
**LAND & NATURAL RESOURCE
MANAGEMENT SYSTEM
ASSESSMENT**

BIE PROVINCE, ANGOLA



A Report for CARE International Angola

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EXECUTIVE SUMMARY

It is widely felt that the ending of war in Angola should bring rapid improvements for agriculture, reopening the crucial trade links between the rural and urban areas. Who gets to participate and benefit from this anticipated growth, however, will depend upon the adoption, or not, of a set of policies and support programmes that are based on an understanding of the vulnerability context of livelihoods in the Angolan countryside. The rural areas of Angola were the most heavily affected by the long periods of conflict. In those areas where populations were not forced to flee for safety and humanitarian assistance to the urban areas, a large number of households lost most of their assets and were cut off from markets, retreating to a rudimentary subsistence economy.

In a context where rural livelihoods are heavily dependent upon natural resource use, and particularly on access to suitable land for agriculture, an understanding of how tenure issues are being dealt with at both community level and in formal policy development processes, are important elements in the design of appropriate support programmes.

Essentially, Angola now stands at a crossroads in respect to the future scenario for the livelihoods of the vast majority of rural dwellers. There are important elements in the newly proposed land law that go some way towards removing the duality inherent in the land policies to date, whilst at the same time recognising and building upon the strengths and flexibility of the existing customary norms and values. However, there are many limitations to the law as proposed that would still prevent local communities from being able to break out of the paradigm in which they are considered to be second class occupiers and users of land, whose usufruct rights merit protection, but whose capabilities do not merit entrance into the modern formal system of property rights that would enable them to realise the value of the large stock of natural capital available to them: their land. There are, too, many circumstances under which even the protected occupation and use rights of local communities can be withdrawn or cancelled by the state and many instances where the law introduces ambiguities rather than clarity.

The form and nature of the integration of traditional authorities and the exercise of their powers as envisaged in the new land law will be crucial. There are important questions related to the identification of legitimate traditional institutions at community level and the nature in which customary norms and practises become encapsulated in formal law.

Given the conditions of extreme poverty and stress such as persist in Angola, the immediate social relationships within families and communities are likely to be crucial for survival both in peoples' daily lives and at times of particular hardship and stress. How these social relations work and how they may have changed in respect to land and natural resource access were the main focus of this study. Fieldwork in Bie province, consisting of a mix of open-ended interviews with key informants (particularly traditional and formal authority figures), semi-structured interviews with randomly selected families, and group discussions and participatory mapping exercises with different interest groups, was conducted by a team from CARE International and MINADER. A total of 111 interviews and 22 group discussions were held in six study sites in three different municípios.

Generally speaking, access to land has not been a problem and almost all families in the survey reported that they had recognised access and tenure over more land than they were presently able to cultivate; in most cases this was land, in addition to areas of fallow land, that had never been cleared or cultivated (i.e. virgin bush land). At all of the study sites respondents reported that all land within the community/village area was owned by one family clan or another, including all the land that was not in cultivation and had never been cleared. A small percentage of people reported that they did not have access to an *onaka* plot (only in Andulo Município) but ownership of *ongongo* and *otchumbo* plots was universal. The overwhelming

majority of respondents in the survey reported that they had inherited their land plots from their families.

In all of the study sites the *sobas* play an important role in terms of land administration, testifying to transactions and acting as intermediaries on behalf of those who need access to land. In many ways their role appeared to be that of a local 'registrar of lands' and, in conjunction with the *sekulos*, they were seen as the custodian of historical knowledge relating to land ownership and of contemporary transactions. In all of the areas, however, people were quick to draw a distinction between the performance of this function and actual ownership and transfer rights over the family lineage land holdings. These rights were vested very clearly in the context of the extended family and the *sobas* were not empowered to make decisions over land holdings except in consultation with and with the agreement of the recognised owners.

Ownership of land through the family lineage is therefore the norm and there would appear to be no areas that are considered as under the communal jurisdiction of broader community entities. However, this did not extend to control over the use and collection of other wild resources (except some trees). The collection and gathering of wild fruits, edible insects, firewood, water, honey, etc. could be practised freely on all land.

In none of study sites did we encounter situations in which returnees, ex-combatants or newcomers to the area were encountering particular difficulties in respect to land access. The vast majority of people who had been displaced had taken up occupation of their hereditary lands without problems; many appeared to have family members who had stayed in the village and had acted as guardians of their interests. If this was not the case, the fact that the customary ownership of land was a deeply embedded reality and widely acknowledged probably served to prevent the usurpation of land in an owner's absence. In general, the customary norms and systems in respect to land appear to have been durable and flexible enough to withstand what has been a period of considerable disruption and upheaval.

Women's tenure rights are precarious at best in most areas. Most women did not have land tenure security in their own right but only through their husbands or their parents, or were considered to be holding land in trust for their children. There was in fact a notable difference between Andulo and the other two *municípios*. In Catabola and Camacupa many people were of the view that a widow would be able to remain in possession of family plots, except in cases where she decided to remarry. In Andulo there was a much more consistent view that widows, irrespective of the circumstances, would be expected to return to her own family and leave the land to the husband's family. An explanation advanced for this difference was that there had been much more integration in Catabola and Camacupa between the Ovimbundu and Ngangela language groups (as a result of past conquests) and that the traditional practises of the Ngangela language group, which favoured women's rights to land after the death of a husband, had impacted upon the Ovimbundu norm under which women would lose these rights.

One of the most important functions performed by the traditional authorities is that of conflict resolution and they were overwhelmingly the forums of first choice for people who needed help in this regard. In all of the study sites the credibility of the traditional authorities in respect to conflict resolution was extremely high, including amongst the younger generation. Although a few respondents mentioned the alternative of the church (mostly in Andulo) the vast majority indicated that the traditional authorities provided the quickest, most accessible and most enduring solutions. The majority of conflicts over land, however, were occurring within family groups and related to tussles over inheritance, rather than being conflicts between different families. As such, most of these conflicts would be resolved within the family grouping, without the formal involvement of the traditional authority. Many people referred to the fact that all parties would normally be happy with solutions provided by the traditional authorities; this was an indication that this route emphasised mediation and conciliation between the parties.

Respondents often referred to the reaching of solutions that ensured that people were able to co-exist peacefully.

Nothing in the research findings would appear to indicate that at the moment access to land represents a limiting factor to the re-establishment of agricultural production or food security. None of the families interviewed during the process indicated that they had encountered problems in getting access to land for cultivation, or for housing, and this was the case for settled residents, returnees and displaced people. It would appear that the traditional mechanisms for land allocation have been sufficiently durable and flexible to both maintain their legitimacy for the vast majority of people and to ensure that social conflicts over land, where they have occurred, are resolved.

However, there are areas related to land tenure security and the recognition of land rights that could be usefully integrated into ongoing CARE programmes in the region. Given that CARE are already working in partnership with the local MINADER structures, and are keen to deepen this arrangement, there is considerable potential for the design of a programme of assistance that supported community groups in the identification of the boundary areas within which they considered themselves to have user rights and to support the local state structures to provide the necessary services to formalise these.

This would be pioneering work if CARE were to design such a programme and would assist the state in the piloting of suitable methodologies for implementation of the law as well as immediately helping to secure the land rights of rural communities. Given that the study has indicated a highly developed sense of ownership by family lineages within a community area, great care would need to be taken to ensure that the process did not result in a transfer of *de facto* control from people themselves to broader institutions at community level. Individual titling of family lineage land holdings at the outset is likely to be expensive and beyond the capacity of existing institutions, both internal and external to communities. However, the initial recognition and registration of the community land area as a whole could be a valuable first step towards the further registration of family lineage land holdings within this area.

The area of most concern arising from the field study has been, not unsurprisingly, the findings in respect to women's rights to land which, with some exceptions in Catabola and Camacupa, are subject to customary laws that are highly prejudicial. However, even within this framework, there was evidence that shifts are occurring: several widows testified to the fact that there were support mechanisms available within communities that facilitated their access to land and that performed a kind of welfare function. As the shift from emergency to development programming continues it might be the case that access to land and other resources becomes a suitable focal point for CARE's continuing work with the Community Development Committees and that discussions that begin to address structural problems in this respect are encouraged. Many respondents in the field study, irrespective of their background, identified that fact that the position of female-headed households and widows was weak in relation to land access and, as indicated, some communities appear to already be taking steps to mitigate this. CARE might therefore be able to identify ways in which these processes can be supported and formalised.

The central policy issue around which lobbying efforts ought to be directed in the future concern the need for the law to allow for, protect and register the recognised rights of community and family groups such that they become subject to transfer and transaction on terms and conditions suitable to the community or the family. This would certainly be preferable to the present formulation, which offers protection of broad community rights only to the extent that they will be compensated in alternative land, or unchallengeable one-off payments, in the event of their expropriation.

INTRODUCTION & OBJECTIVES OF THE ASSESSMENT

This report contains the key findings of a brief study undertaken into the land and natural resource tenure systems in three municipalities in Bie province, Angola. The study was commissioned by CARE Angola in order to improve their understanding of how land tenure patterns in the post war period were re-establishing themselves and to develop a base of empirical information that could be shared with a broader stakeholder community to support informed policy debate on land. It also contains a review of legislative developments in regard to land and attempts to set the research findings within the broader contexts of recent policy developments in respect to land and decentralisation, as well as identifying some potential areas of CARE programme development in the region.

CARE has been working in the Bié Province since 1995 in a variety of interventions, including emergency distributions to IDPs, agricultural development assistance and health interventions such as polio eradication, health post rehabilitation and training. A large Development Relief Programme is targeted at assisting those who were displaced by the conflict to re-establish their livelihoods, mostly through support for attaining food security in the short term and re-establishing subsistence level agricultural production in the medium term. This programme has recently moved to a second phase that aims to build on earlier gains by concentrating on the provision of support to community-level institutions and the rebuilding of critical rural infrastructure.

A particular concern is to ensure that the most vulnerable and marginal groups within communities are included in the development process. In a context where rural livelihoods are heavily dependent upon natural resource use, and particularly on access to suitable land for agriculture, an understanding of how tenure issues are being dealt with at both community level and in formal policy development processes, are important elements in the design of appropriate support programmes.

CARE in Bie has also been working towards the development of more participatory targeting mechanisms over the last year¹, and to establish working methodologies that promote more inclusive, transparent, and equitable access to resources. Land is one of the most important forms of capital available to rural communities in Bie province and the mechanisms through which people can gain access to this resource will have a large impact on the nature and equitability of future growth and development in the area.

The report is organised into 3 sections. **Section 1** looks at the context within which rural livelihoods and issues concerning access to land and natural resources are being played out; it examines the vulnerability context of rural livelihoods in Bie province and some issues of state institutional capacity and contains a review of the legislative developments in respect to land and decentralisation. It also contains a review of some of the main aspects of the proposed new Land Law as far as these relate to rural community tenure issues. **Section 2** contains a summary of the key findings from the field research that was conducted in the three municipalities. It concentrates on issues of land use and availability, mechanisms of access and dispute resolution, the role of traditional authorities, the status of women's' tenure rights and the position of returnees and demobilized combatants. **Section 3** outlines some of the key issues that arise from these in respect to CARE's future work and programming, including some of the legal and policy issues involved.

¹ See the reports of the CARE Angola Transitional Programming Initiative, 2002 - 2003.

1. NATIONAL, PROVINCIAL & POLICY CONTEXT

1.1 Rural livelihoods in context

1.1.1 Introduction

It is generally acknowledged that Angola exhibits some of the worst indicators of poverty and vulnerability in the world. The country ranks 164 out of 175 countries on the UNDP Human Development Index, despite its relatively high GDP per capita of US\$2,040 (UNDP 2003). Such indicators are largely the result of three decades of civil war, which ended less than two years ago in April 2002. An estimated 1.5 million people died in the conflict and the country was left with one of the largest internally displaced populations in the world; approximately one third of the population, or almost 4 million people, were forced from their home areas. Whilst rapid and unplanned urbanization has caused huge problems for some of the major cities in Angola, it is in the countryside where much of the conflict took place and where the challenges of reintegrating this displaced population will largely be faced.

Prior to 1975, Angola was self sufficient in food production and was a major exporter of key cash crops, particularly coffee² and sisal. The Angolan highlands “were well suited to the production of a wide variety of tropical and semi-tropical crops; cassava, maize, sorghum, bananas, sugar cane, cotton, sisal, citrus and other fruits, yams, millet, beans, rice, palm oil, coffee, sunflowers, timber and tobacco”³. Land ownership was highly skewed in this period, with 6,412 colonial farmers having title to 4.5 million hectares, whilst the estimated 1 million so-called ‘family-sector’ African farmers had secure access to a little less than 4.3 million hectares (Pacheco, 2003). Agricultural production, however, appears to have been less skewed, since figures for actual use of land were given as 11% and 50% for the respective groups (ibid). An extensive network of ‘bush traders’ (*comerciantes do mato*) in the colonial period ensured the collection of surplus produce from rural areas and its transportation to the markets of the coastal and urban areas. In the period between 1910 and 1940, Ovimbundu producers in the highlands dominated agricultural export production (see later, section 1.3.1).

Today only 3% of arable land in Angola is under cultivation. Agriculture accounted for a mere 7.8% of GDP in 2002, as compared with 12% in 1994 and 18% in 1990. Production of the five principal grain crops (maize, sorghum, millet, rice and wheat) fell to 246,000 tonnes in 1990, less than a quarter of the output in 1973. Production of maize, one of the main cereal crops was estimated at 460,000 tonnes in 2001, compared with a total food requirement of 1.38 million tonnes (EIU, 2003). The production of coffee and other cash crops, including sisal, cotton, palm oil and tobacco, has dropped dramatically. Some sugar production still takes place in the southern coastal areas and livestock rearing is now mainly concentrated in the Southwest of the country (Tvedten, 2003).

It is widely felt that the ending of war should bring rapid improvements for agriculture, reopening the crucial trade links between the rural and urban areas. Who gets to participate and benefit from this anticipated growth, however, will depend upon the adoption, or not, of a set of policies and support programmes that are based on an understanding of the vulnerability context of livelihoods in the Angolan countryside. As the following section outlines, the level and complexity of livelihood vulnerability for rural people is at present extremely high.

² In 1974, Angola was Africa's second largest and the world's fourth largest coffee producer.

³ Official Angolan website: www.angola.org

1.1.2 The vulnerability context of rural livelihoods

The rural areas of Angola were the most heavily affected by the long periods of conflict. In those areas where populations were not forced to flee for safety and humanitarian assistance to the urban areas, a large number of households lost most of their assets and were cut off from markets, retreating to a rudimentary subsistence economy. Large areas of land are of low fertility (despite the enduring myth of the highly fertile and extensive soils of the planalto⁴), or are in low rainfall areas or remote from markets and services. Insecurity as a result of landmines remains an extensive problem.

Agricultural inputs such as seeds and tools are almost entirely restricted to those being distributed by the relief agencies; the private sector provision of services in rural areas is absent. Most rural infrastructure and services have been decimated and state institutions below the level of the provincial administrations barely exist and function on a minimum of resources and staff. Civil institutions are almost completely absent and the administration of justice is extremely weak; in this context, the return of demobilized UNITA soldiers to rural communities that were the past targets of many of their destructive actions, has created a social context characterised by fear, suspicion and mistrust (CARE, undated). Social capital in the form of the network of bush traders that existed during the colonial period has disappeared – these used to offer the option of bartering agricultural produce for consumer goods and agricultural inputs, and provided an important bulking-up function. They may also have offered small-scale production or consumption credit to local people. In the current situation, many farmers have to travel long-distances to local markets where their bargaining position is weak.

There is some evidence of increasing competition between peasant and commercial farming. By 1999, land concessions totalling more than 2 million hectares, or 50% of the area held by commercial farmers in the colonial period, had already been granted to new a new elite of large scale landholders, at the expense of peasant farmers (Hodges, 2002), although there is little knowledge about where these concessions are located as a result of a continuing lack of transparency from the Government cadastral services. So far disputes over land appear to have been limited by the fact that the new landowners have been unable to assert their land 'rights' in areas affected by the war (ibid). As access and security improve, however, many smallholders may find themselves pushed off land that has been allocated to these new agricultural 'entrepreneurs' through the concession process.

The HIV/AIDS prevalence in Angola is still very low compared to other countries in the region although it is uncertain whether this represents the real situation or is a reflection of the outcome of limited political attention and under-recording of the incidence of HIV/AIDS by a weak health system (Tvedten 2003). Recent evidence suggests that the rate of infection is increasing and the future social implications for families affected by the disease, the difficulties of access to appropriate health care and the reduction in agricultural capacity will be most keenly felt in the rural areas. Its impact is likely to enhance the vulnerability levels of many households, as families are affected by illness. Some families are likely to lose land, or to get much less benefit from the land than was assumed. The burden of care for family members who fall ill will largely be placed upon female members of the household, who are also predominantly those involved in agricultural production (women are already head of the household for a significant percentage of families). It is likely that family savings will be consumed and assets sold to help pay for medical expenses as illness strikes. Farmland utilization is likely to decline as the inputs become unaffordable and the household labour supply is reduced (Drimie, 2002).

⁴ See Birkeland, Nina M (1999), Construction of a myth - "the very fertile agricultural land" in the Planalto Central, Angola, Department of Geography, Norwegian University of Science and Technology and Heywood (1987).

Transportation links have been severed and remain in a precarious state; at the time of writing, for example, Bie's provincial capital, Kuito, has no secure access to the two municipalities of Chinguara and Chitembo.

1.1.3 Natural resource use as part of livelihood strategies

Studies recently conducted amongst ex-combatants⁵ have indicated that the vast majority wish to return to their area of origin (85%) and that 43% of these former soldiers intend to establish themselves once again as small scale agricultural producers (Parsons, 2003). They will be joining the resident rural population and other returnees who also depend predominantly upon agriculture for their livelihoods. Opportunities for wage labour in non-agricultural sectors in the rural areas are few and far between.

However, the use of natural resources as a central part of livelihood strategies is not limited to agriculture and the full-time cultivation of land. The relatively small area of land that is actually cultivated paints a false picture of the actual area that is important to the rural poor. A host of other natural resources are collected, processed and/or marketed by many families, either as a predominant activity or as part of a diversified portfolio of livelihood strategies designed to spread and minimise specific risks. These include resources such as fish, bush meat, honey, clay, roots and tubers, edible insects, medicinal plants, building materials, thatching grass, firewood and the production of charcoal and salt. Forests and rivers, in particular, provide a range of resources central to peoples' livelihoods. It will be important in the future, therefore, that policy approaches to securing land tenure for the rural poor are not restricted to those areas that are occupied merely by residential and cultivated plots.

1.2 Provincial Context

1.2.1 General situation

Kuito, the provincial capital of Bie, was once the hub of agricultural and light manufacturing industries, with a strong network of road and rail links to coastal and southern areas as well as into the interior and beyond (SCF, 2000). The provinces' main agricultural potential comprises produce such as citrus fruits, rice, beans, wheat, maize, sisal, bananas and coffee. Crops grown for subsistence include mandioca, maize, beans, sunflowers and a range of vegetables and although stocking rates are presently low after the decimation of the war, there are large areas of good pasturelands for cattle and smallstock. Bie has a tropical, high altitude climate and good average rainfall.

Recent history has been characterised by both periods of recovery and renewed conflict. For the most part, between 1997 and 1998, there was a period of relative peace, during which agricultural production and trade increased, and many households began to rebuild lost productive capacity (CARE, 2002). In late 1998 the political, economic and security conditions in Bie deteriorated rapidly. UNITA launched numerous attacks against government outposts, assassinated *sobas*, and ordered farmers not to bring produce to market. The IDP caseload in government controlled areas increased throughout this period. Shortly thereafter, terrible fighting broke out in Bie province, all semblances of order and normalcy broke down in the countryside, and hundreds of thousands of displaced people poured into Kuito (ibid). During this period many of the displaced around Kuito encountered considerable difficulties in obtaining access to land. A report by SCF from 2000 indicated that on average a family was able to cultivate 0.25 to 1 hectare (SCF, 2000). The situation in the rural areas was largely unknown at this time.

⁵ By the International Organisation for Migration (quoted in Parsons, 2003).

The CDRA baseline study, conducted in August and September of 2003, produced important data on the status of households after the 2002/2003 planting season. The Bie province baseline data show that the average aggregate production (all crops) was only 149 kg covering the food needs of a household of five for only two months. 70% of the farmers planted less than 1 hectare of land with the main crops maize (96% of the farmers) and beans (63% of the farmers). In addition, the baseline data showed that 25% of the households was female-headed. The other sources of income were farm labour and the sale of agricultural produce or other products such as charcoal and forest fruits. (CARE, 2004)

1.2.2 State institutional capacity

In Angola, all current government structures below the level of the national government are referred to as local government – or more precisely, as the 'local organs of the state'. This includes the dominant level in the local government system, the provincial governments, of which there are 18. Beneath this level are the much weaker administrations of the *municípios* and *comunas*.

In Bie province there are 9 *municípios*, including that of the capital city, Kuito. The others are Andulo, Nharea, Cuemba, Cunhinga, Catabola, Camacupa, Chinguar and Chitembo.

MINADER's capacity to provide services to the rural communities in the *communas* of Bie province remains weak. In Bie, MINADER is only present at the municipal level and resources to work with the farmers at the *communa* level are not available.

1.3 Policy Context

1.3.1 The historical development of policy and its impact on the central highlands

Land policy in the former Portuguese African colonies generally followed the evolving approach that the colonial authorities took towards the general status of their African 'subjects'; combined with policies designed to force large numbers of people in the Angolan highlands into the category of forced labourers, the net result was a gradual undermining of Ovimbundu agriculture, which in the years before 1930 had been a source of relative prosperity.

The infamous *Estatuto dos Indígenas Portugueses das Províncias de Angola, Moçambique e Guine*, the final version of which was promulgated in 1954, set out the basis for a racially-differentiated administration of what were then considered the African provinces of the Portuguese state. According to this statute almost all aspects of life for the indigenous populations (access to work, health care, the payment of taxes, obligations for military service, etc.) were differentiated from those applicable to European Portuguese citizens (Neto, 2001). Accordingly, the land regime applicable to Angola, codified within legislation of 1919, recognised the existence of specific areas of land destined for the 'exclusive use' of the indigenous population whilst making the remainder available for European settler concessions (it did not, however, provide any mechanisms through which the statutory usufruct rights of the *indígenas* could be identified, nor did it allow for the attribution of full property rights, either through collective or individual titling). The justification for this was a perceived need to protect the usufruct of the indigenous populations, but its implication was to exclude them from a more formal property rights regime in which title to land could be acquired.

The standard summary of events relating to land occupation at this time paints a picture in which the increasing colonial up-take of land systematically ignored the existing occupational rights of local populations. Colonial settlers, according to this version of historical events, occupied large tracts of peasant-occupied land (favourable in terms of soil fertility and their location close to markets or transport linkages), despite their nominal protection in law. As a plantation economy developed, these '*fazendas*' began to encompass entire villages, pushing

subsistence agriculture to the margins and forcing local populations into paid agricultural labour, particularly in the central highlands, where there was much demand for land.

This, however, was not the complete picture; labour policies may have had a greater impact on the erosion of African land holdings and agriculture than land settlement by outsiders, at least in the central highlands. At the time of the Portuguese conquest of the central highlands of Angola (from 1890 to 1905) the nature of the Ovimbundu society that they encountered was extremely dynamic and highly stratified. The Ovimbundu inhabitants of the area controlled the organisation and marketing of the major export of the area at the time, wild rubber. The wealth gained from this trade had been used by many to purchase slaves and a traditional elite had built up possession of large retinues of dependents and substantial estates (Heywood, 1987). The imposition of the hut tax in 1906 served to shift revenue from the heads of the traditional states to the colonial government, but did little to reduce the revenue potential of the elite. Neither did it affect the ability of the Ovimbundu to take advantage of the shift in economic emphasis, from mercantile activity (based on the rubber trade) to agriculture (based on maize production) that took place in the early 1920s. This shift had been encouraged by the authorities of the Benguela Railroad, who were keen to raise revenue through maize exports before the railroad reached its final destination in the copper fields of Katanga. In addition to expanding their production of a traditional crop like maize, the Ovimbundu also took up growing new crops once a market potential had been demonstrated (ibid).

Initially, competition for land in the highlands was extremely limited. Government surveys in 1922 estimated that there were 9 million available hectares of arable land, with 150,000 to 200,000 hectares being taken up by Ovimbundu maize cultivation. By the mid-twenties, only 280,000 hectares had been awarded under concession and a survey of land use in 1923 showed that less than 10% of this area was actually in use. Portuguese settlers, far from entering into farming competition with the Ovimbundu residents, concentrated instead on marketing Ovimbundu-grown produce, mainly maize and beans, which they purchased directly from the producers. At this point the colonial state was little interested in what it perceived might be an expensive subsidisation of settler agriculture, particularly when the local populations were producing large quantities of exportable goods without any government support.

It was only in the 1940s that the colonial government became interested in supporting a project for establishing large numbers of Portuguese smallholders in the highlands. Even so, the state was loathe to deprive itself of the potential of the tax-paying peasant producers, whose maize exports had helped considerably in alleviating a difficult balance of payments situation⁶. A law of 1933 therefore provided that an African who occupied land that was otherwise ungranted and had been previously vacant and uncultivated, and was using modern farming methods, would be given title to the land and would receive a further grant of 10 hectares of land forming a block nearby. Already at this time there were an estimated 15,000 Africans in the highlands who had been accorded 'assimilated' status⁷ and were thus eligible to benefit from formal land ownership. The 1933 law appeared to open up the possibility for African land ownership even further (ibid).

However, undermining these moves to recognise African land holdings, and the expansion of peasant agriculture generally, the colonial state in the 1930s introduced fixed prices for maize, wheat and beans that paid higher prices to white settlers. They also introduced new labour

⁶ In 1932 the amount of peasant-produced maize was estimated to be 220,000 metric tonnes, approximately half of which was exported. The value of these exports was second only to diamonds, while settler-produced coffee and sugar were third and fourth (Heywood, 1987).

⁷ 36% of these were catechists and pastors and they formed the backbone of the African 'farmer class' being targeted by the 1933 law.

policies that required stipulated periods of labour that were not tied to taxation, drawing in those who might have been able (as in the past) to meet monetary tax obligations from home production. Combined with the degradation of fragile soils and the increasing reservation of the best-located areas for settler agriculture, Ovimbundu production went into decline. Despite the 1933 law, a report on Huambo from 1942 revealed that only 78 Africans, of a total of 83,878 producers, held a title to their land.

In the 1960s the Portuguese, responding to broader political shifts on the continent, precipitated a change in their approach to the administration of the African colonies and revoked the racially discriminatory '*Estatuto dos Indígenas*'. All Angolans were now to be accorded full citizenship through this change, with, in theory, all the private rights due to such a status. The new land law introduced in 1961⁸, however, perpetuated the dualistic treatment of the land tenure regime; under this law it was established that Europeans would be given title to the land they had occupied if the properties (which became known as *fazendas*) were developed for a continuous period of 20 years (Williams, 1996) whilst land areas occupied by the local population, for residential or agricultural purposes, were recognised and protected as 'reserve' areas (where concessions could not be granted). These latter areas were classified by the legislators as 'second class lands' and were susceptible to demarcation in a ratio of 5 times the area that was effectively being occupied⁹, but only on a communal basis. 'First class lands' referred to the areas of actual villages or settlements and 'third class lands' were those that fell outside of either of the first two categories. It was these 'third class lands' that were available for concession, and, at least legally speaking, this was permissible by both Europeans and Africans.

