

# LAND IN AFRICA – AN INDISPENSABLE ELEMENT TOWARDS INCREASING THE WEALTH OF THE POOR

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## **The dimension of poverty and the need for land**

In the majority of countries sustainable growth of income of the poorest segments of the population depends on agricultural growth. To this end, it seems necessary to improve their access to basic goods such as land and education.

T S Jayne, 2001, MSU Paper No 24)

In the year 2000, in 28 of the 45 African countries on which there is information available, approximately 64 per cent of the people lived on less than US \$ 2.00 per day. Among those, about half did not even reach a daily income of US \$ 1.00. At least 400 million Africans find themselves in a situation of absolute poverty and around 200 million are considered indigent. In these same countries the percentage of the rural population is 61 per cent. That means that the overwhelming majority of the poor and indigent people are found on the land. They are rural families which survive from the land and from what the land has to offer them<sup>2</sup>.

In spite of the US\$ 500 billion in investments over the last 40 years, added to another US\$ 200 billion contracted in foreign debt, absolute poverty has taken root; in addition the stagnation of technological growth has become part and parcel of the daily lives of hundreds of millions of rural families. The Continent is becoming ever more conscious of this situation and, increasingly, one is faced by a genuine will to go beyond the analytical domain of the problems surrounding poverty, into the normative domain, that is, how to act in order to overcome this situation.

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<sup>2</sup>The population of these 28 countries represents 81 per cent of the Continent's total population; it is estimated that the number of those living below the line of absolute poverty surpasses by many tens of thousands the figure of 400 million. These estimates were made on the basis of statistical data published by the UNPD, 2002, *Human Development Report*, New York: Oxford University Press.

This article joins the efforts of many other Africans, with the understanding that poverty does not refer only to the levels of daily income per person; poverty should also be seen as the lack of power in intra-family relations, as well as between them and the rest of the actors in society and between society in its totality and the natural resources which exist in the African Continent. Moreover, we understand that poverty reduction should not become an objective in itself<sup>3</sup>, but should rather be a consequence of the sustainable increase of income and the progressive improvement in the people's living conditions<sup>4</sup>, in other words, the production and distribution of wealth.

Today there is consensus that the reduction of poverty or the increase of wealth and its distribution in Africa must necessarily be through the growth of agricultural production; this will necessitate access to the land and to education by the poor<sup>5</sup>. Why? For the simple reason that one does not foresee that the structural transformation of the economy and the resulting transformation of the peasant class into workers or artisans in the urban service sectors will happen. At the same time, one also does not foresee that there will be significant investment in large-scale agriculture, which could absorb the hundreds of millions of peasants of the African Continent as rural workers. With the current rate of increase in the population, neither will there be employment for all, nor will there be a tendency for a significant increase in the average salary. Thus, land for all the rural poor becomes an indispensable condition for food security; it is the only valid asset for a sustainable increase in income and for the attainment of the much desired social stability.

But we are not dealing with cold numbers and functional relations alone, when speaking of the land in Africa. For the 400 million African poor, the land is the only certainty of continuity they have at their disposal; it is on the land that they produce the food they eat and the few surpluses or industrial cultures they are able to get, on it they converse with the spirits of their ancestors, on it they find wood and stakes for the construction of their houses, on it they allow the cattle to graze and they look for healing herbs, on it they identify themselves with the origin of life which is carried by

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<sup>3</sup>In this regard see Negrão, J, 2002. "Para que o PARPA resulte!" *Revista Ciências Sociais*, Vol. No. Universidade de Coimbra.

<sup>4</sup>Meier, G. 1989. "What do we mean by Economic Development", in *Leading Issues in Economic Development*, New York: Oxford University Press.

<sup>5</sup>In this regard see the empirical evidence produced by the University of Massachusetts in Jayne, TS, 2001, MSU Paper No 24.

the waters of the rivers. The land is the patrimony of the family, the lineage and the community; their ability to resist outside interventions resides in the sustainability the use of the land in the fight against poverty and for the increase of wealth.

In this way, the land has an inseparable relationship to work, human capacity and capital. The empirical evidence showed that among rural families<sup>6</sup> the land used for various types of consumption cannot be perfectly replaced by the land geared for the market; in addition, the market does not work exclusively through the convertibility of assets into capital, but also by the convertibility of the latter and the social obligations networks<sup>7</sup>. In other words, there are social relationships which go through the land. In this way, the function of distribution on the land is intrinsically connected to the functions of production and consumption, and of these with the rural family. The rural family's function of consumption corresponds to the access to land; the function of production is equivalent to the security of possession; and the distribution function is related to the division of the land in function of the multiplicity of networks which are established by means of blood ties, marriage and inheritance. Thus, for them, above any other interest group, the maintenance of inter-generational returns in the use of resources is of paramount importance, because it is essential for their reproduction.

