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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: Honorable Paul Muite, Member of Parliament

Location of interview (part one of two): Nairobi, Kenya; in his law office

Date of interviews: July 23, 2002

The transcription is by Bob Press. Research notes, by Press are shown either in brackets, parenthesis or, to highlight certain phrases, underlined, as well as tape recording numbers. The rest consists of the statement by Mr. Muite.

Biographical note at the time of the interview: Mr. Muite is an attorney and politician; first elected to Parliament in 1992. He was a resident of Nairobi 87-97. He described himself as an “internal refugee” from 1988-1989 because the government had retained his passport. He has an honors law degree from the University of London. He is Kikuyu; Christian (Anglican), and is married. He was a member of the political party Ford Kenya (92-94); Safina (94 to present); currently party leader of the political party Safina. In my research, he was consistently ranked, along with attorney and Member of Parliament Gitobu Imanyara as one of the two leading human rights activists in Kenya during the study period of 1987-2002. (Imanyara is the only activist approached in this study who did not consent to an interview; the author used archival information to explain his role in Kenya’s political transition.)

Side one; tape one (of two)

[Part one ended with: (around 550) “...using the wrong argument.”

Begin part two:]

“ In fact there is no legal reason for stopping people from meeting (emphasis). How are the people every going to find out if the majority of Kenyans want one party or multi-party system [unless] they are permitted to exercise their constitutional freedom of assembly (emphasis)?”

End of tape one/side one

Start tape one/side two

Arguing for registering non-contesting political parties when Kenya was still a one-party state:

?00: “It also laid the basis, also convincing [Kenneth] Matiba and [Charles] Rubia that you are perfectly within your legal and constitutional rights to apply for a license to hold a rally in Kamakunji [a traditional political rally location in central Nairobi] to discuss multi-partyism. We were able to demonstrate it’s the government that was violating the constitution rather than us. Then you can...use **legal creativity**. Even when I was calling for registration of the National Alliance...I had said it should be registered. My argument was that freedom of association had actually not been outlawed as given in the Bill of Rights. Section 82 [or 78?]of the Constitution...one of the fundamental rights, is the freedom of association. So I was saying if we had a judiciary that functions in Kenya, which we did not have and do not have, one of the rules of interpretation of Acts of Parliament...the court reads the whole Act and tries to gather the intention of the legislature. How do you harmonize the two [the enactment of a one-party state and the Bill of Rights]? My argument was that the meaning to be accorded to ‘There shall be only one political party, Kanu,’ in Section 2A, the only way you could harmonize that without saying

you have deleted Section 82 [or 78?] I think it was, freedom of association, was that constitutionally you could actually register political parties. What they could not do is to field candidates for either civic or Parliamentary seats. And in fact, that is the position today in Uganda. So strictly speaking, if we had had a [fair] judiciary, they would have interpreted that. The refusal of the government to register other parties is unconstitutional.” [This was the argument used in seeking registration of FORD, which became a political opposition party.]”

25. “We are entitled to our freedom of association, entitled to our freedom of speech, and are entitled to our freedom of assembly. Of course there were other fundamental arguments, but as a Kenyan I chose to ask for the repeal of this, so that I can compete for political power. But even before coming to the repeal of this, how do you find out whether a majority of people are with you [and want to] exercise speech, association, and assembly. Because when you’ve got freedom of association, it gives you a platform to gather views, to express views.”

35. “Then of course it was very important to use the tactics of linkages with the religious sector.”

Pressure politics leads to repeal of ban on multi-partyism.

“We had the original Saba Saba.”

[July 7, 1990, when Kenneth Matiba and Charles Rubia had planned a rally in favor of multi-partyism; but the rally was disrupted by police and the arrest of Matiba, Rubia and other planners, including Raila Odinga and Gitobu Imanyara, but not Muite; then the second Saba Saba in 1991 was planned; then there was a disrupted political rally of November 1991 where police attacked participants, a week before donors to Kenya met and cut off all new funds to Kenya (and Malawi).]

“That is what led to the repeal of Section 2. [Diplomats Muite talked to about the funds cutoff, officially said it was over lack of economic reforms in Kenya] clearly owned up...we told them there is a direct nexus between the economic governance and political governance. You can’t separate the two. After all the economic destructions because of the absence of checks and balances and over-concentration of powers. When one individual is appointing all the judges, civil servants – holding office at his pleasure, Parliament is subjugated to the President. They [donors] agreed to that [argument] and they saw it. Their response was that it is easier to quantify, if you like, and to measure economic reforms than political reforms.”

