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Kenya Research project by Robert M. Press [see: Press, Robert M. (2006) *Peaceful Resistance: Advancing Human Rights and Civil Liberties*. Aldershot, U. K.: Ashgate.]

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Interview conducted by Robert M. Press (bob.press@usm.edu; press.bob@gmail.com)

Interviewee: James Orengo

Location of interview: Nairobi, Kenya, in his office in a residential neighborhood.

Date of interviews: July 26, 2002

Transcription by Press. BP = interviewer (Bob Press); JO = respondent (James Orengo). Double ?? Indicates unclear point. Research notes are shown, often in brackets; HR = human rights activism; Tactic = activists' tactics; SA = State action to bloc activism. Bold sections of respondent's remarks are ones considered by the researcher as key statements. Occasional tape counter numbers are shown.

James Orengo, an opposition leader, was elected to Parliament in 2001 as a member of the Social Democratic Party. He was an attorney, with an LLB bachelor of law degree from the University of Nairobi. He is a Luo, a Christian, and in 1992 joined the opposition party FORD/Kenya.

Tape one, side one

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Step by step explanation of a political 'chess game' showing how activists mounted an opposition movement against the regime, pushing for greater human rights in Kenya. This is a key interview with one of the key planners of the opposition that helped bring down the walls of resistance against multi-party politics in Kenya and its tangential improvement of the rights of assembly and association. The following shows the Chess Game the activists and government played in the critical years 1990 and 1991.

BP What were the specific steps you took in Kenya to try to advance human rights, realizing your larger interests in pluralism?

[HR TACTIC (Step 1) Seek registration of a party. Testing the waters on forming a new party in one-party state by seeking registration of a party that would be a lobby group and not run candidates. Court battle lost.

SA- court refuses party registration; TACTIC – Avoid formation of opposition groups

IMPACT: greater public awareness around the issue of multi-party]

JO There were many court battles, so many cases related to human rights and democracy. One of the cases that I remember was to try and register a political party, around 1990; that was the National Democratic Party, not the National Development Party of Raila Odinga. They were both NDP. The first one was the National Democratic Party. The Party was formed by the late Jaramogi [Oginga] Odinga [former Vice President; father of Raila Odinga] and other persons. But as you know, at that time, the legal framework or constitutional framework only provided for one party, Section 2A. But on account of provisions in the constitution guaranteeing the freedom of association, the bill of rights, we insisted that section 2A, if read with other sections of the constitution, did not actually specifically ban the existence of political parties, prohibit the existence of political parties. What probably any party other than the ruling party could not do

was to sponsor candidates at the Parliamentary and civic levels – local authorities. So there was a constitutional case that filed in court, argued it out.

BP Were you one of the attorneys?

JO Yes I was the leading attorney. We did not win. But I think it was [a] landmark because from then on, things took quite a different turn.

BP Was this before FORD [Forum for the Restoration of Democracy; a small coalition of opposition leaders that later became a political party that split into ethnic-based factions.]

JO This was before FORD. In fact we had a debate at the time, whether to try to register a party legally, or in view of the section 2A, just to have a lobby group. At the end of the day we said: let's go to court, fight the battles through the court; use it as a way of sensitizing the public, mobilizing the public around the issue of multi-partyism.

BP So you chose the registration route.

[HR: Next TACTIC (Step 2) Form a lobby group. Having failed to register a non-candidate-presenting party): Form a “party” of less than ten people and avoid having to register with the government under the Registration of Societies law.]

SA- (no countermove) Intended TACTIC: Block formation of opposition parties, groups. They had not anticipated this move.

JO We chose the registration route. And when it failed in the courts, then we said we will now start the Forum for the Restoration of Democracy (FORD). The idea was really mine [several other Kenyan opposition leaders also claimed credit for the idea] in the sense that I argued at the time that to seek registration of a society the law required that you be a society consisting of more than nine members. So that if you are nine or less you did not fall under the Registration of Societies Act. So FORD was started as a lobby group, a political lobby group, which had a following, had support, but on paper we said it has only nine, in fact specifically only six members... That nine was because of the provisions of the Societies Act which said that if you are a society, organized for any purpose, welfare, political or educational, if you have more than nine then you have to seek registration.

BP So this was a political TACTIC.

JO Yeah, it was a political TACTIC.

BP What was your aim?

JO Well, we were trying to push the government to allow formation of political parties, that these parties would then be able to fight, or campaign.

[TACTIC: FORD also provided a basis for mobilizing popular support for an opposition party.]

BP So this was kind of laying the ground work, getting discussion going.

JO Precisely. But it also gave us a basis for mobilizing support in the country. So specifically there was that case at the judicial level; we went to the courts then took a political position to start that political lobby.

HR: TACTIC (Step 3) – seek permission for a public meeting of the lobby group

SA- TACTIC: block formation of opposition groups to meet; State refuses license

JO Then once FORD was in existence, we started organizing public meetings.

[This came at a time when the government was also forbidding opposition meetings, using police force to break up any pro-multi-party gatherings. But the publicity around FORD's

formation alerted the country that an alternative to the Moi/KANU monopoly on power was in the making.]

JO The first public meeting of FORD was the 16th of November, 1990 [He later agreed with my correction that this was Nov. 16, 1991.] Under the Public Order Act, we were required to seek a license to hold a meeting. That was the law at that time. The license was sought. It was refused.

