

FINANCIAL ACCOUNTABILITY OF PUBLIC CORPORATIONS IN A LIBERALISED ECONOMY: THE CASE OF AUDITING IN TANZANIA

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Abstract: For more than three decades since 1967 the role of public corporations in the Tanzania economy was dominant. However, their poor financial management and loss-making character could not be underestimated either, particularly by the tax payer who was ultimately responsible for sustaining them. For instance, in the year which ended in June, 1991, a year before public corporations were lined up for privatization, the aggregate losses accumulated by the loss making institutions exceeded the aggregate profits realised by the profit making enterprises by Tanzania shillings 4,616 million.¹ In an economy dominated by the public sector, surplus from this sector was expected to be the major source of public finance and the determinant factor in the growth of the economy. Unfortunately, its performance defied this expectation presumably due to poor financial accountability. Financial accountability in public corporations was and still is, one of the mandatory requirements. In this context legislators have always made it mandatory for public corporations to have their accounts audited annually and cause the same to be submitted to a minister who, in turn, lays them before the National Assembly, the peoples' representative organ, for final scrutiny and verification. In order to facilitate the audit function the public corporations are also required to keep and maintain proper books of accounts. All these requirements are taken in order to ensure that public money is properly expended and accounted for.

INTRODUCTION

In order to make financial accountability meaningful and successful the services of an auditor cannot be dispensed with. His indispensability lies in the powers, actual or potential, which he wields in controlling and monitoring financial expenditure be it in public or private enterprises. For instance, it is rightly submitted by Makanda and Johnson that:

Financial accountability is the obligation of one party to report on the use of funds entrusted to it by another party. In the public sector, governments have a duty to account, to their citizens for the public funds they manage... through audited accounts.... Lack of accountability leads to inefficiencies, corruption and disillusionment²

In the light of this background this article takes stock of and examines the role of audit, based on past experiences, in the monitoring,

controlling and correcting the pattern of expenditure in public corporations now operating in a liberalised economy. It is hypothesized firstly, that accountability of public funds by public corporations is meaningful only if public corporations succeed to have their accounts audited annually by a competent and reputable auditor. Secondly, that a mechanism should be devised for enforcing the remedial measures recommended by the auditor including taking to task all those who flout the financial regulations regardless of their face or status. Short of that audit will remain a costly but useless exercise before the public.

FUNCTIONS AND REQUIREMENTS OF AUDIT

Audit, like any good policeman, performs both an apprehending and a correcting function. It does so by verifying that the accounting system works in consonance with

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¹ Tanzania Audit Corporation, 23rd Annual Report and Accounts for the Year ended 30th June 1991: 10. loss making trend is also reflected in the previous Reports of the Corporation.

² Makanda, J. and Johnson S. "Financial Accountability as a Prerequisite for a Whole New Year" *The Accountant* Vol. 9 No2 June 1997: 3

the prescribed rules and, in the process, points out practices that deviate from acceptable accounting principles and procedures. Generally, it embraces both the detection of irregularities and the implementation of accounting mechanisms that will eliminate such irregularities in future, hence, bailing off institutions from the risk of liquidation due to financial malpractices. Sometimes audit takes the form of investigation of facts but in all cases the guilty as well as the innocent are exposed. In criminal scenes, offences are, naturally, detected and exposed and where appropriate culprits are arrested and prosecuted according to the relevant penal provisions.³ Audited financial statements do also inform the owners and the public how their enterprise is performing. Moreover, the statements are central to planning and control needed by and essential to both managerial decision makers and outsiders - owners, creditors, investors, the government and the public.⁴

For countries pursuing economic reforms like Tanzania, audit is an essential lubricant for a well functioning market economy as it lowers transaction costs and reduces misuse of funds and theft.⁵ Consequently, they have been advised to ensure that:

Reform programs should be linked to the building of capacity in economic and financial management, including accounting and auditing.... Without investing in monitoring institutions such as the Auditor General's Office and Public Accounts Committee, financial accountability is not sustainable.⁶

Of late statutes have been enacted which make public corporations operating in the style of

regulatory agencies to be audited by the Controller and Auditor General or any other competent auditor appointed for that purpose by the Controller and Auditor General.⁷ This is also true of banking and financial institutions established under the Banking and Financial Institutions Act 1991 whose provisions are drafted to ensure that funds channeled in those institutions are audited by qualified, competent and reputed auditors. Further and more important, the law establishing and defining the powers of the Controller and Auditor General has been seriously revised by repealing the Exchequer and Auditor Ordinance, Cap 439 and replacing it with the Public Finance Act, 2001, No. 6/2001.

Meanwhile, a common feature in the legislation establishing public corporations is the express requirement for maintenance of accounts and other relevant financial records by public corporations.⁸ Such accounts should be audited annually by qualified auditors before they are submitted to the Minister. The Minister then presents them before the National Assembly.¹⁰ Previously, the audited accounts had to be accompanied by an annual report of the corporations' activities.¹¹ In brief this is what is meant by financial accountability by public corporations. Through audit Members of Parliament are placed in a position to know how public funds in public corporations are expended. Audit therefore, assists the legislators as custodians of public funds to decide whether or not to vote for their future funds.

⁷ See Bill for the establishment of the Surface and Marine Transport Regulatory Authority, Bill Supplement No 2

⁸ See sections 15 and 47 of the Public Corporations Act, 1992 as amended in 1993.

⁹ See for example section 20 and 17 of the Pyrethrum Act, 1997 and the Sisal Industry Act, 1997 No. 2/1997 respectively.

¹⁰ See section 134 (B) (1) of the Companies Ordinance, Cap 212 as amended by the Written Laws (Miscellaneous Amendments) Act, 1981, No. 22/1981. Legislation enacted after liberalisation of the economy do not expressly provide for this requirement.

³ See the various provisions in the Penal Code, Cap 16 e.g. Section 284 (A).

⁴ H.P.B. Moshi, "Financial performance of Public Corporations: A Case of District Development Corporations" *UTAFITI* Vol V No. 1 (1980): 11

⁵ Makanda, J. and Johson, S. *op. cit* p. 14.

⁶ *Ibid*, p 14

But in order to be effective, audit is also supposed to conform to the best commercial and or professional standards imposed by Accountants and Auditors established under the Auditors and Accountants (Registration) Act 1972. In upholding these tenets, audit as mentioned before, seeks to combat prevalent mischiefs which, if not corrected in time would constitute an affront to the corporation's financial disposition. However, audit requirements have varied with time depending partly on the mischiefs being addressed. For the sake of not being ahistorical we shall approach this subject in its historical context beginning with the colonial era where audit of public corporations was, for the first time, given space in the statute books.

AUDIT DURING COLONIAL PERIOD

Public corporations in Tanzania trace their origin to the 1930s when the British colonial government began to incorporate them in the various sectors of the economy. In the transport sector public corporations began to emerge in 1932 when the Highway Ordinance¹¹ established them in form of boards. Sections 4 and 6 (1) of this Ordinance empowered the Governor to establish Provincial and Area Road Boards respectively. The Boards as juridical persons operated on funds paid out of the revenue of the Territory. Except for provisions explaining how the estimates of the Boards would be prepared, the Ordinance was totally silent on who, when and how the accounts of the Boards would be audited. The Ordinance also fell short of mentioning the office to which the audited accounts would be submitted. Thus, it is not pretentious to assert that this Ordinance took matters relating to audit very casually.

