CENSORSHIP IN KENYA

GOVERNMENT CRITICS FACE THE DEATH SENTENCE

March 1995

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ACRONYMS

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CTN Cable Television Network

CLARION Centre for Law and Research International

FORD-Kenya Forum for the Restoration of Democracy-Kenya

ICCPR International Covenant on Civil and Political Rights

IPK Islamic Party of Kenya

KANU Kenya African National Union

NDEHURIO National Democratic and Human Rights Organization

RPP Release Political Prisoners

UNDP United Nations Development Programme

UMKE United Muslims of Kenya

INTRODUCTION

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In a speech to mark the New Year, President Daniel arap Moi announced the opening of a process of debate and amendment of Kenya's Constitution in 1995. The announcement was widely welcomed, including by President Moi's political critics and by human rights activists, who have long argued that the Constitution gives the President excessive arbitrary powers and needs to be brought into line with the new multi-party political order.

In fact, the Constitution already guarantees freedom of expression in Section 79:

> Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) ... .

Unfortunately, as the actions of the Kenyan authorities in the last weeks of 1994 and the early weeks of 1995 show, without urgent institutional and legal reform, constitutional safeguards alone will not protect fundamental rights. Among the attacks on freedom of expression in recent weeks have been the following:

> • Government denunciations of Kenya's main daily newspaper, the *Nation*, including a threat to close it down. This was followed by the dismissal of critical *Nation* journalists. On 1 February 1995, the independent magazine, *Finance*, was the victim of an arson attack. Later that month, the government banned all past, present and future issues of *Inooro*, a Kikuyu-language weekly newspaper run by the Catholic Church.

• An announcement by the Minister of Information that the government does not intend to grant any licences for private broadcasting, irrespective of the findings of a government-appointed task force which is currently reviewing broadcasting law. President Moi publicly lambasted a judge who had given a broadcasting company leave to sue the Minister for contempt of court, resulting in the application being withdrawn.

• The forced removal, without any public notice, of several thousand people already displaced by political violence in the Rift Valley — violence which is widely alleged to have been orchestrated by the ruling party to disrupt the opposition. This was followed by a new upsurge of violence and the arrest of six opposition party officials and Members of Parliament (MPs) when they tried to attend a church service for the victims, one of whom remains in detention on charges of sedition. In March, the government charged another opposition MP with sedition in relation to remarks he allegedly made at a rally in the Central Province.

• Police opened fire at a peaceful event to commemorate the anniversary of the death of opposition leader Jaramogi Oginga Odinga.

• The Mwangaza Trust, a body established in 1994 as a policy think-tank on constitutional, human rights and other issues, was deprived of its legal registration by the Attorney-General in January 1995. Ironically, given the President's New Year speech, the Mwangaza Trust had been one of the main advocates of constitutional reform. In February 1995, another non-governmental group, the Centre for Law and Research International (CLARION) was banned after it released a detailed report on corruption.

• Sheikh Khalid Balala, a leading Islamic critic of the government, was deprived of his Kenyan citizenship while he was travelling out of the country. The Islamic Party of Kenya, of which he is a member, continues to have its registration refused by the government.

• Koigi wa Wamwere, a former MP and the founder of a human rights organization, and three other people are on trial for their lives in a Nakuru magistrates' court. They are alleged to have launched an armed raid on a police station — charges which appear to have been fabricated. The trial has been in progress since April 1994. If convicted, the four men face a mandatory death sentence. Other people associated with the four accused have also been charged with similar offences, which carry the death penalty, and some have been tortured in custody. The second half of this report consists of a review of the Koigi wa Wamwere case based upon two trial observation missions conducted by ARTICLE 19.

PART ONE

RECENT ATTACKS ON FREEDOM OF EXPRESSION

1.1 The *Nation* and Attacks on the Press

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In December 1994, members of the government made two public attacks on the Nation Newspaper group — the largest in the region with a daily circulation of some 200,000. First, President Moi warned the group against thinking that it was too large to be touched: "This newspaper can be banned and its licence revoked." Then, the Minister for Information and Broadcasting, Johnstone Makau, threatened to ban Nation newspapers "if they continue with irresponsible journalism".

In early January 1995, two *Nation* reporters were summarily dismissed in circumstances which caused many observers to believe this was a result of official pressure on the company. Alex Cege was sacked after writing a story alleging that a new office building had been sold to a government minister at considerably less than its market value. Julius Mokaya was dismissed after he had quoted lawyers as saying that Attorney-General Amos Wako was the main stumbling block to the rewriting of Kenya's Constitution.

The *Nation* has been the subject of frequent government attacks over the past 18 months. Joseph Ngugi, a Nakuru-based correspondent, was one of the first journalists charged in October 1993 with breach of security regulations for attempting to report on political violence in Molo.

Mutegi Njau, the news editor of the *Daily Nation*, was arrested in April 1994, along with the paper's Eldoret correspondent, and charged with subversion. The paper had run two stories on official involvement in political violence in the Burnt Forest area of the Rift Valley. The first alleged that a senior official in State House (the President's offices) had been responsible for initiating attacks on Burnt Forest communities. The second provided further details claiming, on the basis of eyewitness testimony, that a helicopter had been seen ferrying attackers. Since the "Kalenjin warriors" who were supposed to be responsible for the "spontaneous" attack would not normally have access to a helicopter, the general inference was again of official involvement. Mutegi Njau was bailed for a large sum and required to report to Nakuru police every two weeks — despite the fact that he lives in Nairobi. After some months the charges were dropped.

The most serious legal attack on the press in 1994 was the prosecution for contempt of court of Bedan Mbugua and David Makali, editor and reporter on *The People*, and of lawyer G B M Kariuki. The paper had published an article quoting Mr Kariuki as saying that a Court of Appeal ruling in a case involving striking university lecturers "reeked of state interference". Despite the fact that the case was already concluded, this comment was deemed to be in contempt by the Court of Appeal — the same court which had made the criticized ruling. The three were given heavy fines, which Bedan Mbugua and David Makali refused to pay. They served five and four months in prison respectively. Ironically, the rare use of criminal contempt charges against the press only served to reinforce the original allegation that the judiciary is susceptible to pressure from the highest levels of government.

Recent events at the Nation Newspaper group suggest that it, too, is coming under government pressure. The company's major shareholder, with 35 per cent of shares, is the Aga Khan, the Pakistani leader of the world Ismaili community. The remainder of the shares are publicly traded on the Nairobi Stock Exchange. Some journalists and commentators have expressed fears that the government in various guises may be trying to buy a substantial interest in the Nation group.

Since January 1995, the government has resorted to its old practice of imposing outright bans to suppress dissent (see also section 1.4 below). In February, the government banned all past, present and future issues of *Inooro*, a new weekly publication of the Catholic Church. *Inooro* had been published in the Kikuyu-language and distributed in the Central and Rift Valley Provinces as well as in Nairobi.

