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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: Kathurima M'Inoti

Location of interviews: Nairobi, Kenya; in his office in the office of Kamau and Kiraitu law office

Date of interviews: July 18, 2002; and July 26, 2002

The transcription is by Bob Press. BP = Bob Press; KM = Kathurima M'Inoti, an attorney in the law office of Kamau and Kuria in Nairobi. The transcript includes a summary of oppressive laws and their changes in 1997 at IPPG; and editorial notations by the interviewer; plus tape counter numbers.]

First Interview

July 18, 2002

BP Why do you think there was change in terms of expanding human rights, at least in urban areas, between 87 and 97?

DA-Donors quiet about abuses in early 80s

KM I agree with you that the answer is not as easy as it first looks. But I think we cannot ignore these aspects of these changes: the first one is that there was very, very concerted international pressure. If you look at the violations that had been going on say from 87 backwards, virtually no donors, no embassy in Nairobi ever commented about them. Like in 1982 when the country became a one party state, the amendment to the constitution was hurried through in Parliament in record time. Nobody ever raised any issue about that.

HR, DA + Late 80s, early 90s: activism, tied aid brings change

And you find that it is in the 1980s, late in the 80s and early 90s that you find foreign missions in Nairobi willing to speak openly about the repression that was...in Kenya at that time. And you also find out there were quite a number of very vocal individuals around that time agitating for change around that time. I think the combination of all these was that there was fairly consistent adverse publicity for the government which [Moi??] was very keen to avoid. That's basically what I would think is part of the contributions to the changes.

*HR IMPACT: Saba Saba – int. outcry prompts Wako appointment?

BP They [the government] wanted to avoid publicity for what reasons?

KM First and foremost, you focus for example on 1990, the crackdown, the so-called Saba Saba [July 7] riots. As a result of the outcry that arose from that violence and the detentions: we had the IBA [International Bar Association ?? check name; date], for

example, which was supposed to hold one of its meetings in Nairobi, canceling and taking it to New York. And the reality is that many of the governments were actually willing to tie aid to issues of human rights.

BP I just came across Lee Muthoga's article about that transfer [of meeting venues] saying that it wasn't all that big a deal.

KM It was a big deal because – it was around that time that you find Amos Wako being appointed Attorney General and at that time he was the darling of many Western ngos, was very closely-associated with human rights, having been a member of the Executive Committee of the ICJ [International Commission of Jurists] in Geneva and having been a rapporteur of one of the UN human rights – I think he was the rapporteur on disappearances [??]...So that in my mind, that criticism, the government was seriously feeling the heat. That's why it opted for somebody like Wako, who had human rights credential as a way of sort of saying: you have somebody schooled in human rights as the Attorney General and we are trying to address those issues.

BP When was he appointed?

KM It must have been 1991. [Q – months after Saba Saba; so are the two really related?]

PR vs. substance, a Moi pattern: no major changes after Wako; it was a "PR" exercise

BP So did things change notably after his appointment, besides multi-party announcement in late 91?

KM No...I believe the government's intention was not so much to change things but to be able to show the outside world – it was [an appearance] exercise. In reality, things did not radically change from the way they were because the laws that had been used for this repression continued in place, and they continued being invoked. So to me, those changes [Wako's appointment] were not seriously meant to address the complex [problem] But [it was just] a PR [public relations] exercise to show that the government was trying to do something about that.

Oppressive laws in Kenya and their changes in the 1997 IPPG, an all-party session of Parliament including the opposition.

BP Maybe being methodical about this would be helpful for me for a moment and just simply list those laws you were referring to as oppressive in place at the time. What were they?

(1) the laws until 1997

KM

There was the **Preservation of Public Security Act**, Chapter 57 of the laws of Kenya. This law enabled the President at any time, if he thought somebody was engaging in conduct which was a threat to public security, he could order the **detention of that person without trial**. And the Saba Saba riots were preceded of course by that kind of detention.

