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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 February 2009

Interviews (3) conducted and recorded by Robert M. Press (bob.press@usm.edu; press.bob@gmail.com)

Interviewee: Gibson Kamau Kuria, a leading human rights attorney in Kenya in the late 1980s and 1990s.

Location on interview: Nairobi, Kenya; Kuria's law office

Dates of interviews: July 12, 2002; July 17, 2002; August 3, 2002

Note: words in quotations are exact quotes of the interviewee. Other words are paraphrasing (see interview three) or comments by the interviewer inserted at the time the transcriptions were made in 2002. Where used, BP refers to interviewer (Bob Press) and GK to interviewee Gibson Kuria. Numbers are tape counter numbers.

First Interview

Tape 1 (A)

Color: Gibson has a very short haircut, in marked contrast to the unruly longer hair he had for years. A colleague says that when he was elected chairman of the Kenya Law Society (1999-2000), his friends prevailed upon him to cut it. Tonight he wears a short-sleeved shirt and checkered tie. He has just returned to his office from a full day in court. His desk is practically covered, as are all his chairs but one, with stacks of case files in brown paper folders. The piles range in height from a few inches to two feet or more. Books on law line his shelves behind his desk and flow over into piles on the floor. A secretary in his firm says that she often has to stay until 8 or 9 p.m. when Gibson or one of his two partners is working late on cases. The phone rings frequently.

Kuria has lectured on law at Stanford University and the University of Chicago; was at one time admitted to graduate law studies at Yale, Columbia and Oxford. He chose Oxford, where he studied theory and human rights. Later, during a year in exile (1991-1992) he studied at Harvard.

Q2.What was your motivation??

00: "I believe in democracy and human rights."

He was impressed with a play (????) he read in h.s.: A Man for All Seasons and the defense of the law it presented. Impressed by U.S. constitution.

68: "I remember one night Freedom Fighters (Mau Mau) coming to my house to look for food."

72: saw bodies of Kikuyus left near the market of his hometown by the British who were fighting the Kenyans. He could see that the colonial system was "very unjust and people [Kenyan Freedom Fighters] had really made a sacrifice.

82: he saw a link between Thomas Moore (of A Man for All Seasons) and the Freedom Fighters of Kenya. "Both were fighting for justice."

He was also influenced by the teachings of a British law professor, Ian Brownley, who both taught at Oxford, where he took graduate law studies and was a practicing attorney, combing theory and practice. He was also influenced by an American law professor, Ronald Dorkin, who also taught at Oxford.

Gibson decided he wanted to be a scholar, a teacher, as well as practice law.

166s: "I did not go for much money, quickly; I did not go for a big public office. I really got out of the mainstream.

175: “The motivation was...intellectual: teaching, researching, writing is very important. And I thought if I taught and practiced law I would live comfortably.”

189: “I just choose post-graduate work; I didn’t choose human rights.”

15: “I have always known the court can be effectively used to protect democracy.”

43: “I did not expect to come into conflict with the state.” “I was just commenting on public affairs; later I was a mere lawyer taking up cases in court.

112: he opted not to become a judge or seek political office such as attorney general.

Q3 and 4: IMPACT: (see excel chart on Activists’ actions)

“I kept on losing cases, but I kept filing them.” But he saw another value: growing public awareness of human rights. An interrogator told him when he himself was detained because (416) “human rights consciousness was rising to a “dangerous” level. It was pointed out to him (by the govt.) that his name was appearing in international journals and that he kept on filing cases. He was compared to a wild beast that kept on charging, filing cases, despite the fact that he was losing most of them. He lost “most of them.” He said: “I must be rendering a service: I keep getting cases despite the fact that I lose them.” (The fact is that only a few attorneys were willing to take the risk of involvement in human rights cases in the late 1980s, several years before the resumption of multi-party politics in Kenya.)

The 1984 Mutunga detention case that he took up, which he lost, gave groups such as the Lawyers Committee for Human Rights and Amnesty International information on detentions. And his other 1984 case, which argued for the right of detainees to have legal representation also helped open the doors for attorneys to represent detainees, also providing more information on detentions for international human rights groups. But the Mutunga case also had a negative impact. Challenged to obey the legal limit of holding someone without charges for no longer than 24 hours, the government, with a one-party Parliament, simply lengthened the period of legal detention without charges from 1 day to 2 weeks, a point Gibson acknowledges.

The state also reacted negatively (from the detainee’s point of view) in the 1987 case Gibson took that sued the government for torture of three detainees. When the government began releasing other detainees under domestic and international pressure to do so, they held his three clients pending resolution of the case. (Final resolution????)

David Westbrook (spelling) from Minn. U (????) gathered information for Amnesty on the detention cases with Gibson’s help, also getting information about Gibson that was later used by Amnesty in their campaign for his own release from detention in 1987. (468)

His 1987 detention was apparently aimed at setting an example to other lawyers not to get involved in human rights. It backfired: he continued after release and the publicity surrounding the case raised the public awareness of human rights even higher.

585: “When the history of the legal profession is written, this case will [be seen as] one of those cases that brought independence to the lawyer. The state got so much pressure from the international community that it [no longer] dared to interfere with the lawyers’ work.

335 (on international organizations helping): at the time of Gibson’s detainment. “Between the time I was locked up and Kiraitu took the case to court, it was not within the power of the government to act [by locking up Kiraitu as well, due to the international publicity: HRW???? Amnesty????, including from the newspapers, initially by the Washington Post’s Blaine Hardin).

494 “Blaine’s article was important because I expected that one of the possibilities was to die, so somebody should know why this happened. Unless someone intervened, something was going to happen. So Blaine has contributed greatly to our struggle. Later, after release from his own detention, he

resumed the case on behalf of the three detainees and in the process he interrogated one of the government interrogators who had interrogated him during his own detention. 375: “We turned the tables.”