52: “He [Moi] had called the delegates before and told them: ‘we must oppose this [a multi-party state]; we must oppose this; we are not coherent (?). But at that time I believe he had already made up his mind and now wanted he alone to get the credit (laughs), which is why he humiliated and embarrassed all the delegates whom he had previously told to oppose – and they all opposed, opposed, opposed. [The donors had not asked for multi-party but economic reforms. In accepting multi-party, Moi, in the view of this research, was not just responding to aid freezes but, more importantly, trying to get ahead of domestic pressure.] I believe so. I think what he was trying to do was to reinvent himself just to repeal that Section [making Kenya a one-party state]. Leave all the institutional structures of oppression in place.” [The other laws did not change.]

World Bank indifference to human rights

71. “When I went to receive the award [from the Robert F. Kennedy Memorial] on behalf of Gibson [Kamau Kuria in 1988,]. On return I found them waiting for me. That’s when they took my passport

away. They [the Kennedy family] had asked me who I wanted to see and I said officials in the State Department, etc. I specifically requested to see people in the World Bank, and they organized for me to see them. I remember distinctly I saw the man who was in charge of the East African desk. He was from Zimbabwe. And I said I have come to see you because unless you link aid (emphasis) to political and economic reforms, you will continue to waste your money in Africa, especially Kenya. I left, a very depressed and disappointed person because his immediate response to me was that we are not concerned. [The World Bank official asked: 'How do you measure these human rights and reforms; how do you measure [them], or even basic economic reforms? What criteria, what yardstick do you use.' And then came the clincher: 'By the way, some of our best customers are dictators. Our only concern is whether they are repaying or not repaying.' It's been a painfully slow process and it's taken a very long time for the penny to drop."

109. "In the run-up to the 1992 elections, we said: 'Good: you've repealed Section 2A (banning other parties), but can we now have comprehensive reforms in the electoral field, including the constitution in order to make the elections truly free and fair?' But the American priorities had changed. We had had an excellent ally in [U.S. Ambassador] Smith Hempstone. And I'm not suggesting that the burden was entirely on the Americans or any foreigners to democratize the country for us. He [Hempstone] played a critical role up to the repeal of Section 2A. But in 1992, June, July, when we were demanding comprehensive reforms – we could foresee you couldn't have fair and free elections within the then-current environment. And we could foresee that we did not in any case want another individual, even from the opposition, to become President with this enormous concentration of powers. Why would he [an opposition presidential candidate] agree to have those powers diluted. [None of the presidential candidates pushed for a reduction in the powers of the office they were seeking.] It's only us in the civil society who were pushing because of these two reasons."

The role of donors and the changing American priorities.

122. "The American priorities had suddenly changed because America wanted Kenyan bases, particularly in Mombassa for their Mogadishu [Somalia] operation which then took center stage. So the very ready support we had gotten from Smith Hempstone changed, very suddenly [even when he was here]. He was here (emphasis); he was here (emphasis). In fact, when the then British High Commissioner hurriedly arranged a lunch for the Bishops, the religious sector, who, again, had been allies for change. People like the late Henry Okullo [who] had been very, very vocal, very supportive, was the first to issue a statement calling on the opposition that they must participate in elections. We had talked about boycotting the elections. And we had talked about it openly. I was a strong supporter of it. But here are former allies now calling on us that we must participate. Smith Hempstone issued a public statement. Then another statement was issued from the State Department calling on the opposition to participate in elections, literally making the same point: 'Rome was not built in a day.'

[Muite changed his mind] "under protest" [and agreed not to support a boycott of the elections.] "But I knew we had lost the game. [U.S. Undersecretary of State for African Affairs Herman Cohen] "came here and I know that the Kennedy family attempted very hard to get him to have a meeting with me [and other opposition leaders] and he wouldn't because he didn't want to upset Moi. He was only photographed at the State House with Moi. And they handed over [a] check for \$5 million to Moi. [The signal was:] the game has changed; democratization within Kenya is not a priority. Now what I am trying to say is that the blame is not just on the pro-democracy forces. And when you hear accusations that if you people had been united you would have gotten rid of Moi, that is only half the story. The donor community played a role there. And internally, the religious sector played a role."

“I’m trying to say that what the donors give out as an excuse – they are covering up for their own role. They are slowing down democratization. [The opposition vote did split, helping to ensure Moi’s re-election in 1992 and 1997.] We were terrified of creating dictators within the opposition.” [None of the opposition candidates showed much interest in reducing the powers of the presidency; they appeared eager, in fact, to take over such powers themselves.]

