

KENYA

MULTIPARTYISM BETRAYED IN KENYA

Continuing Rural Violence and Restrictions on Freedom of Speech and Assembly

Only one year after multiparty elections, the hopes of Kenyans have been shattered by the evident derailment of the democratisation process. There are visible signs of the unwillingness of the government to fully accept the democratisation process in Kenya.... There have been calculated moves to silence the voices of democracy, as seen in the arrests, confinement in police cells, and arraignment in court of protagonists of democracy under flimsy charges. Such acts are aimed at intimidating and defaming the victims, as well as other potential supporters of justice and peace. The continued harassment of a section of the media and the banning of some publications are but some of the incidences of the government's efforts to barricade the corridors of democracy that had begun to open.

— *Pastoral letter issued by the Catholic Bishops
Nairobi, March 12, 1994.*

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INTRODUCTION

In December 1992, Kenya held its first multiparty elections since independence in 1963. Daniel arap Moi, head of state since the death of Kenya's first president, Jomo Kenyatta, in 1978, was returned to office; Moi's party, the Kenya African National Union (KANU), gained one hundred of the 188 elected seats in parliament. The election victory was based on only 36 percent of the popular vote, and owed much to divisions within the political opposition.¹ However, President Moi has not attempted to rule in the spirit of a government that has only minority support among the general population. Although the legalization of political opposition parties, formally banned from 1982 until 1991, has resulted in some improvement in respect for basic political freedoms and civil rights, the new KANU government has proved to be no more tolerant of criticism than the old.

Since winning the election, government harassment of the political opposition has steadily increased: opposition politicians have been the target of spurious criminal charges, of unwarranted restrictions on their freedom to hold meetings and consult their constituencies, and even of arrest without charge. Similar tactics have been used against the independent press, and several magazines critical of the government have been forced to close. Journalists have been the subject of arrest, detention and criminal charges for writing articles criticizing government policies.

Perhaps of most concern, political violence — which erupted during the year leading up to the election — has continued to affect the rural areas of western Kenya. In November 1993, Human Rights Watch/Africa estimated that 1,500 people had died and 300,000 had been displaced since the "ethnic clashes" first broke out in late October 1991.² A program for resettlement of those displaced by the clashes has had only limited success, and as recently as March 1994 further violence in the Rift Valley resulted in the deaths of at least eighteen and the displacement of thousands from their farms to camps at local church centers and elsewhere.

The government blames the violence on the opposition parties, churches and the media, warning of the dangers of "tribalism" inherent in a multiparty system, and saying that calls for increased democracy are nothing more than subversion. However, successive reports — including both a 1992 parliamentary committee made up only of KANU members and the latest eyewitness accounts — have alleged that government security forces are not acting to defend those who have been attacked and even that high-ranking members of the government are involved in provoking violence. The majority of the victims have been members of the Kikuyu, Luo and Luhya ethnic groups, associated with the opposition parties.

International attention to Kenya, which was crucial in President Moi's decision to repeal the article in the constitution making Kenya a one-party state and to call elections, has failed to sustain pressure for the respect of human rights. Bilateral aid to Kenya, suspended in November 1991 at a meeting of the "consultative group" of donors, on economic, political and human rights grounds, was re-pledged in November 1993. The donors did caution, however, that the Kenyan government would need

¹ The coalition calling for the end of one-party rule in Kenya, known as the Forum for the Restoration of Democracy (FORD), split during the course of the election campaign — largely along ethnic lines — into two main groups, FORD-Kenya and FORD-Asili ("Original" FORD), to which were added a breakaway group from KANU, the Democratic Party (DP). The election was also marred by government harassment of the opposition during the campaign and there were widespread allegations of government manipulation of the election process. However, the Commonwealth Observer Group at the elections concluded that "Despite the fact that the whole electoral process cannot be given an unqualified rating as free and fair ... we believe that the results in many instances directly reflect, however imperfectly, the expression of the will of the people." *The Presidential, Parliamentary and Civic Elections in Kenya: The Report of the Commonwealth Observer Group*, Commonwealth Secretariat, 1993, p.40.

² *Divide and Rule: State Sponsored Ethnic Violence in Kenya* (NY: Human Rights Watch, November 1993), p. 1.

to make continued efforts in the area of governance before the promised aid would be released. In January 1994, the Paris Club of creditors rescheduled U.S. \$700 million of Kenya's debt. On July 20, 1994, Kenya's donors will be meeting to deliberate on Kenya's progress since November 1993.

The United States, in particular, previously outspoken on the need for Kenya to improve its human rights record, has become increasingly reluctant to criticize the government in public statements. Although President Moi portrays any call for his government to show greater respect for democracy and human rights as illegitimate interference in Kenya's internal affairs, individuals active in the movement for the protection of human rights in Kenya insist that pressure must be maintained.

THE "ETHNIC" VIOLENCE

In late October 1991, violence broke out at a farm in Nandi District, on the border of Rift Valley, Nyanza and Western Provinces in western Kenya. Although it seemed initially that the fighting was a simple land dispute between members of the Luo and Kalenjin (Nandi) ethnic groups, it later appeared that the attacks were motivated by the call for "non-indigenous" groups to leave the Rift Valley, associated with the idea of *majimboism* (regionalism in Swahili) sponsored by several high-ranking government ministers.³ Leaflets signed by a group calling itself the Nandi Warriors warned Luos to leave the area by December 12, 1991 or "face the consequences." Violence spread to neighboring districts: by December 1991, when Parliament repealed the section of the constitution making Kenya a one-party state, large areas of the west of Kenya had been affected and tens of thousands displaced from their land.

Eyewitness reports of the violence were remarkably similar. Farms occupied by members of the Luo, Kikuyu or Luhya ethnic groups were attacked by groups of "Kalenjin warriors," as they came to be known, coming from one or other of the subgroups of the Kalenjin ethnic group.⁴ Non-Kalenjin houses were burnt and their owners driven away. The attackers were often dressed in an informal uniform of red or black t-shirts, their faces marked with clay in the manner of initiation candidates, and armed with bows and arrows or *pangas* (machetes).

Violence escalated during 1992, as the opposition mobilized for the election. Members of the opposition parties charged the government with complicity in the violence, stating that close associates of President Moi had deliberately provoked attacks. These allegations were supported by reports from the National Council of Churches of Kenya (NCCK) and the Catholic Church, who had taken up the task of caring for the clash victims.

³ *Majimboism* is a form of ethnic regionalism that was promoted by the Kenya African Democratic Union (KADU) at independence. KADU's support came mainly from the minority ethnic groups of Kenya, including the Kalenjin, and President Moi was one of the party's leaders. KADU voluntarily dissolved itself into KANU soon after independence, and the idea of *majimboism* was dropped. However, KANU politicians close to Moi, from the Kalenjin and Maasai ethnic groups, revived the calls for *majimboism* as a way of countering the demand for multipartyism in Kenya. Under the cover of a call for regional autonomy, prominent MPs have demanded the forcible expulsion of all ethnic groups from the Rift Valley except for those pastoralist groups — Kalenjins, Maasai, Turkana and Samburu — that were on the land before colonialism. While many Kenyans have no quarrel with the concept of regionalism, per se, they view these calls as nothing less than calls for ethnic cleansing. *Divide and Rule*, p.12.

⁴The Kalenjin are made up of a number of smaller groups — of which the Nandi are one — speaking Nilotic languages and sharing similar cultural traditions. Together they form about eleven percent of the Kenyan population. In precolonial times, the Kalenjin were largely pastoralists and had few political links; the sense of a common "Kalenjin" identity was born as a result of British colonial policies, and has strengthened since independence. President Moi is a Kalenjin. The Luhyas are similarly made up of several smaller ethnic groups, the collective description also dating from the colonial period.

Following mounting pressure, the government was eventually forced to authorize an official investigation. In September 1992, a report by a parliamentary select committee (made up only of KANU members) estimated that the clashes had caused the deaths of at least 779 people and had rendered as many as 56,000 families homeless. The report also concluded that, far from being spontaneous, the clashes had been politically motivated and orchestrated by prominent ministers close to President Moi, from the Kalenjin and Maasai ethnic groups, including Vice-President George Saitoti and Members of Parliament (MP) Ezekiel Barngetuny and Nicholas Biwott.

Many expected that the violence would cease after Moi's victory in the election of December 1992. But although some areas were restored to calm, outbreaks of violence continued. During 1993, clashes were concentrated in Trans Nzoia and Bungoma districts of Western Province, and in Uasin Gishu and Nakuru districts of the Rift Valley. In October, violence flared at Enosupukia in the previously unaffected district of Narok in the south of the Rift Valley, when Kikuyu farms in the region were attacked by Maasais. The Maasai minister of local government, William ole Ntimama, stated that he had "no regrets about the events in Enosupukia because the Maasai were fighting for their rights."⁵

In November 1993, Human Rights Watch/Africa published a report on the "ethnic clashes" entitled *Divide and Rule: State-Sponsored Ethnic Violence in Kenya*, which estimated that the violence had by that date left at least 1,500 dead and as many as 300,000 internally displaced. The report concluded that the ethnic violence had been deliberately manipulated and instigated by Moi and his inner circle in order to undermine the political opposition and limit the effect of democratic reforms. The government had failed in its duty to punish those responsible for the violence and had exhibited outright hostility towards those who sought to help the victims.

Little has changed since the publication of the report. While a resettlement program has been instituted, with the joint backing of the Kenyan government and the United Nations Development Programme (UNDP), the majority of the displaced victims are not yet able to return safely to their land. Moreover, renewed outbreaks of violence have occurred despite government assurances that everything is being done to maintain law and order. These new clashes have been concentrated in the Rift Valley, where the great majority of the victims have been Kikuyus.

In January 1994, approximately 4,000 Kikuyus fled from their homes at Mwoyoi Scheme and Nyandonche, Ibere, Nyaiguta, Masimba and Tilango Farms in Trans Mara sub-district of Narok province, after their farms had been attacked by Maasais. Property valued at approximately KShs. 40 million [U.S. \$667,000] was destroyed and looted.⁶ The Kikuyu owners alleged that a meeting had been held at Lolgorien Division headquarters of the local administration, which non-Maasais had been barred from attending, where a resolution had been passed to evict them. On February 21, there was a raid by approximately fifty Kalenjins on Kianjogu village in Laikipia District. The attack resulted in several injured and the death of one Kikuyu villager, Kuria Njoroge, as well as the burning of four houses. The victims of the attack reported that their attackers identified themselves as "tribal executioners who will return soon to finish all of you."⁷

On May 1, 1994, eight people were killed and twenty-six seriously injured when over one hundred attackers chanting majimbo slogans attacked Mtondia village, approximately ten kilometers from Kilifi town in Coast Province, hundreds of miles from the Rift Valley, where clashes had previously

⁵ "Minister: 'No Regrets' Over Events," *Daily Nation*, Nairobi, October 20, 1993.

⁶ In this report, an exchange rate of 60 Kenyan shillings to the US dollar is used.

⁷ "Evicted Group in Plea," *Daily Nation*, February 19, 1994.

been centered. The houses and property of the predominantly Luo residents was destroyed and looted. Approximately 2,000 people fled the area following the attack.⁸ In January, anonymous leaflets had been circulated in the area stating "if you are a Luo, the road to Kisumu is wide open, we have no mercy, we shall fight you." Journalists who attempted to visit the area after the attack were prevented by police who had sealed off the area.⁹

Renewed Violence in Burnt Forest

In March 1994, violent clashes broke out yet again in the Burnt Forest area of Uasin Gishu District in Rift Valley Province. For the past two years, this area has been particularly hard hit by the violence. Communities in Burnt Forest were first attacked in December 1992 and then in January, February, April and August 1993, resulting in the largest number of displaced in the country, according to estimates by the National Council of Churches of Kenya (NCCK).

In September 1993, after two years of inaction, the government designated Burnt Forest one of three "security operation zones." The declaration of the security operation zones in the Burnt Forest, Molo and Londiani areas gives the government extraordinary powers to limit access to the region and to enforce law and order within the area.¹⁰ The security zone regulations grant the police powers to arrest without a warrant any person suspected of having committed an offense in the area. The regulations prohibit, among other things, the possession of firearms or offensive weapons in the zone; the publication of any information concerning the security zone when deemed necessary by the minister; and the entry of any unauthorized person into the zone.¹¹

Following a period of relative calm, sporadic attacks in the Burnt Forest area began to cause renewed concern in January 1994. These attacks increased in intensity and culminated in an outbreak of widespread violence from March 28 to April 4, 1994. According to the NCCK, the violence affected three communities in the Burnt Forest area: Kesses, Ainabkoi and Burnt Forest divisions.¹² Incidents of ethnic fighting, predominantly between Kalenjins and Kikuyus, took place on a number of farms (including Bindura, Chakaiya, Emkwen, Kaplanga, Kiptega, Kiruka, Kondoo, Lorian, Olare, Rolian, Rukuini, Rurigi and Usalama farms), and at a number of trading centers (including Burnt Forest, Kamuyu, Kidigia and Lorian trading centers).¹³

According to a government statement released by Julius Sunkuli, an assistant minister in the President's Office, the renewed violence in the Burnt Forest area in March 1994 resulted in the deaths of eighteen people (thirteen Kikuyus and five Kalenjins).¹⁴ Mr. Sunkuli also stated that twenty-eight people

⁸ "Thousands Flee in Fear of Fresh Attack," *Daily Nation*, May 4, 1994.

