Tanzania's Policies on Private Foreign Investment

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The foundations of Tanzania's present policies on private foreign investments are laid down in the Arusha Declaration which was issued by Tanzania's ruling party, TANU, in February 1967. The Arusha Declaration called for socialism and self-reliance and declared that the State must have effective control of the major means of production. After the Arusha Declaration a substantial number of foreign owned banks, trading companies, industrial companies, etc., were nationalized. In many companies not all the shares have been taken over by Tanzania; the Government has been satisfied with 50 or 60 per cent of the shares.

At the announcement of the Arusha Declaration the Tanzanian Government declared that it would pay full and fair compensation for the nationalizations. In almost all cases it has been possible to reach an agreement on compensation with the foreign companies, and it seems that, generally, the latter have been satisfied with the compensation agreements. It was very important to reach compensation agreements which satisfied the foreign companies because Tanzania did not consider herself capable of running the whole economy without the technological and managerial skills possessed by these concerns. Tanzania wanted the foreign managers to stay in the nationalized companies and run them under management contracts. Furthermore, Tanzania did not want to develop a bad image with the foreign investors which might totally preclude future foreign investments.

Tanzania's policies of public control of the economy put strong emphasis on the parastatal holding corporations. These are a kind of development corporation, mainly financed by Government funds. They are subject to Government supervision, but at the same time, they enjoy a certain degree of autonomy, among other things the right to establish joint ventures and to enter into management contracts with foreign companies. The parastatal holding corporations each deal with a specific sector of the economy: National Development Corporation (NDC) deals with most of the industry, National Agricultural and Food Corporation (NAFCO) deals with agriculture, including processing of agricultural products, Tanzania Tourist Corporation (TTC) deals with tourism, etc. Today, many of the nationalized companies, whether totally or partially owned by the parastatal holding corporations, have management contracts with foreign companies. In the same way, many of the new companies founded by the parastatal holding corporations have foreign management, and some of them also have private foreign capital participation.

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Although most investment in Tanzania takes place inside the public sector (especially by the parastatal corporations), there is still ample room for private investment including private foreign investment. In the non-priority sectors (including most consumer goods), investors are free to invest with or without minority shareholding by the pertinent parastatal corporation. At the time of the Arusha Declaration some people, both inside and outside Tanzania, thought that Tanzania's policy of nationalization would make cooperation with foreign companies extremely difficult and therefore would lead to difficulties in the Tanzanian economy. However, cooperation with foreign companies has run rather smoothly up to now, and Tanzania has been able to attract foreign management and foreign capital for new projects, both in the sector reserved for public control and in the sector totally open to private investment. Only a few of the foreign companies hit by nationalization have refused to supply Tanzania with the required know-how. When the British banks in Tanzania were nationalized in 1967 they immediately withdrew their personnel, leaving the Tanzanian banking system in a difficult position. However, by recruiting personnel in foreign countries, but especially by giving greater responsibility to local staff, Tanzania put the banking system in good order within half a year. The successful development of local talent in the banking system and similar experiences in other sectors have had a strong psychological impact and considerably increased Tanzanian self-respect and confidence in the policy of self-reliance.

Although Tanzania has published a list of the industries open to private investment, it is not quite clear which industries the Tanzanian Government wants to control through the parastatal corporations. The major means of production which are to be controlled by the State are very loosely defined in the Arusha Declaration, and since 1967 the Government has on various occasions undertaken nationalizations and thereby put more sectors under public control. It is a general opinion in Tanzania that in future, Government will put more and more sectors under public control. Thus, virtually all foreign companies in Tanzania must face the fact that one day they may become nationalized, totally or partially. However, this generally does not prevent the foreign companies from making new investments in Tanzania, because they feel confident that in the event of nationalization Tanzania will pay full compensation, so that the invested money will not be wasted.

Criticism of the Parastatals

We have seen that the Arusha Declaration and the subsequent nationalizations have not prevented the foreign companies from wanting to invest in Tanzania and to cooperate with the parastatal corporations through joint ventures and management contracts. Part of the explanation to this lies in the fact that the socialist principles in the Arusha Declaration have as yet only been carried out to a limited extent. The Tanzanian economy is still more of a market economy than a centrally planned economy, and the private profitability criterion (as opposed to the social profitability criterion) has until now been

dominant in economic decisions. The companies with foreign management are largely run according to the wishes of the foreign managers, irrespective of the distribution of ownership. The members on the companies' boards appointed by the parastatal holding corporations tend to be passive and to agree to the proposals made by the foreign managers because they lack managerial and especially technological knowledge. Furthermore and more importantly, the parastatal holding corporations have only to a limited extent elaborated socialist business principles.

Until recently, the initiative for formulating new projects has to a large extent been taken by foreign companies and not by the parastatal holding corporations, although these corporations are supposed to be the dynamic force in the development of the Tanzanian economy. However, it seems that the initiative for economic decisions, especially for investment decisions, has moved recently from the foreign companies to the Tanzanian parastatal corporations and other Tanzanian bodies to a certain degree. In recent years the parastatal corporations have increased their planning staff and thus their capacity for project-formulation considerably. Whereas the primary bottleneck for the expansion of the parastatal sector was previously lack of planning capacity, it is now lack of financial resources.