End of Cold War brings Western support for human rights

Q. To what extent were advances in human rights in Kenya due to the fact that Kenya law is based on British law, which is “based on morality” [as Muite describes it]?

A. “That’s a difficult question to answer. First of all the reason behind human rights taking center stage in Kenya, in my analysis as a lawyer and an actor at that point in time, is simply because of the collapse of the Cold War. Because prior to the collapse of the Soviet Union, and therefore the coming to an end of the Cold War, we were complaining very loudly about human rights here. The record is there. Back from the 70’s, in fact during the days of the last regime, the lack of respect for human rights, the lack of democratization, the lack of democratic space – we were articulating these issues persistently, but we had no one to listen to us (emphasis). First, because as long as a dictatorial regime, not just Kenya, but all the other dictatorships in the whole of Africa – as long as they were able to tell the West that they were for the West and adopted pro-Western stands, in return....I’m trying to say our minds were not blind to the Western hypocrisy and double standards. As long as a regime proclaimed itself to be pro-West, then the West was not interested in the internal democratization and the internal human rights situation. On the contrary, they were quite happy to prop up those dictators by training their military, giving them money. You never heard of the World Bank, and IMF and world community in fact imposing any conditions – prior to the collapse [of Communism in 1989]. So it’s not that these things were lost on us. So human rights, cannot in my view – and this is an issue that I personally articulated separately to Ambassadors, to High Commissioners, to donors – you cannot take human rights in its narrow perspective. You’ve got to contextualize it in the wider democratic setting. Because although democratic governments can and do violate human rights, the ultimate check against human rights violations is actually democratic governance which allows informed public opinion to be ultimately a guarantor of democracy and human rights.”

“To jump the gun and give an example, the recent debates in the U.S. itself, with regard to this American citizen who is of Middle East origin, and who is not being tried in the normal courts [but] in the military courts, is a good example of the manner in which even in the leading example of democracy in the whole world would be tempted to place what it calls national interests above or justifies violation of fairly fundamental, universally-accepted human rights: the right to a fair trial, the right to access to counsel, that sort of thing. But you can see the outcry that that has elicited in a fairly mature debate between national interests and where you are doing something in the promotion of national interest how can you also balance the interest of the individual. That is the debate that is going on. And that debate has elicited a lot of interest because of the maturity of public opinion, and the government is sensitive to public opinion.”

Q. Was the government here [in Kenya] sensitive to public opinion?

A. “Not when it was enjoying the confidence of its benefactors. In fact, without passing the buck to the West, the poor state of human rights violation in the country, the collapse of the economy, the runaway corruption, they are all attributable to the West, to a large extent, because it is them who propped up the dictators. What were the internal citizens to do against a dictator whose pockets are full of dollars from

the West, the Army, the police are trained [by the West]. Without an armed insurrection, you couldn't even get rid of this government, which explains why there were so many military coups in Africa because that was the only way you could change a government like that."

Human rights interested the Western donor on the advent of the collapse of the Cold War.

"And because they specifically focused on human rights, it saw unprecedented groups, because an undemocratic government is the government that will be violating human rights on a daily basis. So that was the center of focus. Even when some of us we pushed human rights, it was only they key to the wider issue of democratization, which is what we are still doing. From there, then, we progressed to saying, 'Listen, you can't even talk about economic reforms, you see, unless you address the issue of political pluralism, liberalization, democratization.'" [Human rights, Muite agreed, was a 'wedge' used to expose some of the faults of the regime and help the drive toward pluralism.] "Our ultimate destination was always democratization. Human rights was easy to quantify; easy to demonstrate its violation."

Churches were latecomers in the 'war' for human rights in Kenya.

"The church was important in the sense that during the years of repression, since the church tended to be quiet, initially, and tended to confine itself to matters of preaching the spirit, it was the only area that was tolerated. There was a proliferation of churches in Kenya. In terms of civil society, you might say, it constituted the only organized institutions of civil society outside the government. Which is why an institution such as the Law Society [of Kenya: LSK] was being hammered, because it was established by an Act of Parliament. The other societies needed to be registered under the Societies Act and therefore were denied registration very easily. The churches were also registered under the Societies Act, but they were always registered; no question. Any other attempts by citizens to organize themselves into any organized society were always disbanded.

