

HUMAN RIGHTS ABUSE IN KENYA UNDER DANIEL ARAP MOI, 1978-2001

Korwa G. Adar and Isaac M Munyae

INTRODUCTION

Jomo Kenyatta, the founding president of Kenya, passed away in August 1978 after fourteen years as head of state. His successor, Daniel Arap Moi, served as Kenyatta's vice-president from 1966 - 1978. During Kenyatta's presidency, the political realm was dominated by a small Kikuyu elite, the so-called Kiambu Mafia, from Kenyatta's home district. This group undermined Kenyatta's nationalist and populist background, alienating other ethnic groups, as well as many non-conforming Kikuyus. Although Moi was loyal to Kenyatta, he was never accepted into Kenyatta's inner circle. He also came from a small community--the Kalenjin. He was regarded by Kenyans to be the right candidate to steer the country towards a more accommodating human rights era, without ethnic dominance.

This general perception of Moi by Kenyans was reinforced by the decisions and promises he made immediately he took over the presidency. In December 1978 Moi released all twenty-six political detainees across the ethnic spectrum, most of whom had been languishing in jails for years.¹ He also reassured Kenyans that his administration would not condone drunkenness, "tribalism", corruption, and smuggling, problems already deeply entrenched in Kenya.² His administration also took quick actions against top civil servants accused of corruption, culminating in the resignations of officials including the Police Commissioner, Bernard Hinga. These actions were interpreted by Kenyans as an indication of the dawn of a new era, a conducive environment for adherence to democracy and human rights.

In due course, however, Moi became more interested in neutralizing those perceived to be against his leadership. The issues of corruption, "tribalism" and human rights per se became distant concerns. Instead, Moi began to centralize and personalize power when he took over the presidency. He pledged to follow Kenyatta's nyayo (Swahili for "footsteps"). He wanted ordinary Kenyans to perceive him as a true nationalist in his own right, and as a close confidant of Kenyatta. He traveled constantly throughout the country addressing many prearranged or ad hoc public gatherings. He popularized nyayo within the context of what he called "love, peace and unity".³ His grand design turned out to be a strategy geared toward the achievement of specific objectives, namely, the control of the state, the consolidation of power, the legitimization of his leadership, and the broadening of his political base and popular support. It turned out this strategy called for little respect of human rights.

Initially, Moi's ascendancy to the presidency faced a major handicap because of the

dissension against his leadership from within the ranks of the ruling party, Kenya African National Union (KANU). This came from the influential "Kiamba Mafia" that had constituted themselves into what became known as the Change the Constitution Movement.⁴ The main objective of the movement was to bar Moi from taking over the presidency. The group called for the amendment of the Kenyan constitutional clause which conferred rights on the Vice-President to take over the presidency for ninety days pending the general elections should the office of the president fall vacant.⁵ The movement failed, mainly due to the opposition it faced from Moi's ally, attorney general Charles Njonjo. Moi succeeded in assuming the presidency and thereafter began to systematically institute an authoritarian and oppressive one-man state rule.

Kenyatta's style of restraint and steering the country as a de facto one-party state did not conform to Moi's leadership and behavioral characteristics. Moi's style -- the centralization and personalization of power -- gradually laid the foundation for a dictatorship and innumerable human rights violations by his administration. When Jaramogi Oginga Odinga and George Anyona sought to register a socialist opposition party in 1982, Moi struck back by making the country a de jure one party state. He criminalized competitive politics and criticism of his leadership.⁶ Throughout the 1980s to 1990s the security forces, particularly the police, were used to suppress any criticism of his regime.

To ensure his grip on power, Moi systematically usurped the functions of the other institutions of governance to the extent that the principle of the separation of powers was rendered ineffectual. A few days after releasing all the political detainees, he rushed a bill through Kenya's parliament which granted the president emergency powers for the first time in Kenya's post-independence history. Moi associated insecurity and instability with open criticisms and challenge to his policies and style of leadership. Patronage and loyalty therefore has remained characteristic of Moi's leadership style which has enabled him to centralize and personalize his rule.⁷ For more than two decades as Kenya's head of state, the second longest serving president in Sub-Saharan Africa -- Moi has remained what has been described as a "tribal paramount chief writ large".⁸ In return for patronage, he enjoys praise from civil servants and KANU officials to an embarrassing degree. For example, in one of the numerous public functions he attended, a senior minister stated while pointing at him: "There, is enshrined in human form the popular will ... Even lobsters and fishes of the sea, out to the 200- mile limit and even beyond, pay obeisance to our great president the Honorable Daniel Arap Moi."⁹

This article deals with the manner in which the autocratic patronage system established by Moi has undermined the rule of law and respect for human rights in Kenya. It is an authoritarian system in which the president delegates no responsibilities and becomes personally involved in almost everything in the country, particularly issues concerning the rights of individual Kenya citizens to speak their minds, assemble without hindrance, write and publish without being molested.

