

**ERIS**

**Final Report of Findings**

**Presidential, Parliamentary and Councillors Elections  
Zanzibar (United Republic of Tanzania)  
30 October 2005**

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This report was drafted by Paul O'Grady, an ERIS consultant, and Thomas Boserup, election consultants contracted by the European Union, Delegation of the European Commission in Tanzania.<sup>1</sup> The findings in this report are based on information gathered from 25 October to 14 November 2005. While the consultants were able to gather and analyse information and meet with a variety of interlocutors from political parties, the election administration, EU embassies, official observer missions, and the NGO sector, the breadth and in particular the depth of the report reflects the limited time available to the consultants prior to election day. It has not been possible to verify many aspects of the election process with the rigour associated with an EU Election Observation Mission (EOM).<sup>2</sup> This report should be read in conjunction with the preliminary report prepared by the consultants on the Tanzania elections.

## 1. Executive Summary

While the elections highlighted a number of positive developments compared to the 2000 Zanzibar elections<sup>3</sup>, the consultants, election day observers from diplomatic missions co-ordinated by the UNDP, and formal election observer missions deployed by international organisations noted a number of shortcomings and irregularities in the election process, some of which are significant.

The positive features of the electoral process on Zanzibar included:

- The adoption of the October 2001 political accord between the ruling *Chama Cha Mapinduzi* (CCM) and the opposition Civic United Front (CUF)<sup>4</sup> on measures to implement the June 1999 Muafaka Accord. *Inter alia*, the 2001 accord provided for: a reform of the ZEC, the establishment of a permanent voter register (PVR), a review of the Constitution and electoral laws, respect for political freedoms and reforms of the media and judiciary.
- Many of the provisions of the Accord were implemented including amendments of the Constitution and the Election Act (in 2002) to take account of opposition grievances regarding the 2000 elections;
- A considerable (if belated) effort was made by the election authorities to create a permanent voter register (PVR);
- A keenly fought contest between two strong parties and their candidates, which evidenced that genuine political pluralism exists in Zanzibar;
- A consensus among Zanzibari stakeholders that the 2005 elections were administered more efficiently than the 2000 elections;
- The applicable legislation contains provisions designed to enhance the integrity of the ballot e.g. the use of ink to mark voters' fingers when voting, the inclusion of voters' photos in the voter register, the use of transparent ballot boxes, the counting of ballots at polling stations (rather than counting centres), and the public posting of individual polling station results after the vote count;
- The presence of party agents at polling stations and election observers, which enhanced the transparency of the polling process.

Some of the major shortcomings in the election framework and its implementation are as follows:

- The failure to implement all provisions of the 'Muafaka Accord' in advance of the election, most obviously, the lack of reform of the judiciary and publicly owned media;

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<sup>1</sup> Electoral Reform International Services (ERIS) specialises in the implementation of election assistance programmes and the secondment of election experts and observers.

<sup>2</sup> For example, it is not possible to comment on the balance of the media's coverage of political parties, the fairness of the election campaign, assess election boundaries or provide a detailed analysis of the legal framework.

<sup>3</sup> It is highly debatable whether the 2000, which were considered seriously flawed, should serve as a valid 'benchmark'.

<sup>4</sup> In elections, opposition parties tend to make more complaints than incumbents. Often, this reflects that incumbents have a greater capacity to control decisions and events. This report contains a number of claims and allegations made by CUF. However, it was not possible to verify the vast majority of these. This report makes much less reference to complaints made by CCM for the simple reason that few complaints were conveyed to the consultants by the CCM, despite holding an equal number of meetings with the two parties.

- The politically charged atmosphere in which the election took place. Specifically the ‘polarisation’ and deep lack of trust between the two main parties, which was not conducive to peaceful pre-election period. This is most clearly evidenced by controversy over the activities of party militias, notably those of the CCM known colloquially as ‘janjaweed’;
- Right up to election day CUF alleged that the PVR had been ‘padded’ with ineligible voters during the compilation phase, that it continued to contain multiple entries and that a large number of electors, who were eligible to register, had been denied registration. The failure of the Zanzibar Election Commission’s (ZEC) to respect a ‘political understanding’ to provide a copy of the PVR to CUF in advance of election day significantly reduced the transparency of the voter registration process and lessened CUF’s confidence in the credibility of the PVR and consequently in the integrity of the election;
- Only 50 Members of the Parliament (62%) are directly elected. The remaining 30 seats (38%) are reserved for non-elected MPs, of which, 10 are appointed by the President and 5 are ex-officio positions. In a close election this enables the President to alter the Parliamentary majority. Such an action would run counter to democratic principles;
- A provision of the law that limits the right to stand for election to candidates nominated by political parties. This conflicts with international standards for democratic elections.
- The failure to guarantee elected representatives tenure in office once elected (both the president and parliamentary deputies) makes candidates more accountable to parties than those that elected them and thus conflicts with democratic norms;
- Controversial decision-making by the Government of Zanzibar regarding the printing of ballot papers and the process of checking for multiple entries in the PVR, which some regarded as interference in the work of the legally independent election administration;
- Inadequate legal provisions regarding the announcement and declaration of official final election results;
- A provision of the Constitution that prevents the filing of a legal challenge against the result of the presidential election after the declaration of the final election result. This means that there is no legal remedy available to candidates in the event of serious election malpractice (should the ZEC take no action in this regard); and,
- The timeframe for hearing and ruling on legal appeals against the conduct or results of parliamentary election contests (two years), renders the filing of such an appeal an almost futile exercise;

On election day, in general, polling was conducted in a peaceful atmosphere. In contrast to 2000, the large majority of polling stations received ballots and other election material well before opening of polling stations.<sup>5</sup> UNDP co-ordinated observers reported that, with a few notable exceptions, in general polling staff made an effort to comply with correct voting procedures and worked well together in a collegial spirit. While some procedural deficiencies were noted, most can be characterised as minor mistakes.

However, serious public order incidents occurred in *Mji Mkongwe* (Stone Town) and *Mtoni* constituencies on Unguja Island. The incidents appeared to have stemmed from a seemingly organised attempt to manipulate the election process. In the run up to the events, it was reported that relatively large numbers of persons with a dubious eligibility to vote were transported to polling stations under the protective escort of security forces, and it is believed, cast votes. This prompted protests from CUF supporters. Conversely CCM has claimed CUF supporters attempted to prevent eligible citizens from voting.

In general, observers reported that only relatively small numbers of voters were turned away from polling stations because their names did not appear on PVR extracts. However, it should be recalled that allegations were made by CUF that eligible persons were denied registration earlier in the year. Some observers noted inconsistencies in the approach taken by Presiding Officers

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<sup>5</sup> However, polling stations in one constituency (Dole) did not receive ballots for the parliamentary election and five election ‘wards’ did not receive ballots for the councillors’ elections. Hence the respective elections did not take place. These contests have been rescheduled to take place on 18 December.

towards persons whose names did not appear in polling station extracts of the PVR. Some presiding officers allowed persons in possession of a voters' card to vote, others did not. However, it is not thought that these inconsistencies affected large numbers of voters.

In general, the count proceeded smoothly at polling station level. However, observers noted cases where party agents were not given copies of the official polling results and where the results were not posted publicly, as required by law.

Election observers did not follow the aggregation of results at constituency/district level in a systematic manner. As such, it is difficult to draw any firm conclusions on this phase. CUF complained that some party agents were denied information or otherwise prevented from scrutinising election results during the aggregation phase. One ZEC member made a similar complaint concerning the aggregation of presidential election results by the ZEC Secretariat.

Based on information released by the ZEC on 1 November, the incumbent president, Amani Abeid Karume (CCM), received 53.2% of the vote (239,832 votes) while Seif Shariff Hamad (CUF) received 46.1% (207,733 votes). On 2 November, Amanai Abeid Karume was sworn in as President of Zanzibar for a second term.

Of the 50 elected seats in the Zanzibar House of Representatives, CCM candidates were declared the winners in 30 constituencies and CUF candidates declared the winners in 19 constituencies. In addition to the elected seats<sup>6</sup>, a further 31 deputies are appointed, some by the President, some are ex officio MPs. Thus, the parliament has up to 81 members. Following the 2005 election, the ruling CMM has 40 seats and a further 15 might be under the influence of the executive. This gives the CCM and pro-government deputies potential control over 55 seats (68%) and thus a potential parliamentary majority of 30 votes. This majority can be used to amend the Constitution in a politically unilateral manner.<sup>7</sup>

After the election day, the political environment became highly charged. Prior to the swearing in of Mr Karume as President, parts of Zanzibar Town were encircled by security forces. The situation eased after 2 November although the media and the CCM reported that sporadic violence continued on Pemba Island.

