"THE MULTINATIONAL CORPORATION AND
GOVERNMENT CONTROL IN KENYA - WITH
SPECIAL REFERENCE TO THE MANUFACTURING SECTOR"

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In

SUMMARY

The continuing growing influence and power of the multinational corporation vis-a-vis the world economic and national economies is a phenomenon which has attracted the interest of scholars the world over and is of special concern to scholars in the so-called Third World where the impact of this form of business organisation is quite pronounced as regards the deforming of national economic sovereignty.

Why should a lawyer be concerned with an area which on the face of it seems to be the preserve of scholars in other fields of study like economics or political science?

For those lawyers who like the sweet music of Latin terminology and other allied legal formalisms and euphemisms, a study of this nature does not excite their interest as to them what constitutes law is a series of citation of cases and reference to statutes willy nilly even if the level of scholarship is of a dubious kind. But even to this type of lawyer, and other conservative souls, the study of law within the realm of political economy has become a great reality. A lawyer to be an effective legislator or a defender of peoples' rights must understand the nature of the society around him for society is not for the law but that on the contrary law is for the society. The
nature of economic, political and social interactions within the society must be identified by the lawyer before he can resolve the conflicts thereof.

In our situation, the way in which the law is shaped and implemented depends on the framework of the socio-economic system - on the concrete historical conditions, the character of state power, the situation in class struggle, the international situation, and so forth.

In the first chapter of this study, an attempt is made to define, describe and analyse the multinational corporation. Numerous publications offer definitions of the multinational corporation which get bogged down in mere formalisation of descriptive type analysis which treats the multinational phenomenon in complete isolation from the various economic, political and social forces. Such considerations like size, the role of the headquarters and the number of countries in which the operations take place are fine points when describing the multinational corporation but they do not get us very far.

The approach in this study is that the multinational corporation is a good manifestation of the capitalist process and that its tentacles on the international level have ramifications which affect not only a particular nation state but indeed affect class relationships within the state.
The prevailing opinion of the country's leadership is that the multinational corporation is a beneficient vehicle of development whose activities should be encouraged "in so far as these are in keeping with the country's aspirations". The approach here, however, is that the multinational corporation is inimical to the concept of economic sovereignty and that it encourages the prevalence of exploitation and dependency. As such then, this type of business organisations -has to be briddled, to use that rather very alien word.

The study therefore of necessity concentrates on various measures of control (looked at against the existing incentives to foreign investors- Chapter II) with the end aim of establishing whether these controls are reliable remedies. Thus, it is deemed necessary to examine the relevant aspects of the legal environment of the host country, in this case Kenya, which include, inter alia, taxation, freedom to repatriate earnings and capital, the degree of financial disclosure required, the extent to which equity participation by residents of the host country is required, the form of business organisations permitted, and the extent and terms to which nationals of the host country should be employed by the company. The reason for such exposition is to provide some idea of the range of policies which prevail and the instruments used to implement them.
The study puts forward the proposition that the present regulatory and monitoring devices for multinational corporations to the extent that they exist at all, are quite inadequate. The mode of various methods of control - screening and restricting foreign investments, devising national policies to promote local industry through tax mechanisms or government subsidization and ownership, seeking greater diversification in the sources of foreign investment capital and in training partners, and joining the forces fighting the prospects of international supervision and regulation of multinational corporations - only underscores cautious middle course which is no match for the sophisticated strategies employed by these corporations in protecting their assets and decreasing their vulnerability.

However, the study does not allege that the present legal structure governing the operations of the multinational corporation in the country has had no tangible results. However, the study vigorously attempts to show that the various laws and regulations have only the effects of reformism and that they in no way help in restructuring the economic set-up. This is so because there are clear limits of legal safeguards when the political, economic and social structure is solidly geared to a capitalist mode of planning. Thus law under Kenya's budding capitalist system is not able to plan or
direct its development: it has to be elastic, but ominously resists change in the most basic aspects of property relationships. In the circumstances, the present and future legal controls will at best be palliatives, so long as Kenya continues to internationalise home-country values and aspirations. With such high whole-scale importation of foreign values - political, legal and cultural - it is not possible to disengage from the unequal or unbalanced international economic relations whose bedrock constitutes alien standards and perspectives.

There exists a relationship between law and socio-economic structure. In particular, there is a relationship between the forms, content and values of our law and our still essentially capitalist structure; if the structure changes, law will change with it. Thus, to have a meaningful action with regard to the duties and responsibilities of the multinational corporations, it becomes necessary to have a fundamental change in the body politic in both political, social and economic terms.