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LAND TENURE AND PROPERTY RIGHTS ASSESSMENT FOR ANGOLA

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ACRONYMS AND ABBREVIATIONS

| | |
|---------|---|
| ADRA | Angolan Rural Development Action |
| CLUSA | Cooperative League of the United States |
| CSO | Civil Society Organization |
| DFID | British Department for International Development |
| FAO | Food and Agriculture Organization of the United Nations |
| GOA | Government of Angola |
| IDP | Internally Displaced Person |
| IGCA | Geodesic and Cartographic Institute of Angola |
| IR | Intermediate Result |
| MINADER | Ministry of Agriculture and Rural Development, Government of Angola |
| MINURA | Ministry of Urbanization and the Environment, Government of Angola |
| NGO | Non-Governmental Organization |
| NPA | Norwegian People's Aid |
| NRM | Natural Resource Management |
| OTI | Office of Transition Initiatives, USAID |
| RDI | Rural Development Institute, Seattle, USA |
| SO | Strategic Objective |
| UNDP | United Nations Development Program |
| USAID | United States Agency for International Development |

I.0 INTRODUCTION

I.1 COUNTRY CONTEXT

Angola's 27 years of civil war created many problems that further compound the land challenges faced by the country. The war disrupted and changed customary land use and allocation (for both cropping and grazing), and such customary rights are now threatened by encroaching land users and competitive claims (both formal and informal). Earlier assessments of the land situation in Angola indicate that the newly enacted land law (August 2004) is vague, ambiguous, and potentially threatening to customary, informal, and formal land users and rights holders. The new law requires that land occupiers make application for formalized land rights within three years of a date uncertain (or forever lose those occupation rights), and the new law also re-asserts the government's right to grant land concessions subject to unclear and non-transparent criteria and processes. There are numerous other troubling provisions.

Formal land administration in Angola is rudimentary or non-existent. Institutional capacity is lacking at all levels, but it worsens progressively from the center towards the edges. The infrastructure needed for formal dispute resolution and promoting the rule of law is weak. Informal dispute resolution does occur within communities with village elders and other leaders adjudicating and mediating many conflicts. However, there is no connection between formal and informal mechanisms and laws. Unfortunately, there appears to be no regulatory rulemaking process in place in Angola, which will lead to a lack of notice, opportunity to be heard, and right of appeal. Few citizens are aware of their rights and obligations, and a lack of legal literacy could hamper equitable and productive land relations for years to come.

More information is needed, although some recent research is shedding light on land problems and needs. Others have recently conducted fieldwork in Bie, Huambo, and Huila provinces. The recent land and property rights assessment, which this report describes, provides further information needed to determine how to best assist the government in the implementation of the flawed land law and to craft appropriate supporting initiatives that address a variety of land issues.

I.2 LAND TENURE AWARENESS FRAMEWORK AND OBJECTIVES

One purpose of the assessment was to further refine and test the land tenure and property rights assessment tools created as a part of USAID's "Global Awareness Framework: Property Rights and Natural Resource Management Framework" Task Order.¹ The assessment tools are designed to be used world-wide to provide an in-depth rapid land tenure and property rights assessment that would identify and rank important land issues and provide the information needed to design useful interventions. The findings, while necessarily limited due to the short duration of the assessment fieldwork, provide an overview of the land and property rights situation in Angola, highlighting areas of concern or topics where further information should be gathered. The assessment and the related findings and recommendations are broken down into the following Land Tenure Awareness Framework categories: (1) Conflicts and Instability; (2) Insecure Land and Property Rights; (3) Landlessness and Inequitable Land Distribution; (4) Poorly Performing Land Markets; and (5) Unsustainable Natural Resources Management. Each category is discussed below and includes a description of: (1) the team's on-the-ground assessment; (2) current donor activities in the area; and (3) recommendations for USAID intervention. The recommendations for USAID intervention are repeated and prioritized for the short and longer term in Section 7.0. It is important to note that, although the recommendations are generally

¹ The Awareness Framework: Property Rights and Natural Resources Management Task Order was awarded to ARD, Inc. under the Broadening Access and Strengthening Input Market Systems (BASIS) Indefinite Quantity Contract (IQC) – Contract No. LAG-I-00-98-00031-00.

associated with one or two of the framework categories (and only described as such below), most of the recommendations would also address the other framework categories.

I.3 ASSESSMENT METHODOLOGY AND APPROACH

The land tenure and property rights assessment was carried out for USAID/Angola from October 2 to October 15, 2004. The assessment team consisted of Gregory Myers, USAID/Washington; David Bledsoe, Policy and Legal Specialist, Rural Development Institute (RDI); Jennifer Brown, Policy and Legal and Gender/Disadvantaged Populations Specialist, RDI; Mark Marquardt, Land Administration Specialist, ARD; and Robert Morin, Impact Assessment and Measurement Specialist, ARD. The team was also assisted by Fernando Pacheco, an Angolan Land and Agricultural Specialist, as well as by several NGO representatives who handled a number of logistical chores.

The primary purpose of the assessment was to review the current status of the land tenure and property rights situation in Angola and determine how USAID/Angola might assist Angola, both the government and civil society, to address land related issues. Land tenure issues are of key importance in a post-conflict setting such as Angola where internal displacement and returning populations, institutional deficiencies, and overlapping customary and formal laws can lead to tenure insecurity and conflicts over land. Development theory and experience both show that accessible and secure land resources and rights are central to poverty alleviation, economic growth, and increases to social equity throughout the developing world. In countries where land access rights are distributed more equitably, and tenure security has been strengthened, there have been related and measurable improvements in investment and growth, transition to democratic government, and improved use of resources. Conversely, where rights to land are limited, land distribution is skewed, or where land rights are insecure or otherwise fragile, poverty levels are frequently at their worst, marginalized groups are often egregiously excluded from social and economic opportunity, and the seeds of violent conflict are often present.

The assessment findings are based on the team's two weeks in country and a review of background documents. The initial portion of the assessment was based in Luanda, where the team interviewed key informants from government, the donor community, and civil society groups. The team also visited Huambo Province to explore the land situation in the fertile and highly populated planter area. Interviews in Huambo were held with provincial government officials, non-governmental organizations, and rural citizens. A full listing of persons contacted for the assessment can be found in Appendix I. A mission debrief was held on the final day of the assessment, where assessment results and recommendations were described by the team. A short bulleted summary of findings and recommendations was delivered to the mission at this time, a copy of which is at Appendix III.

2.0 CONFLICT AND INSTABILITY

2.1 BACKGROUND AND RELEVANT ISSUES

Government and other (including farmers, farm association leaders, and NGO representatives) sources generally reported that land conflicts between refugees, internally displaced persons (IDPs, returnees, concession holders, and occupation-based land rights holders are not currently an extensive problem. While many appear to have returned to their points of origin, there was also evidence of “strangers” staying in some areas and finding land. Many (and perhaps most) returnees appear to have been given some land back within their communities upon return, and most communities seem to remember and respect community members’ land claims. For example, several leaders of farmers associations in Huambo Province stated that, while most community members have returned since the end of fighting, they are still holding some land in informal trust for additional members who are expected to return. They stated that such land may be granted to non-community members, on a temporary basis with certain restrictions on use.

Thus, it appears that many have returned to their original communities and that smaller numbers have successfully settled elsewhere. This ability to resettle into former community lands demonstrates that communities are re-establishing themselves. In some but not all cases, traditional authority structures appear to be playing a role in determining land rights both for returning community members and “strangers” who have stayed in the area. This process of resettlement, or settlement in a new place, appears to be occurring smoothly in some places with the assistance of these traditional authority structures. However, the conclusion that conflicts related to returnees and those remaining in new areas are generally not a problem should be validated over the coming months and years.

While individuals and families are apparently quite able to access land and settle peacefully, there is conflict potential between communities and those with claims to land from previously held *fazendas*² and other concessions. Communities are beginning to assert informal collective property rights by trying to reassert claims to lands that had previously been taken from them for formal concessions. The general sentiment of members and leaders of traditional communities is that much of the land in the colonial concessions (and new and renewed concessions of colonially-designated parcels) is rightfully a part of traditional community lands.

