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

Location of interview: Nairobi, Kenya; in law office of interviewee

Date of interview: August 14, 2002.

Interviewee: John Khaminwa, long time Kenyan human rights activist and attorney; described as a model by some younger human rights activists.

Note: Q =interviewer (Robert Press); A= respondent (interviewee): John Khaminwa. The interview was NOT tape recorded, at the request of the interviewee, who allowed note taking; interviewee's words are in quotations. Some question marks indicate uncertainty of the detail cited. Includes research notes by the interviewer; underlined portions were added by interviewer for emphasis.

Biographical:

Educational level: Masters of Law in International Law, New York University Law School

[Khaminwa, is wearing a blue and green pullover sweater. He has just finished another full day of legal work, much of which takes him to the courts where for years he has taken on cases the one-party state was not happy with, including those trying to promote multi-party democracy, a practice which landed him in detention from 1982 to 1983 starting before the attempted military coup of that year.

[What got him detained in 82??]

He was detained again, for a few weeks, in 1990 in connection with the attempted political rally in July of that year to promote multi-party government when the Moi regime was refusing to allow it. This was the locally-famous Saba Saba rally, meaning "Seven Seven" because it was attempted on July 7, the seventh day of the seventh month. In Kenya it is considered a political landmark. He also represented the widow of S. M. Otieno in the much-publicized burial case in which she wanted to go against Luo tradition to take the body back to the home village and instead bury him in Nairobi. The case, according to Khaminwa had political ramifications: Luo members of Parliament said they would be defeated for reelection if the burial was not done at the home of the deceased.

Older than most of his fellow human rights colleagues, Khaminwa often remarked that in the 1980s (and later) government intelligence officials would try to monitor conversations and often kept activists under police surveillance. Perhaps this was the reason that he alone of the Kenyans interviewed up to that point, did not give permission for the interview to be tape recorded. But he did give permission to quote him.

"I used litigation" to challenge state power. "I was also part of the activism pushing for multi-party and democratization."

HR TACTIC An innovative legal device using the courts

One of his original contributions to the struggle against state authoritarianism in Kenya was a court precedent which provided for “bail pending arrest.” To me the phrase sounded backward: people usually sought bail after arrest. But Khaminwa explained how this strange wording and precedent became a tool in the legal battle against repression. Clients whose activities had caught the eye of the government would come to him in fear of arrest. And arrest in the 1980s for political activists meant the risk of torture in police cells. So Khaminwa came up with a way to help his clients get bail immediately and thus avoid being held pending trial, which is when the torture would take place.

He opened an old, blue cover, spiral-bound notebook to show me the court document from a case from October 27, 1986 in which he represented a non-political client in a successful attempt to get the ruling, by High Court Chief Justice C. B. Madan, that the defendant was eligible for bail pending arrest. It was a period (late 1980s) when government repression against activists, whom the regime accused of planning to overthrow the government, was reaching a peak. “This was my contribution [to the human rights activism in Kenya], through my ingenuity,” Khaminwa said. “Very many activists benefited from it.” The activists would carry it in their pocket as a kind of safety card to avoid police custody. “They would not go through the fear they would be tortured.” He said many other lawyers also began using this tool.

[Note: the only activist he recalled by name who had benefited from this measure was Dr. Kimani wa. Nyoike, who does not appear on my master list of known activists from 1987-1997.)

Detention before the Saba Saba rally (1990): a frightening experience

Khaminwa, Muite, Kuria and a few others (who?) held a planning meeting at the home of Japheth Shamalla (spelling; get number from Khaminwa). “We decided to be involved in upholding human rights.” Kenneth Matiba and Charles Rubia had been arrested shortly before the date of the intended rally. Since the others in the meeting were more likely to be arrested as well, it was decided that Khaminwa and Shamalla would go to the police and seek the whereabouts of Matiba and Rubia.

(From the second interview). “When I reached the [Nairobi Area] Police station I met a very pleasant police officer. He offered us tea. He then said he wanted to see me along, without Mr. Shamalla. I followed him [into another room]. He closed the door behind me. I found myself facing two lines of police officers – fully armed. As I walked between them he told me I was under arrest.”

What struck him the most at the time, in addition to the fact that the officers were fully-armed, was how the officer had been in first inviting them to have tea then arresting him in such conditions. “It was the most cruel thing.”

“He took me straight to a cell, in the same building. I was searched, stripped naked. It was a bad exercise; it was something I was not expecting. It was about 11 p.m.” Shortly after midnight he was taken from that cell and taken to another office where he was served with detention papers. He was then taken to Kamati (spelling?? prison in Nairobi. (Khaminwa paused, gazed out the window at the busy street below, full of commuters heading home in crowded mini-bus taxis known as “matatus” or walking along the sidewalks.)

