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Property Rights, Investment, Opportunity and Growth : Africa in a Global Context

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Introduction:

- The last two decades and half in African economic history have been devoted to an exploration of the best framework for securing property rights, attracting investment and unleashing growth. The immediate context for this quest is the prolonged economic crisis which most African countries have faced since the early 1980s and which has taken a huge toll on social livelihoods across the continent.
- In seeking to overcome the economic problems of African countries, a considerable amount of attention has been paid to the structure of incentives, understood in terms of the package rewards and penalties targeted at economic agents, and the way in which it has impacted on the prospects for growth. Overall, the dominant view has been that the pre-existing structure of incentives has slowed or even outrightly inhibited growth. Policy energies have, therefore, been devoted to the articulation and implementation of measures aimed at improving the incentives system in a manner and direction which it is hoped will unlock the growth potentialities of African countries and overcome their prolonged crisis.
- It is by now a settled matter in general economic theory that investments are necessary for the achievement of growth – any growth – and that the kind of growth whose benefits are properly distributed and whose foundations are carefully sustained through balanced policies, is also good for creation of opportunity. It is in the creation of opportunity which makes for broad-ranging social inclusion, equity, and improved livelihoods that growth becomes

developmental. Or to put in another way, while investments are necessary for growth, not all growth is by definition developmental.

- If investments are good for growth, a question which is posed and which has always exercised the minds of economists and policy makers historically, is just how to generate/attract, secure and sustain them. This is not a question to which there are easy answers, although there is no shortage of economic models which seek to identify the determinants of growth and propose universally applicable principles. One perspective which has become dominant in the policy circles suggests that "secure" property rights constitute *the sine qua non* for the generation of investments, as well as increased productivity, income and growth. This perspective which is the one that is currently being applied across developing countries is, however, contested by another school of thought which argues that the evidence on the correlation between the rights regime or the environment of governance and the direction and pattern of investment flows is very thin indeed. China is one of the most frequently cited examples in this connection but the cases of Nigeria and Angola, two of the most important destinations for foreign investment flows in Africa have also been cited. Investor behaviour is very frequently based on subjective sentiments, hunches about possibilities that exist, and the mentality of the herd, and not so much on *a priori* calculations about whether property rights are "secure".
- A review of the historical and contemporary data on the international flow of investments will indicate the small share of foreign capital receipts accounted for by Africa. Correcting this situation has been a long-standing preoccupation which has resulted in policy being formulated with the express goal of attracting investments. In practice, attracting investment has invariably been interpreted to mean *foreign* capital and has always consisted of seeking to provide the conditions which it is thought foreign investors are searching for. These conditions have varied in detail in their mixes over time and the particular issues on which accent has been placed have also shifted – as frequently as the mood of economists and fund managers. In consequence of this excessive orientation of policy towards what it is thought will attract foreign investors, African economies have hardly been driven by a domestic logic and are disproportionately submitted to external impulses.
- In the early independence years, African countries were told and accepted that a favourable tax climate was critical to attracting foreign investments. Virtually every country adopted a set of investment-attracting tax holidays – often in competition with one another but to little positive effect. Subsequently, as the nationalist coalitions that inherited power from the colonial authorities began to unravel and conflicts of varying dimensions broke out, emphasis shifted to the imperatives of political stability for the attraction of foreign investors. To this was added the necessity for "democracy", the "rule of law", "press freedom", "governmental accountability" and "transparency", "judicial independence" – in sum, "good governance". More recently, concerns about property rights have been added to the list – along side issues of contracts, social capital and trust that now form part of the magical "winning" formula which different authors and policy institutions – Fukuyama, de Soto, the World Bank, etc. – have identified as

determinant or necessary. However, in spite of the various measures adopted, Africa's quest for foreign investments has yielded very little by way of results and has amounted to an endless waiting for Godot. Indeed, if anything, the continent has not only suffered a flight of capital but also enjoys the dubious distinction of being a net exporter of capital. Meanwhile, under the guise of "good" governance, a process of large-scale land/property alienation and concentration is being facilitated in different parts of the continent

