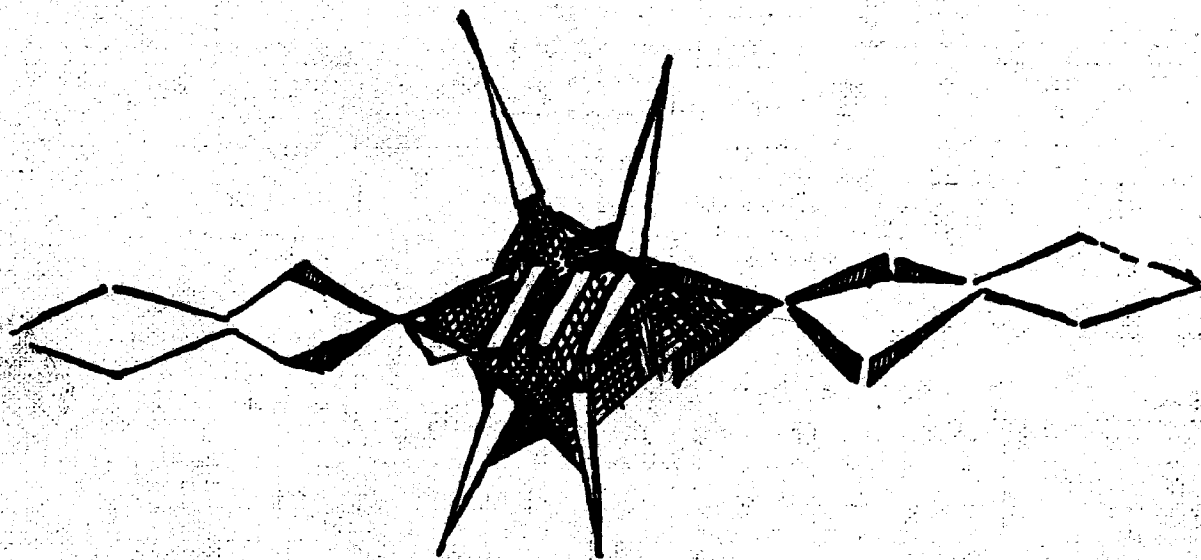


THE STATE OF HUMAN RIGHTS IN KENYA



A YEAR OF POLITICAL HARASSMENT

1993

A Kenya Human Rights Commission Report

Nairobi, Kenya

STATE OF HUMAN RIGHTS IN KENYA

1993



A YEAR OF POLITICAL HARASSMENT

**Kenya Human Rights Commission
P.O. Box 55235 Nairobi, Kenya
Tel: 254-2-749233/749238
Fax: 254-2-749248**

The Kenya Human Rights Commission is a non-profit, independent and non-partisan advocacy group founded in 1992. It is based both in the United States and Kenya. Its mission is to protect and promote the respect of fundamental human rights as stipulated in the Kenya Constitution and international covenants.

The Kenya Human Rights Commission began operations in Nairobi in September 1992. Since then, it has produced research reports on human rights violations in Kenya, organized a peaceful prayer-march for peace, and written opinion pieces in both local and international media.

For more information, contact the Kenya Human Rights Commission, P.O. Box 55235 Nairobi, Kenya Tel: 254-2-749233/8. Our address in the U.S. is: 34 Johnson Avenue, Medford, MA 02155; Tel: (617) 483-3234.

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Kenya Human Rights Commission
P.O. Box 55235 Nairobi, Kenya
Tel: 254-2-749233/749238
Fax: 254-2-749248

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PREFACE

By Maina Kiai, Executive Director

In 1991, capitulating after the suspension of aid by the World Bank and consistent pressure from local and international groups, President Moi's Kenya African National Union (KANU) government amended the Constitution to allow for a multi-party system of government. After ten years of unitary rule, the return to multi-partyism was expected to be the first step toward the institutionalization of democracy and respect for human rights. The December 1992 elections, although fraught with irregularities, resulted in seven opposition parties sending representatives to parliament as minority parties to KANU.

Soon after his January 1993 inauguration, however, President Daniel arap Moi stated clearly that he was still opposed to pluralism in Kenya. Using a refrain that had been first enunciated after the demands for change became louder and persistent in the late 1980s and early 1990s, President Moi claimed that a multi-party system would only inflame ethnic animosity and tribalism. In 1991, this language had been closely followed by violence unprecedented in independent Kenya, with "clashes" springing up in parts of the Rift Valley region inhabited by ethnic groups thought to be opposed to single party rule. As in 1991-92, President Moi's assertion was followed through into 1993 with increased violence against predominately non-Kalenjin and non-Maasai peoples in circumstances similar to the violence in 1991-1992. (Note: President Moi belongs to the Kalenjin ethnic group which like the Maasai are traditionally pastoralist.)

Compelling evidence gathered by independent bodies ranging from the National Council of Churches of Kenya, the Kiliku Parliamentary Committee¹, to Africa Watch, have implicated the Moi regime in this violence that some have termed "ethnic cleansing." Since 1991, approximately 2,000 people have died, and more than 300,000 displaced from their homes as internal refugees. The majority of victims have been non-Kalenjin and non-Maasai peoples pitted against "Kalenjin warriors" or "Maasai morans."

While failing to establish measures to contain the violence, the Moi regime consistently worked to block assistance to the displaced communities. Indeed, extraordinary measures such as the declaration of "security operations zones" were invoked in some of the affected areas, limiting movement and information to and from the affected areas.

Several benefits from the violence accrue to Moi and the Kalenjin and Maasai power brokers close to him. First, the continued violence in these multi-ethnic areas is a realization of a self-fulfilling prediction by the President that pluralism in Kenya would lead to violence. Second, the violence has resulted in the consolidation of Moi's power base within the "smaller" ethnic groups, and principally through the Kalenjin and Maasai who may have seen the rise of pluralism as a way to ease one of their own from power. In addition, there has been a de facto

¹ A parliamentary select committee set up when Kenya was a one party state.

re-distribution of land through the violence with Kalenjin and Maasai occupying parts of the land left behind by the displaced people. The violence and re-distribution of land may also be part of the grand design to split Kenya into *majimbo*s, a version of federalism advocated by many high-ranking KANU leaders based on ethnicity, in which "indigenous" groups control the massive and fertile Rift Valley to the exclusion of other communities.

In keeping with these broader political objectives, the KANU government continued, in 1993, to suppress the exercise of civil and political rights. This was accomplished through laws enacted to control popular participation in governance and perpetrate one man rule, as well as through the use of sheer force.

This report examines the legal channels and the extra-judicial means utilized by the government to suppress and restrict fundamental rights during 1993. The interference with liberty and free speech through the police and the judicial system was disturbingly effective. Opposition was met with arbitrary arrest, detention without arraignment or trial, torture, criminal charges, denial of licenses for meetings and their systematic break-up, destruction of property, armed attacks, and murder. The harassment practiced by the KANU government was both economic and political.

This is the first attempt by a Kenyan group to document and report on the violations of human rights on an annual basis. (The Commission has released other reports that document specific aspects of human rights violations perpetrated in 1993, and other groups have issued reports on election malpractices in by-elections held in 1993.) There have been two reports detailing human rights abuses in 1993 released by the United States State Department and the Robert F. Kennedy Memorial Center. These are the Country Report on Kenya and Failing The Democratic Challenge: Freedom of Expression in Multi-Party Kenya, respectively. The two reports were released in February 1994, and the Kenya Human Rights Commission has relied, to some extent, on them in preparing our report.

A variety of problems have made this report a little late in coming out, and we apologize for the delay. Nevertheless, we believe that the material in this report is still relevant and includes substantial information that has not been covered in other reports. In particular, this report emphasizes on the Nakuru area--the capital of the Rift Valley--which has been the epicenter of the ethnic clashes, and has seen some horrible atrocities committed against individuals and groups.

In addition to the earlier reports cited, the report has used newspaper articles and interviews as sources. Some of the interviewees requested anonymity which has been respected. As a caveat we would like to add that this report does not pretend to cover every single incident of human rights violations that occurred during 1993. It should be read in conjunction with the State Department's report and the Robert F. Kennedy report to gain a more complete picture of the abuses. In particular, the report omits the issue of women's rights. This issue is far too serious to be covered adequately within the focus of this report. The Kenya Human Rights Commission is currently working on a separate report on this very important matter.

I. THE STATUS OF CIVIL AND POLITICAL RIGHTS

A. ARBITRARY ARRESTS AND UNLAWFUL DETENTIONS

Countless Kenyans were arrested and/or detained in 1993 for political reasons. They included thirty-six opposition Members of Parliament (MPs)² (constituting about 42 percent of all opposition MPs), and several political figures and activist lawyers. The general pattern, as outlined in this chapter, shows a systematic effort on the part of the Moi regime to deter criticism and the free flow of information on the violence in the Rift Valley. Consequently, the independent media also fell victim to this systematic effort aimed at silencing the country, as did opposition politicians and independent critics.

The preferred charges were incitement, breach of the peace, sedition, subversion, oathing and robbery with violence. Robbery with violence carries a mandatory death sentence on conviction, and is non-bailable. In 1993, it was used against the "Ndeiya six" who were charged with attempted robbery of a Chief's camp, allegedly committed on October 31, 1993, and Koigi Wamwere and ten others arrested on November 5, for allegedly attempting to rob a police station on the night of November 1. The case against Koigi started in April 1994, and in the intervening period, Koigi and his co-accused were remanded in prison custody.

1993 was disturbing in the incidences of mass arrests in urban areas and especially in the Rift Valley. These arrests described in this chapter, bring to mind the tactics used by the colonial government in Kenya or the *apartheid* regime in South Africa when dealing with nationalist fervour. It is more disturbing given that they occurred during the first year after the multiparty elections in 1992 when a break from the past was expected.

Interestingly, no government or KANU official was arrested in 1993 and charged with similar political offenses. Yet, during the year, several high ranking government officials issued public statements carried in the local media that essentially declared war against certain ethnic communities and opposition politicians.

It will be noted that responsibility for public prosecutions lies with the office of the Attorney General. The Constitution of Kenya provides security of tenure for the Attorney General so that he may not be fired at the whim of the President while in office. Further, the Constitution declares that the "Attorney General shall not be subject to the control or direction of any other person or authority" in the performance of his duties. The numerous arrests and prosecutions of opposition politicians, independent critics, and perceived supporters of the opposition, compared to no arrests and prosecutions of KANU or government officials, lead to the irresistible conclusion that the present Attorney General, Amos Wako, was either incompetent or biased in the conduct of his duties.

² See U.S. State Department, Country Report on Human Rights Practices in Kenya, 1993, (Washington, D.C. 1993).

