should be recognized, expanded (as with the new UN Regional Office for Central Africa), and adequately resourced.
- Senior mediators' prior professional experiences in other multilateral organizations contributed to the effective collaboration among international and regional organizations. Such crossover backgrounds should be considered in future senior appointments.
- In strengthening its preventive diplomacy and mediation support capacities, the UN system should prepare itself as systematically as possible for addressing electoral disputes.
- DPA should enhance its general level of communication with resident coordinators and, in conjunction with UNDP, help ensure that UN country teams are as well prepared as possible for the sorts of challenges likely to arise during a political crisis. DPA and UNDP should also find ways to expedite the process of appointing and deploying peace and development advisers.
- The UN system should find ways to create effective mechanisms to monitor transitional arrangements, including power sharing and other efforts at reconciliation, justice, and inclusive, conflict-sensitive development. Monitoring power-sharing arrangements would offer a reference point for national and civil society actors seeking to ensure inclusion and broaden elite deals to the wider population.
- Finally, the UN should address constitutional crises on a case-by-case basis, and be cautious about adopting a blanket policy of denouncing all departures from constitutional order.

Introduction

Recent coups d'état, unconstitutional changes of government, and other constitutional crises have confronted the UN with a number of recurrent challenges. Chief among them is the need to ensure a principled, coherent, and effective response that will prevent the escalation of violence and facilitate a country's return to constitutional order. A good deal of scholarship is available on issues of close relevance, including (a) transitions from authoritarian regimes toward democracy; (b) transitional arrangements after civil wars; and (c) power-sharing arrangements, including consociationalism. However, less research is available on transitional political arrangements after coups and other crises that do not occur after warfare.

Several developments make it especially timely to review the UN's experience in dealing with such political crises and the transitional political arrangements that emerge from them. First, the past few years witnessed an apparent resurgence of the toppling of sitting presidents, either through coups or as a result of mass popular demonstrations. The recent political crises in the Arab world and northern Africa underscore this trend.

Second, a number of disputed elections have sparked crises, leading to violence, displacement, and international intervention. The crisis in Côte d'Ivoire following the 2010 elections in that country is perhaps the most prominent example. Given the UN's longstanding and unique role in supporting national elections, and with twenty-three elections foreseen in 2012 in Africa alone, it is important to learn from these recent experiences to develop better strategies for preventing election-related violence.

Third, intergovernmental organizations have adopted new standards and norms, including expulsion and sanctions, that discourage unconstitutional changes of government more firmly than ever. These new norms place pressure on leaders who come to power through unconstitutional means to create inclusive transitional political arrangements; to organize open, free, and competitive elections promptly; and (often) to exclude themselves from standing for elective office.

Finally, the UN system, including UN country teams, has increasingly played a role in mediation

efforts after unconstitutional changes of government, and should therefore be well-prepared to develop coherent and effective responses, informed by past experience. Only a decade ago the UN rarely undertook mediation in cases of coups and other constitutional crises. This role is relatively new and follows largely from the innovative expansion by regional and subregional organizations of norms rejecting departures from constitutional rule. As with other instances of preventive diplomacy and mediation, UN action in constitutional crises rests on a weaker mandate than in interstate or civil wars. Despite this relatively weak mandate, the UN system has ironically provided crucial technical and political expertise during constitutional crises. It has drawn, albeit in an ad hoc manner, on emerging and strengthened institutional capacities such as the Department of Political Affairs' (DPA) Mediation Support Unit and its Standby Team; peace and development advisers that reflect the strategic partnership between DPA and the United Nations Development Programme (UNDP); special political missions at the regional level; DPA's Electoral Assistance Division; as well as other Secretariat staff, the agencies, and the coordinating leadership of the UN country teams. Conversely, regional organizations that have led the way in developing stronger norms in support of constitutional order are often relatively thin on specialized technical staff to accompany these processes. UN capacity and legitimacy are thus likely to lead to a continued role for the organization in responses to constitutional crises.

Related to these developments, the Secretary-General's Policy Committee in 2009 called for a more coherent UN response to unconstitutional changes in government. There is a pressing need for the UN to learn from past experiences, to understand the constraints and dilemmas faced by UN leadership in the field and at headquarters in such situations, and to develop guidance for a principled and coherent response to future coups and political crises. Although the current political crises in northern Africa and the Arab world are generating their own lessons, earlier experiences in different regions are also useful for reflecting on the UN's capacities and approaches to unconstitutional changes of government. Such crises will likely emerge in diverse regions of the world in the future.

This report seeks to provide a concise analysis of UN responses to five cases of unconstitutional changes of government selected with input from DPA's Policy Planning Unit. The cases were chosen for three reasons: they were relatively recent constitutional crises (since December 2007); the UN played an active political role in each; and they offered varied political dynamics and experiences with counterpart organizations. Presented in chronological order, the cases are Kenya (after an election dispute and related violence in 2007–2008), Mauritania (after a military coup in 2008), Guinea (after a military coup in 2008), Madagascar (after mass political demonstrations and military involvement in 2009), and Kyrgyzstan (after mass civilian demonstrations in 2010).

The report offers neither a comprehensive study of the mediation processes, nor an analysis of the full range of the causes, character, and consequences of each transitional arrangement. Instead, it describes the basic elements of the transitional arrangements and a brief account of the role of the UN system, including its relation to other actors, in the emergence of those interim arrangements. The study is not based on interviews with the full range of international and national actors in each case, but on a mixture of desk research and interviews with key UN officials and a handful of others involved in post-transition mediation. Each brief case study analyzes the transitional political arrangement and the mediation efforts, and then draws lessons from the case. This paper opens by discussing some important concepts and terms before turning to the case studies and conclusions.

Concepts and Terms

Constitutional crises may derive from various sources: opposition parties, security forces, mass demonstrations; extrastate armed interventions; or from a combination of these. Departures from constitutional order may also occur when a sitting government refuses to hold a constitutionally required election, when that election fails to meet constitutional standards, or when the authorities refuse to recognize the results of a constitutionally-required election process and stay in power.

In other words, departures from constitutional order—or constitutional crises—can occur through

either,

- **an unconstitutional change of government** (e.g., Guinea's successful 2008 coup); or
- **an unconstitutional continuity of government** (e.g., the alleged electoral fraud in Kenya in 2007).

Contemporary coups and other unconstitutional ousters of heads of state are almost always followed by a transitional political authority. Transitional or interim authorities can be national, international, or some combination of the two. They can reflect power-sharing principles, or not. And sometimes "power sharing" can be limited to like-minded or allied parties, excluding their main opponents or an ousted president's party.

- *Transitional political authority* refers to the institutional configuration that exercises state executive powers, usually in an extraconstitutional formulation, and that has declared its tenure to be limited until rule can be regularized, usually in the form of national elections. Sometimes legislative and judicial powers are also included in this configuration.
- *Transitional political arrangements* refer not just to the transitional institutional actors ("authority") but also to the mechanisms related to interim governance and its legitimation. These may include popular consultations, electoral processes, referenda, the creation or reallocation of powers of provincial or local authorities, constitutional reforms, and pertinent legal changes.
- *Power sharing* refers to a system of governance in which minority groups are guaranteed a role in their own governance through representation in the state, either through allocated positions or through administrative, electoral, or appointive procedures (such as mutual vetoes or electoral systems that favor minorities). Historically, power sharing has referred mainly to "political" power sharing (referring to government posts or processes in the legislature or the executive branch), but recent scholarship has emphasized four types of power sharing: political, security (referring to the military, police, or security forces), economic (referring to access to resources or processes of economic decision making), or territorial (referring to forms of

territorial autonomy).¹ Despite the growth of multiple forms of power sharing in peace processes, constitutional crises involving coups and electoral disputes tend to center on political power sharing.

Having defined transitional political arrangements following departures from constitutional order, what do we know about them? Coups d'état and political protests themselves have received extensive attention. However, less scholarship has been devoted to comparing the disparate political arrangements and authorities that follow coups or mass protests.²

The literature on political transitions after civil wars is of value, but with some important caveats.³ In a coup d'état, there are no opposing armed parties that can be brought to the table based on their claim to legitimacy or control of territory. It is both politically perilous and legally questionable for outside actors to introduce their military forces, either bilaterally or multilaterally. More broadly, outside of the civil war context, the role of external mediators and intergovernmental organizations tends to be more diverse and rooted in uncertain mandates.

The democratization literature offers a number of insights, and there is an extensive literature on transitions from authoritarian rule.⁴ Although external actors make a difference, transitional politics are driven mainly by national actors and exhibit great uncertainty.⁵ Where the armed forces are involved in regime transitions, hardliners and softliners within the officer ranks shape whether a transition to civilian rule occurs and how.

However, recent transitions differ from the “third

wave” of democratization in important ways. First, unlike military dictatorships or communist regimes, most of the constitutional orders discussed below already met formal definitions of democracy. The logic of international efforts to restore democratic constitutional order differs from the logic of encouraging movement away from prior authoritarian rule toward democracy.

Second, the restoration of constitutional order reflects recent norms and commitments adopted by intergovernmental organizations in Africa and Latin America.⁶ Although European regional organizations have long embraced such norms,⁷ the African Union (AU) and the Organization of American States (OAS) have played much more salient roles in responding to constitutional crises of the past few years than they did during the third wave of democratization.

Third, recent transitions occur in a very different global milieu in terms of state repression and popular protest. In contrast to the transitions of the late 1980s and early 1990s, states today face greater scrutiny of, resistance to, and accountability for human rights violations. Repression of urban protests are less likely to stifle dissent and more likely to provoke greater internal and external backlash against a regime. Popular access to technology and mass communications mean that nonviolent protests can have wider impact and that violence is both documented and denounced under a strengthened human rights framework. These differences reveal the need for greater scholarly inquiry into the phenomenon of political transitions after constitutional crises.

- 1 See Caroline Hartzell and Matthew Hoddie, *Crafting Peace: Power-Sharing Institutions and the Negotiated Settlement of Civil Wars* (University Park, PA: Pennsylvania State University Press, 2007); Stefan Wolff, “Complex Power-sharing and the Centrality of Territorial Self-governance in Contemporary Conflict Settlements,” *Ethnopolitics* 8, No. 1 (2009): 27-45; Michaela Mattes and Burcu Savun, “Fostering Peace after Civil War: Commitment Problems and Agreement Design,” *International Studies Quarterly* 53, No. 3 (2009): 737-759; Anna K. Jarstad, “Power Sharing: Former Enemies in Joint Government,” in *From War to Democracy: Dilemmas of Peacebuilding*, edited by Anna Jarstad and Timothy Sisk (New York: Cambridge University Press, 2008), pp. 105-133.
- 2 On coups, see Thomas Bruneau and Scott Tollefson, eds., *Who Guards the Guardians and How: Democratic Civil-Military Relations* (Austin, Tx: University of Texas Press, 2006); and Samuel Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, MA: Belknap/Harvard University Press, 1957); A.B. Assensoh and Yvette M. Alex-Assensoh, *African Military History and Politics* (New York: Palgrave, 2001); Patrick J. McGowan, “African Military Coups d'Etat, 1956-2001: Frequency, Trends and Distribution,” *Journal of Modern African Studies* 41, No. 3 (2003): 339-370.
- 3 See Michael W. Doyle, “Transitional Authority,” in Stephen Stedman, Elizabeth Cousens, and Donald Rothchild, *Ending Civil Wars* (Boulder, CO: Lynne Rienner, 2002); Timothy Sisk, “Pathways of the Political: Electoral Processes after Civil War,” in Roland Paris and Timothy Sisk, *The Dilemmas of State-building* (New York: Routledge, 2009), pp. 196-224; Anna K. Jarstad and Timothy Sisk, *From War to Democracy* (Cambridge: Cambridge University Press, 2008).
- 4 Some of the more salient works include Guillermo O'Donnell, Philippe C. Schmitter, and Laurence Whitehead, *Transitions from Authoritarian Rule, Volumes I-IV* (Baltimore: Johns Hopkins University Press, 1986); Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK: University of Oklahoma Press, 1991); Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore: Johns Hopkins University Press, 1996); Scott Mainwaring, Guillermo O'Donnell, and J. Samuel Valenzuela, eds., *Issues in Democratic Consolidation: The New South American Democracies in Comparative Perspective* (Notre Dame: University of Notre Dame Press, 1992); Alfred Stepan, *Rethinking Military Politics* (Princeton: Princeton University Press, 1987).
- 5 O'Donnell, Schmitter, and Whitehead, *Transitions*, Volume IV.
- 6 Jon C. Pevehouse, *Democracy from Above: Regional Organizations and Democracy* (Cambridge: Cambridge University Press, 2005); K.O. Kufuor, “The OAU and the Recognition of Governments in Africa: Analyzing its Practice and Proposals for the Future,” *American University International Law Review* 17, No. 2 (2002): 369; Eki Yemisi Omorogbe, “A Club of Incumbents? The African Union and Coups d'Etat,” *Vanderbilt Journal of Transitional Law* 44 (2001): 123-155.
- 7 Paul J. Kubicek, *The European Union and Democratization* (New York: Routledge, 2003); Laurence Whitehead, *The International Dimensions of Democratization* (Oxford: Oxford University Press, 2001).

Kenya (2007-2011)

OVERVIEW AND TIMELINE

More than one thousand people died and more than 350,000 were displaced in the violence that erupted after national elections in Kenya in December 2007.⁸ Isolated instances of violence initially broke out once the Electoral Commission of Kenya (ECK) announced that President Mwai Kibaki of the Party of National Unity (PNU) had won re-election, despite challenger Raila Odinga's indications that he had a large lead.⁹ Suspicions of vote tampering ran high given that Odinga's Orange Democratic Movement (ODM) had garnered a substantial portion of the parliamentary seats. As violence escalated and mediators offered their

services, an AU-mandated Panel of Eminent African Personalities chaired by Kofi Annan took leadership of the mediation effort on January 22, 2008. After forty-one days, a settlement was reached involving a "grand coalition" power-sharing arrangement. President Kibaki would remain alongside Odinga as newly empowered prime minister, with shared cabinet posts and some mutual vetoes on those posts. Although the perceived losing candidate persisted in office, further mass violence was averted. The arrangement was ratified by a parliamentary vote and, under a new constitution approved by referendum in 2010, is slated to endure until elections are held, which are now due by March 2013. Further negotiations on social and structural issues emerged from the negotiations and continued afterward.