But he also won a few some. And became well-known. “There are very few people who don’t know me.”

273: “When I do human rights work, when I make statements, I am not only speaking for myself, I am speaking for them – the ordinary people.” He appreciates that people greet him with genuine warmth. “They identify with the human rights work.” Even strangers come up to him to encourage him and thank him for his work. 311: “This reaction cuts across ethnic groups.”

He points out he has not gone into politics as numerous other attorneys and others promoting human rights have (including his law partner, Kiraitu Murungi).

Q 5.

590. He was a member of LSK since 1980.

SIDE TWO

1: “I did not receive any moral support from LSK when my human rights work started....I did receive a little support when I was detained.

In fact he was discouraged by LSK chairman at the time (Lee Muthoga) in taking up the cases of detainees. “I was a radical, left wing liberal.” “We must put a stop to this.” “If the government was to lock us up, let them do it.”

“At least I put the Law Society of Kenya to the test – and it failed.”

87 case: received some moral support from a section of LSK. (75)But Muthoga was among those against LSK discussing at their annual meeting Gibson’s detention. G.B. M. Kariuki was LSK chair at the time.

The disincentives of human rights work: not much money

99. (1) “Human rights work entails sacrifice. The clients don’t have money to pay.” (2) “The risk, to your profession, your life...”

The incentives: “rising human rights consciousness [means] it becomes safer; the risks of detention and to life are reduced.”

154 “A 100 percent turn.” Before pluralism (1992), only a few people were dissidents; afterwards, “the majority of Kenyans were dissidents (laughs). [true: Moi got slightly more than 1/3 of the vote in 92 and 97.)

Except for a few close friends, like Muite, helped support him, “I got no financial support from Kenyans.” He financed his human rights work by his practice. “Typing, anything, it is my law firm. I could not have done human rights work as a scholar.”

When KHRC started, for six months, Gibson housed them (Maina Kia was head of it), getting free rent, use of faxes, etc.

1998 – inter. Funding stopped suddenly after the 1997 mass demonstrations for constitutional reform. Donors were pressuring Moi for reforms. The national convention was held by dissidents. “No sooner had Moi caved in...[money to NCEC stopped; money to govt. started up again.

Q. 6

Levels of repression

225???? “low repression to high repression, reaching a peak in 1992 and 1993 with ethnic violence.” Considerable in 1990 when Ouko is killed and Saba Saba.

Comparisons must start in 1982 when authoritarian state, one party begins. Dejure one-party state. “repression; people detained; the repression keeps on increasing. In 1986 there were established torture chambers in Nyao House, it goes on 1986 and 1987” Amnesty report of 1987 brought this into the open: “a great eye-opener.”

300 approx. Then the repression goes down a bit in 1988, then slowly started to pick up, reaching a peak in July 1990 (Saba Saba). Then goes down a little; then picks up in Oct. 1991 (ethnic violence broke out)..continues to 93; down a little; rises again in 95 (more ethnic violence); down a bit, then much higher Saba Saba 97 (killing in All Saints); then coast violence (pre election 97); Jan. 98: ethnic violence.

END of FIRST Interview.

[’82 is a good period to start for perspective:]

SECOND INTERVIEW: Gibson Kamau Kuria July 17, 2002 in his office; Nairobi, Kenya; on details of cases; clarifications.

1983 case to win the right of representation: “a victory for representation.”

1984 – “victory in that the court held a detention order (must say why detained: Mutunga case)

1985 – (Raila case) challenged the validity of detention. “That’s the one that excited them. I was now able to establish from intelligence [officials] that human rights consciousness was now “rising to dangerous levels” [in the words of the government official]. Every case I do is a partnership case...but the reality and perception is that all of these are my cases; that’s why Kiraitu [Murungi, his law partner at the time] was not touched. I’m the one who was ‘corrupting’ the youth... [laughs], so I was to be dealt with.

Q: when did state extend the time they could legally hold a detainee without filing charges from 24 hours to 2 weeks.

A. 1987 – but what happened was as a result of some kind of crackdown on dissent in 1986 there were applications we were making. In 1986 we had another case of Mirugi Kariuki, even before that one of ’87. Mirugi Kariuki was [arrested] and I applied for a note of habeas corpus. (He was not successful). Following that he was detained. That caused some anger [on the part of the state] because the court ordered that Mirugi Kariuki be produced in court. I indicated I wanted to apply for the country’s commissioner of police to be sent to jail for having failed to produce Mirugi Kariuki in court. [He was asking that the Commissioner of Police be sent to jail.] [laughs loudly]. The case was very well covered [by the media] from my perspective; it was so well covered that I could see there was a real possibility that the police commissioner wanted me detained. [The state never produced Mr. Kariuki in court.] They intimidated the judge....After an hour’s adjournment, the attitude of the judge changed very, very rapidly. He now was not listening to anything I said. He was listening to what the state was saying. So it was quite clear that...there must have been something that happened to him to get him to become a totally different person. [Kuria inferred that the judge had received instructions from some superior during the one hour adjournment.]

Detention cases

421: “In these detention cases you now come as close as one can be to the state. Challenging the work of the intelligence [personnel of the state], the police, the Minister of State.

1989 (Mbaccha????) a political activist; a great supporter of Kenneth Matiba. It was like a shadow of Matiba who was to figure prominently in 1990. He had written a pamphlet that was very critical of the government – freedom of expression. Even his fees were paid by Matiba. (Kuria lost the case, but] the state was panicked; [in this case] the Bill of Rights was suspended.