In many locations, there are multiple, overlapping, and competitive informal land claims with the potential for conflict. To date, however, most NGOs and government sources have said there are no serious conflicts related to these overlapping claims. Yet the Centre for Common Ground did state that there has been a recent increase in conflict reports from the provinces, that, while such conflicts are often termed “political,” they may actually be related to conflict over resources. It appears that few are attempting to act on old concessions, but the potential activation of these claims could be the source of conflict.

Some concern has been expressed by civil society that older *fazenda* rights holders may attempt to reactivate their claims. Both the Government of Angola’s Ministry of Agriculture and Rural Development (MINADER) and the Geodesic and Cartographic Institute of Angola (IGCA) in Huambo have stated that a regulation under the 1992 Land Law largely forecloses this possibility. The regulation essentially states that, if a previous (usually Portuguese) *fazenda* owner left the country at the time of independence and remained away for three

² Fazendas are formal concession that date from the colonial period.

years, then the rights holder has forfeited rights to the *fazenda* concession. However, there seem to be methods to circumvent this law, such as issuing power of attorney to an Angolan who keeps the claim active.

The regulations for the new Land Law must reconcile any secure and legitimate existing rights with new land rights. The regulations must also reconcile existing rights with the reality that traditional users have physically reclaimed portions of their traditional lands, occupying lands that may be subject to claims by others. Similar types of conflicts will arise concerning former large-scale concession lands.

Related to the problem of claimants reactivating old land claims is the problem of the colonial cadastre being used as the basis of making fresh concessions. The Angolan Rural Development Action (ADRA) and others, including government representatives, in Huambo, acknowledge that concessions granted during the colonial area (and in some cases, since that time) did not respect the boundaries of traditional community holdings. Demarcation of rural community land, discussed in the Section 5, is one method by which such communities are defining their land claims, which should help to prevent concessions being granted (or re-granted) in conflict with those community rights.

During the assessment, the team encountered a well-documented conflict between the government and a local community in Huambo Province—the Kilometer 25 dispute. It seems that the government, on behalf of and in cooperation with Brazilian investors, set out to establish a coffee plantation which would have required resettlement of some or all of the Kilometer 25 community. ADRA sponsored and coordinated with a lawyer to advocate on behalf of the community. An agreement has apparently been reached, and the community will not be relocated. Government officials representing MINADER in Huambo acknowledged the dispute and resolution. However, they viewed the incident to be a misunderstanding and believed that the project would have benefited the community through funding for schools and clinics.

2.1.1 Dispute Resolution

When disputes do arise, they are, in most cases, resolved by traditional community authorities such as a *soba*. While these traditional authorities are successful in dispute resolution, they are not always doing so in accordance with formal law, but rather they are following tradition.

There does not appear to be a significant formal (local or provincial) government judicial dispute resolution mechanism available. There are courts at the provincial level, but these courts are under-staffed and under-funded, and they are not accessible to most citizens. Furthermore, the majority of citizens does not understand the court system and does not have access to courts as a practical matter.

The new Land Law describes at least three different dispute resolution bodies: mediation and conciliation bodies; arbitration tribunals; and traditional community dispute resolution. The duties of these bodies are unclearly defined in the Land Law and require further clarification, especially in terms of their respective roles and jurisdictions. This clarification should include, where appropriate, avenues for appeal; clear, accessible, and relatively simple procedures; standardized forms and simplified documentation requirements; physical accessibility; minimal (or no) fees and costs for the poor and with respect to certain types of disputes; and the capacity to accommodate different forms of evidence.

Administrative dispute resolution forums must be accessible to women, minorities, lowest-income persons, under-educated persons, and other groups that may historically find it difficult to access courts. These groups must also be assured of impartial outcomes.

These administrative dispute resolution forums also need to be supported by judicial resolution mechanisms, both as avenues for appeal and for venues of first consideration. Unfortunately, the Land Law does not permit decisions from arbitration tribunals to be appealed. The law does allude to appeals to judicial courts for disputes before the mediation and conciliation bodies and traditional community dispute resolution bodies. Courts, however, are grossly under-resourced and virtually inaccessible to average citizens because of costs and the need for specialized knowledge. A functioning judicial system is a critically-needed social asset.

2.1.2 Legal Assistance

There are few lawyers with adequate legal training in the country. A representative of the Angolan Bar Association informed us that there are currently 685 registered lawyers, 92 percent of whom are based in Luanda. Provinces exist without a single lawyer. Donors acknowledge that providing traditional legal aid services at this time would be a challenge because of the problematic distribution of lawyers across the country.

2.2 CURRENT DONOR INVOLVEMENT

Land dispute resolution is a component, but not the main focus, of a number of donor and NGO programs. For example, Norwegian People's Aid has a mine clearance program that includes a land assessment with requisite dispute resolution before land is cleared. Similarly, ADRA provided legal assistance to the Kilometer 25 community when it was needed.

Rede Terra has conducted research on land disputes. This report is currently being finalized, but should provide additional useful insights into land disputes.

2.3 RECOMMENDATIONS FOR USAID INTERVENTION

In the near term, USAID should work to build NGO research and assessment capacity and support monitoring of and data collection on land-related conflicts and instability. As mentioned above, the potential for conflict connects to land access and tenure security. The process for gathering conflict data could be as simple as relaying ground information on land-related conflicts to a central collection point. Because Rede Terra has recently researched land disputes and has a land observatory project currently underway, they should be consulted on the establishment of an ongoing monitoring mechanism. This information would inform on the implementation of the Land Law and would better position the NGOs, the government, and the donor community to respond quickly to potential conflicts.

In connection to monitoring for current hotspots, USAID could support the creation of conflict resolution teams (made up of Angolan nationals) to identify conflicts and conflict hotspots and then work to facilitate conflict resolution by promoting a negotiation and consultation process to harmonize formal local government and traditional leaders and customs. Such teams could act as a stopgap in conflict resolutions until the new regulations and institutions envisioned in the law are created. This process could also help inform the drafting of the relevant regulations.

Case studies could be undertaken on land-related demographics. Such studies would determine or confirm whether people are returning to their home villages; how the communities are being re-established; how land is being reclaimed or reallocated; how land rights are being re-established; and other related issues. This information would yield indications of possible conflicts. Research could also be usefully conducted on local dispute settlement mechanisms. The research on conflicts and dispute resolution would be valuable during the drafting (and re-drafting) of Land Law regulations.

In the medium term, USAID should consider working with the government to create and strengthen the country's land dispute resolution capacity. The Land Law sets out a framework for dispute resolution that includes the courts, mediation boards, arbitration boards, and traditional community dispute resolution. Given existing levels of resources and capacities, implementation will be difficult or impossible if assistance is not provided. Defining the roles and connections between each dispute resolution component and process will be an important task as regulations are drafted and the law is implemented. It will be especially important to define connections between local formal dispute resolution mechanisms and informal traditional dispute resolution mechanisms.

In addition to assisting with the definition of roles, responsibilities, and procedures through regulations, the dispute resolution system requires resources such as trained staff, equipment, and facilities. It also requires consensus building within the country in support of establishing the rule of law. Consensus building or structural reforms might take the form of legal aid clinics to ensure the judicial branch is an independent institution that can hold other branches of government accountable. The clinics could make the process of filing a suit more efficient and would help to further professionalize the bench and bar.

3.0 INSECURE LAND AND PROPERTY RIGHTS

3.1 BACKGROUND AND RELEVANT ISSUES

Land in Angola is essentially occupied at the sufferance of the Angolan government. Under the 1992 Land Law and the new 2004 Land Law, the government “owns” most of the agricultural land. There are very few formalized land rights for either individual or community land occupiers. As mentioned elsewhere, some rural community common land holdings have been demarcated and “titled” with documents filed at the provincial level. Individual farmers seldom hold a formal concession. Some commercial concessions are formalized, but few formal concessions from the colonial period (*fazendas*) remain in force or are occupied by the original concession holders. Many *fazenda* holdings have been re-occupied by individuals and communities. The Angolan government hopes to introduce a number of new, formalized land rights by way of recent legislation.