THE INSTITUTIONALIZATION, CENTRALIZATION AND

PERSONALIZATION OF THE PRESIDENCY

The trend began with presidential directives and constitutional amendments. Apart from the Constitution of Kenya, Amendment Act, Number 7 of 1982, which introduced Section 2(A) transforming the country into a de jure one-party state, Kenya's parliament, on Moi's order, reinstated the detention laws which had been suspended in 1978. Colonial era laws, like the Chief's Authority Act, the Public Order Act, the Preservation of Public Security Act, the Public Order Act, and the Penal Codes, gave the president the right to suspend individual rights guaranteed by the constitution.¹⁰ The parliamentary privilege, which gave representatives the right to obtain information from the Office of the President, was also revoked. This meant that members of parliament, and by extension their constituents, surrendered their constitutional rights to the presidency. Parliamentary supremacy became subordinated to the presidency and the ruling KANU party.¹¹

For the first time in Kenya's post independence history, the provincial administrators (Provincial Commissioners[PCs], the District Commissioners[DCs], and District Officers [DOs]) who are civil servants, were directed by the Office of the President to get involved in the internal affairs of KANU. They were to review and clear party meetings throughout the country and to isolate dissenters. KANU officials and members of parliament henceforth were subjected to these administrative procedures, undermining the meaning and legitimacy of representation in Kenya's legislature. These reorganizations and restructurings had a number of implications. First, the structures of representation both within KANU and parliament were obscured. The provincial administration now had the power to prevent an elected member of parliament from addressing his or her own constituents. Second, patronage and loyalty to the President became mandatory for one's political survival. In the 1988 general elections most members of parliament were not elected but selected by the party.¹² One of the first victims to fail the loyalty test was the man behind Moi's smooth ascendancy to the Presidency, Charles Njonjo, then attorney general and minister for constitutional affairs, who was accused of plotting to overthrow Moi's government.¹³ Third, those perceived to be against the President and KANU policies were denied the right to contest electoral seats.

By 1981 all the ethnic-centered welfare associations had been banned. These included the Luo Union, the Gikuyu, Embu, and Meru Association (GEMA), and the Abaluhya Union. The president also outlawed the Civil Servants Union (CSU) and the Nairobi University Academic Staff Union (UASU). In 1986 Moi gave a directive for the Maendeleo Ya Wanawake Organization (MYWO), a national non-governmental organization for women, to be affiliated to KANU, and in 1987 officially changed its name to KANU-MYWO.¹⁴ The Central Organization of Trade Unions (COTU), the umbrella body for most of the trade unions in Kenya, had been an ally of KANU for more than two decades, with most of its top leadership frequently selected by KANU, particularly in the 1980s to 1990s. These changes strengthened party-state relations and solidified presidential control of the state. Between 1964 to 1990, twenty-four constitutional amendments were enacted by parliament, all intended to strengthen the

presidency at the expense of civil rights.

On the 1st of August 1982 there was a military coup attempt by some junior Kenya Air Force officers. It was put down at an estimated 600 to 1,800 lives. This accelerated the process of the control of the state and solidified Moi's authoritarian rule.¹⁵ In 1986 parliament enacted Act No. 14 followed in 1988 by Act No.4, imposing limitations on the independence of the judiciary, with far reaching human rights violations. Sections 61(1) and (2) of the Constitution empower the president to appoint the chief justice and puisne judges respectively upon the recommendations of the Judicial Services Commission (JSC) which is also appointed by the president. The 1986 and 1988 constitutional amendments provided for the removal of the security and tenure of the Attorney General, the Controller and Auditor General, the judges of the High Court and the Court of Appeal. Parliament, which at this time was under the control of the executive arm of the government, did not resist these amendments. The control of parliament and the judiciary meant that the office of the president was in a position to manipulate the functions of the two branches of the government. Both Parliament and the Judiciary ceased to have the constitutional rights to control the excesses of the executive. There were no checks and balances on Moi's personal authority.

Two major events happened before Act 14 of 1986 was passed in Parliament to symbolize the unchecked power of the executive. In his ruling in a case in which an American marine had murdered a Kenyan woman in Mombassa, a judge found the accused guilty but fined the marine only Kenyan shillings 500 (about \$50) and bonded him for one year probation.¹⁶ The issue was raised in parliament thereafter because of the light sentence imposed by the judge. The then Attorney General, James B. Karugu, as the chief legal advisor to the government, responded by criticizing the decision of the judge. He did not last long in his position. After that, the Controller and Auditor General questioned why a state owned corporation engaged the services of a private lawyer in this particular case.¹⁷ His office became the object of executive branch criticism. Moi interpreted both of these actions as direct threats to his leadership and thus pressured parliament to enact the amendments to give him more authority over the judiciary and the audit department. The police had, through Act 14 of 1988, the prerogative to detain the critiques of the regime for fourteen days while coercing them into submission. By this time parliament was functioning largely as a rubber stamp of policies initiated by the presidency.