### **Colonisation and decolonisation**

The lands of the Africans were confiscated under pretext of an eminent right acquired by conquest; and among the various powers, those unjustly gotten lands were granted and sub-leased to plantations where the native workers suffered all kinds of inhumanities.

Nnandi Azikiwe, 1937, *African Morning Post*, Accra

If it is true that access to and possession of the land by the poor are indispensable elements for the production and distribution of wealth, then it is not less true that, as in the other continents, the current pattern of land distribution derives from an historical process which has been strongly influenced by the various powers which have governed the Continent during the 20<sup>th</sup> century. The land policy is nothing more than

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<sup>6</sup>By rural family we understand the smallest unit of production, consumption and distribution of the African rural societies.

<sup>7</sup>Platteau, Jean-Philippe. 2000. "Does Africa Need Land Reform?" in Toulmin, Camilla & Quan, Julian (eds.), *Evolving land rights, policy and tenure in Africa*, London: DFID.

the manifestation of the economic growth option by the governments in the domain of the development economy.

When, during the long period of darkness of the colonial era the Continent was divided among the world powers and the world rehearsed globalization, families were thrust into indigenous reservations where the women worked for subsistence and the men were compelled to make up the labour force for cocoa, coffee, sugar, copra, tobacco and tea, to the delight of the international free market. In exchange for the export of the agricultural produce of the poor, the rich received industrial goods; in addition, the rich held the most productive lands, the clearest waters and the most leafy trees. This rehearsal of globalization on the African Continent was an international market success for the rich and a total environmental and social disaster for the poor. The reservation lands became progressively depleted, with less productive capacity, while the technological know-how for the production of alternative energy sources stagnated, and creativity vanished in the chores of compulsory labour. In addition, growing urbanization led to the appearance of social movements which everywhere reclaimed independence for the people of the African land.

However, in spite of great leaders such as Kwame Nkrumah, Patrice Lumumba, Frantz Fanon, Amílcar Cabral, Gamal Nasser, Ahmed Ben Bella and Julius Nyerere, who raised their voices against the structure of the state, sooner or later the new governments ended up adopting the colonial administrative practice. From the time artificial borders were imposed upon Africa by the Berlin Conference, the state instruments entrenched by the colonial administrations were taken up. At the same time, the superiority complexes of the rich foreigners were taken for granted, and the economic postulates of modernisation exonerated. Although the question of the seizure of the African land by Africans was the order of the day for the newly created modern states, the set of problems related to the dimension of agricultural utilisation and the role of international markets led the majority of politicians of the 1960s and 1970s to ignore that pressing issue. The endogenous institutional dynamics of the African societies with regard to the administration of the people and of the land were ignored; the know-how about production and commerce of the rural populations was spurned; the replacement of the colonial élites by emerging African élites was made possible through a hyper-intervention of the state; and the rapid transformation of peasants into rural workers was seen as the only alternative to face the increasing deterioration in the international conditions of exchange.

Colonial dualism was maintained and the states continued to award the best lands either to local or foreign élites, or to state-run enterprises. In countries of east-and southern Africa, such as Kenya, Malawi and Botswana, the poor were left on marginalised lands where the economy was already structurally distorted when they arrived there. In west Africa the structure of the rural economy prevalent in colonial times was maintained, along with the land distribution system; all that changed was the nationalities of management of businesses and services, as well as the colour of their officials<sup>8</sup>.

In other parts of Africa, following the principle defended by the green revolution, that the poor could also become part of development, provided they received the appropriate technology and infrastructure, Nasser and Ben Bella were the first to challenge the dualistic approach, channelling large investments towards irrigated agriculture. Others, relying on less resources, attempted to reduce dependency and protect the poor from the national 'bourgeoisies'. Julius Nyerere made headway with the *Ujamaa Vijijini*, and Samora Machel nationalised the land and wanted to turn the state *machambas* (small farms) into the basis for the formation of national capital. However, the agricultural product, in relation to the number of inhabitants, showed a constant decline along the years, and productivity did not increase at the desired rate. This is due to various reasons, the most important being: the evolution of the international situation and the state's incompetence in business administration; there were strong price distortions resulting from the overvaluation of national currencies; and there were high indirect taxes on agriculture.

The economies began to send off negative signals. Conventional agricultural products for export from Africa had less and less value in the international markets, which in turn were protected by the countries of the North; added to which the economic inefficiency of the private or state-owned great plantations increased, and salaries plummeted in real terms. The growth rate of the agricultural food product was not able to keep company with the population growth rate. The result was that the Continent became a regular food importer. Land distribution maintained the dualistic standard of the colonial period: on the one side an agriculture of scale turned towards the market, and on the other the family land with a dual function of meeting the needs of both consumption and the local market. Some countries attempted a programme of land distribution for the poorest people in order to guarantee self-sustenance, but the greater investment volume continued to be directed towards the large agricultural estates. The

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<sup>8</sup>See in this regard the collection of original texts of the time compiled by Minogue, M & Molloy, J, 1974, *African Aims and Attitudes: selected documents*, Cambridge: Cambridge University Press.

latter became state property or the property of members of the government who were strongly protected by the state; and the former continued to be used by rural families with flimsy security of tenure in the face of the current land legislation.