1987 case of Wayiro Kihoro. (he won that case, though the state never admitted torture, although the court found there had been torture.) He still has not been compensated. The judgment was given in our favor in the court of Appeal. He was awarded 400,000 Kenya Shillings, which was a lot of money in 1992. He is one of those discussed by Blaine [Hardin of the Washington Post in a page one article on torture in Kenya]. We have yet to have a state [in Kenya] own up to its failings. This one [the state in Kenya] is always ‘right.’

The others [from the trio of defendants in torture cases filed in 1987] are still pending [laughs]. It’s been a while.

(end of second interview)

THIRD INTERVIEW August 3, 2002 in his office in downtown Nairobi

(Tape one, side two 506

(The following section did not record and is based on very close notes taken at the time)

[It is a Saturday morning. The usual jam of traffic outside his the building with his third-floor law office is calm. Kuria has arrived wearing a white polo shirt, a black leather jacket, blue jeans and black shoes. This is the first time I have ever seen him not wearing a tie. He has gained some weight since I first interviewed him in the late 1980s about human rights in Kenya.]

Q. Please describe the periods 88-91; 91-92; 92-97 in terms of state repression, using the worlds “low,” “moderate,” or “high.”

A. “high” for all three periods. (See the rough profile/line drawing Gibson made to illustrate this; attached to end of notes from second interview. What follows is paraphrasing except where indicated by use of quotation marks.)

Q. How did the dynamic of each period differ??

A. 1988-1991: The international human rights movement (Amnesty, Human Rights Watch, etc) were becoming prominent. Earlier U.S. President Jimmy Carter had put human rights on the international diplomatic agenda. Human rights standards were established universally. And according to those standards, “Kenya was found wanting, particularly from ’86 when the Kenyan government had torture chambers in Nyayo House.” These were exposed internationally in a report by Amnesty International in 1987 (verify year). “Kenya had descended to the level of bad governments on the continent. The Moi Administration was unable to enjoy the kind of support it had in the Cold War; he was seen as a tyrant” [once the Cold War was over.]

1991-1992: Communism had collapsed and its support of one-party systems. This created “hope” in Africa for greater human rights. “Western governments supported multi-party and human rights greatly. But Eastern Europe did not happen in Kenya. Dictators like Moi found ways of postponing” changes. Kuria mentioned Robert Mugabe, President of Zimbabwe and Yoweri Museveni, President of Uganda, as other examples of what he called dictatorships.

(Resume transcription from recording)

520:

Two clear patterns emerged

1: democracy: He pointed to South Africa as an example where a constitution was “negotiated and implemented.” Other examples have included Ghana, Malawi, and Zambia – where one-party governments were replaced (despite transitions that were not very well-managed.) [This trend] “represents the hope of the continent.” [He added Nigeria to this group.]

2. Cases such as Kenya, Zimbabwe, and Tanzania, where you have “strong opposition to the authoritarian governments.” [The second trend tends to keep authoritarian regimes in place,] “the status quo.” He added Sam Njoma of Namibia to the list for having secured a third term [laughs].

1992-1997: “The Kanu regime was greatly [????dilocaed] and it is involved in a fight to hold power under changing conditions both domestic and international. The opposition continues and Kanu is trying to fight for its survival amidst very adverse conditions domestically, internationally, and economically. One can say it’s [only] a question of when it collapses. There is no doubt it is going to collapse – only when.”

Q. If KANU does collapse and the opposition takes power without major constitutional changes will politics in Kenya be any different??

A. Going by the experience we have, the country will have a government like that of Malawi or Zambia, where similar changes occurred – changes of government before fundamental constitutional changes had been made. The other possibility would be of further
(end of tape one)

Note: from here on I do a full transcription rather than selecting the key portions, per Mugenda’s advice.

Tape 2, side one

O.

BP New regime (2002????) could be new faces with the same powers for the president without constitutional changes????

GK Yes, but the advantage will be that the new regime will not be as strong as Moi’s. Therefore the struggle for democratic change will take place in a better environment than it had been if the Moi regime continues.

Colonial era control mechanisms kept and used by Kenyan presidents to maintain their power.

BP 92-97 when const. change was sought, was one change the abolishment of the system of regional and local (appointed) administrative officials??

GK Yes. We are still working for a fundamental change in the structure of the constitution. We know the models of democratic constitutions...we wanted an overhaul. This would entail, among others,

insuring that the Executive arm of the government is not used to maintain a certain political order. The Executive arm would be promoting public good. But since colonial times, the offices of the Chief and District Commissioner the PC [Provincial Commissioner], have been used to keep in power during colonial rule an authoritarian government. And after independence the same structure [was continued]. These are the people who will insure that freedom of associations is not enjoyed, freedom of assembly. BP So as long as long as you had those powers in place, those basic freedoms were still under control because the British system wasn't meant for human rights, it was meant for control.

GK That's correct. And therefore that has to change. I'm saying these people were there to insure survival of the colonial government. And then come independence, these structures became the object of keeping Moi or Kenyatta in power, not serving the society as a whole.

BP So that structure has to go.

GK That structure has to go.

BP Is there any other major kind of constitutional reform... sought in 1997, or was that the main one.

GK Oh, no; it was not the main one. One is to reorganize the relationship between the people and their elected representatives because since independence, the Members of Parliament have refused to recognize the supremacy of the people. So one of the fundamental changes is the Parliament must accept the supremacy of the people, which means that the Parliament must be accountable to the people, to some process like a referendum when it comes to ratifying constitutional changes.

BP And not just do it at the top??