- One element that has always been missing in discussions about the promotion of investments in Africa concerns the place and role of domestic investors and the ways in which they might be promoted to help endow the accumulation process in Africa with an internally-driven logic that is also propelled by a developmental ethos. The reasons for the academic and policy silence on domestic investors are many and multidimensional and need not detain us here; suffice it to note for now that Africa has paid a heavy price for the failure of its policy makers to establish credible and enduring frames for nurturing domestic investment capacities, and for not recognising from the outset that an adequate framework of incentives for stimulating local investments and promoting local investors is all that is needed in order to attract all other investors.
- It is clear from the foregoing that agreement on the basic principle that Africa, as indeed any other region of the world, could do with investments for promoting growth has been the much easier part of the policy equation for overcoming the economic crisis facing the continent. Much more complicated and requiring continuous reflection is the appropriate mix of policies that is required for achieving and sustaining growth, and it is precisely on this question that opinion has polarised considerably.

Assumptions on which Presentation is Premised:

- This reflection on property rights, investment, opportunity and growth in Africa is premised on a number of assumptions which deserve to be tabled upfront. The first of these and one to which I hold very dearly, is that there is no one universally applicable and valid model of policy mixes for achieving growth or securing property rights. Economists may hazard informed guesses on the policy combinations that could, under the certain conditions, at different points in time, and in different places generate growth. Commercial lawyers, Sociologists and Political Scientists may attempt to aggregate from different experiences to understand the framework of rights that is in place. Historians will remind us that both the rights regime that is in operation and the dominant policy framework that is applied are the products of historically-specific struggles that leave their imprint on the content, tone and tenor of practice which, moreover, is itself in constant evolution. The tragedy of Africa has been the all too frequent temptation to lift policies from the historical experiences of other peoples and to apply them, out of context, to the continent in an ossified form in the guise of a (universal) model that works for all and for all time. This approach to "doing" development in Africa is itself part and parcel of a broader methodological flaw in the study of the continent by which, as Mamdani has observed, most scholars and policy-makers are conditioned into thinking and acting by analogy in order to address the numerous challenges facing the continent. I underscore this point particularly in relation to the Land Question in Africa where over the last 25 years, the revived debate has tended to be dominated by the search for models which deny governments and communities the needed creativity and originality which their context and history call for.

- Property rights have important economic elements, dimensions and consequences which require constantly to be taken into consideration in the policy process. But it is equally important to remember that decisions which bear on them are not exclusively about economics narrowly defined, nor are economic considerations always at their core or solely determinant. Critical decisions by individuals, communities and governments about property and the rights regime on which it is built are products of a complex of considerations of which the economic is only an element, even if an important one. Other considerations which often loom large include those bordering on the correction of historical injustices, the reduction of social polarisation that is either capable of spurring (violent) conflicts or which is at the root of such conflicts, the attainment of political stability/sustainability, the improvement of governmental legitimacy, an improvement in social equity as part of an enlightened approach to social policy, the advancement of environmental sustainability, the improvement of minority rights, an increase in the level of access enjoyed by women, the spiritual values attached to land by households and communities, respect for the cultural values and institutions of different ethnic groups, etc.

  To be sure, these non-economic considerations do carry costs but it may well be the conscious decision of key social actors, the citizenry or the state that the short- and long-term social, political, cultural and other benefits which they carry for the polity far outweigh the immediate and long-run economic costs that will be incurred. In any case, the ends for which they are introduced are, in themselves, bound to be refracted over the medium and long-term into the economy in ways which could benefit the process of accumulation. Furthermore, the tendency to assume that all non-economic considerations in decision-making about property rights issues are not rational also stands to be challenged as much for the fact that rationality in the policy process is not solely when decisions emanate from economic considerations as that there are indeed economic decisions which are themselves irrational. Moreover, the very notion of economic rationality is, itself, contestable: what is rational to one economist may not be rational to another, a fact which underscores the contested nature of rationality.
- In matters of securing property rights, promoting investments, and reviving growth, the state has and should play an important role. In my view, this role ought to go way beyond the earlier minimalist functions which first-generation neo-liberalism sought to allocate to the state and the provision of an enabling environment which more recent neo-liberal perspectives have tried to assign to it as a mark of accommodation of critics of the minimalist thesis. Historically, no process of reform of property relations, enforcement of the rights ensuing and