⁹ "Luos Targeted in Violence, Kilifi Attack: A Genesis of Clashes at Coast?," *Clashes Update* (Nairobi: NCCK), issue no. 16, May 25, 1994.

¹⁰ Under the Constitution, the President has powers to seal off any part of the country when public order is threatened. These powers are also set out in Part III of the Preservation of Public Security Act.

¹¹ The Preservation of Public Security (Molo, Burnt Forest and Londiani areas) Regulations, 1993. Kenya Gazette supplement no. 60, September 17, 1993. Sections 13(1) and (2) state that "no person shall, without lawful authority or excuse, proof of which shall lie on him, be in, enter, or attempt to enter the prescribed zone," and "any person who is in, or who enters or attempts to enter the prescribed area in contravention of paragraph (1) shall be guilty of an offence and liable to a fine of ten thousand shillings or to imprisonment for one year or to both."

¹² Telephone interview with Rev. Peter Gathuru, NCCK, May 3, 1994.

¹³ Interview with Moses Wanyama Masinde, NCCK, May 11, 1994.

¹⁴ The names of those known to have been killed were released by the Office of the President as: Kikuyu --

had been arrested and charged with illegal possession of dangerous weapons and firearms, of whom eighteen were Kalenjin, seven Kikuyu and three Luhya.

The restrictions on access to the security operation zones have been strictly enforced by the security forces against journalists, clergy, human rights groups and even relief organizations since September 1993.¹⁵ Accordingly, detailed first-hand information on the recent outbreak of violence in the Burnt Forest security operation zone has been extremely difficult to obtain. In preparing this account, Human Rights Watch/Africa has relied on information from secondary sources, including Kenyan government statements, local press clippings and interviews with clergy and international relief workers in the Eldoret area who have been feeding the displaced. It has been impossible to verify each account due to the restrictions on access. All sources are cited in the following chronology:

- On January 3, 1994, Kalenjins attacked Kondoo farm (number 3) leaving six dead and houses in the area burnt and looted.¹⁶
- On February 17, 1994, eleven houses were burnt on Kondoo farm (number 7).¹⁷
- On March 9, 1994, six houses were burnt by Kalenjins.¹⁸
- On March 10, approximately eleven houses were burnt and property destroyed in an attack on Kondoo Farm. On March 13, the district commissioner (DC), Wilson Chepkwony, toured the affected areas and assured residents that the situation was under control and that peace had been restored.¹⁹
- On March 20, a man was killed in renewed ethnic violence at Kiptega in Burnt Forest according to the district commissioner. Fifteen houses were burnt and several people injured. Two people

Muchina Wamuchuma, Njenga Waocha, Peter Kahungi Gichuru, Samuel Karanja Muchina, David Mwangi Kungu, Muthiora Mwarura, Eva Wambui Kamau, Maina Njuguna, Gerald Mutahi, Njoroge Ng'ang'a, Kariuki Mungai, Japhet Kiilu Ngahu; Kalenjin -- John Cheruiyot, Koskei Kibore, George Tamunywet, Kipsewere arap Kiptere, Charles Mnichus; and one unknown person believed to be Kikuyu. Statement by Assistant Minister Julius Sunkuli, as reported in *Economic Review* (Kenya), April 11-17, 1994.

¹⁵ On September 3, 1993, a Red Cross food convoy containing seven tons of grain intended for clash victims was barred entry into Molo by security forces. A group of Dutch Parliamentarians visiting Kenya were also prohibited access to the Molo area on September 6, 1993. On September 10, 1993, police arrested Presbyterian Ministers Timothy Njoya and Johnson Nyutu along with Bedan Mbugua, the editor of *The People* newspaper, when they attempted to enter the Molo area. The same month, thirteen opposition MPs were arrested and charged with breaching the peace when they attempted to enter a security operation zone on a fact-finding mission. Three priests have been arrested and charged for entering the area, including Fr. Francis Mirango who is from an area in one of the security zones. In April 1994, Fr. Stephen Mbugua of St. Joseph seminary in Molo and Fr. Ndenyere of Olunguruone Catholic parish were arrested and released on bond after they had gone into a security zone to distribute food relief and pray with a group of displaced Kalenjins (Dorobo). Journalists have also been prohibited from entering the security zones. *Divide and Rule: State-Sponsored Ethnic Violence in Kenya*, Africa Watch, New York: November 1993, pp. 39-41 and interview with Ernest Murimi, Catholic Justice and Peace Commission, May 16, 1994.

¹⁶ Press statement by farmers from the Burnt Forest security zone of Uasin Gishu district of the Rift Valley province, March 28, 1994.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ "A Chronology of Events," *Economic Review*, April 11-17, 1994.

were arrested for possession of home-made guns.²⁰ Kondoo farm (number 3) was also attacked for the second time leaving a Kikuyu farmer, Kania Kamau, dead.²¹

- On March 21, at Kondoo farm (number 3), one person was killed, three injured, 152 houses burnt and approximately 300 cattle stolen in a third attack.²²
- On March 24, Uasin Gishu district police head, Charles Issika, called a press conference to display a petrol bomb which he said was recovered from an arrested arsonist at Kiptega. The same day, the district commissioner announced that peace had been restored and that action would be taken against those spreading rumors or creating alarm.²³
- On March 28, according to a statement by Assistant Minister Julius Sunkuli, violence began when fighting broke out between the Kalenjin and Kikuyu communities after a Kikuyu man, John Kinyanjui Kamau, allegedly hurled a grenade at a Kalenjin farm at Kiptega.²⁴ The fighting resulted in the death of two people — Mr. Muchiri and Mr. Mjenga Roja — and over fifty houses burnt at Kondoo farm (number 1). The fighting then spread to all the Kondoo farms (numbers 1-9).²⁵ At Kondoo farm (number 5), three residents were killed and over 250 houses burnt. On Kondoo farms (numbers 6 and 7), a total of ninety houses were burnt and cattle stolen. At Rukuini farm, two houses were burnt and grain destroyed.²⁶ Schools in the area were closed. The Kikuyu residents allege that the attacks took place because they had been returning to plough their farms. Local authorities immediately assured residents that extra security had been deployed to bring the situation under control.²⁷
- On March 29, Kalenjin "warriors" attacked Kikuyus at Rurigi farm for approximately five hours. Four people were left dead, thirty were wounded and approximately 200 houses were torched to the ground. Police on the scene only shot in the air, allowing the attackers to continue with impunity. Extra security did not arrive at the farm until two days later.²⁸ The same day, two Kalenjins (Jonah Cheruiyot and Kipkoske arap Bore) were killed at Kamuyu and Usalama farms, leaving fifteen houses burnt, according to District Commissioner Chepkwony. The district commissioner stated that the violence began after Kikuyu slaughtered three cows belonging to the

²⁰ "Man Dies in Fresh Violence," *Daily Nation*, March 22, 1994.

²¹ Press statement by farmers from the Burnt Forest security zone of Uasin Gishu district of the Rift Valley Province, March 28, 1994.

²² Ibid.

²³ "A Chronology of Events," *Economic Review*, April 11-17, 1994.

²⁴ "Moi Slaps Curfew on Burnt Forest," *Daily Nation*, April 6, 1994 and "A Chronology of Events," *Economic Review*, April 11-17, 1994.

²⁵ "Two Killed in Burnt Forest," *Daily Nation*, March 30, 1994 and interview with Moses Wanyama Masinde, NCKK, May 11, 1994.

²⁶ Press statement by farmers from the Burnt Forest security zone of Uasin Gishu district of the Rift Valley Province, March 28, 1994.

²⁷ "A Chronology of Events," *Economic Review*, April 11-17, 1994.

²⁸ Tribal Clashes Resettlement Volunteer Service, "Politically-Motivated Tribal Clashes in Kenya," fifth update, March 1994, p.3, and interview with Moses Wanyama Masinde, NCKK, May 11, 1994.

Kalenjin community. Other accounts confirm the violence but attribute Kalenjin attackers with instigating the fighting.²⁹ The district commissioner also confirmed the violence at Rurigi and Kerio farms.³⁰

- Six people were killed on March 30 in another outbreak of violence on various farms. The district commissioner announced that those killed included two Kalenjins and two Kikuyus at Olare scheme; a Kalenjin, George arap Kibogoyo, at Lorian farm; and a Kikuyu, Peter Koigi, who was shot by police. At Kitingia trading center near Burnt Forest, five houses and eight shops were burnt in another attack.³¹ Kalenjins also attacked Bindura farm residents who had been living at the farm's market center since being displaced in a similar 1992 attack, resulting in two deaths.³² The same day, eleven Kalenjins pleaded not guilty to the charge of possession of offensive weapons in the local court. They were released on bail pending the trial.
- In the first week of April, Kalenjin warriors attacked Kimuri and Rono farms on the outskirts of the security zone. A priest that witnessed the destruction noted that all the houses burnt belonged to Kikuyus. No Kalenjins on the farms had been displaced, but all the Kikuyus had fled the area.³³ On April 2, local clergy witnessed houses being burned while the police standing approximately 100 meters away took no action.³⁴
- Two market centers — Kamuyu and Lorian — were attacked by Kalenjins (dates unknown).³⁵
- At Rolian farm, the violence resulted in the death of one man and eighty houses burnt. At Kaplanga farm, twenty-five houses were burnt and looted (dates unknown).³⁶

The violence caused thousands of terrified Kikuyus to flee the area. An eye-witness described the situation he encountered on March 30:

I witnessed a massive crowd at Burnt Forest Centre while smoke was visible from afar. The victims running for refuge were gathering all along the main Uganda road looking for means of transport in vain. They clutched the little they were able to save. Children and women were exhausted, hungry and miserable while men were desperate. People are still flowing to Eldoret NCKK Centre. Some come with nothing as they are robbed along the way.³⁷

²⁹ Letter from Wangari Maathai, Tribal Clashes Resettlement Volunteer Service, to Killian Kleinschmidt, UNDP Senior Technical Advisor, April 11, 1994.

³⁰ "A Chronology of Events," *Economic Review*, April 11-17, 1994.

³¹ "Seven More Killed as Clashes Escalate," *Daily Nation*, April 1, 1994.

³² Letter from Wangari Maathai, Tribal Clashes Resettlement Volunteer Service, to Killian Kleinschmidt, UNDP Senior Technical Advisor, April 11, 1994.

³³ Telephone interview with Catholic priest (name withheld on request), May 13, 1994.

³⁴ Interview with Moses Wanyama Masinde, NCKK, May 11, 1994.

³⁵ Telephone interview with Rev. Peter Gathuru, NCKK, May 3, 1994.

³⁶ Press statement by farmers from the Burnt Forest security zone of Uasin Gishu district of the Rift Valley Province, March 28, 1994.

³⁷ Written account of eyewitness (name withheld by request), Eldoret, April 4, 1994, sent to Tribal Clashes

Many of the people emerging from the security operation zone bore injuries from having been attacked. The local Uasin Gishu District Hospital medical superintendent, John Kibosia, reported that the hospital "could not cope with the number, the wounded are just too many." Most of the people fleeing the violence had to be treated to remove arrow heads and bullets. The hospital mortuary was so overcrowded that the dead bodies had begun to decompose.³⁸

Although the recent fighting in Burnt Forest appears to have died down, thousands of Kikuyu families have been driven off their farms. The relief community in the clash areas has mobilized to address the crisis area providing medical and food supplies. Most of the displaced have not returned for fear of recurring violence. For some, this is the second or even third time that they have been displaced. A number of the attacks took place on market centers where displaced victims from previous attacks were staying because they were still too scared to reside on their property. In contrast, it appears that the local Kalenjin community have been able to remain on their farms for the most part, mirroring the pattern of violence and displacement that has characterized the situation since 1991.

Government Response to the Violence

By contrast with past outbreaks of violence, when there were frequent accusations of government inaction, the government response to the Burnt Forest violence appeared to be more responsible. The local administration and security forces were immediately on the scene appearing to make efforts to address the situation. In addition, the government held several public press briefings which acknowledged the renewed violence and released casualty and arrest figures. President Moi visited the area and addressed a public rally on April 6, where he announced that the government would take the following steps:

- the imposition of a nighttime curfew from 7:00 P.M. to 5:00 A.M.;
- the deployment of additional security;
- a one-month amnesty for all persons surrendering illegal firearms;
- a ban on the carrying of all offensive weapons, including arrows, spears and pangas;
- a ban on "screaming and other warlike cries;"
- the formation of village committees to oversee an end to the violence.³⁹

District Commissioner Wilson Chepkwony, announced that the government would donate ten sacks of maize meal.⁴⁰ Although the amount was inadequate to address the needs of all those displaced, the Catholic Church did acknowledge receiving and distributing the food on behalf of the government.⁴¹ In the past, food relief pledged by the government was often never actually received by the displaced.⁴²

Resettlement Volunteer Service.

