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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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Location of interview: Nairobi, Kenya; Law Society of Kenya office.

Date of interview: August 12, 2002.

**Interviewee: Mirugi Kariuki, Kenyan member of Parliament; human rights attorney and human rights activist. He later became an official in the government when the opposition won the presidential election in 2002. He died in a plane crash while serving in that office. He once had to hide in a charcoal delivery truck to sneak into an election office to register as a candidate for Parliament when police were trying to block his registration.**

**Note: BP =interviewer (Bob Press); MK = respondent/interviewee Mirugi Kariuki. The interview was tape recorded. Transcription includes bracketed research notes and occasional tape counter numbers made by Bob Press. The double ?? indicates something was not clear on the tape or uncertainty of spelling.**

Interview in LSK office August 12, 2002

(Tape one, side one and two transcribed by Kaari)

Tape two, side one cont. of interview, transcribed by Bob Press)

**BP** What were the specific actions you took between, say 1987 to – it can be, in your case, it can be slightly before that – up until 1997, which were designed to advance human rights in Kenya?

**MK** I think I'll go back to 1982 which was the peak of repression after Moi had assumed the power. In 1982 a number of journalists were arraigned in court, among them is the late Wang'ondu Kariuki, who was working with *The Viva Magazine*, and I took his defence in 1982 – this is well before the attempted coup – and he was the first case of sedition to be convicted.

**BP** Could you spell his name, please?

**MK** Wang'ondu Kariuki. W-A-N-G-O-N-D-U, then Kariuki, just like mine there.

**BP** No relation?

**MK** No relationship, but he was a good friend of mine. I must say, when I finished my law course and before I settled down in Nakuru I shared a house with him.

**BP** (interrupts) What was the publication?

**MK** That was 1976. The publication, he was alleged to have published a seditious document called **PAMBANA – The organ of December 12 Movement**.

**BP** It was a "Mwakenya" publication, allegedly?

**MK** No, no. "Mwakenya" had not come into existence. That was pre-"Mwakenya."

**BP** So he was alleged to have published an article in PAMBANA?

**MK** He was supposed, he was alleged to have been in possession of a seditious publication namely, **PAMBANA – The organ of December 12 Movement**.

**BP** Was he found guilty?

**MK** He was found guilty and sentenced to 4 ½ years imprisonment.

**BP** Did you suffer any consequences for having represented him?

**MK** Yes, that's why I went back to 1982. I was at the same time, myself, involved in politics in 1982, because one of my good friends, Koigi wa Wamwere, who was a member of parliament, then, was detained in the aftermath of the attempted coup in August 1982. So there was a by-election in his constituency – that is Nakuru North constituency – and I was asked to contest. It was a one party state, of course, and I contested among many other candidates.

**BP** In '82?

**MK** '82. November.

**BP** For parliament?

**MK** Yes, for parliament.

**BP** ??

**MK** I took part in the by-election of November 1982. But before I could even get cleared Moi had already talked about me as a person who wants to take over the mantle from Koigi, and I was allegedly more subversive, according to Moi, than Koigi. And actually warned me in public that he would take very severe action against me. That did not, however, discourage me. I went ahead, presented my papers, they tried to arrest me before the presentation of nomination papers, but somehow we managed to evade the net and I presented my papers. The truth of the matter is that I won that by-election with a huge majority. But it was a very unusual by-election because Moi summoned all his district commissioners in the republic, ostensibly for a seminar at his Kabarak home. And it turned out to be the returning officers at all the polling stations for that by-election. And these are people who had already polished the art of rigging. So they rigged me out, but I had clearly won and the people knew that I had won. So 1983 there was a general election, (to have Parliament??) dissolved in the aftermath of what you call 'the traitor issue,' when they said that Njonjo was a traitor. So Parliament was dissolved, and I offered myself again for the general election, the same constituency.

**BP** Which is? Nakuru?

**MK** Nakuru North.

**BP** OK.

**MK** Which has now been sub-divided into 2; that is Subukia and Rongai, today. There are 2 separate constituencies. But that is where Moi's backyard is. The significance of Nakuru North was that that is Moi's residence. And that's why he was interfering with the elections because Kabarak was in Nakuru North.

**BP** So you were running to be his \_\_\_\_\_

**MK** \_\_\_\_\_ to be his Member of Parliament. And I think that is why even he detained Koigi, for the same reasons, because Koigi was his MP. So we had that election again.

**BP** Koigi was his MP; were you trying to replace Koigi?

**MK** I was trying to replace Koigi because \_\_\_\_\_

**BP** Were you running against Koigi, then?

**MK** No, Koigi had been detained without trial by Moi. So it was declared vacant because the Member of Parliament was detained. Koigi was detained by Moi in 1982, in the aftermath of the coup.

**BP** That's when you ran.

**MK** That's when I run; by-election. That was a by-election. Now the general election came in 1983, and this time round I had serious problems presenting my papers. First there was a meeting at Uhuru Park, and Moi talked about me in public,

and said that they are going to clear people to contest for elections, but he must warn me specifically – he mentioned Mirugi Kariuki – “I must warn him, this lawyer, that if he’s going to talk the way he talked last year,” he’s referring to the by-election. “That if he goes to Parliament he’ll cause release of all detainees. We’ll not clear him.” Because I said that in 1982, that my first priority will be to fight for the human rights of the detained persons. And I’ll be calling on the government to release all political detainees. So that was my agenda in the by-election. So Moi talks about it and he said he’s warning me, if I repeat it now, I’ll face the consequences. This is an Uhuru Park meeting. He’s addressing the whole nation and calling me names, and saying, who am I to call for release of detainees. So what they did is we went for the clearance, a KANU clearance. It took place at night because there were very many people from all over the republic to be cleared. And I appeared before the party treasurer, the late ole Tipis. So after calling all the people in I was the last one for Nakuru\_\_

**BP** \_\_\_ with a big moustache.

**MK** Oh, aay, that fellow. I was the very last person for the Nakuru candidates, and so he asked me, he told me, “Here is your clearance certificate.” He didn’t think that I’d look at the document. I looked at the document, the clearance certificate to contest election, and I noticed that it had not been signed. It’s supposed to be signed by the treasurer, and/ or the president. But I told him, “This is not signed.” So it was a trick to make sure I go with unsigned document and they will reject it on the nomination day. So he was quite put a-back that I was so alert and then he told me, “You have to wait.”

**BP** It had to be signed by KANU Treasurer?

**MK** Treasurer.

**BP** And the President?

**MK** And the President: the clearance certificate. Mine was not. So this was almost midnight. So he tells me, “You wait out there.” And I had to wait for about 45 minutes. And he called me in. He was quite sympathetic, in a way. He told me, “You must be a very keen lawyer. How did you know we had not signed?” Meanwhile he was talking to the President in those 45 minutes. Then he asked me certain questions. “These are the allegations made against you; you are sponsoring other candidates, yes, you are working for the downfall of the government, you are anti-KANU, and so forth. So many questions he put to me. And he said, “I have to warn you very strongly. I have been talking to the president of the party, just now, and we have decided, OK, we are going to sign this. But I must warn you, you could face dire consequences if you misbehave.” Finally he signed.

**BP** Did you need the signature of the President, too?

**MK** You know they were blank. He pulled another one out. He signed the proper one, now, with the proper signature.

**BP** But it still didn’t have the President’s signature.

**MK** He has both, but mine was blank.

**BP** Oh, he had some with the President’s on them

**MK** He had blank ones. He receives money and signs. Moi has already signed.

**BP** So then you had your signatures.

**MK** I had my signatures, the documents were proper, so I left for Nakuru. A good friend of mine in the Special Branch, the intelligence department, told me, “The game is not over. We have been instructed to come and arrest you before the nomination day, two days away. So make sure you put guards in your house, don’t allow visitors even if they are policemen. Lock it up.” He was very sympathetic, the intelligent

officer. And sure enough, that evening they were there, trying to say, “We are his friends, we are trying to come to his house.” He even gave me the number of the registration of the vehicles that would come. It turned out to be true. He was a very useful intelligence officer. So – and even the following morning what they did, I didn’t open, and they were told I’m not there, they went and arrested my brother. It’s a long story. So they said, “We are police officers, and we have arrested his brother, and we are very sympathetic. We would like him to come and talk to him here, outside the gate. So they were told clearly, I was not there. My brother was supposed to be the bait for me to come out and they affect arrest on me. So I declined, so I managed to go through the neighbours’ door and got away.

BP Did you climb over a wall?

MK Yeah, I climbed over a wall to the neighbours’ compound and a friend was waiting for me outside the neighbours’ gate, the other side, the opposite road. And they drove me out of town. This was on a Thursday, the nomination day is – no sorry, this was a Friday, the nomination day is Monday. So I got out of town. I went outside, in Nyahururu, completely about 60 kilometers away from Nakuru to stay in a friend’s house. And I came back to Nakuru the previous – they were still looking for me the whole weekend, to arrest me before I present my papers. And even on Monday morning they were there. They put a whole net of police to catch me.