sustained growth has occurred without a strong, capable state which is both willing and able to take on a proactive role. Thus, while it is true that the radical title exercised by the African state has been misused and abused extensively by various post-independence governments, this is not sufficient, in and of itself, to justify the wholesale denial of a central role for the state in the land management process. The experience across the world has been the achievement of redistributive reform either through revolutionary appropriation or through strong, direct, and proactive state action. To emphasis the point again: No society has ever achieved land redistribution and reform solely on the basis of the market and the attempts at employing the market-based willing-seller-willing-buyer approach to achieve reform in Africa have been a signal failure as eloquently attested to by the contemporary experience of Zimbabwe and South Africa.

- Whenever we reflect on issues of property rights in Africa and the rest of the global South, the temptation is often very strong to do so on the basis of a set of rigid, mutually exclusive and even out rightly opposed dichotomies: Public vs. private, statutory vs. customary, state vs. market, individual vs. collective, urban vs. rural, etc. Although in some instances, such dichotomies, if properly handled, may be useful for highlighting particular characteristics worthy of special attention, all too often, they are absolutised to a point where they become obscurantist and mystifying. For, in all societies, to a greater or lesser extent, for better or for worse, livelihoods consist of different types and levels of straddling, and of constant efforts at negotiating and inhabiting these dichotomies in a simultaneous process. In other words, the dichotomies are articulated, mixed together and combined in peoples lives and practices in complex ways than is captured by the approach of treating them as distinct and exclusive categories. This is a process that is, of course, rife with contradictions but the contradictions also constitute a part of the people's lived experiences. Furthermore, within each of the categories themselves are a host of diversities and differentiations which the prevalent method of treating them as exclusive spheres invariably misses.
- Markets in property have always existed in differing degrees of maturity and irrespective of whether they are formal or not. It is not, therefore, altogether correct to suggest that Africa has not known or does not have a history of property markets insofar as terms of access and use, transfers in user rights, leases of differing tenures, and exchanges emanating from a variety of considerations have been a feature of the management of assets. However, to argue the case about the existence of a long history of market relations in property in Africa is one thing; to suggest that property relations should be driven exclusively by market forces is quite something else altogether the implications of which will require to be closely studied. This is in the main because Africa is not the *tabula rasa* which it is assumed to be for free-wheeling market experimentations and existing systems of asset-building, sustenance, and transfer are intimately tied to livelihoods at multiple levels that call for policy heterodoxy, and not the orthodoxy of the neo-liberals.
- The inter-connection between property rights, investments and growth in Africa has been a long-standing issue of policy interest and scholarly debate which has acquired a new significance in the context of the economic crisis and structural

adjustment experience of the last two and half decades. The dominant and prevailing policy approach is premised on the assumption that there is a close relationship of causation between the property rights regime, the flow of investments and the achievement of growth. However, I would suggest that based on history and experience, the relations of causation are not nearly as clear-cut as is assumed and that in some cases, investments have flowed or slowed, and growth has accelerated or decelerated in spite of the property regime in place. Moreover, an approach which is built on a wholesale instrumentalisation of the property rights regime is one which should be treated with caution in terms of the kinds of conclusions towards which it steers scholars and policy makers.