President Moi's control of parliament thereafter was extended to elections. The "Queue" voting system introduced by KANU in 1986 replaced the secret ballot with a system where voters lined up behind candidates. Those parliamentary candidates who secured more than 70 percent of the votes did not have to go through the process of the secret ballot in the general elections. This system encouraged electoral rigging and paved the way for what has been described elsewhere as "selection within an election". In a situation where there was a dispute over head-count, a repeat of the same process was not possible at the end of the exercise.¹⁸ The provincial administrators, who were the election officers, were only answerable to the presidency and they declared as winners only those candidates favored by the regime. Disputes arising out of nominations were

often referred to the president personally as the final arbiter over matters pertaining to the only political party in the country. Kenyans thus lost their right to vote for parliamentary candidates of their choice.

The judicial system could not protect human rights either. The British judges who have continued to serve Kenya as part of the British overseas development aid are more susceptible to the manipulation than their Kenyan counterparts because they are seconded on contracts.¹⁹ Under the terms of the agreement between Kenya and the United Kingdom, the renewal of contracts were at the discretion of the Kenya government.²⁰ A former British expatriate judge in Kenya, Eugene Cotran, openly stated that in cases in which the president has direct interest, the government applied pressure on the expatriate judges to make rulings in favor of the state.²¹ It was as a result of similar circumstances, that two expatriate judges, Justices Derek Schofield and Patrick O'Connor, resigned because of what they called a judicial system "blatantly contravened by those who are supposed to be its supreme guardians".²²

Interference with the judicial process in the late 1990s, with respect to "political" cases, rose to a new high. At a workshop held at Mbagathi (Nairobi) in April 1995, Judges Bena Lata and William Mbuya accused the government of interfering in cases that were then in court.²³ The attempts by the Law Society of Kenya (LSK) to achieve the repeal of the restrictions and to handle legal cases in the courts of law without interference and intimidation landed some of the outspoken lawyers in detention in the 1980s. In 1990, the Office of the President succeeded in manipulating the LSK elections which saw its sponsored candidate, Fred Ojiambo, defeating the pro-multiparty supporter, Paul Muite, for the chairmanship.²⁴ This move was designed to control the legal profession by the state.

To bolster his grip on power, Moi also embarked on the gradual Kalenjinization of the public and private sectors from the 1980s. Moi is a Tugen, one of the smaller Kalenjin ethnic groups. He began to "de-Kikuyunize" the civil service and the state-owned enterprises previously dominated by the Kikuyu ethnic group during Kenyatta's regime. He appointed Kalenjins in key posts in, among others, Agricultural Development Corporation (ADC), Kenya Commercial Bank (KCB), Kenya Posts and Telecommunications (KPT), Central Bank of Kenya (CBK), Kenya Industrial Estates (KIE), National Cereals and Produce Board (NCPB), and the Kenya Grain Growers Cooperative Union (KGGCU). He created Nyayo Tea Zones (NTZ), Nyayo Bus Company (NBC) and Nyayo Tea Zones Development Corporation (NTZDC).²⁵

The only remaining major worry for the presidency by 1990 was the church, particularly the Anglican Church (then known as the Church of Province of Kenya), the Catholic Church and the Presbyterian Church of East Africa, which together account for over 70% of the Kenyan Christian community, a majority of the population. Together with the umbrella organization, the National Council of Churches of Kenya (NCCCK), the church has persistently and consistently used the pulpit to criticize Moi's authoritarian regime.²⁶ What Moi has established over the years is a clear manifestation of an institutionalized authoritarian regime with a habit of human rights violations. It was not

until the return of multiparty politics in Kenya, after demonstrations in 1990, that the situation changed.

