

Theorising Kenya's Protracted Transition to Democracy

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Theorising Transitions

In their seminal text *Transitions from Authoritarian Rule*, Guillermo O'Donnell and Philippe Schmitter (1986:6) define a transition as "the interval between one political system and another". According to the authors, the beginning and end of this process are relatively easy to trace. The transition begins with a split in the authoritarian regime, after which regime elites who believe in the necessity of electoral legitimation become dominant. These softliners, as they are known, typically negotiate a pact with moderate opposition elites, providing for elections under clearly defined rules and procedures. The transition ends when new political elites assume power or, in rare cases, the old elites are newly legitimised. In most sub-Saharan African cases, as well as many elsewhere, both boundaries of the transition process are in fact hard to delimit. It is difficult to determine when a particular transition began and, more significantly, when it has actually ended.

Unlike the military regimes in South America that served as the basis for O'Donnell and Schmitter's generalisations, African authoritarian regimes are best characterised as neopatrimonial rule. Since fundamental political divisions in Africa are between those inside and outside patronage networks, rather than between regime hardliners and softliners (Bratton and Van de Walle 1997:86), the famous statement by O'Donnell and Schmitter (1986:19) that "there is no transition whose beginning is not the consequence – direct or indirect – of important divisions within the authoritarian regime itself" cannot be extended to Africa. Because this split never occurs, their description of the pacted transition does not apply either. Only South Africa's transition follows the model of a pact, though it was between regime elites and what Elisabeth Wood (2000) terms "insurgency elites", rather than the non-violent moderate opposition. Elsewhere in Africa, highly centralised political power is widely perceived as a reward in a zero-sum game, conditions that are not conducive to compromise. In most African transitions, domestic and international pressure caused authoritarian rulers to hold elections.

Rather than a split, the beginning point can be more accurately, if less precisely, described as "the initial stirrings of a crisis under authoritarian rule that generate

some form of political opening and greater respect for basic civil rights” (Mainwaring, O’Donnell and Valenzuela 1992:2). These so-called stirrings can be identified only after political liberalisation has occurred. If the regime manages to control the incipient crisis, no transition will take place and the stirrings amount to no more than relatively ineffective protest. (Likewise, O’Donnell and Schmitter’s split is nothing more significant than ineffectual internal dissent if the hardliners remain dominant). Identifying the starting point of a transition is only possible, if at all, in hindsight. Since the breakdown of an authoritarian regime is a complex process and events often depend on prior ones, the exact moment a transition started is next to impossible to pinpoint and of questionable analytical importance.

It is not by chance that O’Donnell, Schmitter and their associates called their four-volume project *Transitions from Authoritarian Rule*, rather than *Transitions to Democracy*. Their studies – and those that followed – concentrate far more on the process of authoritarian breakdown than of actual democratisation per se. In the personalist and single-party regimes of Africa, factionalisation often does not result in a transition (Geddes 1999). Where democratisation does occur, at what point is the transition complete? This question is more important to those interested in the democratisation process, not least because it would mark a tangible achievement and the beginning of the consolidation phase. The post-transition phase is usually seen as requiring means and goals completely different from the previous ones. For instance, it involves popular restraint, order, stability and predictability, rather than mobilisation and uncertainty (Guilhot and Schmitter 2000).

If one adopts a minimalist or procedural definition of democracy, whether a given transition is to democracy (as opposed to another authoritarian regime or something in between) depends on whether the elections in which the new elites were selected were free and fair. Some authors, preferring a middle-range definition of democracy, require meeting additional criteria, such as the absence of a veto over policy by non-elected officials, such as the military (Karl 1990). It is far from clear, however, what the benchmark is for free-and-fair elections. At issue are both *freeness* in the election day poll (were eligible voters allowed to express their preference in a secret ballot?) and *fairness* in the campaign conditions (was the playing field level?). Incumbents’ control of the process often puts into doubt whether elections can meaningfully be called democratic. Since no election is perfectly free and fair, how close to the ideal is good enough? Who makes that determination?

The Kenyan Case

A new era of multiparty politics in Kenya began in December 1991, when President Daniel arap Moi repealed the constitutional clause that enshrined the Kenya African National Union (KANU) as the sole political party. Though it followed years, if not decades, of domestic political protests and more recent international

pressure, that decision, which Moi had long forsworn, best marks the beginning of Kenya's decade-long transition. Despite widespread unpopularity, Moi won the presidential elections and his party secured a majority in parliament in the following two general elections, held in December 1992 and December 1997. This was made possible by a blatantly uneven playing field and the ruling party's use of a panoply of devious practices, ranging from gerrymandering and the stuffing of ballot boxes to violent intimidation and even ethnic cleansing, and facilitated by the opposition's fragmentation (see discussion in Brown 2001).