There was the **law of Seditious Offences** provided for in the penal code, section 56, which created the offense of sedition whereby if anyone engaged in any conduct which was deemed to be calculated to bring the name of the President or the government into contempt or disrepute, the person could be charged in court, and jailed. Frequently one could not really tell the boundary between criticism, harsh criticism of the government

and criticism which was calculated to incite disaffection or to bring the government into disrepute.

And there was the **Public Conduct Act**, chapter 56 of the laws of Kenya. This Act required that before a person could hold any **public meeting**, you had to obtain a license from the District Officer [a Presidential-appointed official, an office carried over from the British colonial period and designed to help the British, and later Presidents of Kenya, maintain control] in the area where the meeting is to be held. Any meeting held without that license, whether or not it proceeds peacefully is an illegal meeting, including weddings. In fact they took it to the point [where] if you had to hold a meeting to arrange for a funeral of a friend or relative, you still had to get this permit from the DO. And the law allowed the police to break [up] any meeting held without that license. And they did, very frequently. Very many meetings were broken [up]. Members of Parliament themselves could not hold meetings in their constituencies without first of all obtaining this license. [This measure affected opposition MPs after Kenya resumed having multi-party elections as of 1992.]

And even now...the offense of incitement [is] provided for in the penal code, and again, it operates more like sedition because if you hold a meeting where you criticize the government harshly, you easily could be charged with incitement to violence. And you see, ordinarily, the offense is deemed to have been committed whether or not [how] your audience reacts to your words.

So basically, those are some of the laws.

BP There was a Chief's Act.

KM There was a **Chief's Authority Act** also which **gives the Chief quite a lot of powers** in the area of his jurisdiction. [The term Chief here does not imply a locally-selected person but a Presidential-appointed official at the local level.] They could direct you to go and do work – forced labor, which you do without any kind of pay; compel you to give money to what were deemed public causes – forced contributions. [This was another carry-over from the British colonial era. In some parts of Kenya, for example, Kenyan subjects were forced to dig terraces to slow erosion. The practice became so unpopular that after independence there was strong resistance to such work, even though it made sense in agricultural terms. The practice was revived years later, on a voluntary basis and with the encouragement of extension agents.] And in some outrageous cases, Chiefs used to go to people's houses in villages and take their chicken as those peoples' contributions to harambees[?? Spelling] [public fund raising events].

Those were the main laws [which human rights activists and others objected to].

Changes in the law as a result of the 1997 IPPG

BP Did all of those change?

KM The laws of Sedition have been repealed in 1997.

The Public Order Act has also been substantially amended [in 1997], so that if you want to hold a public meeting now, all you have to do is report to the police in that area of the intention. If the police find that somebody else has already requested to use that venue for a meeting [at the same time and date], they can deny you the opportunity to hold that meeting on that day or suggest an alternative venue. It's scheduling. They are supposed actually to give [you] a [look at] the register, so that if you want to use the Kamakunji grounds [a popular public meeting area in Nairobi for political gatherings] on

Saturday and you go there and they tell you, sorry, you can't use [it] because it's already booked, you are actually entitled to look at the register and confirm somebody else has already booked the place. So that if someone else has booked that place, you can get an alternative venue or an alternative date. Or if they think your holding that meeting is likely to cause a breach of peace at that time, they are supposed to let you know.

What has happened is that the police have not been following the law. They still keep insisting that one requires a license. And secondly, they refuse to show people the register. They will just tell you you can't hold the meeting. So this big concept of threat to public security is still in tact and it is used to deny very many people opportunities to hold meetings.

The Chief's Authority Act has also been substantially amended [in 1997] to take away the powers of the Chiefs. That one is fairly effective. These days the Chiefs do not appear to enjoy the kind of power that they were enjoying. And the President actually was complaining that one of the negative effects of these amendments was to make the Chiefs powerless and therefore it has allowed a lot of crime to be committed in rural areas, which appears to be just an excuse.