In the agricultural sector public corporations began to emerge in the form of boards as well in the year 1937, after the passage of the *Sisal*

Board Ordinance.¹² The Board which was established by section 4 as a legal entity, enjoyed a territorial jurisdiction. Its funds included such public monies as were placed at its disposal by vote of the Legislative Council. Although its funds were voted by the legislature the accountability for the funds was placed elsewhere. But unlike the *Highway Ordinance*, the *Sisal Board Ordinance* was better drafted in as far as audit requirements were concerned. Section 6 of the latter Ordinance stipulated that the accounts of the Board shall be audited and published in such manner as the Governor may from time to time direct. Yet, like the previous legislation, the *Sisal Board Ordinance* also left several questions unanswered - who was to appoint the auditors, to which authority was the auditor's Report to be submitted and which form should the auditor's report take? It appears that the Legislature was precluded from reviewing the Board's audited accounts otherwise the law would have explicitly stated so. As to publication of the auditor's report it is most likely that the Governor published it in the Government Gazettee, as part of the Government's Financial Annual Reports.

Another body corporate enjoying similar audit provisions was the Tea Board established under the *Tea Industry Ordinance*.¹³ Like the Sisal Board, the Tea Board's accounts were audited and published in such manner as the Governor would from time to time direct.

Inspired by later developments, and in an attempt to tighten control on the coffee industry, the Native Coffee Boards established by the Native Coffee (Control and Marketing) Ordinance 1937¹⁴ were, by a stroke of an amendment effected in 1946 consolidated into a single territorial body corporate.¹⁵ In spite of the amendment the accounts of the newly

¹² Ordinance No. 19/1937

¹³ Ordinance No. 26/1938

¹⁴ Ordinance No. 26/1937

¹⁵ See Native Coffee (Control and Marketing) Ordinance, 1946

¹¹ Cap. 67

established pan-territorial Coffee Board continued to be audited in conformity with the provisions of the 1937 Ordinance, that is, audited in such manner as the Governor may prescribe. Apparently, publication of the audited accounts was also not necessary. Be it as it may, the questions previously raised in respect of the Sisal Board are equally valid here.

This brief exposition leads to several conclusions. Firstly, audit at this particular point in time did not look like a serious weapon to reckon with in the control of public funds in public corporations. *De jure*, it appears that public corporations were accountable to no one. The statutes discussed simply gave the Governor the mandate to order auditing but hardly specified the authority to whom the audited accounts would be submitted. Secondly, accountability of public funds, if at all there was any, was made elsewhere other than the Tanganyika Legislature in spite of the Legislature's role in voting for the funds. Thirdly, it appears that publication of audited accounts was deemed inconsequential.

The rationale for this apparent laxity is not far-fetched. During the period under discussion colonialists attached the least interest in public corporations, thus, assigning them a minimal role to play in the growth of the colonial economy. Numerically, they were few and confined mainly in the agricultural sector. Although statutes required the Boards to promote interests relating to the industry in question, there is little evidence to suggest that the Boards responded to this call. In the agricultural sector success of cash crop production on native farms would have deprived settlers' plantations of labour. The conflict between the Kilimanjaro Native Cooperative Union and the white settler coffee producers in the late 1930s clearly stands out as testimony to this contention.¹⁶ In this context it is cogent

to argue that during this period public corporations were just an after-thought.

THE NEW IMPETUS

In Britain as well as in colonies the period subsequent to the Second World War witnessed a change in policy towards public corporations. In Britain the Colonial Development Corporation (CDC) was established in 1948 on the pretext of promoting growth and welfare of the colonies whereas, in fact, it aimed at increasing African production of vegetable oils for the benefit of British consumers and providing larger markets for British manufacturers in the colonies.¹⁷ By its constitution, the CDC was conceived as a holding corporation with the mandate to finance subsidiary companies in colonies established in collaboration with private entrepreneurs. Naturally, the desire to establish public corporations in colonies was rejuvenated in order to reciprocate to what was then taking place in the metropole. As a result, the statutory provisions dealing with public funds in public corporations were given a face-lift.

An outstanding legislation which came in the wake of the incorporation of the CDC was the *African Agricultural Products (Control and Marketing) Ordinance, 1949*.¹⁸ The Ordinance empowered the Governor to establish Boards in any part of the territory in which a specified agricultural product was grown and marketed. Boards so established were deemed corporate bodies. Provisions on financial control by audit were adequately spelt out in the Ordinance. Section 13 of the Ordinance directed every Board to keep proper books of accounts and other books and records and prepare in respect of each financial year a statement of accounts showing the assets and liabilities, revenue and

¹⁶ See Shivji, I.G. *Law State and the Working Class in Tanzania*. Dar es Salaam, Tanzania Publishing House, 1986

¹⁷ Pozen, R.C. "Public Corporations in Ghana: A Case Study of Legal Importation" *Wisconsin Law Review*, 802 p. 811.

¹⁸ Ordinance No.57/1949, Cap. 284

expenditure of the Board. The accounts were to be audited by an auditor appointed annually by the Board and approved by the Governor. As soon as the accounts were audited, the Board was required to send a copy of the statement to the Minister of Agriculture and National Resources and to the Director of Audit. Tabling of the statement before the Legislature was dispensed with, supposedly, on the grounds that the Minister and the Director of Audit were administratively better placed to discipline the Board if the statement disclosed any financial discrepancies.

Another post World War II legislation was the *Lint and Seed Marketing Ordinance 1952*.¹⁹ The Ordinance established two types of body corporates, the Lint and Seed Marketing Board which enjoyed territorial jurisdiction and the Provincial Cotton Committees whose jurisdiction was confined to the provinces of their establishment, namely, the Lake and Eastern Provinces. As to the scope of financial accountability, this was the most comprehensive legislation ever enacted by the colonial Legislature.

The Board was, required by section 14 of the Ordinance to prepare its accounts up to 30th June of each year and to have them audited by an auditor appointed annually by the Board and approved by the Governor. A copy of the audited accounts was supposed to be laid before the Legislative Council together with a copy of the audited accounts for such year of each Provincial Cotton Committee. The Board was, soon after 30th June of each year, required to prepare a report of its operations during the year ready for transmission to the Legislature. This Ordinance, for the first time granted the Legislature an opportunity to examine and verify the expenditure and investment of finances by public corporations.

The decision to tighten supervision of funds

in public corporations after World War II should be viewed in the light of the then battered economy in Western Europe. The recovery of the economy in the metropole depended heavily on how agriculture excelled in the colonies. Therefore the solution lay partly in recharging the provisions on audit especially in public corporations entrusted with the task of handling products which were in great demand in Europe. Nevertheless, the revitalised accountability of the Board's funds to the Legislature in this Ordinance should not be discussed in isolation of the re-organisation of the accounting system in British colonies generally. The re-organisation is recounted by the Minister for Finance thus:

As is generally known, in 1948 the Secretary of State put forward certain proposals for financial devolution of some of his financial powers. These proposals were accepted in 1950 and Colonial Regulations were in their application to Tanganyika modified accordingly in 1952. Until devolution took place the position was that the Director of Audit here in Tanganyika reported on the financial accounts of the Territory direct to the Director General of Colonial Audit.... The Director General of Colonial Audit then certified the accounts and reported on them to the Secretary of State. It follows as a corollary to devolution, that the Director of Audit here should himself verify the accounts and logically report on them to the authority on whom powers have devolved - that is to say the Legislature.²⁰

This exposition is very vital for several reasons. First, besides answering the questions raised earlier it also highlights the accounting system then in force. It is now clear that prior to 1952, the accountability of the Territory's funds was made to the Secretary of State in Britain in spite of the Tanganyika Legislature's purport to vote for them. And, as long as government departments were not statutorily accountable to the Legislative Council, the omission of

¹⁹ Ordinance No. 11/1952.