Kenya: Timeline of Events	
December 27, 2007	Presidential and parliamentary elections are held. Interethnic violence erupts as the results of the presidential election are disputed.
January 10, 2008	Parties to the dispute—the governing Party of National Unity and the Orange Democratic Movement—consent to the appointment of Kofi Annan to chair the AU Panel of Eminent African Personalities.
January 22, 2008	The Annan-led panel takes leadership of mediation.
February 28, 2008	The parties sign the Agreement on the Principles of Partnership of the Coalition Government.
April 1, 2010	The Kenyan National Assembly passes a new constitution.
August 27, 2010	President Kibaki promulgates the constitution after it is approved by 67 percent in a referendum.
March 2013	Presidential and parliamentary elections are scheduled, but may be held earlier if the government is dissolved before then.

⁸ Commission of Inquiry on Post-Election Violence, "Final Report" (also known as the "Waki Commission Report"), Nairobi, Kenya, October 16, 2008, pp. 351, 383.

⁹ The Kenya case study draws heavily on Elisabeth Lindenmayer and Josie Lianna Kaye, "A Choice for Peace?: The Story of Forty-One Days of Mediation in Kenya," New York: International Peace Institute, August 2009.

MEDIATION EFFORTS AND THE EVOLUTION OF TRANSITION

Several prominent figures offered to mediate within days of the elections, including Archbishop Tutu, four former African heads of state, and AU Chairman Kufuor. By January 10th, the parties had consented to the appointment of Kofi Annan as chair of the AU panel that also comprised former Tanzanian President Benjamin Mkapa and former Education Minister of Mozambique and children's rights advocate Graça Machel. At Mr. Annan's request, the UN Development Programme agreed to be the principal mechanism for managing the donor funds and the personnel contracts for his mediation effort. In addition, he drew principally on two or three DPA officials to staff his efforts while in Kenya, plus a staff member from the AU and two or three persons from the Geneva-based Centre for Humanitarian Dialogue (HD Centre).

The ODM's initial position was that Odinga had rightfully won the presidential election, and nothing less than his occupying the presidency was acceptable. The government's position was that the electoral commission had spoken, and Kibaki was sworn in within hours of its announced results. Within two weeks, Kibaki had appointed a vice president and sixteen cabinet members, accusing the ODM of criminally inciting mass violence. Kibaki continued to act as president throughout the mediation period and has done so to date.

The transitional political arrangement that was eventually embraced emerged from the recognition that some sort of power sharing was the only way forward. The first two hurdles were the questions of what to do about the elections and their results, and about the consequent violence. These issues fell under Agenda 1 (the violence and civil liberties) and Agenda 2 (humanitarian crisis and reconciliation) of the talks. The parties variously proposed a recount, the disqualification of votes from certain districts, appointment of a new electoral commission, and a prompt repeat of presidential elections. The mediators believed that it would be next to impossible to ascertain an election result that would not be rejected by one party, and that the mass violence and enormous displacement of people would complicate the process of a new election so much that it would discredit that option. The mediation team worked closely with, and relied heavily on, the electoral experts from the UN's

Electoral Assistance Division in their strictly technical capacity, to carefully explain these complications to the parties. This deployment of technical expertise was crucial to convincing the parties to abandon their insistence on the electoral outcome they had worked so hard to secure, perforce opening them to consider alternative governance options for the country.

The notion of the "grand coalition" emerged from discussions within the mediation team, including from Mr. Annan himself, and from some Kenyan civil society actors. It came to be seen as the only option that would not lead to renewed bloodshed. These discussions of transitional governance came under Agenda 3. Although some among the parties' negotiators resisted the applicability of other countries' experiences to the Kenyan context, the use of international experts on power sharing and its features helped the parties become more acclimated to the grand-coalition concept and understand the technical components of how it might work.

Signed on February 28, 2008, the *Agreement on the Principles of Partnership of the Coalition Government* recognized the stalemate: "Given the current situation, neither side can realistically govern the country without the other." Although an initial proposal called for the accord to last for two years, a five-year timeline was eventually agreed, ending in elections in 2012. The Kenyan High Court has now scheduled the elections for March 2013, unless the government is dissolved before then.

To enact the accord, the National Assembly within a month passed a law that added the post of prime minister and two deputy prime ministers to the country's executive. The prime minister was mandated "to coordinate and supervise the execution of the functions and affairs of the Government of Kenya including those of Ministries," but he was not designated as the head of government or of the civil service, introducing ambiguity about his authority. Because the process of constitutional reform would be contentious and time-consuming, the mediators were pleased to help the parties find a way to approve the new arrangement by law, without revising the constitution.

AU panel member Graça Machel played a crucial

role in ensuring the participation of women in the mediation process, although women's issues were neither mandated nor prominent.¹⁰ Women were prominent in the talks themselves, but the advocacy by women's groups in civil society had more impact on the inclusion of women's issues in the agreement. Women's groups organized themselves actively, and Ms. Machel facilitated discussions that rendered them more unified and effective. Diverse women's groups also initiated reconciliation initiatives at the local level, and pressed for victims' perspectives to be included in the inquiry into the post-election violence and in measures to redress the wrongs committed.

In addition to these negotiations over governance, Agenda 4 took up "long-term issues," including legal and institutional reforms, land reform, poverty and inequality, national cohesion, and impunity. Pursuant to these negotiations, and deriving largely from the involvement of Kenya's active civil society, numerous measures were adopted to address these long-term "Agenda 4" issues, such that the phrase even gained broad recognition in Kenyan public discourse. These included the creation of a Truth, Justice and Reconciliation Commission (TJRC) and, subsequently, of the National Cohesion and Integration Commission (NCIC), and the Commission of Experts for drafting the new constitution. The panel also created, in consultation with the parties and civil society, a Coordination and Liaison Office (CLO) in August 2008 to monitor and support the implementation of the agreements.

A new constitution was drafted and discussed in 2009 and 2010, passed by the National Assembly in April 2010, and upheld in a referendum by 67 percent of the vote. It took effect in August 2010 following its promulgation by President Kibaki. The new constitution institutionalized many of the reforms that emerged from Agenda 4 of the prior negotiations. It expanded the number of seats in the National Assembly, adding a woman member elected from each of roughly forty-seven counties; created a senate representing the regions; devolved

power from provinces down to the counties, each of which will have a directly-elected governor; created county assemblies; required that women comprise one-third of all elected bodies; and recognized new socioeconomic rights. A November 2009 "harmonized draft constitution," drafted by a committee of experts after popular consultations, had recommended that the prime minister post be retained as head of government, as stipulated in the February power-sharing accord. However, the final version passed by Parliament dropped the prime minister post and embraced a presidential system, albeit one with reduced powers for the president and more checks and balances.

CONSEQUENCES OF THE TRANSITIONAL ARRANGEMENT

The transition from the constitutional crisis will remain incomplete until the 2013 elections install a new elected government. Nevertheless, the mediated power-sharing arrangement in Kenya is widely seen as having prevented a resumption of mass ethnic violence and possibly civil war or genocide. Admittedly, justice for election-related violence has not been achieved; impunity and corruption persist;¹¹ civil society sees many missed opportunities for enhancing their role in governance and holding the state more accountable; and little headway has been made in addressing Kenya's socioeconomic problems. The power-sharing arrangement may even collapse before the elections are due to be held.¹² However, the mediation effort and the grand-coalition arrangement reversed the rising tide of ethnic violence in the wake of the election. It also generated a series of promising reform initiatives on justice, reconciliation, and tolerance, whose results are not yet clear.

The mediation experience was positive for the United Nations as an organization, as it was for the African Union, influencing subsequent responses in Zimbabwe and Côte d'Ivoire. It showed that the UN could provide its technical expertise in mediation support to other organizations and do so in collaboration with others like the HD Centre,

10 This paragraph draws mainly on Meredith Preston-McGhie and E. Njoki Wamai, "Beyond the Numbers: Women's Participation in the Kenya National Dialogue," HD Centre report, March 2011, available at www.hdcentre.org/publications/beyond-numbers-womens-participation-kenya-national-dialogue-and-reconciliation.

11 Some criticize the creation of forty ministries, undertaken to accommodate the parties' interests in holding government posts, for making it more difficult to monitor corruption. Jim Fisher, "Clinton, Africa Experts Laud Kenya Constitution Reform Process Ambassador Ranneberger hopes 'historic opportunity' is not lost," December 8, 2009, available at www.america.gov/st/democracyhr-english/2009/December/200912081350591EJrehsiF6.330073e-02.html.

12 On January 30, 2011, Mr. Annan publicly expressed concern about the need for greater consultation in senior cabinet appointments by the Kibaki administration.

without concern for being in the lead.

LESSONS FROM KENYA

The panel's mediation was well executed and offers numerous positive lessons. Kofi Annan was a high-profile choice as mediator, unifying the African Union mandate and his past as UN Secretary-General. He insisted on exclusivity as mediator, and exhibited sound judgment at key moments. He insisted that the parties not revert to separate mediators, and managed public relations extremely well, placing public pressure on the parties without giving them a chance to walk away, all the while cognizant that mass violence might break out if the talks were seen to falter. When the parties seemed to reach an impasse on February 26th, his decision to suspend the talks and engage exclusively with the two principals placed the onus on Kibaki and Odinga, who stood to lose support and standing if the talks failed, but to reap considerable power and acclaim if they succeeded.

A power-sharing arrangement is more feasible and likely where each side holds a card that is indispensable to governance, providing comparable or mutual vetoes. Odinga's ODM enjoyed a widespread perception that it had won the vote, whereas President Kibaki held the levers of state power (including the armed forces and the courts) and had the ECK's decision in his favor. The Independent Review Commission (IREC) on the 2007 elections, which arose out of the mediation process, concluded that the electoral process and results were so polluted that it was impossible to determine who won the presidential elections. This situation contrasts sharply with societies where a sitting president flees the country or has lost control of the coercive forces or other state organs.

Electoral assistance and monitoring can play vital roles in mediating governance disputes. The greater accuracy and certainty that independent exit polling and electoral monitoring can achieve, the greater the confidence with which internal and external actors can address competing claims to victory. In addition, the technical expertise of the

DPA's Electoral Assistance Division (EAD) officials in Kenya was crucial to concluding that neither a recount nor a rerun of the balloting would produce a conclusive outcome in the wake of the violence.

The political accord and an end to election-related violence were achieved without providing amnesties or embracing impunity. The creation of mutually acceptable mechanisms to investigate the post-election violence and the electoral system were crucial to opening the way for a political agreement. In turn, despite some setbacks, Kenya's interim power-sharing arrangement has facilitated a number of steps toward improving communal relations and human rights under Agenda 4.

Mediation efforts to address constitutional crises benefit from incorporating women's participation and concerns, including inquiries into mass atrocities. Civil society organizations were an important ally in this effort. One participant suggested that the incorporation of civil society's views would have been improved with a more formal mechanism for relating to the mediation process and with a full-time staff member dedicated to supporting engagement with civil society, as well as a gender adviser.

The continued existence of the panel, and the creation of a mechanism for monitoring and follow-on engagement with civil society, have contributed to the implementation of the accord, especially Agenda 4, and the life of the transitional arrangement. The Panel, under Mr. Annan's leadership, has issued implementation reports and made statements at crucial moments to remind the parties of their obligations and support civil society's monitoring efforts. The Coordination and Liaison Office (CLO) has sponsored an independent Kenyan organization to issue regular reports on the implementation of the accord. Although some civil society organizations would like to see the CLO take more initiative to stimulate reforms, rather than support Kenyan processes through monitoring, the CLO has positively sustained attention on the accords.

Mauritania (2008-2010)

OVERVIEW AND TIMELINE

On August 6, 2008, a bloodless coup deposed President Sidi Ould Cheikh Abdallahi, who had been elected following a 2005 coup. General Mohamed Ould Abdel Aziz, one of four military generals fired by President Abdallahi earlier that day, led the coup and became the head of the new junta, called the High Council of State (HCE). Abdallahi was held prisoner until international and national pressure led to his release in December 2008. Major donors and the AU condemned the coup and called for the release of the president and his active participation in resolving the crisis and restoring constitutional order.

After months of little progress, the HCE proposed that Aziz resign in favor of a transitional government and that elections be held in June 2009.

This plan was initially rejected by the opposition. Talks mediated by Senegal's President Abdoulaye Wade, with active UN support, led to the declaration by Abdel Aziz in April 2009 that he would resign as head of the HCE and stand for elections to be held in June. When no opposition candidates consented to participate, further negotiation efforts on the part of the UN, the AU, and the Arab League, led to the Dakar Agreement, in which the HCE would recognize Abdallahi as president in order for him to resign that position in favor of an interim "national unity" administration headed by the Senate President Ba Mamadou Mbaré, the country's first black head of state. The presidential election was postponed until July 18, 2009. Abdel Aziz won that election with a 52 percent majority, obviating a second round, and leading to his swearing in as president in August 2009. International sanctions were dropped, and the AU restored Mauritania's status.