Another factor influencing the initiative of the parastatals is the severe criticism which has been launched against their performance, particularly the NDC. This criticism has been manifold. The parastatals have been criticized for having low profitability due to bad management and bad project preparation. NDC is also criticized for having traditional capitalist investment criteria, that is, short-term private profitability criteria. These criteria make NDC prefer investments in import substitution industries producing more or less luxury goods (beer, cigarettes, etc.). Instead, NDC ought to have socialist, long-term, social benefit criteria which would lead to investments in production of simple household goods and in basic industries like iron and steel. In the same manner, NDC has also been criticized for preferring large, capital-intensive projects in the cities (Dar es Salaam, Tanga, Arusha, Moshi and Mwanza) instead of small, labour-intensive projects scattered in smaller towns and villages. Some of the criticism launched against the parastatals has directly to do with their cooperation with foreign companies. The parastatals are accused of putting too much emphasis on foreign managers who are said to be running the companies in an authoritarian, capitalist way contrary to the interests of the Tanzanian workers and society as a whole. The terms of the management contracts have been strongly criticized as too generous to the foreign management agents and for not inducing them sufficiently to run the companies in a way beneficial to Tanzania.

NDC has defended itself against some of these criticisms in various ways. It points to the fact that its statute says that the corporation shall be profit-earning and shall largely finance new investments out of its own earnings. Therefore, it is natural that NDC's primary investment criterion is the profitability of the individual project, and the profitability criterion is also a sound one for measuring the efficiency of the running of the parastatal companies. NDC maintains that it pays attention to the economic policies of the Government and also lets social benefit considerations like forward and backward linkages and effects on foreign exchange and employment, influence the choice of investment projects. NDC has declared that it understands the need for social considerations, but that it would be much easier to pay attention to them if the Treasury would pay subsidies to NDC when Government wants it to deviate from the private profitability criterion. NDC also points to the difficulty in supporting labour-intensive projects when Government makes such projects unviable by increasing the minimum wage far beyond the opportunity cost of unskilled labour. NDC admits that many of its subsidiary companies make losses or meagre profits, but maintains that, to a large extent, this is a consequence of factors beyond its control. Government has allocated too few personnel to the parastatals and does not permit them to offer high salaries to attract the most competent people. Government has also allowed wages to rise without permitting corresponding price increases, whereby the profits of the parastatal companies have been squeezed.

Government Control of the Parastatals

As a consequence of the criticism against the parastatals, the Tanzanian Government has taken various steps to ensure that they work efficiently and in accordance with the official development strategy. In 1969, a reorganization of the parastatal sector was made. TTC and NAFCO were split off from NDC, and the parastatal holding corporations were put under the control of the pertinent 'parent' Ministries, NDC under the Ministry of Commerce and Industries, NAFCO under the Ministry of Agriculture and Cooperatives, etc. Recently the parastatals have also been put more closely under the control of the two 'general' Ministries, the Ministry of Finance and the Ministry of Economic Affairs and Development Planning (Devplan), which checks that the parastatal projects are consistent with the development goals of the Government.

In 1972 the Tanzanian Government introduced a new arrangement by which the surpluses from the parastatal companies will be paid into a common fund, which will allocate money to the parastatal companies and holding corporations according to approved investment programmes. In this way, the growing surpluses in the parastatal sector will not automatically be at the disposal of the companies or holding corporations where they originate, but will be channelled into the sectors given highest priority by the Government. Gradually the Tanzanian banking system has assumed an important role in control of the parastatals. The central bank, the Bank of Tanzania, has control over the parastatals' use of foreign exchange, among other ways by managing the import licensing system. The Tanzania Investment Bank, which was established in 1970, will become an important source of long-term finance for new parastatal projects and will control the efficiency with which the parastatal companies use their investment funds. At the same time, the National Bank of Commerce, which gives short-term loans to the parastatal

companies, is increasing its control over their general financial management. The Government has paid special attention to the control of management contracts. In 1971, a revision of existing management contracts took place, and at present all new management contracts must be approved by the Economic Committee of the Cabinet. Tanzania now seeks to make the foreign partner accept a contract which specifies clearly the obligations of the managing agent (e.g., in relation to training of local staff), and which makes the fee dependent on the profitability of the company; this should induce the managing agent to run the company in an efficient way.

As described above, the Tanzanian Government now has a rather strict control of the activities of the parastatal corporations, including their collaboration with foreign companies. Consequently, the Government can make the parastatals act in accordance with its development strategy. One basic weakness, however, is that the development strategy of the Government has until now not been sufficiently precise to give the parastatals clear guidelines for their activities, e.g., clear criteria for investment decisions. For instance, the parastatal corporations are supposed to run at a profit and at the same time to pay attention to social considerations, such as the employment effect of the projects. But often the profitability criterion points in one direction (e.g., towards capital-intensive projects) and the social criterion points in the opposite direction (e.g., towards labour-intensive projects). In such cases there is no clear guideline to the weight to be given to each of the criteria. One method of solving this problem would be to make investment calculations by using shadow values determined by the Government for wages of unskilled workers, interest on capital, foreign exchange, etc. Shadow pricing is known in Tanzania, but it is not used in any consistent way, so investment decisions are still not based on an unambiguous criterion. Recently there has been much discussion of development strategy and investment criteria in Tanzania. The discussion is still going on, but from various statements by Government and by TANU some new trends can be seen. These trends suggest that in future, Tanzania is likely to put more emphasis on overall planning and on development in the rural areas. Development projects are likely to become more directly productive and more labour-intensive than formerly. In the industrial sector priority is likely to be given to processing of local raw materials for local consumption and for exports rather than to import substitution industries using imported inputs. Finally, these trends suggest that future industrial projects are likely to be less heavily concentrated in the cities.

Some experiments in accordance with the above mentioned trends have already been made in Tanzania. Although NDC generally favours capital-intensive projects, some labour-intensive projects have been set up in the industrial sector. One of these is the Chinese-financed Friendship Textile Mill in Dar es Salaam which started production in 1968. The mill was established on the basis of an agreement between the Chinese and Tanzanian Governments, and NDC did not have any influence on the investment decision. NDC was not enthusiastic about the labour-intensity of the project and showed its preference by establishing, at almost the same time, a highly automated textile mill in

Mwanza in partnership with a French company. The two mills have about the same capacity, but the Friendship Textile Mill has much cheaper machinery and employs about twice as many workers as the Mwanza Textile Mill. NDC has also established projects with widely different techniques in the cashewnut processing industry. In a number of ujamaa villages manual processing of cashewnuts is taking place, and at the same time cashewnuts are also processed in capital-intensive factories in Mtwara and Dar es Salaam.

