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MACHINERY TO SERVICE AFRICAN STATES IN THE
LEGAL FIELD: A PROPOSAL

A. Legal setting in Africa

1. This decade is perhaps the most important turning point in the history of Africa. During the late fifties and early sixties, there emerged about twenty-five new nations on the map of the continent. The emergence of such a large number of States within a short period of time is a new phenomenon in the history of the world.
2. One of the first tasks of a new nation is to aim at giving economic content to political independence. Economic planning gives concrete expression to aspirations that led to independence. The legal framework can provide the necessary basis that facilitates the implementation of development plans. The driving forces behind independence had different social, economic and political background and ideas. But the task of economic development is now an unprecedented challenge.
3. Practically every independent State in Africa has had political connexions with some part of Europe. Although there was contact with Europe in Roman times and later during the fifteenth century, it was the second half of the nineteenth century which saw the culmination of this long contact. This European domination of Africa was not organized. The former African kingdoms were split into a mosaic of tiny States. Their boundaries marked the lines where each individual European power extended its sphere of influence. The frontiers did not correspond with known rational, geographical, economic or political criteria.

4. Thus, on the verge of independence, the African countries inherited an intermixture of concepts, attitudes, modes and methods of thought and behaviour. When translated into political, economic and legal ideas and institutions, it forms an extremely confusing legacy. Now, when the new countries are turning their attention to varied economic and social problems, the question arises of an appropriate strategy for the achievement of rapid economic growth. The attainment of this goal requires, for most African States, a high degree of co-ordination and harmonization.

5. The existing legal system in Africa, which represents basically a superimposition of various European laws on traditional practices, is extremely complex. The former British West African territories had legal systems derived from England. The ex-French territories, on the other hand, acquired French law with minor changes. The sum total of the conflicts have resulted in local statutory varieties representing dualism and sometimes pluralism. External influences, together with the desire to create an original structure, constitute a basic dilemma in Africa today.

B. The need for some machinery to service African States in the legal field

6. The most fundamental question is what type of legal framework is necessary for economic growth. The new States are finding it essential to turn to existing legal institutions to examine their adequacy for economic needs. As law generally tends to adjust slowly, a dynamic effort will have to be made to co-ordinate and harmonize existing laws. Aspects of existing commercial, governmental and fiscal laws relating to contract, agency, taxation and licensing, general constitutional provisions protecting private property - all these rules and laws whatever their merits at the time of their formulation, can hardly be expected to form an adequate legal basis for economic development. To implement a clearly defined development policy, it is necessary to spell out the detailed legislative needs in correspondence with national economic objectives.

7. In this context of economic and legal transition, several questions arise : in what ways will the legislative, juridical and administrative processes of law most closely affect the attainment of economic and social

goals; to what extent is it possible to define a minimum legislative framework needed to reach the proclaimed economic goals. Other problems for consideration relate to inadequate administration of legal machinery or the existing data on legal systems which could be useful to development planners. Comparative studies of experience of developing countries may be also useful. Fundamental questions relating to priorities in legal research and the role of lawyers need to be examined. Several types of legal problems are likely to arise when a country establishes new institutions, development agencies, financial institutions, credit banks in different fields. A study of laws under separate headings is likely to reveal a wide pattern in Africa. But these studies should not be only a presentation of a static picture which indicates the differences in laws of the various countries. It should be, in fact, a dynamic analysis of the manner in which the laws and regulations have changed, changes which were associated with the aims and objectives of economic and social development.

8. Particular problems which could be given priority in the period of transition are :

- (a) Executive and legislative decisions of governments to implement development plans.
- (b) Commercial legislation directly affecting newly established industries.
- (c) Economic analysis of agreements signed by independent African countries with foreign firms.
- (d) Existing regulations concerning fiscal incentives for industrial development.
- (e) A uniform taxation policy for industrial development.
- (f) Comparison of customs taxes and common commercial policy in Africa.
- (g) Economic criteria for legal policy.

9. These are some of the subjects in the vast field of legal factors influencing industrialization. The Work Programme of ECA already includes

some of these studies. Proposals to draft a uniform investment code for the various sub-regions and an African convention for commercial arbitration were recommended by the Standing Committee for Industry, Transport and Natural Resources at its second session held in December 1963.