To sum up, in a given period the colonial administrations were characterised by the adoption of the modernisation paradigm and its dualistic models of land distribution between large enterprises turned towards the market, and indigenous reservations for the production of food, so guaranteeing the propagation of the labour force. In some countries, and at a different time, compulsory cultures for the poor were introduced in function of the economic rationality of the coloniser; the latter was in no way related to the sustainability of the income received by the workers and by the land worked by them.

The implementation of the dualistic models resulted in increased migration towards the urban centres; this had a negative impact on the so-called subsistence economy and caused a decrease in the demand for industrial products in the rural areas, that is, there was contraction instead of expansion in the domestic market. The practice of the 'productivist' models showed that the large public investments in infrastructure not only showed poor results in the short term, but also led to an increase in the inflation rate. Furthermore, the accumulation of debt by those who made use of technological packages for the irrigation areas caused them to have to hand over their land to their creditors, reverting to the condition of tenant-farmers. Last, the implementation of protectionist measures has shown that import substitution generates, in parallel, unfair and unsustainable terms of exchange between the rural and the urban worlds.

### **The imposition of globalization**

We promised that this state will not interfere with individual property and we will not go back on it in any way.

... However, what we can never agree to is the existence, here, of landowners who are absent from their properties.

Kenneth Kaunda, 1967, *Humanism: a Guide to the Nation*

Kenneth Kaunda's great preoccupation with the large estate owners who leased their land without investing anything in it, turned out to become a reality in many African countries at the end of the 20<sup>th</sup> century; this applies in particular to the more recently liberated countries such as Zimbabwe and South Africa.. On the one hand there is respect for individual land ownership, which is strongly required by the neo-liberal

models of the market paradigms; on the other hand there is a fear that the 'landless', like in Latin America, could become the rule rather than the exception in each one of the countries. But how did we arrive at this point?

The poor economic results achieved by the African countries, the end of the Cold War, capital flight, and the increase in foreign debt were sufficient reason for a profound change. However, this change was not a function of the colonial legacies, but was carried out in the name of efficiency and integration into the world economy. It is in this context that the structural readjustment of the economies, allied to a new land policy for the Continent, emerged in the 1990s.

At the time, the World Bank maintained that the reason for the reform was the fact that the poor had no access to land in a way they would like, that is, with full ownership rights; this in turn resulted in the existence of a market of credit and imperfect securities, the existence of fallow land, and a great number of unemployed labour, albeit having a calling for agriculture. So it was that land reform had as its objective the introduction of a regimen of land ownership which would create incentives for people to seek the land for productive use.

This new policy was based on the presupposition that individual title [of the land] would decrease transaction costs, increase the economic efficiency of the businesses, and develop the land market. As a consequence, there would be a movement towards perfect convertibility between land and capital, and this would result in improvement for the financial market. To sum up, the land had to be titled in order to assure land ownership rights and access to credit; in addition, the title should be individual or by productive unit to facilitate its transformation into a business. The seizure of private land had to be ended and the conditions which were being directly or indirectly contemplated by the national legislatures in favour of the state had to be removed, in order to allow investment to take place and to attract capital<sup>9</sup>. Furthermore, for the sake of not distorting the market, in the case of expropriation compensation would have to be paid and this should be based on market prices for land; in turn, this land market, as

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<sup>9</sup>Platteau, Jean-Philippe, 1996, "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: a critical assessment", *Development and Change*, Vol. 27, 29-86, Oxford: Institute of Social Studies.

it became evident in Zimbabwe and in South Africa<sup>10</sup>, is profoundly distorted because of long term historical reasons and, in more recent times, reasons related to power<sup>11</sup>.

However, the empirical evidence of the 1990s showed that the implementation of this policy on the African Continent developed patterns which had not been foreseen and which, above all, questioned the very social reproduction of the most needy social groups. In the first place, the desired efficiency of the non-formal land market did not take place because, among other reasons, of the abovementioned distortions and the fact that investments did not flow in at the projected rhythm. Evidence showed that, under the present African rural conditions, the individual rationality akin to business is not only non-exclusive, but it also brings about disadvantages for the poorest and for women who are heads of households. It was also found that there is no positive correlation between titled land and credit disbursement; and that the land market which flourished was so distorted due to state interference, that even the food security of the poor, as well as the much desired social and political stability were put in question. In addition it was concluded that the market does not work, exclusively, through convertibility of assets and capital, but also through the convertibility of the latter with the social obligations networks which are established in the space units which are the seats of African rural societies<sup>12</sup>.