An alarming incident indicates the dangerous conditions under which the independent press in Kenya continues to operate. On 1 February 1995, two armed men burst into the offices of *Finance* magazine, doused it in petrol and set it on fire. Ruth Gathiga, secretary to the publisher, Njehu Gatabaki, was assaulted with a gun butt by one of the attackers. *Finance* had only resumed publishing in October 1994, after a sustained campaign of legal harassment by the government had temporarily forced it off the streets.

1.2 Restrictions on Private Broadcasting

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In Kenyan law there is no prohibition of private radio or television, yet the government still retains an effective monopoly over broadcasting. Aside from the state-controlled Kenya Broadcasting Corporation, whose board and management are directly appointed by the government, the nominally private Kenya Television Network is owned by the same company which publishes the *Kenya Times*, the daily newspaper of the ruling Kenya African National Union (KANU).

Allocation of broadcasting licences is, in law, the responsibility of the managing director of the Kenya Posts and Telecommunications Corporation. In practice, however, the decision appears to rest with the Minister of Information and Broadcasting, currently Johnstone Makau. More than 50 applications for private broadcasting licences are currently outstanding, including from two privately-owned newspaper groups, the Nation and the Standard; the National Council of Churches of Kenya (NCCK); and opposition political parties. Public concern about the process was sparked in mid-1994 when Cable Television Network (CTN) jumped the queue to be granted a licence. Minister Johnstone Makau's explanation was that, as a cable company, CTN was not subject to the complicated process of frequency allocation. The fact that CTN was using cables belonging to the state-owned electricity corporation, however, suggests that the company's apparently good official connections may have been an important factor.

In November 1993, the director of one of the companies who had been longest in the licence queue, Samuel Macharia of Royal Media Services, filed a High Court suit against the government. He alleged that the government was violating his constitutional rights by its delay in considering his licence application, which had been lodged in January of that year.

On 20 December 1994, Minister Makau told the press that there would be no licensing of private radio stations in the immediate future. He linked private radio to alleged opposition plans to launch guerrilla warfare from neighbouring countries, noting that "All applications and requests to start independent electronic media are ill-intentioned." Lawyers for Royal Media Services, whose suit was being heard by the High Court, applied for leave to sue the Minister for contempt of court on the grounds that he was stating, in effect, that he would not abide by the court's ruling if it went against the government. Justice Githinji granted leave to file a lawsuit against the Minister.

In a speech on 8 January 1995, President Moi attacked Justice Githinji, saying that government policy could not be interfered with by the courts — apparently contradicting his undertaking a week earlier to implement constitutional reform which would, it was assumed, make the government more accountable. Four days later, Samuel Macharia announced that he was withdrawing the contempt application.

More recently, Western diplomats in Kenya, led by the US Ambassador, Aurelio Brazeal, have taken up the issue of broadcasting freedom. In response to enquiries by the US Ambassador in February 1995, the Minister for Information and Broadcasting is reported to have said that his Ministry was reviewing broadcasting laws in other countries and that new legislation addressing the allocation of licences was being considered. The government-appointed Task Force on Media Law is due to make it recommendations on broadcasting law in March.

1.3 Rift Valley Violence and Monitoring Restrictions

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Since late December 1994, the situation in the Rift Valley has again become inflamed after some months of relative calm. As had happened earlier, government sanctions have been harshest against those who tried to investigate the causes of the violence or provide support to the victims.

The increase in tension began with moves against mainly Kikuyu communities who had already been displaced from their homes and land by Kalenjin or Maasai raiders. The police have takes various measures against the displaced population of Enoosupukia, housed since October 1993 at Maela Camp near Naivasha. On 23 December 1994, police rounded up camp residents and forcibly transported 2,000 of them to Central Province (regarded by Kalenjins as the "traditional" home of the Kikuyus). The residents were not told where they were being taken. Families were separated and, initially, the displaced were not provided with shelter or food.

The camp at Maela was razed to the ground, although approximately 1,000 displaced people remained there. The remaining population was beaten and harassed by the authorities. The United Nations Development Programme (UNDP) and Médecins sans Frontières were denied access. Police went to Kirigiti Stadium, one of three locations the displaced had been moved to, and questioned residents about their ethnic and family background.

Meanwhile, local authorities in other areas were beginning to insist on the dispersal of displaced people. On 28 December 1994, for example, the District Officer of Uasin Gishu ordered 118 families at the NCCK community centre in Eldoret to disperse by 4 January.

On 4 January, police dispersed 700 of the people moved from Maela Camp out of the three holding centres in Central Province: Ol Kalau, Ndaragwa and Kirigiti. At Kirigiti Stadium the camp was razed. The UNDP, the government's official partner in the programme to resettle displaced people, had apparently not been informed of the government action.

Two days later some 650 displaced people at Thessalia Mission were victims of a night-time attack by men armed with bows and arrows. Some accounts described the displaced as having been dispersed from Maela. However, there has been a long-standing displaced community at Thessalia which the government refuses to include in the resettlement programme, on the grounds that they are squatters, not victims of the "clashes".

On 8 January, in the same speech in Naivasha in which he attacked Justice Githinji, President Moi accused the opposition of planning "guerrilla warfare" against the government and of being behind recent Rift Valley violence. Two days later, 10 Kikuyus, including two children, died in attacks by 60 Maasai *moran* (warriors) at Kagecha, near Mai Mahiu in Naivasha. Some reports alleged that the attack was prompted by the earlier killing of a Maasai in Mau Narok.

On 15 January, three opposition MPs — Njenga Mungai, MP for Molo, Liwali Oyondi, MP for Nakuru Town, and Francis Wanyange, MP for Nakuru East — were arrested in Longonot as they were about to attend a church service for victims of the Mai Mahiu attack. Seven other opposition officials were also arrested, held incommunicado for four days and then released on police bond. The three MPs, all members of the Forum for the Restoration of Democracy-Asili (FORD-Asili), and three others were charged with promoting "warlike activities" and "uttering words with seditious intention". On 20 January, the six were denied bail. In mid-February, charges against five of them were withdrawn. The sixth, Njenga Mungai, continued to be held in Nakuru Prison, where conditions are reported to be harsh, and was admitted to hospital in Nakuru with health problems. In February, following statements by President Moi that he would not tolerate any criticism of the Presidency, another opposition MP, Linus Oluoch Polo, was charged with sedition in relation to remarks he allegedly made about the President at a public gathering.

This is by no means the first time that opposition politicians have been penalized for criticizing the government, carrying out their legitimate functions as members of parliament or simply engaging in political party activity. At the time of an ARTICLE 19 research trip to Kenya in May 1994, no fewer than 26 opposition MPs — about one third of the total — faced criminal charges, including incitement to violence and subversion. In September 1993, for example, 13 opposition politicians who visited Molo on a fact-finding tour were arrested and charged with causing a disturbance and organizing an illegal public procession. In May 1994, the Attorney-General entered a *nolle prosequi* — a decision which was criticized because by doing this, rather than withdrawing the charges, he retained the option of re-opening the prosecution later.