For some, the overall acceptability of the 1992 elections, flaws and all, meant that Kenya had undergone a transition to democracy, even if it was not a liberal democracy. From that perspective, any subsequent deepening and widening of democracy would belong to a separate phase, usually referred to as the consolidation phase. Thus, when government and opposition members of parliament agreed to some constitutional reforms prior to the 1997 elections, John Harbeson (1998:165) described it as a "post-transition pact".¹ Others spoke of a "second transition" (Holmquist and Ford 1998). A political officer at the US embassy in Nairobi went as far as asserting, shortly after the 1997 elections, that democracy in Kenya had been consolidated because, after two multiparty elections, it was "the only game in town".² This was unduly optimistic, as even the US department of state (2000:2) subsequently reported that "citizens' ability to change their government peacefully has not yet been demonstrated fully".

In the December 2002 elections, however, Kenyans demonstrated their ability to do just that. After relatively peaceful and free (if not particularly fair) polls, opposition candidate Mwai Kibaki was elected to the presidency and his National Rainbow Coalition (NARC) obtained a strong majority in parliament, relegating KANU members of parliament to opposition benches for the first time since independence in 1963. To much celebration, power was smoothly transferred to Kibaki on December 30, 2002, marking the end of Kenya's transition. Stephen Ndegwa (2003:145) calls this, perhaps without exaggeration, "the most significant political event in the history of Kenya since British colonial rule formally ended".

Argument

This essay examines the most recent advances in the protracted democratisation process in Kenya, long considered "one of Africa's most notorious cases of stalled democratic transition" (Ndegwa 2003:145), in order not only to understand it better but also to glean some comparative and theoretical insights. The case study begins with an analysis of the dynamics of final stages of this particular transition. Specifically, it asks: What caused the 2002 general elections to be qualitatively far better than the ones held five and ten years earlier? In other words, what finally went right? This article argues that the results of Kenya's most recent elections depended in large part on a series of contingent events that make the completion of the transition process a more case-specific phenomenon,

with important challenges remaining. These events depended on more than a decade of slow progress in the area of democratisation, resulting from the active intervention by numerous actors, both domestic (opposition political elites, civil society organisations and some popular mobilisation at critical moments) and international (mainly foreign aid donors). These in turn rested on a number of structural changes, including Bretton Woods-led economic reforms that undermined the KANU neopatrimonial system, notably by eroding KANU's ability to mobilise resources to maintain patron–client relations at a time when alternative power centres were emerging. Because these factors have been widely analysed elsewhere in the past decade (see, among many others, Holmquist, Weaver and Ford 1994; Klopp 2001; and Southall 1999), this article concentrates on the more recent and final stages of the transition.

Though Kenya's experience is not easily reproduced elsewhere, this article subsequently suggests some implications for other democratising countries, including the importance of institutional structures as points of contestation, notably the defence of constitutional term limits. Kenya also assists in re-evaluating the "transition paradigm" (Carothers 2002) that characterises democratisation theories and efforts to promote democracy, suggesting that the separation into transition and consolidation phases may be counterproductive to democratisation itself, more broadly conceived.

The December 2002 Elections: What Went Right?

In June 2001, one-and-a-half years before Kenya's groundbreaking December 2002 elections, the Kenyan political scientist Rok Ajulu (2001:197) wrote: "There is ... little prospect that President Moi will give way to a replacement at the end of his second five-year term in 2002". At the time this prediction was published, it seemed like a reasonable assessment of the situation. Yet Moi did step down and the KANU presidential candidate garnered only 31 per cent of the popular vote, a distant second to Kibaki's 62 per cent. Kibaki's NARC also won 125 out of 210 seats in parliament, while KANU retained only 64 (all figures from Electoral Commission of Kenya 2003).

In hindsight, there is no lack of explanations as to why power was peacefully transferred to a victorious opposition. In a number of interviews I carried out in Nairobi in June 2003 and in various articles in the Kenyan press, I perceived a broad consensus on three main factors that made this possible: (i) an opposition far more united than in the two previous polls; (ii) a more independent media with greater readership and viewership across Kenya; and (iii) a shift in popular attitudes that would no longer tolerate foul play, taken as evidence of the effectiveness of 10 years of civic education. This provides a relatively easy formula for efforts to promote democratisation elsewhere, even if the playing field is not level: opposition coalition plus citizen access to impartial information plus civic education augurs well for a transition to democracy.

Though I agree to a certain degree with the significance of opposition co-operation, I am unconvinced of the centrality of the media and sceptical of a transformation of attitudes and the impact of civic education. I do not want to deny the importance of the circulation of non-partisan information or of voter education, even if their effects are difficult to measure. However, I am not persuaded that an uninformed electorate countenanced prior election-related abuses by the ruling party, or that a new political culture has rendered it impossible to resume such tactics in the future.

