

**Zanzibar**  
**Democracy**  
**On**  
**Shaky Foundations**

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### INTRODUCTION AND SUMMARY OF RECOMMENDATIONS

As the October 2000 multiparty elections in Tanzania draw near, it appears increasingly likely that restrictions on freedom of expression and other fundamental freedoms will once again seriously undermine the democratic process on the autonomous island of Zanzibar. This can only have negative consequences for the credibility of the elections as a whole in Tanzania.

The 1995 presidential and parliamentary elections in Tanzania were the first multiparty elections to be held in Zanzibar for thirty-one years. They were the culmination of a long process which began in 1991 with the setting up of a committee on multipartyism. This committee made recommendations that led to the formation and official registration of political parties, which took place between 1991 and 1993. Hopes were raised at that time that Tanzania's democratic transition might proceed smoothly. But such hopes were dashed by events on Zanzibar. The 1995 elections there were deeply flawed and lacked credibility. The main opposition party, the Civic United Front (CUF), quickly declared the victory of the ruling Chama cha Mapinduzi (CCM) fraudulent. The dispute between the two main parties in Zanzibar escalated further in November 1997, when tensions surrounding a crucial parliamentary by-election led to eighteen leaders of the CUF being arrested and charged with treason. They remain detained to this day. Two years on and their trial has barely begun. ARTICLE 19 believes that the charges are politically-motivated and that they should be released immediately and unconditionally.

Little progress has been made in building respect for human rights and a durable democracy in Zanzibar since 1995. There are still many laws in Zanzibar which are incompatible with genuine multi-party democracy and the international human rights treaties to which the United Republic of Tanzania, including Zanzibar, is a party. Taken together, these laws gravely undermine the Bill of Rights introduced in Zanzibar in 1985 following reform of the Constitution. Their use in restricting the media, freedom of expression, association and assembly in Zanzibar has led many to fear that Zanzibar's democracy rests on shaky foundations.

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In June 1999, a Commonwealth-brokered Agreement was signed by both the CCM and the CUF, under which the parties agreed to a package of measures which would address the long-running political crisis on the island – including reform of the Zanzibar Constitution, the judiciary and the electoral laws. The Commonwealth fixed a deadline of May 2000 for implementation of the Agreement but little progress has been made. At the time of writing, the Agreement appears still-born. This bodes ill for the elections scheduled for October 2000 and their aftermath.

ARTICLE 19 is acutely aware that harassment of the opposition and media in Tanzania is by no means restricted to the island of Zanzibar. However, developments there have potentially explosive consequences for Tanzania as a whole. Given the continuing rumblings of discontent about the basis of the marriage between Tanganyika (also known as Tanzania mainland) and Zanzibar in 1964, renewed upheaval on Zanzibar could have disastrous consequences for the stability of the country, which in turn could have a major negative impact on its neighbours in East, Central and southern Africa.

An essential precondition for resolving the political crisis which has developed in Zanzibar is the immediate and unconditional release of the eighteen CUF leaders facing trial. Only when this has taken place is there any genuine basis for the realisation of the objectives of the Commonwealth-brokered Agreement. The international community has a crucial role to play in both regards. It should begin by putting heavy pressure on the Zanzibar authorities to release the CUF leaders. Any hesitations in doing so will send the wrong signal to the Zanzibar CCM at a moment when even mainland CCM parliamentarians are now publicly calling for the charges to be dropped. Indeed, while the CCM on the mainland has always been careful not to infringe the autonomous status of Zanzibar, its leadership should belatedly recognise that it too has an obligation under international law to ensure their rapid release. The international community should then provide strong backing for the resurrection of the June 1999 Commonwealth-brokered Agreement, which is essential if the shaky foundations of Zanzibar's democratic transition are to be replaced with structures of greater solidity and durability. Sustained international commitment will be required to achieve this goal.

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This report also provides an in-depth analysis of Zanzibar's structural democratic deficit with regard to the fundamental rights of freedom of expression, association and assembly. A wide range of constitutional and legal provisions at both the union- and Zanzibar-levels violate Tanzania's international human rights obligations in these spheres. ARTICLE 19 has identified a number of laws which require urgent repeal if the Commonwealth-brokered Agreement is to be fully implemented.

**The following are ARTICLE 19's recommendations to the government of Zanzibar, the government of the United Republic of Tanzania and to the international community:**

**The government of Zanzibar should:**

- Release the CUF eighteen immediately and unconditionally;
- End all official harassment of political opponents and the media;
- Initiate comprehensive reform of all Zanzibar Constitutional and legal provisions which violate the international human rights obligations of Tanzania, including Zanzibar. As a first step with regard to freedom of expression, association and assembly, immediately repeal the **Registration of News Agents, Newspapers and Book Act** and the **Societies Act**;
- Implement the June 1999 Commonwealth-brokered Agreement by the end of May 2000 so that the conditions are created for credible elections in October, cooperating with the Commonwealth and wider international community to this end.

**The government of the United Republic of Tanzania should:**

- Put pressure on the government of Zanzibar to release the CUF eighteen immediately and unconditionally;
- End all official harassment of political opponents and the media;
- Initiate comprehensive reform of all union-level Constitutional and legal provisions which violate the international human rights obligations of Tanzania, including

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Zanzibar.<sup>1</sup> As a first step with regard to freedom of expression, association and assembly, it should immediately repeal the **Political Parties Act** and the **National Security Act**;

- Do everything in its power to support the implementation of the June 1999 Commonwealth-brokered Agreement by the end of May 2000 so that the conditions are created for credible elections on Zanzibar in October, cooperating with the Commonwealth and wider international community to this end.

### **The international community should:**

- Support the Commonwealth-brokered Agreement so that it is implemented by the end of May 2000, in the first instance by pressurising for the immediate and unconditional release of the CUF eighteen;
- Establish clear and public criteria for assessing the credibility of the elections in Tanzania and Zanzibar, as scheduled for October 2000;
- Make it clear to both the union and Zanzibar governments that a similar outcome to 1995 will be met with strong condemnation and concerted action to establish respect for human rights and democracy on Zanzibar.

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<sup>1</sup> The union government could accelerate this process by returning to the conclusions and recommendations of the 1992 report of the Nyalali Constitutional Commission. This report recommended the repeal or amendment of forty pieces of legislation which it considered unduly limited fundamental freedoms in the United Republic of Tanzania. Among those recommended for repeal were the **National Security Act** (1970) (see Appendix A).

### 1 POLITICAL BACKGROUND

Zanzibar has been ruled since January 1964 by the Afro Shiraz Party (ASP) [renamed CCM in 1977]. The January 1964 revolution was triggered by the coming to power of a coalition of two minority parties made up of the Zanzibar Nationalist Party (ZNP) and the Zanzibar and Pemba Peoples' Party (ZPPP) in elections in December 1963. In those elections, the ASP scored 54.3 per cent of the vote and the ZNP and ZPPP together scored 46.7 per cent of the vote. However, the distribution of parliamentary seats resulted in the ZNP and ZPPP having more seats and forming the government. The ASP and its supporters, which included the majority African population, regarded this as an imposition of two minority parties supported by the Arabs and other settlers. Some also alleged that the parliamentary equation was the handiwork of the former British colonial government. The revolution installed the ASP in power, which immediately proclaimed a one-party state.<sup>2</sup>

In April 1964, Zanzibar united with Tanganyika to form the United Republic of Tanzania. The terms of the union have created a complex set of Constitutional and legal arrangements. A union government was created and a union Constitution promulgated which applies across the entire country, including Zanzibar. However, Zanzibar was granted the right also to have its own Constitution and to establish a government with a number of exclusive spheres of competence. Media law was (and remains today) one such sphere of competence. A range of important spheres of competence were retained at the union-level. These automatically apply to both Tanganyika (known as Tanzania mainland) and Zanzibar. One such sphere of competence is national security.

In February 1977, the ruling ASP on Zanzibar merged with the ruling Tanganyika African National Union (TANU) party on the mainland to become a single party, Chama cha Mapinduzi (CCM) - [Party of the Revolution]. Regardless of the party merger, Zanzibar maintained its autonomy and separate government. In the 1960s and 1970s, the repression of political opposition earned the government of Zanzibar

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<sup>2</sup> *Emmas Encyclopaedia Tanzaniana of National Records* (Dar es Salaam, 1995).

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notoriety for its human rights record. CCM on the mainland, hardly a paragon of virtue itself in this regard, stood by indifferently.

Following the reforms of the early 1990s, which led to the introduction of multi-party politics in Tanzania, only the ruling CCM was automatically granted legal status as a political party. Other parties, including the CUF, had to go through a two-stage process of registration. The CUF was formed in May 1992 through a merger of two formerly existing movements – KAMAHURU, a pressure group for democratisation in Zanzibar, and the Civic Movement, a human rights organisation based on the mainland. Many leaders and members of the CUF were formerly CCM stalwarts, some of whom had been expelled over disputes about party and government policy. Some had also held important offices in the CCM government, including Sief Shariff Hamad, who was a former CCM Chief Minister (Prime Minister) of Zanzibar. This somewhat undermines the allegations of some CCM supporters that the CUF is a reincarnation of the former ZPP/ZNPP coalition and stands for a return to the politics of pre-1964 Zanzibar.

The union between Tanganyika and Zanzibar has always been a complicating factor in Tanzanian politics. The ruling CCM's official position on the union is that the United Republic is based on a union government for all Tanzania, and a semi-autonomous government for Zanzibar. This has been adopted as government policy since the union was created in 1964 and was reinforced by the TANU and ASP merger to create CCM in 1977. However, the CUF argues that for the union to be just and equal, it needs to be a union between two states. Accordingly, it advocates a three-tier government as an alternative. This would mean separate governments for Tanganyika and Zanzibar and a federal government for the union. The official response of the CCM is that a three-tier government would undermine the union. However, a minority of CCM parliamentarians in recent times have also advocated a three-tier government, on the grounds that the interests of Tanganyika are not adequately protected by the present two-tier arrangement.