³⁸ "Seven more killed as Clashes Escalate," *Daily Nation*, April 1, 1994.

³⁹ "Moi Slaps Curfew on Burnt Forest," *Daily Nation*, April 6, 1994 and "Eighteen Killed in Clashes, says Govt," *Daily Nation*, April 8, 1994. The ban on offensive weapons was already in effect in the security operation zone areas under Sections 4(1) and (3) of the Preservation of Public Security Regulations, 1993.

⁴⁰ "Seven More Killed as Clashes Escalate," *Daily Nation*, April 1, 1994.

⁴¹ Telephone interview with the office of Bishop Cornelius Korir, Eldoret, May 2, 1994.

⁴² In 1992, the government pledged to provide approximately US \$125,000 of food and other relief supplies to the displaced clash victims. However, Human Rights Watch/Africa was able to trace the distribution of only a tenth of this sum -- an inadequate amount to begin with given the scale of the crisis. *Divide and Rule*, p.53.

The government's statements, however, were weakened by the news black-out created by the security operation regulations. The restrictions in the security zone made it close to impossible to obtain any further information or to verify much of the information released by government sources. The government statement by Mr. Sunkuli claimed that the violence began March 28 after two Kikuyu youths hurled a grenade at a Kalenjin farm. But according to other reliable sources, the violence had been continuing sporadically since January and had broken out in full force over two weeks earlier. Moreover, repeated assertions by the district commissioner, during tours of the affected areas, that peace had been restored began to lose credibility when attacks subsequently took place, sometimes that very night.

The recent outbreak of violence in the Burnt Forest — one of the security operation zones in which extra security has been deployed — is particularly disturbing because of the implication that the government is either unable or unwilling to take effective measures to stop the clashes. As several of the incidents described above indicate, there is continuing evidence that police often make no real attempt to halt attacks. Many believe that if the violence could break out in a protected zone such as Burnt Forest, government assurances of security, particularly over the long term, are meaningless. Moreover, despite government announcements of arrests, it does not appear that the few cases which have been brought to court in connection with the recent violence have been vigorously pursued. Under international law, the government has an obligation to protect its citizens from extra-legal or arbitrary killings, to investigate violations when they occur and to bring the perpetrators to justice.⁴³

President Moi continues to blame the political opposition, the clergy and the press⁴⁴ for the violence and has accused "certain embassies" of "showing open support for subversive elements operating in the country in the name of democracy."⁴⁵ He has neither acknowledged his government's ultimate responsibility to end the violence nor taken steps to censure members of his government who make statements inflaming ethnic sentiments.

Minister for Local Government William ole Ntimama, a Maasai, has stated publicly on a number of occasions that the Kikuyus displaced in the Enosupukia clashes of October 1993 would not be allowed by the Maasai to return to their homes. Other similar statements by Mr. Ntimama have provoked incidents of violence. Kipkalia Kones, a Kalenjin minister of state in the President's Office, has also made such statements. Shortly before the violence broke out in Burnt Forest, Mr. Kones threatened to lynch and forcibly expel Luo people from Bomet and Kericho districts if they supported the opposition FORD-Kenya.⁴⁶ In April 1994, KANU Assistant Minister Shariff Nassir told Kenyans that until Kenya reverted to a one-party state, the ethnic violence would continue.

At Makutano Stadium in Kapenguria, Home Affairs Minister Francis Lotodo gave a speech on November 28, 1993, telling Kikuyus that they had forty-eight hours to leave West Pokot District. He also

⁴³ Article 6 of the International Covenant on Civil and Political Rights (International Covenant), to which Kenya is a party, and report of the Human Rights Committee, 37 UN GAOR Supp. (no. 40) Annex V, general comment 7(16), para 1 (1982) UN Doc. A/37/40(1982).

⁴⁴ For example, on April 5, 1994, the state-run radio station reported that President Moi accused the *Daily Nation* newspaper of "fanning tribal animosity ... by publishing false reports [and] ... called on the country's media to play a more responsible role in promoting a harmonious co-existence among the different communities." He also called on the churches to preach to the people the importance of maintaining peace "instead of using the pulpit to criticize the government and making inflammatory statements." KBC radio, Nairobi, as reported in BBC *Summary of World Broadcasts* (SWB) AL/1965 A/2, April 7, 1994.

⁴⁵ KBC radio broadcast, Nairobi March 3, 1994, as reported in SWB AL/1938 A/2, March 5, 1994.

⁴⁶ "Burnt Forest: Name Takes on a Meaning of its Own," *Economic Review*, April 11-17, 1994 and "Wamalwa Wants Kones Arrested," *Daily Nation*, April 6, 1994.

warned that the Kalenjin (Pokot) community would take the law into their own hands if they did not comply with this order.⁴⁷ Following his visit, two town councilors reiterated his message, telling the Kikuyu community that they had two weeks to dispose of their property and move out before Kalenjins would take over their land.⁴⁸ In November 1993, the Kalenjin MP for Kerio South, Nicholas Biwott, called for majimboism at a rally in Kericho District where he also warned other ethnic groups that they were only welcome in the Rift Valley Province as long as they respected the rights of the original inhabitants (Kalenjins, Maasais, Samburu and Turkanas).⁴⁹

However, when opposition members make similar statements, they are immediately censured. For example, on December 6, 1993, FORD-Kenya MP George Kapten was arrested for a comment he made on November 18, 1993 at Matulo Friends Church in Bungoma district to the effect that non-Kalenjins in Trans Nzoia district would fight back if attacked.⁵⁰

In a March 1994 pastoral letter, the nation's Catholic bishops criticized the government's inaction on the ethnic violence:

The so-called majimboism or political regionalism, denying the human rights of the citizens to choose their own place of dwelling and their freedom of movement was preached by some KANU leaders before the elections and continues to be implemented with violence through the wrongly called ethnic clashes. The government has not spared any efforts to persuade public opinion that the clashes are caused by the opposition leaders, but Kenyans now have the conviction that these clashes could not have taken place nor continued for such a long time without the passive and sometimes active collaboration of the authorities. Should Kenyans believe that our numerous, well trained and well equipped army and police can be defeated by a small group of village warriors armed with pangas and rungas? Should we believe that the police and the army did their best but unfortunately always arrived late?⁵¹

In the same statement, the bishops also censured the government for its callous treatment of the displaced in various areas and the continued violence, stating:

It is well known who ordered the demolition of Maela camp and of Nakuru kiosks. It is well known who sent bulldozers to Burru Thessalia holding ground to evict people who had been in due right of tenancy of the land for more than fifty years. We could add many other names to the list: Enoosupukia, Likoni, Molo, Kapenguria, Sirisia, Olenguruone, Turbo Scheme, Rironi, etc. The president himself visited some of the affected areas and called for peace, but soon after his departure the clashes started again. Should we believe the words about national unity pronounced by our president during the past celebration of Kenyatta day, or the words inciting to tribal revenge pronounced in parliament by one of his ministers with total impunity and even supported by many KANU members of parliament? We confirm here what we expressed last year ... never before in the history of

⁴⁷ "Remaining Kikuyus Told to Move Out by Lotodo," *Daily Nation*, November 29, 1993.

⁴⁸ "Tension rise in W. Pokot," *Daily Nation*, November 30, 1993.

⁴⁹ "'Majimbo' is the Answer -- Biwott," *Daily Nation*, November 29, 1993.

⁵⁰ "Events in the Clash Areas," *Clashes Update*, NCKK, Vol. 2 issue no. 11, December 18, 1993.

⁵¹ "On the Road to Democracy," pastoral letter issued by the Kenya Episcopal Conference, March 12, 1994 as reported in *Economic Review*, March 21-27, 1994, p.9.

Kenya have conditions been so bad for our people.⁵²

In response to the pastoral letter, President Moi attacked the Catholic church at a rally in Karbanet on April 7 stating that the church statements would be responsible for causing a civil war in the country.⁵³

Government incitement to violence has gone beyond statements by ministers. When the clashes first erupted in November 1991 there were numerous reports that the so-called Kalenjin warriors responsible for the attacks had been transported to the sites of the clashes by government trucks and trained on farms belonging to government ministers. These reports were later substantiated in a KANU Parliamentary Select Committee report.⁵⁴ Disturbingly, there are allegations that the recent violence was also provoked. A number of displaced victims have alleged that they witnessed a helicopter landing shortly before the violence began in the area. A Kikuyu survivor, Kimani Kariuki, recounted to the press that he had witnessed a helicopter carrying Kalenjin warriors which had landed on the farm of a prominent Rift Valley politician shortly before nearby Rurigi farm was attacked.⁵⁵ Other displaced victims told local clergy that shortly after the helicopter was seen landing, young men armed with sticks and arrows began burning houses and chasing Kikuyus out of Burnt Forest trading center.⁵⁶ While Human Rights Watch/Africa has not been able to verify these allegations, they clearly merit serious concern and investigation: instead, the news editor of the paper publishing the account has been charged with subversion.⁵⁷

At a press conference held in Nairobi on March 28, thirteen displaced Kikuyu residents of Burnt Forest issued a statement complaining that the local authorities had not taken any action even against known perpetrators of the violence. The displaced stated:

We want to tell the world that these clashes are occurring in the so-called security zones which the government brought into force last year. We want to remind the world that the government blamed the earlier clashes on outsiders. Hence the idea of security zones to keep outsiders out ... The current wave of arson, murder and destruction of property is aimed largely at the Kikuyu in the area ... [but] all administrative positions in the area are held by Kalenjins to whom we cannot report when we are killed or our property is stolen or destroyed. We have been attacked a thousand times in the presence of the DC [District Commissioner], DO [District Officer], chiefs and assistant chiefs and their policemen and yet nothing is done. The policemen merely fire in the area. Warriors walk openly with arrows and bows and are never arrested⁵⁸ ... our children are sick with sleeping in the

⁵² Ibid.

⁵³ "Moi Cautions Kenyans Over Civil War Threat," Xinhua General Overseas News Service, April 8, 1994, as reported in NEXIS.

⁵⁴ Republic of Kenya, *Report of the Parliamentary Select Committee to Investigate Ethnic Clashes in Western and Other Parts of Kenya* (September 1992).

⁵⁵ "A Chronology of Events," *Economic Review*, April 11-17, 1994.

⁵⁶ Interview with NCKK representative (name withheld on request), May 11, 1994.

⁵⁷ See below, under "Intimidation of the Press."

⁵⁸ This is contrary to Section 4(1) of the Security Operation Regulations which prohibits any person from being "in possession or under his control in the prescribed area any offensive weapon shall be guilty of an offense and liable to imprisonment of not less than five years or not more than ten years." Section 4(3) defines an offensive weapon as "any article made or adapted for use for causing injury to a person or capable of being so used, or intended by the person having it with him for such use, and includes any bow and arrow, axe, *rungu*, *panga*, *simi*, spear or similar weapon."

cold. Our families are hungry. We want the world to intervene on our behalf ... The aim of these crimes is to drive Kikuyus out of Burnt Forest.⁵⁹

The displaced also charged that the violence had been organized with the cooperation of a senior State House official, with the purpose of driving the Kikuyu community out of the area:

We know for a fact that, high government officials led by the comptroller of State House, Mr. Abraham Kiptanui and his Uasin Gishu councillor and brother Samuel Ngelel and an in-law and also councillor Kibet Sitienei are the main organizers of the current wave of mayhem in Uasin Gishu. We have evidence of Mr. Kiptanui's involvement through his meetings with the arsonists in local hotels and use of his vehicles ... These heinous crimes are planned at the Olare Guest House. Mr. Kiptanui meets his arsonists in this hotel. Transport and food is arranged here. Ranking arsonists use a dark blue Peugeot 204 car [license plate number] KTT679 fitted with a radio call for communication with arsonists in the field. Mr. Kiptanui visits arsonists in a Pajero. The vehicles used in the operations are [license plate numbers] KUD301, KAB026F, KAB562L, KJK400, KWP998, KXV700, KTH848 and KAA139C.⁶⁰

These charges were denied by Mr. Kiptanui and District Commissioner Chepkwony. So far as Human Rights Watch/Africa is aware, the government has not undertaken any investigation into the accusations.⁶¹

The Displaced Population Continues to Grow

The exact number of the displaced in Burnt Forest has been difficult to ascertain in part because several relief organizations are feeding and assisting the displaced and also because some of the displaced are living with friends or relatives. The Catholic church in the area estimates that approximately 25,000 people have been displaced by the fighting in Burnt Forest.⁶² The NCK estimates the total number of displaced to be about 30,000. Of those, they estimate that approximately 10,000 are camped at St. Patrick's Catholic church in Burnt Forest and another 2,500 victims are at the NCK community centre in Eldoret. The remainder are scattered throughout the area.⁶³ An international relief worker estimated the number in the camps to be about 7,000.⁶⁴

The displaced from this recent violence join the other Kenyans who have been terrorized off their land. Although accurate figures are difficult to obtain, it is likely that at least 300,000 Kenyans, largely children, have been affected by the clashes since 1991.⁶⁵ The vast majority of the displaced belong to the

⁵⁹ Press statement by farmers from the Burnt Forest Security Zone of Uasin Gishu district of the Rift Valley Province, March 28, 1994.

