



**CONSTITUTIONALISM AND POLITICAL STABILITY
IN ZANZIBAR:
THE SEARCH FOR A NEW VISION**

**A Report of the Fact Finding Mission Organised under the
Auspices of Kituo Cha Katiba**

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PREFACE

KCK sincerely thanks all the respondents who met the Mission, and spent their valuable time to discuss the *Muafaka* and its implications for positive constitutionalism and democratic development in Zanzibar. Their interaction was not only insightful but also extremely frank and enlightening, and productively contributed to the quality of the report. The Mission was particularly grateful for those kinds of opinions that generated a candid discussion of the issues with which this report is most concerned. Appreciation is further extended to the participants at the Dissemination workshop that was held on October 25th 2003. Their input reaffirmed most of the findings of the Mission.

This fact finding mission would not have been possible without the distinguished participation, diligence and focus of the Mission members who had to endure long working hours. Special thanks goes to the Chairperson of Kituo cha Katiba, Prof Chris Maina Peter and the consultant to the Mission, Prof Haroub Othman, for the exemplary coordination of the Mission meetings, and particularly for ensuring that the Mission was able to meet with a cross section of respondents representing a broad spectrum of opinion on the issues under investigation. Mr. Shafi Adam Shafi in translating the report into Kiswahili, has further enhanced the dissemination of the Mission findings to the grassroots person, whose participation in the dialogue is crucial for forging lasting peace, security, democratic and constitutional development in Zanzibar.

The efforts of the Secretariat of KCK, for taking the notes during the dialogue is highly appreciated, as is the work of Prof. J. Oloka-Onyango and Ms. Maria Nassali for reducing the great amount of information collected into this publication. The Mission and the expert editing team, including the Board members, Mr. Salum Toufiq and Ms. Muthoni Wanyeki whose participation enabled KCK to pre-test the findings was very resourceful. Last but by no means least, we

thank the Ford Foundation, through the offices of Dr. Tade Aina, for the support given for conducting the Mission and to the Friedrich Ebert Stiftung, through the good offices of Mr. Reinhold Einloft for publishing this report.

ABBREVIATIONS

ANGOZA	Association of Non-Governmental Organisations, Zanzibar
ASP	Afro Shirazi Party
CCM	Chama cha Mapinduzi
CCW	Chama cha Wananchi
CUF	Civic United Front
DFID	Department for International Development (U.K)
DPP	Director of Public Prosecutions
EAC	East African Community
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (German Technical Services)
G-55	A Group of 55 Union Parliamentarians who supported the 1993 Motion to establish a three-tier government system
JAZ	Journalist Association of Zanzibar
JKU	Jeshi la Kujenga Uchumi (National Service in Zanzibar)
JPSC	Joint Presidential Supervisory Commission
KCK	Kituo Cha Katiba
KMKM	Kikosi Maalum cha Kuzuia Magendo (Anti Smuggling Unit - Zanzibar)

NCCR-Mageuzi	National Convention for Construction and Reform
NEC	National Electoral Commission
OIC	Organisation of Islamic Conference
SADC	Southern African Development Community
TANU	Tanganyika African National Union
TEMCO	Tanzania Election Monitoring Committee
TPDF	Tanzania Peoples Defense Forces
TRA	Tanzania Revenue Authority
UN	United Nations
UNDP	United Nations Development Programme
ZEC	Zanzibar Electoral Commission
ZEMOG	Zanzibar Electoral Monitoring Group
ZLSC	Zanzibar Legal Service Centre
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar and Pemba People’s Party
ZUF	Zanzibar United Front

EXECUTIVE SUMMARY

This is a report of the Fact Finding Mission organized by Kituo cha Katiba (KCK) and conducted in Zanzibar over the period Sunday, March 30th to Sunday, April 6th 2003, with a follow-up thereto from Tuesday, May 6th to Saturday May 10th, 2003. The principal goal of the mission was to critically examine the *Muafaka* agreement as a basis for fostering peaceful constitutional development in Zanzibar, as well as assessing the progress made by the *Muafaka* initiative in Zanzibar. The Mission interacted with a cross-section of people representing the broad spectrum of political views on both the general state of constitutional development and on the *Muafaka* process in particular. The delegation met with government officials, the Joint Presidential Supervisory Commission (JPSC), members of both the governing and opposition political parties, a former President and Chief Ministers, current and former Zanzibar Electoral Commission (ZEC) members, officials of the Judiciary, NGO activists, academics, Parliamentarians, civil service retirees, religious leaders, youth, the media, the Tanzania Revenue Authority (TRA) and donors. The Mission held interviews at Pemba, Unguja and Dar-es-Salaam. Our findings are mainly concerned with issues of a constitutional or governance nature.

The Muafaka Agreements

While *Muafaka I* was a dead letter for a lack of political goodwill, the 2nd *Muafaka* has registered considerable success. This includes promulgation of the 8th and the 9th constitutional amendments; reconstitution of the Zanzibar Electoral Commission (ZEC) to include two members of the official opposition; establishment of the office of Director of Public Prosecutions (DPP); development of a cordial relationship between the leaderships of *Chama cha Mapinduzi* (CCM) and the Civic United Front (CUF), and enhanced access to the grassroots by the opposition.

However, *Muafaka* is not well constituted as a forum for wide constitutional debate and reform for the following reasons. There is a lack of popular participation in the process, being restricted exclusively to CUF and CCM. With the exception of the political party branch levels, there is no institutional framework to ensure the involvement of the people in the debates about reconciliation, nor in the progress towards its achievement. Furthermore, *Muafaka* is specifically tied to the electoral process and its outcome. The view of the Mission is that there is a need to address those historical questions that continue to affect the political situation in Zanzibar, and particularly the fundamental issues of the Union, democracy, human rights and the relationship between Unguja and Pemba.

Political Parties in Zanzibar

The role and place of political organizations and activities are central to the debate on constitutionalism in Zanzibar. Political affiliations on the islands are essentially divided between two parties, *viz.*, CCM and CUF. However, the Mission underscores the imperative of not reducing the problems in Zanzibar to a CCM/CUF issue, and also to appreciate that the issues of concern today are much more complex and intricate than historical legacies alone. What the Mission considers important is to ensure that the mechanisms of dialogue and give-and-take that were central to the operation of *Muafaka* and other mechanisms of dialogue and cooperation are institutionalised. In this way, those flash-points (like elections) that have previously provided much fodder for tension and violence can be substantively reduced and even rendered impotent.

The Union between Tanganyika and Zanzibar

Tanzania needs to have an honest and candid discussion about the Union. According to the vast majority of views heard by the Mission, while Zanzibaris definitely want a Union and accept the original Articles as the legal basis for the Union, they are largely dissatisfied

with several aspects of its current operation. While the ideals of the Union are not in dispute, there are different preferences for the form that the relationship should assume. The Mission found Zanzibaris to be extremely nationalistic and proud of their island heritage and culture, irrespective of political affiliation. Indeed, the Mission felt there was a widespread conviction that Zanzibar is a state, and the Union is widely regarded as an agreement between two sovereign states, and must be treated as such.

Unguja and Pemba: An Unequal Relationship?

There are a number of points of concern underpinning the relationship between the two islands that make up Zanzibar, namely, Unguja and Pemba. These relate to the economy, the distribution of infrastructure, power, and opportunities, such as state scholarships. There is also a widespread belief that there is latent discrimination against the people of Pemba in terms of the holding of state office. It is counter argued that there is no consistent pattern of marginalisation and that the dichotomy is both a superficial and an artificial political creation utilised by both CUF and CCM. Nonetheless, the Mission felt that it was important to present these views for further debate and analysis especially since enough respondents spoke of the matter for us to consider that it required specific attention. Further, the issue of who is a Zanzibari lurks beneath the surface of some of the political tension that exists on the islands, implying a need to revisit the issue in order to ensure that no individual or groups are disenfranchised on account of racial or ethnic considerations.

Government of National Unity

A Government of National Unity was supposed to be one of the outcomes of the *Muafaka*, however, the Mission found the idea to be contested for being outside the law, going against the mandate of the people who voted in the party of their choice and offering CCM

nothing to gain, as the party in power. On the other hand, such an arrangement is advocated for as an ideal temporary or interim measure in the quest for political harmony, given the lack of a clear-cut majority in Zanzibar.

Additionally, the success so far achieved through *Muafaka* demonstrates the usefulness and feasibility of CUF and CCM working together. The Mission feels that what this issue speaks to is a larger question than simply the government of national unity; it concerns the idea of equitable power sharing and of designing mechanisms to deal most appropriately with the stand-off that produced the pre- and post-election tensions in the past. More thought therefore needs to be given to ideas such as proportional representation and the decentralization of powers that are currently exercised by the central government. It is also necessary to give critical thought to appropriate mechanisms of affirmative action—whether of regions that might be more disenfranchised (such as Pemba) or for marginalized groups such as women, and the youth. Most importantly, the Mission notes that the key question is that of political goodwill. Without it, the conflicts and tensions will continue.

Institutional Framework for a Comprehensive Constitutional Dialogue

The Ministry of Constitutional Affairs' and Good Governance's Strategic Plan provides an opportunity to channel constitutional reforms in the Zanzibar constitution in a comprehensive fashion. Even without initiating a comprehensive dialogue, the Ministry can begin to play a role in expanding the democratic space, in terms of ensuring the protection of media rights, guaranteeing enhanced civic participation in the processes of governance and by conducting civic education. Furthermore, Zanzibari civil society needs to be strengthened to act as the true conscience of the people, and refrain from being polarized. The legal fraternity have a particular obligation to take up an activist

role in upholding and promoting the rule of law and good governance in the country.

Among the Main Recommendations of the Mission are the following:

- * There needs to be a comprehensive discussion of constitutional and governance issues in Tanzania that encompasses both the current constitutional instruments, as well the content of laws and regulations that do not pass the test of constitutional muster.
- * It is essential to have a frank, candid and comprehensive discussion of all aspects of the Union between Tanganyika and Zanzibar, with a focus not only on what the Union was intended to be, but also on what it has actually evolved into, and in which direction the peoples of Tanzania and Zanzibar want it to develop.
- * There is a need for a comprehensive *intra-Zanzibari* dialogue focusing on the specific aspects of Zanzibar’s constitutional and governance arrangements and specifically those issues (such as citizenship) that have the tendency to promote feelings of xenophobia and political persecution.
- * Mechanisms for civic and political education, and especially for the promotion of greater citizenship participation need to be put in place in Zanzibar.
- * The *Muafaka* Process is commended for providing a positive dispute settlement mechanism as well as a tool for progressive negotiations. The dialogue among the top party leadership should nevertheless be replicated at the village level.
- * The independence of the judiciary should be entrenched in the Constitution, through ensuring security of tenure and the creation of a credible and independent Judicial Service Commission.
 - CUF and CCM need to be more tolerant and appreciative of each other as political competitors. The Mission emphasizes that there is an acute need in Zanzibar to move away from the ‘winner take all’ attitude.

THE MISSION TO ZANZIBAR: ORIGINS AND INTENT

1.1 General Introduction

Kituo Cha Katiba (KCK) was established in 1997 with the mission of promoting constitution making and democratic governance in the East African Region. To this end, KCK provides a mechanism and neutral forum for activists, academicians and politicians to engage in dialogue, self-reflection and critical debate over a wide variety of issues that are of critical contemporary relevance. The ultimate aim of the organisation is to promote the active participation of civil society in the processes of good governance and to inculcate a culture of constitutionalism that strives to make the constitution a living document reflecting the aspirations and needs of the common people. KCK is governed by a Board whose members come from Kenya, Tanzania, Uganda, and Zanzibar. Its secretariat is currently located in Kampala, Uganda.

In 2002, KCK conducted similar fact-finding missions to Kenya and Uganda. Those exercises arose out of a genuine concern for East Africa as a region and the need for individual countries to succeed in their quest for progressive constitutional development. KCK believes that East Africans are best placed to deal with these issues not only shared histories and insights, but also given the wider vision for an East African political federation. Profoundly, the experience of the Union of Tanzania provides vital lessons for the current vision of the Political Federation of East Africa.

Impact of the Findings of KCK's Earlier Reports

In Kenya, the Mission aimed at initiating dialogue among all the stakeholders involved in the constitutional review process in that country. The Mission enumerated several factors that were in its view

significant to the Kenya process in general and the Constitution of Kenya Review Commission in particular, and provided recommendations towards the actualisation of its goals. These recommendations were well received. Indeed on subsequent visits, the basic infrastructure, such as district offices and information centres, equipment and publications had been put in place. In part on account of the Mission urging that there was a need for more action.

The main goal of the Fact Finding Mission to Uganda was to influence constructive debate over the political systems' as one of the most controversial issues of the constitutional review process. The proponents of the Multi-party political system in Uganda argue that the Movement "no-party" system of government, that is ostensibly based on personal merit rather than organised political action is detrimental to democracy and the protection of fundamental civil and political rights. On the other hand, the proponents of the Movement System argue that it has the constitutional right and mandate of the people of Uganda to remain in power, as determined by the 2000 Referendum on Political Systems. Among others, the Mission recommended the opening up of political space with the requisite establishment of the legal and institutional framework to guarantee political pluralism. The report of the Mission has been recommended as a reference book for parliamentarians by the Speaker of Parliament.

Methodology of KCK's Missions

The Missions undertaken by KCK are fairly qualitative, with interviews held within a period of two weeks, with a selection of respondents representing a cross section of the populace. These usually include religious leaders, members of Parliament, leaders of political parties, Constitution Review Commissioners, donor community, the media, government Ministers, political activists, cultural leaders, human rights activists, civic organisations leaders, academicians, the youth and the general public.

In order to stimulate honest discussion with the respondents and to promote objectivity to the Mission and the subsequent report, no person from a given investigated country is allowed to attend the Mission sessions with respondents. Neither is any respondent quoted on their submissions, given the sensitivity of most of the issues discussed. However, the respondents are informed of whom the Mission would meet and are given an opportunity to suggest other respondents with the aim of collecting balanced views.

After initial consultations, the draft Mission report is disseminated at workshops involving the wider society in order to solicit more input and for the final report.

The Mission reports have been regarded as a significant insight and guidance to the on-going discussions about constitutional development in the two countries. The reports of the Mission findings have constituted a firm basis for KCK to engage governments in an informed manner in the furtherance of positive constitutional development supported with empirical information. Furthermore, the Missions have helped KCK to use its regional placement as a conduit for negotiation between government and civil society, from a vantage point that is different from that provided by national organisations. These interventions have earned acclaim as a practical manifestation of the transition towards true East Africaness. The honesty with which the interviews are conducted is regarded as a successful enhancement of stakeholders confidence and trust.

1.2 Background on the Zanzibar Fact Finding Mission

This is a report of the Fact Finding Mission organized by Kituo cha Katiba (KCK) and conducted in Zanzibar over the period Sunday, March 30th to Sunday, April 6th 2003, with a follow-up thereto that took place from Tuesday, May 6th to Saturday May 10th, 2003. The KCK Mission to Zanzibar was generally well received. The various discussions held with politicians, activists, academicians and ordinary

members of the public were candid and revealing. Many respondents appreciated an East African intervention which they believed would stimulate more dialogue amongst the people of Zanzibar and help especially to foster further engagement between the government and the opposition. However, some skepticism was also expressed about the usefulness of such a Mission. The Mission was informed that the key issues had already been put on the table but had allegedly been ignored by the government of Zanzibar and the ruling party. In these circumstances the Mission was asked: How influential is KCK? Whose ears would the report reach? Of what utility would the report be?

The report catalogues the collective findings of the Mission. It is intended to place both the issues of consensus and controversy on the table, and to subject them to a thorough analysis by all interested parties. KCK considers this dialogue a small contribution by concerned East Africans towards furthering the process of dialogue in a bid to improve the political situation in Zanzibar, and ultimately in the East African region as a whole.

The Zanzibar Fact Finding Mission was prompted by the need to provide a regional perspective to the *Muafaka* initiative that has been afoot in the islands since 1998. The Mission was informed that *Muafaka* was the product of the search for a home-grown peace pact amongst the main contending political parties, viz., *Chama Cha Mapinduzi* (CCM) and Civic United Front (CUF). It is the sincere hope of KCK that the Mission will facilitate a process of dialogue and tolerance thereby promoting a forum for the amicable solution of the tensions in the country, and ultimately for the promotion of enhanced constitutionalism and democratic governance.

1.3 The Goal of the Mission

The principal goal of the fact-finding mission was to critically examine the *Muafaka* agreement as a basis for fostering peaceful constitutional development in Zanzibar, as well as assessing the progress made by the *Muafaka* initiative in Zanzibar.

The specific objectives of the mission were to :

- (1). Initiate a dialogue with all the stakeholders having varied interests and holding differing views in order to form a rational opinion about the process and prospects of constitutional development in Zanzibar;
- (2). Document the progress, challenges and lessons learnt by both government and the opposition during the peace process in Zanzibar, and to consider its potential for the enhancement of constitutional development in the country;
- (3). Provide a mechanism and neutral forum for activists, academicians and politicians to engage in dialogue, self-reflection and critical debate over the process of constitutional development in Zanzibar and to act as a conduit for negotiation between government and the opposition as well as with the general populace;
- (4). Provide regional support for constitutional development in Zanzibar, and
- (5). Enable critical actors in the ongoing constitutional review processes in the region to share experiences and learn from each other's best practices and mistakes.

1.4 Membership of the Mission

The Fact-Finding Mission was made up of prominent individuals from Kenya and Uganda, selected on the basis of their individual experiences with constitutional development in their own countries, as well as for their commitment to the objective of regional cooperation and political development.