[The Preservation of Public Security Act] was also amended [in 1997] to take away the power of detention in times of peace. From 1992 nobody has ever been detained. That one, I think, has 100 percent been observed.

The law of Sedition was also repealed... [what the government uses in its place is] the law of incitement. Unfortunately [the law of] incitement was not changed, so it has replaced the law of sedition in terms of being a convenient tool for harassment.

[Kiraitu Murungi enters briefly to confirm he has arrived and is available for a scheduled interview.]

(end of this interview, which was continued on another date.)

(end of tape one, side one.)

Second interview with Kathurima M'Inoti

July 26, 2002 in the office of M'Inoti, in Kamu/Kiraitu law office.

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[1997 reforms were essentially electoral]

KM Even the reforms in 1997 are [essentially] electoral reforms.

BP Why do you say they are "electoral" reforms?

KM First, and foremost, the rallying call for mass action [in 1997] was no reform, no elections. People were refusing to go to elections before serious constitutional reforms [unlike in 1992 when the opposition leaders and their supporters rushed to elections, sure of victory over a widely-unpopular President].

[Reforms aimed at providing opposition parties with a "level playing field" in campaigns]

BP [Reforms] aimed at doing what?

KM First of all insuring a fair and level playing ground in the elections.

BP Access to radio and Tv [by the opposition]?

[Stalling on reforms: (THEME/THEORY: governance without trust?)

(1) Electoral Commission appointments]

KM Exactly – for all the political parties. And you will see among the reforms brought by IPPG, first and foremost was for Moi to concede to reconstitution of the Electoral Commission [?? Full name] where the other registered political parties were allowed to nominate candidates to the Electoral Commission who were just confirmed by Moi...

BP Excuse me: before that change, Moi just simply named them?

KM Completely. And unfortunately, you will see in terms of concession, that was a big lie because the opposition was allowed to nominate candidates appointed by Moi for five years. Now what has happened, they never amended the law to require opposition parties themselves to nominate a fraction of the members of the Electoral Commission. It was done as a gentleman's agreement. And it was done.

Now what is happening, the tenure of those people nominated by the opposition is coming to an end. Now because there's no law in place to require Moi to appoint people who have been nominated by the parties, he's actually doing nominations himself. Only from his own people.

BP When is the tenure up?

KM For different people its ending at different times. But for example now, he's already appointed the former Commissioner of Prisons who retired. He was very closely identified with KANU...[He named another former government official also appointed.]

BP KANU officials are being appointed to the Commission.

KM And the former immigration officer [appointed by Moi] is the guy who was taking people's passports [of some prominent human rights and pluralism activists], like Gibson [Kamau Kuria]; he's the one who ordered the police to take their passports. So these people are becoming electoral commissioners.

(2) stalling on broadcast licensing

KM So to get back to the point, we are seeing also the Kenyan Broadcasting Commission Act was amended to require an express legal duty on the [government-owned] Broadcasting Corporation to cover all political parties fairly, to give them equal coverage. Although in reality it hasn't been happening. The Democratic Party is thinking of going to court and gathering statistics in terms of the coverage [prior to] going to court.

BP There is a nuance here that I only learned about recently, that the broadcasting – granting a license to more than KBC for radio and television is something that was new to me since I came back [after working in Kenya from 1987 to 1995]. I'm told they really only go about 40 kilometers (approximately 25 miles) outside the city; you can't get it up country.

KM That's true. Very many of them are just here. There's a famous station in Nairobi which plays music...there's one called KTN [??name] Actually the license is for Nairobi but somehow they are broadcasting in Nakuru and Mombasa. They are saying they are going to Kisumu. But that one is associated very closely with people from State House. Kenya Television Network.

BP Isn't that the KANU station?