As Pacheco notes, however, "the necessary steps were not taken for the implementation of the law; the 'reserve' areas for the Africans were not demarcated, staff were not employed or trained for execution of the law and it was not sufficiently promulgated" (Pacheco, 2003). Furthermore, the formal registration requirements for the granting of concession titles in the third class areas were such that they remained out of reach for the vast majority of African smallholders. In fact, there is little evidence that many Europeans were granted legal freehold interests due to the inefficient government bureaucracy. Thus most Europeans held their *fazendas* as *de facto* freehold rather than as *de jure* freehold (Williams, 1996).

The European settler desire for more land, particularly in the central highlands, did not abate, however, and those with an eye to accessing further land areas, still occupied by local populations under customary systems, formed a cynical pressure group for revision of the law. Justifying their argument on the basis that the 1961 Land Law perpetuated racially discriminatory treatment (by recognising 'second class' communal areas of customary occupation), this group pushed for a unitary land tenure regime which would see all land not yet demarcated coming under a single system and being available for demarcation by European and African citizens alike (with themselves, obviously, in a prime position to exploit such opportunities). In this they were only partially successful; although a new Land Law in 1973 declared available for concession all those land areas that had not yet passed into private property or public dominion, those areas under customary tenure remained protected from the encroachment of private concessions.

At Independence in 1975 the new Angolan government abolished private property and established state farms and agricultural cooperatives¹⁰ on the land that was abandoned by the

⁸ Regulamento da Ocupação e Concessão de Terras nas Províncias Ultramarinas, September 1961

⁹ This was, according to the legislation, to allow for the recognition of traditional agricultural practises and land uses.

¹⁰ The newly created state enterprises were known as *Agrupamentos de Unidades de Produção* (AUP) and, in addition, the state replaced the network of 'bush traders' with its own rural shops, intended to provide rural peasants with consumer goods and agricultural inputs (Williams, 1996). These quickly failed through mismanagement and See next page

Europeans. The new Constitution, however, did not deal with issues regarding land ownership and restricted itself to dealing only with other natural resources¹¹. No further legislation was passed to regulate the use of land or to recognise or upgrade existing customary tenure systems. Partly this was a result of the almost wholesale abandonment of the formerly occupied *fazendas*, which “allowed peasants to recover most of the land they had lost in a process independent from legislative nationalization or confiscation measures. A land reform was not needed” (Pacheco, 2000).

This, however, meant the perpetuation of a dualistic land tenure regime, in which the vast majority of Angolans continued to be ruled by informal, unwritten customary laws of land access which had little connection to the formal land tenure regime applicable to other (ill-defined) areas of the national territory.

The privatisation process of the late 1980s (part of a larger initial liberalisation of the economy adopted as a result of the recognised failings of the socialist era) was conducted within this dual framework. With the intention of creating an entrepreneurial agricultural elite that would serve as a “engine to modernize agriculture”, the privatisations were characterised by the ceding of land use rights by the state to various well-connected individuals and entities. Overwhelmingly, these were user rights to the previous *fazendas* as encapsulated within the 1975 cadastre, with no regard to what may have happened to these areas in the intervening years.

Moreover, in 1992, with the prospect of peace and further moves towards a market economy, the government finally produced new legislation to regulate land access and, in doing so, failed again to remove the dual character of the formal land tenure regime¹². The development of this law occurred with very little consultation or contestation and has been strongly criticised for its failure to deal with this and many other issues.

The *Lei de Licenciamento da Titularidade do Uso e Aproveitamento da Terra para Fins Agrícolas*¹³, although introducing the concept of ‘local communities’ and the principle that lands occupied by them should be protected, failed to define these concepts and did not introduce mechanisms through which such ‘protected tenure rights’ could be registered or upgraded. It also failed to address land issues in the urban areas, or indeed land that was not destined for agricultural purposes. It did, however, recognise the rights of both the colonial-era holders of tenure rights (whose property had not been subsequently nationalised) and the post independence concessions that had been awarded by the State since 1975 (with a three year period for regularisation of ‘anomalous’ situations in light of the new law). It permitted transactions in these rights and their inheritance.

inefficiency and there was a dramatic decline in peasant-produced crops, despite the removal of the colonial era constraints on access to land.

¹¹ The Constitution of 1975 in Article 11° declared that “all natural resources existing in the soil and subsoil...are property of the State, which will determine the conditions of its benefit and use” (*“todos os recursos naturais existentes no solo e no subsolo... são propriedade do Estado, que determinará as condições do seu aproveitamento e utilização”*).

¹² The amended Constitution of 1992 did, however, deal specifically with land. Article 12(3) stated “Land, which is by origin the property of the State, may be transferred to individuals or corporate bodies, with a view to rational and full use thereof, in accordance with the law” and Article 12(4) stipulated that “The State shall respect and protect people’s property, whether individuals or corporate bodies, *and the property and ownership of land by peasants*, without prejudice to the possibility of expropriation in the public interest, in accordance with the law.” The phrase in emphasis shows how ‘peasant’s land’ continued to be viewed as something different in nature.

¹³ Lei 21-C/92

This law essentially set the seal on the elite 'land grab'¹⁴ that had preceded it, a process characterised by Pacheco as follows:

"Land alienation has been happening in a disorganized, confused and non-transparent manner, even in the cases where local authorities are involved and, apparently, the agreement of the so-called "traditional authorities" is obtained. The result of this governmental mistake is the gradual reconstitution of former properties; the restoration of an order which inexorably will collide against peasants' interests" (Pacheco, 2000).

The Angolan government are currently involved in the development of a new Land Law to replace the 1992 law, a process that has at least been marked by the broader involvement of different interest groups in its formulation than was the case in the past. Unfortunately, the development of the law is not underpinned by a formal policy on land, nor informed by a common vision for rural (or indeed, urban) development. However, the opportunities for civil society groups to engage in the process were notably greater and various groups, coordinated by a Land Network (*Rede da Terra*) have been consulting constituencies and proposing amendments¹⁵. More recently, it appears as if the Angolan government's patience with the consultation processes may have worn thin and in a surprise move towards the end of 2003 the draft law was approved by the Council of Ministers and submitted to the National Assembly.

Essentially, Angola now stands at a crossroads in respect to the future scenario for the livelihoods of the vast majority of rural dwellers. There are important elements in the new law that go some way towards removing the duality inherent in the land policies to date, whilst at the same time recognising and building upon the strengths and flexibility of the existing customary norms and values. However, there are many limitations to the law as proposed that would still prevent local communities from being able to break out of the paradigm in which they are considered to be second class occupiers and users of land, whose usufruct rights merit protection, but whose capabilities do not merit entrance into the modern formal system of property rights that would enable them to realise the value of the large stock of natural capital available to them: their land. There are, too, many circumstances under which even the protected occupation and use rights of local communities can be withdrawn or cancelled by the state and many instances where the law introduces ambiguities rather than clarity. The next section looks briefly at some of these elements of the proposed law.

1.3.2 The proposed new Land Law

This section looks at some of the relevant provisions within the proposed law now before the National Assembly, concentrating on those that have a direct bearing on the rural land holdings of local community groups and highlighting some immediate issues.

It is not intended to be a full commentary upon the law¹⁶ and is limited to a description of the concepts and the relevant articles, and a summary of how the law intends to treat the particular tenure issues¹⁷.

¹⁴ John Bruce, of the Wisconsin Land Tenure Centre, commented in 1996: *"For a state once committed to radical egalitarianism Angola has presided over a massive grab of land from rural people as urban elites have moved to take advantage of normative confusion created by the abandonment of socialist policies"* (Bruce, 1996)

¹⁵ See "Anteprojecto da Lei de Terras; Análise das Consultas às Comunidades em 10 Províncias do País nas vertentes económica, sociológica e jurídica (1st draft)", Rede da Terra, 2004.

¹⁶ See Beldsoe (2004) for a fuller treatment of some of the issues.

¹⁷ All translations from Portuguese are unofficial, by the author.

Rural communities

The law in its definitions section, Article 1, introduces the concept of a 'rural community'. A rural community is defined as:

*"Communities of neighbouring or closely-connected families, who, in a rural setting, have communal rights of tenure, of management and of use and enjoyment of community means of production, namely of the rural community lands occupied and used in a useful and effective manner by them, following the principles of self-administration and self-management, either for their residence or for the exercise of their activity, or for the attainment of other objectives recognised by custom and by the present law and its regulations"*¹⁸

Furthermore, article 70(3) would appear to grant legal personality to 'rural communities':

*"The legal personality and capacity of rural communities is recognised"*¹⁹

However, some issues worth noting here include:

- ✓ The communal rights of tenure appear to be restricted to those over land which is being used in a 'useful and effective manner', potentially precluding rights over fallow areas, areas of cultural importance, areas for future expansion, etc.²⁰
- ✓ The use of land for the 'attainment of other objectives' would appear to require recognition both in custom and in the present law and regulations. Although this may protect land earmarked for future expansion it could leave the holding of land by communities for speculative purposes (something which ought to be encouraged as a potential poverty alleviation mechanism) in an ambiguous position.
- ✓ There is nothing further in the law that proscribes how the legal standing supposedly granted to rural communities can be exercised, by whom, with what limitations, etc. A range of legal difficulties arise as a result of this²¹.

Tenure rights awarded to rural communities

Article 37 appears to provide for a statutory right of use and enjoyment of land occupied by families that form part of rural communities. Article 37 (1) states:

*"The occupation, tenure and the rights of use and enjoyment of rural community lands, occupied and used in a useful and effective manner according to custom, by families that form part of rural communities, are recognised"*²²

However, article 37(2) implies that this statutory right only comes into operation on the issuance of a title, a process for which further regulations to the law will be required:

*"The recognition of rights, referred to in the previous article, is effective through a title issued by the competent authority in terms of the regulation arrangements of this law"*²³

¹⁸ Article 1 (c), Lei de Terras

¹⁹ Article 70 (3), *ibid*

²⁰ As Pacheco points out the dangers of this approach are that "Just as...happened in colonial times, the restored "modern" sector will be characterized by an excess of unused land, with areas destined to reserves or to future speculation, while the familial sector will quickly advance towards the small plot of land, without possibility of expansion and without reserves or land for fallow periods, that in their situation are so necessary to avoid the degradation of soil fertility, which will put at risk the sustainability and even the survival of the peasants" (Pacheco, 2000).

²¹ The Rede de Terra have commented that the Land Law is not the appropriate instrument for the granting of legal standing to community groups and that this ought to be dealt with through a particular diploma issued in terms of articles (66) and (69) of the Civil Code (Rede de Terra, 2004).

²² Article 37 (1), Lei de Terras

Another route to the acquisition of tenure rights appears to have been introduced by article 6(5), which deals with the process of prescription (essentially a mechanism, regulated by article 1287 of the Civil Code, through which the uninterrupted and uncontested exercise of a personal 'right' becomes a 'real' right in law). Article 6(5), having in the preceding section specifically stated that land rights over state land cannot be obtained through prescription, creates an exception to this:

*"The acquisition, through prescription, of underlying rights corresponding to the powers that **peasants** have exercised over land areas referred to in the previous article is, however, recognised"²⁴ (authors emphasis)*

The position of a rural dweller that occupies and uses land outside of the customary systems of occupation (and that may not have access to the prescription route) would appear to be particularly precarious, however. For, example, article 84 imposes a requirement that untitled occupiers of land must request and fulfil the requirements for the award of a concession within a one-year period from the publication of the law and that failure to do so will result in the presumption that no underlying right of occupation has been acquired.

Difficulties arise with these stipulations:

- ✓ The protection of rural community land rights may only be effective on the issuance of a title in accordance with s37(2)²⁵.
- ✓ The departure in s6(5) from the use of 'families that are part of rural communities' (for which a definition in the law exists) in favour of the use of 'peasants' ("*camponeses*") (for which a definition in the law does not exist).
- ✓ The procedures contained within the Civil Code (that dates from the colonial era) that invoke the acquisition of rights through prescription are likely to be outdated and inappropriate.
- ✓ The vast majority of those who may be able to claim occupational rights under s84 will not be in a position to apply for concessions to their land areas, particularly within such a tight time limit.

The definition of rural community areas and boundaries

As far as defining the concept and extent of rural community lands and respective rights, there are several pertinent articles. Article 22 classifies rural land into community, arable and forestry lands and lands for 'installations' and road and utility networks. It goes on to define community lands as:

"...those lands occupied by families of local rural communities for their residence, the exercise of their activity or for other objectives recognised by custom or by the present law and respective regulations"²⁶

Further detail is added by article 23:

"Rural community lands are the lands utilized by a rural community according to custom in respect to the use of land, encompassing, as the case may be, complementary areas for shifting agriculture, migratory corridors for livestock access to water sources and pasture and the pathways, subject or not to

²³ Article 37 (2), *ibid*

²⁴ Article 6 (5), *ibid*

²⁵ Articles 60(2) and (3) would appear to set a further condition to this by making such rights subject to and only effective after their registration in the *registo predial*

²⁶ Article 22(2), *ibid*

*servitudes, used to access water or the roads or access paths to urban conglomerations*²⁷

As far as the process for formal registration of these areas is concerned, the following articles have relevance:

*“The delimitation of rural community areas will be preceded by a hearing of the families that are part of the rural communities and of the institutions of Traditional Power existing in the place of the site of those lands”*²⁸

and:

*“The delimitation of the rural community areas and the definition of the use of the community areas, by the competent authority, must adhere to the arrangements in the corresponding instruments of territorial planning and the regulatory arrangements of the present law”*²⁹

*“For the purposes of applying the previous article the competent authority must hear the administrative authorities, the institutions of Traditional Power and the families of the affected rural community”*³⁰

A range of immediate issues arise here:

- ✓ There appears to be no allowance in the definition of rural community lands for the inclusion of areas for future expansion.
- ✓ The definition of the boundaries and the definition of the use of community lands are ultimately in the hands of an external third party - the ‘competent authority’ (presumably an as-yet-unspecified government department).
- ✓ The delimitation of rural community lands is subordinate to territorial planning instruments.
- ✓ No definition is given in the law of what constitute the ‘institutions of Traditional Power’.
- ✓ The exact status of the hearings accorded to the traditional authorities and the affected families is not specified.
- ✓ The procedures through which the rural community lands can be delimited must await the elaboration of further regulations.

The status awarded to rural community land rights

We have seen above that the implication of article 37 is that rural community tenure rights may only be effectively recognised on the issuing of a title, which (it has to be presumed) would be the culmination of the delimitation process. What then are the rights that are being recognised?

Article 35 states:

*“The State may not transmit to single persons or collective persons in private law the right of property over rural lands integrated either in its public or private dominion”*³¹

²⁷ Article 23(1), *ibid*

²⁸ Article 23(2), *ibid*

²⁹ Article 51(1), *ibid*

³⁰ Article 51(2), *ibid*

³¹ Article 35(3), *ibid*

If rural communities as recognised in the Land Law are considered to be ‘collective persons in private law’, which would appear to be the case, it is therefore not possible for them to attain a right equivalent to freehold over rural land areas.

Article 19 deals with the classification of lands into those over which rights may and may not be ceded and in part states that community lands are within the latter group. This would imply that rights over community lands cannot be in any way ceded (not even to individual members of the community) and would appear to make the right that community groups acquire, one that is not subject to transaction in any form. The leasing of community land to a third party user, for example, would appear to be precluded.

However, in article 37, the possibility of rights over community lands being withdrawn by government and awarded as a concession to third parties is contemplated. Firstly, a degree of protection is awarded through 37(3):

“The rural community lands, whilst integrated in areas of customary use rights, may not be the object of concession”³²

But then the article goes on to state:

“Having heard the institutions of Traditional Power, it will be, however, possible to determine the dismemberment of rural community lands and their concession, without prejudice to the granting of other lands to the holders of customary use rights or, where this is not possible, without prejudice to the adequate compensation owed to them”³³

So, although the community groups themselves may not transact with the user rights that the law permits them to hold, the State can do just that. In addition, there are various other articles that considerably detract from the value of the tenure rights awarded to rural communities:

- ✓ Article 7.4 states that rights may be extinguished through the non-observance of levels of ‘effective use’ (which is undefined in the law) if this is for three consecutive years or for 6 interrupted years [reiterated in article 64(b)].
- ✓ Article 9.2 states specifically that rural community rights can be expropriated for public utility or a private development or be the object of ‘requisition’, without prejudice to the right to ‘just compensation’.
- ✓ Article 33 permits the creation of reserve areas, which may specifically deprive rural communities of customary use rights, on the basis of the provision of other land or ‘adequate’ compensation.
- ✓ Article 37(7) [read with 55(1)(b)] state that customary user rights have no limit but may be extinguished through the non-use or non-occupation of land in terms of customary norms.
- ✓ Article 64(c) states that rights may be extinguished where the land is being used for a purpose other than that which it was destined for.

The resolution of conflicts

Reference is specifically made in the law to the occurrence of conflicts within community groups in article 82, which leaves the resolution of such conflicts to be decided in terms of the particular community “norms and practises”, except where one of the parties may not agree to this and the dispute will therefore be submitted to the courts.

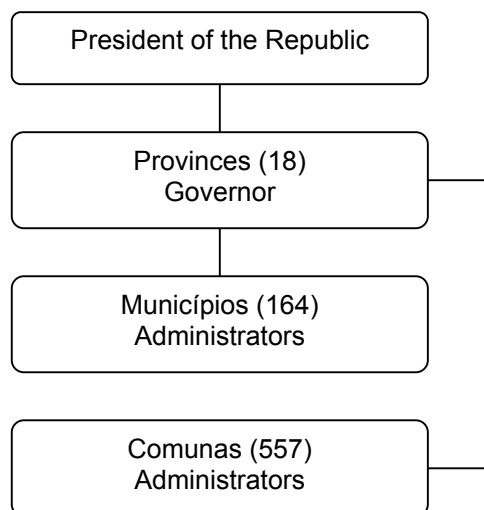
³² Article 37(3), *ibid*

³³ Article 37(4), *ibid*

1.3.3 Land Administration and Decentralisation

“Presently, land management occurs within an outdated, disorganized and confused legal framework. To the State’s weak capability is added the lack of human and material resources, function dispersion and task juxtaposition” (Pacheco, 2000)

Angolan governance operates, and always has done, on a highly centralised basis. Administrative units consist of the 18 Provinces, further divided up into 164 Municípios and 557 Comunas. Local governments on all levels, from the provinces to the comunas, have been principally concerned with serving as administrators of policies formulated at higher levels.



There are no elected local government bodies, with administrators at both *município* and *comuna* level being appointed by the provincial governors (see diagram above), who in turn are appointed by the president of the Republic. Constitutionally, the provincial governors are ‘the Government’s representative in the Province, on whom it falls to direct the provincial governance, ensure normal functioning of the local administrative organs and responsible for his activities to the Government and President of the Republic’.

Administrators at *município* and *comuna* level are similarly responsible for the execution of central state-defined programmes and dependent upon the provincial level for resources and revenue. A law passed in 1999³⁴, as well as ensuring direct administration of the national territory by the central state, also paved the way for an increase of the governors’ power at the expense of the ministries’. Previously, ‘commissars’ and delegations at the provincial level represented the various line ministries, which had control over their own budgets. The new law ensured the direct transfer of budgeted funds to the provincial administrations, which subsequently divided their resources between the newly established provincial directorates. The number of directorates is fixed at 11, each headed by a director who is nominated by the Governor.

One of these directorates is that of Agriculture and Rural Development (MINADER), the directorate that would appear to be at least nominally responsible to date for land management issues and maintenance of the cadastre. Whether or not it is this line ministry’s function to award concessions to land remains a moot point. The proposed new Land law leaves the issue to be decided by the National Assembly by putting forward two alternative formulations. In so far as rural areas are concerned the law is clear that the Council of Ministers has the power to

³⁴ Lei 17/99

concession rural land areas of up to 10,000 hectares. However, the power to grant concessions of between 1,000 to 10,000 hectares is to be delegated either to the particular Ministry that has legal competence of the land, according to its 'type', or to the entity that is responsible for the maintenance of the cadastre³⁵ (which would appear to be the *Órgão Central para a Gestão técnica da Terras*, referred to in article 67). This would appear to be a new institution, created by the law, and presumably is intended to replace the recently defunct Geodesic and Cadastral Institute that existed within the Ministry of Defence (Pacheco, pers comm.).

The point at which formal and customary systems of land administration will eventually encounter each other is in the institution of the *sobas*, the word used to describe a form of traditional authority and which is a modification of the term *osoma* – the Mbundu word for a particular kind of chief (see later, section 2.2.1). The post-independence MPLA state, in contrast to other ex-Portuguese colonies such as Mozambique, opted for a de facto 'integrative' approach to traditional authorities, as the need for improved organic links with the rural masses became a practical necessity shortly after independence. The MPLA adopted a similar approach to the *sobas* as had the Portuguese colonial administration: the *sobas* were accorded formal appointments at the lowest administrative level of the territorial state administration, responsible for ensuring local popular cooperation with the decrees of the state and enforcing taxation and forced labour requirements. To date, the MPLA government has apparently employed approximately 33,000 *sobas* (Tvedten & Orre, 2003).

In most rural areas the traditional authorities broadly are seen as providing social cohesion, serving as upholders of a commonly accepted cosmology, and as points of reference for the negotiation of questions of justice. Thus, in the absence of a state with a solid local presence, the *sobas* mediate, record, and judge in many areas in which a modern state would want to regulate and legislate (ibid). Included within their officially recognised duties are responsibilities for land administration, conflict resolution and (significantly) for negotiations with third parties in respect to the use of natural resources (see Box 1).

The *Communa* Administrators are supposedly the direct superiors of the Traditional Authorities, although as we shall see from the fieldwork findings (see 2.2.1) this hardly corresponds to the views on authority and prestige of many rural populations.

Box 1: Main tasks of the *sobas*

- ✓ Connect to the ancestors of the dominant lineages
- ✓ Assume magical-religious recourse to specific agents for this purpose
- ✓ Administer justice, with the ability to dispose of the lives of their subjects
- ✓ **Administer and distribute the land to subjects and strangers**
- ✓ Administer community issues related to dwellings, organisation of agricultural work, and barter
- ✓ Control the population, statistically and security-wise
- ✓ Establish social and juridical norms
- ✓ Inform military forces about young men for recruitment
- ✓ Reinforce and inspire construction and maintenance work
- ✓ Watch over solidarity mechanisms
- ✓ **Handle conflicts**
- ✓ **Negotiate on behalf of the communities with external agents (State, NGOs, private businesses, political parties etc.), including matters of natural resources**
- ✓ Transmit information to the population
- ✓ Be spokespeople for the communities
- ✓ Be points of connection between the community and the State

Source; "Estudo sobre a macro-estrutura da Administração Local (contribuição para a desconcentração e descentralização) - documento de trabalho". Luanda: Ministério da Administração do Território (MAT). Quoted by Tvedten & Orre, 2003).

³⁵ Alternative formulations of article 66(2) & (3), Projecto da Lei da Terras

Notwithstanding this extension of centralised state power, there is in fact a reform process in motion that would see the devolution of more powers to a local level and a change within the system of territorial administration. In addition to the 'local organs of the state' (provinces, *municípios* and *comunas*) there is legislation under consideration that would see the creation of independent organs of 'local power', to be created in the form of *autarquias*. These *autarquias* will be 'collective territorial legal persons which will pursue the interests of the population, thus having at their disposal elected representative organs and the right to manage their respective communities.' The *autarquias* will also have the right to collect and keep taxes. Other rights and duties are not as yet specified, but they will be under the tutelage of the provincial government (ibid).

Much more important in the short to medium term, however, will be the form and nature of the integration of traditional authorities and the exercise of their powers as envisaged in the new land law. There are important questions related to the identification of legitimate traditional institutions at community level and the nature in which customary norms and practises become encapsulated in formal law. As Pacheco points out, however, in one way or another, the 'social fact' of traditional authority must be recognised and respected by the state:

I believe that we can make a peaceful and soft transition from the current situation to another in which the local [traditional] powers would reflect an adequate articulation between the democratic aspects and the cultural reality, and at the same time introduce [...] democratising aspects in the exercise of traditional power, and still take advantage of everything of value in their institution. (Pacheco 2002a)

2. ACCESS TO LAND AND NATURAL RESOURCES IN BIE PROVINCE

2.1 Methodology & Site Selection

The study was undertaken over a 15-day period in February-March, 2004 and involved a review of the existing literature on the policy and legislative framework, interviews with key people in Luanda and Bie and fieldwork in communities in the municipalities of Andulo, Camacupa and Catabola.

The study areas were chosen on the basis of a range of criteria, including population density, the history of conflict and disruption in the area and consequent concentrations of formerly displaced people and ex-UNITA combatants, land use types and agricultural practises, the existence of privatised '*fazendas*' and conditions of access. Using these criteria the ideal *municípios* would have been Andulo and Chitembo, since the latter area lies in the south west of the province and displays different characteristics in terms of climate and agricultural practises and had a significantly greater percentage of returnees. The use of resources by outsiders (forestry & hunting) was also much more prevalent. It is also an area populated largely by people of a different language group and was thought to offer a comparison of cultural practises in regard to land systems. Unfortunately, as of early February 2004 there is no secure access to the area from Kuito. Eventually, therefore, it was decided to choose Andulo, Camacupa and Catabola as the study sites. Six different villages were selected, two from each *município*.

Given the conditions of extreme poverty and stress such as persist in Angola, the immediate social relationships within families and communities are likely to be crucial for survival both in peoples' daily lives and at times of particular hardship and stress. How these social relations work and how they may have changed in respect to land and natural resource access were considered to be our main areas of enquiry and we concentrated on this aspect rather than on the collection of more conventional quantitative data. The fieldwork therefore consisted of a mix of open-ended interviews with key informants (particularly traditional and formal authority figures), semi-structured interviews with randomly selected families, group discussions (elder men, women, widows, youth and ex-UNITA combatants) and participatory mapping exercises with different interest groups. A total of 111 interviews and 22 group discussions were held in the six study sites.

The field research was conducted by a group of 7 people drawn from CARE personnel and integrating one person from the provincial directorate of Agriculture. A short orientation session was held with the research group to discuss the content and nature of the interviews, to highlight the kinds of supplementary questions that could be asked if appropriate and to introduce them to elements of importance in respect to land and natural resource tenure and to the use of mapping methodologies³⁶. The guide for the fieldwork and the interview formats are attached in the annex to this report. Some of the interviews were taped and some of the participatory exercises and key informant interviews were filmed. These audio-visual materials are available at the CARE Kuito regional office.

³⁶ We were also mindful of the stipulations made in a previous CARE report concerning the raising of land issues, namely that – "staff are equipped with an understanding of why the organisation wishes to engage this issue, and are clearly instructed about the parameters of their discussions with communities; staff are aware of the sensitivities likely to be involved, and are equipped with a clear format for initiating, conducting and closing discussions about land issues; there is organisational clarity on the content and process of the Governments Land Policy document (as far as this is possible, given the apparent lack of clarity on GoA policy)" (CARE, 2003a)

The results of the fieldwork were analysed on an ongoing basis and adjustments made to the methodologies as appropriate. At the end of the fieldwork period the team came together to discuss the results and issues arising from them. This section of the report has been put together on the basis of these discussions.

2.2 Summary of Key Findings

The following section provides a brief summary of the research findings from the fieldwork and from interviews conducted with provincial actors. Section 2.3 contains the more detailed findings from each of the study sites.

2.2.1 Land use & availability and mechanisms of access to land

All families own various plots of land, distinguished by where they are located. The various types described by the respondents are as follows:

Ongongo plots of land that are in higher, well-drained areas. Usually these are the most extensive plots owned by a family. These are the plots most commonly and frequently left fallow.

Othchumbo smaller plots near to or surrounding the household and used for limited cultivation of maize (for immediate consumption), vegetables and sunflowers or sesame (for oil). Often banana and citrus fruit trees will also be present on these plots.

