

# HAVEN OF REPRESSION: A REPORT ON THE UNIVERSITY OF NAIROBI AND ACADEMIC FREEDOM IN KENYA

## INTRODUCTION

Perhaps no other institution better embodies the aspirations and frustrations of the Kenyan society like the University of Nairobi. Since its inauguration, the University of Nairobi (UON) has been an accurate microcosm of the struggles facing the Kenyan people. It has often been the testing ground for most of the adverse sections later perpetrated on the larger Kenyan community. Attempts at controlling and directing the university are frequently a prelude to similar efforts at the national level.

The UON is the largest and oldest university in Kenya. This report analyses the enjoyment of academic freedom in UON in recent times. Academic freedom encompasses the freedoms of thought, conscience and the propagation of ideas, in addition to the other fundamental rights and freedoms available to every member of society. The report is based on the premise that the central goal of any university is the pursuit of knowledge and truth in the interests of continued social transformation and human freedom. Article 19 of the International Covenant on Civil and Political Rights, which Kenya ratified in 1966, declares that everyone has "the right to hold opinions without interference; the right to freedom of expression (including) the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers . . . ."

Articles 9, 10, 11 and 17 of the African Charter on Human and peoples' Rights - which Kenya ratified in February 1992 - also provide for the right to information and its dissemination, the right to association and assembly, and the right to education.

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*"An independent, non-profit organization committed to the protection of, and advocacy for, fundamental human rights in Kenya."*

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The Kenya Human Rights Commission contends that academic freedom issues impact on the economic and social development of the country. Article 13 of the International Covenant on Economic, Social and Cultural Rights provides that States that have ratified the Covenant (including Kenya) shall ensure that everyone has a right to education that "...shall be directed to the full development of the human personality and the sense of dignity, and shall strengthen the respect of human rights and fundamental freedoms...."

Academic exercises carried out in an environment of frequent closures; interference with curricula; frequent staff changes due to imprisonment or exile; restrictions on research, books and speakers; promotions of staff based on political sycophancy, and; widespread fear and intimidation adversely affect the quality of university education and consequently inhibit the future development of the country. (A joke circulating around the Faculty of Medicine of the UON has it that doctors should be required to wear badges on their coats stating the year they graduated to ensure that patients can distinguish fully trained from half-trained doctors.)

Since the UON encompasses not only the future potential of the Kenyan nation but also its present realities, any attempts to abridge academic freedom must be condemned without reservation.

## Background

The University of Nairobi was established in 1970, taking over the functions of the University College of Nairobi that was part of the then University of East Africa. But even before the UON had become an autonomous institution, the government was already interfering with its right to receive ideas. In January 1969, Oginga Odinga, then president of the opposition Kenya Peoples Union (KPU) was prevented from giving a public speech at the university. Students boycotted lectures in protest and the UON was closed for a brief period. Since then, the government has not hesitated to interfere in the affairs of the university.

In 1972, the student newspaper University Platform was banned and its editors arrested after criticizing the ruling party KANU. The 1975 assassination of J.M. Kariuki, a popular and critical member of parliament, marked the turning point in the relations between the government and the university community. Students took to the streets to protest the government's ambivalence in responding to the murder. The government reacted violently, beating up the students and closing the university. Several women students were raped by security forces in the ensuing chaos.

Thereafter, a climate of confrontation emerged with the state invariably using force to curtail student efforts to organize

protests against government policy. The anniversary of J.M. Kariuki's death on March 2 became an unofficial closing date for the university as the government violently put down marches and events commemorating his death.

During this time, the academic staff remained relatively free to conduct research and writing without much intimidation. A highly critical novel, Petals of Blood, by Ngugi wa Thiong'o was published in Kenya in 1977. But in 1978, Ngugi was detained after establishing a community-based theatre group that performed a play attacking the government's policy toward the poor. His appointment to the university was revoked on the grounds of "non-performance of contract." Academic staff became afraid of pursuing activities that the government frowned upon, and the presence of informants in classrooms became common. The Vice-Chancellor (Dr. Josephat Karanja) frequently stated that academic staff attacking government policy in class would not be paid.