²⁰ Tanganyika: Proceedings of the Legislative Council, 1956/1957, Second Volume, p. 983

similar provisions in the statutes establishing public corporations was therefore not an accident. The corporations were required to transmit their audited accounts to the Director of Audit who in turn, consolidated them with those of ministries before submitting them to the Director General of Colonial Audit for onward transmission to the Secretary of State.

The enactment of the Audit Ordinance in 1957²¹ had yet another impact. Apart from establishing the office of the Director of Audit in Tanganyika and directing all Government departments' expenditure to be brought before the Legislative Council, the Ordinance also placed all public corporations under the jurisdiction of the Director of Audit. The Director was, when required so to do, to audit the accounts of any statutory corporation which was in receipt of a contribution from the public revenue.²² Provisions of this nature were probably reserved for sensitive corporations like the Lint and Seed Marketing Board if they failed to produce their audited accounts in conformity with the provisions of the statutes establishing them.

The effectiveness of the audit measures introduced after 1945 are not easy to assess as the Director's financial annual reports did not disclose separate accounts for public corporations and government departments. Apparently, the public corporations' accounts were lumped together with those of their parent ministries thus causing the accounts of the corporations to lose identity. Be it as it may, the conclusion that auditing during colonial period portrayed both dormant and active role is not unfounded. It was dormant in so far as provisions on audit in the pre-1945 legislation were inadequate and incomprehensive. It was active from mid 1940s when audit turned inward, with public corporations being made answerable to the Legislative Council through

the unequivocal provisions of the law. But in the absence of separate audit annual reports for public corporations any attempt to appraise the newly introduced audit measures remains a futile exercise. Yet, the foundation upon which audit would in future grow and consolidate itself as an effective weapon of financial control in public corporations was laid down.

AUDIT REQUIREMENTS: 1961-1967

The post-independence period witnessed the establishment of public corporations in the other sectors of the economy. In the industrial sector the Tanganyika Development Corporation, later reconstituted into the National Development Corporation (NDC) was established.²³ Others were incorporated in the mining, tourist, commercial, construction and service sectors. Admittedly, it is a futile exercise to try to enlist all the public corporations incorporated during this period. Suffice it to say that by the end of 1967, a year of the massive nationalization carried out in the heat of the Arusha Declaration, the total number of public corporations had risen to 64 with an investment capital amounting to Shs.398.8 million.²⁴ The funds ear-marked for investment in these corporations called for frugal expenditure as well as sound financial management, supervision and accountability. That could not be achieved without stringent audit provisions.

In the NDC Act, 1964, financial accountability was covered by section 10. NDC was directed to keep proper accounts and other records in relation thereto, and prepare in respect of each financial year a statement of accounts showing in all necessary details, the assets and liabilities, revenue and expenditure. The accounts were to be audited by an auditor appointed annually by the

²³ See the Tanganyika Development Corporation Act, 1962, Act no.201962 as amended by the Tanganyika Development Corporation (Amendment) Act, 1964, No. 69/1964.

²⁴ United Republic of Tanzania, Five Year Development Plan, 1969-1974

²¹ Cap. 384

²² See Section 12

Minister, and the Minister was, within six months or such longer period as the National Assembly may by resolution appoint after the end of the financial year, lay a copy of the audited financial statement together with the auditor's report before the National Assembly. NDC, and not the auditors was responsible for furnishing the Minister with the audited accounts.²⁵ It is our humble submission that this responsibility should have remained with the auditors instead of NDC to avoid undue delay by NDC in submitting the accounts to the Minister.

Public Corporations established after the incorporation of NDC were in addition to preparation of the financial statements compelled to present them in such forms as the Minister may direct.²⁶ The forms were required to conform with the best commercial standards.

Further, NDC was required to prepare and submit to the Minister a full report on the conduct of the corporation's business during the year and a copy of the same was to be tabled before the National Assembly.²⁷ This formed yet another avenue for the National Assembly to measure the competence of the Corporation's management in general. Other public corporations whose auditors were appointed by the Minister included the National Housing Corporation,²⁸ Tanganyika National Tourist Board²⁹ and the National Sports Council,³⁰ to mention just a few.

The National Agricultural Products Board and every other Board established under the

Agricultural Products (Control and Marketing) Act 1962,³¹ exhibited another formula of appointing auditors. Their auditors were appointed from time to time by the Boards with the approval of the Minister.³² The Sisal Marketing Board³³ and the Nyamwezi Creameries Board³⁴ had similar provisions. Auditors of the National Museum,³⁵ the Governing Board of the College of African Wildlife Management³⁶ were directly appointed by the Boards without ministerial consent.

Unlike other public corporations, the National Bank of Commerce³⁷ and the State Trading Corporation³⁸ were audited by auditors of high repute appointed by the Minister. The Bank was directed to prepare a balance sheet showing in detail the assets and liabilities and the income and expenditure of the Bank. Every such balance sheet was to carry a certificate by the Board certifying that it has complied with said directives. However, no penal sanctions were specified in the Act in the event the Board falsified the certification. The two public corporations put much emphasis on professionalism and competence of their auditors probably because, in so far as they were a brain child of the Arusha Declaration, their accounts had to demonstrate a high degree of professionalism for other public corporations

³¹ See the *Agricultural Products (Control and Marketing) Act*, No. 56/1962.

³² See section 10 of the *Agricultural Products (Control and Marketing) Act*.

³³ See section 10 of the Sisal Industry Ordinance, Cap 143.

³⁴ See section 24 (2) of the Schedule to the Act.

³⁵ See section 15 of the First Schedule to the National Museum Act, 1963, No. 23/1963.

³⁶ See section 16 (1) of the College of African Wildlife Management Act, 1964, No. 8/1964.

³⁷ See, the National Bank of Commerce (Establishment and Vesting of Assets and Liabilities) Act, No. 1/1967. Like the NDC, the Bank's statement of accounts had to be in such form as the Minister may direct, being in a form conformed with the best commercial standards.

³⁸ See section 7 of the State Trading Corporation (Establishment and Vesting of Interests) Act, 1967 No. 2/1967.

²⁵ See Section 10

²⁶ See, for example, the National Sports Council Act, 1967, No. 12/1967.

²⁷ See section 10

²⁸ See section 14 of the national Housing Corporation Act, 1962, No. 45/1962

²⁹ See section 10 of the tanganyika National Tourist Board Act 1962, No. 25/1962

³⁰ See section 8 of National Sports Council Act 1967, No. 12/1967

to emulate. The period under discussion also witnessed corporate bodies incorporated during the colonial period continue to be audited by auditors appointed "in such manner as the Minister may direct." The Tanganyika Tea Board was one, among many others.³⁹

The appointment of auditors in a diversified manner as amply demonstrated above, left much to be desired. Firstly, there was no guarantee that the appointing authorities would appoint qualified and professionally minded auditors to undertake the assignment. Secondly, the existing audit practices hardly strived to create a uniform code of practice within ministries and among public corporations, especially on the presentation of financial statements. Some public corporations had to conform with forms prescribed by ministers while others needed to comply with ministerial directives subject to certification of compliance by Boards of Directors to the said directives. In other cases the statutes were silent. Thirdly, many of the statutes were silent on when public corporations and or auditors should submit audited accounts to ministers. The same applied to ministers when submitting copies of the audited accounts to the National Assembly. For instance, the National Bank of Commerce was supposed to submit a copy of the statement of accounts to the National Assembly together with a copy of the auditor's report as soon as possible.⁴⁰ How soon? As regards the tabling of the audited accounts by the Minister to the legislature, no specific time was prescribed.⁴¹ Thus, the Bank and the Minister for that matter, could sit on the auditor's report for an indefinite time and no one could take them to task for delayed submission of the audited accounts. Fourthly, the whole practice of relying on foreign auditors was dictating against the policy and interests of

the government in founding a self-reliant nation. By this time Tanzania did not have enough locally trained personnel in accounts and audit. The odds of involving private and probably incompetent and non-professional auditors in auditing funds of public institutions could not be over-emphasized. Professional regulatory agencies, like the National Board of Accountants and Auditors, were not in existence. Consequently, collusion between the corporations' managements and the auditors could not be ruled out. After all, poor financial management does not necessarily mean loss making. Even where profits are made the corporation could still suffer financial mismanagement if stringent financial supervision in the form of audit is not instituted.