⁶⁰ Ibid.

⁶¹ "Seven More Killed as Clashes Escalate," *Daily Nation*, April 1, 1994 and "A Chronology of Events," *Economic Review*, April 11-17, 1994.

⁶² Telephone interview with the office of Bishop Cornelius Korir, Eldoret, May 2, 1994.

⁶³ Telephone interview with Rev. Peter Gathuru, NCK, May 3, 1994 and interview with Moses Wanyama Masinde, NCK, May 11, 1994.

⁶⁴ Telephone interview with international relief worker (name withheld on request), May 2, 1994.

⁶⁵ A recent NCK figure, based on October 1993 food registration figures, estimates the total number of displaced to be 304,833, confirming the estimate of Human Rights Watch/Africa published in November 1993. The breakdown of the figures is as follows: Uasin Gishu 112,524; Trans Nzoia 77,724; Bungoma 35,963; Turkana 23,614;

Kikuyu, Luhya and Luo ethnic groups although Kalenjins have also been affected. Although many clash victims displaced from their homes have been absorbed into surrounding communities, many have congregated in large numbers at church compounds or abandoned buildings throughout Western, Nyanza and Rift Valley Provinces. They live in destitute overcrowded conditions, some of them since the clashes first began over two years ago. On several occasions, local government authorities have dispersed camps of this type which have attracted the attention of visiting human rights groups, the media or foreign diplomats. To date, thousands of displaced victims have to farm on their land in the day and sleep elsewhere at night for fear of a recurring attack. In many cases, displaced victims have found their land illegally occupied by Kalenjins. Others have sold their land to Kalenjins fearing another attack. Yet others who have returned to their land have been attacked a second or even a third time.

The situation for the displaced from Burnt Forest is no exception. The camps are overcrowded and grossly inadequate. The situation is exacerbated by seasonal rains. Many are living in open makeshift structures covered with plastic sheeting or under corrugated metal sheets leaned against walls of nearby buildings. At the NCKC community center, the 2,500 displaced are living in three classrooms and a church or outside in tents or makeshift structures, sharing six pit latrines which were built by the NCKC. Conditions, while inadequate, are slightly better at the Burnt Forest church compound.

The Kenya Government/UNDP Resettlement Program

In October 1993, the United Nations Development Program (UNDP) and the Kenyan government announced a joint "Programme for Displaced People," which proposed a \$20 million plan for reconciliation and resettlement.⁶⁶ The program was intended to resettle the people who had been displaced by the violence since 1991, estimated by UNDP at the time of the report at about 255,000 (or 42,500 families). Appeals were made to the international community for U.S. \$11 million to implement this plan. However, one diplomat told Human Rights Watch/Africa that some donors have not responded eagerly to the appeal, citing — in private — continuing concerns with the Kenyan government's commitment to ending the clashes.⁶⁷ In addition to a UNDP revolving fund of U.S. \$800,000, funding has also been pledged by the British government, the European Union and the Danish government to date.⁶⁸

The Kenya Government/UNDP program has initiated its resettlement efforts in the Mt. Elgon area of Western Province in cooperation with local nongovernmental organizations. Although it is difficult to specify how many people have returned to their land, one relief worker put the number at approximately 30,000 people (Kalenjin and Luhya).⁶⁹ Others estimate that no more than 5 percent of this number have actually returned. The NCKC believes that most continue to live at the foot of the Mt. Elgon area for fear of attack if they return to their farms.⁷⁰ Human Rights Watch/Africa has information

Kisii/Nyamira 33,863; Kisumu 14,625; Nandi 6,520. A February 1994 UNDP programme report/proposal estimates the number at 260,000. The vast majority are children.

⁶⁶ Government of Kenya/UNDP *Programme Document: Programme for Displaced Persons*, Inter-agency joint programming, October 26, 1993.

⁶⁷ Interview with foreign diplomat (name withheld by request), March 29, 1994.

⁶⁸ Telephone interview with international relief worker (name withheld on request), May 2, 1994.

⁶⁹ Ibid.

⁷⁰ The Christian Reformed World Relief Committee (CRWRC) created seven new camps at Tuyandet, Namorio, Chebukube, Wamono, Chemoge, Kiniama and Wasio for the displaced. However, since these camps are in the heart of the Kalenjin (Sabaot) community, most Luhyas have been unwilling to move to these camps where they could receive relief assistance. Interview with Moses Masinde, NCKC, May 11, 1994.

that the displaced populations in the following areas have been successfully resettled: Chepsweta, Kisumu and Sondu in Kisumu District, and Kibigori, Kabuchia, Kapsakwony, Wasio, Wamono in Bungoma District. In Bungoma District, the displaced populations at Kapkateny, Sirisia, Chwele and Kimaswa, visited by Human Rights Watch/Africa in 1993, continue to live in destitute camps.⁷¹

It is difficult to determine the extent of the threat of further attack against those who attempt to return to their homes. However, there are sufficient reports of threats or actual violence against those returning to indicate a more serious problem. For example, in December 1993, members of a Luhya family who had returned to their farm in Chesiro, Chepkube district, were attacked. Within a week of their return, five unknown assailants attacked the farm, leaving its owner Moses Wanjenji Kisibo dead, his wife Pileao Halayi Kisibo badly beaten and their two daughters Rose Mutengo (age sixteen) and Caroline Nandutu (age twelve) raped.⁷²

While the church and local relief organizations working with the displaced have welcomed the resettlement efforts begun by UNDP, they continue to have misgivings about the Kenyan government's commitment to the program. The success of the Kenyan government/UNDP proposal for resettlement is ultimately contingent on the active involvement of the government to maintain peace and provide security. UNDP Resident Representative David Whaley has also stated that a necessary precondition for the success of the proposal is that the government create "an enabling environment."⁷³

In January 1994, thirty nongovernmental organizations involved in relief and resettlement, including the NCCK and the Kenyan Red Cross, issued a statement critical of the government at a press conference in Nairobi. They pointed to "a persistent gap between the government's stated commitment to co-operation [with the NGO's providing food relief to the displaced] and the practice of government machinery at the local and regional level."⁷⁴ Six months later, the consensus remains the same. According to an NCCK representative:

lack of political will on the part of the government has dragged out the peace and reconciliation pace. On a general level, peace was coming slowly. However, in many areas, insecurity has remained the order of the day making it difficult to reconcile and resettle the victims. Such areas as Miteitei in Nandi; Kerisoi in Molo; and Endebess, Saboti, Chebukube, Chebwek and Chemoge in Mt. Elgon will take longer to resettle. These are areas which need more than food relief to reconcile the warring communities. The political will is needed. The recent clashes in Burnt Forest have set back the process and pointed out the difficulties that go along with reconciling, resettling and rehabilitating the over 300,000 victims displaced by the clashes in Kenya.⁷⁵

Ernest Murimi, of the Catholic Justice and Peace Commission, noted to Human Rights Watch/Africa, that "The displaced are ready to go back as long as the government will assure them protection. But [high-ranking government officials such as KANU Local Government Minister William ole] Ntimama and others are still advocating violence ... the problem is with the leaders."⁷⁶

⁷¹ Interview with Moses Wanyama Masinde, NCCK, May 11, 1994.

⁷² "Killings: A Drawback to Resettlement," *Clashes Update*, NCCK, vol. 2, issue no. 12, January 25, 1994.

⁷³ "Enabling Environment a Must to Resettle Victims," *Clashes Update*, NCCK, vol. 2, issue 11, December 18, 1993.

⁷⁴ "State Attacked Over Victims of Violence," *Daily Nation*, January 19, 1994 and "Government, NGOs Cooperation: Only Way to Resettle Victims," *Clashes Update*, NCCK, vol. 2, issue no. 12, January 25, 1994.

⁷⁵ Interview with Moses Wanyama Masinde, NCCK, May 11, 1994.

⁷⁶ Interview with Ernest Murimi, Catholic Justice and Peace Commission, May 16, 1994.

Government Harassment of the Displaced

Government credibility has also been strained by the fact that it continues to harass displaced victims and relief officials involved with feeding the displaced, especially where there are large gatherings of refugees receiving media attention. There have also been complaints by nongovernmental organizations providing food relief that they have been denied access to camps where clash victims are gathered, despite several written requests to the local authorities.⁷⁷

In its November 1993 report, Human Rights Watch/Africa reported an incident when government authorities had cleared a camp of displaced Luhyas and Tesos at Endebess in Trans Nzoia district in June 1993. The camp residents had fled there after an attack by Kalenjins in December 1991. Local government authorities first closed down a school formed for the displaced children and then evicted the camp residents, without providing any alternative accommodation or assistance. Camp residents were forced to relocate to neighboring farms because it was still unsafe to return to their land. Already impoverished from being displaced, the camp residents were forced to live in crowded makeshift shelters with no protection from the rain.⁷⁸

There were expectations that this sort of harassment would cease, particularly once the Kenyan government/UNDP plan for resettlement of clash victims had begun. However, on January 5, 1994, government officials ordered a similar demolition of a camp of displaced people at Maela, near Enosupukia. Approximately 30,000 people, predominantly Kikuyus, had sought refuge there in October 1993 after being attacked in their houses in Enosupukia by approximately 500 Maasais, carrying knives and sharpened sticks. The area's Kikuyu population had been strong supporters of the FORD-Asili district party chair, Horoun ole Lempaka. Approximately 10,000 of those displaced settled in a makeshift camp at nearby Maela.

The displaced Kikuyus who sought refuge at Maela were living in squalid conditions under plastic sheeting on church grounds. The overcrowding led to shortages of food, water and medical supplies. According to Reverend Gathere, a local priest, twenty-two camp residents died by the end of the year, including eleven children.⁷⁹ In November 1993, representatives of the U.S. Embassy visited the camp, after much difficulty in receiving permission from local authorities. In response to the camp conditions, U.S. Ambassador Aurelia Brazeal declared the camp a disaster area and pledged U.S. \$25,000 to purchase and distribute shelter materials and potable water.⁸⁰

On January 5, 1994, local government officials accompanied by over twenty police demolished the temporary structures and closed down a medical clinic and a makeshift school at the camp. Local government authorities also pressured church officials to stop a church feeding program for the Maela camp residents. The residents were told by local authorities that they posed a security risk to the area. Only after intense international and media pressure did local government authorities abandon their actions against the camp residents. In February, the displaced rebuilt the makeshift housing which had been pulled down by the local authorities. They remain at Maela to date, living in congested conditions sometimes without sufficient food.

Although Maela is not in a security operation zone, where official regulations prevent reporting, the local authorities and security forces have restricted access to relief organizations, journalists and

⁷⁷ "State Attacked Over Victims of Violence," *Daily Nation*, January 19, 1994.

⁷⁸ *Divide and Rule*, p.67.

⁷⁹ "Clash Victims 'Distrust' Government," *Daily Nation*, January 1, 1994.

⁸⁰ U.S. Agency for International Development, "Kenya -- Civil Strife/Drought," fact sheet #2, April 15, 1994.

foreign diplomats. On January 5, 1994, armed policemen prevented UNDP officials from visiting the camp, despite the joint government/UNDP resettlement plan. On January 8, reporters from the *Daily Nation* newspaper were not allowed to interview the Maela victims by the local District Officer. Two weeks later, representatives from the U.S. Embassy were barred from entering the camp. An Irish priest, Tom O'Neil, who had spoken out against the forced eviction was threatened by the Nakuru district commissioner and served with a deportation order. On May 22, 1994, Democratic Party (DP) chair Mwai Kibaki and other party members were prevented by police from visiting Maela.⁸¹ The government has alleged that the victims were free to go home and were only staying for the free food, despite the statements by Local Minister Ntimama saying that Kikuyus would not be allowed back to their farms.