Upon ascending to the presidency in 1978, Daniel Arap Moi released all political prisoners, eliciting demonstrations by UON students in support of the decision. But any hopes of a cordial relationship between the university community and the government were quickly dashed as Moi expected uncritical support and loyalty from the university. He soon proscribed the students organization Nairobi University Students Organization (NUSO) which had emerged as a strong supporter of the autonomy of the university and a vocal defender of academic freedom. Criticism of government policies was met with vitriolic hostility by Moi and his officials. Public speeches at the university had to be cleared by the Special Branch (intelligence police) who also attended any lectures held.

Harassment of students and staff increased to unprecedented levels in the 1980s. Police informers became regulars on the campus and in the classrooms. Student leaders were regularly expelled and the Academic Staff Union was banned in 1980. Government officials called for the screening of academics to ensure that only those lecturers loyal to the government were allowed to teach. Student organizations were mandated to obtain permits from the Office of the President before holding meetings on the campus. In May 1981, after student disturbances prompted by inadequate library conditions and the barring of outside speakers, lecturers regarded as critical of the government were deprived of their passports. They included Ooko Ombaka, Micere Mugo, Michael Chege, Mukaru Ng'ang'a, Okoth Ogendo, Atieno Odhiambo, Peter Anyang Nyong'o and Shadrack Gutto. Most of these lecturers had been associated with the Academic Staff Union.

In 1982, several staff members of the university were arrested after being accused by Moi of "teaching subversive literature aimed at creating disorder in the country." Though no evidence of their "crime" was produced by the state, Willy Mutunga, Edward Oyugi, Alamin Mazrui, Kamoji Wachira, and Mukaru Ng'ang'a were detained

without trial for varying periods of time.

The August 1982 coup attempt tightened the government's grip over the university. In September 1982, Tito Adungosi, the Chairman of the Student Organization of Nairobi University (SONU)<sup>1</sup> was jailed for sedition after university students celebrated the coup attempt. (Adungosi later died in prison in December 1988 under mysterious circumstances after being deprived of medical attention. No inquest was held to ascertain the cause of death, contrary to prison regulations.) Sixty-seven other students were held from August till February 1983, when they were granted presidential clemency, except for six students who were jailed for sedition.

The coup attempt resulted in the longest closure in the history of the university. The government closed it down soon after the coup was crushed, and did not reopen it until October 1983--a period of fourteen months. A backlog of students waiting to be admitted emerged which the university handled by introducing the "double-intake" in 1987 when two groups of qualified students were admitted at the same time.

In February 1985, nineteen students were arrested, tortured and jailed in connection with peaceful protests (boycotts of classes and prayer meetings) over the expulsions without reason of several students, including the immediate past Chairman of SONU, Mwandawiro Mghanga, Gupta Ng'ang'a Thiong'o, Gacheche wa Miano, Philip Tirop, Karimi Nduthu, Odera Okumu, and Atanasio Ondiek. The expelled students were known to be ardent opponents of the then Chairman of SONU, P.L.O. Lumumba, who many regarded as a tool of the authorities. At a prayer meeting on February 10, 1985 students were surrounded by armed riot police and savagely beaten. One student died and over sixty-five students were injured. The convictions against the nineteen students were later quashed on appeal (after the students had served their sentences), on the grounds that the proceedings were "arbitrary."

The Mwakenya<sup>2</sup> saga of 1986-1988 resulted in the jailing or

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<sup>1</sup> SONU was established in 1982, as a central body representing students. It replaced the Interim Committee formed as an informal group after the banning of NUSO. Tito Adungosi was SONU's first Chairman.

<sup>2</sup> Mwakenya, an underground movement opposed to the government, periodically released anonymous pamphlets detailing alleged abuses. Hundreds of Kenyans were arrested for allegedly supporting the movement, and over 70 people were convicted in quick afternoon trials where all confessed to the charges against them. Claims of torture were ignored by the magistrates. Those strong enough to resist the torture were detained without trial.

detention of several people connected to the university. Among the current or former students affected were Gacheche wa Miano, Gupta Ng'ang'a Thiong'o, James Opiata, Mwandawiro Mghanga, Wanderi Muthigani, Philip Tirop, Karimi Nduthu, George Oduor Ogwen, David Njuguna Mutonye, and David Murathe. From the academic staff, Ngotho Kariuki, Kariuki Gathitu, Katama Mkangi, and Gibson Kamau Kuria were among those persecuted.