BP You have to, in Kenya, to present physically your papers?

MK Physically! You must be there. Not through an agent. So they hoped (I’ll??) get me before. And the person to receive documents was then the District Commissioner. There was no Electoral Commission. And the District Commissioner is the chairman of the district security committee.

BP Yes, I know. Throughout the whole state. And it’s still the same.

MK It’s still the same. So I got very good friends. They managed to put me in an old vehicle which was supposed to deliver charcoal to a blood donor office near the DC’s office. That charcoal store near the blood donor, whatever they were using the charcoal store for.

BP The charcoal truck? Lorry?

MK No, no. A pick-up. I was inside. And it’s got a tent on top. So they were told\_\_

BP So you were inside among the bags of charcoal?

MK I was behind. But I had a lawyer who sat in front with a driver.

BP Under a tent? You were under a tent.

MK Yeah, I was under a tent with the bags of charcoal. So they said, they told police – because there was a police dragnet there, we couldn’t pass through – they said, “Oh, we’re just delivering charcoal, here at the blood donor.” They allowed, they didn’t suspect anything. So they drove in the reverse, I got out,

BP The police roadblock was set up for you?

MK It’s a friend of mine who set up this.

BP I mean, the roadblock was set up to stop you?

MK Stop me, to arrest me. Round the place, it was ringed up.

BP So what happened?

MK So I got out. They (thought??) the charcoal: so the charcoal is off loaded. But in the charcoal store there is another door. (Two other door??) and you reach where the DC is. Somebody in the council offices, a sympathiser arranged it. So they dropped me out,

BP There’s a back door, in other words to the charcoal store?

MK Yes, yes.

BP You went in the front door\_\_

MK Charcoal store has 2 doors. Front, and another one there leading to offices.

BP So you went in the front door\_\_

MK They reversed the vehicle.

BP They reversed it so you hopped out.

MK So that the charcoal is off loaded. So nobody sees what's being off loaded.

BP Right. Oh, my gosh!

MK So I was off loaded.

BP I never heard this (??)

MK They closed the door, and they drove away.

BP And you were inside the charcoal store?

MK Yes. In the charcoal store I've got my bodyguard, a strong fellow, and then the lawyer was in front. So we were three people now. We marched to the DC through other three doors inside and the DC just found us right there. And he's shocked. He said, "WHERE DID YOU PEOPLE PASS!" And,

BP You presented your papers.

MK The intelligence officer who had told me they would arrest me was there. He said, "Bwana DC, it's not our business how they came here. The point is that they are before us." The intelligence officer advising the DC: why don't you deal with them, they are here! So the DC was furious. He said, "And what is that stupid policeman doing out there? Where did he pass?"

BP So your papers were presented.

MK Presented. He told me, "Present your papers to the DO. 1" The DO 1 today is a DC, I think, in Embu. He's called Makumi. A very nice (parting present??) with the DC. They cleared my papers very fast. Meanwhile the PC had sent a word that the police officer in charge of the security outside had failed. So he was very furious

BP (I can leave it on??) I'm just curious. It's such an interesting dramatic story. I don't want \_\_

MK You can leave the fine details

BP No, but I don't want to miss a detail. The charcoal store's here, the DC office's here. Did you, like, \_\_

MK (??)They brought\_\_

BP \_\_run out in front?

MK This is the old town hall, the town hall. The DC's office is here, security wise, it's not very good. They use the municipal hall. Now this municipal hall there are roads all round, and the police are (round, round??). Now the blood donor store is here. There's the blood donor office, there's the charcoal store. All these are offices\_\_

BP These are all under one roof.

MK Under one roof, under one roof. The DC is somewhere. So you have to come through a door, another door, another door, and you reach where the DC is.

BP And so you did that.

MK I did that. And there I am now.

BP It's not easy to get(??)

MK It wasn't easy, but I had very sympathetic friends.

BP Did you win the election?

MK That again, another rigged election. But this time I think even the votes were much higher than the by-election, by far. They said I lost by 500 votes. The truth of the matter is that I had won by a much, much higher margin.

BP What evidence do you have of that?

MK Because in 4 polling stations we found the police burning ballot papers. You know, they close during lunch time. Polling stations are not supposed to close. They

closed, chased away agents. And they came out, the polls, the ballots that had been cast were removed, and they replaced them with ballots stuffed up in new ballot boxes. So we found the burning\_\_\_

BP You saw that?

MK We saw that, yes! Of course they were armed, and they were very violent. And we found them burning this old lot, the one they took from the polling stations. They were burning them. It was just as crude as that. It's very crude form of ruling, (ugly??) by a form of violence. So I did get, in that election, 12,500 as opposed to 13,000 of the alleged winner. This is the same person they rigged for in the by-election. The point is, he had given the ethnic factor here is that the winner was a Kalenjin, a nephew of Moi.

BP A nephew?

MK Of Moi.

BP Do you remember his name?

MK Francis Koima Kimosop. 2 years down the line he committed suicide. He didn't finish. Moi put him under a lot of stress he committed suicide. Despite the rigging. Anyway, after the elections, now when the story now comes, is after elections. So, just on the nomination day, after nomination – I didn't complete the DC story. I go out there, now. I've presented my papers. The DC has already ordered the police officer to arrest me, and he's calling him names: that, "You're useless, you let this man in," and I couldn't stop him. So the police officer, the provincial police – the provincial criminal investigation officer then arrests me and takes me to his office. And he's furious. So was I. And, "Tell me, where did you pass? You want me to lose my job?" He was literally pleading, "Where did you pass? Now I'm going to lose my job for not arresting you." And so finally they locked me up. They bring then this brother of mine, the one they had brought to try and lure me out of the house. And \_\_\_

BP What's your brother's name?

MK Samuel Gakinya Kariuki.

BP Is Samuel Kariuki enough, or should I use the middle name?

MK 'G,' just put 'G.' So, then we were arraigned in court. Well, the DC had no choice than to say I am properly nominated, but I have to face criminal charges. And the criminal charges they brought was that I signed a false agreement between my brother's companies, the company he was leading, he was chairman of a land buying company, and a surveyor – something like that. So they actually got the Indian surveyor \_\_\_

BP So they made criminal charges \_\_\_

MK Criminal charges, trumped up charges, which they never prosecuted. And then after that they dropped them, after elections, and I filed a civil suit against them for malicious prosecution. And the day they were – the newspapers carried a (splash??) story that I've now sued for malicious prosecution, and that they were trying to use the criminal charges to justify their attempt to block me from \_\_\_\_\_

BP In '83?

MK That is '84, now,

BP '84?

MK Yes. The elections were in November '83. Now, then they arrest me one morning. I ask, "Why are you arresting me?" "Now, you know the story in the newspaper." So they then charged me with unlawful communication with a prisoner. That's how now the Wang'ondu story comes in. The prisoner is no other person than the client I represented in 1982 sedition case of the journalist. They say I've been in an unlawful communication with a prisoner. I am his advocate. I am appealing, I see

him in prison, he writes me from prison. So they came, picked that file from my chambers, and they say, "We're now charging you with unlawful communication with a prisoner."

BP Did you win that appeal, by any chance?

MK What?

BP That appeal, did you win it? The appeal, for this journalist? Was that something that you won or lost?

MK Now, the appeal is still pending, that time. They remand me and I find him in prison.

BP So you saw him in prison because you were imprisoned?

MK Yeah, and I get (now together??). And you see, to just cup the humiliation, they put me in the same cell with my client. So they actually – they tried me \_\_\_

BP Were you considered a detainee at that point or were you \_\_\_

MK No, no. Just charged. Charged with unlawful communication with a prisoner. Charge number 2: being in possession of government stores. The government stores story is \_\_\_

BP Were you convicted?

MK I was convicted

BP You were convicted?

MK I was convicted, sentenced to 8 months. I appealed and within 3 months the appeal had been argued – within 2 months – the appeal had been argued, before now retired Chief Justice Cocker, and this other judge they dismissed called Togbo(sp), the Nigerian.

BP Oh yeah, I think he was still here when I got here.

MK Yeah, that ???. So they had their appeal. And what happens? Cocker disappears. Delivery of judgement was supposed to be done within 2 weeks. It was a 2-judge appeal. And then I kept appearing before Togbo(sp) until 5 months expired. That was I was due for release. And out of the blue Cocker surfaces, on the morning of my release, official release, they read judgement to acquit me. So I was acquitted upon completion of the imprisonment. Of course I got the remission. So I served 5 months. But the morning – I was already at home when they were reading judgement. I was released at 9 o'clock, they read the judgement at 11 o'clock that morning to say there was no basis for conviction and they threw out the conviction.

BP 5 months.

MK I had already served – yes, 5 months.

BP 5 months for good behaviour.