Instead, I argue that the results of the 2002 elections depended in large part on a series of contingent events that, in effect, make the transition a more case-specific phenomenon, not so easily reproduced in other countries. In this section, I trace what I regard as the three key events and factors (namely Moi's decision to retire, KANU's implosion over his succession, and greater opposition unity) and explain one unexpected positive side-effect (the dramatic decrease in organised political violence).

Moi's Decision Not to Run Again

Since at least 1978, upon the death of his predecessor Jomo Kenyatta, Kenya's first president, Moi had proven himself on numerous occasions to be a master at rewriting the rules to ensure his own political survival. Had Moi run for re-election in 2002, it is quite possible that he would have managed to prevent free and fair elections and the transferral of power to the opposition, thus keeping Kenya's transition stalled. What prevented this from happening?

When the KANU government amended the constitution in 1991, in preparation for multiparty elections, it inserted a limit of two five-year presidential terms. The setting of term limits was a common practice in the numerous African countries that were liberalising their political systems at that time and seeking to increase their legitimacy. Many of them later simply extended these limits, as in Guinea, Namibia and Togo. In other countries such as Malawi and Zambia, popular mobilisation prevented this from happening (Baker 2002). In Kenya, Moi was widely expected to circumvent the rule. For example, he could have dissolved parliament a year early, having at that point technically served only one *five-year* term. He could also, through cajoling, intimidation and bribery, have secured enough votes to change the constitution. Alternatively, he could have extended parliament beyond its five-year term, using as justification that more time was required to complete the constitutional review that was (and still is) under way.

For a long time, Moi refused to state unequivocally that he would step down. He often said that he would follow the constitution or the will of the Kenyan people, neither of which precluded his staying on. Kenyan churches, civil society groups, foreign aid donors and the independent media constantly insisted that all other options were unacceptable, that elections should be held as required by the end of December 2002, and that Moi should not be a presidential candidate. In the end,

Moi heeded this pressure. On June 30, 2002, he announced he would definitely not run again. Had he not done so, it is quite probable that he could have used methods similar to those employed in 1992 and 1997 to secure re-election.

Term limits are institutional impediments to continued domination by incumbents. They do not guarantee that long-time rulers will leave office, but they provide the opposition (and ruling party dissidents) with a potentially important tool for dislodging leaders unwilling to give up power. Debates around term limits are therefore not dry, abstract events, but important sites of contested political renewal and democratisation. Though some efforts fail, the Kenyan case illustrates how domestic and international mobilisation to reinforce the “emerging norm” of term limits can jumpstart a stalled transition, or at least prevent reversion to authoritarianism. As Nicolas Van de Walle (2002:78) argues, “even relatively authoritarian rulers must take these norms into account when estimating what their citizens will put up with”.

The Succession Issue and Party Implosion

For years, there had been much jockeying within KANU to succeed Moi. Several senior KANU politicians, including Vice-President George Saitoti, expected to be KANU’s presidential candidate in 2002. Raila Odinga merged his National Democratic Party (NDP) with KANU in March 2002 in the belief, encouraged by Moi, that he would be the one to step into Moi’s shoes. The merger, according to Ndegwa (2003:153), “effectively put a lock on the December elections – but only if they could hang together”. When Moi selected Uhuru Kenyatta (son of Jomo Kenyatta) to be KANU’s candidate, this started a series of events that led to KANU’s implosion.

Uhuru Kenyatta was an outsider who had only recently been appointed to parliament and cabinet, occupying one of KANU’s few positions of nominated MP (specially vacated for him) and being made minister of local government. He had no prior political experience, having failed to be elected in 1997 on the KANU ticket in his home region, and lacked political credibility. Moi’s intentions were clear: he admitted that he had selected Kenyatta because he could be easily ‘guided’, and he arranged to create and occupy the post of KANU party chairman so that he could continue to play a central role under Uhuru Kenyatta’s presidency, rather as Tanzania’s Julius Nyerere remained the power behind his successor after he ‘retired’. It was especially important for Moi to pass power to a loyal successor in order to protect the wealth he had accumulated over the 25 years of his presidency, and to avoid prosecution for his misdeeds. Moi also needed to avoid a repetition of the Zambian scenario, in which the *dauphin*, Levy Mwanawasa, once installed in the presidency, lifted the immunity of his predecessor and former protector, Frederick Chiluba, after which he was put on trial for corruption.