(1) Press-related arrests

Mr. Njehu Gatabaki, editor of *Finance* magazine was arrested in January after preparing a lead story entitled "Moi Family Has Sh. 150 Billion Abroad."³ He was charged with sedition and held for several days before being released on bond. He was arrested again in May but released several hours later without charge. In June, Gatabaki was arrested for the third time at the High Court where he was petitioning for the return of his passport. He was again charged with sedition, held in custody for forty-eight hours and released on bond. None of these sedition cases has been pursued, and all pending charges were dropped by the end of October.⁴

In February, the Editor and a staff member of *Watchman* magazine, Rev. Jamlick Miano and Mr. Peter Kihumba respectively, were arrested and charged with sedition.⁵ In May, Rev. Jamlick Miano was again arrested and charged with sedition for trying to publish *Jitegemea* magazine, a publication of the Presbyterian Church of East Africa, of which he was the editor. The issue in question accused the government of targeting the Kikuyu community by demolishing kiosks and instigating the clashes.⁶ In the same month, Mr. Dominic Martin, proprietor of Fotoform printers, was arraigned in court on charges of sedition.⁷ Mr. Martin printed most of the independent and critical magazines. In August, police raided the offices of Colourprint, where *Finance* and other magazines were printed. In the raid Mr. Bushan Sanju, son of the Chairman of Colourprint, was held for ten hours by police before being released without charge.⁸

(2) Speech-related arrests

Public statements critical of the government were similarly answered with arrest and detention in 1993. In January, an attempt to arrest Mr. Paul Muite, opposition Member of Parliament for Kikuyu, for accusing the government of sustaining unrest in North Eastern Province, failed when his lawyers and ordinary Kenyans intervened.⁹ Mr. Joseph Mugalla, Central Organization of Trade Unions (COTU) Secretary General, was arrested in May after calling for a national strike

³ "Moi Family has Shs. 150 Billion Abroad", *Finance*, January 31, 1993.

⁴ This case is further discussed below. See part III, "Freedom of Speech and the Information Media".

⁵ "Sedition Charges Repugnant", *Daily Nation*, February 18, 1993.

⁶ See Country Report on Human Rights Practices in Kenya 1993, pp. 11-12 for further discussion.

⁷ "Printer Charged With Sedition", *Daily Nation*, May 12, 1993.

⁸ See *The Economic Review*, April 1994 pp. 8-10 for a summary of trials and tribulations faced by the press in Kenya since 1992.

⁹ *Id.*

and the dismissal of Vice-President George Saitoti.¹⁰

In August, Mr. Abdullahi Sheikh Ahmed, Manderu East MP from the Party of the Independent Candidates of Kenya was held for several hours in Manderu town after a Muslim march protesting the desecration of the Koran. He was released without charge.¹¹ In November, Mr. John Kinyanjui was arrested after telling the British Broadcasting Corporation that he had been tortured. Kinyanjui, was charged with being in the country illegally on the grounds that he is a Ugandan, before being released on bail.¹² The suppression of the right to free expression was taken to the extreme in Nakuru with the arrests of eleven men, who while drinking in a bar, stated that President Moi was "masonic."¹³

(3) Arrests for Association and Assembly

Arrest was also used to harass those who attempted to engage in meetings or discussions of a political nature. In April, Mr. Raila Odinga, MP for Langata, Mr. John Mwaura, MP for Kigumo, and two others were arrested in Nairobi for taking part in an inter-denominational prayer service.¹⁴ Odinga was charged with holding an illegal meeting, but the charges were later dropped. Mr. Martin Shikuku, the opposition FORD Asili Party Secretary General, and Mr. Kamau Icharia, FORD Asili MP for Kiambaa were arrested in May at a licensed FORD Asili meeting in Kiambu. They were held overnight and released the next day without being charged.¹⁵

Four officials of the University Academic Staff Union (UASU), Dr. Korwa Adar (National Chairman), Dr. Kilemi Mweria (Secretary-general), Mr. Odhiambo Nyaduwa (Treasurer), and Dr. Airo Akodhe (Chairman, Egerton University Chapter) were arrested in December while on their way to a meeting at Egerton University. The four were held and interrogated but no charges were filed against them. They were released the next day.¹⁶

(4) Clashes Related Arrests

The continued ethnic cleansing in the Rift Valley resulted in related violations against people

¹⁰ See Country Report, pp. 5-6.

¹¹ "Police Fire To Break up Muslim Demo," *Daily Nation*, August 23, 1993.

¹² See *The Economic Review* summary of human rights violations during November 1993.

¹³ A member of the secret order of the Freemasons.

¹⁴ See *The Economic Review* summary of violations during the month of April 1993.

¹⁵ "Shikuku Flees Anti Riot Squad," *Standard*, May 31, 1993.

¹⁶ Reporting notes of Joseph Ngugi, *Daily Nation* correspondent in Nakuru, December 11, 1993.

seeking to assist the victims or even visit them. Further, a climate of repression was cultivated in the clash areas and the areas surrounding them by arresting and intimidating people from or in support of the opposition parties.

Mr. John Makanga, a pharmacist with a shop at the Hilton Hotel in Nairobi, was arrested in February for alleged incitement related to his support of clash victims.¹⁷ In May, Mr. Njenga Mungai, MP for Molo, was arrested after visiting an area in Nakuru where kiosks had been demolished by the police. He was charged with incitement and damage to property and held in police custody for two weeks without bail. The charges were later withdrawn. In August, Mungai was arrested again in Molo while addressing members of his constituency who had been displaced due to clashes. He was charged with inciting violence and organizing an illegal public procession.¹⁸

In early September, Mr. Mukaru Ng'ang'a, Chairman of the opposition Kenya National Democratic Alliance party (KENDA) was arrested outside Molo hospital after visiting clash victims. Ng'ang'a was taken to Nakuru for interrogation over the weekend. He was not allowed food or drink while being held. He was charged with creating a disturbance in a manner likely to cause a breach of peace and released on bond.¹⁹ In September, 13 opposition MPs were arrested in Nakuru after visiting Molo and charged with creating a disturbance and organizing an illegal procession. They were released on bail and told not to go to Molo.²⁰

Mr. Joseph Njoroge, National Chairman of the National Democratic and Human Rights Organization (NDEHURIO), and Mr. Kariuki Kiboi, deputy executive director of NDEHURIO, were arrested at the Rift Valley Provincial Criminal Investigation Department (CID) headquarters in Nakuru while looking for Mr. John Kinyanjui, who had been arrested with the 13 opposition MPs but did not turn up with them.²¹

In early November, Bishop Joseph Kimani, MP for Nakuru North, was summoned to CID offices and arrested after going to Bahati police station to view the bodies of two men shot dead after allegedly raiding the police station. On viewing the bodies, Bishop Kimani publicly declared that there were no blood stains at the police station, yet the police had claimed that they

¹⁷ See Divide & Rule: State Sponsored Ethnic Violence in Kenya, Africa Watch, November 1993, pp. 62

¹⁸ Interview by Kenya Human Rights Commission with Mirugi Kariuki. See also the Robert F. Kennedy Report, Failing the Democratic Challenge: Freedom of Expression in Multi Party Kenya, pp. 26-28 for further information on the government's attacks on Mungai.

¹⁹ "Mukaru Ng'anga arrested in Molo," *Kenya Times*, September 12, 1993.

²⁰ The MPs included Raila Odinga, George Kapten, Macharia Muraya, Dr. Mukhisa Kituyi, Musikari Kombo, Norman Nyagah, Otieno K'Opiyo, Mrs. Agnes Ndeti, Mrs. Kaluki Ngilu, J. B. Mwaura, Ileri Ndwiga, and Joseph Mulusya.

²¹ See reporting notes of Joseph Ngugi, September 24, 1993.

shot the men there. He was charged with publishing false rumours based on a later-substantiated statement that chemicals had been sprayed in his home area affecting about 300 of his neighbours. He was held in custody for one week awaiting a ruling on bail.²²

In late November, Reverend David Kiilu of the Church of the Province of Kenya (CPK) Njoro parish and Reverend Simon Githinji of the Presbyterian Church of East Africa (PCEA) Njoro Parish were picked up from their church residences in the evening and locked up in the Rift Valley Provincial CID headquarters after presiding over a Memorial Service for the displaced clash victims at St. Lwanga Catholic Church in Molo and accusing the government of instigating the clashes.²³

Dr. S.W. Mwangi, a Nakuru physician who performed medical examinations for torture victims was arrested in late November. He was taken to Menengai Police Station and forced to remove his shoes and spend two days in a wet cell. While in custody, he was shown a document which he had not seen before and told that he was being charged with possessing seditious papers and explosives. The explosives consisted of two firecrackers taken from his house. Mwangi was kept at Bondeni Police Station for another night in an extremely crowded cell contaminated by human waste. After being released, Mwangi was told that he should stop writing medical reports on torture victims.²⁴

(5) Other Arrests

The *Economic Review*, and The *Daily Nation* have reported many instances where others were harassed through arrest or detention on the basis of their political beliefs. Councillor Joseph Chege Nduguga, Council Chairman for Molo, Mr. S.D.K. Njoroge, a Molo private surveyor, Mr. Joram Njenga Mbugua, the chairman of the PCEA Mau Summit Church, Mr. Nathan Kimani, Chairman of the Molo Haraka farm, Mr. John Njogu Kamau, a former councillor, Kiberenge Karanja, and one other person were arrested in mid-March.²⁵

Mr Ferdinand Obure, the Bonchari MP, was arrested in May after being severely beaten by police officers in Kisii. When he was flown to Nairobi, he appeared in court on a stretcher. Sheikh Khalid Balala, Mombasa preacher and Islamic Party of Kenya (IPK) activist, was also arrested in May and charged with threatening to kill three Mombasa KANU politicians. Mr. Joseph Daniel Kinuthia, a former Eldama Ravine Councillor was charged with incitement to violence in November. The police alleged that statements were made telling Kikuyus to arm

²² *Id.* November 2, 1993.

²³ *Id.* November 30, 1993.

²⁴ *Id.* November-21, 1993. Also interview with Kenya Human Rights Commission.

²⁵ See also reporting notes of Joseph Ngugi, March 16, 1993 on file at the Kenya Human Rights Commission.

themselves and attack the Maasai.²⁶

Mr. Koigi Wamwere, a prominent government critic, was repeatedly harassed through arrest and other means in 1993. In January, he was released from prison custody following the cessation of treason charges against him. He and three others had been held for two and a half years. In September, he was again arrested together with his lawyer and fellow treason suspect Mirugi Kariuki, Mirugi's wife Susan, Geoffrey Kuria (Koigi's cousin), Francis Muriuki Kanuthe, John Njoroge Wamwere (who is Koigi's brother) and John Kinyanjui in Molo and charged with entering a prescribed area contrary to security zone regulations, possessing seditious pamphlets, and possessing a rifle and ammunition. At this time, the regulations declaring the particular areas "security zones" had not been gazetted as required by law.²⁷

On November 5th, Koigi and eleven others were arrested and charged with raiding Bahati Police Station in Nakuru district and attempting to rob two police constables of their firearms. The others included: Koigi's brother John Njoroge, Koigi's cousin Geoffrey Kuria, Mr. Wilfred Kinuthia Ngengi, brother of a Molo councillor, and two *matatu*²⁸touts, Mr. Francis Ngige Kabete and Stephen Kariuki Muigia. (Bishop Kimani, MP for Nakuru North, and Bishop Ndingi Mwana a'Nzeki had visited the police station after the alleged raid on November 2, and asserted that they saw corpses but no blood or bullet wounds contrary to police claims that they had shot the alleged raiders.)²⁹

(6) Mass Arrests of Wananchi

The literal English translation of "wananchi" is "owners of the land." The wananchi, or people of Kenya, have not been allowed enjoyment of the land free of harassment, nor has ownership been respected. The government persistently resorted to mass arrests of wananchi in areas perceived not to support the government, and especially in the Rift Valley. *Matatu* touts and other young persons were often arrested, with or without charges, then released following a brief detention or after exacting a fine. Occasionally the drivers were either forced to give over their routes to KANU youthwingers or to pay a form of tax or percentage of their earnings to KANU.³⁰

There were also mass arrests for oath taking. In African societies, oathing has deep significance in binding people for a mission regardless of the consequences. Oaths inspire unity of purpose

²⁶ *Id.* November 4, 1993.

