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**When domestic resistance outweighs international influence: the struggle for
human rights and democracy in Kenya 1987-2002**

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**When Domestic Resistance Outweighs International Influence:
The Struggle for Human Rights and Democracy in Kenya 1987-2002**

by Robert M. Press

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**A paper presented at International Studies Association annual meeting
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Abstract

With the growing attention in recent years to the impact of transnational networks and donor policies on human rights in developing countries, there is a risk of over-emphasizing such impact and under-emphasizing the work of domestic human rights activism. While such international forces do have some influence on the behavior of authoritarian states, especially ones that at least claim to respect the rule of law, on-the-ground case studies can reveal better than theoretical or macro studies the critical role of domestic resistance.

This paper examines the resistance of human rights activists in Kenya from 1987 to 2002, a period that saw Kenya's authoritarian regime shift from torturing dissidents to holding a relatively fair election in which the ruling party was defeated for the first time since Independence. During this period, human rights activists, led mostly by middle class, educated Kenyans, including lawyers, clergy and journalists, used a wide variety of tactics to press for reforms.

Although the international donor community, most notably the United States, the UK and Germany, sought democratization reforms and an end to human rights abuses in Kenya, their pressure was often inconsistent and sometimes in contradiction to other donors. Despite one dramatic funding cutoff and another less dramatic one, donors' efforts were of secondary importance to domestic activism. The paper is part of a larger study based on some 70 personal interviews in 2002, mostly in Kenya, including almost all the key activists, and on archival research.

I. Introduction

Kenya's presidential election in 2002 was no ordinary one. For the first time in nearly forty years, the ruling party lost. But even more significantly, the opposition victory meant an end to the corrupt rule of Daniel arap Moi, who had presided over a reign of repression in the 1980s and into the early 1990s. Gradually he had been forced to make concessions which advanced human rights and democracy, ending in the generally fair election in 2002 that saw his defeat.

The question this paper examines is what obliged President Moi to make those concessions, mostly in the early 1990s, that ended torture of political dissidents (though not of common criminals) and allowed multi-party politics to replace a long period of single party rule?

A traditional international relations (IR) perspective on the question might well highlight the fact that international donors, including the United States, the United Kingdom, Germany, and financial institutions such as the World Bank and the International Monetary Fund (IMF) put pressure on the Moi regime to make reforms. The fact that President Moi surprised his supporters in December 1991 and approved the return to multi-party elections just a week after donors at a consultative meeting in Paris froze new funds to Kenya pending economic reforms, would seem to bolster the IR perspective.

A comparativist analysis, on the other hand, might well point to rising domestic opposition and acts of rebellion against restrictions on human rights. These acts included individual and organized resistance in the form of published criticism of the regime, court cases defending civil liberties, and both spontaneous and organized public rallies in defiance of bans against such political gatherings.

This paper argues that either perspective by itself is too limited to fully explain the reforms and the pressures, both international and domestic, that led to them. Further, the paper argues that a close analysis of the sequence of events, a micro-analysis against a macro-backdrop of some international pressures, shows that it was primarily domestic resistance that led to the few, major concessions the Moi regime made and not international pressures.

It is an argument of this paper that an authoritarian regime is more likely to make a concession in the early stages of resistance when faced with a convergence of forces, both domestic and international. But it is also an argument of the paper that international pressure in the case of Kenya not only followed domestic pressure but was unlikely to have occurred without it; and in any case it was not international pressures that were the critical factor that led to reforms by the authoritarian Moi regime.

Such a finding, which is unlikely to win unanimous agreement among scholars of Kenya's politics, especially among traditionalists in the IR camp, challenges several long-standing IR

perspectives. Such challenges arise not only from a comparativist perspective but from within segments of the IR scholarly community itself.

The rest of the paper is written in several sections: challenges to IR paradigms; analysis of donor and other international pressures for change in Kenya during the study period; analysis of domestic pressures for change during the same period; a conclusion.

II Challenges to IR Paradigms

In a recent edited work re-examining basic IR themes (Katzenstein, Keohane, and Krasner 1999), the editors and contributors challenge some of the IR paradigms. Using what she terms a “rationalist institutionalist” approach, contributor Helen V. Milner calls for relaxing two principal tenants of traditional IR analysis. “A central assumption has been that states are unitary actors. Relaxing this assumption means bringing domestic politics back in” (Milner 1999, p 121). Just as Evans, Rueschemeyer and Skocpol iconized the concept of “Bringing the State Back In,” the title of their 1985 edited book, Milner would like to re-focus attention on domestic politics when assessing political change in countries. Why the focus ever dimmed is somewhat of a mystery: no serious political scientist would ever think of trying to analyze political change in a Western country by ignoring domestic politics and looking only at international relations. It makes no more sense to do that when examining a non-Western country.

Milner challenges a second common assumption in the IR literature: the primacy of the state. “That states are the most important, if not the sole, actors of consequence in international politics is a central tenet of realism and neorealism.” She encourages a broader consideration of such entities as “multinational corporations, international organizations, and nongovernmental organizations (NGOs).” While this re-assessment opens the door to analyses based on a broader focus than the state, it is still

limited mostly to international organizations. Even in the case of many NGOs in developing countries, including Kenya, many are heavily-funded by international sources, thus risking that they become dependent not only on external funding but external priorities.

James N. Rosenau of The George Washington University issued a recent challenge to professionals in international studies to recognize that in an age of “interdependence and globalization” the old “state-centric” worldviews of many scholars no longer have much relevancy. New studies, he suggested must also break through “disciplinary boundaries” (Rosenau 2005).

Challenges to IR paradigms are not new. In 1968, one scholar wrote: “The distinction between international and domestic politics has become deeply embedded conceptually, pedagogically, and institutionally...Blame is often placed on the lack of purposeful communication between specialists in international politics and specialists in comparative politics. In truth, many of us have imprisoned ourselves in conceptual jails of our own making where we remain incommunicado and deaf to the voices from next door” (Hanrieder 1968, p. 482).