According to Ng'ang'a Thiong'o, those arrested were subjected to serious torture which included:

- \*Severe beatings with whips, canes and fists;
- \*Application of electric shocks to the genitals;
- \*Forced exercises in front of police officers in the nude;
- \*Confinement for days in water-logged cells while naked and without food or water. This forced the suspects to drink the water from the cells in which they had urinated and excreted;
- \*Hosing with cold water at great pressure;
- \*Deprivation of food and water for days on end; and
- \*Solitary confinement in cells with either bright lights or no lights at all, making one lose sense of time.

Urging the suspects to sign confession forms, the police torturers boasted that nothing would happen to them even if the suspects died. According to Thiong'o, the suspects were offered four "options":

1. Confess to the alleged crime and receive a jail term;
2. Be detained without trial at the president's pleasure;
3. Be tortured to death; or
4. Be charged with treason and sentenced to hang.

Acknowledging that the suspects may indeed be innocent, the interrogators asserted that they had gone through the university files in search of anyone who had a history of challenging authority.

The Mwakenya crack-down however did not stifle the UON community to the extent that the government desired. To control the UON further, new strategies were instituted. These included the shifting of resources from the UON to other universities, and particularly to Moi University in Eldoret.

Lecturers and professors were offered higher salaries at Moi University and many left for Eldoret. More insidiously, the government began to appoint "loyal" academic staff to lucrative directorships of government-owned companies. Because the salaries of university staff are quite low, these government perks became prize catches for the lecturers, and a considerable number began to vocally defend the government. In addition, the lecturers were required to sign forms that allowed for their dismissal without access to a hearing. These measures, plus the introduction of a

new course aimed at teaching the president's Nyayo philosophy (based on the slogan Love, Peace and Unity) had a chilling effect on the academic staff.

The students were better able to resist attempts by the government and university administration to control and direct their affairs. They insisted on the independence of SONU, and frequently issued statements addressing issues facing the university and the country.

In November 1987, SONU was invited to participate in an international students conference in Cuba. The government refused to issue a passport to the SONU chairman, Wafula Buke, who strongly condemned the decision at a meeting. In a night attack, heavily armed police arrested student leaders from their university residences, provoking protests from the general student body. The police violently put down the protests and over forty students were arrested. SONU was banned, and Buke jailed for five years after being held for two weeks incommunicado. Thereafter, the student community adopted a much lower profile in national issues.

#### **POLITICAL PATRONAGE AND THE CONTROL OF STUDENT ORGANIZATIONS**

Following the banning of SONU in November 1987, students at the UON did not have a central student organization representing their interests until April 1992. Attempts to revive a central student body were swiftly met with the arbitrary expulsions of vocal students. The ensuing climate of fear within the student community led to a vacuum in student leadership and organization. Using divide and rule tactics, the government promoted ethnic-based welfare associations in place of a central students body.

These organizations ostensibly represented students from various districts. They were characterized by a patronage system stemming from local politicians closely associated with President Moi and the government. The leaders of these district associations (later dubbed tribal organizations) had direct access to the President and other politicians, and frequently led well publicized trips to pay homage to the president. Given the historical tension between students and the government, local politicians used the associations and the visits to the president to prove their control over the previously "radical" students.

Such trips and the close contacts with the president and other politicians soon became sources of income for the students, as the president invariably "donated" large sums of money to the visiting groups.

Because of their close relationships with Moi and other politicians, these associations were totally incapable of defending

student interests that conflicted with the government. In addition to frequent declarations of loyalty to the president and the government, the associations preferred to deal with "development" projects in their home areas that had been approved by the authorities. But the enthusiasm for these "development" projects soon fizzled out when the students realized that all they needed to do to get "donations" from politicians was claim that they were planning to carry out certain projects.

The university administration, on the other hand, promoted the idea of college and faculty-based organizations in place of a central student body. These college organizations received immense official support and held monthly meetings with the university administration. By their nature, they were ineffective in addressing issues that were not directly related to school work. For instance, in November 1990, 18 students were expelled from the university without a hearing to determine the legitimacy and validity of the charges. None of the college and faculty-based organizations uttered a word of protest or concern on the issue. In time these organizations came to be regarded as "official stooges" of the administration whose major purpose was channelling information to the authorities about "trouble-makers."

The various strategies to deter the formation of a central student body ultimately failed as the student community continued to agitate for an organization that would genuinely represent their interests. Their demands gathered momentum simultaneously with demands from the public for government accountability and the introduction of multiparty politics. However, the frequent closures of the university together with an elaborate informer network in the university, hampered the maturation of these demands into a coherent force.