We wish to observe further that the repeal and replacement, immediately after independence, of the Audit Ordinance 1957, with the Exchequer and Audit Ordinance,⁴² had yet another impact on financial accountability by public corporations. The statutory duty of auditing public corporations, hitherto vested in the Director of Audit passed over to the Controller and Auditor General, (hereinafter the Auditor General). The Auditor General was authorised to audit the accounts of any body corporate if, by resolution, the National Assembly so directed.⁴³ The Auditor General was given a discretion to delegate these powers to any competent professional accountant.

Where an audit was conducted, the Auditor General was supposed to prepare a report on the audited accounts and submit them together with the auditor's report to the Minister. Copies of the same were made available to the public corporation audited. The corporation was given an opportunity to deliberate on the report and submit to the Minister its observations in writing within twenty one days. A certified copy

³⁹ See the Tea Ordinance, Cap. 291.

⁴⁰ Section 7 (3) of the Act.

⁴¹ See section 7 (4) of the Act

⁴² Cap. 439

⁴³ See section 28 of the ordinance, Cap. 439

of the observation was transmitted to the Auditor General. Thereafter, the Minister submitted the audited accounts to the National Assembly. It is clear that this provision measured squarely with the rules of natural justice, in that it gave a chance to the National Assembly to condemn management in the audited public corporations after they had been given the right to be heard. It should be emphasized that the powers of the Auditor General under Cap 439 were dormant, exercisable only upon reactivation by a resolution of the National Assembly. Where a resolution was not forthcoming, the provisions on the appointment of auditors in the public corporation's parent legislation prevailed. Hopefully, the powers of the Auditor General could be exercised in cases where the Boards of Directors or Ministers failed to appoint an auditor or in the case of appointment, the auditor failed to audit the accounts of the public corporation due to the latter's failure to prepare and submit them.

Going by the provisions of the statutes enacted after independence one would be tempted to conclude that by 1967, audit had succeeded in inculcating financial accountability in public corporations. But this was not the case. A perusal of the Auditor General's annual reports points to the failure to inculcate financial accountability. For example, Bradley reports that:

....the Auditor General in his report on the 1964-65 Accounts drew attention to the losses incurred by the National Development Credit Agency, to the dissatisfaction of professional auditors.... and to the fact that the National Housing Corporation accounts for two previous years had not been made available to the Minister for Housing. In his report on the 1965-66 accounts the Tanzanian Auditor General commented on the fact that the accounts of the Rural Settlement Commission... laid before the National Assembly did not give a true and fair view of the Commission's affairs; on the lack of a time-limit for the production of

accounts of the National Products Board and the fact that the Board's accounting was defective and in arrears...; on the draft accounts of the National Co-operative Bank for 1965-66, which cast doubt on whether its financial affairs were being managed in a prudent and business-like manner as required by law.⁴⁴

The criticisms that were raised earlier, thus, found unfeigned corroborative evidence in these reports. Several other weaknesses raised by the reports may also be underscored.

First, whereas some public corporations' accounts failed to give a true and fair view of their affairs, others conducted their businesses in total defiance of the commercial norms. Second, some of the corporations failed to comply with ministerial directives or the prescribed forms of accounting as their accounts were defective and in arrears. Third, though the Auditor General was invested with powers to audit public corporations, he rarely exercised them. This is evidenced by those corporations which failed to submit their accounts for audit for several years and yet the Auditor General never intervened. Fourth, in cases where no time scale was provided for submission of audited accounts, the managements abused the discretion to have the accounts submitted within a reasonable time. Since the auditor's right to audit accrues only after he has been formally appointed and after the accounts have been duly prepared, it goes without saying that his powers are highly circumscribed by these two precedents. And where an auditor has been formally appointed care should be taken in exercising these powers lest he risks future appointment. Obviously, few auditors are prepared to take this risk unless they are bathed and drenched in the professional ethics.

⁴⁴ Bradley, A.W. and McAuslan, J.W., "Public Corporations in East Africa. in Friedmann, W. and Garner J.F. (eds): *Government Enterprises: A Comparative Study*. Stevens and Sons, London, 1970, p. 4

Fifth, the malpractices reported by the Auditor General had the consequence of watering down the role of the auditor notwithstanding the much improved provisions on audit in the various statutes. Therefore, the establishment of the Tanzania Audit Corporation in 1968 should partly be viewed in this context, and more importantly, in the wake of the socialist policy pronounced officially by the Arusha Declaration in 1967.

AUDIT AFTER 1967

Auditing of public corporations has changed with time. Prior to the Arusha Declaration, the auditing of all companies public and private was undertaken by private firms of auditors. After the promulgation of the Arusha Declaration, coupled with the fact that public corporations were to enjoy monopoly in the provision of essential goods and services to the public, the government felt that there was a need to modify the system of external audit for parastatals with a view to enabling the Government to exercise better control over the financial and other affairs of these institutions.⁴⁵ This called for the establishment of a state auditing firm in 1968, known as the Tanzania Audit Corporation⁴⁶ (hereinafter, referred to as TAC). With the Arusha Declaration on agenda the motto was socialist enterprises should be serviced by socialist institutions. Indeed, the socialist euphoria prevailed in the House when the Bill seeking to establish TAC was read for the first time. In tabling the Bill the Minister for Finance argued "in a state set to build socialism it was ideal that a national institution be established to audit the finance of co-national institutions, instead of relying on foreign experts who have since formed the bulk of auditors in the public sector."⁴⁷

Undoubtedly, the Minister succeeded in accomplishing his mission for out of the three Members of Parliament who debated the Bill two spoke about the procedure and the delay occasioned in presenting the Bill to the House. To them, the Bill should have come after the House had deliberated on the nationalization of several private firms which were subsequently made part of TAC's clientele. The third Member simply seconded the motion. Thus in a debate of hardly half an hour the Bill was unanimously passed by the law-makers.

The Tanzania Audit Corporation (TAC) Act⁴⁸

The first clients of TAC were identified by section 4 (1) of the Act.⁴⁹ Consequently, all provisions on the appointment of auditors, hitherto in force in the statutes establishing the scheduled parastatals were automatically repealed and replaced with those of TAC. A new era for common audit practices in all public corporations was ushered in.

Functionally, TAC was required to perform its duties in accordance with the best professional standards and unless otherwise implied, to audit the accounts of each client within fifteen months from the end of the financial year.⁵⁰ The fifteen months' period was later reduced to six months⁵¹ although a later amendment to the Act⁵² brought it back to the original fifteen months. The latter amendment probably took cognizance of the fact that TAC's clients had

⁴⁸ Act No. 1/1968.