Most of the CCM's leaders believe that the ruling party, which claims to be the only genuinely "national" party in Tanzania, would be badly weakened if a three-tier system

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was adopted. The CCM has a tendency to suggest that anyone who favours a three-tier system is against the union and therefore only a few steps away from treason. A key condition for political party registration, is that a party "shall not advocate or further the interest of ... only a specific area within any part of the republic ... nor carry out its political activities exclusively in one part of the United Republic".

### **The 1995 Elections and their Aftermath**

It was inevitable that the 1995 elections in Zanzibar would be keenly contested. The ruling CCM took every opportunity it could to impede the organisational and campaigning efforts of the CUF, including through harassment of its leaders and supporters. The CUF rejected the official results of the presidential elections on the grounds that it had won more votes in the municipal and parliamentary (known as the House of Representatives) elections than in the presidential elections and could not have received less votes in the presidential elections.<sup>3</sup> The CUF was also unhappy about the fact that the apparent distribution of votes across constituencies meant that the CCM won 73 municipal seats to the CUF's 69 and 26 parliamentary seats to the CUF's 24. The CUF boycotted the House of Representatives and refused to recognise the government as legitimate. The conduct of the elections was heavily criticised by international and domestic observers. Relations between the two parties further deteriorated during a parliamentary by-election in November 1997, when eighteen leaders of the CUF were arrested and subsequently charged with treason.

The CUF boycott of the Zanzibar parliament was only finally called off following the signing of a Commonwealth-brokered Agreement in June 1999. This led many to hope that the political crisis in Zanzibar might be resolved in time for the 2000 elections. The agreement proposed to establish an Inter Party Committee (IPC) to work out the modalities of implementing of the agreement, which provides for reform of the Constitution, the judiciary and Zanzibar's electoral laws. But at the time of writing, the Commonwealth Agreement has not been implemented and the trial of the eighteen CUF leaders for treason continues.

## 2 HUMAN RIGHTS ABUSES SINCE 1995

### Harassment of the Opposition and the Media

Persecution of the political opposition on Zanzibar certainly pre-dates the 1995 elections. For example, in September 1993, ten persons, including Huwena Hamad, wife of CUF leader Seif Sharrif Hamad, were detained and charged with organising an illegal meeting and insulting President Salmin Amour. The charges were dropped in 1994. Since the 1995 elections, the pattern of human rights abuses on Zanzibar has been fundamentally shaped by the ebb and flow of the ongoing conflict between the CCM and CUF. Virtually every case of harassment of the opposition and the media has been triggered by CUF attempts to exercise its rights to freedom of expression, association and assembly.

The ruling CCM has pursued a range of strategies to harass the CUF since 1995: detention of CUF leaders and supporters without charge; denial of bail; refusal of permits for public meetings, or arrests for organising or participating in public meetings; and charges of sedition, defamation, subversion, possession of classified documents and treason.

For example, in February 1996, CUF Member of Parliament Mussa Haji Kombo was detained for two weeks without being charged for organising a public meeting, after being denied permission to do so by the authorities. In March 1996, two prominent members of the CUF, Mtumwa Khatib and Sulieman Hamad, were also detained following clashes between occupants of a village on Pemba island and the police. The following month, a CUF parliamentarian, Salim Yussuf Mohammed, was charged with stealing firearms after the same incident. A Zanzibar High Court dismissed the charges after he had spent three weeks in detention. Not all cases of persecution have involved high-profile opposition figures or have been widely publicised. At other times, ordinary members or supporters of opposition parties, including the CUF, have suffered more subtle forms of persecution. For example, people with opposition leanings have been

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<sup>3</sup> Collated election results published in "Zanzibar Elections -The Other Side of the Story", Publication of CUF Department of Information and Publicity, 1997.

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sacked from government jobs. One such victim, Ali Khamis, an electrical engineer, told the BBC in July 1999 that he was unlikely to get another government job.

The persecution of the CUF has also apparently extended to the mainland, where it is also seeking to win public support. In November 1999, fourteen people, most of them CUF members, were reportedly arrested in Dar es Salaam after protesting at a polling station during municipal elections. They had claimed that the number of those who had turned up to vote outnumbered the number of registered voters. In December 1999, CUF National Chairman Professor Ibrahim Lipumba told journalists that the government's arbitrary arrest of opposition leaders threatened to "kill" the political opposition. His statement followed the arrest of three CUF officials, including Deputy Secretary General (mainland) Alfred Lwakatare. Two of them were subsequently charged for allegedly using abusive language during the municipal campaign. He also criticised the arrest of leaders and members of other opposition parties, including the CHADEMA Secretary General, Dr Amani Walid Kaboruru, and the National Chairman of the Tanzanian Labour Party, Augustine Mrema, and six other members of his party.

The independent media, which is entirely mainland-based, has often found itself under attack from the Zanzibar authorities for reporting opposition activities and human rights abuses in Zanzibar. The public broadcast media in Zanzibar has also been rebuked at points for not adequately toeing the official line.

In January 1996, the Zanzibar Minister of Information, Issa Mohamed Issa, issued an order which excluded the Kiswahili newspaper *Majira* from the island. The reports cited by the Minister included an article questioning the conduct of President Salim Amour following the disputed elections, an editorial condemning the detention without trial of CUF members for protesting against the election results, a story on the alleged burning of CUF offices by CCM supporters and a report that donor agencies were threatening to withdraw assistance following alleged repression of the opposition.

Shortly after the ban on *Majira*, the Minister of Information also announced that its Zanzibar correspondent, Salim Said Salim, was banned from working on the island.

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Salim was ordered to "return to his rural home" for writing reports that could "incite the island into chaos". *Majira* was subsequently banned from the island for two years.

In December 1996, the Zanzibari authorities threatened to arrest BBC correspondent Ally Saleh for filing reports on the growing political tension between the CCM and the CUF. Saleh, who is disabled, was reportedly threatened with amputation of one of his legs by CCM supporters. The correspondent went into hiding as a result of the threats. In the same month, the Zanzibar Information Services announced that journalists would have to be licensed by the government from January 1997 onwards and that non-licensed journalists would be fined 500,000 Tanzanian shillings (US\$625)<sup>4</sup> or be imprisoned for five years, or both. The Deputy Director of Information Services stated that the decision was aimed at enforcing the Zanzibar **Registration of News Agents, Newspapers and Books Act** (1988). The licence fee was fixed at 6000 Tanzanian Shillings (US\$7.5) and would be renewed yearly. The Minister of Information reserved to right to refuse to grant licenses with no right of appeal.

In January 1997, the Zanzibar Minister of Information banned a Press Club which had been established by journalists on the island. He gave no reasons for doing so, but the Media Institute for Southern Africa (MISA) -- Tanzania stated that the authorities had taken the action because it viewed the Club as "a breeding place for political dissent on the island".

The Zanzibar police briefly detained three journalists in January 1998 who were covering demonstrations in support of detained opposition leaders. Mwinyi Sadala, a reporter with *Nipash*, Khalfan Said, a photo-journalist with *The Guardian*, and Pascal Mayalla, a camera man from Dar es Salaam Television (DTV), were held for several hours for attempting to interview detained opposition leaders and covering the build up to the demonstrations. They were eventually released without charge, although the police seized Sadala's camera and developed the film in order to identify and confiscate "sensitive" photographs. BBC correspondent Ally Saleh went into hiding again at this

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<sup>4</sup> The average monthly wage is equivalent to roughly US\$50. The exchange rate is roughly Tsh800 to \$1.

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time after another attempt was made to arrest him for allegedly inciting the public through his reporting.

Another photojournalist, Amour Nassor, who works for the state owned weekly *Nuru*, had his films seized while covering a parliamentary by-election in June 1998. In July, another journalist with DTV, Betty Massanja, was interrogated for two hours about an interview in which the-then Vice Chairman of the CUF, Seif Shariff Hamad, had allegedly implicated himself in treasonable activities.

In August 1998, *M'Tanzania*, a Kiswahili newspaper, was banned for allegedly publishing a "false report" about a meeting between President Salmin Amour and a Commonwealth envoy regarding the CUF's parliamentary boycott.

In December 1998, a correspondent for the Dar es Salaam based *Daily Mail* was denied access to the Vuga Courts in Zanzibar where the treason trial of the CUF eighteen was taking place. He was stopped and escorted to the exit by ten heavily armed policemen despite showing them his press card. The police claimed he was late and the court was full but three journalists who managed to get into the court refuted this.

In March 1999, Mwinyi Sadallah, a freelance journalist reporting for the Press Service of Tanzania (PST), was banned from working on the island. He was told that his application to work on the island would be considered when Sadallah refrained from "inventing" stories and worked according to "professional ethics".

On 3 May 1999 -- world press freedom day -- the Acting Chairman of the newly formed Journalists Association of Zanzibar (JAZ), Hassan Mitawi, stated on behalf of his colleagues, who work mostly for the government-owned media, that there was too much interference by the authorities, particularly in relation to coverage of political events. He claimed that the state media had lost credibility in the eyes of the people and had been reduced to a tool of propaganda. Latter in the same month, the ruling CCM threatened to take the daily private paper *Heko* to court over a report claiming that the President of Zanzibar, Salmin Amour, would stand as Vice-Presidential running mate

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to the Tanzanian President, Benjamin Mkapa, and that the current Tanzanian Vice-President, Dr Ali Juma, would stand as CCM presidential candidate in Zanzibar.

### The CUF Treason Trial

All the available evidence confirms that the treason charges against the eighteen leaders of the CUF who are facing trial are politically-motivated. When the first arrest of fourteen CUF leaders took place in November 1997, they were originally charged with sedition. However, following an application for bail by the fourteen, the charge was upgraded to treason, which is a non-bailable offence. Between December 1997 and May 1998, four more CUF members – including Juma Duni Haji, the winner of the hotly-contested November 1997 parliamentary by-election – were also arrested and charged with treason.<sup>5</sup>

In July 1998, Seif Shariff Hamad, was summoned for questioning but then released and ordered to report back three weeks later. He was reportedly questioned about classified documents allegedly found with CUF supporters and about the contents of a computer found in his possession. In May 1999, the respected Tanzanian daily *The Guardian* reported that the Zanzibar Attorney General, Mr Ali Mohammed Umar, had issued arrest warrants for ten additional CUF leaders, including Seif Shariff Hamad and the then Secretary General, Hamis Mlo<sup>6</sup>. The Attorney General was quoted as saying: "you can't arrest the lieutenants and leave the generals. This is why ten other people need to be arrested and included in the trial". Following local and international protests, the police denied that they were going to arrest Hamad and other CUF leaders.