3.1.1 Passage of Legislation and Regulations

A Land Law and a Territory Law were recently passed (in August 2004), and on a positive note, the legislative process appeared to include, in the case of the Land Law, considerable public participation. Notwithstanding the notable level of public input, it should not be concluded that the average Angolan citizen was able to provide much feedback. Most input came from NGOs, and the content often consisted of perspectives and recommendations provided by foreign land specialists. Also, despite the new benchmark in public participation, little of the input provided is reflected in the enacted law; at best, a few key provisions seem to have been influenced this feedback. The Land Law takes a slightly different approach to land than the 1992 law, in that it governs all land, not just agricultural land. The law also establishes the possibility of privatization; something not possible under old law, although the details of the concept are absent, and the applicable provisions are ambiguously articulated. Most land will be held under concessions to be issued by the government (as discussed below). The Territory Law outlines an aggressive master planning process that is seen by the government as a solution to much of the irregular urban and peri-urban development.

Both laws call for additional special legislation and numerous regulations. Apparently, each ministerial sector will devise relevant regulations. The regulation creation process will be lead by the Angolan Ministry of Urbanization and the Environment (MINURA), but will include participation by MINADER. The regulations will also be key elements for clearing up the current unbalanced policy proclamations within and behind the two laws. The drafting of these laws was not guided by a formal land policy, and this absence of a policy guide is reflected in the conflicting policy proclamations in the laws. Both the Land Law and the Territory Law indirectly express policy objectives through their strictures, permissions, rights, and prohibitions. For example, both laws promote the highest and best use of resources, economic development, social equity, environmental stewardship, and preservation of traditional ways. Specifically, the Land Law sets as objectives both “maximum profitability and economic and social development.” Yet the laws do not indicate how to balance the often conflicting and sometimes mutually exclusive policy objectives.

The regulations to be promulgated for the new Land Law are seen by both government and civil society as the key to improving and implementing the laws. There does appear to be some entrée to assisting government with the creation of the regulations. In fact, several government representatives requested such assistance during the assessment. The law gives three months to create regulations and the government is keen to promulgate regulations. This is a huge task, however, and the government is handicapped by the lack

of research on problems related to the old law and the fact that few people have practical experience implementing the 1992 law. It is unrealistic to expect that the regulations will be created within three months. The list of needed regulations, rules, and procedures is long (including land registration, expropriation, concession granting, concession auctions, and community demarcation, among others) and would challenge the capacity of even the most skilled and well-funded government. Until the regulations are created and implemented, tenure types and levels of tenure security will remain undefined.

Furthermore, there does not appear to be a uniform and principled approach, in the form of a rulemaking law or procedure, for promulgating these regulations, procedures, or rules. This vacuum will result in a lack of regulatory input and review, and could abet inappropriate takings.

3.1.2 Public Awareness

Public awareness is usually a key to establishing secure land and property rights, but few are aware of the rights and obligations set out in either the 1992 law or the new land law. Both the Land Law (2004) and the Territory Law create and bestow a variety of rights and obligations upon citizens and legal entities. In order to use and benefit from the rights and to comply with the obligations, land rights holders need to be aware of their existence. Legal literacy, as it relates to land, refers to the knowledge and understanding of land rights and obligations and the ability to apply those rights and meet those obligations. Our interviews indicated that legal literacy levels are low among citizens and also some government representatives (particularly at the local level).

The governmental land-related institutions envisioned under the new Land Law and Territory Law will most likely be best situated to provide much of this literacy. Unfortunately, this expectation is probably unrealistic because of the history of civil ignorance and the lack of resources at the provincial and local levels of government. If government institutions do not help provide this legal education, they should at least work to accommodate it by striving for simplicity and transparency.

3.1.3 Institutions

Strong land administration institutions are also central to establishing secure land and property rights. It is not presently clear which land administration duties will fall to which ministries with the implementation of the new Land and Territory Laws. The National Directorate for Rural Development, within MINADER, used to issue titles for agricultural land (albeit, relatively few). Under the new law, the Institute for Cartography and Geography (IGCA), within MINURA, will be responsible for issuing these titles and for maintaining the cadastre (part of which used to be administered by MINADER and the other part, by the Ministry of Defense). Responsibilities other than these broad outlines are unclear and remain to be determined or, at minimum, formally announced.

The new law does not cut through this fog, as it contains ambiguities about powers, processes, responsibilities, and obligations. Uncertainties are created by vague language and the need for yet-to-be-promulgated regulations, rules, and procedures to clarify the situation. For example, conversations with MINADER and the Geodesic and Cartographic Institute of Angola (IGCA) representatives confirmed the understanding that the new roles have yet to be clearly defined. The assessment team was unable to meet with representatives of MINURA, but beginning a dialog with MINURA will be an important step moving forward.

Central, provincial, and municipal governments recognize that there are insufficient resources at the provincial and municipal levels to perform the responsibilities envisioned by the new Land Law and Territory Law (e.g., demarcating rural community lands, preparing land use plans, and enforcing land use regulations).

To enable secure land and property rights to be established and enforced, there is a certain need to build capacity for land administration and the rule of law within the ministries of the provincial and municipal

governments and the private sector (surveying, valuation, and the legal profession). There are very few trained land administration professionals within any level of government (office staff, surveyors, valuers, registrars, and others).

3.1.4 Civil Society

An active and supportive civil society is also a key to secure land and property rights. NGOs (and NGO coalitions) are beginning to develop the skills and capacities that would make them suitable agents for organizing and promoting the education, consultation, and feedback process needed for regulation drafting related to the new Land Law and Territory Law. The process of commenting, educating the public, and advocating for changes to these laws prior to their passage was integral to strengthening civil society organizations in Angola.

3.1.5 Formalization of Land Rights

The new Land Law calls for individual landholders to formalize their land rights within three years or lose those rights. It is not exactly clear when this three year period is to begin, but one could reasonably read that the new law period will commence at the same time that the Land Law is published or when related regulations regarding formalization are enacted.

As mentioned above, the process for formalizing such rights is not detailed in the new Land Law, and new procedures for the formalization will need to be clearly defined in the regulations. The current process of formalizing land rights, as explained to us by the head of a farmers association, is lengthy and cumbersome. Applications have to be made in turn to each of the following offices: sub-municipality, municipality, geodesic services, MINADER at the provincial level, and finally, the provincial governor. The application has to be approved before it can pass to the next level. Considering the huge number of claims that the new Land Law will require to be processed in a short period of time, this process must be drastically simplified in the new regulations. Plus, significant resources will be needed to enable government to process and approve the applications.

3.1.6 Demarcation and Formalization of Community Common Lands

In addition to the process of formalizing individual land occupiers' rights, a process will be necessary for demarcating and formalizing rights to traditionally held rural community land. Tenure security for community holdings can best be created and preserved through this kind of formalization. The new Land Law provides for such formalization, but no procedures have been defined. It is presumed that the three-year period will not apply to formalization of community rights. In any event, a massive effort will be required in the coming years to formalize and protect these community rights after a procedure has been created.

Even with a defined procedure, it is currently unclear whether the implementation and application of the new Land Law will adequately recognize and protect rural community land rights. Local officials seemed to genuinely believe that a community land demarcation process will provide needed recognition and protection, but this will not be certain until the process is spelled out in regulations. For example, it is unclear whether the government intends to limit recognition and protections to the mostly undisputed traditional lands that remain in the possession of the traditional communities, or if the government will extend such recognition to lands that the communities claim to be part of their traditional lands but that have otherwise been demarcated as private farms and awarded as concessions to others. (This often happened during colonial times) An even more progressive approach would permit communities, during a fixed claim period, to make formal claims to land seen as traditionally belonging to the communities, even when this land is currently unoccupied by the community and is, in fact, subject to a former, formal concession. It was reported to the assessment team that in some cases during the Food and Agricultural Organization (FAO) demarcation process (see below), communities have been able to reclaim former concession or *fazenda* land that had been carved out of their

traditional holdings during the colonial period. This claim should be confirmed. Final assurance that adequate protections are in place will only come through careful drafting of the process of demarcation through the regulations and supported by dispute resolution where necessary.