²⁷ Interview with Mirugi Kariuki, February 8-10, 1994. See also notes of Joseph Ngugi, September 24, 1993.

²⁸ Minibuses or mini-vans used for public transport.

²⁹ Interview with Bishop Ndingi of Nakuru Catholic Diocese, February 7, 1994.

³⁰ *Id.*

and irrevocable commitment to a cause. Most of the people charged with oath taking were victims of the violence and displaced from their homes. The Moi government has taken reports of oath taking seriously and engaged in mass arrests.

In July, twenty-five farmers from Laikipia district were arrested and charged with taking an unlawful oath. They were held without bail for one week.³¹ Sixty-one members of the "Thayu" religious sect were arrested in late September and charged with taking an illegal oath. In October, approximately 100 Kikuyu youths from Likia and Ndeffo farms in Nakuru were arrested and whipped on allegations of being armed. They were held at Njoro and Nakuru Central police stations and not allowed to see family members.³²

About 100 people in Nakuru town were arrested in November. Of these, approximately 70 were charged with petty offenses such as being drunk and disorderly, loitering in the town at odd hours, failing to register with the registrar of persons, and not carrying a government identity card. Those who pleaded guilty were fined between KSh. 200 and 500 or jailed from one to three months if they could not pay the fine. Those pleading not guilty were released on bonds of KSh. 5,000 to 10,000.³³

On December 11th, one day before celebrations marking thirty years of independence, 712 people were arrested in a police swoop in Nakuru town. Most of the arrested persons were youths taken from the streets, hotels, matatus, and open air businesses, second-hand clothes dealers, and shoe shiners. The vast majority were Kikuyu. Those arrested were held at Bondeni and Nakuru Central police stations. Some were charged and remanded at Nakuru Prison until pleas were taken. Police stated that the swoop was aimed at finding a pickpocket who stabbed a police officer.³⁴

B. TORTURE

It is impossible to know how many torture cases occurred in Kenya in 1993. It is clear, however, that torture was used as an additional weapon to harass and intimidate Kenyans regularly, and especially in the clash areas. From the investigations carried out, it appeared that torture was reserved for those Kenyans without a substantial public profile, and ordinary wananchi.

Mirugi Kariuki a lawyer and former detainee who represented torture victims and other victims

³¹ Joseph Ngugi's reporting notes, July 26, 1993.

³² *Id.* October 28, 1993.

³³ *Id.* November 4, 1993.

³⁴ *Id.* December 11, 1993.

of political harassment, stated that police cells were often used for torture in the Nakuru area. According to Mr. Kariuki, on September 18, four people were arrested for "entering a security zone".³⁵ At least three of them were tortured in CID offices in Nakuru.³⁶

There were also reports that the KANU offices in Nakuru were used as torture chambers. In March or April a former Member of Parliament for Nakuru North, Mr. J.M. Kuria, complained that he was taken by KANU youthwingers to a cell at the rear of the KANU offices and assaulted there. According to Mirugi Kariuki there is a big drum of water kept at the KANU office in Nakuru. The practice is to bind people and beat them, then throw them into the water with their clothes on. They are then removed from the drum and beaten again.

Some of the men arrested with Koigi wa Wamwere in connection with the alleged raid of Bahati Police Station have stated that they were tortured by Corporal Kamunde of the Criminal Investigations Department in Lake Nakuru National Park³⁷. They asserted that their hands and legs were bound separately, and a pole inserted under the knots, along the back. The pole was then suspended between two trees such that the victims hung upside down. In that position, the men were beaten. One man's leg was fractured, and another's eardrum was ruptured.³⁸

In another case of torture, a matatu driver named Kamuri Kapata suffered a skull fracture in Burnt Forest. The matatu was stopped at a road block. Kapata fought the police and passengers who tried to apprehend him and defeated them. Backup police were brought in who were able to subdue Kapata. Kapata was beaten severely. The police twice destroyed x-ray films which showed a skull fracture. To justify their actions, the police said Kapata had a hand grenade that didn't explode and that a Kalenjin woman who was sitting next to him said that he had a gun. Kapata was charged with possession of firearms and robbery with violence. These two charges are non-bailable, and Kapata is currently in prison awaiting trial.³⁹

In early May, twenty-one Kikuyu men who had volunteered to look for cattle that had allegedly been stolen were surrounded by armed Kalenjin warriors and members of the Anti-Stock Theft Unit. The latter were accompanied by the person whose cattle were supposed to have been stolen, Mr. Mbaria Kariuki. The volunteers were stripped naked, severely beaten, their shoes and money stolen. They were then transported to Kamara Center and injected with an

³⁵ Those arrested were Geoffrey Kuria, Francis Muriuki Kanuthe, John Njoroge Wamwere, and John Kinyanjui.

³⁶ Interview with Mirugi Kariuki, February 8-10, 1994.

³⁷ Corporal Kamunde's name featured prominently in many of the interviews conducted with victims of torture and police harassment. He has since been promoted to Inspector of Police and transferred to the department responsible for investigating motor vehicle thefts.

³⁸ Interview with Mirugi Kariuki, February 8-10, 1994.

³⁹ *Id.* February 1994.

unidentified substance with hypodermic needles by the armed warriors, Anti-Stock Theft Unit and administration police. All twenty-one volunteers sustained serious injuries and have since developed kidney disorders.⁴⁰

Dr. S. W. Mwangi was arrested for writing medical reports for thirteen men arrested between July 18 and 21, 1993. The men arrested had been either beaten or intimidated until they admitted taking oaths. From the copies of the medical reports availed to the Kenya Human Rights Commission, the pattern of torture sustained by these men was strikingly similar. Most were picked up from where they lived or worked and taken to a police station where some were beaten with sticks or rods, sustaining injuries to the knees, knuckles and head. Others were whipped or kicked from behind until they fell. Most reported some combination or all of these abuses to Dr. Mwangi.⁴¹

Dr. Mwangi produced eight other medical reports of men showing signs of having been physically tortured between August and late November. The medical reports detailed the following pattern of torture. First, the victim would be taken to a police station and beaten for two or three hours. Later that day or the next day, he would be taken to a forest such as Lake Nakuru National Park where he would be bound at the hands and feet and tied to separate trees. The police officers would then whip and beat the victim, targeting the ankles and feet until the victim lost consciousness. The beatings, (done with hoe handles and *rungus*)⁴², sometimes continued the next day when the victim regained consciousness.

One medical report provides a particularly horrific example of the torture exacted on Kenyan citizens:

[The victim] was travelling in a matatu when he was arrested by some policemen [based] on the accusation that he possessed dangerous weapons. He was taken to Tarakwa Police Station in Burnt Forest. There, he says he was not beaten but was made to wait until about 5 p.m. The same day, he was taken to Eldoret Police Station. While at Eldoret, he says, "several policemen started interrogating me. In the process, I was whipped and beaten with the handle of a hoe by about four policemen who were alternating in two's. Most of the blows landed on my head, legs and back. This continued up to about 8 p.m. when I became unconscious." The same night, he was transferred to Iten Police Station where he spent the night.

⁴⁰ See sworn affidavits submitted by 21 torture victims represented by Mirugi Kariuki & Company, Advocates. Copy of affidavits on file at Kenya Human Rights Commission.

⁴¹ Interview with Dr. Mwangi. See also statement by Dr. Mwangi dated November 26, 1993, on file at KHRC.

⁴² Any stick equipped with a knob at one end, usually used for defensive purposes.

The next day, interrogation was resumed again in Iten Police Station. He says, "I was whipped and beaten with hoe handles. This time most blows landed on my knees, feet, back and head. They were asking me to tell them where the other weapons were hidden. When I denied any knowledge of hidden weapons, they beat me so hard until I lost consciousness. By this time there was blood all over my body. I came to at about 4 a.m. in the morning and realized later that I was in Eldoret Police Station.

On [the next day] some C.I.D. Officers came from Nakuru to interview him. He was subsequently put into a land Rover and taken to EATEC [East African Tanning Extract Company] Forest. While in transit he was covered with a blanket and hand-cuffed. In the forest, he says, "All my clothes were removed. I was threatened with death unless I agreed to sign some statements. I accepted to sign the statement but soon after, I was fixed between two trees with my hands fastened each to a tree. I was then whipped and beaten with hoe handles all over my body. Then they tied my penile shaft with a string and started pulling until there was a crack which bled. Despite my pleas that I did not have any more hidden information, they insisted that I should tell them everything. They continued beating so hard until I became unconscious." He was then taken to Soi Police Station where he spent the night.

On [F]riday at about 5 a.m. he was taken to Eldoret Forest. He says, "they started beating me again and said they would kill me unless I agreed that I killed some people. I agreed and signed some documents. They then stopped beating me." From there, he was taken to Eldoret Police Station where he spent the Week-end.

On Monday he was taken for an identification parade. Subsequently he was taken to Menengai Police Station. While there, he says "I was beaten by some police officers over the back and head with G-3 rifle butts". He did not lose consciousness this time.

The next day he was taken to Nakuru Central Police Station where he says he was generally not beaten. He spent the rest of the week there until Monday when he was taken to court and remanded in custody at the G.K. Prison.⁴³

C. THE ROLE OF THE JUDICIAL SYSTEM

The court process through which these arrests, detentions and incidents of torture were treated

⁴³ Medical report of David Mbugua Kabata, a patient of Dr. Mwangi, on file at KHRC.

demonstrated an unequivocal underpinning of harassment. Politically motivated arrests often did not result in a criminal charge. Rather, a period of incarceration was preferred. When a person was charged in court, the case was often not pursued. For instance, Mr. Keffa Wagara, a former Nakuru East MP, was charged with incitement in 1992. He was released on bond, but his case was still pending at the end of 1993. (At the time of writing this report, no progress had yet been made on the case.)⁴⁴

Another tactic used to harass political activists and critics was charging them with non-bailable offenses,⁴⁵ thus allowing the state to detain the arrested persons while they await trial. Many of these cases are neither prosecuted nor pursued by the government. According to two Nakuru lawyers, no case involving possession of firearms was completed by the end of 1993.⁴⁶

The object of these tactics of arresting people for a while and then releasing them, and of using non-bailable offenses to hold persons in custody is clearly intended to circumvent public scrutiny for pure political harassment. They also have the object of creating fear among critics and opponents of the Moi regime.