At another camp for displaced people at Thessalia Mission in Kericho District, the local authorities have been denying access to the 630 camp residents, despite the fact that it is not in a security operation zone. On April 10, 1994, FORD-Kenya MP Mukhisa Kituyi, was prevented by police from entering the camp area to donate fifteen bags of maize to the residents. The police told him that they had been given instructions by the district commissioner not to permit access to the displaced. According to the NCKK, children in the mission have begun to suffer from malnutrition and one child has died of measles. The displaced were forcibly and illegally evicted from their ninety-two-acre farm, which they had owned since 1978, by Administration Police. There have been leaflets calling on Kalenjins to purchase the land.⁸²

INTIMIDATING THE PRESS

Although freedom of expression has increased to some degree since the height of repression in the 1980s and early 1990s, the independent press in Kenya continues to face harassment for reporting critically on politically sensitive issues. Although the government has been most sensitive to press reports on the violence, harassment of journalists has not been confined to those seeking to overcome the news blackout created by the security operation zones. Others writing or publishing articles critical of the government have also faced judicial action. These actions by the government violate the free speech provisions in the Kenyan Constitution and the International Covenant on Civil and Political Rights.⁸³

Reporting on events pertaining to the "ethnic" conflict has become increasingly difficult for journalists. Following negative international publicity on the government's role and inaction in ending the violence, the government has tried to censor any information on the clashes. Since last September, two years after the violence began, the government has used the Security Operation Regulations to deny the media access to three of the worst-hit areas — Molo, Burnt Forest and Londiani. According to Rift Valley provincial commissioner, Ishmael Chelang'a, the primary reason for the creation of the zones was to keep away "those who did not wish us well and who were spreading rumours, lies and propaganda." He has also accused the press of worsening the situation by "giving the outside world the wrong picture."⁸⁴ Similarly, President Moi has been quick to blame the press for inciting the violence "by publishing tribal articles."⁸⁵

In the past four months, there have been numerous cases of government harassment of the press for reporting on the clashes including:

⁸¹ "Events in the Clash Areas, *Clashes Update*, issue no. 16, May 1994.

⁸² Telephone interview with Mukhisa Kituyi, FORD-K MP for Kimilili, May 4, 1994.

⁸³ Section 79 of the Kenyan Constitution and Article 19 of the International Covenant.

⁸⁴ "Molo: State to Review Order -- PC," *Standard*, February 12, 1993.

⁸⁵ "Parties to Blame," *Daily Nation*, December 3, 1993.

- On January 7, two reporters, Moses Wanyama Masinde and Jeff Mbure, and a driver, Joshua Mutunga, from the NCCK magazine *Target*, were arrested and held for three days without charge after they visited and interviewed displaced clash victims at the camp in Maela. While in custody Mr. Masinde was beaten by the district Criminal Investigation Division (CID) officer, Godana Golicha. Their notebooks, cameras, employee IDs and press cards were confiscated by the police and they were accused of inciting the victims in the camp. They were released on bond pending police investigation and are required to report monthly to the CID in Nakuru.⁸⁶
- On March 16, Ngumo Kuria, *Standard* newspaper Nakuru bureau chief, and Peter Rianga Makori, a provincial correspondent, were arrested and charged with subversion under Section 77 of the Kenyan Penal Code, for "an act prejudicial to the security of the state" by writing a report "intended or calculated to promote feelings of hatred or enmity between different races or communities in Kenya." They were charged after the publication of an article alleging that nine people had been killed and hundreds of others displaced by renewed "ethnic" fighting in Molo, one of the areas of the Rift Valley worst affected by violence over the past two years. A week later, the managing editor of the *Standard*, Kamau Kanyanga, and the deputy chief sub-editor, John Nyaosi, were also charged with subversion for editing the article. The case is currently pending. All four were granted bail on March 31.⁸⁷ The published story quoted an eyewitness source who claimed to have seen the violence. Government statements that the incident had not occurred were later confirmed to Human Rights Watch/Africa by clergy assisting the displaced in the area.
- On April 11, Mutegi Njau, news editor of the *Daily Nation*, and Evans Kanini, Eldoret correspondent, were arrested in Nakuru. They had been summoned to the office of the Rift Valley provincial criminal investigations officer to answer questions relating to an article entitled "Clashes: Bishops Condemn the Govt," published in the April 4 edition of the paper. The article had quoted a displaced clash victim from Burnt Forest claiming that he had seen a government helicopter transporting Kalenjin attackers land on the farm of an unnamed "prominent Rift Valley politician" shortly before violence had erupted on the nearby Rurigi farm. Mr. Njau was charged with subversion and released on bail. The charges are pending.⁸⁸
- *Daily Nation* correspondent Austin Kiguta, based in Laikipia was interrogated by police and made to record a statement after he wrote an article on property destruction at an East Laikipia farm.

Other incidents of suppression of free speech in 1994 include the following:

- Fifteen thousand copies of the book *Kenya: Return to Reason*, written by FORD-Asili leader Kenneth Matiba, were confiscated by police from the printer Colourprint Ltd at 11:00 P.M. on January 13. The book documented the government's activities since it took power and contained for the most part documented and public information. The publication was officially banned by the government on January 14.⁸⁹

⁸⁶ "Target Reporters Arrested at Maela," *Daily Nation*, January 10, 1994.

⁸⁷ "Standard Newsmen Released on Bail," *Daily Nation*, April 1, 1994 and "Journalists on Subversion Charge," *Society*, April 4, 1994 and Amnesty International, Urgent Action, AFR 32/05/94, March 1994.

⁸⁸ "Moi Slaps Curfew on Burnt Forest," and "Newsmen Grilled," *Daily Nation*, April 6, 1994.

⁸⁹ "Copies of Matiba Book Impounded," *Daily Nation*, January 14, 1994 and "Leaders Condemn Book Ban," *Daily Nation*, January 17, 1994.

- On January 13, Nairobi City Council guards illegally impounded copies of the *Daily Nation* newspaper from approximately forty vendors. The edition carried an article about a hawker who was clubbed to death by City Council guards that week. The vendors stalls were also destroyed by the City Council guards.⁹⁰
- On March 11, Kisumu bureau chief of the *Daily Nation* newspaper, Caleb Atemi, was arrested and interrogated by CID personnel over his coverage of a by-election in Lugari.⁹¹
- A BBC correspondent, Abu Mbelezi, was detained, searched and interrogated at Mombasa Airport on April 1 as he prepared to return to London. His tape cassettes and notebooks were confiscated and he was questioned about a meeting he had earlier that day with Sheikh Balala of the unregistered Islamic Party of Kenya (IPK).⁹² As a result, Mr. Mbelezi missed his flight. His materials were returned to him before he left the following day.⁹³
- On May 15, *Daily Nation* correspondent, Oloo Janak was summoned for questioning by the police after writing a story which quoted the Migori town council chairman complaining about deteriorating security and the rising crime rate in the town. The council chairman subsequently denied making the statement when questioned by the police, but did admit talking about the security situation and the police.⁹⁴
- In May, security forces confiscated copies of an edition of the London *Financial Times* which contained an article on the Kenyan economy which was deemed unhelpful to the government. The article by reporter Leslie Crawford had stated that Western donors were divided over whether to resume aid to Kenya and some were becoming alarmed by the political events in Kenya and "face[d] an awkward dilemma" over whether to continue aid support. The report concluded by stating: "Kenya's aid partners have come to believe that the harassment and incarceration of opposition politicians, ethnic cleansing in the Rift Valley, and the government's crackdown on the press are no random occurrences, but the actions of a regime which has not shed its authoritarian instincts."⁹⁵

The government has not hesitated to conduct campaigns of threats, arrests, charges and seizures against publications which have been particularly critical of government policy. Two such publications

⁹⁰ "Copies of Nation Seized," *Daily Nation*, January 15, 1994.

⁹¹ "Nation Man Arrested by CID Officers," *Daily Nation*, March 11, 1994.

⁹² The government continues to deny the registration of the IPK as a political party, although the Societies Act nowhere prohibits religion-based political parties. The Attorney-General has maintained that the registration of sectarian parties would contradict the spirit of the law, which proscribes organizations "incompatible with peace, welfare, or good order in Kenya." The government's refusal to permit the IPK to register caused political violence in Kenya's coastal cities in 1993. In May 1993, the leader of the IPK, Sheikh Khalid Balala, was arrested and charged for threatening to kill KANU leaders. He continues to be harassed by the government. *Human Rights Watch World Report, 1994*, NY: Human Rights Watch, December 1993, p.14; *US Department of State Country Report for Human Rights Practices for 1993, Kenya*, February 1994.

⁹³ *Daily Nation*, April 2, 1994.

⁹⁴ "Newsman Grilled by Police," *Daily Nation*, May 16, 1994.

⁹⁵ "Donors 'Alarmed' by Events in Kenya," *Daily Nation*, May 11, 1994, and "Kenya: A Very Private Affair," *Africa Confidential*, vol. 35, no. 10, May 20, 1994.

are *Society* and *Finance*, fortnightly magazines that have been highly critical of the government, which have been subject to harassment through a combination of legal and extra-legal methods. In June 1994, *Finance* resumed publishing after a year's silence caused by sedition charges, attacks on printing presses and confiscation of controversial issues.⁹⁶

On May 31, 1994, Attorney General Amos Wako indicated that all sedition charges were under review and might be dropped; however, in the same statement, he said that it was a serious offense under Kenyan law to utter words or remarks that are derogatory of the president, reportedly stating that "although the head of state was subject to criticism, it must be with respect and without resorting to abusive and insulting language."⁹⁷ Moi himself has criticized the press on many occasions, for disloyalty and "promoting tribalism and lies."⁹⁸

The Case of Bedan Mbugua, David Makali and GBM Kariuki

A case which epitomizes the fact that criticism of the government bears a heavy cost is the case against the editor-in-chief of *The People*, Bedan Mbugua; reporter David Makali; lawyer G.B.M. Kariuki; and Independent Media Services (IMS), Ltd., the publisher of *The People*, owned by Kenneth Matiba. The government brought criminal charges against the four parties alleging contempt of court, following the publication of an article written by Mr. Makali in the March 6-12, 1994, issue of *The People*, which quoted Mr. Kariuki saying that a recent Court of Appeal decision amounted to "judicial lynching and blackmail tailored to meet the political expedience of the Executive."⁹⁹ Mr. Kariuki has also acted for FORD-Asili opposition leader, Kenneth Matiba, on several matters.¹⁰⁰

The statement made by Mr. Kariuki referred to a judgment in which a five-judge bench of the

⁹⁶ *Facing the Democratic Challenge: Freedom of Expression in Multiparty Kenya*, Washington DC: Robert F. Kennedy Memorial Center for Human Rights, February 1994; *Kenya: Shooting the Messenger*, London: Article 19, Issue 28, October 29, 1993; *Divide and Rule*, p.58, "The Tortuous Path Journalist Tread," *The People*, April 24-30, 1994 and *US Department of State Country Report for Human Rights Practices for 1993, Kenya*, February 1994.

⁹⁷ "AG may drop sedition cases," *Daily Nation*, June 1, 1994; KBC Radio, May 31, 1994, as reported in SWB AL/2012 A/3, June 2, 1994.

⁹⁸ "President Moi criticizes British MP's comments in Swahili Madaraka Speech," KBC Radio, June 1, 1994, as reported in SWB AL/2014 A/1, June 4, 1994.

⁹⁹ "Court of Appeal Ruling on Dons Reeked of State Interference," *The People*, March 6-12, 1994.

¹⁰⁰ The government has had a long-standing practice of using the criminal justice system to penalize critics. Charges such as sedition and contempt of court have been regularly used to harass critics, and the courts have been reluctant to oppose the government by standing up for individual rights. Human rights activists within the country and internationally have consistently identified the lack of an independent judiciary as a major obstacle to lasting change in Kenya. Following sustained local and international pressure criticizing the role of British Chief Justice Alan Hancox in the erosion of the independence of the judiciary in Kenya, President Moi replaced him in March 1993 with another expatriate judge, Fred Apaloo, a Ghanaian. While many Kenyan jurists were optimistic about the new Chief Justice, there are increasing complaints that he has done little to change the functioning of the Kenyan judiciary in the one year since his confirmation. In May 1994, two judges of the High Court publicly criticized the judicial system. Justices D.K.S. Aganyanya and Richard Kuloba independently commented on the pervasive lack of confidence in the courts as an impartial organ of dispensing justice. Justice Aganyanya commented on the increasing corruption involving magistrates and judges and Justice Kuloba criticized the appointment of judges on the basis of their ethnicity. In June 1994, the contract of another expatriate judge, Ghanaian Edward Torgbor, was terminated after ten years' service. Torgbor had been one of two judges presiding over a petition brought by FORD-Asili leader Kenneth Matiba against President Moi, and had given a historic ruling against the president. "Have Kenyans Lost Faith in the Courts?" *The People*, May 8-14, 1994; George Owuor & Mburu Mwangi, "Torgbor: Lawyers answer registrar," *Daily Nation*, June 5, 1994.