The grounds upon which the authorities have charged the eighteen with treason remain vague and unclear. No details of an alleged plan to commit treason or of any action undertaken by them has been given beyond an assertion that they by "their words and actions ...devised ways of treason." Since 1997, the authorities have successfully delayed the start of the trial proper through various means of procrastination and the tactic of requesting adjournments. During 1998, a series of pre-trial hearings or

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<sup>5</sup> See Appendix B for a full list of the CUF eighteen.

<sup>6</sup> Presently CUF Vice Chairman.

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mentions took place. The prosecution claimed it needed more time to investigate the case and at one point claimed there were other suspects based abroad without whom the trial could not commence. At no time were these suspects named.

Following official claims that the judicial system was clogged up with a heavy backlog of cases and that Zanzibar lacked enough competent judges, nine judges were recruited during 1998 from Nigeria and the case was allocated to one of them. This triggered protests from lawyers in Zanzibar and mainland Tanzania who argued that there were Tanzanian judges competent enough to try the case. The government also claimed that it had no funds to proceed with the trial, provoking an offer from the CUF that it would provide the required funds. The government ultimately announced in November 1999 that it had secured funds from the treasury's emergency finances. When in March 1999 the prosecution finally submitted its evidence and the eighteen were brought before the Zanzibar High Court, the defence were denied copies of the file on the grounds of national security.

After yet another long adjournment, the eighteen appeared before the court on 19 January 2000. However, the case was again adjourned on the request of the prosecution on the grounds that it needed more time to amend the charges and add ten more people to the charge list. CUF supporters protested on the day of the hearing, leading to a heavy police crackdown. Seventy people were reportedly badly injured by heavily armed police in full riot gear and forty persons were arrested. House-to-house searches were later conducted by the police, including raids on the homes of CUF municipal officials. A CUF rally planned for the next day was also banned.

An adjournment was granted on 19 January 2000 until 27 January. Another adjournment to 28 February followed. Then, on 26 January a new Zanzibar Attorney General was appointed. His predecessor had let the cat out of the bag by admitting that it was a “political trial” and asserting that the accused “deserved to be hanged”. At the same time, the first cracks in the unity of the CCM on the issue were beginning to appear. 45 CCM parliamentarians at union-level signed a petition calling on the Zanzibar authorities to drop the treason charges and end the trials. Then at the last

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hearing on 28 February, the case was again adjourned to 3 April, following a request by the prosecution to correct a defective charge sheet.

The only possible interpretation of the behaviour of the Zanzibar authorities is that it is dragging out the trial in order to weaken the CUF in the run-up to the October 2000 elections. The continuous on-and-off threat to arrest ten other CUF leaders -- including its 1995 Zanzibar presidential candidate and current Secretary General, Seif Shariff Hamad – appears to confirm this. ARTICLE 19 is calling on the Zanzibar authorities to drop the charges against the eighteen and release them from custody immediately and unconditionally. Tanzania, including Zanzibar, is a party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights is therefore obliged under international law to respect the rights of the accused to freedom of expression and to a free and fair trial in an open and independent court.<sup>7</sup> The government of the United Republic of Tanzania, led by President Benjamin Mkapa, has an obligation to ensure that Tanzania's International human rights law obligations are met, notwithstanding the autonomous status of Zanzibar. Unfortunately, it is an obligation it seems highly unwilling to discharge.

### **3 THE COMMONWEALTH-BROKERED AGREEMENT: AN AUDIT**

On 4 May 1999, the Commonwealth Secretariat in London announced that the Commonwealth had brokered an agreement between the CCM and CUF. The formal signing of the agreement in June brought with it hope that four years of political conflict between the two parties had come to an end. The fifteen Articles of the Agreement cover contentious areas such as: review of the constitution and electoral laws; reform of the Zanzibar Electoral Commission (ZEC); compilation of a credible voters' register; equal access to the publicly-owned media and balanced coverage of political activities; guaranteed freedom for all parties to propagate and canvass support for their views free from persecution; reform of the judiciary; reconciliation and reconstruction measures including compensation to certain categories of CUF members

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and supporters; and ending the boycott of the House of Representatives by the CUF. Both parties agreed to the formation of an Inter Party Committee (IPC), composed of seven members of each party, to facilitate the implementation of the Agreement.

In his speech on the occasion of the signing of the agreement, Chief Emeka Anyaoku, the Commonwealth Secretary General, described the terms as "a binding contractual agreement" between the CCM and CUF aimed at facilitating their "working together ... to consolidate democracy in Zanzibar, [and] promoting human rights and good governance to ensure that the elections expected in the year 2000 are free of controversy". He also stated that responsibility for ensuring the Agreement is implemented lies not just with the IPC, but with "the entire political leadership of Zanzibar". Chief Anyaoku also stated that the Commonwealth had been in "constant contact with the Secretary General of the United Nations, Kofi Annan, as well as with the OAU Secretary General, Salim Ahmed Salim, and that both wholeheartedly supported the Commonwealth initiative.

However, as soon as the IPC attempted to begin work, it ran into a host of problems -- lack of office space, equipment, personnel and funds to run its activities. These problems took three months to resolve. The Commonwealth's special envoy, Dr Moses Anafu, has cautioned that there will be no extension to the May 2000 deadline for the implementation of the Agreement. However, the CCM has refused to agree to the creation of an independent ZEC and at the time of writing the Agreement appears to be on the verge of collapse.

Some of the contentious areas covered by the Agreement against which progress towards implementation should be measured are as follows:

- Review of Constitution and Electoral Laws

No progress to our knowledge. So far, the only "constitutional review" has been an attempt by some members of the CCM in Zanzibar to amend the Constitution to permit the President Salim Amour to run for a third five-year term. The Constitution currently allows for two five-year terms only. These efforts have now been abandoned.

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<sup>7</sup> Amnesty International issued a report in January 2000 making similar demands. See [www.amnesty.org](http://www.amnesty.org)

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- Reform of Zanzibar Electoral Commission

No progress to our knowledge. The independence of the ZEC is yet to be guaranteed in law and practice. During the 1995 elections, it played a very partisan role.

- Credible Voters' Register

No progress to our knowledge. It is vital that the process of voter registration is transparent and comprehensive. The registration points need to be well publicised and accessible to all as opposed to the method of officials visiting prospective voters in their homes to register them, which is open to abuse. The pre-requisite that citizens need to have lived in a constituency for five consecutive years also needs to be repealed in favour of one requiring only proof of identity and registration.

- Equitable Access to the Public Media

No progress to our knowledge. The existence of only one state-owned radio and television station on Zanzibar confers enormous advantages on the ruling party. Essential to securing equitable access will be the entrenchment in law of the independence of the governing body of ZBS and of the principle of editorial independence. A new governing body also needs to be appointed. The same process should take place with regard to the public broadcast media at the union-level ahead of the forthcoming elections.

- Guaranteed Freedom of Unhindered Political Activity

No progress to our knowledge. At the very least, the union-level **Political Parties Act** (1992) and the Zanzibar-level **Societies Act** (1995) should be repealed ahead of the forthcoming elections.

- Reform of the Judiciary

No progress to our knowledge. A transparent process for the appointment of qualified judges which will guarantee and protect their independence needs to be agreed ahead of the forthcoming elections.

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- Reconciliation and Reconstruction

No progress to our knowledge. There cannot be meaningful reconciliation while the politically-motivated treason trial of the CUF eighteen continues. Their immediate and unconditional release is an essential precondition for successful implementation of the Agreement.

The only clearly identifiable area where there has been progress with regard to the Agreement is that the CUF have ended their boycott of parliament.

### CONCLUSION

The dismal results of our audit of the Commonwealth-brokered Agreement provokes a sobering question: given that there is only two months to go before the Commonwealth-imposed deadline for implementation, is the Agreement still-born? If the Agreement is still-born, the October 2000 elections in Zanzibar appear headed for disaster. By itself, the Commonwealth is not strong enough to rescue the Agreement. There must be an immediate and determined effort, both within Tanzania and internationally, to revive the Agreement and give it substance over the next two months. Essential first steps are the immediate and unconditional release of the CUF eighteen and the creation of an independent ZEC. In the longer-term, whoever is elected to government on Zanzibar in October 2000 should undertake a comprehensive programme of human rights reform, including with regard to freedom of expression. Given the interlocking jurisdictions of the mainland and Zanzibar, it is vital that a parallel programme of reform is simultaneously undertaken at the union-level.

As for the international community, while it was heavily critical of the conduct of the 1995 elections on Zanzibar and has withheld donor funds since then as a result, it needs to accept that in order to have an impact on the situation there, greater pressure should also be put on the union government to act on Zanzibar. Otherwise there is the real possibility that the continuing donor boycott of Zanzibar will simply exacerbate the grave economic crisis on the island without achieving any political change – the worst

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of all worlds for ordinary Zanzibaris. It is the government of the United Republic of Tanzania which has the final responsibility under international law for what happens on Zanzibar, whatever claims to the contrary it may make. It follows that it should play a crucial role in helping to establish respect for human rights and democratic values there. Only then can the autonomy of Zanzibar mean real freedom for its people. The union government and the international community should work closely together in pursuit of these objectives over the coming two months.

Zanzibar is known the world over as an island paradise. The tourists who visit are largely oblivious of the fact that behind the beautiful scenery and wonderful climate lies a society which has systematically been deprived of democracy and justice for almost forty years. For the sake of the people of Zanzibar as they prepare to vote again, the time has surely come for that to change.