HR: TACTIC (Step 4) – go to court to win license (raising the stakes: keeping the issue in the spotlight)

SA –TACTIC: use courts to block opposition. Court would almost certainly have ruled against the activists

Then again as lead counsel, I filed a case in the High Court, trying to seek under the Bill of Rights, freedom of assembly, that the police or government could not stop us from holding a meeting.

[TACTIC/THEME. Activists used the government’s own repressive laws to their advantage. When a license for an opposition meeting was refused, Orengo, in this case, went to court to win the right to exercise freedom of assembly. The government was put in a corner. It wanted to block a build up of sentiment for a multi-party election, though it was fighting against a wave of such elections in Eastern Europe and in parts of Africa following the collapse of the Berlin Wall and the ending of the Cold War. But it also needed donor money to keep the economy going. The negative publicity around the denial of a license to hold a public meeting was compounded by the continuing publicity as the fight for the right to meet moved into the courtroom.

[In theoretical terms, the activists were, in Tarrow’s words, assessing the “opportunity structure,” or exogenous possibilities for action and moving ahead. Oginga Odinga also got publicity out of his attempt to register his new party [name??]. The papers the next day carried the story of the government’s refusal. No matter what the activists did, they were gaining, not in the foreground, where the authoritarian structure of the government held them in check, with registration laws and meeting license laws, but in the background where the activists were stirring public thought toward the idea that an alternative to the Moi/KANU regime was a possibility, that Kenya might well follow the example of other nations opening up to the winds of democracy. There was little the government could do to stop the *mental sea change that was underway in Kenya. The dike was springing not one hole which could be blocked, but thousands of tiny holes that were chipping away at the strongest weapon the authoritarian regime had on its side: fear.*

This lessening of fear was a key element in the partial transformation of Kenyan politics from authoritarianism to a somewhat liberalized form of government, though still far from democratic in the period 1987 to 1997. At one of their first encounters with the press at the announcement of FORD, one of the original FORD members, Martin Shikuku, kept repeating the magic number “nine, nine, nine,” which was the legal maximum size of a group that did not have to seek government approval for registering as a society, approval which would never be given. The six FORD members [mentioned in other interviews] and the strategists behind them, people such as Orengo, had discovered a weak chink in the wall of repression, a legal way to form a lobby group that would help galvanize the public regarding multi-party democracy and in the process bring the issue of the right to assemble and associate to the foreground.]

HR: (Step 5) TACTIC Walking out of court to avoid a certain ruling against an opposition rally

SA – stymied; no countermove available

BP Using the argument that the Bill of Rights was still there [in the constitution, despite the addition of a sentence making Kenya a one party state, an amendment that had been adopted in record speed to head off the likelihood that an opposition party was about to surface]. This was not a party therefore it should be allowed to meet. [Actually Paul Muite?? argued that even if it was a party it should be allowed to meet, it just wouldn't present candidates; but that manoeuvre had been blocked by the Moi courts.]

JO It should be allowed to meet. [This was in 1990]. The case went formally before the Court. Then in the middle of submissions, we said we don't want to proceed with the case. Once having gone to court. **[TACTIC] We were just using the Court as a political platform.**

THEME: use of the court room to present political ideas in opposition to the government.

JO But we know the attitude of the bench. They were not going to rule in our favor, so instead of giving them that advantage, or privilege as it were, we just pulled out and said the meeting will go on with or without a license. We went for the meeting of the 16th [1991 at Kamakunji].

BP Why did you want to have it [a rally] at Kamakunji at that time?

HR: TACTIC (Step 6) “go to the people” (without a license); plans continue for rally

SA- Government warns rally is illegal: resorting to usual intimidation TACTIC

[**Theme: Chess game.** Blocked in the first steps by the government, the challengers now take a bold move and decide to go ahead with the rally which the government was calling illegal. This time the government runs out of quiet countermoves and can only stop the challenger from winning by knocking him off the board (police forced to disrupt the rally).]

JO *We said now the battle has to go to the people.* The AG's [Attorney General's] office which was given the task or responsibilities of registering societies...did not register [us]. We had gone to the courts and of course the courts at that time and including now were under the direction of the Executive. So we said **this now must go to the people** [emphasis].

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SA- TACTIC. (Step 7) This time the government moves first, taking the initiative for the first time in this game, using the tactic that when all else fails, **make arrests**. When peaceful methods fail, use harsher ones. Having failed to stop their organizing and plans, as the rally date was arriving, police arrested as many organizers as they could find.

HR: counter TACTIC: Hide.

JO If I may put it the way we thought of it at the time, it was **mass action**. We had come to a position that it was only through mass action- that was the only option left [that they could use to try to win a change to multi-party politics in Kenya. The government had blocked the administrative routes to multi-party; now it would have to use force to stop mass action in favor of the change and suffer the consequences in terms of reduced donor aid.] We had tried to think of [other] avenues; they were not working. So, mass action involving the people. And that's why

we even withdrew the case from the court [in favor of mass action]. There's a lot of things that happened before that meeting because they started arresting a lot of people just before that meeting. Happily I was not there. Fortunately. So I started rounding up my colleagues. There was a Zimbabwean, a political attaché. He was a very helpful man, a man called Mr. Balecwa [??] I don't know if they would behave the same way now. He was a very close friend of mine. So I went around looking for the other participants: Paul Muite, took him to Balecwa's house; [Martin] Shikuku, [Japheth] Shamalla, Muliro, all those guys. It was somewhere in Kileleshwa [a residential section of Nairobi].