Contrary to what had been foreseen, the land market that flourished is deeply distorted. A tendency is found everywhere to have land concentration among families belonging to the élites in power or foreign companies. It has also been established that the land which is being sought for buying by large capital is that which is earmarked as having indigenous forests, wildlife, and those suitable for summer holidays; hence, there is much resistance in making the connection between the utilisation of those resources and the social and economic development of the African poor. On the arable lands, instead of the desired national economic and business oriented efficiency, it has been ascertained that land concentration is not accompanied by investment: the landowners

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<sup>10</sup>Borras, Juan, 2001, "Towards a Better Understanding of Market-Led Agrarian Reform (MLAR). Experiences in Brazil, South Africa and Colombia and their implications for the Philippines", mimeo.

<sup>11</sup>Binswanger, Hans, et al, 1993, "Power, Distortions, Revolt and Reform in Agricultural Land Relations" in *Handbook of Development Economics*, Vol. III, Amsterdam: Elsvier.

<sup>12</sup>Negrão, José, 2001, *Cem anos de economia da familia rural africana*, Maputo: Promedia.



are absent and lease their land to the poorest who remained landless. The absence of investments in irrigation schemes, in conservation technologies and in local human capital has led to an over-utilisation of the soil, an indiscriminate chopping down of vegetal energy resources, and the dilution/dissipation of centuries-old institutions and local knowledge by the power relationships which are imposed upon them.

Summing up, where land reform took place in accordance with what was prescribed by the neo-liberal models, in place of land being used for productive ends, what happened was a monopolisation and land speculation. There were those among the poor who reverted to the condition of being 'landless', having to resort to leasing the land from the large landowners who would be living in the cities and who invested nothing towards the improvement of the lands under their control. Credit did not flow as had been foreseen, because the commercial banks did not accept the land of the poor as collateral; furthermore, the state's compensation system for redistribution of land "at the market price of the land" ended up as a big problem for governments genuinely concerned with the welfare of the poor<sup>13</sup>. What was to be done?

### **Indispensable but insufficient**

Development and investment require credit and a credit economy is strongly based on a system of registration and title of the land. Consequently, land ownership must have a more definitive and explicit character if we wish the land to be worked, [but] agricultural land will not be sold to foreigners, unless there is government approval.

*African Socialism and its Application to Planning in Kenya,*  
Nairobi, 1965.

The issue of land as guarantee for agricultural credit is as old as the decades of independence on the Continent. However, then and now, even when the land is privately owned, credit continues to be scarce and the desired investment is not taking place except in special cases which, normally, entail strict conditions for the protection of the products by the government<sup>14</sup>.

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<sup>13</sup>The most remarkable examples of the negative effects of land reform which is market orientated have been found in Senegal, Kenya, Egypt, Algeria and South Africa. See in this regard Rochegude, Alain, 2000, *Décentralisation, acteurs locaux et foncier. Mise en perspective juridique des textes sur la décentralisation et le foncier en Afrique de l'Ouest et du Centre*, Paris: Ministère des Affaires Etrangères.

<sup>14</sup>Moreover, the same happens in the OECD countries. In 1999 the OECD countries spent US\$ 360 billion in agricultural subsidies; that is the equivalent of approximately

For what reason is the land alone not sufficient to attract agricultural investment? Furthermore, knowing that everywhere there is a market in non-registered land which is developing among the poor, in parallel with savings and credit systems which are equally not registered, why then does the market in registered land not acquire the same dynamics<sup>15</sup>? Because a bad formulation of presuppositions took place, whereby the exclusive determining factor was the land, in the assumption that the abundance of land would lead to an increase of the product per worker (as happened in the New World), and assuming that in the areas where land would become scarce there would be an increase of the product per hectare (as happened in Asia). However, neither option materialised. This is because work, and not land, is the main constraint for the economy of the rural family.

Arthur Lewis already made the same mistake in believing that work was abundant and capital scarce; but later it was established that when capital investment is not accompanied by technological transformation, rapidly decreasing marginal returns will be experienced. The question of time and quality of work are crucial for agricultural development and, in consequence, for the evolution of the land tenure system in Africa, not the other way round. It is not the definition of land ownership that determines the development process; it is the latter which will be demanding ever more complex forms of definition of land tenure and ownership<sup>16</sup>.

The seasonal sparsity of time for agriculture together with the opportunity cost in the utilisation of working time available to the family on the basis of gender and age, added to the conditions of technological stagnation and the deterioration of terms of exchange between agricultural and industrial products and services are determinants for rural development from which an endogenous development of the land market can unfold.

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1 billion dollars per day in subsidies. in OECD, 2001, *Agricultural Policies in OECD Countries: Monitoring and Evaluation*.