The Mission comprised the following members:

- 1) Hon. Abubaker Zein: Member, Constitution Review Commission of Kenya (Mission Chairperson);
- 2) Ms. Jane Michuki: Board Member, Women & Law in Development (Africa) and Consultant on elections in Kenya;
- 3) Hon. Sarah Bagalaaliwo: Member of the East African Legislative Assembly (Uganda) and former Vice President, FIDA International, and
- 4) Prof. J. Oloka-Onyango: former Dean of Law, Makerere University and KCK Board member.

Ms. Maria Nassali and Ms. Edith Kibalama, respectively Executive Director, and Programme Officer of KCK served as secretaries to the Mission. Prof. Haroub Othman of the Zanzibar Legal Services Centre (ZLSC) facilitated as a consultant.

1.5 Synopsis of Persons interviewed by the Mission

The delegation met with government officials, the Joint Presidential Supervisory Commission (JPSC), members of both the governing and opposition political parties, Former President and Chief Ministers, current and former Zanzibar Electoral Commission (ZEC) members, officials of the judiciary, NGO activists, academics, Parliamentarians, civil service retirees, religious leaders, the media, The Tanzania Revenue Authority and donors. The Mission held interviews at Pemba, Unguja and Dar-es-Salaam.

1.6 Methodology of Interviews, Process and Reportage

The report of the findings of the Mission is highly qualitative, being essentially derived from the interviews held over the span of two weeks. Given the constraints of time, while it was not feasible to extensively interview ordinary Zanzibari citizens, the Mission managed to interact with a cross-section of people who by and large represented the broad spectrum of political views on both the general state of constitutional development and the *Muafaka* process in particular. Rather than using a structured questionnaire, the Mission relied primarily on open-ended inquiries. Each respondent was requested to give his or her own assessment of the *Muafaka* process and of other issues related to the objectives of the Mission. The Chairperson of the Mission guided and oversaw the tenor and direction of discussion and debate. Through a dialogue with the respondent, members of the Mission posed questions for the purpose of gaining clarity or directing focus to a particular aspect of the investigation.

Due to the sensitivity of some of the issues discussed, the Mission assured respondents of the confidentiality of the interviews. As such, no attribution is made to specific personalities or organizations, unless there was a specific waiver of anonymity. Verbatim quotations are made without reference to any respondent, but are included primarily to capture meaning and content where necessary. In rendering the oral interviews into written form, the Mission makes no assertions as to the accuracy or otherwise of those claims that may be found to be highly controversial or contentious. Needless to say, the Mission considered that it was particularly those kinds of opinions that would generate a frank and candid discussion of the issues with which this report is concerned. Notes were taken by the Executive Director of KCK, assisted by the Programme Officer. The Mission is of the considered opinion that the above conditions provided a relaxed atmosphere for frank and honest discussion.

KCK disseminated the draft report at a National workshop held on October 25th 2003, in Zanzibar. The objectives of the Dissemination workshop were the following :

- a) To present the collective findings of the Mission for further deliberation and input by the people of Zanzibar;
- b) To provide a mechanism and neutral forum for activists, academicians and politicians to engage in dialogue, self-reflection and critical debate over the Muafaka Process

The workshop was attended by over 100 participants drawn from a cross section of Zanzibari society and representing a broad spectrum of Zanzibari, including many of the respondents who were interviewed as well as the general public. The report was translated in Swahili by Mr. Shafi Adam Shafi to promote more fluid discussion during the workshop as well as for wider dissemination to the grassroots person.

The views of the workshop participants confirmed many of the conclusions of the Mission. Some of the workshop observations and recommendations are accordingly incorporated in this report.

II. ZANZIBAR: A BACKGROUND TO THE CONSTITUTIONAL REGIME

2.1 From 1832 to 1984: Colonial Heritage, Revolution and Union

Zanzibar consists of two main islands, Unguja and Pemba that together comprise 2,332 square kilometers, with the former making up 67% and the latter 37% of the total land area. With a population of 979,637 people according to the 2002 census, Zanzibar is united by a common language, *Kiswahili* that is spoken by all and is both the *lingua franca* and the language of official business on the island.

Zanzibar was the main center of Arab trade on the East African coast since the 7th Century A.D. In 1832, Sultan Seyyid Said, the ruler of Oman and Zanzibar transferred his capital from Muscat to Zanzibar, thereby establishing a permanent physical presence on the island. In 1890, Zanzibar became a British Protectorate, with the British in charge of all key political and administrative matters, while the Sultan remained the symbolic head of state. In 1914, a Protectorate Council was formed with the Sultan as President and the British Resident as the Vice President, although as was typical with all colonial arrangements of indirect rule, the colonial power was the entity in control. In 1926, the Legislative and Executive Council were formed, although representative issues relating to the Arab and African populations illustrated once again, that real power lay with the British.

As was the case with the other East African countries, nationalist politics witnessed an upsurge during the post-Second World War period. The first political party to be formed on the island was the Zanzibar Nationalist Party (ZNP), that was established in 1955. It was followed in 1957 by the Afro Shirazi Party (ASP). The two parties enjoyed almost equal political support among the electorate. The 1957 elections were won by ASP. However due to significant gerrymandering by the Protectorate Government, in 1961 and 1963,

ZNP (together with a minor party, the Zanzibar and Pemba People's Party (ZPPP) garnered more parliamentary seats and thus came to dominate the legislature. As a matter of fact, ASP secured an overall majority of votes and thus should have formed the government that led the islands to self-government and eventually to independence. Once again, the intent of the British government was not to allow genuine democracy to prevail, but instead to force a situation in which its strategic and other interests were protected.

Zanzibar gained independence on 10th December 1963 from the British and its Independence Constitution followed the Westminster model of government. Executive powers were vested in the Sultan, as head of state, while a Prime Minister appointed by the Sultan on the advice of the British Resident was head of government. Legislative power was enshrined in the Parliament consisting of the Sultan and a National Assembly of not more than 31 members who had been elected by adult suffrage. The constitution contained a bill of rights and particularly provided for protection against slavery and forced labour.

However, this arrangement did not last long. The independence government was overthrown on January 12th 1964 through the Zanzibar revolution, which led to the ouster of the Sultan and his forcible exile. The Revolutionary Council revoked the 1963 independence Constitution and proceeded to govern Zanzibar under Presidential Decrees, the most prominent being Decree No. 5/1964 entitled *Constitutional Government and the Rule of Law* and No. 6/1964, entitled *Equality, Reconciliation and Unity of Zanzibar People*. All democratic institutions, political parties, trade unions, and other civil society organizations were abolished. The President was vested with absolute powers while legislative and judicial powers were entrusted to the Revolutionary Council. Sheik Abeid Amani Karume became the first President of post-revolutionary Zanzibar. On 26th April 1964, the Union between Tanganyika and Zanzibar was formed, leading to the creation of the United Republic of Tanzania,

with *Mwalimu* Julius K. Nyerere as President, and Karume as first Vice President. In many respects, both the circumstances under which the Union was created, as well as the manner in which it has progressed since that time have been definitive in shaping the constitutional and governance issues that affect Zanzibar. Coming to terms with what the Union has meant, and its impact on constitutionalism and governance in Zanzibar is thus a critical entry point for an understanding of contemporary conditions on the Islands.

President Karume was assassinated in April 1972 and was succeeded by Aboud Jumbe. President Jumbe amended the ASP (i.e the Ruling Party) Constitution by placing the Revolutionary Council under the Party, although it retained its powers to appoint the president, cabinet, legislature and judiciary. Furthermore, Jumbe strengthened the political, security, and military links with the Mainland. This culminated in the 1977 merger of ASP and TANU to form CCM, as the single governing party for both the Mainland and the Islands.

In 1979, President Jumbe introduced the first post-revolution constitution for Zanzibar, entitled *Katiba ya Serikali ya Mapinduzi*. The new constitution did the following:

- a) It mandated separation of powers by establishing distinct organs of state power. In particular, it separated the legislature from the Revolutionary Council. The House of Representatives had power to legislate over all matters of Zanzibar and to supervise government activities by way of parliamentary debate. The judiciary was made independent from the Revolutionary Council, and
- b) Established elections by universal adult suffrage of the President of Zanzibar instead of being elected by the Revolutionary Council. Furthermore, the President had to win by at least 50% of the votes cast in the election.

In 1980, the first elections since the 1964 revolution were held for the President of Zanzibar. Under the single party system then in existence, there was only a single candidate. Although a clearly limited franchise, this certainly represented an improvement since prior to that time, there had never been any elections for the presidency in Zanzibar. Voting was only done for the President of the Union. In January 1984, President Jumbe was forced to resign in part due to his proposal for a three tier government for the Union, i.e. a government for the Union, and separate governments for Tanzania Mainland and the Zanzibar islands.

Following Aboud Jumbe's resignation, Ali Hassan Mwinyi was nominated as interim President, and subsequently elected as sole candidate with a vote of 87.5% of the electorate. Under Mwinyi, political freedoms in Zanzibar improved, as did civil liberties and respect for human rights, albeit under a single party system.

Soon after Mwinyi's election in 1984, many Zanzibaris called for a referendum on the Union. Instead, the Zanzibar government introduced a new constitution, entitled *Katiba ya Zanzibar* which was passed by the Zanzibar Constituent Assembly on 9th October 1984 and came into force on 1st January 1985. This Constitution introduced a Bill of Rights for the first time since 1964. In 1985, Zanzibar's President Mwinyi succeeded Nyerere as the Union President. Idris Abdul Wakil succeeded Mwinyi as the President of Zanzibar.

2.2 The Nyalali Commission of 1991 and its Implications for Zanzibar

The Presidential Commission on Single Party or Multiparty System in Tanzania, 1991 popularly known as the Nyalali Commission, was established in February 1991, by President Mwinyi and inaugurated in March 1991. It was constituted of 22 Commissioners, with equal membership of ten members each from both the Mainland and the

islands, and one Chairperson and a Vice Chairperson. Its main terms of reference was to collate people's views on the debate of whether Tanzania should continue with the Single Party System or adopt a Multi-party system. As far as Zanzibar was concerned, its primary terms of reference were *inter-alia*, "to consider and assess the likely advantages of any changes, as favoured by the majority, to the position of Zanzibar in the Union, and also to examine in detail whether effecting such changes in the political system would be in the interest (security) of Zanzibar in regard to her history, politics and the culture of Zanzibaris."

The main findings of the Commission were the following: 79% preferred the continuation of a single party system of government, while 21 % preferred the establishment of a multi-party system. However, the Commission recommended multi-partism on three grounds. First of all, that those who recommended a single party insisted on major reforms to the system that would completely change its character. Secondly, 20 % was a substantial minority whose discontent could negatively affect the creation of a democratic political system. Finally, that Tanzanians below the age of forty years did not know any other political system to compare with.

With specific respect to Zanzibar, the Commission felt that despite expressed fears of a revival of pre-revolution tensions, it was best that the islands also adopted political pluralism. However, it added that in order to ensure that the change from a single party to a multi-party system was implemented in an atmosphere of peace and tranquillity, it would be wise that they were adopted together with the changes in the Union structure. These changes specifically related to the number of governments that would best reflect this. Accordingly, twelve Commissioners voted in favour of a three government structure. Seven Commissioners were in favour of retaining the two government structure, while three Commissioners abstained from the vote.

The Commission recommended the establishment of a Constitutional Commission which would seek the views of the people on the type of constitution they wanted and then draft the constitution and later present it to the public for discussion and approval. It also called for the repeal or amendment of over 40 laws that restricted the fundamental rights and freedoms particularly those concerning freedom of association, and which proscribed the formation of political parties. Finally, the Commission called for the provision of civic education.

Following the Nyalali Commission, was the promulgation of the 8th Amendment to the Constitution, the passing of the Political Party Act of 1992, the Change of Union matters and the establishment of the Registrar of Political Parties. It also led to the establishment of Tanzania's first political parties, since the transition from a single party-system. Among these were the Civic United Front (CUF).

In 1993, the issue of the Union emerged once again when the so-called G55 moved a motion in the Union Parliament for the establishment of a 3 tier government. This action followed the decision of the government of Zanzibar to join the Organisation of Islamic Conference (OIC), which was perceived to be an action that detracted from the spirit of the Union. Tanzania's first multi-party elections were held in 1995.

2.3 The Government of Tanzania White Paper on Constitutional Development of 1998 and the Kisanga Committee

The Government White Paper was published in 1998, in part as a response to the recommendations of the Nyayali Report. Subsequently, the government of Tanzania appointed Justice Kisanga to head a Committee to look at the Union Constitution and make necessary recommendations. The White Paper provided the government position on 19 issues, which included among others, the

structure of the Union, powers of the executive, absolute majority requirement of winning the presidency, challenging presidential election results, independent candidacy, proportional representation; presidential nomination of members of Parliament, separation of powers, the 40 laws condemned by the Nyalali Commission, the issue of human rights and the entrenchment of socialism and self-reliance as national ideologies. The Kisanga Committee recommended a three government system, reduction of presidential powers, the maintenance of the provision that required the President to win by an absolute majority, independent candidates for parliament, enhancement of the independence of the judiciary and parliamentary approval of the Electoral Commission. The Zanzibar Government adopted some of the recommendations of the Kisanga Committee, and made changes to the Zanzibar Constitution, but these were of a piecemeal nature.

2.4. The Mbita Commission

The Government of Tanzania has undertaken positive measures in addressing the political violence in Zanzibar, particularly aggravated around the election times. Accordingly, following the 2000 elections, a Commission of eight members, chaired by Brig. General (Rtd.) Hashim I. Mbita, was appointed by the President of the United Republic of Tanzania on 16th January, 2002. Its major terms of reference were to investigate the causes and consequences of the events of January 26th and 27th 2001, and make recommendations to government on the humanitarian assistance required as well as how to prevent the recurrence of similar events.

The Commission submitted its report on 4th November 2002. It established that 31 people were killed, 48 people suffered permanent disability, and 243 people suffered injuries. More than two-thirds of the victims hailed from Pemba. A number of women suffered rape and sexual harassment, such as being ordered to undress. Over 2000 Tanzanians fled to Kenya as refugees. It attributed the January 26th and 27th events to long term structural problems, such as political

antagonism between different classes (*matabaka*) of *wananchi*, poor understanding of multiparty democracy, lack of civic education, lack of a code of conduct for multi-party democracy, lack of an established process to solve political problems through dialogue, non implementation of Muafaka 1 (1999), absence of a competent forum for political parties to discuss their problems, extreme underdevelopment in certain areas especially Pemba and selfish political interests. Further, the immediate causes included the serious shortcomings (*kuvurugika*) of Election 2000, the media fuelling of antagonism and misunderstanding, failure of political parties to solve the stalemate and CUF's refusal to heed Government order not to demonstrate.

The report recommended, the strengthening of civic education, transparent elections, respect for the rule of law by leaders, respect for human rights and observance of duties by citizens, independence of the judiciary, non-partisan organs of state, reform of the police force by cultivating good public relations, provision of equipment which would not warrant use of excessive force in the containing of riots, economic development particularly for Pemba with improvement of basic infrastructure, increased use of dialogue in solving problems, impartial media, creation of a national vision and implementation of the *Muafaka*. Only families which had suffered a death, persons with permanent injuries and rape victims were recommended for humanitarian assistance.

3 THE FINDINGS OF THE MISSION

This report is essentially concerned with issues of a constitutional or governance nature. Obviously, the ambit of such concerns can be as large or as narrow as one decides, given that constitutional issues cover virtually the whole scope of state activity. Consequently, the kernel of this report is drawn from the processes of reconciliation and accommodation that have been attempted in Zanzibar since the late 1990s, in the wake of the elections and subsequent disturbances that rocked the islands. In particular, we examine the *Muafaka* agreements and their implications for the future of constitutional development on the islands. Because these agreements are central to the constitutional and governance issues on the islands today, we considered it necessary to give them fairly extensive consideration. In addition, the report considers the nature of the relationship between the mainland (Tanganyika) and the islands (Unguja and Pemba), wherein we consider issues such as sovereignty and autonomy, as well as those relating to economics and the livelihoods of the people. Returning to an examination of issues internal to Zanzibar, we also examine the question of citizenship and the relationship between the two islands, before concluding with an examination of the institutional and governance frameworks that are in place in the country. Our recommendations largely derive from the respondents of the Mission and the conclusions of the Mission team.

3.1 The *Muafaka* Agreements

Muafaka, which means ‘accord’ in English, is the term commonly used to refer to the Commonwealth brokered Accord. The first *Muafaka* was signed on June 9th 1999, while the second was signed on October 10th 2001. The dialogue that eventually resulted in the accord was informally initiated by among others Brigadier General Hashim Mbita, Ambassador Abbas Sykes, Ambassador Suedi and Hon. Joseph Warioba in their individual personal capacities in 1996 out of concern for the stalemate that followed the 1995 elections. The Secretary

General of the Commonwealth at the time—Chief Emeka Anyoaku joined in the mediation in February 1998. Dr. Moses Anafu of the Commonwealth was assigned the specific task of mediating the tensions between the two parties that had been involved in the elections in Zanzibar. The two accords have had varying degrees of success.

3.1.1 MUAFAKA 1

Muafaka 1 followed increased tensions between the two parties, CUF and CCM, that had resulted from domestic and international pressure in the wake of the state brutality and repression against the opposition in the aftermath of the 1995 elections. It was in essence an agreement to cooperate in the spirit of reconciliation, democratisation, the promotion of human rights and the quest for good governance. Specifically, the two parties agreed to a programme of action involving a review of the electoral laws, reform of the Zanzibar Electoral Commission (ZEC), the compilation of a credible voters register, the institution of a program of civic education as well as a review of the Constitution. In pursuance of these objectives, it was agreed that the Zanzibar government would ensure equitable and balanced coverage in the state media for all political parties, the reform of the judiciary in order to buttress its independence and impartiality, and an independent assessment of the claims of properties destroyed or damaged in the post-election repression. On its part, CUF undertook to resume attending sessions of the House of Representatives, while the President was to appoint two CUF members to the House of Representatives. The CUF central Committee endorsed the initial proposals on July 1998. However, CCM delayed its endorsement of the pact, meaning that final signature on the agreement was not secured until as late as June 1999.