Experiments in decentralization of industrial development have been carried out for some years. These experiments have been made because the majority of industrial plants are located in four to five big towns, with a heavy concentration in Dar es Salaam. In an effort to decrease the concentration in the capital the Government has decided that as many industrial projects as possible will be located in nine 'growth towns', i.e., Arusha, Dodoma, Mbeya, Morogoro, Moshi, Mtwara, Mwanza, Tabora and Tanga. Until now, the decentralization policy has had some success in that, in the last few years, a large number of industrial projects have been located in up-country towns. For a number of joint ventures, both NDC and the foreign partners would have preferred Dar es Salaam, but the Government has decided that they should be located in one of the priority towns.

However, the decentralization policy of the Government has not been completely successful, as there has been a heavy concentration of new industrial projects in three of the priority towns, Arusha, Moshi and Tanga. These towns have a rather well-developed infrastructure and easy access to Kenya, which is an important export market for many industrial products. For a typical consumer article 40-50 per cent of the Tanzanian market is situated in the Dar es Salaam/Morogoro area, 30-40 per cent in the Northern regions and only 10-30 per cent in the rest of the country.[1] This means that for most market-based goods, location in Arusha, Moshi or Tanga is almost as favourable in private profit terms as location in Dar es Salaam and much more favourable than location in the other priority towns, especially Dodoma, Mbeya, Mtwara or Tabora. NDC has had considerable trouble in finding projects which could be located in the priority towns situated at a long distance from the main markets, especially because some of these towns have a very poor infrastructure and no natural resources in the neighbourhood on which to base resource-based industries. This problem could be solved if Government introduced an efficient programme of incentives for decentralization of industrial development, but such a programme has not emerged as yet.

Some of the above mentioned new trends in Government development strategy are not very favourable to private foreign investments. This applies especially to the policies on labour-intensity of production and intensified decentralization of industrial development. Industrial projects using labour-intensive techniques and located outside the four or five biggest towns will, in most cases, not be very profitable to the investors, and, therefore, will not

1 I. C. Parker, "NDC Investment Policy and its Relation to National Industrial Objectives," Economic Research Bureau paper, University of Dar es Salaam, 1970, p. 24.

attract foreign capital. Furthermore, in most caces, the machinery and the managerial and technological know-how they can offer are not well suited to labour-intensive projects. The Tanzanian Government is well aware that the new trends in development strategy, especially if they are also enforced in the sector open to private majority investment, will make it difficult to attract private foreign capital to Tanzania. However, this is consistent with development in recent years in Tanzania's policies on foreign investment. Tanzania believes that reliance on private foreign capital is very expensive and that, in the main, the capital necessary for development can be raised by mobilizing internal resources and by receiving development assistance. At the same time, Tanzania is exploring the possibilities of obtaining the technological and managerial know-how possessed by specialists in the developed countries without accepting private foreign capital.

Provision of Know-How for Industrial Projects

Tanzania is actively looking for alternatives to private foreign investment for her industrial development. In accordance with her policy of self-reliance, she seeks to depend as much as possible on her own forces. This implies a strong emphasis on training local people for all kinds of jobs, including the most responsible ones. Often Tanzanians are placed in top positions, e.g., in the parastatal companies, although they are much less experienced than foreign specialists. In the short run this may lead to poor performance, e.g., to production of goods of low quality, but this is accepted in Tanzania as an inevitable consequence of her long-range policy of self-reliance. In many cases know-how provided by a development assistance agency is used as a substitute for private foreign investment. Thus, Tanzania receives experts for industrial projects from multilateral agencies like the United Nations Industrial Development Organization as well as from a number of development assistance agencies in capitalist and socialist countries. These experts are expected to train local people to replace them on the expiry of their contracts. This system does have its limitations, however, The top people in NDC tend to be uninterested in assistance from the socialist countries, in part because they consider the technologies available in these countries generally inferior to those available in capitalist countries. Another reason is that the socialist countries generally offer their assistance as a package deal including supply of machinery, experts, financing, etc., and some of the components of such packages may be unacceptable to Tanzania.

There are also limitations to Tanzania's possibilities of getting industrial expertise from capitalist countries. According to conventional thinking in these countries, the industrial sector is to be left to private (local or foreign) investors, and therefore they show some hesitation in giving assistance to public sector industries in developing countries. There are also some practical problems in transfer of technology without direct cooperation with a private firm, especially in industries using sophisticated technologies. In such industries the pertinent know-how is most often not vested in one single person but in a group of persons. Thus transfer of technology can only take place through a team whose skills are complementary and who can work well together. It is very difficult for a development assistance agency to recruit such a complete team at the same time, and if it is possible it is a handicap for such a team not to be able to get technical advice, etc.,from a parent company in a developed country. One additional difficulty is that in sophisticated industries technological progress is generally rapid in the developed countries, and a specialist who leaves his company to work in a developing country runs the risk of losing contact with the technological progress. This makes many specialists prefer to stay at home in order to preserve their career opportunities. Yet another difficulty is that the use of sophisticated technologies is often restricted by patents owned by companies in the developed countries. Thus, if Tanzania wants to establish projects in industries where sophisticated technologies are the only efficient technologies available, she is likely to do so in some kind of cooperation with foreign companies, since she has no specialists in these industries herself and possibilities of getting such specialists through development assistance are small.