Mauritania: Timeline of Events	
August 6, 2008	President Sidi Ould Cheikh Abdallahi is deposed in a bloodless coup by General Mohamed Ould Abdel Aziz, who (along with three other military generals) had been sacked by Abdallahi earlier that same day. Abdel Aziz takes charge of the new junta, called the High Council of State (HCE).
February 2009	The AU adopts targeted financial and travel sanctions on coup leaders.
April 2009	Abdel Aziz offers to resign as head of the HCE and stand for elections scheduled for June, but no other candidates agree to participate.
June 2, 2009	The Dakar Agreement is signed after intensive mediation efforts led by Senegalese President Abdoulaye Wade on behalf of the AU. The agreement calls for a coalition of national unity upon the "voluntary" resignation of President Abdallahi.
June 27, 2009	Abdallahi resigns.
July 18, 2009	Presidential elections are held, with General Abdel Aziz claiming a first-round victory with 52 percent of the vote in a peaceful balloting process, thus obviating the need for a second round. Subsequently, the AU drops its sanctions.
August 5, 2009	Abdel Aziz is sworn in as president.

MEDIATION EFFORTS AND THE EVOLUTION OF TRANSITION

Immediately after the August 6, 2008, coup, an eleven-member High Council of State (HCE) was formed entirely of senior military officers, including Abdel Aziz. It placed President Abdallahi under house arrest without access to mediators. On September 14th, a majority of the National Assembly adopted a resolution effectively recognizing the HCE, calling for a broad dialogue process that would include the international community and the political opposition, and proposing a roadmap for a return to constitutional order that included presidential elections within fourteen months, the revitalization of the Independent National Electoral Commission (CENI), and a broad-based coalition government. Once it was clear that the HCE would not provide guarantees that its members would abstain from standing in the proposed new elections, the members of Parliament (MPs) of the “legal opposition” Rally of Democratic Forces (RFD) led by Ahmed Ould Daddah split from the pro-coup majority of the ninety-five-member Parliament. In addition, members of civil society, supporters of President Abdallahi, and other groups opposed to the coup formed the National Front for the Defense of Democracy (FNDD). This constant and significant, albeit minority, opposition to the coup marked a departure from the relatively weak response to Mauritania’s several previous post-independence coups.

The international community reacted swiftly to condemn the coup. The AU suspended Mauritania; and the UN, the EU, and the AU called for the immediate release of the president and a return to constitutional order. The EU, its member states, and the USA suspended non-humanitarian aid, and the AU Peace and Security Council eventually adopted targeted financial and travel sanctions against the coup leaders in February 2009. The UN Secretary-General expressed regret over the coup and called for the immediate restoration of constitutional order. Said Djinnit, in his capacity as Special Representative of the Secretary-General (SRSG) for West Africa, and head of the Dakar-based UN Office for West Africa (UNOWA), promptly embarked for the Mauritanian capital Nouakchott after the coup to assess the situation and provide guidance to the UN country team. The president of the AU Commission on Peace and Security also

traveled there to assess the situation, as did the Arab League and La Francophonie. In the context of Article 96 of the Cotonou Agreements, the EU also invited the HCE to engage in consultations on the return to constitutional order in October 2008. The talks failed miserably. An international contact group for Mauritania was formed, chaired by the AU, which convened outside of Mauritania but received strong lobbying from the FNDD and the HCE each time they met.

In the absence of much flexibility on the part of the HCE, no official mediation was initiated in the weeks following the coup. SRSG Djinnit urged the HCE to send a high-level delegation to a consultative meeting of the AU Commission in Addis Ababa on November 10th, which the government did, along with a statement of its position. This exchange of views provided the HCE with a clearer understanding of the international community’s expectations. In December, under intense international pressure, the HCE transferred President Abdallahi to the village of Lemden and permitted him to receive visitors and speak as the country’s president but not to exercise other duties. This step opened the way for Abdallahi to make a January 2009 proposal for new elections conditional on the end of military rule, and for him to eventually become part of a resolution of the crisis.

On February 12th, the HCE proposed conditions for a June 6, 2009, election, including the plan to appoint an Independent National Electoral Commission; for the Senate president to act as interim president; for the prime minister and cabinet to formally resign but continue running the state for forty-five days before the balloting; and for the limitation of the functions of the HCE to national security issues. Mr. Daddah’s RFD rejected the proposal as undertaken without consultation and locking in the election of Gen. Abdel Aziz. It proposed instead the creation of a transitional national unity government to replace the military in power, and the non-candidacy of the HCE for elections to be scheduled later. Pursuant to these proposals in early 2009, the AU Chair Muammar Qaddafi undertook mediation efforts, which failed.

Subsequently, Senegal’s President Wade and his foreign ministry engaged the parties seeking a basis for agreement. In May the AU, the UN, and the Arab League became involved in these efforts, which eventually led to the Dakar Agreement of

June 2, 2009. Much of the government's proposal was contained in the accord, except the date of the elections was postponed until July 18, 2009, and a coalition of national unity appointed by President Abdallahi would take effect upon the "voluntary" resignation of President Abdallahi. The accord stipulated that the government portfolios would be distributed fifty-fifty between the parliamentary supporters of Gen. Abdel Aziz and those of the opposition FNDD and RFD. The prime minister was proposed by Abdel Aziz, whereas the ministers of the interior (overseeing the police and elections), finance, and communication were proposed by the opposition factions. The CENI would be composed of fifteen members, of whom eight would be from the two opposition "poles," four from the HCE, and the president, vice president, and another member proposed by civil society. The accord stipulated other measures to ensure full participation and free competition in the campaign period. It also stipulated continued national dialogue on other points, including preventing future unconstitutional changes of government, security-sector reform, good governance, human rights, reconciliation, and socioeconomic development.

After three weeks of further negotiations over the relegation of the HCE to a national security body subordinate to the transitional government, Abdallahi resigned on June 27th. The elections occurred as agreed, with Gen. Abdel Aziz achieving first-round victory (his nearest competitor from the FNDD received 16 percent) in a peaceful balloting process. The CENI declared the elections free and fair and recognized the results, although its RFD-nominated president resigned over concerns about fraud. While Gen. Abdel Aziz did resign from both the government and the military, his candidacy diverged from a recent AU pattern of discouraging transitional leaders brought to power through coups from standing in presidential elections. Although the FNDD and the RFD complained of electoral irregularities, the international community followed the CENI findings and recognized the election as having restored constitutional order. Subsequently, the Abdel Aziz government showed reticence in implementing the provisions on national dialogue in the Dakar Accord.

In terms of the UN role, SRSJ Djinnit and the resident coordinator supported the AU chair, the

AU Commission, Senegal, and the international contact group throughout the process. A high-level UN panel was also deployed for a week surrounding the July 18th elections, to assess the environment for the elections, monitor the process and its results, and report back to the Secretary-General. Although a UN peace and development adviser (PDA) was slated to be deployed in April 2010, this process was delayed by UN procedures, leading to only a one-month deployment in July 2010. Another PDA was slated to deploy to Mauritania in spring 2011. In addition, the December 2008 decision by the UN Credentials Committee to accept the credentials of the HCE government's officials proved an embarrassing incident that might have complicated the UN's stance vis-à-vis the opposition in mediation efforts.

CONSEQUENCES OF THE TRANSITIONAL ARRANGEMENT

During the first four months after the 2008 coup, the HCE held firm, unrelenting in its insistence on detaining the elected president and overseeing a process of normalization without regard for the internal opposition or international criticism. The support of the National Assembly helped provide a veneer of legitimacy inside Mauritania, although the HCE's desire for external legitimacy and financial support ultimately proved decisive. The country's finances were seriously threatened by the cutoff of non-humanitarian aid, and in its dealings with international actors the HCE emphasized its interest in combating Islamic extremism and terrorism.

The mediated transition redounded positively on the UN, especially UNOWA and the UN country team, as well as the AU. At the same time, the international community and the opposition parties all chose, largely because they had few other realistic options, to participate in a transition process that defied the prevailing norm of preventing transitional leaders after coups from benefitting electorally from their role in unconstitutional rupture.

LESSONS FROM MAURITANIA

Coup-generated rulers, even where the prior president has been ousted, can still be persuaded to undergo a negotiated transition to restore constitutional order. Although President Abdallahi had not left the country, he was held prisoner and

could no longer readily mobilize political followers or units of the armed forces. Nevertheless, after months of little movement in talks, General Aziz was persuaded to accept constitutional reforms, to step down and to stand for new elections. Similarly, the political opposition acceded to an impossibly quick timetable for elections, seeming to believe that a fraud-free election, even with an onerously short campaign on a questionable playing field, was the best among bad options. Its demands for the non-eligibility of coup leaders in the elections went unheeded.

Although the transition was highly orchestrated under a power dynamic heavily favoring the HCE, the format of the transitional government of national unity holds some lessons. The agreement by the HCE to split the ministries with the opposition in the run up to elections, including the opposition's control over functions of key concern—the electoral commission and the ministers of interior and finance—represented a real concession. It successfully brought the opposition into a political process to restore constitutionality and to ensure, at least on paper, continued dialogue over the important challenges facing governance and Mauritanian society. At the same time, once the international community recognized the restoration of constitutionality and diminished its scrutiny, the government largely disregarded the dialogue promised in the Dakar Accord, jeopardizing the possibility of addressing the governance, socioeconomic, and other problems that underlay the coup.

The UN played a supportive and facilitative role

in the mediation, despite the lack of a mediation mandate. SRSJ Djinnit shuttled among the actors, worked to persuade the de facto authorities of the benefits of a return to constitutionality, helped coordinate the international community, and offered advice to the AU-led mediation. His prior familiarity with the actors, knowledge and support of the AU, and willingness to assist the AU and President Wade and his mediation team facilitated a cohesive international effort and communication among all actors.

The UN country team, and specifically the resident coordinator, played a helpful role. The country team provided a convening space for the diplomatic delegations; met frequently with key opposition leaders, political authorities, and civil society leaders; facilitated exchange of their views; kept UNOWA apprised of events as they unfolded; all while managing the UN's political profile carefully to continue the country team's projects. Resident Coordinator Maria de Valle Ribeiro deployed political skills to keep channels open among the political actors, drawing on a comparative advantage in a country where few other subregional or international actors had an in-country presence. Earlier UNDP projects facilitating dialogue, both after the 2003 coup attempt and again after the 2005 coup, laid the groundwork for UNDP to play this role again in 2008. UNDP had carefully framed its earlier dialogue efforts around the MDGs in order not to inflame political sensitivities. The 2008 experience showed strong collaboration among the UN country team, the Secretariat, and UNOWA, as well as EAD.

Guinea (2009-2010)

OVERVIEW AND TIMELINE

On December 23, 2008, six hours after the death of Guinea's longtime ruler Lansana Conté, a coup d'état was announced by Capt. Moussa Dadis Camara on behalf of a group called the National Council for Democracy and Development (CNDD). The military junta dissolved the institutions of government and suspended the constitution and all political and union activity. Partly due to longstanding fears that Conté's death would usher in civil unrest and the belief that the return to constitutional rule would be swift, the coup initially enjoyed some support, with large crowds taking to the streets to welcome the new rulers.

Negotiations commenced between the CNDD and the *Forces Vives*, a collection of civil society and political groups, with mediation led by the AU and Economic Community Of West African States (ECOWAS) as co-chairs of an international contact group. The talks enjoyed active UN support under the leadership of regional SRSR Said Djinnit. In April, Dadis Camara seemed to renege on earlier pledges that members of the CNDD would not stand for elections, leading to protests. Government forces suppressed a demonstration in September 2009 with violence, leading to mass atrocities and more than 150 deaths. In response, the UN established a commission of inquiry. As the inquiry's report neared release in December, Dadis Camara blamed a lieutenant for the atrocities, and

Guinea: Timeline of Events	
December 23, 2008	Longtime ruler Lansana Conté dies. Capt. Moussa Dadis Camara takes control of the state on behalf of a coup junta called the National Council for Democracy and Development (CNDD), dissolving government institutions and suspending the constitution and all political and union activities.
April 2009	Dadis Camara publicly begins to suggest that CNDD members may participate in elections later in the year, reneging on an earlier promise, while also continuing to delay the promised formation of a national transitional council.
September 28, 2009	Military and security forces suppress demonstrations convened by the <i>Forces Vives</i> , committing mass rapes and mutilation, and killing more than 150 people.
October 16, 2009	UN Secretary-General Ban Ki-moon establishes a commission of inquiry to investigate the atrocities, supported by the Office of the High Commissioner for Human Rights (OHCHR).
December 3, 2009	Lt. Aboubacar "Toumba" Diakité shoots Dadis Camara in the head, leading to his evacuation to Morocco for medical attention, after Dadis Camara blamed Diakité and others for the September killings and abuses. Defense Minister Sékouba Konaté assumes power as interim president in Dadis Camara's absence.
December 2009	The commission of inquiry's report names members of the security forces that committed serious violations of human rights in September.
January 15, 2010	The Ouagadougou Accord is signed, providing a roadmap to return to constitutional order.
June 27, 2010	The first round of presidential elections is held. Cellou Dalein Diallo receives 44 percent of the vote; Alpha Condé receives 18 percent.
November 7, 2010	The second round of presidential elections is held amid violence and after controversy over the electoral commission and process. Alpha Condé is declared the victor, and Diallo concedes.
December 21, 2010	Alpha Condé is sworn in as president with legislative elections still pending.

the latter then shot Dadis Camara in the head. The de facto leader was flown out of the country, and Defense Minister Sékouba Konaté assumed power on an interim basis.

The next month, in January 2010, Konaté, Dadis Camara, and the *Forces Vives* reached an agreement brokered by Burkina Faso's President Compaoré, who had assumed the lead mediator role after the September violence. The Ouagadougou Accord provided for presidential elections, whose first round took place in June. After delays and contention over the electoral process and electoral commission, a second round occurred in the wake of incidents of violence. Opposition leader Alpha Condé was declared the winner, a result accepted by the defeated candidate and recognized by the international contact group. Condé assumed power and has ruled without a parliament, pending legislative elections which were scheduled for late December 2011, before being postponed.