ASSASSINATION, REPRESSION AND DETENTION WITHOUT TRIAL OF DISSIDENTS

When the Kenya African Democratic Union (KADU), of which Moi was the chairman, crossed the floor and joined KANU in 1964, Moi was appointed by Kenyatta as the minister for home affairs. He became the Vice-President in 1967, but kept the home affairs portfolio. The Kenyan police force, which at the time of independence outnumbered the national defense forces, was under his jurisdiction as the minister for home affairs. Kenya Police includes the Criminal Investigation Department (CID), the paramilitary General Service Unit (GSU), and the Directorate of Security and Intelligence (DSI). Moi therefore was exposed to the structure and functions of the police force for fourteen years before he became president. Under Kenyatta's instructions, Vice-President Moi invoked his administrative prerogatives to detain Oginga Odinga and the other eight leaders of the then opposition Kenya People's Union (KPU) in 1969 when that party was proscribed by Kenyatta. Moi explained that the KPU leaders were detained because "any government worth its salt must put the preservation of public security above the convenience of a handful of persons who are doing their utmost to undermine it".²⁷ As the person in charge of internal security for fourteen years, he established a network of supporters within the ranks of the intelligence community. It was one of his counter-intelligence supporters, James Kanyotu, who telephoned him when Kenyatta died in 1978.²⁸

Detentions and political trials, torture, arbitrary arrests and police brutality reminiscent of the colonial era have become common during Moi's tenure. He perceives human rights generally as alien and Euro centric conceptions inconsistent with African values and culture. He views the pro-democracy and human rights advocates in Kenya as unpatriotic, disloyal, and ungrateful individuals influenced by what he calls foreign masters.²⁹ A few years after taking over the presidency, Moi began to exercise his style of authoritarianism by detaining a number of Kenyans critical of his government. Table One indicates the extent to which detention has been consistently used as an instrument for suppressing Moi's outspoken opponents in the 1980s and 1990s. Some of these detainees were former or sitting MPs arrested for demanding, among other things, the introduction of multiparty politics.

After the university staff union was banned, University of Nairobi faculty members, Willy Mutunga and Katama Mukangi, were detained for what Moi called "over-indulgence in politics".³⁰ This was just the beginning of the crackdown on Kenyans by his Administration in the 1980s. Apart from detaining the UASU leaders, the passports of lecturers considered to be critical of his rule were seized.³¹

Moi's actions were meant to silence the intelligent, perceived to be critical of his authoritarian rule. The emergence of the little known clandestine London based movement, Mwakenya, set the stage for more widespread human rights violations by

his Administration. In 1986 alone, 100 people were arrested and detained for their alleged association with Mwakenya, the movement started by some Kenyans in Europe who had fled Moi's oppression, demanded, inter alia, social justice and respect for human rights.³² Even though Moi made a big issue out of the movement, there was no tangible evidence of a well organized group in the country that threatened Kenya's national security and which would have warranted the massive arbitrary arrest, torture, and detention without trial of the suspects. Moi used the same tactic when he denounced the February Eighteenth Movement (FEM) which he accused of planning attacks on Kenya to be launched from Uganda in the early 1990s.³³

Between 1989 to 1991 Kenya saw one of the worst human rights violations in its history. Moi accused advocates of multiparty politics of subversion, and thereby got a fresh excuse for detaining a new generation of his critics. A number of the champions of multiparty politics--John Khaminwa, Raila Odinga, Mohammed Ibrahim, Gitobu Imanyara, Kenneth Matiba and Charles Rubia--among others, were detained under inhuman conditions and without trial. Human rights lawyers, Gibson Kamau Kuria and Kiraitu Murungi, fled to the United States to avoid being jailed.

Arrests and detentions in fact followed every one of Moi's warning against his critics. As has been the practice throughout his leadership, the police moved quickly and arrested those in the forefront for democracy, with the judiciary merely sanctioning what is commonly known in Kenya as political cases.³⁴ A case becomes political when Moi makes a direct statement regarding the case in question even when it has subjudice implications.³⁵ The ruling against the Universities Academic Staff Union (UASU) and its officials between 1993 to 1995 serve as good examples of the level of state interference in political cases.³⁶ The union which sought to promote academic freedom and professionalism in Kenya universities was defended by seven well known human rights lawyers: Pheroze Nowrojee, James Orengo, Gibson Kamau Kuria, Paul Muite, Kiraitu Murungi, Otieno Kajwang' and Kathurima M'Inoti, among others. The courts refused outright to hear it while the police harassed its officials.

Suppression of freedom of the press, assembly, association, expression and movement and other fundamental rights of individuals were extended to the press, and non-governmental organizations. In 1991 Moi banned the production of George Orwell's Animal Farm. He also banned Ngugi Wa Thiong's play Ngaahika Ndeenda (Kikuyu for, "I Will Marry When I Want") considered by the regime to be subversive because it attacks post-independence African dictators.³⁷

By this time detention and the violation of human rights were regularly protested by civil society, with the church and the LSK taking the lead. Since the 1980s the church had remained the central locus of dissent against the Moi regime, with the pro-democracy and human rights movements using cathedrals and the compounds of churches as venues for expressing their views and drawing plans for action. But using the church as a refuge did not deter the regime from arresting, assaulting and detaining its critiques within church compounds. In one of his sermons, the late Anglican Bishop Alexander K. Muge emphasized that the church has a moral obligation to "protest when God-given rights and liberties are violated" and to "give voice to the voiceless".³⁸ Even though

some politicians and the Office of the President condemned his criticism of the queue voting system, Bishop Muge maintained that: "I shall not protest against violations of human rights in South Africa if I am not allowed to protest the violation of human rights in my own country".³⁹ Yet not even the clergy was spared arrest by the police. The Presbyterian minister Rev. Timothy Njoya was arrested in 1988 for suggesting that Kenyans should hold discussions on critical questions affecting the country. Bishop Muge's death in a car crash in August 1990 is still shrouded in mystery.