BP Basically hiding from being arrested.

JO Hiding from being arrested.

BP Because they were looking for you.

JO They were looking for us all over. And of course Jaramogi [Oginga Odinga], [Gitobu] Imanyara, Luke Obok, Akumu [Denis??], quite a number of people had been arrested prior to the meeting, those who we didn't get to in good time.

HR: TACTIC (Step 8). Be brave. Defy the police. Mass action means leaders must act, too. SA- TACTIC : Desperation: more arrests, police violence at the rally; possible shots from police?

Then we proceeded to the meeting. We organized with the press.

BP Just out of curiosity, when you organized with the press, I remember getting a tip [to meet the organizers of Kamakunji at the curb in front of the U.S. Embassy from Fred LaSore ?? then the U. S. Embassy press officer. [Smith Hempstone was the American Ambassador at the time and an active proponent of democracy in Kenya.]

JO It was agreed that that would be the meeting point with the press. We would come from the place of hiding incognito as it were and get things going [laughs].

BP There was the cooperation of the American Embassy. They were tipping us off.

JO Yes, yes, yes. Then we started the drive to Kamakunji. [He and Shikuku were in the same vehicle]. We didn't go very far because maybe half a kilometre away we were stopped by the police; there was a roadblock. Shikuku, Muliro and myself and Mr. [Philip] Gachoka managed to get in the pickup, the famous pickup. But Shamalla, Muite and some of our colleagues got held up in the other vehicles and were arrested at that spot.

So Shikuku and I continued driving towards Kamakunji. There was no entry point?? So we drove along Jogo Road. We were shot at.

BP Were you shot at?

JO We were shot at.

BP People that I've spoken with said they heard what they thought was the crack of guns at various points.

JO We were shot at. The first bullet hit us about a kilometre away from the first police roadblock. It hit the car. Then there was a second shot near Kaliani ?? [The second bullet] hit the car. We think that was somehow responsible for a hit at the petrol tank because now it first started leaking. Although I don't think the bullet made contact with the tank because otherwise it would have blown... We were on top.

[Shikuku had seated himself on top along with Orengo. Shikuku was sitting with his legs over the luggage bar and feet resting on the top of the roof of the passenger cab, lifting both arms in a multi-party gesture, with his fingers on each hand making a two-finger salute as well. That photo was splashed onto the pages of the newspaper the next day and sent out over the international news wires. It was a potent symbol of defiance of Moi's

authoritarian rule, one of the most daring public gestures of opposition Kenya had seen up to that time.]

BP At some point the police were actually behind you.

JO They were actually behind us throughout. It [their vehicle] had loud speakers and we were shouting FORD, FORD, and people were lining the road. It was a chase until a place called Kariobangi [??]. That's where the police now put a roadblock; there was a cull de sac, there was no where we could go. I remember just before we got to that roadblock, one of the guys with us, Mr. Gachoka - he's now a Commissioner in the Electoral Commission, said we should just come out and run into the slums. But I remember saying, no, no, no; let's just get over with it because whatever happens we'll end up in some jail somewhere [laughs].

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JO So we got arrested. Everybody was put in a separate vehicle and taken to various police stations. The police decided to prosecute us in courts in our own home areas. All different areas.

BP Who was with you?

JO Philip Gachoka, a close confident of Matiba at the time. He was amongst the six, a proxy for Matiba [in the original FORD; Matiba may have been in a hospital recovering in London from detention, or in detention still?]; Martin Shikuku; Masinde Muliro, that is in the pickup, and myself. But in the convoy there was Shamalla (later on a Member of Parliament and an Assistant Minister), and there was Paul Muite. There are some friends of ours...

THEME: Breaking the fear. All this helped break fear of the regime; spurred defiance.

IMPACT? BP What was the value of all that effort, which in fact turned out to be fairly risky. What was the benefit of it or its IMPACT?

JO I think there was a very big impact because you know there was this...dictatorship. People were scared. There was an element of fear. People would not stand up and say 'no' to political oppression. So we thought that not only were we advancing the cause of mass action, but we were emboldening the masses. You know, if the leadership is prepared to take these risks which must be taken (emphasis), then down the line we'll get a lot more people prepared to come out and take this risk.

BP Breaking the fear?

JO Breaking the fear. And that did happen subsequently. Things were very different [after the event].

BP (relates his first-hand observations as a journalist from near the scene at Kamakunji) It seemed like you did break the fear.

JO Yeah, break the fear.

Some Police show a softer side and listen to BBC with their prisoner.

BP And then, although we had been arrested, the whole day that activity was there – confrontation with the police, fights. Where I was taken to Western Kenya, even the policemen locked me in the cells but at a certain time around 6 o'clock they brought me out very excited. There was a BBC broadcast of the events of the day, the noise, the gun fights, the cheers – they were coming from the crowds, and the engagement of the police throughout the day. So even the police wanted me to hear that. And I thought that was very nice [laughs.] They could smell the

change coming and instead of being locked up in a cell without a blanket, I end up, yes, in a cell, but they give me a mattress and a blanket.

BP You did better than Matiba earlier [who later suffered a stroke after being confined.]