In some cases export considerations may induce Tanzania to establish an industrial project in partnership with a foreign company, even if the product can be made by simple technologies and therefore can be established in an alternative way. If Tanzania wants to export an industrial product it is important for her to be able to use a well-known trade mark of a foreign company. Normally, foreign companies are not interested in exports from their subsidiaries or joint-ventures in developing countries. But from Tanzania they have duty-free access to Kenya and Uganda because of the East African Common Market. If they have no production in Kenya or in Uganda they may be interested in supplying these markets from Tanzania, and well-known trade marks will facilitate such exports.

Management Contracts

When NDC decides to acquire technology from a foreign company, this most often takes place through a management contract. But because Tanzania has had some bad experiences with management contracts, NDC now considers the terms of such agreements very carefully before concluding them. Particular attention is paid to the way in which the management fee is calculated. It may be a lumpsum, a part of the turnover of the project, a part of the profits of the project or a combination of two or three of these factors. A lumpsum fee has the disadvantage for Tanzania that it does not induce the managing agent to pay regard to productivity. A fee calculated on the basis of the turnover has the disadvantage that it may induce the managing agent to increase turnover regardless of the costs. A fee calculated on the basis of the profits of the project is preferred by Tanzania, but the managing agents maintain, not without justification, that profitability is not a fair criterion for evaluation of their performance, since it is dependent on factors outside their control, e.g., the wage and price policies of the Tanzanian Government. In practice, in most

cases, NDC and the managing agent agree on a fee calculated on the basis of more than one factor, e.g., lumpsum plus a part of the profits. One thing to which NDC pays great attention is the provision for training of Tanzanian personnel in the management contracts. This is clearly a field where the interest of NDC and those of the managing agents tend to clash. NDC wants a quick replacement of foreign managers by Tanzanian staff, and, in most cases, the managing agents are not interested in efficient training of Tanzanians, because this will make themselves superfluous and thus deprive them of the management fees (which are normally quite high).

Although Tanzania thinks that private foreign capital is a very expensive way of financing investments, she accepts it in cases where it is considered crucial for the profitability of a project. Often NDC asks a foreign company to provide both management and a (normally minority) part of the equity, because financial involvement induces the foreign company to provide good management. If the foreign partner has a substantial share of the equity capital, he may even be interested in quick training of Tanzanians in order to replace foreign managers. Such replacement will increase the profits on the equity, since a Tanzanian manager only gets a fraction (e.g., one-third or one-fifth) of the salary of a foreign manager.

A foreign company providing management to a company in Tanzania has various opportunities to run the Tanzanian company in a way which is beneficial to itself and detrimental to Tanzania. It is, of course, the more tempted to do this, the less financial stake it has in the Tanzanian company. One way of doing this is to manipulate transfer prices for deliveries. Deliveries of capital goods, raw materials, services, etc., from the parent company to the Tanzanian company can be sold above the world market price. In the same way, deliveries of goods from the Tanzanian company to the parent company can be sold below the world market price. Even in developed countries the authorities find it difficult to prevent manipulation of transfer prices, because some of the products traded are of a very special kind, and it is, therefore, very difficult to establish their world market price. It is a widespread opinion in Tanzania that such manipulation is common in companies with foreign management, but due to the lack of skilled people, there has until recently been very little control of transfer prices. However, since such manipulation is believed to cause a serious drain of foreign exchange, the Bank of Tanzania has recently taken steps to control transfer prices.

The Tanzanian Government prefers management contracts of a relatively short duration, because this provides the possibility of periodical evaluation of the performance of the managing agents and of getting rid of poor managing agents in a relatively short time. There have been a few cases where Tanzania has declined to renew a management contract, e.g., because of insufficient training of local personnel to replace the foreign managers. There has also been one case where Tanzania has dismissed the foreign managers during the contract period. As this case clearly shows some of the problems connected with management contracts, it deserves to be described in some detail.

In 1965 Tanzania accepted a contract with the Israeli firm Mlonot for the management of Kilimanjaro Hotel in Dar es Salaam. At that time Tanzania had no experience with management contracts, and therefore the contract did not specify very clearly the obligations of the managing agents. The distribution of the profits between Tanzania and Mlonot was calculated in a very complicated way and Mlonot is believed to have manipulated the accounts of the hotel in such a way as to cheat the Tanzanian Government of its share. Due to the manipulations Mlonot allegedly got a very high remuneration for its management of the hotel, although the profitability of the hotel was much lower than expected, in some years even negative. In 1969, Mlonot established another hotel, Africana, near Dar es Salaam. Nobody in Tanzania had expected this, but Mlonot was free to do so, since there was no provision against it in the management contract. Mlonot is believed to have run the two hotels together so as to boost the profitability of Africana, which was wholly owned by Mlonot, at the expense of Kilimanjaro Hotel. Local staff were trained at Kilimanjaro Hotel and removed to Africana after the completion of the training period. Some of the facilities of Kilimanjaro Hotel, like the laundry, were used for Africana, and it does not seem that Africana has paid an adequate fee for these services. Contrary to its promises, Mlonot did not train local staff to take over senior posts in Kilimanjaro Hotel. Furthermore, the workers at Kilimanjaro Hotel often complained of abusive language used against them by the foreign managers. For a long time there was criticism against Mlonot for mismanagement of Kilimanjaro Hotel and against Tanzania Tourist Corporation for not being able to prevent Mlonot's abuses. The criticism reached a peak in 1972, when the matter was aired in the Tanzanian Parliament, and when the workers at Kilimanjaro and Africana staged a strike demanding the dismissal of three top managers at Kilimanjaro whom they accused of abusive language. In October 1972 the discontent with Mlonot led the Government to terminate the management contract before expiry. TTC then recruited top managers from Holland and Denmark on two-year contracts. The managers are supposed to train local staff to replace them at the end of the two-year period. Despite Mlonot's alleged manipulations, the Tanzanian Government has declared that it is prepared to give compensation to Mlonot for Tanzania's unilateral annulment of the management contract. The Government has done this in order to preserve Tanzania's image as a reliable business partner.[2] Because of the problems in connection with management contracts, Tanzania is considering other forms of cooperation with foreign companies. She is considering the possibility of separating managerial and technological know-how so as to use Tanzanian managers assisted by technological assistance contracts with foreign companies. In future, when more Tanzanians have managerial skills, Tanzania is likely to substitute such contracts for management contracts, because they are much cheaper and involve a smaller degree of dependence.