In unilaterally designating Kenyatta his successor, in a process Mexicans call *el dedazo* (the pointing of the finger), rather than allowing a secret ballot by party

members, Moi made one of the few serious mistakes of his political career, one that proved fatal for KANU's hold on power. First, he overestimated Kenyatta's appeal and chose as the KANU candidate "the one guy who could not win", in spite of his family name.³ Second, Moi underestimated the alienation this would cause within the ranks of the KANU stalwarts and Raila Odinga's faction. This internal dissent only grew and, after Kenyatta was confirmed as KANU's presidential candidate, the party imploded. Many senior KANU politicians left the party in October 2002, bringing with them their supporters, and formed the Liberal Democratic Party (LDP). This crippled KANU and created a new opposition bloc with which to compete for votes. Since Raila Odinga was one of the main instigators of this defection, Moi's earlier decision to absorb Odinga's NDP into KANU could be seen as another serious political miscalculation. It has been argued that, had Odinga not been inside KANU, "most of the KANU old-guard would have reluctantly accepted Uhuru Kenyatta's imposition" and would have remained in KANU (Center for Strategic and International Studies 2002:2).

Ruling parties' internal political dynamics and individual actors' strategic choices combine to shape transitions in important ways. In Kenya, had the succession been better managed, KANU might still be in power today. Kenya is not the only case: the process for selecting a party leader to succeed Jerry Rawlings in Ghana also strongly contributed to the incumbent party's defeat in the 2000 elections (Nugent 2001). As a result, it can be plausibly argued – though difficult to prove – that ruling elite strategic errors make some transitions possible.

Opposition Unity: Elusive No More?

Opposition unity had long been touted as the best means to defeat KANU, regardless of KANU's multiple unfair advantages and egregious electoral practices. Disunity has usually been overstated as the key factor keeping the opposition from power. Actually, even if the opposition had been more united in 1992 and 1997, KANU still had the will and the means to take additional measures to ensure that it would win anyway. The splintering of the opposition simply reduced the need for that (Brown 2001).

Even if not sufficient, greater opposition co-operation was necessary to defeat KANU. In 2002, foreign aid donors strongly encouraged opposition politicians to form a common front, and some civil society representatives brokered initial meetings. The most contentious issue was: Who would be the joint presidential candidate? In September 2002, in the face of necessity and spurred on by the NDP-KANU merger, the various parties that had formed the National Alliance Party of Kenya (NAK) settled on Mwai Kibaki of the Democratic Party, the most senior opposition politician. The agreement was facilitated by the understanding that Kibaki, already in his 70s, would serve for one term only, thereby obviating the need for a bitter presidential primary while not postponing for too long the presidential aspirations of the leaders of NAK's other major constituent parties.

Kibaki, like Uhuru Kenyatta, had the advantage of belonging to the Kikuyu ethnic group. The Kikuyu are the most numerous ethnic group in Kenya, constituting almost a quarter of the population. It is likely that Moi had planned Kenyatta's candidacy to prevent the Kikuyu from voting en masse for the opposition, as they had in 1992 and 1997. However, with the Kikuyu vote divided between KANU and NAK, NAK succeeded in rallying enough support from other groups to make victory arithmetically possible, though far from sure. NAK's 'super-alliance' with the LDP made victory far more probable. The two groups joined forces in October 2002 to form the 16-party National Rainbow Coalition (NARC), signing a memorandum of understanding on the division of cabinet positions and other perquisites of power, including the creation of the position of prime minister, to be given to Raila Odinga. The formation of NARC essentially made the elections a two-horse race, even if three other presidential candidates ran. Between them, Mwai Kibaki and Uhuru Kenyatta captured 93 per cent of the popular vote and their parties won 189 out of 210 seats in parliament. The remainder were divided among five much smaller parties. Unlike 1992 and 1997, there was no question in 2002 of splitting the opposition vote across the board.

It is not clear that this super-alliance was necessary to defeat KANU in the 2002 elections. What would have happened, for instance, if NAK and the LDP had fielded separate candidates? Though one could perhaps make some mathematical calculations, changes in players' strategies are difficult to predict. To ensure victory, NAK chose to make a last-minute Faustian bargain with many former regime hardliners who had until two months before the elections been members of KANU. As described below, this soon caused problems for the NAK wing of the ruling NARC. However, had NARC not been formed, violence might have played a much more central role in the campaign and facilitated KANU re-election.

Political Violence: The Dog That Did Not Bark in the Night

The 2002 elections were surprising for the relative absence of wide-scale organised violence. The two previous campaigns and polls had been characterised by systematic attacks on members of ethnic groups that resided in KANU strongholds but generally supported the opposition. This violence, often called 'ethnic clashes', was induced by senior KANU party officials for political purposes. Between 1991 and 2001, the so-called clashes killed thousands of Kenyans and displaced hundreds of thousands more (Brown 2003b). It was widely feared, given their success in the past and the complete impunity accorded the organisers and perpetrators, that similar attacks would occur in 2002.