On 2 November, the EU Presidency issued a statement in which it noted "the broad assessment by international observer groups that the electoral process was a marked improvement on past polls" and also that "there were instances, particularly on Unguja, where there were irregularities and a lack of transparency". It goes on to say "A number of observer groups have called for a thorough investigation of these anomalies. The EU supports this call and suggests that the early publication of all polling results would contribute to confidence amongst the Zanzibari electorate".

Due to the limited scope of the election assessment, it is not feasible to draw firm conclusions on the degree to which the Zanzibar elections met international standards. However, it is clear that controversies over the registration of voters, incomplete transparency in the administration of the elections and announcement of results, and a few serious election day irregularities created a lack of certainty regarding the credibility of the election process.

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<sup>6</sup> On 30 October, the parliamentary election did not take place in one constituency (Dole). The election will take place on 18 December.

<sup>7</sup> The Constitution of Zanzibar (Art 80 (2)) requires that at least two-thirds of all members of the House support the proposed Constitutional changes at the first and second parliamentary reading.

## 2. Introduction

Elections at all levels (President, Parliament and Councillors) were scheduled to take place in the United Republic of Tanzania on 30 October (hereafter 'Union elections'). Simultaneously, elections were also due to take place for the semi-autonomous institutions of Zanzibar (President, House of Representatives and Councillors) (hereafter 'Zanzibar elections'). The Union and the Zanzibar elections are held under separate pieces of legislation and administered by different election administrations. The National Election Commission (NEC) administers the Union elections on the entire territory of Tanzania and the Zanzibar Election Commission (ZEC) administers the Zanzibar elections.

The EU was invited by the Tanzanian authorities to observe the Union elections and by the Ministry of Foreign Affairs and International Cooperation of Zanzibar to observe the Zanzibar elections. The EU decided not to deploy an election observation mission (EU EOM) to observe either the Union elections or the Zanzibar elections. However, two election experts were recruited by the EC Delegation in Tanzania to follow the processes and assist the EC Delegation in its reporting on the elections.<sup>8</sup>

Other organisations did deploy election observer missions. Nordem (Norway) deployed 10 'long-term' observers some weeks before election day, including six observers based in Zanzibar (Unguja and Pemba Islands). The Electoral Institute of Southern Africa (EISA) also deployed a long-term observer mission. Closer to election day other organisations including the Commonwealth, the African Union (AU) and three Southern Africa Development Community (SADC) institutions sent short-term observer missions to follow the Union and Zanzibar elections, as did the non-governmental organisation the National Democratic Institute (NDI). Some 135 observers drawn mainly from international staff of diplomatic missions based in Dar es Salaam (EU and non-EU diplomatic representations) were accredited to observe the Tanzania and Zanzibar elections under UNDP's co-ordination.

The Tanzania Election Monitoring Committee (TEMCO), a domestic election observer group, monitored the process over a long period and, *inter alia*, reported on the voter registration process, the media's coverage of political parties, and the election campaign. The organisation deployed some 300 observers for the Zanzibar election.

Following the death of Jumbe Rajab Jumbe (vice presidential candidate of the political party CHADEMA), on 27 October, the National Election Commission (NEC) postponed all three Union elections initially to 18 December, and subsequently to 14 December. The decision to postpone the Union elections created uncertainty regarding whether the Zanzibar elections would be held as planned. After a period of hesitation, at 15.00 on 28 October, the ZEC publicly announced that the Zanzibar elections would be held on 30 October. It considered that there was no legal basis for their postponement.

Following the postponement of the Union elections, all observer groups continued with their pre-existing plans to observe the Zanzibar elections. However, only those observers previously accredited by the ZEC were deployed on Zanzibar.<sup>9</sup> On 30 October 36 international observers under the co-ordination of the UNDP monitored polling and counting on Zanzibar

The UNDP co-ordinated observers did not issue a public statement on the elections. Other international observer groups including: the Commonwealth, SADC, AU, EISA and NDI all issued public statements on the elections.

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<sup>8</sup> Paul O'Grady (UK), an ERIS Consultant, and Thomas Boserup (Denmark). The consultants arrived in Tanzania on 24 October and departed on 14 November 2005.

<sup>9</sup> NEC accreditation documents were not accepted as entitling observers to follow the process in Zanzibar.

This report presents the main findings regarding the Zanzibar elections. It draws upon the election day findings of the international observers co-ordinated by the UNDP. A separate report covers the consultants' preliminary findings for the Union elections.

### 3. Background

Multiparty elections were first held in Zanzibar in 1957. Zanzibar became independent in 1963. Further multiparty elections were held in 1963 before the Afro-Shiraz Party assumed power through a revolution. In 1964, Tanganyika and Zanzibar formed a political Union: the United Republic of Tanzania (hereafter Tanzania). In 1977, the ASP merged with the Tanganyika African National Union (TANU) to form *Chama Cha Mapinduzi* – (CCM) (Revolutionary State Party). From 1964 to 1992, Tanzania (including Zanzibar) was a one party state.

In 1992, after a consultation process, the decision was taken to amend the Constitution to make Tanzania a multi-party democracy. The same year, the Political Parties Act was adopted to allow for the registration of political parties, and the Office of the Registrar of Political Parties was created. Nevertheless, TANU/ASP/CCM have ruled Tanzania (and Zanzibar) uninterruptedly since independence and is still regarded as the dominant political force.

Multi-party elections were held in Tanzania and for the semi-autonomous Zanzibar institutions in 1995 and 2000. In Zanzibar, despite the dominance of the CCM, these elections were keenly contested events (between CCM and CUF), although marred by irregularities. CUF enjoys a very high level of support on Pemba while CCM is stronger on the more populous Unguja.

In the 1995 Zanzibar elections, the CCM candidate, incumbent President Dr. Salmin Amour Juma, was declared the winner of the election with 50.24% of the vote (less than 1,600 votes more than his rival Seif Shariff Hamad of CUF).<sup>10</sup> Following the elections, CUF called for fresh elections to be held. This prompted a repressive clampdown by the Zanzibar authorities. In response, many donors suspended their cooperation and assistance to Zanzibar.

In June 1999 the first *Muafaka Accord* was agreed to promote reconciliation, democratisation, human rights and good governance.<sup>11</sup> Following the accord, CUF ended its boycott of the parliament and recognised the government of Salmin Amour Juma. However many of the provisions of the *Muafaka Accord* were not implemented before the 2000 elections.

The 2000 election campaign was particularly rancorous. In the presidential election, the ZEC declared Amani Abeid Karume (CCM) the winner with 67.04% of the vote to 32.96% for Seif Shariff Hamad. The ZEC nullified the results in 16 of Zanzibar's 50 constituencies due to major irregularities. CUF boycotted the re-run elections because their demand to annul all election results had not been met. While the EU observed the 2000 elections in Tanzania, it did not deploy observers to Zanzibar. However, the Commonwealth did send observers and concluded: "the conduct of the elections fell far short of minimum standards".

In January 2001 riots broke out in Zanzibar. The government responded in a heavy-handed manner with resulted in some deaths and several hundred injuries and prompted over 2,000 persons to seek refuge in Kenya.<sup>12</sup> On 10 October the second *Muafaka Accord* was signed by the CCM and CUF. This accord resulted in the adoption of amendments to the Constitution<sup>13</sup>, *inter alia* in the reform of the Election Act and the ZEC and the establishment of a PVR. In May 2003, Union by-elections were held in Pemba to fill 16 vacant seats in the Tanzanian Parliament.

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<sup>10</sup> U.S. Department of State, Bureau of Democracy, Human Rights, and Labor in its Country Report on Human Rights Practices (1996) notes: "International observers noted serious discrepancies during the vote-counting process, calling into question the re-election of CCM incumbent ... as ...President."

<sup>11</sup> The Commonwealth brokered the Accord.

<sup>12</sup> President Mkapa appointed Brigadier General Hashim I Mbita Chair of an eight-member commission tasked to investigate the causes and consequences of the January events and to make recommendations on how to prevent a reoccurrence of similar events.

<sup>13</sup> The 8<sup>th</sup> and 9<sup>th</sup> Constitutional amendments.

The 2005 Zanzibar elections were once again highly competitive contests between CCM's and CUF's candidates. Incumbent President, Amani Abeid Karume was the presidential candidate of CCM while Seif Shariff Hamad was, once again, CUF's presidential candidate.