Despite the initial goodwill and effort that went into the agreement, *Muafaka 1* was nevertheless beset by several problems from the outset. In the first instance, no provision was made for monitoring the

agreement. Secondly, there was no mechanism for the implementation of the compact. Instead, the agreement largely depended on the good will of the parties, with the Inter-party Committee having only an advisory status. On its part, the Commonwealth was merely a moral guarantor of the accord. It was of little surprise therefore that *Muafaka 1* remained a dead letter for the lack of political commitment which was further fueled by suspicion between the parties. Both CCM and CUF viewed the dialogue initiators with suspicion.

3.1.2 MUAFAKA 2

The failure of the first *Muafaka* was demonstrated in bold relief by the conduct and outcome of the elections in 2000. Not only were they widely believed to have been a sham, but they also resulted in several actions that bespoke the hollowness of the pledge of reconciliation that *Muafaka* was supposed to represent. Thus, demonstrations were called against the flawed process and the gerrymandered result of the 2000 elections. The government response to the events of January 26th and 27th, 2001, was marked by unprecedented brutality. Several hundreds were injured and Tanzania produced several refugees, numbering 2300, most of whom fled to Shimoni on the Kenyan coast. According to the Mbita Commission 30 persons died, but other estimates have put the figure at close to 60. The reprisals were followed with at least two weeks of beatings, mass arrests and various forms of harassment and intimidation meted out against the ordinary populace.

The physical clashes, death and exile of political opponents following the 2000 election was a shocking experience for Tanzania which had hitherto prided itself on having made a successful transition to a pluralist system and maintaining peace, unity and tranquility as a nation. *Muafaka 2* was the result of considerable pressure brought to bear on CCM as the stronger (and ruling) party to give in to several political reforms. The pressure came from the *wananchi*, intellectuals and the donor community, to mention only a few of the actors who

responded to the stalemate and violence that had ensued. Crucial in this respect was the Union government's eventual adoption of a proactive position in seeking a solution to the crisis in Zanzibar.

The terms of *Muafaka 2* were similar to those of *Muafaka 1*, with an emphasis placed on issues of governance. Having learnt from the experiences of *Muafaka 1*, the second *Muafaka* was not only signed on October 10th 2001, but it was also translated into an Act of the House of Representatives. In 2002, the agreement was entrenched in the Zanzibar Constitution by virtue of the 8th and the 9th Constitutional amendments. Given this background, what exactly did *Muafaka 2* do?

3.1.3 *Muafaka 2* in Perspective

In the main, *Muafaka 2* led to the introduction of two important constitutional amendments, namely the 8th and the 9th. These provided for a review of the electoral laws and a reform of the composition of ZEC, hence generating more confidence in the process by the opposition. In amending the electoral laws *Muafaka 2* made the following stipulations:

- a) The powers of the Director of Elections were reduced, such that the directorate was made to work upon the instructions of the ZEC;
- b) The previously absolute powers of the *Sheha* (village leaders) over voter registration were reduced. The importance of this reform lies in the fact that *Shehas* are political appointees and as such staunch ruling party supporters. There was thus a strong likelihood that they would not be impartial in the electoral process. Furthermore, the *shehas* work in collaboration with party agents.
- c) The residence requirements law enabling a person to participate in elections after moving into a new area was reduced from 5 to 3 years, thus enabling more Zanzibaris who had changed residence to participate in the elections.

One of the most important reforms introduced by *Muafaka 2* was the reconstitution of ZEC from its original composition. Thus, ZEC was reconstituted to provide for the following:

- i) The inclusion of two members appointed upon the advice of the official opposition;
- ii) Two members were to be appointed upon the advice of the leader of government business in the House;
- iii) The Director of Elections was to be appointed by the President on the advice of the ZEC and,
- iv) The ZEC was empowered to appoint its own returning officers.

A further reform introduced under the framework of *Muafaka 2* related to the establishment of the office of Director of Public Prosecutions (DPP). This appointment was informed by the need to separate the government and the ruling party from the DPP's office, as well as to improve upon the expeditious and fair administration of the system of criminal justice. The DPP's office was removed from the Attorney General's chambers and established as an independent Department, under the Ministry of Constitutional Affairs and Good Governance. The DPP is responsible for all criminal matters and holds a 5 year tenure of office. The mission found that virtually all political parties and other observers were confident that the current DPP, Mr. O.M. Othman, would execute his assignment with competence and impartiality. Finally, under *Muafaka 2*, a review of the recruitment procedures and training of the Police has commenced.

The Mission was informed that under the arrangement created by *Muafaka 2*, the leaderships of the two parties have developed a cordial relationship through the mechanism of the Inter-party Commission. They are equally represented in the *Muafaka* Commission, as well as in co-chairing the arrangement. Furthermore, there is a process that ensures that any grievances between the parties are amicably resolved. For example, the accusation of voters importation by both CUF and CCM in the run-up to the bye-election in May 2003 was resolved through the combined efforts of the Secretaries General of the two

parties. It is believed that such a situation could have become inflammatory without the *Muafaka* mechanism. At the time of the Mission, CUF had resolved to build more bridges with CCM by desisting from the use of inflammatory language and refraining from making public criticism of the ruling party and government, and instead had tried to utilize more cordial and direct dialogue with their counterparts.

Finally, *Muafaka 2* has stimulated a spirit of good neighbourliness amongst Zanzibaris. It has underscored the fact that competitive politics does not necessitate hatred of each other. The Mission was informed that there was a time when talking to a person from a different party was deemed treacherous, to such an extent that a brother could not attend a social-cultural gathering, such as the wedding of another if he belonged to a different party affiliation. The interaction between the parties has certainly resulted in decreased political tension, evidenced by the minimization of the clashes between the different party members and the reduction of political cases in court. Furthermore, as at the time of the Mission, there were no political detainees in Zanzibar, and the refugees from the 2000 violence had largely returned to the islands.

Following *Muafaka 2*, observers state that the politicisation of the civil service has been reduced, as has the victimization of officials who were considered not to be sufficiently loyal to the government. The opposition can more readily access the grassroots communities and its rallies are less often disrupted or dispersed. While the time-table for the implementation of the commitments contained in the agreement has not been strictly adhered to, substantive changes have been implemented. These provide a new framework of democratic governance in Zanzibar, with a demonstrable commitment to the success of the agreement from both the Presidents of Zanzibar and of Tanzania.

3.1.3 Limitations of MUAFAKA 2

Despite the overall positive feelings generated by *Muafaka 2*, many of those who the Mission met expressed several reservations about the full realization of the objectives of the Agreement. These misgivings ranged from the claim that there was a lack of popular participation in the forging of the compact, to issues regarding its legal force. In the following pages, we catalogue the limitations that were considered to the respondents met by the Mission acknowledged that *Muafaka* is a political compact mainly targeting the leadership of the parties in an appeal to their rational understanding. However, there was a strongly articulated opinion that the agreement has not substantially addressed the bitterness amongst the people accrued from the history of political hostilities that led to the signing of the agreement. In other words, *Muafaka* has remained so exclusive that it has not been effectively translated down to the grassroots communities. And yet, in the considered opinion of the Mission, reconciliation amongst society in general can only be achieved if it is targeted at the membership of the political parties. The grassroots have not been sufficiently involved in the debates about reconciliation, nor in the progress towards its achievement. In other words, while the authority of the political elite was useful to stop the many tensions that existed in Zanzibar society at the time the process of reconciliation was commenced, it is important to involve the masses to contribute as well as sustain the fruits of *Muafaka*. With the exception of the political party branch levels, there is no institutional framework to ensure the involvement of the people. Neither was ZEC given the mandate to disseminate the essential principles and understandings that make up *Muafaka*, although in the opinion of the Mission, this would not be its function. Since *Muafaka* is not embedded in the minds and the hearts of the people, it is easy for the principles of the agreement to be abandoned, at best, or even for an incitement to violence, at worst.

The non-Involvement of Other Political Actors

While it is appreciated that initially *Muafaka* had to mainly target CCM and CUF being the two parties that had contributed most to the existing political crisis, the agreement should have embraced the other parties that operate on the Zanzibar political scene. This would have broadened the debate to embrace different points of view, as well as to expand the political arrangement beyond the two most dominant actors. Some of the respondents who met the Mission described *Muafaka* as “a very strange” process: *How can only two political parties decide to change the constitution?* Many saw this as a reflection of the collusion between CCM/the government, on the one hand, and CUF/the opposition, on the other. In the interpretation of the Mission, it was clear that such attitudes were a reflection on the challenges of ensuring that *Muafaka* was not viewed as an exclusively CCM/CUF agreement, but rather one that was of relevance to all the people of Zanzibar.

Muafaka as a Political Compact

Some concern was expressed to the Mission over the fact that since *Muafaka* was a political deal, and was mainly created by and for the benefit of politicians, its success is determined by the very same politicians who constitute it. That being the case, the arrangement was highly contingent upon the political goodwill of the two parties to the agreement. However, on both sides of the compact, there are people interested in either forestalling or frustrating the arrangement. Some CCM members perceive *Muafaka* as eroding their power base, while some in CUF also viewed it as an opportunity to widen their political gains. The general perception the Mission encountered was that CCM is more reluctant to open up political space under the guise of safeguarding the gains of the revolution. Accordingly, CCM quickly seeks recourse in repressive laws not only to prove its domination of the political scene,

but also to retain and strengthen its domination therein. In the view of the Mission, this stems from the lack of legal entrenchment of the accord.

A case in point that was described to the Mission was the disqualification of the 6 CUF candidates in the run-up to the May bye-elections. It was commented that “CUF put its faith in *Muafaka* and not the law, yet it is the law which is applied.” Again, in reference to the disqualification, a CCM member interviewed by the Mission commented that “when we decided to cooperate on *Muafaka* we did not agree that we should lose the election. If the law is on our side, we shall use it.” In the view of the Mission, *Muafaka* should have carried out a strict scrutiny of the law in total in order to ensure that the parties were operating on a level playing field. At the time the disqualification happened, some criticized CCM as having a narrow outlook, which considered only short-term gain, and not the longer-term interests of the country at large. It was suggested that CCM should have been willing to compromise and make concessions in the interests of the larger political development of the country, rather than the short-term gain, which, moreover, was effected by a technicality in the law. From the Mission perspective, this point underscored the fact that there was a need to establish concrete institutional mechanisms to oversee implementation of the agreement. What was also interesting was the fact that it was one of the opposition parties *viz.*, NCCR-Mageuzi that initiated the process of disqualification of the 6 CUF candidates. This further strengthens the point that in order to be fully successful *Muafaka* must be a process inclusive of all political actors and not only the dominant two, because the issues involved in the accord extend beyond them.

Personalisation of Muafaka

Respondents interviewed by the Mission were of the view that the *Muafaka* arrangement needs to mark distance from the main party officials who had come to control it. On the one hand the commitment

of the two Secretaries General, i.e. that of CUF (Seif Shariff Hamad) and of CCM (Phillip Mangula) was commended as an illustration of the topmost commitment of the party. On the other hand, there was some apprehension expressed over the possible personalisation of the process. Hence, many of those who spoke to the Mission made an appeal that the process be institutionalised in order to involve the party organs and demonopolise the control of the process by the two main actors, rather than continuing to depend on the goodwill of only a few prominent personalities in the party bureaucracies. In sum, the impression that has been created is that without them, the process would come to naught.

CCM Participation in the Accord

The Mission was informed that CCM is much more visible as government, than it is as a Party. According to this point of view, the fact that CCM representatives are busy elsewhere (especially in government) has affected their participation in the *Muafaka*. The Co-chairperson of CCM is also the Minister of Home Affairs, the in-charge of CCM Publicity and as well as a member of the National Executive Committee of the ruling party. Of the other Commissioners, one is a member of the East African Legislative Assembly, yet another is a District Commissioner. It is also recognised that the Co-chair from CUF is the Leader of the Opposition. Again, this was reflective of the larger question of separation of party and state, and illustrated that there was still additional work to do in this respect. In the view of the Mission, this is reflective of the incompleteness of the transition from the single party system to a politically pluralist regime.

The Question of Time and Issue

Muafaka is both time and issue bound. Many predicted that the survival of the agreement was contingent on the successful holding of the May bye-election. The critical question then becomes: what next after *Muafaka*? There is also the perception that “*Muafaka* is a

solution to a specific problem. Therefore people should not read too much into it, nor expect it to be permanent.” Another viewpoint considers *Muafaka* to be a matter of political expedience. According to this opinion: “we can tolerate them (the opposition) because *Muafaka* shall only survive up to 2004. There is only one year to go.” More profoundly in the opinion of the Mission, *Muafaka* only addresses current issues and these are specifically tied to the electoral process and outcome. And yet, there is a need to address those historical questions that continue to affect the political situation in Zanzibar, and particularly the fundamental issues of the Union, democracy, human rights and Unguja/Pemba relationship. This issue is explored in greater depth later in the Report.

The Place of the Legislature

According to some opinions expressed to the Mission, the *Muafaka* Joint Presidential Supervisory Commission (JPSC) has undermined the fundamental role of the House of Representatives to make laws and to write the constitution in Zanzibar. Under the present arrangement, the House is only expected to rubber stamp the *Muafaka* proposals. Thus, it is argued that if CUF insists that even if one comma of the agreement is changed it shall not accept it, this amounts to overriding the powers of the House to make and amend laws. On the other hand, it is equally contended that the House of Representative have amended the essence of *Muafaka*, such as reduced the membership of ZEC of the opposition parties from four to two and insisting that the some of the changes take effect from 2005. Another point of contention arises from the allocation of budgetary resources, with *Muafaka* being given preferential treatment. Accordingly, the House of Representatives Committee budgets are reduced by the political establishment without due consultation. *Muafaka* receives priority funding. While in the 2002/3 budget this situation may have been reversed, in the considered opinion of the Mission, what this represents is simply the need to ensure that the *Muafaka* process is integrated into the overall business of the state,

rather than running parallel to it, akin to having two governments. In sum, *Muafaka* needs to be domesticated.

The Role of Presidents Karume and Mkapa

The active involvement of the Presidents of Zanzibar and United Republic of Tanzania has provoked contradictory sentiments. Some of the respondents fear that President Mkapa's active interest in the issue may result in further entrenchment of the Mainland's influence over Zanzibar, with the latter becoming a mere region of the Mainland. On the flip side of the coin, the majority appreciate it as a positive development, and argue that *Muafaka I* failed partly because it was a purely Zanzibari affair. President Mkapa's reconciliatory leadership in taking the lead in implementing *Muafaka* was equally commended. For example, he nominated Hamad Rashid Mohammed—a member of the opposition—to the Union Parliament in what was viewed as a promotion of the *Muafaka* spirit.

A contrary opinion was expressed that as a matter of fact, President Mkapa was not doing enough to support the agreement given that it is his last term in office. It was hoped that he would have used *Muafaka* to resolve the mounting tensions about the Union by initiating a constitutional dialogue as his legacy. Some of the respondents who spoke to the Mission attributed Mkapa's inertia over the issue of the Union to the remnants of the ideology of the one party state that allowed debate only within the party and others to the fact that Mkapa is seen as Nyerere's personal choice. Consequently, he cannot appear to be ungrateful by questioning one of *Mwalimu* Nyerere's biggest legacies—the Union. Given that the Union is central to the very idea of Tanzania as a nation-state, this issue has raised a lot of anxiety and speculation about who will be the next president of Tanzania and what this means regarding the prospects for a full opening up of the constitutional debate in the country. It is impossible to ascertain what the President's position is because the Mission did not speak to him.

The role of President Karume is equally contentious. There is a yearning amongst many people in Zanzibar to see Karume assume a lead role in the *Muafaka* process, instead of giving the lead to Mkapa, a Mainlander.

Others are sympathetic to President Karume's predicament especially given the internal pressures of CCM, and the considerable influence of his predecessor, Dr. Salmin Amour.

Is Muafaka 'home-grown' or Externally Imposed?

Muafaka 1 is largely believed not to have been a home grown initiative and consequently this issue was a major one with regard to *Muafaka* 2. While many of the Mission respondents viewed *Muafaka* as a home-grown constitutional solution, however, some cynicism was expressed to the Mission that it was in fact heavily influenced by the Scandinavians because of the substantial financial support, particularly countries like Sweden and Denmark had extended to the same. On their part, the donors are adamant that *Muafaka* is in fact a home-grown initiative, although it may have benefited from experiences outside the country. Indeed, according to some observers, *Muafaka* is in fact an exemplary demonstration of how African countries should resolve deep-seated political problems. Central to this resolution is the manner in which political parties are organized and operate.

3.2 Political Parties in Zanzibar

Zanzibar is a politically active society. As such, the people of Zanzibar are highly sensitive to situations in which their rights are violated and have stood up to ensure their protection in many instances, with the revolution providing the most dramatic example of this resilience. Although after the revolution pluralist political activity was suppressed, the return to a multiparty system of government was embraced whole-heartedly in Zanzibar. The Mission found that the

role and place of political organizations and activities were central to the debate on constitutionalism in the country. Political affiliations on the islands are essentially divided between two parties, *viz.*, Chama cha Mapinduzi (CCM) and the Civic United Front (CUF). In the words of one respondent to the Mission: “In Zanzibar, neutrality is considered partisan: to be trusted as a neutral person, it is imperative to declare a lack of political ambitions.” Needless to say, the Mission found many of the respondents interviewed were willing to rise above political affiliation and to critically assess both the strengths and the failings of the main political actors in the country. Indeed, one respondent argued that it was essential for the people (who have the most to lose from the standoff) to ensure that *both* parties were compelled to respect the Constitution and to promote the basic objectives of good governance. According to this viewpoint, it was also important to expand the debate beyond the CCM/CUF relations around which all political conversations in Zanzibar seem to rotate.