One method used by the government to prevent opposition MPs from communicating with their constituents is to refuse licences for political meetings and to arrest MPs for organizing or attending "illegal" meetings. A gathering of more than three people requires a permit, which is issued by the District or Provincial Commissioner.

Opposition MP Paul Muite told ARTICLE 19:

> Even if I go to a shopping centre in my constituency and people want to meet I would need a permit. Seminars are even disrupted. I organized a seminar for young people to talk about teenage issues and I arranged for a psychiatrist to attend. It was in a hotel conference room and even this was dispersed by the District Commissioner with armed riot police. This means that opposition MPs cannot have free interaction with the public at grass roots.

For example, Dr Mukhisa Kituyi, Forum for the Restoration of Democracy-Kenya (FORD-Kenya) MP for Kimilili and opposition chief whip, was arrested at a church in his constituency in April 1994, during a meeting to organize relief aid. He was taken 250 kilometres away to Kisii police station and held overnight before being charged with organizing an illegal assembly. Later, an additional charge was added, of uttering words

calculated to cause disaffection against President Moi. The charges were eventually dropped.

On 21 January 1995, police fired shots into the air to disperse opposition supporters at a gathering to commemorate the first anniversary of the death of Jaramogi Oginga Odinga, leader of FORD-Kenya. Several of those present were seriously injured as they fled from the shooting.

1.4 The Banning of CLARION and the Mwangaza Trust

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In February 1995, the government banned CLARION, an academic research organization headed by Professor Kivutha Kibwana of Nairobi University. CLARION had recently published a detailed report on corruption in Kenya, accusing the government of complicity in high-level corruption. The banning order claimed that CLARION had disseminated "inaccurate and unsubstantiated material of a political character which gravely injured the credibility of the Kenyan government". The report, which was funded by the Danish government, came at an embarrassing time for the Kenyan government, which was preparing to receive an International Monetary Fund/World Bank team to review economic reform. There has been no attempt to ban the report itself, which, however, has not yet been widely circulated.

Earlier, on 18 January 1995, the Attorney-General, Amos Wako, announced that he was removing legal registration from the Mwangaza Trust, a think-tank involving opposition politicians, church leaders, human rights activists and others. Mwangaza's publication, *Nuru*, which was published in eight Kenyan languages, was impounded by the police, who subsequently threatened newspaper vendors with arrest if they were found selling the publication.

The Mwangaza Trust was established in mid-March 1994 by Paul Muite and two others of the younger generation of FORD-Kenya MPs, Peter Anyang'Nyong'o and Kiraitu Murungi, as a vehicle for political reform. The major focus of its activity has been a campaign for constitutional reform and the removal of restrictive legislation. Paul Muite, who heads the Trust, stated: "the foundation will spearhead a campaign to bring about the realization — in Kenya and by the donor community — that free and fair elections in Kenya are an impossibility so long as the oppressive regime of laws that allowed Kanu to win in 1992 are not repealed." The focus of the Trust's work included KANU's monopoly of the Kenya Broadcasting Corporation and government use of security forces to harass and kill opponents.

This legal move against the Mwangaza Trust seems to directly contradict President Moi's publicly stated commitment to a national debate on constitutional reform, since it appears to be aimed at silencing one of the strongest non-governmental viewpoints on the subject.

1.5 The Suppression of Islamic Dissent

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In December 1994, Sheikh Khalid Balala, a Mombasa-based Muslim preacher, was deprived of his Kenyan citizenship while travelling abroad. When he applied to renew his passport at the Kenyan embassy in Germany, the government refused, stating that he was also in possession of a Yemeni passport. Opposition MPs argue that, as a Kenyan by birth, Sheikh Balala may not be deprived of his citizenship. Sheikh Balala filed a legal action against the government for a new passport to be issued but withdrew it when the newly-appointed Chief Justice, Abdul Majid Cockar, denied his application to present his case in person.

Sheikh Balala came to prominence in May 1992 when police stormed the Kwa-Sibu Mosque in Mombasa to disperse a crowd protesting against the government's refusal to register the Islamic Party of Kenya (IPK). In earlier protests, police had shot dead several people. Sheikh Balala was arrested in July 1992 and charged with sedition by "imagining" the death of President Moi, which carries the death sentence. He was held for six months, but eventually acquitted. Sheikh Balala was not, however, the founder of the IPK, which was launched in 1992 by a group of Mombasa business people and intellectuals to articulate the grievances of the Muslim community in the Coast Province.

The refusal to register the IPK apparently reflected the government's fear that the country's substantial Muslim community — some 6 million out of a total population of about 24 million — could become a coherent political force in opposition to KANU. Ironically, the government's actions in banning the IPK may well have the feared effect — one grievance of the Islamic community is their under-representation in Parliament. According to Khalid Khalifa, a member of the Supreme Council of Kenyan Muslims, "Muslims have reason to be dissatisfied with the present government for it has failed to translate our numerical power into balanced representation within various institutions in the country". In February 1995, more than 100 imams signed a public statement criticizing the government, and announced that they would join with Christians in campaigning for "better national leadership".

The government has tried to marginalize the impact of the IPK by differentiating between Muslims of African descent and those (like Sheikh Balala) of Arab descent whom it accuses of responsibility for the slave trade in the eighteenth century. In a speech in June 1992, for example, President Moi blamed Arab Muslims for slavery.

A new organization, the United Muslims of Kenya (UMKE), has been set up by pro-KANU figures in Mombasa to counter the allegedly Arab IPK. It is led by Emmanuel Maitha, a non-Muslim, in a strategy which appears parallel to the fostering of ethnic violence in the Rift Valley. Emmanuel Maitha has called on black Muslims to take up arms against the Arabs and has announced the formation of an African army to carry out the task. These statements drew increasingly violent rhetoric from Sheikh Balala, who was arrested for incitement in May 1993. It was only after a public outcry that Emmanuel Maitha was also arrested on similar charges, although he was promptly released on bail and the charges quietly withdrawn.

The government's denial of a legal voice to Muslims in the Coast Province has had stimulated Islamic fundamentalism. At the same time, KANU supporters have been encouraged to use violent tactics against the IPK. The latest attempt to deny Sheikh Balala a platform by depriving him of Kenyan citizenship is likely to have the effect — and indeed may have the intention — of stimulating further communal violence in the Coast.

1.6 Still Shooting the Messenger

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In October 1993, ARTICLE 19 published a report entitled *Kenya: Shooting the Messenger*. Our concern at that time was that, rather than addressing the causes of political violence in the Rift Valley and Western Kenya, the authorities were trying to prevent accurate reporting of the violence and thereby obstructing the search for lasting solutions. Thus, ARTICLE 19 was highly critical of the newly enacted security regulations which limited access to Molo, Burnt Forest and Londiani, three of the worst affected areas, with the aim of stopping investigation of the causes of violence. Those who were harassed or prosecuted under these regulations were journalists, human rights monitors, members of Church groups and opposition politicians.