Court of Appeal had dismissed an application by university lecturers seeking an injunction against the university from evicting them from university housing. They argued that they should be allowed to remain, pending determination of another suit they had filed for being fired from their jobs after protesting the government's refusal to allow the academic community to form a union. The Chief Justice had convened a five-judge bench instead of three judges — a highly unusual step — to enable the government to directly overrule a previous Court of Appeal decision that would otherwise have required the later court to find in favor of the university lecturers.¹⁰¹

The contempt charges against Mr. Kariuki and the others raise serious questions about Kenyan judiciary's compliance with the standards of due process set out in Kenyan and international law. For example, two of the three judges hearing the contempt case were the very judges that were the subject of Mr. Kariuki's alleged comment. Despite requests that the judges recuse themselves from the case due to a conflict of interest, the judges deliberated the case. The charges were also brought with a haste that is contrary to the defendant's right under the Kenyan constitution to adequate time and facilities to prepare his defence. On March 31, the court issued warrants of arrest for Mbugua and Makali for not appearing in court despite the fact that they had not been served with papers notifying them of the court date. On April 15, Mr. Kariuki's lawyer, Martha Karua, was thrown out of court by the judges and forced to withdraw from the case after being threatened with contempt of court charges herself by the judges — a denial of legal counsel of one's choice — after she had filed an affidavit questioning the neutrality of the third judge.

On June 2, 1994, the Court of Appeal found the four parties guilty of contempt. Lawyer G.B.M. Kariuki was ordered to pay KShs.500,000 [U.S. \$8,300] or serve a six-month sentence. Editor Bedan Mbugua was ordered to pay KShs.400,000 [U.S. \$6,700] or serve five months. Journalist David Makali was ordered to pay KShs.300,000 [U.S. \$5,000] or serve four months. The publishing company, IMS, was fined KShs.500,000 [U.S. \$8,300]. The court also gave the defendants only one week to pay the enormous fines or face prison sentences. Each was also ordered to submit an apology to the court and pay for its publication in the daily newspapers. Finally, *The People* was ordered not to publish until IMS had paid its fine. Because the case had been brought in the Court of Appeal, there could be no appeal against the judgment.

The day after the decision, IMS paid its fine, and *The People* appeared the following day. Mr. Kariuki also paid and submitted an apology, which was only accepted in an amended version. However, Mr. Mbugua and Mr. Makali refused to pay their fines or submit an apology, stating that Kenya's law of contempt of court

has a chilling effect on the work of journalists and will seriously inhibit the willingness of the people of this nation from voicing opinions critical or contrary to the government position. Its application on us clearly falls within an insidious pattern of abuse of the judicial process. It is intended to silence and intimidate the government's critics.¹⁰²

Messrs. Mbugua and Makali are currently serving their prison sentences.

HARASSMENT OF THE POLITICAL OPPOSITION

The legalization of multipartyism and the presence of opposition politicians in Parliament has allowed greater freedom to criticize government policies than was possible under one-party rule.

¹⁰¹ See below, "The Case of the University Lecturers."

¹⁰² "Press statement by Bedan Mbugua and David Makali before offering themselves to go to prison," June 8, 1994.

Nevertheless, the political opposition has faced increasing levels of petty intimidation from government officials during 1993 and 1994. Numerous opposition members have complained of harassment and disruption of their meetings by police or local authorities, as well as the denial of licenses to hold meetings without cause or right of appeal. Under the law, before a meeting is held, the organizer must apply in advance (usually two weeks) for a license from the local district commissioner.¹⁰³

"The license should be used to inform the government about public meetings so that the authorities can provide security," noted opposition MP Martha Karua, "to facilitate, not to obstruct legitimate activity."¹⁰⁴ In practice, however, the law gives local authorities sweeping powers to interpret whether a meeting might "prejudice the maintenance of public order." This discretionary power is misused to prevent opposition party members from holding public meetings of any kind, including non-political workshops and seminars. Workshops for educational purposes do not require a license. The government's actions against the political opposition constitute an illegal restriction on their freedoms of association and expression which are guaranteed in the Kenyan constitution and the International Covenant on Civil and Political Rights.¹⁰⁵ The government's zeal in monitoring and restricting opposition activity and speech is all the more striking in comparison to its inaction with regard to its own KANU members of Parliament who are able to make statements with impunity, particularly with regard to ethnic sentiments.

A report by the Church of the Province of Kenya (the Anglican church in Kenya) on freedom of association listed dozens of cases between 1986 and 1993 in which the government had denied licenses to meet to those who were regarded as likely to criticize government policies. It stated: "If indeed the Constitution guarantees Kenyans the right to hold meetings, the denial of licenses to hold public meetings should not arise."¹⁰⁶

The government's arbitrary application of the law prompted the Catholic bishops to state in March 1994:

What Kenyans citizens have witnessed since that constitutional change [to a multiparty system] in 1991 is far from leading to democracy. First of all, we can say that there is no noticeable change as far as the one-party system is concerned. Though there are several parties, after the elections KANU continues to ignore other parties. Not to be a member of KANU is interpreted as being against the government of Kenya. This is the clear implication of the words pronounced by a minister in the President's office when he affirmed that only those areas that supported the KANU government would benefit from the national resources controlled by the ruling party. It is important to notice that this is not an isolated statement but the same has been repeated by many people in the highest authority of the government. How could this statement be acceptable in a democratic society?¹⁰⁷

¹⁰³ Laws of Kenya, Public Order Act (cap. 56), Section 5(3) give the local district commissioner the power to grant a license if "satisfied that the meeting or procession is not likely to prejudice the maintenance of public order or to be used for any unlawful or immoral purpose." The penalty for holding an unlicensed meeting is up to three years imprisonment.

¹⁰⁴ Interview with Martha Karua, Democratic Party MP for Kirinyaga, May 13, 1994.

¹⁰⁵ Sections 79 and 80 of the Kenyan Constitution and articles 19, 21 and 22 of the International Covenant.

¹⁰⁶ Church of the Province of Kenya "Curbing of Freedom of Association in Kenya," as quoted in R. Carver, "Kenya: Aftermath of the Elections," *Refugee Survey Quarterly*, Vol.13, No.1, Spring 1994.

¹⁰⁷ "On the Road to Democracy," pastoral letter issued by the Kenya Episcopal Conference, March 12, 1994 as reported in *Economic Review*, March 21-27, 1994, p.9.

The statement referred to by the bishops was made in January 1994, by Kipkalia Kones, a minister in the President's Office, who stated that areas which did not support the government would be ignored in the distribution of resources. His statement was made during a trip to Kitui District where he had been sent by President Moi to assess the food shortage in the area.¹⁰⁸

The increasing frequency with which opposition politicians are being harassed prompted one opposition MP to lament "in 1993, it was much better for us."¹⁰⁹ In 1993, thirty-six of the eighty-five opposition members of Parliament were jailed at different times for at least short periods.¹¹⁰

The increased harassment, according to one respected Kenyan lawyer, is due to government orders from the top to the local district commissioners, following the death of former FORD-Kenya leader, Oginga Odinga. In 1993, the government and FORD-Kenya had adopted a policy of cooperation. However, following the death of Mr. Odinga in January 1994 and finding less support in the current FORD-Kenya leadership, President Moi announced that KANU would no longer cooperate with the political opposition. He also told the Kalenjin community to cooperate with the Kisii and Maasai ethnic groups, but not with "their FORD-Kenya neighbours." The President also stated that he had done a lot for the Luo ethnic group, "but they were not grateful." President Moi's statement was followed by an announcement by KANU Secretary-General Joseph Kamotho that KANU would "declare war" against the opposition.¹¹¹ Human rights lawyer Gibson Kamau Kuria explained that:

the government has realized what pluralism is all about. It is now realizing that it means being judged by higher standards; that alternative views can be legally expressed. This appears to be something that the government finds difficult to take. Secondly, the discovery by the government that although it rigged the elections and retained power, it emerged weaker in terms of legitimacy because even according to the rigged elections, 3.4 million Kenyans voted for opposition parties, and only 1.9 million for KANU. So, its claims that it is representing the majority of people were eroded. We have, therefore, seen rule by some form of consensus being replaced by rule by force.¹¹²

All the opposition MPs who are harassed have been publicly outspoken against government policies. Some of the cases of members of Parliament who have been harassed in 1994 include:

- On March 16, anti-riot police dispersed a seminar of approximately 100 representatives from women's groups in the Kisumu Rural constituency who were to discuss the role of non-governmental organizations in development and how to initiate development projects using locally available resources. The keynote speaker at the event was MP Anyang' Nyong'o, the area MP.¹¹³ The police stated that the meeting had not been licensed. A similar workshop held the day before on March 15 was held without interruption by the police at Bar Korwa Catholic

¹⁰⁸ "Anti-KANU Areas to 'Miss Out'," *Daily Nation*, January 20, 1994.

¹⁰⁹ Interview with Kiraitu Murungi, FORD-K MP for South Imenti, Meru, May 17, 1994.

¹¹⁰ *Failing the Democratic Challenge*, p.25; Department of State Country Reports on Human Rights 1993, p.129.

¹¹¹ "Moi Cuts Links with FORD-K," *Daily Nation*, February 12, 1994 and interview with Kenyan lawyer (name withheld on request), May 1994.

¹¹² Interview with Gibson Kamau Kuria, lawyer, May 9, 1994.

¹¹³ See below The Case of Anyang' Nyong'o

mission.¹¹⁴

- In March, Maore Maoka, a DP MP for Ntonyiri constituency, Meru, decided to attend a public meeting held regularly by the provincial administration and chiefs, to which the public is invited. When the local government officials saw him, they disbanded the meeting and refused to continue in his presence.¹¹⁵
- MP George Nyanja from FORD-Asili was denied a license to hold a meeting in his constituency (date unknown).
- A public meeting called for March 5, by DP MP Martha Karua in her constituency Gichugu, Kirinyaga District, was cancelled by the local authorities hours before the meeting was to begin, despite the fact that she had received a license. The local district officer stated that the stadium was being used by the local school children and had cancelled the meeting on those grounds despite the fact that under the law only a district commissioner can retract a license. Undeterred, Ms. Karua reassembled the meeting outside the offices of the district officer, Mr. Gachanja, who had cancelled the meeting. She and the other scheduled speakers addressed the crowd standing on a Landrover car. During that time, they were surrounded by twenty police armed with tear gas dressed in riot gear.¹¹⁶
- FORD-Kenya MP Paul Muite was forced to leave an area of his Kikuyu constituency on March 8, when he went there with film crew to investigate allegations that land was being sold off by local officials. The local district officer evicted Mr. Muite and the journalists.
- A meeting to be addressed by five FORD-Asili MPs in Githunguri was ordered dispersed by the local District officer and the crowd of supporters teargassed.
- MP Kiraitu Murungi of FORD-Kenya was unable to hold a planned seminar in Meru town on March 4 to discuss education and agricultural production in his area. The district commissioner refused to allow the meeting to be held and insisted that a license was required and that he would not grant one. Security officials were posted at the Pig and Whistle Hotel, where the seminar had been scheduled, to prevent the meeting from taking place.¹¹⁷ On April 16, MP Murungi applied for a license to hold a fund-raiser for a water project in Igoji, a town in his constituency of South Imenti, Meru. The district commissioner denied the license but licensed a public KANU rally for the same day.¹¹⁸
- In April, DP MP for Kangundo, Joseph Mulusya, was arrested and charged for holding an illegal meeting. The charges came shortly after he had been present in an area where a KANU rally was being held.¹¹⁹

¹¹⁴ Interview with Angang' Nyong'o, FORD-K MP for Kisumu Rural, May 16, 1994 and "Police Storm Convent," *Daily Nation*, March 17, 1994.

¹¹⁵ Interview with Kiraitu Murungi, FORD-K MP for South Imenti, Meru, May 17, 1994.

¹¹⁶ Interview with Martha Karua, DP MP for Kirinyaga, May 13, 1994.

¹¹⁷ "MPs send Protest Note to Moi," *Daily Nation*, March 22, 1994.

¹¹⁸ Interview with Kiraitu Murungi, FORD-K MP for South Imenti, Meru, May 17, 1994.

¹¹⁹ Interview with Martha Karua, DP MP for Kirinyaga, May 13, 1994.