### APPENDIX A

## THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR FREEDOM OF EXPRESSION IN ZANZIBAR

Although Zanzibar introduced a Bill of Rights into its 1984 Constitution – and in doing so, initiated the introduction of a similar bill into the Constitution of the United Republic of Tanzania – this apparent step forward has been undermined by the retention or introduction of a host of “claw-back” constitutional and legal provisions. While most of these provisions derive from the Zanzibar Constitution and Zanzibar laws, in a number of important instances they derive from the Constitution of the United Republic of Tanzania and union-level laws. This section of the report seeks to describe all constitutional guarantees and laws which have application in Zanzibar.<sup>8</sup>

### Constitutional Provisions

The Constitution of Zanzibar states that "subject to any law for the time being in force, every person shall have the enjoyment of his freedom of expression, that is to say, freedom to hold opinion without interference, freedom to receive ideas and information without interference and freedom from interference, with his correspondence".<sup>9</sup> It further states that "every citizen shall be entitled to receive information at any time in

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<sup>8</sup> The spheres in which laws can only be passed by the House of Representatives of the United Republic of Tanzania are specified in what is known as the union list. The original union list contained the following: Constitution and Government of the United Republic; External Affairs; Defence; Police; Emergency Powers; Citizenship; Immigration; External Trade and Borrowing; Public Services; Income Tax; Corporation Tax; Customs and Excise Duties; Harbours; Civil Aviation; Posts and Telegraphs. The piece-meal expansion of the union list in the years which have followed – often without formal ratification by either the union and Zanzibar governments - has sometimes resulted in confusion over which laws apply in which jurisdictions. The complexity of the situation and the sheer difficulty of obtaining copies of relevant legislation means that ARTICLE 19 cannot be sure that its description of the laws which apply in Zanzibar is comprehensive. In a companion report which will be part of its Media Law and Practice in Southern Africa Series, ARTICLE 19 will undertake a survey of the legal and institutional framework for the regulation of the media which applies on the mainland of Tanzania. To construct an overall picture of the situation within the United Republic of Tanzania as a whole, these reports should be read together. Both reports are available on [www.article19.org](http://www.article19.org).

<sup>9</sup> Zanzibar Constitution of 1984 [Official English translation from Swahili original], Chapter Three, Article 18(1).

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respect of national and international events which are important to the lives and functions of the people and also on matters of public interest".<sup>10</sup>

The phrase "subject to any law being in force" means in effect that the constitutional guarantee of the right to freedom of expression is trumped by laws which may violate that guarantee.

Most constitutions and international law allow for some restrictions on freedom of expression, but only where these meet strict conditions. Three conditions are usually imposed. The first condition is that restrictions must be prescribed by or under the authority of law. State action restricting freedom of expression that is not specifically provided for by law is not acceptable. Restrictions must be accessible and foreseeable so that citizens know in advance what is prohibited and may regulate their conduct accordingly.

The second condition is that any restriction must serve either one of a limited list of legitimate objectives or promote a legislative objective of sufficient importance to warrant overriding a constitutionally protected right. Under international law, Article 19 of the ICCPR permits restrictions on freedom of expression only as necessary to protect the rights and reputations of others, national security, or public order, health or morals. This list of legitimate objectives is exclusive. Measures restricting freedom of expression which have been motivated by other interests, even if these measures are specifically provided for by law, breach constitutional guarantees. The third condition is that any restrictions must be reasonable, necessary or justifiable in a democratic society. Given the pivotal importance of freedom of expression in a democratic society, it is not enough for the government simply to claim that a restriction relates to a legitimate objective. The restriction must be proportionate to the importance of the legitimate objective. Where the harm to freedom of expression caused by a restriction outweighs the benefit in terms of advancing the legitimate objective, the restriction is unconstitutional. Under this part of the test, courts may require restrictions to be rationally connected, and no more than necessary to further, a legitimate objective.

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<sup>10</sup> Ibid., Article 18(2).

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The Zanzibar Constitution fails to satisfy the three-part test provided under international law with regard to the right to freedom of expression. Accordingly, it should be amended as a matter of urgency.

Another amendment which would strengthen the constitutional guarantee for freedom of expression in Zanzibar would be explicit protection not just of the right to receive information, but also to seek and impart it. Further, it should be made clear that people have the right to information held by public authorities in each of these regards. Bad government needs secrecy to survive. It allows inefficiency, wastefulness and corruption to thrive. A cast-iron, explicit Constitutional guarantee of the right to information is crucial to the promotion of good government.

The Constitution of the United Republic of Tanzania, which also applies in Zanzibar, itself fails the three-part test set out above. In addition, Articles 31 and 32 provide for the restriction of rights such as freedom of expression on both the mainland and Zanzibar in a state of emergency. Of itself, this may be a legitimate objective in terms of Article 19 of the ICCPR. However, Article 32 (2) (f) sets out a “catch-all” provision which allows for such a declaration where there is “some other kind of danger which clearly constitutes a threat to the state”. This “catch-all” provision is overbroad and should be repealed to bring the state of emergency provisions into line with international standards.

Finally, both the Zanzibar Constitution and the Constitution of the United Republic of Tanzania contain clauses which validate legislation where it has been passed in the “national interest”. Such vague and subjective terms give excessively wide powers to the union and Zanzibar governments to act in arbitrary or politically-motivated ways and should also be repealed in order to bring these respective Constitutions into line with international standards.

### The Press

The most important Zanzibar law with regard to the print media is the **Registration of News Agents, Newspapers and Books Act** (1988). This Act is far more sweeping and repressive than the union-level equivalent, the **Tanzania Newspaper Act** (1976). A measure of its heavy-handedness is the fact that, in dramatic contrast to the mainland, not a single privately-owned newspaper or news magazine is based in Zanzibar.

The Zanzibar Act lays down difficult and arbitrary conditions for the practice of print journalism, including government licensing of individual journalists and steep conditions on ownership and publication of newspapers. In addition, it gives government officials and the police almost limitless powers to seize publications, search premises, effect arrests and suspend or ban publications or individual journalists. These provisions are reinforced by archaic provisions on sedition and defamation.

The key areas of the Zanzibar Act which impose unduly restrictive regulation of the print media and journalists working within it are as follows:

i) The “Advisory Board”

The government of Zanzibar has arrogated itself a supervisory role over the print media by appointing, as provided for under the Act, an "advisory board" which is mandated to exercise "disciplinary control over journalists, editors and publishers", arbitrate disputes between the public and the media and the state and the media and regulate "the conduct of and promoting good ethical standards and discipline of journalists". The board also "advises the minister on the implications of this Act" and "considers applications made under this act". The advisory board has as its members, "a Chairman who shall be appointed by the President and five other members in mass communication who shall be appointed by the Minister".<sup>11</sup>

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<sup>11</sup> Sections 4 and 5 of the Registration of News Agents, Newspapers and Books Act (1988) [as amended in 1997].

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ARTICLE 19 believes that matters relating to the "ethical standards and discipline of journalists" in the print sphere should be overseen by a self-regulatory independent body which is not under government control. Statutory regulation of the media is only appropriate with regard to the broadcasting sector, where – particularly in the case of public broadcasters – there are important public interest considerations. In relation to the print media, however, public interest obligations apply less strictly. Radio and television frequencies are limited in availability. Accordingly, it is legitimate for there to be statutory oversight to ensure that there is sufficient media pluralism and diversity of views being expressed. There are no such inherent technical limitations upon the number of newspapers and magazines which can be produced. ARTICLE 19's monitoring of statutory regulation of the print media around the world has demonstrated that it is all too often a vehicle for political interference. The situation in Zanzibar appears to confirm this.

It is striking that a self-regulatory independent body already exists on mainland Tanzania in the form of the Media Council of Tanzania. Journalists on the mainland have won a hard-fought battle to regulate their own affairs. But its writ does not run on Zanzibar.

### ii) Registration provisions

The Act makes it illegal for newspapers to exist in Zanzibar without being approved and registered by the government.<sup>12</sup> In addition, publishers of newspapers are required to meet the conditions of a punitive bond [a sum to be determined by the Minister of Information] which:

shall be conditioned to serve as security for or towards the payment of any monetary penalty which may at any time be imposed upon or adjudged against him or any person acting for him in his absence upon conviction for an offence under this Act or any other written law ... relating to the printing of or publication of such newspaper or any matter herein, and also for the payment of and damages and costs awarded against him

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<sup>12</sup> Ibid., Section 8.

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in respect of any libel printed or published in the newspaper after the execution of the bond.<sup>13</sup>

The penalties for giving false details in an application or otherwise violating this law are "a fine of not less than 500,000 shillings [US\$625] or imprisonment for a term not less than three years, or both such a fine and imprisonment."<sup>14</sup> In addition to publishers and printers, the Act also stipulates the same punishment for any person who "sells any newspaper which he knows or has reason to believe has been printed and published in contravention of the "relevant laws".<sup>15</sup>

ARTICLE 19 believes that these registration requirements are excessively restrictive and cumbersome. They clearly arise from the determination of the Zanzibar authorities to prevent the development of a locally-based print media. The bond requirement is a completely unjustified restriction upon freedom of expression. It is unknown in established democracies today. In our view, registration requirements should not extend beyond providing technical information to an independent body, such as the names of proprietors and editors and the addresses of newspapers.

### iii) Powers to search and seize

Under the Act, any authorised police officer has arbitrary powers to enter premises and seize any publications" which he reasonably suspects to have been printed or published in contravention of this Act". Although the law requires that law enforcement officers procure search warrants, it undermines this provision by stating that:

If any police officer of or above the rank of inspector has reasonable cause to believe that the delay which would occur in obtaining a search warrant in subsection (2) would or tend to defeat the purpose of this Act, he may without warrant, exercise the powers described in that subsection as if he had obtained a search warrant under that subsection.<sup>16</sup>

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<sup>13</sup> Ibid., Section 18.

<sup>14</sup> Ibid., Section 16(1) [as amended in 1997].

<sup>15</sup> Ibid., Section 33(b).

<sup>16</sup> Ibid., Section 27(1).

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In addition, the police can:

- (a) enter any place, premises or vehicle or aircraft within which he has reason to believe that any news material intended for dissemination is being or about to be prepared, conveyed or otherwise dealt with for the purpose of collection or distribution with a view to ascertaining whether or not the provisions of this Act or any order direction or regulation made or issued under this Act have been complied with;
- (b) inspect any process or operation which is or appears likely to be carried on in any place or premises in connection with the collection or distribution of any news or news material intended for dissemination;
- (c) require from any person the production of any book, record, newspaper or other publication or document which is in the possession or custody or under the control of that person or any other person on his behalf;
- (d) examine and copy any part of any book, record, newspaper or other publications which appears to him to have relevance to his inquiry, and require any person to give an explanation of any entry in the book, record newspaper or other publication or document and take possession of all or any one of those documents or document if he believes that the documents or document so taken may afford evidence of an offence under this Act.<sup>17</sup>

These provisions grant the authorities potentially limitless powers to harass the print media – powers which they have not hesitated in the past to use. They have had devastating consequences for freedom of expression in Zanzibar and should be repealed.

