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# BRITISH JURISDICTION AND LEGAL PROTECTION OF NON-EUROPEANS IN THE SULTANATE OF ZANZIBAR, 1841–1888

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## ABSTRACT

This article addresses the problem of jurisdiction and protection over certain categories of the local population by the British Consulate in the independent Sultanate of Zanzibar. The minorities in question represented various ethno-religious backgrounds and enjoyed different social and economic statuses. They included the British Indian community, whose members belonged to the economic elite of the state and many of whom were British servants: employees of the British Consulate, as well as missions and private companies. The category also included freed slaves and Christian converts. The article examines the motives and conditions that stood behind British legal policies in Zanzibar. It argues that even if the consulate did run its own policy within the limits sketched by the imperial administration, the dynamics of this policy was set by the interaction between the consuls and the groups over which the British claimed jurisdiction. Although the clash of different legal norms and systems occurred as a result of legal pluralism, the real conflicts concerned the limits of British jurisdiction. This paper is based on research in the national archives of Zanzibar, France, Germany and the United Kingdom.

## INTRODUCTION

Motto: *“Where the wolves and sheep are drinking water in the same pond together.”*

Legal plurality, or the coexistence of different legal jurisdictions, norms and systems was typical in pre-modern complex societies as well as early modern European empires.<sup>2</sup> It was also typical of many 19th century polities in Asia and Africa which encouraged Western European governments to stake claims of jurisdiction over

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1. Saleh Suchedina to John Kirk, 21 April 1879, Zanzibar National Archives (hereafter: ZNA) AA 2/37.

2. Richard J. Ross and Lauren A. Benton, *Empires and Legal Pluralism: Jurisdiction, Sovereignty, and Political Imagination in the Early Modern World*, in: Richard J. Ross and Lauren A. Benton (eds.), *Legal Pluralism and Empire, 1500-1850* (New York: NYU Press, 2013), 1–20.

certain populations in order to achieve political and economic ends without resorting to territorial conquest. While previous centuries saw some examples of the partial exclusion of certain categories of persons from the jurisdiction of local courts, such as the “capitulations” in the Ottoman Empire, they usually concerned Westerners.<sup>3</sup> In the 19th century, interference in the legal sphere encompassed persons of non-European origin. Further, the institutional side of this phenomenon took on new forms. For example, in Egypt and China, so-called mixed courts resolved disputes between Europeans and the subjects of local rulers.<sup>4</sup> European powers also influenced the judiciary in less politically centralized areas such as West Africa. Such courts were not based on legal codes, but rather on a set of general arbitrary rules that were considered universally binding.<sup>5</sup> As the polities where judicial institutions were dominated by European powers often ended up as European dependencies, historians have included them in the category of “informal empire.” Arguably, arbitration tribunals and consular courts constituted an important part of colonial expansionist policy – for example, they established a legal framework for Westerners’ commercial activity. On the other hand, there are cases where legal policies were primarily motivated by other concerns.

One such case – a precolonial African state whose status may be described as part of the “informal” British Empire was the Sultanate of Zanzibar. Its rulers dealt with a society in statu nascendi, created by relatively largescale migrations from Oman, India, and the African interior. These migrants imbued it with decisive economic, political, and cultural traits. The Omani Āl Bū Saʿīdi rulers of Zanzibar, who were constantly challenged by Arab elites (both in East Africa and Oman), retained and expanded their domination by satisfying the demands of Great Britain. As the main European player in the western Indian Ocean, agents of the crown made political support for Saʿīd bin Sulṭān Āl Bū Saʿīdi conditional on further restrictions on the slave trade in 1822 and 1845.<sup>6</sup> However, Zanzibar initiated and maintained relations with other Western nations, as evidenced by the conclusion of trade and friendship treaties with the USA (1833), Great Britain (1839), France (1844), the Hanseatic Republics (1859), as well as other countries.

These agreements not only encouraged foreign merchants to trade in East Africa, but gave the Āl Bu Saʿīdi dynasty room for a broader diplomatic approach. However, the only power other than Britain that conducted an ambitious and aggressive policy

3. Ferry de Goey, *Consuls and the Institutions of Global Capitalism, 1783–1914* (Perspectives in Economic and Social History), Kindle edition (Taylor and Francis, 2016), 35–6; Anne Mézin, “Les services consulaires français au XIXe siècle,” in *Consuls et services consulaires au XIXe siècle*, eds. Jörg Ulbert and Lukian Prijac (Hamburg: DOBU Verlag, 2010), 53.

4. Byron Cannon, *Politics of Law and the Courts in Nineteenth-Century Egypt* (Salt Lake City: University of Utah Press 1988); Andrew Porter, ed., *The Oxford History of the British Empire. Volume III. The Nineteenth Century* (OUP, 2004), 149–50, 164; Desmond Platt, *The Cinderella Service. British Consuls since 1825* (London: Longman, 1971).

5. Porter, *The Oxford History*, 192; Cherry Gertzel, “Relations between African and European Traders in the Niger Delta 1880–1896,” *The Journal of African History* 3, no. 2 (1962): 361–6.

6. M. Reda Bhacker, *Trade And Empire In Muscat And Zanzibar. The Roots Of British Domination* (London: Routledge, 1998), 103, 169.

in the region was France, which became one of the negotiators and guarantors of the agreement resolving the succession disputes following the death of Sa'īd bin Sulṭān. As a result, one of his sons, Mājid (1856-1870) gained international recognition as the sultan of Zanzibar, a separate country encompassing Sa'īd's East African possessions. His successor and the last ruler of independent Zanzibar was another of Sa'īd's sons, Barḡaš (1870-1888), who in 1859 tried to take power with the help of some Arab elites and the political support of the French consulate. This rebellion came to naught thanks to the active attitude of Consul Rigby and a British Navy squadron. However, when Barḡaš legally took the throne, he was forced to continue the policy of concessions to Great Britain, including a ban on the export of slaves from the mainland. This agreement allowed the ruler to remain in power despite the landing of the Egyptian military in the north of the Sultanate (1875-1876), the military rebellion in Mombasa (1875), and the revolt in Kilwa against new anti-slavery regulations (1876). The policy also brought success in the economic field and some political reforms.<sup>7</sup>

In addition to the regulations concerning custom duties and freedom of trade, a fixed element of most of these treaties was a paragraph on the consular jurisdiction over the subjects of the signatory state.<sup>8</sup> As Lauren Benton noted in her seminal book, it was through such policies that "British consuls sought legal influence in places where treaties recognized their role and in places they did not".<sup>9</sup> This article demonstrates how British consuls exerted influence on Zanzibar's government based on claims which far exceeded the contents of the 1837 treaty on commerce and friendship. This was due to a combination of factors that included not only the directives received from Bombay, but also the individual ambitions and objectives of British consular personnel. Above all, however, the extent of these jurisdictional claims was determined by the local context in which the British Consulate operated. This included the weakness of the Sultans position in relation to Great Britain, but also the not always predictable relationships between diplomats in Zanzibar, which varied not only in terms of objectives, but in the competence of staff.

The British Consulate was primarily a political institution which obtained support from its navy, which was permanently present in the region. The British diplomatic representatives in Zanzibar acted in a dual capacity: political agents of the Bombay Presidency government (until the early 1870s, and then after the central government of India), as well as the British consul, which reported to the Foreign Office. In the first of these roles, they were responsible for the affairs of British Indian subjects,

7. Norman Bennett, *A History of the Arab State of Zanzibar* (London, 1978, 99–100); Reginald Coupland, *The Exploitation of East Africa* (London: Faber and Faber, 1939), 271–299.

8. See: Sheriff, *Slaves*; Reginald Coupland, *East Africa and its Invaders. From the Earliest Times to the Death of Seyyid Said in 1856* (Oxford: Clarendon Press, 1938); Coupland, *The Exploitation of East Africa*.

9. Lauren Benton and Lisa Ford, *Rage for Order: The British Empire and the Origins of International Law, 1800-1850*, (Cambridge, MA: Harvard University Press, 2018), 194.

as Britons were rarely present as businessmen in Zanzibar between the early 1840s and mid-1860s.<sup>10</sup> For the British, Zanzibar, even if not a target of territorial expansion, was the focal point of their policy in the region. Although the dynamics of trade relations in Zanzibar influenced their approach to South Asian immigrants, it was also determined by global factors. Further study is required to determine whether it was a coincidence that the consulate's interest in the slaves held by East African Indians fell in the late 1850s – i.e., subsequent to the Great Uprising in India. There is no doubt that the second campaign, which took place at the beginning of the 1870s – i.e., soon after the opening of the Suez Canal and the launch of steamers in the region – was related to the fact that Indian immigration to East Africa grew rapidly.