3.2.1 Perceptions about CCM and CUF

There is a very strong perception that the current parties still reflect the allegiances and struggles of Zanzibar’s past. The Mission was told that CCM-Zanzibar is essentially derived from the Afro Shirazi Party (ASP), while CUF is considered by many to be a reincarnation of the Zanzibar Nationalist Party (ZNP). Understandably, the adherents and officials of both parties strongly contest this assertion. ZNP was predominantly comprised of people of Arab, Indian or Comorian extraction, while the ASP was predominantly African. ASP was also the party that emerged dominant in the wake of the revolution against the Sultanate soon after independence in 1964. CUF is also regarded as the much stronger party in Pemba and it was asserted that this has been the root of the electoral problems experienced in that part of the country.

The Mission found these perceptions to be prominent in many of the discussions we held. These stereotypes are manipulated for the

following reasons. First, in contemporary politics, ideological choices are made by the followers. Second, there are significant changes in the character of the parties and thirdly, 75% of the population is post-revolution. It is also important to point to the fact that there have been incidents of crossover between the two parties since the political arena was opened up to competition. Thus, political allegiances and concerns today do not necessarily follow the same trajectory as they did four decades ago. Moreover, there are other parties, both on the Mainland and the islands which have an influence on the process of political development on the islands. It is essential therefore from the outset not to reduce the problems in Zanzibar to a CCM/CUF issue, and also to appreciate that the issues of concern today are much more complex and intricate than historical legacies alone.

As the ruling party, CCM in Zanzibar lays claim to the fact that it is the strongest and most politically dominant organization on the islands. However, there is a perception that the CCM party hierarchy in Zanzibar is under siege, hence many believe that there is an undue reliance on the mainland for political support, which certainly raises questions about how strong the party actually is on the ground. On its part, CUF was founded on May 28th 1992, following the transition in Tanzania from a single party state to a pluralist political arrangement. CUF is a product of the merger between the Zanzibar United Front (ZUF) and Chama cha Wananchi (CCW). In the main, CUF has focussed on the legacy of CCM as a single party and on the economic woes faced by the peoples of the islands. Central to its philosophy is the need to revise the Union constitution, aside from attacking the ruling party and government on issues such as corruption and administrative mismanagement. While there may be internal weaknesses such as complacency and competition for the presidency within CCM, it is likely that the party will continue to play a prominent role in the political development of the islands for a long time to come.

Both parties are quite apprehensive of the true interests and objectives of the other. For example, CUF accuses CCM of continuing to harbour fascist tendencies and of arrogance, apart from the grievances it still holds towards the manner in which the 2000 elections were conducted. On its part, CCM accuses CUF of being short-sighted, and of having a weak ideological programme largely motivated by the simple desire to secure the removal of CCM from power. Nonetheless, while many respondents were critical of CUF's weak ideological base, they commended its managerial competence as well as its open public relations policy. Despite the points of tension, between these two main political actors, the Mission noted that there are several points of consensus. Indeed, the whole process of reconciliation and dialogue that produced the *Muafaka* agreements is testimony to this fact. What the Mission considers important is to ensure that the mechanisms of dialogue and give-and-take that were central to the operation of *Muafaka* and other mechanisms of dialogue and cooperation are institutionalised. In this way, those flashpoints (like elections) that have previously provided much fodder for tension and violence can be substantively reduced and even rendered impotent.

3.3 Elections and Electoral Processes

Many of Zanzibar's political problems have witnessed their most intense expression during periods of electoral competition, particularly following the introduction of multi-party politics to the country. It is apparent from the beginning that many politicians in Zanzibar—particularly those who had benefited from the monopoly of the single party—were not keen to open up to multi-partism. This trepidation allegedly arose on the basis of the argument that parties in Zanzibar were predominantly racial-oriented, and thus sectarian. However, given that decisions were taken at the national party level, Zanzibar was compelled to oblige with the decision to restore multi-party politics. Nonetheless, the Zanzibar government did not put in place all the specified conditions for the full implementation of the

decision. For example, there was resistance to the inclusion of persons who

were not original members of ASP within the CCM hierarchy. Furthermore, the regional Commissioners were retained as members of the House of Representatives, compromising the separation of powers' principle.

A good number of Zanzibar's electoral problems were attributed to politicians for their unwillingness to submit themselves to the people's choice. According to some of the views expressed to the Mission, many politicians are more intent on stealing power or inheriting it through the party hierarchy than they were on securing it on their own merit in a genuinely competitive contest. One respondent was of the view that the manipulation of elections has a long and checkered history in Zanzibar: "The British introduced the system of rigging and it has continued to date: both sides steal and the bigger thief wins." Inevitably, those who come to power through force retain it via force. The failure to hold legitimate elections in Zanzibar has greatly frustrated the people. Indeed, the view was expressed that it is better to go back to the single party because there was (allegedly) no rigging under that system. Politics in Zanzibar became so polarised because it was conceived as a source of livelihood and hence as a life and death scuffle to win elections.

3.3.1 The 1995 Elections

Elections in Zanzibar since the transition to pluralist politics has been plagued both by the historical legacy of tension that has surrounded these exercises, as well as by the failure to ensure that the remnants of the single party legal structure were actually dismantled. With the exception of a minor review of Act 11 of 1984 as amended on March 31st 1995, the same law that was used to manage elections under the single party state was largely that which was used for the first multi-party elections. There were a few amendments. For example, the residence requirement was introduced.

The 1995 elections were manifestly not free and were lacking in basic standards of fairness. Indeed they were declared a sham by a host of different local and international observers of the process. There was rigging at the stage of the registration of voters, at the actual balloting and in the counting of the votes, coupled with gross mismanagement by the elections bureaucracy in charge of the process. Indeed, some of the polling stations did not receive some of the necessary electoral materials. In the event, CCM won the presidential elections by a margin of only 0.04%. On its part, CUF was disgruntled because it believed it had won the elections and expected to be declared winner. Consequently, CUF made a technical appearance in the House without participating in any of the debates. As such, CUF members periodically attended the House sessions in order to avoid losing their seats and to collect their allowances, but did not participate in the House of Representatives discussions. In addition sympathisers of CUF were dismissed and students thought to be sympathetic to CUF were not given scholarships.

There was intensive harassment and imprisonment as well as the institution of a treason case against prominent CUF members. It was this stalemate that eventually led to the *Muafaka* agreement. Immediately after these elections, former President Nyerere and Zanzibar Election Monitors (ZEMOG) called for a government of National Unity. During the election campaigns, CUF had declared its intention of having a government of national unity if it won, even marginally.

3.3.2 The 2000 Elections

If the 1995 election suffered from bureaucratic incompetence and considerable mismanagement, the elections in 2000 can only be described as shambles, compounded by the tragedy of the high levels of violence. Virtually all observers of this election were of the

unanimous opinion that they had been rigged to such a massive scale they could not possibly reflect the genuine will of the people. The

2000 election campaigns were dominated by violence, rioting, intimidation, abusive language, character assassination and threats. ZEC failed to deliver election materials and instruments to 16 constituencies in the Urban West Region of Unguja some of which were a few meters from the ZEC headquarters, including the constituency where ZEC headquarters are allocated. Subsequent to the polling, ZEC annulled elections in the 16 constituencies and also stopped the whole process in all remaining 34 constituencies of Zanzibar. Counting was ordered to resume a week later after the re-run of elections in the 16 constituencies. CUF boycotted the counting process because the ballot boxes had been collected by the military and taken to destinations unknown and inaccessible to party agents, and without the tally documents or verification by the agents. Furthermore, even in the constituencies where elections were proceeding well, they were declared void. Some improvements in the administration of the election over the 1995 process were registered. These included the use of transparent ballot boxes for the Union elections, unnumbered ballot papers, and the vesting of liability in individual electoral Commission personnel as well as the holding of five levels of elections on the same day. Unfortunately, whatever improvements registered were grossly overshadowed by the manifestly high levels of violence and intimidation that marred the process.

While on its part the national electoral agency (NEC) witnessed a marked improvement in the management of elections on the Mainland compared to its performance in 1995, its local counterpart ZEC on the other hand, demonstrated even greater inefficiencies in a number of ways. These included the restriction of foreign and local observers, the mishandling of the registration process and the failure to post the list of registered voters in the respective registration centers in time. It was stated that only CCM was provided with the list of voters. ZEC

assisted by the *shehas*, denied potential voters registration in some constituencies aside from failing to enforce electoral guidelines governing campaigns. The Commission was unable or unwilling to

control or condemn the acts of hooliganism demonstrated by youth vigilantes of both CCM and CUF throughout the campaign period, and to condemn the excessive harassment by police of CUF supporters. ZEC also failed to ensure that all polling stations had election materials by the start of the process. During the voting in several polling stations, party agents were not allowed to carry out their duties and would be threatened with arrest and detention. In some stations, the ballot papers were fewer than the registered number of voters. Particularly in Pemba, the inhuman treatment of voters was widespread. This involved among others, long queuing, disruption of elections and sexual harassment.

3.3.3 *The Bye-Elections of 2003*

The Bye-Elections were prompted by the refusal of CUF to recognize the 2000 elections as free and fair. This resulted in the termination of the mandate of the elected CUF members for failure to attend to the House of Representative business. Further, both the Parliament in Dodoma and the House of Representative passed a law that provided that there shall be no bye-elections for a period of two years, in seventeen out of the twenty one constituencies in Pemba. The elections were thus held to fill these vacant seats.

As we have already pointed out, it was largely on account of *Muafaka 2* that electoral reforms were initiated to ensure a free and fair process for the by-elections that were scheduled to be held in May, 2003, and contested by CUF, CCM and others. In the run-up to the election, most respondents predicted that CUF would win the exercise handily, although the Mission also heard a minority view that the trend would reveal a weakening of CUF and a strengthening of CCM in Pemba. Despite delays in reconstituting ZEC, with a resultant delay in election preparations, such as the provision of a permanent register and the full

participation of independent monitors, the Mission found there was general satisfaction with the preparations for the bye-elections. A

Code of Conduct and invitations to the independent monitors was in progress at the time of our visit a few weeks before the poll.

Nevertheless, there were a few incidents of rising tension that put *Muafaka 2* to the test. First of all, CUF accused CCM of sending young people from the national service to register for the bye-elections. Similarly CCM accused CUF of registering persons from constituencies other than those in which they were authorized to vote. On its part, the ZEC argued that it had no mandate to investigate these allegations, but instead appealed to the Joint Presidential Supervisory Commission (JPSC), decrying the practice. As a result, the Secretaries General of both parties issued a joint statement on 31st March 2003, thus mutually resolving the impasse.

During our follow up visit in May, the Mission found that 6 CUF candidates had been disqualified from contesting the bye-election, after NCCR-Mageuzi challenged their candidature on account of a provision in the law that barred persons who were dismissed from the House of Representatives from contesting elections. It was generally feared that this action would destabilize the gains of *Muafaka*. While some observers suggested the calling for more nominations, others urged a postponement of the elections in a quest for an amicable solution to the crisis.

ZEC voted 5:2 to sustain the objections against CUF candidates. When the matter was taken to the High Court seeking to overturn ZEC's decision, the NCCR advocate, Dr. Mvungi objected on preliminary points of law and procedure with regard to filing such applications, which the State Counsel concurred with. Justice Suleiman Kihyo sustained the preliminary objection. However, the court did not decide on the candidature of the applicants: the substance of the application. Despite these set-backs, the election was held in a

peaceful and calm atmosphere. CUF urged its supporters to participate in the poll, but to wrongly mark their votes and spoil them since CUF did not have any candidates contesting the election. The number of

spoilt votes or *maruhani* meaning votes for a ‘ghost’ (or non-existent) candidate in all the six constituencies tallied more than those received by the CCM candidates. The *maruhani* scored a moral victory. Put another way, the CCM candidates won the six seats, albeit on a minority of votes cast. CUF is now in court seeking an interpretation of what the phrase “a majority of the votes” means. From the perspective of the Mission, the bye-election demonstrated that violence does not have to accompany the electoral process, and that even with the odds stacked against any one party, there are different, peaceful ways of addressing the situation. At the same time, the bye-elections clearly demonstrated that there are larger issues of constitutional reform and political settlement that need to be addressed in a more enduring manner. For example, the ZEC’s disqualification of the 6 candidates raised questions about the remaining 11 and the selective application of the law.

3.3.3 *The Role of the Zanzibar Electoral Commission (ZEC)*

ZEC is the primary organ responsible for organising elections in Zanzibar. While the law governing elections provided that Union elections would be managed by the National Electoral Commission (NEC), this duty was informally delegated to ZEC. ZEC has powers to issue regulations, directives, notices and subsidiary electoral laws governing the administration of elections. The functions of ZEC include the determination and demarcation of constituencies, coordinating registration processes and conducting elections at all levels. ZEC is also responsible for appointing election officers at different levels to assist in the administration of elections.

ZEC claims that initially many people were unconvinced about its impartiality, but asserts that this charge has waned, particularly

following the amendment to the law in 2002. A team of ZEC Commissioners who met the Mission stated its firm resolution to conduct free and fair elections as a precursor to the achievement of peace and economic development in Zanzibar. Among one of their

methodologies of work is not to vote on issues, and instead to aim at seeking the middle ground, by striving for a workable consensus. Additionally, in order to win the confidence of the two contesting parties, ZEC has sought to be transparent in informing both CUF and CCM of any developments with respect to the electoral process. In this regard, ZEC explained its inability to issue permanent registration cards in time and appealed to both parties to address the complaints of voter importation. Further, the Mission was informed that ZEC is resolved to respect the authority of the party agents during the registration, as was evidenced by ZEC's action in preventing the registration of a former Commissioner in Wete. ZEC received daily updates from the District Secretaries, in order to promptly react to complaints, clarify on issues of controversy, and monitor the progress of compiling electoral registers.

The confidence in ZEC is exemplified by the fact that during the run-up to the bye-election in May, 2003, both CCM and CUF referred their complaints to ZEC. Previously, it was only CUF that was consistently complaining. Indeed, for the first time, CUF commended the transparency of ZEC in this particular exercise. Likewise, the people were hopeful that a free and fair election would actually take place, but put the challenge on the political leadership to accept their verdict. ZEC has undertaken capacity building training and drawn from the experience of other electoral commissions around the world in order to improve its operations. In sum, there have been considerable efforts undertaken to change both the image and the operation of the principal electoral authority on the islands. Its first test—the May 2003 bye-election—was a success in both the manner in which ZEC handled the run-up to the process, as well as the actual balloting which largely passed without incident.

Nonetheless, ZEC still faces many formidable challenges. It is toothless in undertaking investigations prior to the elections. Neither does it have significant enforcement powers. Consequently it has relied on *Muafaka* and the goodwill of both parties to adhere to the

law. Furthermore, ZEC continues to lack an independent budget. Instead, it receives funding through the Chief Minister's office, which has negatively impacted on its operations and independence. It is hoped that this shall be rectified with the implementation of the amended Act, which provides ZEC with funding from the Consolidated Fund. Insufficient funding has had many negative consequences, including the inability to provide sufficient civic education, hence the reliance on the media to carry out the same. Clearly, much more needs to be done in order to transform ZEC into an efficient and effective mechanism for conducting elections in Zanzibar.

There are a number of additional factors that militated against ZEC impartially and effectively executing its designated role up to 2002 when the law governing the ZEC was amended. First of all, ZEC Commissioners were appointed by the President on the basis of criteria open to abuse. In contrast to NEC, the Chairperson of ZEC was not a judge. Secondly, ZEC did not have an independent budget approved by Parliament and is thus forced to rely on state facilities such as vehicles and office buildings for its fluid operation. Third, due to the lack of its own independent staff, ZEC relied principally on government officials as part of its personnel, and finally, the law managing elections is scattered in different legislation, namely, the Zanzibar Elections Act, No.11/1984 (as amended by Act No.11/1990); Act No.8/1992, Act No.14/1992, Act No.5/1995 and the Elections (Amendment) Act No.3/ 2000. Other applicable laws include, the Political Parties Act of 1992, the Zanzibar Municipal Act of 1995 and the Zanzibar District and Town Council Act of 1995. These have all been consolidated in the 2000 July legislation.

3.4 The Union between Tanganyika and Zanzibar

The Union between Tanganyika and Zanzibar, which created Tanzania was formed on 26th April 1964, essentially as a political initiative between Presidents Abeid Karume and *Mwalimu* Julius Kambarage

Nyerere. The Articles of Union contained the following eleven areas as Union matters:

- (i). the Constitution and Government of the United Republic;
- (ii). External Affairs;
- (iii). Defense;
- (iv). Police;
- (v). Emergency Powers;
- (vi). Citizenship;
- (vii). Immigration;
- (viii). External Trade and Borrowing;
- (ix). the Public Service of the United Republic;
- (x). Income Tax, Corporation Tax, Customs and Excise Duties, and
- (xi). Harbours, Civil Aviation, Posts and Telegraph.