This threat, however, failed to materialise for two main reasons. First, though effective in disenfranchising numerous voters, violence alone could not significantly narrow NARC's two-to-one lead over KANU in opinion polls. Second, when the KANU defectors joined Raila Odinga in forming their own opposition party, the LDP attracted some of the very people responsible for organising the

clashes. KANU thus lost capacity to mobilise their private militias to carry out political violence. This, along with the fact that both main contenders for the presidency were Kikuyu, blurred the previously clear allegiances, usually ethnic, which therefore 'detrified' the poll to a certain extent. In any case, the prospect of a NARC government was not overly threatening to the majority of the old guard. Most KANU leaders, according to David Throup (2003:1), a keen observer of Kenyan elections, "decided that they could live with a Kibaki presidency" and therefore only rigged the campaign and "intimidate[d] voters ... in a spasmodic, half-hearted manner".

After losing the election, Moi could also have tried to use force to retain power, rather than hand it over to the opposition. It is widely believed in Kenya that some KANU hardliners advocated a kind of 'self-coup' to prevent the opposition from assuming office. Why this did not occur is difficult to prove. Uhuru Kenyatta is generally thought to have been opposed to such methods, perhaps Moi as well. Moreover, the army officer corps is quite well professionalised and unlikely to want to intervene in politics.⁴ Raila Odinga and others made credible threats of mass action if Kibaki were not sworn in, which also almost certainly influenced KANU and military elites. The probability of donor sanctions provided another disincentive.⁵

No amnesty law was ever passed to protect Moi after he left office. It is quite possible that a pre-election verbal pact was made between Kibaki and Moi. Moi might have agreed to transfer power to the new government on the understanding that he would be safe from prosecution and seizure of his personal wealth. Indeed, after his inauguration, Kibaki ambiguously promised to hold people accountable for past actions but avoid witch-hunts. Moi's de facto immunity was subsequently confirmed in later official pronouncements, discussed below.

Violence is often used as a tool for informal repression by sub-Saharan African rulers to restrain electoral competition, not only in Kenya but also in countries such as Cameroon and Rwanda (Kirschke 2000). This in turn exacerbates divisions in the population and leaves deep scars, creating additional challenges for the post-transition phase.

Post-Transition Challenges

The new government faces numerous challenges if it is to survive its first mandate. NARC's first task will be to stick together – and it is unlikely to be able to do so, as a disparate coalition with many ambitious individuals, each with a sizeable following. Kibaki was chosen as a joint candidate they could all agree on. If he tries to stay for a second term (which he appears to be considering), he will face much internal opposition. If he steps down as promised, those not selected as his successor might well leave the coalition and run under their own party banner. Resistance to Kibaki's plans to merge the constituent parties indicates that party members want to retain the possibility of leaving the coalition as a group.

The ex-KANU members of the LDP are likely to be the first to desert NARC. Many are already complaining that Kibaki is not honouring his written commitment to cede half the cabinet positions and other public appointments to its members. The rift between the LDP and NAK wings of NARC became clearer when, in the June 30, 2004 cabinet shuffle, Raila Odinga's responsibilities were trimmed, other LDP ministers were demoted and new ministers were appointed from two opposition parties, Ford-People and – more surprisingly – KANU. Even within the NAK wing, there is discontent over Kibaki's restricted circle of advisors known as the Mount Kenya Mafia (for their common geographical origins) and perceptions of dominance by members of Kibaki's Democratic Party. The most contentious political issue is currently constitutional reform. The Kibaki government is strongly resisting the constitutional conference's recommendation to create the post of prime minister, which Kibaki reputedly promised Odinga. The government's repeated stalling, reminiscent of Moi's, has further alienated the LDP members of the governing alliance. The constitutional review process could be fatally handicapped by the reluctance of any sitting president to trim his own powers. The extensive executive prerogatives, so vehemently decried by politicians in opposition, prove quite useful once they are in government. As Cooke and Throup (2003:5) point out, "President Kibaki did not wait 24 years to become president, only to hand over the bulk of his presidential powers to a prime minister".

Second, how to prevent ethnicity from re-emerging as a key political consideration before the 2007 elections? The fact that the two main presidential contenders belong to the same ethnic group does not mean that Kenyan politics has been meaningfully 'detrified'. On the contrary, alliances and defections are always made in light of the followers that politicians bring with them as ethnic power-brokers. For instance, when Odinga joined KANU and later left it, he brought with him a large bloc of Luo voters. He thus still acts very much as an ethnic gatekeeper.⁶

Third, given the above, how to prevent organised violence from re-emerging as well? Though large-scale clashes did not occur around the 2002 elections, as they had around the previous two polls, changing party configurations and campaign conditions could lead to their re-emergence. It is wrong, somewhat patronising and more than a little dangerous to suppose that the Kenyan electorate has 'matured' – through better understanding of the process – and will no longer tolerate violence and other illegitimate means to win elections. 'Clashes' and wide-scale fraud did not occur in the past because voters were naïve or ignorant. They were tactics used by a regime desperate to hold on to power in a new multiparty context. For the reasons explained above, the strategies would not have been effective in 2002, but that does not preclude them being useful again in the future.