I can give you an example: the matatus [mini-van taxis], which you have seen, which are the most important means of transportation here in this country. There was a very powerful matatu owners' association which was Registered under the Society's Act. Its objective, truly, was to negotiate low insurance premiums, to negotiate matters of labor, salaries of drivers and touts [fare collectors in the taxis], to be able to buy spare parts - a traders association like any other for the benefit of their members. The first thing the President did was to disband that organization because it was seen as a threat. Here was an organization that gave a platform to people who could defy the government and decide to go on strike. I remember the President saying, no, let each matatu driver look after their matatu; why do you want an association? [This was before they had gone on strike.] The strikes followed later. But actually they de-registered farmers' organizations. There was a spate of de-registration of all societies because they didn't want people to exercise their freedom of association.

But the churches were left alone. For a long time the churches did not take on political issues, with the exception of individuals within the church: people like the Rev. Dr. Timothy Njoya, people like [Bishop] Henry Okullu, people like the former Provost [at All Saints Cathedral] Peter Njenga. You know, a few, but not (emphasis) the churches as an institution. In fact quite often the church would be against the individuals. Dr. Njoya was persecuted by his own church. Bedan Mbugua is an example. Bedan Mbugua was running a paper, called *Beyond*, being published by the National Council of Churches [of Kenya: NCCCK]. And he was completely disowned [by the NCCCK]. And what had he done? He had taken a few constituencies and demonstrated the rigging [in the 1988 national election]. He went to prison. He was sent to prison because of that. And the church sort of disowned him. So the churches were really late comers in the 'war' [for human rights] if you see what I mean, because they represent, in theory, the morality of a nation. They've always been important, whether they are playing a leading role or not, because of their membership, because they have authority."

[To summarize the above point: the struggle for human rights in Kenya initially was primarily the work of individuals, including some in churches, not the work of institutions, including churches.]

Q. Did you shift tactics from using human rights as a ‘wedge’ to open pluralism to a direct focus on pluralism? What kinds of coalitions did you seek to form?

A. “The strategy here was to widen the allies, to increase the momentum, to up the stakes, to get more people involved in the drive for pluralism.

[Muite’s effort to build a GEMA (Gikuyu (also Kikuyu)-Embu-Meru Association) coalition] “was a mistake; a knee-jerk reaction [to the efforts by Ford Asili and the Democratic Party to build a similar GEMA coalition for their support]. What I had stood for always previously – myself and people like [human rights activist and journalist Gitobu] Imanyara, was a national approach because we knew that Moi had always promoted ethnicity as an instrument of governance. Although he kept pretending that KANU was national, KANU was nothing...but carefully-balanced ethnic groups. We really wanted to build a party that truly transcended ethnicity, which is why we stuck with FORD Kenya. I’m talking about a person like Kiraitu Murugi, Imanyara, myself.” [The temporary effort to “revive the GEMA block of votes,” as Muite noted, was a “knee-jerk” reaction to those who wanted to keep FORD Kenya a Luo-Luhya party and not let in the Kikuyus.]

Q. Has ethnicity helped or hindered the drive for improved human rights in Kenya?

A. “It has terribly hurt and slowed down democratization. It is the most tragic issue, not just in Kenya, but I would say in Africa. Also human rights. It’s the most divisive issue; it’s capitalized on by ethnic chiefs and therefore acts as a major obstacle to evolving truly national parties based on ideology, having internal democracy. It [ethnicity] is the most fertile recruitment ground. If you sort of excite ethnic insecurities and you capture your ethnic community, then you become a negotiator and you are negotiating with your ethnic community. That is exactly what [Former Vice President Mwai] Kibaki [a Kikuyu] is doing. It is exactly what Wamalwa is doing. It’s exactly what Raila [Odinga] is doing. Moi – how do I describe it – is a master of that [ethnic manipulation]. And he doesn’t hide [it]. You read the newspaper report. When he’s in Eastern Province he is saying what he has done for the Kamba – and be careful not to be dominated by the Kikuyus. [And he uses the same strategy with the Luos and Luhya, Muite added.] When you look at the distribution of positions within KANU, it’s to assuage ethnic interest. This (emphasis) is the issue that is going to dog germination of the democratic culture in Kenya and democratization in Kenya, any new constitutional dispensation. And the issue is, of course, linked up with the issue of land, resources, and division of the income of the country. The solution is to accept that we are polarized along ethnic lines, that it is not a good thing. That it is going to take a long time to eliminate and therefore come up with the strategies. For example a more equitable formula for distributing national resources, a restructured system of local authorities through which these more equitable distribution of resources can be channeled and a ruthless enforcement of the rule of law for everybody.”