KM They do not want to openly it's a KANU station, but its owned by State House interests. But there's another one called Citizen[?? Verify full name]. That one, they have a license; its supposed to cover nationally. Radio Citizen. It's private but it [has had] a lot

of legal problems. Their license was cancelled. Gibson [Kamau Kuria] was acting for them.

BP My point here is – when was that licensing process changed?

KM Let me first of all tell you that sometimes in 1994, these Citizen people went to court to challenge the refusal of the government to...give them a broadcasting license. And the Attorney General came to court and said there's no law in place to enable us to issue licenses. They have to wait for enactment of a law. But then the court found that this KTN had actually been licensed. And the question was, how had they been licensed if there was no law? So the court said, as far as it was concerned, that [the stated need to wait for a law to be passed] would not be a sufficient answer, and it told the government to consider the application by Citizen. Of course after that they were granted their license sometime ...around 1997, as we were getting to elections.

Then NATION [which publishes a popular newspaper strongly critical of the government in many instances] applied for a radio and Tv license, and it has taken so long. They've not been able to cover entirely nationally [Citizen?]...they have the license to do so. For almost one whole year the Communications Commission of Kenya broke into their office and took away their equipment on the basis that they had violated conditions of their license and therefore they have been out of broadcasting.

BP So it's the old thing, you make a concession, it looks pretty good, in substance it comes out very little; and what you get you have to fight for it every inch.

KM Exactly.

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"False reform"

BP You were going back to this point where you had the Commissioners of Election appointed by the President because their [Commissioners chosen by the opposition parties] tenure is running out. So that [gentleman's agreement] really wasn't much of permanent reform at all, was it?

KM It was not. We are seeing it was part of the tricks that KANU really had used to get the pressure that was building from mass action off its back. It's true they honored the agreement and appointed people nominated by the opposition to the Commission, but since that agreement was never enacted into the law, what's happening as their term is coming to and end, Moi is single handedly again [making nominations] to the electoral commission.

BP So it's a false reform.

KM Very, very, very, very false reform. So, I'm saying that these other human rights reforms that we see in 1997 should actually be seen in that context. The cry...was 'no reforms, no elections.' And it was like Moi was feeling that he had to go for elections under the constitution then in place. People were saying no, we need a new constitution before we can go to elections.

BP What are the reforms they were demanding, the mass action was demanding. One was electoral commission?

KM Not only Electoral Commission [but] reforms which would make the playing field level. That's why the composition of the Electoral Commission, access to national media – there are very many laws: the Public Order Act, on the basis that it was stopping...effective campaign, in terms of being able to meet and put across your

message. The laws of sedition, in the sense that they were restricting the campaign message. So that if you continue from that angle you can see also actually that these reforms were being formed very much by the looming election in 1997.

BP And also the Chief's Act, was that part of [the reform package sought].

KM Again, that is the same thing... You only see the Chief's Authority Act in close conjunction with the Public Order Act in terms of controlling people in their locations, in terms of being able to call a meeting and address the people.

HR TACTIC – Mass action [describe]

BP So, 97, from about May until July, they had a series of mass actions, demonstrations – mostly here, wasn't it [in Nairobi]?

KM Yeah. Sixth of June, seventh of July, eighth of August, ninth of September, you know, nane nane [eight eight – or the eighth day of the eighth month], tisa tisa [nine nine], the 10th of October.

BP And the government response got increasingly strong, didn't it. Because for the first couple, there wasn't much response at all.

SA- TACTIC: Violence to stop mass action (Q: why did Moi feel threatened?)

KM Saba Saba on 7th of July 97, 9th of September [97], the meetings were [attacked] very violently. That's when they got people even in the church [On October ?, the General Services Unit?? A para-military force stormed in and clubbed people, including Rev. Njoya [verify??].

BP Which one did they go into All Saints Cathedral

KM I think it was 10th of October [verify date??]

BP There weren't any [mass actions] after that...

KM Yeah.