MK That's now '85, 1985, now \_\_\_

BP Let me jump ahead just a minute because I want to look at what actions you consciously took to try to advance human rights.

MK First I think they didn't like my court litigation. I was involved in a lot of judicial review applications, pushing the decisions of the District Commissioner in land matters, regulation review actions – in a way acting in excess of their powers to grab land from individuals. And I had quite a number of successful applications \_\_\_

BP '85 – '87 maybe?

MK First '81 – '81 all the way to '85. Even Moi talked about these things; "how can a court overturn a decision of my DC?" So these are the areas that he was quite unhappy about.

BP He said, "how can a court overturn a decision of my DC?"

MK "of my DC," yes, started blasting a judge – there was a very good judge, there. So, the other thing is, through my political activism of course, calling for release of

detainees and all that made Moi quite unhappy. My association with the progressive journalists like Wang'ondu Kariuki, whom he had jailed. Politicians like Koigi, and generally speaking out about the abuses of rights \_\_\_\_

BP How did you speak out?

MK It would normally be, either issue press statement, or by presentation of some of the most unpopular clients, judged with political offences, generally. So it's really like anybody charged with a political offence would come to me. So that perception that I sympathised with anti-government \_\_\_\_

BP Without going into too much of the details of the unpopular cases that you represented, could you give me an idea generically, of what kind of cases you're talking about?

MK The judicial review cases basically related to land, where \_\_\_\_

BP Challenging the DO's decision to \_\_\_\_

MK Yes, transfer of people's land without the consent of the (\_\_\_\_??)

BP Land grabbing.

MK Yeah. What they did – you know, we have a law here. No agricultural land can be transferred without the authority of the land control board, and without the consent of the owner of the land. So what the DC here would do is abuse his power. – he is the chairman of the land control board – issue consent when the owner has said, “I'm not selling.” And he'd try to transfer your land to a 3<sup>rd</sup> party by force. And we challenged this abuse of power; he acted in excess of his jurisdiction, under the statute. So severally the court would uphold me and quash all those transfers of land.

BP Court would uphold you \_\_\_\_

MK And they're just not ordinary transfers, they're just well connected individuals grabbing land from poor people.

BP From the poor to the rich.

MK Yes, poor to the rich. And I think the end, of course, this person from whom the land is grabbed for, are good friends of the President, the establishment. So that rubbed them the wrong way.

BP So you were basically a pain in their butt, and a kind of a thorn in their side.

MK Precisely because of my professional work. They didn't like it. I think they even got more angry when I got into political activism through the campaign. You see, now I'm taking another turn.

BP So when you were detained in March 198-, or December –

MK '85 March to August I'm in custody, acquitted on the day of release.

BP Right, but you were, in 1987 \_\_\_\_

MK Now, '86 Moi started again. That's when this fellow commits suicide, the MP they rigged for early '86. So meanwhile Koigi is out of detention. He's contesting, and I also express my desire to contest, but it was a trick. I didn't want to contest. They knew that when both of us say they want to contest, they'll clear us so that we can divide the vote. So they cleared, in fact the trick worked. They cleared us but I did not present my nomination papers. I left it for Koigi to go to the by-election. But then the public attacks were not on Koigi. It was on me. So Moi kept saying – and this is the crackdown of Mwakenya, (remember??) '86, it had already started. And the by-election is coming somewhere around June/July. And Moi kept talking about me. They did 3 searches in my house, on Moi's orders that the police must find out what I'm doing. 'Cause I'm a dangerous lawyer. So they'd come, search my house without a warrant, turn it upside down, take my books. When on those 2 occasions they never affected arrest. They said, “Oh, we didn't find anything subversive.” We had learned to be alert because the police coming to my house, must declare what he has in his



body, because they really put those papers and dumped them in the house. So finally the crunch came in December of '86, 9<sup>th</sup> of December. They find me – I'm arguing a matter before the judge in chambers, and a police officer comes in, intelligence officer so, I finish one matter, I'm going to the next. Another lawyer mentions the matter, so he calls me aside. He said, "We have your urgent message here." So I went to find out what this urgent message is. As soon as I was out of the judge's chambers – I left my books there – they dragged me into their van and that was it. I wasn't to come back to that court until 1989. So they took me to detention from court.

BP From the court?

MK Yes. They brought me to Nyayo House, here, and so you have the story of Nyayo House. 11 days, torture.

BP So that is accurate?

MK This is the story, now. This is accurate. 11 days is correct. And from 21<sup>st</sup> of December I'm taken to detention, from Nyayo House, through the provincial police office, served with a detention order by Kilonzo, the late Kilonzo, former Commissioner of Police, and the standard document for detention of course, was being involved in utterances and activities intended to undermine the good government of the Republic of Kenya.

BP Did they accuse you of being a Mwakenya.

MK No. That's the statement. The (??) statement for detention. Being involved in utterances and activities intended to undermine the good government of the Republic of Kenya. No particulars were given. I filed a suit to challenge the detention order, I also filed a suit to challenge my detention.

BP That's the same thing, isn't it?

MK A suit to challenge the torture.

BP The second suit is for the torture.

MK The other one is detention, yes.

BP How did you get a message to Gibson?

MK Yes. In Nyayo House I met a very sympathetic police officer. He was a Mkamba, a very nice young fellow. So one evening he's there alone; his colleague went away, because you know, they check on each other. So he had the key and he came and opened the cell. And we had a little chat. And he locked all the doors. And so he told me, "What do you intend to do?" I told him, "Well, I would really like somebody who can file Habeas Corpus for me. 'Cause this is really inhuman and is against the law. And he said, "Can you trust me?" And I said, "Well, I'm prepared to take a risk. Can you deliver a message if I want it delivered?" He said, "Yes." And I wrote a note. I wrote a note to Gibson. And I asked him to get in touch with my wife; file a habeas corpus quick, I am in serious trouble.

BP Did you mention the torture?

MK Yes, and I told him, "This person will give you the details of the trouble." I didn't mention. But he was a very good officer. He actually went to see Gibson with the note, and briefed him with very good detail. He became our mutual friend even after detention.

BP But that is the man who then was able to detail the fact the kinds of torture that was involved?

MK Yes. I was to meet Gibson later. He then, with that information, he filed an affidavit, a habeas corpus, they went to court.

BP I'm familiar with the affidavit, but what I'm not familiar with is how Gibson knew how you were being tortured. Was that individual then able to bravely take that information and pass it to Gibson?

MK For habeas corpus purposes that was the individual.

BP That's a brave person, in those days.

MK Very brave.

BP I mean there are some unsung heroes that you don't hear about.

MK Very brave person. But then, habeas corpus thrown out and I was taken to detention.

BP Let me ask you a question. (*No record of question*)

MK The habeas corpus had been filed, and it was going to be argued tomorrow. And he even told me 1<sup>st</sup> part had been argued before the second part could go, they served me – moment it was filed they wrote the detention order, dated 21<sup>st</sup>. And habeas corpus was filed on the 19<sup>th</sup>.

BP I don't understand. You had a detention order filed before that? They were just holding you \_\_\_\_

MK They were reacting to the habeas corpus. As soon as they filed, they signed the detention order, even before the arguments could be concluded in court.

BP When habeas corpus – Gibson was arrested when he presented the papers, or when he \_\_\_\_\_

MK No, he wasn't. Not that time. That's another story. The habeas corpus, he was allowed to argue it, and it was thrown out. I'm then detained. And (??) was my detention, and he wrote \_\_\_\_

BP Were you brought to court, though?

MK No. I wasn't brought to court at all. It's Chunga who was doing these stu..., such things. Now he's Chief Justice, pretending to dispense justice. It's terrible. So anyway, so I'm detained, and in February Gibson applies to be allowed to see me.

BP February '88?

MK '87.

BP Oh, '87, you're right. 'Cause I arrived here in mid '87, and it had happened just before that.

MK Yes. So detention is in December. Now February. I meet Gibson. I'm taken to the Detainee Review Tribunal, and I meet Gibson. So I brief him about the whole story of torture in detail. And I instruct him, "You must now file suit. First challenge my detention, it lacks particulars and the law says it must have particulars. It must be specific to bear ground for detention." So he went and wrote a demand letter and he said at the expiry of the notice he'll file a suit. So we went to the tribunal with him, and within a week Gibson himself was a detainee.

BP Within a week of presenting your \_\_\_\_

MK Representing me in the tribunal: detainee and instructions to file suit for torture and question my detention. He actually went and wrote the letter immediately. They arrest him, they detain him.

BP Within a week of filing the complaint about the torture,

MK the torture,

BP the detention

MK the detention, Gibson is arrested. And he himself is served with a detention order. So, that's really it, you know, until June '89. The rest is really details about detention, or whatever it was.

BP I don't want to minimize that, but I have some information on that and I think it's extremely important, and that's why I'm taking – I'm looking you up because of that in part. But also, after June '89 was there any additional things: and that's where I'm a little weak on not knowing exactly whether you continued to (??) on human rights.