#### **4. The Electoral Framework**

##### **4.1 The Election System (presidential and parliamentary elections)**

The president is elected in a single constituency comprising the territory of Zanzibar. To be elected, the winning candidate requires a plurality but not a majority of the vote.

Zanzibar has a unicameral parliament, the House of Representatives. Only 50 (62%) of its 81 members are directly elected. A further 31 seats (38%) are reserved for non-elected MPs. Of these, 15 are 'reserved' for women (distributed among parties according to the number of elected seats they won), ten are appointed by the President and 6 are 'ex-officio' members of parliament (the five government-appointed Regional Administrators and the Attorney General). Thus, a party could win a majority of elected seats but still find itself in a parliamentary minority, depending on choices made by the President.

To be elected, candidates must win a plurality of the vote in one of the 50 constituencies (32 on Unguja Island and 18 on Pemba island). In the run up to the 2005 elections, Pemba 'lost' three constituencies which were 'given' to Unguja. The change necessitated the redrawing of several constituency boundaries. The consultants did not have time to analyse the boundary changes in detail.

##### **4.2 The Legal Framework**

The consultants received a copy of the Regulations for the 2005 elections (Chairman of the Revolutionary Council and the President of Zanzibar, the House of Representatives and the Local Authorities). Copies of English language versions of the Constitution of Zanzibar (1984) and the Elections Act (1984) were received on 14 November. The consultants were unable to obtain copies of the ZECs decisions and instructions.

The Elections Act was amended in 2002 as part of the Muafaka Accord. The amendments included: a reform of the ZEC *inter alia* by amending its composition, enhancing its independence, and strengthening the Commission's power over its Secretariat. Other provisions were changed e.g. an amendment to the residency requirement (for eligibility to register as a voter) so that electors must be resident in a constituency for three years rather than five years (as previously), and limiting the role of *shehas* (local government officials) in the election process.<sup>14</sup>

Insufficient time was available to analyse the key legal acts in detail. Therefore, it is not possible to assess with certainty if the legal framework provides an adequate basis for holding genuine democratic elections. Nevertheless, the following features of the legislation are noteworthy:

- The Constitution of Zanzibar allows the President to serve only two consecutive terms. Traditionally this provision has been respected;
- The legal framework incorporates various safeguards aimed at safeguarding the integrity of the ballot, *inter alia*:
  - Including photos of electors on the PVR, to lessen the possibility of voter impersonation;
  - Using transparent ballot boxes, which can act as a safeguard against so-called 'ballot stuffing';

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<sup>14</sup> Source: paper on the Zanzibar elections published by the University of Oslo ([www.humanrights.uio.no](http://www.humanrights.uio.no)).

- Using ink to mark voters fingers to lessen the potential for multiple voting;<sup>15</sup>
  - Counting ballots at polling station level rather than at counting centres;<sup>16</sup> and,
  - Publicly posting polling station results after the counting of ballots;
- The requirement that 30% of MPs are women. However, regrettably only one woman MP was directly elected, all other women MPs were appointed.

However, noteworthy weaknesses in the legal framework include:

- The Constitution restricts the right to seek election to members of political parties, thereby preventing 'non-party' or 'independent candidates' from seeking election. This restriction conflicts with Art 25 of the International Covenant on Civil and Political Rights (1966) which states: "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2, and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives".<sup>17</sup> It may also conflict with Chapter IV, Article 2 of the AU Declaration on the Principles Governing Democratic Elections in Africa (hereafter AU principles).
- The mandate of elected officials (President, Parliament and Councillors) can be terminated if they cease to be members of the party in whose name they were elected. Such a situation might arise not only where the elected official resigns from the party, but also if they were expelled. As such, elected officials might be unduly dependent on senior party officials, have limited scope to act or vote according to their conscience and in general be less accountable to voters than to party structures.
- To be eligible to vote in Zanzibar elections persons must have Zanzibari 'status' according to the provisions of the Zanzibari Act of 1985 and have had permanent residence and have lived continuously in the constituency in which he/she will vote for 36 months before the date of their registration as a voter. These provisions are applied for all 3 elections. The 36-month residency requirement provision appears unduly restrictive as it unnecessarily restricts the right to vote. This is particularly the case concerning presidential elections;<sup>18</sup>
- Civil servants, members of security forces or employees of international organisations that have been transferred to the constituency in the course of employment, do not have to meet the 36-month residency requirement. This provision creates a legal loophole, which is open to abuse.<sup>19</sup>
- The timeframe for the official announcement of final presidential election results – only three days after the election – may not provide sufficient time to adjudicate election day complaints in a fair manner or allow parties sufficient time to prepare evidence to support complaints in advance of the official declaration of results.
- The Constitution (Art 34(7)) specifically proscribes the filing of an appeal against the result of the presidential election after its official declaration by the ZEC. Thus, if election fraud

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<sup>15</sup> The application of ink to prevent 'double' or 'multiple' voting is only effective if ink is applied uniformly and persons are checked for ink systematically before receiving ballots.

<sup>16</sup> However, in some countries parties argue in favour of using counting centres as these are thought easier to monitor and avoid tampering with election results between the polling station and higher-level commission. No system is foolproof.

<sup>17</sup> Point 17 of the General Comment 25 of the UN Human Rights Committee (1996) states "The right of persons to stand for election should not be limited unreasonably to members of parties or of specific parties.

<sup>18</sup> Article 11 of General Comment 25 of the UN Human Rights Committee (1996) states "if residency requirements apply to registration, they must be 'reasonable'. As the franchise is already limited to those with Zanzibari status, the additional residency requirement can be considered as 'unreasonable', particularly is it is applied selectively.

<sup>19</sup> CUF claimed that the provision had been abused and that security forces were deployed and re-deployed to create multiple entries in the registers.

has been committed and not adequately investigated by the competent body, there is a real danger that it may be impossible for parties to seek or receive effective legal redress. This provision may conflict with the spirit of Chapter IV, Article 6 of the AU principles which states: “Individuals or political parties shall have the right to appeal and to obtain timely hearing against all proven electoral malpractices to the competent judicial authorities in accordance with the electoral laws of the country.”

- Petitions on the conduct of a parliamentary election may be filed with the High Court within 14 days from the date of the declaration of results. However, the High Court has two years to hear the case. This is an unreasonably long time to adjudicate a case.

## **5. Election Administration**

### **5.1 The Zanzibar Election Commission (ZEC): Composition and Functioning**

The ZEC is established as an independent body. The National Election Commission (NEC) administers Union elections held on the territory of Zanzibar. The ZEC is responsible for administering the Zanzibar elections. It is composed of seven members. Following the 2002 amendments to the legal framework, the opposition and the ruling party were each given the right to nominate two members, while the President nominated the remaining three members, including the Chair of the ZEC.<sup>20</sup> The ZEC is supported in its work by a Secretariat that organises the elections on a day-to-day basis. The ZEC Director heads the ZEC Secretariat.

The appointment of some ZEC members by the parties was intended to increase the transparency of the ZEC's functioning and during the pre-election period may have improved political confidence in its decision-making. However, CUF complained that the five other members of the ZEC frequently used an inbuilt majority of five to two to vote on ZEC decisions, sometimes ignoring opposition opinion. CCM was satisfied with the functioning of the ZEC.

A consensus existed among interlocutors that, in contrast to the 2000 elections, there had been a noticeable improvement in the ZEC's capacity to organise the elections efficiently. A greater effort was made to provide the electorate with more information (so-called voter education) on the voter registration and voting procedures, for which the election administration should be commended. However, the ZEC did not issue public information to citizens regarding 'the eligibility to register' - important in the Zanzibar context where not all residents are entitled to vote. Nor did the ZEC maintain a website. This could have been used to provide valuable information on the election process.

Less positively, allegations were made that the independence of the ZEC was compromised by certain decisions of the government of Zanzibar on the administration of elections e.g. its intervention on the printing of ballots. Originally, the ZEC had decided to use Universal Print Group (UPG). Following the intervention of the Government, the contract was awarded to Free State Business (FSB).<sup>21</sup> This issue was highly controversial and its outcome ran counter to the wishes of the ZEC as well as raising opposition concerns over integrity of ballot printing process.

The decision by the ZEC to use the military to transport election material to polling centres and used election material, including election returns and marked ballots after the completion of the vote count at polling stations, while accepted by all parties beforehand, was highly unusual.

Returning Officers (RO) and Assistant ROs are responsible for administering the elections in the 50 constituencies. Some ROs had responsibility for more than one election constituency.

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<sup>20</sup> The Chairman must be a judge of the High Court or Court of Appeal of any Commonwealth Country, or a respected person in the society. One of the other two members appointed by the President must also be a Judge of the High Court.