Curb on presidential powers sought (in 97 and 2002)

GK Yes, exactly. When it comes to appointment of office holders, there has to be involvement of the people. It's not just an affair of the President appointing [or firing someone]. Moi appoints many people. Now it has reached a stage where it seems he can even appoint (emphasis) a President. [Kuria refers here to the campaign President Moi carried out in the last half of 2002 on behalf of the presidential candidacy of Uhuru Kenyatta, son of the first President of Kenya, Jomo Kenyatta, and a Kikuyu with no political experience. The campaign caused a split in the majority KANU party and open rebellion against his choice by some of his own appointed officials who were concerned that the President would not allow fair election of delegates to the KANU presidential nomination convention nor a free vote at the convention that might choose another candidate.] It is really a reflection of that kind of [broad powers of the President to make appointments in Kenya].

BP Are you [opting] for the kind of Congressional approval system [in the U.S.] of key presidential appointments.

GK Yeah, that's correct. That's one of the illustrations. It has got many other illustrations like having a jury...you don't just leave a judge alone to decide.

BP You want jury trials.

GK Jury trial. I'm saying it [the nature of constitutional reforms sought] is a kind of democratic involvement...the same idea of court reformation{????} of judges, other office holders, then involvement of the people in the jury. Then the other thing we wanted is the model of the modern Executive of state had to change from authoritarian to a democracy. There are two models which have emerged: either a President who shares Executive powers with the Parliament, or a Prime Minister who is accountable to Parliament and shares the power with the Parliament. So this is one of the changes we wanted to have.

Some reforms agreed to by Parliament

[In August 2002, the majority of Parliament, both members of the ruling KANU party and the opposition parties overwhelmingly agreed on adoption of a Prime Minister and abolishment of the appointed system of regional and local government, to be replaced by elected officials at both levels. See Nation clip for details]

GK (continues) Then we also wanted to have a judiciary that was independent because the judiciary we had, like the colonial one, was operating under a kind of control of the Executive. Of course it was supposed to be independent, but the system of appointing judges [subject to dismissal by the President resulted, for the most part, in compliant judges, according to human rights activists in Kenya and some outside reports: see one by the Robert F. Kennedy Memorial. In 1988 [????] Moi removed the security of tenure of judges and the attorney general [???? Verify with archives. Under strong protest following the charges of government rigging in the 1988 elections using a public line-up or queuing system, the security of tenure provision was re-instated [???? Not sure of dates or sequence here; check archives]

GK Secondly, the electoral system created a situation where the President has got such powers that he dominates Parliament, he dominates the Executive, dominates the judiciary. So all these dominations have to be dismantled.

BP Is the U.S. constitution one of your models??

GK Yes, its one of the models available, but we have others like Germany, India, Australia, Canada and the like: democratic models.

BP and the French??

GK The French...their democracy is not as strong as it should be.

Kuria on causes of change in state behavior (levels of repression 1987-1997):

Q from questionnaire, (#6): Why did the levels of state repression in Kenya decline from 1987 to 1997??

GK I think one can give about three reasons for the decline in repression

a. increased repression repels donors – leads to international criticism and aid conditionalities

Firstly, President Moi as a ruler departed from even the benevolent authoritarianism of Moi and was not even convincing to either foreign investors or local investors.

BP He tried to make the appearance of change but did not change??

GK Yeah. He did not change. Kenyatta was a stabilizing factor. The investments would not be interfered with. But Moi was actually an unstable [factor].

So secondly, the character of the state changes.

Then there was also the international human rights movement.

[At this point Kuria finally reached for the telephone which had already rung quite a few times. As usual, his brown leather bag with current case material sits open on the floor beside his desk. There is no secretary on duty this weekend morning. Kuria picks up the phone and speaks to a client in Kikuyu. When he finishes, he smiles and half shrugs: "On duty all the time," he says, then resumes the interview.]

BP [From question 6: Why were there changes; what forces and factors brought those changes about?? [The phone rings again and he answers it]

BP Why were there changes from 1987. If you look at activism, both individual and organizational, and also donor actions and international organizations. If you look at those three – and if there are others, please mention them – why do you think some of the changes were made??

GK Firstly, one has to start with Kenyans' own understanding of their social and political order and also, the international community's view of the Kenyan political and economic order. During this period, there was a fundamental change [increased repression in the late 1980s]. Therefore anyone dealing with Kenya [donors] had to withdraw support for it. This period [1987-1997] was very much like the Kenya of the 1970s, the 1960s[????] The corresponding change – this increasing authoritarianism, sort of attracts the attention of the international human rights movement.

b. domestic opposition

But the other dynamic is that with the deterioration of a certain political order there is increased opposition to the regime. For instance, 1986, there were people charged with sedition. There were even people thinking of getting a movement to overthrow the government. There was the attempted coup in 1982, then in 1986 there was a kind of guerrilla movement that was claiming it is there.[He refers here to the Mwakenya movement of undetermined size and character which Moi cited as the reason for many arrests of suspected dissidents, including some academics, and the subsequent wave of torture of the detainees to obtain confessions and imprisonment.]

c. the “combination” of international and domestic opposition helped curb the excesses.

You see, there is a combination of domestic opposition then international criticism. These become stronger with the passage of time. Therefore the donors find ways of trying to tone down the excesses through conditionalities [of aid] and the like.

BP ...you referred to underground activism pre-87; how about the open opposition from 1988, 1989 and onward; how effective was that, if at all, in terms of pushing government toward multi-party and a sort of gradual relaxation on human rights??

GK It was quite considerable. You look at 1987-1989 as a continuum. From the 1980s, the Law Society of Kenya [LSK], the church in Kenya – Catholic, Protestants – become increasingly critical of the social order. It is unlike anything Kenya had witnessed before. Therefore the period you are focusing on [1987-1997] sees an intensification of a phenomenon that dates back to a much earlier period. The 1990 uprising – Saba Saba [July 7], again, is a further intensification of a procession which had been going on.