## **SONU 92 AND THE CURRENT CRISIS**

In mid-1991, with the university closed, a group of law students still on campus conducting their practical training decided to revive SONU as SONU 92. They were led by Francis Kajwang, who formed an interim committee and organized students from other faculties and colleges to take part in the central student body.

Kajwang was subsequently subjected to severe harassment for his efforts. His residence was bugged and he was followed by plainclothes policemen. The university administration asked him to appear before a disciplinary committee, but they were unable to take any action after a letter purporting to expel him from the university after the disciplinary committee hearing was discovered before the hearing. But these moves and others (e.g. bribery and threats against the leaders) failed to dim the students' enthusiasm. In fact, other students formed new organizations, such

as Student Opinion (STOP) which were designed to lobby for the registration of SONU 92.

The university administration eventually succumbed to student demands and facilitated elections for SONU 92 in May. Godfrey Kabando, who had been active in STOP was elected chairman. But despite official recognition, some administration staff--Professor O.K. Mutungi, Deputy Vice-Chancellor (Academic Affairs) and Prof. J.N. Mugambi, Academic Registrar--tried to manipulate the election. Voting was conducted in two stages to ensure that all students had a chance to vote. Profs. Mutungi and Mugambi demanded that the counting of votes be delayed until all votes had been cast, while they retained custody of the votes from the first stage of the election. The supervisor of the election, Mr. Smokin Wanjala of the Faculty of Law, successfully resisted their demand.

The SONU 92 leadership was soon in trouble with the authorities after organizing demonstrations and meetings that protested government actions. In particular, the government was incensed by protests against the political violence in the Rift Valley that left over 750 people dead and more than 20,000 families displaced from their homes. (Two separate and independent reports from the National Christian Council of Kenya and a Parliamentary Select Committee, incriminate various government officials with instigating, funding and supporting the violence.)

SONU 92 also called for the restructuring of the university, including the removal of: the president as Chancellor, Prof. Gichaga as Vice-Chancellor, Professor Mutungi, and Mr. Laanoi of the Student Welfare Association--the body mandated to administer the accommodation and catering for the students. (The students contended that Mr. Laanoi was unqualified for the position and had been appointed because of links to powerful officials in government.)<sup>3</sup> SONU 92 also demanded the depoliticization of the offices of the Chancellor and Vice-Chancellor respectively.

In response, the university was closed once again, SONU 92 was banned, and student leaders ordered to appear before a Disciplinary Committee on August 28, 1992. The students summoned included: Godfrey Kabando, Kamau wa Mbugua, Michael Oliewa, Otieno Aluoka, Judy Muthoni, Moses Kuria, Jane Muigai, Allan Nguri, Cannon Ponge Awuor, and Moses Awili, all officials of SONU 92. Among the charges facing the students were: participating in a press conference; calling for the removal of the chancellor, vice-chancellor, Prof. Mutungi and Mr. Laanoi; organizing a procession

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<sup>3</sup> Mr. Laanoi was first hired by the UON as a College Registrar in December 1985. He was not interviewed, nor were his academic and other credentials verified before his hiring. Many complaints arose about his work ethic and attitude, especially since he considered himself answerable to only the Vice-Chancellor.



against the political violence; and distributing leaflets in support of SONU 92.

The students were not given sufficient time to prepare their defence and call witnesses. Further, they were denied legal representation despite Regulation IV (c) (V) of the Rules and Regulations Governing the Organisation, Conduct and Discipline of the Students of the University of Nairobi, which reads:

At all proceedings of a disciplinary committee before he/she is summoned, the student shall be entitled to a fair hearing and to representation either in person or by someone of his/her choice, to call witnesses in his/her defence, and to appeal to the Senate Disciplinary Committee.

The students walked out of the hearings and filed suit for a judicial review of the above regulation. The suit is still pending in court, but the university has since amended the regulation explicitly denying legal representation in future hearings.

The charges facing the students are perplexing when placed within the context of the current political situation in Kenya. Since the re-introduction of multiparty politics in December 1991, a degree of openness unknown in the past has arisen in the country. Opposition politicians and independent groups have not only demanded the resignation of the president, some have even called for his trial for alleged crimes. Further, Section 79 of the Kenya Constitution provides for freedom of expression and association.