2 The Kilimanjaro Hotel case was documented in the Tanzanian newspapers; among others, *Sunday News*, 20 December 1970, and *Daily News*, 23 June 1972, 5 August 1972, and 6 October 1972.

Financing Investment Projects in Tanzania

As mentioned above, Tanzania is actively looking for alternatives to private foreign capital for financing investment projects. A foreign investor contemplating an investment in a developing country will normally not undertake it unless he is reasonably sure of obtaining an annual after-tax profit of at least 20-25 per cent on his capital investment. Most African countries are eager to attract private foreign capital and are willing to give concessions (tax holidays, tariff protection, etc.), in order to give the foreign investor a profit of 20-25 per cent or even more. Tanzania is not prepared to give a foreign investor more than 15-20 per cent profit on his capital investment in a joint venture with one of the parastatal corporations, except in special cases, e.g., when it is considered necessary to attract a very specific and important technology. In some cases a profit of 15-20 per cent is sufficient to attract private foreign capital, especially if the foreign investor secures important indirect profits. Such profits might result from a favourable management contract, sale of capital goods, raw materials, etc. (possibly at an inflated price). Secondly, the foreign investor may be very eager to maintain his market in Tanzania. The Tanzanian market is a very protected one, so if a foreign investor establishes himself in Tanzania as the only company in his industry, he can be pretty sure of a complete monopoly. If the foreign company decides not to invest in Tanzania, it may lose its market completely if production is established in Tanzania in another way or if the article can be imported from China. This is because Tanzania's import licensing system gives first priority to locally produced goods and second priority to imports from China (in accordance with the agreement on financing of local costs connected with the Chinese-financed railway linking Zambia's copper belt with Dar es Salaam). However, in many cases a profit of 15-20 per cent is not sufficient for a foreign investor, especially if he has the choice of investing in another developing country which offers him a much larger profit and puts fewer restrictions on him. The Tanzanian Government is well aware of this, but it is of the opinion that, generally, Tanzania is better off without private foreign capital if it demands too much. One method used by Tanzania to get capital for development projects is mobilization of her own internal resources combined with an import policy giving priority to imports of capital goods. Since Tanzania introduced her policy of self-reliance in 1967 much has been done in this respect.

Tanzania's First Five Year Plan (1964-69) projected that total Central Government development expenditure (including contributions to the parastatal sector) would be Shs. 2,040 million of which Shs. 1,590 million would be financed by foreign sources and Shs. 450 million by local sources. However, it turned out that Tanzania could not get that much assistance from outside without modifying her foreign policy, and she decided to speed up the mobilization of internal resources. This policy was successful. Out of an actual total expenditure of Shs. 1,533 million, external sources accounted for only Shs. 496 million and local sources for as much as Shs. 1,037 million, which is more than twice the planned level[3] The Second Five Year Plan (1969-74) also put great emphasis on mobilization of internal resources. This policy was successful, and this made very large investments possible especially in the public sector. In 1971 the public sector accounted for about 30 per cent of the Gross National Product in the monetary sector, but for as much as about 75 per cent of the fixed capital formation in the monetary sector. However, it is generally believed in Tanzania that taxation has now reached such a high level that it cannot be pushed much higher. Therefore, Tanzania is very interested in getting foreign Govermental assistance, and it seems that she has much better opportunities of getting this on acceptable terms than before. One of the reasons for this is probably that Tanzania's policy of self-reliance has made a good impression in both socialist and capitalist donor countries. Furthermore, these countries have come to realize that Tanzania is standing firmly on her principles, so that the threat of cutting assistance to Tanzania cannot be used as a means of changing Tanzania's foreign policy. The Tanzanian Government is planning that foreign loans and grants will account for 54 per cent of total development budget expenditure in 1974/75, which is approximately the same percentage as in the four preceding financial years.[4]

Many projects in the parastatal sector are partially financed by foreign development loans. The parastatals get the foreign loans through the Ministry of Finance and Tanzania Investment Bank (TIB), which may add a loan out of its own funds. It is planned that all large projects in the parastatal sector will in future be financed partially by loans from TIB which in this way will gain control of the financial management of the parastatals. At the same time TIB is supposed to act as a connecting link to potential foreign investors, e.g., by disseminating information on investment opportunities in Tanzania abroad. The parastatals normally pay an interest rate on the loans from TIB which varies between seven and nine per cent, depending on how much priority is given to the sector in question by the overall planning. If a project is marginally profitable, but socially desirable, it can obtain a loan from TIB at a rate below seven per cent. Thus a parastatal project which is partially financed by a foreign development loan on 'soft terms', i.e., containing a grant element, does not automatically reap the benefit of this grant element itself; more often the benefit is reaped by the Ministry of Finance and by TIB, i.e., more or less by the Tanzanian society as a whole.

In general, foreign development loans (especially with a large grant element) are a cheaper way of financing parastatal projects than is private foreign capital. However, there are some problems. Most bilateral development loans are tied to purchase of investment goods in the donor country. Various studies[5] suggest that this tying often involves a price mark-up to the detriment

3 John Loxley, "The Finance of Government Spending in Tanzania Since Independence," *Raslimali, Tanzania Investment Outlook*, published by Tanzania Investment Bank, 1972, p. 24-25.