This article explores the motives and conditions behind British legal policies in Zanzibar and the subsequent local response. Jörg Fisch pointed out that spreading European law through such institutions did not necessarily have any practical goals related to the needs of the British Empire. Their main purpose may have been to spread Western legal norms, justified by humanitarian reasons.<sup>11</sup> Somehow, however, these norms affected the legal fields most central to business activities such as contract law, land tenure and labour status.<sup>12</sup> In contrast, Benton and Ford argue that, from the imperial point of view, the goal of such policy was neither to create an advantage for British merchants nor to spread justice and the rule of law for the sake of a universal moral good. It was rather to establish a legal order that “became an end in itself”.<sup>13</sup> This point is still valid when one looks at the legal policy from the local perspective, e.g. that of the British diplomatic post on Zanzibar. I argue that the even if consulate did run its own policy, and it operated within the limits sketched by the imperial administration, its dynamics were set by the interaction between the consuls and the local groups over which they claimed jurisdiction.

According to Ross and Benton, legal pluralism can be identified “as an overlap of multiple legal systems, plurality of the ‘rule systems’, but also social fields and normative systems”.<sup>14</sup> They also noted that “jurisdictional divides came into focus and matter most to an understanding of legal pluralism when conflicts occur”. Drawing on this observation, they focused their attention on “clusters of conflicts rather than elusive and often inconsistently applied rules or norm”.<sup>15</sup> With Zanzibar, the difficulty is that conflicts derived from the construction of groups to which litigating individuals

10. Reginald Coupland, *East Africa and its Invaders. From the Earliest Times to the Death of Seyyid Said in 1856* (Oxford: Clarendon Press, 1938), 479–84.

11. Jörg Fisch, *Law as a means and as an end, Some remarks on the function of European and non-European law in the process of European Expansion*, in: J. A. de Moor & W. J. Mommsen (eds.), *European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-century Africa and Asia* (Oxford: Berg Publishers, 1992), 15.

12. Fisch, *Law*, 32.

13. Benton and Ford, *Rage for Order*, 194–5.

14. Ross and Benton, *Empires and Legal Pluralism*, 4.

15. Ross and Benton, *Empires and Legal Pluralism*, 6.



belonged. I ask, therefore, how the composition and construction of the groups that were to be subject to British jurisdiction affected the fields of legal dispute. Furthermore, I show how these areas of dispute created opportunities for interested parties to influence their relations with the British Consulate in Zanzibar. I consider these questions in the context of political, but also technological, economic and demographic changes that took place in East Africa during the discussed period.<sup>16</sup>

I begin the article by summarizing the legal basis and scope of jurisdiction exercised by the British consular court in Zanzibar. Subsequently, I discuss the groups of non-European and American subjects who fell under British jurisdiction, be it effectively or only potentially. I then analyse the process behind the imposition of legal control over the Indian population of Zanzibar. This topic has already been discussed extensively by Hideaki Suzuki, who concentrated on its anti-slavery context.<sup>17</sup> I focus on how the British modulated their claims at various times between 1857 and early 1870s, according to which conditions their diplomatic representatives in Zanzibar acted in carrying out the instructions from Bombay and London. I stress the relationship between jurisdictional claims against immigrants from India and the legal protection offered to them. The next party under discussion is comprised of ship owners and crews of vessels flying the British flag. I examine this issue in a broader context, showing the contrast between British and French policies. I treat the French case only as a reference point, because the claims of both countries combined with the reaction in Zanzibar delineated the space for the activity of the groups in question. It is crucial to explore not only the archival material produced by the British, but also by the French and Germans, as well as local sources, in order to provide a sharp image of the British legal policy. Finally, I discuss policy towards two often overlapping sub-groups, usually of African origin: people working in British, or sometimes more widely European, institutions, as well as converts to Christianity. The juxtaposition of all these categories, different in terms of economic and political significance as well as material status, will help define the goals and assumptions of British politics, and facilitate an understanding of the different responses of representatives of these groups to it. Next, I detail the nuances of legal protection in civil and criminal matters over persons under British jurisdiction. This clarifies the moves of the consulate between two often contradictory premises of action: the accumulation of political support by members of protected groups and the legitimization of its own authority through appeals to the principles of universal justice. One of the important, and not yet discussed in the literature, aspects of legal protection is the issue of custody over British subjects and the execution of prison sentences against them, which I discuss at the end of this article.

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16. Marek Pawełczak, *The State and the Stateless. The Sultanate of Zanzibar and the East African Mainland: Politics, Economy and Society, 1837–1888* (Warsaw: Instytut Historyczny Uniwersytetu Warszawskiego, 2010), 128–9.

17. Hideaki Suzuki, *Slave Trade Profiteers in the Western Indian Ocean. Suppression and Resistance in the Nineteenth Century* (London: Palgrave Macmillan, 2017), 141–166.

## BRITISH CONSULAR COURT – THE SCOPE OF JURISDICTION

According to Article 4 of the British-Zanzibar Treaty of 1839, “Subjects of the dominions of His Highness the Sultan of Muscat, actually in the service of British subjects in those dominions, shall enjoy the same protection, which is granted to British subjects themselves”. However, if such a person “shall be convicted of any crime or infraction of the law requiring punishment”, he or she “shall be discharged by the British subject in whose service they may be, and shall be delivered over to the authorities of His Highness the Sultan of Muscat”.<sup>18</sup> In fact, the British consul initially had quite limited powers compared to his French colleague (who had the right to impose a fine and imprison a criminal<sup>19</sup>), and could not deport a person who had been sentenced for participation in the slave trade.<sup>20</sup> Consul Seward had doubts regarding the legality of exercising British jurisdiction in criminal matters. The validity of his jurisdiction was acknowledged by the Advocate General of the Government of Bombay, who, however, pointed out in his legal opinion that since this jurisdiction had actually been exercised since the implementation of the Treaty of 1839, there were no grounds for the reduction of British jurisdictional powers.<sup>21</sup>

Soon after the exchange of correspondence took place, the jurisdiction of the consul, both in civil and criminal cases, was redefined by the Queen’s decree of 9 August 1866. The delay resulted, *inter alia*, from the fact that application of British law in Zanzibar dominions would be too difficult due to the lack of codified laws. The Indian Penal Code was introduced in India only in 1862, and it became binding for the British Consulate Court in Zanzibar only in 1882.<sup>22</sup> The Indian Contract Act was passed in 1872, but it did not become law before the end of Zanzibar’s independence.<sup>23</sup> Thomas Metcalf, who explored various aspects of the Raj expansion in the Indian Ocean, quoted the following opinion of 19th century British colonial lawyer and legal expert Charles J. Tarring on the application of the Indian laws: “so far as concerns the administration of justice to British subjects, a part of Her Majesty’s Indian Empire”.<sup>24</sup> As will be seen, this claim is exaggerated, and Indians continued to depend on the local Muslim courts for questions related to the execution of contracts, and especially

18. “Commercial Convention between Great Britain and Muscat”, May 31 1839, in: *Zanzibar Treaties* (London: Foreign Office, 1910), 14.

19. Richard F. Burton, *Zanzibar: City, Island and Coast*, I (London, 1872), 461.

20. Burton, *Zanzibar*, I, 461.

21. The Advocate General, Bombay High Court, Opinion of 5 June 1866, Maharashtra State Archives, Mumbai, India, Political Department (henceforth: MSA, PD), 1866, v. 74.

22. Zanzibar (Indian Penal Code) Order in Council, *The London Gazette* 3 (March 1883).

23. Fahad A. Bishara, *A Sea of Debt. Law and Economic Life in the Western Indian Ocean, 1780–1950* (Cambridge: Cambridge University Press, 2017), 139–41.

