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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.]

Transmitted to LOC December 2009

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

Interviewee: Kiraitu Murungi

Location of interview: Nairobi, Kenya law office of Kiraitu and Gibson Kamau Kuria

Date of interviews: July 18, 2002

Transcription by Press includes research notations by the interviewer and tape counter numbers. BP= interviewer Bob Press; KM= interviewee Kiraitu Murungi. Multiple ?? indicate unclear transcription or unverified notation.

Biographical information.

Profession: activist attorney in the opposition during the late 1980s and 1990s.

Education: graduate degree in law

Residence: 87-90: Nairobi; 90-92 exile/political asylum in U.S. (got an LLM master degree in Law at Harvard); 92-97 Nairobi.

Ethnicity; Meru; Catholic

Political affiliation: 1992 Ford; then Safina; then Democratic Party; in 2002 he was in the NAC (National Alliance for Change. When the opposition won in 2002, with Mwai Kibaki elected President, Murungi was appointed Minister for Justice and Constitutional Affairs (2002-2005) and in 2005 Minister for Energy.

00 BP Do you want to begin by mentioning any specific actions that you took as an individual to improve human rights in Kenya and then maybe we can assess whether the immediate action was negative or positive.....?

KM How far back?

BP OK, as far back as you want to go but more in detail from 87 to 97

[His law partner, Gibson had been detained in 1987]

KM We can start when you were here, late 1980's. I think I first met you in, about 1987. I think that was almost at the height of one party dictatorship in Kenya, with Mwakenya* trials, a lot of torture by the police; and I think around that time my partner had been detained without trial for representing people like Wanyiri Kihoro and the others who had been badly tortured in the process of detention. [*Mwakenya was a subversive organization that surfaced in the mid-1980s; though it may have been small, it was used by then President Daniel arap Moi as a reason for cracking down harshly, including with torture, on suspected dissidents.]

BP If I remember specifically, though, you are not giving yourself adequate credit here. He was detained for presenting a form of, as you said, suit for torture....[His law partner, Gibson Kamau Kuria was himself detained shortly after suing the government to stop torturing his client who was then in detention.]

KM So the government's response to his demand letter was to detain him.

BP Yes, and what did you do then?

[Law practise threatened by the government for anti-torture suits filed]

KM There was a lot of fear after [?] Kamau was detained, and there were threats on us in the firm, that the government would totally destroy our law firm. But we were caught up with this moral dilemma because many of the people who had been detained and for whom Gibson wanted to file the cases were people we knew and we had seen them in detention and in hardship.

BP You say there were threats. Were there threats to kind of discourage your clientele, or to physically destroy the office?

KM In fact...First, all the corporate work that the firm was doing was withdrawn. The government put pressure..... (mobile phone interference)..... so they withdrew their files from us. So we were left acting for basically peasant clients. And then, even for the peasant clientele, the government posted special branch officers to man our doors.

BP Which intimidated you?

KM Yes. When they come in they are asked for their identity card, what are they coming to tell the lawyer. And of course many people are not used to the police so they would turn round. They would go back. Fortunately for us we had accumulated a lot of surplus from the years before when we were doing corporate work. So the firm was able to survive doing very little work for almost 3 or 4 years. So there was a threat, both to our clients and to us physically, to destroy us economically, and to file the cases: because I did not know what to tell Gibson if I saw him afterwards [laughs], as to why the cases were not filed [for which Gibson had been detained.]

[Murungi re-filed the suit over which Kuria had been detained for trying to file.]

[**TACTIC:** show government there would be no rest by simply detaining one attorney; others would step forward, as in this case. And when key activists were on trial, whole groups of attorneys would show up to defend them, including at Pheroze Nowrojee's own contempt hearing (and in showcase trials like that of George Anyona and others, and for Gitobu Imanyara?).]

BP Did you have to physically go over and present this to the government? Or did you mail it? How did that work?