Based on its earlier efforts in Huila, Huambo, Bengo, and elsewhere, the FAO currently has a project in three provinces to demarcate and formalize rural community land. The community, neighboring communities, and local government representatives all participate in the process. Demarcations include agricultural land, grazing land, and other common lands traditionally held by the community. ADRA has also been demarcating rural community land in the province of Huambo, but it is unclear who is sponsoring them, or whether they are working with local government to formalize and perpetuate these demarcations.

The FAO demarcation model, as researched by the team during October 2004, as seen by Bledsoe in 2002, and as seen by Bledsoe and Myers in December 2003:

- Is, for the most part, well-received and valued by most rural communities involved;
- Is probably (or could be modified to be) an effective means of defining and formalizing rural community resources;
- Should be an effective way of helping to protect those resources from encroachment by others and communities to best benefit from their resources;
- Will require fine tuning to be applicable to and appropriate for all rural community situations;
- Does not currently provide for the demarcation and formalization of common resources used by two or more rural communities (grazing areas and watering sources, for example) or of cattle corridors used by one or more communities; and
- Is not sustainable or able to be implemented by provincial governments without assistance from donors.

There are several concerns related to community demarcation. First, there is a concern that the demarcation and formalization will simply serve to create “reservations,” around which land can be granted by concessions to other users. Second, there is some fear that the process of demarcation may place too much power over land in the hands of community leaders at the expense of the tenure security of individual families within the community. Third, some are concerned that language in the law may limit the ability of communities to use their land in the most effective manner, because the law requires that they use the land according to “traditional uses.” The danger in this is that communities will foreclose commercial use of the land, either on their own or in collaboration with commercial partners.

3.2 CURRENT DONOR INVOLVEMENT

3.2.1 Legislation

With support from USAID and other donors, several groups worked to facilitate public participation in the promulgation of the Land Law, including Rede Terra, National Democratic Institute, World Learning, Land Network, and Development Workshop. These organizations also worked to strengthen the rights of rural communities and the urban poor in the final version of the law.

3.2.2 Regulations

Rede Terra plans to work with the government on the regulations. They intend to conduct a review of the final version of the Land Law, craft a set of recommendations for the regulations, and present them to government. They believe that the government is quite open to their involvement at this level.

4.0 RECOMMENDATIONS FOR USAID INTERVENTION

4.1 LEGISLATION/REGULATIONS

USAID should support and work with Rede Terra and Development Workshop on the creation of regulations for the Land Law and Territory Law and in their advocacy and lobbying efforts related to implementation. Crosscutting, but often forgotten issues, such as gender and natural resources, should be kept in mind during this process and additional information on these two topics gathered as is possible and necessary.

In addition to these regulations for the Land and Territory Laws, USAID should begin to work cooperatively with the government, and through Rede Terra, to develop and/or improve the laws addressing expropriation (compulsory acquisition of land), mortgage, valuations, administrative rulemaking, and the like.

Components of this legal counsel and drafting assistance could include:

- Identification of receptive and influential channels through which to work, especially in MINURA, with the ministry that is heading up the regulation drafting effort;
- Ongoing review of and commentary on the regulations being drafted for the Land Law and Territory Law;
- Provision of comparative international legal information, in the form of memorandums, on topics important to the regulations and implementation process (e.g. public consultation, expropriation, administrative rulemaking, land titling and registration, natural resource licensing, auctions, leasing and concessions, administrative and judicial dispute resolution, transactions in land rights, common property regimes, mortgage, gender, and natural resource management);
- Model regulatory provisions that contain the best mix of international models and national policy priorities; and
- Simultaneous partnering, training, and participation with selected Angolan lawyers in the process of regulation drafting.

4.2 PUBLIC EDUCATION

The government will require assistance to ensure that a well-crafted legal literacy campaign accompanies implementation of the new Land Law and Territory Law. NGOs and donors will need to take the lead in creating and sustaining an Angolan legal land literacy campaign. The Mozambique Land Campaign, undertaken in the late 1990s, provides a good model upon which to base Angolan NGO land campaign efforts.

Thought should also be given to supporting an extensive campaign of both legal literacy and advocacy that is created by training local leaders in the law and advocacy techniques and then having them train lower-echelon community leaders. This approach has been used very successfully elsewhere. This activity could suitably be a part of a package of assistance support that is directed toward civil society support and expansion. Features of an overall legal land literacy activity should include:

- A team of specialists, trained in communications, the existing Land Law and Territory Law, policy issues, and the features of the forthcoming regulations, who can work through local NGOs, community leaders, community associations, and local government to organize or conduct the education and outreach efforts;
- Appropriate materials and tactics (leaflets, comic books [as in the Mozambique campaign], manuals, radio and TV spots, videos, street theater, etc.) that will convey general issues and the basic components of the draft laws to the citizens. Foreign technical assistance should be obtained to help craft the training and communications materials;
- Monitoring of message and advocacy results and effectiveness; and
- Appropriate changes in the program to reflect monitoring results.

These efforts should be ongoing and conducted at the community level.

4.2.1 Institutions

The government is in the process of re-establishing itself and its role in society. A certain amount of reorganization will occur as ministry responsibilities are delineated and clarified. It is important that these roles are clearly stated to avoid overlapping responsibility, inconsistency in policy and legislative development, and contradictory regulations and enforcement. In the shorter term, USAID should assist GOA in clarifying ministry land responsibilities. In the medium- to long-term time frame, USAID should help GOA to identify areas within the land-related institutions where training and capacity building is needed and provide support to these training programs.

4.2.2 Formalization and Demarcation

As to the creation of specific regulations, USAID should focus its near-term efforts on supporting the creation of a clear, simple, and sanctioned process for formalizing individual landholders' rights and community common land rights. Without such a clear process, many individual landholders, especially the most vulnerable, stand to lose claims to land when the three-year period ends.

To inform these efforts, USAID should consider sponsoring an on-the-ground assessment and inventory of the general land situation in Huambo. This kind of case study could help shed light on appropriate processes for individual, community, and commercial rights formalization that could be applied elsewhere. The assessment could also include case studies on the internal governance of traditional rural communities to learn how decisions are being made, how conflicts are being resolved, and how the community demarcation process might be altering this dynamic for better or worse. Of particular interest would be an investigation of individual community members' land rights and security within the context of the greater rural community.

In addition to these efforts to help the government craft appropriate regulations and procedures on the formalization of individual land holdings or demarcation of rural community holdings, USAID could provide expanded assistance to rural communities and individual farmers for the actual application process.

Particularly because it is providing funding for the process, USAID could usefully create a list of the rural communities that have been demarcated and formalized throughout Angola. This would be a worthy task to be performed before a large number of additional demarcations are completed. It is unclear as to the number, locale, date, and extent of the demarcations which have been completed to date. The oldest demarcations should be visited and assessed as to levels of tenure security, uses of community lands, etc.

USAID might also provide assistance to further support, improve, expand, and implement the FAO demarcation model as a pilot for informing the creation of new Land Law regulations. Because over 70 percent of current agricultural production comes from traditional rural community lands, and because the

route to food security will be through this productive asset, further demarcation of traditional community lands could provide formal rights and associated tenure security and protection. New components could include:

- Further refinement of a method for identifying priority areas to receive the demarcations (on the basis of conflict potential, productivity potential, the likelihood of near term concession granting, community desire, cost, provincial and local government receptiveness, etc).
- Development of models whereby the communities are helped to enter into mutually beneficial economic transactions with investors, and thereby benefiting in new ways from the community resource.
- Creation of a small team of implementers that, working a wide circuit, can select and train local coordinators, liaise with provincial and local government, assist with community selection, facilitate negotiations, work with suitable NGOs that might provide assistance (such as ADRA) and troubleshoot problems.
- Creation and use of a wider demarcation model that would also demarcate and title to two or more communities the common resources used in transhumance by these communities (primarily grazing land and water sources).
- Creation and use of an “easement” or “servitude” model that would allow cattle corridors and other transhumance routes that cross lands claimed by others to be recorded and protected.
- Further standardization of the title “recording” and “registration” process across the provinces so that the demarcation information can be as formalized as possible, permit public examination of titled rights, and more effectively feed a later, formalized title registration system.
- Further refinement of monitoring and costing processes so that per unit costs can be determined (with an eye toward reliability, sustainability, self-implementation and generally minimizing costs).