In assessing the constitutional and governance questions revolving around the Union, the Mission felt that it was necessary to preface our remarks with a comment on the main architect of the Union—*Mwalimu* Julius Nyerere. The Mission found that there was near unanimous acclaim from among the respondents with regard to *Mwalimu* Nyerere's belief in nationalism and especially his view that the Union was the best way forward for two underdeveloped countries that were closely related by ties of history. Nyerere's legacy is further evidenced by reference to him on any important issue, even up to the present time. However, it is equally important to acknowledge that while he bequeathed great things to both Tanganyika and Zanzibar, in order to comprehensively address the issues involved, there is a need to mark distance from the phenomenon we can only describe as *Nyerereism*. That is the tendency to venerate and idolize everything that Nyerere did as the leader of Tanzania. It is the considered opinion of the Mission that there is a need to have an honest and candid

discussion about the Union even if it is considered one of President Nyerere's greatest legacies.

3.4.1 The Benefits of the Union

The Union is unique because it is neither a confederation nor a federation. Indeed, there is considerable debate about the precise legal character of the arrangement. The Mission found that most Zanzibaris are agreed on the need for a Union and accept the original Articles as the legal basis for the Union. But opinion is divided on what form it should assume and the nature and extent to which the powers under the Union should be shared. Our deliberations pointed towards a choice between 3 options: maintaining the Union as it currently is; reforming the Union or abolishing it altogether. The majority opinion was in favour of some reform, although, once again, there was a diversity of opinions on precisely how this should be effected.

The strongest argument for retention of the Union was that there were several areas of co-dependency between Tanganyika and Zanzibar. For example, there are strong kinship ties existing between the Mainland and the islands, and severance of those ties would lead to economic hardship on both sides. The Mainland earns revenue from the supply of electricity and food to the islands, while the islands also benefit in numerous ways. Others emphasized the negative aspects of a potential break which they felt could prejudice Zanzibari's proprietary interests on the Mainland, and also exacerbate racial differences among the people on the islands. The biggest benefit of the Union was stated to be in the arena of defence, security and in the context of international relations. It is still feared that Zanzibar could become more vulnerable to attack from foreign countries. Finally, it was argued that the economy of Zanzibar could not stand on its own. For example the clove industry is collapsing and despite the fact that tourism generates considerable revenue, the Zanzibaris are employed

in the lowest cadre jobs, with most of the benefits accruing to foreign corporate entities.

In sum, according to the vast majority of views heard by the Mission, while Zanzibaris definitely want a Union, they are largely dissatisfied with its current form, because, in the words of one respondent, the Union literally “finished” Zanzibar. Many Zanzibaris expressed a dissatisfaction with the form and performance of the Union and particularly with the manner in which additions to the Articles of the Union has been effected. According to this point of view, the process of additions to the Articles of Union has led to the progressive marginalisation of the islands. At the end of the day, the Mission surmised that the people seek a better Union, which meets the needs of the two parties, *viz.*, Zanzibar and Tanganyika in an equitable and enduring fashion.

3.4.2 Problems of the Union in the Eyes of Zanzibaris and Mainlanders

On the face of it, it would appear that the logic for cooperation between the two entities is indisputable. However, the fact that the relationship has subsisted for nearly 40 years belies an undercurrent of tension that has surrounded its operation, not to mention some of the modalities through which the relationship is directed. To cite one telling example, the Mission was told that issues of the Union are embraced differently by ordinary citizens of the Mainland and by Zanzibaris. Thus, Zanzibaris and Mainlanders expressed different interests in the White Paper process. The uncertainty over Union matters has resulted in confusion, due to the inconsistency between what is done in practice and the spirit of the Articles of Union. Zanzibaris complain of political marginalisation, as exemplified by the fact that to date no Zanzibari has ever been appointed Attorney General, Chief Justice, Central Bank Governor or Inspector General of

Police of the Union Government. This is compounded by the submission that even when appointed, historically, some Zanzibaris have used the Union to advance their own personal and party interests. The net effect of the above is a growing xenophobia between Zanzibaris and Mainlanders. The Mission was also informed that even

for positions earmarked for Zanzibar, the Zanzibar Government has not submitted names. The Court of Appeal, Deputy Registrar of Political Parties, Deputy Governor of the Central bank are cases in point. Further, Zanzibaris have been appointed in non-Union portfolios, such as Health and Tourism.

The Mission heard the complaint that Zanzibaris treat Mainlanders like foreigners while the reverse is not true. Similarly, Zanzibaris are said to think that all problems emanate from the Mainland. This viewpoint was exacerbated by a recent spate of prostitution and armed robberies in Zanzibar committed by criminals/gangsters who were allegedly from the Mainland. Equally, there are many stereotypes about Zanzibaris by Mainlanders. Finally, the Mission was also told that state brutality is imported from the Mainland specifically to ‘steal’ elections, rather than maintain law and order, because the police and army are Union matters. Moreover, there is no evidence of consultation with the Zanzibar government before the deployment of the military or other security forces.

In fact, the Mission found that expressions of dissatisfaction with the Union came from both sides (Mainlanders and islanders), albeit for different reasons. There is considerable indifference and ignorance of Mainlanders about the isles. To many Mainlanders, Union matters are addressed by the Union government comprised of Tanganyika and Zanzibar. This explains the lack of appreciation of complaints by Zanzibar. As stated by one Mainlander, “we see them passing issues in Parliament and later they complain. We do not hear them saying anything or refusing anything and asking for a debate on this issue.” In addition, it is claimed that Zanzibar is over represented in Dodoma, due to the fact that it has a population of about 1 million people, but

has over fifty representatives in the Union parliament. On the other hand, Zanzibar argues that it is a sovereign state and as such is entitled to equal representation, irrespective of population size. Given the above, the Mission found it useful to catalogue the causes for this disgruntlement.

The Secrecy and Legality of the Union

The secrecy surrounding the inception, the mode of operation and the development of the Union has stimulated a spectrum of views about its

legality and the form of government, which was designed to bring it into effect. That secrecy has provoked considerable suspicion and doubt among many people in Zanzibar, and the belief that this secrecy shielded a more sinister motive. Some have contended that the Union was imposed on Zanzibar, and that it was little more than a gentleman's agreement between Julius Nyerere and Abeid Karume. Almost all the respondents the Mission met testified that they had never seen an original or duplicate copy of the signed Articles of Union. In fact, it has been argued that even the Attorney General of the time, Wolfgang Dourado, was not privy to the Union discussions between Nyerere and Karume, neither was Abdulraham Babu, who as a leader of the Umma party and ally of President Karume.

On the other hand, it was argued that given Zanzibar's vulnerability to counter action by the Sultan, the creation of the Union was a buffer against foreign intervention. In such circumstances, speed and secrecy were of essence. Karume and Nyerere agreed on the general format of the Union and left a lawyer to draft the precise agreement. One respondent met by the Mission, who asserts that he was privy to the creation of the Union, testified that among the persons present was Oscar Kambona (Tanganyika's Foreign Minister at the time), Rashid Kawawa, (former Vice President of Tanganyika), Kassim Hanga (Vice President of the People's Republic of Zanzibar) and Salim Rashid (Secretary General to the Revolutionary Council). Mark Bomani who

was serving as a State Attorney at the time, and later became Attorney General, was also said to be present. The respondent affirmed that he had indeed seen the signed document. Despite this testimony, there are others who still question the legality of the Union particularly because

they argue that there is no evidence that the articles of the Union were ever ratified by the Revolutionary Council of Zanzibar.

Issues of an Economic Nature

Much of the contention over the Union relates to issues of resources and their distribution between the two entities. In the first instance, many in Zanzibar argue that it should have 4.5% of total revenue collected for

Tanzania. On the other hand, Mainland Tanzania according to the opinion of one Mainlander, views Zanzibar as “a small partner taking a lions share of Aid and Finance amounting to 4.5 %. Zanzibar is the size of Temeke, a District in Dar-es-Salaam, yet Temeke has a higher population than Zanzibar.”

The complaints over the economy and livelihood have a long history. Upon dissolution of the East African Community (EAC), virtually all issues that had previously been handled under the EAC were transferred to the Union Government, after all both Tanganyika and Zanzibar had surrendered them to the EAC. However, many people in Zanzibar contest having certain issues under the Union on account of economic reasons. According to this argument, upon dissolution of the East Africa Currency Board (EACB) in the mid-1960s, Zanzibar lost its reserves to Tanzania Mainland. The Central Bank of Tanzania was established using the two shares derived from Tanganyika and Zanzibar. However, Zanzibar has never received dividends nor a report of the utilisation of funds which were merged into the new bank. This raised the suspicion that Tanganyika misappropriated the

Zanzibari Consolidated Fund. Zanzibar complains of lack of direct access to donor aid because foreign aid on behalf of Zanzibar is channelled through the Mainland.

Many of the respondents the Mission spoke to argued that Tanganyika and Zanzibar were two different economies. However, harbours as one

of the major contributors to Zanzibar's economy falls under the Union. Although Zanzibar is by law a free port, this is not reflected in practice, because of the structure of taxation. The expansion of Civil Aviation to include Air Transport and Petroleum has been met with further suspicion. One respondent queried why natural gas and petroleum should be Union matters, while gold and diamonds are not. Inevitably, if oil is discovered off shore in Zanzibar as some reports seem to indicate, it is likely to complicate the economic dimensions of the Union relationship even further. The issue of fisheries, while not a Union matter, is complicated by the fact that the sea is a Union matter. Therefore the issue arises as to who controls deep sea fishing rights.

A considerable amount of dissatisfaction over economic issues relates to the question of Taxation. The operation of one customs duty regime throughout the Mainland and Zanzibar, has resulted in the decreased utilisation of Zanzibar Port thus causing severe financial loss. Hence the queries: How can revenue be a Union matter? Conversely, how can a government operate without revenue? It is felt that the marginalisation of Zanzibar is a deliberate act intended to strangle the economy of Zanzibar, turning it into a mere market for Tanganyika. As such, the trade deficit of 300% between the island and the Mainland is not surprising.

On the part of the bureaucracy on the Mainland, it was suspected that Zanzibar was used as a transit point for goods to the Mainland. Furthermore, a view was expressed that some of the materials imported through Zanzibar were not taxed and were therefore cheaper, which competed unfairly with the Mainland. On the other hand, Zanzibar argues that the material imported through Zanzibar should

not be taxed again since it is one country, because the double taxation makes Zanzibar an expensive port. What this has led to is the diversion of trade to Tanga, hence the loss of tax base custom levies. It is also contended that the unified tariff system has made life more expensive in Zanzibar. It is hoped that the newly established Joint

Finance Committee will help to iron out the grievances between the Mainland and Zanzibar in this regard.

The Mission's interview with the Tanzania Revenue Authority (TRA) revealed that tax collection is administered by the Customs Union. These include income tax and customs tax. The tax collection of Zanzibar is under the authority of the Deputy Commissioner of Zanzibar. Ninety percent (90%) of the taxes collected from Zanzibar are derived from customs tax while ten percent (10%) is made up of income tax. The targets of tax collection are determined in consultation with the Ministries of Finance of both the Mainland and Zanzibar. The collections are directly remitted to the Zanzibar account.

The people on the Mainland complain that they meet all the costs of maintaining the Union. For example, the Tanzania Revenue Authority (TRA) is funded from the budget of the Mainland yet it offers services to both the Mainland and Zanzibar. The Auditor General has queried why Zanzibar does not contribute to the Union costs. The Mission was informed that this issue would be addressed in detail by the Joint Finance Commission.

The Form of the Union Government

The intentions of the Union were also questioned by many persons interviewed by the Mission. It is contended that Karume sought a unitary arrangement. Others assert that Karume wished to create a federal government instead of a Union. Still others argue that Karume thought that the Union was a first step towards the establishment of an

East African Union. In defence of the form of the Union, it is contended that the haste with which the Union was created dictated the form it assumed. Creation of a proper federal Union would have taken more time, while a Unitary state would have faced the criticism of swallowing up Zanzibar. It was hoped that time would demonstrate the usefulness of the Union and propel the peoples of the two

countries to endorse it. According to this line of argument, a Constitutional Commission charged with the task of drafting a permanent Constitution for the Union was to be subsequently established.

Unfortunately, to date both the form and the substantive content of the Union remain issues of considerable contention and dissatisfaction. While it might have been agreed that a Constitutional Commission should be established within a year to discuss the form of the Union, the establishment of such a Commission was postponed on an annual basis and later indefinitely. The matter was revisited in 1977 when TANU and ASP merged to form CCM. On completion of the CCM Constitution, the same Commission headed by Thabit Kombo, was changed into the Constitution Commission to draft the Union Constitution with the main aim of establishing the permanent Constitution of Tanzania. The Assembly met and passed it.

The opening up to multi-partism in 1991 was a lost opportunity to address the issue relating to the Union between the two entities in a comprehensive manner. However, the leadership of CCM was against a discussion of the issue in fear of its potential to lead to destabilization and unrest, coming so fast on the heels of such radical change. On its part, the opposition was in a hurry to get into multi-partism. The transition to multi-partism was therefore addressed only within the party, which resulted in the amendment of only 2 articles of the constitution, yet the original constitution, as adopted in 1967 had been designed around the dominant single party, *viz*, TANU and then CCM. As we noted in the introductory chapter of this report, both the Nyalali Commission and Kisanga Committee gave some attention to

this issue. The government accepted the minority report of the Nyalali Commission. However, the recommendations of the Kisanga Committee were initially wholly rejected, although eventually, the government adopted some of them.

Contemporary discussion of the Form of Government

While the ideals of the Union are not in dispute, there are different preferences for the form that the relationship should assume. There are those who argue that the current two government system should be retained. On the other extreme, some have argued that in fact only a single (fully unified) government is appropriate. A considerable body of opinion has made the point that the Union should comprise three governments. In the following sections of the report we reprise these arguments.

The ‘Two-Governments’ Proponents

According to those who argue in favour of the two-government structure (i.e. the current arrangement), it is stated that this would ensure that the Union remains intact. There is some apprehension that any reform of the current system would provide fertile ground for either party to secede from the Union. According to this view, forming 3 governments is a recipe for unnecessary trouble, because even within such a structure, the Tanganyika government would be in a preferential position and thus be able to dictate to the Union government based on its financial contribution to the Union. Finally, such a structure would be considerably more expensive and duplicative of those structures that currently exist at the Union level. It is important to note, in concluding, that the official policy of CCM is to maintain the 2 government structure.

The Single Government Argument

According to those respondents who were in favour of this structure, they argued that this was the ultimate intention of both Presidents Karume and Nyerere. Viewed from this perspective, the increased amendments to the Articles of the Union are deliberate and are geared towards the achievement of one government, and are thus closest to the intention of the ‘founding fathers’ of the Union. According to one

respondent, Zanzibar and Tanganyika as sovereign states died in 1964 and formed Tanzania. It is also argued that a single government is supported by the current trends of globalisation and of regional integration. Otherwise, according to the view that favours the one-government system, what is the point of East African integration when there is no unity of Tanzania? Although the points were strongly made, the Mission found that those in favour of a single, unitary government were in a definite minority.

Arguments for Three Governments

A considerable number of respondents who spoke to the Mission were in favour of the so-called ‘Three-Government’ reform, which would introduce a government for the Mainland (Tanganyika), one for the islands (Zanzibar) and a government for the Union (Tanzania). Several arguments were proffered in support of this reform, and we recount them here in no particular order.

In the first instance, proponents of the 3-government system adopt a historical perspective, and argue that the amendment that removed the president of Zanzibar as a Vice President of the Union was fatal, for it removed the organic link between Zanzibar and the Mainland.

According, to the Union articles, and indeed up to the 5th President of Zanzibar, the President of Zanzibar was automatically one of the Vice Presidents of the Union. This was amended with the creation of the running mate principle introduced with the transition to the multiparty system of government. This amendment was made to cover situations where the Mainland and Zanzibar had Presidents from different parties. CCM argues that Zanzibar acquiesced to this amendment, citing the point that a Zanzibari was in fact the Vice President of the Union at the time.

However, those who were against the amendment argue that its effect was to demolish the organic link between the governments of

Tanzania and Zanzibar. In other words, Zanzibar as a state is not effectively represented in the Union cabinet, because the President of Zanzibar is no longer one of the Vice Presidents, but is a mere cabinet minister without portfolio in the Union government. Likewise, the Vice President of the Union has no representation in the government of Zanzibar. Equally, the Zanzibaris in the Union cabinet do not represent Zanzibar but are there as appointees of the Union President.

According to this argument the rotation of the presidency between Zanzibar and Tanganyika, or between a Moslem and a Christian would not necessarily always take place. On the flip side of the coin, is the fear that Zanzibar's sovereignty could in fact be further eroded by having a Union President from Zanzibar. This is because of the likelihood that such a person would seek to augment his/her power under the Union at the expense of Zanzibar.

Hence, the only logical conclusion that followed from such a change is that there should be a 3 governments structure. Furthermore, since the 1980s, there has been agitation for the 3 governments. Former President Aboud Jumbe drafted a Constitution with 3 Governments. The issue re-surfaced in 1993 with the G-55 Motion by Union Parliamentarians

seeking the establishment of a government for Tanganyika following Zanzibar's decision to join the Organisation of Islamic Conference (OIC). According to this view, the two government structure does not permit a partnership concept to enable the two sides of the Union to sit together. Moreover, the 3-governments structure is not only demanded by the people of the islands. The Mainland is complaining of deprivation of its sovereignty and government, as reflected in the G-55 Resolution. The resolution was single-handedly killed by Mwalimu Nyerere's powerful and passionate argument that tampering with a structure that had withstood 30 years amounted to the opening of a Pandora's Box because one can never know when to stop. Out of respect, the debate was deferred but never fully resolved.