<sup>15</sup>I make use of the concepts 'registered' and 'non-registered' in place of 'formal' and 'informal', in the understanding that there is a series of formalities of institutional character in the so-called informal sector or market, making them undeserving of that designation.

<sup>16</sup>So the neo-institutionalistic postulate, in North's version, is inverted. According to it, priority is given to the definition of private property as an indispensable element for development to take place.

The scarcity of time in the face of technology being used led to the appearance of the imperfect substitution of working time for the production of food by working time for production for the market; this applies not only to agricultural produce, but also to the sale of other goods and services, for example, male labour. For this reason, in the absence of external constraints, such as working time, the land which constitutes the guarantee of consumption is neither salable nor replaceable by any other asset. That explains why among the poor the land cannot be used as guarantee for credit and a market can develop in the marginal lands. Access is intimately related to consumption, whilst tenure is related to the market; and these are not interchangeable. One can also understand why around a community territory, from the lineage lands to lands of enlarged and nuclear families, a myriad of relations take place. These move easily between the symbolic and the economic, which are the centres of the functions of distributing the plots and the wealth. Last, it explains why empirical evidence has shown that family agriculture has more economic efficiency than any agriculture of scale carried out on the Continent.

Work, in its full extent, from availability of time allocated in the privacy of the family in function of the technologies being used, up to quality in function of vocational training and level of schooling, going through organisational forms, as Reynolds said, arises as the determining variable in the rural development process, in the Continent's specific conditions<sup>17</sup>. In other words, the growth of human capital and social capital are conditions *sine qua non* for development to take place<sup>18</sup>. Technical progress cannot be exogenous to local dynamics, as claimed by Sollow; instead, it must derive from an endogenous accumulation of human and social capital, as shown by the endogenous growth theories.

However, the production of rural wealth does not only result from internal conditions of the family and community economies. The international situation has its share of responsibility for the current situation of generalized poverty in Africa<sup>19</sup>. The

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<sup>17</sup>Reynolds, Lloyd, 1971, *The Three Worlds of Economics*, London: Yale University Press.

<sup>18</sup>As Barros and Akiko have demonstrated, in order for human capital growth to have direct effects upon the development process at local level it is necessary that there be a parallel growth of social capital, as one cannot dissociate private returns from social returns in cases of extreme poverty (Akiko, Abe, 2002, "Social Capital, Institutions and Participation", mimeo, Maputo; Barros, Carlos et al. 2001, "Human Capital and Social Capital in Mozambique", mimeo, Lisbon).

<sup>19</sup>Mellor Johnston said that rural development could take place in an inward orientated economy and, depending on the situation of the moment, with external markets; however, empirical evidence shows that, because of historical reasons, as well as

deterioration of the international terms of exchange and the terms of exchange between urban and rural products, as well as subsidies to agriculture by the countries of the North, are the two factors which the neo-liberal model ignored or pretended to ignore when formulating the land policy which ushered the structural re-adjustment in the African countries. The mainstream created two wrong presuppositions: first, that the markets for agricultural products have an endogenous self-regulatory capacity and, therefore, incline towards perfection<sup>20</sup>; second, that demand is unlimited and, therefore, it is the dimension of the supply and not the structure of the demand that is in question.

In the real world, markets are neither self-regulating nor is demand unlimited. These are the reasons given to justify the high subsidies to agriculture in the OECD countries. At a time of globalization and in the face of poverty in Africa, it is important that the North accepts that it must negotiate the structure of the international market for agricultural products; it is equally important to already start creating compensation funds for barriers to access to international markets making them available as risk capital for the agricultural sector.

But what should be done with this risk capital? It so happens that a distorted demand structure does not exist only at the international level. At national and regional levels the same proves to be true. Contrary to what is presupposed in the neo-liberal model, that the only problem is one of supply, countless case studies as well as daily experience demonstrate that the surpluses are not drained off, that value is not added to raw materials, and that there are many losses in the post-harvest period. The rapid development of small and medium agro-industry arises as a means of assuring demand, of adding value to African agricultural products, and of finding specialisation in function of national and international markets<sup>21</sup>. Risk capital would then be utilised as the motive power for the development of small and medium agro-industries, which would effect an 'induced innovation' on the upside for the rural families with the consequent increase of supply, and the increase of aggregate demand on the down side.

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reasons pertaining to the nature of economic behaviour of the family units, relations with external markets tend to have a structural character (Hayami, Yujiro & Ruttan, V, 1985, *Agricultural Development: an international perspective*, Baltimore: The Johns Hopkins University Press; Negrão, José, 2001, *Cem Anos de Economia da Família Rural Africana*, Maputo: Promedia.