<sup>21</sup> Apparently the decision was taken for financial reasons. However it was not clear that FSB's fees and terms were more favourable to those offered by UPG.

Following the amendment of the Election Act, local government executives are no longer *ex officio* appointed as ROs. Instead, ROs are appointed by decisions of the ZEC. However, despite the changes, CUF complained that some ROs were insufficiently independent from government structures and the party had a general lack of confidence in the impartiality of the lower levels of the election administration. The CCM did not raise this as an issue with the consultants.

There was a general absence of complaints by parties concerning the failure to register their candidates. This stands in contrast to the 2000 elections, where some prospective candidates were prevented from standing.<sup>22</sup> However, it is noteworthy that the two major parties fielded only 3 women candidates between them. While Zanzibar has a requirement that 30% of MPs are women almost all are appointed because of the failure by the parties to nominate sufficient numbers of women candidates.

## 5.2 Voter Registration

Despite the significant - if belated - effort by the Zanzibar authorities to create the PVR, voter registration remained the most significant issue of contention in the Zanzibar election process.

The registration of voters began on 29 November 2004 in South Pemba Region and ended in Urban West Unguja Region on 26 April 2005. After a process of data cleansing, 507,225 electors were registered to vote in the elections (some 93% of the original estimate of eligible voters).

During the registration phase, CUF claimed that frequently its supporters were arbitrarily denied registration by biased local government officials (*shehas*) and election officials, often on the grounds of non-residence and that some eligible citizens were prevented from filing appeals against these decisions, due to an absence of claim forms or their wilful non-release by officials.<sup>23</sup> CCM did not raise this as an issue with the consultants. A TEMCO report from April 2005 states as the 'major lesson' of the registration process: "[The] ZEC needs to assert its authority over the *Shehas* and Assistant Registration Officers who do not observe voter registration rules [...]. [The] ZEC should clarify the 36-month residency requirement rule. Misinterpretation of this rule has led to conflict and misunderstanding at many registration centres." Only 60 to 70 electors were registered following a successful appeal to a court.<sup>24</sup>

After the registration period, extracts of the preliminary PVR were displayed at polling stations. During this period people were able to challenge the eligibility of persons whose details appeared in the PVR. According to the ZEC, 425 entries were removed.

In the run up to the election, CUF expressed its lack of confidence in the accuracy of the Zanzibar PVR and estimated that some 7,500 of its supporters, who it claimed were eligible to vote, were denied registration and estimated that some 10,000 unknown persons were included. No such claims were made by the CCM.

While CUF did not present any firm evidence to the consultants to support its claims, some unexplained anomalies between the number of registered voters initially reported as having registered (between 29 November and 25 April) and the final numbers of registered voters, were noted by the consultants in three districts. In Urban District 102,7102 voters were originally declared as registered, whereas the final figure given by the ZEC was 112,974. In West District 88,298 voters were originally declared as having been registered, whereas the final figure was 92,591 - a combined increase for the two districts of 14,565 voters. In Wete District 50,182 voters were originally declared as having been registered, whereas the final figure given by the ZEC was

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<sup>22</sup> However, this comment should not imply that all eligible candidates at all levels were registered with problems. The consultants are aware of one council ward where a CCM candidate was elected unopposed due to a 'de-registration' of his opponent.

<sup>23</sup> The election administration refused to accept appeals filed on photocopied claim forms.

<sup>24</sup> Approximate figure – source: ZEC Vice Chair

45,157 – over 5,000 less voters. In the other seven districts only relatively small differences were found between the initial and final numbers of voters registered.

In the run up to the election a controversy arose over the ZECs plans to check the register for multiple entries using technology available in South Africa.<sup>25</sup> The company 'Waymark' received a sample of 30,000 records from the ZEC to assess the feasibility of checking for duplicate entries using fingerprint recognition technology. The Government intervened, ostensibly because of objections to removing entries from Tanzanian territory and because it claimed that tendering procedures had not been followed. The feasibility study was cancelled.<sup>26</sup> The results of the study were never made public.

It is not clear whether the complete PVR was checked for double or multiple entries using other available fingerprint recognition systems. However, the consultants were informed by the ZEC that cleaning of the register was done by comparing names and personal details and then matching fingerprints to confirm the duplicate (i.e. after a duplicate had been identified by other means). Using this method, 829 voters were found to have registered more than once. Late in the process (21-25 October) the NEC assisted the ZEC in using facial recognition technology to identify duplicates during which 1,197 people were identified to have registered more than once, of which 444 were also found to be multiple registrants in a second phase check.<sup>27</sup> In total 2,007 people were identified to have registered more than once. This led to the deletion of 2,998 entries from the register.<sup>28</sup> This figure appears quite modest. It is not known if this reflects the general absence of multiple records or that the process of identifying multiple records was inadequate. It was noted that time available to complete the facial recognition was extremely limited. In the run up to election day, delays were evident in the preparation of the voter register, partly as a result of the lateness in checking the PVR for duplicate records.

The ZEC agreed to provide a 'soft copy' of the complete PVR to CUF by 24 October. CUF wanted this data to assess the credibility of the final version of the PVR. The party had planned to provide its party agents with copies of the extracts of the PVR for use on election day, *inter alia* to verify that the PVR used on election day was the same as that given to the party. However, the ZEC did not provide CUF with information on registered voters until 14.00 hrs on 29 October, despite the fact that the data was available at least from 26 October, when the printing of the PVR commenced. Significantly, the data given to CUF was not a copy of the PVR but simply an 8,454-page list of voters unsorted by constituency or polling station. Consequently, it was unusable as a verification instrument. The party finally received a soft copy of the PVR (broken down by constituency and polling station) only on 3 November, 4 days after election day. The ZEC's lack of co-operation and transparency in this regard can be considered one of the major shortcomings in the election process and its handling of this sensitive issue lessened confidence in the integrity of the final version of the PVR.

On 29 November, the ZEC director informed international observers that persons whose names appear on the PVR but who are not in possession of a certificate of registration (voter card) would be allowed to vote if they could provide satisfactory evidence that they were the person whose name appeared in the PVR. Those persons that possessed a certificate of registration but whose names do not appear in the PVR would not be allowed to vote. This decision seemed to render registration certificates as valueless documents, particularly for those who were in possession of a genuine certificate but found that their name did not appear on the polling station PVR extract. Moreover, the decision was not well communicated to polling staff and was inconsistently applied on election day (see section 7.3).

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<sup>25</sup> According to a ZEC member this had been agreed in a session of the ZEC.

<sup>26</sup> According to a ZEC member, the entries were not removed, simply a copy of photos and fingerprints were made to check if they were of sufficient quality to make a check for duplicates.

<sup>27</sup> However, it is not clear whether the ZEC tried to match all records against each other, or tried to match records within the different constituencies or districts. The methodology used could have a significant bearing on the number of duplicate entries identified.

<sup>28</sup> It is not known if the details of any of the 2,998 multiple registrants were passed to the Public Prosecutor and if any criminal cases have been launched.

Unlike the mainland there is no legal requirement to post extracts of the final voter register at polling stations prior to the election. Certainly such a course of action would have improved the transparency of the process in the run up to the election. However most lists were displayed on the eve of the election.

After the 30 October 2005 elections, the maintenance of the PVR will be a key challenge for the ZEC. One issue that could prove controversial is the ZEC's intention to replace lost voter cards with new cards with a different number. This could lead to multiple registration and lessen confidence in the accuracy of the register in years to come.

### **5.3 Equality of the Vote<sup>29</sup>**

In the run up to the 2005 elections, some constituency boundaries were redrawn and the number of constituencies in some districts revised upwards or downwards. In 2000, the four districts on Pemba had 21 of the 50 constituencies. In 2005, this was reduced to 18, with three constituencies being awarded to districts on Unguja. Based on population data given to the consultants by the ZEC, this decision seems reasonable.<sup>30</sup> The redistricting also corrected the serious under-representation of West District, Unguja. The allocation of constituencies to the various administrative districts appears reasonable and equitable.

Nevertheless, the allocation of constituencies among districts was based on estimated population figures. In many cases, the actual numbers of registered votes per district were considerably higher or lower than the estimates. Hence, an imbalance in the number of voters registered in different constituencies is present. For example, Chambiani constituency (South Pemba) has a number of registered voters that corresponds to only 63.12% of the average constituency total (10,145). Conversely, in Koani constituency (Central, Unguja) the corresponding figure is 154.12% of the average. Based on the actual number of registered voters - and assuming that all eligible voters were registered (an assumption challenged by CUF) - then Mkoani and Wete Districts are each 'over-represented' by one constituency, while central and urban districts are each under-represented by one constituency. However, it would not be advisable to re-allocate constituencies or redraw any constituency boundaries until it has been verified that all eligible voters are included in the PVR.