Onaka low-lying fields that are often irrigated by channel systems connecting to a local river or water source. Used for vegetable and maize cultivation.

Ombanda mentioned less frequently, these are plots located between the *ongongo* and *onaka* plots, drier than the latter but with moister soils than the *ongongo* plots.

Generally speaking, access to land has not been a problem and almost all families in the survey reported that they had recognised access and tenure over more land than they were presently able to cultivate; in most cases this was land, in addition to areas of fallow land, which had never been cleared or cultivated (i.e. virgin bush land). At all of the study sites respondents reported that all land within the community/village area was owned by one family lineage or another, including all the land that was not in cultivation and had never been cleared. A small percentage of people reported that they did not have access to an *onaka* plot (only in Andulo Município) but ownership of *ongongo* and *otchumbo* plots was universal.

The overwhelming majority of respondents in the survey reported that they had inherited their land plots from their families. Only a few cases were encountered where all the land available had been purchased; one involved a single man who had come to a village to join his brother and others concerned families that were 'incomers' to particular villages. Often, however, they would have kinship or other linkages with residents. Incidences where people had augmented their land by purchasing other plots in addition to those that they had inherited were more common in Andulo and Catabola.

In all the study areas the rental of land was stated to be very infrequent; in fact in all sites there were respondents that denied that it took place at all, particularly in Camacupa. Rental is probably taking place to a limited extent only in Andulo. None of those interviewed had rented land. Much more common was the loan of land to others, often people closely connected in terms of kinship. Such arrangements would often be a precursor to the definitive transfer of land. This would be effected through sale, where the land is purchased with cash or in-kind payments, or often through donation. Whether or not land was donated after an initial period of loan depended largely on the closeness of the relationship between the parties or, in some cases, on the perceived social standing and ability to pay of the purchaser. One group of widows, for example, testified to the fact that they would be able to purchase land with "the little

that they had” if they had a good understanding with the seller. Other groups of widows indicated that there were people within the community who were willing to donate land to them.

2.2.2 The role of Traditional Authorities

The structure and nature of the traditional authority institutions in the various areas is complex and detailed and requires more research than was possible in this study in order to fully reveal the various checks and balances that obviously exist. The description included here is largely based on an interview conducted with the *soba* and *sekulo* of Mbandanga village in Andulo. Other areas will undoubtedly exhibit slightly different arrangements, given that what are involved are essentially localised political systems.

There are three tiers at the apex of the traditional authority structures in Andulo that are all referred to as *Regedores* (the Umbundu term is reported by Pacheco as being ‘*osama inene*’ in Humabo Province but we have used the Portuguese term here, following local usage); the jurisdictional areas attached to these are referred to as *Regedorias* and these exist at the level of the *município*, *comuna* and *embala*. A *Regedor* will head an *embala grande*. These positions are all hereditary.

At the level of an *embala grande*, the *Regedor* will have three formally recognised assistants who together form the nucleus of the council. These are known as the *Epalanga*, the *Kassoma* and the *Nuñulo*, in order of seniority. They will all be drawn from the same family as the *Regedor* and will succeed him in the case of his death, or replace him in the case of his absence, in order of seniority. When the bottom rung of *Nuñulo* becomes vacant through this process another member of the family will be nominated to take up this position.

The *embala grande* will have further positions that are also hereditary but which are separated from the political power of the *Regedor* and perform merely as functionaries. They are drawn from families that are separate to that of the *regedor* and from each other. These consist of the *Mwendalo* (the keeper of the *Regedor*’s fire), the *Kessongo* and the *Mwekalia* (who together perform logistical functions within the *embala*), the *Kwatchalo* (who carries the chair of the *Regedor*) and the *Uyalini* (who is the treasurer and takes care of payments made for the resolution of conflicts).

At village level the responsibilities are delegated to a *sungú*, a position that is normally referred to as that of the *soba* (in this report we have henceforth referred to this position as a *soba* - Pacheco reports that in Huambo the term for such a position is ‘*osongui*’). This position is not hereditary and the *sungú/soba* will instead be chosen by the elders of the village that have themselves been nominated to act as *sekulos*. The *sekulos* will be drawn from the ranks of the elder men from the village on the basis of their knowledge of the community history, their capacity to act and judge wisely and their credibility at large. The choice is made by existing *sekulos* and women and youths do not participate in this process. However, this appears to be one of the defining elements that explain the high level of credibility that is accorded to the *sobas*, as revealed by our research findings: that is, the possibility that a *soba* at this level will be ultimately held to account.

In all of the study sites the *sobas* play an important role in terms of land administration, testifying to transactions and acting as intermediaries on behalf of those who need access to land. In many ways their role appeared to be that of a local ‘registrar of lands’ and, in conjunction with the *sekulos*, they were seen as the custodian of historical knowledge relating to land ownership and of contemporary transactions. They also performed an important and well-recognised function in resolving conflicts (see below). In all of the areas, however, people were quick to draw a distinction between the performance of this function and actual ownership and transfer rights over the family lineage land holdings. These rights were vested very clearly in the context of the extended family and the *sobas* were not empowered to make decisions over land holdings except in consultation with and with the agreement of the recognised owners. This was expressed in various ways by many of the respondents in all the study areas.

However, the popular conception of power relations vis-à-vis the formal government authorities was that the *sobas* had much more authority in respect to land. This was true even where respondents initially expressed highly developed notions of private ownership rights, vested in the family lineage, that denied a role for either the *sobas* or the government. On further questioning almost all respondents expressed a sense that the *soba* would act as a representative and guardian of their interests as a group of landowners and that the government would have to respect and adhere to these interests.

Ownership of land through the family lineage is therefore the norm and there would appear to be no areas that are considered as under the communal jurisdiction of broader community entities. However, this did not extend to control over the use and collection of other wild resources (except some trees). The collection and gathering of wild fruits, edible insects, firewood, water, honey, etc. could be practised freely on all land. This was universally the case and no conflicts were mentioned in relation to these resources. There was extensive use of such other natural resources in all the study sites, including activities such as fishing and hunting (the latter particularly in Camacupa). Access to these resources for members of the community is open and not subject to controls; as most respondents put it “it depends on the capacity and needs of the family – if you want to get something you go to the bush and collect it”. This also appeared to be the case with people coming from outside of the community groups, although unfortunately this issue was not explored in sufficient depth. One important and related point did emerge from this aspect of the discussions: all the community groups identified contiguous boundaries between their land and that of their neighbours. There was no ‘free land’ in between.

2.2.3 The position of returnees, ex-UNITA combatants and ‘incomers’

In none of study sites did we encounter situations in which returnees, ex-combatants or newcomers to the area were encountering particular difficulties in respect to land access. The vast majority of people who had been displaced had taken up occupation of their hereditary lands without problems; many appeared to have family members who had stayed in the village and had acted as guardians of their interests. If this was not the case, the fact that the customary ownership of land was a deeply embedded reality and widely acknowledged probably served to prevent the usurpation of land in an owner’s absence. In general, the customary norms and systems in respect to land appear to have been durable and flexible enough to withstand what has been a period of considerable disruption and upheaval.

Strangers to an area who wished to obtain land would, if not assisted by contacts or kin, approach the traditional authorities of the area who would assist them in locating residents who had land available. Several respondents mentioned that the role of the traditional authorities in such a case would include the positive one of ensuring that the land was suitable. That is, they acted, as protectors of a purchaser’s interest, by preventing the sale of land that was unfertile or otherwise unsuitable.

Most respondents who were incomers to an area did in fact have kinship or other links with residents and in many cases they would use these contacts to themselves identify available land. The role of the *soba* and *sekulos* would then be to testify to the transaction and incorporate this knowledge into the local ‘virtual’ cadastre of the village.

2.2.4 The position of women

Tenure security for women appeared to be highly variable and there were often different responses to enquiries in the same locality. One Kuito-based representative of an international organisation working in the province confidently asserted that the Ovimbundu did not take land away from women and that they would be allowed to continue cultivating the family plots after the husband’s death. Although a handful of respondents echoed this view, the general picture appeared to be the opposite of this. Women, in fact, did not have land tenure security in their

own right but only through their husbands or their parents, or were considered to be holding land in trust for their children.

There was in fact a notable difference between Andulo and the other two *municípios*. In Catabola and Camacupa many people were of the view that a widow would be able to remain in possession of family plots, except in cases where she decided to remarry. Several cases were encountered where this had taken place. In Andulo there was a much more consistent view that widows, irrespective of the circumstances, would be expected to return to her own family and leave the land to the husband's family. An explanation advanced for this difference was that there had been much more integration in Catabola and Camacupa between the Ovimbundu and Ngangela language groups (as a result of past conquests) and that the traditional practises of the Ngangela language group, which favoured women's rights to land after the death of a husband, had impacted upon the Ovimbundu norm under which women would lose these rights.

Factors that were said to impact upon the actual practise in any given situation included the age of the widow and whether or not she had children. Elderly widows and those with grown children would have a better chance of being able to stay in the area and benefit from the family land. The children's right to inherit seemed to be uncontested in all areas, except in cases where a widow remarried whilst the children were still very young.

Women's rights upon divorce were also varied across the sites. In Andulo the unequivocal view was that the woman would have no rights at all to any of the family assets. In Camacupa and Catabola there were indications that a division of assets would take place and that in exceptional circumstances this might also involve land.

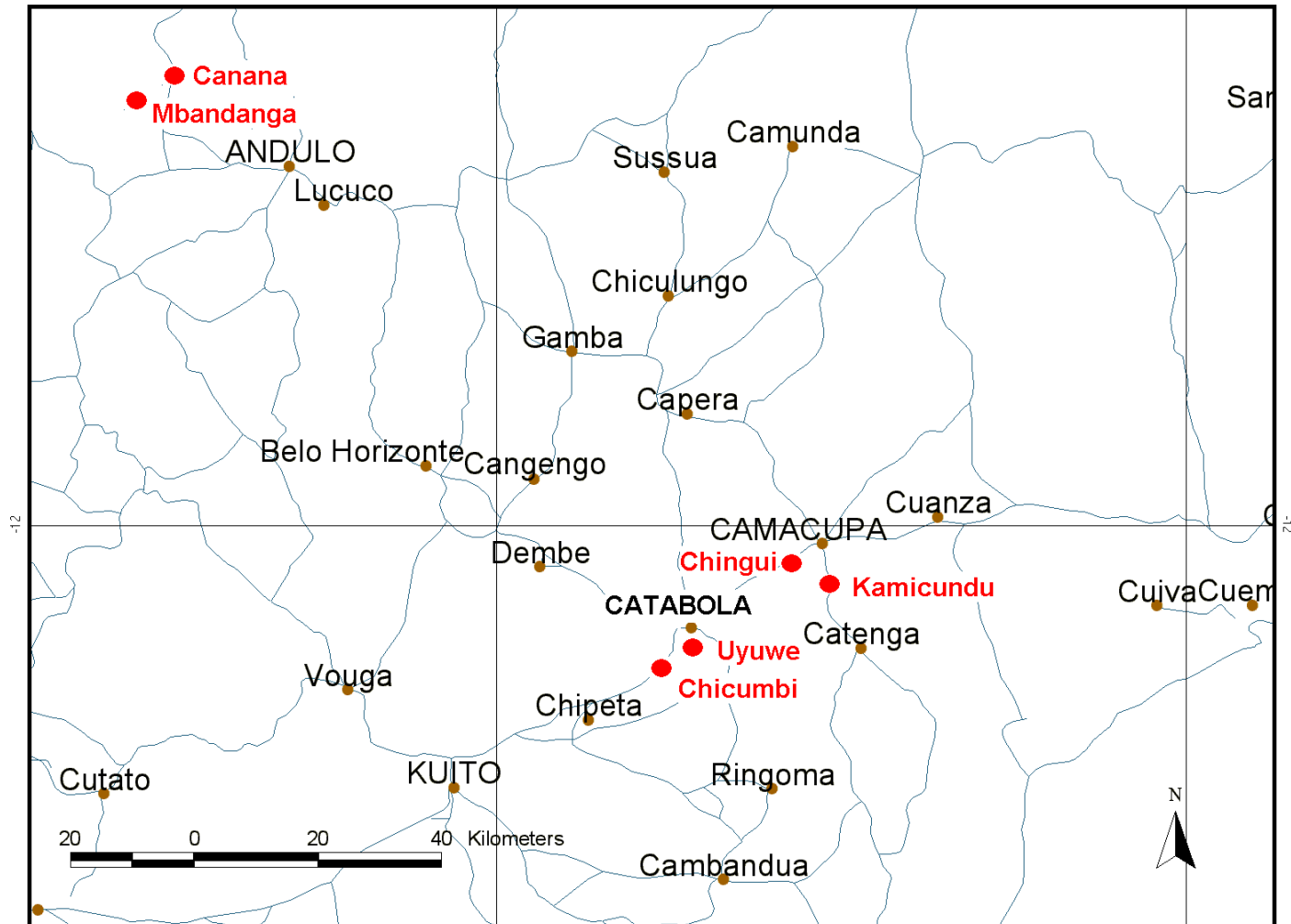
2.2.5 Conflict resolution mechanisms

One of the most important functions performed by the traditional authorities is that of conflict resolution and they were overwhelmingly the forums of first choice for people who needed help in this regard. In all of the study sites the credibility of the traditional authorities in respect to conflict resolution was extremely high. Although a few respondents mentioned the alternative of the church (mostly in Andulo) the vast majority indicated that the traditional authorities provided the quickest, most accessible and most enduring solutions.

The majority of conflicts over land, however, were occurring within family groups and related to tussles over inheritance, rather than being conflicts between different families. As such, most of these conflicts would be resolved within the family grouping, without the formal involvement of the traditional authority (although a *sekulo* that was from the family would often be called upon).

One of the reasons for people attempting to avert the need for assistance outside the family was that those cases that were presented to the traditional authorities would normally involve a joint payment by both parties, which could be made in cash or in kind. Usually payment appeared to be made in the form of traditional drinks and reference was often made to the fact that this was a form of celebrating any agreement reached. This, along with the fact that many people referred to the fact that all parties would normally be happy with solutions provided by the traditional authorities, was an indication that this route emphasised mediation and conciliation between the parties. In fact, only in cases where there were allegations of 'witchcraft' (mentioned only twice, notably) would any kind of judgement be expected from the *soba* and *sekulos*. Many respondents referred instead to the reaching of solutions that ensured that people were able to co-exist peacefully.

Map of Study Sites – Bie Province



2.3 Land Tenure Systems in the Study Sites

2.3.1 Andulo Município

CHIVAÚLO COMUNA - Canana Aldeia

A total of 19 semi-structured interviews were conducted in the village, 6 of which were with families that had been displaced, with a further 5 group discussions (women, men, widows, youth and ex-UNITA combatants) and two detailed interviews held with key informants.

All except three respondents claimed ownership of *otchumbo*, *ongongo* and *naka* plots, the three exceptions were families without access to *naka* plots. Two respondents mentioned possession of *ombanda* plots, generally understood to mean those lying in intermediate areas between the *naka* and *ongongo* plots.

All respondents without exception stated that they had land available that was presently lying fallow and a majority also mentioned the fact that they were not cultivating the land available to them to the full extent as a result of a lack of inputs or labour availability. Most grew mandioca, beans & maize as staples with vegetable cultivation (cabbage, beans & sweet potato) in the *otchumbo* plots. All respondents stated that they were using the land for subsistence purposes, with one stating that part of the family land holdings were for sale.

Most respondents reported that their land areas were well marked, normally by pathways around the *otchumbo* household plots and by sisal and other plants around the *ongongo* plots. Relationships with neighbouring landholders were unanimously stated to be very good and in the vast majority of cases it appeared that the neighbours were part of the extended family grouping.

Seven respondents reported the employment of people outside of the family to work in their plots, with levels of remuneration varying between 1 to 6kg of maize, beans or other foodstuff per day of labour.

Residents reported that access via the *soba* was most normal route for arranging land but were clear that this did not mean that the *soba* had powers to allocate land; his role, instead, would be to locate existing owners of land within the village that might be prepared to loan or sell land and to then act as an intermediary and to oversee the terms of agreement between seller and buyer. One respondent expressed this in the following terms:

“The traditional authorities have nothing to do with the (ownership of the) land because the land is from our forefathers and he knows this himself. You only call the soba when there is a conflict between neighbouring landowners”

The *soba* himself confirmed this, explaining that his role would be to identify people who might be willing to make land available and to ensure that this land was suitable, that is was “good land”.

A total of six respondents stated that they had bought at least some of the land plots available to them; two families had purchased all of the land that they had. The remainder of all plots of land had been inherited from the forefathers of the families.

The ease with which people could purchase land appeared to depend in part on the social capital that was available to a particular family. The group of widows, for example, stated that there were differences between people in the following terms:

“If you have a strong friendship with a person you can buy land with the little that you have.”

The men’s group also mentioned the fact that women-headed households would be assisted in the construction of dwellings and the clearing of the *ongongo* plots.

Loan or rental was possible for an intervening period, until someone was able to buy land, but most transfers appeared to be definitive. Many respondents only mentioned the possibility of loans rather than rentals, which would indicate that the latter arrangement was much less common. In fact, two respondents and the group of widows stated that renting of land was not possible in the area. Sales of land appeared to be most common where a family “did not have many children waiting to inherit”. Payments on sale of land could be made in money or, as appeared more usual, in animals and crops.

“Everything functions on the basis of a conversation and an agreement between the soba, the seller and the buyer”

In many cases it appears as though agreements for rental or sale of land would be negotiated between parties who would subsequently inform the *soba* and “register” the agreement with him.

All respondents identified areas of land with absentee owners, but all of these were said to either be being used by the family of the owner, or to be lying fallow. All these areas seemed to be well recognised and respected as belonging to someone. Limited activities, such as hunting or the collection of firewood was permitted on the bush land that was owned by other people.

There appeared to be no distinction drawn between residents, displaced people or other immigrants to the area, with the proviso (mentioned only by the group of widows) that if a person had been expelled from another area then they would not be given land. Of the group of five ex-UNITA combatants only one stated that he had not yet arranged a plot of land.

Other resources that respondents mentioned were mainly firewood and charcoal; access to these resources was free within the area of the village, equating to a traditional jurisdictional area of the *soba*.

“If you want any of these things, you just go to the bush and collect them.”

Other resources mentioned less frequently, but probably of equal importance for local livelihoods, were forest (wild) fruits (used mainly for making traditional drinks), mushrooms, edible insects, medicinal plants, honey, fish and animals from hunting.

Sobas were viewed very much as an agent of control, but also as unifying agents whose role was to prevent conflicts arising and to resolve problems:

“(Their role) is to control and unite the people so that there are no conflicts about land”

On being asked about their understanding of any land policy and law, most respondents interpreted this in local terms, stating that it related to understanding and respect for the division of land at village level and the role of the village elders. Those that interpreted the question as relating to their understanding of a formal policy and law all stated that they had no knowledge of this.

When asked about levels of security in respect to land occupation all respondents without exception confirmed that they felt very secure and that their ownership was recognised. Mostly this appeared to be based on the fact that they had inherited the land from their forefathers. One respondent stated:

“We are very secure here because these lands come from our grandfather. Even our own grandchildren are going to work these lands”

However, even those that had bought land reported that they felt that they had secure tenure over this land, one respondent, in justification, mentioning the fact that the sale had been testified to by the *soba*.

Women’s rights to land were almost non-existent. Widows, if with children, might remain with land, mainly it appears as holders in trust for the children. Some respondents stated that the

situation would depend on the age of the children. Others, when asked about the different ways that women might gain access to land, mentioned inheritance from fathers or from husbands, without distinguishing between widows with children and those without. One respondent drew a distinction between women who had come to the village from another area and those that were originally from the village; in the latter case, according to this respondent, the woman would be allowed to remain with the land owned by the couple, whereas a woman who had come from another area would be expected to return there, leaving the land to the husbands family.

All respondents stated unequivocally that women on divorce have no right to land held jointly by the couple. Tenure over trees would be similarly lost, even if planted by the woman herself. The widows group affirmed this:

“If you have children then they have a right to the trees but if not, the widow is not even allowed to put her feet on that land”.

Justifications for this advanced by most respondents were almost always that the women would find land and trees “at the place where she goes to”.

The group interview conducted with women from the village, elicited the following response when the issue of women’s right to land was raised:

“There is a big difference (between men and women) because everything that has to do with women’s’ tenure has no consideration”

Tree planting was viewed as a sign of land tenure. The existence of sale and purchase of particular trees was reported by all respondents, either to those interested in increasing the number of trees that they owned or purchase by those who did not inherit trees. Such purchases would also involve the underlying land since, as the group of men put it:

“Buying a tree without the land is difficult”

However, only four respondents mentioned that they owned trees. Some respondents stated that trees would only be sold by a family that had no children to inherit them, implying that sales were probably uncommon. One respondent stated that the only trees that were normally sold were the eucalyptus trees, for timber, rather than fruit trees such as mangoes.

Four families mentioned the occurrence of a conflict over land that had impacted on them. All but one of these appeared to have involved intra-family squabbles and had been resolved within the family. The other conflict reported was settled by the *soba*.

Conflict resolution in general was almost unanimously mentioned as occurring through the intervention of the *soba*. Four respondents indicated the church as a conflict resolution medium of first choice, two of these indicating that assistance would be free of charge and one because “the path of the church kept people from evil doings”. Payment to the *soba* normally took the form of money (amounts of between 50 and 100 kwanza were indicated) or in kind (usually 4-5 chickens or 2 bottles of local alcohol). The *soba* himself, however, asserted that payment would only be due where the *embala grande* became involved and that at village level no payment was necessary.

Advantages of this system were identified as the fact that the *sobas* were ‘closest’, although this referred much more to their knowledge of the village dynamics, the land holdings, etc. rather than to physical proximity. Conflicts concerning land where there may have been some intervening investment (e.g. land clearance) would normally involve payment of compensation for this if the decision was that the land would be taken from the person who had invested in it.

Overall, the picture was one of a well entrenched and ordered system of land inheritance through the generations and within the family lineage, and a population secure both in the knowledge of how this system worked and of the rights and protection that it afforded them. Land in the area was all attributed to one of the family lineages and had been for a very long period of time. Sales of land between families and to incoming families were often mentioned

but these would be integrated into the local “living cadastre” and would be testified to by the *sekulos* and the *soba*. All respondents reported that the mechanisms concerning access to land had not changed from those used in the past. The men’s group stated that this was because:

“We need to follow the ways of our ancestors”

Where the relationship between the formal administrative authorities and the *sobas* was explored in the interviews, the respondents expressed a strong sense that the government role should be subordinate to that of the *soba* and should take the form of ‘rubber-stamping’ decisions made by him. One respondent stated:

“The sobas are those that are always with us, while the government is not”

The women’s group stated the same thing in slightly different terms:

“The government have no role and no powers over our land because they are visitors. The land is ours and always will be.”

Only the group of ex-UNITA combatants answered differently, stating that they were newly returned to the area and were not sure of how the traditional and formal authorities related to each other.

Forms of evidence that were used to prove land ownership were always indicated as being the testimony of uncles, aunts, elder relatives, neighbours and the *sobas*.

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				<i>Ongongo</i>	<i>Otchumbo</i>	<i>Onaka</i>						
1	3	4	1987 (r)	√	√	√	Mango	No	Yes	Yes	No	Inheritance
2	2	0	2003 ¹		√		No	No	Yes	Yes	No	Purchase ²
3	2	4	1974 (r)	√	√	√	Mango, eucalyptus	No	Yes	Yes	No	Inheritance
4	3	2	1975 (r)	√	√		No	No	Yes	Yes	No	Inheritance
5	1	2	1975 (r)	√	√		No?	No	Yes	Yes	No	Purchase & inheritance
6	2	6	1988 ³	√	√	√	?	Yes	Yes	Yes	Yes ⁴	Inheritance
7	4	3	1967 (r)	√	√	√	?	Yes ⁵	Yes	Yes	No	Inheritance
8	1	7	1967 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
9 ⁶	2	5	1972 (r)	√	√	√	?	No	Yes	Yes	Yes ⁷	Inheritance
10	2	6	1988 ⁸	√	√	√	No	Yes ⁹	Yes	Yes	Yes ¹⁰	Purchase ¹¹ & inheritance

¹ Respondent had come to village to join his brother.

² Purchased land using brother as intermediary.

³ Family originally from village but had been displaced to Cassumbi.

⁴ Conflict concerned the boundary of a plot.

⁵ Payment of workers by this family was stated to consist of 4-5kgs of maize/mandioca daily.

⁶ Head of household was ex-combatant in UNITA forces and had been in Mussende-Andulo.

⁷ Conflict did not involve land per se but the non-repayment of a sack of maize.

⁸ Family originally from village but had been displaced to unspecified location.

⁹ Payment of workers by this family was stated to consist of 6 kgs of maize/mandioca daily.

¹⁰ Conflict concerned the boundary of a plot and was resolved within the family.

¹¹ The grandfather of the family in this case had purchased the plot many years ago.

Results of family interviews: Canana Aldeia, 25/26 February, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				Ongongo	Otchumbo	Onaka						
11	3	4	1998 ¹²	√ ¹³	√	√	No	No	Yes	Yes	No	Purchase
12	3	3	2003 ¹⁴	√	√	√	Yes	Yes	Yes	Yes	No	Arranged through family
13	4	1	1964 (r)	√	√	√	No	Yes ¹⁵	Yes	Yes	?	Inheritance
14	4	4	1954 (r)	√	√	√	No	No	Yes	Yes	?	Purchase & inheritance
15	1	1	1964 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
16	2	2	1980 (r)	√	√	√	No	No	Yes	Yes	Yes ¹⁶	Inheritance
17	?	?	? (r)	√	√	√	Yes	Yes	Yes	Yes	Yes ¹⁷	Purchase & inheritance
18	?	?	2001	√	√	√	No	No	Yes	Yes	No	Inheritance
19 ¹⁸	?	?	1938 (r)	√	√	√	Eucalyptus	Yes	Yes	Yes	Yes ¹⁹	Purchase & inheritance

¹² The first wife of the head of household had died in Bandanga, a neighbouring village, and so he had brought the family to live in Canana.

¹³ These plots were located in another *comuna* of Andulo município.

¹⁴ Family originally from village but had been displaced to Chiula.

¹⁵ Payment of workers by this family was stated to consist of 1 kg of maize/beans daily.

¹⁶ Involved usurpation of land "because of ambition or mistake". Was resolved by the soba and involved payment as acceptance of guilt.

¹⁷ Conflict concerned the boundary of a plot and was resolved within the family.

¹⁸ Respondent was soba of the village.

¹⁹ The family had purchased some land from an uncle and had occupied a larger area than agreed. Through intervention of the previous soba, the land area was returned to the uncle.

CHIVAÚLO COMUNA - Mbandanga Aldeia

A total of 13 semi-structured interviews, 4 of which with displaced families, were conducted in the village, with a further 5 group discussions (women, men, widows, youth and ex-UNITA combatants) and 2 detailed interviews with key informants.

In general the situation regarding land tenure systems was almost identical to that reported in Canana. In Mbandanga there were fewer families amongst those interviewed that owned trees and none of the interviewed families reported that they employed other people to work on their plots. This may indicate less social differentiation in Mbandanga but the samples were not reliable enough to make any clear statement.

All except three respondents claimed ownership of *otchumbo*, *ongongo* and *naka* plots, the three exceptions were families without access to *naka* plots. All respondents except one (a unmarried woman) stated that they had land available that was presently lying fallow and a majority also mentioned the fact that they were not cultivating the land available to them to the full extent as a result of a lack of inputs or labour availability.