- There are many ways in which an excessive, one-sided emphasis on formal property rules, registration and (individual) titling that has been justified on the grounds of enhancing productivity and which is at the heart of current policy approaches, could be as diversionary as it is irresponsible. It is diversionary because it is now a settled fact that a key aspect of the productivity problems bedevilling African agriculture derives from the unfavourable terms of trade for the continent's commodity exports and the extensive use of subsidies by Europe and the United States to the detriment of the African small holder. It is irresponsible insofar as it sidetracks *ab initio*, the necessary focus on thorough-going land and agrarian reform that ought to be the starting point for a project of socio-economic transformation in Africa. In contexts which are already characterised by extensive differentiation and inequality, a decision to focus exclusively on rules and the security of title as the anchor on which to base policy could easily become a recipe for the reinforcement of an unjust *status quo*. In other words, it is not a given that the development and application of an abstract set of rules can in and of itself help in the achievement of the security of tenure that is the purported objective of current policy and attention ought, therefore, to be paid to other critical variables that can make for a socially-sustainable property rights regime.

Debating Property Rights, Investment and Growth in Africa:

- Recent discussions on property rights, investment and growth in Africa have polarised the intellectual and policy communities along two broad lines. The first and dominant approach is the one which is anchored on the centrality of the free market and the imperatives of the establishment of private property rights to the prospects for attracting investments and generating growth. According to this school, Africa's development has been stymied by the absence of a coherent set of enforceable property laws that could stimulate the growth of the market. The absence of a coherent property regime has, in turn, meant the underdevelopment of the market and the private sector with the attendant consequences for growth. Even where property laws exist, they are discriminatory against the private sector and loaded against the free market with the same adverse outcomes for investment and growth. The scope for trading in property and property instruments, a domestic property financing market, and the legal framework for contracts are either non-existent, highly limited or over-regulated. In order for African countries to succeed in attracting the magnitude of investments which they require for generating growth, they would have to establish property regimes that are friendly to the private sector and driven by the forces of the market. In practice, this has translated into policy efforts designed to establish market-based property regimes and institutions, encourage the registration of titles to property, promote legal/judicial reform for the protection of private property rights, set up a framework for the enforcement of contracts, recast the role of the state, and divest the state of its landed assets and property.

- Exponents of the market-based approach to reforming property relations in Africa have also suggested that one of the most intractable difficulties posed on the continent, especially with regard to land rights, is the existence of multiple rules of tenure and use. Rationalising these rules through the establishment of formal, private and registered titles was seen as a policy priority. Through such registered titles, it would not only be easier to assure the security of the holders of land and landed assets but also facilitate access to financing, strengthen investor confidence, reduce, if not out rightly eliminate costly litigation over ownership and user rights, stimulate the development of all aspects of the property market, and contribute to stable economic growth. In a sense, the core preoccupation of this approach dates back to the colonial period during which, once all land and mineral rights had been vested in the state, a selective allocation of private rights and titles was undertaken as part of the strategy for building the colonial economy.
- Against this dominant perspective is a second school which challenges the suggestion that Africa did not have a coherent property regime prior to the introduction of on-going reform efforts and the view that the only way to attract investment and stimulate growth is first to liberalise the property market and then establish formal, private titles. This school also argues the position that the marketisation of property and property rights along the dominant neo-liberal lines that have informed policy produces a new generation of inequalities characterised by a concurrent process of alienation, concentration, dispossession, loss of access, and landlessness. The establishment of private property rights not only produces new rigidities in ownership and use that undermine a long history of popular access, it also does not necessarily guarantee private property title holders access to investment fund. That this is so is not surprising given the preponderance of small holder agriculture in land use in much of Africa.

At the same time as land privatisation and marketisation have acted to undermine the peasantry, they have also fuelled a speculative bubble from which a minority class of people have benefited. Furthermore, the one-sided policy emphasis on the creation and/or enhancement of a free market in property as a way of securing rights, and the push for the privatisation of ownership, have undermined systems of communal ownership that were central to household social security and rights of access and use. In the face of this, the expected reduction in land litigation has not materialised as various interests challenge the basis of the acquisition of rights by the private holders of title. Privatisation and titling have also undermined household food security; furthermore, they would seem to have worsened not just class inequalities but also gender inequalities, closing off possibilities which previously existed for access to and use of land by women. The extensive resort to the sub-division and fragmentation of titled land among the working poor has been one response to the absence of finance and other problems created by privatisation and individualisation; the reform process has increased economic vulnerability, dispossession and (a new wave of) landlessness. Effectively, according to this school, marketisation and privatisation have failed to deliver the economic benefits which their advocates promised and have, instead, created a host of social dislocations.