## **6. The Pre-Election Environment and the Election Campaign**

While it is evident that political pluralism is present in Zanzibar, the relationship between the main parties is characterised by deep mistrust and at times hostility. This, together with the conduct of the 2000 election and the events of January 2001, have polarised political discourse in Zanzibar.

The Code of Ethics (Zanzibar) represented an important effort aimed at improving the fairness of the pre-election campaign. However, due to the limited scope of this report, no assessment can be made on the success of the Code in meeting its objectives.

There exists among many Zanzibaris a perception that the separation of State structures from the incumbent party structures is incomplete. One prominent Zanzibari informed the consultants that he was summarily dismissed from his senior position in the public sector, he believed, simply for attending an opposition political event. Additionally, he claimed that many public sector workers were placed under duress in their political choices and feared for the security of their employment if they were seen to support a party other than the ruling party.

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<sup>29</sup> All figures on Zanzibar's population should be treated with caution as no exact data exists which could serve as an accurate reference point for comparison.

<sup>30</sup> According to the data supplied by the ZEC, Pemba has an estimated population of 360,797 – 36.75% of the total estimated population of Zanzibar: 981,754. Pemba has 18 constituencies – 36% of the total number of constituencies.

The presence and activity of party militias during the pre-election period, notably the so-called 'janjaweed', believed to be affiliated to the CCM, was not conducive to a free vote and could have caused fear among some citizens. The opposition claimed that some of its supporters, and on occasion ordinary citizens, had been attacked. The CCM complained of violent activity of CUF supporters on Pemba.

On a few occasions the security forces failed to respect the right to peaceful assembly, during the pre-election campaign. In one well-publicised incident in Donge, they appeared to have used particularly heavy-handed tactics that resulted in injuries to opposition supporters who were travelling to a campaign event. These actions may conflict with international standards including Chapter IV article 5 of the AU principles, which states: "Individuals and political parties shall have the right to freedom of movement, to campaign and to express political opinions with full access to the media and information within the limits of the laws of the land".

In the run up to the election, calls made by CUF in Zanzibar for party supporters to congregate in numbers 'in the vicinity of' polling stations on election day had the potential to heighten political tensions and drew criticism from CCM interlocutors. However, prior to election day, CUF's party leadership modified its call so that the presence of party activists would be less concentrated and less visible and hence might be perceived as less 'threatening' by voters supporting the CCM.

## **7. Election Day and Subsequent Findings**

### **7.1 Observer Information and Sources of Data**

The EU did not deploy election day observers. However 36 observers drawn mainly from international staff of diplomatic missions based in Dar es Salaam (EU and non-EU diplomatic representations) were accredited to observe the Zanzibar elections under UNDP's co-ordination (22 were deployed to Unguja and 14 were deployed to Pemba). In general, observers performed their tasks in teams of two or three persons.

The information contained in section 7 of this report is taken from a variety of sources including:

- Data from observer report forms prepared by UNDP. A report was made available to diplomats on 1 November 2005 covering the voting phase;
- Observers' comments included in the report and incident report forms;
- A debriefing of observers held at the initiative of observers deployed on Unguja, on 31 October 2005; and,
- A debriefing of observers, chaired by UNDP on 1 November 2005.

### **7.2. Atmosphere on election day**

According to the ZEC Director, 1,600 polling stations were established (1,090 on Unguja and 510 on Pemba).<sup>31</sup> Overall, polling on Zanzibar was conducted in a peaceful atmosphere. However, the polling environment at some polling stations in Mji Mkongwe constituency (Stone Town) deteriorated during the mid-afternoon period with the security forces using teargas to disperse opposition party supporters. Security forces also used water cannon in this area.

Around the time of the disturbances, CUF claimed that groups of unknown persons were being transported to polling stations and voting - although their names were included in the PVR. This also appeared to have happened in Mtoni constituency (West District), which also caused a disturbance. On 31 October, the government made a written statement regarding the public order incidents in which the Director of Information in the Zanzibar government placed the blame for the unrest on CUF supporters, who the government alleged, threw stones at CCM supporters to stop

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<sup>31</sup> During a briefing for international observers on 29 October, the ZEC Director announced that 1,560 polling stations had been established. Indeed, there was a general degree of confusion over the actual number of polling stations.

them voting. The government also claimed that it had not “been bussing in voters from rural areas to vote in the Stone Town”. After election day the CCM claimed that CUF supporters were intimidating their supporters and preventing eligible citizens from voting.

Nevertheless, the incidents in Mji Mkongwe appeared to some election observers (who were present in the constituency), including those from other observer delegations, to be a planned attempt to manipulate the election process. Such incidents were not reported elsewhere in Zanzibar although observers noted attempts to intimidate voters at six polling stations - although the nature of the intimidation remains unclear. In general, most observers stressed that the regular police forces behaved in an appropriate manner on election day.<sup>32</sup> This was also the opinion of CCM representatives with whom the consultants met.

In some areas, citizens were waiting to vote in multiple lines. After the election, the Deputy Chair of the ZEC confirmed that the ZEC had instructed polling staff to prioritise voting by security service personnel. However, it does not appear that the law provides for such a practice, although it might not preclude it either.

### **7.3 Voter Registers**

In a few polling stations in a variety of constituencies in Unguja, CUF alleged to observers that persons not known to be resident in the area were able to vote - despite their names not being on the PVR. In 8% of polling stations visited, observers reported that some persons thought not to be eligible to vote were able to do so. However, it is not known how many such persons this concerned.

Observers noted at a few polling stations, relatively small numbers of citizens were unable to cast ballots because their names did not appear on the PVR, in some instances these persons were in possession of voter cards. In some constituencies, persons with voter cards, but whose names were not on the lists, were allowed to vote.

Also noteworthy was the observation that at a few polling stations the copy of the PVR displayed outside the polling station and the copy used by the polling staff were not always identical. In some cases, those whose names appeared on the ‘display’ list but not the ‘working’ list were allowed to vote.

Extracts of the PVR were not displayed systematically outside all polling stations. However, as noted earlier in this report, it is not a requirement of Zanzibar Election Act to display a copy of the PVR extracts. In a number of polling stations in Kiembe Samake constituency (West District), voters’ photos did not appear on the working copy of the PVR extract. In general, observers noted that the quality of the photos on the printed version of the PVR was poor.

### **7.4 Voting and Respect for Procedures**

Polling was generally smooth and orderly. In contrast to 2000, the large majority of polling stations in Zanzibar received ballots and all other election material. However, in five election wards (constituencies for councillors’ elections), ballot papers for the councillors’ election were not delivered. Consequently, the local election did not take place, although polling for the parliamentary and the presidential election did proceed normally. Similarly, parliamentary ballots for Dole constituency were not received and this election did not take place.

The presence of domestic and international observers and party agents at polling stations on election day in Zanzibar enhanced the transparency of the process. However, CUF complained of initial delays in their party agents’ receiving their credentials and were critical of a restriction on

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<sup>32</sup> However, there were many branches of the security forces visible on election day, and it was not always possible for observers to identify with certainty which branches were present at specific locations.

party agents, who were not entitled to travel in the vehicles used to transport election materials to and from polling stations. The CCM did not raise these as issues with the consultants.

In most cases, the various stakeholders - polling staff, party agents, security personnel and domestic observers - worked constructively to resolve election-related problems as they arose. In general, polling staff (presiding officer, and two polling assistants) carried out their tasks correctly and voters were, in general, able to vote in secrecy. Party agents from both main parties were present in large numbers, with the large majority able to carry out their tasks without interference. Almost uniformly, polling staff checked voters' identity documents before they were able to vote. Observers noted that seemingly large numbers of voters were unable to vote without the assistance of other persons.