Q. What was the motivation behind the ethnic clashes? Who was responsible?

A. “Undoubtedly the government and his ‘kitchen’ cabinet; the President and his ‘kitchen’ cabinet. And they used government machinery and they were stoking the insecurities of ethnicity around land. And the objective was actually to get rid of the non-Kalenjins from the Rift Valley – to give their own people land but more importantly to insure they did not vote against the government in the 1992 elections. Where there is a state of insecurity, few people bothered to turn out and vote in the ’92 elections. I don’t think he [Moi] was very confident initially [about winning in Kenya’s return to multi-party politics in

1992]. These clashes started before FORD actually splintered. So he wasn't confident. He started it [ethnic clashes] even before elections, as a way of resisting the mounting pressure for multi-partyism. [They were continued after the elections] for election purposes. He wanted to kick out the non-Kalenjins from Rift Valley so that they don't vote against the government. [A secondary reason was to get land for the Kalenjin.] That was not a dominant consideration. Of course they took the land. And the pretext was that the land belonged to the Kalenjins. But it was not the cause, it was the pretext. And [clashes] in '97? That was to kick people from up country from the coast. It was Luos, Luhyas and Kikuyus [in Likoni]. My interpretation is that it had two objectives; one was a narrow one, insuring that that particular constituency did not go to the opposition and remained in KANU hands. In fact the person who was eventually elected was mentioned very adversely in that report [a Human Rights Watch report in 2002 on the 1997 coastal ethnic clashes]. But the more important reason in my view is that was a test case, if you like; a political message to the entire country: don't take us for granted: we are prepared to unleash that sort of violence – everywhere. It was a message that the government is willing to use violence to retain power.”

The key to overcoming a powerful government: “exciting the masses.”

[Commenting on his call in 1993 for a boycott by matatu operators and cash crop growers and strikes by civil servants as part of a civil disobedience campaign, Muite said the main aim was not human rights but “pluralism.” “We had widened the ‘war.’ We’ve realized – some of us who have been in this struggle – that ultimately it doesn’t matter what power the government has. If you can succeed in exciting the masses, the masses rise up against the government, the government has to give way. It can not imprison everybody; it can not kill everybody. We came very close to it in 1990-1991. You can say the government saw the people were uprising and they were prepared to escalate the uprising. And they [the government] gave in. [An example of this, Muite noted, was the police-aborted rally at Kamakunji November 16, 1991, which many people attended despite the repression]. In 1996-97 it was the same: we had mass action, demonstrations everywhere. We closed down the roads. We built up the momentum from the fall of 1995. And again, what led to the government giving in, marginally, on the infamous IPPG [Inter-Parliamentary Party Group]. So there’s no doubt about it: mass action, civil uprising by the people is something the government cannot cope with.”

Q. Why was the level of state repression reduced between 1987 and 1997. Was it activism (individual and organizational)? Donors? International agencies? Or a combination of these?

A. All these were there. Let's start with 1991 when they repealed Section 2A. OK? Human Rights Watch, donors, agitation by lawyers, critical statements by the churches; they were all there. But the last straw that made the government give in was the defiance, first in July 1990 and November of 1991. That was the final straw that sent the message to the government that her own people are prepared to rise up and defy the government. It was when, in July of 1990, despite the detention of people like Matiba, people went to Kamakunji. That frightened the government. The government saw there was going to be chaos, general chaos across the entire [country]. So here were people jumping out into the streets who were prepared to be killed. That is what frightened the government. And we repeated the same in 1991. So it is that defiance. That is what does the trick in the end.”

(end of side two of tape one)

(Tape two/side one of one)

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Q. Why was there a gap between '91 and '97 in terms of advances on human rights/pluralism?

A. "I think the answer to that is the pro-reform movement is not very well organized. It sort of tends to be spontaneous. It's also lacking in resources. But the other very important factor is infiltration: jumping onto the bandwagon of pro-reformists by conservatives who ideologically are in KANU and whose quarrel with KANU is that they are falling out of favor in KANU. They are the ones with the resources, accumulated since Independence. They are the ones with the cash. So they come and hijack the reform agenda. It takes a bit of time for the genuine reformists [to react. It took until 1996 and 1997 until new momentum could be created by these genuine reformists, Muite said.] It's exactly the problem we are having now [2002]."