BP And Kamakunji [Nov. 16] 1991??

GK 1991. You can see Nairobi Law Monthly from 1987 had published criticism of the regime. So you have the civil society, you have then critics like the late Oginga Odinga, and Matiba coming to the scene. **So you ...see, there's the civil society, there's the politicians, there's the donors, there's the international human rights movement. These are the pressures...** Now what I see is that up to 1992 or 1993, the donors lose faith in the democratization ...process in Africa. [The donors realize that] democratization will not come quickly and they find ways of working with the authoritarian regimes. The conditionalities become a new way of trying to improve [human rights and pluralism]. So one does not see much pressure put on the regime by the donors...

DA-Unclear donor signals: limited IMPACT

BP In fact my research has shown so far, at least in a very initial tracking of funding, that you have after that low cut off point [November 1991] you had a high point, then it goes down, then it goes back up, then it goes down. Meanwhile the level of human rights doesn't change much. So the signals that I see

are exactly as you describe them: not a whole lot of pressure and not a whole lot of consistency in those signals. Would you agree to that analysis??

[???? what project is he referring to below??]

GK That's what I see because...after 1992, the support from donors sort of declines, support for change and pressure declines. I can give you an example. In 1987 we were pressurizing the government to effect constitutional changes. First, the donors were not giving us assistance. We were trying to do a deal with the government, trying to pressurize [the Moi regime]. We reached a stage where Moi was not responding whatsoever to anything. So they now gave us support, a little funding. And then we put pressure on Moi. And when Moi was about to capitulate, then they suddenly withdrew support and returned to do business with Moi. They – the donors - started describing us as radicals, extremists [laughs].

BP So you had a little support for a while, Moi gives a little bit, and all of a sudden you become the bad guys.

GK Yeah, that's correct.

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Donors seek investor opportunities, not democracy

BP Why do you think they [donors] switched [from supporting the reform drive to supporting Moi??

GK It is because of their own interests. They had never been interested in true democracy; they had just been interested in a regime that meets their interests.

BP Which is??

GK Well, to me, it is in creating a favorable climate for investment

BP They haven't succeeded there, have they??

GK No. What I thought was that the liberals who are responsible for attaching conditionalities stopped making pressures and the conservative position of the Western governments returned [in favor of] their interest in maximizing the wealth of their own people. It is only the Western liberals who are interested in human rights and rule of law everywhere. That's what it really is. Amnesty International, Human Rights Watch and the like [are those] who want a good order for everybody in the world.

BP International support for human rights [in Kenya] has declined since the early '90s??

Unfinished human rights agenda – non-Kenyan liberals' goals were too low

GK Yes; it has declined quite a bit because the liberals might have set themselves too low goals. [laughs]. Probably their reasoning was that there was free expression...a very great expression of ideas, excess freedom of assembly and association, then the local people should utilize the new freedoms to bring democracy on their own to finish their agenda.

BP Would you say that the human rights agenda in Kenya is finished...

GK No, no, no. Of course it has not [finished].

BP By the end of 97 was there ample human rights??

Abuses continued in late 1990s but got little donor reaction

GK There wasn't. There isn't. That's what I'm trying to find justification for – the withdrawal of support. For instance, in 1999 and in 2000. Honorable Orendo and some of his friends tried to hold meetings in various parts of the country and the government machinery was used to prevent that. One did not see the donors coming out as strong against the government as they did [in the early 1990s]

BP [Q 6 continued] How would you describe as of '97, after the big push, after mass action, after some action by the government, how would you, if you were summing up at the end of '97, the state of human rights in Kenya??

Human rights reforms were adopted by Parliament in 1997 but not fully implemented.

GK (pauses) I would say (pauses; takes a deep breath) the campaign [for greater human rights??] drew from the need for comprehensive review of the constitution. The state of human rights was not healthy. That's why some changes of laws were amended [in 1997] or changed to increase the enjoyment of freedom of association, freedom of expression, to reduce the government...to try to remove Executive influence over policing and the like. But (emphasis), the KANU government has not implemented these laws [as of mid-2002].

Examples of continuing abuses of laws even after they were amended to provide greater freedoms

Let me give you an illustration. For instance, the state controlled, the state-owned electronic media, was supposed to cover all shades of political opinion. It does so half-heartedly.

BP You mean allowing licensing of...

GK No. I'm saying like covering of positions, agendas, meetings and the like [of the opposition]. The misuse of state media to advance of cause of KANU while the state media should be neutral as is happening in a democracy [though many states do not have a state media.]

BP It [the state media] is very pro-government.

GK Yeah. That's correct.

Then [another example of slow implementation of reforms] the use of the government to prevent rallies, meetings. So the government still continues – the police, DC's [presidential appointed District Commissioners], and the others have been instrumental in the suppression of those [seeking] the enjoy freedom of association.

BP So the law amending the Public Order Act saying now you only have to notify the police, and they have to give you the meeting unless they have another one scheduled [in the same venue, in which case they have to show the requesting group their schedule book] is not being followed in all places at all times.

GK Yeah. It is only followed with the permission of the government, as used to be the case [before the 1997 amendment to the Act].

BP But that is not what the law says.

GK That's correct. Secondly, the police were supposed to now serve everybody. The law has changed. Police are still used to maintain the KANU rule to give KANU an edge [in elections????]

BP Is that because people don't know the law and don't ask for a schedule of the meetings??

GK No. You see, you want to hold a meeting in a particular place. The police who are armed will be there. They don't arrest you, which is what they should do [to any lawbreakers]. They just prevent you from going to the meeting.

BP Even when [police] were notified??