KM **What we did is we sat on a Sunday afternoon with all my secretaries and we did all the prints, and then the following morning I took them personally and filed them with the court. And then I knew that I would be detained on doing it so I'd made extra copies, which I gave to IPS – the International Press Service – who were just next door, in Chester House, and I also gave copies to *The Weekly Review*, which was then a very good magazine. So they were published in the press, one was the following day, and *The Weekly Review* on Friday. So we stuck at home expecting detention. And every time a vehicle passed by we thought it was the police and we couldn't sleep for several weeks. But finally nothing happened to me. I think the dust, which had been kicked up, especially by the international community – more specifically The American Bar Association, The Lawyers Committee for Human Rights and Amnesty International....**

[**IMPACT:** Here the government did not detain Murungi as they had Kuria. Murungi seems correct in his assessment that enough furore at home and especially abroad (U.S. Washington Post article; pg. 1? Showed Moi and Reagan at the White house with the headline screaming Torture in Kenya; get exact wording) that Moi and company apparently decided not to add fuel to the fire and arrest a second attorney filing the same charges as Kuria. There might be no end to that process of attorneys

taking up the torch. Also the local press did publish the charges (did they the first time??).

This seems to be a good case of combination pressures from (1) an individual attorney; (2) publicity internationally and domestically about both the torture charges and the arrest of an attorney seeking to free clients from torture; (3) personal embarrassment of the President over an arrest that gained him little in the way of silencing critics; (4) International agencies' response: Amnesty's report around this time was a landmark report that broke a long wall of silence and secret trials and torture of suspected dissidents; the American Bar Association and the Lawyers Committee for Human Rights, also made public protests; (5) The filing of charges by a second attorney with (6) a second ?? round of negative publicity. ?? Did donors react at all to this? There were some statements – see archival review – from the British, I believe, indicating all was well in Kenya despite the fact that people were being tortured and, if the comments came after the publicity, there was no way of denying the charges, documented by Kenyan attorneys and Amnesty.]

And most importantly, the impact of the decision of three Kenyan detainees to withstand torture, not confess, seek legal representation, and the decision of first Kuria then Murungi to take up the case despite the threat of detention and torture to them (Kuria was detained but not tortured), was to bring a halt to the torture. There were some cases of torture of prominent dissidents later but it was rare, though torture of ordinary, little-known Kenyans, mostly those charged with criminal acts, continued as a systemic practise through the 1990s (see KHRC report in 1997).]

BP Did they all immediately make public statements about Gibson's detention?

KM Yes. And in fact Gibson was front-page news in *The Washington Post*. Blaine Hardin [a Nairobi-based journalist at the time for the *Washington Post*, wrote the article.] I think that is why I was not detained. So I think, at least, our activities led to the reduction of that kind of torture. I am not saying torture is not going on today, but it is not that official and it is not an open government policy. You know there was a signed CAT, the international Convention Against Torture. [?? Exact title; date signed]

BP Kenya signed that?

KM Kenya signed that, I think, 2 years ago. At the public level they are making pretences of.....

[But torture continues in ordinary criminal cases in Kenya]

BP There was a human rights report by a Kenya Human Rights Commission in 1999 [1997??] on Systemic Police Torture, in – it looks like primarily rural areas – what to me looks like ordinary people. Now maybe these are political activists, I don't know. But torture does still continue or at least as of 1999 [97??]

KM I think torture goes beyond politics. Torture is, I think, one of the methods accepted by the police for investigation of crime because many Kenyans have died during investigations of crimes like petty theft....

BP Small things

KM Very small things. People hung upside down until they die. You have others beaten up, others exposed to cruel labour for things which were not really political. So I think although it will be very useful when it is used against us as a political tool, it is also prevalent as an accepted method for extracting information. So we are trying to

address that now in parliament. We have done some campaign in parliament and there is a bill being introduced called The Criminal Law Amendment Bill, in which we have said that the police should not take confessions and the courts should not accept any confessions taken by the police. Any confessions should be taken by the court itself, by the magistrate. So there will be no need to feel that they should be extracting confessions from suspects.

BP I've noticed also when you mention parliament that many of the individuals that I used to interview, including yourself, who were kind of running around trying to stay out of jail and do something, are all in parliament now. Quite a few of you.