24. Thomas R. Metcalf, *Imperial Connections. India in the Indian Ocean Arena, 1860–1920* (Los Angeles and Berkeley: University of California Press, 2007), 23–4.

debts, as well as personal security. Moreover, in court practice, the British consular officers did not use Indian law, but rather a local “established custom” (regardless of origin) and the general principles of British law taken from textbooks.<sup>25</sup>

By virtue of the decree of 1866, the consul had unlimited powers in all civil proceedings where the sum of damages or fines did not exceed \$200 or a prison sentence of one month. The sentences issued in Zanzibar were appealed to the Supreme Court in Bombay. The only exception was cases of violation of the Indian anti-slavery law, where sentences of up to seven years were issued in Zanzibar, and the convicted person could appeal only to the Governor-General of India.<sup>26</sup> In 1867, the vice-admiralty court was established in Zanzibar to deal with complaints about British naval patrols searching and destroying ships whose owners were suspected of participation in the slave trade.<sup>27</sup> The French, unlike the Americans, did not authorize the British fleet to search ships sailing under their flag. This exposed the British to constant interventions by the French consulate, as well as demands for compensation in cases of unjustified action. During the years 1866–1869, the British navy boarded approximately 800 boats. According to the British consulate, a total of 3380 illegally transported slaves were found. Between 1868 and 1869 alone, the British navy destroyed 98 boats, many of which sailed under the French flag.<sup>28</sup>

#### BRITISH CONSULAR PROTECTION AND JURISDICTION OVER INDIANS

Indians have been present in East Africa for many centuries as merchants and craftsmen. However, the development of the Āl Bu Saʿīdi state and international trade contributed to a significant increase in their numbers and their economic status. This concerns not only the Baniyas, a Hindu community heavily involved in trade from north-west India, but also Muslims from the same region, mainly from the sects of Khoja and Bohra. The process of properly defining the legal situation of Indians living in the Sultanate of Zanzibar lasted until the early 1870s. Previously, they were the subject of a game between the British government in Bombay and the rulers of Zanzibar, in which they themselves took an active role.

The largest community in East Africa were Indians from Kutch, a princely state

25. Bishara, *A Sea of Debt*, 139–40.

26. Robert L. Playfair, “Rules and regulations framed under Her Majesty’s Order in Council of the 9th of August, 1866, by Her Majesty’s Political Agent and Consul at Zanzibar,” The National Archives, London (henceforth NA), FO 84/1279. See also: Frederick Holmwood, “Administration report of the Political Agent and Consul-General at Zanzibar for the years 1873 and 1874,” 8 February 1875, House of Commons, British Parliamentary Papers (hereafter: PP) 1875, C.1168/33/1.

27. Henry Churchill to the Secretary to Government, Bombay, 24 May 1868, PP 1868–69, 4131/89/1.

28. Jean-François Rispal, *La présence française à Zanzibar (1770–1904)*, These présentée à l’Université de Pau et des pays de l’Adour, Ecole doctorale des lettres et sciences humaines, 2004, 294–5.



under British rule.<sup>29</sup> They were not considered subjects of the British Empire, as was the case for migrants from British India. The views of Saʿīd bin Sulṭān's circle on the jurisdiction of Zanzibar is reflected by the statement of the ruler's English-speaking secretary, Aḥmad bin Naʿmān al-Kaʿabi. Referring to a British merchant who had lived in the Sultanate for eight years, Naʿmān stated that he was no longer an "Englishman," as he had become a subject of Zanzibar. The secretary believed that a similar law – i.e., sanctioning automatic change of citizenship after a certain period of residence in the country of settlement – applied in Great Britain and the USA.<sup>30</sup>

The man who seriously began to pursue the claim of British jurisdiction over Indians was Consul Atkins Hamerton (in office 1841–1857), in 1847, after the Anglo–Zanzibar treaty banning the export of slaves from the African dominions of Saʿīd bin Sulṭān came into force. In the early 1850s, Saʿīd succumbed to the demands of the British consul and allowed him to settle disputes in which Indians were involved.<sup>31</sup> In 1853, the ruler stated that subjects of the British-protected states in India who had committed a crime should be tried in the consulate.<sup>32</sup> The most common offenses were related to the slave trade and slave possession, which, by the 1840s, were prohibited by British Indian law and considered to have "less weight than murder, but more than theft."<sup>33</sup> At that time, immigrants from British India owned about 10,000 slaves in Zanzibar, and they did so without interference from the authorities. It was only when the ruler recognized British jurisdiction over the Indians in Zanzibar that the British consul forbade them from possessing slaves or participating in the slave trade. However, he did not take specific actions on this matter. It was not until 1856 that Hamerton asked the ruler to order Indians to free their slaves within two years. The ruler apparently agreed to this request, but before the period elapsed, both Saʿīd and the consul had died.<sup>34</sup>

Hamerton's successor, Christopher P. Rigby (1858–1861), initiated the emancipation of illegally owned slaves, inevitably increasing the frequency of contact between slave owners and the consulate. The consul forbade all British business relationships with people involved in the slave trade.<sup>35</sup> He had no legal basis for his actions, which, as will be seen, later determined the policy of the Indian government towards Indians in Zanzibar. Following Rigby's short tenure, and for the next few years, the question of slaves belonging to British subjects was not raised. His successor, Lewis Pelly (1861–

29. Sheriff, *Slaves*, 84–6; See also: Chhaya Goswami, *The Call of the Sea. Kachchhi Traders in Muscat and Zanzibar, c. 1800–1880* (New Delhi: Orient Blackswan Private Ltd., 2011).

30. Atkins Hamerton to John P. Willoughby, 3 March 1842, in *New England Merchants in Africa. A History through Documents, 1802–1865*, eds. Norman Bennett and George Brooks (Boston: Boston University Press, 1865), 130.

31. Charles Ward to John Clayton, 20 July 1850, in *New England Merchants*, eds. Bennett and Brooks, 466.

32. William McMullan to William Marcy, 7 December 1853, in *New England Merchants*, eds. Bennett and Brooks, 497.

33. Henry Churchill to Mājid bin Saʿīd, 16 December 1867, PP 1868–69, 4131/73/3.

34. Frederick Holmwood, "Administration report of the Political Agent and Consul-General at Zanzibar for the years 1873 and 1874," 8 February 1875, PP 1875, C.1168/33/1.

35. Ladislav Cochet to Ministère des Affaires Étrangères (henceforth MAE), 25 July 1858, CADMAE, P. 254, v. 2.

1863), compiled a register of Indians who were British subjects, but it included only those who volunteered to register. Thus, he excluded a fair number of the Zanzibar Indians from consular jurisdiction. The next consul, Robert L. Playfair (1863–1865), informed Sultan Mājid (1856–1870) that as well as those entered into the consular register being deemed British, so were all persons born in British India. This modified position was supported by the Governor of Bombay and accepted by the ruler of Zanzibar. Such a state of affairs persisted during the tenure of Consul E. Seward (1865–1867), who even took a small step back by announcing that persons of Indian origin who were in his service but were not recorded in the register would be treated “just like the Arabs.” This was motivated by the fact that they were born on Zanzibar and spent their whole lives there.<sup>36</sup> Furthermore, according to the decree already quoted, all British subjects and those of the protected states of India had to register at the consulate within 30 days of their arrival, otherwise they were not entitled to British protection.<sup>37</sup>

The change in that respect the Indians owed to Consul Henry A. Churchill (1867–1870).<sup>38</sup> In his correspondence with the government, the consul argued that if the ambiguity continued, the Indians deprived of their property during Rigby’s tenure might seek compensation.<sup>39</sup> Bombay decided that the renunciation of British protection would no longer mean freedom from British jurisdiction. This move can be seen as a tightening of the course towards Indian slave owners, but also a safety measure against the growing legal awareness of Indians. Despite Mājid’s resistance, a principle was introduced that all subjects of the ruler (rao) of Kutch residing in Zanzibar were under the jurisdiction of the British consul as long as they had broken Indian law. However, if they did not sign the consular register, they were deprived of British protection.<sup>40</sup> For the first time, issues of jurisdiction and protection over Indians became separated in official discourse. Bombay also made a decision regarding slaves belonging to the subjects of Kutch: Those who were registered at the consulate as British subjects were to define their slaves as “domestic,” whose possession was temporarily allowed, or free them immediately. Kutchees had to report to the consulate to present a list of slaves at a specified time under the threat of losing property or being subjected to a fine and imprisonment.<sup>41</sup> The principle that British subjects residing in protectorates in India

36. Mājid bin Saʿīd to Henry Churchill, 21 December 1867, PP 1868–69, 4131/79/4.

37. Robert L. Playfair, “Rules and regulations framed under Her Majesty’s Order in Council of the 9<sup>th</sup> of August, 1866, by Her Majesty’s Political Agent and Consul at Zanzibar,” NA, FO 84/1279. For more detail on the earlier stage of the conflict concerning the jurisdiction over Indians, see: Suzuki, *Slave Trade Profiteers*.

38. Frederick Holmwood, “Administration report of the Political Agent and Consul-General at Zanzibar for the years 1873 and 1874,” 8 February 1875, PP 1875, C.1168/33/1.