One of the main points made about the 3-governments structure is that it is an expensive endeavour for an underdeveloped country. Those in favour respond that under the one party state, you had a party structure that was maintained by public funds and in substance this was a 3rd government. In fact, according to this reasoning, three governments would ensure the full economic development of Zanzibar, as was the case in 1964 before the Union was concluded. The 3-governments proponents argue that such an arrangement would make the infrastructure of the Union visible and would therefore enable the people not only to understand it, but also to own it. Under the current 2 government structure, Zanzibar feels marginalised and treated as a region instead of as part of a federation. The 3-governments structure would guarantee the identity and citizenship of the people of Zanzibar. Under the 2 government system, the fact that the Union Government and the Tanganyika government are effectively one and the same has given the Mainland undue influence over the Island. Furthermore, there is also a psychological dimension. The Zanzibaris think that the Union works more for the benefit of the Mainland than it does for the islands. Likewise Tanganyikans think that the Union government is their government. The 3 government system preserves the identity of Zanzibar. The final argument made in favour of a 3-governments system was that the present two-government system does not accommodate any likelihood of a party other than CCM forming the government of the Union. However, it was pointed out that if there were two different political parties in power in Zanzibar and on the Mainland, this would warrant a 3-government system. But, in the final analysis, those who argue for a 3-government system are also dissatisfied with the manner in which the Articles of the Union have been expanded over time to cover more areas.

The Amendments to the Union

The Articles of the Union are generally accepted as the *grund norm* of the Union, and yet it does not itself provide for a mechanism of amendment. Instead, the mechanism for amendment is provided for

under the Union Constitution. Previously, all matters relating to the Union had to be tabled to the House of Representative of Zanzibar. Article 98 of the Union Constitution provides that for any amendment affecting the Union, two-thirds of each side of the Union members in the Union Parliament should approve it. Unfortunately, some amendments have been effected through manipulation of the laid down procedure. There is added contention over where the issue is placed, whether under List A which requires two-thirds of the House approval or List B which requires a special majority of all members of the House. Hence, there is some validity to the conclusion that some articles were ‘smuggled’ into the Union in order to expand the influence the Mainland exercises over Zanzibar, with the resultant erosion of the latter’s sovereignty. Although the official increase of the articles of the Union is from 11 to 22 over the 39 years of its operation, a close reading of the same amounts to over 30 items, because there are some articles which address a number of key issues in a single article. In addition to these formal amendments, some Union issues are expanded through administrative directives. There is also a practice in the drafting of legislation that applies matters to both Tanganyika and the islands, for non-Union matters.

At the extreme end of the above arguments is the questioning of the very constitutionality of the expansion of the Union matters and the creation of the permanent Union Constitution. In other words, the process which was envisaged at the time of the Union was not followed. The process was in the main a CCM party process, which according to this view, was effected without discussion and subsequent ratification of Zanzibar. Furthermore, although the additions to Union matters were discussed in Dodoma with the participation of representatives from Zanzibar, several reasons were advanced to illuminate the illegality of the amendments. In the first instance, it is contended that the effect of Article 98 is to ensure a veto of Zanzibari opinion on any Union issue, given that Zanzibaris’ constitute less than a $\frac{1}{3}$ (60/230) of the Dodoma Parliament. Secondly, the Zanzibaris in Dodoma do not represent the interests of Zanzibar as

a partner state. Instead, they are there as members of CCM as a party. This is why it is mandatory to have the amendments ratified in the House of Representatives of Zanzibar in order to ensure that the representative of the people of the islands have a say. On the flip side of the coin, is the argument that the amendments were effected with the connivance of the Zanzibaris in Dodoma, who acquiesced in their promulgation by keeping quiet as they were being passed. Furthermore, it is contended that some amendments were proposed by Zanzibaris themselves. A case in point was the making of internal security a Union issue. In summation, it is asserted that the non-observance of the procedures of the Union matters warrants a review of the whole process.

The Amendments and their effects on the Zanzibar Constitution

Some have attributed the genesis of disgruntlement over the Union to the failure to put in place an explicit Union constitution. Accordingly, the Articles of the Union would have constituted the legitimate and undisputed core of the Constitution of the Union. Unfortunately, the discussion of the Union constitution was never accomplished in 1965, a year after the creation of the Union, as was originally intended. Rather, the Tanganyika constitution was amended to become the Union Constitution. From 1965-1977, the Union was served by the Interim Constitution. The permanent constitution was created in 1977. Many Zanzibaris claim that the constitution of the United Republic of Tanzania is not ‘their’ constitution. Rather, it is a constitution for Tanganyika and only affects Zanzibar on Union issues.

The increased amendments to the Union arrangement have violated the Zanzibar constitution as the fundamental law of the land. The amendment to the Union constitution affects Zanzibar, yet many times this is done without the ratification of Zanzibar. The only Article which was brought to the House of Representatives of Zanzibar for discussion was item 22 which covers the registration of political parties. Accordingly, one view was that the Union does whatever it

wants with Zanzibar by effecting changes to the supposed Union Constitution. The lack of respect from Dodoma makes the constitution of Zanzibar a mere shell, a sterile document with only ceremonial value.

Sovereignty and Autonomy for Zanzibar

The Mission found Zanzibaris to be extremely nationalistic and proud of their island heritage and culture, irrespective of political affiliation, whether CCM or CUF. Indeed, the Mission felt there was a widespread conviction that Zanzibar is a state. The Union was an agreement between two sovereign states therefore the issue of size is irrelevant. The view over sovereignty and autonomy was expressed in the following manner: “although we are a small island we want to retain our identity. There are smaller countries than Zanzibar represented in the United Nations.”

The Articles of the Union explicitly provide that Zanzibar was a sovereign state and it had united with Tanganyika to form Tanzania. However, the preamble to the Union Constitution is silent on this matter and merely recognizes Zanzibar as part of Tanzania, without explicitly providing whether or not it is a state. Zanzibaris have been persistent and consistent on the issue of their sovereignty. For example, in 1984, former President Jumbe drafted a constitution for Zanzibar, with a national flag and plans for a currency and was allegedly forced to resign on that account. Even when Seif Shariff Hamad became Chief Minister of Zanzibar, he maintained the same position as Jumbe. Immediate past President Dr. Salmin Amour insisted on being sworn in by the Chief Justice of Tanzania and not by the President of Tanzania, upon being appointed into the Union Government as required by the 11th Amendment of the 1994 to the Union Constitution, because he did not consider himself subordinate to him and argued that Zanzibar was a sovereign state. The issue of Zanzibar’s sovereignty *vis á vis* the Union was addressed by both the Nyalali Commission and Kisanga Committee. However, the

recommendations of both Commissions on this issue were never implemented, and thus remain unresolved.

There are several dimensions to this issue which point to the need for its comprehensive resolution, extending from the socio-economic to the cultural and the legal. For example, in the case of *Machano Khamis v. Republic (Treason Case)*, the Court of Appeal ruled that Zanzibar was not a state recognized under international law. As such, a person could not commit treason against the Zanzibari government. While the effect of the judgment for the individual accused persons may have been positive, its implications for Zanzibar are indeed profound, and go to the core of the issues of sovereignty and autonomy that the Mission found to be of such great concern to the people of the islands.

Zanzibar in Relation to Regional Bodies

Zanzibar seeks special representation on non-Union matters in regional bodies such as the East Africa Community (EAC), the Organisation of Islamic Conference (OIC), and the Southern African Development Cooperation (SADC), to mention but a few. The Union constitution does not explicitly bar Zanzibar from participating in regional organisations in its own right. Evidently, Zanzibar was party to a number of institutions of the defunct EAC on non-union matters. Hence, the strong argument that the United Republic of Tanzania should not represent Zanzibar on non-Union matters, irrespective of whether the Union Minister is a Zanzibari or not. Such issues include tourism, education and fisheries among others. Furthermore, the issue of Zanzibar's representation in the EAC is augmented by the fact that the representatives to the East Africa Legislative Assembly do not seem to represent Zanzibar interests, but instead those of their party.

3.5 The Question of who is a ‘Zanzibari’

Who is a pure or indigenous Zanzibari is the classic chicken and egg argument, given that it is an island and in light of its historical experience with different waves of migration. At the same time, the Mission found that the issue of citizenship is one that lurks beneath the surface of some of the political tension that exists on the islands. Before the revolution, a Zanzibari was defined as anybody born on the islands before the coming into force of the constitution and was automatically a subject of the Sultan. While the Revolution of 1964 maintained the same definition, it added that anybody who was not born in Zanzibar but had stayed in Zanzibar for at least 15 years without committing an offence was a Zanzibari.

However, in 1968, a Decree was passed requiring persons in government service who traced their origins to the Comoros islands to resign and become naturalised. This decree was also going to affect the Goans and the Shirazi, but government realized its fallacy and rescinded it. In other words, even though born in Zanzibar, a Comorian was not legally regarded as a citizen unless s/he became naturalised. Currently the law provides that one can become a Zanzibari by birth or by application. The Zanzibari citizenship issue is compounded by the existence of Zanzibaris in the Diaspora. During the Dissemination Workshop, there was more emphasis on the position of the law on who is a Zanzibari. However the crux of the problem of citizenship does not lie with what the law provides but how it translates in reality. For example it is contended that the manipulation of the Zanzibari issue as a political tool to either silence government criticism or to disfranchise potential political opponents is not a recent phenomenon in Tanzania. The Union government declared Oscar Kambona, Michael Kamaliza and Austin Shaba non-citizens. All three were prominent politicians in the very first

government of Tanganyika/Tanzania.¹ The case of Ali Nabwa, the editor of the weekly

Dira newspaper who is of Commorian descent, but Zanzibari by birth, is a more recent example of an attempt by the state to use the issue of citizenship to silence political dissent. The fact that Ali Nabwa, took a Commorian passport is now being used against him. At the time of the Mission, the matter was still in contention. Citizenship is a Union issue and therefore, the Zanzibari government is using Union institutions to harass its opponents.

Generally, the issue of who is a Zanzibari remains unresolved. Among the general public a Zanzibari is commonly interpreted to refer to a person who can claim the longest stay on the islands. Under the Zanzibar Constitution, any Zanzibari has a right to vote for the President, because Zanzibar is regarded as one constituency for the purposes of presidential elections. By inference, one cannot therefore lose Zanzibari status. Quite clearly, therefore, the issue of who is a Zanzibari is a constitutional matter still requires to be revisited in order to ensure that no individual or groups are disenfranchised.

3.6 Unguja and Pemba: An Unequal Relationship?

One issue that continuously emerged during the course of the Mission visit was the relationship between the two islands that make up

¹ Oscar Kambona was the first Secretary General of TANU and later served as Minister for Defence, and of Foreign Affairs. He went into self-imposed exile in 1967 after the Arusha Declaration. Michael Kamaliza was a Trade Unionist and the first Secretary-General of the sole Trade Union, National Union of Tanzania Workers (NUTA) and became Minister of Labour. He was implicated in the first treason trial in 1970 for plotting against the Nyerere government. Austin Shaba was Minister of Health and later resigned from government on allegations of being a non-citizen. Aboud Maalim, the Minister of Commerce and Industry in the first phase government resigned because of being alleged to be a non-Zanzibari but a Commorian. All the other personalities listed above were alleged to have been or originated from Malawi and hence the claim that they were non-citizens.

Zanzibar, namely, Unguja and Pemba. While some respondents denied that there was any problem between the two, it was clear to the Mission that there are a number of points of concern that underpin the relationship between the two islands. Some of the respondents who spoke to the Mission assert that there is a racial dimension to the tensions between the two islands. According to this argument, the sultanate treated the two islands differently. In Pemba there was less repression of the people as compared to the situation in Unguja. Pemba was more independent and had the *Shirazis* while Ungujans were mainly slaves and clove pickers. There are strong sentiments that the *Wapemba* pretend to be Arabs and are so exclusive that they only employ other *Wapemba*. This racial discrimination underlines the core problem facing the islands currently, despite the fact that intermarriages between the inhabitants of both islands and across racial divides has taken place. Some have traced the dichotomy to the centre and periphery concept, with Unguja being the seat of the capital of Zanzibar. Hence, the perceived marginalisation predates the revolution, given that the Sultan also treated Pemba as a marginal part of his territory. Indeed, it was reported that the Sultan never slept in Pemba, but rather remained on his ship whenever he visited. Others argue that there is no consistent pattern of marginalisation, but that the dichotomy is a mere managerial problem arising from the leadership style of the personalities holding government positions. As such, the problems that do exist are easily rectifiable. The lack of or deterioration in infrastructure is not unique to Pemba, but is applicable to other rural parts of Zanzibar. While the new generation which constitutes over 70% does not adhere to this demarcation, it is claimed to be firmly ingrained in the elderly who are still influential in the politics of the two isles.

Yet others contend that the dichotomy is both a superficial and an artificial political creation utilised by both CUF and CCM, with CUF exaggerating it in order to maintain its political stronghold in Pemba, while CCM exploits it to weaken the unity of Zanzibar as a state. In the view of one respondent, the Unguja/Pemba divide is a political

myth that cannot stand up to scrutiny amidst the inter-marriage and other interactions between the peoples of the two islands. For example, before the implementation of the multiparty system, 2 out of 3 Chief Ministers were from Pemba. Furthermore, immediately after the revolution there was an attempt to equalize opportunities between the two islands. For example, there were two major hospitals one in Pemba and the other in Unguja; Pemba had good murrum roads, telephone links and well-maintained wells. Although education centers are concentrated in Unguja, they were open for both WaPemba and WaUnguja. The majority of students who acquired scholarships on merit were from Pemba. According to this argument, the dichotomy was created when government decided to identify the origin of the students whether from Pemba and Unguja in granting state scholarships. Currently, it is alleged, the *Wapemba* are not granted higher education scholarships.

Those who advance the existence of discrimination argue that the dichotomy between the two islands can be diagnosed from political, economic and racial perspectives. The Mission felt that it was important to present these views for further debate and analysis especially since enough respondents spoke of the matter for us to consider that it required specific attention and analysis.

The Political Dimension

During the pre-independence period there was an equal representation of Ministers from Pemba and Unguja. However, there is also a submission that even the British had an administrative policy of not giving leadership positions to Wapemba. Nevertheless the political cleavages worsened after the revolution, with the WaPemba victimised for their perceived lack of participation in the 1964 revolution. Accordingly, there were only a few Wapemba in the Revolutionary Council. The relationship was aggravated with CCM having lost all the 21 seats of Pemba in the 1995 elections and winning only 5 seats in the 2000 elections, which in any event, was a

seriously contested result. This enhanced the perception of all Wapemba being seen as opposition. Again, a claim is made that there has never been a President, Chief Justice, or Speaker of the House from Pemba. Additionally, the army, police, *Jeshi la Kujenga Uchumi* (JKU), Prison Service and *Kikosi Maalum cha Kuzuia Magendo* (KMKM) are allegedly hesitant to employ a person of “Arab origin.” In fact since the assassination of Karume, no person of Arab, Goan, Indian or Comorian origin have been appointed to any of the above institutions.

The economic dimension

Despite the fact that Pemba contributes 85% of Zanzibar’s cloves and constitutes about 40% of the population, there is an inequitable distribution of infrastructure, power, and opportunities, such as state scholarships. This has made the *Wapemba* believe that the *Waunguja* simply dislike them. As such, the sudden deflation of the cost of cloves from Shs. 3,000/= to 1,000/= within 6 months of the 2000 elections is perceived as punishment for Pemba’s lack of political support to the CCM government. The counter point to this argument is that the deflation of the clove prices is attributed to world trade, and the clove boom in Indonesia. Furthermore, the claim of economic marginalisation is also a sham, given that Pemba is agriculturally richer, has more university graduates than Unguja and has a large population of successful migrants in the business sector on the mainland.

3.7 The Situation of Marginalised Groups and the Question of Religious Tension

There are a number of groups in Zanzibar society which are crucial to ensuring the peaceful and progressive development of the country. Among them are women and the youth, who have traditionally been left out of the debate about change in society. There is also a question relating to religious tensions that has surfaced in recent years. The

Mission felt that it was important that the views of marginal groups on the issues of constitutional order and political governance that affect their society be given an airing, as does the religious issue. Islam is the dominant religion in Zanzibar with ninety-eight percent (98%) of the population being muslim, and most belonging to the Sunni sect. There has always been tolerance of religion on the island exemplified by the offer of the Sultan to Christians to build a church. Furthermore, Christians restrain themselves from eating publicly during the fasting month of Ramadhan. However, there have of recent been some religious tensions that are allegedly fueled by the Zanzibar government's approach to Islam. For example, on February 25th 2003, Iddi prayers were broken up. Muslims clashed with Police in Zanzibar in a row over the dates of the Muslim festival Eid. A law had been passed permitting only the Mufti to decide when Eid should be celebrated. Accordingly, a section of Muslims gathered for Eid prayers on Tuesday as opposed to Wednesday. The police fired tear gas and plastic bullets to disperse the worshippers. Four people were injured in the ensuing fracas. This state coercion triggered the increased attendance of Moslems at prayers as a sign of resilience against perceived religious persecution. This demonstrates the need to reform the law that empowers the Mufti to determine Eid celebrations, in order to guarantee the fundamental rights of all Moslems.

The religious tensions are further compounded by the allegations from western countries of growing Islamic fundamentalism in Zanzibar, particularly Pemba. Additionally, the extreme poverty and oppression make Pemba a potential breeding ground for terrorism. The fact that one of the September 11 suspects was from Pemba, has been overplayed by the foreign press in order to support the claim of the possibility of the existence of a cell of Islamic fundamentalism located in Pemba. As a consequence, the travel advisories issued by the USA and Britain have adversely affected the tourism industry.