Production systems were similar in Mbandanga to those in Canana. Most grew mandioca, beans & maize as staples with vegetable cultivation (onions, cabbages) in the *otchumbo* plots. All respondents stated that they were using the land for solely for subsistence purposes. As with Canana, land areas were well marked by paths, sisal or fruit trees and other plants around the *ongongo* plots. Relationships with neighbouring landholders were unanimously stated to be very good and in the vast majority of cases it appeared that the neighbours were part of the extended family grouping.

Again all residents reported that access via the *soba* was most normal route for arranging land but were also clear that this did not mean that the *soba* had powers to allocate land; his role, as in Canana, would be to locate existing owners of land within the village that might be prepared to loan or sell land and to then act as an intermediary and to oversee the terms of agreement between seller and buyer. Respondents expressed this in the following terms:

“Neither the traditional authorities nor the government have any rights when it comes to the land because these lands are ours”

“The soba cannot do anything without consulting the owner of the land. His role is just to let the person know who has land available for sale”

“The sobas have nothing to do with land because every family here has their own land. Only if there is conflict between two neighbouring families do you go to the soba”

The group of ex-UNITA combatants confirmed what we had been told by the *soba* in Canana; that is, one of the functions of the *soba* was to ensure that the land being considered for loan or sale was fertile land.

All of the interviewees, with the exception of the women’s group, confirmed that these practises conformed to those used in the past and nothing had changed. The women’s group said that:

“In the past land was not sold”

The women’s group also, stated, however, that they could arrange land themselves as long as their husbands did not come to know about it. None of them had in fact done this, precisely because they were afraid of their husband’s reaction. This was explained in terms of Ovimbundu culture: great shame would befall a man whose wife arranged either land or housing for the family.

Of the families interviewed, none had purchased land; all plots had been inherited. The four families that had been displaced during the conflict and had returned to the village reported no difficulties in repossessing their family lands.

In Mbandanga village there appeared to be a much stronger preference for loan or sale of land, rather than rental. Most respondents categorically mentioned that rental of land did not take place. Displaced people in need of land were able to get access in exactly the same way as residents who wanted to increase land holdings; first they would identify someone with land available (with or without intervention from the *soba*) and then a deal would be struck about its use. Loans of land would be made depending on the “level of understanding” between the two parties, an indication that once again social linkages and capital played a large part in the establishing of the terms of an agreement. The *soba* and elders of the families would then testify to the transactions.

The government authorities were said to have no role in the allocation of land to displaced people because:

“In first place is the soba” (men’s group)

“The obligation is always to speak to the owner of the land” (youth’s group)

“The soba has more power over the land the government. The government only ought to give an opinion (“parecer”)” (women’s group)

“The sobas can resolve the peoples’ problems because the government is distant from us” (individual respondent)

“The (government) administration cannot give land or authorise its use, only certify (what the soba decides)” (individual respondent)

“The government cannot give land because they are visitors. They have to speak to the soba” (ex-UNITA combatants group)

All respondents again identified areas of land with absentee owners, but all of these were said to either be being used by the family of the owner, or to be lying fallow.

Other resources that respondents mentioned were mainly firewood and charcoal; access to these resources was free within the area of the village, equating to, again, the traditional jurisdictional area of the *soba*. Similar resources as those utilized in Canana were mentioned: forest (wild) fruits (used mainly for making traditional drinks), mushrooms, plants used for medicinal purposes, edible insects, honey, fish and animals from hunting. Again, the mechanism for gaining access to these resources merely depended upon the needs and energies of a family:

“If you want any of these things, you just go to the bush and collect them. Those that have the capacity for this work collect these things”

On being asked about their understanding of any land policy and law, responses were similar to those in Canana:

“There is no policy or land law here because our lands were all inherited by us”

As in Canana, all respondents without exception confirmed that they felt very secure about their tenure over land and that their ownership was recognised. Again, they expressed this through reference to the fact that they had inherited the land from their forefathers, which was the case with all of the families interviewed, including those that had been displaced. One respondent used a phrase in Umbundu that captures the general sentiments expressed by all the respondents on being asked about tenure security:

“Tuo pissa kolo nayulu”, the translation of which is roughly:

“We began this in the time of our ancestors”

The women’s group, however, expressed a sense of lack of security in the following terms:

“Only if someone has a grandfather rich in land do they feel secure”

indicating a differentiation between people in terms of the amount of physical capital (land) available to them.

Women's right to land was equally tenuous in Mbandanga, with more respondents stating unequivocally that a woman had no rights to land on the death of her husband or after divorce. One respondent stated that it would depend on the age of the widow; if she was already old (even without sons to inherit) she may be allowed to continue cropping on the land of the husband but these lands would revert to the husband's family on her death. The men's group stated flatly that women had no land rights, nor rights to trees. The women's group stated that they could plant trees but that if their husband were to die they would have no rights to these and that their children would inherit them. Again, the justification for this approach was that the woman would be provided access to land by her own family or by a new husband. On women's rights in general the group of widows said:

"A family without a man has no voice in the community"

The existence or planting of two particular tree species was indicated as a sign of land tenure; eucalyptus and mulemba, the sap of which is apparently the base of a substance used for capturing birds.

Conflict resolution in general was again almost unanimously mentioned as occurring through the intervention of the *soba*, including by the group of youths who confirmed his position of that of a 'leader' of the community. One respondent indicated the church as a conflict resolution medium of first choice because the traditional authorities would order beatings and for compensation to be paid, which the churches refrained from doing. One respondent and two of the groups mentioned the involvement of the elders, before the *soba*, because they did not require payment. One respondent said that the route of the *soba* was preferable because it was a "quick resolution". Where payments were mentioned they were similar in nature and value to those practised in Canana.

One respondent in discussions concerning conflicts stated;

"There has never been conflict over land here because everybody has their land"

Some respondents mentioned the fact that many conflicts arose through jealousy and that some people would cause problems after drinking too much alcohol and accusing others of whom they were jealous of practising witchcraft or stealing land. Problems like this would be resolved through sitting down with the *sekulos* and *sobas* and discussing the case, after which a decision on compensation might be made. Four of the interviewed families reported conflicts in the past, the majority of which had been resolved through the family elders, with one case requiring recourse to the *soba*.

If a conflict arose over land that had been cultivated, several groups and respondents mentioned the fact that the resolution may involve the handing over of part of the crop to a prejudiced party.

Results of family interviews: Mbandanga Aldeia, 27th February, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				<i>Ongongo</i>	<i>Otchumbo</i>	<i>Onaka</i>						
1	2	3	1932 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
2	3	3	2000 (r) ¹	√	√	√	No	No	Yes	Yes	Yes ²	Inheritance
3	2	2	1953 (r) ³	√	√	√	No	No	Yes	Yes	Yes ⁴	Inheritance
4	3	5	1960 (r) ⁵	√	√	√	Yes	No	Yes	Yes	Yes ⁶	Inheritance
5	5	1	2002 (r) ⁷	√	√	√	No	No	Yes	Yes	No	Inheritance
6	1	2	1946 (r)	√	√	√	No	No	Yes	Yes	Yes	Inheritance
7	3	2	1993 (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
8	4	2	1955 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
9	1	0	1969 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
10	3	4	1933 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
11	2	2	1975	√	√		No	No	Yes	Yes	No	Inheritance
12	1	4	1969 (r)	√	√		No	No	Yes	Yes	No	Inheritance
13	0	1	1981	√	√		No	No	No	Yes	No	Inheritance

¹ Family originally from village but had been displaced to Andulo Sede.

² Conflict arose within the family when one member was jealous of the others crop and made certain accusations. Resolved through traditional mechanisms, despite this respondent having indicated that the forum of first choice would be the church authorities.

³ This family had been displaced from the village between 1992 and 1998.

⁴ Conflict involved the theft of a small parcel of land and some maize. Resolved through traditional mechanisms, with offender making repayment.

⁵ This family had been displaced from the village between 1992 and 2000.

⁶ Conflict involved the theft of fruits from a tree owned by the family. Resolved between the families involved.

⁷ This family had returned from the wife's village. Husband was originally from Mbandanga.

2.3.2 Camakupa Município

CAMACUPA COMUNA - Kamicundu Aldeia

The village of Kamicundu is situated 18km to the south of the município headquarters, within Camacupa comuna. It forms part of the *embala* Kambovo, which consists in total of 5 villages. There are approximately 140 families in the village with a mix of Umbundu and Ngangela speakers.

A total of 17 semi-structured interviews, 2 of which with displaced families and a further 2 with 'incomers' (although with family links) to the area, were conducted in the village, with a further 3 group discussions (women, men & widows) and 2 detailed interviews with key informants.

All individual respondents possessed *ongongo*, *otchumbo* and *onaka* plots and one family mentioned possession of an *ombanda* plot. Generally speaking (although plots sizes were difficult for many families to identify) the land holdings appeared to be larger in comparison to those in the villages of Andulo. One family, which had established their household (unusually) in the village of the wife, were using land that she had inherited from her family. These lands appeared to be quite extensive; the respondent mentioned 18 hectares in all, 4 hectares of which were being cultivated. Two respondents mentioned specifically that they had a lot of land but not much capacity to cultivate much of it. Where families were able to give estimates of plot sizes they were often in excess of 6 hectares.

All respondents stated that they had obtained land through inheritance. One respondent mentioned that there used to be a system to register land and that the relevant documents would be issued from the *sede*. They stated that this system was no longer taking place.

Transfers occurred between family groups through sale or loan; one respondent mentioned specifically that land rental did not take place and the women's group echoed this sentiment. Other groups just said that land rentals were unusual. The group of widows (12) mentioned that they did not buy land but that it was given to them. However, they also stated:

"There is a lot of disrespect for women who are the head of the household, because of the lack of a man" (widow's and women's groups)

Sales of land would often be preceded by a period of loan. If the person using the land wished to continue using it, at that point they would then purchase the land from the owner. Pigs and goats were specifically mentioned as the in-kind payments that could be made for land although cash transactions were also common.

The *soba* was indicated as the main mechanism through which incomers to the area could obtain land, but again this was an intermediary role:

"The soba will direct people to the land that has no owner"

One respondent specifically made the point that the *soba* had no right to distribute land as such but would have to identify people who had land available. A *soba's* right to allocate land was limited to the land that was owned by his family. Returnees or displaced people could negotiate directly with people for land, rather than going through the *soba*, but this usually only occurred where they were dealing with relatives. The government were not considered to have any role in distributing land to displaced people because:

"The government do not know the owners" (women's group)

Only 2 of the interviewed families people employed other people to work on their plots; these workers received maize (5kgs) or beans (4kgs).

Tree ownership existed but only one the plots of the family. Only eucalyptus trees were the subject of sale. Fruit produce was often mentioned in this context. Mango and avocado trees were much more common in this area and were used as markers/evidence for land ownership.

According to the women and widows, charcoal was one resource that was being exploited by people from outside of the community, but the men's group denied this.

The widows mentioned that fishing was an activity done by women using local traps.

The *fazendas* in the area were thought to be not being used (widows) or only partially used (women) or mainly in production (men). The widow's group explained that this because the owners had died and that only the wives remained whilst the women's group explained it also as being due to a lack of seeds. They thought that with peace these *fazendas* would be put back into production. The major crops on these *fazendas* were said to be vegetables, wheat and rice. The men's group said that in the previous year the *fazendas* had produced vegetables, maize, beans and fruits.

This village appeared to have more liberal attitudes in respect to women's rights to land. Several respondents mentioned the fact that women would remain with rights to land after a husband's death, unless she were to remarry. This is particularly the case if she has children. The men's group claimed that this would be the normal situation: a widow would remain on the husband's land with her children. Even on remarriage, if she has children, they will inherit the land. However, many of the individual interviewees who mentioned this possibility said it would "depend on the particular family".

The widow's group said that it depended on the age of the children at the time of the husband's death; if they were young, they would accompany the mother when she returned to her family (normally after a one year period of mourning during which time she would stay in the deceased husband's home) and on reaching maturity they would then inherit their father's land. If they were already grown they would inherit immediately at the time of the father's death and then they may or may not keep their mother in their household.

In the case of divorce the widow's group said "you have to leave even your clothing with the man".

Testimony of neighbours, older members of the family and "the community" in general were sufficient to prove occupation:

"People feel secure about their land because they have witnesses"

Four respondents testified to conflicts that had had an impact on their own family, two of which had involved theft of produce from a plot rather than being directly concerned with land. The widow's group stated that they thought the origin of some land conflicts involved struggles within a family over the most fertile lands. The man's group mentioned a particular conflict that they said took place in 1955; this involved a man whose parents had died when he was young and as a result he was unsure of where the boundaries to his inherited land lay. Because he was 'ambitious' he occupied more land than he had a right to, causing conflict with a neighbouring farmer. According to the men, the conflict was resolved through the *sekulos* of the respective families. Conflicts were often described as having derived from a "mistake".

Traditional drink, animals or produce would be used to pay for conflict resolution by the traditional authorities, overwhelmingly the most common route. Several people mentioned the fact that resolving conflicts in this way meant that a durable solution was found and the problem would not be raised again. Three respondents made similar comments to the following:

"The sobas are preferred because everyone leaves satisfied, even the person found to be in the wrong"

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				<i>Ongongo</i>	<i>Otchumbo</i>	<i>Onaka</i>						
1	4	1	?	√	√	√	Mango	No	Yes	Yes	No	Inheritance
2	3	3	1983 (r) ¹	√	√	√	Yes	No	Yes	Yes	No	Inheritance
3	0	1	2001(r) ²	√	√	√	No	No	No	Yes	?	Inheritance
4	3	3	1883 (r)	√	√	√	No	Yes	Yes	Yes	No	Inheritance
5	2	2	2000 ³	√	√	√	Yes	Yes	Yes	Yes	Yes ⁴	Inheritance
6	5	3	1962 (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
7	2	2	1964 ⁵ (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
8	2	3	1981	√	√	√	Yes	No	Yes	Yes	No	Inheritance
9	2	1	? (r)	√	√	√	?	No	Yes	Yes	No	Inheritance
10	0	1	? (r)	√	√	√	Yes	No	Yes	Yes	Yes	Inheritance
11	4	2	1965 (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
12	3	3	1969 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
13	3	3	1962 (r)	√	√	√	Yes	No	Yes	Yes	Yes ⁶	Inheritance

¹ This family had been displaced from the village until 1983 in a village known as Tchinani.

² This woman had been displaced from the village until 2001 in a village known as Camaue.

³ This family had decided to settle in the village of the wife because of the war; the date of arrival therefore represents the date that the household was established. The husband said that he preferred to establish his house and arrange land in his wife's village.

⁴ This was a conflict that arose over the theft of some beans – resolved through traditional mechanisms.

⁵ Family have had their own fields since 1991.

⁶ Conflict arose as a result of the theft of maize from the *ongongo* plot. Was resolved through intervention of the soba. Payment to the soba consisted of two bottles of traditional drink and two chickens.

Results of family interviews: Kamicundu Aldeia, 01/02 March, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				<i>Ongongo</i>	<i>Otchumbo</i>	<i>Onaka</i>						
14	1	2	1980 (r) ⁷	√	√	√	No	No	Yes	Yes	No	Inheritance
15	4	1	? (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
16	3	3	? (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
17	2	1	? (r)	√	√	√	No	No	Yes	Yes	Yes ⁸	Inheritance

⁷ This family had lived, previously to 1980, in the nearby village of Andoka but considered their presence in Kamicundu to be a result of having been born in the area (“*é nossa terra natal*”).

⁸ Respondent limited explanation of the conflict to the fact that it was “a mistake”.

CAMACUPA COMUNA - Chinguí Aldeia

Chingui is situated 5km south west of Camacupa município headquarters. It is the location for the Chingui embala and contains approximately 100 families. Most residents are Umbundu speakers.

A total of 26 semi-structured interviews (2 with 'incoming' families to the village and 1 family that had been displaced), were conducted in the village, with a further 3 group discussions (women, young men & elders) and 2 detailed interviews with key informants.

All individual respondents possessed *ongongo*, *otchumbo* and *onaka* plots and one family mentioned possession of an *ombanda* plot. Maize, beans and mandioca were the main staples with cultivation also of potatoes, tomatoes, onions and cabbage.

Access mechanisms for land were limited to purchase or loan. No one mentioned rental of land as a system practised in the area. Loan periods could vary between 1 to 3 years. Whether you were given land or not was, according to one respondent, dependent upon how much land you wanted. Small parcels would be transferred for free.

There appeared to be no distinction drawn between residents, displaced people or other immigrants to the area. The family that had arrived from outside of the area stated that they had arranged land through the *soba*. Another two families had increased their inherited land areas by purchasing further plots and all other families were occupying only land that they had inherited. Land was available for purchase because:

"Everyone here has a lot of land for their children to inherit"

Only four respondents stated that they were utilizing all the land available to them. Three respondents and the widow's group mentioned changes to the contemporary system:

"In the past there was no sale of land"

However, the vast majority stated that things were functioning as they always had done.

There was some disagreement over the existence of any private land. The group of young people stated that they did not know whether or not there were any *fazendas* in the area and the old men stated that there had never been any. The widow's said that there was one, which had already been re-occupied by the owner and which produced vegetables.

Other wild resources in the area consisted of forest (wild) fruits (used mainly for making traditional drinks), mushrooms, edible insects, medicinal plants, honey, fish and animals from hunting. In relation to access to wild resources the situation was exactly the same as in the other study sites:

"That which is ours we just take"

Over half of the respondents reported ownership of trees, particularly as markers for land boundaries. Eucalyptus and pine trees were the subject of sale but not fruit trees. One respondent mentioned the sale of coffee bushes.

Seven families employed other people to work on their land at particular times, including the recently returned displaced family.

Almost all respondents stated that a widow would remain in possession of her husband's land, particularly if she was old. On remarriage she would lose these rights herself but her offspring would inherit. One recently widowed woman explained:

"I still have the land of that my husband left. He died but his family is good"

Of the group of widows there were some others who had married into the village and remained in occupation of the land of their husbands. One respondent mentioned that on divorce a meeting would be held to discuss the division of household assets and that this would include

land plots. Two families said it would depend on whether the husband's family were 'understanding'.

A total of five respondents mentioned previous conflicts concerning land. One respondent stated that most common conflict resolution route was through uncles and aunts. One respondent mentioned the church, commencing with the catechist through to the pastor.

One respondent said that the *soba* was the "unifier" of all the people in the village. Others mentioned that the process involved "good mediation" between the parties and lead to a quick resolution. Both parties are expected to pay the 'entrance fee' and the party found to be in the wrong might have to pay a fine.

One family stated that they had resolved a conflict over the wrongful occupation of one of their plots by discussing directly with the person involved ("*basta conversa*"). One respondent said that choosing the *soba*, as a mechanism for resolving conflict was "a rule of the area". Payments to the *soba* were in cash (100 kwanza) or traditional drink (2 bottles).

The *soba* was considered much more important in respect to land than the formal authorities:

"The government have nothing to do with land. They depend upon the soba"

"The soba has the right to show where land is available and authorise its use. The government can't because it doesn't know the land"

Results of family interviews: Chingui Aldeia, 4th March, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				<i>Ongongo</i>	<i>Otchumbo</i>	<i>Onaka</i>						
1	3	2	1972 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
2	1	1	? (r)	√	√	√	Yes	No	Yes	Yes	Yes	Inheritance
3	1	2	1942 (r)	√	√	√	Yes	No	Yes	Yes	Yes ¹	Purchase ² & Inheritance
4	5	1	? (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
5	1	2	? (r)	√	√	√	No	No	No	Yes	No	Inheritance
6	1	2	1944 (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
7	2	3	1939 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
8	3	2	1938 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
9	4	2	1971 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
10	3	2	1968 (r)	√	√	√	No	No	No	Yes	No	Inheritance
11	4	4	1995 ³	√	√	√	No	No	No	Yes	No	Purchase ⁴
12	2	1	1980 ⁵	√	√	√	Yes	No	Yes	Yes	No	Purchase & Inheritance
13	3	1	1955 (r)	√	√	√	No	No	Yes	Yes	Yes ⁶	Inheritance
14	3	2	1977 (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance

¹ Origin of the conflict said to be the “wrongful division of plots”. Resolved through the *soba*.

² Purchase had been by the father of the family head shortly before his death.

³ Family were ‘incomers’ to the village, having arrived from Chieke in 1995 because of conflict.

⁴ Family had acquired land through the *soba*, acting as intermediary.

⁵ Family were ‘incomers’ to the village, having arrived from Capunda in 1995 because of conflict.

⁶ Conflict arose when someone occupied an area belonging to the family. Was resolved without intervention of the *soba* (see main text).

Results of family interviews: Chingui Aldeia, 4th March, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				<i>Ongongo</i>	<i>Otchumbo</i>	<i>Onaka</i>						
15	1	3	1945 (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
16	1	1	1972 (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
17	3	3	1984 ⁷	√	√	√	Yes	No	No	Yes	Yes ⁸	Inheritance ⁹
18	3	4	1964 (r)	√	√	√	Yes	No	Yes	Yes	Yes ¹⁰	Inheritance
19	5	3	? (r) ¹¹	√	√	√	No	Yes	Yes	Yes	No	Inheritance ¹²
20	3	5	? (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
21	4	3	? (r)	√	√	√	Yes	Yes	Yes	Yes	No	Inheritance
22	3	3	? (r)	√	√	√	No	Yes	Yes	Yes	No	Inheritance
23	3	4	? (r)	√	√	√	Yes	Yes	Yes	Yes	No	Inheritance
24	3	1	? (r)	√	√	√	Yes	Yes	Yes	Yes	No	Inheritance
25	3	2	1989 (r)	√	√	√	Yes	Yes	Yes	Yes	No	Inheritance
26	3	6	1979 (r) ¹³	√	√	√	Yes	Yes	Yes	Yes	No	Inheritance

⁷ This date was that of the husband's arrival in the village, where he married and remained. Family had run from conflict on several occasions but not very far away.

⁸ Conflict between wife and her brother about division of land inherited from father. Resolved through the soba and sekulos.

⁹ Respondent had inherited land from a maternal uncle, dividing it with the uncle's sons.

¹⁰ Conflict over land ownership within the family. Resolved by the soba and sekulos.

¹¹ Family of a widow who had returned to the village after the death of her husband.

¹² The widow had inherited land from her father, which she took occupation of after returning from her husband's place of origin. She had also remained with possession of the husband's land (see main text).

¹³ Family were displaced to Kissene and had recently returned.

2.3.3 Catabola Município

CATABOLA COMUNA - Uyuwe Aldeia

Uyuwe is a small village of approximately 56 families situated 12kms south west of Catabola. Most residents were forced to move here by the government in the mid-1980s in an attempt to deprive UNITA forces of sustenance. They were moved from a more isolated area called Ndembei and the new village is located much closer to the road. Although most people have maintained their land plots in the vicinity of Ndembei they are now settled in the new village and do not intend returning. The population is largely comprised of Umbundu speakers.

A total of 14 semi-structured interviews, were conducted in the village, with a further 3 group discussions (women, men & widows) and 2 detailed interviews with key informants. Three of the families had been displaced to Kuito and had returned in the last two years and a total of eight families had moved to the area from the previous village of Ndembei, in the mid-1980s.

All individual respondents possessed *ongongo*, *otchumbo* and *onaka* plots and one family mentioned possession of an *ombanda* plot. Maize, beans and mandioca were the main staples with cultivation also of potatoes, tomatoes, onions and cabbage.

Land access was not seen as a problem, all families having inherited the plots from their predecessors.

“If you don’t have land you can buy, or someone can loan you for a particular period of time”

The women’s group, however, stated that one of the changes in land access mechanisms was that the loan of land happened much more often in the past and that now sales were much more common. No-one mentioned the rental of land: plots would be loaned for a period or sold. The sale of plots was mentioned as being quite common.

Only one respondent reported cultivating all land available, all other families had areas lying fallow and areas that had never been cultivated. Plot sizes in general appeared to be quite large; those unable to put a figure to the area described them as “very large” or “vast”. Others indicated areas of between 6 and 10 hectares.

Only one family reported the employment of agricultural workers. Daily amounts paid to workers on land were 100 kwanza, 5kg of maize or 4kg of beans.

The *soba* was indicated as the main mechanism through which incomers to the area could obtain land, but again this was an intermediary role. Similarly to the other study sites, the role of the *soba* was considered much more important than that of the government:

“The soba has no right to provide land unless it is his own”

“The soba has the right to show where land is available and authorise its use. The government can’t because it doesn’t know the land”

However, in contradiction to this, one respondent stated that:

“It is the government that has power because the traditional authorities depend on the government”

Again, the picture was one of a well entrenched and ordered system of land inheritance through the generations and a population secure both in the knowledge of how this system worked and of the rights and protection that it afforded them. Land in the area was all attributed to one of the family lineages and had been for a very long period of time:

“All the land here has an owner”

Tenure security expressed unanimously as a function of having inherited the land. One respondent, on being asked if the plots had been registered by anyone, replied:

“It is not necessary to register (land) with the government”

“You can prove your occupation through witnesses from the village or the family”

Most respondents reported that their land areas were well marked, normally by pathways around the *otchumbo* household plots and by large forest trees, fruit trees, eucalyptus and avocado trees or elephant grass around the *ongongo* plots.

Relationships with neighbouring landholders were unanimously stated to be very good and in the vast majority of cases it appeared that the neighbours were part of the extended family grouping. People stated that the markers helped them to identify “the lands of our forefathers”.

Charcoal was mentioned by two respondents as being a resource that was being exploited by people from outside of the community. Fishing was a major occupation; one person stated that in the past people always fed themselves on the basis of fish.

Other wild resources included thatching grass, edible insects and plants and mushrooms. Access was open and according to the capacity of a particular family:

“No one authorises you to collect these resources. You just go to collect them yourself”

People testified to the sale of produce (fruits) from trees but not the trees themselves, unless the land on which the trees stood was being sold. An exception was the sale of eucalyptus trees for timber, mentioned by several people.

A few people noted the existence of one *fazenda* in the area but no-one knew what would happen to it. It was not being utilised currently but appeared not to have been occupied and was not considered to be part (or to have been part) of the village lands.

The position of women in this area seemed slightly better in comparison with the other study sites in Andulo. The majority of respondents stated that a woman with children would remain with the land plots of the husband after his death. If she were childless she would be expected to return to her family. Only two respondents stated that a woman would only be allowed to occupy the plots for the period of mourning. Some respondents mentioned that a widow might lose these rights if she decided to remarry, in which case the land would return to the husband’s family, even if she had children although others stated that the children would still inherit.

Two widows mentioned the fact that it was always possible to find someone “of good faith” or “with good hearts” that would help them by loaning land.

A total of five respondents reported the occurrence of conflict, one of these involving theft of produce. The others were land related matters of one sort or another and most involved intra-family squabbles over boundaries, which had been solved by the family themselves (1) or through the *soba* (3).

The influence of the church appeared less also in this area, with only one respondent mentioning this as a potential forum in resolving conflicts, commencing with a catechist or involving the pastor. Overwhelmingly, respondents indicated the traditional authorities as the preferred route and some stated that payment was not always necessary (one of the reasons stated in other study sites as being a disincentive):

“Payments depend on the case, but if it involves land you do not pay”

One family that had been involved in a conflict over land (“resulting from ambition” but unexplained) confirmed this by stating that the *soba*’s intervention had been for free. However, two others stated that:

“You pay a bit to sit with the old men”

“We paid 200 kwanzas for the sobas and sekulos to celebrate the agreement”

Advantages to the traditional system of conflict resolution included the observation that there was good mediation between the two parties involved. This appears to be a common conception, echoed in the other study sites, where people explained it by saying that everyone would be “satisfied” at the end of the process or that no-one would leave “unhappy”.