As demands for competitive elections and an end to detention without trial continued, Kenya's Foreign Affairs Minister, Dr. Robert Ouko, was assassinated in February 1990. Demands to reveal his real murders amplified those for pluralism and respect for human rights. To save his regime from collapse, Moi adopted even greater authoritarian tactics arguing on a number of occasions that multipartism would cause chaos in the country because Kenya was not "cohesive enough". Clergymen, lawyers, and other pro-democracy and human rights advocates were persistently arrested and harassed. The crackdown intensified during the Saba Saba (July 7) 1990 meeting, organized by the pro-democracy and human rights advocates. Some of these leaders later founded the Forum for the Restoration of Democracy (FORD). The forum advocated an end to jailing dissenters without trial. The attempt by the American embassy to broker a negotiated permission for FORD to hold its first public meeting scheduled for 16 November, 1991 failed. The government refused to issue a permit and instead arrested Oginga Odinga and Gitobu Imanyara. Masinde Muliro, Martin Shikuku, James Orengo, and Paul Muite managed to go into hiding. The FORD leaders, however, later went ahead with the meeting, but were arrested by the police who forcefully dispersed the gathering.

Instead of ending detention, the government arrested leaders who then were charged under section 5(10)(d) of the Public Security Act. The Act states that "any person who prints, publishes, displays, distributes or circulates notice of, or in any other manner advertises or publicizes, a public meeting or public procession which has not been licensed under this section, shall be guilty of an offense".⁴⁰

The US Congress, concerned with human rights violations and corruption, passed the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1991 requiring Kenya to meet certain conditions before \$15 million in economic and military aid could be disbursed.⁴¹ These conditions were based on the provisions that Kenya "charge and try or release all prisoners, including any persons detained for political reasons; cease any physical abuse or mistreatment of prisoners; restore the independence of the judiciary; and restore freedoms of expression."⁴² US Congressional concerns for human rights violations in Kenya gained momentum in the 1990s, culminating in a fact finding mission to Kenya by high ranking Senators and the release of Kenneth Matiba, Charles Rubia, Raila Odinga, and Gitobu Imanyara.

At this point the KANU government tactically gave in. It agreed to repeal Section 2A of the Constitution which made Kenya a de jure one-party state. This decision paved the way for the formation of political parties, namely FORD (Forum for Restoration of Democracy) led by the opposition veteran, Oginga Odinga, and the Democratic Party of

Kenya (DP) under Mwai Kibaki. There were other smaller parties. By splitting their votes against Moi's KANU, the opposition assured KANU a victory, albeit one characterized by violent repression and unfairness at the polls. Violations of human rights continued even under the conditions of a symbolic multi-party democracy.

HUMAN RIGHTS VIOLATIONS UNDER MULTI-PARTY RULE

When Kenya entered the second multi-party era it was assumed that by allowing opposition to exist, the government would create an enabling environment for its citizens to freely exercise their constitutionally guaranteed rights. What resulted, however, was continuity in human rights violations by the police, and government-supported armed militia and hired thugs. The arbitrary arrests, detentions, and the practice of the interference of the judiciary by the executive, also continued for most of the 1990s.

In the early 1990s, the KANU government went as far as instigating ethnic violence in order to portray the multi-party system as inappropriate for Kenya. Ethnic cleansing was introduced in order to eliminate opposition in "KANU-only zones." From various independent human rights reports, the 1992 and 1998 ethnic violence in the Rift Valley Province was deliberately inflamed for political purposes by members of the government. Violence spread in the Likoni-Kwale (Coast Province) prior to and after the 1997 general elections, in areas where opposition to KANU was strong. The 1998 clashes were different from the previous ones in that this time the Kikuyu community in the Rift Valley retaliated in an organized fashion which the attackers had not anticipated.