GK There have been two stages of breaking the law: they refused to record your notice; and then instead of arresting you and charging you with participating in an illegal assembly, they just physically come and occupy the place where you are supposed to be meeting.

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Are human rights greater in urban than rural areas?? Gibson says they are abused in both areas but sees a growth of human rights consciousness even in the rural areas, and gives some examples.

BP That's happening not just to the elites but to ordinary small groups trying to hold meetings??

GK Yeah, that's correct. Like for instance, the [he says NCC [National Convention for Constitutional...but this does not appear to be the correct title; just use a constitutional reform group] had its meetings broken up; just ordinary people meeting to discuss constitutional affairs.

BP That's the civil society side. And Orenge has also had meetings [broken up]/

GK Yeah. Many places. There must be more than 20. You'd see on the [TV] screen, Members of Parliament running like children who have been chased by the police.

BP. It raises an interesting question here; to what extent do human rights – those improvements you helped gain – are being enjoyed by the elites in Nairobi, compared to the non-elites in rural areas?? Is there two kinds of systems here (multiple radio and TV stations in Nairobi, but only the state media in most of the country) People like yourself would probably never get arrested again, or tortured. People, according to KHRC, '97 report, found police torture was systemic in the rural areas among ordinary criminals.

GK Yeah, that's correct. Get a copy of a study by a group called African Rights which published a study in 1996 of the human rights situation in Kenya. This describes the kind of situation you're talking about.

BP Is it [the extent of human rights in Kenya] a two-tiered system??

GK It's not a kind of two-tiered system as such. It just indicates what the status of the rule of law and the human rights is. Like people losing faith in the justice system...and the like.

BP But going back to the basic question: do you have the same rights among the elites as you do among the rural areas??

GK Well, I don't see that kind of dichotomy. Orenge was holding meetings in a kind of urban areas – and rural areas [which were broken up at times by police, after the law was amended to provide greater freedom of assembly]. The meetings both in urban and rural areas. For instance, one meeting was in the city and he was not allowed to hold [it]

BP Is there any difference?? Some people have described human rights ...as a kind of fountain where there has been movement at the top, but it hasn't trickled down and gotten all the dry areas wet, outside of Nairobi. You don't see it quite that way. How do you see it??

GK ...I've seen human rights awareness [increase]. I get cases I do from people in the rural areas. I've got some from remote places in Northern Kenya. These people or others have come just to seek advice because they know (emphasis) this firm does human rights work. (Pause)

We have the regime's commitment to observe human rights, rule of law, and democracy. But (emphasis) it [the regime] is fighting for its own survival. So it has to be involved in cheating. ...It may be able to cheat more in rural areas where people don't have newspapers and the like. But there is still the church – the church is there, it is still outspoken. Take the newspapers over the last two days: the [negative] reaction to Moi in Kakamega [????spelling] and even in Kisumu.

BP [Public] booing, making noises, holding up placards [favoring the] opposition...

GK Yeah.

BP Those are in rural areas.

Not just an urban-rural split on human rights: a more subtle analysis

GK That's correct. That to me indicates that **human rights consciousness has shifted even to rural areas.**

BP [Human rights] consciousness is not just in the cities, its national??

GK That's correct.

BP The practice [of human rights] isn't just in the city and not in the countryside, its national but its applied at different degrees at different times and the circumstances depend on where the government feels threatened at any particular moment. Does that characterize what you're saying??

GK Yeah.

BP That's a much more subtle and complicated analysis, and its interesting. I like it; I have to let it sink in for a minute. In other words, first of all people are more aware of their rights; there are ngos around the country, with varying degrees of funding and ability – but they are there, even in Mwingi and places like that. [See report I have showing documented allegations of police torture of several human rights activists in Mwingi in 2002].

GK Yeah. I'm doing a case where a girl has been sexually abused by her employer and a corporate society which I act for from Maranga [????] referred the case to me. This was a local tyrant. I've taken him to court.

BP The kind of thing where the girl might have been too afraid to speak out [in the past]??

GK She doesn't have money. I pay the court fees; I use my own vehicle to go to attend to her case in Maranga [????]. People in rural areas are able to connect their problems with a human rights practice in the city.

BP OK; they're making that connection. Is there an array of human rights lawyers around the country or are they all in Nairobi.

GK There are lawyers who take up human rights cases in places like Mombassa, Nakuru (Mirugi Kariuki; tries to think of the name of another). There are some, not many??

BP Are there very many human rights lawyers in Nairobi??

GK There aren't very many who do it. But we are having more and more human rights cases taken up than used to be the case. The growth is not as phenomenal as one would have liked it. I see the high court as having more matters under litigation than it has before. The courts are now receptive to human rights concerns. So to me this is a very important development. In the 1980s, we only hoped that we would talk [about the need for improvements in human rights]. But now we can talk and get remedies.

BP You wouldn't get arrested in the process of presenting the case.

GK That's correct. Now being arrested is not an option.

***THEME**

Ranking kinds of pressures?? Gibson sees them as "mutually reinforcing."

BP (from Q #6: Which of those pressures were the most important [I showed Gibson my questionnaire listing individual activism, organizational activism, donor actions, actions by other international groups, and other pressures.] If you had to rank them in terms of changes that have occurred, how would you rank them??