⁴⁹ See the public corporations and Companies in the First and Schedule to the Act. All these were to be audited by TAC. The Written Laws (Miscellaneous Amendments) Act, 1988, No. 13/1988 was passed and expanded TAC's clientele to include any parastatal organisation established by any written law or under the Companies Ordinance, Cap. 212 and any persons who wished to avail its services. Thus, by 1991 TAC had more than 445 clients.

⁵⁰ Section 4 (2) of the Act

⁵¹ See the Written Laws (Miscellaneous Amendments) Act 1981, No. 22/1981.

⁵² See the Written Laws (Miscellaneous Amendments) Act, 1988, No. 13/1988, section 4 (2).

⁴⁵ Tanzania Audit Corporation, 23rd Annual Report, *op cit* p.3

⁴⁶ Tanzania Audit Corporation Act, 1968, No. 1/1968.

⁴⁷ Majadiliano ya Bunge (Hansard) Tarehe 9-16 Januari 1968 p.25

increased with time and therefore it was unrealistic to expect TAC to audit all her clients within 6 months after the closure of the financial year. Section 4 (8) also vested TAC with the right to demand audit of the accounts of a parastatal that defies section 4 (1), that is, fails to submit its accounts for auditing within the specified time. A penalty to the tune of T. Shs.50,000/= or an imprisonment not exceeding 5 years may be imposed on any officer or employer who fails to produce all such book of accounts and other documents as required by TAC.⁵³ We are not aware how far TAC had availed itself of this vital provision to deal with clients whose accounts were perpetually in arrears.⁵⁴

Audit Requirements in Other Statutes

The enactment of the Tanzania Audit Corporation Act, 1968, went hand in hand with the intensification of audit requirements in statutes establishing statutory corporations. This is evidenced by, among others, the Cotton Industry Act, 1973,⁵⁵ the Sisal Industry Act 1973,⁵⁶ and the Board of Internal Trade Act 1973,⁵⁷ which exhibited similar financial and audit provisions.

For example, section 51 (2) of the Cotton Industry Act 1973, directed the Cotton Authority to be audited at least once in every financial year. The literal interpretation of this provision is that the Authority could be audited as many times as TAC deemed it necessary. The audited balance sheet was to be tabled

before the Board of Directors of the Authority and if adopted, the same was endorsed by the Board by way of certification that it had been so adopted, before it was transmitted to the Minister for tabling in the National Assembly. The certificate, unlike the accounting documents, was never transmitted to the National Assembly. While adhering to the rules of natural justice the Act failed to prescribe the cause open to the Board in case it objected to the auditor's report. But going by the practice in the public sector, the Board would no doubt have seized any opportunity granted to it to defend the management if the management was directly condemned for any financial embezzlement.

One of the glaring inconsistency among the statutes establishing public corporations was the disparity in time scale within which public corporations and ministers were to submit the audited accounts and related documents to ministers and the legislature respectively. Generally, the variation tended to fluctuate between six and nine months and in extreme cases ministers were only directed to submit them "as soon as practicable" after receiving them from the public corporations. This inconsistency went on unnoticed for more than a decade until when the Written Laws (Miscellaneous Amendments) Act, 1981 was enacted. The Act grouped TAC's clients into two and each group enjoyed its own time scale. For parastatals registered under the Companies Ordinance, Cap 212, submission of their accounts including the balance sheet and the profit and loss accounts was to be made "as soon as possible after the close of every financial year."⁵⁸ TAC was obliged to audit the accounts as soon as practicable and in any case not later than six months from the close of the financial year.⁵⁹ This means that submission of a

⁵³ See section 4 (8) as added by the Tanzania Audit Corporation (Amendment) Act 1970, No. 15/1970.

⁵⁴ The accounts of 120 clients were in arrears for one year or more as at 30th June 1991, and 98 clients as at 30th June 1990. See TAC 23rd Annual Report *op cit.* p. 7.

⁵⁵ No. 3/1973. The Act was repealed by the Cotton Industry Act, No. 2/2001.

⁵⁶ No. 2/1973

⁵⁷ No. 15/1973

⁵⁸ Section 134 A (2)

⁵⁹ Section 134 A (2)

parastatal's accounts to TAC was supposed to be made earlier, and in any case before the expiry of six months.

As regards submission of the audited accounts, together with the auditor's report to the Minister, the deadline was set at seven months from the close of the financial year.⁶⁰ The Minister in turn was obliged to table the statement of audited accounts, the auditor's report, the management audit report and the director's annual report as soon as practicable, but not later than eight months after the close of the financial year.⁶¹ Thus, in essence, the Minister was given two months only after TAC had concluded its task to have the audited accounts and related annexures tabled before the National Assembly. An extension of time to submit the accounts by the Minister to the National Assembly could be granted provided there was a resolution to that effect by the National Assembly.⁶²

For statutory corporations and public corporations established under the now repealed Public Corporations Act 1969⁶³ their accounts were due for submission to auditors within three months from the close of the financial year. The rest of the financial provisions were, *mutatis mutandis*, identical to provisions applicable to parastatals registered under Cap 212, except for one requirement, namely, the 1969 Act did not oblige ministers to submit the management audit reports to the National Assembly. Obviously this denied the Legislature an opportunity to question ministers on the general mismanagement of the parastatals established under the 1969 Act.

It is not in dispute that the changes introduced in 1981 had far reaching consequences on parastatals incorporated under the Companies Ordinance. In fact, this seems

to have been the intention of the government as aptly summed up by the Minister for Justice when he said:

The public contributes to their share capital and they are generally supervised by the Government on behalf of the public. But by virtue of their mode of incorporation they are like companies in the private sector, not required by law to present (sic) to the Government. As a result, Parliament, the guarantor does not have any legally enforceable means of supervising their activities. It is intended that the amendment sought to be made... will enable the Parastatal Organisations Committee of the National Assembly to keep an august watch and exercise effective control on the financial and other activities of parastatals in this category.⁶⁴

We hasten to add here that in its deliberations the Parastatal Organisations Committee (POC) relies heavily on the management audit report to take to task lousy managements occasioning financial loss to their institutions. This contention is substantiated by the truth that in management audit reports TAC normally points out management decisions which resulted in any infractions or extravagant use of public funds, and the degree of compliance or otherwise with directives by any person entitled to give them. Therefore, availability of this report facilitates POC's discharge of its obligations in line with the objectives for which it was established. Presently, it is gratifying to note that the Public Corporations Act 1992 now empowers TAC to prepare and submit management audit reports even in respect of parastatals formerly excluded from this obligation.⁶⁵

To say the least, the 1981 amendments opened another line of accountability

⁶⁰ Section 134 A (3)

⁶¹ Section 134 A (B) (1)

⁶² Section 134 A (B) (2)

⁶³ Repealed and replaced with the Public Corporations Act 1992, No. 2/1992

⁶⁴ From the objectives and reasons as contained in the Written Laws (Miscellaneous Amendments) Bill, 1981.

⁶⁵ See section 19 (2). TAC can prepare any report and a copy of the same has to be sent to the Minister so that he can table it with other documents to the National Assembly.

particularly on parastatals registered under the Companies Ordinance. As from that date their management affairs had to be tabled for deliberations in the National Assembly contrary to previous practices where their affairs used to be sent to and discussed by the Treasury Registrar the only shareholders.