Finally, how to find a balance among truth, reconciliation and justice? Moi will retire from political life and concentrate on playing the role of elder statesman. In the tradition of Nelson Mandela, Julius Nyerere and other African leaders, he will

set up a foundation for charitable work for children, and espouse AIDS prevention and mediation of African conflicts. The Kibaki-appointed anti-corruption tsar John Githongo stated that the government intends to give Moi immunity from corruption charges “because he agreed to step aside peacefully at the last elections”. Kibaki himself is reported as saying that “a deliberate choice, which we are willing to defend, has been made not to target President Moi” (BBC News Online, December 21, 2003). If the judiciary sentences Moi, Kibaki commands the power of presidential pardon. Immunity for ex-presidents could be a useful precedent for Kibaki’s own retirement.

Many victims of past abuses, not least those targeted by ethnic clashes, will demand recognition, restitution or compensation, and perhaps reparations. Addressing these needs with minimal resources in hand and pursuing perpetrators, some of whom are currently in government and even cabinet, risks provoking further divisions. Investigations into corruption will also bring to light many abuses by former KANU officials who are now in government. Foremost among these are the ongoing hearings on the Goldenberg scandal from the early 1990s, in which George Saitoti, currently minister of education, has been implicated.

Civil society organisations in Kenya are faced with the challenge to find a new identity. So long defined by the struggle for human rights and democracy, which used to be understood in opposition to the KANU government, NGOs will need to work out a new relationship with the state. Several respected activists and academics have now joined the government, not only depleting the ranks of civil society but also making it harder for members of the latter to criticise their friends and former colleagues. (In South Africa, the civic associations faced an even starker situation when many of their activists joined the African National Congress government.) Moreover, Kenyan organisations will sometimes find themselves asked to speak out in favour of the rights of KANU officials – for example, Moi’s right to register a foundation. Much of their credibility as civil society rests on their willingness to do so.⁷

Conclusion

At first glance, the many particularities of the Kenyan transition make it difficult to draw lessons. Nonetheless, it is not purely idiographic; some useful generalisations can be made.

Explaining Kenya’s Transition

It took Kenya 11 years to complete its transition, from legalising opposition parties in December 1991 to the transfer of power to a multiparty coalition in December 2002. The length of this transition was due in large part to the multiplicity of clever if at times brutalising tactics that the KANU government used to resist democratisation, combined with critical moments of donor intervention in support of the status quo (as argued in Brown 2001). These combined to legiti-

mise at least partially the 1992 and 1997 elections and keep the Moi regime in power.

What differed in 2002 and allowed the opposition to win and assume power? Nairobi elites and media in mid-2003 appeared to agree that it was a combination of an unprecedented opposition coalition, a greater degree than ever before of citizen access to impartial information, and the fruits of a decade of civic education. The effect of the latter two are difficult to measure, not to mention unverified; and I would hesitate to attribute too much power to new knowledge and self-restraint. It is too early to discount the possibility of political manipulation or 'uncivil society' re-emerging.

Moreover, while the coalition-building (including building through compromises) was important to avoid splitting the anti-KANU vote, a more unified opposition in and of itself would have been insufficient to defeat KANU in 1992 and 1997. This article sees greater importance in the results of key political decisions and struggles in the past few years, namely Moi's decision not to run and his party's implosion when he appointed an unpopular successor, which severely limited the possibility of using egregious practices that in the past had ensured KANU's re-election.

The presidential term limit, inserted into the Kenyan constitution in 1992, proved to be a stumbling block for Moi's continued political domination. Forced to pass the reins on to a successor, Moi miscalculated when he appointed an heir and made a further tactical mistake in absorbing Raila Odinga's NDP into KANU, which permitted Odinga to organise dissent from within and lead a mass defection. As a result of the reconfiguration of elite alliances and unprecedented opposition coalition-building, KANU no longer monopolised the means of political violence. Moreover, the methods used to secure victory in 1992 and 1997 were no longer sufficient to guarantee re-election. An understanding between Moi and his successor smoothed the transition process and, not incidentally, ensured Moi's immunity from prosecution.