<sup>20</sup>Strangely, an identical presupposition was adopted by OXFAM UK in its international campaign of 'fair trade' – remove the subsidies from the North and the international agricultural produce market will regulate itself!

<sup>21</sup>Hayami, Yujiro & Ruttan, V. *op. cit.*

I have presented four normative conditions for the alleviation of poverty: induced technological transformation; the growth of human capital in parallel with social capital; the existence of risk capital, and its utilisation in small and medium agro-industries which are directly dependent on the primary product of the rural families. Where does the land come in?

In the first place, credit does not arise out of the land, but from the accumulated savings of agro-industry, from savings deriving from an increase in production due to technological transformation, and from added value owing to specialisation geared for the market. So, credit arises together with the rural family, in function of the product and the savings assurance. Whilst these savings levels have not been achieved, it is necessary for risk capital to be made available with an origin from outside the agricultural sector. So, particularly at this moment, the fictitious argument about the utilisation of the land as credit guarantee is eliminated<sup>22</sup>.

In the second place, access to the land by all who need it is an indispensable condition to ensure consumption and the retention of people in rural areas in place of urbanisation at an uncontrollable pace. There are two political consequences of adopting this principle: first, the redistribution of land, provided it is confirmed that a landless situation is occurring in a country where land is abundant; and second, the prevention of concentration of land for speculative ends or for leasing without any re-investment.

In the third place, security of tenure must be guaranteed to all who work and live on the land, whether individually or collectively. In other words, there must be a recognition of occupation rights, provided they do not arise from bad faith, and provided that there is effective use of and usufruct from the land. Sooner or later this security will have to require private appropriation; however, the state must retain the possibility of expropriation when the constitutional rights of the people are threatened by a given landowner or his or her agent<sup>23</sup>. But how does one go about such registration, in the knowledge that the quantity of registered land in the whole of Africa is less than ten per

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<sup>22</sup>There is no Commercial Bank in Africa which will accept giving credit to the poor having the land as collateral. For the simple reason that, in cases of non-payment, administrative costs are so high that they do not justify the risk.

<sup>23</sup>This formulation is not only valid for entrepreneurial land speculators (as is the case, for example, in Egypt), but it is also valid for community leaders who despotically eliminate the persuasion mechanisms of the local institutions in function of individual interests (as has happened, for example, in Malawi and Tanzania).

cent, and that there are high costs involved with the said registration? However, there is evidence that the systems of land demarcation and division of plots in use are effective in determining the use and even the transfer of property rights among the poor. So, nothing prevents the recognition of registration conveyed by oral means in a framework of common practice, in parallel with the written registration, for the purpose of recognising the rights which have been acquired by the population. So, the two limitations which were found in the last decade in relation to registration have become obsolete because the possibility of recognition of the oral proof is given the same judicial validity as the title (the written proof); and the hypothesis of collective registration (community land) is admitted whenever the collective rationalities are predominant to the individual ones according to the explicit will of the people who reside there.

In the fourth place, the utilisation of the land as capital for the poor, in partnership with investments by third parties. As a result of land relationships established during the colonial period, Africa is the only continent where the dualism in the use of the land is maintained. On all the other continents the division of land use is in function of the area and dimension of the undertakings, comprising small, medium and large enterprises; but on the African Continent the difference between the entrepreneurial and the family (or 'subsistence') system still persists. The rationality of this division is tied to the presupposition that the family or domestic economy is essentially directed towards minimising risks, while the entrepreneurial economy will seek as a primary objective to maximise returns. But it so happens that evermore domestic productive units not only demonstrate a greater efficiency than the great agricultural estates, but also incline towards developing into family enterprises. It is obvious that the agricultural entrepreneurial model of the entrepreneur being the custodian, simultaneously, of capital and land, whilst the poor hold only work as their own, begins to be replaced by a model of the modern enterprise with shares, where the poor have land and labour, and the entrepreneur has capital and technical and marketing know-how; this results in a partnership between the two sectors on the basis of mutual advantage. These advantages become particularly significant when the partnership is related to the industrial transformation of the product (as in the case of industrial cultures), or with an intensive exploitation of the physical space (as in the cases of exploitation of indigenous species of wood, or the exploitation of wildlife for tourism purposes). However, the development of this type of partnership requires that, in parallel, an institutional framework be developed for the establishment of clearly defined contractual relationships, which can be periodically renegotiated between both

parties<sup>24</sup>. So, an unimodal approach to agricultural development will be adopted; this is the so-called Danish family model, to the detriment of the bimodal approach, also known as the English entrepreneurial model.