4 Budget Speech presented in Parliament by the Minister of Finance. *Daily News*, 14 June 1974.

5 See, e.g., *Untying Development Finance and Trade Expansion Among Developing Countries*, UNCTAD, TD/B/AC, 10/3/1970.

of the recipient country. One case from Tanzania is very illustrative. In 1968, Tanzania Portland Cement Company decided to undertake an expansion and bought new cement machines from a Danish firm. The machines already in use in the factory were of a German origin, and Tanzania Portland Cement Company was offered additional German machines, at a price about eleven per cent below the price of the Danish machines, which were not considered by the company managers to be better than the German ones. However, since at that time there was a 'soft' (but dried) Danish loan available to Tanzania but no corresponding German one, the Tanzanian Ministry of Finance ordered the Portland Cement Company to buy the Danish machines. Because of the large grant element in the Danish loan this was probably a rational arrangement for Tanzania under the circumstances, but it caused some problems for the cement company. The company would have preferred to buy the German machines, not only because they were cheaper, but also because purchase of new machines identical to the old ones would have considerably reduced the problems of training of workers and especially of keeping spare parts.

Many projects in the parastatal sector are financed by loans from both external and internal sources in order to limit expensive financing by private foreign capital and to secure majority equity holding by Tanzania. Whereas conventional economic wisdom suggests that the ratio between loan capital and equity capital should not exceed 1:1 for any project, some of NDC's subsidiary companies have a ratio of 5:1 or 6:1, and this may create problems. If a project has a very high debt/equity ratio, the calculated per cent return on the equity capital may be extremely high, but if the performance of the project turns out to be a little bit less favourable than projected, a large per cent profit may turn into a large per cent loss. Thus, heavy reliance on loan capital makes it difficult to predict the profits of the parastatal companies and thereby causes difficulties for the planning of both the parastatal companies and the holding corporations. A heavy debt burden is especially harmful to the liquidity of a project in its first years, when it is running at a loss or at a marginal profit. Whereas dividends on shares normally depend on the profit of the project and are not declared until the project is well consolidated, servicing of loans is a fixed amount and starts at the beginning of the life of the project (unless a grace period is granted). Supplier's credits are especially dangerous because they are normally of a very short-term nature and have high interest rates. In some cases the parastatal holding corporations have relied heavily on supplier's credits for financing new projects, and this has been criticized because it only solves the problem of financing projects in the short run.

Despite the problems relating to financing of projects by loan capital, Tanzania generally prefers foreign development loans to private foreign equity capital for the financing of new projects in the parastatal sector. The main reason for this is that development loans are cheaper, even allowing for the fact that tying reduces the grant element, corresponding to an estimated increase in the interest rate by a few per cent. Development loans most often have interest rates in the range of 0 to 6 per cent, whereas private foreign capital can normally only be attracted if the expected return is about 20 per cent or more.

Although private foreign capital is considered expensive, Tanzania in some cases accepts it for parastatal projects, e.g., in order to induce the foreign partner to provide good management. In almost all cases the parastatal holding corporation prefers to have a majority holding, e.g., 60 per cent of the shares, in order to have nominal control of the company. However, the real control is most often vested in the managing agent, because he has the know-how, and is running the day-to-day business of the company. In cases where the foreign managing agent supplies machinery to a parastatal project, Tanzania may want the managing agent to take a substantial share of the equity in order to be protected against supply of inferior machinery. That Tanzania's search for substitutes for foreign capital has been successful can be seen from the investment expenditure of Shs. 6.6 million, only Shs. 5 million will be contributed by private foreign investment, whereas foreign assistance will amount to Shs. 396 million, and borrowing from various foreign sources will be Shs. 29 million.

Wage Policies

Until 1967 urban wages increased very rapidly, and therefore the gap in living standards between the urban population and the rural population widened. Especially after the expansion of the public sector in 1967, this situation was considered unacceptable, and the Government introduced a national wage policy. By this policy a Permanent Labour Tribunal was established with the aim of checking wage increases. All wage agreements between employers and trade unions must be approved by the Permanent Labour Tribunal before coming into force. The national wage policy stipulated that wage increases cannot exceed five per cent per year and shall only be given if improvements in productivity are taking place. In the first years of its existence this policy proved successful in that wages increased considerably less than in previous years. However, in the last 2-3 years the cost of living has increased very rapidly in Tanzania, especially in the urban areas. This has made it impossible to restrict wage increases to the limits set by the national wage policy. The interpretation of the five per cent rule has gradually changed, and at this moment the most common interpretation is that all workers are entitled to a five per cent yearly wage increase and those whose productivity has risen considerably are entitled to more. The wage restrictions have led to dissatisfaction in parts of the trade union movement, NUTA. However, NUTA officially endorses the national wage policy and also accepts that the Government controls all of its activities, e.g., by appointing its secretary general (normally the Minister of Labour is appointed to hold this post also). NUTA is not very active, but the demands of the workers have a certain influence in Tanzania politics, since a number of influential TANU and Government leaders support them. Thus, in 1972 and 1974 the Government decreed increases in the minimum wage. By this the minimum monthly wage for urban workers increased from Shs. 180/- to 340/-.

The increase in the urban minimum wage has been criticized for not being consistent with the development strategy of the Government because it widens the gap between the urban and the rural population, and because it makes labour-intensive production less profitable. However, use of labour-intensive techniques in the urban areas is still possible in the public sector, but the minimum wage increase makes this even more dependent on application of social investment criteria than before. In addition, the minimum wage increase has not affected possibilities of establishing labour-intensive production in ujamaa villages, like the afore-mentioned manual cashewnut processing. Persons working collectively are considered as self-employed and not as wage earners and can, therefore, work at an income below the statutory minimum wage.