JO [laughs]. Yeah. So [going back to the point of their arrest that day in Nairobi] we were taken to various police stations, and then we ended up at Wilson airport, those going to Western Kenya: myself, Muliro and Shamalla. When I was arrested I was taken to Nairobi Area Police headquarters with my head, for all practical purposes, under the seat. They force your head down. They didn't want you to know where you were going. I was taken to Nairobi Area Police [headquarters] in the back seat, with policemen all around. I was sandwiched between four or five policemen and lying on the floor.

A senior police officer threatens Orengo

JO And the Provincial police officer, he was a Kalenjin [a member of Moi's cluster of small tribes], he said things to me which were very irresponsible. He said, what you think you are doing? What you are trying to do you can never achieve because President Moi's government is strong, and if you play around you're going to end up the way Ouko [did]. [Robert Ouko was Minister of Foreign Affairs when he was murdered, his body burnt, in rural Kenya not far from his home after President Moi was reported to be furious with him over an incident that happened on his trip with the President to Washington, shortly before his body was discovered. Ouko had also been preparing to detail alleged corruption charges against some of Moi's associates over a molasses plant project?? VERIFY carefully]. Ouko disappeared; people made noise but he's now history.

BP That was a direct threat.

JO Yeah

Shikuku was brought in, Shamalla, Muliro...on account of his age we first dropped him at Kitale and he was taken to court immediately. Then the plane went to Kakamega and Shamalla and Shikuku were dropped at Kakamega. Then I was dropped in Kisumu...

BP It was like a flying political taxi.

JO [laughs] taken in custody by local police and driven to Maseno [??] Police station. There is where I was held on a Saturday and taken to court.

BP What happened then?

JO I was taken to court on a Monday. We were refused bail and held in prison for about a month. We were charged. The case was withdrawn later on.

BP Why were you released in a month?

[SA-TACTIC: Send the organizers to their home districts for prosecution; a miscalculation HR Crowd turn out to cheer the prisoners.]

JO There was internal pressure. It looked like the government had miscalculated by taking us to our home areas. They thought it would be too dangerous to take us to court in Nairobi. **But it was like by default spreading the message. Everywhere we went people were turning up in large numbers.**

BP Were they turning up at the police station?

JO No at the police station they would not go. We were taken to the police station incognito. But when we were taken to court that had to be done in broad daylight. When people learned of our presence, because we were taken to this court on various days, and word had gotten out that

everyone had been flown to their home areas. So the turnout all over in different parts of the country was huge, including in [his] case.

BP People standing in the streets.

JO Oh yeah. **As we were being escorted by the police there were thousands of people turning out. They were waving and shouting words of encouragement. “We shall overcome,” things like that. So I think the state realized that it was a miscalculation. It was transporting or exporting a broad and bold political dissent from the capitol to the provinces.**

[After Kamakunji, a donor message and then multi-party] Why? Multi factors, says Orengo]

BP. The next step after that came with the Paris Consultative meeting and then after that they [donors] cut new funds – and a week later Moi went to multi-party. Why do you think those events happened? You described yours, but there were three: your event, the donors, and then multi-party. A very key moment in the history of Kenya. Why do you think the donors did what they did?

JO I think down the line, you know Kenya was going the wrong way and it was quite clear as the repression intensified, **governance became worse and corruption was unbridled.** So there was obviously a connection between the way the leadership was dealing with repression, with the way they were running the economy. And I think the **donors**, like in the past when they were interested in how the economy was run and the issue of governance; in a way that was just responsive to the demands of the international donor community or the international institutions. I think one could see some awareness; and I think this was growing over the years. With Carter in the U.S. there was a time they tried to put that link between **human rights** and...relations with the United States. Within the Commonwealth there were now specific resolutions...about the same time. And sometimes when you look at the Harare declaration of democracy, accountability and transparency [laughs] – all those good words coming out of Harare, and then the way [Zimbabwean President Robert] Mugabe ended [under international condemnation for rigging his re-election and becoming increasingly authoritarian]. So there were specific positions which the international community was taking that now emboldened everybody. You could make a reference that this is what you say [at international gatherings], but they are all good for nothing if they are just being said at these meetings at heads of state level and they are **not being translated into any action.** I think the international community also realized they were at risk, also, in terms of their interests, their investments. **If there was going to be instability and implosion in every country, in the sense that no longer could anybody disregard the call and demand for democracy and human rights.**

And of course what was happening in **Eastern Europe where the Berlin wall came down.** And there were a lot of things which happened...**communications technology**, beginning with **fax machines**

BP things that got past the government.

JO Past the government; **CNN.** All that in various ways made a large contribution [to political change].

BP Why do you think Moi would take all those signals in 1991 when the donors are asking for economic reforms – although you were asking for political reforms – he decides to go and

surprise the delegates – multi-party. He could have said, well, we'll have these economic reforms. Do you think these factors you are talking about bore on him?

JO Yes, I think these factors bore on him; the **world was definitely becoming smaller**.

Everywhere you go you are being told changes come and you must change. And, **for the first time, the political conditionalities became stronger than they ever were before**. Very many repressive governments used to have cordial and very effective relations...with the international community in general. **The whole doctrine of non-interference with internal affairs was changing**. And some of those kinds of policies made it easy...**The fall of Communism**; Communism was an alternative. If the West cannot take care of you, you had always a place to turn to.

BP And if you look at 87 to 97...[makes a rough diagram of the period]. (From 92 to 97) nothing much happened (in the way of human rights promotional efforts). Why?

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[SA- TACTIC: Politics of diversion, or change the icing on the cake, but not the cake; allow multi-party elections but don't reduce the powers of the President which remain intact as long as the President's party wins a majority, or at least (like the President himself) a plurality, though that risks a coalition among the opposition.