Risse, Ropp and Sikkink (1999) advance the analysis of how human rights norms are adopted in authoritarian states. They point to the importance of both international and domestic human rights networks but argue that of the two, transnational human rights advocacy networks are the “primary instigators of human rights change (277).” While they recognize the importance of domestic organizations pressuring for change, they emphasize the international pressure as the critical one. This paper argues that while international advocacy networks did help provide some measure of protection through publicity for leading human rights activists and important help to human rights organizations, the primary instigators of human rights change were Kenyans themselves through their own domestic pressure.

III International Pressures for Reform in Kenya: Mixed Signals

Can donors successfully pressure a regime abusing human rights and dragging its feet on democratization? The record in Kenya is mixed. The symbolic end of the Cold War in 1989 with the fall of the Berlin Wall was followed by abrupt change of regimes in a number of former Communist countries. One change that surely caught the attention of Kenyan President Moi was the overthrow and murder of President Nicolae Ceaușescu of Romania.

For the most part the Cold War had kept the focus of Western donors on supporting allies and undermining leftist regimes in Africa. Kenya was seen as a stable country in a turbulent region where Uganda and Sudan had experienced civil wars, and Somalia and Ethiopia (at different times) had received military aid from the Soviet Union. Kenya was a pro-market capitalist state. Any international concerns about human rights abuses and lack of democracy in Kenya until after the fall of the Berlin were given low priority.

After the fall of the Berlin Wall, the United States and other Western donors began showing more interest in human rights and democracy since Kenya was no longer a proxy in the global struggle for influence against the Soviet Union. But on the whole, donors proved to be inconsistent in their funding, sometimes praising the regime, sometimes cutting off funds, in a usually uncoordinated fashion.

After the Cold War the West began applying a somewhat tougher standard to the behavior of former non-Communist authoritarian regimes in terms of human rights and democratization.¹ But the Western love affair with Kenya was not over: donors were generally supportive of the Moi regime during the late 1980s and up until the funding freeze in late 1991, despite documented use of torture by the state against political dissidents. The International Monetary Fund (IMF) imposed two other freezes,

¹ Kenyan activist attorney Gibson Kamau Kuria suggests that the West did have a Cold War interest in human rights but primarily as a means of critiquing Communist nations; in an interview with the author, July 2002, in Nairobi, Kenya.

in 1997 and 2002, ostensibly for economic reasons, each time followed by protracted negotiations with the Kenyans to restore aid. Starting around 1990, bilateral donors put more pressure on the regime to democratize.

Such pressure “did not inspire mass uprisings” (Bratton, Van de Walle 1997, 136), which is not surprising: it is unlikely that those who did protest were calculating the irregular funding flow from mostly Western donors before taking to the streets. More likely encouragements to protest were the fall of the Berlin Wall in 1989, followed soon by the demise of several authoritarian heads of state in Eastern Europe; the release of Nelson Mandela from prison in 1990; and the wave of democratization that spread across much of sub-Saharan Africa in the early 1990s. Numerous Kenyan activists interviewed for this study cited these factors as encouraging their own activism.

For a few years in the early 1990s, there was a feeling that authoritarian regimes were on the run. In 1989, only five African states had what might be called democracy, with more than one political party and contested elections.² By 1995, three out of four African states had “competitive party systems”³ of one degree or another (Wiseman 1996, 1-2).

Despite mounting abuse of human rights by the Kenya regime in the months leading up to the freeze in late 1991 on new funds, donors were often inconsistent, sometimes increasing funding, sometimes slowing it down; some donors praising the regime, others condemning it. It was only after dramatic mass public protests that they finally united, temporarily, to cut off funds.

² The five were Botswana, The Gambia, Mauritius, Senegal, and Zimbabwe. A military coup in The Gambia ousted the government in July 1994. Zimbabwe’s leader Robert Mugabe later turned autocratic and abusive of human rights.

³ Wiseman (2) defines a fully-fledged single-party state as one in which “only one political party is allowed, by law, to exist and, where elections take place, participation is confined to members of the party.”

There is evidence of informal, diplomatic encouragement from the United States and the United Kingdom of institutionalization of domestic resistance. Through much of 1990 and 1991, the United States, particularly U.S. Ambassador Smith Hempstone, complained, sometimes publicly about human rights abuses. A political officer at the U.S. embassy suggested to one Kenyan activist that formation of a unified opposition group would be a good idea.⁴ The British were more quiet about any disagreements with the Moi regime, however, although two activists met with a British politician who encouraged them to organize a civic forum of the kind formed in Czechoslovakia and East Germany prior to 1989 (Throup and Hornsby 1998, 76).⁵

Hempstone warned the Moi regime in May 1990 that future aid money would likely be concentrated on nations supporting human rights and democratization.⁶ And the United States was beginning to back up his words, holding up funding: first \$5 million in August 1990, then \$25 million in November specifically pending human rights reforms. But signals from the donor community were mixed, as the table below shows.

The U.S. freeze of \$25 million in late 1990 was followed a week later by a promise from donors in the so-called Paris Club of \$1 billion in new aid, with no mention of human rights abuses. Then in

⁴ Raila Odinga, in an interview with the author in Nairobi, Kenya, October 2002. Odinga said he met with the American diplomat in June 1991.

⁵ Throup and Hornsby (1998) provide one of the most detailed accounts of political resistance and government manipulation in the critical period of 1990 to the 1992 Presidential election.

⁶ Ambassador Hempstone's remarks came at the end of a speech to the Rotary club in Nairobi. He said that "a strong political tide is flowing in our Congress, which controls the purse strings, to concentrate our economic assistance on those of the world's nations that nourish democratic institutions, defend human rights, and practice multiparty politics" (Hempstone 1997, 91). His remarks provoked a barrage of criticism from officials in the ruling party, the Kenya African National Union (KANU).