TAC's Consolidation

The intensification of audit provisions in other statutes went hand in hand with the consolidation of the TAC Act. Within a few years of its enactment, the Act exhibited cracks. For example, by 1970 it was evident that TAC was not receiving cooperation from its clients and there was no legal backing to exact it. This hampered TAC's accessibility, at all times, to the books of account and other financial records of its clients. This also deprived TAC of the right to request from directors and managements of public corporations such information and explanation as it thought necessary for purposes of discharging its duties. This led to the enactment of the Tanzania Audit Corporation (Amendment) Act, 1970 whose section 4 (8) had the effect of inflicting punishment on managements which decided to withhold any information requested by TAC.⁶⁶

Another significant change introduced by the Tanzania Audit Corporation (Amendment) Act, 1970 [Act No.15 of 1970] was the introduction of section 4A to the parent Act. This section empowers the President to direct a special audit inspection of any specified authority or in respect of any person employed by the said authority or any person having dealings with any of the specified authority. Specified authority comprises the whole spectrum of TAC clientele and dealings with specified authority means dealing with it as a buyer, seller, contractor, sub-contractor, broker

or supplier. An obvious transaction which merited a special audit inspection, though not directed was once raised by TAC on the accounts of the University of Dar es Salaam. TAC had complained:

Agreement contracts between the University and contractors were not available for our scrutiny. Estimates of capital works were not prepared by the University before inviting tenders. In some instances tenders were not scrutinized by the Council or Committee appointed by the Council. (emphasis added)⁶⁷

It is extremely difficult to gauge the effectiveness of section 4A in the absence of the publicity of cases in which special audit inspections were directed by the President. In the circumstances one wonders whether this provision has ever been invoked by the President. Briefly, at present TAC is charged with the following general tasks.

First, section 4 (2)⁶⁸ directs TAC to audit the accounts of her clients within fifteen months from the end of each financial year. Further, a management audit report as pointed out before has to be prepared.⁶⁹ This forms the cornerstone for POC's deliberations.

Second, TAC is required to prepare a consolidated report encompassing all clients audited in a particular financially year and submit it to the President with a copy to the Auditor General. For each client audited, the report should disclose the following;- any payments made without due authority according to law, any deficiency or loss occasioned through negligence or misconduct, any delay in the submission of accounts for audit, any failure to observe a policy of the highest thrift and any sum which ought to have been but was not brought to account.⁷⁰

67 Report No. B/26/80-81: Audit Report for the Two Years ended 30th June 1979, University of Dar es Salaam

68 See written Laws (Miscellaneous Amendments) Act 1988, No. 13/1988

69 See section 5B added by Act No. 22/1981.

70 Section 5D

66 See Tanzania Audit Corporation (Amendment) Act 1970, No. 15 of 1970

The President is required to table the report submitted to him before the National Assembly; and where he defaults, the Auditor General takes over this responsibility. On receipt of the report the Speaker refers it to the POC which considers the report and advises the Principal Secretary to the Treasury whether any officer should be surcharged in respect of any payment deficiency, loss or sum concerned or that disciplinary proceedings should be instituted.⁷¹ This is in addition to the powers granted to the Auditor General vide section 5G of Act No.13 of 1988 which empowers him to make a report to the National Assembly on any financial matter concerning any parastatal regardless of the audit that may have already been undertaken by TAC. However, the effectiveness of POC as a parliamentary watch-dog of expenditures in public corporations is bound to be marginalised for an indefinite period if the current trend whereby managements in public corporations avoid the Parastatal Organization Committee sittings for lame excuses. Is tamed by improvisation of legal or administrative sanctions. For example in 1997 the accounts of seven parastatals could not be scrutinised by POC for a number of reasons including non-availability of up to date audited accounts.⁷²

AUDIT IN A LIBERALISED ECONOMY

The economic crisis which necessitated third world countries and Tanzania in particular to adopt Structural Adjustment Programmes prescribed by the International Monetary Fund and the World Bank is beyond the scope of this paper.⁷³ Suffice it to say that by 1986 Tanzania

had begun to implement various reform programmes with the primary object of creating a predominantly market-oriented economy. In the parastatal sector the reforms were preceded by a policy statement issued in January, 1992 in which the government made several commitments. These included: (i) withdrawal from state ownership of productive businesses and (ii) an emphasis on accountability for commercial success in those parastatals which would remain after privatisation.⁷⁴ This policy statement was succeeded in the same year by the enactment, in February 1992, of the enabling legal framework, namely the Public Corporations Act 1992, hereinafter PCA 1992.⁷⁵ Section 3 of the Act empowers the President to establish by Order published in the Gazette public corporations which shall operate their businesses according to sound commercial principles.

AUDIT PROVISIONS IN PCA 1992

The coming into force of PCA 1992 brought Tanzania to the same position in which it was before 1968 when TAC was established. The audit industry has since then been re-liberalised and private audit firms have now been allowed to work alongside TAC. In fact, TAC itself is earmarked for privatisation so that it is able to compete with other private firms operating in the country. For the time being however, TAC continues to operate under the legal frame work discussed above.

The audit provisions in PCA 1992 are contained in several provisions which are, apparently, in conflict. The conflict seems to have been brewed by the Public Corporations (Amendment) Act 1993,⁷⁶ hereinafter PCA

⁷¹ Section 5E

⁷² Tanzania Audit Corporation, 29th Annual Report and Accounts for the Year ended 30th June 1997, p. 11.

⁷³ For detailed discussion on SAPs see *inter alia* Bagachwa M.S.D. et al (eds): *Market Reforms and Parastatal Restructuring in Tanzania*, Dar es Salaam 1992; Moshi, H.P.B., "Economic Transformation and Privatisation in Tanzania." *Change*, Vol 2 No. 1 January 1994: "The Politics of Structural Adjustmrnt Programmes in Africa." *Change* Vol. 2 No. 8/9 (August-September) 1994.

⁷⁴ Presidential Parastatal Sector Reform Commission, *Parastatal Privatisation and Reform, 1993 Review and 1994& 1995 Action Plan*, p. 15.

⁷⁵ For example, the definition of public corporations has been refined to refer to profit making institutions only. See section 3 and 58 of the PCA, 1992. This definition also changed following the amendment to the Act made in 1993.

⁷⁶ Act No. 1/1993

1993. Presently, audit provisions can be found in sections 15, 17, 19, 46 and 47 of the PCA 1992 as amended. Prior to the amendment audit provisions in the Act used to be found in sections 18 and 19 which were subsequently renumbered as sections 46 and 47 pursuant to the amendment. It seems the re-numbering was done without ascertaining whether the newly introduced audit provisions by PCA 1993 were in harmony with the original provisions (sections 18 and 19) of PCA 1992. Accordingly, section 47 (1) of PCA 1992 as amended now provides that the accounts of every public corporation shall be audited by TAC or by such other person as the Minister may direct if the Government is the sole shareholder in that corporation. In case of a public corporation in which the government is not the sole shareholder and except where the law or other instrument provides to the contrary the public corporation shall appoint annually an independent auditor approved by the Minister.⁷⁷

It is evident from the PCA provisions that Government wholly owned public corporations are somehow restricted in appointing their auditors. Their accounts are open for audit by either TAC or such other person as the Minister may direct. Technically speaking it is not open for a public corporation to decide on the appointment of such other person except the Minister himself who makes such decision although in practice the public corporation may make a recommendation to the Minister of that other auditor and let the Minister confirm the appointment. In case of public corporations where the government is not the sole shareholder the appointment of an auditor is dependent on the law or instrument establishing that corporation. That law or instrument will prescribe how the auditor shall be appointed. However, if it is silent the auditor shall be

appointed by the public corporation subject to approval by the Minister of the parastatal's parent ministry. In this case, the initiative to appoint the auditor comes from the public corporation itself. TAC is also eligible for appointment in such cases.