### Disciplinary Committee Hearings

Disciplinary committee hearings have become exercises in psychological terror. Typically, the student charged appears before a panel of 8 to 10 university administrators including the chief security officer and lecturers. Other university security officers hang around the hearing room, and officers from the Kenya Police are often present. In the hearing itself, the student is presumed guilty, and she/he has the burden of proving her/his innocence. No witnesses are called to determine the veracity of the charges which are usually compiled by the security office with the help of student informers. The climate is very intimidating to the young students, with the threat of expulsion constantly hovering around. Since few Kenyans can afford to attend universities outside the country, and the other public universities would not accept expelled students, this threat is profound.

Godfrey Kabando appeared before the Senate Disciplinary Committee on March 26, 1992, charged with convening an illegal meeting; forming an illegal organization (STOP); addressing a press conference; and making public statements "likely to bring the University and its programmes into disrepute and public odium."

Prof. Mutungi chaired the hearing which run from 7:20 pm to 10:30 pm. Kabando was made to wait for about five hours.

At the hearing, Prof. Mutungi, who was the sole "prosecutor" from the panel, started off by asking Kabando whether he had ever been to see a psychiatrist. He questioned Kabando's intelligence and sanity repeatedly, and asserted that Kabando's press release must have been produced by someone outside the university as Kabando did not have the ability to write so well. He inquired into Kabando's background making sarcastic remarks about his achievements and background. Kabando was questioned about his interest in community organization and was threatened with expulsion and imprisonment.

Unable to shake Kabando, and bowing to the student pressure building within the student community, the disciplinary committee dropped the charges. They were to resurface again during the August 1992 hearings that have now been postponed until the courts decide on the question of legal representation.

#### **ECONOMIC AND SOCIAL RIGHTS: THE EROSION OF ACADEMIC STANDARDS**

Economic and social rights are impossible to attain within a climate where students do not receive adequate preparation to enable them to fulfil the demands of their future careers. The importance of adequate and proper training can not be overstated as it is expertise and technology that differentiates between the developed and underdeveloped countries such as Kenya.

Many factors can contribute to the erosion of academic standards in an university. Among them are the lack of sufficient time to adequately prepare students for the rigours of their future jobs; overcrowding of students; intimidation of teaching staff; expulsion of students who exhibit independence; insufficient staff due to political reasons; politically motivated promotions of academic staff; and inclusion of less qualified students in the classes due to political pressure. The University of Nairobi has been affected by many of these factors.

#### **Closures: Misuse of Discretion**

Since its inception the UON has been closed many times. However, until 1985, the university endeavoured to make up for lost time by prolonging the academic term to ensure that the published syllabuses were covered. Extra class hours would also be added after the closures. During the last closure in September 1992, the university decided that it would not make any effort to compensate for lost time, in an attempt to discourage future agitation by the students.

The many closures of the UON have taken their toll on the university's academic standards. The current academic calendar provides for an academic year divided into two semesters of 17 weeks each. The frequent closures have made this impossible to achieve, and the current students have spent far more time at home than in the university attending classes. Sadly, the tight schedule at the university means that time lost is not recovered.

Since 1990, the university, or sections of it, have been closed a total of 6 times. The students were sent on "early vacation" on July 14, 1990 following demonstrations by Kenyans over demands for multiparty politics. The official closing date was originally in October but the authorities wanted to avoid the possibility of students joining the demonstrations.

In November 1990, students in the Faculty of Arts were sent home until January 1991 (two months) after protesting a delay in refunding money owed to them by the university. Observers opine, however, that the university needed temporary accommodation for incoming students of the new Kikuyu campus program (Bachelor of Education candidates) whose entry had been twice delayed due to incomplete construction of their hostels. Indeed, as soon as the students went home, the Kikuyu campus students immediately took up residence in the empty hostels until construction was completed.

In July 1991, all students were expelled and the university closed following protests over the manner the government was introducing cost sharing. The university opened in March 1992-- after a closure of about nine months. Soon after resuming, students at the Lower Kabete campus (Faculty of Commerce) were sent home on April 2 over the registration of SONU 92. They came back after one month on May 4.