By coincidence the same day as Hempstone's speech, two former KANU members who had served in President Moi's cabinet but had resigned and been expelled from the party, Kenneth Matiba and Charles Rubia, held a press conference calling for Kenya to move to a multiparty system. They were later detained.

January 1991, the U.S. switched its own signals. With the start of the Gulf War, the U.S. was now looking for ways to help the Kenyan government, with an eye to possible use of its ports in the conflict. The U.S. moved to cut some of the debt owed to it from Kenya; the Danish promised new aid.

Next month donors were complaining about the arrest of activist Gitobu Imanyara, who by now had developed numerous contacts with journalists and human rights organizations in Europe and the United States. By August, however, the donors were once again giving the regime mixed signals; some were linking aid to reforms, while the British went out of their way to praise President Moi.

Donors as a whole failed to use their aid leverage for reforms collectively except for the dramatic cutoff in late 1991. Inconsistency in the use of donor aid as a leverage for reform not only slows the institutionalization of resistance, it can send signals to the abusive regime that it need not make major reforms in order to keep money flowing. Geopolitical needs of donors are also likely to trump any intended penalties against abuses against an ally needed allies in any regional conflict.

Over all, donor assistance to Kenya had been increasing from 1987 to 1991. But in late November 1991, shortly after the disrupted, pro-multiparty rally Martin Shikuku and others helped lead, bilateral donors meeting in Paris decided as a group to freeze some \$350 million in new aid pending reforms.⁷ According to the World Bank press release, donors conditioned a resumption of aid to the “early implementation of political reform,” which included “greater pluralism, the importance of the rule of law and respect for human rights, notably basic freedoms of expression and assembly, and... firm action to deal with issues of corruption” (as noted in Brown 2000). They did not ask for multi-party elections, though some observers felt this would be necessary (Barkan 1993: 91).

⁷ One year earlier Western donors had considered reducing their aid to Kenya, “which financed nearly 30 percent of government expenditure (Throup and Hornsby 1998, 74).

Development aid to Kenya 1987-2002

Year	Dollars (millions)	Donor Actions	Regime Concessions and Abuses
1987	753	87-90: aid increased	torture; detention
1988	954		torture reduced
1989	1,092		detentions reduced
1990	1,615		protests suppressed
1991	1,102	donors freeze funds	protests suppressed multiparty accepted
1992	987		multiparty election
1993	870	Inconsistent aid	
1994	731	flows send ambiguous	
1995	1,021	signals to regime	rights abuses continue
1996	743		
1997	448	IMF freezes funds	protests suppressed; constitutional reforms
1998	415		
1999	310		
2000	512	donors freeze funds	Corruption
2001	452		Corruption unaddressed
2002	n.a.		Rallies suppressed; Moi allows election on time

Source: World Bank study for 1987-1996; Organization for Economic Co-operation (OECD) for 1997-2001; Human Rights Watch World Reports 2002 and 2003.

Note: n.a. = not available

The 1991 freeze was one of only two major freezes in donor funding during the study period (1987-2002).⁸ A World Bank official at the 1991 donors' meeting recalls that the main concern at the meeting was Kenya's poor economic performance but that donors also wanted Kenya to adopt a multiparty system.⁹

Donor leverage impact limited. Overall, conditionality of donor aid did not have a major effect on reform implantation in Kenya, according to a study by the former head of the World Bank team in Kenya at this time and coauthored by a former senior financial and economic official in the Kenyan government (O'Brien and Ryan 2001). The study found that "donor aid can have an influence on the form of agreement reached and on the agreed timetable for implementation, but whether implementation is carried out depends in the end much more on domestic political and economic factors than on donor money."¹⁰

⁸ The first freeze lasted from November 1991 to mid-1993, though some donors, including France, increased funding before that. The second major halt in funding was in mid-1997 by the International Monetary Fund (IMF) came amidst mounting public demonstrations put down with police violence in which a number of protestors were killed. Three years later the Moi regime and the IMF had still not reached a new agreement.

⁹ Stephen O'Brien, in e-mail communication with the author, June 2002. The freeze of funds resulted "from concern primarily over poor economic management and corruption and from the desire to force Kenya to adopt a multiparty political system," according to O'Brien.

Another official at the meeting, a governance official who has worked for the World Bank, says he can not recall anyone at the meeting mentioning "human rights," though there was talk of the need for better "governance," which was understood to include "basic human rights such as freedom to associate, freedom to assemble, and freedom of access to information" (e-mail communication with the author from a governance official who worked with the World Bank and requested anonymity, January 2003).

According to the World Bank press release at the time, donors conditioned a resumption of aid to the "early implementation of political reform," which included "greater pluralism, the importance of the rule of law and respect for human rights, notably basic freedoms of expression and assembly, and... firm action to deal with issues of corruption" (Brown 2000). Although donors did not require multiparty democracy, the repeal of the constitutional ban against more than one party was necessary, according to one scholar who focuses on Kenya (Barkan 1993: 91).

By 1995 aid levels were back to approximately the same levels as just before the freeze and yet many of the democratization reforms that one would expect to have accompanied a change from a one-party system to a multiparty system, such as freedom of speech and assembly, were still significantly limited by the regime.

A key study of the role of donors in Kenya's move toward greater respect for human rights and democracy argues that "[i]n the case of Kenya, the reform movement was mainly domestically driven, with donors lending their support after a critical mass had already been achieved and actually discouraging more fundamental political reform"(Brown 2000, 459).

The role of donors in Kenya pushing for reforms was not only inconsistent; it may have slowed Kenya's transition toward democracy. Brown argues that the funding freezes of 1991 and 1997 did help push the Moi regime to make concessions. But he adds, "[d]onors twice knowingly endorsed unfair elections [which Moi won in 1992 and 1997] (including suppressing evidence of their illegitimacy)"¹¹

¹⁰ The study was by Terry C. I. Ryan, of the University of Nairobi and former senior Kenya Treasury official; and Stephen O'Brien, a former head of the World Bank delegation in Kenya. The study focused on aid to Kenya between 1980 and 1998.