10: "Believe you me, these conservatives came in the eleventh hour on constitutional reform. When they joined the reform movement in the eleventh hour – and we had demonstrations everywhere – they got legitimacy, now that they were a part of the pro-reforms. As soon as that legitimacy was there, Moi moved in and offered them very little in IPPG. They deserted us and went and struck a deal with Moi (emphasis) in order to go to elections (emphasis), thinking they would win the elections on the basis of those piecemeal reforms. We warned them against it, but we were in a minority. [Most of the Members of Parliament who had associated themselves with the reformist movement deserted it and moved to the Inter-party Parliamentary Group or IPPG.] They lost the elections. Now they come back to us and they continue to demand for comprehensive reforms. And when we succeed, they again strike a deal in terms of the merger between Ufungamano [House, a popular meeting place in Nairobi for political discussions]. So that's another phenomenon that has been slowing democratization."

1996-1997: the push for constitutional reform

"To understand this group properly [the group pushing for constitutional reform], this group convened a meeting in Limuru [the Limuru Conference]. And this group was the one saying: 'Wait a minute. The repeal of Section 2 [2A made KANU the only political party and was repealed in 1992], the electoral field is still not level; you are going to lose; let's have comprehensive reforms so as to democratize the country. We were not listened to at that time. That's the group that was urging the boycott of elections in June 1992. Some were in civil society; some now, like myself, were now in the political arena. [Muite was a Member of Parliament.] We were not listened to, so we participated, we lost in '92. We re-grouped and said: 'Did we not tell you that we cannot [advance] democratization with structures that are the structures of a one-party state. The judiciary is not free. The civil service, everything is controlled; the President is still subjugating every other aspect in this country.'"

Kenya's 'police state' structure

[Muite agreed that the unelected Provincial administration could be described as a police state.]

"They are appointed by the President, they hold office at the pleasure of the President; he promotes them, he sacks them; he decides their salaries. And they serve him – and his party (emphasis). To understand this monolithic system of authority, this was invented by the Brits [as a key element of their indirect rule during the colonial period in Kenya.] The black Presidents just stepped into the shoes of the Governor [General of Britain]. When you are talking about a sub chief, he's literally in charge of...homesteads. So a sub chief gets to know who is sleeping with whose wife, what quarrels are going where, any discussion. They are...informers. They are looking at very tiny, little, sub-locations. The above you've got a Chief, you've got a D.O. [District Officer] a D.C. [District Commissioner], you've got a P.C. [Provincial Commissioner] and on to the President. The ability of the President to know what is happening in every village in the whole country is enormous. [Muite agreed that it amounts to a spy

system.] It's even worse. It's not just the Chiefs. When you come now to the Divisions, by and large equivalent to a constituency, you've got the D.O. there. The D.O., District Officer, he is in charge of the divisional security committee, so the local police boss is [under] him; the agricultural officer, the government officers, are under him including the informers, the secret police – they are all under him. It's a very powerful institution. The D.C. is in charge of the district security committee; the P.C. is in charge of the Provincial security committee. So it's a very tight system, vesting enormous powers in a President. [The constitutional reformers would like to “get rid of it,” Muite said.] This would have to go: we don't need them. Let's have elected, local authorities. And give them power, not just political power but economic powers and budgets and that sort of thing.

“So '92, we lost. We said: ‘Look, this is why we lost. So what we are telling you is, take a bit of time to regroup, to rebuild. [The election in 1992 was] “lost because of the institutions that favor the one-party monolithism. [The fact that seven candidates in the opposition split the vote among them, allowing President Moi a plurality victory of just over one-third of the national vote] is also true [Muite agreed.] But as I said before, just stating it as a fact, not a matter of argument, we are not looking to an opposition win that is going to repress the people in exactly the same manner as the KANU government. [Even if the opposition had won, with no constitutional changes reducing the powers of the President] it would not have brought the changes that we are looking for. We are looking for a new style of management of the economy, new morality, new ethics, new institutions, so that we can be a true democracy.”

Q. Has human rights lost its punch as a ‘wedge’ issue at this point [2002]?

A.” I don't think it can take a front line anymore because there has been a reduction of violations of human rights. It's not as brazen as it used to be. I think the focus has got to be on democratization.”

Q. Was the improvement in human rights in Kenya primarily an urban phenomenon, involving primarily urban elites?

A. “With an increasing number of NGOs [non-government organizations], it [observance of human rights by the State] is trickling down to the masses. And it is exciting interest in the rural populations because the NGOs are now able to reach out to the rural areas and take up cases of violations by Chiefs, by police, and by other government agents, and to highlight those cases, whether they are in Garrissa [spelling?] [far Eastern Kenya], even in very remote areas. Violations in Tana River, for example, where the government sometimes would have closed an eye, and what was going on there was not able to be known; now its able to be exposed. [Muite agreed, however, that the informant system still functions in rural areas; that police do sometimes arrest people without good cause; that holding meetings is still not as easy as the law would allow; that police do not always show the meeting schedule as required by law to those notifying the police under the changed law of their intention to hold a gathering. “That is true, he said.] The government is not enjoying the sort of immunity it used to have, even in the rural areas.”