- Six DP members, including Kyale Mwendwa, a national officer, and Jacob Mutua, a lawyer, were arrested in Mr. Mwendwa's office in April by police. They were first taken to Kilimani police station in Nairobi and then transferred to a number of other police stations. They were held incommunicado overnight and released on bond the following day. The day after, they were charged with holding an illegal meeting. The charges are pending.¹²⁰
- A request for a license for the DP to hold a rally in Kirinyaga on April 23 was never responded to by the district commissioner. Other MPs, such as the vice-chair of DP, Agnes Ndeti, have been unable to get an answer to requests for a license to hold a meeting despite repeated requests.¹²¹
- On April 23, police used tear gas to disperse a peaceful meeting of over 600 FORD-A members who were attending a conference. The police raided the meeting, acting on a court injunction restraining the meeting from taking place obtained by a disgruntled FORD-A member, Salim Ndamwe, on the grounds that the purpose of the meeting was intended to suspend him from the party. The meeting was held the following day after the injunction expired.¹²²
- On April 24, FORD-Kenya MP Mukhisa Kituyi was harassed and arrested by police in his constituency, Kimilili. Dr. Kituyi was arrested when he had gone to inspect a bridge in his constituency. The police superintendent and the head of the Criminal Investigations Division along with their deputies arrested him at gunpoint without a warrant. They drove him in a circuitous route through three districts — Bungoma, Kakamega and Kisumu — before arriving in Kericho District. He was held overnight without charge and was told that he could not use the telephone because they did not want anyone to know his whereabouts. The following day, he was driven 100 km to appear in court in Kisii district where he was charged with holding an illegal rally at Muhoroni, where he had opened the local FORD-Kenya offices on April 10, and for having "uttered words to being into disaffection the name of his Excellency the President." Dr. Kituyi pleaded not guilty and was remanded in Kisii prison that night before being released the following morning on bond. The charges are currently pending.¹²³
- On May 7, thirteen FORD-Kenya officials were arrested and held overnight in Nakuru for allegedly holding an illegal meeting in their offices.¹²⁴
- On May 15, DP MP for North Imenti, Meru, David Mwiraria, applied for a license to hold a public rally. Three days before the scheduled meeting, he contacted the district commissioner who informed him that the license could not be issued because the application had been lost.¹²⁵
- On June 4, a rally at Nyamira, addressed by Kenya Social Congress leader George Anyona was violently broken up by police after a license had been refused by the Nyamira district commissioner.¹²⁶

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² "Ford-Asili Meeting Goes Ahead Following Expiry of Court Injunction Against It," KTN TV, Nairobi, April 23, 1994, as reported in SWB AL/1981/ A/3, April 26, 1993.

¹²³ Telephone interview with Mukhisa Kituyi, FORD-K MP for Kimilili, May 4, 1994.

¹²⁴ "Police Arrest 13 FORD-K Officials," *Standard*, May 8, 1994.

¹²⁵ Interview with Kiraitu Murungi, FORD-K MP for South Imenti, Meru, May 17, 1994.

¹²⁶ "Opposition Parties Form New Political Alliance," AFP June 5, 1994, as reported in FBIS-AFR-94-109, June 7,

- On June 9, heavily armed police stopped a meeting organized by the League of Kenyan Women Voters to discuss "civic education and the legal rights of women." A police inspector declared the meeting illegal and told two DP MPs, Martha Karua and Bishop Allan Njeru, that he had "instructions to disperse them." Ms. Karua snatched the microphone and said the meeting must continue, but was grabbed by the policeman. Ms. Karua later announced that she and three other women were suing the Attorney-General for assault and wrongful detention.¹²⁷

However, on June 1, Rift Valley Provincial Commissioner Ishmael Chelang'a announced that he was directing the provincial administration to start issuing licenses for public meetings.¹²⁸ On June 4, an opposition rally was held at Kamukunji stadium in Nairobi at which a new coalition was announced, the United National Alliance, the first large political gathering since the elections in December 1992.¹²⁹

The Case of Anyang' Nyong'o

The home in Seme, Kisumu, of Anyang' Nyong'o, a FORD-Kenya Member of Parliament for Kisumu Rural, was attacked at approximately 2:00 A.M. on March 4, 1994. Approximately thirty to forty-five armed assailants broke into his home in search of the MP and his father. Dr. Nyong'o had been observing the by-election in Lugari constituency the previous day and had later returned to his home in Nairobi.

The thugs broke down the doors and asked for Dr. Nyong'o and his father. Dr. Nyong'o's mother, Dorca Nyong'o, who is approximately seventy years old, was badly beaten and her arm injured. Several neighbors who attempted to help Ms. Nyong'o, as well as Dr. Nyong'o's uncle, William Oduogo Owi, were also beaten by the attackers. In the ensuing fighting, Mr. Owi was hit on the head with a hammer causing his death. The police did not appear on the scene until two hours later.¹³⁰

While the identity of those who attacked the MP's home is unknown, it is widely believed that the attack was politically motivated, particularly since few belongings were stolen as well as the fact that there have been other similar attacks on the houses of Webuye MP Musikari Kombo and Kisumu Rural MP Job Omino.

Following the attack, Dr. Nyong'o issued a public statement that "this regime does not care any more about what happens to Kenyans. It is driving us systematically towards civil war." On March 11, Dr. Nyong'o was arrested and interrogated for six hours by the police for an allegedly "seditious" statement before being released without charge on police bond.

The Case of Koigi wa Wamwere et al.

Koigi wa Wamwere, a former MP and political prisoner who last year founded the National Democratic and Human Rights Organization (NDEHURIO), has been in custody since November 1993 facing charges of robbery with violence. Mr. Wamwere is a long-time critic of the Moi government. He is a former political prisoner, adopted by Amnesty International as a prisoner of conscience while detained

1994.

¹²⁷ George Munei, "Bishop, MPs in clash with police," *Daily Nation*, June 10, 1994; "A-G sued over police action," *Daily Nation*, June 21, 1994.

¹²⁸ Joseph Ngugi, "PC gives order on rally permits," *Daily Nation*, June 2, 1994.

¹²⁹ "Opposition Parties Form New Political Alliance," AFP June 5, 1994, as reported in FBIS-AFR-94-109, June 7, 1994.

¹³⁰ Interview with Angang' Nyong'o, FORD-K MP for Kisumu Rural, May 16, 1994

on treason charges between October 1990 and January 1993. The charges were eventually dropped, but Wamwere was held without bail during that time and complained of mistreatment at the hands of security officials.

In September 1993, Mr. Wamwere was rearrested, shortly after the government had declared its security operation zone regulations, along with well-known lawyer Mirugi Kariuki and others. Mr. Kariuki is a Nakuru-based lawyer who has represented prominent government critics and numerous clash victims. Messrs. Wamwere and Kariuki and others were charged with possessing seditious publications, administering an unlawful oath and travelling in a proscribed area. The allegedly seditious publications included leaflets published by the NDEHURIO on the issue of the ethnic violence which the government charged were "calculated to bring into hatred or contempt or to excite disaffection against the government of Kenya."¹³¹ Messrs. Wamwere and Kariuki were held in prison in Nakuru until October 19, 1993, when they were released on bail. The charges are still pending.

Shortly after his release, Mr. Wamwere was arrested yet again. On November 5, 1993, along with fourteen others, Mr. Wamwere was accused by the government of attempting to raid Bahati police station in Nakuru and rob two police constables of their rifles on November 2, 1993. He was charged with attempted robbery under Section 297(2) of the Penal Code and being in possession of firearms without a certificate under Section 4(1) of the Firearms Act. The first count carries the death penalty and the second a term of imprisonment.¹³²

The government has alleged that at approximately 2:30 A.M. on November 2, 1993, Mr. Wamwere and others attempted to raid Bahati police station and that in the course of the raid two of the attackers were shot by the police. The initial police press conference announcing the raid described the perpetrators without reference to Mr. Wamwere or the three others now facing charges.¹³³

Eleven of those initially charged with Mr. Wamwere were released in January 1994 after the state dropped the charges.¹³⁴ Charges against Mr. Wamwere and three other defendants remain. The three are Godfrey Ngengi Njuguna; James Maigwa (Mr. Wamwere's brother-in-law); and Charles Kuria Wamwere (Mr. Wamwere's brother). The four have been held without bail since November 1993. They have been held in Nakuru prison, where there is severe overcrowding, diet is poor and prisoners have frequently been denied adequate medical treatment. Human Rights Watch/Africa shares the fears of others that the arrest of Mr. Wamwere and his co-accused is part of a pattern of harassment of human rights activists, opposition figures and journalists, and especially those who — like Koigi wa Wamwere — are attempting to investigate or report incidents of political violence.¹³⁵

The trial began on April 12, 1994. If convicted, the accused face mandatory death sentences. An International Bar Association observer attending the trial concluded that the trial did not conform to international standards of fair trial and noted among other things:

¹³¹ Charge sheet as reported in *Failing the Democratic Challenge*, p.35.

¹³² Report by International Bar Association trial observer, Anthony Mmieh, May 1994.

¹³³ Ibid.

¹³⁴ Those released without charge included Mr. Wamwere's brother John Njoroge; a cousin Geoffrey Kuria Kariuki; Wilfred Kinuthia Ngengi; Jimmy James Waigwa; Daniel Kigoche; Francis Ngigi Kabeta; Stephen Kariuki Muigai; Ephraim Muchiri Muhoro; Samwel Mwangi; George Kariuki Wanjau; and Douglas Wokabi Toto.

¹³⁵ "Kenya: Human Rights Activist on Trial For His Life," Amnesty International, AFR 32/WU 01/94, April 14, 1994.

I observed that any application, however flimsy, by the prosecutor was granted irrespective of strong valid objection by the defence counsel ... I also found that both the prosecutor and the magistrate were in the habit of putting words into the mouth of prosecution witnesses during examination in chief and in cross-examination.¹³⁶

He concluded his report by stating that the "procedural anomalies would result in miscarriage of justice to the accused persons."¹³⁷

FREEDOM OF ASSOCIATION: THE CASE OF THE UNIVERSITY LECTURERS

Since November 29, 1993, university lecturers at Kenya's four universities — Nairobi University, Kenyatta University, Moi University and Egerton College — have been on strike. The strike was called in connection with an application to the registrar of trade unions to form an association, the University Academic Staff Union (UASU), under the Trade Union Act (Cap. 233). A union by the same name had operated at the universities until 1982, when its registration was cancelled as part of a general crackdown on civil society by the government of President Moi.

The lecturers first filed their application in October 1992. After receiving no response from the government office for over a year, the university lecturers began a strike in November 1993 in protest at the registrar's delay in making a decision that usually takes no more than six months. Soon after the strike began, the registrar's office issued a rejection of the application. In January 1994, the vice-chancellors of the four universities warned lecturers that their contractual terms of employment did not allow for trade unions. Twenty-three lecturers were subsequently dismissed from their positions on the grounds that they were in breach of contract by not conducting classes.¹³⁸

Conditions for faculty members on Kenyan university campuses have deteriorated as the cost of living has increased significantly and class sizes have doubled, particularly after an expansion of student enrollment in 1987. The lecturers said that their call for a union was made in order to facilitate negotiations with the university administrations for better living and working conditions, in particular salary scales, medical insurance, housing and pensions.

A press release issued by former lecturers who had been members of UASU before it was banned by President Moi in 1982 stated:

The demand by the dons at our public universities to register the Staff Union, and to use the union to represent their interests, is legitimate and constitutional. It cannot be denied by any authority whatsoever. There is therefore no need to victimize any university lecturer for exercising the rights guaranteed by the Constitution. As former dons at our public universities, it is amazing to us that the government, having once registered the University Staff Union in the late seventies, should now argue that such a union is not registerable today. It was illegal to ban the union in the first place. But now that

¹³⁶ Report by International Bar Association trial observer, Anthony Mmeh, May 1994.

¹³⁷ Ibid.

¹³⁸ KBC radio, Nairobi, January 16, 1994 as reported in SWB AL/1898 A/4, January 18, 1994. The following lecturers were dismissed. University of Nairobi: Korwa Adar (UASU Chair), Churchill Kibisu, Eric V.J. Makokha, Charles Nyamachanja, Omari Onyango. Kenyatta University: Charles Maranga, Kilemi Mwiria. Moi University: Pamala Abuya, Peter Mwangi Kagwanja, Nyaduwa Odhiambo, Joyce Nyairo, Odeke Ogunde, Richard Ogunde, Peter Omboto, Francis Opar. Egerton University: Airo Akodhe, Yunus Khan, Wanjala H. Khisa, Kimani Njuguna Kimani, Kibiwott Kurgatt, James Mwanjewe, F.M. Muchoki, Gathogo K. Thuo.

democratic governance is being restored, it is preposterous to maintain the ban on the union.¹³⁹

Student organizations, clergy, the political opposition and the Kenya National Union of Teachers also came out in support of the faculty's right to register UASU, citing the government's refusal to register the union as a breach of Section 80 of the Kenyan Constitution which guarantees the right of association.¹⁴⁰

The university lecturers have filed two claims in the High Court protesting the refusal of the registrar to register UASU. The first is an appeal against the registrar's refusal, under Section 18 of the Trade Union Act, which states: "If the registrar refuses or cancels a trade union registration, the complainant has a right to ask for the intervention of the High Court." The second claim is a constitutional reference asking the court to declare the registrar's refusal unconstitutional in respect of Section 80 of the Kenyan Constitution, which guarantees the right of association. Both claims are currently pending in the High Court.