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<sup>17</sup> Ibid., Section 43(2).

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### iv) Powers to Suspend or Ban Publications and Prohibit Access to Banned Publications

No less devastating for freedom of expression in Zanzibar have been the powers which the authorities have under the Act to suspend or ban the publishing, importation, circulation or possession of any publication. These powers can be invoked "in the public interest or in the interest of peace and good order". In either case, the power to decide what is "the public interest or the interest of peace and good order" resides entirely with the authorities.<sup>18</sup>

In order to ensure compliance, the Act further stipulates that the importation, publication, sale, distribution or production of prohibited publications is an offence punishable by a fine of 200,000 Tanzanian shillings (US\$250) three years' imprisonment, or both. Possession of a prohibited publication attracts also a fine of not less than 200,000 Tanzanian shillings (US\$250) or imprisonment for two years, or both.<sup>19</sup> Any person to whom a prohibited publication is sent "without his knowledge or who is in possession of an extract" and does not hand it over to the nearest police station or administrative officer shall be guilty of an offence punishable by a fine of up to 10,000 Tanzanian shillings (US\$12.5) or a jail term not exceeding three years, or both. Postmasters, police officers or any person authorised by the minister may detain, open and examine any package or article which they suspect contains prohibited publications and may detain anyone in whose possession they are found.<sup>20</sup>

The direct consequence of these provisions is that the officials so designated are given the powers to interfere with or seize correspondence based on nothing but mere suspicion. This is in clear violation of chapter 18(1) of the Constitution of Zanzibar, which guarantees every citizen the right to "freedom from interference with his correspondence".

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<sup>18</sup> Ibid., Sections 30(1), 31, 34(1, 2).

<sup>19</sup> Ibid., Section 35(1,2) [as amended in 1997].

<sup>20</sup> Ibid: Section 36(1).

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The possibility of suspension or banning of a newspaper represents the most serious sanction it is possible to apply to a publication. The “chilling effect” of suspensions is enormous and will affect the whole of the journalistic community and not just those working for the suspended or banned publication. For these reasons, ARTICLE 19 believes that a suspension or ban represents an unacceptable threat to freedom of expression and should never be imposed. These provisions should also be repealed.

### v) Government Licensing of journalists

No one can work as a journalist in Zanzibar unless granted "written authorisation" by the government. The Act states that any one not licensed cannot:

- (a) collect or cause to be collected in Zanzibar any news or news material for the purpose of dissemination; or
- (b) distribute or cause to be distributed, whether within or outside Zanzibar any news or news material intended for dissemination collected within Zanzibar.<sup>21</sup>

Even those who have been licensed can have their licences revoked by the Minister of Information, "if in his opinion such revocation would be in the interest of the public or would be in the interest of peace and good order".<sup>22</sup>

In addition, the government can, "without assigning reasons therefore refuse to issue any authorisation under this subsection or suspend or revoke any authorisation issued".

Although the licensing laws make provisions for an administrative appeal against refusals, suspensions and revocation of licenses, [within a time specified by the Minister] it also makes it clear, that "[E]very decision by the Minister on any appeal ... shall be final and conclusive and shall not be subject to any review by any court".

There are also built-in mechanisms that could be used to prevent journalists from even applying for licences in the first place or to ensure that those granted licences have a sword of Damocles continuously dangling over their necks. For example, the size of the

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<sup>21</sup> Ibid: Section 39(1).

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fee payable upon application for a licence is entirely a matter for the authorities. In addition, Section 42 states that licences will be granted only on condition that news gatherers:

- shall be bound by the government policy and in particular shall have regard to
- (a) the need to promote national policies and aspirations of the people of Zanzibar , Tanzania and the Government
  - (b) the need to promote and maintain harmony in the society.<sup>23</sup>

ARTICLE 19 believes that official attempts to licence journalists are a direct attack on freedom of expression. They are clearly contrary to international law, as confirmed by the Inter-American Court of Human Rights in a 1985 ruling.<sup>24</sup> Governments have no legitimate role in determining who may or may not exercise that right, whether through writing or broadcasting. Official restrictions upon access to the profession inhibit the development of a vibrant, independent and pluralistic press, without which the public's right to receive and impart information and ideas is fatally compromised. Any such official role is also clearly open to political abuse and manipulation – as demonstrated by the vague and subjective provisions of Section 42 above, against which applicants are measured.

### vi) Registration of Journalists' Associations

The provisions under the Act for the licensing of journalists are compounded by those for journalists' associations. Not only does the Minister of Information have to authorise the existence of an "all Zanzibar Journalists Association", the Act states that its membership:

shall be confined to: -

- (a) Persons who are holders of valid authorisation issued under section 39 of this Act.<sup>25</sup>

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<sup>22</sup> Ibid., Section 40.

<sup>23</sup> Ibid., Section 42.

<sup>24</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 Nov. 1985, Series A, No. 5, para. 70.

<sup>25</sup> As per note 24, Section 75.

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This provision is a clear violation of the right to freedom of expression and the closely-related right to form and join trade unions as guaranteed by ICCPR.<sup>26</sup> Freedom of expression includes the right to seek, receive and impart information and ideas. The press has a role in respect of both these aspects. Mandatory membership requirements of this type impede the ability of those who do not meet the membership requirements to impart information and ideas. These provisions should be repealed.

### Broadcasting

The **Zanzibar Broadcasting Commission Act** (1997) has virtually identical provisions to the **Tanzania Broadcasting Services Act** (1993), on which it is apparently based. The Act covers not just the establishment of the Zanzibar Broadcasting Commission (ZBC) but also regulates broadcasting as a whole. Its provisions are out of line with international standards in a number of ways. As is the case with private print media, there are no locally-based private broadcasters. A survey of the provisions of the Zanzibar Act goes a long way to explaining why.

The Act provides for the operation of Zanzibar Broadcasting Services (ZBS), which is the state-owned radio and television service.<sup>27</sup> However, it does not guarantee the independence of the governing body or that editorial policy and decision-making should be free from interference by government. In practice, ZBS has always been a mouthpiece of the ruling CCM in Zanzibar. These provisions should be amended so that the basis for genuine public service broadcasting can be established in Zanzibar.<sup>28</sup>

The ZBC is composed of a Chairman and Executive Secretary, both of whom are appointed by the President, and between four and eight other members appointed by the Minister of Information. While ARTICLE 19 fully accepts the need for statutory regulation of broadcasting, it believes that the independence of the governing body of any regulatory institution should also be guaranteed by law. The current appointments

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<sup>26</sup> Article 22.1 of the ICCPR.

<sup>27</sup> Section 4 of the Zanzibar Broadcasting Commission Act (1997).

<sup>28</sup> For a fuller discussion of ARTICLE 19's position on the appropriate legal and institutional framework for the regulation of broadcasting, see its *Measures to Promote and Protect Broadcasting Freedom*. These are available on request from ARTICLE 19.

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process and the absence of any legal safeguarding of its independence mean that the ZBC completely lacks credibility.<sup>29</sup>

The main functions of the Commission are to issue licences to private broadcasters, regulate the activities of broadcasters and the conduct of broadcasting, and "to protect the policy, security, culture and tradition of Zanzibar".<sup>30</sup> This last function is vague and subjective and makes it dangerously subject to government whim. There are a number of considerations which the ZBC must apply when considering a licence application. These include a welcome provision safeguarding against any concentration in media ownership and promoting community radio. Less welcome is the reference to "national development broadcasting" as a consideration. Once again, such vague and subjective wording might be misused to exclude from consideration independent-minded applicants.<sup>31</sup> Any person aggrieved by the decision of the Commission not to grant a licence may appeal to the Minister of Information, whose discretion is final. No reasons need to be given by the Minister and no right of judicial appeal is provided for.

In addition to the above considerations, the Act sets out conditions upon which a licence to a private broadcaster will be granted. Included amongst them are "the location of a transmitter station... and the specific geographical area to which broadcasting may be made". Although this is rather coded language, it appears that this is designed to prevent a Zanzibar-based private broadcaster transmitting beyond the island. A similar provision to restrict the range of private broadcasters exists in the equivalent union legislation. The union cabinet has decided that no single private broadcaster should be allowed to broadcast to more than twenty five per cent of the country or five geographical regions. The intention seems to be to ensure that the state-owned broadcasters maintain a monopoly as national broadcasters. These provisions are an unjustified restriction upon media pluralism and should be urgently reviewed at both the union- and Zanzibar-levels.<sup>32</sup> It is striking that the Act provides an opportunity for the ZBC to add more conditions "in order to give effect to any international treaty

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<sup>29</sup> Zanzibar Broadcasting Commission Act of 1997: Section 6(1).

<sup>30</sup> *Ibid.*, Section 17.

<sup>31</sup> *Ibid.*, Section 12.

<sup>32</sup> *Ibid.*, Section 13.

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in relationship to broadcasting to which Zanzibar is a party”. In our view, the entire Act should be reviewed on this basis.

The Act also sets out the duties of private broadcasters, which are in effect also conditions upon which a licence is retained. While these duties require private broadcasters to present news and current affairs in a balanced and impartial manner, the wording of some of them is sufficiently vague and subjective to potentially open the way for politically-motivated action by the authorities. For example, one duty is “to contribute... to shared national consciousness, identity and continuity”. Another is “encourage the development of Zanzibar and Zanzibari expression”. It is open to question whether such language is appropriate in law. Furthermore, these duties would be more suitable as general objectives of the ZBC rather than duties for individual private broadcasters.<sup>33</sup>

ARTICLE 19 believes that the process for allocating broadcast licences should be transparent, fair and non-discriminatory and that licences should be allocated by a body that is independent of government. The Zanzibar Act requires urgent review if it is to fully reflect these principles. In addition, licence applications should be made public, so that the merit of the application and the reasons for the ZBC’s decisions are matters of public knowledge and debate.

