

115  
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MEMORANDUM FOR DR. W. M. MYERS

International Institute of Tropical Agriculture

February 8, 1966

We have examined the memorandum proposal and draft bill for an International Institute of Tropical Agriculture in Nigeria to determine whether the proposed legislation presents any special problems for the Ford and Rockefeller Foundations. We suggest that the following points should be considered by the Foundations before they apply for final Nigerian authorization to establish the Institute.

Political Considerations

Following the recent military coup d'état in Nigeria, the provisions of the Nigerian constitution which provide for a Legislature were suspended. There is, therefore, at present no Legislature to which a draft bill can be presented. Because final authorization to establish the Institute presumably will have to be obtained from the military regime, or its successor, the procedure for obtaining such authorization must be ascertained.

Tax-Exempt Status of the Foundation

The description of the Institute given in the draft bill and memorandum proposal meets the standards of a tax-exempt "scientific" organization under Section 501(c)(3) as interpreted by the applicable Treasury regulations. One factor



the Internal Revenue Service considers in determining eligibility for exemption under Section 501(c)(3) is the statement of organizational purposes made in the written instrument "by which an organization is created". Whatever instrument ultimately "creates" the Institute under the law of the current military regime, therefore, should restate the purposes of the Institute substantially as set forth in the memorandum proposal and draft bill.

#### Problems Under Nigerian Constitution

Under the taxing principles of the 1963 Nigerian Constitution (which may not continue in effect) there would be some doubt whether the Parliament would be empowered to exempt salaries paid to the staff of the Institute from taxation, as provided for in Section 11 of the draft bill. Under Article 76(2) of the 1963 Constitution, Parliament was empowered to make laws affecting personal income tax only for limited purposes. None of such limited purposes would expressly authorize exemption of Institute salaries from income tax. Under Article 76(2)(a), Parliament may make laws with respect to taxes on income and profits (other than the income and profits of companies) for the purpose of implementing any treaty, but there does not appear to be any treaty between the United States and Nigeria authorizing an exemption of Institute personnel from income tax. The tax treaty between



Note!

the United States and the United Kingdom, recognized and adopted by Nigeria, exempts income of professors and teachers from income tax. However, only part of the functions of part of the Institute's staff, as envisioned by the memorandum proposal, would seem to be professorial in nature. In the absence of an agreement between the Federal Nigerian government and the government of the Region in which the Institute is to be located, the Article 76(2)(e) exemption for persons covered by an agreement between a Regional government and the Federal government would be inapplicable.

Under Nigerian law, the governments of the Regions, not the Federal government, generally hold title to land. Therefore, although the Federal government may own the land at the site of the University of Ibadan, it is possible that it may not yet own the land adjacent to or near the University on which the proposed Institute is to be located.

#### Devolution of Physical Assets of Institute to Nigeria

Section 14 of the draft bill provides that if the existence of the Institute terminates "for any reason" all its physical plant and equipment shall thereupon become the property of Nigeria. The memorandum proposal, page 4, provides that the "physical assets" of the Institute will become the property of Nigeria only "after the Foundations discontinue financial support for the Institute or at some later time it



is deemed unnecessary or no longer feasible for the Institute to continue". It would seem that the additional protective language with respect to the conditions of devolution contained in the memorandum proposal should be included in the draft bill and that the meaning of the term "physical assets" as used in the memorandum proposal be particularly defined in the draft bill.

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