Results of family interviews: Uyuwe Aldeia, 5th March, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				<i>Ongongo</i>	<i>Otchumbo</i>	<i>Onaka</i>						
1	2	2	2001 (r) ¹	√	√	√	Yes	No	Yes	Yes	No	Inheritance
2	4	2	1984 ²	√	√	√	Yes	No	Yes	Yes	No	Purchase ³
3	1	5	1984 ⁴	√	√	√	Yes	No	Yes	Yes	No	Inheritance ⁵
4	5	1	1975	√	√	√	Yes	Yes	Yes	Yes	No	Inheritance
5	5	5	1983 ⁶	√	√	√	Yes	No	Yes	Yes	No	Inheritance
6	2	1	2002 ⁷ (r)	√	√	√	Yes	No	No	Yes	No	Inheritance
7	3	2	2001 ⁸ (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
8	4	3	1980 ⁹	√	√	√	Yes	No	Yes	Yes	Yes ¹⁰	Inheritance
9	3	3	1980 ¹¹	√	√	√	No	No	Yes ¹²	Yes	Yes ¹³	Inheritance

¹ This family had returned from Kuito

² This family had been displaced from their village of Ndembei in 1984 because of the conflict and had resided in Uyué village since that time. They had come to join an uncle and cousins.

³ The purchase had been facilitated by their family connections in the village and may actually have been more of an inheritance than the response suggested.

⁴ This family had been displaced from their village of Ndembei in 1984 because of the conflict and had resided in Uyué village since that time.

⁵ This family appeared to still be cultivating the fields that were close to the village from which they had been displaced.

⁶ This family had been displaced from their village of Ndembei in 1983 because of the conflict and had resided in Uyué village since that time.

⁷ This family had been displaced to Kuito.

⁸ This family had been displaced to Kuito.

⁹ This family had been displaced from their village of Ndembei in 1980 because of the conflict and had resided in Uyué village since that time.

¹⁰ Conflict involved one family member occupying land of another and was resolved within the family without resort to the soba.

¹¹ This family had been displaced from their village of Ndembei in 1980 because of the conflict and had resided in Uyué village since that time.

¹² This was a female-headed household that had been cultivating all of the plots when the husband was alive. Presently there are plots lying fallow.

¹³ The nature of the conflict was not explained but was said to have resulted from "ambition or jealousy"

Results of family interviews: Uyuwe Aldeia, 5th March, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				<i>Ongongo</i>	<i>Otchumbo</i>	<i>Onaka</i>						
10	3	1	? ¹⁴	√	√	√	Yes	No	Yes	Yes	No	Inheritance
11	5	2	?	√	√	√	Yes	No	Yes	Yes	Yes ¹⁵	Inheritance
12	2	3	1984 ¹⁶	√	√	√	Yes	No	Yes	Yes	Yes	Inheritance
13	3	3	(r)	√	√	√	Yes	No	Yes	Yes	Yes ¹⁷	Inheritance
14	2	2	1984 ¹⁸ (r)	√	√	√	No	No	Yes	Yes	Yes	Inheritance

¹⁴ This family had been displaced from their village of Ndembei but could not remember when.

¹⁵ A neighbour had loaned a member of the family a plot of land. This man subsequently died. The son who inherited wanted the land back and the case was resolved through the *soba*.

¹⁶ This family had been displaced from their village of Ndembei in 1984 because of the conflict and had resided in Uyué village since that time.

¹⁷ Case involved theft of maize and mandioca and was resolved by the *soba* (who was paid 200 kwanza for his intervention).

¹⁸ This family had been displaced from their village of Ndembei in 1984 because of the conflict and had resided in Uyué village since that time.

CATABOLA COMUNA - Chicumbi Aldeia

Chicumbi village consists of approximately 120 families and is situated 7kms south of Catabola.

A total of 22 semi-structured interviews, were conducted in the village, with a further 4 group discussions (women, men, youth & widows) and 2 detailed interviews with key informants. One of the families had been displaced to Huambo, returning in 2002 and one family were returnees from Kuito. A total of 8 families had been displaced at one time or another (one family on two occasions) and one family were 'incomers' to the village.

All respondents without exception had access to *ongongo*, *otchumbo* and *onaka* plots. Two respondents mentioned possession of an *ombanda* plot. Maize, mandioca and rice were the main staples, with vegetables and fruits. A particularity of this area was coffee production, which in the past had been considerable. Some families were still producing coffee for sale and consumption whilst others explained that whilst their parents or they themselves had done this in the past there was no longer a sufficient market or that they were no longer able to produce in sufficient quantity. Several respondents stated that they were cultivating coffee in their *otchumbo* plots in order to produce seeds, indicating a desire to increase production in the future.

There was much more evidence of land purchase here than in Uyué village; six respondents had purchased land plots in addition to those that they had inherited. One family that were not native to the village indicated that they had arranged land through 'contacts'. Purchase of land appeared common and both the women and widow groups mentioned that land could be transferred definitively to someone in need for free. Both groups explained it in the following way:

"It depends on the heart of the person with the land"

Limits on periods of loaning land were indicated as being 1 to 2 years, although one person stated that it could be up to 5 years.

Again all land in the area was said to have an owner.

"There are lands here that belong to people who are not here but they are all being used by members of the owners family"

Despite this the collection of wild resources in these areas was unregulated by any need to ask permission, as in the other study sites.

The men's group said that there were no *fazendas* in the area but the widow's group and the women's group stated that there was one, which belonged to the *soba*.

A total of six families testified to having employed workers at some time or another (three of these were family groups that had purchased land in addition to those that had inherited) Workers on plots were paid between 100 and 200 kwanza daily.

All respondents stated that relationships with the owners of neighbouring plots were very good and in the vast majority of cases the neighbours were said to be part of the extended family. One family mentioned that their plots were marked with sisal and cemented stones and most others referred to fruit or wild forest trees. All respondents stated that they felt their ownership was uncontested.

"We feel secure because these lands are ours from ancient times"

As with Uyuwe, the majority of respondents stated that a woman with children would remain with the land plots of the husband after his death. Most respondents were unequivocal about this; one stated that it would depend upon the particular family. Two respondents also stated that on divorce the parties would divide the common goods of the family, although this did not include land plots.

The widow's group explained that some of them had come to the village with their husbands and purchased land plots. On the death of the husbands they had remained with these plots and their children would have the right to inherit.

Only one respondent mentioned the church as an alternative to the traditional authorities in the case of conflict. In some cases it appears as if the *soba* will take a proactive role in resolving conflicts. The respondent that was not a native of the village and who had bought land there through 'contacts' reported that he had been involved in a conflict soon after purchasing one of the plots of land. The brother of the seller apparently sold the same plot to someone else. Interestingly, the respondent stated:

"We were always discussing this situation until the point that the soba called us. Witnesses were called and in the end the soba provided me with another parcel of land. We did not pay anything to the soba"

Another respondent who had been involved in a conflict confirmed that he did not have to pay for the *soba's* intervention. Others, however, said:

"The old men cannot sit down like this (to discuss a case) without being given something"

Again there were indications that the traditional authorities were viewed very much as mediators and that the process was geared to conciliation between the parties:

"The advantage of this system is that afterwards the people are reconciled again"
"if you go to the police they don't resolve your problem" (women's group)

One respondent explained that the payment made for resolution of a conflict would often be in the form of a traditional drink, in order to "consolidate the agreement". Another stated that if a case were particularly serious the amount paid by the parties would be greater (500 kwanza, rather than 200 kwanza for a 'normal' case).

Three respondents, on being asked about their knowledge of the land policy or law, said that it consisted of rules against burning the bush and trees and also prohibitions on charcoal burning. One respondent stated that it meant that you should not use the same piece of land for more than three years consecutively. The men's group said that it related to not cutting down trees or allowing thatching grass to grow too high.

Results of family interviews: Chicumbi Aldeia, 4th March, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				Ongongo	Otchumbo	Onaka						
1	5	3	2002 (r) ¹	√	√	√	Yes	Yes	Yes	Yes	No	Purchase & inheritance
2	5	2	1960 (r)	√	√	√	Yes	Yes	Yes	Yes	No	Inheritance
3	4	1	1959 (r) ²	√	√	√	Yes	No	Yes	Yes	No	Inheritance
4	4	5	1988 ³	√	√	√	Yes	No	No	Yes	Yes ⁴	Purchase
5	4	6	1956 (r)	√	√	√	Yes	No	No	Yes	No	Inheritance
6	4	3	? (r)	√	√	√	Yes	Yes	No	Yes	No	Inheritance
7	2	3	1988 (r)	√	√	√	Yes	No	No	Yes	Yes ⁵	Purchase & inheritance
8	1	2	1988 (r)	√	√	√	Yes	No	No	Yes	No	Inheritance
9	2	1	1988 (r)	√	√	√	Yes	No	Yes	Yes	Yes	Inheritance
10	4	3	1996 (r) ⁶	√	√	√	Yes	Yes	Yes	Yes	No	Inheritance
11	4	2	1996 (r) ⁷	√	√	√	Yes	No	Yes	Yes	Yes ⁸	Inheritance
12	3	3	1960 (r)	√	√	√	Yes	Yes	Yes	Yes	Yes ⁹	Purchase & inheritance

¹ This family were native to the village but were displaced to Huambo, returning in 2002.

² This family were native to the village but were displaced to Kuito, date of return not mentioned.

³ Family were not native to the village and had arrived from Sandes in 1988 as a result of conflict.

⁴ See main text.

⁵ Unspecified conflict over land. Resolved by the soba.

⁶ Family were displaced, returning in 1996.

⁷ Family were displaced, returning in 1996.

⁸ This was a conflict resolved within the family.

⁹ Unspecified conflict re land. Resolved by *soba* at cost of 100 kwanza to both parties.

Results of family interviews: Chicumbi Aldeia, 4th March, 2004

Family Ref	male	female	Yr arrival	Type of land available?			Tree ownership?	Workers employed?	Fallow land?	Secure?	Conflict?	Access?
				Ongongo	Otchumbo	Onaka						
13	2	1	? (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
14	4	2	1973 (r)	√	√	√	No	No	Yes	Yes	No	Inheritance
15	6	10	1946 (r)	√	√	√	No	No	No	Yes	No	Purchase & inheritance
16	3	2	1997 ¹⁰	√	√	√	Yes	No	Yes	Yes	No	Inheritance
17	5	5	1988 (r) ¹¹	√	√	√	Yes	Yes	Yes	Yes	Yes ¹²	Purchase & inheritance
18	?	?	1968 (r)	√	√	√	Yes	No	Yes	Yes	Yes ¹³	Inheritance
19	3	3	1970 (r)	√	√	√	Yes	No	Yes	Yes	Yes ¹⁴	Inheritance
20	1	2	1963 (r)	√	√	√	Yes	No	Yes	Yes	No	Inheritance
21	2	2	1998 (r) ¹⁵	√	√	√	Yes	No	Yes	Yes	No	Inheritance
22	2	2	1962 (r) ¹⁶	√	√	√	Yes	No	Yes	Yes	Yes ¹⁷	Inheritance

¹⁰ Family had been displaced to B. Horizonte and had returned in 1997 to the wife's village.

¹¹ Family had been displaced to Catabola sede.

¹² Unspecified conflict re land. Resolved by *soba* at no cost.

¹³ Unspecified conflict re land. Resolved by *soba* at unspecified cost to both parties.

¹⁴ Unspecified conflict re land. Resolved by *soba*. Both parties contributed traditional drink to "consolidate" the agreement.

¹⁵ Family had left the village because of the war to "live in the bush".

¹⁶ Family had been displaced twice to Camacupa sede, returning for the last time in 1988.

¹⁷ Conflict involved members of the family and was resolved internally without intervention of the *soba*.

3. KEY ISSUES FOR CARE PROGRAMMING - THE PROMOTION OF LIVELIHOOD SECURITY & EQUITY

A sustainable livelihoods approach requires that the focus of the Angolan state now needs to be on providing tailored services to empower poor people (and others), within an appropriate policy environment, to benefit from potential livelihood gains arising from the outbreak of peace and relative stability. The critical role of the centre becomes helping to create that environment; through developing policy (or localising national policy), through redistribution where market forces need tempering to ensure the poor are covered, through high level strategic planning and developing strategies for implementation, through the delegation of operational control to 'deconcentrated' structures at provincial and district level (or to local government), through ensuring coordination in the use of resources and monitoring development to ensure that policy objectives are achieved cost-effectively and without fraud. In Angola, there remain many challenges. The purpose of this section is to propose some areas where CARE, through its existing programmes in Bie province and at a national level, might be able to support the state in achieving these objectives in so far as they relate to the important issue of land and natural resource tenure.

3.1 Project Level Programming

The rights-related implications of people being disconnected from their governance structures are many, and are often amongst the fundamental causes of disenfranchisement and conflict. While noting that the DRP (and the peace process in Angola) is at a very early stage, it might be worth considering whether finding ways to facilitate improved links between target populations and their formal governance structures might be an avenue for CARE to explore in the future. (CARE, 2003a)

It is important that NGOs do not undermine the efforts of resettling communities to reinstitute their social structures. Our emphasis should be on learning how these structures are being reinstated, and then searching for ways in which our activities can support this process (or processes of negotiated change in the nature of social structures). (CARE, 2003b)

Nothing in the research findings would appear to indicate that at the moment access to land represents a limiting factor to the re-establishment of agricultural production or food security. None of the families interviewed during the process indicated that they had encountered problems in getting access to land for cultivation, or for housing, and this was the case for settled residents, returnees and displaced people. It would appear that the traditional mechanisms for land allocation have been sufficiently durable and flexible to both maintain their legitimacy for the vast majority of people and to ensure that social conflicts over land, where they have occurred, are resolved. These findings are similar to the initial indications from research conducted in other areas by Development Workshop (Allan Cain, pers comm.). In some areas, such as Andulo, the influence of the church in conflict resolution is noticeable but it was indicated as a choice for the minority of people overall. Overwhelmingly, and particularly in relation to the formal administrative authorities, the institution of the *soba*, in conjunction with the attendant checks and balances inherent to the system, was recognised as being the most appropriate one for local land administration and the recognition of land rights.

However, there are areas related to land tenure security and the recognition of land rights that could be usefully integrated into ongoing CARE programmes in the region. These would complement and give substance to some of the elements of the DRP and the BP farmer

associations project and would, in the long term, be geared towards ensuring the promotion of livelihood security and equity in the rural areas.

The entry points for these areas of work have already been identified in the reports from the CARE Transitional Programming Initiative, as encapsulated in the two quotes at the start of this section. The following are very broad recommendations of how these could be taken forward in relation to the issue of land tenure security and land rights for the target populations.

3.1.1 Linkages to formal governance structures

The proposed new land law, although it contains many areas of concern and ambiguity, does hold out the prospect of an upgrading of local rural community land rights and their recognition through the formal land administration system. Until regulations to the law are drafted and published it is not possible to state exactly what would be involved but from the broad indications in the proposed law a process similar to that in Mozambique appears to be envisaged. That is, rural communities would be permitted to demarcate the area over which they had usufruct rights on a communal basis and be issued with a legal title to that effect by the state. It is almost certainly the case that with registered title to the land, community groups would be in a stronger position to protect their land from third party encroachment than if they were to be relying merely on statutory protection.

Given that CARE are already working in partnership with the local MINADER structures, and are keen to deepen this arrangement, there is considerable potential for the design of a programme of assistance that supported community groups in the identification of the boundary areas within which they considered themselves, as a group of extended families, to have user rights and to support the local state structures to provide the necessary services to formalise these. A well-managed programme along these lines would facilitate the building of linkages between target populations and formal governance structures and build confidence and trust on both sides. Although not covered by the present research there is strong evidence from the recent community consultation processes undertaken by the Rede da Terra that many community groups are demanding that they be issued with titles to their land (Rede da Terra, 2004).

The delimitation of community lands in Mozambique is taking place within a similar legal and cultural context to that of Angola. In Mozambique the process of community land titling is regulated by a technical annex to the law (see annex) and the various components offer an idea of the kind of model that could be adopted and the forms of assistance that could be considered by CARE in Angola. The table overleaf provides a very loosely based outline of these components.

This would be pioneering work if CARE were to design such a programme and would assist the state in the piloting of suitable methodologies for implementation of the law as well as immediately helping to secure the communal land rights of rural communities. Given that the study has indicated a highly developed sense of ownership by family lineages within a community area, great care would need to be taken to ensure that the process did not result in a transfer of *de facto* control from people themselves to broader institutions at community level. Individual titling of family lineage land holdings at the outset is likely to be expensive and beyond the capacity of existing institutions, both internal and external to communities. However, the initial recognition and registration of the community land area as a whole could be a valuable first step towards the further registration of family lineage land holdings within this area.

It is difficult to estimate the resource requirements of such a programme and much would depend on the scope and the level of contribution of the government services themselves. An initial focus might be to select those communities where CARE is already working with farmers' associations, in partnership with MINADER (the project presently financed by BP), and to also

formalise the land holdings of these groups within the context of a broader titling process within the community.

Potential components and forms of support for a community land-titling programme

Activity component	Main objectives and elements of potential support
INFORMATION ON THE PROCESS AND DISSEMINATION OF THE LAW	<p>To ensure that the community broadly are aware of the process, implications and objectives and that they have an opportunity to freely choose a group of representatives that will oversee activities.</p> <p>Potential support:</p> <ul style="list-style-type: none"> - Programming Assistance with targeting of community groups and planning and prioritising of activities - Technical Assistance with design and methodology used in workshops and community meetings - Technical Assistance with design and production of written and visual materials - Training - Financial Assistance with transport & accommodation costs of fieldworkers and government staff
PARTICIPATORY MAPPING & INFORMATION COLLECTION	<p>To ensure that all interest groups within the community are assisted to identify areas of cultivation, fallow areas, areas where resources are collected, sacred zones and areas of cultural importance, common boundaries, etc. and to build up a picture of the history and social organisation of the community.</p> <p>Potential support:</p> <ul style="list-style-type: none"> - Technical Assistance with design and methodology used in mapping processes and community meetings - Technical Assistance with design and production of written and visual materials - Training - Provision of simple hand-held GPS units - Financial Assistance with transport & accommodation costs of fieldworkers and government staff
DESCRIPTIVE MEMORANDUM AND FORMAL MAPPING OF COMMUNITY AREA	<p>To produce a formal legal descriptive memorandum of the area and an accurate map of the community area on 1:50,000 scale maps.</p> <p>Potential support:</p> <ul style="list-style-type: none"> - Technical Assistance with design and methodology used in formal survey and mapping processes - Technical Assistance with use of suitable surveying equipment - Training - Provision of suitable surveying equipment - Financial Assistance with transport & accommodation costs of fieldworkers and government staff
INFORMATION AND FEEDBACK TO COMMUNITY AND NEIGHBOURS	<p>To confirm the results of the process with the community and their neighbours and formally hand over title to land.</p> <p>Potential support:</p> <ul style="list-style-type: none"> - Technical Assistance with design and methodology used in feedback sessions - Technical Assistance with formal registration processes (which could include compilation of information in the cadastre and the use of a GIS to manage information on land holdings) - Training - Provision of GIS software & training - Financial Assistance with transport & accommodation costs of fieldworkers and government staff

3.1.2 Support and negotiated change to social institutions at community level

None of the people interviewed in the study sites had any knowledge of the policy development process in respect to land and had never heard of the proposed new land law (nor indeed of any land law). At a broader level, therefore, a dissemination campaign in the province regarding the main points of the law would be a potential role for CARE, again in partnership with the government authorities and particularly MINADER. There are elements in the law that accord with the CARE approach as encapsulated in the Transitional Programming Initiative and which both serve to support existing community institutions whilst at the same time encourage broader participation and involvement of potentially marginalized groups. The development of appropriate dissemination materials and methodologies may be an area in which CARE could encourage development and provide technical assistance to the formal authorities.

The area of most concern arising from the field study has been, not unsurprisingly, the findings in respect to women's rights to land which, with some exceptions in Catabola and Camacupa, are subject to customary laws that are highly prejudicial. However, even within this framework, there was evidence that shifts are occurring: several widows testified to the fact that there were support mechanisms available within communities that facilitated their access to land and that performed a kind of welfare function. As the shift from emergency to development programming continues it might be the case that access to land and other resources becomes a suitable focal point for CARE's continuing work with the Community Development Committees and that discussions that begin to address structural problems in this respect are encouraged. Many respondents in the field study, irrespective of their background, identified that fact that the position of female-headed households and widows was weak in relation to land access and, as indicated, some communities appear to already be taking steps to mitigate this. CARE might therefore be able to identify ways in which these processes can be supported and formalised.

3.2 Policy & Legal Implications

3.2.1 The realisation of the 'informal' capital of rural communities

Nevertheless, if cohabitation between peasants and the private sector is possible and desirable, one must think about compensations. As long as there is a serious negotiation process, communities may be interested in surrendering part of their land, if they obtain in exchange technological investments for increasing productivity and production and into social infra-structures such as schools, health, roads, etc. (Pacheco, 2002)

This quote from Pacheco clearly identifies the central potential of contemporary land policy in the region to contribute to rural development and poverty alleviation. The recognition not just of usufruct rights but also of 'ownership' rights on the part of a community implies a possibility of transforming informal natural capital, which they have in abundance (land), into formal realisable capital that can be used to negotiate benefits and returns. The potential for this process of registering rights to be implemented at a community level, avoids the pitfalls of the argument advanced by Hernando Soto regarding the individual transformation and titling of hitherto informal capital; that is, that it requires an implementation capacity and supportive enabling environment way beyond that which present conditions allow. The delimitation of community lands, and the identification of areas contained within these that can be made available to the private sector, is within the capacity of the state and its development partners.

Whether or not the policy makers envisage such a process is hard to gauge given the absence of any clear policy statement. The present contents of the proposed law, however, would seem to indicate that this is not the central intention and that the State wishes to keep for itself the potential revenue from negotiated access agreements to land. The inclusion of clauses that

specifically allow the State to ‘de-register’ community lands where private developments are envisaged is the most obvious indication that this is the case, but there are also many others.

This is therefore the central issue around which lobbying efforts ought to be directed in the future: the law should allow for, protect and register the recognised rights of community groups such that they become subject to transfer and transaction on terms and conditions suitable to the community. This would certainly be preferable to the present formulation, which offers protection of community rights only to the extent that they will be compensated in alternative land, or unchallengeable one-off payments, in the event of their expropriation.

3.2.2 The recognition of traditional authorities

Decentralisation is about empowering people to make decisions about their local social and natural environment. Power may be handed over to local people in a democratic or an undemocratic way, and decentralisation could create democratic or undemocratic local institutions and power structures. The land law is vague about the ‘traditional authorities’ that will be recognised in respect to land issues. Given that they will be central actors in local consultation processes envisaged in the law, it is important that there is more clarity on this. Our research has revealed the fact that at a local level, where the *soba* is at least subject to a certain level of community control, the traditional authorities play a valuable and well-recognised role and enjoy a high level of credibility. They are central to conflict resolution processes and are the forum of first choice for most people. They also attest to land transactions and act as reference points for residents and those who wish to acquire land. However, their powers do not extend to being able to make decisions over land that does not clearly belong to their particular lineage. Property is to all intents and purposes held by the family lineage in the areas that we investigated and the law must be careful not to effect a statutory transfer of power.

In most areas the lawmakers have been careful to ensure that ‘families that form part of a rural community’ are mentioned alongside the institutions of traditional authority. This is not the case in article 37(4), however, which is crucial:

“Having heard the institutions of Traditional Power, it will be, however, possible to determine the dismemberment of rural community lands and their concession, without prejudice to the granting of other lands to the holders of customary use rights or, where this is not possible, without prejudice to the adequate compensation owed to them”

Given our research findings such a clause would not be acceptable in its present form and holds the potential for considerable social conflict.

More encouraging and in keeping with our findings in Bie is the law’s recognition of the customary norms and practises in respect to conflict resolution.

3.2.3 The recognition and protection of community rights

As noted earlier (see 1.3.2) article 37 of the proposed law would seem to imply that formal recognition, and therefore protection, of rural community tenure rights is only effective on registration. Article 6.5, which introduces the possibility of acquiring a land tenure right through the clumsy civil procedure of prescription, also requires registration processes to be completed. If there is a concern to really offer widespread and effective protection to the rights of rural communities it is suggested that a much cheaper and easier method would be the incorporation of a statutory right, effective on publication of the law, that recognised the occupational rights of people who were occupying land in good faith for a particular period of time, or in terms of customary norms and practises. Registration mechanisms could then be geared towards the upgrading of these rights, but the law would have already provided an immediate level of statutory protection of usufruct rights.

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ANNEXURE

Photographs of fieldwork and team members

Text of Proposed Land Law, November 2003

English text of Mozambican Technical Annex to the Land Law



Preparing the field study



Ex-UNITA combatants in Andulo



Youth Group in Andulo



Regedor of Chingue (left)



Women in Canana (Andulo)



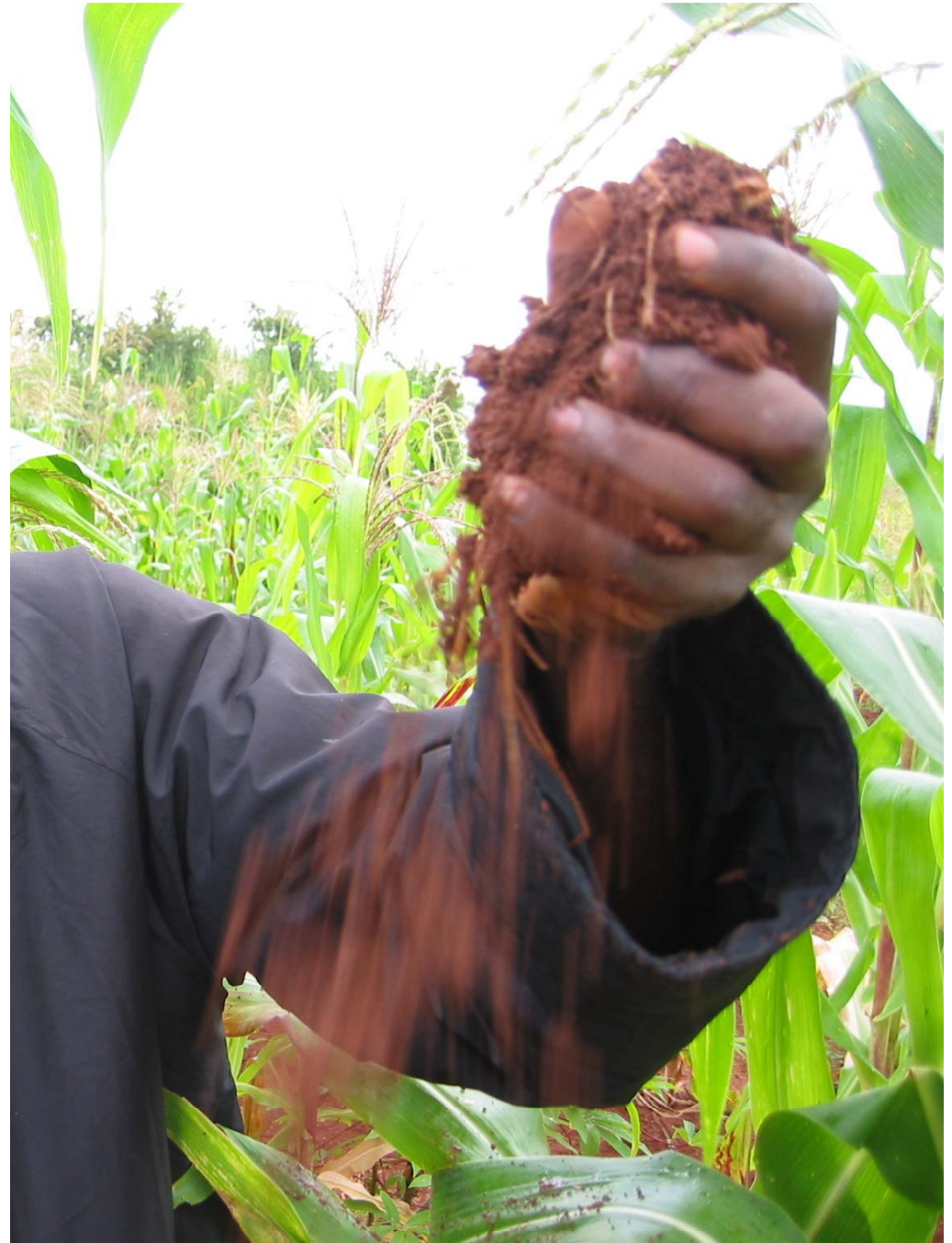
Traditional hunting and fishing



Widows in Camacupa



Felisberto Ngola, CARE





Rural hospitality



Women's group in Andulo



Joaquim Rubem, CARE



Lando, CARE



Community group in Andulo



Participatory Mapping



Jorge Manuel, MINADER



'Regedor', CARE



Participatory Mapping



Access problems



Tiago Kaunda, CARE



Edith Chivi, CARE



Participatory Mapping



Widow's group in Catabola



António Fernando, CARE



Fernanda Elaho, CARE



REPÚBLICA DE ANGOLA

PROJECTO DE LEI DE TERRAS

LUANDA, NOVEMBRO/2003



PREÂMBULO

LEI N.º ____ / ____ DE _____

Considerando que a problemática fundiária em geral e, em particular, o enquadramento jurídico do problema da terra não foi, ainda, objecto do tratamento multidisciplinar que merece.