39. Henry Churchill to Charles Gonne, 14 August 1868, NA, FO 84/1292.

40. Henry Churchill to Mājid bin Saʿīd, 16 December 1867, PP 1868–69, 4131/73/3; 20 January 1869, PP 1870, C.209/34/2; 26 February 1869, NA, FO 84/1307. At that period, there was also a register of Kutchees, who were Mājid’s protégés, kept by the wazir Sulayman bin Ali. Henry Churchill to Mājid bin Saʿīd, 20 February 1869, NA, FO 84/1307.

41. [“To all natives of India in the Dominions of the Sultan of Zanzibar,”] 20 January 1869, PP 1870, C.209/34/3; Henry Churchill to the Secretary to Government, Bombay, 22 January 1869, PP 1870, C.209/34/1.

could be prosecuted for offenses related to slavery was confirmed in the fourth article of the British–Zanzibar treaty of 1873.<sup>42</sup> After its signing, during the period 1874–1875, slaves belonging to East African Indians were registered and liberated. To reinforce the effect, the sultan was persuaded to announce that creditors who accepted slaves as collateral could not recover debts at his court.<sup>43</sup>

British Consul John Kirk (1870–1888) believed that poorer Indians born in Zanzibar still preferred to be considered subjects of the sultan. Depriving them of the status of masters put them on the margins of the free population. Kirk did not take into account the fact that a significant number of poorer Indians living in East Africa had arrived in the 1870s and never became slave owners. As for the Hindus, their need for African servants was limited due to the ritual inhibitions concerning dealing with food and water.<sup>44</sup> It is hard to deny, however, that for those Indians for whom slave ownership had become part of their lifestyle, the prohibition would cause them significant difficulties. The matter of slave ownership touched not only the economic but also the private sphere of Indians' lives. The British consulate forced many of them to pay their former slaves allowances for clothes and dowries, and even to find them spouses.<sup>45</sup>

## BOATS SAILING UNDER WESTERN FLAGS

The lack of regulations regarding the issue of the flag displayed by ships belonging to the subjects of Sultan of Zanzibar and other nearby rulers encouraged shipowners to look for the possibility of using foreign colours. This led to the formation, on a voluntary basis, of groups entitled to Western legal protection. The British flag was the obvious choice for residents of British India, but boats from Indian protected states sailed under the flag of the country of their origin.<sup>46</sup> However, when ships reached East African shores, they usually raised the red flag of Zanzibar on the mast, as no documents of registration were required from Zanzibar vessels in the sultan's waters.<sup>47</sup> Although foreigners could apply for the right to fly the British flag, relatively few owners of the boats that sailed on Zanzibar waters were interested.<sup>48</sup> Little evidence suggests

42. Frederick Holmwood, "Administration report of the Political Agent and Consul-General at Zanzibar for the years 1873 and 1874," 8 February 1875, PP 1875, C.1168/33/1.

43. Frederick Elton to William Prideaux, 2 March 1874, NA, FO 881/2499/2/4.

44. James Christie, *Cholera Epidemics in East Africa: An Account of the Several Diffusions of the Disease in that Country from 1821 Till 1872, with an Outline of the Geography, Ethnology and Trade Connections of the Regions Through which the Epidemics Passed* (London: Macmillan, 1876), 354.

45. Frederick Holmwood, "Report by Mr. Holmwood," 17 November 1874, NA, FO 881/2572/1/2.

46. Charles Ward to William Clayton, 20 July 1850, in *New England Merchants*, eds. Bennett and Brooks, 466; Charles Rigby to FO, 10 July 1860 (copy), NA, FO 84/1292.

47. Kuhlmann to MAE, 27 March 1852, CADMAE, P. 254, v. 2.

48. John Kirk's Diary, 24 February 1870, National Library of Scotland, Edinburgh, Papers of Sir John Kirk, GCMB KCB and Lady Kirk, née Helen Cooke Acc. 9942, file 25 (henceforth John Kirk's Diary).

any cases of unauthorized use of the Union Jack.<sup>49</sup> During the period of 1867–1870, the British lost over a quarter of the tonnage of the fleet sailing along the coasts of East Africa, while the number of cabotage vessels increased.<sup>50</sup>

To understand the phenomenon, one has to go back to the 1840s, when French influence in the Comoros began to grow and the slave exports from Zanzibar dominions were forbidden. Before this happened, Comorians sailing to Zanzibar often flew its flag voluntarily, as a sign of prestige or an expression of sympathy for the power of Saʿīd bin Sulṭān and dissatisfaction with the growing French influence in their homeland.<sup>51</sup> The real turning point was the political crisis of 1859, when British naval activity in the waters of the Indian Ocean increased rapidly.<sup>52</sup> The French consulate registers of ships under the French flag calling at the port at that time begin to show dhows whose owners and captains bore Muslim Arabic names.<sup>53</sup> Slave dealers taking people outside East African waters, as well as those who carried slave servants, concubines, and even employed slaves as crew members, no longer took the risk of sailing under the flag of Zanzibar, thus avoiding uncomfortable questions asked by the commanders of the British vessels. Instead, many Comorians chose the French flag,<sup>54</sup> as the coastal Zanzibar fleet was diminished due to the actions of the British fleet, which destroyed ships suspected of slave smuggling, the Comorians under the French flag easily took control of cabotage in Zanzibar waters.<sup>55</sup>

After 1865, the main reason for choosing the French flag was the customs privileges to which French ships were entitled. In that year, they paid only 5 percent duty, as provided by the Franco–Zanzibar treaty, which gave them an advantage over boats sailing under the British flag. The latter still had to pay extra duties on goods exported from the coast.<sup>56</sup> In the late 1860s and early 1870s, along the southern coast of the Sultanate, as well as between Zanzibar and Comoros and Madagascar, the French flag was seen on most dhows.<sup>57</sup> In February 1870, Kirk noted in his diary that thirteen dhows anchored in front of his window and flying the French flag belonged to Arabs and Indians. The consul was irritated by the fact that these boats had the right to French

49. John Kirk to Earl Granville, 8 August 1873, PP 1874, C.1064/49; John Kirk to Earl Granville, 30 November 1880, NA, FO 84/1575.

50. John Kirk's Diary, 30 March 1870.

51. Henryk Jabłoński to MAE, 29 July 1863, CADMAE, P. 254, v. 2.

52. "État faisant connaître les mouvements des navires de guerre anglais dans le port de Zanzibar" (1864), CADMAE, microfilm 18464.

53. "Consulat de France a Zanzibar. Etat de la Navigation Française" (1857–1870). Ministère des Affaires étrangères, Centre des archives diplomatiques de Nantes. Archives repatriées du consulat de France à Zanzibar. Fonds A (1870–1923).

54. Kuhlmann to MAE, 27 March 1852, CADMAE, P. 254, v. 2; John Kirk to Earl of Clarendon, 23 April 1869 NS, FO 881/1242/64.

55. Henryk Jabłoński to MAE, 29 July 1863, CADMAE, P. 254, v. 2. For more detail on the use of the French flag in the region, see: Suzuki, *Slave Trade Profiteers*, 141–66.

56. John Kirk's Diary, 24 February 1870.

57. John Kirk's Diary, 4 February 1870, 9 March 1870.

protection, undermining the ability of the British navy to stop and search them.<sup>58</sup>

In the 1870s, a decade marked by the crisis of French imperialism, abuses of the flag and incidents of illegal slave transports still occurred, though they did not strain French–British diplomatic relationships as much as they had in the 1860s.<sup>59</sup> The British–French rivalry for dominance as the regional sailing fleet continued, as the French still had more to offer and the British did little to change the situation. In this field, the former were not bound strictly by metropolitan policy, even if the influence of republican ideology strengthened the vigilance of colonial cadres, with the slave trade carried out under the French flag. Still, persons under French protection were not expected to forfeit anything to retain their privileges.