MEDIATION EFFORTS AND THE EVOLUTION OF TRANSITION

The AU and ECOWAS condemned the coup, which was also the path by which Conté himself had come to power twenty-four years earlier. Both organizations suspended Guinea from participating in their activities, and the US and other donors suspended all but humanitarian assistance. The AU and ECOWAS, with the support of the United Nations, established the International Contact Group on Guinea, comprising Guinea's external partners. The group was co-chaired by the AU and ECOWAS, who respectively named as envoys Professor Ibrahima Fall, the special envoy appointed by the AU for Guinea, and Dr. Mohamed Ibn Chambas, the president of the ECOWAS Commission. SRSG Djinnit played a facilitating role in the mediation from January through September 2009. UNOWA staff and other UN agencies provided important technical support for the mediation effort. Guinea's *Forces Vives*, representing the country's very active civil society and political parties, played an important role in the negotiations as the main organized force seeking a return to civilian rule.

The first phase of the mediation efforts, from January to April 2009, seemed to hold promise for restoring constitutional order. The CNDD showed a willingness to consent to the three main demands of the *Forces Vives* and the international

community: (a) the establishment of a national transitional council (CNT) with civilian and military participation; (b) the establishment of a consultative forum involving civil society; and (c) the non-participation of the military, including the members of the CNDD, as candidates in the elections. The contact group met monthly with the main protagonists in Conakry. Beginning in April, however, Dadis Camara began to suggest that he might present himself as a candidate in the elections. This became a sticking point in the transition, as the *Forces Vives* insisted on the non-candidacy of the members of the junta in elections. Very little progress was made by the junta on the establishment of a transitional council. The negotiations, staffed mainly by ECOWAS (including an official posted permanently in Conakry) with occasional support from AU staff members, made little headway in resolving this standoff about the conditions for ending the unconstitutional rule.

In the context of increasing frustration at the CNDD's resistance to forming a transitional council or abstaining from candidacy, the *Forces Vives* convened street demonstrations. On September 28, 2009, elements of the defense and security forces fired on protesters gathered in Conakry's main stadium and committed gross human rights violations including mass rapes, mutilation, and torture. More than 150 people were killed. National and international outrage ensued, leading to a hardening of positions by the opposition forces. ECOWAS imposed an arms embargo in October, and appointed a sitting head of state, President Blaise Compaoré, to lead the mediation effort, in continued collaboration with Dr. Chambas of ECOWAS, the AU's Professor Fall, and SRSG Djinnit. The UN, the EU, and the USA imposed targeted sanctions on CNDD leaders.

The UN played a crucial role in the wake of the September killings. The Secretary-General immediately established a commission of inquiry into the events, led by the Office of the High Commissioner for Human Rights (OHCHR) with the support of the Department of Political Affairs and the Office of Legal Affairs. The inquiry, completed by December 2009, concluded that various soldiers and security forces had committed crimes against humanity as part of systematic attacks, for which the government bore responsibility. It also named certain individuals as bearing

direct responsibility and recommended that they be further investigated with a view to being prosecuted. In anticipation of the report that would implicate himself and junta members, Dadis Camara stated that Lt. Aboubacar “Toumba” Diakité held responsibility and had acted on his own authority.¹³ On December 3, 2009, Diakité shot Dadis Camara in the head, leading to his evacuation for medical treatment in Morocco.¹⁴ The defense minister, Sékouba Konaté, assumed the interim presidency of the country during Dadis Camara’s absence.

This change of leadership, amid heightened international and national pressure, opened the way to the crucial Ouagadougou Accord of January 15, 2010, which would provide a roadmap for the return to constitutional order. Dadis Camara, who had boarded a plane in Morocco expecting to arrive to cheering supporters in Conakry, instead arrived in Ouagadougou. There, President Compaoré was able to facilitate an agreement between Konaté, Dadis Camara, opposition figures, and members of the contact group. The agreement provided for a national transitional council, including a prime minister named from the *Forces Vives*, a first round of presidential elections by June 2010, internationally-supported security-sector reforms, and the non-participation in elections by officials in the CNDD, active military officers, or members of the transitional council. Dadis Camara endorsed the accord and indicated he would remain outside the country receiving medical treatment. In recognition of this breakthrough, and despite misgivings about the CNDD’s continued participation in the transitional council and its continued control over the security forces, France and the US restored some bilateral assistance, while the EU eased some targeted sanctions. The Electoral Assistance Division and UNDP helped mobilize funds for election preparations. The first round of elections for president were held on June 27, 2010, in which Mr. Cellou Dalein Diallo received 44 percent of the vote and Mr. Alpha Condé, a longtime opponent of Conté, received 18 percent.

After the first round had been held, the mediation effort focused largely on the electoral process. The parties and other observers raised questions about the National Independent Electoral Commission (CENI): its role in fraud in certain areas of the first round, its favoritism toward one candidate or ethnic group, whether its leader or entire membership should be replaced, and by whom. The Condé campaign alleged problems distributing ballots and incidents of fraud, demanding reforms to the CENI. Three months after the first round of voting, a Guinean court sentenced the CENI’s president, Ben Sékou Sylla, and its planning director to a year in jail for fraud. Cellou Diallo denounced Sékou Sylla’s replacement as president of the CENI, Louceny Camara, for having stolen 109 electoral registers during the first round, and in October a court sentenced this latest CENI president to a year in jail for fraud as well. These accusations and legal problems over the electoral commission delayed the second round considerably. Neither Diallo nor Condé could agree on a new head for the commission, partly because of disagreements over the ethnicity of the persons proposed. Throughout this period, the EAD provided technical assistance, coordination, and mobilization of resources. Because Condé’s campaign had been less well organized and prepared than that of Diallo, some observers believe the former saw benefit in delaying the second round, whereas Diallo pressed to hold the second round promptly. Eventually Malian Gen. Siaka Sangaré, an elections expert who had been assisting the electoral commission, was appointed to lead the CENI through the second round.

The second round occurred on November 7, 2010, following instances of violence, and Mr. Alpha Condé was declared the winner. The military declared a state of emergency, and some Diallo supporters, many from the Fula ethnic group, blocked streets in protest of the result. Diallo eventually conceded defeat, and President Condé was sworn into office on December 21, 2010, marking the successful return to constitutional order.

13 John Lee Anderson, “Downfall of a Dictator,” *The New Yorker*, April 9, 2010.

14 Two weeks later, Diakité said he had shot Dadis Camara because the latter had betrayed democracy and because “He [Camara] tried to blame me for the events of Sept. 28.” See “Guinea Aide Admits Shooting Moussa Dadis Camara,” *The Guardian*, December 16, 2009, available at www.guardian.co.uk/world/2009/dec/16/guinea-aide-shoot-camara.

CONSEQUENCES OF THE TRANSITIONAL ARRANGEMENTS

The transitional arrangements held important consequences. Initially the coup inspired relief internally and externally at the prospect that the long-awaited succession after the nearly 25-year-rule of President Conté would not lead to mass violence or civil war. However, within a few months the putschists had reignited apprehensions that they would not permit a democratic process and would cling to power. Insecurity amid militias newly formed by the government and heightened ethnic tensions emerged in 2009, as no progress was made in the negotiations.

The transitional arrangements that emerged from the Ouagadougou Agreement reflected concessions to the *Forces Vives* but also a compromise, as several military members of the CNDD remained in cabinet positions. The initial positive reception of the Guinean coup poses the question of whether a protocol that locks the UN system into denouncing coups is desirable. At the same time, the failure of the UN to issue a statement in response to the coup lent support to the notion that the UN recognized the CNDD when it initiated contact with it for mediation. The UN's role in the mediation was characterized by positive collaboration with ECOWAS and the AU, instilling support for a collaborative style and a technical assistance role for the subregional and regional organizations in such situations. The return to constitutional order is largely attributable to external mediation, of which the UN was a crucial component.

LESSONS FROM GUINEA

The death of the sitting president proved a departure point for the initial crisis. This is often the case, where succession opportunities lead to fear and institutional uncertainty, and people act to take advantage of such windows preemptively, out of fear that others will. Planners should anticipate such moments.

When the coup occurred, the lack of an incumbent in the presidency, or even a clearly organized political force dominating the state, meant that no salient counterweight or alternative existed for either internal opponents or external actors condemning the departure from constitutional rule. The fact that the coup plotters issued from the armed forces and were able to prevent

open dissent within those forces, even as they sacked senior commanders, helped consolidate their power and reduce violence. But it also left them largely unchallenged in their control of the state.

While a clear violation of law and international standards, **the shooting and effective disabling of the junta president, Dadis Camara, proved decisive in removing the main roadblock to a negotiated agreement on the return to constitutional rule.** Dadis Camara's mixed signals about his willingness to stand for office had become the main obstacle to an agreed-upon electoral path. When, after Dadis Camara's departure from Guinea, Konaté returned to the CNDD's earlier commitment not to stand for office in presidential balloting, the mediation moved forward and resulted in the Ouagadougou Accord of January 15, 2010, which ultimately served as the roadmap for the successful return to constitutional rule.

The highly coordinated and smooth mediation efforts among ECOWAS, the AU, and the UN proved crucial. The mediation effort was unified fairly quickly, building on the strong response against the coup by the regional and subregional actors and major donors. The UN played an important role in facilitating the mediation efforts until the appointment by ECOWAS of President Compaoré, whom Mr. Djinnit then played an active and key role in supporting. Mr. Djinnit and his staff proposed mediation strategies to the other mediators, keeping them informed of developments, calling them frequently, picking them up with the UN airplane that proved crucial for his work, and ensuring the support of the diplomatic community for a united regional-subregional-UN effort.

The Guinea case showed that transitional justice can complement and reinforce, rather than contradict, mediation efforts. Much of the literature on democratic transitions and on peacebuilding points to the danger of threatening political elites with prosecution for human rights abuses, which may leave them little incentive to relinquish power or make concessions. However, in Guinea the commission of inquiry proved crucial in dividing and weakening the CNDD (albeit unintentionally and indirectly), and in ending the rule of Dadis Camara while hardening the resolve of the opposition. The inquiry responded to

popular outrage over atrocities, and was a necessary measure to signal international condemnation and intolerance of such acts. It also represented a positive instance of collaboration between the OHCHR, UNOWA, UNDP, and the *Forces Vives*.

The UN Office for West Africa offered a useful mechanism for joint mediation efforts and an official of sufficient rank and standing, whose writ required maintaining ongoing contacts in the country and monitoring political developments.

The specific characteristics of SRSO Said Djinnit also constituted a positive element for a number of reasons worth considering for future comparable appointments. Aside from being a known, respected, and accomplished diplomat in the region, Mr. Djinnit embodies many recent developments in African multilateralism, regionalism, and good governance. He was commissioner for peace and security of the AU, and played a role in creating the AU Peace and Security Council, the African Peer Review Mechanism, and the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government. This background, as well as crossover appointments (to regional, UN, and subregional organizations), in the person of an SRSO facilitated collaborative relationships among the different actors. The AU envoy, Ibrahima Fall, also reflected this crossover experience, having served as UN regional coordinator for the Great Lakes region and held a number of other senior UN posts.

Basing representatives of the international mediating organizations in Conakry, including a senior mediation adviser deployed by UNOWA, proved helpful in apprising the principal mediators of developments and advising them on strategy. In June 2010, after a delay of three months, Mr. Bakary Dabo was deployed as senior mediation adviser to UNOWA, based in Conakry. President Compaoré appointed his former army chief of staff, Ali Traoré, to be his special representative in

Guinea. These postings, which also required a small number of support personnel, were funded through a grant from the UN's Peacebuilding Fund in a useful collaboration.

The Guinea case also shows the importance of international mediation on issues related to both the politics and the technical details of a nation's electoral tribunal or commission. The technical experts played an important role in explaining why renewed elections would not provide a technically satisfactory election outcome, much less one that would be above reproach politically.

The International Contact Group on Guinea, created after the AU consultative meeting in January 2009, considerably facilitated dialogue between the *Forces Vives* and the military junta. The international contact group worked to elicit firm commitments from the military junta for the organization of elections and a return to constitutional order. At the same time, the contact group worked to communicate with the *Forces Vives* and ensure that the transition was a broadly consensual process.

The political negotiations benefitted from including a broad array of actors from within Guinean society. During the negotiations, the mediation team and the UN country team sought to include actors from Guinean society beyond top political and military leaders. This effort included regular meetings with women's organizations, support for civil society platforms and local dialogue spaces, and mobilization of funds and technical support for peacebuilding initiatives in different parts of the country. In addition, the inclusion of security-sector reform in the mediation agenda served as a confidence-building mechanism, reassuring the armed forces of continued support while holding the promise of positive changes to the security sector for the *Forces Vives*.

Madagascar (2008-2011)

OVERVIEW AND TIMELINE

In December 2008, Madagascar's President Marc Ravalomanana closed the TV station belonging to Andry Rajoelina, the popular thirty-four-year-old mayor of the country's capital, Antananarivo. This decision prompted mass demonstrations and weeks of protests. By late January, demonstrators calling for democratic reforms had shifted to demanding an ouster of the "dictator" president and the formation of a transitional government to convene new elections. Violence and vandalism increased, and Ravalomanana announced the removal of Rajoelina from his post on February 3, 2009. Four days later, Rajoelina announced the formation of a High Transitional Authority (HAT) to govern the country. Tensions deepened after the presidential guard killed several demonstrators, bringing the number of dead from the protests and vandalism to nearly 130. The coup was complete after a group of colonels took over the military and forced the

president's resignation. Ravalomanana initially handed power to a group of army officers on March 17th, but these were then persuaded to recognize Rajoelina and the HAT.