The fifth and last point on what to do with the land is how to incorporate local institutional mechanisms in the administration of physical space with the objective of guaranteeing the maintenance of inter-generational returns in the utilisation of the resources. The issue of administration of physical space is far from being a merely technical problem, which can be solved by means of a zoning of land use on a drawing board or computer screen. The complexity of planning is related not only to the bearing capacity of the soils, the productive potentials in function of the markets and of the technology applied, but also with a strong unpredictable component which has to do with human behaviour and technological innovation in areas such as new materials, or organically grown food. Furthermore, experience has shown that the institutional framework through which the physical space administration is processed is the Achilles heel of this activity. The fragility of institutions in the African states regarding the setting of norms and control, added to the deterioration of ethical values in the public service, manifesting itself in corruption, indicate the necessity to empower the already existing persuasion mechanisms at local level with the purpose of having them institutionalised into the system for registration law<sup>25</sup>. The incorporation of the local persuasion mechanisms will have as a consequence a greater and more responsible intervention by the citizen in the definition of the physical space where he or she resides or works. Consequently, it will be less and less probable that there will be a compulsory creation of villages in the rural areas, in the name of plans that are alien to the actual communities, and which continue to contribute towards the political, social and economic instability of the Continent.

To sum up: first, the land needs public and private investment and, under current conditions, it cannot be transformed into goods that can be perfectly converted into capital. Second, access to land must be guaranteed to all persons who wish to work. Third, security of land tenure begins by recognising occupation rights and may be

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<sup>24</sup>Alessandro Marini makes detailed reference to the theoretical framework of the partnerships, defending the neo-institutionalistic approach which fundamentally supports the advantages resulting from the minimisation and the sharing of risk among the various endorers. See Marini, A, 2001, "Partnership between local peasants and large commercial investors" in *Land Reform*, Rome: FAO.

<sup>25</sup>For the abovementioned reasons, I prefer to use the concept of System for Registration Law instead of System of Positive, Statutory or Formal Law.

terminated by private appropriation with social limitations by the consubstantiated in the state's institutions. Fourth, the land may and must be used as the poor people's capital. Fifth, the persuasion mechanisms of the local institutions must be institutionalised into the administration of the physical space.

### **Constructing / building the institutional framework in Mozambique**

No to landlessness in Mozambique.

No to absentee landowners, those who let the land and do not invest.

Recognition of testimonial proof of land occupation by the poor.

Incorporation of common law systems into the legal framework.

Stop the bi-modal approach for agricultural development.

(Text of Mozambican civil society divulged in 1996)

The debate over the elaboration of a new Land Law in Mozambique was unleashed as a result of a specific national and regional situation. The country was finally entering the post-war [era] thus making it possible for those living in urban areas to return to the countryside, and enabling rural families to return to their land of origin; furthermore, the structural readjustment opened up new perspectives for investment in rural areas by means of a re-privatisation of state agricultural estates. In the region, the end of the apartheid regime in South Africa and the imminent fall of the land ownership system in Zimbabwe pointed towards capital inflows and the arrival of entrepreneurs in Mozambique.

This culminated in the monopoly by the urban élites of the best land for speculative purposes; after this took place, land conflicts with the rural populations began to appear everywhere. The alarm was sounded; the country then lived almost exclusively on external food support; thus it could not be permitted that the few lands with infrastructure would remain unproductive. This was due to motives that had nothing to do with the war. It became a matter of urgency to review the Land Law of 1979, which not only granted excessive advantages to the state and to Frelimo, which fostered corruption, but also stimulated the monopoly of the land<sup>26</sup>.

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<sup>26</sup>According to the 1979 Act, land taxes decreased with an area increase. The rationality of this legal mechanism was based on the socialist orientation of the economy, in which the largest areas belonged to state enterprises and, therefore, they paid less taxes.



It was within this context that the movement now known as the Land Campaign came into being as a movement. In the beginning it was not a structured campaign; fundamentally, it was an awareness which covered a large spectrum of social layers and interest groups, associations and co-operatives, non government organisations, academics, politicians, and even private sector elements, in additions to dozens of unknown, honest people who together manifested their disquiet about what was happening and feared that a new social conflict would erupt in the country, and that hunger would return and be entrenched in the devastated rural areas.

A series of studies were carried out on the nature and outline of the problem, as well as on the popular aspirations and alternatives for rural development. These were widely discussed around the whole country. The motive force was a thorough discussion of the various draft bills of the new Land Law. These were the responsibility of the newly created technical Secretariat of the Inter Ministerial Land Commission<sup>27</sup>. It was the catalysing movement of this dynamic that finally became the Land Campaign.