#### PROTECTED PERSONS EMPLOYED BY THE BRITISH

Although, in theory, a British protégé enjoyed the same protection as a British subject, in practice he was offered legal assistance before a Muslim court only in civil cases. In criminal cases, when found guilty, such a person was dismissed from British service and handed over to the Sultanate authorities.<sup>60</sup> The category of protected persons was not limited to employees of the consulates, such as interpreters and consular agents. The employees of trade companies and Christian missions who received monthly wages also belonged to it.<sup>61</sup> For Christian converts, obtaining the status of a protégé of one of the Western countries was the only way of avoiding severe punishment for apostasy. This is evident in the case of a Swahili employee of the Church Missionary Society in the vicinity of Mombasa who wished to abandon Islam. Once the news reached his former community leaders, they demanded his expulsion from the mission. When the missionaries refused, the case went to the Sultan's governor (liwali) of Mombasa. The officer tried to dissuade the apostate from conversion and threatened him with imprisonment. The argument that saved him was the fact that, as a mission employee, he was under the consul's protection.<sup>62</sup> Another case involved an Arab who spent several years in prison after converting to Christianity. Upon his release, he returned to the mission. After a few days, Sultan Bargaš ordered his arrest, but the British consul's intervention rescued him from further punishment.<sup>63</sup>

58. John Kirk's Diary, 9 March 1870. The British navy argued that the agreement of 1859 that regulated the inspection of boats that sailed under the French flag concerned only European-built vessels, as dhows under French colors were rarely seen in Zanzibar waters. For the discussion between the French and British consulates on the rules of inspection, see correspondence in FO 84/1292, i.a.: Eugène Bure to Henry Churchill, 24 August 1868, Commodore Leopold G. Heath to Henry Churchill, 27 August 1868, Eugène Bure to Henry Churchill, 28 August 1868.

59. John Kirk to Earl Granville, 17 August 1880, NA, FO 84/1575.

60. John Kirk to Earl Derby, 10 April 1877, NA, FO 881/3227/63.

61. Samuel Miles to Earl Granville, 3 June 1882, NA, FO 84/1621.

62. During to John Kirk, 14 June 1881, ZNA, AA 2/31.

63. Samuel Miles to Earl Granville, 3 June 1882, NA, FO 84/1621.



While Christian converts in the Sultanate of Zanzibar were in a very difficult position which British protection could revert only with the utmost difficulty, for liberated persons an opportunity to raise one's social status was to join the Sultan's regular army. It was created in 1877 under the direction and command of a British officer. Since the commander favored Christians, their numbers among the recruits grew quickly, which caused vexation within the ranks of the Sultan's government. An example of the conflict that arose against such a background is the story of an Arab of Oromo roots who converted to Christianity while serving in the army, and then, without formal resignation, was employed in the Anglican Universities Mission to Central Africa. He was arrested, but the British consulate claimed the right to protect him. The sultan, however, insisted that, as a British protégé, he would not be allowed admittance to the army of Zanzibar, and therefore he should consider himself a subject of the sultan. In reality, the sultan had no influence on recruitment and could not prevent British subjects from being accepted into military service.<sup>64</sup> One can consider the Sultan's regular army a unique institution where British jurisdictional policy achieved consistency with imperial objectives. For the commanders and many soldiers, anti-slavery laws took precedence over the interests of the sultan of Zanzibar.<sup>65</sup>

The British consistently defended their protégés even when they were clearly guilty. British consular protection was an obstacle in prosecuting persons suspected of serious crimes, including intimidation of Europeans and inciting local people against them.<sup>66</sup> While the French were reacting harshly and consistently over the entire period to the arrests of their protégés, these were arrests by the British Navy. So this policy, unlike that of the British, did not affect the dignitaries of the Sultanate. Prompt and strong diplomatic reaction to the arrest of British protégés is evident. In 1860, Consul Rigby suspended diplomatic relations with Zanzibar and lowered the flag at the consulate when his servant was arrested and sent to Lamu.<sup>67</sup> Such cases sometimes served as a pretext to interfere with the sultan's personnel policy. In 1862, Consul Pelly demanded the dismissal of the governor of Lamu, a nephew of the sultan, for arresting a British subject. The request was agreed to, despite protests from the French consulate.<sup>68</sup>

As opposed to the diminishing number of cases in the French Consulate, at the beginning of John Kirk's term in office the number of cases referred to the consular court was growing rapidly. Interestingly, the increase in the value of compensation awarded was much slower. This may indicate that the increase in the number of cases

64. Bargaš bin Sa'īd to Samuel Miles, 26 May 1882, NA FO 84/1621; Miles to Earl Granville, 29 August 1882, NA FO 84/1622.

65. Pawełczak, *The State and the Stateless*, 249–53.

66. Henryk Jabłoński to MAE, 8 March 1863, CADMAE, P. 254, v. 2.

67. John Webb to Cass, 27 October 1860. National Archives and Records Administration, Washington DC, US), Dispatches from U.S. Consuls Zanzibar, 1836–1906, microcopy 468 (hereafter: NARA, USCZ), reel 2.

68. W. J. Speer to William Seward, 31 March 1862, NARA, USCZ, reel 2.

resulted from the fact that more trivial complaints were directed to the court. A good example is a case in which an African female servant of Justus Strandes, an agent of the Hamburg company Hansing & Co., was bitten by a monkey in his home. Strandes learned about his obligation to pay five-rupee compensation to the injured woman when the British consul informed a German colleague, Grallert, in writing. Kirk paid out of his own pocket without waiting for the Hamburger's answer. According to Strandes, his maid's claim to compensation, without interrogation and investigation, was based on her good relations with British missionaries or the British consulate.<sup>69</sup> Even if Strandes categorically refused to pay, this kind of thing certainly echoed widely in Zanzibar and throughout the Sultanate, creating the impression that the British consulate was an independent locus of power that provided protection even against people with high social status. Strandes writes that if the injured woman addressed the request directly to him, he would not refuse compensation. The verdict was issued without the witnesses being questioned. The written and continuous attempts to cancel the verdict were unsuccessful, Kirk's setting out the amount awarded was an act of informal pressure on a citizen of a foreign country. The German consuls still, despite the passage of years that had elapsed since the unification of Germany in 1870, used British consular aid in the cases where German subjects were involved,<sup>70</sup> which is why Kirk insisted on Strandes' payment. The case shows that the universal moral message of equality before the law that went hand in hand with practical considerations, that is to demonstrate the broad category of "British servants" who were granted not only nominal protection, but real support against the mighty residents of Zanzibar.

## LEGAL PROTECTION IN CIVIL MATTERS

Civil cases in the Sultanate of Zanzibar were judged by qadis depending on the Islamic school they professed – i.e., in accordance with Sunni Shafite or Ibadite tradition. Governors served as appellate courts, and the highest instance was the sultan.<sup>71</sup> From the point of view of Indians, with their majority being Shiite Ismailis, the effectiveness of the Zanzibar courts in the enforcement of contracts was questionable; therefore, British jurisdiction was potentially attractive to them. After Atkins Hamerton left

69. Justus Strandes, *Erinnerungen an Kindheit und Jugend und an die Kaufmannszeit in Hamburg und Ostafrika, 1856–1889* (Hamburg: Verlag Hanseatischer Merkur, 2004), 103.

70. Karl Evers, "Das Hamburger Zanzibarhandelshaus Wm. O'Swald & Co. 1847–1890. Zur Geschichte des Hamburger Handels mit Ostafrika" (PhD diss., Universität Hamburg, 1986), 68, 77.

71. Burton, *Zanzibar*, II, 76; Procès verbal, 2 April 1886, NA FO 403/5308/89/2. Also: Patricia Romero, *Lamu. History, Society and Family in an East African Port City* (Princeton, 1997), 46; Muḥammad bin Salīm to Bargaš bin Sa'īd 23 April 1883, ZNA AA 1/48; Selim Michalla to Gustav Michahelles, 7 May 1888, Bundesarchiv, Abteilungen Berlin, Germany, RKA 418; Streeter to Kirk, 18 June 1881, NA FO 881/4638/22/7; Kitchener to Earl Rosebery, 10 February 1886, NA FO 403/5271/155; Frederick Elton to William Prideaux, 2 March 1874, NA, FO 881/2499/2/4; Charles Smith to John Kirk, 5 June 1884, ZNA AA 10/1; Charles Smith to John Kirk, 29 November 1884, ZNA AA10/1.

office, British consuls assisted Indians in legal matters. In 1861, Consul Rigby, on a daily basis, presented sultan Mājid with a list of Arab debtors who owed money to British subjects. His efforts were, however, rarely effective.<sup>72</sup> In the following decades, the situation changed slightly in favor of creditors. Fahad Bishara has pointed out that in the nineteenth century, credit networks spread across the area of the western Indian Ocean. The system of documents written in Arabic (from Arabic sing.: waraqa) often took the form of the sale of real estate with the option of repurchase after a set deadline. Essentially, however, they were mortgage documents, and as such were forbidden by Muslim law. Creditors, in order to facilitate debt enforcement, often registered them in the British consular court in Zanzibar.<sup>73</sup> Whenever Western capital was involved, bills of lading – i.e., documents that confirmed that a firm shipped commodities abroad for which payment was pending – were the equivalent of waraqa.<sup>74</sup> Both types of documents circulated in the merchant community, serving as a means of balancing liabilities. The market was flooded with such securities, which involved high risk of investment and made merchants susceptible even to small fluctuations in the business cycle. Thus, the sense of uncertainty was another factor that encouraged Indian entrepreneurs to seek support in the British consulate.<sup>75</sup>