Q. What lessons can be drawn from Kenya's experience using human rights as a ‘wedge’ for pluralistic change today in the rest of Africa? Or has human rights lost its punch in Africa as a whole in favor of a focus on pluralism?

A. “My advice would be that at whatever level of development, human rights is always a useful tool to use because it is very specific. And there are a number of human rights organizations that continue to take an interest in human rights. So one is not talking in generalities. It is something that can be demonstrated in terms of individuals, in terms of the violations and highlighted; something in respect of which data can be collected, evidence can be collected. And therefore that makes it a very useful tool if

you like because up to now, when you are talking about democratizing, you are at sea; you are talking about generalities. Because there are these sort of differences [between democratic and authoritarian states] even in the essential ingredients of democratic states, even in the Western nations, the international community has not developed an acceptable standard, or criteria – benchmarks, if you like, to measure democratization. But they have done that with regard to human rights. And that makes human rights a very useful tool, in my view. Even here you continue to embarrass the government when you continue to collect the data.”

Q. What forces bring improvements in human rights?

A. “NGOs are very important, in terms of having the capacity [to promote change]. The local NGOs, with linkages to the international NGOs are critical on the issue of human rights because it is them that will have the institutional capacity, the financial capacity to collect the data, to monitor, to expose.”

“This institutionalization of political violence...Moi’s tactic about attacking the ‘enemy’...this is a tool that was used by the government very, very effectively, and is still being used up till now. [An example was President Moi’s going to the Kibera slums and “inciting” the residents by telling them they were paying too much rent. He did that] because he wanted the Luo vote there. He was playing the ethnic card. A majority of the landlords in Kibera are Kikuyus; a majority of the tenants are Luos. [Some landlords are Nubians, given the land by the Colonial government]. But statistically the majority of the landlords today are Kikuyus. The difference is that the Nubian landlords live there; the Kikuyu landlords do not live there. But the target [of Moi’s incitement] was not the Nubians; the target was the Kikuyus.”

Q. What were the tactics the Moi government used to counter the tactics of human rights/pluralism activists?

A. State resources. State resources. They would tire you financially; they would tire you in terms of time. The government machinery is far-reaching and has got more human resources. You are running around defending people; you have no time to earn a living, to keep your family. State resources. Exhausting you, deliberately.”

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Q. What was your motivation for becoming a human rights activist?

A. “It’s very simple. You study what has happened in the other countries. Look at Uganda, for example; it is a good case study. Despite the number of people [killed] and the excesses of [Ugandan dictator] Idi Amin, he was a necessary consequence of [President Milton] Obote’s repression. [Under Obote’s first regime] you stifle dissent, you make it impossible to change political power through competition in the market place; the country goes down the drain, inevitably. So any thinking person can see the direction in which Kenya was heading, inevitably. Now when you see that, you don’t just sit back and say ‘I’m making a good income as a lawyer,’ because in any case one could foretell the economy was on a downward spiral anyway. The judiciary was on a downward spiral. It came to the point where even the job satisfaction practicing as a lawyer...is coming to an end. You don’t win cases on the basis of evidence of the law [but - potentially] on the basis of bribing judges.

But the real answer to your question is: when your country is attacked in a war situation, you don’t wait to be conscripted, you enlist to go to war. And here, here is a country heading towards armed insurrection; here is a country heading toward collapse. So the question is: what do you do. And the answer is, you do the little you can to change the direction of the ship of the state in order to avoid that. That’s all. You owe it to yourself, you owe it to your family, you owe it to your country. And you say

you've got the intellect to see that, to analyze and to see. Perhaps the peasants in the countryside may not. They suffer; they may not know the cause of it."

Q. But what led you to the point where, after making such an analysis, you decided to become one of the few taking action to make changes?

A. "It's not difficult. One doesn't sit and make a conscious decision. It just comes, by the way. It's just like [when] elections are stolen. Right? The best analogy is [Ugandan President Yoweri] Museveni. He's done what he can. The elections are stolen. Forget about trying to bring changes through discussions. Let's go to the bush. There comes a time when changes have got to come. So how do we bring the changes? It's an intolerable position. You inter-act with these people. You know them. You see them ruining the country for everybody. And you say, I am not going to sit back and allow this to happen. I'm going to be involved in bringing change to the country."