[**TACTIC.** Some of the key human rights/pluralist activists of the late 1980s and early 1990s decided to run for Parliament – and most of the prominent activists who ran were elected, providing an electoral endorsement for their stands on human rights (as well as opposition to government-sponsored candidates).]

[Activists debate whether to run for Parliament or not and ask if politics will taint their role as activists.]

KM Yes. There was a big debate in the 1990's among the human rights activists as to whether we should remain, in quotes, "non partisan" so that we can have credentials for doing human rights work, or whether we should get into politics and try to change things within the political system itself.

BP So there was a debate on that?

KM Yes. I know you know people like Maina Kiai.....

BP Yes, I interviewed him in Washington about a month ago.

KMwe disagreed because he felt that human rights activists should not get directly involved in politics.

BP There were two views.

KM Yes; and because they did not maintain their distance so that we can file accurate reports, and that kind of thing.

[Murungi opts to seek improvements in human rights from within Parliament. His book, titled *In the Mud of Politics* (Acacia Stantex: Nairobi 2000) expresses the view that activists should go into politics and seek change from within the system, not just call for change from the outside. He raises a key issue regarding interest groups seeking to "influence" the political system, putting "pressure" on it vs. seeking to "change the system," in his words. The former is generally associated with interest group approach to a political system; the later with revolution, seeking actual changes in the power structure. But in Kenya, activists took a middle ground by being elected to Parliament, where they sought incremental changes. There is little to show in the way of impact for such efforts however [??]. In 1997, activists in Parliament did seek to change the balance of power away from the Presidency but with only limited success. The changes achieved in a rare moment of cooperation between the government party and the opposition parties were significant but in no way changed the real powers of the president, which may be why the President went along with them.]

BP What was your own view, which was the other side of that?

KM My own view was that there was need for human rights activists to engage in politics and replace the dictators because we felt that the human rights activists can only put pressure and **influence** the system; but we felt what we needed was actually

to **change** the system, and the individuals who had participated in all those human rights crimes.

BP Change the system.....

Murungi sees need for government to be run by those with a human rights background.

KM Yes. We needed political change. We needed to install a government which was more friendly to human rights, and that government could only be properly run by people who have a human rights background. So, it was on that basis that we went into politics. Now, we did not win [the presidency] in 1992. So the structures of dictatorship and one-party rule have continued up to this day, 10 years later [2002].

[end of transcription by a Kenyan; begin transcription by Press]

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BP Changed in name but not in structure.

KM Yeah, its name was multi-party and democracy, but in fact it's still an authoritarian government because you've not changed the fundamental structures of one-party rule, things like the Provincial Administration which are used to repress people: the DC's [District Officers], the Chiefs, etc. And there has been no reforms in our courts. The court system was not changed. And the appointment of the judiciary is still by Moi. This has a main psychological pressure on the judges. So the judiciary is still very much like a one-party judiciary. And I can't say that it is friendly to human rights activists. And still you see the old rules. Human rights are still sacrificed to legal technicalities like in the old days

BP So legal technicalities are still used in a repressive way, even though some of the laws have been changed or amended....

KM. That's right.

BP. Because the spirit of the Administration hasn't changed.

KM Yeah. We're still seeing that the judiciary is still, at the heart, a one-party judiciary. So there hasn't been much change there. So despite multi-partyism the institutions of a one-party state are still [there].

BP So in other words, you're raising a good word: the institutionalization of human rights has not yet occurred.

KM It has not taken place. The institutionalization of human rights and democracy has not yet taken place. And this is what we thought would take place through the constitutional review process [which was underway at the time, 2002, prior to elections].

[TACTIC by government: Hold constitutional review out as a possibility to defuse any build-up of criticism. In 1992 there were some calls of reform, but the focus by opposition politicians was on getting elected; and human rights activists were not strong enough to force the issue. But to defuse what calls there were for change, Moi organized a national review commission [??dates] headed by his Vice President George Saitoti which effectively heard much and did little to bring about change. It did follow an outcry of government rigging even while using open-view queuing. That system was scrapped.