It must be noted that the Moi regime had the option of using the provisions of the Preservation of Public Security Act which allows for the indefinite detention without trial for anyone at the pleasure of the president. This law has not been used since 1991, when it came under serious international and local condemnation. It thus appears that the Moi regime used these other methods to camouflage what eventually amounted to detention without trial.

In 1993, the Nakuru area provided a good illustration of some of the tactics used in the court system. Although most lawyers interviewed generally had no complaints about the conduct of the judges and magistrates in non-political cases (except for the overcrowding of the judicial system that led to long delays before cases commenced), in cases with a political content the situation was markedly different. In Nakuru district, for example, almost all these cases were sent to Senior Principal Magistrate William Tuiyot. It was claimed that he verified the docket with the police and prosecutors in order to ensure that these cases were handed to him. The magistrate also personally kept the files, which would ordinarily be kept in the court registry, in his office under lock and key. The case file of the thirteen MPs arrested for visiting a clash area, as well as that of the eleven young men who insulted President Moi while drinking in a

⁴⁴ Interview with Kamau Kaniaru, a Nakuru lawyer, February 8-10 1994.

⁴⁵ These are offenses where bail is precluded by law. They are all capital offenses with a mandatory death sentence on conviction. They are treason, murder, and robbery with violence. In 1993, Chief Justice Alan Hancox issued an administrative circular to all magistrates directing them to reject bail for firearm-related offenses. The directive followed a speech by President Moi where he decried the granting of bail to people accused of possessing firearms. Justice Hancox has since left, but the circular has never been rescinded.

⁴⁶ Interviews with Mirugi Kariuki and Kamau Kaniaru, February 8-10, 1994.

bar, were kept in Mr. Tuiyot's office.⁴⁷

Similarly, in mid-March armed police burst into the chambers of Nakuru resident Magistrate John Kingori and demanded the court file for a case in ruling against G.G. Ngengi who had been arrested for illegal possession of fire arms. After the incident the Magistrate removed himself from the case, citing fear for his security and improprieties in the case.

The courts were also unduly influenced by police officers. According to lawyer Kamau Kaniaru, Geoffrey Kinugi was charged with possession of firearms without a permit in early 1993. The police vigorously opposed his release on bail, but the court overruled them and granted him a bond. The state subsequently entered a plea of *nolo contendere* and rearrested Kinugi, charging him with the same offence on that same day. This time bail was denied. G.G. Ngengi, his doctor, his wife Jacqueline Ngengi, and an elder male relative were also detained on charges relating to firearms.

Perhaps the best illustration of the misuse of court processes was the arrest in August 1993 of Molo MP Njenga Mungai for allegedly organizing a public procession without a license. Mr. Mungai was arrested in Nakuru where the offence allegedly occurred, but he was charged in Kericho district--a distance of about 100 kilometres from Nakuru--before Mr. Tuiyot who was then sitting in Kericho. Moreover, the case was heard at 7:30 in the morning, while the official court hours begins at 9:00 am. When Mr. Mungai refused to plea without his lawyer present, Mr. Tuiyot entered a plea of "not guilty" and remanded Mr. Mungai in prison for one week. He took possession of the court file, making an immediate appeal on bail impossible.⁴⁸

An interesting phenomenon with the Nakuru cases related to the clashes is that prosecutions have only been initiated when the victims have been Kalenjin. In August 1993, eight policemen were charged with murder after a Kalenjin woman was killed when police intervened during an attack by Kalenjin warriors on Kikuyus at Kamara area. The policemen were remanded in custody pending the hearing of the case which had not started by the end of 1993.⁴⁹

(1) Harassment of lawyers

According to information provided by the Law Society of Kenya, there were a number of cases in 1993 where lawyers were harassed in the course of their duties. In Nakuru, the police interrupted a confidential lawyer-client discussion between Mr. J.G. Kaguchia and Koigi Wamwere and arrested Mr. Wamwere from inside the lawyer's chambers and despite protestations from Mr. Kaguchia. Mr. Mirugi Kariuki also reported harassment arising from

⁴⁷ Interview with Mr. Kariuki, February 8-10, 1994.

⁴⁸ *Id.* February 8-10, 1994.

⁴⁹ Reporting notes of Joseph Ngugi, August 3, 1993.

his work.

In September following his arrest for "entering a security operations zone," Mr. Kariuki found his telephone at home had been disconnected. He made enquiries at the post office (which is responsible for telephone communications) and was told that they had disconnected his line on his own instructions. Mr. Kariuki informed them that he had not issued any such instructions and threatened to file suit if they did not re-connect the line forthwith, which was done.

In June 1993 the Hon. P.K. Muite & Hon. Martha Karua filed complaints with the Commissioner of Police relating to assaults by police officers against them. Similarly, in September Betty Kaari Murungi a member of the Law Society of Kenya and Hon. James Orengo were assaulted by a police sergeant at the Kilimani Police Station. The circumstances that led to the assault as related in the complaint filed by Ms. Murungi with the Commissioner of Police on September 6, 1993 are as follows:

On 25/8/93 at about 8:30 p.m., I went to the police station in the company of another advocate, Mr. James Orengo. We had been instructed that our client was being held at the said police station without charge and we had gone to make inquiries. We found certain police officers at the counter and we made the necessary enquiries. We were informed that the client whom we were looking for had been released about half an hour earlier.

Whilst we were still at the counter but getting ready to leave, the duty officer arrived and quite abrasively wanted to know why we were asking for a 'prisoner' at that time of the night. Mr. Orengo then informed the duty officer that we were within our rights to enquire after a client at whatever time of the day that we were instructed to do so. At this point, the said duty officer became incensed and pushed Mr. Orengo violently towards the inside of the room against the wall.

I protested at the treatment being meted out on my colleague. At this juncture my problems started in earnest. I was subjected to the most humiliating insults bearing on my gender and ultimately assaulted with the clipboard and pieces of paper that the duty officer was carrying in addition to being violently pushed and shoved. By their conduct I got the distinct impression that the six policemen insulting and assaulting us were intoxicated.

Eventually Mr. Orengo and I were placed under arrest and an entry made in the O.B book. The entry when read back to us did not disclose any offence committed by ourselves. Mr. Orengo then required the duty officer to record his complaint that he had been assaulted; the duty officer refused to do this.

After establishing my colleague's identity as a Member of Parliament, the duty officer then made frantic consultations with his superiors over the phone, whereupon he was instructed to release us forthwith. He apologized to Mr. Orengo and adding insult to

injury blamed the whole fiasco on myself!! May I add that at this point we had removed our belts, watches and shoes ready for a night in the Cells....⁵⁰

D. DEPORTATION

In February, Mr. Anders Breidlid, a Norwegian national who was working on behalf of Kenyan political prisoners, was deported immediately after he landed in Kenya. Father Oliver Ryan, an Irish priest living in the Rift Valley was also deported in May for blaming the government for the clashes in the Rift Valley.⁵¹ Father Oliver had been working with the Justice and Peace Committee in Baringo and had previously complained about threats of eviction.⁵²

E. RIGHT TO PRIVACY

Several people reported that they had been followed and/or their phones tapped through 1993. Koigi Wamwere was persistently followed by a parastatal (State Corporation) vehicle from September until the time of his arrest in November. He would be followed from Nakuru to Nairobi, where other vehicles would take over. One Nakuru lawyer, M.K. Githua, was approached by the police who insisted on searching his office for documents without a warrant. He managed to stall them until he obtained a court order precluding them from searching his office without a warrant.⁵³

Ernest Murimi, the coordinator of Nakuru Catholic Diocese Justice and Peace Commission and Joseph Ngugi, a reporter for the *Daily Nation*, stated that their telephones were most likely tapped. In addition to hearing other people on the line and clicking noises while talking, they both stated that sometimes their phones rang, and on answering the phone they found that they had been connected to the police station.⁵⁴

F. RIGHT TO PROPERTY/ECONOMIC HARASSMENT

The chief human rights violation in Kenya in 1993 was the continuation of violence against non-Kalenjin and non-Maasai Kenyans, in what was dubbed the "ethnic clashes." Bishop Ndingi

⁵⁰ Copy of the complaints are on file at the Kenya Human Rights Commission and at the Law Society of Kenya.

⁵¹ Information provided by Ernest Murimi, Coordinator, Justice & Peace Committee, Nakuru Catholic Diocese, February 8, 1994.

⁵² *Id.*

⁵³ Interview with Mr. Kariuki, February 8-10, 1994.

⁵⁴ Interview with Ernest Murimi, February 8-10, 1994.

Mwana a'Nzeki of the Nakuru Catholic Diocese called the clashes "the most unfortunate thing that has happened in this country. For the ordinary person a sense of forgiveness is remote." Throughout 1993, the government and/or government officials either instigated, facilitated, or tolerated violence against Kenyans in the Rift Valley.⁵⁵

In January and February, the predominantly Luhya communities in Trans Nzoia and Bungoma districts were attacked by armed "warriors." Kikuyus in the Burnt Forest area were attacked repeatedly in January, February, April and August. In March, clash victims attempting to return to their homes in the Molo area were robbed by armed raiders who took their cattle. One woman was raped by a group of raiders in front of her husband and children.⁵⁶ In June, Londiani was hit by clashes. The Molo area suffered clash violence from June to August. In October, Enosupukia and Mau Narok were attacked by armed raiders. In November, Luo residents of Thessalia Farm in Kericho district were evicted by force from their homes. Since the violence erupted in 1991, there has been no significant resettlement of the estimated 300,000 displaced persons. Most have dispersed around the country, while some have rented rooms in nearby shopping centers from where they work their farms daily.

i) Londiani Clashes

On June 20, 1993, three hundred raiders armed with bows and arrows attacked Ndarugu farm in Londiani. Three people were killed: Mr. Nyaga Chege, Mr. Kamau Kagiri and Mr. Josephat Karanja. Four others were injured. Sixteen houses and a lorry were burnt, destroying over KSh.10 million in property. The raid was said to have occurred after a Kalenjin was injured by a Kikuyu following an argument in a bar. Fierce fighting continued for two days after the first raid. Over six hundred raiders armed with bows and arrows entered the Londiani PCEA church (which was frequented by the Kikuyu), drank church wine, ate Holy Communion, burnt down a priest's house, destroyed property worth over KSh. 5 million and stole forty iron sheets, church choir uniforms and bedding. A timber yard nearby was also invaded and set on fire, destroying over KSh. 6 million worth of timber.⁵⁷

ii) Molo clashes

On the first day of August, fresh clashes broke out in the already clash-torn Molo area. Eight people were killed by a gang of raiders who attacked Temulyota, Arimi, Sondu River and Kamara farms in Molo south area. Raiders also raped women when attacking the Kamara Trading Center. Mr. William Kerario, the Nakuru District Commissioner, said the clashes were sparked by the alleged killing of a twelve year old boy by people suspected to be Kikuyus, but the continuation of the violence indicated that there was government involvement.