Considerando que, a problemática da terra na sua dimensão jurídica não pode deixar de ser tratada de forma integrada e em função dos seus múltiplos usos, a saber:

- suporte de abrigo ou habitação da população residente no território o que implica um adequado regime urbanístico;
- abrigo de riquezas naturais cujo uso e aproveitamento releva do direito mineiro, agrário, florestal e de ordenamento do território;
- suporte do exercício de actividades económicas, agrárias, industriais e de prestação de serviços;
- suporte de todos os efeitos resultantes da acção desregrada ou degradante do homem com impacto negativo no equilíbrio ecológico que releva para o direito do ambiente.

Tendo em conta que, por um lado, a legislação em vigor, em especial, a Lei n.º 21-c/92 não tratou da problemática da terra em todas aquelas dimensões, e, por outro, não houve por parte do legislador da Lei de Terras em vigor, uma visão integrada e multidisciplinar que pode, até levar a afirmação segundo a qual a Lei em vigor é uma Lei Agrária. Não se cuidou dos fins económicos, sociais e urbanísticos e, em geral, da imbricação entre a problemática fundiária e o ordenamento do território.

Convindo a aprovar as bases gerais do regime jurídico das terras, bem como os direitos que podem incidir sobre as terras e o regime geral de concessão e constituição dos direitos fundiários.

Nestes termos e ao abrigo do disposto na alínea b) do artigo 88 da Lei Constitucional, a Assembléia Nacional aprova o seguinte:



CAPÍTULO I Disposições e Princípios Gerais

Secção I Disposições Gerais

Artigo 1.º Definições

Para efeitos da presente lei, entende-se por:

- a) “Aglomerados urbanos”: zonas territoriais dotadas de infra-estruturas urbanísticas, designadamente, de redes de abastecimento de água e de electricidade e redes de saneamento básico, contanto que a sua expansão se processe segundo planos urbanísticos ou, na sua falta, segundo instrumentos de gestão urbanística aprovados pela autoridade competente;
- b) “Cidade”: o aglomerado urbano assim classificado por normas de ordenamento do território, a que tenha sido atribuído o foral de cidade e com o número mínimo de habitantes definido por lei;
- c) “Comunidades rurais”: comunidades de famílias vizinhas ou compartes que, nos meios rurais, têm os direitos colectivos de posse, de gestão e de uso e fruição dos meios de produção comunitários, designadamente, dos terrenos rurais comunitários por elas ocupados e aproveitados de forma útil e efectiva, segundo os princípios de auto-administração e autogestão, quer para sua habitação, quer para o exercício da sua actividade, quer ainda para a consecução de outros fins reconhecidos pelo costume e pelo presente diploma ou seus regulamentos;
- d) “Domínio público”: conjunto de coisas que o Estado ou as autarquias locais aproveitam para a prossecução dos seus fins, usando poderes de autoridade, ou seja, através do Direito Público, incluindo nomeadamente as coisas destinadas ao uso de todos, as coisas utilizadas pelos serviços públicos ou sobre as quais incida a actuação destes e as coisas que satisfaçam os fins de uma pessoa colectiva pública;
- e) “Domínio privado”: conjunto de coisas não compreendidas no domínio público e sobre as quais recai a propriedade do Estado ou das autarquias locais;
- f) “Foral”: título, aprovado por diploma do Governo, pelo qual o Estado delimita a área dos terrenos integrados no domínio público do Estado e por este concedidos às autarquias locais para gestão autónoma;
- g) “Direitos fundiários”: direitos que recaem sobre os terrenos integrados no domínio privado do Estado e de que sejam titulares quer as pessoas singulares, quer as pessoas colectivas de direito público e de direito privado;
- h) “Solo”: camada superficial de terra sobre que recai a propriedade originária do Estado e destinada a aproveitamento útil, rural ou urbano, através da constituição de um dos diversos tipos de direitos fundiários previstos na presente lei;
- i) “Subsolo”: camada de terra imediatamente inferior ao solo;
- j) “Terra”: o mesmo que terreno;
- k) “Terreno”: parte delimitada do solo, incluindo o subsolo, e as construções nele existentes que não tenham autonomia económica, a que corresponda ou possa corresponder um número próprio na matriz predial respectiva e no registo predial;
- l) “Atravessadouros”: os terrenos ou caminhos rurais que, pertencendo quer ao domínio público do Estado ou das autarquias locais, quer ao domínio privado do Estado ou dos particulares, estão colocados sob um regime de servidão de passagem ou integrados em terrenos comunitários, segundo o direito consuetudinário, para acesso do gado a pastagens ou fontes de água e outras utilidades tradicionais das comunidades rurais.



Artigo 2.º

Objecto

A presente lei estabelece as bases gerais do regime jurídico das terras integradas na propriedade originária do Estado, os direitos fundiários que sobre estas podem recair e o regime geral de transmissão, constituição, exercício e extinção destes direitos.

Artigo 3.º

Âmbito de aplicação

1. A presente lei aplica-se aos terrenos rurais e urbanos sobre os quais o Estado constitua algum dos direitos fundiários nela previstos em benefício de pessoas singulares ou de pessoas colectivas de direito público ou de direito privado, designadamente com vista à prossecução de fins de exploração agrícola, pecuária, silvícola, mineira, industrial, comercial, habitacional, de edificação urbana ou rural, de ordenamento do território, de protecção do ambiente e de combate à erosão dos solos.
2. Ficam excluídos do âmbito de aplicação desta lei, os terrenos que não possam ser objecto de direitos privados, como os terrenos do domínio público ou os que, por sua natureza, sejam insusceptíveis de apropriação individual.

Secção II

Princípios Fundamentais

Subsecção I

Estrutura Fundiária

Artigo 4.º

Princípios fundamentais

A transmissão, constituição e exercício de direitos fundiários sobre os terrenos concedíveis do Estado está sujeita aos seguintes princípios fundamentais:

- a) princípio da propriedade originária da terra pelo Estado;

- b) princípio da transmissibilidade dos terrenos integrados no domínio privado do Estado;
- c) princípio do aproveitamento útil e efectivo da terra;
- d) princípio da taxatividade;
- e) princípio do respeito pelos direitos fundiários das comunidades rurais;
- f) princípio da propriedade dos recursos naturais pelo Estado;
- g) princípio da não reversibilidade das nacionalizações e dos confiscos.

Artigo 5.º

Propriedade originária

A terra constitui propriedade originária do Estado, integrada no seu domínio privado ou no seu domínio público.

Artigo 6.º

Transmissibilidade

1. Sem prejuízo do disposto no artigo 35.º, o Estado pode transmitir ou onerar a propriedade dos terrenos integrados no seu domínio privado.
2. São nulos os negócios de transmissão ou de oneração referidos no número anterior que violem normas de ordem pública.
3. A nulidade prevista no número anterior é invocável nos termos gerais.
4. Não podem adquirir-se por usucapião quaisquer direitos sobre os terrenos integrados no domínio privado do Estado.
5. É reconhecida, porém, a aquisição, por usucapião, dos direitos fundiários correspondentes aos poderes que os camponeses venham exercendo sobre os terrenos referidos no número anterior.
6. A aquisição por usucapião, a que se refere o número anterior, está sujeita ao regime estatuído no Código Civil.

Artigo 7.º

Aproveitamento útil e efectivo

1. A transmissão do direito de propriedade e a constituição de direitos fundiários limitados sobre terrenos integrados no domínio privado do Estado só podem ter lugar



com o objectivo de garantir o aproveitamento útil e efectivo destes.

2. Os índices de aproveitamento útil e efectivo dos terrenos serão fixados por instrumentos de gestão territorial, designadamente tendo em conta o fim a que o terreno se destina, o tipo de cultura aí praticado e o índice de construção.
3. A área dos terrenos a conceder não pode exceder em um terço a superfície correspondente à capacidade de trabalho do explorador directo e sua família.
4. Os direitos fundiários adquiridos, transmitidos ou constituídos nos termos da presente lei extinguem-se pelo seu não exercício ou pela inobservância dos índices de aproveitamento útil e efectivo durante três anos consecutivos ou seis anos interpolados, qualquer que seja o motivo.

Artigo 8.º

Taxatividade

1. Não é permitida a constituição, sobre os terrenos integrados no domínio privado do Estado, de direitos fundiários diferentes dos previstos na presente lei.
2. É nulo o negócio pelo qual se constitua um direito fundiário que não esteja previsto nesta lei.
3. A nulidade prevista no número anterior é invocável nos termos gerais.

Artigo 9.º

Comunidades rurais

1. O Estado respeita e protege os direitos fundiários de que sejam titulares as comunidades rurais, incluindo aqueles que se fundam nos usos ou no costume.
2. Os terrenos das comunidades rurais podem ser expropriados por utilidade pública ou particular ou ser objecto de requisição, sem prejuízo do

direito daquelas a uma justa indemnização.

Artigo 10.º

Recursos naturais

1. Os recursos naturais são propriedade do Estado, integrando-se no seu domínio público.
2. O direito de propriedade do Estado sobre os recursos naturais é intransmissível.
3. Sem prejuízo do disposto no número anterior, o Estado pode constituir, em benefício de pessoas singulares ou colectivas, direitos de exploração dos recursos naturais, nos termos da legislação respectiva.
4. A transmissão do direito de propriedade ou a constituição de direitos fundiários limitados sobre terrenos do domínio privado do Estado, ao abrigo do disposto na presente lei, não implica a aquisição, por acessão ou por outro modo de aquisição, de qualquer direito sobre os recursos naturais.

Artigo 11.º

Nacionalizações e Confiscos

Sem prejuízo do disposto em legislação específica sobre reprivatizações, são consideradas válidas e irreversíveis todas as aquisições do direito de propriedade pelo Estado por força de nacionalizações ou de confiscos realizados nos termos da legislação respectiva.

Artigo 12.º

Expropriação por utilidade pública

1. Ninguém pode ser privado, no todo ou em parte, do seu direito de propriedade ou do seu direito fundiário limitado, senão nos casos fixados na lei.
2. O Estado e as autarquias locais podem expropriar terrenos, contanto que estes sejam utilizados em um fim específico de utilidade pública.
3. A expropriação extingue os direitos fundiários constituídos sobre os terrenos e determina a sua transferência definitiva para o património do Estado ou das autarquias locais, cabendo a estes



últimos pagar ao titular dos direitos extintos uma justa indemnização.

Artigo 13.º

Domínio público

O Estado pode sujeitar os terrenos abrangidos pelo âmbito de aplicação da presente lei ao regime jurídico dos bens do domínio público, nos casos e nos termos nela previstos.

Subsecção II Intervenção Fundiária

Artigo 14.º

Objectivos

O Estado intervém na gestão e na concessão das terras a que se aplica o presente diploma, de harmonia com os seguintes objectivos:

- a) adequado ordenamento do território e correcta formação, ordenação e funcionamento dos aglomerados urbanos;
- b) protecção do ambiente e utilização economicamente eficiente e sustentável das terras;
- c) prioridade do interesse público e do desenvolvimento económico e social;
- d) respeito pelos princípios previstos na presente lei.

Artigo 15.º

Ordenamento do território e planeamento urbanístico

A constituição ou a transmissão de direitos fundiários sobre as terras e a ocupação, o uso e a fruição destas regem-se pelas normas constantes dos instrumentos de ordenamento do território e de planeamento urbanístico, designadamente no que diz respeito aos objectivos por estes prosseguidos.

Artigo 16.º

Protecção do ambiente e utilização das terras

1. A ocupação, o uso e a fruição das terras estão sujeitos às normas sobre protecção do ambiente,

designadamente às que dizem respeito à protecção das paisagens e das espécies da flora e da fauna nacionais, à preservação do equilíbrio ecológico e ao direito dos cidadãos a um ambiente sadio e não poluído.

2. A ocupação, o uso e a fruição das terras devem ser exercidos de modo a não comprometer a capacidade de regeneração dos terrenos aráveis e a manutenção da respectiva aptidão produtiva.

Artigo 17.º

Interesse público e desenvolvimento económico e social

A constituição e a transmissão pelo Estado de direitos fundiários sobre as terras obedecem à prioridade do interesse público e do desenvolvimento económico e social do País.

Artigo 18.º

Limites ao exercício dos direitos fundiários

1. O exercício dos direitos fundiários sobre as terras pelos seus titulares está subordinado ao fim económico e social que justificou a sua atribuição.
2. É aplicável ao exercício dos direitos previstos na presente lei o disposto no Código Civil em matéria de abuso do direito.

CAPÍTULO II

Dos Terrenos e dos Direitos

Secção I

Dos Terrenos

Artigo 19.º

Classificação dos terrenos

1. Os terrenos são classificados em função dos fins a que se destinam e do regime jurídico a que estão sujeitos nos termos da lei.
2. Os terrenos do Estado classificam-se em concedíveis e não concedíveis.
3. Para efeitos do seu aproveitamento pelas pessoas singulares ou colectivas, os terrenos concedíveis classificam-se



em terrenos urbanos e em terrenos rurais.

4. Entende-se por terreno urbano o prédio rústico situado na área delimitada por um foral ou na área delimitada de um aglomerado urbano e que se destine a fins de edificação urbana.
5. É havido como terreno rural o prédio rústico situado fora da área delimitada por um foral ou da área de um aglomerado urbano e que designadamente se destine a fins de exploração agrícola, pecuária, silvícola e mineira.
6. A classificação dos terrenos concedíveis em urbanos ou rurais é feita nos planos gerais de ordenamento do território ou, na sua falta ou insuficiência, por decisão das autoridades competentes nos termos do presente diploma.
7. Os terrenos integrados no domínio público do Estado e os terrenos comunitários são terrenos não concedíveis.

Artigo 20.º

Terrenos concedíveis

1. São concedíveis os terrenos de que o Estado tenha a propriedade originária, contanto que não tenham entrado definitivamente na propriedade privada de outrem.
2. O domínio dos terrenos concedíveis e os direitos fundiários limitados sobre estes constituídos estão sujeitos ao regime jurídico do domínio privado do Estado ou das autarquias locais, às normas constantes do presente diploma e ao disposto no artigo 1304.º do Código Civil.
3. Os direitos fundiários do Estado não prescrevem.
4. Sem prejuízo do disposto no artigo 35.º, o Estado pode transmitir o direito de propriedade sobre terrenos concedíveis ou constituir sobre estes os direitos fundiários previstos na

presente lei em benefício de pessoas singulares ou colectivas.

5. O Estado pode igualmente transmitir às autarquias locais os seus direitos fundiários sobre terrenos concedíveis através da concessão de foral ou de título legal equivalente.

Artigo 21.º

Terrenos urbanos

1. Os terrenos urbanos são classificados em função dos fins urbanísticos em terrenos urbanizados, terrenos de construção e terrenos urbanizáveis.
2. São urbanizados os terrenos cujos fins concretos estão definidos pelos planos urbanísticos ou como tal classificados por decisão das autoridades competentes, contanto que neles estejam implementadas infra-estruturas de urbanização.
3. São havidos como terrenos de construção os terrenos urbanizados que, estando abrangidos por uma operação de loteamento devidamente aprovada, se destinem à construção de edifício, contanto que esta haja sido licenciada pela autoridade local competente.
4. São terrenos urbanizáveis os terrenos que, embora abrangidos na área delimitada por foral ou no perímetro urbano equivalente, hajam sido classificados, por plano urbanístico ou plano equivalente, como reserva urbana de expansão.

Artigo 22.º

Terrenos rurais

1. Os terrenos rurais são classificados, em função dos fins a que se destinam e do regime jurídico a que estão sujeitos, em terrenos rurais comunitários, terrenos agrários, terrenos florestais, terrenos de instalação e terrenos viários.
2. Os terrenos rurais comunitários são os terrenos ocupados por famílias das comunidades rurais locais para sua habitação, exercício da sua actividade ou para outros fins reconhecidos pelo costume ou pelo presente diploma e respectivos regulamentos.



3. São havidos como terrenos agrários os terrenos aptos para cultura, designadamente para o exercício de actividade agrícola e pecuária, nos termos do regime jurídico de constituição ou transmissão de direitos fundiários previsto na presente lei.
4. Os terrenos florestais são os terrenos aptos para o exercício da actividade silvícola, designadamente para a exploração e utilização racional de florestas naturais ou artificiais, nos termos dos planos de ordenamento rural e da respectiva legislação especial.
5. Entende-se por terrenos de instalação os terrenos destinados à implantação de instalações mineiras, industriais ou agro-industriais, nos termos da presente lei e da respectiva legislação aplicável ao exercício de actividades mineiras e petrolíferas e aos parques industriais.
6. São havidos como terrenos viários os terrenos afectos à implantação de vias terrestres de comunicação, de redes de abastecimento de água e de electricidade, e de redes de drenagem pluvial e de esgotos.

Artigo 23.º

Terrenos rurais comunitários

1. Os terrenos rurais comunitários são os terrenos utilizados por uma comunidade rural segundo o costume relativo ao uso da terra, abrangendo, conforme o caso, as áreas complementares para a agricultura itinerante, os corredores de transumância para o acesso do gado a fontes de água e a pastagens e os atravessadouros, sujeitos ou não ao regime de servidão, utilizados para aceder à água ou às estradas ou caminhos de acesso aos aglomerados urbanos.
2. A delimitação dos terrenos rurais comunitários será precedida da audição das famílias que integram as comunidades rurais e das instituições do Poder Tradicional existentes no lugar da situação daqueles terrenos.

Artigo 24.º

Terrenos agrários

1. Os terrenos agrários são classificados pela entidade competente, através de regulamento próprio, em função do tipo de cultura predominante, em terrenos de regadio, arvenses ou hortícolas, e terrenos de sequeiro.
2. O tipo de cultura, a que se refere o número anterior, é a que seja considerada, pela entidade competente, como mais adequada à aptidão dos terrenos, à conservação destes e à preservação da sua capacidade de regeneração.
3. A transmissão e a constituição pelo Estado de direitos fundiários sobre os terrenos concedíveis e o aproveitamento destes dependem sempre da observância dos critérios enunciados no número anterior.
4. O Estado promoverá operações de remodelação predial destinadas a pôr termo não só à fragmentação como também à dispersão dos prédios rústicos pertencentes ao mesmo titular, com o fim de melhorar o aproveitamento técnico e económico da exploração agrícola, silvícola ou pecuária.
5. O emparcelamento, a que se refere o número anterior, pode implicar a junção de terrenos sobre os quais recaia já a propriedade privada ou o domínio útil do explorador directo.

Artigo 25.º

Terrenos de instalação

1. Sem prejuízo do disposto nos instrumentos de ordenamento do território, a classificação dos terrenos como terrenos de instalação depende da contiguidade destes com minas, fontes de matéria-prima ou eixos viários que aconselhem a implantação de uma instalação mineira ou industrial.
2. É competente, para a classificação de um terreno como terreno de instalação mineira e petrolífera, o órgão que tutela o ordenamento do território e o ambiente, mediante proposta ou parecer



- prévio das entidades que superintendem a respectiva área.
3. A classificação de um terreno como terreno de instalação industrial é da competência do órgão que tutela o ordenamento do território e o ambiente, mediante proposta ou parecer prévio da entidade que tutela a respectiva área.
 4. O órgão que tutela o ordenamento do território e o ambiente deve remeter aos serviços cadastrais cópia dos despachos de classificação dos terrenos, contendo a respectiva fundamentação.
2. Sem prejuízo do disposto no artigo 14.º, n.º 5, da Lei de Bases do Ambiente, a constituição das reservas é da competência do Governo, que nelas poderá incluir terrenos do domínio privado ou do domínio público do Estado ou das autarquias locais, bem como terrenos que já tenham entrado definitivamente na propriedade privada de outrem.
 3. As reservas podem ser totais ou parciais.
 4. Nas reservas totais não é permitida qualquer forma de ocupação ou uso, salvo a que seja exigida para a sua própria conservação ou gestão, tendo em vista a prossecução dos fins de interesse público previstos no respectivo diploma constitutivo.

Artigo 26.º

Terrenos viários

1. Sem prejuízo do regime consagrado no Estatuto das Estradas Nacionais e no Plano Nacional de Estradas, a classificação, pela entidade competente, de um terreno como terreno viário depende de consulta prévia aos organismos que superintendem as áreas de obras públicas, de abastecimento de água e de electricidade e aos Governos Provinciais em cuja circunscrição territorial se integre a rede viária.
 2. A afectação ao domínio público dos terrenos viários do domínio privado do Estado, quando destinados a vias públicas, é da competência dos órgãos que superintendem as áreas de obras públicas e transportes.
 3. É aplicável aos terrenos viários, com as necessárias adaptações, o disposto no n.º 4 do artigo 25.º
5. A constituição de reservas totais visa, entre outros fins, a protecção do meio ambiente, a defesa e segurança nacionais, a preservação de monumentos ou de locais históricos e a promoção do povoamento ou do repovoamento.
 6. Nas reservas parciais são permitidas todas as formas de ocupação ou uso que não colidam com os fins previstos no respectivo diploma constitutivo.
 7. As reservas parciais compreendem, designadamente:
 - a) o leito das águas interiores, do mar territorial e da zona económica exclusiva;
 - b) a plataforma continental;
 - c) a faixa da orla marítima e do contorno de ilhéus, baías e estuários, medida da linha das máximas preia-mares até cem metros para o interior do território;
 - d) a faixa de cem metros confinante com as nascentes de água;
 - e) a faixa de terreno no contorno de barragens e albufeiras até duzentos e cinquenta metros;
 - f) os terrenos ocupados por linhas férreas de interesse público e respectivas estações com uma faixa confinante de cinquenta metros de cada lado do eixo da via;

Artigo 27.º

Terrenos reservados

1. São havidos como terrenos reservados ou reservas os terrenos excluídos do regime geral de ocupação, uso ou fruição por pessoas singulares ou colectivas, em função da sua afectação, total ou parcial, à realização de fins especiais que determinaram a sua constituição.



- g) os terrenos ocupados por auto-estradas, por estradas de quatro faixas e por instalações e condutores de electricidade, de água, de telecomunicações, de petróleo e de gás com uma faixa confinante de trinta metros de cada lado;
 - h) os terrenos ocupados por estradas provinciais com uma faixa confinante de trinta metros e por estradas secundárias e municipais com uma faixa confinante de quinze metros;
 - i) a faixa de terreno de dois quilómetros ao longo da fronteira terrestre;
 - j) os terrenos ocupados por aeroportos e aeródromos com uma faixa confinante de cem metros;
 - k) a faixa de terreno de cem metros confinante com instalações militares e outras instalações de defesa e segurança do Estado.
8. A autoridade que tenha constituído a reserva pode determinar a exclusão de algum ou alguns terrenos do seu âmbito, sempre que ocorra motivo justificado.
9. Os prédios que não pertençam ao Estado podem ser incluídos nas reservas por meio de expropriação por utilidade pública ou pela constituição de servidões administrativas.
10. Havendo expropriação por utilidade pública ou restrições nos termos desta lei, é sempre devida indemnização justa aos proprietários e aos titulares de outros direitos reais afectados, sem prejuízo da possibilidade de estes optarem pela subscrição de capital social das sociedades comerciais que venham a constituir-se para a exploração de actividades relacionadas com o terreno reservado.

Secção II

Dos Direitos Sobre Terrenos

Subsecção I

Domínios do Estado

Artigo 28.º

Domínios do Estado

O Estado e as autarquias locais, por força dos princípios fundamentais consagrados nos artigos 4.º e 12.º, podem ser titulares de direitos fundiários, de harmonia com os seguintes regimes:

- a) domínio público, sendo, neste caso, nomeadamente aplicáveis as normas constantes dos artigos 10.º, n.º 3, 9.º, n.º 1, 13.º e 29.º;
- b) domínio privado, sendo, neste caso, nomeadamente aplicável o disposto nos artigos 5.º, 6.º, 7.º, n.ºs 1 e 2, 8.º, 20.º a 25.º e nas normas da subsecção II da presente secção.

Artigo 29.º

Domínio Público do Estado

1. Estão integrados no domínio público do Estado:
- a) as águas interiores, o mar territorial, a plataforma continental, a zona económica exclusiva, os fundos marinhos contíguos, incluindo os recursos vivos e não vivos neles existentes;
 - b) o espaço aéreo nacional;
 - c) os recursos minerais;
 - d) as estradas e os caminhos públicos, as pontes e as linhas férreas públicas;
 - e) as praias e a orla costeira, numa faixa fixada por foral ou por diploma do Governo, conforme estejam ou não integradas em perímetros urbanos;
 - f) as zonas territoriais reservadas à defesa do ambiente;
 - g) as zonas territoriais reservadas aos portos e aeroportos;
 - h) as zonas territoriais reservadas para fins de defesa militar;
 - i) os monumentos e imóveis de interesse nacional, contanto que



h) hajam assim sido classificados e estejam integrados no domínio público;

- j) outras coisas afectadas, por lei ou por acto administrativo, ao domínio público.
2. Os bens do domínio público são propriedade do Estado e, como tal, são inalienáveis, imprescritíveis e impenhoráveis.

Artigo 30.º

Direitos de exploração do domínio público

A concessão de direitos de pesquisa, exploração e produção de recursos minerais e de outros recursos naturais do domínio público é regulada pela legislação especial aplicável ao tipo de recurso natural em causa.

Artigo 31.º

Classificação e desafecção

1. A classificação ou a desafecção de bens do domínio público é, conforme os casos, declarada por diploma do Governo ou por diploma que aprove os planos gerais de ordenamento do território.
2. A classificação a que se refere o número anterior vale como declaração de utilidade pública para efeitos de processo de expropriação por utilidade pública.

Artigo 32.º

Regime do domínio público autárquico

1. O Estado pode, por diploma próprio do Governo ou por foral, transmitir bens integrados no seu domínio público para as autarquias locais, com o fim de descentralizar a sua gestão.
2. O regime do domínio público do Estado é aplicável, com as necessárias adaptações, ao domínio público das autarquias locais, sem prejuízo, porém, das disposições regulamentares aplicáveis.