Throughout this article, I have avoided stating that Kenya's transition has unequivocally been a transition to democracy. Even if the Moi era is clearly over (though KANU could stage a comeback in 2007) and Kibaki's government was democratically elected (or rather elected despite a playing field slanted against it), it is not yet clear that Kenya is a democracy in more than a procedural sense. The government in many ways behaves as arbitrarily as the previous one. For instance, in early July 2004, the government withdrew permission for previously authorised rallies in favour of constitutional change; when some people ignored the last-minute ban, the police used tear gas on protestors in Nairobi and fired live bullets at demonstrators in Kisumu, killing one (BBC News Online, July 3 and 7, 2004). Moreover, the provincial, municipal and county levels of government still lack democratic governance. The transition may be over, but broader transformation of the state – including its relationship with the economy and civil society – is still required (Ndegwa 2003:158). It is too early to assess how demo-

cratic the current regime is, but future studies will be able to comment on this matter more authoritatively. Key negative indicators include large-scale corruption, disregard of civil liberties (under threat from unaccountable security forces and a draconian 'prevention of terrorism' bill) and a refusal to respect the rule of law.

The serious decline in human security over the past decade does not yet show clear signs of reversal (Brown 2003a). The surprising lack of violence surrounding the 2002 elections marked a clear improvement from the two previous polls. Unfortunately, this does not automatically mean peaceful elections in future. Should the conditions no longer render organised political violence ineffective, it could easily re-emerge. Moreover, if progress is not made in other components of human security, the environment will remain inhospitable to the deepening, if not survival, of democratic rule.

Comparative Lessons and Policy Implications

Kenya yields some lessons for other countries seeking to democratise (or conversely, resist democratisation), as well as for those seeking to support the democratisation process. Central among them is the role of institutions. Term limits, for instance, can prove very important. Domestic civil society and political actors, at times assisted by foreign aid donors, can help prevent term limits being lifted; this in turn exposes ruling party divisions and, by destabilising the status quo, opens the window of opportunities for democratisation. (It should be noted that destabilisation also creates conflict, sometimes violent, as a potential price of change.)

Competitive elections are a necessary though insufficient component of democracy. Even during the most authoritarian years of Moi's and other dictators' rule, some form of elections were maintained as a means of legitimation. Far from adopting a cynical attitude to all elections, Africans have pushed – and continue to push – for a meaningful choice on the ballot. Elections, despite decades of abuse, have proved an enduring institution and one around which to rally disparate groups of people seeking a more inclusive form of government. It is important to continue to support a wide range of institutional and procedural reforms that will improve the fairness of campaigns, the accuracy of voter rolls and the transparency of vote counts.

Pacts can often be valuable, though not necessarily as outlined by O'Donnell and Schmitter. Negotiated compromises can allow a transition to move forward, even if they contain provisions that displease some actors. At times, however, they postpone difficult deliberations, decisions and even confrontations. They are not always made in good faith. Some actors may adopt Machiavellian strategies, deciding to agree now in order to achieve short-term goals, but reneging once a party's power-base is more secure. Such compromises are really trade-offs between short- and long-term goals, in many ways beneficial or arguably necessary,

but often at a price in the not-too-distant future. In time agreements are likely to fall apart, or be deliberately sabotaged, as political situations evolve.

The Kenyan experience points to serious challenges ahead for opposition parties and civil society in semi-authoritarian countries, whether they came to power democratically or not. Though there are many paths to political change, the Kenyan scenario suggests that a useful first step is to ensure that term limits are respected and that the incumbent president does not run again. The ensuing succession battles often divide the ruling party and cause defections from the ruling party to the opposition. Second, to overcome patently uneven playing fields and avoid splitting the vote, opposition parties should seek broad (though not necessarily all-encompassing) coalitions.

In some countries, incumbent presidents – such as Togo's Gnassingbé Eyadéma, who originally seized power in 1967 – continually extend or renew their mandates. In others, for instance Malawi, the first but not the second step was achieved: as in Kenya, popular mobilisation and donor pressure prevented President Bakili Muluzi from having his two-term limit lifted. Like Daniel arap Moi, Muluzi handpicked a party outsider as the ruling party's presidential candidate, which was met with open dissent in his party and caused a number of senior officials to join the opposition. Unlike in Kenya, however, the opposition parties failed to use the ruling party's implosion to their maximum advantage by forming a broad coalition like NARC. Combined with a playing field that clearly favoured the ruling party, this allowed the latter's presidential candidate to assume office after the May 20, 2004 elections (see Brown, forthcoming). Though in Malawi, unlike Kenya, a democratically elected president had already held office, the incumbent party was no less determined to remain in power.

Foreign-aid donors, for their part, have often played an important part in convincing presidents to step down at the end of their term limit. In places such as Kenya, they encourage opposition dialogue. Donors have more generally failed, however, to hold semi-authoritarian governments to sufficiently high electoral standards, instead endorsing clearly substandard elections such as the ones held in Kenya in 1992 and 1997. Even when international observers conclude that elections were patently unfair (as many did after Malawi's 1999 elections and almost all in 2004), donors have been extremely reluctant to refuse to recognise the legitimacy of the government and call for a rerun of the elections, often in the name of stability. This clearly undermines the democratisation process, pointing to an area for future improvement on the part of Western governments.