Moi played a similar game of diversion in 1997, at first opposing (again) constitutional changes before the election, then agreeing to some changes (ratcheted pressure theory: each time the game begins again, it starts at a new level of 'norms' or expectations; and the same stall tactics lose their effect on the state side. On the civilian side in 97 there was much more unity – but again, not among the presidential candidates: you had dual rationalities operating: one with a national outlook one personal; they were not mutually self-supporting.

In the months before the 2002 election, Moi did not say review the constitution after the elections (1992 game plan of diversion), nor simply agree to some changes (1997 game plan of diversion). This time the diversion was the review itself – national hearings, then an attempt to discredit the whole operation by the President not appearing before the Commission, accusing it of being closed-minded, setting the stage for not adopting its recommendations. But this time Moi was losing control of the momentum for change: there were deep splits in his ruling party, KANU, with several leading members openly challenging his choice for President in 2002; and opposition and KANU overwhelmingly agreed on a set of basic changes, including adoption of a Prime Minister and abolishment of the presidential-appointed regional and local officials. But by this time the President's game of diversion had a much different aim than his re-election. His attention apparently had shifted to election of his candidate whom he apparently believed would not charge him with the many misdeeds of his years in power. The example of nearby Zambia, where Chiluba's meek, hand-picked candidate won only to turn on him and charge him with corruption, must have been an unsettling example of succession possibilities.]

[I chose for the title of my Kenya chapter on democratization of sub-Saharan Africa in the 1990s, "The Politics of Ambiguity." (*The New Africa: Dispatches from a Changing Continent*; University Press of Florida, 1999)

THEME/Theory? Premature satisfaction; selling out cheap; short-term rationality; or (on the part of ambitious presidential candidates) don't reduce the powers of the presidency, just let me take them over; or personal rationality in the short term with long-term destructive

results for the country.; of (from Moi's point of view: scraps from the table, or **the politics of diversion**)

HR TACTIC: Threaten a boycott of the '92 elections to force constitutional changes before election.

[Election boycott plans scrapped as global politics leads U.S. to work closer with Moi]

JO Before the elections, actually, we were calling for a boycott, that we cannot go to elections until the playing field was level.

BP But you changed that position.

JO Yeah. But you know what was happening in the Gulf (Gulf War) and Somalia (U.S. humanitarian intervention that used Kenya as a staging post) worked in Moi's favor. Because then the governments that had been supporters of the pro-democracy projects suddenly said: We want you to take part in the elections; there's nothing to be lost; it's not right for you not to go to elections. The United States' Ambassador Smith Hempstone actually changed his position.

[Verify??].

JO Multi-party had already been achieved, but we said we needed a reform, a constitutional review [to reduce the tremendous powers of the Executive], so that by the time you go to elections [in 1992], consequential amendments...would have been made....The constitution is the basic law; all laws flow [from it], like the law regarding meetings [freedom of assembly]; it more or less remained the same [government permission was required, which meant the government could – and often did – block rallies planned by the opposition]; the public media [was still controlled by the government], the sedition law [was still on the books, allowing the government to detain dissidents they deemed troublesome]. All that was still there.

BP You still had the same package, just a different cover.

JO Yeah, yeah, yeah, yeah. In fact it made it even easier, when you had a **semblance of democracy**, for the system. There's a whole argument that we use about it in terrorism – a new phase of terrorism [had arrived on the part of the government]. And if you want to push it further, people can see globalization as a part of imperialism in another guise.

[THEME: How global politics affects domestic reform agendas. In Kenya, where reformists had just won the reform of having multi-party elections (first promised in December 1991 by Moi and held in December 1992), the secondary reform of constitutional changes – and the opposition tactic of an election boycott to force those changes before the election failed for several reasons. The U.S., the strongest voice for pluralism among the donor nations, suddenly found they needed Kenya's cooperation for larger issues: the Gulf War and Somalia. The U.S. intervened in Somalia in late 1992, in the final weeks of the first Bush administration, just as Kenya was preparing to hold its first multi-party elections since (?? year). The U.S. operation in Somalia would use Kenya as a logistical jumping off point for its humanitarian (and later military) involvement. Kenya also looked like a good backup point for some of the Gulf War operations also launched under the first Bush administration. These larger issues washed aside U.S. calls for boycotting the first multi-party election in years unless there were constitutional changes.

Another reason the drive for changes before the election failed was the lack of civil society coordination and sustained pressure for the constitutional review. Apart from statements

by some reformers – amidst a conspicuous lack of commitment to constitutional changes from the opposition presidential candidates – there was no momentum, no credible leverage or force for the changes.]

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[High expectations with opposition in Parliament]

JO We went to elections without much change. The opposition was now in Parliament. There was also a degree of expectation [of results]: now the forum was not out there with the people, you go fight for it from within. [Or as Kiraitu Murungi said, you fight for reforms in “the mud of politics,” his book title]

BP It’s true. All the people I used to see in the street, if I want to find them, they are all in Parliament.

JO [laughs]. So Parliament, it was hoped, would change everything. But if you have an imperial presidency, and the doctrine of separation of powers and checks and balances are not well-placed, you find that the President controls the majority power in Parliament, so he could have his way...The judiciary was still consisting of people loyal to him. So the presidency still domineered, even with a new order, so to speak.