⁵⁵ Interview with Bishop Ndingi, February 7-10, 1994.

⁵⁶ *Id.* Bishop Ndingi, February 7, 1994.

⁵⁷ Reporting Notes of Joseph Ngugi, June 21, 1993.

Between August 11 and August 21 fifteen people died in Molo South clashes. More than 200 houses were burnt at Temuyotta One, Temuyotta Four, Githiriga, Sundu River, Arimi, Tabere and Ndeffo farms. Only houses belonging to Kikuyus were burnt. Policemen did nothing to stop the attackers. Some alleged this inaction was motivated by the police officers' fears of being charged for any possible shootings following the arrest of eight policemen on August 2, for the killing of a Kalenjin woman while trying to stop Kalenjin warriors attacking the Kikuyu.⁵⁸

On August 23rd, raiders robbed the residents of Ngenia farm of their cattle. Though their houses were not burnt, the people fled in fear of their lives.⁵⁹ The next day three people were killed and at least four others injured by raiders who invaded Mawingu farm in Molo South. One of the injured persons was hit by at least ten arrows in his hands, legs, arm, and armpit. Hundreds of people ran to Molo town after raiders had been spotted.

At Mwahe farm several houses were burnt. Twenty-five raiders were alleged to have caused serious head injuries sustained by Mr. Mwangi Kibe from a number of violent blows. The raiders had attacked Mr. Kibe's home, stealing his cows and some sheep.⁶⁰ Similarly, at Murinduko farm, raiders retreated when three armed police officers confronted them. One of the raiders was reported to have shouted "Shoot at us and lose your jobs."⁶¹

On August 25th, fifty-nine raiders armed with bows, arrows, simis⁶², and rungus were arrested while preparing to attack Nyota farm in Molo area.⁶³ Forty-seven of those arrested pleaded guilty to the charge of preparing to commit a felony and were sentenced by Nakuru resident magistrate, Ms. Helen Owino, to ten years in jail and twelve strokes with a cane. Their sentences were however quashed by Senior Principal Magistrate Tuiyot on review of the conviction. Twelve others pleaded not guilty and were held in custody pending trial.⁶⁴

iii) Enoosupukia clashes

a) The attack of Enoosupukia

⁵⁸ Reporting notes of Joseph Ngugi, August 3, 1993. See also section on "Failure of The Courts," which discusses the case where police were charged with murder after the death of a Kalenjin woman.

⁵⁹ Joseph Ngugi, August 24, 1993.

⁶⁰ Reporting notes of Joseph Ngugi, August 25, 1993.

⁶¹ *Id.* August 25, 1993.

⁶² A double-edged sword, which may be straight or curved.

⁶³ Joseph Ngugi, August 26, 1993.

⁶⁴ *Id.* August 26, 1993.

For twelve months prior to the attack, the men of Enoosupukia were on vigil every night anticipating trouble.⁶⁵ As the year progressed, government officials made it clear that it was planning to evict the residents of Enoosupukia. From August to September William Ole Ntimama, Minister of Local Government made political statements declaring Enoosupukia a trust area and telling the residents of Enoosupukia to get out.⁶⁶

Similarly, on October 13, three police officers were transferred from the Enoosupukia area and given four hours' notice to leave.⁶⁷ On October 14, 1993, the Enoosupukia Catholic Church and the Justice and Peace Commission of the Diocese of Ngong sought a court injunction in Nakuru to restrain the government from evicting the residents of Enoosupukia. The complaint alleged that on or about August 19, 1993 Mr. Ntimama declared Enoosupukia a trust area and threatened to evict all its residents. The complaint also alleged that in August, the Narok District Commissioner issued a notice ordering all Enoosupukia residents to leave before the end of September. Justice David Rimita sitting in Nakuru ordered that the application be heard on November 3.⁶⁸

On October 15, at 7:00 am, the residents began to notice the presence of strangers. Women and children moved to the churches. Five hundred to one thousand so-called Maasai warriors marched in wearing army boots and carrying weapons. The weapons resembled Egyptian-made swords, designed with a protective hand-shield. Some of the warriors were recognized as game wardens in the Maasai Mara. Those warriors warned one of their Kikuyu friends to leave the area because the situation would become dangerous.⁶⁹

Attacks were targeted at the men who were shot with firearms and hacked up to cover the bullet wounds. (The Kenya Human Rights Commission has a copy of an x-ray taken of the chest of one of the survivors clearly showing a bullet.) Thirty men were killed that day. Women and children were beaten, even after fleeing into the churches used as sanctuaries. Three people were killed inside the Pentecostal church. One was killed on the church alter and the alter was then destroyed. Father Tom described the church as "one big toilet" after the attacks due to fear-induced bladder control failure.⁷⁰

The Nakuru police were called in during the attack. The Narok police and the District Officer

⁶⁵ Interview with Father Tom of the Milhill Missionary Group, February 17, 1994.

⁶⁶ *Id.* February 17, 1994.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

had been present watching the events from 10 a.m. to 11 a.m. They ordered the Nakuru police to return to Nakuru district. Warriors told the Enoosupukia residents that they would attack again at 2 p.m. People raced to flee the area before the attacks resumed. At 1 p.m. the attacks started again. Men who had gathered in one area found themselves surrounded on all sides. At least six of them died that afternoon.

The residents of Enoosupukia travelled six or seven kilometers to the Catholic mission at Maela in Nakuru district. The first night there were thirty thousand people, but twenty thousand left after the first night in search of family and shelter. For a few days following the clashes, people attempted to retrieve food and belongings from their homes. Many women were raped while returning to their homes. Even now there remains marauding groups of morans between Maela and Enoosupukia.⁷¹

b) Conditions at Maela

The intimidation of the Enoosupukia residents continued at Maela camp. During the first two weeks of the crisis, contingents of the paramilitary General Service Unit (GSU) were sent to the area. They initially allowed people to collect some of their belongings, but later began to loot and rape women. Articles stolen from Enoosupukia were brought to Maela in lorries for sale.

There were several attempts made to force the refugees to leave Maela for other areas further from Enoosupukia. On October 18, for instance, the local chief in Maela told a priest at the refugee camp that the Maasai were coming. The priest organized reinforcements and lorries to transport people and their belongings. More than 1,000 people were transported up to Naivasha before the priest learnt that he had been given false information. He promptly transported the people back to Maela since the refugees were weary of moving too far from their homes and since it was too expensive and difficult to maintain two camps.⁷²

The victims of the Enoosupukia clashes built makeshift paper shelters on the grounds of the church mission in extremely dusty and environmentally hostile conditions. Later administrative police destroyed the shelters.

There were 9,431 refugees at Maela camp as of January 3, 1994. One hundred and sixty of these were pregnant women, and approximately seventy percent are children. The Maela mission is located at higher altitude, and is cool during the day and cold at night. The area is very dusty due to the volcanic soil. Since the first shelters were destroyed, families have been living in makeshift sheds made of thin plastic sheets tied to stakes driven into the ground. Rocks

⁷¹ *Id.* Information also gathered from interviews by KHRC with the refugees now camped at Maela, Naivasha in Nakuru district.

⁷² On February 9, 1993 representatives from the Kenya Human Rights Commission visited the area and interviewed some of the residents.

are placed on the tops of the sheds to protect the sheets from strong winds and rain. There are no social facilities and school age children are taught by volunteers under trees.⁷³

The efforts of the Catholic Church to deliver food to the victims at Maela were frustrated throughout 1993. In order to deliver food, the church had to get permission from the Nakuru District Commissioner (DC) as well as request police escorts. While the food procured by the Catholic Church would originally have been sufficient to feed the refugees at Maela, interferences with delivery left many hungry. In addition to food, the Catholic Church transports some water from Nakuru to Naivasha daily at a cost of KSh 7000 per day.⁷⁴

iv) Mau Narok clashes

On October 18, 1993, Maasai morans raided Mwisho Wa Rami area in Mau Narok about 50 kilometres west of Nakuru town, killing one man and injuring at least three. The dead man was Mr. Solomon Mwangi Kimemia, the Chairman of the Local African Independent Pentecostal Church. Apparently he had been invited by Maasai elders to talk about certain clash-related issues.

On October 19th, three Land Rovers carrying police officers were seen in the area that had been attacked just before midday. A lorry carrying GSU officers was seen heading toward the area slightly before 1:00 a.m. when about six cows and thirty sheep were stolen. At least nine people were killed in the clashes at Mau Narok. Similarly, Mr Ernest Murimi was threatened with arrest when he met the District Commissioner in Mau Narok. The DC said he would arrest him if he saw him in the area again. Murimi was threatened again when he stated that he had documentation about the destruction of kiosks in Nakuru. The DC said "take it up at your own risk."⁷⁵

The Commission also learned from interviews with Joseph Ngugi, a reporter with the *Daily Nation* that on October 25, 1993 armed Maasai raided Gatimu farm killing some of the area residents. Police were alleged to have been in the vicinity but did not intervene.

v) Thessalia clashes

In November 1993, the 630 Luo residents on Thessalia Farm in Kericho district fled the farm following a quit notice from the chief of the location. The chief intimated to the residents that if they resisted the quit order, the same fate that befell the residents of Molo and Enosupukia would fall on them. Knowing the extent of casualties arising from the violence in Molo and

⁷³ Interview with Ernest Murimi, February 8-10, 1994.

⁷⁴ *Id.*

⁷⁵ Interview with Ernest Murimi, February 8-10, 1994.

Enoosupukia, the residents decided to flee the farm and camped at the nearby Thessalia Mission.⁷⁶

The evicted residents had originally settled on the farm as labourers and squatters in 1918 when it was owned by Europeans. The Europeans left in 1960 leaving the workers and squatters on the land. In 1971, the land was divided into three with one part reserved for the Luo inhabitants at a fee of Ksh, 60,000. The other two parts were reserved for Kalenjin settlers and Mr. Job Omino who was then a senior civil servant. Some money was raised and paid to the government and receipts provided for the purchase. However, by 1975, the residents were asked to pay an additional Ksh. 20,000 since they had not paid up the original sum on schedule. They obliged. The Kenya Human Rights Commission obtained copies of some of the receipts issued by the government for the purchase of the land.⁷⁷

The advent of pluralism in 1991 affected the Luo residents at the farm in this predominately Kalenjin area. Some homes were burnt down, but there was no fighting in the area. On April 29, 1993, the Kericho District Commissioner Mr. Timothy arap Sirma issued a quit notice to the residents through the press. In November, the Kalenjin neighbors began building structures on the Luo farm, but these were removed by the administration soon thereafter.