5.0 LANDLESSNESS/ INEQUITABLE LAND DISTRIBUTION

5.1 BACKGROUND AND RELEVANT ISSUES

5.1.1 Access and Distribution

As described above in Section 2, it appears (within the limited fieldwork areas visited by the team) that most people have been able to return to or otherwise access their land. Traditional (or informal) authorities often seem able to link those that need land with what is available.

In Huambo, provincial officials report that the average subsistence farmer cultivates about 0.5 hectares of land. For individual users, the amount of land cultivated seems to be limited more by availability or access to labor, animals, tractors, and other inputs, than by the availability of land itself. More commercially-oriented larger farmers, or those linked with farmers' associations, may be cultivating larger landholdings. For example, the head of one farmers' association was cultivating 50 hectares of land to produce a seed crop for World Vision.

At least in Huambo Province, individuals or associations that hold land in formal concessions (as opposed to unformalized, customary holdings) are reported to keep them for five-year terms on a renewable basis. Evidently, the children and spouses of concessions holders can also renew concession with proof of identity and relationship to the original concession holder.

There is a demand for land to be used for commercial purposes. MINADER representatives in Huambo stated that they would help persons or entities locate commercial farmland. To determine what land is available for concessions, they refer to old colonial concession maps and consult with local traditional authorities. Regardless of what land these maps indicated was available, the team was told several times that, before a new concession can be granted, approval would need to be obtained from the traditional authority of the area. Of course, these kinds of claims should be viewed with some skepticism, and the concession-granting process should be closely monitored over the next few years.

Some commercial interests also concern themselves with ensuring that land targeted for their investment is free from competing claims. For example, Chiquita Banana was working with the government to secure land for a banana plantation, and one of its primary concerns was to make sure that any potential claims or disputes related to the project land were resolved before they made significant investments. No information was provided by officials on the rights or occupiers potentially associated with the land under consideration.

The new Land Law lacks specific reference to women's access or rights to land. Rural research by Rede Terra, the only group encountered that was working on the question of women's land rights, has confirmed that access to land by women is not ensured within the framework of customary rights. Despite this, women are an important component of agriculture and rural land use. Additionally, there are a large number of female-headed households. In Huambo, for instance, it was reported that women headed 35 percent of households. Unfortunately, in the event of divorce or other family breakdown, women are often left without access or

legal rights to property. Women's access to land has been further degraded by HIV/AIDs, as women who are HIV-positive are often banished from their households and, thus, lose access to land.

The Civil Code governs inheritance and marital property. The Civil Code, however, is rarely followed and custom predominates. Traditionally, inheritance is matrilineal, with property passing through a man's sister's oldest son. This pattern is changing somewhat, and families are beginning to pass property through the father. Customarily, women do not inherit property, the mindset being that they will get access to property through their husband's family. At the time of divorce or family breakdown, women are generally left without property.

5.1.2 Expropriation

Government expropriations can create landlessness and shift distribution patterns. Both the new Land Law and the new Territory Law envision government expropriation, and both these laws refer to expropriations being done pursuant to applicable law. It does not appear that an existing, stand-alone expropriations law is currently in place. Given a current climate that tends to manifest distrust of government actions and the lack of principled frameworks to guide government actions, the lack of a land expropriation law creates a frightening void and heightens tenure insecurity. The government should draft an expropriations law as soon as possible.

5.2 CURRENT DONOR INVOLVEMENT

Several studies related to land access have recently been conducted. With donor funding, Rede Terra has conducted studies on land concessions and patterns of landholding and management. Rede Terra has also conducted research on women's rights and access to land. Related to these findings, Rede Terra is conducting training for women on their land rights in Huambo, Huila, and Melange.

In addition to general studies, and as mentioned above, Norwegian People's Aid uses an innovative land demining approach that links the de-mining process to land access, use, and tenure. They work to resolve any potential conflict and to secure tenure at the time mines are cleared.

In terms of the formalization process, Development Workshop hopes, in the short term, to create a simplified process to have rights formalized, focusing on urban areas. Other donors are apparently not working on the formalization question.

As mentioned above, both FAO and ADRA have current projects on the demarcation of rural community land. USAID has provided funding to FAO in support of these demarcations, with FAO having worked on community land demarcation since 1999. They have been using the 1992 law as a framework for the demarcations and will continue to do so until the new law is published and the related regulations are created. It is not entirely clear as to the number and location of all of the FAO demarcated communities.

5.3 RECOMMENDATIONS FOR USAID INTERVENTION

5.3.1 Access and Distribution

It is important to again note that many of the recommendations related to insecure land and property rights will also improve access and distribution. For example, activities that demarcate land and improve tenure security will also help to prevent new instances of landlessness and improve distribution patterns. As well, efforts to promote transactions (see below) will help to improve distribution.

To obtain information on landlessness, access, and distribution patterns, USAID should, as mentioned above, sponsor the on-the-ground assessment and inventory of the general land situation in Huambo. This

assessment could yield data on numbers of landless families, plot sizes and distribution, and mechanisms for re-allocating or shifting land to the landless or those without sufficient land to provide for basic subsistence needs.

5.3.2 Expropriations Law

In addition to the efforts related to the land law regulations mentioned above, USAID should assist the government with the drafting of an expropriations law that clearly defines the public purposes for which land can be taken and provides for appropriate notice and just compensation for the rights holders.

6.0 POORLY PERFORMING LAND MARKETS

6.1 BACKGROUND AND RELEVANT ISSUES

6.1.1 Transactions

The new Land Law severely limits transactions (purchase and sale, mortgage, lease, gift, and bequest). The new law is ambiguous as to what “ownership” rights might be, and the transferability of concessions is not well-articulated. There is a limited pool of land that could potentially be held in ownership, rather than in some form of long-term use right, because only urban land can be held in ownership (not rural land). “Owned” land can be sold, but only after a five year period has passed and only after the permission of an unspecified “granting authority” is received. There is no explanation as to what criteria will be used for granting (or not granting) permission.

The assessment team was not able to gather much information on actual land transactions, but it did learn from the Development Workshop of the existence of an active informal market in urban and peri-urban residential properties. It is not in the least surprising that informal occupiers are informally transacting in urban and peri-urban land. It is almost as certain that there are, at least on some small level, informal transactions in agricultural land.

6.1.2 Records

As would be expected from a country emerging from 27 years of civil war, existing land records (property documents and maps) are tattered, incomplete, out-of-date, and often do not reflect reality. Some records have been destroyed. Archival maps do not appear to exist. Some records are housed in central offices and some in provincial offices. The cadastre (or what parts of it remain in existence) has not been updated since 1975. That is to say, land parcel concession information (both old and new concessions) or information about the boundaries or claims of traditional community lands have not been entered into the cadastre since 1975. In the two years or so since the end of the civil war, updated information on concessions may have been added locally; at least, there was some evidence of this in Huambo. As a result, it is now quite difficult to get information about current concessions or other land rights. Given the reallocation of ministerial responsibilities, there will also be the need to move existing records to new locations. The relevant officials and ministries understand these problems, but support will be necessary to correct the situation.

Previously, maps had been created for specific purposes (mining, agricultural, and other concessions) by different ministries and government agencies with little or no coordination between them. It is currently envisioned that a new single cadastre will be established that would include information on all sectors and would be managed by the IGCA. Without extensive assistance, this vision is unlikely to be fulfilled in the near term.

6.1.3 Public Education

Public information on transactions and land administration processes, procedures, fee structures, and other topic is almost nonexistent. Not only was there little evidence that people understood the role of land

administration institutions, there appeared to be little opportunity for people to obtain information about land administration activities.