There is one more sector which is not directly affected by the increase in the statutory minimum wage. A large number of small, locally owned enterprises, generally labour-intensive, pay wages considerably below the statutory minimum wage. They can do so because unemployment makes many people accept a low wage, because it is difficult for the authorities and for NUTA to check that they pay the statutory minimum wage, and probably also because everyone knows that an enforcement of the minimum wage regulation would invariably reduce employment in this sector.

The wage increases which have taken place in the last ten years in Tanzania have not caused much trouble to most of the foreign companies. Generally, these are rather capital-intensive, and wages and salaries form only a small fraction of total costs. This is especially true if one deducts salaries of expatriate staff, which are not affected by changes in the Tanzanian labour market and which may amount to more than one half of the total wage and salary bill. Therefore, even a substantial increase in local wages and salaries does not add much to total costs.

Labour Relations

Many Tanzanian workers have lost confidence in NUTA because of its poor record in fighting for higher wages for the workers. In order to regain the confidence of the workers NUTA has intensified its efforts to fight for the interests of the workers in other fields. One of these fields is the training of Tanzanians to replace expatriates in leading positions in companies with foreign management. Due to the rising educational level in Tanzania and to the pressure from the Government and NUTA, most companies with foreign management have speeded up their training and replacement programmes considerably in the last few years. In order to encourage this, in 1972 the Government introduced a training levy on companies employing non-citizens. These companies have to pay a levy corresponding to 10 per cent of the wages and salaries paid to non-citizens, unless they can prove that they have a satisfactory training and replacement programme. Despite these endeavours by the Government, some companies have done little to train Tanzanians to replace expatriates. This may be because the foreign managers do not think that Tanzanians are able to work satisfactorily in leading positions, or because they are afraid of losing the real control of the company, or because they want to make themselves indispensable in order to force Tanzania to renew a lucrative management contract with them. Because of the complexities of the problems relating to training and replacement it is often impossible for outside bodies to check that a serious training and replacement programme exists in the companies with foreign management. Therefore, it is natural that the NUTA branches as well as the TANU branches in these companies are active in this field. NUTA pressure for rapid Tanzanianization is welcomed by the workers. Only a few of them can benefit directly from training and promotion, but most of them have a strong preference for Tanzanian managers. The reason for this is that they think that many foreign managers still have colonialist ideas and show their disrespect for the human dignity of the Tanzanian workers.

In the last few years the self-respect of the Tanzanian workers has increased considerably, and this has led to a number of strikes in companies with foreign management. It is interesting to note that in most cases the main reason for the strikes has not been wage demands. The most common reasons have been complaints by the workers that the foreign managers show disrespect to them by not training them to replace expatriates and by using abusive language towards them. In some cases the workers have demanded that one or more of the managers be dismissed, or even that the company be completely nationalized by the Government. In such cases of spontaneous strikes, NUTA has been in an awkward position, because it is at the same time supposed to fight for the interests of the workers and to cooperate with the management in maintaining peaceful industrial relations and discipline among the workers. Because of NUTA's ambiguous position the workers have preferred not to rely on NUTA and to organize the strikes themselves, and often the strikes have taken the NUTA branch leaders by surprise. Like NUTA, the Government has taken an ambiguous attitude to the strikes. In some cases the Government has complied with the demands of the workers. However, in other cases the Government has taken actions against the workers, e.g. by ordering dismissal of the strike leaders.

Taxation of Foreign Companies and Remittance of Profits

In Tanzania all companies pay a corporate income tax of 45 per cent on net profits. In addition, companies pay a 'withholding tax' of 15 per cent on profits remitted to foreign countries and 20 per cent on management and licence fees. The withholding tax may have a slight effect on the re-investment rate and on the use of management and licence contracts, but its main purpose is to tax payments to companies in foreign countries. A large number of products are subject to price control in Tanzania and for some companies price control has caused squeezing of profits, because selling prices have not been allowed to rise proportionally to the rise in wages and in prices of raw materials. For some goods with a high income elasticity and a low price elasticity, such as cigarettes and beer, the Government has increased the sales tax and not allowed selling

prices to increase or allowed them to increase by only a fraction of the increase in the sales tax. In such cases the increase in sales tax has been wholly or partly absorbed into profits. This is a way of taxing selected companies which produce goods with a rapidly increasing demand and which therefore have rapidly growing profits. As most of the companies affected by the increase in sales tax have foreign capital participation, this policy can also be seen as a device to tax foreign companies earning large profits in Tanzania.

Unlike many other developing countries, Tanzania does not offer tax holidays to foreign companies in order to attract foreign investments. Tanzania needs all the tax revenue she can get and a tax holiday would probably be totally inefficient in attracting hesitant investors to Tanzania. Conservative businessmen consider investments in Tanzania insecure because of the socialist policies of the Government. Their hesitation is not likely to be counter-balanced by a tax holiday which only has importance if the investment is profitable. Indeed, Tanzania offers few incentives to investors apart from protection against competition from foreign countries. One of the incentives offered is that companies in certain industries can import most of their inputs without paying customs duties. Another is a capital allowance of normally 20 per cent on fixed investments; this allowance implies that fixed investments can be written off at a rate of 120 per cent of the investment expenditure. The capital allowance has been criticized on the grounds that it gives the investor a premium on capital investment and therefore encourages capital-intensive production. It has been proposed to change it into a kind of labour allowance which should encourage labour-intensive production. But a labour allowance entails many practical problems and it has not been introduced as yet.