However, the following shortcomings are worthy of note in the polling stations observed:

- There were delays in opening some 12% of polling stations. These were mostly short-lived.
- In a significant number of polling stations (16%), observers noted apparently underage persons casting ballots. In several cases 'minors' gave their ballots to another person who voted on their behalf;
- "Family voting" (more than one person of the same family voting simultaneously) was also noted on a few occasions in northern Unguja. This could have limited the secrecy of the vote for some family members;
- Party campaign materials were seen at or near 12% of polling stations visited;
- The application of ink to voters' fingers (done to prevent multiple voting) was not uniform. In some cases it occurred after votes had been cast and at other times not at all (6% of polling stations).
- The check for traces of ink before a voter received a ballot was even less well implemented with 11% of polling staff not applying the procedure correctly. Also, observers noted that two types of ink mark were applied by polling staff; and,
- Some observers reported that polling staff did not always verify with any thoroughness that the voters' photo on the PVR matched the photo on voters' voter cards;

## 7.5 Counting Procedures

In general, the counting of votes at polling stations proceeded smoothly, although some stations started counting late so polling staff could break their religious fast.<sup>33</sup> However, observers noted certain cases where party agents were not given copies of the official polling results as required by the procedures manual and where the results were not posted publicly as required by law.

While the public posting of polling station results was a welcome innovation, it was insufficient in itself to guarantee the necessary level of transparency during and after the aggregation of results. Specifically, it would have been highly advantageous for the ZEC to make publicly available all polling station results at a single source (for example on a website) before the announcement of official results, so that stakeholders – such as parties – could have verified the accuracy of the aggregation of polling station and constituency-level results. Regrettably the law does not provide for this. However, its provisions do not appear to have precluded the ZEC from taking this course of action.

A number of observers reported that the police were recording the results of the election at polling station level, raising the question whether they were also reporting results within their operational structure and if so, for what purpose?

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<sup>33</sup> The election took place during the holy month of Ramadan.

## 7.6 The Aggregation of Results

After votes were counted at polling stations, the results and the election material were transported to Returning Officers' (ROs) offices (located at six 'district' centres on Unguja and four district centres on Pemba). The ROs are mandated to declare results for parliamentary seats at constituency level and for councillor's elections. Results for the presidential election were 'announced' at constituency level, but it is for the ZEC to formally 'declare' the aggregated final result of the election after all of the results have been physically received from the ROs.

Only a few observers were present at ROs' offices for any length of time and they reported that it was only partly feasible to follow the tabulation process using the observation methodology employed. Observers emphasized that it had not been possible to focus sufficiently on this part of the election process. Where observers were present, mostly the aggregation (adding) of polling station results began only after all the results in a constituency had been received from Presiding Officers (with the logistical support of the military). However, in North A, the aggregation of results began before all polling results were received.

Of the limited observations made by observers, most felt that the process was reasonably transparent. At the time of the visits of observers, party agents were present and allowed to carry out their tasks without undue restriction. However, the aggregation of results for constituencies in North A district was more problematic e.g. the premises were too small for the task, the familiarity of some ROs (or their assistants) with their tasks was not deep and basic resources were sometimes missing. The observer team in this district reported that the aggregation initially proceeded very slowly but speeded up when the constituency-level results were calculated by different teams simultaneously. However, as parties were only entitled to deploy a single party agent, he had to choose which aggregation process to follow, leaving the others 'un-scrutinised'.

## 7.7 Complaints

After the election CUF made a number of allegations regarding election irregularities and violations, including that:

- Its party agents were prevented from making formal complaints in the polling logbooks;
- On several occasions, 'janjaweed' voted multiple times with a protective army escort and travelled in army vehicles;<sup>34</sup>
- The names of CUF supporters had been moved to different polling stations thereby lessening certainty among these persons where they should vote;
- The data contained on the PVR for some of their supporters had been mixed up e.g. the names no longer corresponded with voter card numbers etc.;
- 'Phantom' polling stations had been established i.e. stations that do not exist in reality but nevertheless return election results;<sup>35</sup>
- On occasions their party agents were intimidated by security personnel, denied copies of the polling results sheets, received the last carbonised copy of the results sheet (which was illegible) and, were offered money to hand over their copies of results sheets in the post-election period;
- On occasions the correct type of results sheets were not available at polling stations; and,
- On occasions their party agents refused to sign the results sheets because they believed the reported results were incorrect;

It is not possible to verify these claims. However it was noted that very few formal complaints were filed on or after election day by any party. Nevertheless, as noted elsewhere in this report the timeframe for hearing and ruling on complaints and appeals is inadequate.

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<sup>34</sup> In addition to the events in Stone Town, CUF claims this happened at 22 other locations.

<sup>35</sup> CUF claimed such polling stations existed in Bububu, Tumbatu and Bumbwini constituencies.

## 8. Post-Election Period

### 8.1 Announcement of Results by the ZEC

The Election Act does not foresee the announcement of 'partial' or 'provisional' election results for the presidential election by the ZEC. Returning Officers 'declare' parliamentary election results for parliamentary constituencies and for councillors and 'announce' results for the presidential election in the constituencies in their respective jurisdictions. Parliamentary election results were declared by ROs on 31 October and 1 November.

CUF filed a complaint with the ZEC on 31 October outlining 5 areas of dispute and requested the ZEC to delay the declaration of final election results for the presidential election until it had investigated the party's claims. The party was not sent a reply by the ZEC, although a letter, dated 1 November was given to the party on 3 November, two days after the declaration of results for the presidential election and one day after the swearing-in of the President.

One ZEC member informed the consultants that the ZEC Secretariat refused to give him access to the area in which the aggregation took place and any information on partial results for the presidential contest at any time leading up to the declaration of results. According to the ZEC member, the ZEC did not take a decision on when it would announce official results. However, a ZEC meeting was held at 14.30 on 1 November at which a copy of the complete final presidential results was made available to all ZEC members. Final election results were declared at 15.30 without a formal discussion of CUF's complaint filed on 31 October.

Based on information released by the ZEC on 1 November, the CCM presidential candidate Amani Abeid Karume received 53.2% of the vote (239,832 votes) while Seif Shariff Hamad received 46.1% (207,733 votes).<sup>36</sup> On 2 November, Amani Abeid Karume was sworn in as President of Zanzibar for a second term.

Of the 50 elected seats in the Zanzibar House of Representatives, CCM candidates were declared the winners in 30 constituencies and CUF candidates declared the winners in 19 constituencies. A further 10 deputies are appointed by the President<sup>37</sup> and 15 deputies are allocated to parties in proportion to the number of elected seats won (9 CCM and 6 CUF). The 5 appointed Regional Governors and the Attorney General are *ex officio* members of parliament. Thus, the parliament has 81 members.<sup>38</sup>

Following the 2005 election, the ruling CMM has 40 seats and a further 15 might be under the influence of the executive. This gives the CCM and pro-government deputies potential control over 55 seats (68%) and a potential parliamentary majority of 30 votes. This majority can be used to amend the Constitution in a politically unilateral manner.

The parliament convened on 9 November. While CUF refused to recognise the presidential and parliamentary election results its MPs took up their seats but boycotted an address to parliament by Amani Abeid Karume. The party has stated its intention to participate in the 14 December Union elections.

CUF has yet to present any firm evidence to the competent authorities to support its claims that the election was rigged. On 8 November, the party informed the consultants that they were in the process of collating this information and planned to file petitions with the High Court against the parliamentary results in some 12 constituencies, which they believed they had won. However, the

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<sup>36</sup> In Pemba, Mr Karume received 22,623 votes while on Unguja he received 217,209 votes. In Pemba, Mr Hamad received 120,329 votes while on Unguja he received 87,404 votes.

<sup>37</sup> Media reports indicate that none of the appointed MPs hail from Pemba Island.

<sup>38</sup> On 30 October, the parliamentary election did not take place in one constituency (Dole). The election will take place on 18 December.

party did not file any formal appeals before the 14-day legal deadline. Instead, CUF called for an international, independent investigation' of the election.

To date (22 November), the ZEC has not made available polling station results, which would enable parties to verify the results collected by their party agents with the official ZEC results and to scrutinise the figures for polling stations for which they are not in possession of a copy of the official results forms.<sup>39</sup> More information on the processing of results from the ZEC would have improved transparency and could have lessened tensions.

## 8.2 Post-election Political Environment

The day after election day, CUF announced that according to information it had collected, its presidential candidate had received most votes, by a narrow margin. Shortly afterwards, police and security forces encircled some neighbourhoods of Stone Town, including the area in which CUF headquarters is located. At the time, several hundred CUF supporters were assembled there, it is believed awaiting direction from the party leadership. This led to one major confrontation, involving extensive use of tear gas. Some international news channels covered the incident. The massive presence of security forces might have been a pre-emptive measure to prevent CUF from congregating in other parts of the town and mounting large-scale protests. This action restricted the scope of CUF's response to the declaration of official election results by the ZEC, which the party contested and appeared to have restricted citizens' rights of association, movement and peaceful assembly. The extremely tense security situation eased on Wednesday 2 November when the blockade of part of Stone Town was lifted following the hasty inauguration of Amani Abeid Karume as president.