6.2 CURRENT DONOR INVOLVEMENT

The European Commission is providing support to build capacity in the land administration arena by funding an FAO project, “Strengthening Institutional Capacity of the National Land Administration System.” This project seeks to provide training, technology, and efficiency in cadastre and mapping methodologies and to assist with the consolidation and digitization of maps. Some observers have raised concerns about the transparency and public availability of these land records. This information should be made available to the public for its use in making land transactions. If it is made available only to the government, there is a risk that it will be used solely for making non-transparent land concessions to elites.

6.3 RECOMMENDATIONS FOR USAID INTERVENTION

6.3.1 Promoting and Regularizing Transactions

Land administration development can provide some of the mechanisms needed to spur and maintain an active and efficient market in land rights (whether they are ownership rights or long-term use rights). Toward this end, USAID’s involvement in support of land administration capacity development, in the near-term (as described above), should be coordinated with the European Commission and FAO. In the medium- to long-term, USAID should consider becoming involved in more general land administration training and capacity building and could work to assist government in decentralization of land administration functions.

Also in the mid-term, systematic registration and titling exercises could be piloted for land registration in the Huambo area. Such pilot activities are needed for urban and peri-urban land and could be undertaken by supporting and expanding the efforts of the Development Workshop. Similarly, in conjunction with the process of formalizing land rights and demarcating community land, USAID could support titling and registration procedures. Any titling and registration pilot should emulate as closely as possible the process and procedures that would be best recommended for adoption when the government again begins to register land. To the extent that there are existing land registration regulations (being implemented by the government), this piloting effort should also include a drafting and recommendations component that provides the government with suggested legal revisions and procedures. It might be sensible to undertake the suggested pilot in an area to be focused on by the FAO demarcation process. In that way, any titles that are created during the demarcation process could be included within the pilot.

7.0 UNSUSTAINABLE NATURAL RESOURCES MANAGEMENT

7.1 BACKGROUND AND RELEVANT ISSUES

7.1.1 Natural Resources Management:

The assessment team probed the topic of natural resources in places where resource issues intersect with land tenure issues. An extensive review of natural resources management was not conducted.

Natural resources management in Angola is governed by a number of laws, some recently-passed and some forthcoming. The new Land Law makes it clear that subsoil resources (presumably minerals, water, etc.) belong to the state, and that holding land does not entitle the holder to such rights. In addition to the brief mention of natural resources in the Land Law, a recent Petroleum Law was passed, and mining and forestry laws are being created. Rights to natural resources will be granted by way of concessions or licenses for exploitation and use.

It is likely that some of the land that would be eligible for traditional rural community possession and use is also land that would be designated as a “natural resource,” or that materials on such land would qualify as “natural resources,” subject to state ownership and control. Examples might include wetlands, seashores, some subsurface rights (clay for brick making, for example), and forests. It is also clear that, under terms of the Territory Law, these customary land resources would be subject to the ambitious land planning and protection strictures set out in that law. The apparent conflict between the state’s desires to own, protect, and franchise natural resources and the state’s desire to promote and protect customary use and possession of land resources should be reconciled in the regulations. Ideally, groups of customary land users, as separate legal entities, should be permitted to license and benefit from the third party use of some limited subsurface and other natural resources that exist on and under customarily held land. The ability to benefit from these resources would be a way to direct needed support toward these customary users. However, this kind of beneficial arrangement is unlikely to be acceptable to the government.

Related to the natural resources issue is the question of reserves: protected areas, parks, or game reserves. In some areas of the country, rural communities are living within the boundaries of protected areas. Apparently, MINURA has proposed shifting these populations entirely out of the protected areas (an idea which is echoed somewhat in the Land Law’s description of reserve areas as being off-limits to human settlement). Some of these populations, however, have lived for generations within these areas. Others are more recent settlers who were displaced by war. When and if plans advance to clear these areas of human populations, conflict is likely.

Government representatives and NGOs state that they were largely unaware of any major conflicts regarding natural resources. A few did tell the assessment team that conflicts over water are a problem in some provinces, particularly in the south where water is less plentiful.

Land and resource degradation also appears to be a problem in certain areas of the country. There was some deforestation during the war, and deforestation continues, for firewood collecting and charcoal production

are livelihood strategies. This is especially acute along major travel routes. Agricultural soils are generally depleted from overuse and lack of replenishment. Fertilizers are useful almost everywhere, although most farmers lack sufficient access.

Finally, regional and trans-boundary resource issues exist that must be monitored, such as regulating flow and use of the Okavango (Cubango) river. Few were aware of other transboundary natural resource issues.

7.1.2 Land Use Planning

There are numerous and serious problems related to urban and peri-urban land use and tenure. Irregular development is widespread and unquantified. Land administration capabilities in these areas are woefully inadequate. Infrastructure is essentially absent.

The new Territory Law foretells an extensive master planning campaign for both urban and rural areas. Policymakers view such intensive planning as a solution to previously unregulated and now informal development. This “command and control” mentality echoes many provisions in the new Land Law. The Territory Law also calls for a number of complementary laws and regulations. The government’s current capacity is not sufficient to take on such a global planning process. The implementation of the Basic Environmental Law, passed in 1998, may shed some light on the possible pattern of implementation of the land and territory laws. The Basic Environmental Law, like the more recent two, is ambitious, but the government has not had the capacity to implement it. Necessary regulations have never been drafted, and a legislated shift of ministerial responsibility (from MINADER to MINURA) has not fully occurred, leaving responsibilities for implementation of the law unclear.

In addition to lacking capacity for such an ambitious process, it is feared that this extensive planning process may cause harm and conflict in areas with potentially non-conforming uses. Sufficient consideration has not gone into how these uses, such as how to handle the large informal settlements in population centers. Clearly, individuals living and investing in their present plot cannot be resettled easily. The failure to acknowledge and accommodate the realities of many existing non-conforming and irregular uses that contravene land use planning desires is unrealistic. Some recognition of the need to reconcile the present reality with the sought-after goals is an absolute necessity.

7.1.3 Use Requirements

Similar in its “command and control” stance, the Land Law strictly calls for the efficient and productive use of land and contains provisions regarding the taking of land for non-use. Such use and productivity provisions were also in prior legislation but were rarely enforced (except in the case of valuable land holdings).

While use and productivity requirements may seem appropriate in view of past situations of non-use and under-use, and of the general need to improve productivity and spur economic growth, the government should implement these kinds of controls with considerable restraint and caution. The government’s desire to adopt a market economy and market approach to development is inconsistent with a desire to over-control transactions and uses.

Over-broad requirements that land be continuously or rationally used are normally impossible to administer in a principled way, and these kinds of controls require high levels of resources (staff, equipment, and facilities) to implement. Given the severe governmental resource limitations, it is unlikely that the government could monitor and enforce controls. Uneven and inequitable application will probably be the result. These resource constraints should be borne in mind when drafting the regulations for the laws, and government control of land uses should be limited to prevent the controls from stifling efficient investment and transactions and to permit even and fair implementation of the few controls that remain.

Additionally, neither the Land Law nor the Territory Law sets out mechanisms for changing land use designations. Specific procedures to be used in seeking and obtaining permission to reasonably change land uses must be provided in the regulations. Some caution is in order, because regulations that prohibit or unrealistically constrain conversion of land from one use to another or that are so administratively or procedurally cumbersome that change of land use is effectively prohibited can be counter-productive and shortsighted.

7.2 CURRENT DONOR INVOLVEMENT

Almost no donors are working on natural resource management issues, and it appears that few resources are being sustainably managed. The few programs that were encountered include work on biodiversity, funded by UNDP, a DFID project related to transparency of the extractive industries, and possibly a few natural resource management projects that were funded by oil companies in Cabinda. Soil degradation is receiving attention from World Vision, which works directly with farmers on soil preservation techniques. The Italian Development Cooperation program is considering funding a project on participatory land management by communities.

The government recognizes the need for additional information on natural resources and their management. MINADER, which oversees forestry issues, apparently plans to conduct a natural resource inventory. Without additional resources, it will be impossible to conduct this inventory.