The international community was relatively united in rejecting the unconstitutional change of government. The African Union, Southern African Development Community (SADC), and Organisation internationale de la Francophonie (OIF) all suspended Madagascar's participation in their activities, and most donors suspended assistance, although the UN did not condemn the coup. Drawing on political events after the 1991 coup, the de facto authorities foresaw a transition involving a national consultation, the drafting of a revised constitution to be voted on by referendum, and the holding of new elections for Parliament and the presidency. In the face of such strong international condemnation, however, the HAT reluctantly agreed within weeks to engage in mediation efforts. Despite coming close to reaching agreement on a transitional authority acceptable to all the main

Madagascar: Timeline of Events	
December 2008	President Marc Ravalomanana closes the television station of the popular young mayor of Antananarivo, Andry Rajoelina.
Late January 2009	Demonstrators calling for democratic reforms begin demanding the ouster of Ravalomanana and the formation of a transitional government to convene new elections. Ravalomanana asks the UN to mediate.
February 3, 2009	Ravalomanana removes Rajoelina from his post as mayor of Antananarivo.
February 7, 2009	Rajoelina announces the formation of a High Transitional Authority (HAT) to govern the country. Presidential guards kill protesters marching on the presidential palace.
March 17, 2009	After Rajoelina gains control of key army commanders, Ravalomanana hands power to a group of army officers. These officers are then forced to recognize Rajoelina and the HAT.
July 2009	Four main international organizations—the UN, AU, Southern African Development Community (SADC), and Organisation internationale de la Francophonie (OIF)—form a joint mediation team for Madagascar, supporting former Mozambican President Joaquim Chissano.
August 2009	The Maputo Agreement is signed, but is ultimately rejected by several HAT officials, including Rajoelina himself, over the allocation of top posts.
March 2011	The SADC team brokers an agreement among a majority of, but not all, principal parties; recognizes Rajoelina as interim president; and provides for scheduling elections in which he can run.

parties, the mediation collapsed in December 2009. In November 2010 a popular referendum approved constitutional changes proposed by the HAT, but all three main opposition factions rejected the results. A new agreement was reached among many political parties and the government in March 2011, but rejected by the main opposition parties. It recognized Rajoelina as interim president, with an opposition-approved prime minister, and provided for subsequent scheduling of parliamentary and presidential elections, in which Rajoelina could offer his candidacy. In September 2011, after months of SADC-led mediation efforts, a roadmap to restore constitutional order was agreed on by the HAT and all but one of ten opposition parties.

MEDIATION EFFORTS AND THE EVOLUTION OF TRANSITION

In January 2009 the UN Secretariat received a request from the government of President Marc Ravalomanana to provide good offices. The Secretary-General sent two senior UN officials, the first arriving on the day of the February 7th killings. Initially supported by the UN country team and a South African expert, the entire UN mediation team turned over in early March with the arrival of a senior political adviser, an expert, and a staffer from DPA's Mediation Support Unit. Sensitive to charges that it was appointing too many special envoys, the Secretariat decided not to create a special political mission or name an envoy, nor to devote resources to a dedicated office for these efforts. The UN instead appointed a consultant with the title "senior political adviser," which meant he was later seen by the AU and SADC as having less status than their envoys—a perception which cast doubt on the overall importance the UN was attaching to its role in Madagascar. Initially and up through the coup, the UN mediation team decided to follow a precedent created after the 1991 coup and supported mediation between Rajoelina and Ravalomanana, led by the Malagasy Council of Christian Churches (FFKM).

Up through the March 17th coup, the UN led the international mediation support, and continued to do so in the immediate aftermath of the coup. The UN mediation team was instructed by headquarters to negotiate an inclusive, consensual solution to the crisis. It organized the negotiation structure around the HAT and the three political groups associated with the former president—the "four movements"

structure. This structure was intended to create a more politically diverse process and to ensure that the political negotiations extended beyond the highland elite—which includes both Ravalomanana and Rajoelina—to the majority coastal peoples. However, some Malagasies and others later questioned that approach as "bringing back dinosaurs" and for unnecessarily offering veto powers over transitional arrangements to two former presidents who no longer had much of a constituency.

The UN made significant substantive and procedural contributions to the mediation up until Maputo III and the dissolution of talks. It provided staff for the mediation effort under the AU, and then under SADC and the four-organization Joint Mediation Team; it maintained staff on the ground from the outset and did much of the drafting of agreements; it initiated the legwork necessary to persuade SADC to join the AU-UN approach in June; and it suggested compromises that ultimately led to the agreements of Maputo and Addis Ababa in November 2009. Complicating the UN role was a routine but ill-coordinated invitation from a separate part of the UN system to the de facto government, asking them to join a donor conference on Somalia to be held in April 2009. The HAT publicly interpreted this invite as a recognition of its authority, undermining the UN's role vis-à-vis the other parties and mediators.

The formula for transition eventually agreed upon by the parties in late 2009 had been proposed early after the coup, drawing on the 1991 experience. Some civil society actors coincided with the HAT on the key elements: national consultations, constitutional revision and referendum, and new elections. On other points, such as a stronger parliament vis-à-vis the presidency, they did not agree. During the 2009 mediation, the HAT brought in some representatives of other parties, but balked at including representatives of Ravalomanana. Salient sticking points included whether Ravalomanana could return; whether he, Rajoelina, or other transition officials could stand for elections; and whether the former heads of state would receive amnesty for past alleged abuses.

The mediation efforts merit some attention. The coup was followed by forum shopping by the new de facto authorities, and by the absence of a clear lead mediator. Whereas before the coup the UN

had supported a national mediation process, the UN's Tiébilé Dramé informally led the mediation after the coup, even though the OIF and the AU had each appointed their own envoys. On April 30th, the AU officially took the lead in mediation, although the former prime minister of Swaziland, Absalom Themba Dlamini, outranked the AU envoy upon his appointment as SADC envoy in mid-May, and he in turn was trumped by his SADC replacement on June 20, 2009, ex-President Joaquim Chissano. In July, the four main international organizations—the UN, AU, SADC, and OIF—formed a joint mediation team for Madagascar supporting Chissano. Throughout this post-coup period, until its withdrawal in March 2010, the UN provided the only constant staff presence in Antananarivo for the mediation process. The AU Executive became the lead mediator in January 2010, but SADC once again took the lead in March 2010, which it retained in 2011.

In August 2009, the four parties signed the Maputo Agreement with President Chissano's facilitation, although the main points had already been fleshed out in prior months. The parties agreed on an amnesty for former Presidents Ravalomanana and Ratsiraka, and the former consented not to return to the country until conditions were "appropriate." The accord stipulated that the prime minister and vice president be named by other parties, even as Rajoelina remained as president. However, other HAT officials (some of whom stood to lose their posts) rejected the deal. Finally, in November 2009, the parties accepted the creation of a "collective executive," including Rajoelina and two others named by the other parties. Rajoelina was persuaded to name a "consensus prime minister." At 3:00a.m. on the fourth day of negotiations, the parties had finally agreed on the allocation of some 455 government posts, except for 3 cabinet posts. Despite pleas by staffers to remain until the final detail was settled, President Chissano had to depart for other obligations and concluded the meeting. The parties continued to haggle over a handful of cabinet slots, without reaching agreement. Chissano organized a third Maputo meeting in December, but Rajoelina refused to attend and renounced the Maputo Agreement. He then replaced the consensus prime minister and rejected participation in the next round of multilateral

mediation, in which the three opposition parties proposed to form a government on their own.

The EU extended its suspension of aid, and the US suspended Madagascar from the African Growth and Opportunity Act (which offers tangible incentives for African countries to continue their efforts to open their economies and build free markets). The AU imposed its promised sanctions on 108 individual members of the HAT. Rajoelina's HAT brought in additional opposition figures, initiated its own dialogue with civil society, and proceeded without international mediation of the transition. The HAT proposed a new constitution, whose changes focused on the succession issue—lowering the age requirement from forty to thirty-five years of age and extending the interim presidency through the next elections—rather than revising governmental powers or structures. The reforms taken up in the constitution, which passed in a November 2009 referendum, were determined by Malagasies rather than by the UN or other international mediators.

SADC-led mediation efforts began to gain traction in early 2011, after SADC proposed a roadmap to constitutionality. The proposal permitted recognition of Rajoelina as president, stipulated an interim government leading to elections in which Rajoelina could run, and provided for appointment of a consensus prime minister to oversee an interim national-unity government that would include elements of the opposition. However, the three main opposition parties refused to sign the roadmap in March. Following unilateral implementation of some of the roadmap by the de facto authorities, further mediation led in September 2011 to the signing of the roadmap by all parties except former President Ratsiraka. The signed roadmap provided for the restoration of exiled President Ravalomanana to oversee the interim administration through parliamentary and presidential elections in 2012.

CONSEQUENCES OF THE TRANSITIONAL ARRANGEMENT

The transitional arrangement consisted of an unconstitutional junta that has governed without interruption since the coup of March 2009. Its initial popularity has ebbed. Although 74 percent voted in favor of the HAT's constitutional reforms, the process was marred. Some of the military and

civilian supporters of the HAT have resigned or expressed their dissent from the undemocratic conduct of the Rajoelina-led authority. According to some mediators, the UN's reluctance to issue a statement expressing reservations or condemnation of the coup helped preserve a role for the organization in the mediation, in contrast to the perception of bias alleged against SADC and the AU after their norm-driven condemnation of the unconstitutional change of government.

The High Transitional Authority's management of the constitutional referendum undermined its legitimacy, but the HAT may also have correctly surmised that the Malagasy people were fed up with the transition and willing to move on to a firmer constitutional footing. The UN's role became diminished politically after the breakdown of talks, although it continued to play a role bridging the Malagasy parties and SADC after the Maputo Agreement fell apart.

LESSONS FROM MADAGASCAR

A number of factors combined to produce protracted failure in altering the de facto transitional government's unconstitutional rule.

First, the situation on the ground favored the opposition's ability to retain power and resist power sharing and elections. The flight of the sitting President Ravalomanana was crucial in creating a balance of power that significantly favored Mr. Rajoelina and the relatively united opposition forces. The decision of the armed forces not to suppress the demonstrators also proved crucial both to minimizing violence and to emboldening and ensuring the security of the demonstrators. The military's continued support, along with the earlier constitutional requirement that the president be forty years of age, provided a disincentive for Mr. Rajoelina to schedule elections without lowering the constitutional age requirement.

Second, the international mediation was poorly coordinated and exhibited some flaws at crucial moments. The rotating lead in the international mediation led to inconsistency in the goals and process, tensions among the mediators, mixed signals by external actors in exercising leverage, and the ability of the parties to evade commitments. Crucial decisions seem ill-conceived in hindsight: SADC's threats of potential coercive force; the failure to secure final agreement on all the 455

appointments in Addis Ababa; and the decision to convene Maputo III in December without the participation of Rajoelina, producing a one-sided outcome that sparked Rajoelina's outraged renunciation of the Maputo Accord and ended the entire mediation.

Some UN decisions contributed to flawed mediation. The UN made some suboptimal choices in the early weeks of the crisis. These included (1) the failure to conduct a quick assessment in relation to the need for an initial mediation strategy, admittedly difficult in the face of quickly evolving events; (2) the decision to forego appointment of an envoy or creation of a special political mission, and the appointment of a UN principal mediator whose consultant status undermined his standing among those inside and outside the UN system; and (3) initial deference to a national-level mediation without accounting for its technical deficiencies and its openness to charges of bias.

The invitation of the de facto government to an official event, falsely conveying recognition, complicated the UN's role and the mediation itself. The entire UN system must be guided by consistency in its actions and protocol in order to ensure an effective mediation and uphold the organization's principles.

The Madagascar case shows the dilemmas facing international actors after protracted unconstitutional rule, especially when claims of having restored constitutional order are rejected and the transitional arrangements seem to enjoy some popularity. Although the popularity of Mr. Rajoelina and the HAT had ebbed by 2010, it remained relatively high. The positive referendum on the HAT's constitution, disputed by the three main opposition groupings, deepened the quandary for external actors whose non-humanitarian aid remained suspended.

International actors should be wary of bringing in actors who may exercise a veto over the process. Some Malagasies and international analysts believe it was a mistake to have brought the two earlier ex-presidents into the negotiations, and especially to have insisted on their participation in mid-2010 efforts to resuscitate the talks, when Rajoelina expressed a willingness to make a bilateral deal with Ravalomanana.

Kyrgyzstan (2010-2011)

OVERVIEW AND TIMELINE

In February 2010, demonstrators in the north of the country launched protests against price hikes due to the privatization of utilities. These spread in the subsequent weeks, with protestors raising their demands to include the resignation of President Bakiev. On April 6th, protesters stormed the governor's offices in the northern town of Talas and declared a "people's government."¹⁵ Government forces took back the building, but protests swelled and spread to other cities the next day, fueled by the arrest of several opposition political leaders. Protesters overwhelmed security forces in some cases, and took the presidential offices in the capital Bishkek. President Kurmanbek Bakiev fled to his southern stronghold of Jalalabad. Unlike the ouster of President Akaev in 2005, state forces used violence against protestors, killing eighty-five persons and injuring hundreds.