Breaches of the conditions and duties set out by the Act can lead to a fine of 1,000,000 Tanzanian shillings (US\$1250) or even suspension or revocation of a licence. There is no provision with regard to suspension or revocation for either administrative or judicial appeal. The decision of the ZBC is final. These provisions also need urgent reform. ARTICLE 19’s view is that licences should only be revoked in extreme circumstances such as direct and repeated incitement to racial or ethnic violence.

Heavy penalties of 5,000,000 Tanzanian shillings (US\$625) or two years’ imprisonment (or both) for a host of offences committed under the Act are also provided for. In addition, a court may order the "forfeiture to the government of any

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<sup>33</sup> Ibid., Section 15.

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broadcasting apparatus or other material in relation to or in connection with or by means of which the offence was committed".<sup>34</sup>

Freedom of expression and media pluralism are further undermined by a number of "catch-all" clauses which give the ZBC and the Minister of Information arbitrary powers to interpret the Act or pass regulations as they see fit.<sup>35</sup> In addition, the Act gives further powers of control and censorship to the Minister by authorising him to "require any license holder to broadcast... at any time and in any manner specified any announcement which has as its content any material which the Minister deems to be in the interest of national security or in the public interest". Furthermore, the Act states that "if the Minister is of the opinion that the broadcasting of any matter of any... character would be contrary to the national security or public interest he may... prohibit" the broadcasting of any such matter.<sup>36</sup> Nowhere are national security or public interest defined. These provisions allow wide scope for political abuse. They also violate the fundamental principle of editorial independence. These provisions should be repealed.

Finally, the Act gives the ZBC a role in assisting people to have the right of reply where they object to anything which has been broadcast.<sup>37</sup> ARTICLE 19 believes that such a complaints role should only be played by a body which is independent of government – which the ZBC transparently is not – and only where a legal right has been breached.

### Defamation

The Zanzibar **Registration of News Agents, Newspapers and Books Act** (1988) is virtually identical to the union-level **Newspapers Act** (1976) with regard to defamation. However, it provides for tougher criminal sanctions. The Zanzibar Act states that "any person who by print, writing, painting, effigy or by any means

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<sup>34</sup> Ibid., Section 26(1,2).

<sup>35</sup> Ibid., Sections 15(2), 25 and 29.

<sup>36</sup> Ibid., Section 27(1,2).

<sup>37</sup> Ibid., Section 17.

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otherwise than solely by gesture, spoken words or other sounds unlawfully publishes any defamatory matter concerning another person shall be guilty of an offence".<sup>38</sup> It further defines defamation as "matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or likely to damage any person in his professional trade and by injury to his reputation" and that "it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead".<sup>39</sup>

With reference to the press, the defamation laws say that "a person publishes libel if he causes the print, writing, painting, effigy or any other, means by which defamatory matter is conveyed to be dealt with either by exhibition, reading, recitation, description, delivery or otherwise, so that the defamatory meaning thereof becomes known or is likely to become known to the person defamed or any other person".<sup>40</sup> It also further states that "it is not necessary for libel that the defamatory meaning should be directly or completely expressed".

The political application of defamation laws for censorship purposes is evident in Section 61 of the Act, which states that "any person who without such justification or excuse as would be sufficient in the case of a defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign sovereign ruler, ambassador or other foreign dignitary with the intent to disturb the peace and friendship between Tanzania and the foreign country to which such a ruler or dignitary belongs, shall be guilty of the offence of libel".

The punishment for violating these provisions are "a fine of not less than 300,000 shillings (US\$375) or... imprisonment for a term of three years or to both such fine and imprisonment".<sup>41</sup> Where an offence is committed under this act for which no specific penalty is provided, the offender is liable upon conviction to "a fine of not less than two hundred thousand shillings (US\$250) or to a term of imprisonment of two years or

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<sup>38</sup> The Registration of News Agents, Newspapers and books Act (1988), Section 43.

<sup>39</sup> Ibid., Section 54.

<sup>40</sup> Ibid., Section 55(1).

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both".<sup>42</sup> If the offence under this act "is committed by a company or other body corporate or by a society, association or a body of persons, every person who is at the time of the commission of the offence was concerned as a Director or an officer with the management of the affairs or activities of such company other body corporate, or society, association or body of persons shall be guilty of the offence... unless he proves to the satisfaction of the court that he had no knowledge, and could not by exercise of reasonable diligence have had knowledge of the commission of the offence".<sup>43</sup>

On the other hand, "where an offence under this act is committed by a person as an agent or employee, the principal or employer shall be guilty of the offence and be proceeded against and punished accordingly, unless he proves to the satisfaction of the court that he had no knowledge, and could not by the exercise of reasonable diligence have had knowledge of the commission of the offence".<sup>44</sup>

ARTICLE 19 believes that the defamation provisions of the Zanzibar Act require substantial reform to bring them into line with recent developments in international jurisprudence in this area of law. For example, the provisions of the Zanzibar Act unduly limit reasonable criticism of persons who hold public office. They hamper the capacity of the public, and especially the media, to scrutinise the conduct of public officials or accurately report what has been said at political gatherings or meetings. Under no circumstances should public officials, notwithstanding their rank or status benefit from any special protection under the law. It is now well established in international jurisprudence that such officials should in general tolerate more, rather than less criticism. Criticism of public officials in relation to their work and comment on their private lives when their actions are a reflection of suitability for public office should be defended. If this is not done, the law of defamation will be used to prevent legitimate criticism of public officials or exposure of official wrongdoing or corruption.

In addition, such defamation provisions cannot be justified where their purpose or effect is to limit the publication of true statements or of "opinions", or to protect

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<sup>41</sup> Ibid., Section 62 [as amended in 1997].

<sup>42</sup> Ibid., Section 73 [as amended in 1997].

<sup>43</sup> Ibid., Section 69.

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"reputations" of state symbols such as flags or national insignia. Nor can they be justified in relation to public figures who have passed away. The dead should not be able to bring defamation cases. In ARTICLE 19's view, defamation laws should never be used to help maintain public order, national security, or friendly relations with foreign states or governments. Furthermore, certain bodies, including elected and executive bodies and publicly-owned corporations, ought to be prohibited from bringing defamation actions.

In all cases, the truth of a statement should be a complete defence to an allegation of defamation. It should be a defence in an action for civil defamation regarding a statement on a matter of public interest for a defendant to show that he or she has not acted unreasonably in all circumstances, even if the statement is false or cannot be shown to be true. Factors to be taken into account in establishing unreasonableness should include: (a) the extent to which the author of the statement investigated the matter before publication; (b) the credibility of the source of the statement; (c) the extent to which alternative sources of information (for example, public authorities) have unjustifiably withheld information; (d) the nature of the language in which the statement is cast; (e) the extent to which the public's right to know in a timely fashion justified publication.

Certain types of statements should never attract liability in defamation: statements made in the course of the proceedings of legislative bodies, including by elected members and by witnesses; reports ordered to be published by legislative bodies; statements made in the course of judicial proceedings; and fair and accurate reports of the situations described above.

Punitive damages should be awarded only where the defendant has acted with actual malice or recklessness. Alternative or non-monetary remedies - including any action by self-regulatory bodies (such as press councils), the issuance of apologies and corrections and the exercise by plaintiffs of a right of reply should be promoted.

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<sup>44</sup> Ibid., Section 70.

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Another aspect of the Zanzibar Act which requires amendment is the provision which places the onus upon directors or employers to prove that they are not guilty of defamation by association. This reverses the burden of proof in violation of a fundamental principle of justice.

Finally, ARTICLE 19 calls for the provision in the Zanzibar Act for potential imprisonment in cases of defamation to be repealed. It believes that prison sentences, suspended prison sentences, suspension of the right to practice journalism, excessive fines and other harsh criminal sanctions should never be available as a sanction for breach of defamation laws. The state should take no part in the prosecution of defamation cases regardless of the status of the plaintiff. Criminalisation of a particular activity implies a clear state interest in controlling a certain activity. The protection of one's own reputation is by definition a private interest.

### **Sedition and false news**

The law of sedition in Zanzibar is found in the **Registration of News Agents, Newspapers and Books Act** (1988). Once again, it is very similar in its provisions to those found in the **Tanzania Newspapers Act** (1976).

Section 47(1) of the Zanzibar Act defines sedition as an intention to:

- (a) to bring into hatred or contempt or to excite disaffection against the lawful authority of Zanzibar or the government thereof; or
- (b) to excite any of the inhabitants of Zanzibar to attempt to procure the alteration, otherwise than by lawful means, or any other matter in Zanzibar ; or
- (c) to bring in to hatred or contempt or to excite disaffection against the administration of justice in Zanzibar; or
- (d) to raise discontent or disaffection amongst any of the inhabitants of Zanzibar; or
- (e) to promote feelings of ill will and hostility between different categories of the population of Zanzibar.

Consequently, any person who:

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- (a) does or attempts to do , or makes any preparation to do, or conspires with any person to do , any act with seditious intention;
  - (b) utters any words with a seditious publication;
  - (c) prints, publishes, sells offers for sale, distributes or reproduces any seditious publication;
  - (d) imports any seditious publication, unless he has no reason to believe that it is seditious;
- Shall be guilty of an offence and shall be liable on conviction to a fine of not less than one million shillings [US\$1250] or to imprisonment for a term of five years or to both such a fine and imprisonment and such publication shall be forfeited to the government.

Section 48(2) of the Act [as amended in 1997] also makes it an offence to be in possession of seditious material. This offence is punishable by a fine of not less than 200,000 Tanzanian shillings (US\$250) and a jail term of one year, or both. In addition, printing machines may be seized on mere suspicion of being used to print allegedly seditious material "pending trial and acquittal". On conviction, any such machine shall be "forfeited to the government whether or not either person convicted is, or was at the time when the publication was printed the owner of the printing machine". Courts may also make an order prohibiting the further publication of such a newspaper and anyone who contravenes the order shall be guilty of an offence and on conviction liable to a fine of between 5,000 and 30,000 Tanzanian shillings (US\$6.25 - 37.5) or to a term of imprisonment not exceeding three years, or both.