In 1997 activists called for constitutional reform before the elections, while Moi promised action after the election and ended up compromising on some pre-election reforms that took the wind out of the sails of opposition reformists who had

organized a public constitutional conference. As quickly as Moi signalled to his party in Parliament to strike a deal with opposition Parliament members, many of those Members abandoned the citizens' pressure-from-the-outside approach in favour of passing amendments in Parliament. Donors quickly shifted attention – and funding-from the citizens' conference approach to backing Parliamentary efforts at reform.

In 2002, the cry for constitutional reforms was not as loud as before the 1997 elections, when a series of public protests met with increasing police violence to stop them but were followed by the government compromising on some reforms. But in 2002 there were no mass protest demonstrations. Instead, Moi defused any potential pressures and outcry for change by organizing a national commission to hear citizen suggestions for change. For a while the President and his party were not clear whether they would try to postpone the elections until after a new constitution had been adopted. But he gave assurances to the U.S. and the United Kingdom that he would step down and later announced that elections would be held in December 2002 whether the new constitution was ready or not. The election was held and Moi's candidate and party lost, the first time the ruling party had lost since independence.]

BP One could assume that because some of the activists who were on the outside were now on the inside one might think that the politics of protest for human rights ...(unclear) but the result is still not an institutionalization of human rights.

KM Right. I think a lot of ground has been covered. The civil society is very vibrant. The 'mud' making has increased in our society [a reference to the title of his book: *In the Mud of Politics*].

The democratization has achieved a very vibrant civil society, a relatively free press, except the area of electronic media.

[TACTIC of government: give a little ground under pressure, but not much. The government has never been democratic-minded and has resisted every pressure for change and granted change only incrementally, never fully embracing the idea of democracy. Murungi's point about the electronic media is a good one. Begrudgingly and after much delay and resistance, the government granted permission for independent radio and television stations. But it limited their broadcast power to about 40 kilometres or 24 miles [?? Verify], which covered Nairobi [and some other urban areas where there were private transmitters; Mombasa?? Nakuru?]. In other words, the so-called free electronic media was an urban phenomenon. In the countryside, the government held onto its monopoly, apparently as a way of continuing to support KANU as the only national party. (The government might view it as a way of holding the country together by providing a 'national' voice, though it was very much a one-party voice [?? Counterbalancing evidence??])

KM (continuing) And I think **there's [been] a psychological revolution of the people.**

BP Specific activism?

KM We evoked the campaign for multi-party democracy. I was then Secretary of ICJ [International Commission of Jurists – Kenya section]. We were the first group to organize human rights seminars. [Murungi was Secretary from 1988 to 1990 when he fled into exile to avoid arrest at the time of the famed *Saba Saba* [seven seven in Swahili, meaning July 7 in 1990, which was intended to launch a public campaign for multi-party democracy in Kenya] My Secretary ship was terminated by exile.

I was a consultant for the Catholic Bishops and we set up the Catholic Justice and Peace Commission [which played an active role in efforts to defend and advance human rights in the early 1990s, including during periods of ethnic clashes apparently initiated with government support in particular areas of opposition voters.]

[Calling for multi-party democracy: Murungi helps draft the pre-Saba Saba statement.]

Our campaign for multi-party democracy (unclear) Saba Saba. [Murungi was involved in the planning of that event]. The statement [Kenneth] Matiba and [Charles] Rubia read [in May 1990 calling for multi-party democracy in Kenya] was prepared by Paul Muite, Gibson [Kamau Kuria] and I.

[Saba Saba arrests lead Murungi to stay out of Kenya and go into exile.]

KM I had left the country a few days before. Saba Saba broke out when I was in Ethiopia. I had gone to attend the OAU [Organization of African Unity] meeting. We were drafting a charter on the rights of the child for the OAU. So the arrests took place when I was there and I didn't come back. All my colleagues were in [prison]. So I decided to go to the UK. Gibson joined me in UK through the American Embassy. [Kuria had sought asylum at the American Embassy and then-Ambassador Smith Hempstone accepted him and later escorted him onto a plane leaving Kenya.] So we met in UK and then we went to America.

[Murungi carries on his campaign for human rights after election to Parliament]

BP You came back in 1992 and contested for Parliament.