On April 8th a new interim government was announced under the leadership of former Foreign Minister Roza Otunbaeva, with pledges of new elections and a new constitution later in 2010. After a week of intensive negotiations involving various external actors, Bakiev resigned and fled into exile. Following rising incidents of ethnic violence, mass killings and displacement broke out between June 10 and 14, 2010, in the south, mainly between Kyrgyz and Uzbeks. Roughly 2,000 people were killed and 300,000 displaced in the space of a few days, before some degree of calm was restored. Voters approved a new constitution and confirmed Otunbaeva as president in a referendum on June 27th, despite the recent mass violence and displacement. This vote allowed for the establishment of a technically constitutional government, once parliamentary elections were held in October 2011. A coalition government took office two months later, ushering in the new constitution's mixed parliamentary system, the first in Central Asia. Presidential elections were slated for late 2011, in

Kyrgyzstan: Timeline of Events	
February 2010	Demonstrators launch protests against price hikes resulting from the privatization of utilities. They eventually demand the resignation of President Bakiev. In the weeks that follow, the repression of protests costs eighty-five lives and injures hundreds.
April 6, 2010	Protestors storm the governor's offices in Talas, declaring a "people's government." Government forces retake the building.
April 7, 2010	Protests swell and spread to other cities, fueled by the arrest of several opposition political leaders. Protestors take the presidential offices in Bishkek.
April 8, 2010	A new interim government is announced under the leadership of former Foreign Minister Roza Otunbaeva.
June 10-14, 2010	Ethnically-based mass killings and displacement occur primarily in the south between Kyrgyz and Uzbeks. Some 2,000 people are killed and 300,000 displaced.
June 27, 2010	A new constitution is approved in a referendum, legalizing the interim government, instituting a parliamentary system with safeguards against majoritarian excess, and slating presidential elections for 2011.
October 2010	Parliamentary elections are held.
October 30, 2011	Presidential elections are held without significant violence. As agreed, Otunbaeva does not run. Prime Minister Almazbek Atambayev wins with 63 percent of the vote.

15 On these events, see International Crisis Group (ICG), "Kyrgyzstan: A Hollow Regime Collapses," *Asia Briefing* No.102, April 27, 2010.

which Otunbaeva pledged not to run.

MEDIATION EFFORTS AND THE EVOLUTION OF TRANSITION

Early on April 8, 2010, Roza Otunbaeva met with the prime minister. She then announced that the latter had resigned, that his cabinet had been dismissed, and that the legislature had been dissolved as it was not legitimately elected.¹⁶ She also announced the formation of an interim government, which would hold power until presidential elections could be held six months later; stated that international law and treaties (including agreements on US and Russian bases) would be respected; and said that a new constitution would be drafted and popularly approved.

On April 8th, the day after the opposition announced its takeover, the UN Secretary-General appointed the director of the UN Economic Commission for Europe, Jan Kubiš, as special envoy for Kyrgyzstan. Having specialized in Central Asia and served in senior positions for the EU and the Organization for Security and Co-operation in Europe (OSCE) and as SRS in Tajikistan, Kubiš was familiar with both the Kyrgyz and regional players. The OSCE appointed Zhanybek Karibzhanov as special envoy on the same day. Karibzhanov spent several days in Kyrgyzstan, issuing a statement calling for “setting the political situation on a firm legal footing” and for a “rapid and peaceful transition towards constitutional reform and new elections on the basis of dialogue and inclusiveness.”¹⁷ The EU special representative for Central Asia, Pierre Morel, also arrived swiftly.

Concerned that Bakiev would initiate an armed conflict from his stronghold in the south and that this could spark violence throughout Central Asia, the three envoys engaged in active diplomacy. From April 10th to 14th, SRS Kubiš engaged in sustained talks with the interim government, civil society, the diplomatic corps, and other intergovernmental organizations’ envoys and representatives. Among envoys, he maintained the most frequent and continuous communication with Mr. Bakiev and his supporters during the first week after the change

of government.

Some organizations accused the Russian government, in frustration at Bakiev’s decision to extend the treaty governing the US Manas airbase, of fomenting the change in government; others blamed the US government, given its embrace of pro-Western leaders including Roza Otunbaeva.¹⁸ Otunbaeva had served as Kyrgyz ambassador to London and Washington, and was head of the UN office in Abkhazia when the “Rose Revolution” brought pro-Western Mikheil Saakashvili to power in Georgia. The American diplomat in charge of Central Asia, Robert Blake, traveled to Bishkek after the uprising, declaring on April 14th that Otunbaeva’s leadership offered “a unique and historic opportunity to create a democracy that could be a model for Central Asia and the wide region.”¹⁹ Both the Russian and the American governments sought to avoid violent conflict that might destabilize the country (the only in the world containing both US and Russian bases) and the region, including nearby Afghanistan.

As tensions mounted in the south amid signs that Bakiev’s supporters might mobilize violence on his behalf, bilateral and multilateral efforts also intensified. The president vowed to defend himself, and the interim government lifted his presidential immunity from prosecution on April 13th because of his government’s killing of peaceful protesters. The government also disbanded the constitutional court, which had acted politically favorably to Bakiev in the past.

On April 15th, troops loyal to the interim government surrounded Bakiev’s forces in Jalalabad. Later that day the chair of the OSCE, Khazakstani Foreign Minister Kanat Saudabayev, announced that,

as a result of joint efforts of Kazakhstan’s President Nursultan Nazarbayev, U.S. President Barack Obama and Russia’s President Dmitry Medvedev, as well as active mediation by the OSCE, along with the United Nations and the European Union, an agreement was reached with the Interim Government of Kyrgyzstan and President Kurmanbek Bakiev on his departure from the country.²⁰

16 Jim Nichol, “The April 2010 Coup in Kyrgyzstan and its Aftermath: Context and Implications for U.S. Interests,” Washington, DC: Congressional Research Service, June 15, 2010, p. 4.

17 “OSCE Special Envoy Calls for Return to Legal Framework in Kyrgyzstan.” OSCE Press Release available at www.osce.org/cio/69154.

18 M. K. Bhadrakumar, “Kzrgyzstan: A Russian-Uzbek challenge to the US,” *Voltairenet.org*, April 23, 2010, available at www.voltairenet.org/article165142.html.

19 Ibid.

20 Quoted in Nichol, “The April 2010 Coup,” p. 5.

Bakiev flew to Kazakhstan, where he resigned before continuing to Minsk. On April 21st, he repudiated his resignation, alleging that the interim government had reneged on its pledge not to prosecute his family members.²¹ Upon Bakiev's resignation and departure, Mr. Kubiš announced on April 16th that his mission to avert an escalation into armed conflict was completed, and handed the UN lead to the UN Regional Centre for Preventive Diplomacy for Central Asia under SRSG Miroslav Jenča. On May 14, 2010, a month after Bakiev's resignation, the Collective Security Treaty Organisation (CSTO) condemned the unconstitutional ouster.

National-level actors, especially Vice Chair Omurbek Tekebaev and others within the interim government, drove the constitutional reform process. On April 26th, less than three weeks after the takeover, the interim government released a draft constitution that it characterized as introducing a parliamentary system.²² A constitutional commission of seventy-five persons completed a final draft that was released in May, when Otunbaeva praised the shift to parliamentarianism and limits on majority rule: "the experience of our country during the years of independence shows that a strong presidency inevitably leads to family authoritarianism.... We should not allow any of this to happen ever again."²³ On May 20, 2010, the provisional government issued a decree stating that a new constitution would be put to a referendum along with the interim president's tenure through December 2011, and that parliamentary elections would be held in October 2010. Under the decree, the interim president could not stand for office nor could she belong to any political party or support any faction. Interim officials depicted Otunbaeva as having sacrificed her political candidacy in order to provide stability by serving the country as interim president.

The June 2010 Violence

Kyrgyzstan is unusual among recent cases of unconstitutional changes of government in that it

was followed two months later by a wave of ethnicity-based killings, cleansing, and arson. Ethnic Uzbeks there constitute roughly 15 percent of the national population, but in Osh and Jalalabad they comprise 50 percent and 25 percent of the population, respectively.²⁴ Some in the south felt the coup reflected northern Kyrgyz reasserting themselves, and many Uzbeks welcomed the interim government's promises of greater democratization as helping them, perhaps threatening southern Kyrgyz.²⁵

In mid-May, Bakiev supporters took over the central administrative building in Osh, prompting their ouster by mobs led by two political parties, including one majority-Uzbek party led by Batyrov. Subsequent clashes heightened ethnic tensions and a perception among Kyrgyz that Uzbeks were acting aggressively.²⁶ Arrests were made, and a curfew was imposed on Jalalabad. In response to these events, SRSG Jenča and others expressed their concern about the need for a more energetic provision of order by the interim government.

On June 11, 2010, nine days after the curfew in Jalalabad was lifted, groups of Uzbek and Kyrgyz youth in Osh engaged in fights. Over the next three days, ethnic violence spread across the southern region, eventually with armed mobs of mainly Kyrgyz exercising control. The security forces did not stop the violence, and in most cases did not try. Subsequent analyses strongly suggest that the mobs were organized and supplied, probably by security-service personnel.²⁷ Weapons were reportedly distributed to the Kyrgyz mobs by other civilians, by Osh city officials, and by police and military personnel.²⁸ The violence significantly dropped in scale after June 14, 2010.

Upon the outbreak of violence, the three special envoys (from the UN, OSCE, and the EU) jointly issued a statement declaring they had prepared a plan for a return to public order and urging establishment of a humanitarian corridor in the south. Although interim leader Otunbaeva on June 12th called for Russia to send peacekeepers, Russia

21 This paragraph is from Nichol, "The April 2010 Coup," pp. 4-6.

22 Ibid., p. 6. Tekebaev, along with interim-government member and former Prime Minister Atambaev, had unsuccessfully worked to revise the constitution in 2009.

23 ITAR-TASS, May 3, 2010, quoted in Nichol, "The April 2010 Coup," p. 7.

24 Ibid., fn. 1.

25 Ibid.

26 ICG, "The Pogroms of Kyrgyzstan," *Asia Report* No. 193, August 23, 2010, pp. 7-10.

27 Ibid., pp. 11-14.

28 Ibid., p. 14.

declined and suggested the Collective Security Treaty Organisation (CSTO) might send troops.²⁹ Otunbaeva also mobilized military reservists on June 12th, although many believe the interim government was slow to both anticipate and respond to the crisis. The official death count was 393, but investigations subsequently estimated that 2,000 persons died, and some 300,000 people were displaced, including over 100,000 who fled to Uzbekistan, mainly Uzbeks in the southern part of the country.³⁰ Hundreds of homes and businesses were burned.

In July the OSCE approved sending a police advisory group to support stabilization efforts. However, the group never deployed as the government faced resistance and criticism of foreign interference, including from the mayor of Osh, who has questioned the authority of the provisional government. Otunbaeva's calls for the deployment of Russian or CSTO peacekeepers or police forces were likewise never approved.

The violence had far-reaching impacts, not only on the southern part of the country, but also on regional fears of instability and on the political transition. Dissatisfaction with the provisional government's inability to handle the ethnic violence undermined support for the parties that had backed the unconstitutional change of government, and fueled the creation of new parties critical of the interim government. One of these parties, *Ata-Zhurt*, which includes a large number of former Bakiev supporters and called for overturning the new parliamentary system, won a plurality in the October parliamentary elections and formed part of the governing coalition.

Following SRSG Kubiš's role in the collective mediation of Bakiev's departure, the UN seems to have had more influence on technical and humanitarian issues than on political questions linked to potential violence. SRSG Jenča's visits led him to express concerns to the interim government about rising ethnic tensions in the south. The government was proving inchoate and unable to exercise much authority across the territory, especially in the south where the army and police officials owed

President Bakiev their positions. Before the violence broke out, some UN advisers argued against the prohibition of identity-based political parties, as this would undermine representation of ethnic Uzbeks and Russians, potentially deepening their political alienation. However, this position did not find uniform support, even among international actors.

Before the outbreak of widespread violence in June, DPA deployed two UN standby experts on power sharing and constitutional law. Based on field research from May 18th to June 13th, they prepared a conflict analysis and an assessment of the potential for reconciliation for the DPA's Mediation Support Unit (MSU).³¹ With the deepening of the crisis, DPA deployed a senior reconciliation adviser who arrived in July 2010 to support SRSG Jenča's work. The adviser, supported by a political affairs officer from the United Nations Regional Centre for Preventive Diplomacy for Central Asia (UNRCCA), worked closely with the political parties to facilitate dialogue and promote tolerance, as parliamentary elections approached. In addition, two technical advisers from EAD assisted the Central Election Commission in preparing for the parliamentary elections, working in conjunction with the OSCE after it identified problems in the June referendum. In October, at the behest of the UN's Policy Committee, the UN country team and the UNRCCA began preparing a peacebuilding strategy to be undertaken in coordination with the EU, OSCE, and Commonwealth of Independent States (CIS). The UN Refugee Agency (UNHCR) played an important role in responding to the problems of refugees and internally displaced persons (IDPs) created by the violence.

Constitutional Referendum

A national referendum on the constitution had been scheduled for June 27, 2010. The outbreak of violence and the massive displacement that ensued caused many to call for a delay in the referendum, which would also formalize the interim government and the tenure of Roza Otunbaeva as interim president through December 2011. However, the

29 Nichol, "The April 2010 Coup," p. 1.

30 "Official death toll climbs to 393 in Osh and Jalal-Abad," 24.kg news site, August 19, 2010, available at <http://eng.24.kg/community/2010/08/19/13188.html>. See also ICG, "The Pogroms."

31 Brendan O'Leary, Christie Warren, and Atajan Yazmuradov, "Draft Report of the Mediation Support Unit Mission to the Kyrgyz Republic," Period of Mission May 18-June 13, 2010.

interim authorities decided to proceed with the referendum on June 27th, and the constitution was approved by some 90 percent of voters, with an official turnout of 72 percent.³² The OSCE pronounced the balloting transparent and fair, but opposition parties said the turnout figures were not credible.³³

The drafters of the constitution, which went into effect three days after the referendum, explicitly sought to institutionalize power sharing and to prevent the emergence of a new autocrat. Unlike its presidentialist neighbors, the country adopted a mixed parliamentary system with a president who holds important powers. The prime minister heads the government on a day-to-day basis, but the president can veto all laws except those related to the budget and fiscal policy. No political party can be created on religious or ethnic grounds, and members of the army, police, and judiciary may not join a political party. The constitution also increased the size of Parliament from 90 to 120 seats to increase the chances of broader inclusion. No party can hold more than 65 of those seats, making coalition rule highly probable.