A third case, asking for the dismissals to be set aside, was rejected by the High Court in February 1994. Pending an appeal of that decision, the lecturers applied for an order from the court that they be allowed to stay in university housing until the hearing in the Court of Appeal was decided. As the basis of their claim, the lecturers relied on an October 1993 Court of Appeal judgment which had been given in similar circumstances and ruled that an employee in a legal dispute with an employer had a right to remain in company housing until the dispute was ruled on by the courts.¹⁴¹

Under the common law doctrine of precedent, as applied in Kenya, the only way a decision of the Court of Appeal can be overruled is by convening a bench of five judges, instead of the usual three, in a later Court of Appeal case. This usually occurs when one or both of the parties petition the court for the two additional judges citing the reasons why they believe the precedent should be overruled. In this case, neither side petitioned for a bench of five to hear the lecturer's application for an injunction. However, Chief Justice Fred Apaloo convened a bench of five on his own initiative. According to Kenyan lawyers, while this step is within the discretionary powers of the chief justice, it is highly unusual and has never been taken before.

Few were surprised when the five-judge bench handed down a ruling on March 2, overruling the case precedent and allowing the university to evict the organizers of the strike from university housing. The judges also went further in their 25-page judgment, and commented at length on the dismissal of the lecturers from their positions, despite the fact that this application did not deal with the merits of that issue.

In January, while the cases were still pending, President Moi stated publicly that the registration of UASU would not be permitted, adding that the formation of a trade union for academic staff would lower the prestige of the country's universities.¹⁴² In February, President Moi made another statement at a public rally at Kerugoya Stadium in Nairobi ruling out the registration of UASU.¹⁴³ These declarations by President Moi are believed by many Kenyan lawyers to be prejudicial to the outcome of the pending

¹³⁹ "Press Release — The Crisis of Our Universities," as reported in *Daily Nation*, January 7, 1994.

¹⁴⁰ "University Faculty on Strike in Kenya," *Committee for Academic Freedom in Africa*, newsletter No. 6, spring 1994.

¹⁴¹ *Nyamogo vs. Kenya Post and Telecommunications* (October 1993). In this case, Ochieng Nyamogo, an employee with KPT, successfully obtained an interim injunction restraining his employer from evicting him from company housing until his appeal against an early forced retirement had been duly determined.

¹⁴² "Moi Rules Out Dons' Union," *Daily Nation*, January 1, 1994.

¹⁴³ "Court of Appeal Ruling on Dons Reeked of State Interference," *The People*, March 6-12, 1994.

cases particularly in light of the long-standing compliance of the Kenyan judiciary to the executive branch.¹⁴⁴

The security forces have also harassed the legal counsel of the striking lecturers. On January 14, lawyer Gibson Kamau Kuria was prevented from entering the university compound by security officials. Mr. Kamau Kuria was told that they had been issued orders by the Vice-Chancellor of the University to bar him from the premises.¹⁴⁵

The government's refusal to allow university lecturers to form a union for purposes of improving their working conditions is a violation of Article 22 of the International Covenant on Civil and Political Rights which guarantees freedom of association and to which Kenya is a party. The many procedural concerns in the various court applications relating to the UASU registration, including President Moi's public statements opposing the union, also raise serious questions about judicial independence from the executive branch and the possibility of a fair trial from the Kenyan court system in political cases.

RESPONSE OF THE INTERNATIONAL DONOR COMMUNITY

In November 1991, at a consultative group meeting in Paris, the World Bank and Kenya's bilateral donors announced the suspension of over one billion dollars of program aid to Kenya, on governance, economic and human rights grounds. Following the suspension, the Moi government reintroduced a multiparty system and released prominent political prisoners. Elections were held in December 1992. In November 1993, the World Bank and Kenya's bilateral donors met once again in Paris to reevaluate their decision and to decide whether to resume the disbursement of aid.

At the consultative group meeting in November 1993, Kenya's donors pledged \$850 million in new aid for 1994 — \$170 of that amount being balance of payments assistance from the World Bank which would go directly to the Kenyan treasury. The aid was conditional on arrangements being made for the repayment of U.S. \$700 million of debt arrears.¹⁴⁶ The donors stated that the decision to pledge a renewal of aid was motivated by several factors, including "significant efforts of the government to reestablish an appropriate macroeconomic framework and initiate structural reforms ... in particular, the progress in liberalizing the external sector, strengthening monetary control, enforcing financial sector discipline and liberalizing maize imports and movement."¹⁴⁷

However, the donor countries cautioned that "the translation of these indications of new commitments into disbursements in 1994 depends on progress in implementing the economic reform agenda, as well as strong positive steps on human rights, governance, and corruption."¹⁴⁸ Bilateral donors acknowledged that Kenya's multiparty elections were a major and welcome first step to developing "an environment conducive to a more democratic and open society." However, the World Bank statement noted that

special concern was expressed over recent incidents of ethnic clashes. Bilateral donors

¹⁴⁴ See *Justice Enjoined: The State of the Judiciary in Kenya*, Washington DC: Robert F. Kennedy Memorial Center for Human Rights, 1992.

¹⁴⁵ "Dons' Case Fails to Take Off," *Daily Nation*, January 15, 1994.

¹⁴⁶ "Kenya foreign aid resumed despite graft and violence," *The Guardian* (London), November 24, 1993.

¹⁴⁷ World Bank Press Release, Meeting of the Consultative Group for Kenya, November 23, 1993.

¹⁴⁸ *Ibid.*

underlined the importance of concerted government action to defuse the underlying tension and deal with unrest through evenhanded application of the law ... Bilateral donors also underlined the need for the government to respect the basic freedoms of political expression and assembly. Delegates expressed concern over widespread corruption, which in some cases had undermined the impact of reforms.¹⁴⁹

In January 1994, Kenya successfully negotiated with the Paris Club of creditors to reschedule \$500 million of debt.¹⁵⁰

When the World Bank and Kenya's donors meet on July 20, 1994 to evaluate Kenya's human rights record, they will find that the human rights situation has remained unchanged for the most part in the six months following the last consultative group meeting and that their stated concerns continue to go unaddressed.

U.S. Government Policy

U.S. Ambassador Smith Hempstone, regarded as a hero by many Kenyans for his leadership of the international pressure on President Moi to hold elections, resigned from his position, as is customary, at the end of the Bush administration. Aurelia Brazeal, a career diplomat previously ambassador to Micronesia, was confirmed as Hempstone's replacement in August 1993, and took up her position in September. Since the arrival of Ms. Brazeal, U.S. policy towards Kenya has been much less critical of the government.

In November 1991, the U.S. took part in the decision of the consultative group of bilateral donors to suspend aid to Kenya; although the U.S. continued to provide development aid, totalling about \$18 million a year, to nongovernmental organizations working in Kenya. In September 1993, the State Department announced the release of \$3.73 million of pipeline money in military assistance to assist the Kenyan government in providing security along the border with Somalia. Commendably, the department issued a public statement that "[t]he decision to release these funds is based solely on the need to respond to an extraordinary security threat. The release does not constitute satisfaction with the human rights situation in Kenya, a matter which remains of deep and fundamental concern to the United States."

Several statements were also issued throughout 1993, by the State Department or by the embassy in Nairobi, protesting actions taken by the government against freedom of expression. Nevertheless, in contrast to the critical stand previously taken by Ambassador Hempstone, the U.S. failed to take a strong position holding the Kenyan government responsible for the violence in the Rift Valley Province. In September 1993, the only statement issued on the violence publicly welcomed the government's decision to declare security zones, showing unwarranted faith in the good behavior of the security forces in these circumstances. The statement was subject only to the "hope that the increased security measures will be accompanied by measures to allow access to the affected areas by the press and political representatives of all concerned."

On November 9, 1993, as a result of recent clashes, Ambassador Brazeal declared Maela displaced camp area a disaster and released \$25,000 for the purchase of shelter materials and water to the displaced. U.S.AID announced in April 1994 that it had programmed \$22.4 million, including emergency food aid, in assistance during FY 1994, for the relief of clash victims and to alleviate the effects of drought.¹⁵¹

¹⁴⁹ Ibid.

¹⁵⁰ Leslie Crawford, "Kenya reaches Paris Club deal," *Financial Times*, London, January 26, 1994.

¹⁵¹ "Kenya — Civil Strife/Drought," OFDA Fact Sheet #2, April 15, 1994.

The Department of State's report on human rights in Kenya, released in February 1994, reported the "substantial evidence" of the complicity of high-level government officials in instigating the clashes, yet public statements by the Ambassador or other senior officials have not called for investigation of these allegations. On April 7, 1994, the day following the announcement of a curfew in one of the security operation zones, Assistant Secretary of State for African Affairs George Moose, visiting Kenya at that time, simply commended President Moi for taking "decisive steps ... to curb the resurgence of ethnic violence" and failed to raise other serious concerns. In June 1994, after returning from a visit to the U.S. and a few days after the decision in the Kariuki case mentioned above, Ambassador Brazeal praised political and economic reforms, though "regretting" that permits to hold meetings were still being denied to some politicians. A few days later, she stated more forcefully that licenses for rallies should be granted, and that the U.S. regarded respect for human rights as a "moral necessity."¹⁵²

RECOMMENDATIONS

To the Kenyan Government

- Additional and adequate security should be provided in clash areas to end the violence and create an enabling environment to permit the UNDP resettlement program to succeed. Since the creation of "security operation zones" has not been successful in preventing further outbreaks of violence even in those areas where they apply, the government might consider asking for advice from policing or peacekeeping experts from, for example, the Commonwealth or European Union. The behavior of security forces in the clash zones should at all times be kept under public scrutiny to ensure effective and accountable action in the defense of the whole community.
- Continuing and past attacks should be thoroughly investigated and charges brought and vigorously pressed where there is evidence against individuals alleged to be directly responsible for killings and destruction of property or to have planned such acts.
- In all cases, the criminal law must be applied without regard for ethnic group, political party or other status: instructions should be given that government officials or members of the Kalenjin or Maasai ethnic groups must be subject to the same penalties as opposition politicians or Kikuyus, if they are involved in criminal wrongdoing.
- Free movement should be permitted in the "security operation zones," with security escorts if reasonably necessary, to all duly accredited press correspondents, church relief officials, and human rights groups.
- Charges such as sedition that have been brought against politicians or journalists on the grounds only of travelling within the clash areas or of publishing reports of events in the clash areas should be dropped. In other cases, where charges involve concrete allegations such as possession of firearms, damage to property or bodily injury, the charges should be carefully reconsidered with a view to confirming that the evidence is sufficient to warrant criminal prosecution; where it is not, charges should be dropped.
- Where clash victims have congregated in camps, local government officials should be given instructions to facilitate assistance by local and international relief groups. In no circumstances should such camps be dispersed forcibly and without notice. Where legitimate reasons for

¹⁵² "US Envoy Moose praises Moi for curbing ethnic violence," KNA news agency, April 7, 1994, as reported in SWB AL/1968 A/11, April 11, 1994; "Changes Please US Envoy," *Daily Nation*, June 8, 1994; George Owuor, "Parties' conduct worries US envoy," *Daily Nation*, June 12, 1994.

relocation exist, adequate alternative sites should be provided in advance.

- Licenses to hold political or other meetings should be refused only when there are legitimate security concerns. Instructions should be given to all local government officials that there should be no distinction between opposition and KANU politicians when applications to hold meetings are considered.
- In all trials, the rights of due process, set out in the Kenyan constitution and in international instruments, should be scrupulously adhered to; the government should be sure to avoid in all cases the appearance or fact of influencing the judiciary in its deliberations.
- The government should permit the registration of the University Academic Staff Union (UASU) and reinstate the lecturers who were dismissed.

To the International Community

- Donor nations should continue to link disbursement of non-development aid to the Kenyan government's performance on good governance and human rights criteria. In particular, the Moi government should be called on to demonstrate its effective commitment to ending the "ethnic" violence and resettling the displaced population; to allowing free political activity for all opposition parties; and to respecting the rights of Kenyans to freedom of association, assembly and expression.
- Foreign governments should maintain a consistent and unequivocal human rights message to the Kenyan government. Foreign governments should publicly raise human rights concerns with the Kenya government and call for the government to act to address these concerns.
- Governments and international relief organizations giving aid to Kenya should continue to consult and cooperate with the local nongovernmental community in distributing relief to the clash victims outside government channels.

This report is based on interviews separately conducted in Kenya by two Human Rights Watch/Africa researchers in April and May 1994 as well as subsequent research. The report was written by Binaifer Nowrojee, a consultant to Human Rights Watch, and edited by Bronwen Manby, research associate with Human Rights Watch/Africa. We express our gratitude to all the individuals and organizations that assisted us in the preparation of this report.

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Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki Accords. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Mendez is the general counsel; and Susan Osnos is the communications director. Robert L. Bernstein is the chair of the executive committee and Adrian W. DeWind is vice chair. The Africa division of Human Rights Watch was established in 1988 to monitor and promote the observance of internationally recognized human rights in Africa. Abdullahi An-Na'im is the director; Janet Fleischman is the Washington representative; Bronwen Manby, Karen Sorensen, Alex Vines and Berhane Woldegabriel are research associates; and Kimberley Mazyck and Urmi Shah are associates. William Carmichael is the chair of the advisory committee and Alice Brown is the vice chair.