Mutegi Njau, the *Daily Nation* news editor charged with subversion for his reporting of violence in Burnt Forest, told ARTICLE 19 of the effects of the security zone:

> The government ignores or attempts to stifle the information until it reaches the papers whereupon an editor is arrested with no attempt by the police to provide information from their own sources who control the area.
>
> The security zone prevents the flow of information and makes accurate reporting difficult. It creates an atmosphere of fear that means people are afraid to tell of their experiences as the clashes continue for fear of being arrested. The zone is seen by the press and opposition MPs as a means of suppressing information and to keep people out to prevent the free flow of information.

Nearly 18 months after the security zone was imposed, despite some months of lull in the violence, the situation is still far from resolved. The incidents outlined above show a continuing intolerance of truthful and impartial investigation into the causes of violence. ARTICLE 19 believes that monitoring censorship is particularly important because it can serve as an early warning of gross human rights abuse or the descent into endemic violence. Sadly, Kenya illustrates this all too clearly — not only in the Rift Valley, but also on the Coast, where Islamic fundamentalism is growing as a result of government restrictions on the freedom of expression of Muslim representatives.

The case of Koigi wa Wamwere, Charles Kuria Wamwere, James Maigwa and G G Njuguna Ngengi, discussed below, has its origins in the period when the government introduced its security regulations in Molo, Burnt Forest and Londiani. Koigi wa Wamwere, the founder of the National Democratic and Human Rights Organization (NDEHURIO), was one of seven people charged with violation of the security regulations in September 1993 after a visit to Burnt Forest, although the trip was made two days before the regulations were gazetted. They were also charged with possession of seditious publications — NDEHURIO pamphlets — and illegal possession of an AK-47 rifle (although their car had been searched at road blocks several times before their arrest and the police had failed on each occasion to find a weapon). Koigi wa Wamwere was on bail awaiting prosecution on these charges — which are still outstanding — when he was arrested and charged with attempted armed robbery in the case which is currently being tried.

During September 1993, a group of musicians had visited Molo on NDEHURIO's behalf and made a cassette of songs in order to raise money for the victims of the violence. The musicians were forced to go into hiding to avoid arrest and vendors selling the tape were harassed and at least one was tortured. On 4 November, President Moi made a radio broadcast blaming "the so-called ethnic clashes" on a number of individuals "through leaflets, offensive audio-cassettes and publications". The next day, Koigi wa Wamwere and his colleagues were arrested again.

PART TWO

THE TRIAL OF KOIGI WA WAMWERE AND THREE OTHERS

2.1 Introduction

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Koigi wa Wamwere, formerly the MP for Nakuru North, had been detained without charge on three occasions, spending nearly eight years in prison without trial, before leaving to live in exile in Norway. In 1990 he was arrested again. He maintains that he was abducted from neighbouring Uganda by Kenyan security officials. He was charged with treason, but was finally released after the charges were withdrawn in January 1993, shortly after multi-party elections. He returned to Norway and only came back to Kenya to found NDEHURIO in early September 1993, less than three weeks before he was arrested again. On 19 October 1993, he and the six others accused with him were released on bail.

The incident from which the current charges arise is an alleged raid on a police station in Bahati, close to Nakuru, to steal arms. The raid is alleged to have taken place at 2.30 a.m. on 2 November 1993.

Koigi wa Wamwere was arrested on 5 November 1993, and on 10 November charged with attempted robbery with violence under section 297(2) of the Penal Code, which carries a mandatory death sentence. In total 15 people — mainly members of Koigi wa Wamwere's family or supporters of NDEHURIO or another human rights group, Release Political Prisoners — were arrested and charged with the same offence. In January 1994 Attorney-General Amos Wako instructed that charges be withdrawn against all but four of the accused: Koigi wa Wamwere, his brother Charles Kuria Wamwere, his cousin James Maigwa and G G Njuguna Ngengi, a local councillor from Molo.

The trial began on 12 April 1994 and has been subject to constant delays. In March 1995, it is still continuing, though nearing completion, and the four remain on remand in Nakuru Prison, since attempted armed robbery is a non-bailable offence.

On two occasions, in May and September 1994, ARTICLE 19 sent an observer to attend the trial. ARTICLE 19 was represented by Ian Robbins, a barrister and member of the Human Rights Committee of the Bar Council of England and Wales. The purpose of the observation was to determine how far the proceedings complied with international standards for a fair trial, notably Article 7 of the African Charter on Human and Peoples' Rights and Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Kenya is a party to both these treaties.

The mission also investigated how far the other rights of the accused were being safeguarded, in particular their rights under international standards and Kenyan law not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and their rights to humane conditions of imprisonment, including access to adequate medical treatment. The ARTICLE 19 observer was mandated to inquire whether the detention and trial of Koigi wa Wamwere, Charles Kuria Wamwere, James Maigwa and G G Njuguna Ngengi appeared to be an attempt to restrict their right to freedom of expression, guaranteed under Article 19 of the ICCPR.

ARTICLE 19 concludes that the accused are undergoing an unfair trial on false, politically-motivated charges, which are based on fabricated evidence.

2.2 Police Conduct of the Investigation

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After the raid on Bahati police station, the police gave a press conference blaming *matatu* (taxi) touts for the raid and describing how they had arrived at the police station in a lorry. At no point were Koigi wa Wamwere or his car said to have been present. Although the key evidence against Koigi wa Wamwere was to be his alleged identification by one of two police officers present at the time of the raid, this was not mentioned at the time. It later transpired that the officer claimed to have met Koigi wa Wamwere previously in Nairobi at times when he was, in fact, either in prison or in Norway. A police officer also claimed that Koigi wa Wamwere's car was used in the raid. Yet, the police did not impound his car, as might have been expected if it had been used for the raid.

It is unclear what further investigation of the case took place. No attempt was made to check out the alibis offered by all four accused for the time of the raid. The only serious forensic evidence presented at the trial was the reports of post-mortem examinations of three men alleged to have taken part in the raid and to have died of gunshot wounds sustained at the time. These reports, however, did not correspond to the police account of events (see below). In any event, this evidence did not link the accused to the raid.

2.3 Fair and Public Hearing

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The proceedings in Nakuru magistrates' court are open to the public and have generated considerable interest both nationally and internationally. There have been various limitations on public access, however, including the arrest of members of the public attending the trial, frequent judicial criticism of press coverage of the trial and restrictions on the activities of legal and human rights observers.

The trial has been attended at various stages by observers from a number of international organizations, including Amnesty International, the Norwegian Bar Association and ARTICLE 19. In the early weeks of the trial, including ARTICLE 19's first period of observation, the magistrate prohibited observers from taking notes in court. When challenged by the defence as to the basis of this ruling, he could only indicate that he could find no provision in Kenyan law that specifically authorized observation, despite it being a public trial in open court. After several weeks of evidence and a protest to the

Chief Justice, the magistrate reversed this decision to correct "the erroneous impression ... in the minds of Kenyans that there is something being hidden from the public in the proceedings".