C. Machinery to service African States in the legal field

10. The magnitude of these problems requires an organized and co-ordinated effort by a team of legal experts. At a national level there is need for the government to establish a clearly defined and adequately staffed technical body which would analyse, on a continuous and full-time basis, the relevant trends in economic development. This "development staff" must be entrusted with the task of co-ordinating and harmonizing national laws. Their role would be to create a legislative basis for development planning. But if development plans must be co-ordinated in order to have a coherent approach towards African unity, at an international level also laws must be harmonized, co-ordinated and modernized.

11. For these purposes a suitable African institution is needed. It is therefore suggested that some machinery to service African States in the legal field should be created. The proposed organization could channel information and assist in harmonizing some of the conflicting trends in legal practices and, in general, evolve a legal strategy for economic development. Such an organization would act as a laboratory where the adequacy of existing laws could be examined in the context of economic progress.

12. The functions of the proposed organization need to be spelled out. Some provisional ideas are suggested here:

(i) To promote the co-ordination, harmonization and modernization of legal systems of African States by:

- Drafting model laws and other legal instruments on matters connected with economic and social development;
- Advising African States on legislation relating to the above, taking into account local customs and needs;

- Providing information on modern legislative trends by furnishing advice, documentation and comparative legislation;
 - Conducting studies, seminars and lectures for above purposes.
- (ii) To perform legal services for the Executive Secretary of ECA relating to areas where inter-state agreement and co-operation is involved and in administrative and other matters.
- (iii) To organize and maintain a comprehensive legal library with special emphasis on laws and documentation relating to the economic and social development of African countries.
- (iv) To help to train young African lawyers.

In view of its relation to the activities of the ECA, the Organization might be located at the headquarters of ECA. Its establishment would seem to require two phases:

- (a) The preparatory phase. In the preparatory stage, which might last from six months to a year, the secretariat should consist of four staff members. It would be responsible for all the preparatory work. The composition of the staff could be of this order :

- 1 ECA consultant
- 2 research assistants one each with a background of English and French legal systems
- 1 bi-lingual secretary

For the appointment of the personnel, UNTAB might be approached for funds. At a later stage when the work-load increased, the staff could be expanded. Financial assistance from the UN Special Fund and from the Foundations might then be requested.

Legal Library. In the first phase the library would consist of about five hundred books, two hundred of which would be government and official publications and the rest related to law and economic development. The estimated cost of these books is about \$ 5,000.

Perhaps one of the Foundations could be approached to supply the funds. Later the library could be expanded to 5,000 books.

(b) The second phase. The preparatory work for the establishment of this machinery would have been finished by late 1964 or early 1965. The organization could then begin its research and advisory functions. To perform them adequately, more staff would obviously be needed. The requirement could be worked out in detail later on. But some indications may be given here. The Centre might be governed by a governing council, assisted by a secretariat.

(i) The governing council might consist of the ECA Executive Secretary as the chairman and five jurists of recognized competence elected by ECA in their individual capacity. The method of their election and the term of their appointment would need to be worked out in detail during the preparatory phase.

(ii) Since the secretariat would be responsible for the execution of the work, its regular staff might consist of experts qualified in the major legal systems prevailing in Africa - i.e., common law, civil law, Islamic law and customary law. For particular assignments it may be occasionally necessary to utilize the services of outside jurists.

Since one of the functions of the Organisation could also be to act as the legal office of the ECA, the secretariat of the centre should maintain a close working collaboration with the Office of Legal Affairs at United Nations Headquarters.

At this second stage the secretariat might consist of:

1 director

4 legal officers with expert knowledge of major legal systems prevailing in Africa

2 research associates

- 1 administrative officer
- 2 interpreter-translators
- 1 librarian
- 3 bi-lingual secretaries
- 2 clerk-typists

The budgetary requirements of the Organization would have to be carefully worked out during the Preparatory stage. Broad requirements are suggested here for discussion.

The annual budget of the Organization, when fully functioning, could be of the order of \$ 100,000, to cover the costs of staff salaries, travel, library, furniture, equipment, supplies, miscellaneous expenses and provision for outside experts. Once the details have been fully worked out, the United Nations Special Fund might be approached for financial assistance, together with Foundations and, of course, African States.

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