The office of the Mufti is established under the law and works under the Ministry of Constitutional Affairs and Good Governance. The role

of the Mufti is to coordinate religious affairs, Ramadhan, Muslim public gatherings and celebrations, as well as the sighting of the moon. The sighting of the moon is an important function because Eid is a public holiday and thus affects government functioning. The Mufti declined to comment on *Muafaka* because as a religious leader he argued that he is not supposed to participate in politics. However, he was hopeful that the political tensions would subside. The above notwithstanding, the Mufti recommended the consultation of religious leaders particularly on matters of religious affairs in the formulation of government policy, rather than having a reactionary consultation in response to problems as and when they arise.

The Issue of Gender Relations

Traditionally, the role of women in politics has been marginal throughout Tanzania. Very few women occupy prominent positions. Women's participation in politics is largely in mobilization particularly through use of local dancing. This was attributed to the lack of women's willingness to offer themselves for positions of power or because they are not sufficiently educated. Not many respondents commented about the situation of women in Zanzibar, but the few who did claimed that women are both politically aware and active behind the scenes.

Although the Constitution of Zanzibar recognizes the equality of men and women and provides for a 30% representation of women at all levels of political participation, overall, there are still few women in critical decision making positions. This is partly due to the low educational levels of girls. Few girls complete secondary and higher education, leading to low accessibility to available employment opportunities. In view of this problem it was observed that women are not well represented even on the *Muafaka*, with only 2 women, one from each of the two parties.

Women face gender specific violence during elections. For example the Mbita Commission reported that 22 women claimed to have been raped and eighteen were harassed and subjected to attempted rape, the tearing of clothes and touching of private parts. In 1998, the Zanzibar government passed the Sexual offences (Special Provisions Act) aimed at protecting the dignity of women and children. Currently, there is a debate over the Spinster and Widows Law.

Rights education and access to justice for women is still wanting in Zanzibar. This warrants a systematic process of rights education for women at the grassroots level about violence and access to justice. The Mission was informed that initially, the Ministry of Youth, Employment, Children and Women represented women in Court. Women have now been referred to other legal aid providers such as *Kituo cha Huduma za Sheria* (ZLSC) which provides legal counseling.

The Role of the Youth

As in most East African societies, the youth are aware of their political history. Likewise, the youth interviewed by the Mission were aware of the revolution and of related political developments in Zanzibar. However, they did not appreciate why history should be decisive in shaping current political choices. Consequently, they were more concerned with contemporary problems such as HIV/AIDS and unemployment, to mention but a few. In particular, they felt that there was a need to emphasize political tolerance in order to garner the collective efforts of all youth in the struggle for the development of Zanzibar, and also to give them more opportunities to be heard and to influence issues in their country. The role and creative energies of the youth need to be geared towards constructive development. The youth are being misused by drug barons with political protection as drug carriers and peddlers which has adversely affected both their health and prospects for development.

Media and Politics

For many years, there has been no independent media in Zanzibar. The mass media is still tilted in favour of the ruling party. *Dira* is the first independent paper to operate after the revolution. Its focus is mainly corruption and good governance, and as a consequence it is not popular with government. This situation of tension was intensified when the paper published an article entitled, “The other side of the coin of Nyerere,” which inferred that Nyerere was not quite the angel he had historically been portrayed to be. As a result of this and other stories, advertisements in *Dira* have reduced, out of fear by businesspeople of being seen to be associating with an anti-government publication. On the other hand, many people interviewed by the Mission regard *Dira* as their mouthpiece in that they are of the view that it reports the truth without fear or favour. Yet others contend that *Dira* is a CUF paper and is therefore partisan. Whatever, in reality, it is *Dira*'s reportage that led to its editor (Ali Nabwa) facing the problems we have already alluded to regarding his citizenship. As yet, the paper is still tolerated by the government, but there are indications that the present levels of restraint may not last. For example, the government has lodged complaints against the *Dira* to the Media Council of Tanzania. Since the *Muafaka*, there has been improved reportage of political events covering the opposition in the media, particularly on radio. There is also a need for the liberalization of the air waves and encouragement of the establishment of independent television and radio stations in Zanzibar.

3.8 Institutional Frameworks, Governmental Powers and the Place of Donors

Progressive approaches to constitutionalism and good governance are intricately linked to the institutional structures and the powers vested in governmental organs. Several of these are of relevance in the context of Zanzibar. The Mission noted that the institutional establishment in Zanzibar retains vestiges of a single party state, and

as such this poses a major impediment to the fluid functioning of the system in a manner that ensures that all persons are treated with equality before the law. Likewise, there are problems with the operation of the separation of powers. This links up to the overall issue of the structure and operation of the Union, but there are many dimensions specific to the case of Zanzibar. The following synopses of these institutions simply highlights those issues that the Mission felt were most relevant as providing a basis on which a more comprehensive discussion of each of these institutions and bodies could be conducted.

The House of Representatives

The Zanzibar House of Representatives has effective power in non-Union matters in Zanzibar. The Mission learnt that there have been instances in which the Union Parliament in Dodoma enacts laws on non-Union matters which extend to Zanzibar. A case in point is the law establishing the Commission of Human Rights and Good Governance. Furthermore, the House of Representatives in Zanzibar has for several years been functioning without the effective participation of the opposition, first arising out of the technical boycott and later as a result of the nullified 2000 elections. This absence has hampered the development of the legislature as an institution responsible for oversight particularly one that is ably played by the opposition in such a Parliament. The above notwithstanding, in some instances the Mission was informed of the vibrancy of the debate in the House of Representatives. Equally, the House of Representative has been commended for passing many progressive laws including the 8th and 9th Amendment and the Electoral laws. As part of the *Muafaka* 2 process, the return of the Opposition to effective participation in the legislature should result in a more comprehensive development of the Zanzibar House as a critical element in the quest for progressive constitutionalism. Furthermore, the House of Representative has to be adequately resourced in order to act as an effective check and balance to other arms of government.

The Attorney General's Chambers

While there are two Attorneys General, one for the United Republic of Tanzania and another for Zanzibar, the Mission learnt that they rarely consult each other to determine whether a given issue is a constitutional matter or not, perhaps because of the view that the two are independent of one another. There were general impressions that before *Muafaka*, the Attorney General's office, had much influence on the office of the Chief Minister and that of the Commissioner of Police. Furthermore, the Attorney General is a member of the National Executive Committee of CCM, raising questions regarding the impartiality of the holder of the office. The Mission is of the considered opinion that the recommendation of the Nyalali Commission for consultations to be held between the two Attorneys General on any matter of the Union, should be followed up.

The Law Reform Commission

The Law Reform Commission of Zanzibar is largely non-functional, mainly on account of a lack of resources. And yet, it is quite clear that there is a need for comprehensive and radical legislative reform in order to make the legal regime truly reflective of the current system of governance. As such, the Commission would evolve to play a critical and fundamental role in ensuring that the process of law reform is comprehensive and fully covers the key issues of constitutional development that require attention. There is a need to reconstitute the Commission to make it an effective institution in addition to giving it adequate resources.

The Judiciary

The Mission heard claims that the judiciary in Zanzibar functions much more as an extension of the Executive than it does as an independent organ, and that this is a legacy inherited from the single-party regime. While the Mission did not carry out an empirical

investigation of this charge, certainly, there are issues that require attention in order to ensure that the judicial arm of government is fully equipped to deal with the demands of constitutional fidelity and good governance. Thus, it is clear that the judiciary is seriously hampered on account of a lack of institutional support. For example, there is no resident judge in Pemba. The visiting judge only visits the island once or twice a year. Given that the current visiting judge has been allowed by government to serve beyond retirement age, doubts have been raised about his impartiality and his ability to effectively execute the functions of his office. This has resulted in disillusionment and discouragement from filing cases. While appeals from Pemba can be heard in Unguja, the costs of doing this are prohibitive. Most civil cases concern claims for the payment of rent and criminal actions are in the main about drug abuse by youth, traffic offences and simple theft. Any urgent application is registered and sent to Unguja. These impediments feed into the claims that Pemba is mistreated and that there is less concern for the rights and interests of the citizens of this part of the country. The Mission was informed that there is a pool of local legal experts who qualify to be judges, but due to political considerations they are ignored. There is also a need to have a resident judge in Pemba in order to make justice readily available for all.

Although the constitution provides for the establishment of a Constitutional court to address Union and other constitutional issues, such a body is yet to be put in place. Equally, the human rights Chapter in the present Constitution is not comprehensive. For example, the lack of a constitutional limit within which a person may be brought before a court of law, in effect condones lengthy detentions. Such issues need to be given a comprehensive review and the necessary reform implemented in order to ensure that both the criminal justice system and that of civil litigation are attuned to the current needs of the Zanzibar populace. The Mission notes the marked improvement in the protection of human rights under the 8th and 9th Constitution, for example the prohibition of torture and inhumane and degrading treatment.

The Mission recommends that law reports and law reporting should be re-established in order to develop precedents. The registry has to be modernized. Furthermore, judges should have security of tenure, because retaining judges on contract undermines the independence of the judiciary.

The Ministry of Constitutional Affairs

The Ministry of Constitutional Affairs is constituted of 7 departments comprised of the Mufti, the DPP, the Attorney General, Wakf and Trust Commission, the Registrar General and the High Court. A Department of Corruption and Ethics was due to be created after July 2003. Although ideally the ZEC and Union matters should have been under the authority of the Ministry of Constitutional Affairs, these are currently under the office of the Chief Minister. A Civic Education section is yet to be established under the Ministry of Constitutional Affairs. Placing the Mufti's office under the Ministry of Constitutional Affairs undermines the position of Zanzibar as a secular state. The separation of the DPP from the Attorney General's Chambers is appreciated as a positive step towards consolidating the rule of law and depoliticising the system of prosecution. Likewise, safeguarding the security of tenure of the DPP is a positive development. However, the relationship of the different departments under the Ministry need to be clearly defined to preserve the concept of the separation of powers, particularly the likelihood of undue executive influence over the judiciary.

The Civil Service

The civil service in Zanzibar has in many respects been largely dysfunctional since the revolution. The Mission heard several assertions about the governance and operation of the civil service in Zanzibar. It is allegedly characterised by a lack of known rules of procedure; personalised recruitment; prevalence of oral directives from the executive arm of government, and lack of criteria for

promotion. As such, a person may hold the same position for 25 years without promotion or salary increment. There is also lack of a retirement benefits system; personal collection of taxes without receipts; poor accountability for funds; prevalence of nepotism, corruption, extreme inefficiency and abuse of office. Civil servants who are deemed sympathetic to the opposition have lost their jobs, most notable, among them being Rukia Utope.² At a minimum the mechanisms for oversight of the civil service require reform, not to mention the need for a comprehensive review of the extent to which such claims are actually correct.

Civil Society

A few organizations, such as the disabled persons' groups, umbrella Organisations such as Association of Non-Governmental Organisations of Zanzibar (ANGOZA), The Journalist Association of Zanzibar (JAZ) and Kituo cha Huduma za Sheria (ZLSC) have been professional in the execution of the roles. However, the majority of civil society actors in Zanzibar suffer from a number of disabilities. In the first instance, the sector is a small and marginalized one. Secondly, it appears to be tainted with the charge of partisanship.

Contrary to the practice of having lawyers at the forefront of struggles for the rule of law, the lawyers in Zanzibar have been relatively inactive. There are only eight practicing lawyers in Zanzibar and the Zanzibar Law Society is yet to make a significant impact on the political or constitutional situation in the country. As a civil society organization, the Zanzibar Law Society has largely failed to speak out or take legal action on the constitutional amendments effected in contravention of legal procedures, or indeed to design a program of

² Rukia Utope was employed by the Ministry of Women and Children until 1997 when she was fired for allegedly having been seen to celebrate when CUF won the Mkunazini bye election. She filed a petition in the High Court of Zanzibar. The court ordered that Mrs Utope be reinstated and paid all her arrears because the Ministry failed to prove the actual derogatory words she had spoken of the Government of the day.

action to address the many issues of legal and constitutional concern that abound in the country. ZLSC has filled this void by providing legal counselling and education. According to members of the Bar who spoke to the Mission, the Judicial Service Commission is hardly operational. Moreover, the Chief Justice yields considerable influence over this body, particularly because he has absolute discretion to issue practicing licenses, which adversely affects lawyers capacity to engage in overt legal activism. Although there was an attempt to seek recourse to the International Court of Justice for the violation of the Union Treaty, Zanzibar found itself technically incapacitated because being part of Tanzania, it is not a recognized state under international law. Neither has there been a meaningful discussion of this issue. Ironically, State Attorneys (lawyers in government employment) are perceived to be at the forefront of legal activism in the country. Hence, the strong misconception that all lawyers are part of the opposition.

The Police

The security agencies fall under the ambit of the Union Government and the Zanzibar government. The police, the Tanzania People's Defence Forces (TPDF) fall under the Union Government, while the KMKM, the Zanzibar Prisons, the National Intelligence Services fall under the Zanzibar government. However, the Mission was only able to interview the police, thus this report primarily focuses on the police.

As a remnant of the one party state the security agencies have been known to display political bias in the execution of their duties. Some respondents argued that the police continue to function much more as a party organ. The attitude of the Police Force has not changed due to the recruitment process, which is effected through the *Maskani* (originally vigilante groups converted into political mobilization groups) on the recommendation of the CCM branch office.

The Police maintained that their duty was to ensure law and order in incidents of a breach of the peace. However, they find themselves “sandwiched” between the struggles of the political parties. In other words, their intervention to restore law and order is often misconceived as being partisan with the focus shifting from the two political parties that prompted the police intervention in the first instance. While meeting the Mission, they dismissed the possibility of bias in the recruitment process, arguing that the police recruitment is guided by a definite criteria: a person must be 18 years of age; they must have completed Ordinary Secondary school education, have no criminal record and be physically fit. According to the head of Police, such criteria may inadvertently exclude certain people from recruitment into the force. The above notwithstanding, the police were hopeful that that the implementation of *Muafaka* would be advantageous to it. The police training on human rights is in progress. Specifically, they were of the view that it would result in better investigative skills development and the improved coordination of the prosecutions process to mention but a few of the advantages.

Donors and their Role

As with many other countries in the region, the donor community has a dominant presence in Tanzania. However, it is apparent that they do not have a uniform approach to Zanzibar. The Swedish government has given direct support to the island, while the Dutch prefer to deal directly with the Union and as such there is no individual allocation of resources to Zanzibar. On the other hand, the German Government offers assistance through development agencies such as Friedrich Nauman Stiftung, Fredrich Ebert Stiftung and GTZ. Otherwise, most development agencies are situated in Dar es Salaam, with the exception of UNDP which operates project staff in Zanzibar. Some donors contribute to the ‘basket’ funding coordinated by the Danish Embassy, in support of the process. The European Union has also offered substantive support to *Muafaka*.

Following the problems with the 1995 elections that were characterized by violence and illegal detention, donors were prompted to cut off aid to Zanzibar. This was exacerbated by the imprisonment of the CUF leadership in 1998. Currently, donors have opted to exercise neutrality by having dialogue with both the government and the opposition. As a development policy, bilateral aid is negotiated between governments, in which case the Union government is party to the negotiations. Under this arrangement, it is presumed that Zanzibar being part of Tanzania would obviously benefit from the aid with 4.5% earmarked for it. This has prompted some dissatisfaction among some of the respondents the Mission met, who feel they are being treated simply as another region of the Mainland. On the other hand the Mainland argues that the 4.5% is a lions' share compared to the population and size of Zanzibar.

IV. CONCLUSION AND RECOMMENDATIONS

The report of the Mission visits to Zanzibar is a combination of the conversations that were held, an examination of the literature on the subject that was collected, as well as a survey of the policy statements and legal instruments of the country. However, it is essential that practical measures be taken to move the discussion beyond this point. Our broad conclusion is that the people of Zanzibar have had their fair share of political turmoil and constitutional uncertainty. The reasons for this are both internally generated, as well as externally influenced. They are retraceable to Zanzibar's tortured historical past as well as to the uncertainty of its present, and fears for its future. Consequently, these conclusions and recommendations are addressed to both the Tanzanian and Zanzibar governments, as well as to all those political and civic actors who took the time off to interact with our Fact-Finding Mission. Most importantly, our recommendations are directed to the people of Zanzibar, who ultimately are the actors best situated to effect positive and progressive constitutional change in their country.

Since independence, Tanzania has never had a comprehensive constitutional discussion. Whenever an opportunity for such discussion has arisen, as in 1964, 1977, 1991 and 1998 debate has been narrowly focused and directed at the achievement of specific political gains. What has thus emerged has been a piecemeal or *ad hoc* approach to the issues of constitutionalism and governance, an approach that has left out the vast majority of the country's populace. In the view of the Mission, Tanzania's most important recent constitutional development was to make the peaceful transition from a single-party arrangement to one in which political pluralism is upheld and promoted. And yet, a review of Tanzania's current Constitution will elicit overtones of the single party. Furthermore, although the two elections that have been held since this transition took place have affirmed the domination of CCM in the political arena, the ruling party has not yet fully internalised the fact that it is operating in a

pluralist, politically competitive situation. In sum, the transition is yet to be completed. This is particularly the case in Zanzibar, where there is a continuing need for CUF and CCM to be more tolerant and appreciative of each other as political competitors, and where there is an acute need to move away from the ‘winner take all’ attitude. The focus should shift from assigning blame to working for a better Zanzibar.