Theoretical Implications

The tumultuous events in Kenya over the past few years illustrate O'Donnell and Schmitter's fundamental perspective that transitions are idiosyncratic and uncertain processes, highly contingent on numerous factors and events that do not follow a linear path or clear pattern. Individual politicians' strategies and errors can

greatly influence outcomes. As they argued, authoritarian breakdowns were not “fatalistically bound to occur, that is, they could have been avoided if some strategic decisions had been made and especially if some crucial mistakes had not been committed” (O’Donnell and Schmitter 1986:19).

When focusing on elite actors and a particular period of time, it is easy to over-emphasise voluntaristic factors. Transitions are best understood as “underdetermined political situations”; their analysis thus “temporarily suspends structural constraints” (Guilhot and Schmitter 2000:618, 622, author’s translation). Many structural factors such as economic conditions and international conjuncture undeniably play an important role in democratisation in Africa and elsewhere. The wave of democratisation in 1989–1994 in sub-Saharan Africa and the former soviet bloc cannot be credibly attributed solely to actors’ contingent choices. Across the African continent, a decade of economic crisis and difficult structural adjustment programmes eroded regimes’ capacity to provide the resources required to keep clientelist networks functioning, thus delegitimising authoritarian rule and fomenting popular discontent. Changes in donor priorities and norms of governance, profoundly influenced by the end of the Cold War, also increased the cost of overtly authoritarian rule.

Though often underemphasised, such structural factors clearly influenced the modes and timing of African transitions. Inevitably, it is difficult to pinpoint exactly how the diffuse economic conditions, let alone international norms, affected the actions of the individuals examined in a short-term, country-focused analysis like this one. We know that the causes of the completion of the transition analysed above do not float in the air ahistorically. Rather, a gamut of prior changes that eroded Moi’s neopatrimonial rule made possible the sequence of events recorded here.

At the other extreme, long-term, large-N analyses are more concerned with aggregate probabilities than individual possibilities, especially with regard to the endurance of democracy (see Przeworski *et al* 1996). They tell us very little, if anything, about the role of human agency in democratisation. Still, such studies point to the necessity of supporting a wide range of underlying socioeconomic improvements that will indirectly favour democratisation in the long term, such as promoting human development and human security.

Finally, as seen above, institutions (such as electoral processes and term limits) are an important intervening variable that bridge structure and agency. While broad structural conditions are difficult to change in the short or even medium term, a variety of domestic and international actors can make efforts to use or modify existing institutions in order to effect political change. Thus, agents can harness and influence some institutional structures in their immediate environment to promote democratisation.

O’Donnell and Schmitter (1986:6) admit that transitology generally pays scant attention to the post-transition phase: “our efforts generally stop at the moment

that a new regime is installed". A question raised at the beginning of this article was: How does one know when a transition has ended and the consolidation phase begun? Increasingly, it is becoming clear that the analytical separation of the two phases does not serve a practical purpose on the ground. A change in regime is often a necessary first step for democratisation, but a transition in and of itself provides little impetus for deeper, but equally necessary, transformations. Continued pressure and even struggle may well be required, causing a contentious politics that some would interpret as "deconsolidation" (Guilhot and Schmitter 2000:623). It may be more productive to focus less on reified transition and consolidation phases and the boundaries between them and more, as Deborah Yashar (1999:103) suggests, on the complex dynamics of democratic politics.

Notes

1. For a discussion of these agreements' similarities with and key differences from the kind of pact described by O'Donnell and Schmitter, see Brown 2001:733.
2. Interview with Jim Huskey, Political Officer for Kenya, United States Embassy, Nairobi, March 4, 1998.
3. Interview with Stephen Randall, First Secretary, Canadian High Commission, Nairobi, June 24, 2003. Kenyatta's candidacy was also handicapped by the fact that he was seen as being very close to highly unpopular KANU hardliners. Interviews with Karin Steffensen, Programme Officer, Royal Danish Embassy, Nairobi, June 24, 2003, and Ian Paterson, Second Secretary (Political/Economic), British High Commission, Nairobi, June 27, 2003.
4. Interview with Willy Mutunga, Executive Director, Kenya Human Rights Commission, Nairobi, June 25, 2003.
5. It is widely believed that George W. Bush and Colin Powell made this clear during Moi's visit to Washington a few weeks before the elections.
6. Interview with Mugambi Kiai, Programme Manager, Central Depository Unit, Nairobi, June 24, 2003.
7. Interview with Willy Mutunga, Executive Director, Kenya Human Rights Commission, Nairobi, June 25, 2003.

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