MK June '89 we come out. My first reaction was to condemn detention without trial. You can get old newspapers of *The Standard*, - *Times* also wrote – and there was some reaction that I was not remorseful. One of them from – a lawyer in Nakuru who was apparently the chairman of Rift Valley Law Society – saying how can I react like that instead of thanking the President, I'm blasting the government for my detention. The other one was from Njenga Mungai, former MP for Molo, saying, that I should thank Moi for releasing me. That kind of thing. But I stood my ground. I said I have nothing to thank Moi for. I demand, I'm going to pursue my case for damages on torture and I'll not give up. Of course they thought I was crazy that time because there was high level of repression. So, 19—

BP That's right. The dynamics of that year were, there were still a lot of bad things going on. Were you the last detainee that was tortured?

MK Yeah. That is 6<sup>th</sup> of June.

BP No, I mean \_\_\_\_

MK There was no other detainee in prison when I came out.

BP You were the last one out.

MK Yeah.

BP 'Cause if I remember correctly everyone was released earlier except the 3 of you.

MK Yes, and then of the 3 of us, they were released on 1<sup>st</sup> June, Wanyiri Kihoro and Mukaru. And of the 3 which had been left (??) it was only myself.

BP You came out 6<sup>th</sup> of June?

MK Yes. But some of the people I were with earlier, who had been released with Raila group in '88, one of them, Magina, is (??) again. You know they were released, detained again. They were also released on 1<sup>st</sup> of June. Second detention. I was still continuing.

BP Well, I'm glad you mention it because what I don't really \_\_\_\_

MK Because we filed a suit, and I said I'll never withdraw my suit to challenge my detention. So when they were released the excuse Kilonzo gave to the press was the 3 detainees who were left have a case against the government, that's why they were not released.

BP I remember that.

MK So, June (??) come out, there it is, and there is this now momentum for multiparty-ism. We had several meetings here, in Nairobi. Gibson, Paul Muite and a group of other lawyers, who were also campaigning for Paul to become chairman of the law society. That's about, now September/October/November of '89. Elections were, of course, rigged, the law society elections for the first time, so – and then we pick up the momentum for multiparty-ism,

BP Who was the winner in '89?

MK You know the results come out the following year. It was Ojiambo. Fred Ojiambo. He refused to release the ballot papers to those against him. So only his favourite got the ballot papers.

BP And Gibson challenged that thing.

MK And he produced – Gibson produced his own papers. And he said we're invoking the document of \_\_\_\_

BP 1989 was election year for the LSK?

MK Yes. So that's when he was releasing papers evoking the (adoption??) of necessity.

BP I don't know that you did anything since you're release other than statements in favour of multiparty, but in fact those statements were important during the time because multiparty was still very much condemned at that time.

MK Yes! Condemned and you'll be arrested and a lot of fear, of course. We used to meet in Paul's office, quite often. Of course after my release the other thing was my treatment, which was also very important.

BP Your treatment?

MK You know, they ruptured my bladder. For the time I was in detention, oh, I used to use a catheter to pass urine. So the Lawyer's Centre for Human Rights in New York and another group – I couldn't get a passport 'cause they had taken away my passport right from '82 – so they had to send doctors here disguised as tourists.

BP American doctors?

MK Yes, American doctors.

BP In 1989, when you came out, you mean?

MK '89, yes, yes, '89. They came here, Nairobi Hospital and we were not sure of our doctor friends here, but Paul's wife was very instrumental in arranging – you know, she's a doctor – and even the doctors we used here never got to know my name. One of the nasty experiences in early detention is the failure to get a doctor to carry out surgery on me. It's another long story, I think. So the medical profession was really compromised. We didn't even give my correct name. We used \_\_\_\_

BP After you are out give me, so that there will be no problem.

MK So we went to Nairobi Hospital (??) 'cause if they knew it was an ex-detainee they'd got scared. So we got one fellow, his name (??) as a consultant, Baraza, he's still in Nairobi Hospital. He came to understand politics much later when his father, himself, was incarcerated in this crackdown in Western Kenya. That time he was still very green in politics

BP I remember the atmosphere because I was here.

MK So we didn't tell them my name, so Paul's wife gave them a false name. 'Cause if they got my name they'd say, "We won't treat this one." So the doctors, we befriended them. They said, "These are professors from the university in America, practitioners. They just want to know what you are doing and they have a patient here. Can you do this with them?" They actually got into the hospital, disguised as visiting, you know, \_\_\_\_

BP Tourists.

MK No, professors. But they (??). They came with their equipments and everything, with the surgery in Nairobi Hospital. I don't think the management ever got to know. 'Cause they would have been scared.

BP Your action was legal action, as I understand it. You didn't lead demonstrations, or join demonstrations, but you did publish some criticism. You had some statements that you gave to the press.

MK Yes, but also you know in 19--; all the way I've been involved in politics from '74, campaigned for Koigi \_\_\_\_

BP This is from '87 to '97 (??)

MK '87 I'm in.

BP I know. Do you want to sum up? You know there are all these other questions that I have (??)

MK I see, maybe a long way. So then it ends up with the multiparty campaign, now, in the early '90,

BP Yes, but did you take part in that campaign?

MK Yes!

BP What did you do?

MK We were meeting as lawyers, and this started with the campaign to place Paul as the chairman of the law society.

BP Oh, OK. You campaigned for him to the chairmanship.

MK Yes. And more than that, we campaigned – we were the very first people to urge for multiparty-ism, other than Rev. Njoya, who also worked close with us. Politicians had not come into it.

BP How did you advocate for it? In terms of public statements?

MK Public statements and publications.

BP In the newspapers?

MK Yes. We used to meet and issue a statement, a collective group. This is a group of lawyers.

BP OK. As a group of lawyers. Was that in the name of the LSK, or just in that group of lawyers?

MK We lost the leadership of LSK in the rigged elections, but we continued to meet.

BP A group of individual lawyers,

MK A group of individual lawyers.

BP Not acting on behalf of LSK.

MK No, no, no. We were not in leadership of LSK. LSK was already in the hands of Moi, the leadership of LSK.

BP Was there 4 or 5 of you issuing the signed statements or press releases or what? Muite would be one, Paul would be one.

MK Paul, you know, is the one who got Matiba and Rubia on board, the multiparty. The statements were issued in '90. And it is Gibson who crafted the statement (he??) just went to sign.

BP So Gibson wrote the statement?

MK Wrote the statement,

BP Or more than one?

MK That splash one, which they went to present, remember, if you recall those days?

BP In November of '89?

MK Not November '89. These fellows came in about June. This is May/June '90, when we got politicians – they were the first politicians to come openly to advocate multiparty.

BP Gibson wrote a statement in mid '90?

MK About May; April/May.

BP Who signed it?

MK Matiba and Rubia..

BP Oh, OK.

MK It was not their statement.

BP Oh, I was there for that press conference.

MK It was not their statement, \_\_\_\_

BP But I was referring to you, and your own contribution. You're very modest about it, so I have to draw it out sometimes. But in \_\_\_\_

MK This was collective effort.

BP Yes, it was. But by that collective effort there were some public statements that you gave, right? Did you make any statements to the press? I'm just trying to find out what kind of contributions people made.

MK I can't possibly remember.

BP No, no, no.

MK I can't remember. I've issued many statements. I can't remember which specific one.

BP No, it's not necessary to remember the details, but there were, like, press conferences. We used to go to press conferences all the time. I don't remember all the people who were there, but \_\_\_\_

MK Now I'm in Nakuru, so my statements will be individual.

BP OK, because that's one of the other things that I'm trying to show. That actually in the early years, as far as I can tell, the people who were pushing for change were doing that on the basis of their individual – own individual contributions.

MK That's right.

BP It wasn't through the safety or comfort of a large organization.

MK They couldn't get people to work with. There were very few people you could work with.

BP I know. That's the point I've been trying to bring out.

MK And you see, like now, our association with Gibson was inevitable because he suffered his fate because of me. And then after his detention it's Paul who went to court to file his habeas corpus. So at least we had some common background, in terms of what we went through.

BP There was a whole chain, like a relay, and an amazing story, you know, and you were part of that.

MK That's right. So, I can't specifically point out what we did in the early '90's save for those collective efforts. But Saba Saba then came, and this crackdown on this Saba Saba

BP In '90.

MK In 1990. All the people in Nakuru \_\_\_\_

BP Would you be able to describe, in your own assessment, any impact that your actions to advance human rights have had on state behaviour?

MK Well, I was coming to Saba Saba. They arrested nine hundred and fifty people in Nakuru.

BP Nine hundred and fifty?

MK Nine hundred and fifty. And this was a night trial. I came to court at six, only to find \_\_\_\_

BP 1990?

MK 1990. Saba Saba. The crackdown. Terrible in Nakuru. So somebody calls me at 6. And they had just been put into lorries. 'Cause they called magistrates the whole night to come and try them. Night trial.