On the other hand section 19 of PCA 1992 (as amended by PCA 1993) provides that:

The accounts of every public corporation shall, except where the law establishing the public corporation provides to the contrary, be audited annually by an independent qualified auditor appointed by the Board.

Section 19 conflicts with section 47 (1) in that the latter provision designates TAC or such other person as the Minister may direct to be auditors of public corporations in which the Government is the sole shareholder. Moreover, section 19 also conflicts with section 47 (2) in the sense that the latter provision allows appointment of an auditor by the public corporation but subject to approval by the Minister. The issue here is, which provision should prevail over the other? Should Public corporations go for provisions which suit their interests? This matter, naturally, calls for immediate attention from the authorities that may be.

Another conflict is built on the provisions of sections 15 (1) and 17 of PCA 1992, on the one hand and section 47 (2) on the other. Section 15 (1) requires every public corporation to submit its audited financial statements to the Minister for Finance, Minister responsible for that corporation and the Presidential Parastatal Reform Commission (PSRC) within six months after the end of each financial year. Other additional documents for submission to the a fore-mentioned authorities include a report on the operations of the public corporation during that financial year and the auditor's report on the financial statement. Section 17 further enjoins the Minister responsible for the public

⁷⁷ See section 47 (1) (b) of the CPA Act, 1993

corporation to lay before the National Assembly the annual report, the audited financial statements, the auditor's report and the statement of corporate strategy for that year and the succeeding two years. Apparently, the latter document does not form part of the documents which are supposed to be availed to the auditor. The conflicts inherent in these provisions are that section 47 (2) does not require the Board of Directors to furnish the Finance Minister and PSRC with a copy of the audited accounts. Neither does it require the Board of Directors to provide the responsible Minister with a copy of the report on the operations of the public corporation. Similarly, under section 47 (2) the responsible Minister is not obliged to lay before the National Assembly the statement of the corporation strategy. So, again the question here is, which of the two sets of provision prevail? These provisions should be harmonised as soon possible as practicable lest they paralyse financial accountability by public corporations established under the Act. In the same spirit we should also take note of another notable discrepancy between the provisions of PCA 1992 and the TAC Act 1968 on submission of the audited accounts by public corporations. While section 15 of PCA 1992 talks of six months, section 4 (2) of the TAC Act requires TAC to audit the accounts of its clients within fifteen months. But TAC's clients include the corporations established under PCA 1992. Which provisions should guide TAC in discharge of its functions?

AUDIT PROVISIONS IN STATUTORY CORPORATIONS

Apart from public corporations established by a Presidential Order under the provisions of PCA 1992, public corporations may also be established by statutes passed by Parliament. These are generally referred to as statutory corporations. Audit provisions in pieces of legislation establishing statutory

corporations enacted subsequent to the passage of PCA 1992 are equally varied. We will examine the variations with reference to the provisions of several statutes.

Under section 20 (2) of the Pyrethrum Act 1997⁷⁸ the accounts of the Pyrethrum Board may be audited annually by TAC or any other reputable audit firm. The provision dispenses with Ministerial approval in the appointment of the audit. The Board, thus, can appoint any firm provided it is reputable.⁷⁹ Unlike section 20 (2) above, section 17 (2) of the Sisal Industry Act 1997⁸⁰ stipulates that the accounts of the Sisal Board shall be audited at least once in every financial year by TAC or any other reputable audit firm approved by the Minister. Here approval by the Minister is mandatory if the appointment of an auditor is other than TAC. As far as the Cotton Board⁸¹ is concerned, its accounts shall be audited at the end of each financial year by any authorised auditor duly registered under the Auditors and Accountants (Registration) Act, 1972 appointed by the Board.

Like the Pyrethrum and Tea Acts, the auditor of the Cotton Board can be appointed by the Board without the approval of the Minister. But unlike its counter-parts, the Cotton Industry 2001 Act does not give any preference to TAC as there is no mention of TAC in the Act. More important, the Cotton Industry Act insists that the Board's auditor should be any authorised auditor duly registered under the law regulating the audit and accountancy profession. Is this auditor different, in terms of qualification, experience, expertise or competence from a reputable audit firm as commonly required in other statutes discussed before? Doesn't a reputable audit firm comprise authorised and duly registered auditors? The National Board

⁷⁸ Act No. 1/1997

⁷⁹ Section 12 (2) of the Tea Act 1997, No. 3/1997 is identical to the provisions of section 20 (2)

⁸⁰ Act No. 2/1997.

⁸¹ Established by the Cotton Industry Act 2001, No. 2/2001

of Accountants and Auditors may be of great assistance here in providing answers to these questions.

In the meantime, the accounts of the Deep Sea Fishing Authority established under section 4 shall be submitted to and audited by the Controller and Auditor General. The Auditor General is not allowed to delegate this responsibility to any other person. It remains to be ascertained why the Auditor General should be compelled to audit the accounts of the Authority which is neither a government department nor an executive agency. It is also interesting that this Act prohibits the Auditor General to delegate his powers under the Act while other statutes allow him to do so.

As for submission of audited accounts to ministers and the National Assembly the provisions in the statutes are not consistent. For example, the Pyrethrum Act never specifies the time when the accounts of the Board shall be due for submission for audit. Likewise, it does not prescribe the time within which the minister shall lay the audited accounts before the National Assembly.⁸² The Sisal Industry Act also specifies no time for submission of accounts of the Authority for audit. Nevertheless, section 17 (4) requires the Board to submit the audited accounts of the Tanzania Sisal Authority to the Minister not later than six months after the audit. The Minister, as soon as practicable, shall lay the same before the National Assembly. In both Acts the managements can take as much time as they like to have the accounts prepared. Similarly, Ministers can take months before they submit the audited accounts to the National Assembly provided the delay is not contrary to the "as soon as practicable" formula. In the Tea Act, the Minister is obliged, within a period of six months (unless the period is extended by a resolution of the National Assembly) after the end of the financial year to lay the audited

accounts before the National Assembly.⁸³ Here the management and the Board are left to determine for themselves when the accounts should be submitted for audit and when the audited accounts should be submitted to the Minister provided the dead-line of six months is complied with.

In case of the Deep Sea Fishing Authority, the Executive Committee of the Authority is enjoined to submit the accounts for audit within three months after the close of the financial year. The audited accounts shall then be submitted to the Minister within six months after the close of the financial year. Thereafter the Minister shall, as soon as practicable, lay them before the National Assembly.⁸⁴ The provisions in this Act are thorough and more preferable as they provide a staged action plan for all the stake holders involved in handling the accounts of the Corporation. With these provisions in place it is easy to identify the culprit in cases of default and take appropriate measures against him.

The statutes also prescribe different requirements on what the Ministers should lay before the National Assembly.⁸⁵ For instance, section 50 of the Cotton Industry Act advocates for submission of a copy of the audited accounts and the auditor's report only while section 15 of the Deep Sea Fishing Authority Act compels the Minister to table a copy of the audited accounts, a copy of audit report, if any, and a copy of the Director General's report on the activities of the Authority.⁸⁶ This inconsistency is in addition to that arising out of sections 15 and 17 of PCA, whereby four sets of documents are required to be submitted to the National Assembly by the Minister.