On Pemba Island, the security situation remained more volatile over an extended period. It was reported that one person was shot dead by security forces on the day after election day. In Piki, a security officer was killed – possibly fuelling a violent crackdown on elements of the population there. According to media reports citizens from this area took refuge in the forest and some even in Kenya. CUF claims that atrocities have taken place in Pemba and expressed its concern over the abduction of five girls from one village. Conversely, the CCM complained of attacks and arson on property by CUF supporters. Video footage of the incidents was shown to the consultants. CUF informed the consultants that it was preparing a film of the claimed atrocities.

## 8.3 Assessments of the Election by Observer Missions and NGOs

A number of international election observer missions released statements or gave a public assessment of the process on 31 October and 1 November including the Commonwealth, SADC, AU, NDI, and EISA. TEMCO released its preliminary report on 2 November.

SADC concluded in its interim Statement: "... the 2005 General Elections in Zanzibar were a significant improvement from those of 2000. **The mission concludes that the elections were held in terms of regional electoral norms, standards and guidelines and were free and fair.**" (Emphasis appears in the original text)

The head of the AU delegation, the Speaker of the South African Parliament, Baleka Mbete was quoted in the media as saying: "Notwithstanding any organizational and logistical difficulties in some areas, the AU observer mission wishes to seize this opportunity to congratulate ZEC for well-organized and executed elections; the political parties for mature contestation, and the people of Zanzibar for their responsible and largely peaceful participation in the electoral process."

In its interim Statement, the Commonwealth did not make an overall conclusion as such. In the first paragraph it pointed to positive aspects but in the second noted the events in Stone Town. In the fourth paragraph it states: "overall, this was a good election". In its final report, it stated "In our Interim Statement, [...], we expressed the view that the part of the process which we had seen up

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<sup>39</sup> CUF claimed to have 90% of the official forms detailing polling station results. It is lacking some 10% of forms.

to that point – the voting and the counting of the votes on 30 October – provided conditions which were such as to enable the electors to freely express their will. The body of this report includes reference to various shortcomings. But there were more positive than negative features. Overall, it was a good election day.”

Similarly, NDI did not make any overall conclusion on the election but noted: “Zanzibar’s 2005 [...] elections were a marked improvement over past elections. However, problems related to the permanent voter register, election day violence, and in some instances, the excessive use of force by security personnel, may have undermined citizens’ confidence in the election process and could have impaired the integrity of the vote in some polling stations”.

In its Interim Report of 1 November, EISA concluded: “Basing itself on the guidelines enshrined in the PEMMO, and compared to the previous general elections, the EISA Election Observer Mission concludes that the elections in Zanzibar were relatively free and fair. In light of several serious shortcomings identified by the Mission, electoral stakeholders in Zanzibar are invited to build on the achievements of these elections in order to improve the conduct of future elections.”

TEMCO’s report of 1 November, *inter alia*, concluded: “[...] While some of the terms of the MUAFKA agreements have yet to be implemented to the full, the impact of MUAFKA was felt throughout the electoral period. There was a notable marked improvement in terms of political space, a re-organised electoral commission, and a more transparent voting process with party agents, and secret ballot. It is the considered opinion of TEMCO that the Zanzibar elections were by and large free and fair. Incidences of irregularities while regrettable, were on a small scale. [...] Compared with the management of the 2000 general elections ZEC has shown a remarkable improvement.”

On 2 November, the EU Presidency issued a statement in which it noted “the broad assessment by international observer groups that the electoral process was a marked improvement on past polls” and also that “there were instances, particularly on Unguja, where there were irregularities and a lack of transparency”. It goes on to say “A number of observer groups have called for a thorough investigation of these anomalies. The EU supports this call and suggests that the early publication of all polling results would contribute to confidence amongst the Zanzibari electorate”.

On 3 November the U.S. Embassy In Tanzania issued a Press Release that, *inter alia*, stated: “The United States remains troubled by [election] irregularities, and reserves judgement on the “freedom” and “fairness” of this election until their impact on the outcome is clarified. For that reason the U.S. declined its invitation to attend Wednesday’s inaugural ceremony in Zanzibar”.

## **9. Conclusions**

While this report points to some welcome developments it also points to other areas of concern and where the legal framework does not comply with recognised standards. It is not possible to draw firm conclusions on the overall degree to which the Zanzibar elections met international standards due to the limited timeframe for the assessment and the lack of a collegial forum in which to make that assessment.

Specifically, it is not feasible to assess whether alleged inaccuracies and inconsistencies in the PVR and election day irregularities affected the outcome of the election. This is partly because of the failure of the ZEC to make the final PVR available to parties before election day<sup>40</sup> and a lack of transparency in the aggregation of election results, which prevented the opposition from checking the accuracy with which the results were compiled. However, it is clear that election day irregularities and the lack of transparency in key areas of the process have created a lack of certainty regarding the election outcome. This has deepened the political conflict between the CCM and CUF and appears to have lessened public confidence in state of democracy in Zanzibar, at least in some quarters. This may have unpredictable consequences.

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<sup>40</sup> Parties and domestic observers are the only organisations capable of verifying the PVR ‘on the ground’

## 10. Recommendations

Recommendations even where implemented to the full are unlikely to improve the conduct of any election in the absence of domestic political will to hold a genuine democratic election.

The following recommendations are made for consideration.

### 1. General

- 1.1 In the long-term, it is vital to establish more trust between the main parties. In the context of future elections the best ways of ensuring this are by administering the process from the outset with maximum levels of transparency, establishing effective consultation mechanisms between the administration and stakeholders, and creating and impartial and effective formal complaint/appeal mechanisms to resolve election disputes.
- 1.2 The Zanzibar authorities should demonstrate a renewed and genuine commitment to implement all reforms agreed as part of the Muafaka Accord, regardless of the current relations between the parties to the accord. A failure to implement these reforms will do nothing to improve the conduct of future Zanzibar elections.

### 2. Legal Framework

Certain amendments to the legal framework are necessary to bring certain provisions into line with international standards for democratic elections. Some of the recommendations contained herein would require the adoption of Constitutional amendments. Obviously this is a highly sensitive issue. For meaningful discussions to take place the Zanzibar authorities and the opposition must be genuinely open to further discussion on Constitutional reform. However, this may not be the case at present.

Ideally, it is preferable to conduct a thorough analysis of the major applicable acts before issuing recommendations. In the meantime, the following recommendations are offered for serious consideration:

- 2.1 The right to stand for election is not restricted to party-nominated candidates and thereby permitting independent candidates to stand for election - as established by the ICCPR (1966).
- 2.2 Elected candidates should have security of tenure, in particular, that their mandates not be terminated where an elected official is expelled from a political party.
- 2.3 Parties have the right to form and register electoral coalitions.
- 2.4 A higher proportion of MPs be directly elected and that the President's right to appoint some MPs either directly or indirectly (i.e. the Regional Administrators) should be curtailed;
- 2.5 Abolishing the 36-month residency requirement, established as part of the eligibility to register to vote for presidential elections.
- 2.6 Abolishing or substantially lowering the 36-month residency requirement, established as part of the eligibility to register to vote for parliamentary elections.
- 2.7 Extending the deadline by which the ZEC is obliged to declare the final result of the presidential election (currently 3 days after election day) as it does not provide sufficient time for the ZEC to hear formal election complaints or appeals.
- 2.8 Abolishing the provision that proscribes the filing of election petitions regarding the presidential election after the declaration of presidential election results. *De jure* this provision denies due legal process.
- 2.9 The High Court should be required to hear any complaints and appeals against parliamentary election contests within a more reasonable timeframe e.g. within two weeks after the date of their deposition, and to rule on these petitions within a reasonable timeframe e.g. within a further two weeks.