As he was taken to the prison, the vehicle he was in stopped. “I was really frightened; very, very frightened. I thought something bad was going to happen to me.” [Fear of death is something many human rights activists in Kenya felt at times. Attorney Gibson Kamau Kuria, for example, briefed a reporter from the Washington Post, Blaine Hardin (spelling) about a case he was about to file in early 1987 charging the government with torture of political detainees because he felt there was a distinct possibility he would be detained himself and possibly killed, he said in an interview.] Khaminwa was held for only about three weeks, kept in solitary and not mistreated. His wife, Joyce Khaminwa, was

allowed only one visit, however. He was accused of associating with subversives, including Matiba and Rubia, whom he had represented in court [when?]

Impact of international and domestic outcry?

Khaminwa – and who else? – was released fairly quickly, ...international pressure?? But Matiba and Rubia were not released for months.

Question: why (if this was the case) were Khaminwa (and others?) released but not Matiba and Rubia? By the time Matiba was released he has suffered a stroke in prison which left him partially disabled. At one point he had been forced to sleep on a concrete cell floor with no bedding (verify). He said Amnesty helped “raise the alarm” on his detention [dates? Press release?]. His wife, Joyce Khaminwa (the other half of the Khaminwa and Khaminwa legal team) also helped draw attention to the case (how?)

[Joyce Khaminwa joined the interview at this point, at her husband’s request, when I mentioned something she had done. She said that at independence, most of the lawyers were Asians. “They had a colonial mentality,” she charged. In the early years of independence, “lawyers didn’t want to touch cases against the government.” Today, she said (2002), “the younger generation [of Kenyan lawyers] doesn’t fear” the government.

TACTIC by government: deny income to human rights activists and curtail their legal work.
(See next paragraph)

Motivation against intimidation

John Khaminwa said he had always been “committed to certain values.” He had long been “opposed to what was going on: detention without trial. I had an office where the Special Branch [Kenya’s secret police] was checking who was going in and out. [Kiraitu Murungi, in his autobiographical account of his activism in the 1990s, *The Mud of Politics*, gives a similar account of Special Branch intimidation of potential clients, in an attempt to curb the income of activists and disrupt their legal work against the government. It is worth noting that at this point the government must have felt there would be less international and domestic outcry with this tactic than in simply arresting the activist attorneys.]

“We kept on doing it [challenging the government’s arbitrary use of power through court cases]. We were not scared.”

Personal sacrifice (\$)

(From second interview): Human rights work had its cost [a point Kuria also made]. “One could have lived very well by toeing the official line.” Government pressure on him meant that there were some people afraid to do business with him. But, he emphasized: “The common man never abandoned me” in spite of such pressure as having Special Branch personnel sitting outside his office and questioning people who went in.

There was a personal cost, however. His son, Arthur, was at Leeds University, in his third year but was unable to finish his studies for lack of money, at a time when the Special Branch was discouraging his potential clients. “People come to you if the government is on your side. If the government is on your side they think they will get judgments in your favor from Presidential-appointed judges who lack the security of tenure, as they did for much of the time Khaminwa was challenging the state.

A case leads to his detention and “changed this country” – for the worse
Example of negative impact from the state from a human rights challenge
[?get copy of case as he promised]

The case was filed in 1981 (decided in 1982) on behalf of Mwangi Stephen Muriithi (spelling is correct). He was the No. 2 official in the Special Branch, the government’s secret police [? Correct description?]The President had fired this civil servant. Khaminwa argued that the President lacked the legal authority to fire a civil servant. But Justice A. R. W. Hancock (check spelling) ruled otherwise. “It was a turning point [for] the Administration. It strengthened authoritarianism” in Kenya. The case had a “negative impact” on human rights. At that time, he charged, “the courts could do anything.”

(Part two of the interview: August 2, 2002)

Khaminwa has just returned from presenting his views to the constitutional review commission which was to have had a new constitution ready for consideration by Parliament before the 2002 election but was running behind. In 1997 reformists pushed hard for constitutional changes – and won some concessions from the government just before the elections. In 1997 President Moi had said elections would come before the changes. In 2002 he said, for a while, changes should come before the elections, then he changed he said the elections would be held in December, regardless of whether the new constitution was ready or not. At the heart of the constitutional issue in 2002 as in 1992 and 1997, other election years, was the question of whether the Executive would remain all-powerful, in effect above the law and able to dominate the other two branches of government. The changes in the constitution – or lack of them in 1997 constituted a kind of litmus test on how far human rights and pluralism activists had come. The answer: not very far in terms of real distribution of power, though important gains were made in some of the basic rights but in a context in which those rights were still subject to abuse by the enormously powerful executive branch in the person of the President and his appointees.