Independent investigators again confirmed state complicity in these 1997 violations of human rights. A task force appointed by KANU as well as a parliamentary committee reaffirmed the findings of the National Christian Council of Kenya (NCCCK) that the state was involved in widespread ethnic cleansing in the Rift Valley.⁴³ As ethnic conflict and other forms of human rights violations intensified in the early 1990s, the church issued statements protesting the government's inaction in maintaining order and in stopping human rights violations. In one of their pastoral letters addressed to Moi, the Roman Catholic Church wrote:

"Although our pleas, requests and advice ... seem to have been ignored by you, we on our side will not abandon our responsibilities. We have seen and heard of so much wickedness perpetrated in Kenya since the clashes began. Innocent people, peaceful and humble, and even churches and mosques have been attacked and destroyed. All these abominations are done in your name, by some of your Cabinet Ministers, your DCs, DOs, your GSU and your police."⁴⁴

The use of militia to instigate violence on behalf of KANU and the government began with the 1991-1993 ethnic clashes. To attack opposition groups, "Kalenjin warriors" donned traditional attire and used arrows from South Korea transported by helicopters.⁴⁵ Political violence also occurred in 1997 and 1998 in the Rift Valley

Province, particularly in Trans Nzoia and Nakuru Districts. As in the 1992 ethnic clashes, the conflict was between pro-KANU supporters and ethnic communities that were deemed sympathetic to the opposition.

According to human rights groups, the fact that the Provincial Administrators, the GSU, and the police were involved in the conflicts again implicated the state. An investigative report into the Likoni-Kwale violence of August 1997, produced by the Kenya Human Rights Commission, for instance, established that the causes of the violence were essentially the politicization of the socioeconomic situation in the region by local politicians.⁴⁶ The report implied involvement of the government in that Mombassa KANU politicians, Rashid Sajad and Karisa Maitha, had paid a visit to an armed militia training camp in Shimba Hills. They reassured young men recruited from Uganda, Rwanda (mainly Hutus), and Ukunda (Coast Province) that the government was not only behind but also supported the expulsion of "up-country" people from the area.⁴⁷

Apart from the assumption based on evidence that the clashes were not being perpetrated by indigenous people, there are also other instances that indicate that the government was either not concerned about the human rights violations against opposition inclined ethnic groups or it was behind the attacks. On January 27, 1998, a group of Catholic priests and nuns, international journalists, and a unit of about thirty-eight policemen witnessed a Kalenjin raid on a Kikuyu homestead near the junction of Njoro and Molo in the Rift Valley Province. The police did not act until the nuns ran after the raiders.⁴⁸

As noted above, one of the main objectives of the regime in instigating ethnic cleansing was to "prove" to Kenyans and the world that multiparty politics was not suitable for a multi-ethnic country like Kenya. Moi wanted to demonstrate that he is not willing to relinquish power and control of the state. Indeed, he is fearful of the potential consequences if he were to lose power because of the misdeeds and corrupt practices associated with his regime. Despite a multiparty election, detention, arbitrary arrests and torture of ordinary people -- particularly the pro-democracy and human rights advocates and the opposition members of parliament -- continued although at a declining rate throughout the 1990s. The continued arrests of members of parliament in particular undermined the right of representation. Members of parliament have been arrested for addressing "illegal" meetings even in cases where such meetings are licensed by the government.⁴⁹

In a report on Kenya submitted to the United Nations in 1993, the Committee on Economic, Social and Cultural Rights (CESCR) stated that although Kenya has been a party to the Convention since 3 January 1976, it had not submitted a single report as stipulated under Articles 16 and 17 of the covenant. The committee also observed that there is no institutional mechanism in Kenya responsible for the enforcement of human rights, with the High Court performing no constitutional role in this regard.⁵⁰ The state continued to interfere with court evidence as was shown in the case of Koigi wa Wamwere who had been charged with subversion in 1994. His defense attorneys discovered that the Magistrate, William Tuiyot, had interfered with the proceedings.⁵¹

Despite the pressure mounted by internal pro-democracy and human rights groups, another type of repression came into the scene after the 1992 elections: informal repression by the state. This involved the use of proxy agencies and groups to attack the pro-democracy and human rights supporters. Although not new to Kenya, this became an important political tool under Moi in the multiparty era.⁵² During the December 1992 elections, and again in 1997, the KANU government used its control over the instruments of coercion and the Electoral Commission to place an undue advantage over the opposition. Private militia and groups of thugs were used to disrupt opposition rallies.

At the same time, KANU adopted a number of strategies that undermined free and fair elections in 1992 and 1997. Among them was lopsided voter registration which excluded opposition voters, an Electoral Commission of Kenya (ECK) that was biased, intimidation of journalists, and banning of print media that is critical of the regime. The Provincial Administration in both elections helped KANU undermine the opposition party's prospects from gaining ground in the elections. The commissioners of the ECK were appointed by the President alone despite protest by the opposition. It ignored protests of nearly four million eligible voters, (particularly the youth who had attained the age of eighteen years) who were denied registration in 1992.