The qadis did not have to consider waraqa as binding documents, as Muslim law did not accept the institution of mortgage. The consular court, on the other hand, could not enforce a contract when a debtor was not a British subordinate or protégé. The consulate helped creditors by sending an interpreter to the Muslim court, but this did not guarantee success, especially as such a person was not always fluent in Arabic legal terminology.<sup>76</sup> If qadis wanted to overrule a claim of an Indian creditor, they did not have to refer to the principles of Muslim law, as they had a large repertoire of legal loopholes, such as those based on the absence of a party at the trial, which was highly probable given the large mobility of Indian merchants. One recorded case saw the court convening when the plaintiff, an Indian merchant, was absent from Zanzibar for months. The decision to dismiss the claim on account of his absence was approved by sultan Bargāš.<sup>77</sup> On the other hand, according to Bishara, the documents from the 1870s and 1880s indicate that the consulate had considerable success in recovering debts based on waraqa. In fact, in the legal practice of the Sultanate of Zanzibar, recovering a debt was quite easy provided the governor looked favorably upon the plaintiff, but he

72. Theodor Schultz to O'Swald & Co., 27 July 1861, Staatsarchiv Hamburg, Germany (henceforth: STA) 621-1/147/4, Bd. 12.

73. Robert L. Playfair, [Notification], 10 July 1867, NA, FO 84/1279; Bishara, *A Sea of Debt*, 126.

74. Stuart Muirhead, *Crisis Banking in the East. The History of the Chartered Mercantile Bank of India, London and China, 1853–93* (Routledge, 1996), 73.

75. Bishara, *A Sea of Debt*, 142–143, 217.

76. Pragji Jadwji to the consul of Great Britain [n.d. but 1884], ZNA AA 2/36; Abdulla Noor Muhamed to Samuel Miles, 14 July 188?, ZNA AA2/35.

77. Saleh Sachedin to Samuel Miles, 14 March 1883, ZNA AA2/35.

could confiscate property of a person only if he was convinced that he or she failed to pay off a debt.<sup>78</sup>

An example of procedural difficulties resulting from the jurisdictional duality of Zanzibar is the case of the Indian merchant Saleh Sachedina who, over many years, fought to recover a debt from an Arab. One of the British consuls of the 1860s gave him a special intervention letter for the sultan. In 1868, Mājid forced the debtor to sell the property, which satisfied part of the claim. With Kirk's passive attitude, which he assumed despite his promise to help, the newly enthroned sultan Barḡaš did not support the execution of the rest of the debt, arguably because he took over the land belonging to the debtor.<sup>79</sup> During the years 1872–1874, when Saleh was on his pilgrimage to Karbala, his debtor appealed to the consular court for a sum exceeding 30,000 Maria Theresa thalers as compensation for the loss he suffered while the judge sequestered his estate. Kirk dismissed the complaint considering it absurd. In 1878, the consul, seeing that the debtor owned a property, sent the latter to Barḡaš, who appointed a qadi to settle the matter according to Muslim law. Saleh presented his evidence, but he lost and once again asked Kirk for help. The consul replied that he could press for reconsideration but could not prevent the debtor from resuming the litigation against Saleh in the consular court.<sup>80</sup> This case illustrates that the British consulate showed limited effectiveness in the collection of debts, and at the same time the sultan's subjects were able to postpone repayment for many years, also by filing lawsuits with a consular court.

The objectivity of the Zanzibari courts, especially in the execution of contracts, was questioned not only due to the origins of the judges and governors, but also their low earnings, which reportedly encouraged corruption. Similarly, the impartiality of the British consular court was questioned. German and American members of the merchant community believed that it favored Indians.<sup>81</sup> The impression that the legal support Consul Kirk gave Indians in their disputes with Western traders was part of his strategy to draw the former into the orbit of British influence might be partially correct. However, despite the growing interest of the consulate in the affairs of the members of the Indian community, they complained about insufficient legal protection from Kirk, especially in matters of debt enforcement. Kirk did not want to be perceived as someone who only protected Indians. He promoted the idea of a fair court for everyone regardless of race, ethnicity, religion or material status. He gladly referred to statements describing the consular court as a place where “wolves and sheep” – or, in another version, “lions and zebras” – drank from a common pool (implicitly, predators did not bite the weaker animals).<sup>82</sup> The quoted statements seemingly testify to the effectiveness

78. Ibid.

79. Henry W. Ripley to John Kirk, 9 April 1872, ZNA AA 2/8.

80. “Narrative of the Case of the Debt due by Hamed bin Abdalkader Mansabi” [n.d.], ZNA AA 5/26.

81. Theodor Schultz to O'Swald & Co., 3 January 1873, STAHL 621-1/147/4, Bd. 24.

82. Saleh Suchedina to John Kirk, 21 April 1879, ZNA AA 2/37.

of Kirk's efforts, but it is very likely that their authors followed the consul's narrative in order to foster their own claims before the consular court.

The effectiveness of these propaganda tactics can be demonstrated by the data on the number of cases examined in the British consular court. The number rose quickly during the 1870s. In 1871, there were sixty-seven civil and criminal cases, whereas in 1881, the number of civil cases alone amounted to 443.<sup>83</sup> The Indian community of East Africa consisted mostly of small traders, clerks and craftsmen, although some of its members became successful international merchants, and hence civil cases prevailed among the complaints directed against its members. In 1879, sixty-seven suits, mostly civil cases, were tried by the British consular court. Fifty-eight of them involved property valued at over £10,000. At the same time, 212 cases in which British-protected subjects were plaintiffs and natives of Zanzibar were defendants were referred to the Muslim Court, which was conducted by one of the sultan's ministers in the presence of qadis as legal advisers.<sup>84</sup>

#### SECURITY, PUBLIC ORDER AND LAW ENFORCEMENT

One of the major problems for the Indian community in East Africa was violence, which affected not only the rich but also poorer members. There is little evidence regarding the security of Indians during the rule of Sa'īd. In 1840, a life-threatening attack on Jairam Shivji, the leader of the Zanzibar merchant community and a collector of customs duties, was perhaps an isolated case.<sup>85</sup> In contrast, sources from the 1870s and especially the 1880s have much more to say on the topic. While the proximity of the British consulate deterred violence to some degree, the coastal administration was less protective towards Indians. Without intervention from the sultan or the British consul, governors remained passive. A particularly large number of attacks were recorded in Lamu and Mombasa. Investigations into the murders of Indians were usually conducted by governors, but by the 1870s, they were accompanied by a British consular officer, which streamlined investigations. This was the case in 1874, when a client of a brothel, a Hindu, was murdered in Lamu. The murderer had broken into the house to steal valuables. Consul Holmwood interrogated a slave courtesan who was present in the house when the murder was committed, but she denied seeing anything. As a consequence, at the behest of the sultan, the governor sent all witnesses and suspects to Zanzibar. It was not until February 1876 that the aforementioned woman finally admitted, under pressure from the consular assistant, that on the night in question she

83. Bishara, *A Sea of Debt*, 141.

84. Frederick Holmwood, "Administration report of the Political Agent and Consul-General at Zanzibar for the years 1873 and 1874," 8 February 1875, PP 1875, C.1168/33/1.