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Q. Did any early experiences help shape your willingness to get involved?

A. "I remember that distinctly because I was in law school [University of Nairobi]. It must have been back in '68. I forget what the issue was, but the then-Attorney General had issued a statement that was clearly an affront to the rule of law. I wrote a letter which was published in one of the weekly papers of the time. I was just critical. [Writing a letter critical of the government at that time was] outrageous. In fact what I remember was seeing the Attorney General banging [a] table on television [in apparent reaction to the letter]. He called a press conference (laughs) over that letter. But the editor of the paper had taken the good precaution of signing instead of my name "pro bono publisher." I had signed; I signed my letter. I think it was the editor who decided that this is too hot; let us protect the public interest. [In writing the letter, Muite recalled, he was not angry; he was simply pointing out that] "whatever he had done was ridiculous, was wrong. [For Muite, this was not a moment of truth where he consciously began a career of activism, he said he was just reacting to the action of the Attorney General, which was] wrong, not right."

Q. How did you begin your activism?

A. "I got into law. The first challenge [in favor of activism] came in the context of the law, in 1974. My firm was acting for a number of banks, and in the government banks, ...the ministers, the politicians had taken money; they were not repaying the loans. And I got that brief and I said: 'Look, the best way to get money out of politicians is to serve them [the politicians] with bankruptcy petitions,' which I then [did]. They all paid, except the late J. M. Kariuku, who was a sort of opposition within KANU in those days. [Kariuku was "murdered by the government" later, Muite said, during the Presidency of Kenya's first President, Jomo Kenyatta]. He organized some thugs to come to [my] office and said that that petition must be withdrawn. [later in tape:] It was very dramatic. It was in an afternoon. My senior partner called me. He was in a state of excitement. And he told these two people; there was this one tall fellow. They were seated there. I later came to know he was called [name withheld]. Whenever there was a shootout, he would always be there... My senior partner said: 'Can you repeat what you've just told me?' And they repeated. They had been trailing [him] for the past two weeks or so. And they had been giving [him] a blow by blow account of where he had been, where he went to play golf, how many whiskeys he had had, what time he went to his home. And they said: 'last Wednesday you were going home about 1 a.m. and you had a puncture near the Museum. And that' where we were about to finish you. (And everything was absolutely accurate, Muite recalled.) And you took a very long time to change your wheel. But we've now been given to understand that it is somebody who is in the office, some

fellow called Muite, is the one who is handling this matter. So my senior partner said: “It is him, it is him, it is him.” So they said: ‘This petition is to be withdrawn.’ And they proceeded to telephone in the middle of the night at 4 a.m.; they would telephone at 4:30 and tell me, this time you fly, don’t drive along the road.

I said [to myself]: ‘What the heck; the man owes money; I wasn’t doing politics. So my senior partner was insisting that we withdraw the petition. I said no, no; my conscience doesn’t allow me to allow intimidation. We had enough clients [that] we could have sacrificed that particular client.

So from there I got into the Law Society [of Kenya: LSK], agitation for africanization [of the judiciary?]. So one thing led to the other. We had major quarrels with the then-Attorney General. So it was only natural that this [activism?] would ripen. The mismanagement, the mis-governance did not just start with Moi.”

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Q. Accusations denied.

A. [Asked about the accusation that he had taken money from Moi, Muite said:] “Of course it is not true. You were talking about what strategies they [The Moi regime] use. The other strategies are either to destroy you or to co-opt you. So there was an attempt to co-opt me shortly after the 1997 elections. The President specifically sent me Mr. [Charles] Njonjo to ask me to go and work with him. [Njonjo had been Attorney General under President Kenyatta and credited with controlling the early years of the Moi regime after Moi succeeded Kenyatta from the Vice Presidency after Kenyatta died in office. Moi later forced him from office after a long and public investigation of him but later reconciled with him.] They had made up. So when I refused – it’s a long story, talking about the correct way of going about things, [about] national unity, to oversee economic reforms, to oversee constitutional reforms. Anyway, in the end, because I refused, they came very heavily down on me with all sorts of allegations, including financial destruction. You know in the meantime they had recruited my own personal assistant who was running my businesses...without my knowledge....So they also adopt different strategies at different times.

So you asked the reason [for my activism]. The reason is: if you don’t do something... You happen to be born in America, I happen to have been born a Kenyan. I am sure if the situation confronted the U.S. you would react maybe in the same way. I accept we have choices to make. Some people would choose to get out of the country. I did not choose to get out of the country. I chose to stay and fight.”

(end of transcript)