While the Nyalali Commission and Kisanga Committee made numerous and useful recommendations on what needs to be done in order to complete that transition, to date, only a handful of these proposals have actually been taken fully on board. For example, most of the full schedule of laws were identified as unconstitutional, and are yet to be deleted from the statute books. Secondly, the discussion about the most appropriate arrangement for the Union was pushed under the carpet on the grounds that it is unwise to tamper with something that is allegedly working well. What the Mission established was that as a consequence of the lack of popular involvement in whatever constitutional change has thus far taken place, there is near unanimous support for the need for a fundamental and comprehensive constitutional dialogue. Such a dialogue would cover all issues that affect the conditions of governance and civic and political order in the country. The Mission interprets this yearning for a constitutional dialogue as an indication of a sincere eagerness to develop a common vision for political stability and economic development. We emphasize that such a dialogue needs to be conducted at the national level and its parameters need to be broad and all-encompassing. Furthermore, there should be no pre-conditions for such dialogue, and it should be designed in such a manner as to promote direct, uninhibited and candid discussion.

Given that the Mission’s main focus was constitutionalism and the governance situation in Zanzibar, our primary conclusion is that the dialogue at the national level needs to be supplemented by an *intra-Zanzibari* dialogue. This is in recognition of the fact that while the

future of the peoples of Zanzibar and those on the Mainland are intricately linked in various ways, there are issues specific to the islands that require separate in-depth examination. We note that the nucleus of that process can be found in *Muafaka*. Indeed, the Mission salutes those engaged in the dialogue under this arrangement for the achievements made to date.

However, it is the considered opinion of the Mission that *Muafaka* is not well constituted as a forum for wide constitutional public debate on account of all the reasons we have recounted in this report. There is a particular problem with *Muafaka* regarding its representativeness and inclusiveness. In short, there is a need to establish a more embracing mechanism that covers a wider spectrum of opinion and interest.

Furthermore, *Muafaka* deals in the main with the political (and especially the electoral) dimensions of the many issues that are the cause of tensions on the island. However, it is limited to the two main parties who certainly cannot be viewed as representative of all Zanzibaris, whether politically or otherwise. In other words, the constitutional dialogue should encompass varied interests and be conducted in an open environment to stimulate free discussion over the controversial and emotional issues that the Mission encountered in its visits. These include the Unguja and Pemba dichotomy; the Union relationship and the question of who is a Zanzibari, among others. Expressed another way, this dialogue needs to review all matters that are at the core of the feelings of dissatisfaction and marginalisation that the Mission found were abundant in the country. It is believed that an open and constructive debate would avert a political catastrophe. The Ministry of Constitutional Affairs' Strategic Plan for good governance provides an opportunity to channel constitutional reforms in the Zanzibar constitution in a comprehensive fashion. The Mission maintains however, that the process should be comprehensive.

At the same time, the Mission took note of the fact that even without initiating a comprehensive dialogue on these issues, room still exists for establishing a useful framework within which they can begin to be comprehensively addressed. For example, the Ministry of Constitutional Affairs can begin to play a role in expanding the democratic space, in terms of ensuring the protection of media rights and of guaranteeing enhanced civic participation in the processes of governance. This is a conclusion drawn from the Mission's observation both that the notion of an independent press is a new one in Zanzibar, as is the idea of active civic participation in the affairs of governance. Consequently, the Ministry and other non-state actors can begin to play a more significant role, for example, in the conduct of civic education. All institutions of government should be trained to exercise their functions with impartiality and fidelity. This includes the security agencies and the civil service, to mention but a few of the key institutions that need to be primed to play a more central role in the promotion of progressive constitutionalism in the country.

The Mission found that while many Zanzibaris have heard about their constitutions, a good number (including NGO activists) have never seen the Union or Zanzibar Constitution. To compound the problem for many, their information sources about the law and the constitution are not official. The Mission found an extensive lack of knowledge about and appreciation of the place of the Constitution—whether in relation to its fundamental nature, or with regard to its implications for democracy and governance in the country. Further, the constitution is not readily understood because it is written in complicated and legalistic language. Thus the Constitution has to be simplified for the general understanding of the masses. On its part, Zanzibari civil society needs to be strengthened to act as the true conscience of the people, and refrain from being polarized. The lawyers have a particular obligation to take up an activist role in upholding and promoting the rule of law and good governance in the country.

The final conclusion and observation that the Mission would like to make concerns the issue of a Government of National Unity. The Mission was informed that in the aftermath of the May elections, dialogue would commence on the possibility of working towards a government of National Unity. In its discussions with members of CCM, this idea was dismissed allegedly because of the lack of goodwill and tolerance on the part of CUF. Furthermore, it was also argued that a government of National Unity is not provided for under the law and that it would be against the mandate of the people who voted in the party of their choice. Indeed it is advanced that CCM has nothing to gain from such an arrangement, because it is the party in power. According to this line of argument, a government of national unity cannot succeed in Zanzibar because CCM is reluctant to work with CUF.

The proponents for the government of National Unity argue that it would be ideal as a temporary or interim measure in the quest for political harmony. Furthermore, they state, that the bloody electoral conflict which followed both the 1995 and 2000 elections necessitates compromise in the interest of peace and development. It is also argued that the lack of a clear-cut majority in Zanzibar speaks eloquently to the need for a government of National Unity. Additionally, the success so far achieved through *Muafaka* demonstrates the usefulness and feasibility of CUF and CCM working together. The Mission feels that what this issue speaks to is a larger question than simply the government of national unity; it is the idea of equitable power sharing and of designing mechanisms to deal most appropriately with the stand-offs that produced the post-election tensions in the past. More thought therefore needs to be given to ideas such as proportional representation and the decentralization of powers that are currently exercised by the central government. It is also necessary to give critical thought to appropriate mechanisms of affirmative action—whether of regions that might be more disenfranchised (such as Pemba) or for marginalized groups such as women, and the youth. Most importantly, the Mission notes that the key question is that of

political goodwill. Without it, the conflicts and tensions will continue; however, even a little can be utilized to produce changes that will have great significance to the search for progressive constitutionalism and better mechanisms of political governance.

4.1 GENERAL RECOMMENDATIONS

The Mission is of the considered opinion that there needs to be a comprehensive discussion of constitutional and governance issues in Tanzania. That discussion needs to both review the current constitutional instruments for their current relevance, as well as to examine the content of laws and regulations that do not pass the test of constitutional muster.

The Mission feels that there is a need for a comprehensive *intra-Zanzibari* dialogue that would focus on the specific aspects of Zanzibar's constitutional and governance arrangements, and specifically deal with those issues (such as citizenship) that have the tendency to promote feelings of xenophobia and political persecution.

The Mission considers that it is essential for there to be a frank, candid and comprehensive discussion of all aspects of the Union between Tanganyika and Zanzibar. That discussion should focus not only on what the Union was intended to be, but also on what it has actually evolved into, and in which direction the peoples of Tanzania and Zanzibar want it to develop.

The Mission is of the view that mechanisms for civic and political education, and especially for the promotion of greater citizenship participation need to be put in place in Zanzibar.

The Mission notes that a free media is central to the establishment of a free, democratic and transparent system of government. As such, the state in Zanzibar should take all necessary measures to ensure that the print and broadcast media are free to exist and to effectively operate.

4.2 SPECIFIC RECOMMENDATIONS

The Muafaka Process

The Mission recognizes that *Muafaka* is a positive development. It should be internalized and institutionalized. This requires continued popular participation in the dialogue. Despite religious and political differences, the process of dialogue among the top leadership should be replicated at the village level to deepen the roots of *Muafaka*.

Muafaka has implications for regional and Africa integration and provides a useful model for a positive dispute settlement mechanism as well as a tool for negotiations that can influence positive political development.

The Administration of Justice

The independence of the judiciary has to be entrenched into the Constitution, through ensuring security of tenure. Furthermore, a credible and independent Judicial Service Commission should be put in place. Among others, it should safeguard against the de-politicisation of the Judiciary and oversee the recruitment of local legal judicial experts.

The Mission commends the establishment of the office of the DPP, but calls for adequate allocation of resources and independence from the Ministry bureaucracy.

The Law Reform Commission should be revived

There is need for further investigation into the de-humanising prison conditions, particularly those which exist at the Kilimani Prison which is congested. As an interim measure, prisoners serving long-term sentences should be transferred to other prisons.

Political Parties

Currently in Zanzibar there are two major parties and the volatile relationship between the two parties is the basis of political turbulence in Zanzibar. Although it is perceived that political parties carry historical political baggage, there is no empirical evidence to establish this.

Noting that *Muafaka* is about two political parties, other political parties in Zanzibar need to be given recognition and space.

There is a need to develop a Code of Conduct for political parties beyond the election period.

The current position of providing subsidies for political parties in respect of their representation favours the dominant parties and needs to be revisited.

The office of the registrar of political parties should open offices in Zanzibar and the relevant authority should appoint a Deputy Registrar for the islands.

Political parties should build on *Muafaka* to strengthen the freedom of political parties to operate fully and access the public, as well as facilitate a two-way communication within the party structure.

The Electoral Process

Zanzibar needs to consider moving from the first past the post system of elections with the “winner take all” ideology and develop proportional representation, such as mixed member proportion representation based on fixed constituencies and party lists. Further, in situations of marginal winning, putting in place a government of National Unity would be advantageous to the development of Zanzibar.

Persons Interviewed by the Fact Finding Mission

Abbass Muhunzi	Civic United Front Expected candidate of Chambani (4 April 2003 - Pemba)
Ahmed Miskiry	Lawyer (1 April 2003 - Zanzibar)
Ahmed Seff Hamad	Civic United Front (4 April 2003 - Pemba)
Ali A Suleiman	Former KISANGA (2 April 2003 - Zanzibar)
Ali M Ali	Lawyer (1 April 2003 - Zanzibar)
Ali Mohammed	ZAIADI (Zanzibar Association of Information) (3 April 2003 - Zanzibar)
Ali Shamuhuna	Former Minister of Planning & Economic Affairs (5 April 2003 – Dar es Salaam)
Amina Salum Ali	Member of the House of Representatives – Zanzibar (5 April 2003 – Dar es Salaam)
Asha Musa Ahmed	JUWAZA (31 March 2003 - Zanzibar)
Awahd Ali Said	Lawyer (1 April 2003 - Zanzibar)
Brig.-Gen. Hashim Mbita	Chairman of Committee on Pemba Killings (3 April 2003 – Dar es Salaam)
Dr. Godwin Njema	Director, Electoral Commission Research Bureau (4 April 2003 – Dar es Salaam)
Dr. Mohamed G.Bilal	Former Chief Minister (1 April 2003 - Zanzibar)

Dr. Mohammed Bakari	University of Dar es Salaam (3 April 2003 – Dar es Salaam)
Fatma Badda Abdulla	Civic United Front (4 April 2003 - Pemba)
H.E Dr Salmin Amour	Former President of Zanzibar (2 April 2003 - Zanzibar)
H.E Dr. Bernard Berendsen	Ambassador Royal Netherlands Embassy (3 April 2003 – Dar es Salaam)
Haji Faki Shaali	Civic United Front Expected candidate Mkanyageni Constituency (4 April 2003 - Pemba)
Haji Khatibu Haji	ANGOZA (Association of NGOs Zanzibar) (31 March 2003- Zanzibar)
Hamad Ali Mussa	Former Shadow Minister Constitutional Affairs (4 April 2003 - Pemba)
Hamis Juma	Civic United Front (4 April 2003 - Pemba)
Harry M. Kitillya	Commissioner General of the Tanzania Revenue Authority (8 May 2003- Dar es Salaam)
Hassan Abdulla	Civic United Front Party Chairman Micheweru District (4 April 2003 - Pemba)
Hassan Juma	CHANGAMOTO (31 March 2003 – Zanzibar)
Hilika Khamisi	SACP – Development Plan PHQ (2 April 2003 - Zanzibar)
Hon Mark D. Bomani	Former Attorney-General (May 2003 – Dar es Salaam)

Hon Seif Shariff Hamad	General Secretary – The Civic United Front (3 April 2003 – Dar es Salaam)
Hon. Abraham Mwampashi	Resident Magistrate & High Court District Registrar - Pemba (4 April 2003 - Pemba)
Hon. Iddi M. Simba	Member of Parliament for Ilala Central Dar es Salaam (8 May 2003 – Dar es Salaam)
Hon. Juma Duni Haji	Deputy Secretary General (Zanzibar) Civic United Front (1 April 2003 - Zanzibar)
Ibrahim M. Ibrahim	Min. of Constitution & Legal Affairs University of Dar es Salaam (May 2003 Dar es Salaam)
Jenerali Ulimwengu	Chairman, Habari Corporation (4 April 2003 Dar es Salaam)
Juma M Abdalla	SACP – Administration (2 April 2003 - Zanzibar)
Justice Augustino Ramadhani	Court of Appeal of Tanzania & East Africa Court (31 March 2003 - Zanzibar)
Justice Hamid Mahmoud Hamid	Chief Justice of Zanzibar (1 April 2003 - Zanzibar)
Justice Joseph S. Warioba	Former Vice President & Judge of the E. A Court of Justice (May 2003 Dar es Salaam)
Justice Thomas Mihayo	President, Tanganyika Law Society and Judge of the High Court of Tanzania (5 April 2003 Dar es Salaam)
Kamal Basha	Deputy Speaker of House of Representatives (5 April 2003 – Dar es Salaam)

Kassim Suleiman	Former Chair of Radio Zanzibar (2 April 2003 - Zanzibar)
Khalid Idd Nuizan	Police Commissioner – Zanzibar (2 April 2003 - Zanzibar)
Khalifa Molid Issa	Civic United Front MP Candidate Mtanbco Constituency (4 April 2003 - Pemba)
Khamis Ali Saleh	CUF – Candidate (4 April 2003 - Pemba)
Khamis Muhamed Simba	SSP – Crime Prevention Officer (2 April 2003)
Khatib Hamad Shehe	Civic United Front Expected candidate Tumbwe Constituency (4 April 2003 - Pemba)
Makame Ali	SSP – Force Transport Zanzibar (2 April 2003)
Makame Mahmoud	ZLSC (31 March 2003 - Zanzibar)
Maryam Abubarkar	ANGOZA (Association of NGOs Zanzibar) (31 March 2003 - Zanzibar)
Mosadicq A Mohammed	Principal Secretary Ministry of Youth, Employment, Women & Children Development (2 April 2003 - Zanzibar)
Moza Mbaye	Zanzibar Electoral Commissioner (2 April 2003 Zanzibar)
Mufti of Zanzibar	(5 April 2003 – Zanzibar)
Mwadini Abbas Jecha	Civic United Front Expected candidate MP Utaani Constituency (4 April 2003 - Pemba)
Nassor K. Mohammed	Advocate – Nassor & Associates

	Advocates (31 March 2003 - Zanzibar)
O.M. Othman	Director of Public Prosecutions (2 April 2003 - Zanzibar)
Omar A Ali	ZANA (31 March 2003 - Zanzibar)
Omar O. Makungu	Principal Secretary & Deputy Attorney General Zanzibar (1 April 2003 - Zanzibar)
Peter Zingraf	Deputy Head of Mission – Embassy of the Federal Republic of Germany (3 April 2003 – Dar es Salaam)
Prof Haroub Othman	Advocate, Chairman, Zanzibar Legal Services Centre (30 March 2003 - Zanzibar)
Prof Ibrahim Haruna Lipumba	Civic United Front National Chairman (5 May 2003 Dar es Salaam)
Prof Issa Shivji	Advocate – Shivji Law Chambers (May 2003 Dar es Salaam)
Rajab Mgere	JUWAZA (31 March 2003 - Zanzibar)
Ramadhan Kinyogo	SACP – Acting Director of Criminal Investigation (2 April 2003 - Zanzibar)
Rashid Ali Omar	ACP – Commandant Zanzibar (2 April 2003 - Zanzibar)
Riziki M Zana	Zanzibar Nursing Association (31 March 2003 - Zanzibar)
Saada Ibrahim	SACP – Staff Officer PHQ (2 April 2003 - Zanzibar)
Said Arab	Civic United Front (4 April 2003 - Pemba)

Said Hassan	Lawyer (1 April 2003 - Zanzibar)
Salum Toufiq	Director – Zanzibar Legal Aid Centre and Legal Adviser, ZANTEL (1 April 2003 - Zanzibar)
Samia Suluhu Hassan	Minister of Youth, Employment, Women & Children Development (2 April 2003 - Zanzibar)
Seif Nassor	Former MP union Parliament (2 April 2003 - Zanzibar)
Serafini Lucina	Vice Chairman NCCR (2 April 2003 - Zanzibar)

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ABOUT THE BOOK

This is a Report of a Fact Finding Mission to Zanzibar, undertaken by Kituo Cha Katiba: East African Centre for Constitutional Development (KCK), with the support of the Ford Foundation, Office for Eastern Africa. KCK is a regional centre committed to the promotion of constitutionalism, good governance and democratic development in East Africa.

The principal goal of the Mission was to critically examine the *Muafaka* agreement, which has been the basis for fostering peaceful constitutional and democratic development in Zanzibar. The report catalogues the collective findings of the Mission, and places both the issues of consensus and controversy on the table, and subjects them to a thorough analysis. KCK considers this dialogue a small contribution by concerned East Africans towards the improvement of the political situation in Zanzibar, and ultimately in the East African region as a whole.

The report underscores the imperative of building on the gains of *Muafaka*, which is commended for providing a positive dispute settlement mechanism as well as a tool for progressive negotiations between *Chama cha Mapinduzi* (CCM) and the Civic United Front (CUF). It is the considered opinion of the Mission, that the dialogue among the top party leadership and the give-and-take that were central to the operation of *Muafaka*, should be institutionalised by replicating it at the village level through popular participation. The Report concludes that it is imperative that we address those historical questions that continue to affect the political situation in Zanzibar, and particularly the fundamental issues of the Union, democracy, human rights and the relationship between Unguja and Pemba as well as the marginalized groups, including youth, women and persons with disabilities.

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