Voting in 1992 and 1997 was characterized by the suppression of voters' rights by the government in 1997. It was reported that in the Likoni polling stations in the Coast Province, "up-country" people could not vote because their names did not appear on the register, even though they had viable voter registration cards. In one incident, an "up-country" lawyer working in Mombassa insisted on checking the register and actually found his name.⁵³ The ECK was taking advantage of people's ignorance to ensure a KANU victory at the coast and elsewhere. Journalists were ill-treated and attacked by police for reporting these incidents. In February 1997, for instance, Susan Mosoke, a photographer, was assaulted by an administration policeman when covering a story on the deliberate delay in the issuance of identity cards so that people would not be able to register for voting.⁵⁴

In the build-up to the 1997 elections, opposition demonstrations in favor of constitutional reforms to ensure free and fair elections were met with police beatings. Under external donor pressure, some amendments were made and enacted in November 1997, however, the police continued to contravene the constitution by violating the rights enshrined in the constitution. The reform champions demanded repeal of the Preservation of Public Security Act, sections of the Penal Code dealing with sedition and treason, the Public Order Act, the Chiefs Authority Act, the Administration Police Act and the Societies Act.⁵⁵ These were laws used to lock up and detain human rights campaigners and pro-democracy activists. These reforms were actively supported by church groups, opposition parties, human rights organizations, and other NGOs under the forum of the National Convention Assembly (NCA). They challenged the impartiality of the Electoral Commission, decried restrictions on opposition parties, and demanded unhindered access to the broadcast media and a fair registration process.⁵⁶

These reforms were the result of negotiations by an inter-party forum known as the Inter- Parties Parliamentary Group (IPPG). It made recommendations to Parliament and some laws were indeed changed.⁵⁷ The Public Order Act gave way to a measure of freedom of assembly as long as police were notified by organizers of public gatherings. The police could now prevent the holding of a meeting if notice of another meeting had been received and there was a conflict. However, the police are still authorized to stop or prevent the holding of a meeting if no notice has been given, or if another meeting in the same venue presents "clear or imminent dangers of the breach of peace or the public order."⁵⁸ The police subsequently used this clause to stop meetings deemed as likely to undermine the ruling party's authority. The authority of the chief to regulate the movement of persons from the jurisdiction of one chief to another--another act violating the right of free movement--was repealed in the amendments to the Chiefs' Act. However, the local administration still practices the power of arrest and detention.

In May 1998, a meeting by KANU and opposition MPs at Kwanza (Rift Valley Province) was declared illegal. The police beat politicians, journalists, and the general public to prevent the rally.⁵⁹ A subsequent opposition public meeting was invaded by thirty armed raiders. The police reportedly did nothing to stop the raiders. On January 16, 1999, during vote counting of a by-election in Eastern Province, police used wooden clubs and batons to disperse a crowd outside the vote counting hall. They were protesting the announcement of a narrow victory by the KANU candidate based on the counting of the contested ballot boxes.⁶⁰ The police entered the hall and beat up opposition MPs. On June 10, 1999, police resorted to tear gas and force to break up a public rally by KANU and opposition MPs at Machakos, Eastern Province, who had met to discuss issues of concern to the Kamba people.⁶¹ On February 26, 1999, police used tear gas and police dogs to stop MPs and farmers from holding a public rally at Eldoret, Rift Valley Province. In this context, police brutality was directed towards leaders who wanted to discuss the problems their constituents were facing; the government perceived this as criticism.

Despite the presence of a vocal opposition in parliament since 1992, the judiciary has contributed to the consistency and continuity of the human rights violations. Victims of human rights violations are thus left without judicial protection, the High Court having decided that it has no jurisdiction to enforce the human rights provisions of Chapter V of the Constitution, even though section 84 of the Constitution provides for redress before the High Court for violation of any of its provisions.⁶² Undue interference with the judiciary by the executive branch in matters of appointment continued with the presidency playing a major role.

Judges who made rulings in favor of human rights victims exposed themselves to punitive transfers. In September 1994, a chief magistrate was transferred to Kitui, Eastern Province (130 km. from Nairobi) after he refused to accept as evidence the confession of six men accused of raiding the Ndeiya Chief's Camp near Nairobi. The appointment of Bernard Chunga (formerly the chief state Prosecutor) as Chief Justice by Moi in September 1999, was widely criticized by the human rights lawyers as an attempt to further reduce the independence of the judiciary. Chunga was seen as

personally loyal to the President.⁶³ In July 1999 the High Court dismissed a petition case filed by Mwai Kibaki, the leader of the Democratic Party, against Moi for rigging the 1997 presidential elections through the Electoral Commission. The case was dismissed on a technicality that Kibaki failed to submit a copy of the petition to Moi personally.⁶⁴ The truth was that Democratic Party lawyers had been denied personal access to Moi's office by his security guards.