In October, however, ARTICLE 19's observer was briefly detained by security officials at Jomo Kenyatta airport in Nairobi. He was questioned and his notes were seized, but returned upon his release. This was a clear attempt to intimidate ARTICLE 19 and other organizations which might wish to observe the trial, suggesting a continuing fear of scrutiny on the part of the authorities.

During ARTICLE 19's first period of observation, in May, public attendance at the court was regular and substantial. The car park in front of the court was a hive of activity. By September, however, the atmosphere had become much more tense. On the grounds of security, the court was now only open to those who could find a seat; there was no longer any provision for standing room. The police presence had increased, with up to six police officers armed with machine guns at the door of the court, searching members of the public as they entered. There were two armed police officers on the roof of the court building and up to 15 prison guards attended the four accused.

On 26 September 1994 several members of the human rights group Release Political Prisoners (RPP) sat in the public area of the court, wearing white T-shirts bearing the emblems of the RPP and the Kenyan Human Rights Commission. The following day, the magistrate entered court, clearly angered, and demanded to know "who these queer people are in court ... they look intimidating and they should be removed". The RPP members were sitting quietly showing no disrespect to the court. The magistrate left the court. Uniformed police entered, two of them armed, and informed the RPP members that they should leave. They remained in court. Senior police officers approached the senior defence counsel, Paul Muite, and told him that he should instruct the RPP members to leave. He did so, but expressed his view that they were breaking no law. They were then forcibly removed and taken into custody.

Between 27 and 30 September, 12 RPP members arrested in the court were held incommunicado, along with two other members from Nairobi who had come to find out what had happened to them. On 30 September, 10 of the 14 RPP members were released without charge. The others were released without charge some days later. The arrest of the RPP members heightened an already palpable sense of tension and fear among members of the public attending the hearing.

Throughout the trial the magistrate has castigated the press for its reports and indicated what he felt it was appropriate to report. On 10 May, for example, proceedings commenced with the magistrate reprimanding the press. He indicated that he wanted them to give a fuller account of words uttered in his praise during the weekend adjournment by the local High Court judge, Mr Justice Rimitia, who would apparently hear any appeal from this case. On 28 September, the magistrate asked a reporter from the *Standard* newspaper to identify himself and proceeded to complain about the paper's coverage of the arrest of the RPP members.

2.4 Conduct of the Prosecution

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The prosecution is led by Oriri Onyanga, the state prosecutor in Nakuru, who is a member of the Attorney-General's chambers. In a number of respects the prosecutor has conducted the case in an obstructive manner, with the effect of preventing the defence from putting its case adequately.

The prosecutor constantly interrupted proceedings during cross-examination of prosecution witnesses. The interruptions were timed in such a way as to allow the witness more time to think of an answer or to defuse a situation where a witness was at risk of losing his or her credibility. The interruptions were not founded upon legitimate points of procedure or law and repeatedly upset the flow of the defence case. The effect of these interruptions was to allow defence evidence to be diluted or prevent inconsistencies in the prosecution evidence from being exposed to the court. When ARTICLE 19's observer attended the hearing in May such interruptions happened several times each day.

Additionally, the magistrate allowed the prosecutor to re-examine his own witness to contradict evidence given in evidence-in-chief which had been exposed as false in cross-examination. The re-examinations contained numerous leading questions.

It would appear that evidence had been tampered with during the course of the proceedings while in the control of the prosecutor or police. For example, during the cross-examination of a prosecution witness, Corporal Kanga, it was shown that she was unable to locate in the police occurrence book any other examples where time was recorded in the manner 02.30 hours (as opposed to 2.30 a.m.), as it was for the time of the raid. The defence alleged that the entry was inserted after the event. The next day in "re-examination", rather than being asked if there was an explanation for this — a reasonable question for re-examination — she was asked to repeat the process of examining the book and was immediately able to locate a number of entries where the timings began with a zero.

The home-made gun which was allegedly used by the attackers also appears to have been tampered with. When first presented in evidence it was clearly unable to be fired, yet later an attempt had been made to repair it.

During the second period of observation in September, the same problems were repeated and had worsened. Cross-examination would on occasion follow a line which did not reflect an effort to challenge evidence-in-chief. Frequently the proceedings would degenerate, with the prosecutor arguing with the witness rather than putting questions. On 27 September, for example, the prosecutor put to Koigi wa Wamwere that he had no right to criticize the government if he was not a member of a political party. This was challenged by the defence, who asked the magistrate to clarify whether the suggestion

was being made that it was illegal to criticize the government from a non-party position. The magistrate made no reply. The prosecutor was shouting at the witness, moving towards the witness box and accusing Koigi wa Wamwere of being politically subversive.

Similar incidents occurred on a number of occasions in September, with the magistrate failing to exercise any control over the proceedings. On at least two occasions, the magistrate drew adverse inferences against the witness where it was not appropriate to do so. For example, he noted that Koigi wa Wamwere was "struggling with difficult questions", when a fairer assessment would be that he was faced with non-specific questions, comment and argument and was constantly interrupted when he tried to answer.

2.5 Conduct of the Defence

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The defence is conducted by Senior Counsel Paul Muite and Mirugi Kariuki. They are giving their services free of charge since there is no legal aid for those facing capital offences in Kenyan magistrates' courts, contrary to the provisions of Article 14.3(d) of the ICCPR. The activities of the defence have been restricted by a combination of Kenyan law, the rulings of the magistrate and harassment by the police.

Under the normal rules of procedure in Kenyan magistrates' courts, there is no prior disclosure of prosecution evidence, nor is the defence even provided with a list of prosecution witnesses. This makes preparation of a defence extremely difficult, especially in a complicated case such as this one which has so far lasted for nearly a year. Disclosure of evidence and knowledge of the nature of the prosecution case are also intimately related to the presumption that the accused are innocent until proved guilty.

During the proceedings initiated in the High Court in July 1994, the defence team were accused of being political lawyers — Paul Muite is an MP and prominent member of an opposition party. The nature of the defence case is that the charges were brought against Koigi wa Wamwere and his co-accused for essentially political reasons. Although the prosecution constantly stresses that the charges are purely criminal in nature, it nevertheless regularly introduces lines of questioning relating to the political beliefs of the accused.

During ARTICLE 19's periods of observation, the conduct of the defence team was commendable. ARTICLE 19's observer noted only one incident of concern, which, however, was due to the extraordinary circumstances of this case. On 27 September, the hearing was disrupted by Senior Counsel leaving the court during proceedings as a protest against what he perceived as a refusal on the part of the magistrate to receive submissions. In the context of regular court proceedings, this would be unacceptable,

since the refusal of the magistrate could be dealt with as grounds for appeal. These proceedings have been far from regular, however, and, in these circumstances, the defence counsel's action was probably the only way in which he could draw attention to the unfair nature of the proceedings.

On the basis of ARTICLE 19's observation, it appears that the defence and prosecution are not treated equally by the tribunal and the defence case is constantly frustrated by the magistrate's interventions.

After the arrest of members of the RPP on 27 September Paul Muite was compelled to attend the police station and record a statement. He was held for two hours and then released after allegations from a senior police officer that he had paid the RPP to help Koigi wa Wamwere escape.