On July 30, students from the Faculties of Law, Arts, Architecture and Design, Engineering, and Science were sent home over the SONU 92 matter. They resumed on September 2, after a one month closure. The same students were again sent home on September 18 as the university authorities claimed that the students were planning an unlawful meeting. They were recalled in stages after a month at home.

Partly because of these closures, the Commonwealth Association of Architects struck off the university's architecture school from its list of accredited universities in 1987. (The Association has over 145 schools with accreditation in former British colonies.) This means that students graduating in architecture from the UON must get additional qualifications to be internationally recognized as qualified architects. In mid-October, a fourth year architecture student remarked: "For the last 80 weeks of my life, I have been in school for only 12."

The University of Nairobi Act gives the authority to close the

university, or any sections of it, to the Senate of the University. The composition of the Senate includes the Vice-Chancellor, the Deputy Vice-Chancellors, the Principals of the Colleges, Deans, Chairmen of the Departments, and two members elected by the Students' Union. The UON cannot be closed without a decision by the Senate. Recently, however, it has been clear that the decision to close the university has emanated from outside the Senate.

For instance, on July 30, 1992 the Senate met and acceded to student demands on the dismissal of Mr. Laanoi. There was no discussion on closing the university. In fact, the Vice-Chancellor addressed the students after the meeting and confirmed the Senate's position. Later at around 6:00 pm, a memorandum from the Vice-Chancellor's office stated that the Senate had decided to close the university. Godfrey Kabando, who was a student representative on the Senate, asserts that the Vice-Chancellor was probably prompted by "orders from above" to close the university.

### **Too Many Students, Too Few Lecturers**

The numbers of students studying at the UON have been progressively growing over the years. This has contributed to the goals of better education for as many Kenyans as possible and is a laudable achievement.

Nevertheless, the quality of education should not be sacrificed for mere numbers. While Kenya needs many more doctors, scientists, lawyers and engineers, they must be able to handle all the complexities of their respective professions by receiving sufficient instruction. Adequate planning for expansion should be done to ensure that students receive enough attention from their teachers, essays and examination scripts are scrutinized properly, and the teaching staff is not overworked and is consequently able to perform to the best of their abilities.

The expansion at the UON has been tremendous. The Faculty of Law serves as a good illustration of the haphazard expansion at the UON. Until 1983 the average law class had between 50 and 60 students. There was then a staff of about 25 lecturers. Since then the numbers of students have increased dramatically. The numbers of students admitted each year since 1983 are as follows:

1983 - 90	1986 - 128
1984 - 136	1987 - 264
1985 - 112	1988 - 200

The academic staff averaged about 28 lecturers over the same period, and academic facilities such as the law library have remained at basically the same levels as before 1983. Because of the scarcity of available books, lecturers are forced to dictate notes instead of engaging the students in discourse that enhances analytical and research capabilities. Further, tutorials made up

of small groups of students to discuss problems and important issues have had to be abandoned.

The numbers for the 1987 class reflect the "double-intake" when the UON admitted two groups of qualified students to clear the backlog resulting from the 1982 coup attempt and the subsequent closure of the UON for fourteen months. The closure meant that no students were admitted to the university during the 1982-83 academic year. Qualified students had to wait for about twenty-one months before starting classes at the university, instead of the customary nine months.

This extended waiting period continued until the 1987-88 academic year when it was realized that the abrupt change of the country's education system (from a 7-6-3 system to the 8-4-4 system) would compound the back-log problem. The change of system meant that there would be an overlapping of students at the university--some pursuing a 3 year program and others the 4 year program.

Currently, the faculty of law has a total of about 910 students--including two groups of second year students--and a teaching staff of about 30 lecturers.

### **Political Criteria In Hiring: The Story of Kathurima M'Inoti**

Kathurima M'Inoti graduated second in his LL.B class of 1986. In 1987, he was admitted as a candidate for the Master of Laws (LL.M) program. He successfully completed his LL.M degree in July 1989, making him the first person since 1976 to graduate from the UON with the LL.M degree in the minimum two years. He applied to teach law and was appointed as a temporary lecturer on a six-month contract pending confirmation from January 1990. At about the same time, M'Inoti also started practising with the law firm of Kamau Kuria and Kiraitu Advocates, which is renowned in Kenya for defending victims of human rights abuse.

In March 1990, M'Inoti participated in the case against Reverend Lawford Imunde who was convicted of sedition (after severe torture) based on entries in his private diary.