Despite his detention in 1982 and 1990, “we [he and his wife were legal partners] never changed. In that respect we have been consistent...the majority of lawyers didn’t want to touch them [human rights cases.]” Such sensitive cases were coined ‘bad’ cases. After the 1992 multi-party elections, however, many lawyers began taking ‘bad’ cases.

Tactic: multiple attorneys for human rights cases.

In some instances after 1992, six to eight (or more) attorneys would appear to represent someone in a human rights case. But Khaminwa “used to appear alone” in his early days of defending those challenging the government, in the 1970s and 1980s. Among those who later took such cases were Muite, Imanyara, Orengo, G. B. M. Kariuki, Kuria, and Martha Karua. He also mentioned Kathurima M’Inoti. [On the role of Raila Odinga as an activist he said he was not sure what he had done; neither were any other activists whom I interviewed. One attorney suggested that Raila, who contested for the Presidency in 2002, was a surrogate for his father Oginga Odinga, whom the government usually avoided arresting because of his enormous stature as the country’s first Vice President under Jomo Kenyatta. Khaminwa represented Oginga Odinga in the 1980s.]Sometimes one activist attorney would themselves be arrested, so the others would do to their defense. “We were representing one another.”

Impact of Hempstone

U.S. role. There was “no comparison” between the kind of pro-human rights/pluralism stands by former U.S. Ambassador Smith Hempstone and other U.S. Ambassadors, although some of the ones before him did attempt to advance human rights. But Hempstone “symbolized the best in an American Ambassador.

He took a position [in favor of greater freedoms].” And he took an interest in what human rights attorneys were doing, calling up lawyers to ask about the outcome of important cases. Hempstone’s impact on human rights was “very positive.” He became part of the “governance” of the country. He regarded himself as party of the country.” He encouraged people to stand for human rights. “He ate nyama choma with them [human rights/pluralist activists]. Smith Hempstone was an idea ambassador. I respected him. When we got into problems we could count on him.” Khaminwa cited the example of Hempstone granting political asylum to human rights attorney Gibson Kamau Kuria.

Other cases of Khaminwa

Represented Oginga Odinga in the 1980s.

Also represented Luke Obok, Ochien Oneko, and Oyangi Mbacha (???)

Also represented Rumba Kinuthia in a treason case and got him out.

Suggested impact of his cases:

“I enhanced access of litigants to the courts,” representing in court defendants the government would have preferred not to see there. “I was able, very boldly and courageously” to pursue human rights cases. Impact of Media

The media played a role. East African Standard, Daily Nations, even the Kenya Times occasionally “That publicity [of human rights cases] gave us protection.” [Media: Muite and others detail the TACTIC of using the media to publicize criticism of the Moi government. See transcripts.]. With the press paying attention, activists felt safer to proceed. “I felt someone wouldn’t come and do you some harm” when he was representing defendants in cases against the President. The Weekly Review, under Hillary Ngweno “helped a lot” in publicizing rights issues, and in gaining the “sympathy and understanding of the Kenyan public.” Weekly Review presented the cases, including when Khaminwa was detained.

He cited the case of an editorial written in one of the daily opposition newspapers that supported him when he was detained. The writer was fired, he said. (See tasks: Githi/Nation? 82 or 90?). “He [the editorialist] was advancing the human rights movement in this country. He was telling the public I stood for principal.”

Impact: domestic and international.

Both were important.

“We were dealing with an authoritarian state – a one party state.”

First in terms of impact, however, were the human rights lawyers in Kenya. “They sacrificed.”

Impact of Kenyan public: ordinary citizens behind human rights:

Especially in the early years, “very lonely” effort. At other times, when the media began publicizing the cases, Kenyans would “fill the courtroom. They were interested in what you were doing.” He also emphasized (repeating statement above) that “The common man never abandoned me” in bringing him legal cases, despite the intimidating presence of Special Branch personnel outside his office at times.

Changes in state behavior:

Why state gave ground in 91(with multi-party): “Donors helped a lot but national pressure was more than anything else.”

*[Note, he puts domestic pressure first for 1991 changes...and for 1997, but he attributes the 1997 pressure (see below) to the economy more than to any pressure such as demands for human rights.]