It is also worthwhile to consider the provisions of the Independent Auditors

⁸³ See section 12 (4) of the Tea Act

⁸⁴ See section 14 of the Deep Sea Fishing Authority Act.

⁸⁵ See sections 20 (4), 17 (5), 12 (4) of the Pyrethrum, Sisal Industry and Tea Acts respectively.

⁸⁶ See section 14 of the Deep Sea Fishing Authority Act.

⁸² See section 20 of the Pyrethrum Act

Regulations, 2001, GN. No. 102 of 2001 made under section 51 (1) of the Banking and Financial Institutions Act, 1991, (No.12/1991). These provisions cater specifically for auditors appointed to audit banks and financial institutions. Under section 4 (1) of the Regulations, every bank and financial institution is enjoined to appoint annually an independent auditor, qualified under the Companies Ordinance, recognized by NBAA, registered by the Bank of Tanzania and who has no conflict of interest with the bank or financial institution he is to audit. According to the Regulations, an independent auditor means an accounting or auditing firm recognized by NBAA and registered by the Bank of Tanzania. Generally speaking the requisites of an auditor under these Regulations are very demanding in comparison with other requisites discussed above.

The tasks of this auditor are equally taxing. He is to audit and make a report on the annual statement of accounts and submit a copy of such report and statement of accounts to the Bank, submit such additional information in relation to his audit as the Bank may require, carry out any other special investigation and ensure that the statement of accounts prepared by the bank or financial institution complies with the NBAA standards and guidelines where they exist, and if none, it should comply with International Accounting Standards. In short these Regulations create a special audit regime for banks and financial institutions.

This discussion has clearly demonstrated that the state of audit provisions in statutes establishing statutory corporations is very fluid. There is great variance in terms of appointments of auditors; the time scale for preparation of accounts and their submission to auditors, Ministers and the National Assembly and also as to what should be submitted to the National Assembly, the tax-payers' watch-dog. Besides, it is also evident that the audit provisions contained in PCA 1992 are relatively onerous

compared to similar provisions in statutes immediately discussed above. For public corporations established under PCA 1992, their accounts ought to be finalised and submitted to the Minister within six months after the end of each financial year. Moreover, every public corporation is obliged to prepare a statement of corporate strategy for that year and succeeding two years which is tabled by the Minister before the National Assembly together with the audited accounts and the auditor's report on the financial statements. This does not apply to statutory corporations. The only disadvantage with the provisions in the PCA 1992, as mentioned before, is that they conflict with each other. Above all, banks and financial institutions now subscribe to a different code of audit.

What is needed now is to revisit the provisions on audit both in PCA 1992 and other statutes with the object of harmonising them. Only then will it be easier not only for the auditor but also the National Assembly to hold public corporations financially accountable and within the parameters of their new mission which is to "operate on sound commercial basis."

PENDING ISSUES

While we urge for further improvement and harmonisation of the law on audit there are several issues which stakeholders in the parastatal sector should consider in order to make audit more effective in exacting financial accountability public corporations. The first is on enforcement of the law relating to audit. In the statutes discussed there are provisions which set the time-scale in which accounts should be finalised, audited and eventually laid before the National Assembly. The question is how should the law enforcing agencies proceed to censure the defaulters in view of the past experiences? Disciplinary and penal sanctions calculated at instilling financial

discipline and accountability in public corporations have been in our statute books for times immemorial. For instance, in 1970 the Penal Code was amended by creating a new offence of causing economic loss to the government or a parastatal.⁸⁷ The offence can be committed by an employee if:

by any wilful act or omission, or by his negligence or misconduct, or by any reason of his failure to take reasonable care or to discharge his duties in a reasonable manner, causes his employer to suffer a pecuniary loss....

Similarly, in 1974 the Parastatal Employees (Recovery of Debts) Act 1974⁸⁸ was brought into force. Debt was defined as any sum of money due from a parastatal employee to his employing parastatal in respect of any loss caused to his employing parastatal as a result of his negligence, failure by him to take reasonable care or failure by him to discharge his duties in a reasonable manner.⁸⁹ All these statutes have never made any impressive impact on financial accountability by public officials.⁹⁰ On the other hand ministerial accountability has never been exercised to force ministers into resignations where embezzlement of public funds in their ministries is discovered.

The second relates to professional conduct and ethics. Now that the door has been opened to private firms there is a pressing urgency by the regulatory agencies especially the NBAA to intensify the monitoring and regulation of the

audit profession coupled with concerted enforcement of the professional code which was recently launched by NBAA.⁹¹ If this precautionary approach is not taken audit will degenerate into the realm of mercenary auditors who offer services for the sake of earning fees only.

CONCLUSION

It has been amply demonstrated that audit requirements in public corporations have changed with time, and more specifically, with the objectives and the role which public corporations were supposed to play in the growth and development of the economy. During the formative stages of British colonial era, public corporations were assigned a negligible role in the promotion of the colonial economy. This explains why audit provisions in statutes establishing public corporations were barely adequate. After the Second World War with a view to revamping the devastated economy in Britain, public corporations were assigned a new responsibility and, consequently, accountability for their funds took a new dimension. Statutory provisions on finance and audit were relatively more detailed and comprehensive. The struggle for independence across the African continent compelled Britain to change the accounting system which had hitherto existed in colonies. By the late 1950s the colonial government of then Tanganyika was, for the first time, made accountable to the colonial Legislative Council, an institution that purported to represent the will and interests of the people of Tanganyika.

The advent of independence marked yet another milestone in the accountability of public corporations only to be redefined in 1967, after the promulgation of the Arusha Declaration. Their major task was now to

87 See section 284 A of the Penal Code.

88 This Act has now been repealed by PCA 1992.

89 See section 2 of the Parastatal Employees (Recovery of Debts) Act of 1974.

90 See *Daily News*, February 14 th 2001 whereof it was reported that: the Audited national accounts by the Controller and Auditor General showed that the Treasury had yet to reply satisfactorily to two queries for T.shs.2.1 billion seeking submission of vouchers. Some T.shs. 36.2 billion payments were made without adequate supporting documents as of year ended 30th June 1999 and that t.shs. 847.6 million related to the previous year was still outstanding.

91 See the NBAA Code of Ethics By-Laws, 1999 Government Notice No. 213 of 1999

pioneer the building of Socialism. Prior to 1967, provisions on audit of public corporations varied from one corporation to another depending on the statute establishing it. Meanwhile audit continued to be carried out by foreign private firms. After the Arusha Declaration the desire to establish a national audit institution became the government's major pre-occupation. This resulted into the establishment of TAC through an Act of Parliament. Stringent audit provisions were interjected in the Act and in other statutes enacted after the Arusha Declaration in 1967.

In spite of the proliferation of stringent provisions on audit, financial accountability by public corporations remained a night-mare. Loss making continued to be the order of the day until the early 1990s when the government decided to restructure the parastatal sector. In furtherance of this object, audit was similarly

liberalised by removing the statutory monopoly once enjoyed by TAC. Interestingly, the privatisation of the audit function has raised more questions than answers. At one point there is inconsistency on audit provisions in the same statute, and at another, audit standards vary from one set of public corporation to another. Furthermore, provisions on submission of accounts to auditors, ministers and finally to the National Assembly in statutes enacted pursuant to the liberalisation of the economy are not consistent.

While advocating for an improved law on audit the article also draws the attention of the stakeholders to equally important pending issues, namely, enforcement of the law and the need for a sustainable audit profession in the country. Unless these burning issues are tackled audit will hardly succeed in making public and statutory corporations accountable for their finances.