Interviews for confirmation as a full time member of the Faculty of Law were conducted in May 1990. The interviewing panel was chaired by Prof. Mutungi, then the Principal of the College of Humanities and Social Sciences that covers the Faculty of Law.

The interview was turned into an interrogation session as Prof. Mutungi questioned M'Inoti on his political beliefs and writings, and on his participation in the Rev. Imunde case. M'Inoti was also questioned on his LL.M thesis discussing Emergency Powers in Kenya. The thesis argued that detention without trial

was an emergency power that should only be exercised in periods of war or severe internal crisis. In addition, the use of detention without trial violated Article 4 of the International Covenant on Civil and Political Rights which Kenya has ratified. According to M'Inoti, Prof. Mutungi "was hostile in his approach" during the entire "interview."

M'Inoti subsequently received a letter informing him that he had failed the interview. No reasons were given. Since the interview had not alluded to his ability or competence as a teacher, M'Inoti is convinced that he "failed" the interview because of his beliefs and because of his association with Kamau Kuria, who was playing a leading role in the multiparty debate in Kenya, and who had disagreed fundamentally with Prof. Mutungi when he (Kuria) was a lecturer in the Faculty of Law.

Paradoxically, soon after receiving notification of his failure at the interview, M'Inoti was re-appointed as a temporary lecturer on a six-month contract from July 1990. This confirmed his conviction that the interview had been a sham and that the decision to reject him was based upon political rather than academic criteria.

He rejected the offer to concentrate on the firm whose staff had been depleted with the exile of Kamau Kuria and Kiraitu Murungi in the United States following the anti-government protests in July 1990.

Kiraitu Murungi returned home in January 1992 and M'Inoti accepted another offer from the university to teach in the Public Law department of the Faculty of Law on temporary terms for six months from February 1992. The contract expired in early October 1992, but the UON has yet to respond to M'Inoti's application for a renewal. M'Inoti is of the view that the delay stems from his signing on to a letter from law lecturers rejecting the purported appointment of Prof. Arthur Eshiwani as acting Dean of the Faculty in place of Prof. Kivutha Kibwana. (See below.) Prof. Eshiwani is the Chairman of the Public Law department, and must approve the hiring or re-hiring of lecturers in the department.

### **Fighting on Principle: The Saga of Professor Kivutha Kibwana**

Professor Kivutha Kibwana, a graduate of the Universities of Nairobi, London, Harvard Law School and George Washington Law School, was elected acting Dean of the Faculty of Law in February 1991. Under UON regulations, the Dean of any faculty is nominated and elected by the members of the faculty for a period of two years. One can be Dean for only two consecutive terms. Candidates for Deanship must be Associate Professors or above, or have been senior lecturer and chairman of a department within the faculty for

at least two consecutive years.

In 1989, the duly elected Dean of the faculty, Professor George Rukwaro resigned. Mr. E. Nderitu, then chairman of Commercial Law department was elected Dean. In the reshuffling that followed the election, Dr. Kibwana was appointed Chairman of the department of Private Law, but was soon asked to hand over the chairmanship to Dr. Bhalla--an expatriate from India. This action followed the publication of an article by Dr. Kibwana criticizing some of the theories propounded by Prof. Ojwang on the sources of presidential powers in Africa. (Prof. Ojwang, who was close to the authorities in the UON and the government, argues that African presidents derive some legitimate powers from outside the Constitution and the law.)

Elections for the Deanship came up in 1991. The administration wanted Mr. Nderitu re-elected unopposed but Dr. Kibwana was nominated by members of the faculty to contest for the position, even though he did not have the stipulated requirements. Academic staff supporting him asserted that they had the authority to elect anyone in an acting capacity since the purpose of providing for the election of a Dean was aimed at ensuring that the staff participated in deciding who they could work under. Indeed, Prof. Okoth Ogendo had previously been elected as acting Dean of the faculty of law on a similar basis. After a bitter tussle, the view of the staff prevailed and Dr. Kibwana was elected as acting Dean. The faculty of law was soon acknowledged as one of the better organized faculties at the UON and Dr. Kibwana was later promoted to Associate Professor in June 1992.