Artigo 33.º

Terrenos reservados e direitos das comunidades rurais

1. O Estado assegura às famílias que integram as comunidades rurais residentes nos perímetros dos terrenos reservados:
- a) a tempestiva execução de políticas de ordenamento do território, com vista ao seu bem-estar, ao seu desenvolvimento económico e social e à preservação das áreas em que se adoptem formas tradicionais de aproveitamento da terra;
 - b) a outorga de outros terrenos ou, não sendo esta possível, a compensação adequada que lhes for devida, em caso de constituição de novas reservas que tenha afectado os terrenos por elas possuídos ou fruídos;
 - c) o direito de preferência dos seus membros, em condições de paridade, no provimento de cargos e funções criados nos terrenos reservados;
 - d) a afectação a despesas, que visem a promoção do bem-estar das comunidades rurais, de uma certa percentagem das taxas cobradas pelo acesso aos parques e pela caça, pesca ou actividades turísticas aí desenvolvidas.
2. A percentagem das taxas, a que se refere a alínea d) do número anterior, será fixada no Regulamento Geral de Concessão de Terrenos.

Subsecção II

Direitos Fundiários

Artigo 34.º

Tipos e regime

1. São os seguintes os direitos fundiários que o Estado pode transmitir ou constituir sobre os terrenos concedíveis integrados no seu domínio privado em benefício de pessoas singulares ou colectivas:
- a) direito de propriedade;
 - b) domínio útil consuetudinário;



- c) domínio útil civil;
 - d) direito de ocupação precária;
 - e) direito de superfície.
2. À transmissão e à constituição dos direitos fundiários enumerados no número anterior aplicam-se as disposições da presente lei e dos seus regulamentos.

Artigo 35.º

Direito de propriedade

1. Ao direito de propriedade aplicam-se, além das disposições especiais contidas no presente diploma e nos seus regulamentos, o disposto nos artigos 1302.º a 1384.º Código Civil.
2. O Estado pode transmitir a pessoas singulares de nacionalidade angolana ou a pessoas colectivas, contanto que cidadãos nacionais nestas tenham participação maioritária, o direito de propriedade sobre terrenos urbanos concedíveis integrados no seu domínio privado.
3. O Estado não pode transmitir a pessoas singulares ou a pessoas colectivas de direito privado o direito de propriedade sobre terrenos rurais integrados quer no seu domínio público, quer no seu domínio privado.

Artigo 36.º

Direito de propriedade sobre terrenos urbanos

1. É admissível a transmissão do direito de propriedade sobre terrenos urbanos integrados no domínio privado do Estado ou das autarquias locais, contanto que tais terrenos estejam compreendidos no âmbito de um plano de urbanização ou de instrumento legalmente equivalente e haja sido aprovado o respectivo loteamento.
2. O direito, a que se refere o número anterior, pode ser adquirido por contrato, arrematação em hasta pública ou remição do foro enfitêutico, de acordo com processo de transmissão regulado por

disposições regulamentares da presente lei.

3. É livre a transmissão do direito de propriedade de terrenos urbanos que já tenham entrado no regime de propriedade privada, devendo, neste caso, observar-se o disposto no n.º 2 do artigo anterior.
4. O exercício dos poderes de uso e de transformação dos terrenos urbanos integrados na propriedade privada de pessoas singulares ou colectivas está, designadamente, sujeito às restrições contidas nos planos urbanísticos e às restrições que derivem do fim urbanístico a que tais terrenos se destinam.

Artigo 37.º

Domínio útil consuetudinário

1. São reconhecidos às famílias que integram as comunidades rurais, a ocupação, a posse e os direitos de uso e fruição dos terrenos rurais comunitários por elas ocupados e aproveitados de forma útil e efectiva segundo o costume.
2. O reconhecimento dos direitos, a que se refere o número anterior, é feito em título emitido pela autoridade competente nos termos das disposições regulamentares deste diploma.
3. Os terrenos rurais comunitários, enquanto integrados no domínio útil consuetudinário, não podem ser objecto de concessão.
4. Ouvidas as instituições do Poder Tradicional, poderá, porém, ser determinada a desafecção de terrenos rurais comunitários e a sua concessão, sem prejuízo da outorga de outros terrenos aos titulares do domínio útil consuetudinário ou, não sendo esta possível, sem prejuízo da compensação adequada que lhes for devida.
5. Só podem ser objecto de desafecção os terrenos rurais comunitários livremente desocupados pelos seus titulares de harmonia com as regras consuetudinárias da ordenação dominial provisória ou,



excepcionalmente, nos termos das disposições regulamentares.

6. O exercício do domínio útil consuetudinário é gratuito, estando os seus titulares isentos do pagamento de foros ou de prestações de qualquer espécie.
7. O domínio útil consuetudinário não prescreve, mas pode extinguir-se pelo não uso e pela livre desocupação nos termos das normas consuetudinárias.
8. O domínio útil consuetudinário só pode ser hipotecado nos casos previstos no n.º 4 do artigo 61.º para garantir o pagamento de empréstimos bancários.
9. Se as questões relativas ao domínio útil consuetudinário não puderem ser resolvidas pelo direito consuetudinário, serão reguladas pelas normas constantes dos artigos 1491.º a 1523.º do Código Civil, salvo quanto ao pagamento de foros, considerando-se o Estado como titular do domínio directo e as famílias como titulares do domínio útil.

Artigo 38.º

Domínio útil civil

1. O domínio útil civil é integrado pelo conjunto de poderes que o artigo 1501.º do Código Civil reconhece ao enfiteuta.
2. Ao domínio útil civil aplicam-se, além das disposições especiais contidas no presente diploma e nos seus regulamentos, o disposto nos artigos 1491.º a 1523.º Código Civil.
3. Os terrenos sobre os quais pode recair o domínio útil civil podem ser rurais ou urbanos.
4. O domínio útil civil pode ser constituído por contrato de concessão entre o Estado ou as autarquias locais e o concessionário.
5. O montante do foro é fixado no respectivo contrato, sendo calculado de harmonia com os critérios

estabelecidos por disposição regulamentar do presente diploma, designadamente, com a classificação do terreno e com o grau de desenvolvimento de cada zona ou região.

6. O foro é pago em dinheiro nas Tesourarias das Finanças Públicas no fim de cada ano, contado desde a data da constituição do domínio útil civil.
7. O direito à remição do foro é conferido ao enfiteuta, quando o emprazamento tiver vinte anos de duração, não sendo lícito elevar este prazo.
8. O exercício do direito à remição do foro depende da prova, pelo enfiteuta, de que o aproveitamento efectivo dos terrenos, objecto do domínio útil civil, juntamente com outros eventualmente possuídos em propriedade ou enfiteuse, não é inferior a dois terços da superfície total daqueles terrenos.
9. O preço da remição, pago em dinheiro, é igual a dez foros.
10. Exercida a faculdade de remição e abolida a enfiteuse, é aplicável, com as necessárias adaptações, o disposto no artigo 61.º.
11. O domínio útil civil pode ser hipotecado nos termos da alínea b) do n.º 1 do artigo 688.º do Código Civil.

Artigo 39.º

Direito de superfície

1. É admissível a constituição, pelo Estado ou pelas autarquias locais, do direito de superfície sobre terrenos rurais ou urbanos integrados no seu domínio privado, a favor de pessoas singulares nacionais ou estrangeiras ou de pessoas colectivas com sede principal e efectiva no País ou no estrangeiro.
2. Ao direito de superfície aplicam-se, além das disposições especiais contidas no presente diploma e nos seus regulamentos, o disposto nos artigos 1524.º a 1542.º do Código Civil.
3. O superficiário paga uma única prestação ou certa prestação anual em dinheiro, fixada a título de preço no



- respectivo contrato, sendo o seu montante calculado de harmonia com os critérios estabelecidos por disposição regulamentar do presente diploma, designadamente, com a classificação do terreno e com o grau de desenvolvimento de cada zona ou região.
4. O direito de superfície pode ser hipotecado nos termos da alínea c) do n.º 1 do artigo 688.º do Código Civil.
 5. O superficiário goza do direito de preferência, em último lugar, na venda ou dação em cumprimento do solo.
 6. É aplicável ao direito de preferência o disposto nos artigos 416.º a 418.º e 1410.º do Código Civil.

Artigo 40.º

Direito de ocupação precária

1. É admissível a constituição, pelo Estado ou pelas autarquias locais, sobre os terrenos rurais e urbanos integrados no seu domínio privado, através de contrato de arrendamento celebrado por tempo determinado, de um direito de ocupação precária para a construção de instalações não definitivas destinadas, nomeadamente, a apoiar:
 - a) a construção de edifícios de carácter definitivo;
 - b) actividades de prospecção mineira de curta duração;
 - c) actividades de investigação científica;
 - d) actividades de estudo da natureza e de protecção desta;
 - e) outras actividades previstas em regulamentos autárquicos.
2. O contrato de arrendamento a que se refere o número anterior fixará a área e a localização do terreno objecto do direito de ocupação precária.
3. É igualmente admissível a constituição, por contrato de arrendamento, do direito de uso e ocupação precária de bens fundiários integrados no domínio público, contanto que a natureza destes a permita.
4. A construção de instalações a que se refere o presente artigo fica sujeita ao regime geral das benfeitorias úteis previsto no artigo 1273.º do Código Civil, sendo, em consequência, reconhecidos ao ocupante os seguintes direitos:
 - a) o direito de levantar as instalações implantadas no terreno, desde que o possa fazer sem detrimento dele;
 - b) quando, para evitar o detrimento do terreno, o ocupante não possa levantar aquelas instalações, receberá do Estado ou das autarquias locais, consoante os casos, uma indemnização calculada segundo as regras do enriquecimento sem causa;
 - c) nos casos em que o não levantamento das instalações edificadas pelo ocupante cause prejuízo, designadamente de natureza ambiental, ao terreno ocupado, o ocupante deve repor o terreno na situação em que este se encontrava antes da edificação, não tendo neste caso direito a qualquer indemnização.
5. O ocupante paga uma prestação, única ou periódica, em dinheiro, fixada a título de renda no respectivo contrato, sendo o seu montante calculado de harmonia com os critérios estabelecidos por disposição regulamentar do presente diploma, designadamente, com a área e a classificação do terreno e com o prazo pelo qual haja sido constituído o direito de ocupação precária.



CAPÍTULO III
Concessão de direitos fundiários

Secção I
Disposições gerais

Artigo 41.º

Infra-estruturas urbanas

1. A constituição de direitos fundiários sobre terrenos urbanizáveis depende da observância do disposto nos planos urbanísticos ou em instrumentos equivalentes e da execução das correspondentes obras de urbanização.
2. As receitas que o Estado ou as autarquias locais recebam, como contrapartida da constituição de direitos fundiários sobre terrenos urbanizáveis ou urbanizados, só podem ser aplicadas na aquisição de património.

Artigo 42.º

Titulares

Sem prejuízo do disposto no artigo 35.º, podem adquirir direitos fundiários sobre terrenos concedíveis integrados no domínio privado do Estado ou das autarquias locais:

- a) as pessoas singulares de nacionalidade angolana;
- b) as pessoas colectivas de direito público com sede principal e efectiva no País, contanto que tenham capacidade de aquisição de direitos sobre coisas imóveis;
- c) as pessoas colectivas de direito privado com sede principal e efectiva no País, designadamente as instituições que prossigam a realização de fins culturais, religiosos e de solidariedade social, contanto que tenham capacidade de aquisição de direitos sobre coisas imóveis;
- d) as empresas públicas angolanas e as sociedades comerciais com sede principal e efectiva no País;
- e) as pessoas singulares de nacionalidade estrangeira e as

pessoas colectivas com sede principal e efectiva no estrangeiro, sem prejuízo das restrições estabelecidas na Lei Constitucional e na presente lei;

- f) as entidades estrangeiras de direito público que tenham capacidade de aquisição de direitos sobre coisas imóveis, reconhecida em acordos internacionais, desde que, nos respectivos países, seja dado igual tratamento a entidades angolanas congéneres;
- g) as pessoas colectivas internacionais que, nos termos dos respectivos estatutos, sejam dotadas de capacidade de aquisição de direitos sobre coisas imóveis.

Artigo 43.º

Limites das áreas

1. A área dos terrenos urbanos, objecto de contrato de concessão, não pode exceder:
 - a) nas áreas urbanas, dois hectares;
 - b) nas áreas suburbanas, cinco hectares.
2. A área dos terrenos rurais, objecto de contrato de concessão, não pode ser inferior a dois hectares nem superior a dez mil hectares.
3. O Conselho de Ministros pode, porém, autorizar a transmissão ou a constituição de direitos fundiários sobre terrenos rurais de área superior ao limite máximo indicado no número anterior.

Artigo 44.º

Cumulação de direitos

A transmissão ou a constituição de direitos fundiários a favor de pessoa singular ou colectiva, a quem o Estado ou as autarquias locais hajam anteriormente atribuído algum dos direitos fundiários previstos nesta lei, depende da prova do aproveitamento útil e efectivo dos terrenos concedidos.



Artigo 45.º

Princípio da capacidade adequada

1. As pessoas singulares e colectivas, que requeiram a transmissão ou a constituição de direitos fundiários previstos no presente diploma, devem fazer prova da sua capacidade para garantir o aproveitamento útil e efectivo dos terrenos a conceder.
2. A área dos terrenos a conceder a cada explorador directo depende da sua capacidade para garantir o aproveitamento útil e efectivo dos mesmos.
3. Exceptuam-se do disposto nos números anteriores, os projectos de aproveitamento agrícola, pecuário ou silvícola de terrenos agrários ou florestais cuja área não exceda em dez por cento a superfície mínima correspondente à unidade de cultura fixada para cada zona do País, sendo, nesse caso, dispensada a prova da capacidade adequada.
4. A área da unidade de cultura é fixada por diploma regulamentar da presente lei em função das zonas do País e do tipo de terreno.
5. Para efeitos do disposto no número anterior, os terrenos agrários podem ser:
 - a) terrenos de regadio, arvenses ou hortícolas;
 - b) terrenos de sequeiro.

Artigo 46.º

Negócios jurídicos de concessão

1. São os seguintes os negócios jurídicos pelos quais se podem transmitir ou constituir algum dos direitos fundiários previstos nesta lei:
 - a) contrato de compra e venda;
 - b) aquisição forçada do domínio directo por parte do enfiteuta, operando-se essa transmissão coactiva através do acordo das partes ou de venda judicial mediante o exercício do direito potestativo do foreiro integrado por decisão judicial;

- c) contrato de aforamento para a constituição do domínio útil civil;
- d) contrato especial de concessão para a constituição do direito de superfície;
- e) contrato especial de arrendamento para a concessão do direito de ocupação precária.

2. São aplicáveis aos negócios jurídicos de concessão as disposições especiais da presente lei e dos seus regulamentos e, subsidiariamente, as disposições do Código Civil.
3. Sem prejuízo do disposto no número anterior, as autarquias locais podem, por diploma próprio, disciplinar o conteúdo dos negócios jurídicos de concessão que tenham por objecto terrenos integrados no seu domínio privado.

Artigo 47.º

Onerosidade das concessões

1. A transmissão ou a constituição dos direitos fundiários previstos na presente lei só pode ter lugar a título oneroso.
2. Exceptuam-se do disposto no número anterior:
 - a) a constituição do domínio útil consuetudinário, que não se concretiza através de concessão, mas de simples reconhecimento;
 - b) a constituição de direitos fundiários previstos na presente lei em benefício de pessoas que façam prova de insuficiência de meios económicos, nos termos estabelecidos em disposições regulamentares.
3. Os foros ou outras prestações, únicas ou periódicas, são pagos em dinheiro e o seu montante é fixado em função dos critérios enunciados nos artigos anteriores a respeito de cada tipo de direito fundiário neles previsto.
4. O preço dos terrenos urbanos do domínio privado das autarquias locais é fixado por meio de licitação em hasta pública, a qual terá por base o valor determinado pelos índices de preços fixados pelas regras de mercado e pelos regulamentos municipais vigentes na



província ou no centro urbano em que aqueles prédios se situem.

5. No caso previsto no número anterior, o resultado da licitação é reduzido a auto, no qual se registará o maior lance de cada licitante, sendo o direito adjudicado ao licitante que ofereça o lance mais elevado.

Artigo 48.º

Compra e venda

1. A venda de terrenos, para os efeitos do disposto na alínea a) do n.º 1 do artigo 46.º e do n.º 4 do artigo anterior, é feita por meio de arrematação em hasta pública.
2. Depositado o preço e paga a sisa, se for devida, o Estado ou a autarquia local passará ao arrematante o correspondente título de arrematação, no qual se identifiquem o terreno, se certifique o pagamento do preço e da sisa e se declare a data da transmissão, que coincidirá com a da arrematação.
3. O contrato de compra e venda pode ser resolvido pelo Estado ou pelas autarquias locais, se não forem observados os índices de aproveitamento útil e efectivo do terreno durante três anos consecutivos ou seis anos interpolados, qualquer que seja o motivo.
4. Resolvido o contrato nos termos do número anterior, o adquirente pode exigir a restituição do preço pago, sem qualquer actualização, mas não tem direito a ser indemnizado das benfeitorias que haja feito, que reverterão para o Estado ou para a autarquia local, consoante os casos.
5. O direito de propriedade, a que se refere a alínea a) do n.º 1 do artigo 34.º, só pode ser transmitido pelo adquirente mediante autorização prévia da autoridade concedente e após o decurso de um prazo de cinco anos de aproveitamento útil e efectivo do terreno, contados desde a

data da sua concessão ou da data da sua última transmissão.

6. Os terrenos sobre os quais tenham sido constituídos direitos de superfície ou que tenham sido emprazados, e que tenham sido objecto de aproveitamento útil e efectivo durante o prazo legalmente fixado, podem ser vendidos, com dispensa de hasta pública, aos titulares daqueles direitos fundiários limitados.
7. É aplicável ao contrato de compra e venda, com as necessárias adaptações, o disposto no artigo seguinte.

Artigo 49.º

Concessão

1. Os contratos de concessão previstos no artigo 46.º, n.º 1, alíneas c), d) e e), só são válidos se forem celebrados por documento escrito do qual constem, além dos demais elementos essenciais, os direitos e os deveres dos concessionários, as sanções aplicáveis em caso de incumprimento destes últimos e as causas de extinção do direito fundiário.
2. O contrato de concessão celebrado nos termos do artigo anterior constitui título de concessão, nos termos das disposições regulamentares.

Artigo 50.º

Concessões gratuitas

O Estado e as autarquias locais podem transmitir ou constituir direitos fundiários, a título gratuito, sobre terrenos integrados no seu domínio privado, em benefício de:

- a) pessoas que façam prova de insuficiência de meios económicos e que desejem integrar projectos de povoamento de zonas do País menos desenvolvidas;
- b) instituições de utilidade pública reconhecida, que prossigam a realização de fins de solidariedade social, culturais, religiosos ou desportivos.



Artigo 51.º

Limites dos terrenos comunitários

1. A delimitação das áreas das comunidades rurais e a definição do aproveitamento dos terrenos comunitários, pela autoridade competente, devem obedecer ao disposto nos correspondentes instrumentos de ordenamento do território e nas disposições regulamentares da presente lei.
2. Para os efeitos do disposto no número anterior, a autoridade competente deve ouvir as autoridades administrativas, as instituições do Poder Tradicional e as famílias da comunidade rural afectada.

Artigo 52.º

Limites dos Terrenos Urbanos

Os limites dos terrenos urbanos são fixados pelos forais, pelos planos urbanísticos e pelas operações de loteamento que hajam sido aprovadas.

Artigo 53.º

Foral

1. O Governo, sob proposta fundamentada do Governador da respectiva província, pode outorgar forais aos centros urbanos, contanto que se verifiquem cumulativamente as seguintes condições:
 - a) a existência de um plano geral de urbanização devidamente aprovado;
 - b) a existência de serviços municipais de cadastros;
 - c) a existência de redes de abastecimento de água e de fornecimento de energia eléctrica e de redes de saneamento básico.
2. Os forais delimitam a área dos terrenos integrados no domínio público do Estado e por este afectados às autarquias locais para gestão autónoma.
3. Os forais são aprovados por diploma do Governo.

Artigo 54.º

Loteamento

1. Constitui operação de loteamento a acção que tenha por objecto ou por efeito a divisão de terrenos urbanizáveis em um ou mais lotes destinados, imediata ou subsequentemente, à edificação urbana, de harmonia com o disposto nos planos de urbanização, ou na sua falta ou insuficiência, com as decisões das órgãos autárquicos competentes.
2. Entende-se por lote a unidade autonomizada de terreno resultante da operação de loteamento.
3. As operações de loteamento dos terrenos integrados no domínio privado da autarquia têm lugar por iniciativa do respectivo município.
4. Nos casos não abrangidos pelo disposto no número anterior, o loteamento é aprovado por alvará emitido pela autarquia local, mediante prévio requerimento dos particulares interessados.

Artigo 55.º

Duração das concessões

1. Os direitos fundiários previstos na presente lei são transmitidos ou constituídos:
 - a) perpetuamente, no caso do direito de propriedade, sem prejuízo do disposto no artigo 48.º quanto à resolução do contrato de compra e venda;
 - b) perpetuamente, no caso do domínio útil consuetudinário, sem prejuízo da sua extinção pelo não uso e pela livre desocupação nos termos das normas consuetudinárias;
 - c) perpetuamente, no caso do domínio útil civil, sem prejuízo do direito de remição;
 - d) por prazo não superior a quarenta e cinco anos, no caso do direito de superfície;
 - e) por prazo não superior a um ano, no caso do direito de ocupação precária.
2. Nos casos previstos nas alíneas d) e e) do número anterior, findo o prazo, o



contrato renova-se por períodos sucessivos, se nenhuma das partes o tiver denunciado no tempo e pela forma convencionados ou se não ocorrer nenhuma causa de extinção prevista na lei.

Artigo 56.º

Deveres do adquirente

São obrigações do adquirente dos direitos fundiários:

- a) pagar tempestivamente os foros e demais prestações a que, conforme o caso, esteja obrigado;
- b) efectuar o aproveitamento útil e efectivo do terreno concedido de acordo com os índices fixados;
- c) não aplicar o terreno a fim diverso daquele a que ele se destina;
- d) não violar as regras do ordenamento do território e dos planos urbanísticos;
- e) utilizar o terreno de modo a salvaguardar a capacidade de regeneração do mesmo e dos recursos naturais nele existentes;
- f) respeitar as normas de protecção do ambiente;
- g) não exceder os limites impostos no artigo 18.º;
- h) respeitar os direitos fundiários das comunidades rurais, designadamente, as servidões de passagem que recaiam sobre o seu terreno;
- i) prestar às autoridades competentes todas as informações por estas solicitadas sobre o aproveitamento útil e efectivo do terreno;
- j) observar o disposto na presente lei e nos seus regulamentos.

Artigo 57.º

Prestações

1. Os titulares de direitos fundiários estão sujeitos ao pagamento, a título de preço ou de renda, de uma única prestação ou de uma certa prestação anual.

2. A prestação anual pode ser progressiva ou regressiva, consoante o tipo e o montante de investimento realizado.
3. As prestações são pagas em dinheiro e são fixadas no respectivo contrato, sendo o seu montante calculado com base na situação e classificação do terreno, na sua área e no fim a que se destina.

Artigo 58.º

Processo de concessão

1. O processo de concessão inicia-se com a apresentação do requerimento pelo interessado e compreende as fases de demarcação provisória, de apreciação, de aprovação e de demarcação definitiva.
2. O Regulamento Geral de Concessão de Terrenos fixará o regime jurídico aplicável ao processo de concessão.

Artigo 59.º

Título de concessão

A autoridade competente emite um título de concessão, segundo o modelo legalmente fixado, no qual se identifiquem a natureza do terreno concedido, o tipo de direito fundiário transmitido ou constituído, a data da transmissão ou da constituição, o prazo do contrato de concessão, a identificação da autoridade concedente, e, sendo caso disso, o preço e a sisa que hajam sido pagos.

Artigo 60.º

Registo cadastral e registo predial

1. O Governo aprovará as normas que garantam a harmonização dos actos praticados pela autoridade concedente com aqueles que devam ser praticados pelos serviços do registo cadastral e do registo predial.
2. Estão sujeitos a inscrição no registo predial os factos jurídicos que determinem a constituição, o reconhecimento, a aquisição, a modificação e a extinção dos direitos fundiários previstos nesta lei.
3. Os factos referidos no número anterior só produzem efeitos contra terceiros depois da data do respectivo registo,



- mas, ainda que não registados, podem ser invocados entre as próprias partes ou seus herdeiros.
4. O Conservador deve recusar o pedido de registo se o apresentante não exhibir o respectivo título de concessão e, sendo caso disso, fotocópia, autenticada por notário, do despacho de autorização prévia da transmissão proferido pela autoridade concedente.
 5. Ao processo de registo aplica-se o disposto na presente lei, nos seus regulamentos e no Código do Registo Predial.
 6. Deve a autoridade concedente, oficiosamente, remeter certidão do contrato, a documentação correspondente e o requerimento do registo definitivo à conservatória do registo predial competente, onde ficarão arquivados, devendo o adquirente pagar antecipadamente os respectivos emolumentos e despesas.
 7. A autoridade concedente deve arquivar uma cópia dos documentos relativos à transmissão ou à constituição dos direitos fundiários sobre os terrenos concedíveis, de modo a garantir a reforma de qualquer processo de concessão que venha a ser destruído ou que venha a desaparecer.
3. Se a transmissão for a título oneroso, deve ser indicado o seu valor.
 4. A transmissão por morte está sujeita a inscrição no título de concessão, devendo a assinatura do sucessor ser reconhecida presencialmente, após apresentação ao notário, para arquivo, de documento comprovativo da respectiva qualidade.
 5. A transmissão dos direitos fundiários implica a cessão dos direitos e obrigações do respectivo titular em face do Estado ou das autarquias locais.
 6. A transmissão de direitos, em vida, quer a título gratuito, quer a título oneroso, só pode ser realizada pelo seu titular, sob pena de nulidade, mediante autorização prévia da autoridade concedente e após o decurso de um prazo de cinco anos de aproveitamento útil e efectivo do terreno, contados desde a data da sua concessão ou da data da sua última transmissão.
 7. A autorização referida no número anterior caduca no prazo de um ano a contar da data da notificação ao requerente do respectivo despacho.
 8. No caso de transmissão por acto entre vivos de direitos fundiários, o notário não pode reconhecer a assinatura do alienante se não lhe tiver sido apresentado, para arquivo, o despacho de autorização.
 9. O Estado goza do direito de preferência e tem o primeiro lugar entre os preferentes legais no caso de venda, dação em cumprimento ou aforamento dos terrenos concedidos.
 10. É aplicável ao direito de preferência previsto no número anterior o disposto nos artigos 416.º a 418.º e 1410.º do Código Civil.

Secção II

Transmissão e extinção dos direitos fundiários

Artigo 61.º

Transmissão

1. Sem prejuízo do disposto nos artigos anteriores e das restrições neles estabelecidas, os direitos fundiários são transmissíveis em vida e por morte.
2. A transmissão por acto entre vivos de direitos fundiários faz-se mediante declaração das partes no título de concessão, com reconhecimento presencial da

Artigo 62.º

Alteração da concessão

1. Os factos modificativos ou extintivos dos direitos fundiários, designadamente os resultantes de execução judicial, fraccionamento ou emparcelamento dos



terrenos concedidos, estão sujeitos a inscrição no título de concessão e no registo predial.

2. Os tribunais não podem proferir sentenças de que resulte a transmissão de direitos fundiários sobre terrenos concedidos, sem que esta tenha sido previamente autorizada pela autoridade concedente, sendo, neste caso, aplicável, com as necessárias adaptações, o disposto no artigo anterior.