This was the second time that Paul Muite had been detained by police in relation to matters arising from the trial. In June he was questioned after the prosecutor had accused Koigi wa Wamwere of threatening him. On another occasion, defence lawyer Mirugi Kariuki alleged in court that police had visited the home and office of a member of the defence team seeking copies of instructions from the accused to their counsel.

2.6 The Tribunal and the Conduct of Magistrate William Tuiyot

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The conduct of the case by Chief Magistrate William Tuiyot has been arbitrary and ill-informed. The case has been marked by a bias in favour of the prosecution in presenting its case while, at the same time, the defence has been inhibited from pursuing its arguments.

The magistrates' court system in Kenya is two tier, comprising a district and a resident magistrates' court. The district magistrates' court is at the base of the court structure and the magistrate has limited sentencing powers. The resident magistrates' court is the next tier, established by Section 3 of the Magistrates Court Act and is presided over by the Chief Magistrate, Principal Magistrate and graded resident magistrates. It has unlimited geographical jurisdiction and unlimited sentencing powers, including the power to impose the death sentence if it is prescribed for the offence.

A matter of great concern is the lack of contemporaneous note-taking by the magistrate, given that his note constitutes the only official court record of the proceedings (which would be important, for example, in the event of an appeal). This was apparent, for example, even when crucial points of evidence were being taken, and leads to serious concerns about whether the magistrate can rely on his notes of evidence, which are vital

when coming to a decision in such a long trial. The defence only had access to the record of proceedings once, in July 1994, during a High Court application to terminate proceedings (see below). The full record will not be provided until after the case is finished.

The magistrate has shown a disturbing lack of familiarity with the rules of evidence and procedure even on simple rulings on the scope of cross-examination and re-examination. However, this appeared without fail to benefit the prosecution case. The magistrate was either unwilling or unable to make immediate rulings on standard disputes as to whether evidence was admissible and the nature of re-examination. Rulings would be postponed until the next day and then the judgment would contain no reference to defence submissions, comprising instead parts of the prosecution submission, begging the question as to whether any evaluation of the legal arguments had taken place.

Observation in both May and September revealed a tribunal willing to interrupt the proceedings constantly and to allow the prosecutor to interrupt the defence's cross-examination. The effect of such interventions has been to allow the witness more time to contemplate an answer; on occasions the magistrate has even suggested an answer to the witness. As noted above, the magistrate has given the prosecution frequent opportunities to put inadmissible questions in re-examination of a witness. At the same time, the defence is inhibited from pursuing its argument that the prosecution is politically motivated.

An example of the magistrate assisting a witness by suggesting an answer came during cross-examination of the prosecution witness, Police Constable Illikweni. The witness was asked if there was any mention in the post-mortem report of a chest wound to one of the deceased. The prosecution had suggested that the deceased had been shot through the heart, yet the report mentioned wounds to the left shoulder, not the chest. The witness refused to answer the question and was pressed by the defence counsel. The magistrate intervened to state that the witness should be given time to consider his answer and then indicated that the chest could be said to include the shoulder — a point on which the witness readily agreed.

2.7 Questions of Evidence

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Three bodies have been produced by the prosecution, alleged to have been of participants in the 2 November raid on the police station who were shot in the course of the attack. Examination of the evidence presented, however, suggested that the deceased had died in highly questionable circumstances.

Photographs of the first deceased were produced in court. There were no visible signs of a bullet wound to the heart, or blood, as was contended by the prosecution. The coat he was wearing was also produced and apparently showed no traces of blood or bullet holes.

The second deceased was allegedly found in a maize field near the scene. An early police report of 3 November 1993 seen by the defence indicated that this man had been arrested by police prior to the raid. He was then presented to his family some days later as having been shot dead in the raid. The family are reported to have stated that they could not see any evidence of the fatal bullet wound. A prosecution witness who stated (after the departure of observers) that the second deceased had been arrested on 1 November was arrested and charged with perjury at the behest of the magistrate and remanded in custody.

Post-mortem documents indicated that the first deceased had died in the police station at 11.00 p.m. on 1 November, not 2.30 a.m. on 2 November — the time of the alleged raid. This was confirmed in evidence by the doctor who conducted the examination, after the prosecution had stated that the time on the document was a mistake. The defence contended that relatives had said that the deceased had been arrested the day before the alleged raid. This extraordinary piece of evidence drew no reaction from the magistrate.

All three post-mortem reports place the time of death *before* the alleged raid took place. In one instance, the report of the post-mortem examination on 5 November places the time of death at least three weeks earlier.

The occurrence book, which is a timed record of events at the police station, has played a crucial role in the case. The record of the raid makes no mention of Koigi wa Wamwere — despite subsequent claims that he was identified at the time — and has been inserted in different handwriting to the other entries for the day. The timing next to the entry of the events immediately prior to the raid has been altered crudely and visibly from 12.50 a.m. to 2.30 a.m.. It appears that extracts from the occurrence book have been destroyed and are no longer available, despite their use in the proceedings. The arms movement book did not record either of the two officers involved as having been armed, despite the fact that they claim to have shot attackers in the course of the raid.

In February 1995, the defence claimed in court that their witnesses were being intimidated. They cited the dismissal of one witness from his job and the arrest by the police outside the court of another, who was then charged with maliciously damaging property in an incident that allegedly occurred almost a year ago.

2.8 Applications for Termination of the Proceedings

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The defence has applied twice to the High Court for termination of the proceedings. The initial application was filed before the hearing commenced in Nakuru and was listed to be heard at the same time as the proceedings in Nakuru. The defence abandoned the application so as to avoid giving any grounds to accuse it of responsibility for the delay in the matter coming to court.

In June 1994, the defence applied to the High Court to terminate the proceedings on the grounds that the magistrate was biased in favour of the prosecution and that the accused could not receive a fair trial as guaranteed under Section 77 of the Kenyan Constitution. The application was heard between 18 and 27 July. The High Court rejected the application amidst controversy. Several days into the proceedings, the judge ordered the defence to submit its response to the prosecution's oral submissions in writing. The defence objected, as written submissions would effectively take the matter out of the public domain, arguing that the judge's order contravened the constitutional requirement of a public trial. The judge refused to re-consider her order. Judgment was delivered on 15 August and the defence application was rejected.

2.9 Treatment of the Accused While in Custody

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On two occasions during ARTICLE 19's periods of observation, the accused were denied food from a medically prescribed diet. Proceedings were delayed to allow the accused, who had not eaten since the previous day, to be fed. ARTICLE 19 was informed that this had happened on other occasions. ARTICLE 19 has also been informed that each of the accused has had medical problems and that they are being held in very poor conditions without bedding.

G G Njuguna Ngengi was admitted to hospital with hypertension on one occasion and discharged prematurely, according to the defence. During a previous period in police custody, he became seriously ill (as well, it is alleged, as being tortured). He suffers from kidney problems.