[Moi learned his TACTICS from the British: give in only a little at a time.]

JO I think – and I like saying this: Moi learned his lessons from the colonial power. When we were fighting for change in this country, in order to deal with the nationalist uprising, they [the British] would give in a little. It was like **democracy by instalments**. In 1957 they said you could have eight elected members [in Parliament]. When there was a little more noise, they came up with another plan: OK, now you can have 16, now you can have 30...Moi instead of dealing with the constitution question allowing a constitution settlement, he gave a little [laughs] in 1992 and proceeded to do the same in 1997, he just gave in a little [laughs].

BP What did he give in '97.

[Brief moment of harmony in Parliament: but the fine print weakened the resulting reforms.]

SA+- TACTIC of government: give a little but not much. Symbolic politics THEORY?

JO Well you know, the Inter-Party Parliamentary Group [IPPG].

BP For a couple of weeks there was this moment when Anyona and others passed some reforms. But it only lasted for a couple of weeks.

JO When that ‘marriage’ was on ...such harmony between the opposition and the government at the time.

BP You were there, weren’t you?

JO But I did not participate. Some of us, [Paul] Muite, Raila Odinga and myself, quite a few said we did not recognize that process; it was short-changed. We didn’t participate. But the thing caught up the imagination of the people...

Government subverts new ‘reforms. ‘How Moi’s regime weakened the reforms in their implementation: tricks at the police station. Note: Orengo is a good source on this, having sought and held meeting across the country and also having been denied some??]

JO For example, the law of meetings. There was an amendment to the effect that now you don't need to obtain a licence, all that you need is notification [to the police of the intention to hold a meeting]. But people didn't see the fine print. The fine print is that if you want to hold a public meeting you must notify the police in the prescribed form. Now if you go to a police station and say I want the form to notify you, they will tell you, you give me a notice, right away.[??] So when they decide that you can now hold the meeting, then they give you out the form. And they actually write it out for you. Whereas the form is supposed to be a document available to everybody on demand. And using that type of trickery they made it very difficult for meetings to be held whenever one wished to hold meetings. And about that I experienced [the trickery]...

BP It's an important thing because its freedom of assembly, so I want to ask you a question. As I understand it you can go in and ask for a meeting and they say you can have it only if someone else is not scheduled. If you know your rights you say if there is [something] scheduled, you say, show me the schedule.

JO Yeah, there's a registry of public meetings. That should be shown to any member of the public on demand. But a lot of times they will refuse to show it. They will say, no, you cannot see it, and just put it bluntly like that. Once you are refused to look at the register, and they know you want a meeting at that particular day, then you find that between your first visit to the police station and your next visit, some bogus group's name will appear [on the registry for the day you requested your meeting]. They will play tricks.

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Orengo on cause of change "local pressure."

BP. If you were to look back at what changes that did come and ask yourself; was it activists, international donors, or international organizations that had the most impact on winning the changes that did come.

JO **I think it was a local thing; local pressure.** But in a new international environment that was very conducive to some of the demands. The reason I'm saying this is, in Africa and Asia, you still find a lot of dictatorships, authoritarianism. It's still there. Uganda, you can see that there is a liking for the President, yet what's happening there is not quite [laughs] what you'd call democracy.

BP What you are doing here [in Kenya] is actually sending signals: what does work and what doesn't work.

[Question: One could argue that an authoritarian leader learns from the Chess Game of politics, learns to counter the moves of the opposition. But as the Kenya case shows, the opposition also learns to play the game better and block the countermoves, and so forth.

THEORY? Institutional learning: a theory of Lawrence Dodd at University of Florida. Does it take place? Not in the formal sense; but maybe in the informal sense of police administration, use of the 'tools' of repression. But is there institutional learning on the part of the opposition? There definitely is in the presidency, but how much is that a one-person show or a collective effort? Those familiar with Moi's decision-making lament that he wavers and is subject to the views of whomever is the last person to advise him before making a decision. This may come from the desire to please (his advisors??). Explore this]

BP I have a question, kind of a morality question, because the basis of English law is based on morality. And you've got Kenyan law based on English law. You've used the courts; you

haven't won [each time], but you've used the courts as a political platform. Do you think the basis of the law being English, British law which is based on "morality" has any effect on the fact that ...you can go into the court and use the courts, because they could have just shut the door and said, no thanks?

JO I think it's not entirely true because if you look at the principles of a lot of British law, a lot of it was helpful. But then you have this body of colonial legislation which was still in place, like the Public Law Act was not meant for Britain; it was meant for the colonies. You look at the Public Law Act in Kenya, and what it was in Tanganyika, in all the British colonies, there's similar legislation which was to enable the imperial power to subjugate the subjects, the British subjects. The Chiefs Authority Act, the emergency laws...

BP They were colonial laws; they were just carried over.

JO Yeah, they were carried over. And even the new governments that came found it [the body of colonial control laws] useful to deal with opposition or dissent. So there was reluctance, once independence was achieved, to repeal some of these repressive laws that were inherited.

[Idea: Just as the first two Presidents of Kenya kept in place the repressive control laws carried over from the British colonial period, so, too, were presidential candidates in 1992, 1997, and 2002, apparently not opposed to them in case they won and would have those powers for themselves.]

BP So there was still a disadvantage of having that kind of law structure because that's still what you are trying to get rid of.

JO Yeah, this is what we are trying to get rid of.

BP Provincial administration [non-elected]?