Historically, sedition is the crime of speaking words against the state. The basic premise of sedition laws is that it is wrong to criticise leaders. This premise is fundamentally incompatible with a democratic form of government in which the ability to criticise leaders is a *sine qua non* for informed choice. As a result, in many jurisdictions sedition today is either formally or effectively a dead letter. Criminal sanctions for criticism of government should never be imposed unless the State can prove beyond reasonable doubt that there is an intention to incite violence or lawless conduct and that there is a real risk that violence will imminently ensue. Accordingly, ARTICLE 19 believes that the law of sedition in Zanzibar should be repealed without delay.

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The same Zanzibar Act also contains archaic provisions against publishing “false news”. These are identical to the provisions found in the union-level **Newspapers Act** (1976), with the exception of the financial penalties which can be imposed. These are much heavier in the Zanzibar Act. Section 52(1) of the same Act [as amended in 1997] states that "any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace shall be guilty of an offence and shall be liable upon conviction, to a fine not less than five hundred thousand shillings (US\$625) or to imprisonment for a term of three years or to both such fine and imprisonment."

Section 52(2) says that it shall be a defence to a charge under 52(1) "if the accused proves that, prior to publication, he took ... measures to verify the accuracy of the statement, rumour or report". The reality in Zanzibar is that there is no culture of officials cooperating with journalistic enquiries. Their usual response will be to view such questions with suspicion. This needs to change.

Laws against the dissemination of false news were first found in medieval England, where they were aimed at preventing slanderous statements against the King and nobles of the realm. The law has been abolished in the United Kingdom. In the Commonwealth context, the Privy Council has held with regard to Antigua and Barbuda that “false news” provisions were contrary to the constitutional guarantee of freedom of expression.<sup>45</sup> ARTICLE 19 believes that “false news” provisions have no place in a modern democratic society. Civil or criminal redress for false statements is better addressed through specific laws of defamation, inciting racial hatred and incitement to violence.

### **National Security and Access to Information**

The **National Security Act** (1970) applies at both the Zanzibar and union-levels. It is a draconian piece of legislation which should be repealed *in toto* and replaced by legislation which is in line with international standards.

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The Act gives the government absolute scope to define what should be disclosed to or withheld from the public and makes it a punishable offence to in any way investigate, obtain, possess, comment on, pass on or publish any document or information which the government considers to be classified. It states: "Classified matter means any information or thing declared to be classified by an authorised officer".<sup>46</sup> This includes documents or information relating to any public parastatal or authority, company, organisation or entity in any way connected with the government, including the ruling party. In addition, anyone who has accessed or is suspected of having accessed a "protected place" can be charged with espionage and sabotage. A protected place means anywhere so designated by the President or government. This provision in effect declares a person guilty until proven innocent – a complete reversal of a fundamental tenet of justice.

Any official or contractor to a government agency or department who might have been a source of any such information can also be prosecuted. Any person who receives or communicates any classified matter is also guilty of an offence. And it is no defence that the accused person could not reasonably have known that it was classified matter.<sup>47</sup> The penalty if found guilty of any of these offences is imprisonment for up to twenty years.

These provisions violate internationally accepted standards on freedom of expression, national security and access to information. ARTICLE 19 believes that any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security objective. A state may not categorically deny access to all information related to national security. In particular, a restriction justified on the grounds of national security is not legitimate if its genuine purpose or demonstrable effect is to protect government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest. Also, any restriction on the free

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<sup>45</sup> *Hector v. Attorney General of Antigua and Barbuda*, (1990) 2 A.C. 312.

<sup>46</sup> National Security Act (1970), Section 29(1).

<sup>47</sup> *Ibid.*, Section 5.

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flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. Governments may not prevent journalists or representatives of intergovernmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violation of human rights or humanitarian law have been committed.<sup>48</sup>

The **National Security Act** further threatens freedom of expression by criminalising contact with international news agencies, trade unions and other international bodies. Section 12(1) of the Act states that "communication with, or attempts to communicate with, a foreign agent in the United Republic or elsewhere" will be presumed to be "for a purpose prejudicial to the safety or interest of the United Republic" and "directly or indirectly useful to a foreign power ", unless an accused can prove that the contrary is the case. This provision also reverses the burden of proof, placing it on the defendant. The Act also provides sweeping powers to search, seize and arrest and detain with or without warrants on the grounds of suspicion alone. Property seized may also be forfeited even if the accused has been acquitted of the offence charged.

Refusal to provide information or the provision of false information to investigators is also punishable by a term of imprisonment not exceeding five years. ARTICLE 19 believes that, as regards the media, protection of national security should not be used as a reason to compel a journalist to reveal a confidential source.<sup>49</sup> Journalists should enjoy the right to professional secrecy in relation to the source of the information published or broadcast, and their silence should not lead to any kind of punishment under national security laws.<sup>50</sup>

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<sup>48</sup> This analysis is based on *The Johannesburg Principles, National Security, Freedom of Expression and Access to Information* (ARTICLE 19 and the Centre for Applied legal Studies, University of the Witwatersrand, London and Johannesburg, 1995). These principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of Witwatersrand, in Johannesburg. The principles are based on international and regional laws standards relating to the protection of human rights, evolving state practice (as reflected *inter alia* , in judgements of national courts), and the general principles of law recognized by the community of nations.

<sup>49</sup> Ibid., Principle 18.

<sup>50</sup> See, for example, the protection afforded to journalists' sources by Article 74(3) of the 1990 Constitution of Mozambique and Article 30 of its 1991 Press Law.

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Another Act which contains sweeping restrictions upon access to information is the **Prisons Act** (1967), which also operates at both the Zanzibar- and union-levels. The Act restricts comment on the prison system or conditions under which prisoners are being kept by the media or members of the public regardless of whether this is in the public interest or not. The restrictions apply specifically to the behaviour or experience in prison of any ex-prisoner or concerning the administration of any prison without taking reasonable steps to verify such information. In addition, Section 83 of the Act disallows communication with any prisoner and forbids making sketches of or taking photographs of a prison or a prisoner within or outside a prison. It also prohibits loitering in the vicinity of a prison or any other place where prisoners may be in the course of their imprisonment and the responsibilities thereto. This Act imposes blanket restrictions upon the right to freedom of expression of prisoners which cannot be justified in a democratic society. It requires urgent review.

Information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take meaningful part in the affairs of that society. Most governments, however, prefer to conduct their business in secret. Governments can usually find reasons for maintaining secrecy – national security, public order and the wider public interest are just some of the reasons they use. However, too often governments treat official information as their property, rather than something which they hold and maintain on behalf of the people. This is why ARTICLE 19 believes that freedom of information legislation is essential in a genuinely democratic society.<sup>51</sup> Accordingly, it calls on the union government, its Zanzibar counterpart and all parties standing in the forthcoming 2000 elections to commit themselves to introducing a union-level freedom of information bill at the earliest opportunity. Whether Zanzibar requires its own legislation is a matter for the two governments.

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<sup>51</sup> See ARTICLE 19's report, *The Public's Right to Know. Principles on Freedom of Information Legislation* (London, June 1999). The report is available on its website at [www.article19.org](http://www.article19.org).

### Other Censorship Provisions

Sections 63 to 68 of the Zanzibar **Registration of News Agents, Newspapers and Books Act** (1988) establishes a government-appointed and controlled Censorship Board with wide-ranging powers to censor artists and artistic freedom of expression. The Act is much more sweeping and restrictive than the union-level **Film and Stage Plays Act** (1976), although its provisions only deal explicitly with film. The provisions of the Zanzibar Act are a flagrant violation of international standards.

Section 63 of the Zanzibar Act [as amended in 1997] prohibits anyone from directing, taking part or assisting in the making of a film of any kind unless the Director of Information has granted permission. Applications are to be accompanied by the " full description of the scenes and a synopsis of the spoken parts ... at least thirty days before the picture ... is to be made". The authorities reserve the right to grant or refuse a permit. If a permit is granted, "a public officer" authorised by the Director [of Information] may be present at the making of such scenes as specified by the Minister and ... may intervene to stop the making of any scene which in his opinion is objectionable to be witnessed by viewers in Zanzibar or Tanzania on grounds of offending Zanzibar or Tanzania's national culture". Owners or managers of premises are forbidden from allowing anywhere under their control to be used for filming unless the Censorship Board has granted prior permission.

Section 65 of the Act also stipulates that in addition, no person shall by way of trade, import or export, sell or hire films unless the Ministry of Information has issued him a permit. The Act also states: "No permit shall be issued for importing, exporting selling or hiring any cinematographic picture if it does not conform with any party or government policy, or it contains anything which is objectionable ... or is capable of inciting or promoting disharmony, violence, hatred or contempt against the government or amongst the people". The penalty for violating these provisions is 300,000 Tanzanian shillings (US\$375) or imprisonment for two years, or both.

### Freedom of Association and Assembly

In parts of the developing world where crucial means of freedom of expression are still unavailable to the majority of the population, the ability to exercise the right to freedom of expression is very much dependent on the extent to which the freedoms of assembly and association are also adequately guaranteed. It is for this reason that freedom of association and assembly have been described as being not only cognate to freedom of expression, but also as another essential element of any democratic system.<sup>52</sup> Undue restrictions on freedom of association and assembly have no place in a genuinely democratic society.

Article 20 of the Constitution of Zanzibar guarantees the right to freedom of association and assembly as follows:

- (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form and belong to trade unions or other associations which are legally established or recognised under the existing laws and which are for his interest.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:
  - (a) that is reasonably required in the interests of defence, public safety, public order, public health and public morality;
  - (b) that is reasonably required for the purpose of protecting the rights and freedoms of other persons; and
  - (c) that imposes restrictions upon public officers members of a disciplined force, or persons in the service of a local government authority.

However, an analysis of the relevant laws which apply in the context of Zanzibar -- the union-level **Political Parties Act** (1992) and the Zanzibar **Societies Act** (1995) -- reveals a situation in which these basic rights are an illusion on the island.