External actors played a minimal role outside of nominal consultations. Although the Russian government expressed doubts about the parliamentary system, it permitted the draft to go forward without impediment.³⁴ The vice chair of the interim government, Omurbek Tekebaev, led the drafting of the constitutional revisions and presented them in early June to a session of the European Commission for Democracy through Law (the Venice Commission).³⁵ The commission animatedly debated the draft. Some members expressed reservations about such a division of powers in the reforms, seeing it as too divided between a parliamentary and presidential system, and about the absence of a constitutional court, common to Europe's parliamentary systems. However, Tekebaev defended the reforms as necessary to prevent the reappearance of powerful autocrats,

citing the past role of Kyrgyzstan's constitutional court in ratifying autocratic rule.³⁶

Elections in October 2010 left five parties holding between twenty-eight and eighteen seats each, and a coalition government came into effect on December 22, 2010. Acting President Otunbaeva's Social Democratic Party formed part of a three-party coalition with the *Ata-Zhurt* party, which had been formed three months before elections by former high officials of Bakiev, promising to restore the old presidentialist constitutional system. Thus, the new government included both a party associated with Bakiev and parties that ousted him. Presidential elections took place without significant violence in October 2011 with Prime Minister Almazbek Atambayev winning with 63 percent of the vote.

CONSEQUENCES OF THE TRANSITIONAL ARRANGEMENT

The interim government was initially viewed with alarm by the international community, not because of its unconstitutional status, but because of its incoherence, its ineffectiveness in much of the territory, and its potential corruption by virtue of including many former officials. One source depicted it as "unruly and disunited" and "stumbling from one crisis to another," claiming that "the pogroms further damaged the already sinking credibility of the Kyrgyz government."³⁷ However, in terms of restoring its constitutional basis, the interim government showed more skill, speed, and determination than most post-coup transitional governments. That path meant that outsiders had little influence, but also that the constitutional reforms and new parliamentary system were adopted without being significantly watered down. Those reforms established important constraints on the ability of future majorities to rule alone, virtually forcing parties to form coalitions and share power. These changes may prove to represent a significant step forward for inclusion and a political culture of negotiation.³⁸

32 ICG, "The Pogroms," p. 19.

33 "OSCE Observers Back Kyrgyzstan Referendum," *BBC News*, June 28, 2010, available at www.bbc.co.uk/news/10432243.

34 *Ibid.*

35 "Venice Commission Positively Values New Kyrgyz Constitution," *AKIpress*, June 7, 2010.

36 *Ibid.*; Charles Recknagel, "How Strong Is Kyrgyzstan's New Constitution?," *Radio Free Europe*, June 30, 2010.

37 ICG, "The Pogroms," pp. 4, 5, 20.

38 One ironic illustration of the power-sharing imperative of the new system is that its architect himself, Omurbek Tekebaev, fell victim to it. Tekebaev's *Ata-Meken* party was slated to form part of a three-party ruling coalition, but the coalition rejected his appointment to be speaker of the unicameral assembly. Consequently, that coalition broke down, and another was formed that included the pro-Bakiev *Ata-Zhurt* party in place of Tekebaev's party.

However, the ouster of Bakiev contributed, either directly or indirectly depending on one's analysis, to the ethnic-based violence two months later. Political reactions by Bakiev supporters underlay initial attacks, and the new interim authorities showed an inability to control the army and police forces' role in that violence, much less to deploy forces to quell the violence. Although the interim government included southerners in its leadership, the perception that northern Kyrgyz were reasserting their power at the cost of southern Kyrgyz played into insecurities that fueled attacks, including attacks on Uzbeks who might have benefited from the uncertainty of the transition. Finally, the interim government included very few ethnic Uzbeks and Russians, and showed disinterest in attending to the concerns of these communities, even after receiving international counsel to do so.

The smooth implementation of the steps to restore constitutional order have not led to a deepening of concern, but rather to greater international acceptance of the outcome of the process. At the same time, international actors remain concerned about the potential for a renewal of mass violence and about the capacities of the interim government and its successors. The transitional arrangements held few consequences for the UN or other regional or international organizations, which all played supporting but subordinate roles. The absence of a significant response from the UN Security Council to the violence of June 2010, despite pleas from senior UN officials in New York and on the ground, may have undercut the idea that the organization can reliably help to stop or prevent mass atrocities.

LESSONS FROM KYRGYZSTAN

The interim government decided on, made public, and implemented a process for returning to constitutionality with speed and determination. In doing so, it addressed problems of past nepotistic and family-based autocracy, but neglected some international concerns about aggravating ethnic tensions.

The plan for restoring constitutional rule was announced at the same time as the initiation of the interim government itself. A new constitution with significant guarantees against one-man autocracy was drafted with broad input and approved by the public within three months of Bakiev's ouster.

Parliamentary elections were held within six months, in which a new party that included many former supporters of Bakiev received the second-most votes and seats.

At the same time, the new government created insecurities among southern Kyrgyz, and did little to protect ethnic Uzbeks once violent incidents began in June. It went forward with constitutional prohibitions on identity-based parties that were seen by ethnic minorities as reducing, rather than enhancing, the responsiveness of the new political system to their concerns.

Departures from constitutional rule may open the way to mass violence that does not correspond to the lines dividing the prior regime and the new provisional authorities, but to other ethnic or religious divides. The UN system should prepare for this eventuality, even when interim authorities do not.

Despite warnings from UN SRSGs Kubiš and Jenča, the interim government discounted the chances of ethnic violence in the south. It failed to attempt either political dialogue addressing ethnic tensions (despite its dialogue with the Bakiev camp) or to ensure that state security forces would be prepared to maintain public order in the face of potential mass violence. Although it did warn of wider violence on the basis of observing increasing instances of ethnic violence against Uzbeks, the UN system could have mobilized information more insistently. Although some elements of the UN country team responded quickly to the crisis, many were slow to respond. The political elites of the country had long played down ethnic identity, and the UN country team's work shared this perspective somewhat, reflecting an attitude that avoiding acknowledgement of ethnic issues (even in its hiring practices) would be best for development and even for mitigating conflict. Some criticized this approach as putting one's head in the sand, inadequately analyzing the potential for conflict, and being ill-prepared for the rise of ethnic violence.

The influence of mediators can be quite limited under certain circumstances. Many factors circumscribed the influence of mediators: the resignation and flight of the president, the initial welcome given to the change of government, the fear of what would follow if the interim government

failed, and the signals from powerful states that they would not support an energetic international effort to reverse the unconstitutional change of government. International actors had their greatest impact in the initial days of the constitutional crisis, helping dissuade President Bakiev and his supporters from digging in for a civil war, and facilitating Bakiev's air transport out of the country into exile.

Political and other strategic factors will lead international actors to assist some unconstitutional interim governments, rather than cut off non-emergency aid, as occurs in other cases. Russia promptly recognized the interim government, and within days offered \$50 million in assistance and 25,000 tons of petroleum products. After some hesitation, the US also expressed support for the change of government as offering a chance for democracy. In May, before the June violence, the US announced it would release \$15

million to the interim government in lease payments for the Manas airbase.³⁹ The interest of both countries in sustaining positive relations with Kyrgyzstan, for interactive strategic reasons, shape this response, one that differs from that of international actors in most of the unconstitutional changes of government in Africa.

The appointment of officials with crossover experience in other organizations facilitated collaboration among mediators. SRSG Kubiš previously served as foreign minister of Slovakia, as chairman of the Committee of Ministers of the Council of Europe, as SRSG for the UN Mission of Observers in Tajikistan (UNMOT), and as Secretary-General of the OSCE for six years. Similarly, SRSG Jenča, also a former Slovakian diplomat, had previously served as head of the office of the OSCE in Uzbekistan's capital Tashkent, including during the 2005 outbreak of violence in Andijan, Uzbekistan.

³⁹ Nichol, "The April 2010 Coup," p. 11.

Trends Across the Cases

Table 1 below categorizes some of the key features across the cases. The table is not intended to present clear trends or subcategories, but to offer a quick, accessible way to see some of the salient features of these transitions. A number of patterns merit mention:

First, the African Union, as well as ECOWAS and SADC, denounced departures from constitutional order in all cases within their respective member states, except for the electoral dispute in Kenya. However, the ouster of Kyrgyzstan's president was not condemned by the OSCE and was only condemned by the Collective Security Treaty Organisation a month later. That country's interim authorities received financial support within weeks from the OSCE, Russia, and the US.

Second, mediation efforts involving regional (and in some cases subregional) organizations occurred

in all cases. In each case, the United Nations played a salient role in supporting mediation efforts. In three cases, a mediated process culminated in presidential elections whose results were recognized by the international community. The lapse of time between departure from constitutional rule and these elections ranged from six to twenty-three months. In the other two cases, Madagascar and Kenya, interim arrangements remain in place and scheduled elections of a new head of state have yet to occur.

Finally, all of the transitions except Mauritania involved constitutional revisions, passed by popular referendum, seeking to legitimate the new order. Because of these constitutional reforms, in some cases international and internal acceptance of a transitional process will likely occur even though the process does not technically represent a restoration of the prior constitutional order.

Table 1. Key Characteristics of Five Cases of Departures from Constitutional Order

Country (Date of event)	Kenya (Dec. 2007)	Mauritania (Aug. 2008)	Guinea (Dec. 2008)	Madagascar (Mar. 2009)	Kyrgyzstan (Apr. 2010)
Transition achieved?	Yes	Yes	Yes	Not yet	Yes
Primary mediator	AU panel	AU-led	AU-led	Multiple	OSCE-EU-UN
Unconstitutional action by	President/ government	Military coup	Military coup	Civilian protesters & military	Civilian protesters
Date of elections	March 2013	July 2009	June & Nov. 2010	Postponed	Oct. 2010 & 2011
Months to election?	n/a	12	23 (18 for first round)	n/a	6 (legislative)
Unconstitutional leader(s) eligible?	Yes	Yes	No	Unclear	No
Prior president involved in transitional arrangement?	Yes	Yes, briefly	n/a	Unclear	No
Constitutional reforms?	Yes	No	Yes	Yes	Yes
Political power sharing?	Yes	For 2-month transition	Yes	Agreed, but not adopted	Yes
Decentralization adopted?	Yes, in reformed constitution	No	No	No	Yes
Elections accepted by international community?	n/a	Yes	Yes	n/a	Yes
Type of inquiry launched?	Human rights & electoral	n/a	Human rights	n/a	Human rights

Conclusion

This concluding section seeks to answer a number of questions, however tentatively. It will make reference mainly to the five cases examined, but also to others, such as Fiji, Niger, and Honduras, where relevant. Are there commonalities to these experiences? What conditions shape whether mediation succeeds and constitutional order can be restored? What sorts of transitional arrangements seem most prevalent? What are the consequences of different transitional arrangements? What do these cases suggest about the UN's ability to affect new coup regimes or other unconstitutional governments? What do they suggest about the way the elements of the UN system work together, and how the UN relates to regional and subregional organizations? I divide below lessons related to the transitional political arrangements themselves and the international and national mediation efforts that shaped those arrangements.

LESSONS REGARDING TRANSITIONAL POLITICAL ARRANGEMENTS

1. The role of the military is crucial in determining whether a sitting president can fend off a coup or a popular challenge to authority.

The military often plays the role of arbiter of constitutional crises. This finding is, perhaps, more obvious now that the experiences of Tunisia, Egypt, and others have brought these questions into global public consciousness, but it remains important nonetheless. In Madagascar (as in Egypt), the military initially wavered but then decided to support protesters, ending any hopes that President Ravalomanana would retain office. The Honduran military played a similar role in ousting President Zelaya, just as the Togolese army was crucial in naming the son of Togolese President Eyadema to succeed his father in 2005, contrary to constitutional specifications. In Mauritania and Guinea, army officers themselves executed coups, seeking ultimately to legitimate their rule through elections. In Niger, in both 1999 and 2010, military coups were actually instrumental in facilitating a return to constitutional order. In Kenya and Kyrgyzstan, where more institutionalized political parties held

center stage, the armed forces were less important actors.

2. Related to this, the political context—and thus transitional political arrangements—are highly influenced by whether the previously-serving president has departed the country or remains in-country, seeking to retain some power.

Of the five cases examined, the departure of the constitutional presidents of Kyrgyzstan and Madagascar gave the empowered opposition forces the wherewithal to outlast mediation efforts and extend their transition for many months. In these cases, as in Mauritania, the coup-generated leaders were able to negotiate a transition process that could claim some return to constitutionality, in some cases through a revised constitution or laws that favored their ability to be elected or retain unelected office.

3. The cases suggest that the use of power-sharing mechanisms to resolve either unconstitutional ousters of elected presidents or electoral disputes raises questions for legitimacy, democracy, and state-society relations—more serious questions than when power sharing is used to resolve armed conflicts.

Bearing in mind the positive potential for power sharing for ending armed conflicts, scholars have raised many critiques of power sharing for (a) inflexibility in the face of demographic and other changes; (b) reinforcing rather than undermining identities as a key element in social life and politics; and (c) excluding third parties, possibly driving them to violence.

However, power sharing in departures from constitutional rule often hold additional perils, including the risks of:

1. overturning the legitimacy of the constitution;
2. undermining the legitimacy of elections and democracy, as neither rulers nor their policies end up reflecting voters' preferences;
3. undermining incentives to participate in future elections; and
4. encouraging others inside and outside the country to resort to departures from constitutional rule.⁴⁰

⁴⁰ On these problems, see A. Carl LeVan, "Power Sharing and Inclusive Politics in Africa's Uncertain Democracies," *Governance: An International Journal of Policy, Administration, and Institutions* 24, No. 1 (January 2011): 31–53.