IMPACT of mass action: Govt. agrees to negotiate and make reforms not reducing Moi's power.

BP So the police and the government effectively stopped the mass action.

KM No. (emphasis). What happened is that after that violence, the Members of Parliament from both KANU and a section of the opposition worked together and started now saying: let's sit down – IPPG – let us negotiate these reforms people are asking for and so that's how the concessions came about.

BP But you had parallel efforts here: you had IPPG, which was begun after these mass actions. But before that you had NCEC; you had this rural [Limuru] convention, sort of a parallel move going on. I haven't been able to pull those two together in my mind.

IMPACT of IPPG – neutralize NCEC:

Theory: give a little, get a lot. Moi gave in on some reforms; kept power

KM [recommends book by Macharia Munene – book on the dual process; more than Willy's book] This mass action was organized by NCEC. It isn't that they were parallel...groups. What happened – the IPPG was supposed to steal the thunder from NCEC. And they did that one very effectively because NCEC virtually collapsed.

BP But who decided, who was behind the stealing of the thunder?

KM That's a very good question. There were MPs from KANU, right? Who considered themselves moderates, who could build bridges across [to] their colleagues who were associated with NCEC and for the sake of the country sit down and renounce the...position taken by the so-called KANU hawks, and by the NCEC radicals, and come with them into Parliament.

BP It's called co-optation.

KM That's basically what happened.

[THEME- Hallmark of Moi co-optation and diversion (he co-opted NCEC, diverted donor funds)]

BP It's a hallmark of the Moi regime. You co-opt and then you thrown away and do nothing.

KM Yeah

BP Or you coop and look like you're doing something...if I remember correctly from my archival research, what happened was very interesting. There was a lot of money-donors putting money into this thing; civil society doing a good job, representing all the kinds of things that we like to have in governance and democracy. And then the minute – here's where I need some help: my recollection of this is that it was a decision, it had to be (I don't know that I actually have that nailed down), but I think it must have been a decision by Moi to talk to the KANU moderates because they were still KANU people; they still did what the President wanted them to [do]. And if Moi gave a signal he might have had two things in mind: (1) stop the money going to this group [NCEC] and the mass actions that resulted from it, and (2) do the usual thing, give a little bit – the British used to do the same thing –give a little bit and then everything will quiet down...So IPPG comes in and Anyona is master of ceremonies. And then you get a few reforms, which actually was interesting for a couple of weeks there. But, as you said, the mass action stopped and the money stopped. The money, in fact [??] shifted right over to the Moi regime, to the state. Diplomats said how can we fund people who are parading and demonstrating when actually the government itself is making the same reforms.

KM That was the point. In fact people said now that the government has accepted what you've been talking, there is no need for mass action and there's no need to continue without [outside of government]. Let's support this initiative because it's the one which will ensure that the country does not collapse.

BP The donors?

KM Yeah (emphasis). A lot of people reasoned that we end up with that. If you ask Gibson, it became very difficult to convince any of the donors who had been funding them [the civil society initiative] to continue with the funding. They would rather deal with IPPG.

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[IPPG worthwhile for Murungi: he got several key human rights amendments passed]

KM One other point to bear in mind possibly: all these reforms which you are seeing, were not really reforms which ...what happened is that some of the people who moved from NCEC to join IPPG saw an opening and pushed through a lot of other reforms which many people had not figured about. And I imagine Kiraitu [Murungi, a Member of Parliament and a firm believer of seeking change from within the system, in the 'mud' of

politics as the title of his book states] was very instrumental, for example, in bringing amendments to the constitution which would enable...you see before 1997 the position was that if you moved to the High Court to enforce human rights, if you say your rights have been violated there was no right of appeal. You move to the High Court to enforce Chapter 5 of the constitution.

BP Win or lose – that's it.

KM that's the end. The Court of Appeal had said its not our jurisdiction to entertain an appeal.

BP Whereas in many criminal cases you can go to the appeals court.