"Certainly Kenya has received massive amounts of aid over a sustained period of time, more than US \$15 billion between 1970 and 1996. This substantial flow of financial and technical assistance has given donors leverage, but much less than the aggregate numbers might suggest," the authors note. Several World Bank staffers calculated the grant-only portion of aid to Kenya and found that it was some \$4 billion or 25% less than the \$15 billion which counted loans and grants. That means the government "*sees*" less tangible benefit from the aid since loan repayments pose a financial burden, the report notes.

The study stated: "On balance, we conclude that government ownership and political will have more to do with the timing, extent, and sustainability of the reform program than does the volume of donor aid."

¹¹ Brown notes that the internal version of the final report of the Election Observation Centre (Kenya General Elections 1997: Final Report for Donors' Democratic Development Group, Nairobi, January 1998, i) includes the following sentence: "...the irregularities in the poll and count were so great as to invalidate the elections in these particular constituencies [eight] and consequently, the legitimacy of the overall KANU majority in the National Assembly." But at "the behest of Canada, France, the USA and especially the UK," the sentence was deleted in the public version of the report. "In other words, *donors*

and repeatedly undermined domestic efforts to secure far-reaching political reforms, which were a prerequisite for an opposition victory and a full transition to democracy” (Brown 2001, 725).¹²

Donor aid also had mixed results when it came to promotion of human rights in Kenya. Kenyan human rights activists have been helped and protected by international networks but those same networks also had some negative, long-term consequences. The networks operated on a vertical basis and did not develop broader horizontal support. This actually left the human rights movement in Kenya weaker than it might otherwise have been (Schmitz 2001).

While some human rights activists in Kenya stated that there was horizontal cooperation among organizations, that cooperation may have been more superficial than substantial. Activist journalist David Makali, who headed the Media Institute in 2002, a private watchdog NGO, noted that human rights advocates in Kenya did get together for meetings. “We got together, planned and [made] proposals and [for example] said we are going to look for funding, all of us, and...publish a journal...[but] nothing happened,” Makali emphasized loudly. “Nobody follows through.”

Makali attributed this lack of coordination not to donors but to what he calls “destructive individualism. And it permeates in the opposition, politics, and everything, in the political parties...It is human nature, I think. Human nature doesn’t allow sacrifice; the egos ...have been standing in the way. It will be a long time before we overcome that individualism that blocks all our initiatives.”¹³

One study of the effectiveness of foreign donors on the democratization process of developing countries concluded that the impact was minimal and often makes false claims related to causation. “In

deliberately suppressed evidence that KANU had not legitimately won a majority in parliament” (Brown 2000, 735; emphasis in original).

¹² Brown’s paper stems from his 2000 dissertation at New York University: *Donors’ Dilemmas in Democratization: Foreign Aid and Political Reform in Africa*.

¹³ David Makali, in an interview with the author in Nairobi, Kenya, September 2002.

any society, the political environment is a swirl of events, institutions, personalities, processes, attitudes, and trends. It is rarely possible to know with any precision how external influences affect internal factors to produce political outcomes” (Carothers 1999, 283).

IV Domestic Pressure for Reform in Kenya: a Micro-analysis of Process

Detecting the role of domestic activism in winning concessions in an authoritarian state is not easy; it cannot be done through statistical analyses or from afar. A macro approach is not likely to unearth the sequence of minor events that add up to significant pressure. The role of domestic activism emerges from a close, on-the-ground analysis of events leading up to reforms. Where the observer from afar and using macro-analysis may easily conclude that international pressures are the key to reforms, quite an opposite conclusion may be reached through a micro-analysis, or case study approach, especially one involving interviews with principal participants and others who can assess domestic activism, as the larger study from which this paper is drawn does.

One of the few macro-studies of political protest in Africa did come to the conclusion that “international and economic factors played supportive but essentially secondary roles in explaining political protest in Africa” (Bratton and Van de Walle 1997, p.139). But given the nature of such an archival study, it was unable to explain the dynamics of resistance that a case study can.

In both 1991 and 1997, when donors united to freeze new funds to Kenya, their actions followed rising domestic resistance. Had the funding issue been pivotal, the regime would likely have moved swiftly to meet the demands of the donors, which were primarily economic, not political in 1991. Yet it took the regime approximately two years after the 1991 cutoff to come to a new agreement and approximately three years to reach agreement after the 1997 cutoff.

The 1991 freeze followed mass demonstrations and violent suppression of them by the regime; the 1997 funding freeze by the IMF followed a series of domestic protests, brutally put down by police with numerous deaths of civilians. Following this, the regime agreed to partial constitutional reforms. It is an argument of this study that what really worried the Moi regime was not the prospect of delayed or lost international funding, or even being painted as a violator of human rights norms, but the prospect of losing control domestically to mass uprisings and possible armed resistance.¹⁴ By 1997, domestic resistance, revived after a lull between election years, was so intense that it largely replaced whatever role international support for reform might have had in 1991.

In Kenya, a principal of accumulating pressure was at work. Domestic activist pressures on the regime, public turnout at the attempted pro-pluralism rally in Nairobi, at Kamakunji by the emerging new political party, the Forum for the Restoration of Democracy (FORD) in November 1991, and the subsequent freezing of funds by donors were followed by the regime's first major concession to the growing activism, a decision to allow multiparty politics. On the surface, the close timing of that concession with the international donors' freeze of funds less than a week earlier is usually credited with achieving this first major reform. But a closer look at the details surrounding that decision and the events leading up to it show that it was domestic, not international pressure that was the most critical factor in winning the concession of a switch to multi-party politics.