It is important to recognize that, in cases like Kyrgyzstan and Mauritania where existing elected governments are widely perceived to have themselves undermined the legitimacy of the constitution or electoral or democratic processes, many citizens may welcome a given departure from constitutional rule. Under any circumstances, however, unconstitutional remedies suffer from some of the above deficiencies.

National and international actors, therefore, confront tensions between short-term resolution of a constitutional crisis and long-term support for constitutional and legitimate political processes. Even where a specific country's citizens believe they benefit from unconstitutional change of government, any outcome that tacitly accepts the outcome of such a change undermines the norms supporting constitutionality and representative government. Of course, a negotiated arrangement that departs from the prior constitutional order may be the last or best option for "restoring" constitutional order without the eruption of mass violence. Where power sharing is part of this arrangement, "sunset" provisions can be adopted that diminish some of the negative effects of power sharing over time.

4. The case of Kenya (and Zimbabwe) suggests that electoral disputes pose more risks for legitimation than unconstitutional ousters of duly-elected governments.

First, electoral processes themselves are directly impugned, further undermining the legitimacy of electoral processes as mechanisms of representation, of expressing policy preferences, and of holding rulers accountable.

Second, elections become problematic remedies for restoring constitutional order after an electoral dispute. Restoring constitutional order after a coup, for instance, tends to involve transitional arrangements culminating in an election that is the most salient mark of restored constitutionality. Unfortunately, electoral disputes severely cripple the main remedy for resolving constitutional crises: elections themselves. The experiences of Zimbabwe and Côte d'Ivoire in recent years underscore these difficulties, along with Kenya. As the UN's Electoral Affairs Division eventually convinced the two disputants in Kenya, rerunning the elections posed a number of technical and political challenges, including enabling tens of thousands of displaced

persons to vote; guaranteeing their physical security; ensuring trust in the electoral commission; and preventing even a well-documented, fair outcome from leading to renewed violence. Consequently, time and effort is required to restore faith in electoral processes after electoral disputes, making non-electoral remedies (such as temporary power sharing or a non-elected but purportedly representative national assembly) more likely and necessary in the short run.

Third, if power sharing is adopted as a remedy for electoral disputes, it may endure for a few years, whereas coups and other ousters of constitutional governments can be resolved within months or two years through an election (even though this often does not occur). Power sharing after electoral disputes effectively kicks the can down the road in terms of resolving not just who has the legitimate right to rule, but what process of selecting rulers will be widely acceptable to the main groups in society. While unconstitutional ousters can also encounter this problem, it is intrinsic to electoral disputes.

5. Commissions of inquiry offer opportunities not just to clarify the circumstances of disputed events, but also to facilitate the restoration of constitutional order without sacrificing justice.

In Guinea, Kenya, and Kyrgyzstan, commissions of inquiry were formed to investigate incidents involving mass violations of human rights. In Kenya, a commission was also created to investigate the disputed 2007 election. Such commissions helped create a single authoritative account of past events. They also helped assure the public that justice had not been entirely set aside as negotiations proceeded concerning a political transition, and that some public account of the parties' responsibility would be forthcoming. They facilitated the mediation process by "bracketing" the heated controversies over these disputed events, removing them from the purview of immediate negotiations, and entrusting them to a body that would offer a more impartial and reliable account. Of course, such a commission can also be misused to advance one version of the truth when its composition, mandate, or methods reflect bias. However, these commissions served to remove the immediate disputes over elections and violence in the Kenya case, to undermine the legitimacy of Dadis Camara and top junta leaders in the Guinea case, and to

lower tensions over ethnic violence in the Kyrgyzstan case. Despite their flaws, these commissions facilitated greater public acceptance of the transitional arrangements in all three cases.

6. Although legislatures often contribute to constitutional crises, they can also provide some stability or offer a forum for dialogue or negotiations.

In Mauritania, the parliament helped legitimate the coup, with a majority bloc supporting the new junta, the High Council of State (HCE). The subsequent resignation of a large number of legislators helped pressure the de facto authorities into a new election following a brief, mediated power-sharing transitional arrangement. The legislature provided a semblance of state continuity throughout the transition. In Kenya, the parliament ratified the power-sharing arrangement pending a new constitution. In Kyrgyzstan, the election of a new legislature provided an important milestone in the return to constitutional order, even as Interim President Otunbaeva's term continued. And in Guinea, the absence of an elected legislature continues to cast a shadow over the elected government of President Condé.

LESSONS REGARDING INTERNATIONAL MEDIATION AND OTHER ROLES

1. International mediation played an important role in moving the actors toward compromise in almost every case; and the UN was vital to those mediation efforts.

Kenya best illustrates the use of international mediation to elicit significant concessions from two parties and forge a power-sharing arrangement that averted mass violence and still offers hope of a sustainable, plural political system, touching even broader issues of socioeconomic development, justice, impunity, and reconciliation. The joint AU-UN-ECOWAS mediation in Guinea persuaded a military-coup regime that had indicated it wished to stand in elections not to stand in such elections, leading ultimately to the election of a presidential candidate who had opposed the coup. In Mauritania, Gen. Abdel Aziz's implacable rejection of a mediation role for the detained president gave way to a transition in which a free election was held under the oversight of the opposition-controlled National Elections Commission, even though the coup leader won as expected. In Madagascar, the

mediation failed—and “is still failing,” as one UN official put it—but did bring the High Transitional Authority (HAT) to accept a transitional power-sharing arrangement, which only failed in the final details.

2. Nevertheless, it is important to recognize the limits of international mediation efforts.

Where determined leaders come to power with widespread popular support through mass mobilization against an unpopular president, internal support for their cause may trump even strong external pressures. Madagascar epitomizes the severe limits facing mediation when internal support for the coup-generated leadership is high and broad, and newly oppositional forces enjoy little popular support.

Two other cases—Mauritania and Guinea—seem to portray success, as mediated transitions to new, post-coup, elected governments received international recognition. However, in Guinea, Mauritania, and Madagascar, the coup leaders seemed bent on retaining power through an eventual election (a plan altered in Guinea only by the unpredictable gunshot injury to Dadis Camara). Thus, even in cases where internationally recognized governments emerged from technically free and fair elections after coups (namely, Guinea, Mauritania, and probably Honduras), the power advantages of coup leaders is apparent.

Kyrgyzstan stands as an example of both the limits of international mediation and of the commitment of the interim government to a competitive electoral process. The joint OSCE-UN-EU mediation had relatively little impact on the content and pace of the constitutional reform or elections, even though the results have been welcomed by the international community. Nor did the mediation anticipate or prevent mass ethnic killings and displacement after the coup. At the same time, the interim government seemed committed to competitive elections and to erecting a system of government that would prevent even themselves from gaining and wielding tremendous power. In the 2010 parliamentary elections, a political party that included numerous former supporters of the ousted president won a plurality of parliamentary seats and formed part of the ruling coalition.

3. International mediators can influence the

menu of options for transitional political arrangements, and even the selection process; however, such influence is uncommon. The content of transitional arrangements and electoral systems tend to be shaped heavily by precedent.

In the case of Kenya, Mr. Annan and the mediation team actively and successfully pressed for a power-sharing arrangement, and brought in two international consultants who helped persuade the parties of its value and shaped its content. However, international mediators or consultants had very little involvement in shaping transitional political arrangements or the content of constitutional changes in Madagascar, Kyrgyzstan, Guinea, or Mauritania. In Madagascar, Kyrgyzstan, and Mauritania, proposals drew on past constitutional proposals or past transitional arrangements.

4. International mediation, however, can influence electoral processes and the creation of special commissions of inquiry into violence or elections, often as a result of technical capacities.

In the cases of Guinea, Mauritania, and in the Maputo Agreement for Madagascar, international mediators helped persuade interim leaders that they must resign in order to compete for the presidency (this principle has been espoused by the AU in recent years; Kyrgyzstani Interim President Otunbaeva voluntarily committed not to run). Mediators also shaped the creation of the commission of inquiry into the September 2009 atrocities in Conakry, and the commissions of inquiry into the violence and into the elections in Kenya. These examples illustrate how pressing for full truth and accountability for human rights violations can complement efforts at political transitions.

DPA's Electoral Assistance Division (EAD) was also very influential in convincing the parties in Kenya that a rerun or recount of the elections would be imprudent. These measures all proved important to the success of the overall transition and restoration of constitutional order. Electoral assistance also proved crucial in Guinea's transition after prolonged disputes over the electoral commission. Numerous UN special political missions have encountered contested results or irregularities in elections (e.g., Afghanistan, Burundi, Central African Republic), even if these have not precipitated constitutional crises. In strengthening its preventive diplomacy and mediation support capacities, the UN system should prepare itself as

systematically as possible for addressing electoral disputes.

5. The cases reveal the remarkable ability of the UN and the AU, the EU, the OSCE, and ECOWAS to work collaboratively and effectively in mediation efforts.

Intergovernmental organizations face real difficulties in working together, not least because of perverse institutional incentives, past bureaucratic clashes, and personal or professional competition between individuals. Yet these cases show how successful the UN and regional and subregional organizations have become in responding to political crises through joint or collaborative efforts. The UN Office for West Africa (UNOWA) and its head, regional SRSG Said Djinnit, provided swift and strategic support for AU-led mediation, with technical support, strategic inputs, and (not least) transport via a UN airplane that shuttled key mediation personnel to strategic meetings at crucial moments. The UN provided key capacity for the AU-led mediation in Mauritania and Guinea, as well as most of the staffing for the AU panel's work in Kenya. Regional SRSG Miroslav Jenča worked actively and closely with the OSCE and EU envoys in responding to the ouster of President Bakiev and the June violence.

Senior mediators' prior professional experiences in other multilateral organizations contributed to the effective collaboration among international and regional organizations. SRSG Djinnit and SRSG Jenča had both held senior positions in the regional organizations with which they coordinated, while Kofi Annan, the AU-appointed lead mediator for Kenya, had obviously held senior posts in the UN. The Secretariat should value such crossover backgrounds in making senior appointments, and continue supporting the crucial mediation role played by the regional SRSGs in political crises.

Only the case of Madagascar suggests that problems of agreed-upon leadership, disunity of effort, and discordant personalities will continue to confront cases of mediation, and that further steps are required to enhance collaboration. Such steps might include collective planning of mediation strategies, standing mechanisms for different intergovernmental organizations to familiarize their different staffs and working routines, exchanges of personnel, and hiring practices that value experience in other organizations. Despite

Mr. Drame's skill and efforts, the mediation effort may have borne more fruit had there existed a regional SRSG for southern Africa. Although joint mediation was unsuccessful in Madagascar and is probably less preferable to a single lead mediator, it proved effective in Kyrgyzstan.

6. The UN system can adopt a number of measures to ensure that preventive diplomacy and mediation support are coherent throughout the system and adequately resourced.

The UN system and its member states have made strides forward in recent years with the increased deployment of peace and development advisers (PDAs) and the creation of DPA's Mediation Support Unit (MSU) and its Standby Team of six thematic experts. The MSU has become a hub of accumulated knowledge and has been deployed in several cases. These strengths should be preserved. The ability to deploy advisers swiftly—be they political, electoral, power-sharing, or other technical specialists—is paramount in these constitutional crises. Given the signal contribution of special political missions, especially regional offices (including those of other organizations, like the OSCE), such offices should be recognized and expanded. The creation of new DPA regional offices (such as the new UN Regional Office for Central Africa) in other subregions, like southern Africa, would obviate the need to appoint ad hoc envoys. It would also create a standing, high-level capacity, affording the opportunity to appoint someone with a serious regional background and reputation. Specific deployments of preventive diplomacy are rare, since they may be unwelcome by the time tensions have escalated to the point that a deployment is called for. Regional political missions represent a constant preventive-diplomacy mechanism, even though the cases examined here all represent implicit failures to prevent the onset of constitutional crisis. Electoral assistance represents another mechanism that can in effect serve to prevent constitutional crises.

DPA could also enhance its general level of communication with resident coordinators and, in conjunction with UNDP's Bureau for Crisis Prevention and Recovery, help ensure that UN country teams are as well prepared as possible for the sorts of challenges likely to arise during a political crisis. DPA and UNDP should also find ways to expedite the process of appointment and

deployment of peace and development advisers. Standby experts can also prove useful, and envoys should be apprised of their potential contributions and limitations. Drawing critically from the Kenya experience, the UN system should find ways to effectively create mechanisms to monitor transitional arrangements, including power sharing and other efforts at reconciliation, justice, and inclusive, conflict-sensitive development. Monitoring power-sharing arrangements would offer a reference point for national and civil society actors seeking to ensure inclusion and broaden elite deals to the wider population. The UN must harmonize its entire system after political crises, so that issues of protocol and recognition; humanitarian and development efforts; and mediation efforts reinforce rather than contradict one another.

Finally, these cases show that the UN should carefully weigh the pros and cons of adopting a blanket policy of denouncing all departures from constitutional order. On the one hand, a policy of uniform condemnation would strengthen the norm against such departures, putting the UN on the same footing as regional and subregional organizations that have committed to condemn any unconstitutional change of government. It would strengthen the normative environment against such coups and other departures, something that could have strong, positive long-run effects.

On the other hand, a policy of blanket condemnation would pose challenges for the UN. First, it might limit the room for maneuver for mediators, mediation support efforts, and other UN good offices. In Madagascar, the UN's choice not to join the AU and SADC in condemning the coup enabled it to play an initial role in supporting mediation, even as the regional organizations' role was debilitated. That choice shows the advantage of not having a policy of blanket condemnation of coups. Second, sometimes constitutional governments have become exclusionary or otherwise unjust regimes. The Arab Spring exemplifies this phenomenon, as some constitutional orders were upended by popular protests with the approval of most of the world. The principle of self-determination coheres with a right to change one's government, calling into question the wisdom of a UN policy to condemn all unconstitutional changes of government.

Annex

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