As for land use planning, particularly the planning process called for in the Territory Law, Development Workshop is the key organization looked to by other donors and NGOs to lead efforts related to implementation of the Territory Law in urban and peri-urban areas. Development Workshop notes that the extensive planning processes called for in the territory and land laws do not contain adequate provisions for public participation. In response to this, Development Workshop and others are working to include public participation provisions in the regulations.

Development Workshop is also endeavoring to map the current state of development in and around Luanda. They have purchased the needed satellite photography and are proceeding to create maps of neighborhoods and parcels. This effort looks promising and will be of great use to Luanda municipal government.

7.3 RECOMMENDATIONS FOR USAID INTERVENTION

USAID should support the incorporation of appropriate provisions regarding natural resource management into the regulations for the new land and territory laws. Similarly, USAID should assist in developing policy for the use of state land.

USAID could profitably support Development Workshop's efforts in addressing urban and peri-urban land issues related to implementation of the Territory and Land Laws.

In the medium term, USAID could assist the government in determining an appropriate and feasible level of land use planning. Similarly, USAID could assist the government with an inventory of natural resources and in the creation of a plan for protecting and managing sensitive resources in particular. A natural resource assessment would be useful in specifically identifying problems and areas for USAID's intervention in this broad and important field.

8.0 RECOMMENDATIONS FOR USAID INTERVENTIONS

The interventions that this assessment recommends largely build on the three activity areas that USAID is already supporting.

First, support for the creation of well-conceived regulations for the Land Law and Territory Law is of primary importance. Such regulations will lay the framework for: (1) the process of demarcating or formalizing land rights; (2) defining responsibilities and authority of different ministries and departments; (3) establishing a workable system for resolving inevitable disputes; (4) promoting proper consideration of marginalized groups, such as women and subsistence farmers, in the regulations; and (5) transparency and public participation in the concession-making and land use planning process. Research and information gathering will be necessary to ensure that the regulations crafted fit and work with the situation on the ground. Such research could include case studies on land uses and administration, land conflicts, resettlement and dispute resolution, and current demarcation and formalization processes. As mentioned, the Huambo area might provide a good locale for gathering much of this information. Parallel with this regulation crafting process, work should be done with Rede Terra to develop and/or improve laws related to expropriation, mortgage, valuations, and administrative rulemaking.

Second, as regulations are crafted, USAID should also help promote land tenure security by supporting the process of demarcation rural community land and formalizing land held by individuals. The current FAO and ADRA demarcation process should be more closely reviewed as a starting place for crafting the relevant regulations. The law creates a three-year window for such formalizations to occur. USAID should support this important process to protect tenure security.

Third, in addition to assisting with the regulations and with the demarcation and formalization of land, USAID should continue its efforts to increase public participation in governance and policymaking. Such public participation can be encouraged in the process of creating regulations. Public participation can also be fostered by supporting Development Workshop and its goals to ensure that public participation plays a significant part in any of the large master planning process that is foreseen in the territory and land laws. A large part of any project to increase public participation should also include an emphasis on public education and a legal literacy campaign; explaining the new Land Law and Territory Law will be an important part of this process.

These three areas should receive the bulk of USAID's nearer term assistance on land tenure. As work on the regulations ends, USAID can then turn its attention in the medium term to the task of building the capacity and strengthening the institutions charged with implementing these laws. MINADER and MINURA, the two ministries that will implement the laws, should be strengthened and their lines of authority defined. Systems for keeping and updating land records should be reviewed, and assistance could be given for the formal registration of land in urban and peri-urban areas—a process that should link up with the demarcation and formalization process that needs to be conducted in the shorter term. Assistance should also be provided to support the sustainable management of natural resources. In the medium term, such assistance might include assisting with an inventory of government lands and protected areas.

Importantly, in addition to the ministries managing land, the institutions charged with dispute resolution will also need to be created from the ground up.

Finally, capacity building will be needed for demarcated rural communities to build on their ability to manage their resources sustainably for the economic benefit of the community and also to ensure that their internal

governance is transparent and appropriate. The ultimate goal should be to position these communities to take advantage of potential relationships with outside investors.

Sequencing of USAID interventions depends on many factors:

- Availability of funding, and the subsequent selection of interventions based on the available funding;
- An accurate understanding of a wide spectrum of existing conditions;
- Current or future interventions that will be undertaken by other donors;
- Proposed geographic and temporal breadth of interventions;
- Preconditions (legal, social, economic, institutional, political, and other) necessary for an intervention to be effective and sustainable;
- Complementary interventions that need to be implemented in parallel (by USAID or another donor) for a selected intervention to be effective and sustainable; and
- Presence of distress or shock factors (HIV/AIDS impacts, violent conflict, natural disasters, and others) that can create unusual time horizons

Some of the sequencing considerations for the recommendations that USAID might want to take on are set out below. These sequencing observations are not exhaustive. A sequencing analysis will be needed as USAID begins to make decisions about the breadth and depth of its land-related intervention package.

Legal and Regulatory Framework Assistance:

- Requires preconditional, institutional, and bureaucratic entrée, as well as some political will on the part of the government;
- Requires parallel or immediately-following development of institutional capacity at all levels of government, even if it only corresponds to the land related law and regulations;
- Needs to be coordinated in parallel with interventions undertaken by other donors and NGOs, such as FAO (rural demarcation), EU (land administration modernization and capacity building), and Development Workshop (urban land situation);
- Requires some prior understanding of customary and informal rules and practices;
- Needs to be accompanied or shortly followed by some improvement in the rule of law and the judicial system;
- Requires public education and legal literacy campaigns in parallel and as ongoing follow-on to infuse the legal and regulatory framework within the society and culture; and
- Needs follow-on monitoring to inform required changes.

Land Rights Formalization Assistance:

- Requires preconditional framework of legal and regulatory procedures and processes (as provided for above);
- Requires a preconditional or parallel state of legal literacy on the part of the rights holder;
- Requires a preconditional and then sustained land administration structure to record the formalized right; and

- Lacking such a structure, requires a post-formalization state, whereby institutions and other rights holders recognize and react appropriately to a right of title held by the rights holder (but not by a land administration institution).

Land Administration Capacity Building:

- To result in an increase in formal, efficient market transactions (including purchase and sales or long-term sublease) and related economic development, needs to be accompanied by measures that prompt the financial community to extend credit to borrowers that:
 - Protect against improvident distress sales;
 - Create a supporting framework of real property professionals (surveyors, valuation experts, and brokers); and
 - Create other needed conditions.
- Also requires sustained donor funding assistance (and/or support by way of user fees) to maintain land administration records and to capture transactions that are subsequent to initial registration.

Dispute Resolution:

- Requires a supporting framework of legal and administrative rules that permit access to the process, quick adjudication, and enforceability;
- Support of informal dispute resolution processes requires local government cooperation and participation; and
- Requires preconditional knowledge of the kinds of and parties to disputes so as to permit appropriate design of dispute resolution mechanisms.

Land Access and Distribution Improvements:

- On the heels of violent conflict, may require resettlement assistance and provision of land to ex-combatants;
- Requires accurate data about past and current land allocation and future expectations and needs; and
- Needs to connect with interventions intended to provide for current and future dispute resolution.

Sustainable Natural Resources Management:

- Requires prior confirmation that conservation and stewardship interventions are compatible with subsistence resource use patterns; or
- Requires livelihoods changes such that interventions are compatible with conservation and stewardship.

Sequencing of prospective interventions can be informed by case studies of past interventions. The case studies should focus on intervention design, costs, implementation difficulties and successes, and expected and unforeseen results. The case studies do not have to be stand-alone efforts; they can frequently be made a part of other studies and inventories done to gather baseline information as a part of intervention design.