The timing of the aid freeze in 1991 and Moi's adoption of multiparty politics, one of only four major concessions during the study period,¹⁵ is so close that there was at least correlation. But as this

¹⁴ Though beyond the scope of this paper it is worth noting that the regime-backed violence against opposition ethnic groups in the early 1990s (armed attacks; burning of homes; forced expulsions) tapered off dramatically soon after a few incidents in which Kikuyus armed themselves against such attacks and amidst rumors of further armed resistance.

¹⁵ The other three were (1) the decision in 1987 to sharply reduce the use of torture and detention of prominent accused dissidents; (2) agreeing in 1997 to constitutional amendments passed in Parliament

section of the paper will show, the events leading up to that concession show that domestic unrest was by far the greater concern to the regime, not funding.

For one thing, the donors were not asking for political reforms but economic ones at the Paris meeting. The President was not being asked to initiate multi-party elections, though U. S. Ambassador Hempstone had suggested that competitive elections were the next logical step on the road to greater democracy in Kenya.

But the President was not watching donors; he was watching the building domestic unrest in Kenya. He knew that a series of economic reforms would not appease the increasingly vocal calls from opponents for multi-party elections. The mass turnout for an illegal opposition party rally, not the freeze on new funding by donors, posed the larger threat to Moi's continued rule. He surprised even his own party at a scheduled meeting in December 1991 by announcing that Kenya would have multi-party elections in late 1992.¹⁶

The prospect of a united opposition behind a single candidate posed the possibility that the President would not be re-elected. A constitutional provision designed by the still one-party Parliament after President Moi conceded to multi-party elections was aimed at putting opposition parties at a disadvantage by requiring the winning candidate for President to receive at least 25 percent of the vote in five of Kenya's eight provinces. The idea was that none of the main opposition candidates had national appeal while the ruling party could garner enough votes in five provinces to qualify.

to drop most restrictions on freedom of speech and assembly; (3) allowing an orderly election to take place on schedule in 2002, despite built-in electoral advantages to the ruling party.

¹⁶ A former senior aide to the President who spoke with him on the morning he made his surprise announcement at the Party conference that he had decided to allow multiparty elections, said that the President still had not revealed that morning what he was going to do.

The freeze in donor funding paled in importance to the need for President Moi to build up enough campaign funds to win over as many voters as possible. The few indirect benefits from foreign aid in terms of possibly swaying voters were small. Given implementation delays, it is unlikely that many new projects would have been brought to fruition by election time anyway. A much larger funding issue was having money to hand to key members of the ruling party who in turn would pass out funds to voters and others in the Moi network. One way the regime built up campaign funds was through a series of bank scams.

Activism. Activism in an authoritarian state involves resistance which a regime considers illegal, such as unlicensed political rallies. Such resistance draws public attention and support if it alerts the general population to abuses, especially as initial concessions are made by the regime. Challenges to a regime and concessions by the regime encourage more people to protest to gain further reforms. But informal resistance carries risks of failure. If few people turn up for a rally, the regime can claim there is little support for political change.

In the late 1980s, in the face of domestic resistance, often led by individual activists at first, with some international publicity, the regime had reduced its use of torture of detainees and the practice of detention itself. But political activists such as Matiba and Rubia were detained in 1990 for their role in organizing an unlicensed political protest rally. The number of political prisoners remained high, many of them having been tortured into confessions in the crackdown on suspected members of Mwakenya, an underground resistance movement. Critical publications were periodically shut down with force. Regime behavior remained erratic and arbitrary and always defensive regarding challenges to the authoritarian power of the President.

Through this period, the regime and activists had matched wits as they had during the earlier phase of activism. Each time the other side tried to advance, in terms of more repression or more

activism, the other side would respond. A learning process developed, with each side learning from the other regarding tactics and counter-tactics, but as individual activism gave way to organizational activism with the arrival of multi-party politics, activists had at least some semblance of organizational backing. And the game had more players, including opposition parties and newly-emerging NGOs.

A key illegal rally planned by two individual activists, Kenneth Matiba and Charles Rubia, for July 7 (Saba Saba in Swahili) in 1990 to support a change to multiparty politics was broken up by police. Such informal resistance poses a serious threat to the legitimacy of a regime and is thus likely to be repressed. It defies the regime's orders and calls on the general public, not just a small band of activists, to come out and express their displeasure. The Moi regime went to great trouble to try to prevent, then to break up the intended rally.

The intended rally, the first such public challenge of its kind to the Moi regime, came after some minor successes won by individual activists using the formal channels of resistance – namely the courts. Those victories, small but symbolically important, not only helped win reforms but signaled to the country, that activism could be effective. Internationally the fall of the Berlin Wall in late 1989 had encouraged activists in Kenya and across Africa to begin to speak out in favor of more human rights and competitive elections.

A quantitative analysis of such rallies would serve little purpose. Their importance is not in the frequency. Head counts would be unreliable because of the way crowds ran about dodging attacking police. The importance of such rallies lies in the fact that they received massive newspaper coverage and triggered strong reactions by the President, who obviously saw the importance of such support for change.¹⁷ The suppression of such rallies also brought strong condemnation from a number of donors to Kenya, including the United States.

The 17 months between the aborted Saba Saba pro-democracy rally of July 1990 and the decision by the President to adopt multiparty politics in December 1991 was a period of transition between individual activism and organizational activism and involved elements of both. There was evidence of a growing public anger at the way the Moi regime was running the country. Both sides, the regime and the activists, began to look for ways to harness this public anger, to channel it, to institutionalize it to their benefit.

The evidence of public anger was clear. Immediately after the aborted rally of 1990, where crowds defied the Presidents warning not to show up and had been driven away by baton-swinging police, there were riots across parts of Kenya. When popular and outspoken Bishop Alexander Muge, a member of President Moi's own ethnic group, was killed in August 1990 in a vehicle crash the next month, there was more public anger. Many Kenyans suspected the crash was no accident. And in September that year, the regime came under heavy criticism in the press when it refused to release a report by Scotland Yard that its author later testified pointed to two top aides of President Moi as suspects in the 1990 murder of popular Minister of Foreign Affairs Robert Ouko.¹⁸ Reports were published in the local newspapers that Ouko had been on the verge of documenting corruption by one of the aides.