BP In the courts?

MK Yes, in the courts. So they were all put in custody. 6am, and I found the whole exercise is over. Nobody was given bond. But I was the first person to apply for bond. And (??) it was declined. We went to the high court. It was really quite a hectic exercise. The judge sometimes kept postponing the ruling because there was a lot of pressure not to release anyone. But once we got the first bail \_\_\_\_

BP Were these people convicted that quickly?

MK No, no, no. They were just denied bail. So we're applying for bail.

BP Arrested, denied bail, overnight.

MK And they were tried unofficial hours 'cause the whole night from 9pm to 6 \_\_

BP These are just bail hearings, right?

MK Bail hearings, but they're not supposed to take place other than during the official hours.

BP Kangaroo court, we call them.

MK Yes. So the first case of bail, I managed to get through, and subsequently they got everybody else out.

BP You did get somebody out?

MK All of them, finally.

BP You got them all out?

MK Yes, all out, finally.

BP Were you working with a group of lawyers?

MK No, single-handedly. Nobody came to my aid. You know, they thought I was courting trouble.

BP You get all 950 out? On bail?

MK Yes, so I (??) the first 5, the judge heard, and then it became a precedent, and then all of the other people were set free.

BP On bail?

MK On bail.

BP No other lawyer jumped in to help you?

MK Nobody, nobody, nobody.

BP They were scared?

MK Even just more recently as we'll come to in '93, these tribal clashes. Even '98, I was almost doing it single-handedly.

BP What did you do in '93? I'm not aware.

MK '93 you know the tribal clashes continued. They were there, and the victims are the ones who are being arraigned in court, '93-'94. In '93-'94 my office represented 718 people (pro bono??), victims of tribal violence.

BP 718? Pro bono?

MK Yes, pro bono. Not a single cent paid. In 1998, after the elections \_\_\_\_

BP Excuse me. It deserves credit and accuracy here. What were these people who were victims of land, of the tribal clashes, what were they charged with?

MK They were charged with being in possession of firearms, ammunitions which were basically for self-defence.

BP Were most of them Kikuyu and Luo?

MK Kikuyus.

BP Luhya?

MK Kikuyus, few Kambas from Njoro. But essentially Kikuyus from Burnt Forest, all those people were brought to Nakuru. From Enosupukia(sp), the whole lot, brought to Nakuru; all those people I represented, 718 (??)

BP So this time you were not acting totally alone, you were acting on behalf of – with – your law office? Is that a big office or a small office?

MK I've just got 2 assistants, so it's really myself.

BP So really that's not with the backing of LSK, the backing of anyone?

MK Not at all, not at all. It's just my own individual efforts to represent people. One thing that I learned about personal freedom, is that you don't protect the freedom of others. Your freedom is not assured. You've got to defend other people if you want to protect your own. Because for a long time during those days I was being arrested and harassed, people thought I was a troublemaker. Until the fire spread to other people then they stopped seeing me as a trouble shooter, because they never thought it will ever reach to them. So maybe one way of guaranteeing people's basic human rights, is to – your own basic human rights – is to come out in defence of other people's human rights. Because by so doing you're really fortifying yourself against a potential situation where you would suffer the same fate.

BP That's a very powerful statement.

MK So we do this really, out of the experience we've gone through, and also of course, out of the desire to protect the human rights of ourselves and those of the other people. So this is all pro bono. 1998, after elections, all those people, Laikipia, Njoro group, 360 pro bono.

BP (??) tribal clashes cases?

MK Tribal clashes cases. I've never charged anyone a fee on these tribal clashes thing.

BP Why?

MK I don't see a need to. First, they are victims. Their relatives have been killed, their properties have been destroyed. These are already people who need compassion. You lose your property, you lose your children, you lose your wife, and you're arraigned in court: and somebody comes with a fee note. (??) how you would react to that. You think the world is mad. So I have not, at any one time, charged for these cases at all.

BP Can I ask you, and I think I'm noting that that is very commendable. I'm fully aware of that now. I was not aware of it before. Do you have any comment on whether or not those efforts have had any impact, positive or negative, in terms of state behaviour, which is really the question I'm trying to answer? Any of these actions you've been talking about.

MK Yes, yes. Each time we fight, our war in court has not been in vain. Even the judicial challenge we gave the state in these cases of political repression has tremendously changed the behaviour of the state. Because there's nothing they hate as much as exposure; that they have no respect for the law, that they are abusing the law. And a court platform gives you that kind of opportunity to point an accusing finger at the state and to really show that they have no respect for their own constitution, they have no respect for their own laws.

BP Did you get a court platform? When did you get that court platform? Which one are you referring to? '89 (??)

MK Take '93. Let's look at this one. I was representing Rev. Njoya. '93. Rev Njoya, you know.

BP Yes, I know him very well.

KM Bedan Mbugua, they were charged, and who else? Rev. Nyuto (sp)

BP I'm seeing Bedan tomorrow. I've seen Njoya.

MK Ask them who presented them, and ask them what time they were brought to court for bail. Six. In the morning. Before the official time. But the PCEA women's guild \_\_

BP This is Njoya?

MK Njoya, Bedan, and Rev. John \_\_

BP Everybody?

MK Yeah. They were charged together. In Nakuru. '93. So I was representing them. And we talked basically about the rights and all that, and how the state is fabricating charges and using curfew laws to harass people. They were released on bond. And for other subsequent cases they never went to trial because the state feared if these matters go to trial they are going to suffer more injury than the accused person. For these are fabricated charges. They were using the court as an instrument of repression. "Silence these people by arraigning them before the court." And that's why they had this hawkish magistrate, now a judge, called Tuiyot. He's the one who would sit at those unearthly hours. He would sit in court at 6 because he doesn't expect a lawyer at 6.



BP But you showed up at 6.

MK Yes. He was quite shocked; why I am coming to court at 6, and he is there, seated!

BP What were they charged with? Roughly, the general kind of charge?

MK They were going to incite people.

BP Incitement (??)

MK Incitement, breaking, whatever. Ummm, the curfew – (??), not curfew.

BP '93.

MK Whatever. '93. I was the one later to be arrested, you know, in '93 September. I was with Koigi at Burnt Forest.

BP I think I heard that.

MK That's another story.

BP And also Rumba Kinuthia.

MK No, Rumba is 1990. 1990, we are arrested in October and brought up on charges of treason.

BP '93?

MK '93, we come out. '93 September 3<sup>rd</sup>, I'm arrested, myself, my wife, my brother, a cousin of mine, Koigi, his brother and a cousin of his. And we are charged with administering unlawful oaths, me and Koigi, on Kikuyu community to fight the Kalenjin community. I was charged with my wife, being in possession of a firearm – all manner of fabrications. And the others were charged with what? Small things they made up \_\_\_\_

BP Similar charges, trumped up charges.

MK Yes, which, eventually were not even prosecuted. So I was again held – they released everybody else except me and Koigi; 30 days, denial of bail.

BP Charges dropped?

MK Charges dropped. No charges went on trial. Just like treason never went to trial.

BP What was the purpose of their continually trying to arrest you?

MK Yes, because they did not want to detain me. Detention had become a very unpopular institution internationally. So other than – the way to beat detention is to arrest and place you on unbailable charge, or deny you bail. It served the same end. 'Cause the idea is to keep you out of circulation for some time, to give them time to reorganize themselves. So these charges about treason charges, about sedition, they became inevitable because the government was under pressure to drop detention laws, internationally, otherwise they risk isolation. So I think that with moving towards that direction that's how they came with treason and all that, and all that. Because you charge somebody with treason, he's in custody just as he would have been with detention anyway.

BP Would you say you had something to do with the government stopping the detentions?

MK Well, 1982, I've told you. It started as \_\_\_\_

BP No, but I mean (??), but I mean in your own case as well.

MK The challenge?

BP Yes, the challenge. Do you think that helped to convince the government to not continue to (detain??) people?

MK Not just my efforts alone, but also the efforts of others. You look at my release on the 6<sup>th</sup> of June 1989. It was pressure from outside. The United States government had offered to give some relief food to Kenya in the form of wheat. And they had 4

ship loads there at Mombasa, and they said they will not off load if there was a single detainee still in custody. That's how I got out 6 days after the others.

BP Huh! I didn't know that!

MK That's the reason.

BP That help?

MK That helped. They said, "We are not off loading this wheat. We'll put it elsewhere, unless the last detainee is released." That's why I was released on a very odd day, 6 days after Madaraka.

BP So June 6 you were released and the stuff was still in the port?

MK The stuff was still in the port. They had made a statement, I think on 4<sup>th</sup> June to say they'll not give Kenya the relief food it's asking for. It's at the port. It will not be off loaded if there's a single detainee remaining. That's how they put pressure. And of course you know the contribution of the Kennedy campaign on detainees and all that. They also publicised my case on torture and lack of medical treatment, so \_\_\_

BP What about international human rights groups like Human Rights Watch or Amnesty? I know that Amnesty and Human Rights Watch both had reports during the time you were in detention.