APPENDIX I. PERSONS CONTACTED

In Luanda

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In Huambo

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APPENDIX II. DOCUMENTS AND LAWS OBTAINED/REVIEWED

- Draft Land Law
- Draft Law on “Organization System of the Territory and Urban Affairs Law”
- Angolan Civil Code, select provisions.
- Dave Bledsoe, 2 “June – 15 June Angola Trip Report” to USAID (June 15, 2004).
- David Bledsoe, “Suggested Changes to the Draft Angola Land Law” (February 2004).
- David Bledsoe, “Assessment of New Draft Land Law” (January 27, 2004).
- David Bledsoe, “30 November – 14 December Angola Trip Report” to USAID (December 13, 2003).
- David Bledsoe and Carlos Pinto, “Republic of Angola Land Law and Policy Assessment” (December 2002).
- CARE, Land & Natural Resource Management System Assessment: Bie Province, Angola (March 2004).
- USAID, “Angola: Transition and Development Assessment” (October 2002).
- Project Document for FAO funded project on “Strengthening Institutional Capacity of the National Land Administration System,” (Starting Date March 2004).
- CIA World Factbook, Angola

APPENDIX III. FINDINGS AND RECOMMENDATIONS AS PROVIDED AT THE MISSION DEBRIEF ON OCTOBER 15TH IN LUANDA, ANGOLA

Angola Land Tenure and Property Rights Assessment
October 2 – 15, 2004
Summary of Findings and Recommendations

INTRODUCTION

Following are generalized points that describe some findings of the assessment. Also included are general descriptions of some interventions that might be undertaken by USAID and/or other donors. The final report will go into more detail about the findings and recommendations. The recommendations will be designed to fit within the Mission's broader objective of helping Angola move from a command-and-control to market economy.

FINDINGS

Governance

- Public awareness of new land legislation is lacking.

Conflicts and Dispute Resolution

- Government sources and many others generally say that land conflicts between refugees, IDPs, returnees, and landholders do not appear to be rampant or particularly intense. However, the very limited nature of the fieldwork makes this conclusion suspect. Observers should remain alert for overlapping and competing land and resource claims, for disparities in ways people (re)acquire resources, and for competing (or complementary) power structures responsible for resource distribution and dispute resolution.
- Within traditional communities, the sobas or other community leaders appear to be resolving some land disputes.

- There does not appear to be a significant formal (local or provincial) government, judicial dispute resolution mechanism available. For producers of any size, problems appear to be resolved administratively.

Agricultural Economics and Credit

- Despite some evidence of progressive projects and activities, there appears to be little governmental agricultural planning or extension that is aimed at addressing issues of inputs, production, processing, or marketing.
- There is little credit available to farm households, and the prohibition of mortgage does not bode well for increasing credit opportunities.

Institutions and Legal and Regulatory Framework

- The regulations to be promulgated for the new land law are seen by both government and civil society as the key to improving and implementing the law. There does appear to be some entrée to assisting government with the creation of the regulations. In fact, several government representatives requested our assistance.
- There are conflicting reports about the extent of public input that will be permitted to influence the regulatory development process.
- Capacity remains weak at all levels to implement much of the Land Law and Territory Law.

Land Access and Distribution

- For the most part, and as limited by the narrow sampling of the fieldwork, it appears that households that desire land in fact have some land. However, the amount of land that is seen as workable by one family (about one half hectare) may be insufficient to sustain the household. Plus, the land held by commercial producers appears to be better situated as regards infrastructure (roads, etc.).
- In many locations, there are multiple, overlapping, and competitive land claims. Confusion about rights will undermine investment, and lead to speculation and conflicts.
- It appears that many households that have been displaced and desire to remain in the locale of their displacement have been given some land by the community within which they now live. However, this conclusion should continue to be validated over the coming months and years. In any event, the prospect of conflict or competition caused by those staying in new locales should be assessed.
- Many (and perhaps most) returnees appear to have been given some land back within their communities upon return. However, this conclusion should continue to be validated over the coming months and years.
- Some farm associations hold land that is farmed cooperatively, which serves to increase the per capita land holding beyond the amount of land held individually by each association member. There is some uncertainty, however, as to whether the cooperative land was obtained from another local farmer, which could render the gain in access less significant from an overall perspective.
- Some communities are reclaiming former concession land as community land.

Land Administration

- Land records (property documents and maps) are incomplete. Some records have been destroyed; others are in central rather than provincial offices.
- Maps are out of date, incomplete, and inconsistent.
- There are a limited number of trained land administration professionals, office staff, surveyors, valuers, and others.
- Public information on land administration is almost nonexistent.

Natural Resources Management and Land Use Planning

- Territory Law has been passed, and an extensive master planning campaign is envisioned as an answer to past unregulated and now informal development. This “command and control” mentality echoes many provisions in the Land Law.
- Almost no one is working on NRM issues, and it appears that few resources are being sustainably managed.
- There have been some conflicts over water in some provinces.
- Under past laws and under the new Land Law, almost all subsurface resources belong to the government. There is no plan to permit communities or individual land concession holders to benefit from these resources that may be related to their land holdings.
- Land concessions that include grazing land typically convey the grazing rights to that land to the concession holder or community. However, there may still be conflicts over use types.
- The government is issuing forestry concessions. Communities use forest resources without formal concessions, and there may be some conflicts or competition associated with these uses. There was some deforestation during the war, and deforestation continues for firewood and charcoal production as livelihood strategies.
- Agricultural soils are generally depleted from overuse and lack of replenishment. Fertilizers are useful almost everywhere, although most farmers lack sufficient access.
- It is unclear whether the law will permit communities to enter into commercial economic relationships using their land.
- Regional and trans-boundary resource issues exist that must be monitored (i.e., Okobango).

Gender

- The new land law lacks reference to women’s access or rights.
- In Huambo, females head 35 percent of all households.
- In the event of divorce or other family breakdown, women are often left without access or legal rights to property.
- Women with AIDS are often banished from their households and lose access to land.

- In Huambo, an official reported that the spouse or children of deceased concession holders can renew land concessions previously held by the deceased.

RECOMMENDATIONS

Gender

- To the extent possible, incorporate appropriate provisions promoting women’s access and rights to property within the Land Law regulations.
- Continue to support data gathering as to the lack of women’s access and rights to property.

Governance

- Support Rede Terra in its advocacy and lobbying efforts, as well as in its civil society training and education efforts.

Conflicts and Dispute Resolution

- Build research and assessment capacity, and support data collection on land access, concessions, and conflicts.
- Assist with judicial reform.

Agricultural Economics and Credit

- Work to resolve the legal uncertainty, and then build capacity within demarcated communities for the communities to benefit from the land resources to which they hold formalized rights by linking with private sector investors (e.g., create Namibia-like “conservancies”).
- Explore options for increasing rural household credit opportunities, including the prospect of mortgage.

Institutions and Legal and Regulatory Framework

- Participate in the promulgation of the regulations needed to implement the new Land Law and Territory Law.
- Assist in developing a policy for the use of state land.
- Support an extensive legal literacy campaign, including translation into local languages.
- Begin to work cooperatively with the government, and through Rede Terra, to develop and/or improve the laws addressing compulsory acquisition of land, mortgage, valuation, administrative rulemaking, and the like.
- Assist government in clarifying ministry responsibilities over land.

Land Access and Distribution

- Support continued community land demarcation, after resolving several outstanding questions.
- Support individual land occupiers in their efforts to apply for formalized land rights pursuant to the new Land Law.

Land Administration

- Perform an inventory of existing land records and maps. Assist government in consolidation of land records and maps. Assist government in identifying “unclaimed” land.
- Conduct an on-the-ground inventory of the land situation in Huambo.
- Provide support for community mapping programs.
- Develop a training program in basic land administration, and develop a public information program on basic land administration procedures.
- Assist in registration and titling of urban land.
- Assist in development of government policy for land and geographical information, development of a training program for land administration officials, and development of a fee structure for land administration services.
- Assist government in decentralization of land administration functions.

Natural Resources Management and Land Use Planning

- To the extent possible, attempt to incorporate appropriate provisions related to natural resources management within the Land Law and Territory Law regulations.
- Support Development Workshop’s efforts in addressing urban and peri-urban land issues.

Gender

- To the extent possible, incorporate appropriate provisions promoting women’s access and rights to property within the Land Law regulations.
- Continue to support data gathering as to the lack of women’s access and rights to property.

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