¹⁷ Interviews the author conducted with participants at the time of a second rally, in November 1991, known as the Kamakunji rally for the site where it was held, indicated a depth of anger at the regime and a willingness to face likely police brutality for showing up at the event.

¹⁸ *Weekly Review*, November 29, 1991. At the commission set up by President Moi to investigate the murder, Scotland Yard Detective John Troon, who headed the Scotland Yard team the President earlier had asked to come investigate said: "...I cannot rule out either of these two gentlemen – [Nicholas] Biwott and [Hezekiah] Oyugi – or eliminate them from the death of Dr. Ouko. Those are my principal suspects. There may well be others involved on the periphery but certainly those two gentlemen are my principal suspects."

Immediately before the Paris Club meeting of donors in November 1991, President Moi arrested these two senior Kenyan aides to the President, releasing them shortly after the meeting.

In 1990 and 1991, the regime would have been hard-pressed, its institutional capacity strained, were it to have tried to quell the rising popular sentiment against his regime. Instead it chose to try to appease the public through a series of national hearings chaired by the Vice President on the conduct of the ruling party. The hearings surfaced further public discontent, however. Several activist clergy members sought a way to institutionalize the anti-regime sentiment surrounding the aborted Saba Saba 1990 rally. They wanted to try to shift the resistance from rather chaotic mass protests in the streets to a longer-lasting and more broadly representative forum; they called for a national convention to remap Kenya's political system.

As 1991 began, Gitobu Imanyara, a human rights advocate and attorney, sought an even broader way to formalize the resistance: he sued in Kenyan court to allow multiparty elections, claiming that a single party limitation violated free speech rights protected by the constitution. This was the first time the growing demands for competitive politics had reached a court. The Moi regime responded to this fundamental attack on its power by reverting to its former pattern of detaining perceived troublemakers. But Imanyara's detention prompted further outcries from domestic activists and brought down international criticism on the regime as well.

From about 1987, when overt resistance to the Moi regime resurfaced after a period of covert opposition following a brutal crackdown on dissidents, individuals often took the lead. Few organizations were recognized or felt safe enough to speak out except for the churches and, occasionally, depending on the current leadership, the Law Society of Kenya (LSK) and other legal professional groups. But by early 1991, organizational resistance was increasing as demands for greater human rights and democracy grew in Kenya and many parts of Africa.

Moi faced further legal challenges when attorney Paul Muite, as chair of LSK, called for repeal of detention laws. The Catholic Church made a similar demand. By mid-1991, the regime was facing a

convergence of domestic forces from organized civil society including the professional middle class (mostly lawyers), churches, former politicians now in the opposition, some business leaders, and from an angry, unorganized public.

Modern civil society¹⁹ in Kenya at the beginning of the 1990s was still fairly weak due to regime control and co-option tactics. But it flourished after 1992 as the government allowed pluralism and more NGOs to form and as donors stepped forward to help fund them.

In the 1990s, human rights and other pro-rights and pro-democracy NGOs began investigating abuses and reporting them and to educating the public about their civil rights, often attracting international funding. This had a double ripple effect: (1) it kept human rights abuses before the Kenyan domestic public and international donors; (2) it helped rouse the dormant understanding of the Kenyan public about what rights they had, especially after the legalization of opposition parties. A national network of human rights activists was nurtured by Nairobi-based organizations that helped establish grass roots support for reform.²⁰

In 1991, a more serious challenge than the Matiba-Rubia pronouncements of 1990 about the need for opposition parties emerged. This time instead of two Kikuyu politicians, the challengers represented

¹⁹ In his study of the impact of foreign aid on democratization, Thomas Carothers argues that Western democracy advocates often overlook the subtle mix of civil society that does not fit the usual Western, institutional definitions:

“The romanticization of civil society has roots in Americans’ rather mythicized Tocquevillean conception of their own society, but it entails a gross oversimplification of the makeup and roles of civil society in other countries around the world. American democracy promoters have made few efforts to understand civil society on its own terms in complex traditional societies in Africa, Asia, and the Middle East. They basically ignore the many layers of clans, tribes, castes, village associations, and the like as essentially unfathomable complexities that do not directly bear on democratic advocacy work. Democracy promoters pass through these countries on hurried civil society assessment missions and declare that “very little civil society exists” because they have found only a handful of Westernized NGOs devoted to nonpartisan public-interest advocacy work on the national scale.” (Carothers 1999, 248-249).

²⁰ Mutuma Ruteere of the Kenya Human Rights Commission, in an interview with the author in Nairobi, Kenya, September 2002.

a number of key ethnic groups, including Kikuyu and Luo, the political combination the regime most feared.

There had been many behind-the-scenes discussions preceding the two Matiba-Rubia press conferences in 1990, but no lasting organization resulted. This time an organization, the Forum for the Restoration of Democracy (FORD), emerged from many conversations and plans behind the press conference in July 1991 which announced the start of a group to unite various opposition factions.²¹ It was clear from the start that this was the nucleus of a political opposition party. But by limiting the number of identified founders, they escaped the law then in effect which required government registration.

The creation of FORD marked a turning point in the resistance movement in Kenya. “The strategy here was to widen the allies, to increase the momentum, to up the stakes, to get more people involved in the drive for pluralism, ”according to activist attorney Muite, a key architect of the plan and part of a group of activists known as the Young Turks.²² But it was members of an older, respected generation of politicians who stepped forward as FORD’s original members, which they did at a press conference July 4, 1991 announcing its formation.²³

²¹ In separate interviews for this study, several organizational political activists claimed credit for launching FORD, including James Orengo, Raila Odinga and Martin Shikuku. Orengo said it was his idea to form a civic group not to exceed nine members so that the group would not have to seek formal registration as a society under restrictive laws at the time and in view of the failure of Odinga Odinga to register an opposition party. Shikuku said he was the one who helped bring people into the group that became FORD; but Raila Odinga said he was the one who invited Shikuku to join the organization in the first place.