JO Yeah, there's a big body of law...

BP I don't know if you'd go as far as calling it a police state, but if you have police in offices, I mean policing-kind of offices all over, from Provincial down, not elected ...

JO Yeah, it is. Even the Provincial Administration is not part of the police force.[??] Their mind set on is the way they carry out functions.

[Kenya is "not far from being a police state." It has an "imperial presidency with undemocratic institutions..." Orengo]

BP How would you describe Kenya. Is it a police state? I don't want to be inaccurate.

JO **I don't want to say it is a police state, but it's not far from being a police state.** It's not very far.

BP It's made some progress

JO Yeah, it's not far from being a police state. The command system is still very much in operation. Very much in operation. The Provincial Administration. **You have an imperial presidency with undemocratic institutions** like Provincial [presidential-appointed] Administration, and the police and the Administration Police [??their role]

BP Do you think that the '97 cluster of activity [protests] was useful? Because it focused on constitutional reforms but didn't get it.

Begin ORENGO tape one, side two

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[Political insiders transform into opposition leaders: e.g. Mwai Kibaki, Moi's Vice President, who was elected President in 2002]

JO That problem persists. The flag bearers of change, who were part of the old order, were part of the system that we are fighting against. So you find individuals who are very high up in the KANU government, because of internal squabbles, personal internal 'wars' that they had, once this new opportunity arose [legalized opposition politics in Kenya], they walked out of the establishment and now became the new flag bearers of change.

BP They became the opposition.

JO They became the opposition. I think that has been part of the problem because they were people who really had no problem with the way things were running.

BP Because they want to inherit the same thing.

JO They want to inherit the same thing [same powers]. But once their own personal situations were affected, either by being demoted, like in the case of Kibaki [who was demoted from Vice President to a Cabinet Post] or more recently [Simeon] Nyachae – he was Minister of Finance, used to say a lot of things against the opposition in a very crude and abusive way. He changes his tune. And now they [the ex-Kanu officials] become the flag bearers [of the opposition]. So the battle can never be won if you have Generals who were seen in other battles of the war [on the other side of the line].

[Kenneth Matiba was an exception, quitting his post in the Cabinet?? over what??. Kibaki didn't leave KANU until the President adopted multi-party politics. But one could ask: where else could they have gone earlier? Exile? Orengo's point here seems to be that many of those who jumped into opposition leadership posts had kept very quiet during times of repression and abuse of human rights by 'their' government, which does seem to have been the case.]

Theoretical perspective: Opportunism or opportunist? Do people who disagree lie low and wait for an opening to press their reforms, or do the newcomer reformists simply use reform as a vehicle for their own emergence as the top political leaders? I would say, at this point, early in the research, that the later seems to be the case. They were not waiting for opportunities to press reforms, simply opportunists ready to ride the reform agenda or any other agenda to power.]

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Orengo on his early activism

BP When you were taking your own activism, would you describe it as – and this is an important point for me to try to understand-was it an individual action you were taking (and maybe you can mention, briefly, some of the other actions you took), or was it an organizational effort. You were in LSK, I assume. Were you getting the support of an organization and pretty much representing it, or were you pretty much on your own?

JO (history). At the University [of Nairobi] I was a student leader.

BP OK, because one of the other questions I want to ask you is how did you arrive; what was your motivation for getting to where you got?

JO I was a student leader. At that time...student leadership played a very critical role. Because there were no opposition parties. I was President of... the Student Union of Nairobi University (SUNU)...in 72-73. In fact the Union was banned during my leadership. We were taking [on] the government on a lot of issues, demanding change involving academic freedom...also becoming part of an international student movement that was very strong at the time.

[Orengo recalls student activism around the world at time when he was one.]

JO There were many lessons to be learned. Before I went to the University [of Nairobi] I was in the University of Madagascar, where ...the [student] movement there had brought the President down. There were the earlier experiences in France where the student movement brought [Charles] de Gaulle down [In 1968 massive student uprising in France, joined by elements of labor, demanded educational reforms – and got them] In the U.S. during the Nixon era... Viet Nam. There was all that [as a world context to his own personal activism as a university student in Kenya]. It was a very active period. It had a lot of impact on us.

BP But you didn't have a lot of freedom to act.

JO We didn't have a lot of freedom, and we paid for it. I mean: arrests, exile.

BP Were you arrested, or kicked out of school?

Exiled twice, once for activism in Parliament in the early 1980s.

JO I Was arrested. I had to run into Tanzania. I've been in exile twice. Once when I was a student leader, then secondly when I became a Member of Parliament in my first term in Parliament. I was in Parliament in 1982 [as a member of KANU, the only party allowed at the time].

Early opposition group in Kenya's single party

BP Why did you have to go in exile if you were a Member of Parliament in '82?

JO They were targeting the opposition. There was only one party [KANU], but we had a group in Parliament. The Attorney General christened us as the **Seven Bearded Sisters**. *We were very active* (emphasis). We were very, very bold and robust in our criticism of the government. Sometimes I would think that we had more courage and were effective more at that time than even now that there is an official opposition [in Parliament]. Nearly everybody who was a member of that group was either prosecuted or jailed.