85. Richard Waters' notebook, 5 June 1843, Phillips Library of the Peabody Essex Museum, Peabody, MA, USA (henceforth: PEM), Richard P. Waters Papers, MH 14.



saw the Hindu man killed by the owner and his companion, a Swahili man. The court could not prove her involvement in the crime. Contrary to the consul's wish and to his dismay, the perpetrators were not sentenced to death but only life imprisonment.<sup>86</sup> Bargaš claimed that he was reluctant to pass death sentences in general.<sup>87</sup> On the other hand, when listing the reasons for his unwillingness to convict a man involved in the murder of a British officer, he explained that under Muslim law a Muslim could not be sentenced to death for the murder of a non-Muslim.<sup>88</sup>

While in the above case an investigation took place, one may assume that in similar cases the perpetrators usually avoided punishment. At the beginning of the 1880s, many matters addressed to the British consulate related to fatal attacks. They included requests to inform the British consulate and the sultan, such as the petition by Indian residents of Lamu written in reaction to the murder of a shopkeeper in Siyu.<sup>89</sup> Some petitions were overlooked and were repeated several times. For example, in 1882, merchants of Mombasa addressed a petition to the British consul, stating that it was the second or possibly third in the same case. It concerned a notorious robber caught in the act while breaking into the house of a Kutchee at night and robbing and killing him. The visit of the Indian delegation to the governor was ineffective due to the fact that, as suggested by the petitioners, the perpetrator previously worked for governors and qadis.<sup>90</sup> Sometimes, the governors covered up attacks which might have a xenophobic motive. For example, in 1883, the murder of a Rajput took place in Mombasa. His things, of which he had little, remained intact. Because he was in debt, the governor of Mombasa came to the conclusion that he had committed suicide. Finally, under pressure from the British consulate, he offered a 400 thalers reward from the sultan's fund. As no one reported anything, the circumstances of the murder remained a mystery.<sup>91</sup> This case exemplifies the impotence of the British Consulate, which not only lacked executive force but also support of the local elites of the Sultanate in identifying the culprits.

Consul Kirk's position on cases of murdered Indians was often seen as ambiguous, as he thought it essential to present an air of impartiality. In 1884, after hearing about the scale of violence involved in the murder of two Indians north of Lamu, Kirk decided to intervene personally. The Lamu Indian community was upset and concerned to the point that shopkeepers closed their businesses. Some of them demanded the immediate execution of a Swahili who, according to witnesses, was guilty of the crime. Their argument that the crime inhibited trade appealed to the governor, and when Kirk arrived in the city, the suspect was already in custody.

86. John Kirk to Bargaš bin Sa'īd, 21 June 1876, PP 1877, C.1800/313/1.

87. Bargaš bin Sa'īd to John Kirk, 21 June 1876, PP 1877, C.1800/313/1.

88. Captain J. E. Craster, *Pemba. The Spice Island of Zanzibar*, London: T. Fisher Unwin, 1913, 68.

89. [Petition of the Indians of Lamu to the merchants of Zanzibar, n.d.], ZNA AA2/35.

90. [Petition of the merchants of Mombasa to the consul of Great Britain], 21 December 1882, ZNA AA2/35.

91. Muhammad Sulayman to Bargaš bin Sa'īd, 10 February 1883, ZNA AA2/35.

The consul, however, called for his release, as he became convinced that the deaths resulted from an accident. Nevertheless, the Indians pressed the sultan to apply the most severe measures. According to Kirk, thanks to his intervention, his reputation among the Swahili community of Lamu improved.<sup>92</sup> At this stage, Indian subjects had no reasonable alternative to British protection. Understandably, the consul was interested in raising the prestige of the British post among the whole population of the city in the face of the emerging colonial schemes which he reportedly championed.<sup>93</sup> However, even if this was so, it only had a local dimension, because the subjects of Zanzibar perceived the British consulate as a hostile institution of power over the weak sultan.

Public security was always a challenge for the Zanzibar government. In the 1840s, the capital town was considered comparatively safe, even though all residents carried weapons.<sup>94</sup> However, by the early 1860s, the situation deteriorated, and there was still no department capable of enforcing court judgments and conducting investigations in criminal cases. Responding to demands by the Western consulates, sultan Mājid tried to organize a police force in 1861. The ruler assigned its command to his former barber. At the very outset of his new career, the nominee was killed during an attempt to recover a debt from an Arab. As no one else wanted to embrace this newly created position, it remained vacant.<sup>95</sup> Sultan Barḡaš resisted the British consulate's suggestion that he should establish a new police force, claiming that it would primarily protect Indians and thus be a British institution.<sup>96</sup> By the end of his rule, however, there were several paramilitary formations in Zanzibar that acted in various capacities as police. At least one of them specialized in patrolling the streets at night in order to protect Indian shops.<sup>97</sup>

The British consulate, unlike its French counterpart, did not have its own prison until the late 1860s. The initiative to build the prison was first presented by Consul Seward. Originally, it was to be constructed next to the consulate complex in the city centre and was supposed to have six gaols including four for Europeans and two for "Natives", with a cubic capacity of 960 cubic feet and 800 cubic feet respectively. His successor, Consul Churchill, in a letter to Bombay, criticized the location and proposed to buy a plot of land on the southern outskirts of the city. The Bombay prison inspector Dr. Wiehe criticized the insufficient capacity of the cell, which did not meet regulations.

92. John Kirk to Earl Granville, 16 March 1884, NA, FO 84/1677.

93. John S. Galbraith, *Mackinnon and East Africa 1878-1895: A Study in the 'New Imperialism'* (Cambridge: Cambridge University Press, 2009), 371.

94. Sandwith Drinker, "A private journal of events and scenes at sea, at the Cape and Zanzibar," PEM, MH 83.

95. Theodor Schultz to O'Swald & Co., 27 July 1861, STAH 621-1/147/4, Bd. 12. See also: diary of Charles Rigby, 14 July 1861, in *General Rigby and the Slave Trade. With Journals, Despatches, etc.*, ed. Charles Rigby (London: Allen and Unwin, 1935), 93.

96. Barḡaš bin Sa'īd to William Prideaux, 3 May 1874, ZNA AA 2/13.

97. Katrin Bromber (ed. and transl.), *The Jurisdiction of the Sultan of Zanzibar and the Subjects of Foreign Nations* (Würzburg: Ergon, 2011), 77–8, 81.

In addition, he pointed out other inadequacies of the project: lack of water closets, hospital, dispensary, and morgue.<sup>98</sup> The government finally agreed to the project on the condition that the gaols would be half as large.<sup>99</sup> Seward, however, reacted sharply to the idea of moving the prison to the outskirts of the city because convicts would be exposed to harassment by street onlookers, and perhaps clansmen seeking revenge for the harm of members of their families.<sup>100</sup>

In practice, the new prison was too small in relation to the number of detainees and convicts, and British subjects were still sent to the sultan's jail, which was established at the old Zanzibar fort, next to the sultan's palace. The state of the cells left a lot to be desired, and as a result, the consular court sometimes changed the penalty of arrest to a fine.<sup>101</sup> As early as the 1850s, it was reported that the prison exposed the inmates to tropical diseases.<sup>102</sup> Consular documents address this subject more often during the 1880s. In 1884, when a man accused of unintentional homicide died in the prison, Consul Kirk became interested in the conditions in which persons under British protection were held. It turned out that the prisoners lived in a stuffy cell without a window, and the entire floor was covered with prisoners. The consul took the remaining inmates to the consulate and prohibited the sending of British subjects to the fort until demanded improvements were made.<sup>103</sup>

Another reason why the British were reluctant to send their protégés to the Zanzibar state prison was the fear of oppression on ethnic or religious grounds. In the 1880s, one of the rooms of the Lamu vice-consulate was converted into a prison cell to detain those arrested for drunkenness, as in the sultan's prison it would be difficult to protect them from the rage of the Muslim inmates.<sup>104</sup> Until the 1870s, among the inhabitants of Zanzibar, only the rich, mainly Arabs, could afford imported beverages. Later, however, when cheap spirits from Hamburg and locally produced rum became available for the lower classes, British-protected consumers of alcohol caused many problems of public order.<sup>105</sup> Bargāš himself was strong critic of alcohol, but did not dare to close the stores that sold it. Most of them belonged to the Goans, who were traditionally subject to British jurisdiction in Zanzibar.<sup>106</sup>

The attitude of the Indians towards the British consulate and, Great Britain more

98. Henry Churchill to Charles Gonne, 5 August 1867, MSA, PD, 1867, v. 124; Dr Wiehe (Inspector General of Prisons to the Secretary to Government, Bombay) to the Political Department, Bombay, 20 September 1867, MSA, PD 1867, v. 124.

99. Charles Gonne to Seward and Henry Churchill, 4 Oct 1867, MSA, PD, 1867, v. 124.

100. "An outlying establishment of the Consulate, could not be safe from aggression, in times of popular commotion, as the Consulate itself, and it might so happen, that the offence of English defaulter, as against Arabs or others, might provoke that tumult and aggression". Seward to Gonne, 25 October 1867, MSA, PD, v. 124.

101. "Report by Mr. Holmwood," 17 November 1874, NA, FO 881/2572/1/2.