Odinga’s version of events is cited by Throup and Hornsby 1998, 78, who attribute it to a Weekly Review article of April 3, 1992. Shikuku said he contacted others to join the group. And he ended up attracting international attention when he was chased by police in a vehicle after the rally was violently aborted by security personnel.

²² Paul Muite in an interview with the author in Nairobi, Kenya, September 2002.

Major rally. FORD's leaders quickly called for a national rally, which they scheduled for November 16, 1991 at the same location as the aborted multiparty rally of 1990, in Nairobi at Kamakunji, an historic site for political speeches located in a low-income area just off the city center. They challenged the legitimacy of the regime by declaring the peoples' right to assemble and support an end to one-party rule, ignoring threats by the regime to forcefully prevent the event. Although the Moi regime quickly declared the new FORD organization illegal and warned the public against participation in the rally, the momentum for change was increasing. Some details of this event are important because they reveal the public mood and the tactics of the still-illegal political opposition, soon to be free to institutionalize their dissent through formation of legal parties.

The morning of the intended rally, large crowds began heading toward the site. Police and paramilitary forces were on the streets leading to the rally and at the site itself. Starting the night of Nov. 14, the government began a sweep to arrest the organizers of the rally, snagging Oginga Odinga and Imanyara, among others. Muite, Masinde Muliro and Martin Shikuku went into hiding; Shikuku took refuge at the home of Fred LaSor, public affairs counselor at the United States Embassy (Hempstone 1997, 251).

To emphasize their united stand in favor of free speech and democratization, German Ambassador Bernd Mutzelberg and U.S. Ambassador Hempstone (Ambassador from 1989 to 1993), jointly met with Bethuel Kiplagat, Permanent Secretary in the Ministry of Foreign Affairs, to protest the arrests. Both of the Ambassadors had infuriated President Moi by their repeated, blunt criticism of the regime and their endorsement of democratic reforms.

Ambassador Hempstone, admired by most activists as an outspoken and sincere ally in their quest for pluralism, offered to try to broker a compromise between Moi and the FORD team, seeking to get

²³ The original members of FORD included: Oginga Odinga (Raila's father), Martin Shikuku, Masinde Muliro, Philip Gachoka, George Nthenge, and Ahmed Salim Bamahriz.

the President's agreement for a rally at a specific date and site to be agreed upon by the two sides, but the negotiations fell apart when the government was unwilling to make any compromise (Hempstone 250). Germany recalled its Ambassador temporarily in protest over the arrests.

Regime's violent response. Crowds arriving at the rally site were met by riot police who attacked. Having escaped a police dragnet just before the rally, FORD founders Shikuku, Orengo, Muliro and Philip Gachoka, made a brief appearance at the rally site before being driven off through the streets of a working class neighborhood nearby. Shikuku climbed atop a small pickup truck, sitting with his legs hanging down toward the driver's window, arms raised overhead in the two-finger salute that signaled support for opposition parties. Orengo rode in the open back of the pickup along with others.

There couldn't have been a clearer symbol of defiance at the moment, a symbol witnessed by crowds along the way. It was also a dangerous gesture: he was exposing himself to any gunfire by pursuing police or other supporters of the regime along the way. Shikuku and Orengo, in separate interviews, later stated that shots had been fired at them. Shikuku explained their defiance:²⁴

We were determined; we were ready to die. Who would see us inside the pick up? And of course the masses were there and they wanted to see their leaders coming. We didn't want to have that repeat of the Saba Saba where...Mr. Matiba and Rubia got cold feet [and called off the multiparty rally in July 1990].²⁵

Photos of the dramatic police chase, with Shikuku riding atop the vehicle flashing the multiparty sign were splashed all over the domestic media and made its way into the international press. One of Kenya's individual activists, Rev. Njoya described the events shortly after they happened as a

²⁴ Martin Shikuku in an interview with the author in Nairobi, Kenya, July 2002.

²⁵ Matiba and Rubia did call off the rally. Rubia explained in an interview with the author (in Nairobi, Kenya in October 2002) that this was done because the government had not issued a permit for the rally. A few hours after their decision to call it off, they were detained by police.

“milestone.” It brought together a lot of people – thousands from all directions of the city. It shows also the confidence people have with the alternative to what we are having now – autocratic and dictatorial leadership” (Press 1999, 115).

Major concession. A few days later, donors meeting in Paris imposed a freeze on new funding to Kenya pending reforms. A few days after the Paris meeting, on December 2, 1991, President Moi addressed a national conference of KANU. After a number of delegates, including several top party officials among the approximately 3,600 attending had soundly denounced the idea of abandoning a one-party system, the President rose to speak. Toward the end of his remarks, he stunned delegates by announcing that the provision of the constitution making Kenya a one-party state would have to be dropped.

It was soon apparent to most Kenyans, however, that the regime had no plans to allow the kind of freedom of speech and assembly and other rights normally associated with a democratic government, despite that fact that the first multiparty presidential elections were held in 1992. The regime continued to harass opposition politicians, breaking up rallies and even arresting some outspoken members; critical NGOs were under verbal and sometimes physical attack; torture continued to be used on common criminals; and the President was dragging his feet on constitutional changes that could reduce his powers.