In December, the local chief gave the residents 18 hours to quit, and a week later, government bulldozers razed the homes and other structures on the farm to the ground. Two opposition members of parliament who paid a visit to Thessalia to console the victims on December 11 were arrested and charged with "incitement."⁷⁸

vi) Resettlement

By the end of 1993, the government had made no substantial efforts toward resettling clash victims despite public announcements that the violence was over and that people should return to their farms. Security and confidence in the clash areas had not been restored and many displaced persons found it safer to rent rooms and shacks near their homes and farms instead of returning. For instance, the former residents of Olenguruone tried to move back in September and again in October but found that it was not safe for them to re-occupy the land.

In October there was a meeting between the D.C. and church groups on resettlement and security. When questioned about Olenguruone specifically since this was the area that residents had migrated furthest from, the DC stated that Olenguruone was a special area and that no

⁷⁶ Kenya Human Rights Commission visited the area and interviewed some of the residents, February 1994.

⁷⁷ On file at the Kenya Human Rights Commission offices.

⁷⁸ Interviews by KHRC with area residents in February 1994.

resettlement would happen there.⁷⁹

The official process for re-settlement was supposed to start with the registration of clash victims with the government. However, even this registration process was regarded with apprehension, and many victims complained that names of refugees were deliberately left out, while names of people unknown to the refugees were being included. For instance, one woman from Enoosupukia said she saw her husband and brother-in-law chopped into pieces. When she reported the killings they were recorded as deaths, instead of murders, and as occurring on separate days.⁸⁰ Similarly, many clash victims were not informed of registration and were not included in the official enumeration reports of clash victims.⁸¹

vii) Effects Of Clashes

The violence in the Rift Valley seriously affected many aspect of life in the country and region. First, the displacement of over 300,000 people who had been small scale farmers disrupted food production. Mr. Samuel Kihiu, a former agricultural officer in the Rift Valley stated in August 1993 that food production in Molo South had dropped by 70 percent due to the clashes. He also stated that pyrethrum production in Molo had decreased from its normal capacity of 50 percent of the country's total production to 10 percent, and milk production dropped from 80,000 litres to 20,000 litres per day.⁸²

The decline in food production also played a role in the famine that gripped Kenya in the latter half of 1993. The clash areas are some of the most fertile lands in Kenya, and have historically produced a variety of food and cash crops. Much of that food production was carried out by small scale farmers and later sold in the major urban areas of Kenya. The lands vacated by the displaced victims were either vacant or used for grazing by the predominantly pastoral Kalenjin and Masaai.⁸³

Before the clashes, the pastoral Kalenjin and Maasai communities would buy food from the Kikuyu farmers in the face of drought, but this avenue was closed once the clashes erupted. It is noteworthy that the areas most heavily affected by the famine were those surrounding the

⁷⁹ Interview with Ernest Murimi, February 8, 1994.

⁸⁰ Interviews by KHRC with residents at Maela on February 9, 1994.

⁸¹ *Id.*

⁸² See *Daily Nation*, August 24, 1993.

⁸³ In March 1993, the Kenya Human Rights Commission visited some of the clash areas that were then vacant. In virtually all the areas, we found cattle belonging to Kalenjin farmers grazing on the land. The ploughed areas with planted crops had since been destroyed. This position was re-affirmed in testimony by displaced persons in Nakuru and with Ernest Murimi on February 8, 1994.

clash areas.⁸⁴

In addition to food shortages linked to the clashes, the violence also increased the level of diseases affecting children, particularly in the refugee camps and makeshift shelters that the refugees occupied. Formal education virtually stopped for many children whose parents lost their only source of income with the violence.

The violence also adversely affected relations between different ethnic communities in Kenya. Never before in the history of the country had such violence been tolerated and perpetuated between different ethnic communities or as such mutual suspicions and apprehensions arose. A Kikuyu in Nakuru remarked that he, and many of his friends and associates, can never again trust the Kalenjin and Maasai.⁸⁵

The lack of government concern led to a culture of "self-help" among many Kenyans. In Lower Subukia, for instance, a Kalenjin caught stealing cattle was burned to death by the Kikuyu residents. The Kalenjin retaliated by burning houses belonging to Kikuyus, which was answered by the Kikuyu attacking Kalenjin homes and razing them to the ground.⁸⁶

G. OTHER FORMS AND INCIDENTS OF VIOLENCE

(1) Election Related Violence

In March, people wearing Maasai attire beat supporters of the opposition who heckled Moi during the state opening of parliament in Nairobi following the December 1992 multiparty elections. Police present failed to intervene. Following public outcry, KANU Secretary General, Mr. Joseph Kamotho, stated during a public function that the "Maasai morans" were actually KANU youthwingers.⁸⁷ Although Mr. Kamotho later denied making the statement, a senior editor of the *Nation* confirmed the statement, lending credence to the allegations.⁸⁸

A number of by-elections took place in 1993 after seats were declared vacant following defections from opposition parties to KANU or after successful election petitions. Most of these by-elections were hotly contested and some serious violence and human rights violations ensued.

⁸⁴ Interview with Bishop Ndingi, February 7-10, 1994.

⁸⁵ Interview with a person who requested anonymity on February 8, 1994.

⁸⁶ Interview with Ernest Murimi, February 8-10, 1994.

⁸⁷ Youthwingers were instituted by President Moi for the purpose of seeking and reporting opposition to KANU. They are vested with police powers, and corruption and brutality are common.

⁸⁸ *Supra*, Country Reports.

On May 3, 1993 in Bonchari, an armed gang of KANU supporters seriously injured three FORD-Kenya supporters.⁸⁹ On May 18, one man had his legs cut off and two others were brutally slashed with pangas by KANU supporters, during a FORD-K Rally at Suneka Market. On May 19, Mr Obure, the Bomachoge MP (Ford-K) after being severely beaten and robbed of Shs 10,000, a wrist watch and a pair of shoes at a police station, was taken to Kisii law court to face a charge of disorderly behaviour and slapping a police officer.⁹⁰

Similar election related violence plagued the Makuyu and Kisauni by-elections. On the night of nomination, the FORD-Asili nominee was attacked by youths wearing KANU T-shirts. Two people were reported to have sustained serious injuries during the attack. On October 9, KANU youthwingers disrupted a FORD-Asili rally seriously injuring a number of people at Ithanga shopping Center. And on the eve of the polling day, the Makuyu KANU sub-branch chairman, Mr. Ndungu Chege, was ruffed up and his three vehicles damaged, while KANU youthwingers armed with bows and arrows sealed off Ithanga market with logs to stop FORD-Asili supporters from conducting a meet-the-people-tour.⁹¹

Other incidences of violence plagued the Kisauni elections. During the nominations held at the Agricultural Society of Kenya grounds, bystanders were attacked by supporters of the KANU candidate, Mr. Maitha, as the mob marched with the politician to the show ground to present his nomination papers. KANU supporter further fueled the intimidation in the air by threatening to kill members of the upcountry communities who did not vote for Mr. Maitha. Mr. Maitha himself had persistently said that upcountry people should stay in-doors on the day of the elections "or else they risked death."⁹²

On December 14, KANU and FORD-K supporters clashed at Shanzu. Twenty people were reported injured, six of them seriously. Similarly, during the flare up ten houses belonging to people associated with FORD-K were burnt down, while a dais belonging to KANU was set ablaze by FORD-K supporters.⁹³

(2) Demolition of kiosks

One of the weapons used against ordinary citizens perceived to be supporters of the opposition was the destruction of their property and livelihood in areas dominated by opposition parties.

⁸⁹ The three injured were Mr. Frederick Boi Obwocha who suffered deep cuts on the head and broken limbs, Mr. Kenyatta Kabinga and Mr. Ogero Keraro who both suffered multiple injuries.

⁹⁰ See Monitoring By-Elections in Kenya, Institute For Education in Democracy, (Nairobi: January 1994), pp. 6-8.

⁹¹ *Id.* pp. 14-15.

⁹² *Id.* pp. 22-24.

⁹³ *Id.*

This method of harassment was particularly aimed at urban dwellers who operated small kiosks and other businesses such as hawking.

In early May, over six hundred kiosk operators were evicted in Nakuru town from their premises near the bus station. A considerable amount of property was destroyed or confiscated by the police. The demolition exercise started in the early morning when bulldozers belonging to the Nakuru municipal council began razing the kiosks to the ground. The area was surrounded by armed policemen who chased away the kiosk owners and bystanders around.⁹⁴ Similarly, in late July, 150 kiosks were pulled down in Kisumu by armed police and municipal askaris.⁹⁵

⁹⁴ Reporting notes of Joseph Ngugi, May 31, 1993.

⁹⁵ Ochieng' Sino, "150 Kiosks pulled down in Kisumu," *Daily Nation*, July 27, 1993.

II. STATUS OF CIVIL LIBERTIES

A. FREEDOM OF SPEECH AND THE INFORMATION MEDIA

In January, copies of *Finance* magazine with a lead story entitled "Moi family has Sh.150 billion abroad" were seized by police. Its editor, Mr. Njehu Gatabaki, was arrested and charged with sedition.⁹⁶ Mr. Gatabaki was later released on bail on February 24. The previous day, however, police had swept through the streets of Nairobi confiscating issues of *Finance* from street vendors.

In February, the Lengo Press, a Christian printing house, was stormed after distributing copies of *The Watchman*, a magazine critical of the government. The issue carried articles questioning the legitimacy of the elections, and the government's handling of the ethnic violence. Plates and printing materials were confiscated. The editor, Reverend Jamlick Miano and a staff member Peter Kihumba were charged with multiple counts of sedition, while staff members of the Lengo Press were briefly held by the police.⁹⁷

In a sustained pattern of government harassment, unidentified attackers stormed the offices of *Finance* again in April and stole print-ready artworks and Ksh 250,000 from the offices, smashing furniture and injuring staff in the process.⁹⁸ The stolen artworks had been prepared for an issue analyzing Moi's first one hundred days in office since the December multiparty election. Gatabaki had secured additional copies of the artworks, enabling the issue to be produced, but before the magazines could be distributed, police officers stormed Fotoform printers and impounded thirty thousand copies of the magazine, plates, artworks and film. Two days later the officers returned and removed essential parts from each of Fotoform's nine printing presses rendering them useless. As a consequence, Fotoform's owner, Dominic Martin was forced to lay off forty permanent workers on July 31. Another forty casual workers dependant on the company's activities were directly and indirectly affected by the closure.⁹⁹

In March, another four incidents of direct suppression of free speech were reported. The Kenya Television Network (KTN) ceased transmission of local news. The last local news item on the network had given extensive coverage to FORD-Asili chairman, Mr. Kenneth Matiba. In this

⁹⁶ See *Economic Review* February 21-27, 1994 pp. 7 for a summary of the article.

⁹⁷ See "'*Watchman*' publisher picked up by police," *Kenya Times*, February 17, 1993; "Lawyer: Sedition charges repugnant," *Daily Nation*, February 18, 1993.

⁹⁸ "'*Finance*' editor stabbed in attack," *Daily Nation*, April 9, 1993.