GK I don't think that it may be very useful to rank them because they were mutually reinforcing. But you can probably say that, in a sense, individual activism was the key thing because individuals became dissidents then there were lawyers acting for these dissidents and these dissidents and their lawyers were enforcing the human rights. Therefore their actions came within the mandates of international human rights organizations. And then in the 1980s there was some conscious thought that the human rights agenda would be used to fight against Communism before Communism fell. And therefore this was a tool that could be used both in the Soviet Union and Africa. Then locally the church found that it had a role to play. Kenyans...found they could set up human rights organizations...I'm saying the ranking them does not help. But even if you

are operating internationally you have to work with somebody. You have to work with some people. You're saying there are human rights violations; you must be able to give examples. BP So rather than a ranking what you're seeing is a sequential occurrence, with each stage getting new support from another factor, and that all of it kind of dove-tails. So it's a horizontal development rather than a vertical development.

GK Yes.

550 or so

Human rights abuses tolerated during the Cold War; local dissent was nothing new but only attracted major international attention and action after the Cold War

THEME?? Human rights popular internationally mostly as a critique of Communism, with only fading support after the Cold War. That's Gibson's view. I had not thought of it that way.

GK. Since independence, let's say since 1964, Kenya had always had dissidents: people who were opposed to the developing authoritarianism. It [the opposition] has [always] been there. But during the heydays of the Cold War, Kenyatta made that reference [????] that weakened democracy in Kenya and give the government the capacity to violate human rights, and it [the government] was not under pressure from the Western governments. And this was the pattern in all the third world countries. Dictators could violate human rights and get away with it so long as we were opposed to Communism. So what is therefore new is, to me, the acceptance or the recognition [before the end of the Cold War] that the human rights agenda can actually be used by the West to fight the Soviet Union. That agenda can not be used only in the fight of the Cold War. It becomes a universal application. That, therefore, leads to a new change in the world, even before [the end of the Cold War].

BP What about after the Cold War: were human rights still seen as a tool, not against Communism but just something good in itself??

GK You can see a marked change. The usefulness of human rights as an instrument is discovered during the Cold War and it's used both against the Soviet Union and dictators in the Third World. However, after the fall of Communism, there seems to be a feeling that the agenda of the usefulness of the human rights institution has stopped when the work is finished.????

BP. Why. Was there no value in it per se, just a means to an end??

GK Now that Communism was identified with the violation of human rights then work is finished. [laughs]

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BP When Communism goes, that's it. And you only had a brief period in 90 and 91 when you really did have a push for human rights by the international community].

GK After that there isn't much support [internationally] for human rights. So that's why in international human rights movements human rights are not just about political rights and civic rights. You have to talk about economic and social rights; **you have to talk about the universality of human rights**. So that now to broaden the human rights agenda. That broad conceptualization has not been embraced very much by the Western governments. That sort of explains... the old feeling that human rights political and civil rights????

BP So in other words you're seeing the need to broaden it out, whereas the Western support really isn't there much anymore. In fact they haven't focused much on helping in terms of economic or social rights, even the hard core [political rights].

End of side one, tape two.

Start of side two, tape two: Kuria

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GK (On the kinds of pressures that brought change).I'm saying they are a combination of the two in that when the human rights are being used as an instrument of change it is the civil and political content that hit at Communism...But even amongst human rights organizations, the conceptualization was much broader. But what was accepted by the Western governments was the narrow one that was used.

BP Central political rights, which is what I'm writing about.

GK Yes.

BP What I don't quite follow your logic here is that there was a focus on the rights that died off after the Cold War. The Cold War ended officially in '89, but at least two or three years later in the U.S., and Western donors in terms of Kenya put the pressure on [the Moi regime], not to stop Communism; Communism was already dead. When the donors in '91 met and cut off all the aid, saying it was economic reasons, then years later saying, well, human rights was on the agenda, but we didn't say it.

[Get press releases from the Paris Club/World Bank after the meeting]. That was not to stop Communism; that was to put pressure [on Kenya] for Economic reforms. But at a time when human rights were being blatantly abused. You know, it came a week after Kamakunji [an intended rally in favor of multi-party democracy which the police broke up with considerable force]. So I don't see the argument that the West only tied it to stopping Communism; that was two years after [the Cold War].

GK I think it is because the fall of Communism in Eastern Europe was not reflected in Africa.

BP Although there was a sweeping amount of change, significant change in the early '90s. It was amazing.

GK Yes, Bob, but we didn't have regimes falling like in Poland, Hungary, East Germany in the like.

BP Right across the street in Chester House we used to have a big map with all the heads of state in Africa and in one of the offices they kept putting Xs through when they fell. The number of Xs increased from '89 to '92. We had Xs all over the place; lots of regimes fell. And most of the countries had some political reform.

34 GK In this region, the only regime that fell was that of Zambia through an election. It is only in this one West African country that was [changing] Benin. [this is not accurate]

The international human rights movement was saying that the one-party dictatorship in Africa did not collapse when the model collapsed in [Eastern Europe].

BP I'll buy your argument for the moment just to go on. We could argue about the numbers and everything for hours. In any case, why did the donors help in '91 – if that was help: some people consider it help, some people consider it not help. But when they cut off the funds in '91 and a week later Moi adopted multi-party. Do you think he did that because of the donors, or because of Kamakunji, or a combination of all those things you are talking about??

GK It was a combination [of kinds of pressures].

BP (continuing with another section of question 6). If you were to look back at the weaknesses of any of these factors [mentioned in my list earlier], and reassess the efforts to expand human rights in Kenya over the last ten year period (87-97) would you be able to spot which one of those factors or variables was the weakest in term so advancing human rights.

GK I guess its only donor actions [that are the weakest]

BP (Q 6 cont.) Did ethnicity help or hinder the promotion of human rights [in Kenya]??