The existence of a strong opposition did not help the justice system. In 1999 Moi stated that courts should not interfere in land matters, affairs of public universities, or issues relating to political parties.⁶⁵ This can help to explain the reason why the courts have handled the political cases in the manner they did. In March 1997, the Chairman of the Kenya Judges and Magistrates Association (KJMA), stated that: "these pronouncements clearly threaten the rule of law, the independence of the judiciary, and the constitutional doctrine of separation of powers."⁶⁶

The war-mongers in the ruling party were again protected by the ruling party as they urged violence against the opposition supporters during and after the 1997 elections. At a KANU rally in Narok, some pro-Moi members of parliament threatened DP supporters with reprisals after Kibaki announced his rejection of the election results. A Minister in the Office of the President, Simon Kiptum Arap Choge, warned that there would be bloodshed country-wide if Kibaki's petition threatened Moi's regime, but no action was taken by the police for incitement to violence.⁶⁷

One cannot overlook the fact that members of the opposition also contributed to incitement of violence through issuing public statements. For instance, Mwai Kibaki is quoted as having said that "Mr. Moi cannot afford to maintain silence as if nothing is happening ...[when] the killing of our citizens has been going on in the last two weeks. It is only natural that the victims will take arms to defend themselves."⁶⁸ This sentiment arose out of the government's lack of action in curbing the ethnic violence. While opposition leaders, such as Stephen Ndicho, were being arrested and charged with inciting violence, nothing was done to KANU and KANU leaders.

In 1997 Minister Francis Lotodo asked all non-Kalenjins to leave the Rift Valley, again contradicting the provisions of freedom of movement in the constitution. In September 1999 President Moi himself stated that government officials should deny "permits" to politicians who use public rallies to abuse other leaders. However, officials now have legal rights to cancel such rallies only if they are a threat to security or if there is another meeting in the same venue.⁶⁹ The KANU government continued to use force to oppress the opposition in the late 1990s, even after the incorporation of the IPPG amendments to the Constitution. Peaceful rallies calling for political and constitutional reforms were persistently violently broken up by the security forces. On June 10, 1999, the police, complemented by a squad of "KANU youth" and the infamous jeshi la mzee (which in Swahili literally means, old man's militia), violently disrupted a peaceful rally organized by religious and civil society groups to protest the government's handling of the constitutional review process. A number of people, including the Reverend Timothy Njoya who has been vocal in criticizing the government, were seriously injured.⁷⁰ The

jeshi la mzee, allegedly sponsored by the Assistant Minister in the Office of the President, Fred Gumo, again appeared on the scene in May 1997 and was used to violently disrupt pro-reform rallies.⁷¹ Notwithstanding the elections, government was complicit to violence against its citizens who were exercising their rights of association and expression.

CONCLUSION

The move to strengthen human rights in Kenya has run against the authoritarian rule of Daniel Arap Moi, and his patronage system. Reforms since the introduction of multipartism have created a stalemate between Moi's government and most of the opposition members of parliament, church leaders, and other pro-democracy and human rights advocates. Despite the reinstatement of multiparty elections and attempts to annul laws that permit abuse of human rights, government security agents and armed militia continue to violate civil and individual liberties. The main explanatory factor of why so little has changed is Moi's pattern of rule and his political beliefs.

Moi's centralization and personalization of power has led to the subordination of the functions of the judiciary and of parliament. As was the case during the *de jure* one-party state rule, human rights violations by his administration have continued even after the post-1992 and 1997 multiparty elections. Moi has persistently demonstrated unwillingness to uphold the sanctity of human rights at home. His administration has shown ambivalence in dealing with violence which has persisted in the country, particularly in the Rift Valley and the Coast Provinces.

It has been argued in this paper that were it not for the partial success of the IPPG in allowing President Moi and KANU to maintain control, the government would have used the Likoni-Kwale violence as an excuse to declare a state of emergency and thus postpone the elections indefinitely. Despite constitutional reform, the government has been unable to fulfill its obligation to the country's citizens as enshrined in the constitution and international human rights treaties that it is party to. In and of themselves, the elections of 1992 and 1997 proved insufficient to guarantee human rights. It is clear that an independent judiciary and an accountable police force are required if human rights and civil liberties are to be secured for the majority of Kenya's peoples.

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Korwa G. Adar is a Senior Lecturer in International Relations, International Studies Unit, Political Studies Department, Rhodes University. **Isaac M Munyae** recently completed his MA in International Studies, International Studies Unit, Political Studies Department, Rhodes University. The authors are indebted to the African Studies Quarterly review committee for their helpful comments

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