KM When it comes to '92 I joined FORD [Forum for the Restoration of Democracy], which evolved quickly into the first opposition party in Kenya since Kenya became a one-party state in [?? Year] and I contested for election.

BP Did you do anything more for human rights or was that the beginning of your career as a politician?

KM I was FORD secretary for human rights and democratization. And we did a lot of seminars all over the country, explaining the need for change and talking to local people about human rights, but in their own language. There was a lot of grass roots [work]. In December 92 I got elected to Parliament.

Some reforms achieved of Parliament

KM In '93 we formed the Centre for Governance and Development, and I became the Chairman. (CGD). The one we recruited was Wachira Maina as Executive Director. He was second [chairman]; the first one was Chris Mule [??]. [The Rev. Timothy Njoya, [Davinder] Lamba, were members of the Board of CGD. So we had civic education projects, gender development and strengthening of Parliament [as projects.] We discovered when we went there that Parliament was still a one-party institution in need of reform. So we had to educate them [the members] on the role of the MP [Member of Parliament]. It was a weak Parliament because it was controlled by the Executive. Through our activities, we helped the members of Parliament to (unclear). Right now we have the Parliamentary Service Commission. So the staff of the National Assembly is now run by the Parliament [and not the Executive]. It is true **a lot more needs to be done.**

[Murungi on what brought change: local activism combined with pressure from international human rights groups and financial institutions. Murungi said he was running for a third term in the 2002 election.]

BP If you look at 87 to 97 in terms of reduced repression by the state, what would you say were the primary causes of those changes: some in '87, you had quite a few changes in 87 – an absence of torture at least at the national level.

KM. It was not '87, it was '92. In '87 there was no change; it [the level of repression] was very high.

BP. Between activists, donors and other international organizations, and Kenyan organizations (by activist I mean both individual and organizational activism); what do you think brought the changes?

KM We are able to get changes where there's a combination of local activists and international human rights organizations and international financial institutions – where those three groups are together, there's change. There have to be local advocates. When that combination works together there is some change. When they don't work together, the government relaxes.

Like now [2002], there's not going to be very much change because the momentum of local activism was not geared up. In 1991 that combination [of pressures for change] was there. It came out again in [1992] and after this peak, it goes down. [He then indicates that the level of activism picked up again in 1997 before the election, along with combined pressure from the other elements, international human rights groups and financial institutions. [?? IMF cut off funds in 1997 – after ?? mass demonstrations were met with police brutality.]

BP Donors only came together in 91 and 97; how do you capture their commitment more often?

KM I think it's there; it's coming back. Everybody now has understood the Moi game. As long as Moi is in power, all the economic projects, all the reform projects that the donor community has been working to assist will not take place. The fight against corruption is not to be won.

405 [Missing link in 2002: local activists, who were there in 1992 and 1997]

KM I think there is that [concern on the part of international financial institutions and human rights groups] ...now. The only missing link is the local activists.

BP Why are local activists missing in 2002? Grown complacent?

KM Not quite. (Pauses). I think we all agree we should change. [The key, he added, is "leadership."]

BP. What are the main continuing abuses?

KM The problem is, we ourselves have to find out....we believe the agenda is political. We agree that the key issue is to remove Moi and Kanu... [There are others] who say it [the priority] is much broader. [For example] the gender activists want to know if we are addressing the gender issue, even as we go along, which is legitimate. The other groups [seek] commitment to human rights and anti-corruption, even among opposition leaders; [they also say some] opposition leaders are as bad as the ruling party. This causes a bit of confusion.

BP Do you see the priority as political or are human rights still your priority?

KM The struggle for human rights will be much easier if you are reforming the Executive in power. South Africa has been able to achieve a lot because we had two people on the top who were interested in changing even human rights. The quality of

leaders we put in place [is crucial]. The same with Uganda and Rwanda. Because your leaders at the top who understand the issues of the day...you are able to carry out the formal agenda.

BP Will the opposition unite this time [to try to defeat the KANU candidate for President in 2002?]

KM There's no way in the world where all the opposition ever united. But the main opposition parties are going to unite this time. We have already registered a separate party [NAC]. There's no way we have just created a decoy of opposition candidates. This might work.

(End of interview and transcript)