Organizational activists played a game of tactics with the regime from 1991-1996. Each side was trying to counter the moves of the other, each side learning from the other. Strategies shifted among activists and the regime, but the goals of each side did not: activists wanted power; the regime wanted to keep it. Ideologies would play only a minor role in the game; the main struggle now was over who would control the country

Regime repression blocked formation of most advocacy groups before 1992. But after the switch to multiparty elections in 1992 there was a proliferation of NGOs, including many advocacy groups. Despite continuing selected repression of individual activists and key advocacy groups, organizational activists operated in a climate of expanding exercise of freedom of speech and assembly, with some opposition activists in Parliament, and with the drawing power of opposition political rallies, despite regime attempts to block many of them.

By 1997, international support for reforms had weakened; donors supported only “minimal reforms” (Brown 2000, 275) and were more focused on corruption than human rights or democracy. It was only after activism was renewed in that election year and ran into regime repression (some demonstrators were killed) that donors reacted. After the regime’s violent repression of demonstrators, the IMF froze new funds, pending reforms.²⁶

By one interpretation, the aid freeze “prompted KANU to seek an accommodation with the opposition parties” (Brown 2000, 285). This paper has argued, however, that it was the domestic resistance and not the international funding cut-offs that was the main pressure moving the regime to make concessions as in 1991 in the face of rising public protest despite repression.²⁷

²⁶ In January 2000 the IMF and World Bank again set anti-corruption conditions that the Kenyan government had to meet and withheld new funds from January 2001 until it did. But two years later Kenya had still not met the conditions and was instead accusing lenders of “shifting goalposts” when they added other conditions. In March, 2001, nineteen diplomatic missions urged Kenya to respect the constitutional review process, which further angered President Moi.

²⁷ In a flattering biography of Moi, the author writes: “While wider democratization and economic liberalization have dramatically changed the social landscape of Kenya, the pace of this change has been dictated as much by the World Bank, the IMF and the international donor community as by the country’s sovereign government” (Morton 1998, 183). Morton, however, did not interview Moi. Further, the President never credited anyone – domestic or international critics – with influencing his regime.

Activists might have ended up with nothing more than a popular constitutional convention in 1997 had it not been for their series of public marches in support of a new constitution. After repeated attacks by police, in which dozens of marchers were killed, and after domestic and international publicity on the violence, the President made what most Kenyan activists concede were several politically shrewd moves.

First, he invited the clergy to leave the coalition of reformists and assume a neutral, mediating role between them and the government. But as soon as they had pulled out of the reform movement, they were ignored by the President. Having neutralized the clergy, he then lured opposition members of Parliament away from the reform movement by offering to strike a deal in Parliament on key constitutional amendments. Most of the politicians jumped at the chance to achieve some changes they could campaign on for re-election. President Moi backed the establishment of an Inter-Party Parliamentary Group (IPPG), which brought KANU and opposition parties into dialogue that resulted in the rapid dropping of key constitutional limits on freedom of speech and assembly that, in theory, would make election campaigning easier since police routinely blocked many opposition rallies and speeches. But it also brought to a stop the drive for a new constitution and demands for reductions in the disproportionate powers of the President.

Donors who had been helping fund the constitutional reform efforts pulled back and expressed their support for a compromise in Parliament. Many activists considered the agreement by opposition politicians to participate in the deal a sell-out for the reform effort. It was a “betrayal” and the reforms adopted by Parliament were a ruse, a “safety valve which defused the steam pressure that had built up” for a new constitution that would reduce the President’s powers.²⁸

²⁸ Activist attorney Pheroze Nowrojee, in an interview with the author in August 2002 in Nairobi, Kenya.

By 1997, activist leaders attempted to merge the various strands of the resistance movement in civil society which previously had not been coordinated. But many NGOs, and particularly the opposition political parties, were not as robust in terms of personnel, planning and financing, as one might have expected in view of the vigorous public demonstrations. Many organizations were poorly-staffed, under-equipped, and lacking independent sources of financing apart from foreign donors, which made them vulnerable to the agendas of their benefactors. “Donor agencies and NGOs have often tried to do too much with too little resources and the impact of civil education, especially in rural areas has been exaggerated. The haphazard, ad hoc, and sporadic seminars and protests have not resulted in any meaningful constitutional or political change” (Murungi 2000, 206). The resistance did lay the ground for increasing domestic opposition, an opposition that eventually united shortly before the 2002 election to defeat the ruling party. Kiraitu Murungi, a human rights attorney active from the 1980s, became a senior justice official in the new Administration.

V. Conclusion

A culture of overt resistance took root in Kenya, starting around 1987. Activism in Kenya became both a dependent variable – spurred on by regime repression, as well as an independent variable, bringing pressure on the regime for human rights and democratic reforms. There would have been no concessions without this domestic pressure.

Before the Cold War ended symbolically in 1989 with the fall of the Berlin Wall, donors showed little interest in pushing for greater human rights or democratic reforms in a Western-oriented, market capitalistic country that was also a stable one. After the Cold War, donors showed more interest in both but only cut off funds after peaks in domestic resistance led to repression of protestors. Despite momentary unity among donors in 1991 when new funds were frozen pending economic reforms, the

Moi regime grew accustomed to the on-and-off approach of donors regarding interest in reforms. From 1988 through 1990, a period of intense repression by the regime, aid flows increased. And soon after the 1991 freeze, some countries resumed aid. Had funding cutoffs (in 1991 and 1997) been the primary concern of the Moi regime, it would not have taken two to three years each time to comply with donor demands for resumption of aid. A close analysis of the events leading up to those cutoffs shows that the domestic pressure and potential domestic unrest posed a far greater threat to the security of the regime than the loss of aid.

Regime concessions, few and incomplete and never fully- implemented, came not as a result of donor pressure but in the face of growing domestic pressure expressed through many channels and evidencing a mass weakening of support for the regime and a growing culture of resistance.

The lesson from such a case study for international relations and comparative research is to gather the details of what is happening on the ground and the sequence of events, plus both the local context and international dynamics and actions, before making conclusions about primary influence of international vs. domestic pressures for reforms in authoritarian countries.

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