### **3. Election Administration**

- 3.1 Retaining the right for the majority party and the main opposition party to nominate two ZEC members until broad confidence in the transparency and impartiality of the election administration at all levels is firmly established.
- 3.2 In an effort to secure more political consensus on ZEC appointments, when selecting future ZEC members, it may be useful for the three persons nominated by the President to be ratified by a decision of Parliament, taken following a discussion of the merits of the various nominees.
- 3.3 All ZEC decisions are taken at a session of the ZEC including formal decisions on complaints and appeals submitted to the ZEC. All ZEC members should always be invited to attend ZEC sessions. During an election period it may be useful to establish set hours for ZEC sessions.
- 3.4 The ZEC's independence should be strengthened. One way this can be achieved is by ensuring it has sufficient financial resources to carry out its work and funds are released by the Government well before payments are required to be made.
- 3.5 The ZEC should have the right to choose service providers it deems suitable for the task.
- 3.6 The ZEC develop a website to enhance the transparency of its functioning on which it places, *inter alia*:
  - The main applicable legislation;
  - Civic education material on voter eligibility, voter registration, and polling procedures;
  - Its election calendar;
  - The names of candidates registered to contest the election;
  - Its decisions and instructions within two days of adoption (ideally these should also be sent to the registered offices of all political parties);
  - Information on the numbers of registered voters per polling station, per constituency, per district and Zanzibar-wide;
  - The addresses of all polling stations;
  - All polling station results (well before the declaration of final results) and the results of previous elections (presidential, parliamentary and councillors')
- 3.7 The training of ROs and their assistants and POs and their assistants is intensified.
- 3.8 To ensure progress on the PVR is consolidated, the election administration may need more permanent structures at district level
- 3.9 The ZEC's capacity to organise the elections should be enhanced so that it no longer requires the assistance of the military or other security forces to distribute and collect election material.

### **4. Eligibility to Vote and Voter Registration**

- 4.1 Should the eligibility to vote remain unaltered for the next Zanzibar elections, the ZEC should be strongly encouraged to conduct an information programme on the eligibility to vote and how residence is evidenced.
- 4.2 To ensure that the exercise of the right to vote, a fundamental right, should not rest with a single individual's testimony, the role of *Shehas* in determining voters' residency status, and thus their eligibility to vote, should be reconsidered, and ideally be dispensed with. This may require amendment of the applicable legislation e.g. on the method of registering and evidencing official residency.
- 4.3 In each case where a person is refused registration as a voter, the registration official should be required by law to complete an official form which contains a unique reference number, the applicants' personal details, and a the reasons why the applicant's request for registration was rejected. The form could have a detachable section containing the same information and informing the applicant of their right to lodge an appeal against the decision and the procedure for doing so. All registration points should have a sufficient quantity of these forms.

- 4.4 Civil servants, members of security forces or employees of international organisations that have been transferred to the constituency in the course of employment, could be registered separately on special voter lists, as their presence in the constituency is probably temporary, and it is questionable whether entries for temporary residents should remain on a permanent register. This would improve transparency as well as accuracy.
- 4.5 A greater effort could be made to ensure that other categories of temporary resident, e.g. students, are able to participate as voters.
- 4.6 If the ID cards introduced and distributed in 2005 have any function in the election process, e.g. evidencing eligibility to register to vote or proving identity on election day, then the Election Act should reflect this.
- 4.7 The timeframe for the registration of voters should ensure that sufficient time is available for each phase of the process including: the actual registration of voters, data entry, a display period in which corrections and claims can be made and ruled upon, a period to enter the corrections and any additions/deletions based on claims, a period to verify and clean the data etc.
- 4.8 The Election Act should establish the right of all registered parties to request a 'soft copy' i.e. an electronic copy of the preliminary version of the PVR for Zanzibar. Parties should receive this information no later than the first day of the display period.
- 4.9 After corrections have been made and claims adjudicated a second preliminary version of the PVR should be prepared. The search for suspected duplicate pairs could then take place, utilising all available technologies. The cross checking process should be transparent e.g. open to all ZEC members and designated party agents. Detailed results of the process should be available to all ZEC members and party agents.
- 4.10 Where evidence exists that double or multiple registration occurred deliberately, the ZEC should be required to inform the Public Prosecutor, who should in turn take the appropriate action within a reasonable timeframe. The law should establish this timeframe.
- 4.11 The law should establish a deadline by which the PVR is considered final. After this point it should not be possible to make any changes to the PVR.
- 4.12 The Election Act should establish the right of all parties with candidates registered to contest the election to request and receive a 'soft copy' i.e. an electronic copy of the final version of the PVR for Zanzibar the day after its finalisation.
- 4.13 The purpose and use of voting certificates in evidencing the eligibility to vote should be clarified to avoid inconsistencies on election day. Currently, the possession of a voting certificate may create a false assurance among citizens that they will be able to vote.
- 4.14 Where voters request to receive a replacement voting certificate e.g. due to loss or damage to the original, it is strongly recommended to 're-issue' the certificate with the same serial number rather than giving a new certificate with a new serial number.

## **5. Election Day: Polling and Counting**

- 5.1 It would be useful if the polling station numbering system, whereby each polling station has a unique ordinal number, were used. This would assist in the identification of polling stations.
- 5.2 The ZEC should take a formal decision on the number and location of all polling stations.
- 5.3 To ensure transparency of voting by the military and security forces, they should vote at polling stations established only for this category of voter. These polling stations should be under the jurisdiction of the ZEC/RO and staffed by regular polling staff. Party agents should be granted statutory access to all phases of the process at these stations.
- 5.4 Where a voter is turned away because their name does not appear on the extract of the PVR a record should be kept of their name and personal details, including whether they were in possession of a voter certificate. This data should be collated by the ROs and forwarded to the ZEC.
- 5.5 If a voter is allowed to vote but is not in possession of a voter certificate, a record should be kept of their name and personal details. This data should be collated by the ROs and forwarded to the ZEC.
- 5.6 The carbonised results forms should have special security features including being printed on special paper, and contain unique serial numbers for which records are kept by the

ZEC/ROs. The top copy, completed in ink by the PO, should be forwarded to the RO and the second copy sent to the ZEC (through the RO) along with the summary results as calculated by the RO.

## **6. Election Results**

- 6.1 It may be useful to introduce the concept of declaring 'provisional results' which can be certified as final results after the expiry of a claims period during which candidates or other stakeholders may file petitions to the ZEC. ZEC's decisions on these complaints should be subject to an appeal process e.g. at the High Court.
- 6.2 The ZEC should be given the resources to establishing a central results centre similar to that planned by the NEC for the 14 December elections, where information on elected councillors' MPs and partial results for the Presidential election could be announced to the media and other interested persons as soon as they are known.
- 6.3 The law should clarify that parties are entitled to deploy one party agent to each constituency (rather than each district) to observe the aggregation of polling station results by ROs.
- 6.4 ROs should be required to complete a table of polling station results for each election within their area of responsibility (ward, constituency and partial results of the presidential contest). This would enable the ZEC to check the correct addition of results by the ROs.
- 6.5 The law should require the ZEC to publish all polling station results for each election, with the totals for each constituency under the jurisdiction of a RO. These should be released simultaneously with its declaration of the provisional results for the presidential election. This would enable parties, candidates and voters to verify the correct addition of votes. This would greatly enhance the transparency of this phase of the electoral process.

## **7. Complaints and Appeals**

- 7.1 The law should provide greater clarity on the means by which party agents or voters may register formal election day complaints.
- 7.2 Where an election day complaint is filed, the PO should put his/her decision on the complaint in writing in the polling logbook and provide the complainant with a copy of the decision on the complaint.
- 7.3 The complainant should be allowed to appeal the PO's decision to the ZEC within 24 hours, who in turn must take a decision before the RO declares the provisional election results.
- 7.4 The ZEC should be in permanent session on election day in order to respond to complaints and appeals. It may be necessary for the ZEC to have a representative in Pemba on election day to receive election day appeals and notify the ZEC accordingly. Filing an appeal with the ZEC should not affect the complainants right to file a formal petition with the High Court.
- 7.5 It may be necessary to augment the capacity of the High Court if it is to hear all election complaints within a reasonable timeframe. Alternatively, it may be preferable to reform the judiciary's role in adjudicating election disputes e.g. by establishing special election tribunals established at district level which could hear and rule on complaints regarding parliamentary and councillors' elections with a reasonable timeframe e.g. one month maximum. This would leave the High Court to hear and rule on complaints regarding the presidential election.

## **8. Parties**

- 8.1 Political parties should intensify their efforts to train their party agents and develop their capacity to monitor elections effectively.
- 8.2 Party agents should have the right to observe all stages of the process including ZEC sessions, the printing of ballots, cleaning the PVR of duplicates, and the ZEC's aggregation of election results.

8.3 Where parties challenge the integrity of the election or the election results, to maintain credibility they should also file complaints to the competent judicial bodies presenting their evidence to support their claims.

## **9. Donors**

9.1 Donors may wish to consider commissioning a Tanzanian NGO or other type of organisation to conduct an 'audit' of the PVR to assess its accuracy. This is a labour and time intensive task, but has been successfully carried out in other countries.

In considering the implementation of recommendations, reference should also be made to the reports of other observer groups, notably the comprehensive report of the Commonwealth, that also includes recommendations, with which - in the large majority of cases - the consultants agree.