KM Yes, but you see, the bill of rights, Chapter 5, had a special procedure for enforcing fundamental rights. So if you went to the high court specifically using that procedure to enforce fundamental rights, whatever decision the high court made was final. There was no right of appeal. So they brought an amendment to the constitution to create an express constitutional right of appeal on human rights cases, to the Court of Appeal. So if you say you have been tortured...you see the case of Wayiri Kihoro went to the Court of Appeal because it started through a procedure called plaint. It had not gone to court directly as a case enforcing the bill of rights itself under that special procedure. It had gone as an ordinary case the way you go to court if someone had assaulted you.

BP [In human rights cases] there had been no way of appealing; he introduced an amendment [to the constitution] that made it possible to appeal.

KM Exactly.

BP Was that amendment passed?

KM It was. They put it through. In fact when we talked to him he said now that these people [KANU] had opened up, lets' put as much as possible in their laps.

No. 2. The position was that after the elections if you are dissatisfied with the outcome of the elections you file a petition in the High Court. Again, there was no right of appeal to the Court of Appeal [which is a court of final appeal, similar to the Supreme Court in the U.S.]. Whatever the High Court determined was final. Again, another right of appeal was put through.

BP Who introduced it.

KM Again, Kiraitu [Murungi]. He pushed for that – an express right of appeal from election matters. It also passed. It's still there; its there now.

BP These are important measures

KM Exactly. I think when there was space, they pushed very hard to put as much as possible (forward for adoption by Parliament). I need to get the entire summary of the changes brought and you will see they are so much wider than the ones I am [explaining] so far.

BP It was perhaps the initial intention of Moi to give a littler, steal the thunder, get the KANU and opposition working together, make a few minor reforms he wasn't too worried about, but in a sense, some of the things that sort of slipped in there lay the groundwork for considerable human rights defense in the future.

KM Exactly

BP Is that the way you guys see it?

KM Yes.

BP So those are significant things

KANU didn't appreciate the importance of some reforms passed;
But KANU held firm against any serious challenge to their power

THEORY?

KM Those things I think KANU did not fully-appreciate their significance. Those changes. And the reason is once when there was direct political interest they completely and successfully resisted change. For example, the constitutional requirement that the winning President must get at least 25% of the vote in five Provinces. That was a major contentious area that people wanted removed and replaced with over 50% of the votes [nationally, regardless of where won. Moi's regime argued that this was the only way to avoid winning on the basis of a concentration of votes among just a few ethnic groups. It was also a way of minimizing the impact of the large Kikuyu vote and making it more difficult for an opposition party to win without establishing a presence nationally at the grass roots, a process which was expensive. The parties lacked finances compared to KANU into whose coffers the government infused money even as several instances were reported of illegal fund-raising by the regime forces] . KANU completely refused consider that. That one KANU completely resisted and eventually the opposition had to give in to that. So you could see where they saw there was direct consequences [negative to the advantages of KANU] they [KANU] were resisting.

BP Because, they could lose...

KM Very easily

BP ...if the Kikuyus and Luos got together they [KANU] could lose the election.

KM There's no time Moi has ever gotten anywhere near 50% of the votes cast. So they knew that [the change proposed by the opposition] was the most effective way of losing.

BP By the 50% formula, he'd be out of office.

KM Exactly. In fact what these people [the opposition] were aiming at was a run-off. The moment nobody gets 50%, you're forced to go to the next stage. And these people in the opposition really have to support one against Moi.

BP That's probably the only way you're going to get unity out of the opposition is to have a run-off. If I remember correctly, this harmony [in Parliament during the IPPG reform period] lasted only for about two weeks, a few weeks.

KM Yeah. We are talking about the last major confrontation, mass action, was in October. This was happening – virtually [only] a month, in November because in December we were going for elections.

[IPPG: "fraudulent cooperation:" a lot was never implemented.]