Little by little some consensus was reached between the various public opinion formers and those in decision making, including those at the core of the parties and in parliament. Among the issues on which consensus was reached the following should be emphasised:

- As the structural transformation of the economy would not be taking place in the short or medium term, since conditions for massive employment creation, industrialisation and urbanisation of society were non-existent, the peasantry was not a class in transition into the rural proletariat or urban employee, but a foundation whereupon the country's process of rural development would have to be based. So, 'no to landlessness' became a point of consensus.
- As large scale agricultural investments were not foreseeable, since the investment tendency in the region's rural areas is oriented towards the lumber sector and tourism (land without people but with a lot of animals!), the Law should move from a reactive position of defence of the rural families' interests to a proactive position, towards the incentivising of national capital creation from the sphere of family

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<sup>27</sup>Tanner, Christopher, 2001, Law-Making in an African Context: The 1997 Mozambican Land Law, mimeo, Maputo.

savings to the reinvestment of aggregate savings at national level. In this fashion the object of the swift transformation of the rural family, from a risk minimising unit into a return maximising unit, arose as an imperative for which the Land Law should constitute the institutional framework. The increase of family savings and their reinvestment became an objective which could not be compatible with the leasing of the land by large estate owners to the poor. So, 'no to the absentee landowners' and 'no to the leasing of land as condition for survival' became the second point of consensus.

- As the registered land market was still in its early stages and was structurally distorted, the state continued to be responsible for land adjudication and, consequently, for safeguarding the constitutional rights of the people. In this case, why then did the law compel the people to register and title their land so that their very rights would be recognised by the state? Why could a legal mechanism not be introduced that would compel the state to recognise, by default, the occupation rights of the rural families based on oral testimony, as was the custom among the poor? The inclusion of oral proof on equal footing with the title for the purpose of recognition of the person's occupation rights as a proactive measure was the third point of consensus<sup>28</sup>.
  
- As with the postwar period, when the systems of common law were efficient and demonstrated an enormous efficiency in the adjudication of land for more than five million people, why not incorporate them into the Land Law instead of considering them qualitatively inferior and 'traditional'? The only reservation to be introduced was related to the secondary role of women in the position of wife, daughter or niece<sup>29</sup>; the introduction of a legal clause assuring the constitutional rights of women has been suggested. So, the incorporation of common law into the Land Law, in place of opting for legislative dualism, became the fourth point of national consensus.

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<sup>28</sup>It is interesting to mention the fact that Mozambique did, in 1997, what Hernando de Soto advocates as a solution in his most recent book *The Mystery of Capital*.

<sup>29</sup>See in this regard Negrão, J, 2001, "Cinco Sistemas de Direitos Consuetudinários da Terra em Moçambique", in *Relatório de Desenvolvimento Humano de Moçambique*, 2001, New York: UNDP.

In less than six months dozens of organisations and entities agreed on these four basic points; an increasing number of parliamentarians accepted them as a valid platform towards resolving the land issue in the country; the private sector with vested interests saw them as a way to reducing the inflationary transaction costs by the land monopolisers; and the donors all together, including the World Bank<sup>30</sup>, recognised that this was the only alternative for the complex issue of an efficient and effective land distribution.

The new Land Law was approved by parliament in 1997 and became effective on 1<sup>st</sup> January 1998. That was the time when it was disseminated throughout the country. Every individual would have to be informed of his or her rights and of the procedures contained in the new law. That is why the movement ended up being called the 'Land Campaign', marking the moment of devolution to the rural people of what had been their contribution towards a national legislative act.

Within two years, approximately 200 non governmental organisations, grassroots community organisations, churches, research institutes and other institutions had joined the Land Campaign. More than 15 000 persons were trained as activists and 50 000 were directly involved in the Land Campaign in 114 of Mozambique's 128 districts; there even came a point when the state's administrators were complaining that the people knew the law better than they did.

The institutional framework had been created, but the most difficult part was still missing – its implementation. Another phase had been entered into and, obviously, new types of problems emerged. Firstly there was the huge resistance from employees in the title deeds offices to accept the new law; this is because, in a way, they would no longer have the monopoly in the decision making regarding land adjudications. Afterwards there surfaced problems related to appeals in cases of violation of the Law; these only demonstrated the extreme fragility and corruption in the Mozambican judicial system. Soon afterwards [there appeared] conceptual problems connected to the definition of community, of the space it occupied, and of the legal precept that the right of occupation implies the duty of utilisation by private, family or community [concerns]. In parallel, the issue of partnerships arose, as well as the lack of capital for rendering them concrete. Later came the monopolisers, using the false argument that the land had to be privatised in order to make credit available; the real purpose of this

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<sup>30</sup>The World Bank took up an identical position.

privatisation was to take ownership of great land estates for speculative purposes and for leasing to poorer people. And lastly, the static vision of property zoning, instead of zoning of potential uses, which may result in the non reinvestment of savings by those who are already settled there.

New problems mean new challenges and new legal provisions pertaining to regulation. For this reason, the Land Law was conceived as a dynamic instrument which would be capable of incorporating change as practice would show the need for this change, without creating obstacles but also without losing sight that, what is at stake is not the land *per se*, but consumption related to access, production intimately connected to possession and distribution of wealth which is consubstantiated by land distribution by the various and varied productive units.