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BP Who were the other six? (MPs in the Seven Bearded Sisters)

JO Chelegat Mutai [later imprisoned]; Koigi Wamwere; two characters who really had it rough but they maintained their positions in Parliament: Moshengu wa Mwachofi, Abuya Abuya; Onyango Midika [also imprisoned]. [Another slightly different listing of the Seven Bearded Sisters by Schmidt and Kibara (2002) includes George Anyona instead of Abuya Abuya; yet another listing included Lawrence Sifuna and Dr. Chibule wa Tsuma [Press 2006, p 59).]

BP What got you in trouble?

JO They were looking for anything. We were being charged in court with false claims of mileage [on official travel]. That was the start of the charge.

BP They tried to pin a corruption charge on you? What was it you were doing that made them want to do all the dirty tricks [against you], so to speak. Were you standing up and singing, or leading demonstrations.

BP Just effective use of the platform of Parliament. Just like, you know, we tried the courts [as a political platform in the early 1990s]. During that period, some of us tried to use the platform of Parliament...to criticize the government, plain criticism. [For example:] you [the government] are not getting the best deal [presumably bids on contracts?]; we want democracy and the system to open up. Even just simple questions a Parliamentarian would want to seek out from the government. At that time there was some kind of self-censorship. There were things that you could not ask.

BP So you keep crossing the line, so to speak.

JO Yeah

BP And then did you actually run into exile because you got tipped off they were going to arrest you?

JO Yes, yes, yes, yes.

BP You went to Tanzania”

JO I went to Uganda in 1982. I was out there for a month. Then I went to Tanzania and stayed some time. I went to Zimbabwe... When I came back to Tanzania, I wanted to do a post-graduate in the University of Dar es Salaam. And there had been a coup attempt in Tanzania. So whereas Dar es Salaam was a city of refuge for Kenyan exiles, but because of the fact that the coup plotters in Tanzania ran to Kenya, Kenya now found a basis for trying to talk with the Tanzanian government to exchange the exiles [laughs]. And that’s what happened to me: we were exchanged and I was brought here [to Nairobi] I was detained for six months in 1983.

BP You say you went into exile twice; when was the other time?

JO The other time was when I was a student leader. We used to have a university newspaper called the [?? First word inaudible Platform], where we said the government is rotten, it must change.

BP That was pretty direct

JO It was. *The Nation* carried it; the *Sunday Nation*, a page one story. [see *Nation* archives; date??] And the screaming headline: “Is This Treason?”

BP Those were serious charges in those days.

JO Very serious. So, everywhere it was obvious the police were looking for us. So we took [off] across the border to Tanzania.

BP You weren’t picked up in the post-1982 attempted coup sweep?

JO It was part of it. So it was a very difficult period.

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Orengo’s motivation. [Orengo was always looking for a “platform” for his ideas of reform: First he used the University as a platform (early 70s), then he used Parliament (early 80s) then the courts (early 90s)]

Theory: activism without the usual ‘opportunity’ described in social movement literature.

THEME: finding a “Platform” for dissent; not waiting for an “opportunity” so much as breaking the mould, the norm, and using as a platform what others hesitated to use. This was not an “opening” in the sense of transitional movements when the military agrees to work with dissidents of various persuasions (Schmidt, et al). Was it Tarrow’s opportunity structure? Somehow I think not.

Orengo is the prime example of one who used platforms of different kinds

Motivation

BP I want to go back a little bit before that because I'm curious about the motivation as to why you would do what you did? If it stems from this, there there's still a previous question: Why were you doing those things as a student leader. What is it, in other words, that got you interested in seeking political change. Most people keep their heads down, which is fairly understandable. And you decided to stand up.

JO Yep. First, the University [of Nairobi] had gone [into] a lull, so to speak. But there was a period when the University was like a platform for debate. When Jaramogi Oginga Odinga, [Kenyatta's first Vice President] was refused by the President [Moi] to give a public lecture at the University, there was a lot of demonstrations that took place; there was a lot of unrest. When [Tom] Mboya [popular Luo political leader seen by many as a potential President] was assassinated [gunned down on a Nairobi street in 1969], and J. M. Kariuki [also assassinated during Kenyatta's time, in 1975]...there was a lot of activity.

BP Did that affect you? What did you think at the time of those assassinations?

JO When J. M. Kariuki, who had a very strong following from the University, was assassinated, just after I left the University – and the students marched to the Law School to demand that I go out and address [them] on the issue of the murder of J.M. Kariuki. There were a lot of demonstrations. I was also arrested at that time.

BP Did you have time to address them?

JO Yes, I did. I said the government did it; the bottom line was that the government did it.

BP How long after that was it before you were arrested?

JO Two days...because of that speech

BP You could have just kept quiet.

JO Well, I mean it was national outrage, national outrage; it was a national outrage. Kenyatta, every since Mboya was assassinated, had never had such a low moment in his tenure. It looked like the whole country was rising against him. Everywhere, people were making noise.

And something peculiar happened. Just to show that he was still in charge – it was being questioned if he was no longer in charge – he decided to have a military parade on Government Road, which is now Moi Avenue, and had a fly past, right in the middle of the city, just to kind of show people that he was still in charge.

BP I don't want to overstay my time; I feel you have some other things to do.

JO If you feel like we still should talk some more you can come back...

BP After I've gone over this. The only thing I'd like more about – and I don't have it – is, you see there is the human rights path in a sense and the pluralism path, and most of your time has been over here [in the pluralism path], although I'm sure you have concerns [about human rights].

JO I would want to talk about the Ouko case a bit...our second meeting.

BP Lets do that a second time.

JO OK.

End of interview tape one, side two

End of transcript.