MK Yeah, but for our treason cases Amnesty didn't help us. In fact they were to express a sense of regret later. Because they bought the state story: "Yes, they want to overthrow the government, we don't support people who (??) at violence."

BP That was (??) in '93?

MK Yeah, 1990-'93.

BP So the government gets out of the international pressure by shifting the thing from a detention to treason charges.

MK That's right. And then alleging violence, that these people want to overthrow the government by violence means, they don't support democracy.

BP And everybody's supporting democracy, so \_\_\_

MK Bodies like Amnesty playing into the hands of government propaganda. And they buy it! "Oh, if they are going to overthrow the government we are not going to ask for their release."

BP And you can't be a prisoner of conscience if you are trying to overthrow government, right?

MK Precisely. They have a different perspective, now. But they were really apologising much later. So the state changes strategies \_\_\_

BP Did they actually send you an apology? Amnesty?

MK Yes, I've met them, they've interviewed me, I've been to their London office,

BP So have I.

MK I asked them what happened,

BP Martin Hill.

MK They said, "But we believed, unfortunately \_\_\_

BP So they told you face to face.

MK And now, let me now report \_\_\_

BP You have an insight here, which is very important. Between activism, both individual and organizational, questions: what made the state change when it changed? Donors? And international organizations?

MK Yes, donors were very instrumental,

BP Which of those would you say \_\_\_

MK Human Rights bodies like Amnesty.

BP Were they all important?

MK They were very important.

BP Was there any one that was more important than the other?

MK I don't think so. Well, Moi, to a large extent has an ear for foreign donors, more particularly the British government. Once they speak out on something Moi will certainly change course. The international funding agencies really came into play in the 90's.

BP Would you say that there has been an improvement in human rights, a great deal, not much, or none at all?

MK I think it's a great deal. People speak out. They are quite vocal, very critical of the government; they get away with it – some of the things being said now would certainly have earned you a detention order. It's really not out of choice for the government because of the increasing pressure, the awareness on the part of the people. There's also greater – You know, I see quite some change on the part of the police, (much??) brutal as they are.

BP If you had to describe the 3 periods, basically divided into these 3 periods here: 88-91. And then you sort of have that interim year, 91-92, and then 92-97. If you had to describe those 3 years in terms of – say 3 words in terms of state repression: high, modern or low. How would you describe those 3 periods? Would it be high, modern or low in 88-91?

MK Very high.

BP Very high. 91-92?

MK Still very high, because this is the era of tribal clashes. It took a violent turn, you know, and actual genocide. It's a genocide period. Let's say 91-94, because Enoosupukia(sp) came early 94 as well.

BP OK, that would be the 2<sup>nd</sup> stage still.

MK (??) 2<sup>nd</sup> stage still was there. But he had already given way to multiparty-ism. So much as there is genocide, its freedom of expression and association also hand in hand with the repression. They gave in something, even as they stepped up repression they were giving some rights on the other hand.

BP So it's give and take.

MK But there was absolutely no freedom with the courts. The courts still remained prisoners of a one party state.

BP During what period?

MK About this time, well, 91-94. And because you know 1 – 2- 3- 4- They were still arresting people here, 93/94 \_\_\_\_

BP So not much freedom in terms of legal freedom?

MK Yes, there wasn't much. They were still – the Njoya story, all those – the courts now became, we changed from open police repression; now the courts became the instrument of repression, to give repression a modicum of legality. That we are within the framework of the law, in taking people to court. But they were using magistrates to deny people bail, and jailing them on trumped up charges.

BP That was about 91-94?

MK Yes.

BP So that was a government tactic, because the government had tactics, too.

MK Yes. You can say 91-96, because Koigi's trial went up to '96, (??) the Koigi trial.

BP By the time you get to '97 is there a different kind of description that you give, high, medium or low? Repression.

MK Temperature went high – there was more pressure from within here. Remember the NCC pressure to greater freedoms.

BP Was the repression level dropping down there?

MK '97, it was dropping down.

BP Would you say it was moderate, or low?

MK I think it was low. Low. And then stepped up after elections. Post election period, we have genocide again. Laikipia, Njoro,

BP And the Coastal.

MK And the Coast.

BP So in other word it's been mixed; the level of repression?

MK Low. Goes up, low again. I think, you know, they are playing to the gallery of donors in many regards. When there's pressure from donors and they want to be seen to respect the law they go a little down; they come up with fresh momentum; they go down again. When the hopes for money is high, that the donors about to release the strings to the purse, they try to behave, they try to behave. When they don't get it, back again! So this trend may have something to do with the reaction of donors in many regards.

BP OK. I've tried to trash the donors' activities and basically in November '91 they of course stopped everything. And a week later at Kasarani Moi goes for multiparty. But I haven't seen any real pattern since then because some will be cutting it off, some will be increasing it. Some will cut it off, some will increase it. I don't see any (??) \_\_\_\_

MK He gives in one hand, he takes in the other.

BP Who?

MK Moi. Freedom of expression, genocide. But we must also, much as we are talking about the freedom of expression there've been many charges of sedition. You can see Gatabaki, even now, being jailed for those old statements.

BP Gatabaki going to jail right now, by the way, what significance does that have?

MK First, maybe it has something to do with lack of independence of the judiciary. Two, it has something to do with Moi's impending retirement, that he is clean, he was not involved in genocide and therefore nobody should revisit these allegations on him.

BP But that's a 7 year old/ 5 year old case. He could have just let it go.

MK Well, 6 months is significant in that it cannot lose his parliamentary seat. 'Cause that's what the law says. If he goes to jail more than 6 months he loses his parliamentary seat.

BP So he won't lose his seat?

MK He won't lose.

BP Why now? Is that just to keep him from writing articles during the election campaign?

MK Well, I don't know. Sometimes it depends on these magistrates. Wanjiru is – she was in Nyahururu and she likes dancing to the tune of the state. So when it comes to political offences that's when you realise our judiciary is spineless. They just do the bidding of the state.

BP This question is important: did ethnicity in Kenya help or hinder the promotion of human rights? In Kenya?

MK That's actually the main impediment to human rights. Look at what we are now seeing here. Raila goes to Kasarani, March 18<sup>th</sup>. They steal the show from Saitoti through very undemocratic procedures of acclamation purely because his community is gaining. Now 3 months down the road he's now saying secret ballot; acclamation is not democratic, because his community is losing in the race of succession. You can see now, double standards in terms of human rights. We are saying we need free and fair election by secret ballot; it must cut across the board. You don't talk because you're gaining. You don't support because you're gaining. And oppose because

you're losing. The standard for human rights must really cut across the board. Talking about free and fair election, don't condone abuses of human rights because you're beneficiary of the abuse. But they will support it because their community, technically, are bound to gain, as they were gaining in March. Now they see the community not gaining, through the same system, and they are advocating for another system.

BP So they're using ethnicity.

MK They're using ethnicity.

BP As a barometer.

MK Yes.

BP Would you say, though, that during the tough years of '87, '88/9, up into the early '90's that ethnicity was used negatively or positively in terms of advancing human rights, or by the state, keeping them down? I'm wrapping this up because I know you have a long way to drive.

MK Ethnicity; remember like when they were fighting Njonjo Moi saying, "When I fight Njonjo I'm not fighting Kikuyu." But the message was clear. He was actually isolating Kikuyu from leadership. You know this ethnicity is like placing prisoners in different cells. You tell the prisoner in this cell, "You know the prisoner next door is being treated better than yourself. And he believes, and he starts fighting the other prisoner. And he forgets that the bottom line is that they're all prisoners, and they need to fight for their freedom. It's (??) how down ethnicity brings us. We forget that we have a common humanity as a people regardless of our ethnic and cultural background. We start seeing ourselves as a special group as opposed to the other. Other than seeing ourselves as one people fighting for their freedom from repression. And that's why you look at the opposition in this country. Majority of Kenyans are in the opposition. In 1992, 69%. In 1997, 64%. Yet they never rule because of ethnic divisions.

BP Divisions.

MK Yeah.

BP But it's not only that. You sometimes have 2 Kikuyus running against each other. So it's not just ethnicity, it's egotism, isn't it?

MK Yes, (it's true??) but the other factor among the communities is basically – well it's Matiba/Kibaki. That was a little different. One says, "I fought for this change." The other one did not fight. But that other one his community hangs on (??). So that from ethnicity we even have to – sectionalism, within the same ethnic group we have divisions.

BP It's true. Do you think that human rights is universal or relative to each country and each culture?

MK It's universal. Humanity is one; difference is in culture and language. You cannot justify discrimination on the basis of that you come from – one of the arguments, by the way, Moi advanced against multiparty is that Africa – Kenya is not ready for multiparty, and this is a foreign concept. We're saying, this is a universal concept. We enjoy the same humanity with the west, with other people elsewhere in the world. So dictators would like to use this kind of division that human rights and democracy are not universal to justify abuse on their own people.