- The issues which have been raised in criticism of the privatisation and marketisation principles that have driven policy in Africa in recent years resonate in many of the empirical studies which have been undertaken across the continent in the last decade and half (Amanor, Moyo, Chachage). Questions have been raised with regard to the assumption that is freely made by many that the private sector has been absent from land matters insofar as the numerous small holder farmers who define the African economic landscape are themselves private economic agents par excellence even if the instinct has been not to treat them as such. Furthermore, in the daily struggles for securing livelihoods, the evidence available would seem to suggest that many people straddle a variety of property regimes that range from the highly formalised to the informal, the customary to the "modern", etc. and which make the assumptions that underpin the on-going drive towards privatisation and marketisation highly questionable, and certainly open to contestation. In any case, it is not all evident that the priority of the local agricultural population in many parts of Africa is the achievement of individualisation, titling, registration and privatisation. Studies from different parts of Africa would seem to suggest that much more stands to be gained in improved productivity, household income and rural food security from such simple measures as investments in basic agricultural infrastructure (water, feeder roads, etc) and the upgrading of technology than from a disproportionate rush to titling which, again as evidence collected indicates, does not in fact produce the promised access to finance from banks. Instead, an intensive and simultaneous process of land alienation, concentration, and landlessness seems to be underway. The discontents which the reforms have produced have stirred citizen pressures for state intervention which other underlying trends in the economy and society make imperative if a sustainable social peace is to be achieved. Insofar as the Land Question is concerned, there are several dimensions to this which deserve close attention.

Land in the Changing Political Economy of Property Relations in Africa:

- Outside of the settler colonies, in particular parts of East Africa and most of Southern Africa, it was generally assumed that the Land Question was either not posed at all or arose only to the extent to which it was connected to the Agrarian

Question. Recent developments have, however, called this assumption seriously into question. At the same time as the "classic" Land Question in East and Southern Africa continues to be played out largely in terms of the quest for restitution of land that was forcibly alienated under colonial guarantee, a "new" Land Question is developing in hitherto land surplus regions of the continent. To be sure, the terms in which the classic Land Question has been posed have not remained static: all over East and Southern Africa, a significant proportion of arable land which was alienated from local populations in order to support large-scale/commercial agriculture by a predominantly white minority group has, in recent times, been put to new uses which include game farming (especially of Ostriches), animal ranching (within privately developed parks) for touristic purposes, holiday campfire sites also linked to tourism, the development of cheap holiday accommodation for tourists, etc. At the same time, large-scale investments in hotel development are taking place on prime lands that practically place such lands beyond the reach of governments seeking to resettle families that were dispossessed. These developments have complicated the task of reform and redistribution insofar as hitherto fallow land which could have been acquired for purposes of re-settling the victims of historic injustices have been put into new uses connected, in part, to changing international trends, including the growth of adventure and ecological tourism. The development of new forms of land use at a time of intensified pressure for restitution and redistribution has also fuelled new patterns of land concentration involving the merger by different large scale commercial farmers of their vast holdings and the incorporation of the new consolidated holdings as (offshore) companies with an established shareholding structure. They are also connected to the abject failure of the willing seller, willing buyer approach based on market-determined prices which have invariably turned out to be much too high for those whose lands were alienated to be able to afford and which governments are also not able to finance.