In January 1994, Charles Kuria Wamwere contracted typhoid in Nakuru prison. However, it was not until the following month that he was finally transferred to hospital after repeated requests from his lawyers.

In December 1994, medical tests were conducted on Koigi wa Wamwere under anaesthetic after he had been persistently urinating blood. Despite medical advice, his police escort would not allow him to remain for further observation in the private hospital where the tests were carried out. Instead, he was returned to court and referred to the state hospital in Nakuru which refused to admit him. He was then returned to his prison cell only hours after being under general anaesthetic.

There has been a recorded assault on one of the accused by a prison warder in the court precinct. There have also been reports of denial of medical treatment, attempted poisoning and serious physical injury while the accused were awaiting trial.

At least five of those originally held in connection with the raid on Bahati police station are alleged to have been tortured while held incommunicado in police detention. Three of them later received medical treatment for injuries including a burst eardrum, a ruptured bladder and a fractured leg. In a clear act of intimidation, on 20 November 1993, police arrested Dr S K Mwangi, who was giving medical assistance to the detainees. He was due to give medical evidence in court about Koigi wa Wamwere and four others on 22 November. He was held incommunicado for three days before being charged with sedition and possession of explosives and released on bail. The charges were later dropped.

2.10 Associated Arrests and Torture

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Three other cases involving similar charges, though not formally linked to the prosecution of Koigi wa Wamwere and his co-accused, cast light on the government's approach in such cases.

- The raid on Bahati police station was one of three such raids alleged to have taken place between 30 October and 2 November 1993. The first was a raid on the Ndeiya Chief's Camp on the night of 30 October. Six men were arrested and charged with breaking into the camp, stealing arms and helping a prisoner to escape. After they had been released on bail, the charge was changed to one of attempted armed robbery so that they could not be bailed. The Nairobi Chief Resident Magistrate dismissed the case against the "Ndeiya Six" in June 1994, on the grounds that confessions made by the accused had clearly been obtained as a result of torture. The six were whipped, forced, to walk on sharp objects and had their finger and toe nails pulled out.

- Josephine Nyawira Ngengi, a member of the RPP and the sister of G G Njuguna Ngengi, was arrested in Nakuru on 8 May 1994. After 22 days of illegal incommunicado detention, she and 18 others were charged with robbing a supermarket. A number of those charged, including Josephine Nyawira Ngengi, alleged that they had been tortured in police custody. At their trial in August 1994, the prosecution entered a *nolle prosequi*. All 19 were immediately rearrested and nine of them, including Josephine Nyawira Ngengi, were then charged on three separate counts of attempted robbery with violence. In December 1994, the charges were again withdrawn. However, Josephine Nyawira Ngengi and others were immediately charged with attempted robbery with violence. In a hearing in February 1995, their trial was adjourned until April.

Geoffrey Kuria Kariuki (see below) also appeared at this hearing, charged with the same offence.

• Geoffrey Kuria Kariuki, one of those originally arrested in connection with the Bahati raid but not prosecuted, was arrested again in July 1994. He was held incommunicado for 10 days and is reported to have been severely tortured. When he was brought to court he and five others were charged with attempted robbery with violence. Among those charged with him were Michael Kung'u, a relative of Koigi wa Wamwere, and John Kinyanjui Njoroge, who had been arrested with Koigi wa Wamwere in September 1993. Shortly afterwards, Anthony Njuguna Njui, a potential defence witness in the case of Koigi wa Wamwere, was arrested and charged with the same offence. A doctor who examined the prisoners recommended that Geoffrey Kuria Kariuki, who had suffered severe head injuries in custody, be given a brain scan — a recommendation which was not complied with. Two of the other accused also required medical attention because of their ill-treatment.

In these three cases ARTICLE 19 has been unable to carry out a detailed consideration of the evidence against the accused. In each instance, however, there have been serious indications of torture in police custody. The pattern of charges in all these cases strongly suggests that the authorities are making frivolous use of criminal charges to detain political and human rights critics.

2.11 ARTICLE 19's Conclusions on the Koigi wa Wamwere Trial

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A number of aspects of the proceedings against Koigi wa Wamwere, Charles Kuria Wamwere, James Maigwa and G G Njuguna Ngengi fall short of internationally agreed standards for a fair trial. In addition, the four have been held in conditions that do not meet the minimum international standards on the treatment of persons in custody.

The accused were held incommunicado and some, although none of those currently on trial, appear to have been tortured.

The initial police investigation was inadequate. The police failed to investigate crucial evidence, such as the alibis claimed by the accused, and appear to have fabricated evidence, such as the occurrence book. Most sinister is the actual fate of the three men alleged to have been killed in the Bahati raid, since evidence presented in court seems to indicate that they were not in fact killed in the course of the alleged raid.

Some of the weaknesses in procedure are inherent in the Kenyan magistrates' court system. For example, the magistrate sits alone to determine questions of both fact and law. There are no assessors to assist on questions of fact, while a magistrate is a relatively junior judicial figure to be charged with questions of law upon which the life of the accused may depend. There is no prior disclosure of prosecution evidence to the defence. Also, the accused only have legal representation because of the willingness of their lawyers to represent them *pro bono*. Most of those standing trial for their lives in Kenyan magistrates' courts have no legal representation. The lack of any record of proceedings other than the magistrate's own notes hampers the defence and could be crucial in the event of an appeal.

However, many of the shortcomings of the trial have been avoidable. The presiding magistrate, William Tuiyot, has shown an extraordinary lack of familiarity with the rules of evidence and procedure and has frequently intervened to assist prosecution witnesses, as well as permitting the prosecutor to prompt witnesses and ask leading questions without restraint. By contrast, he has been highly resistant to allowing the defence to argue its case, namely that the charges are false and politically motivated.

The defence team have faced extraordinary obstacles, including police harassment, in presenting their case. The events of 27 September 1994, witnessed by ARTICLE 19's observer, illustrate much that is wrong with the conduct of the case. On the orders of the magistrate, supporters of a human rights group who were quietly observing the proceedings were cleared from the public area and held in incommunicado detention. The leading defence counsel was questioned by police and alleged — although not charged — to have paid people to organize the escape of the accused.

The charges against Koigi wa Wamwere and his co-accused cannot be understood outside the atmosphere of fear and official obfuscation surrounding the political violence in the Rift Valley. ARTICLE 19's conclusion is that the charges against the four accused have been fabricated for the sole purpose of ensuring that they are imprisoned on a non-bailable offence. After interminable and unnecessary delays in the proceedings, the reality is that even if they were to be acquitted tomorrow, they would nevertheless have spent nearly one and a half years in prison for an offence that they never committed. ARTICLE 19's fear, however, is that they will not be acquitted. The extraordinarily misdirected proceedings, which only serve to undermine the dignity of the judicial process in Kenya, appear to lead inexorably towards their conviction and the imposition of the death sentence. It is ARTICLE 19's conclusion that the reason for their detention, trial and possible death sentence is the peaceful exercise of their internationally guaranteed right to freedom of expression.