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The union-level **Political Parties Act** (1992) is structured in such a manner as to secure for the union government extensive control over the electoral process. The Act effectively gives it the power to decide which political parties will be permitted to contest elections. Parties must register with a government-appointed Registrar. The Registrar has four options: register a party; completely exclude it from the political process; declare it illegal; or grant it "provisional registration" for 180 days.<sup>53</sup> In effect, this is a trial period after which a party may be deregistered. Section 10(1)(a) states that "no political party shall be qualified to be fully registered unless it has first been provisionally registered".

Parties which have provisional registration are allowed only:

[T]o hold and address public meetings in any area of the United Republic after obtaining a permit from the District Commissioner for the area concerned for the purpose of publicising their party and soliciting for membership;

Provided that provisional registration shall not entitle any party to put up a candidate or to campaign for any candidate in any parliamentary or presidential election or in a local authority election.<sup>54</sup>

Further, Section 9(2)(a) of the Act states that no political party shall qualify for provisional registration if by its constitution or policy:

It aims to advocate or further the interests of:

- (i) any religious belief or group;
- (ii) any tribal, ethnic or racial group;
- (iii) only a specific area within any part of the Republic; [or if]
- (iv) it advocates or aims to carry out its political activities exclusively in one part of the United Republic.

Although it has been argued in some quarters in Africa that restrictions on parties based on region, religion, ethnicity or race are necessary to preserve secular society or prevent

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<sup>52</sup> For a fuller discussion of these issues, see ARTICLE 19's forthcoming thematic report on Freedom of Association and Assembly in Sub-Saharan Africa, which will include Tanzania as a case study.

<sup>53</sup> Section 8(2) and (4) of the Political Parties Act of 1992.

<sup>54</sup> *Ibid.*, Section 11(1)(a).

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the conflict or persecution of minorities, ARTICLE 19 believes that the provisions of the Act in this regard are far too sweeping. Recognizably criminal offences such as incitement to violence or hatred should be addressed in ways other than by imposing restrictions on party formation which can be used to deny minorities a political voice and excessively restrict the peaceful exercise of the right to freedom of expression. Moreover, the requirements on parties that they should have a national spread confers a clear material advantage on the ruling CCM, which has had over three decades of one-party rule to accumulate both the property and resources needed to fulfil such a requirement.

This unfair advantage is further entrenched by Section 10(1)(b, c), which stipulates that:

No party shall be qualified to be fully registered unless:

It has obtained not less than not less than two hundred members who are qualified to be registered as voters for the purpose of parliamentary elections from each of at least ten regions of the United Republic out of which at least two regions are in Tanzania-Zanzibar being one Region each from Zanzibar and Pemba and;

It has submitted the names of the national leadership of the party and such leadership draws its members from both Tanzania Zanzibar and Tanzania mainland.

Taken together, these provisions make it very difficult for a party to obtain registration if it wants to promote peaceful public debate on the nature of the union between Tanganyika and Zanzibar.

Although there are provisions for allowing a party to make representations in the event of deregistration, the Act states that "the decision of the registrar on the registration or the cancellation of the registration of any party shall be final and shall not be the subject of any appeal in any court".

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Finally, under section 18(1), the Minister has the sole power to make regulations under the Act, giving him or her enormous scope for politically-motivated actions designed to weaken opponents of the government.

ARTICLE 19 believes that the process for registering political parties should be entirely independent of government. Ministers should have no role in the process whatsoever. In addition, the process of registration should be a purely technical process in a democracy. There should be no grounds upon which registration may be refused simply because a party is seeking peacefully to promote views which the government finds distasteful. Recognizably criminal offences by individuals should be covered by ordinary criminal law and the application of subsequent sanctions. We believe that cancellation of the registration of any political party should only take place in very extreme circumstances – for example, where its leaders have been found guilty in a court of law of direct incitement to racial or ethnic violence – and only on the basis of a ruling by an impartial, competent and independent court. This Act should be repealed and replaced with legislation which reflects international standards with regard to freedom of association and assembly.

**The Societies Act** (1995), as applicable in Zanzibar, is similar to the union-level **Tanzania Societies Ordinance** (1954). The Zanzibar Act gives draconian powers to the Zanzibar Registrar of Societies and the relevant Minister to register or deregister all organisations covered by the Act. Under the Zanzibar Act,

The Minister may when he considers it to be essential in the public interest, by order declare to be unlawful any society which in his opinion:

- (a) is being used for any purpose prejudicial to, or incompatible with the maintenance of peace, order and good governance; and
- (b) is being used for purposes of tribalism;
- (c) is being used for any purpose at variance with its declared objectives.<sup>55</sup>

Any person who manages or assists in the management of an unlawful society shall be guilty of an offence and shall be liable to a fine of two hundred thousand shillings

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<sup>55</sup> Section 5(1) of The Societies Act (1995).

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(US\$250) or imprisonment for a term of six months or to both such fine and imprisonment.<sup>56</sup>

Any person who, knowing or having reasonable cause to believe a society to be an unlawful society:

- (a) is a member, or attends any meeting of that society; or
- (b) allows a meeting which he knows or has reasonable cause to believe to be a meeting of that society, or of any member thereof, to be held in any house, building or place belonging to or occupied by him, or over which he has no control, shall be guilty of an offence, and shall be liable to a fine of two hundred thousand shillings (US\$250) or to imprisonment for a term of six months or both such fine and imprisonment.<sup>57</sup>

Registration may also be refused on the grounds that the Registrar is satisfied that the society does not exist, or that the name under which the society is to be registered:

is in the opinion of the Registrar, repugnant or inconsistent with the provisions of any law of the time being in force in Zanzibar or is otherwise undesirable.<sup>58</sup>

Although there is provision for the Minister to give notice to a society before its registration is revoked, Section 14(1) states that the Minister's "revocation order shall be final and not capable of being removed by any court of law", unless the "Minister has misdirected himself in law". As such, there is no right of administrative or judicial appeal.

Aside from the general restrictions on societies provided by the Act, special restrictions also apply to religious societies. Under section 36 (2):

No constituent religious society shall be registered unless:

- (a) where there is a corresponding apex religious society, approval for registration is obtained from such apex religious society;

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<sup>56</sup> Ibid., Section 6.

<sup>57</sup> Ibid., Section 7.

<sup>58</sup> Ibid., Section 12(2)(e)

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- (b) where there is no apex religious society, approval of registration is obtained from the minister; and
- (c) Where approval for registration is refused by apex religious society approval is obtained from the minister.

This constitutes a serious intrusion of the state into matters of personal conscience and infringes the right of the people of Zanzibar to freedom of religion under the ICCPR.

The Registrar of Societies also has sweeping powers of enforcement, under which any police officer may, with or without warrant, enter any place where he has reason to believe that a meeting of an unlawful society, or of persons who are members of an unlawful society, is being held. That officer may arrest all persons, search the place and seize all documents and other property which he or she has reasonable cause to believe belong to an unlawful society or are in any way connected with the purpose of the meeting.<sup>59</sup>

In addition, any person may be required to attend a hearing and produce information or documents relating to any "suspected society". Violation of the provisions of this Act attracts a jail term of up to a year and a fine of up to 50,000 Tanzanian shillings (US\$62.5), or both. Chairmen and Secretaries of Societies are particularly liable and "it shall be no objection to the admissibility of evidence as to the constitution of rules, objects or activities that the witness tendering such evidence is not or has not been a member of any unlawful society".<sup>60</sup> The burden of proving innocence is once again placed on the accused.<sup>61</sup>

The provisions of this Act flagrantly violate the right to freedom of association and assembly for broadly the same reasons as those set out above with regard to the **Political Parties Act** (1992). The **Societies Act** (1995) should also be repealed without delay.

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<sup>59</sup> Ibid., Section 41.

<sup>60</sup> Ibid., Section 48.

<sup>61</sup> Ibid., Section 42.

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### APPENDIX B THE CUF EIGHTEEN

<b>Juma Duni Haji*</b>	CUF member of the Zanzibar parliament, member CUF central committee, member CUF negotiating team in commonwealth negotiation process, former vice- presidential opposition candidate for Tanzania, former principal secretary in the Ministry of Trade, MSc (UK), 50
<b>Nassor Seif Amour</b>	CUF deputy secretary general, computer specialist, senior government statistician, shadow Minister for Water, Energy, Land, and Reconstruction, MSc (UK), 59
<b>Hamad Masoud Hamad*</b>	CUF member of the Zanzibar parliament, director of the CUF human rights committee, former director of water resources, MSc in hydrology, 42
<b>Soud Yusuf Mgeni</b>	CUF member of parliament, former Minister for Education, Agriculture and Water (in turn) , former member of the Tanzanian parliament, member CUF central committee, CUF Director of Parliamentary and Constitutional Affairs, 51
<b>Hamad Rashid Mohamed*</b>	CUF member of the Zanzibar parliament, former Deputy Finance Minister and Deputy Home Affairs Minister of Tanzania, former member of the Tanzanian parliament, CCM national executive committee and Zanzibar Revolutionary Council, 49
<b>Ramadhan Shamna Abdi</b>	CUF security guard, 48
<b>Hamza Makame Omar</b>	Former navy commodore in the Coastguard and Anti- Smuggling Unit, 44
<b>Machano Khamis Ali</b>	Member of CUF central committee, former senior police officer, former member of the Tanzanian parliament and the Zanzibar Revolutionary Council, 55
<b>Zulekha Ahmed Mohamed (female)</b>	Deputy director of CUF women's association, 46
<b>Shariff Haji Dadi</b>	Private secretary to the CUF secretary general, former deputy director in the Ministry of Labour, MA, 51
<b>Abdullah Said Abeid*</b>	Commander of the Marine Guard, 58
<b>Zeina Juma Mohamed (female)</b>	CUF Member, Mid -20s
<b>Pembe Ame Manja</b>	CUF member, former army officer, 52
<b>Mohamed Ali Maalim</b>	CUF member, CUF security officer, 37
<b>Abbas Zam Ali</b>	Businessperson, reportedly arrested in mistake for his brother (next) , 48
<b>Said Zam Ali*</b>	Engineer, brother of Abbas Zam Ali, 42
<b>Hassan Mbarouk Hassan</b>	CUF security officer and local CUF branch chair, former army officer, 50
<b>Hamad Mmanga Khalfan</b>	Personal assistant to the CUF vice-chair, CUF security officer, former police officer, 50