BP So for a couple of weeks. Then my question is what stopped the cooperation. Suddenly it was almost like overnight the cooperation fell apart.

KM Yeah but it was fraudulent. **It was a fraudulent cooperation.** KANU was conceding because they wanted to get this pressure of mass action off their backs. And the moment a substantial group of the opposition agreed to move across from the radical wing that was for mass action until...Moi's government came down, the pressure was not there. The moment reforms were passed, KANU was prepared to rush for elections.

BP So did someone say...For two weeks the reforms did take place. There were votes, votes, votes, votes. All of a sudden, there were no more votes.

KM It was in that context...in fact hurry that there was no time to legislate for the changes about the electoral commission. They'd been agreed upon. [The next thing that

happened was that Parliament was dissolved -??by the President] From there the moment Parliament was dissolved everybody now started preparing for elections. The main focus now was on elections.

BP So they made reforms to have a more fair election, but they never worked out the details.

KM Completely. A lot of these things were never never implemented (emphasis). **A lot of what was agreed upon at IPPG was not implemented (emphasis)**

BP And who were the [opposition] MPs who were pushing for mass action...who agreed to say stop the mass action and start voting for some of these reforms.

KM A substantial number of MPs who left the on-going of NCEC; there were many; the majority, actually. [He next clarified by adding that the move of MPs out of NCEC into IPPG was so complete that NCEC was left as a civil society and ngo affair.

That's how we say they were able to steal the thunder [of civil society and the proposed reforms of the constitution] because virtually all Members of Parliament went across and said now: It's no problem: we are all together; we are passing these laws for the benefit of the country and therefore it's only ngos that were left there [in the NCEC framework] as noisemakers.

BP If you look back, who won here, mass action, IPPG. When it all over, did Moi win?

KM Oh certainly. Moi won. Life continued. It was business as usual after that. There were no significant changes because even with the changes in the law as we have been saying in terms of doing things, the same same old culture continues. A lot of the things which these people had agreed as a gentleman's agreement were never implemented after the pressure was off. That Moi continued more or less like before...although the opposition has a few things to show, as we were talking about...what they were able to construct from KANU.

BP ...**Why were there some political changes here between 87 and 97: activism, international agencies, donors, or other.** What brought about change?

KM My view is the underlying explanation is – if you look at it throughout there was some form of pressure. 1991 we were seeing a lot of international interest. Donors stopping their funds. Nationally, a lot of people went to Kamakunji, Saba Saba [November 1991]. And ...the government response, or crackdown. From 1990-1991, the introduction of the multi-party system. You see these other kinds of pressures like the ones generated by these ngos which had come up with a model constitution to try and procure rights. The idea of reforming the constitution, which the government was rejecting, this was becoming a fairly popular issue until you see Moi making a promise in 1995, January [date is correct], that by the middle of the year he will have appointed a panel of international experts on that. Many people took it seriously and in fact they...were preparing for the appointment of that commission to look into constitutional reform. By June, Moi turns [his] back on that. You see pressure now slowly starting to build up to 1997 where this very, very serious mass action, consistently on a monthly basis; very strong reaction and very strong international condemnation.

Q: don't people ever see the pattern of duplicity and false promises?

DA For first clear time since 91, donors put pressure on Moi in 97 to reform const., stop repression

BP So for the first time since '91 the donors come back into play.

KM Exactly. And the international press – the kind of reaction that was there after the attack of the people who were in All Saints Cathedral [date?]. The reaction was there, more or less what [the international reaction has been concerning Zimbabwean President Robert] Mugabe [and his forced seizure of white farms in Zimbabwe].

BP Did Budget Day come in that time?

KM Exactly. Budget Day came in June that year.