Some years ago, when Tanzania's foreign exchange reserves began to decline seriously, restrictions on remittance of profits were introduced. Foreign companies were only allowed to repatriate an annual amount corresponding to 20 per cent of their total capital investment in Tanzania. In 1972, when Tanzania's reserves had declined even more seriously, tighter restrictions were introduced. In February 1972, the Government decided that remittance of profits should be temporarily postponed. In the summer of the same year the Specified Companies Act was passed. This act gives the Minister for Finance power to regulate levels of dividends and uses of cash flows of companies and corporations. The act affects a number of companies and corporations (so-called 'specified companies') selected by the Minister for Finance. One of the criteria for the selection of companies is the absolute size of their profits. The specified companies cannot in any one year declare dividends which make their net worth drop below 115 per cent of their paid-up capital. In addition, their dividends cannot in any one year exceed the larger amount of (a) the average of their annual profits in the preceding three years, or (b) 80 per cent of the profits in the preceding year. The Minister for Finance can limit the dividends of any specified company even further if he considers this to be in the national interest. The specified companies are also required to submit their annual cash flow budget to the Minister for Finance, and he can require the specified companies to invest money in Government securities. Many of the specified companies are completely or partially owned by foreign investors, and any new foreign investments in Tanzania may be placed under this act. It is almost certain that this act will discourage some potential foreign investors from investing in Tanzania. One of the most important concerns of a foreign investor is to have a large degree of freedom to remit profits, and the power given to the Minister for Finance by this act is especially annoying to foreign investors since it is, in principle, unlimited. The Tanzanian Government is well aware of this, but it considers the act necessary for the Government control of the economy. Its basic principle is that if foreign investors cannot adapt themselves to the regulations considered necessary by Tanzania, she is better off without their investments.

The tightening of restrictions on remittance of profits has made it even more tempting to the foreign companies to manipulate transfer prices for deliveries between the parent companies and the subsidiaries in Tanzania to shift profits from Tanzania to the home countries of the parent companies. In this way, a foreign company can make the Tanzanian restrictions on remittance of profits ineffective; and if the corporate income tax in the home country is lower than the Tanzanian tax (including the withholding tax), then the foreign company also gets a tax reduction by this manipulation. Companies and individuals can also export capital from Tanzania illegally by collusion with a foreign business partner. They can sell goods from Tanzania to their foreign partner and receive, e.g., 90 per cent of the amount in Tanzania and 10 per cent in an account in a foreign country. A similar manipulation can be made when goods are imported into Tanzania. The importing companies and individuals can pay, e.g., 110 per cent of the agreed amount, and receive the balance of 10 per cent from their partner on an account in a foreign country. It is a general opinion in Tanzania that such manipulations are common with both locally owned and foreign owned companies. Because the manipulations are considered to cause a serious drain on Tanzania's foreign reserves, the Bank of Tanzania is taking steps to cope with them. With effect from 1st November 1972, the Swiss General Superintendence Company has been employed to conduct inspection of shipments of goods to Tanzania in order to check that qualities, quantities and prices are correct. In this way the Bank of Tanzania hopes to eliminate that part of illegal capital exports from Tanzania which takes place by overinvoicing of imports. If the control of transfer prices is efficient, it will be a hard blow to those companies which manipulate transfer prices in order to evade taxes and restrictions on repatriation of profits. There may be some investors who are willing to accept restrictions on remittance of declared dividends because they feel confident that they can remit an additional amount through manipulated transfer prices. Such people will be discouraged from investing in Tanzania by this new move. But this step is one more indication that Tanzania is not making any effort to create a 'favourable investment climate'. On the contrary, she is determined to make foreign investors comply with her aspirations; and if they are not willing to do this, she is determined to achieve development without their cooperation.

Prospects for International Protection of Human Rights in Africa

OSITA C. EZE*

INTRODUCTION

We have come a long way from the Bill of Rights[1] and the Declaration of the Rights of Man and of the Citizen.[2] Both instruments, dating from the end of the eighteenth century, had as their main objectives the guaranteeing and protection of human rights and freedoms. It was natural that in an age when inter-State intercourse was by present-day standards limited, and opportunity did not arise for the creation of universally acceptable mores on the question of human rights, it was left to the States concerned to achieve within their respective spheres a medium of protection for human rights. The scourge of the two World Wars, epitomized as they were by Nazi atrocities, the emergence of progressive forces, and the attainment of independence by States hitherto under colonial yoke, have added greater impetus to the realization that the world can no longer tolerate, without question, the unjustified and unwarranted abrogation or erosion of human rights.

Prior to the twentieth century there had been attempts to deal with the protection of human rights at the international level. Thus as early as the nineteenth century slavery was prohibited.[3] By the early twentieth century

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1 The Bill of Rights, a result of the American War of Independence which erupted in 1775, was only embodied in the Constitution in 1791. It provided *inter alia* for the freedom of religion, of speech and of assembly. Other provisions worth mentioning are those which provide that no individual shall be deprived of life, liberty and property without due process, and that which forbids slavery and involuntary servitude.

2 The *Declaration des droit de l'homme et du citoyen* was drafted at the upsurge of the French Revolution at the initiative of the French Third Estate. It was an attempt by the bourgeois class to destroy the feudal institutions of the *ancien régime* which had imposed unbearable limitations on the rights of the citizens. It enumerates rights akin to those of the American Bill of Rights which must have served as a model to its draftsmen. For the text of the Declaration see G. Ezejiofor, *Protection of Human Rights under the Law* (London: Butterworths, 1964), Appendix II. Cf. the English *Magna Carta* of 1215 which was intended to protect the rights oi the "freeman" who at that time was meant to include the barons and the nobles of the realm.

3 By 1815 the Declaration of Vienna Conference prohibited trade in Negro slaves. In 1841 an international convention was signed on the suppression of the slave trade. See J. Halasz, ed., *Socialist Concept of Human Rights* (Budapest, 1966), p. 268. The 1841 Convention signed at the initiative of Great Britain was mainly motivated by British economic interests. The prospect of negro slaves working on cotton plantations posed a threat to British cotton produced in her colonies. Humanitarian considerations were therefore incidental rather than the motivating factor behind the Convention.