GK (pause) I think I don't understand that. [another activist firmly and quickly identified ethnicity as the bane of human rights and political progress in Kenya. This hesitation on Kuria's part may reflect his reaction to an earlier question when I asked him his ethnicity and he replied "Kenyan." Other Kenyans say that to try to deny the importance of ethnicity in Kenyan human rights and politics in general is to be naïve; but there are those who make every effort to disassociate themselves from being categorized, and certainly Kuria has clients he serves from all parts of the country, undoubtedly with equal vigor]

BP Well the fact that ethnic politics is a factor here; it's very real. I don't think you could deny that. Do you think that that fact and the use of ethnicity by the state – we are also considering analysis of the state – its use of ethnicity and opposition politics, parties based primarily on ethnicity rather than ideology. Would you say that that has helped, hindered, or not been a factor in the advancement of human rights in Kenya.

THEME?? Unintended consequences. Example: ethnic clashes may have “radicalized” the peasants and heightened opposition to the government and an awareness of human rights (while in the short run not helping the regime to stave off either multi-party democracy or the pressure for change)

GK I don't understand that, Bob. Why was there an uprising, these Kamakunjies?? The regime weakened itself by invoking ethnicity in 1991, 1992 by having [ethnic] clashes. It destroyed it's [the regime's] credibility. It was trying to say that it was to remove certain people from certain parts of the country.

BP Kikuyus from the Rift Valley.

GK Kikuyus and Luyahs. That radicalized the peasant.

BP Do you think that radicalizing in a sense provided an opportunity for a counter reaction that advanced human rights, or did it actually slow down the advancement of human rights.

GK There may be different perspectives but for me it [the ethnic clashes which he tied to government responsibility] really accelerated democratization because it heightened human rights awareness.

Because peasants we thought were not involved in politics [but] they were being killed, they were losing their land.

BP So there was a counter-reaction among the consciousness of the people: more aware of the fact that they were being used.

GK I think that what became aware was...that the government was evil.

BP There wasn't much of a gain for the regime in terms of holding off human rights or pluralism; in fact it worked to their disadvantage in the long run.

GK In the long run, yes. [But Kuria pointed out a clear short-run:] Kanu retained power. Kanu retained power [he repeated for emphasis].

[For Moi, who needed under the constitution 25 % of the vote in five of the eight provinces to win the election, a requirement which made depletion of non-Kalenjin/government supporting (for the most part) voters from the Rift Valley an attractive prospect. Few Kikuyus or Luyahs who had faced attempted murder by Kalenjin fighters were anxious to stick around long enough to vote in the country's first multi-party election in years.] And Kanu retained power.]

BP Immediate suffering [by many rural residents], long-term suffering or setback of the credibility of the regime.

GK Yes

BP Interesting analysis. I hadn't really thought about that. I'm learning here.

GK [laughs]

BP (from Q 6 again; we had earlier covered the part of Q 6 on describing the state of human rights in

Commitment to human rights leads an authoritarian into a process of accepting democracy: links Human rights: harbinger of democracy?? (Muite sees human rights as a useful measuring stick of the quality of a regime during the struggle to democratize; they are quantifiable; you can have data, whereas measuring democracy in general is harder, he suggests.)

Kenya today (2002): **Are there any links between democracy and human rights** in Kenya?? And what are they if you see any. Maybe you don't see any.

GK (takes a deep breath). **There always were links between democracy and human rights because the human rights of course arise from a vision of democracy.** Whether it was in the courts or in advocacy in the streets, we were saying that the government is obliged to behave in a particular way to protect human rights. And then what happened is that [some] of the crucial rights were freedoms of expression, liberty, freedom of association. Once the freedoms of expression, association, these rights were respected to a certain extent or when the state realized it could not violate [these rights], then it meant they could not continue detention without trial, people who just express themselves. When people could meet they could talk about the social and economic order and the kind of politics they wanted. By the state committing itself to respect human rights it had actually committed to a broad democracy. And **once it committed to broad democracy the regime had committed political suicide.** That's what's happening now.

BP (last Q under 6). Are human rights universal or relative to particular cultures or countries??

GK That's a long debate, but **I accept the universality of human rights.** There are some who say they are relative.

BP Do you have any other observations that you want to make about human rights, the struggle to increase it, perhaps its relationship to democracy, the weaknesses or strengths of that fight, or maybe lessons from Kenya to any other country.

GK The Kenyan lesson is that human rights ideals and (????) bring down a regime if employed effectively. Sometime in November of last year [2001] I was invited by Uganda Law society to tell them about the Kenyan experience and I was telling them what the Law Society of Kenya had done over the last 20 years. And I was telling them how to import, how to export the Kenyan experience.

[GET copy of his speech, which he offered.] How the lawyers can do this.

BP But as you mention its not just lawyers, its church, lawyers, politicians, everyone working together.

GK Yeah, that's right.

BP Has Kenya had good coordination in its human rights effort??

GK It could have had a better combination, but it has had a combination that did some good. Probably we should just have to continue to try to improve on it.

BP One paper I read, I think by Hans Peter Schmidt, said basically Kenya human rights activists acted pretty much along - their organizations acted pretty much along {I meant to say, along ethnic lines}- they sought international funding, came back and in effect made themselves and their ethnic groups a better target or a more obvious target by the government. And there wasn't any horizontal cooperation; it was mostly vertical structures; people didn't cooperate or talk to each other very much. Do you agree with that analysis or disagree??

GK I disagree. I know that Kenya human rights works well. In fact in Kenya we even have what is called Kenya human rights network. All the organizations involved in human rights work working together, contributing, funding various projects.

BP Could you describe that network.

GK A human rights network.

BP Yeah, could you describe it; I'm not aware of what it is.

GK It is an organization of civil organizations doing human rights work. (Kenya Human Rights Network). They do have frequent meetings and have projects.

BP Who can I contact.

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GK I think you talk to Dr. [Willy] Mutunga [of the Kenya Human Rights Commission].

(End of interviews