⁹⁹ "Staff laid off," *Economic Review*, August 23-29, 1993.

report he requested that President Moi end the tribal clashes.¹⁰⁰ Also, university authorities banned an issue of *The Anvil*, published by the University of Nairobi School of Journalism. This action forced *The Anvil* to cease publication. Later in the month, two hundred copies of the British *Financial Times* were confiscated at Jomo Kenyatta International Airport. The periodical included an editorial entitled "Kenya Crisis" and an article "Kenya abandons the straight and narrow path of reform." It was reported that fifty copies of the British *The Independent* were also seized.¹⁰¹

In the same month, six hundred copies of *The People* were confiscated for its lead story entitled "Political Killings - Kalenjins tell it all." Further confiscations occurred in May when police impounded six thousand copies of *Jitegemea* magazine, published by the Presbyterian Church of East Africa.¹⁰²

In August, negatives, plates and ten thousand copies of *Finance* were taken by police from Colourprint. Along with these, new printers and other "anti-government" magazines were also seized. Colourprint was raided again by police who seized twenty thousand copies of *Finance*, artworks, one hundred copies of *Society* and two covers of *The Economic Review*. Three employees were beaten and Mr. Bushan Sanju, son of the chairman of Colourprint, was detained for ten hours.¹⁰³

B. FREEDOM OF EXPRESSION

In addition to the many arrests related to government protest, the government prohibited the staging of at least two plays in 1993. In July, *Ngaahika Ndeenda* ("I Will Marry When I Want") by Ngugi wa Thiong'o, was stopped twice by the District Officer for Kikuyu in Kiambu district on the grounds that a license was required, and that none had been granted. In August, the staging of the play, *The Trial of Dedan Kimathi* was stopped by the assistant chief of Kirangari in Kiambu.¹⁰⁴

On December 11th, Mr. Francis Wanyange, Nakuru East MP was prevented from speaking at the Independence Day celebrations in Naivasha town after referring to the Kenya Broadcasting Commission as the Kabarak Broadcasting Commission, alluding to the contents of news programs centered on the President whose home is in Kabarak. The District Officer, Mr.

¹⁰⁰ *Id.* August 23-29, 1993.

¹⁰¹ *Id.*

¹⁰² Consult Part II(A), "Freedom of Speech and the Information Media" for details.

¹⁰³ See the *Economic Review*, April 1994, pp. 8-10.

¹⁰⁴ Interview with Paul Muite and Kiraitu Murungi, February 1994. See also *Economic Review* February 21-27, 1994, pp. 8.

Osman Babu, grabbed the microphone from Mr. Wanyange and told him to sit down. After a short argument, Mr. Wanyange walked out.¹⁰⁵

C. FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION

(1) Freedom of assembly

Permits required under law:

Permits for public gatherings were originally required by colonial authorities in 1946 in an effort to thwart African political groups.¹⁰⁶ In 1950, the Public Order Act codified the requirement for licenses for gatherings of ten persons or more. Permits are still required by law today. Often, permission is granted informally, although the denial of permits has become a favoured weapon against opposition politicians and persons critical of the government, particularly in politically sensitive areas.

In Nakuru, for example, the requirement for permits was extended to cover funerals and wakes especially after the government declared certain areas in the district "security operations zones." Often, the permits were only granted after considerable pressure was exerted on the provincial administration, and individuals were arrested while attending these wakes.¹⁰⁷

(2) Freedom of association

In March, a seminar organized by Professor Wangari Maathai was prevented from taking place in a Nakuru catholic church by heavily armed plainclothed and uniformed police. The police officers sealed off all entrances to the Christ the King Catholic Cathedral, priests houses and Diocesan offices. Provincial CID chief Mr. David Kipkemei Korir and the Nakuru police chief Mr. Philip Cheruiyot led the effort. Bishop Ndingi Mwana a'Nzeki was outraged that police came onto church property.¹⁰⁸

Later that month, armed riot police stopped approximately one hundred members of Release Political Prisoners from planting trees to commemorate the first anniversary of the dispersal of

¹⁰⁵ Reporting notes of Joseph Ngugi, December 12, 1993.

¹⁰⁶ See Independence Without Freedom: A Report on the Legitimization of Repressive Laws & Practices in Kenya, Kenya Human Rights Commission, February 1994, pp. 10.

¹⁰⁷ Interview with Bishop Ndingi, February 7, 1994.

¹⁰⁸ Reporting notes of Joseph Ngugi, March 2, 1993.

the mothers of political prisoners from "Freedom Corner."¹⁰⁹

In April the Naivasha District Officer ended a *harambee* fund-raising meeting for three students studying in India when Mr. Francis Wanyange, Nakuru East MP, rose to address the gathering before giving his donation. The District Officer refused to allow Wanyange to address his constituents, on the grounds that the harambee was not a political meeting and that he had not issued a license for a meeting.¹¹⁰

Opposition political gatherings were often frustrated by government efforts. Almost every opposition member of parliament was frustrated in his or her attempts to hold meetings or seminars in their respective constituency.¹¹¹ In May police dispersed a licensed FORD Asili meeting in Kiambu. In August, truckloads of policemen disrupted a "meet-the-people" tour of Murang'a and Embu districts by Kenneth Matiba, Chairman of FORD Asili and MP for Kiharu. Nakuru district commissioner, Mr. William Kerario, also cancelled a rally for Mr. John Francis Wanyange, FORD Asili MP for Nakuru East, without providing a reason. Even a parents' day meeting in Kwanza was disrupted by police because it was being addressed by area MP, Mr. George Kapten of FORD-Kenya.¹¹²

D. FREEDOM OF RELIGION

Freedom of religion was generally protected in Kenya throughout 1993. However, the continued refusal of the government to register the Islamic Party of Kenya, was said by many to be "anti-Muslim." Also, In July, some Seventh Day Adventist students at Kapsabet Girls High School were expelled because they did not attend a presidential rally being held near their school on a Saturday.¹¹³ Due to public outcry they were later reinstated.

E. FREEDOM OF MOVEMENT

(1) Security zones:

The imposition of "security operation zones" in Molo, Londiani, Elburgon and Burnt Forest in September--ostensibly to curb the violence and clashes in these areas--resulted in the severe

¹⁰⁹ "Police bar RPP members," *Daily Nation*, March 4, 1993. (Freedom Corner was the area in Uhuru Park where the mothers of political prisoners camped during a hunger strike in 1992 before they were brutally beaten by the police and dispersed on March 3, 1992.)

¹¹⁰ "MP's Cash Raising meeting cancelled," *Standard*, August 30, 1993.

¹¹¹ See Failing the Democratic Challenge, pp. 41-49.

¹¹² *Id.* pp. 46-49.

¹¹³ They did not attend on the grounds that they were proscribed from such meetings on Saturday which is their Sabbath. The students were instead attending church services.

restriction of the freedom of movement. Curfews and restricted access to the areas were imposed within these zones and only known residents of the areas were allowed to move freely into the areas. The press, human rights activists, and even non-governmental relief organizations were barred from travelling in the areas as the government erected roadblocks on all the roads leading into the areas. This move compromised the freedom of information and the transportation of food aid and other relief to people who had been evicted from their homes and had no source of livelihood.

The imposition of "security operations zones" also created a dangerous precedent in the handling of crisis areas. They led to a virtual state of emergency situation where civil and political rights were arbitrarily abridged. The imposition of the "security operations zones" was legally based on the colonial Preservation of Public Security Act (Chapter 57) and had far-reaching regulations, including "shoot to kill orders," based on mere suspicion of the commission of a crime.¹¹⁴

(2) Seizure and refusal of passports:

The freedom of movement was also limited through denying or seizing passports of various scholars, human rights advocates and government critics. Njehu Gatabaki, the publisher and editor of Finance magazine was unable to leave the country to travel to Vienna when his passport was seized by immigration authorities. He was scheduled to address the World Conference on Human Rights in Vienna, Austria in June.¹¹⁵

Augustus Njeru Kathangu, a former sedition prisoner who has filed a lawsuit for unlawful confinement against the government had his passport seized and was thus unable to travel out of the country.¹¹⁶ Similarly, Jared Kangwana, chairman of the Kenya Television Network (KTN), had his passport impounded while on board a commercial airliner. This action on Kangwana was believed by political observers to have been part of a broader scheme to force Kangwana to relinquish hold of the Kenya Television Network (KTN). Notably, the fact that KTN was successfully ceded to KANU and no criminal proceedings were instituted against Kangwana at the time lends credence to this belief.¹¹⁷

F. DISCRIMINATION

¹¹⁴ Interview with Kathurima M'Inoti, Advocate. Mr. M'Inoti questions the legality of these impositions and is currently challenging the constitutionality of the declaration of those areas as security zones in court.

¹¹⁵ "Editor arrested in court," *Daily Nation*, June 15, 1993. See also Country Report, at pp. 14.

¹¹⁶ *Id.* Country Report, at pp. 14-15.

¹¹⁷ *Id.* pp.15.

(1) Racial And Ethnic Discrimination

The emergence of calls for *majimboism*, or the division of the country into ethnically homogeneous provinces supported by high-ranking government officials led to the rise of ethnic consciousness and discrimination in particular areas of the country. Strategic orchestration of ethnic clashes--preceded or followed by calls for majimboism--promoted violence against non-Kalenjin and non-Maasai people. This hostility and conflict benefited the Moi regime and it consolidated its power over the population and all forms of political dissent. Koigi Wamwere describes it thus:

Through tribalism Moi's regime has been killing national consciousness and making our people feel less like Kenyans and more like Kikuyu, Kalenjin, Luo, Luhya, Maasai, Taita and so forth. This keeps them divided and gives Moi a strength which all of them lack.¹¹⁸

While addressing a rally in April 1993, William Ntimama exhorted "true" Rift Valley residents, referring to Maasai and Kalenjin, to arm themselves in readiness for war against opposition parties. He further accused the opposition of hatching a plot against the "true" residents of the Rift Valley. Attending the rally was Vice-President George Saitoti. He enthusiastically asked the audience to note the importance of Ntimama's words.¹¹⁹

Moreover, the Minister for Home Affairs and National Heritage, Francis Lotodo ordered in October 1993 all "non-Pokots to leave West Pokot district or be dealt with mercilessly".¹²⁰

Selective representation in government positions and parastatals was evident in 1993. Kalenjins were promoted dis-proportionately over other ethnic groups. In Nakuru district, for instance, where the population is mostly Kikuyu, and where Kalenjins constitute only a small percentage of the population, Kalenjins held the majority of the sensitive positions in the administrative and security machinery. In some areas, Kalenjins are also given preferential treatment for entry into schools and colleges.

A cursory review of the key government offices in Nakuru for both the district and province related to security and land, revealed a preponderance of Kalenjin officers. The provincial commissioner, the provincial land adjudication officer, the provincial surveyor, the provincial registrar of persons, the provincial police officer, the provincial criminal investigation officer,

¹¹⁸ Koigi wa Wamwere, The people's Representative and the Tyrants, (Nairobi: New Concept Typesetters, 1992), at pp. 84.