The Kenyan Government has refused to withdraw the charges against the four accused on the basis that this would be an interference in the judicial process. This is patently wrong. ARTICLE 19 considers that the prosecutions were politically motivated on the basis of insubstantial evidence which is apparently fabricated. Although the conduct of the case has been irregular, it was the initial decision to prosecute which began a process which has scarcely enhanced the judiciary's reputation for independence and fairness. To

withdraw all charges now would not only provide justice for Koigi wa Wamwere, Charles Kuria Wamwere, James Maigwa and G G Njuguna Ngengi, it would also help to restore some confidence in the impartial administration of justice in Kenya.

CONCLUSION AND RECOMMENDATIONS

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Conclusions

This report represents a far from complete roll call of suppression of information, harassment, detention, false charges, torture and ill-treatment of government critics by the Kenyan government. Through these actions, the government has severely circumscribed multi-party politics in Kenya. Yet, in a London stopover as part of an investment tour of Western European countries in November 1994, President Moi was anxious to promote the image of a government committed to multi-party politics, stating that "we have embraced the [multi-party] system fully". The following month, the Kenyan government promoted this image to donor countries at the Consultative Group for Kenya meeting in Paris. At that meeting, donor countries pledged US$800 million in aid to Kenya, despite continuing concern about human rights abuses. Since then, there has been a marked shift in the Kenyan government's rhetoric and its use of repressive tactics against those whom it perceives as its opponents.

The government's attitude to the politically motivated violence in the Rift Valley has become ever more entrenched. At the Consultative Group for Kenya meeting in mid-December, many donor governments said that they felt the Kenyan government had improved its handling of the displaced communities and cited this as an important factor in their renewal of aid to Kenya. Since then, however, the government has forcibly dispersed thousands of victims of the political violence, without even consulting the UNDP, its official partner in the resettlement process. On 25 February 1995, the authorities refused to allow an opposition parliamentary team to deliver aid to victims of the violence in the Rift Valley and even detained the US Ambassador, Aurelia Brazeal, on suspicion that she was accompanying the team. At the same time, the ruling KANU party is adopting similar tactics to those used in the Rift Valley in order to divide the Muslim community in the Coastal Province.

President Moi's rhetoric against his critics and opponents has become more pronounced. He has accused unnamed diplomats of interfering in Kenya's internal affairs, apparently in a reference to renewed expressions of concern by foreign diplomats about his government's human rights record, including its failure to reform the country's broadcasting laws. He has openly accused the opposition of planning guerrilla warfare and has warned that he will not tolerate any criticism of the Presidency. In February

1995, yet another opposition MP, Linus Oluoch Polo, was arrested and charged with sedition on the basis of remarks he allegedly made about the President.

The government has also revived its use of arbitrary banning powers to silence its critics — a practice it had previously abandoned in favour of more subtle methods. Since January 1995, it has banned *Inooro,* the Catholic Church weekly, and two non-governmental organizations, the Mwangaza Trust and CLARION. Shortly before, CLARION had published a report on official corruption, funded by the Danish Embassy in Nairobi.

The trial of Koigi wa Wamwere, Charles Kuria Wamwere, James Maigwa and G G Njuguna Ngengi has been marked by a shameful catalogue of abuses; yet the government apparently feels confident that it can ignore international pleas for justice in this case with impunity.

There are real grounds for concern that some members of the international donor community may have been lulled into a sense of complacency by the move towards a multi-party system in Kenya and that this is being cynically exploited by the Kenyan government to further strengthen its political position. Since 1991, when the withdrawal of foreign aid to Kenya forced the government to concede the introduction of a multi-party system, little has changed either in the government's hostility to freedom of expression or in its disregard for the fundamental human rights of its people. Multi-partyism has not been accompanied by the kind of institutional and legal reform which is essential to underpin democratic development. In the absence of reform, as this report demonstrates, temporary improvements in human rights performance are an inadequate measure against which to judge a government's human rights record.

ARTICLE 19 calls on the international community to renew pressure on the Kenyan government in order to prevent further human rights abuses and to ensure that the necessary reform of the law and practice relating to freedom of expression is urgently undertaken. The international community has a duty to act whenever and wherever fundamental human rights are abused. Now is not the time for complacency.

Recommendations

ARTICLE 19 calls on the Kenyan Government to implement the following recommendations in order to protect the fundamental right to freedom of expression and information:

The Media and Political Violence in the Rift Valley

• Allow journalists to carry out their profession free from threats and harassment.

• Rescind the banning order on *Inooro*, which was imposed in February 1995.

• Ensure that the arson attack on *Finance* magazine in February 1995 is fully investigated and that those responsible are brought to justice.

• Implement the recommendations contained in ARTICLE 19's January 1995 report to the Media Task Force on broadcasting by establishing an independent system to issue broadcasting licences and ending government control of the publicly-funded Kenya Broadcasting Corporation.

• Ensure that an independent public investigation is held into the causes of violence in the Rift Valley and that those responsible are brought to justice.

• Ensure that journalists, human rights activists and others can freely visit, investigate and report on the situation in the Rift Valley, and cease the harassment of those who speak out about human rights abuses in the region.

• Ensure that displaced people and those organizations which work with them are fully informed and consulted about resettlement plans and about the situation in their home areas before resettlement takes place.

Freedom of Association

• Allow CLARION and the Mwangaza Trust to resume their activities, free from intimidation, and amend the law on freedom of association to ensure that organizations cannot be banned because of their peaceful political activity.

• Allow opposition political party activists and MPs to hold meetings without harassment, and amend legal provisions which require permits for meetings to ensure that these cannot be applied in an arbitrary or discriminatory manner to ban peaceful political gatherings.

• Allow the IPK to register as a political party and to operate freely, and return Kenyan citizenship to Sheikh Khalid Balala.

False Charges, Prison Conditions and Torture

• Immediately release all those who have been detained on false charges, including Koigi wa Wamwere, Charles Kuria Wamwere, James Maigwa and G G Njuguna Ngengi, and cease the practice of bringing false criminal charges against human rights activists and government critics on account of their peaceful activities.

• Investigate all allegations of torture and ill-treatment in custody, bring those responsible to justice and compensate the victims.

• Ensure that the treatment of prisoners meets the UN Standard Minimum Rules for the Treatment of Prisoners.

• review laws governing the conduct of trials in Kenya to ensure that they meet the fair trial requirements of international human rights law.

APPENDIX

Article 14 of the International Covenant on Civil and Political Rights:

> 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ...
>
> 2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
>
> 3. In determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
>
> > (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
> >
> > (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his choosing;
> >
> > (c) To be tried without undue delay;
> >
> > (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
> >
> > (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of

witnesses on his behalf under the same conditions as witnesses against him; ...

(g) Not to be compelled to testify against himself or to confess guilt. ...

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. ...

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 7 of the African Charter on Human and Peoples' Rights

1. Every individual shall have the right to have his cause heard. This comprises:

(a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

(c) the right to defence, including the right to be defended by counsel of his choice;

(d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

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