Prof. Kibwana's problems with the university administration re-emerged with the controversy over the disciplinary hearings against SONU 92 leaders. University regulations provide that the Dean of the faculty of any student appearing before the disciplinary committee must attend the hearings. Since two of the SONU 92 leaders were members of the Faculty of Law, Prof. Kibwana was asked to attend the hearings on September 2, 1992. Citing professional reasons including the possibility of bias on the matter, Prof. Kibwana declined to attend. He argued that UON regulations provided that students could indeed appear with their lawyers contrary to the prevailing view in the administration.

The administration responded by relieving Prof. Kibwana of his duties as acting Dean on September 9, and appointing Prof. Eshiwani in his place pending the election of a new Dean on October 6, 1992. Prof. Eshiwani is a member of Youth for Kanu 92, a group formed to campaign for the election of President Moi and KANU in the forthcoming elections. The members of the faculty forcefully rejected the appointment of Prof. Eshiwani stating that they were not prepared to work under him.

The staff argued that since the administration could not

dismiss an elected Dean, the same applied to Prof. Kibwana who had been elected in an acting capacity. The students at the faculty also condemned the purported change and called for the reinstatement of Prof. Kibwana. To avert a serious crisis, the administration met with the members of the faculty and decided that Prof. Rukwaro would act as Dean until the election of October 6. The meeting also agreed that Prof. Kibwana would be eligible to contest for the Deanship.

Ironically, disciplinary measures were brought against Prof. Kibwana presumably in a bid to ensure that he did not present himself as a candidate for the deanship. On September 21, the Vice-Chancellor informed Prof. Kibwana that he was to appear before a disciplinary committee on October 1 to answer certain charges. The charges against him were:

- 1) Gross insubordination
- 2) Gross and wilful negligence of duty
- 3) Incompetence
- 4) Inciting students
- 5) Inciting the academic members of the faculty of law

The charges are strange because Prof. Kibwana was not only recently promoted to Associate Professor, but his management of the faculty of law is regarded as one of the best in recent times. With these charges the administration implied that positions taken on principle can amount to negligence and insubordination if they are contrary to the wishes of higher authorities. Further, the charges assume that the staff and students of the faculty of law are incapable of taking independent positions opposed to the authorities.

Prof. Kibwana's hearing did not decide on any action following the disciplinary committee's inability to explain the validity of their jurisdiction. The supposed election of October 6 was not held. Prof. Kibwana had been the sole nominee for the deanship.

## RECOMMENDATIONS

It is clear that the freedom of association, conscience, thought and the propagation of ideas at the University of Nairobi is in serious jeopardy. Continued government interference and abuse has made a mockery of the autonomy and quality of the university. The major loser in this is not the students nor the academic staff. The general society suffers most when the quality of graduates can not be guaranteed. Further, the future political and economic development of the country is put at risk especially when we consider the fact that the majority of people in Kenya are illiterate.

The Kenya Human Rights Commission therefore recommends the following:



--there should be no interference by the state and the university administration in student affairs. Students should be permitted to organize into bodies that will represent their interests and articulate any views they may have;

--the university administration should stop perceiving students as children and engage them in serious dialogue with a view to improving the quality of education. Students should be represented in all the organs of administration;

--the government must cease its persistent interference in university affairs. The deploying of riot and regular police to meetings at the university is unnecessary and a waste of scarce resources;

--the university administration must realize that students and staff are entitled to the rights and freedoms provided in the Constitution and international human rights laws ratified by Kenya, and should not operate it like a private members' club;

--the university must exercise its discretion in closing the university more judiciously than at present. Most of the violent confrontations arise when the police are sent to quell even the most peaceful of protests;

--hiring and promotion of academic staff should be on merit and academic production and not on political considerations;

### **Role of International Community**

The international community must realize that any assistance earmarked for the university in the present circumstances is not of much use. The university has a key position in ensuring the future development of Kenya, but the current trends mitigate against its effectiveness. Consequently, we recommend that donors insist on the implementation of the above recommendations before disbursing any assistance to the universities in Kenya. The linking of aid to political and economic conditionalities must extend to the university system in Kenya.

The Kenya Human Rights Commission is an independent and non-partisan advocacy group that monitors human rights in Kenya. It is based in the United States of America and Kenya. The Board is comprised of Makau wa Mutua--chairman (based in the U.S.), Willy Mutunga--vice-chairman (Kenya), Maina Kiai--executive director (Kenya), Peter Kareithi (U.S.), Alamin Mazrui (U.S.), and Njeri Kabeberi (Kenya).

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