- As it pertains to the "new" Land Question in hitherto land surplus parts of Africa, the pressures which have produced it arise from a variety of factors: Among them are:
    - i) Increased all-round population pressures at a time of declines in the area of farming and grazing land available, the acceleration of the outflow of population from the rural areas, and the entry of land speculators into the rural areas;
    - ii) Growing pressures, associated with an altered structure of incentives, propelling different interests towards a search for the establishment of their statutory rights to land through individual titling and registration;
    - iii) Popular asset-building strategies at a time of prolonged economic crisis, unending currency instability, devaluation and inflation, and generalised uncertainty;
    - iv) Growth in tourism, the property development which it generates and which is targeted at prime land – such as beaches - that become privatised once acquired by the developers;

v) The acquisition of prime arable land by industry as part of governmental campaigns urging them to reduce dependence on imported agricultural raw materials by going into commercial farming. This development is connected to bigger processes of corporate land acquisition under a favourable structure of incentives provided by the state;

vi) The emergence of niche agricultural activities that are mostly oriented towards serving exotic export markets for flowers, organic beans, pineapples, etc.;

vii) Extensive land degradation which in turn has resulted in the shrinkage of arable land for peasants practicing shifting cultivation and grazing zones for pastoralists seeking pasture for their animals;

viii) A rapid and largely uncontrolled process of urbanisation which has translated into pressures on urban and peri-urban landed assets, the pressure on housing, and the spread of peri-urban – and even urban – agriculture;

ix) A spate of private large and small-scale (artisanal and non-artisanal) mining activities across the continent which have fuelled struggles over ownership and control of land, and which have resulted in the displacement of people;

x) The flow of Diaspora funds underwritten by migrants and targeting landed property as the most viable and durable investments that could be made at a time when the policy climate is still strongly tilted against the real sectors of the economy;

xi) A booming urban housing sector fuelled by funds flowing in from a variety of domestic and foreign sources; and

xii) The enclosure of vast tracts of land for "sustainable" commercial logging to the detriment of local farming, hunting and pastoralist communities.

- The factors and processes that have served as the sources of pressure to produce the "new" Land Question have also stimulated the development of *formal* transactions in land and increased concerns about the impeccability of title and security of tenure. At the centre of this process of formalisation is a battery of professionals – lawyers, estate valuers, accountants, insurance brokers, architects, surveyors and building engineers – many of whom have set themselves up in the property market in the face of the high levels of (youth and graduate) unemployment that is a common feature of many African countries.
- Evidently, and as observed earlier, the gulf which once set the former settler and non-settler colonies of Africa apart with regard to the Land Question has narrowed considerably as the latter are increasingly experiencing processes of land alienation, concentration and enclosure side by side with an accelerated increase in the price of land and landed property at a time of pressures towards registration, individualisation and titling, that is not dissimilar in its essence to the historic experiences of the former, and which all over Africa is fuelling disputes and conflicts on account of the gross inequalities associated with it. These

disputes and conflicts have occurred as much in places which are known to be resource-rich as in places which are not necessarily rich in resources.

- Central to the disputes and conflicts over land that are taking place across Africa today are a host of citizenship issues that have come to the fore and which are articulated in terms of right of ownership, access and use, the very nature of ownership itself (individual vs. communal, free hold vs. fixed leases, etc.), the rights of "indigenes" and the entitlements of "settlers", etc. That is why today, the Land Question in Africa is also simultaneously a citizenship question which touches directly on the role of the state and the social policies that underpin the economic reform choices which are made.

Concluding Reflections:

- The way in which the processes connected to the contemporary Land Question have proceeded have left much to be desired. Largely unplanned, they are producing disturbing patterns of concentration of property, increased cases of landlessness, growing social inequalities, and problems of access for the working poor. The primary challenge which they pose is less about how to make land markets more efficient and more how, in the face of radical shifts and changes, livelihoods can be secured and the principles of equity defended. For, for the foreseeable future, the peoples of Africa will continue to live and function within multiple tenure regimes that, in and of themselves, do not necessarily obstruct growth but which could well benefit from the disciplines of a wider public and developmental purpose. For this to happen, attention has, of course, to be paid to the numerous equity and distributional problems that arise. But even more than this, energies will have to be mobilised to ensure that African economies respond more to domestic impulses.