BP The famous picture of [Dr. Rev Timothy Njoya] with his legs up in the air [having been knocked down during the public protest; get details]

KM And the consistency of mass action on a monthly basis was clearly leading to virtual collapse of the state [??really; or just more repression. Despite the bad publicity, the government kept bashing heads until the demonstrations stopped. Did they stop because of that or because it was so close to elections that no one had planned more. Was there a marked drop off in the size of the crowds as the violence increased each month. Any details about the use of thugs to help the police with their work of repression??] And with that pressure now comes IPPG where Moi actually concedes to – I think actually makes a lot of concessions. As a result, the pressure is off his back.

So [in] my view, these reforms have really been forced on Moi consistently [as a result of] pressure.

****Five years of no pressure (92-97); then mass action then five years of no pressure (97-2002)**

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**BP You could go all the way to 2002 and there's nothing happening for five years after that. So the changes have come because of pressure on his [Moi's] back, but the changes have been, as you pointed out, ultimately, fairly minimal.

KM Yeah

BP And yet changes did occur.

“Legalistic repression” based on repressive laws [not arbitrary acts]

KM The point is, what's been happening with all this activism: the moment the government, for example, has taken away laws like the law of sedition, however much you'd want – you see what one sees consistently in the repression [in Kenya], it has been fairly legalistic. There's been some legal basis that's been used to justify these – the repression. Detention without trial, for example, was always based on a Public Order Act...Curtailed freedom of expression...the legal basis has [been] the laws of sedition. The restriction on the freedom of movement was always on the legal basis that there was a Public [Conduct] Act requiring licenses [for public meetings]. The moment these laws have been taken much as the government would want to continue doing these things, it really does not have a legal basis for doing that [??]. And I think that's how the changes have come about. [??]

They[who??] would never, never, never, never enter [enter what??]except in the cases where people were killed? They [the government] always wanted to point out some kind of legal basis for the things they have been doing.

BP That is very significant, isn't it?

KM Yeah, in my view it is very significant.

HR TACTIC?[Legislation, not the courts, brought reforms. Example of pro-government bias of courts?]

BP 'Cause you guys are lawyers. You were chipping away when the legal prop [the most repressive laws which the government had used and which were reformed, at least in part, in 1997] was still as solid as trees – tree trunks. Now the trunks aren't there – it gives you, legally, a lot of room, doesn't it?

KM Yes. And what you notice is that in spite of consistent legal challenge, none of these devices of repression were brought down by the courts themselves. It took the IPPG itself to bring in substantive repeal of these repressive laws.

BP That's interesting.

KM There were quite a number of cases challenging the Public Order Act, challenging the constitutionality of the laws of sedition, but the courts completely maintained them as laws.

BP I wonder if you're being a little modest here, because in a sense, the obvious repression of those things [laws] was made more clear by the small cases that were brought, one by one by one by one, by attorneys against these acts, you know.

KM That was true but you would have expected really a serious judiciary to not only have not only stopped just – for example in [Gitobu] Imanyara's case seeing the Chief does not have any power under the Public Order Act to issue a license, but actually to see that the Public Order Act is unconstitutional [emphasis].

BP But they never did.

KM That's what I'm saying – to remove it once and for all.

BP So you get these laws – you get little chips in it – they [the courts] never throw it out.

KM Yeah. The Public Order Act in Ghana, the Public Order Act in Zambia, the Public Order Act in Tanzania were done away with by orders of the Court... In Kenya it has had to take express legislative intervention to repeal or to change it substantially.

BP It took legislation under the pressure of the law [??]

KM Yes

BP Would you say that, in fact, with these changes...the question is really one of perspective: is this happening – are the benefits from this which are clearly realized [in the capitol] being felt in the countryside?...

KM I think one can say that...also in the country changes are there. You do not see Chiefs being able to go and collect people's chicken the way they were doing previously. It may be that still some elements of resistance are there with particular Chiefs who have been used for a long time to doing things the same way. But even in the grassroots, the differences are there, only perhaps not to the same extent that you would note in Nairobi.

BP Let's quit there.

(end of second interview)

(end of tape two, side one)