Why state gave ground in 97 (with some constitutional reforms):

(A): a poor economy. Moi “probably thought if he could get international investments and donations” he could stay in power. “When there isn’t money around, there’s no job opportunities; governance becomes a problem, security, crime...”; this was the potentially “destabilizing” effect of so many people not having jobs, education, good health. This could be summed up as “economic pressure.”

(b) The international community was changing. The Cold War ended,” he says, repeating my comment. The Soviet Union collapsed and new states emerged in the former Soviet Union and the emphasis [there] on the self-determination concept. The international community pressured the state to make changes it did not want to make.

(c) There was “tremendous internal pressure. “The majority of Kenyans wanted democratization to continue and draconian laws to be repealed.” The Chiefs Act, which gave extensive police powers to President-appointed local ‘chiefs,’ was amended in 1997 to greatly diminish those powers.

State behavior: “The government was trying to avoid creating a situation where there was a break down of law and order.” Khaminwa cited the series of mass demonstrations in 1997 calling for constitutional reforms before the elections that year. [The demonstrations were met by escalating force from the government, culminating in a government-sanctioned eruption of violence against protestors, including the clubbing and near murder of Rev. Timothy Njoya and others who were beaten or had to flee for their lives.]

(d) Pressure for law and order from activists.

Levels of state repression by periods:

87-90: “high; 91-92 “high;” 92-97. He hesitated and ended up not characterizing the period. “There has been slight improvement,” he said, then corrected himself saying “some” improvement. He said there is “appearance – and reality” and cautioned this researcher to “go behind” the appearances to discover how much progress had been made or not. . “Kenya has never been democratic at all.”

Moi’s authoritarianism

The human rights struggles in Kenya were largely against the background of an individual who badly wanted to be stay in power as President. “He’s a man who wanted to have naked power. All he wanted was to exercise power. He believed in his own strange way that he was the only man who could rule the country.” What Kenya needed all along, he said, was a “very broad-minded, educated person with a critical mind.”

On the universality vs. local concepts of human rights

Summary: they are universal.

“Africa’s ruling class will say – including Moi – that Westerners, Europeans do not know Africans. He [Moi] says this to justify the breaking of human rights. The problem with this kind of talking is that it the way the colonial government used to talk – paternalistic.”

“The concept of human rights is not an alien concept. It has roots in the African soil...in the traditional customs of Africans.” He gave this example: an accused was given the right to be heard before punishment was meted out. Africa is “fertile soil” for human rights. Those rights are universal. But those in power would like to show that in Africa they must be applied with caution. This is paternalistic.”

Khaminwa was born under colonialism. Kenya was first ruled by an imperial company. Then it became a colony under the control of a Governor, chiefs, district officers, and headmen – “autocratic

rulers.” After independence, the “same kind of administration” rule, though this time under African control.

[As he continued to talk, he climbed with some difficulty up on the top of his desk and reached up to lock a high window opening to a ledge alongside his first floor office.]

“The President was given power like a chief. From the outset he was not democratic at all.” The Mau Mau struggle was over land as well as political independence. The fight was not for human rights the way it was carried out in the 1980s and 1990s. “There was not much emphasis on individual liberties.”

Second liberation (a term used by human rights activists in Kenya)

The so-called “second liberation” of Kenya placed emphasis on human rights, individual rights.

[How do Kenyans date this second liberation?]

First liberation: kicked out the colonialists: the issues were land and political independence

Second liberation: “upholding fundamental human rights.” It began in the late 1970s under Kenyatta.

[He puts on his jacket over his sweater. It is dark outside now. The church singers on the sidewalk below have finished their recruitment exercise. The streets are no longer crowded but are considered unsafe for walking at night. He has a taxi waiting below for him to take him to his home in Karen outside the city.]

“Legal ‘terrorists’”

This is the term to use, he emphasizes, to describe the attorneys in Kenya who fought the state over human rights. It was used by a journalist.

They had definite strategies or tactics. They would meet “almost daily” in the office of Shamalla, with Karua, Gibson, Muite.

The day Matiba and Rubia were arrested they held a meeting at the home of Shamalla with Muite, Kuria, Khaminwa. They discussed what to do to help them. Muite and Gibson had been very vocal in the criticism of the state and the group feared they would be arrested if they went to the police to inquire about the two men.

TACTIC example: Rumba Kinuthia, Koigi and Mirugi, were charged with treason (verify and dates?) (Unclear explanation). The attorneys apparently would come as a group and defend the accused in political trials, standing up to make their points (he shakes his fist as he speaks)

*idea: anti-government demonstrations and the government’s response provided a measuring stick for the level of repression in Kenya except in cases where the protestors first turned riotous. But the riots usually (always?) followed use of brutal force by the police and other security personnel.

End of interview