BP And finally – because I know the time limit, and I know where you have to go tonight. Motivation. There's a lot of lawyers, there's a number of them in Nakuru. Why did you decide to get so involved with human rights?

MK I don't know. But where do I start? But I feel that everybody should be treated equally. And I get offended myself to see somebody else being subjected to abuse of

his rights. And I recall this incident in 1996, when we tried to go to prison. This Leakey story, remember it? We were beaten up by KANU youth wingers.

BP Njeri Kababere and Leakey were both beaten up. Muite was there, I think.

MK Njeri was not there.

BP Njeri Kababere was standing next to Leakey when he was beaten up. They both went to the car.

MK You know, there are 2 stories.

BP Maybe it's a different incident.

MK The press – I think if you follow the story there were 2 different events that day. The (bloody??) event did not involve Leakey. He was whipped outside the court and drove off.

BP Then there was another one with Muite being attacked and his car (??)

MK Muite was not attacked.

BP The car.

MK It's me who was attacked.

BP Oh. OK.

MK The facts of the matter are that Leakey drove away after being whipped outside the court. But we said, "We'll carry on." We said we're going to prison. We must go.

BP That's when you drove down towards the prison.

MK We went up. Prison is up, not down. It's on a hill. It's up. It's on a hill. So we drove up to the prison. We didn't reach. So we find a prison guard, guards now. They'd created a barricade with guards. So we stopped there.

BP What were you going there to do there? I forgot.

MK It was about Koigi.

BP To get Koigi bail?

MK No.

BP Or released?

MK To visit him.

BP Oh, just to visit. Right. Is he your friend?

MK Well, this was a political gesture we were making. Leakey, Paul, you know. That's the time we were discussing the formation of Safina. What happened is another long story but I'll cut it short. I was with Louise Tunbridge(sp), this BBC correspondent. So they attacked Louise because she's white.

BP Do you remember how to spell her name, by any chance?

MK (??) I suggest it's Louise. Louise. (??) This is Lois in English, I think she spells it like that.

BP OK, I'll find out.

MK Louise Tunbridge??.

BP Anyway it was a BBC woman?

MK Yeah, very aggressive. She was with us and they get hold of her. And the prison officer had big piece of wood with a nail on top. He wanted to hit her on the head. And I got hold of him and wrestled him down to protect Louise. And the next thing is I didn't know where I was. They attacked me until I was unconscious. I found myself in some disabled children's school. Somebody dragged me there. But I felt very provoked. What they were trying to do to her and subjecting her to racial – and of course the fact she is a woman, and the fact she is white, trying to despise her and, you know – I felt so provoked that I ended up being the larger victim. (??) time they hit my car, they demolished the windscreen and all that. Paul managed to drive (out??) to another route. He was never attacked. You know you feel provoked by these situations. Maybe you ought to wind up. After the 1990 \_\_\_\_

BP You really didn't consider your safety at that point, did you? When you tackled the police officer.

MK I think you lose sense. When you see an injustice of that magnitude, I think you lose all your senses, really, because I couldn't see how I could stand by and watch this kind of abuse going on. And then what would Louise say of us? She's singled out of us, first because she's white, secondly because she's a woman, and the guards are beating her up there.

BP It's interesting.

MK It's terrible.

BP Now I didn't know that. I would like for you to go back just a moment in your earlier life to pick out some events that maybe gave you some indication that a long time ago you must have been bothered by injustice. You can't just (certainly??) fabricate (??)

MK No. I grew up in a settlers' farm. In a colonial settler farm, and we suffered a lot of humiliation. They were terrible.

BP What was the worst that your father had?

MK He was working in a milk dairy, to take care of animals. But I worked. I was employed as a young boy, by the settlers, before independence. I used to take care of their wheat, scaring the birds for peanuts.

BP Reminds me of a movie called **Kitchen Toto**. Did you see that?

MK Yeah, I've seen it. I also worked in their orchards, scaring away birds and boys from stealing fruit from their orchard. And we used to get peanuts. Our salary was 6 shillings a month, and some *kibaba* of *unga*. 6 bob. And it's 6 to 6.

BP Did you go school?

MK Yes, I did, of course. We used to do part of this work when we out of school. And we were confined to the farms. We couldn't go to another farm to do work, because you come back to your – we were like owned slaves, you know. We'd be punished for having gone to another farm to work. It was terrible.

BP It is like slavery. Southern slavery in the US was the same way. Couldn't leave your farm.

MK Couldn't leave. You'll be punished. You get big punishment for (??).

BP Were you ever whipped?

MK Oh, yes! They were nasty, these British settlers, they were nasty. They can come running their horses into children, you know. They don't care whether – it was bad. It was bad, and my parents were very Christian. And, you know my father died quite early, in '62.

BP Did you have early desires to kind of grow up and be somebody?

MK Yeah, I wanted to be a politician. I think because a politician was the most popular individual before independence. The only people we knew were politicians, fighting for *uhuru*.

BP It was a pretty good, strong example.

MK Yeah, that's what really I thought I would become. But I remember when I went to Form 1, asked what career I would like to choose, I said I want to become a lawyer.

BP Why?

MK Because I understand lawyers fight for people's rights. So I think it was another substitute for politician. I came to recall much later in my life what I'd written in Form 1, because in between I changed again (??). I wanted to become some accountant. But I went back again, and then I became a lawyer. (??)My first choice in Form 1(??) But my teacher in Form 1 was a school chaplain, was a lawyer by training.

BP A chaplain, and a lawyer?

MK And a lawyer. I think he's still in Nairobi. Rev. Bowles.

BP What's his name?

MK He used to be at St Marks Anglican church here in Westlands. Rev. Bowles.

BP B-O-L-E-S?

MK B-O-W-L-E-S. Bowles.

BP A Catholic?

MK No, Anglican.

BP Anglican.

MK He used to tell us about lawyers and I think that got into my head. He was a magistrate, but I think he got tired of jailing people, and he hated injustice.

BP Was this a British guy?

MK Yes, British guy. He quit magistrate(sic), he's a trained lawyer. Graduate lawyer. He left becoming a lawyer, he became our school chaplain and teacher.

BP (Says??) your first year of secondary school, basically. Form 1, here. Your systems are a little different.

MK Form 1, first year.

BP This guy made an impression on you, huh?

MK I think he made an impression on me, and school chaplain and \_\_\_\_

BP I mean it was a little different impression than the farmers. The settler farmers.

MK Yeah, quite different. And his father, by the way, was a settler farmer. Dr Bowles. He had a farm in Nakuru.

BP It wasn't the farm you were raised on?

MK No, another one. By the time he was teaching his father had sold the farm.

BP Who were the farmers you were raised on? Who were these colonialists?

MK He's called Major Ward.

BP Major?

MK Ward.

BP These guys had titles but they often didn't fight any wars, you know.

MK W-A-R-D. Major Ward. Retired. (Fought in the First World War??).

BP You don't know his first name?

MK His son was – he took over the farm – was John Ward. He's got a small farm in Kiambu. Still here.

BP Do you ever go see him?

MK No, haven't seen him.

BP Be ironical, go see him.

MK Maybe that kind of background must have influenced me and, you know, basically hating people, mistreat others.

BP Did you see people being mistreated all the time, then?

MK Whipped. They were brutal, these settlers. They slapped; kicking children with their boots. So brutal.

BP I never knew all this.

MK One of the most humiliating incident that I now recall is – (??) one day it must have been quite, 1957/58. A small fellow. We had a colonial settler in Nakuru. A lady, Mrs Gibbs. And you know on Christmas day, what she'd do? She'd get all the coins, the small coins; one cent, one cent, five cents. And then she calls the villagers, particularly children. And then she'd throw the money at you. And then you chase each other, fighting over money. What comes to mind is like, you know, throw maize at hens; you know, the way they run \_\_\_\_

BP It's really insulting.



MK And they would laugh and laugh, with their mouths, loud to see us scrambling for one cent. Fighting (??) So maybe it's the kind of background \_\_\_\_

BP There's a mixture of poverty and injustice then. Somehow, that got into you. You must be kind of a stubborn guy though, you know. Because first you get told you can't run you say, "I'm gonna run." Then you get picked up, you get released. You just keep going.

MK I get more satisfaction by doing what my conscience tells me is right. I tell people in Nakuru that the whole world will say, "No." But when I think I'm right I'm prepared to defy the entire world because the truth does not come with the crowd, it comes with an individual. If you think that what you're doing is right, unless there's a justification for you to change your thinking, I mean you should stick to your guts. Don't go by the wind.

BP You said something that I think really hits me. "The truth does not come with the crowd, it comes with an individual." Because there's been several times where you were very much alone.