¹¹⁹ See *Economic Review*, February 21-27, 1994 for summary of a statement made by Minister for Local Government, Mr. William Ntimama in April 1993.

¹²⁰ *Id.* pp.9

the senior principal magistrate, and the provincial prisons commander were all Kalenjin. In an area where conflicts between Kalenjins and non-Kalenjins were common, this ethnic balance is questionable.

Kenyans of Somali origin were also victims of ethnic discrimination. Aside from suspicions that every Somali man is linked to the bandits stalking northern Kenya, they must carry two types of identification at all times: One is the normal national identity card issued to all Kenyans, while an additional pink card proves that the individual has been "screened." Somalis must produce these two forms on demand or before they receive government service, such as when they apply for a passport.¹²¹

¹²¹ See Taking Liberties, a 1991 Africa Watch Report for a discussion on the discrimination against Kenyans of Somali origin.

III. WORKERS RIGHTS

A. THE RIGHT TO ORGANIZE INDEPENDENT TRADE UNIONS

Section 80(i) of the Constitution of Kenya states:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to Trade Unions or other associations for the protection of his interests.

1993 saw the continued frustration of the freedom of association in Kenya. The government took a hard line against the formation of new unions, and interfered in the affairs of existing ones. Importantly, the government continued with its practice of requiring that unions obtain a license from a District Commissioner to hold a members' meetings. Such meetings are not "public meetings", which otherwise require licenses under the *Public Order Act*, and there is no Kenyan law requiring that they be licensed. Several attempts by the Kenya Union of Domestic, Hotel, Educational Institutions and Allied Workers (KUDHEHIA) to organize members' meetings without a permit from the administration were thwarted in 1993.

(1) Kenya Civil Servants Union:

Civil servants of the Kenyan government have been denied the right to form a union since the Kenya Civil Servants Union was "de-registered" by President Moi in 1980. This action was taken despite the fact that under Kenyan law the president has no authority to de-register unions. The prohibition against the organization of a civil servants' union was officially lifted in 1991, but a government committee charged with considering options for the formation of such a union had taken no action by the end of 1993. In August 1993, a group of Members of Parliament demanded the reformation of the de-registered Civil Servants Union by October. On September 13, a group of sixteen civil servants announced that they had formed a union, but their application for registration was denied.¹²²

(2) The Central Organization of Trade Unions

All but five of Kenya's approximately thirty-three trade unions are affiliated under the Central Organization of Trade Unions (COTU). COTU was created by the Kenyan government in 1965, and the government has historically exercised substantial control over the union. The union's constitution, which was drafted by the Attorney General at the union's founding, gives the power to appoint or remove its three senior officials to the President, and stipulates that a representative of the Labour Ministry and of KANU shall be members of COTU's executive board. However, the secretaries of all general unions affiliated under COTU presently hold that in the era of

¹²² *Economic Review*, September 20-26, 1993, pp. 21.

multi-partyism this historic connection should be terminated. The connection existed through 1993.¹²³

In early 1993, the Secretary General of COTU, Joseph Mugalla, called for a one hundred percent increase in wages for all workers organized under COTU, and for the firing of the Vice-President of Kenya George Saitoti or COTU would organize a general strike throughout Kenya. The police arrested Mr. Mugalla and some of his senior associates, Boniface Munyao, George Odiko, and Joseph Bolo on Labour Day, and many COTU workers staged a two-day country-wide strike soon thereafter.¹²⁴

The government moved decisively to assert control over COTU. On July 2, police blocked a meeting of COTU's governing council. A small group of COTU voting members, along with senior Ministry of Labour officials, including the Minister of Labour himself, met in the KANU headquarters in Nairobi. Despite the fact that the next COTU elections were not scheduled until 1995, the group claimed to have elected new COTU leaders. The registrar of trade unions, in disregard of the usual seven day waiting period to verify the legitimacy of such an election, immediately registered the new group.

The effort by the government to install new COTU leaders was thwarted by the High Court on December 27 when it invalidated the July 2 election. The government persisted in its effort to purge the COTU leadership by claiming that the High Court ruling rendered all COTU offices vacant rather than affirming the legitimacy of the leaders that the government had tried to oust. However, the Court of Appeal ruled that the High Court's invalidation of the July 2 election had the effect of reinstating the previous leadership.¹²⁵

(3) The University Academic Staff Union:

In February 1992, academic staff from Kenya's four public universities decided to form a trade union, the University Academic Staff Union (UASU), for purposes of collective bargaining and to protect academic freedom. Pursuant to the requirements of Kenyan law, UASU representatives submitted an application on May 25, 1992 to the registrar of trade unions. In June 1993, having not received a response to the application from the registrar of trade unions, UASU's interim officials wrote to the Attorney General requesting a meeting to discuss the registration of the union.

When neither the registrar of trade unions for the Attorney General responded to UASU's requests by November 1993, UASU announced its intention to go on strike on November 29. Notice of the intended strike was issued to the President, who is the chancellor of the four

¹²³ See *Country Report*, pp. 20-23.

¹²⁴ *Id.* See also *Economic Review*, February 21-27, 1994, pp. 7-8.

¹²⁵ *Id.* *Economic Review*.

universities, the Attorney General, the registrar of trade unions and the vice-chancellors of the four universities. In response to this notice the registrar of trade unions finally responded to UASU's application, on November 24, rejecting it on the grounds that "the union is used for unlawful purposes and as such peace, welfare and good order in Kenya would otherwise be likely to suffer prejudice."

UASU initiated the strike on November 29, 1993, and was on strike by the end of 1993. On December 27, 1993, during the swearing in of two new High Court judges, President Moi stated that the government would never register UASU, and he reiterated this position in a public statement on December 31, despite the fact that the matter of the union's registration was pending before the High Court. The case remains pending.

Members of UASU, and especially its interim officials, were subjected to considerable government harassment. On December 10, 1993, all the union's interim officials were arrested while on their way to Egerton University for a meeting. Those arrested were Dr. Korwa Adar (Chairman), Dr. Kilemi Mweria (Secretary General), Dr. Airo Akodhe (Vice-chairman), and Dr. Odhiambo Nyaduwa (Treasurer). The lecturers were released the following day without charge.¹²⁶



¹²⁶ *Id.* See also Joseph Ngugi's reporting notes, December 31, 1993.

CONCLUSION

There is no doubt that the level of tolerance by the Kenya government for the freedoms of expression and association were significantly higher in 1993 than in the late 1980s. However, the promise held out by the changes resulting in the repeal of Section 2A was definitely not realized. From the events documented throughout 1993, it appears that the Kenya government decided that the political and human rights gains previously made were not to continue further.

One of the most disturbing phenomenons in 1993 was the government's manipulation of the law to serve narrow political interests and confine the respect for human rights. Dubious criminal charges were instituted against independent observers and opposition politicians for the expression of their ideas. This harassment could only have been intended to intimidate Kenyans, because there were no convictions in any of the politically instigated cases of 1993, nor were any of the cases against opposition politicians and critics actually pursued.

Another glaring concern was the vicious and systematic events occurring in the Nakuru area. No other region in Kenya saw such horrifying acts of brutality and harassment. Interestingly, the attacks seemed to be particularly aimed at one community, as almost all the victims of arbitrary arrests were Kikuyu. This harassment was compounded by the fact that the government officials responsible for maintaining order and establishing reconciliation in the area were virtually all from the Kalenjin community. Kalenjin is the community from which most of the powerful people in the government hail, and some of whose leaders have been implicated as the perpetrators of the clashes and violence in the region.

The absence of concrete measures by the government to reduce the tension and hatred brought on by the clashes was another tragic shortcoming of 1993. The violence started in 1991 and although there have been periods of relative quiet, there is no guarantee that the violence will not flare up again since the government has still not arrested nor disarmed the perpetrators. This inaction by the government further fuels suspicions and views that the government itself was intricately involved in the violence. Consequently, any negotiations by the government with concerned individuals and groups on resettlement or security, were shrouded in serious mistrust. Given the lack of government action, few people believed the government's assurances of the restoration of security in the clash torn areas.

It is within these circumstances that the government's decision to impose a virtual state of emergency on the clash areas must be considered. Rather than opening up the areas to observers, humanitarian groups and critics, the government opted to close the areas as "security operation zones." Information flows were curbed, and the freedoms of movement, expression and assembly restricted. While no new violence was reported from these areas once the "security operations zones" were imposed, this act does not solve the problem of violence breaking out if and when the perpetrators decide to do so, since previous violence sometimes took place in full view of the police.

Dozens of Kenyans were arrested for "contravening" the security regulations. Clergy going to minister to their members were included in these arrests, as were opposition members of parliament seeking first hand information. The dangers of closing up an area to independent scrutiny, especially when the government closing off the area is suspected of involvement in the violence, can not be overstated.

In 1993, along with perpetrating the violations of human rights documented in this and other reports, the KANU regime was apparently working as hard as possible to dismantle or destroy the nascent political parties in the country. Throughout 1993, several members of the parliament elected on opposition party tickets defected to KANU amidst credible claims that KANU was bribing the members to leave their parties. Daily newspapers also carried frequent reports of ordinary members, and local government officials defecting to KANU. While it was difficult to establish the veracity of the claims that money was used to "buy" defections to KANU, there is no doubt that the party encouraged these defections. Stage managed ceremonies of large numbers of people defecting were widely broadcast, as well as presidential pleas to certain individuals to defect to KANU.

Interestingly, two parliamentary seats were declared vacant by the High Court of Kenya following election petitions. All these seats were held by opposition members. At the same time, no election petition against a KANU member of parliament succeeded in court, often being dismissed on procedural grounds before the substantive matters could be heard.

All these human rights and political factors lead to the inevitable conclusion that the democratic process in Kenya was seriously stifled in 1993. Rather than expand the space for human rights and democracy, the Moi regime worked to constrict the existing space. If this trend continues in 1994 and beyond, there is every likelihood that the gains made in previous years may be reversed and absolute power within the presidency restored. If this happens, the hazardous times of the mid-1980s in Kenya may very well be repeated. Worse, the recent trend of civil strife in the world as witnessed in Bosnia, Somalia and Rwanda, may well be exported to Kenya.

1993 was the first year after multiparty elections in Kenya. The year was expected to lay the foundations for the respect of human rights in Kenya and for concrete democracy.

This report shows the various stumbling blocks placed in the path of genuine democracy in Kenya, restricting both political and economic rights, during 1993.

The report, the first of its kind by a Kenyan Organization, details some of the abuses perpetrated by the Moi regime on Kenyans. It emphasizes on events in the Nakuru area of the Rift Valley which was the location of serious abuses including extra-judicial killings, displacements and " ethnic cleansing, " and which was symbolic of the harassment that many Kenyans went through in 1993.

The report also analyzes the possible reasons for the abuses occurring in 1993, and suggests that Moi regime is not yet genuine in its commitment to democracy and human rights in Kenya.