102. William McMullan to William Marcy, 21 January 1854, in *New England Merchants*, eds. Bennett and Brooks, 497–8.

103. John Kirk to Earl Granville, 16 March 1884, NA, FO 84/1677.

104. John Haggard to John Kirk, 9 June 1884, ZNA, AA 10/1.

105. Bromber, *The Jurisdiction*, 2011, 51.

106. John Kirk to Foreign Office, 13 November 1872, NA, FO 84/1357.

broadly, was related to issues such as possession of slaves and legal protection. Since at least the mid-1870s, however, the most important factors were personal security and trade opportunities. From those points of view, the real test for the credibility of the British was the Egyptian invasion on the northern reaches of the Zanzibar dominions – i.e., the southern Somali coast (Benadir) – in December 1875, which ended with British diplomatic intervention in Cairo early in 1876. Only the ports of Brava and Kismayo were occupied, but Lamu was also at risk. The occupation forces pursued a very unfavorable policy towards Indian merchants, which included maximum prices,<sup>107</sup> harbor charges and high court fees. Confiscation of goods occurred daily.<sup>108</sup> Such policies discouraged British subjects from investing and led to a suspension of trade.<sup>109</sup> News of maltreatment of their countrymen at the Benadir reached the Indians in Lamu,<sup>110</sup> who also suspended trade.<sup>111</sup>

The Egyptian occupation of the Benadir coast was only one of the factors that shook Indian confidence in the Sultanate of Zanzibar. Even before the invasion, early in 1875, a group of Indians demanded from Consul Prideaux that East Africa be proclaimed a British protectorate.<sup>112</sup> The request was expressed by a deputation of merchants who asked for support in a controversy concerning customs duties, another area that gave the British government an opportunity to intervene on behalf of Indians.<sup>113</sup> The British consulate was more helpful in cases where it was possible to invoke an international treaty that addressed customs regulations.<sup>114</sup> In practice, Indians did not take advantage of the apparent exemption offered by the British consulate, because if they refused to pay, financial obligation fell on the merchants from the coast and interior, discouraging the latter from entering into transactions with contractors who were recalcitrant towards the customs administration.<sup>115</sup>

## CONCLUSION

As Lauren Benton rightly observed when writing about general British imperial legal strategy, until the early 1880s, the British neither aimed to enhance their position nor that of British-protected merchants in Zanzibar. However, if any order was sought

107. John Kirk to Earl Derby, 15 December 1875, NA, FO 881/3090/5.

108. John Kirk to Earl Derby, 15 November 1875, NA, FO 881/3090/16; 15 December 1875, NA, FO 881/3090/54; 11 November 1875, CPA 3090/15; "Petition of the Indian community of Lamu to John Kirk" [n.d. but 1875], NA FO 881/3090/50/2. Frederick Holmwood [Report], 17 November 1874, NA, FO 881/2572/1/2; Kirk to Derby, 6 January 1876, NA, FO 881/3090/88.

109. John Kirk [Memorandum, n.d. but 1875], NA, FO 881/3090, 46/6.

110. John Kirk to Earl Derby, 8 December 1875, NA, FO 881/3090, 47; Kirk to Derby, 15 November 1875, NA, FO 881/3090/16.

111. John Kirk to Earl Derby, 8 December 1875, NA, FO 881/3090, 47.

112. William Prideaux to Earl Derby, 5 February 1875, The British Library, London, IOR/L/P&S/9/51.

113. Pawełczak, *The State and the Stateless*, 316.

114. John Kirk, *Diary*, 20 January 1872, NLS, v. 3; Kirk to Derby, 10 April 1877, PP 1878, C.2139/285 3227.

115. John Kirk to Earl Derby, 10 April 1877, PP 1878, C.2139/285 3227.

for its own sake, it was the extension of Pax Britannica to a place where the Empire did not rule directly. Although the rivalry for prestige and local support between foreign consulates existed, the objectives of British consular policy far exceeded the temporary acquisition of sympathy of their protégés, which caused frustration among the Indians. The British rather attempted to propagate the idea that the consular court represented universal justice based on a moral force superior to that of the institutions of the Sultanate. For the Indian members of the economic elite, however, it was crucial that the British Consulate was transformed into a locus of power which gave them the confidence necessary to engage in large-scale business operations. The relevant groups differed as to their attitude toward the British jurisdiction, be it imposed or offered.

Both Africans and Indians derived various benefits relating to their own place in the social hierarchy of the Sultanate of Zanzibar. Legal protection and assistance, as well as safeguards against violence, were important factors that encouraged the groups to cooperate with the consulate. Indians saw that French diplomacy was more assertive in many respects than the British, including such fields as customs duties. British legal assistance with regard to debt execution was too often nominal. The political choices the group made were most likely decided based on the assessment of factors outside of the legal framework. While they resisted when the status of British protégés was being conferred on them, from the 1860s onwards, they realized the benefits that the status as a subject of a global empire could bring, as evidenced by the action of registering loan securities at the consulate.

The increased size of the Indian population, the reshaping of its social and religious structure, and, above all, the changes in business conditions that took place during the steamship era contributed to the community's new attitude toward the British Consulate. Despite the ambiguity of its policy towards Indians, as I have demonstrated, the interest in consular protection spread quickly. The deterioration of security in the cities and the uncertainty of the future of the Sultanate of Zanzibar ultimately became an argument for all immigrants to favour British jurisdiction and even demand a British protectorate.<sup>116</sup> Furthermore, it was the change of the structure of the diaspora in the wake of a new wave of immigration and the geopolitical turn that marked the decade of 1870s. Once France abandoned its ambitions in Zanzibar, and until Germany entered the picture, the British became the only power capable of influencing the Zanzibar government. No other option remained for Zanzibar Indians, as that particular power was keenly interested in them.

British policy towards Zanzibar can be seen as an imperial project even if there is little evidence regarding the goals that were set by its planners. While the policy of French authorities towards the owners and crews of boats sailing in East African waters assumed their voluntary access to the protected group, Britain constructed and defined

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116. William Prideaux to Earl Derby, 8 February 1875, NA, FO 84/1415.



the target groups without the consent of their members, though not necessarily against their will. Besides its status as a moral problem, the jurisdiction over former slaves and Christian converts involved British prestige versus the Sultanate. This group, unlike Indians, hardly engaged in commerce and rarely sued in courts, notwithstanding the cases concerning the commutation of slave status. However, it was a potentially large and loyal group, and therefore crucial to the success of the colonial project. British jurisdiction was more attractive for British-protected Africans than for Indians, as in practice the execution of contracts was decided by the Sultan's courts, and immunity from Zanzibari penal institutions tended to attract persons of lower status. Given the subsidiary role that the first generation of Kenyan Christians played in the early colonial era,<sup>117</sup> British policy towards Zanzibar appears as an imperial project even if there is no evidence of its planned nature.

From the perspective of the rulers of the Zanzibar Sultanate, granting permission for the spread of British jurisdiction over a considerable number of subjects, even if it was enforced through the presence of European naval power, had a rational basis. For economic and political reasons, the Sultanate's priority was to maintain exemplary relations with Western countries. As the Muslim legal tradition was incompatible with that of the West, and the local executive structures were rather weak, it was better to shift the burden of responsibility for potentially troublesome groups to the consulates, especially due to their claims of Western protection. This move unburdened the sultan of Zanzibar of the odium as a sovereign of slave traders. This is particularly true with regard to slave smugglers who acted under the French flag, but also Indian merchants engaged in human trafficking. Barġaš, unlike his predecessors, did not consider Indians to be his subjects and he did not want them to become such. His stance facilitated some discriminatory measures against Indians that Sa'īd and Mājid did not practice. Barġaš was more sensitive toward the loss of control over British-protected Christian converts, presumably due to the rapid increase in the group's number and their service in his army.

In fact, even if the presence of a British court in Zanzibar involved a clash of legal and moral norms, it do not seem to be a critical factor in the relations between the Sultanate and British officials. Islamic law as practiced in Zanzibar could be flexible with regard to economic norms, as demonstrated by Fahad Bishara, and were open to certain challenges posed by modernity. This concerned both jurisprudence and the practical management of justice. Correspondingly, British law as applied in Zanzibar was based neither on precedent nor a legal code. As a result, the legal disputes were not so acute as could be expected. However, because the courts operated at consulates and the Islamic judiciary was penetrated by the state, the border between legal and political disputes was blurred.

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117. Fred Morton, *Children of Ham. Freed Slaves and Fugitive Slaves of the Kenya Coast, 1873 to 1907* (Boulder: Westview Press, 1990), 190–5.