MK In Nakuru people would see me on the street and hide. If you greet Mirugi the special branch will ask you, "You (talked??) to that man. What were you talking?" – for fear of being harassed. 'Cause I was a lone voice. And Moi would about me in public. Somebody says, you know, "Moi's fighting this man. So if you're seen with this man you're going to be in trouble."

BP Are you currently an MP?

MK No.

BP Do you think you'll run again?

MK Yes.

BP You're going to run this time?

MK I'm going to win this time.

BP You are running.

MK And I'm hoping to win this time. The only thing I can add is

(end of tape one, side two, transcribed by Kaari)

(begin tape two, side one, transcribed by Bob)

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[Kariuki helps start an international human rights arm of the IBA]

MK So 1995 [I] became a founding member of the Human Rights Institute of the International Bar Association. It is the first time that the international bar has appreciated the necessity of lawyer's involvement in human rights. The International Bar Association has been putting more emphasis on commercial law and commercial transactions. Professor [ ] the President, picked me among other people; he was here in Kenya and said I want us to start a human rights institute. He had my history and all that; and a few other people. And we founded a Human Rights Institute. I served in the Human Rights Institute for seven years as a Council member until sometime last year [2001]. It's an arm of the International Bar Association; now it's very powerful. Lawyers are fighting to be appointed in the Council. Formally lawyers didn't think a colleague dealing with human rights had any place in the legal fraternity. They were more concerned with making money.

BP And so you helped found it?

[HR TACTIC His group brings international attention on Kenyan judiciary]

KM I was a founder member and a Council member. I served in the Council for seven years. I started in 1995. We launched it in London and we had regular meetings twice,

three times in a year. So during my time there I brought two missions to Kenya, one from the International Bar Association scrutinizing the performance of the judiciary – and they made very good reports. This was 1996. Then we had another mission from the Law Society of England and Wales, also to study the judiciary and make recommendations. Those were very crucial missions.

BP '97?

KM '96/'97. So...I have served in the IBA Council, the International Bar Association main body Council. I'm currently the GPP Committee.

BP The what?

KM The General Practise Committee, called GPP – General Professional Practise Committee. GPP, one of the strong arms of the IBA...So this is maybe the place we really got more international perspective on human rights, the HRI, Human Rights Institute. I think we have made tremendous **impact worldwide** in terms of bringing awareness to lawyers of human rights issues.

**HR IMPACT: expose political nature of Kenyan judiciary in 96 and 97 reports**

BP Are there any lessons Kenya that if you were discussing this with some of your colleagues from other countries – in terms of the promotion of human rights; looking at the Kenyan experience. Were there any lessons to be drawn out as to whether it was done well, or could have been done better, or how the government reacted?

KM We [looked at] several other governments besides Kenya, because I was the only person [in the HRI] representing Africa and human rights. So we would come across different situations, and I think that in a way did assist a lot because the reports of the judiciary had quite an impact because these are reports we handed over to donors to build more pressure on Moi to let the judiciary be independent and stop interference

BP From the '96 and '97 missions – you gave them [the reports] to donors?

KM Yes.

BP About the lack of independence

**KM Lack of independence**

BP And also I think the Robert Kennedy Foundation [the correct name is Memorial??] must have reacted to that because they had a report in the lack of independence in the judiciary, too.

KM But this was an HRI report. I've also been training. So we have been training other African bars...generally the law societies..

BP It's interesting that in Kenya most of the pushing for human rights has been done by lawyers in the early stages.

**KM And lawyers are supposed to be generally conservative people as far as changes are concerned (laughs)**

BP (laughs) I hadn't noticed that, at least not among this group.

**[Making lawyers group more "relevant" by focusing on human rights]**

KM You can see the IBA. For all its existence, they never allowed [that] a human rights institute was important. There was even some opposition. They said we are going to politicize IBA. But we said lawyers who want to make money (emphasis) out of the society and they have no human rights agenda, you make your organization irrelevant to the lives of the people because you are treated like merchants. But the Human Rights Institute has given the IBA, really, a human face.

BP Where is their headquarters?

KM London. But there Conferences shift. We go from one, now we go to South Africa.

BP I should try to get some of their reports because '96 and '97 reports would be interesting to me. Are they available?

KM Those reports?

BP You said there were two reports that came out of the missions that you gave to donors.

KM We'll try to get them: I have them. They were circulated by the IBA. I should be having one in my records.

BP I'll contact you.

**HR – acting on principle: tells Moi to “shut up”**

KM The other thing – other organizations like ICJ [International Commission of Jurists, including a Kenya section]. In 1996 they gave me an awarded: jurist of the year. It was basically for fighting for the right of dissent. I had an exchange with Moi. I was representing Raila [Odinga] in a matter with Wamwale [??] and [Pheroze???Not at all clear] was on the other side. Pheroze ?? [Clearer; but verify if you use it] was representing Wamwala [spelling??] Moi then makes public statements to support my client after conclusion of our submissions and pending the judgement.

BP He made public statements against (emphasis) your client?

KM In support of my client.

BP In support of Raila [Odinga]

**[Principal is important to Kariuki]**

KM Yeah. And I told him: shut up, you have no business – you know they didn't expect that the lawyer for the one being supported would be the one complaining. Instead I'm the one who complained. The President had no business interfering with the independence of the judiciary. He must show respect for the judiciary. So here was quite some exchange. And I thought they were quite impressed by my position.

It doesn't matter who is interfering with the courts, whether he supports you for that time, don't accept it. **It's wrong in principle because you are encouraging abuse of the independence of the courts.**

**BP Principle is important to you, isn't it.**

**KM It is important (emphasis). Without it, why would you live? I mean, you can't have sleep (laughs). I get more satisfaction out of matters of principle than (pause) just going with the wind.**

BP How would you describe the state of human rights in Kenya today.

**[Kenya has become “like a police state.”]**

KM It's quite bad. You saw me on television last night?

BP I don't have a television [August 11, 2002], I'm sorry.

KM Major news item. My client was shot by police. My client, an administrator at Edgerton University on Friday night as he parked his car. The person who [allegedly] shot him is a Police Inspector and he is a brother of the Director of CID [Criminal Investigation Department]. So the police in Nakuru arrest him and he's out of jail within one hour...So Kenya has become like a police state. The police seem to...

BP Now wait a minute; the person who shot him was a Police Inspector?

KM Yeah, brother to the Director of Criminal Investigation [Department].

BP The Director of CID, the brother?

KM Yeah.

BP How do you know that this is the guy who did it?

KM Well, they're trying to say that it was accidental. The defence is...I'm not the one. They say it's [an] accident. These people park, in the company of a lawyer; they park outside a hotel. And this man comes and says: this is my parking; who has parked in my usual place. Is that the fellow? He draws out a gun and shoots him. For parking in a parking – it's crazy.

BP Who was the victim?

KM Timothy Murithi, and administrator at Edgerton University...They shot him through the arm and it [lodges??] in the spine. It took 12 hours (quiet emphasis) [surgery].

BP Did he live?

KM Yes. It's in today's paper in the Nation [August 12]. So we're saying the police have been killing people and getting away with it. [Note: In Sept or Aug 2002, the Daily Nation published the results of special investigation showing that not only were the police killing people, allegedly in their line of work, but a number of police had been killed themselves by criminals.]

Look at acts of genocide, there has not been any redress from genocide from 1991. People have been killed; '98 [??] they have been killed. No redress.

BP The Akuwumi report [on the so-called ethnic clashes] ever been released?

KM No, it's never been released.

BP Is there any way I can get a copy of that?

KM I don't know how you'd get it; we don't have it. What we need is to discuss seriously a mechanism for transitional justice. Unless all these historical injustices are addressed, you can't talk about respect for human rights. The lessons must be drawn from the past and we must punish and condemn the mistakes of the past if we are going to have greater respect and promotion for human rights.

But this culture of impunity – people committing genocide, committing assassinations, abusing the law and getting away with it, doesn't auger well for the promotion of human rights. And this is the [thing] that we need to break from in this country. Because even as Moi leaves, the next President is likely to be like Moi, if not worse, because we haven't condemned the human rights abuses of Moi. We did not condemn [Kenya's first President Jomo] Kenyatta's human rights abuses. So it's like we're building on a culture of impunity. So if we really have to advance and promote human rights, we have to address the issues of transitional justice, victims of human rights, how will they be compensated, how do we deal with those who perpetuated [abuses] and a general, national condemnation of these things [the human rights abuses] so that we can then draw the lessons from the past in order to build on a better future.

BP Can you have a Truth Commission like the one in South Africa?

KM That may be one way of transitional justice. There are many other mechanisms we can explore. But the bottom line is that we must come to terms with our past. We must condemn the abuses of human rights. We cannot talk about the future when we haven't condemned the past practices because we are perpetuating this culture of impunity by not punishing, by letting people get away with it, so that it [the law] doesn't become a deterrent for potential persons who want to commit human rights abuse.

BP Why do I get the feeling you're far from finished.

KM It's going to be a long story.

(end of interview; end of tape two, side one)