Artigo 63.º

Concessões gratuitas

1. São intransmissíveis os direitos fundiários que o Estado ou as autarquias locais hajam transmitido ou constituído, a título gratuito, em benefício das pessoas e das instituições referidas nas alíneas a) e b) do artigo 50.º.
2. A autoridade concedente pode, porém, autorizar a transmissão, contanto que esta seja realizada a favor de pessoa ou instituição que preencha os requisitos enunciados nas alíneas a) e b) do artigo 50.º.
3. Sem prejuízo do regime de desafectação a que se refere o artigo 37.º e sem prejuízo do direito consuetudinário, o titular do domínio útil consuetudinário não pode transmitir o seu direito em vida nem por morte.
4. O domínio útil consuetudinário é impenhorável, salvo nos casos em que tenha sido hipotecado para garantir o pagamento de empréstimos bancários contraídos pelo seu titular com vista ao aproveitamento útil e efectivo do terreno concedido.

Artigo 64.º

Causas de extinção

Os direitos fundiários extinguem-se, nomeadamente:

- a) pelo decurso do prazo, sendo constituídos por certo tempo, se o

contrato de concessão não for renovado;

- b) pelo seu não exercício ou pela inobservância dos índices de aproveitamento útil e efectivo durante três anos consecutivos ou seis anos interpolados, qualquer que seja o motivo;
- c) pela aplicação do terreno a fim diverso daquele a que ele se destina;
- d) pelo exercício do direito fundiário em contravenção do disposto no artigo 18.º;
- e) pela expropriação por utilidade pública;
- f) pelo desaparecimento ou inutilização do terreno.

Artigo 65.º

Sanções

Os titulares de direitos fundiários, que violem as disposições da presente lei, ficam sujeitos à aplicação das sanções estabelecidas nas disposições regulamentares.

Secção III

Competência para as concessões

Artigo 66.º

Conselho de Ministros

1. Compete ao Conselho de Ministros, nomeadamente:
 - a) autorizar a concessão da ocupação, uso e fruição do leito das águas territoriais, da plataforma continental e da zona económica exclusiva;
 - b) autorizar a concessão da ocupação, uso e fruição de outros bens fundiários integrados no domínio público do Estado;
 - c) autorizar a transmissão ou a constituição de direitos fundiários sobre terrenos rurais até dez mil hectares, nos termos do n.º 3 do artigo 43.º.
 - d) autorizar a transmissão de terrenos do domínio público para o domínio privado do Estado;



- e) autorizar a transmissão, para as autarquias locais, de direitos sobre terrenos integrados no domínio público e privado do Estado;
 - f) autorizar a concessão de forais aos centros urbanos.
2. As competências previstas nas alíneas b), d), e) e f) do número anterior podem ser delegadas, em função do tipo de terrenos, nos Ministérios que tenham competência legalmente fixada no respectivo domínio.
3. A autorização para a transmissão ou para a constituição de direitos fundiários, sobre terrenos rurais de área superior a mil e igual ou inferior a dez mil hectares, é da competência das entidades referidas no número anterior.

Outra possível redacção do artigo 66.º, n.ºs 2 e 3:

2. *As competências previstas nas alíneas b), d), e), f) e g) do número anterior podem ser delegadas, em função do tipo de terrenos, na entidade que tenha a seu cargo a superintendência do cadastro.*
3. *A autorização para a transmissão ou para a constituição de direitos fundiários, sobre terrenos rurais de área superior a mil e igual ou inferior a dez mil hectares, é da competência da entidade que superintenda o cadastro, mediante parecer vinculativo da entidade que tutela a respectiva área.*

Artigo 67.º

Órgão Central para a Gestão Técnica de Terras

Compete ao Órgão Central para a Gestão Técnica de Terras, nomeadamente:

- a) organizar e conservar o tomo, de modo a permitir a identificação de cada terreno, não só quanto à sua situação, com também quanto aos factos

- jurídicos sujeitos a registo a ele respeitantes;
- b) organizar e executar os trabalhos técnicos relativos à demarcação dos terrenos e reservas;
- c) organizar, executar e manter actualizado o cadastro geométrico;
- d) preparar a programação geral da cartografia do País, submeter à autoridade competente a respectiva aprovação e mantê-la actualizada;
- e) executar, nas zonas rurais, as directivas contidas nos planos de ordenamento do território.

Artigo 68.º

Governos Provinciais

1. Compete ao Governo Provincial, relativamente ao terrenos integrados na sua circunscrição territorial, nomeadamente:
- a) autorizar a transmissão ou a constituição de direitos fundiários sobre terrenos rurais, agrários ou florestais, de área igual ou inferior a mil hectares;
 - b) autorizar a transmissão ou a constituição de direitos fundiários sobre terrenos urbanos, de acordo com os planos urbanísticos e com os loteamentos aprovados;
 - c) celebrar contratos de arrendamento pelos quais se constituam direitos de ocupação precária de terrenos do domínio público e privado do Estado, nos termos a definir por regulamento;
 - d) submeter ao Conselho de Ministros propostas de transferência de terrenos do domínio público para o domínio privado do Estado;
 - e) submeter ao Conselho de Ministros propostas de concessão de forais aos centros urbanos que preencham os requisitos legais;
 - f) administrar o domínio fundiário, público e privado, do Estado;
 - g) fiscalizar o cumprimento do disposto na presente lei e nos seus regulamentos.



2. Compete ao Administrador Municipal autorizar a concessão de terrenos até mil metros quadrados.

CAPÍTULO IV **Disposições Processuais**

Secção I **Acção de Nulidade**

Artigo 69.º

Declaração de nulidade

São nulas as decisões da autoridade concedente contrárias à lei ou aos seus regulamentos.

Artigo 70.º

Legitimidade activa

1. Sem prejuízo do disposto no artigo 286.º do Código Civil, a acção de nulidade pode ser intentada:
 - a) por associações de defesa do ambiente dotadas de representatividade, no âmbito previsto na legislação respectiva;
 - b) por associações de interesses económicos legalmente constituídas, actuando no âmbito das suas atribuições.
 - c) pelas comunidades rurais, para defesa dos seus direitos colectivos.
2. As entidades referidas no número anterior actuam, em juízo, em nome próprio, embora façam valer um direito alheio pertencente, em conjunto, às pessoas susceptíveis de ser atingidas pelas decisões nulas.
3. É reconhecida às comunidades rurais personalidade e capacidade judiciárias.

Artigo 71.º

Legitimidade passiva

1. A acção referida no artigo anterior deve ser intentada contra a autoridade concedente que haja proferido a decisão contrária à lei ou aos seus regulamentos.
2. A autoridade concedente é representada pelo Ministério Público.

Artigo 72.º

Tribunal competente

1. Para a acção de nulidade é competente a Sala do Cível e Administrativo do Tribunal Provincial do lugar em que a autoridade concedente tenha a sua sede.
2. As pessoas singulares ou colectivas estrangeiras, devem, no momento da constituição do direito fundiário, nos litígios a eles referente, declarar expressamente que ficam sujeitos a jurisdição dos tribunais nacionais.

Artigo 73.º

Forma do processo

1. A acção de nulidade segue os termos do processo sumário de declaração e está isenta de preparos e de custas.
2. A acção referida no número anterior admite sempre recurso para a Câmara do Cível e Administrativo do Tribunal Supremo, independentemente do valor da causa.
3. A apelação interposta da sentença que decreta a nulidade não suspende a execução desta.

Artigo 74.º

Natureza do processo

Os processos a que se refere a presente secção, bem como os que deles são dependentes, não têm carácter urgente, sem prejuízo de os actos relativos à adjudicação da propriedade, de um direito fundiário limitado ou da posse e sua notificação aos interessados deverem ser praticados mesmo durante as férias judiciais.

Artigo 75.º

Comunicação das decisões judiciais para efeitos de registo

Os tribunais devem remeter, no prazo de trinta dias a contar do trânsito em julgado, à respectiva Conservatória do Registo Predial, cópia da decisão que haja decretado a extinção de algum dos direitos fundiários previstos nesta lei ou que tenha decretado a nulidade ou a anulação de um registo ou do seu cancelamento.



Artigo 76.º

Âmbito desta secção

As normas da presente secção aplicam-se, com as necessárias adaptações, às restantes nulidades previstas neste diploma ou nos seus regulamentos.

Secção II

Mediação e Conciliação

Artigo 77.º

Tentativa de mediação e conciliação

1. Os litígios relativos aos direitos fundiários são obrigatoriamente submetidos a tentativa de mediação e conciliação antes da propositura da acção no tribunal competente.
2. Exceptua-se do disposto no número anterior a acção de nulidade, a que se refere a secção anterior, que pode ser imediatamente proposta pelo interessado na Sala do Cível e Administrativo do Tribunal Provincial competente.

Artigo 78.º

Órgão de mediação e conciliação e tramitação do procedimento

1. A composição do órgão de mediação e conciliação e a tramitação do procedimento previsto nesta secção serão fixadas no Regulamento Geral de Concessão de Terrenos.
2. O procedimento de mediação e conciliação deve obedecer aos princípios da imparcialidade, celeridade e gratuidade.
3. Quando o litígio recaia sobre interesses individuais homogêneos ou colectivos, podem as entidades referidas no artigo 70.º, n.º 1, tomar a iniciativa do procedimento de mediação e conciliação e nele participar, a título principal ou acessório.
4. O órgão de mediação pode tentar a conciliação ou propor às partes a solução que lhe pareça mais adequada.
5. O acordo resultante da mediação será reduzido a escrito e tem a natureza de transacção extrajudicial.

Secção III

Arbitragem

Artigo 79.º

Resolução de litígios

Sem prejuízo do disposto nas secções anteriores, os eventuais litígios que possam surgir sobre a transmissão ou a constituição de direitos fundiários deverão ser submetidos a arbitragem.

80.º

Tribunal arbitral e designação dos árbitros

1. O tribunal arbitral será composto por três membros, sendo dois nomeados por cada uma das partes, e o terceiro, que desempenhará as funções de árbitro-presidente, escolhido de comum acordo pelos árbitros que as partes tiverem designado.
2. O tribunal arbitral considera-se constituído na data em que o terceiro árbitro aceitar a sua nomeação e o comunicar às partes.
3. O tribunal arbitral funcionará na sede do Governo da Província da situação dos terrenos ou da sua maior extensão e utilizará a língua portuguesa.
4. O tribunal arbitral julgará de acordo com a lei angolana.
5. As decisões do tribunal arbitral deverão ser proferidas no prazo máximo de seis meses após a data da sua constituição.
6. Sem prejuízo do disposto no Capítulo V da Lei n.º 16/03, de 25 de Julho, as decisões do tribunal arbitral são finais e vinculativas, e delas não cabe recurso.
7. A decisão arbitral estabelecerá ainda quem deve suportar os custos da arbitragem e em que proporção.

Artigo 81.º

Normas aplicáveis

A arbitragem rege-se pelo disposto no presente diploma e, no que não esteja em oposição com este, pelo regime geral da arbitragem voluntária consagrado na Lei n.º 16/03, de 25 de Julho.



Secção IV **Justiça comunitária**

Artigo 82.º

Litígios no interior das comunidades rurais

1. Os litígios relativos aos direitos colectivos de posse, de gestão, de uso e fruição e do domínio útil consuetudinário dos terrenos rurais comunitários serão decididos no interior das comunidades rurais, de harmonia com o costume vigente na comunidade respectiva.
2. Se uma das partes não estiver de acordo com a resolução do litígio nos termos enunciados no número anterior, será o mesmo decidido pelos tribunais, sendo aplicável, neste caso, o disposto na secção II do presente capítulo.
3. Serão confiscados, nos termos da legislação correspondente, os terrenos a que se refere o número anterior, caso persista a situação de abandono injustificado ou de não regularização.
4. Relativamente a processos de concessão que se encontrem pendentes, devem os requerentes, no prazo de um ano a contar da publicação do regulamento geral ou especial aplicável, alterar o pedido de concessão, de harmonia com as disposições da presente lei, designadamente no que toca aos tipos de direitos fundiários nela previstos.
5. Enquanto não forem constituídas as autarquias locais, as suas atribuições e competências serão exercidas pelos órgãos locais do Estado.

CAPÍTULO V **Disposições finais e transitórias**

Artigo 83.º

Situações transitórias

1. Os direitos de superfície constituídos ao abrigo da Lei n.º 21-C/92, e 28 de Agosto, do seu Regulamento de Concessões, aprovado pelos Decretos n.ºs 32/95, de 8 e Dezembro, e 46/92, de 9 de Setembro, e dos demais regulamentos locais ou especiais, ficam sujeitos ao regime do direito de superfície previsto na presente lei.
2. Aos direitos fundiários constituídos nos termos da legislação vigente antes da entrada em vigor dos diplomas referidos no número anterior, aplica-se o regime do direito de superfície previsto na presente lei, contanto que:
 - a) os terrenos sobre que recaiam aqueles direitos não tenham sido nacionalizados ou confiscados;
 - b) os respectivos titulares tenham procedido à respectiva regularização nos termos e nos prazos previstos na Lei n.º 21-

Artigo 84.º

Títulos de ocupação

1. Sem prejuízo do disposto no artigo 6.º, n.ºs 5 e 6, as pessoas singulares e as pessoas colectivas que ocupam, sem qualquer título, terrenos do Estado ou das autarquias locais, devem, no prazo de um ano a contar da publicação do regulamento geral ou especial aplicável, requerer a emissão de título de concessão.
2. A inobservância do disposto no número anterior implica a não aquisição de qualquer direito fundiário pelo ocupante, por força da inexistência de título.
3. O Estado e as autarquias locais podem usar, contra o ocupante, dos meios facultados ao possuidor nos artigos 1276.º e seguintes do Código Civil.
4. Nos casos referidos nos números anteriores, a emissão de título de concessão depende do preenchimento dos requisitos fixados na presente lei, nos seus regulamentos, nos planos urbanísticos ou, na sua falta ou



insuficiência, nos instrumentos de gestão urbanística aprovados pela autoridade competente.

Artigo 85.º

Regulamentação

O Governo aprovará o Regulamento Geral de Concessão de Terrenos, no prazo de seis meses a contar da data de entrada em vigor da presente lei.

Artigo 86.º

Alterações ao Código Civil

Os artigos 1524.º e 1525.º, n.º 2, do Código Civil passam a ter a seguinte redacção:

“Artigo 1524.º - Noção

O direito de superfície consiste na faculdade de construir ou manter, perpétua ou temporariamente, uma obra em prédio alheio, ou de nele fazer ou manter plantações.”

“Artigo 1525.º - Objecto

1. [...]
2. O direito de superfície pode ter por objecto a construção ou a manutenção de obra sob solo alheio.”

Artigo 87.º

Norma revogatória

Fica revogada toda a legislação que contrarie o disposto na presente lei e nos respectivos regulamentos, nomeadamente a Lei n.º 21-C/92, de 28 de Agosto, e o Regulamento de Concessões, aprovado pelos Decretos n.ºs 32/95, de 8 e Dezembro, e 46/92, de 9 de Setembro.

Artigo 88.º

Entrada em vigor

A presente lei entra em vigor a partir da data da sua publicação.

O PRESIDENTE DA ASSEMBLEIA
NACIONAL
ROBERTO ANTÓNIO VICTOR
FRANCISCO DE ALMEIDA

Promulgada em de de
2003
Publique-se

O PRESIDENTE DA REPÚBLICA
JOSÉ EDUARDO DOS SANTOS

REPUBLIC OF MOZAMBIQUE
MINISTRY OF AGRICULTURE AND FISHERIES
Office of the Minister

MINISTERIAL DIPLOMA No/99
Of 7 December 1999

In compliance with the regulations of the Land Law which was approved by Decree No. 66/98, of 8 December, it has become necessary to define the requirements for the delimitation of areas occupied by local communities and by national singular persons occupying land in good faith, as well as land demarcation within the context of the issuing of titles relating to the right of use and benefit of the land.

In these terms, and within the scope of the authority granted by article 47 of the Regulations to the Land Law, the Minister of Agriculture and Fisheries determines:

Only article: The Technical Annex to the Regulations of the Land Law is hereby approved and annexed to the present Ministerial Diploma and forms an integral part thereof.

Ministry of Agriculture and Fisheries, at Maputo, on 7 of December of 1999.

THE MINISTER OF AGRICULTURE AND FISHERIES

Carlos Agostinho do Rosário

TECHNICAL ANNEX TO THE LAND LAW REGULATIONS

CHAPTER I GENERAL PROVISIONS

Article 1 Scope

The present Technical Annex shall apply:

1. To the delimitation of areas which are occupied by local communities according to customary practices;
2. To the delimitation of areas which are occupied in good faith for at least ten years by national natural persons;
3. To the demarcation, in the ambit of an application for title in:
 - a) Areas occupied by local communities according to customary practices;
 - b) Areas occupied in good faith for at least ten years by national natural persons;
 - c) Areas in which a request for the acquisition of the right of use and benefit of land was made either by natural or juristic persons be they national or foreign, and where provisional authority was issued.

Article 2 Definitions

For the purpose of the present Technical Annex, the following shall mean:-

1. **demarcation notice:** a report describing the work executed including the information regarding technical and auxiliary staff involved, the time of execution, the technology and measuring instruments used, the topographical assistance work, the location, adjustments and compensations made, the total extent, the perimeter and number of markings implanted. This report has to be accompanied by a declaration made by either the titleholder or the applicant stating that he/she will maintain the markings.
2. **Sketch map:** an approximate graphic representation regarding the location of the area, containing topographical information and other details indicated on the participatory maps, which was a result of consensus being reached by the community of all the various participatory maps drawn.
3. **Delimitation:** identification of the boundaries of the areas occupied by local communities or natural national persons, which in good faith are and have been using the land for at least ten years, including the entry of the information into the National Land Cadastre.
4. **Partial Delimitation:** identification of part of the perimeter of a determined area, including only the boundaries which are in conflict or the boundaries where new economic activities and/or new development projects and plans are to be initiated.
5. **Demarcation:** transfer, to the land, of information contained in the diagram and its description regarding boundaries of a portion of land, in the ambit of an application for title.
6. **Participatory Process:** collection of information given by local community regarding: (a) its history; social and cultural organisation; (b) the utilisation of the land and other natural resources and the mechanisms for its management; (c) spatial occupation; (d) population dynamics; (e) possible conflicts and the mechanisms for their resolution, with a view to the drawing of the sketch map.

7. **Diagram:** the diagram representing in conventional scale, the configuration of a portion of land, containing references either drawn or written appropriate for the finding of the land in the Cadastral Atlas including, when necessary, the geo-referencing of points and/or boundary lines not visible on existing topographical maps. The diagram is always accompanied by its descriptive memorandum.
8. **Participatory map:** a diagram designed, by an interest group of the community, namely men, women, youth, pensioners and others, which indicate without scale the natural or artificial landmarks of a permanent character which are used as boundaries, the identification and location of natural resources, reference points where conflicts regarding natural resources take place or any other boundaries or relevant aspects.
9. **Descriptive memorandum of diagram:** written information regarding (a) the description of the boundary points; (b) boundary lines; (c) existing servitudes.
10. **Occupation:** form of acquisition of the right of use and benefit of land by national natural persons which, in good faith, have and are using the land for at least ten years or by local communities.
11. **Topographical plan;** diagram of a demarcated portion of land, containing its scale, its boundaries with numbered points and other particulars for the localising of boundaries, existing servitudes, extent, number of the portion of land as well as neighbouring portions and the number of the official map in a scale of 1:50 000 or 1:250 000 which covers the relevant portion of land.
12. **Technical acknowledgement:** procedure followed from the diagram and its descriptive memorandum to verify the boundaries of the portion of land to be demarcated including the verification of the visibility between boundary points following the applied technology, localising of the existing geodetic points, calculation of the number of marks needed and the estimation of the costs for the demarcation.
13. **Title Deed:** the document issued by Cadastral services confirming the right of use and benefit of land.

Article 3

Realisation of economic activities and other enterprises

The delimitation and/or demarcation of areas occupied by local communities does not impede the realisation of economic activities or other enterprises, as long as consent from the communities is obtained.

Article 4

Measurements, calculations and boundaries

1. At the boundary points that do not exist on topographical maps, measurements and calculation of co-ordinates are to be effected.
2. The precision of measurements and calculations are adapted to the position, dimension and type of utilization of the area according to the rules contained in the instructions issued by Cadastral Services.
3. In the case of delimitation of areas occupied by local communities, the requirement of measurements in the diagram shall not be inferior to one second, or approximately thirty meters.
4. When there are no natural or artificial boundaries of a permanent character, the direction of the boundary is assured through other physical marks such as trees, cairns or concrete marks. In the case of local communities, new hedges of trees or shrubs can be planted in the presence of neighbouring communities.

CHAPTER II

DELIMITATION OF AREAS OCCUPIED BY LOCAL COMMUNITIES

Article 5

Phases of delimitation

1. The delimitation of areas occupied by local communities comprise of the following:-
 - a) Information and dissemination;
 - b) Participatory process;
 - c) Diagram and descriptive memorandum;
 - d) Devolution;
 - e) Entry into the National Land Cadastre
2. To ensure that results are representative and that consensus regarding the delimitation exists, in the aforementioned phases (a) to (d) in number 1 of the present article, the working group that assists in the demarcation shall work with men and women and with diverse socio-economic groups and the elderly within local communities.
3. The neighbours participate in the delimitation, as their participation is obligatory in confirming the diagram and its descriptive memorandum as well as in the devolution.

Article 6

Realization of the delimitation

For the execution of the various phases of the delimitation, the following shall be observed:

1. The phases of the information and dissemination, participatory process, the completion of the diagram and its descriptive memorandum, as prescribed in articles 8, 10, 11 and 12 of the present Technical Annex, shall be completed by an advisory working group with specific training regarding the procedures prescribed in the present Technical Annex.
2. In the phases regarding the completing of the diagram and its descriptive memorandum and the devolution, prescribed in articles 11 and 12 of the present Technical Annex, it shall be obligatory for a technician with basic knowledge of topography, who may be a functionary of the Cadastral Services, or in private practice, in which case his/her relevant professional certificate should be annexed.
3. The signature of the forms and of the minutes referred to in numbers 2 and 3 of article 8 and numbers 2 and 3 of article 12 shall be made by not less than three and not more than nine men and women of the communities, chosen at public meetings.
4. The registration in the National Land Cadastre phase is completed by the Cadastral Services.

Article 7

Priorities, participation and costs

1. The delimitation of local community areas is prioritized in the following cases:
 - a) Where there are conflicts regarding the use of the land and/or natural resources;
 - b) In local community areas where the state and/or other investors intend initiating new economic activities and/or development projects or plans;
 - c) On request from local communities.

2. In the cases referred to in (a) and (b) of the present article, partial delimitations can be done.
3. The local communities shall actively participate in the delimitation of areas that are occupied by them.
4. The costs of the delimitation shall be payable in accordance to the following criteria:
 - a) When the delimitation is effected due to the existence of conflicts, the division of costs shall be decided on by the local Public Administration;
 - b) When the delimitation is effected due to new economic activities and/or development projects and plans, the costs shall be payable by the investors.

Article 8

Information and dissemination

1. The delimitation is initiated by the rendering of information regarding:
 - a) The reasons for the process;
 - b) Relevant provisions of the Land Law and its Regulations;
 - c) Objectives and methodology of the delimitation;
 - d) Advantages and implications.
2. The contents and participation in the information sessions shall be registered in Form 1 of the present Technical Annex.
3. Form 2 of the present Technical Annex and the minutes of the information and dissemination sessions shall be signed by the local community representatives as well as the District Administrator or his/her representative. The minutes shall be signed in triplicate, with the local community, the District Administration and the working group each retaining a copy thereof.

Article 9

Information to Cadastral Services

1. In the cases referred to in subsection (a) and (c) of number 1 of article 6 of the present Technical Annex the local communities shall immediately after the information and dissemination phase submit Forms 1 and 2 to Cadastral Services.
2. In the cases referred to in subsection (b) of number 1 of article 6 of the present Technical Annex the submission of Forms 1 and 2 shall be done by the state and/or other investors.

Article 10

Participatory process

1. With the basis of the information provided by the community a minimum of two participatory maps shall be produced which will indicate the boundaries between a local community and its neighbours.
2. When there are no natural or artificial borders of a permanent character, the community shall indicate any other physical marks, such as trees or stone cairns, which indicate the boundaries of the area occupied by itself.
3. Following the participatory maps the sketch map is drawn.
4. The results of the participatory process shall be reported on containing information and in compliance with Form 3 of the present Technical Annex as well as the sketch map.

Article 11

1. The details represented in the sketch map are specified and completed in the diagram and its descriptive memorandum.

2. For the effect of number 1 of the present article, field work has to be done which involves:
 - a) The local community;
 - b) The field team, which shall include a technician with basic knowledge of topography and who shall have the information contained in the cadastral Atlas
 - c) The neighbours.
3. The diagram shall contain the details already available in the Cadastral Atlas and the geo-reference points as well as servitudes identified during the participatory process and prescribed in article 17 of the Regulation of the Land Law.
4. The descriptive memorandum shall be prepared in conformity with Form 4 of the present Technical Annex.

Article 12

Devolution

1. Devolution is the providing of information to the local community and neighbours/neighbouring communities
2. The devolution is obligatory for the provision of information regarding the diagram and its descriptive memorandum, in accordance with Form 5 of the present Technical Annex.
3. The minutes of the devolution session referred to in number 2 of the present article is signed by community representatives and by the neighbours/neighbouring communities as well as by the District Administrator or his/her representative. The minutes are signed in triplicate with one copy remaining with the local community, the District Administration and the work group respectively.

Article 13

Registration on the National Land Cadastral

1. Once the phases referred to in a) and d) of number 1 of article 5 of the present Technical Annex, the documents which are indicated below are delivered to Cadastral Services which shall organize and enumerate the cadastral application and proceed by verifying that the applicable rules have been complied with and in accordance with Form 6 of the present Technical Annex:
 - a) Form 1 relevant to information and dissemination;
 - b) Form 2 relevant to the approval by the local community of the delimitation;
 - c) Form 3 relevant to the participatory process;
 - d) Diagram and Form 4 relevant to its descriptive memorandum
 - e) Form 5 relevant to the devolution.
2. The registration in the National Land Cadastre shall comprise of:
 - a) The projection of the diagram in the cadastral Atlas;
 - b) The registration in the relevant register book;
 - c) The filing of the cadastral application.
3. The register shall comprise of:
 - a) The reference of the projection in the Cadastral Atlas;
 - b) The number of the cadastral application;
 - c) The identification of the land by its number, the indication of its extent and its location;
 - d) The name of the local community and its neighbours/neighbouring communities;
 - e) Date.
4. After registration, cadastral Services shall officially submit a certificate that shall contain the registration details, which is then delivered to the local community.

5. The certificate referred to in the previous number of the present article is submitted within a maximum period of sixty days after delivery of documentation to Cadastral Services.

CHAPTER III

DELIMITATION OF AREAS OCCUPIED IN GOOD FAITH BY NATURAL NATIONAL PERSONS

Article 14

Phase of delimitation

The provisions of Chapter II of the present Technical Annex are applicable to delimitation in areas, which are occupied in good faith by natural national persons.

CHAPTER IV

DEMARICATION

Article 15

Objective

1. The objective of demarcation is the establishment, on the portion of land, of the conditions which are necessary for:
 - a) The issuing of a title deed proving the right of use and benefit of land acquired through occupation by local communities.
 - b) The issuing of a title deed proving the right of use and benefit of land acquired through good faith occupation by natural national persons, who have been using the land for at least ten years.
 - c) The determination of the exact extent of the portion of land which a natural or juristic national or foreign person intends exercising economic activities or carrying out an enterprise, after the issuing of provisional authorization in terms of articles 28 and 29 of the Regulation of the Land Law.
2. The lack of demarcation shall not prejudice the right of use and benefit of land acquired by occupation of local communities or natural national persons, but when they intend getting a title deed issued they shall have to follow the rules of the present chapter.

Article 16

Boundaries

1. The boundaries are identified in the presence of the land surveyor, the titleholder or applicant and the neighbours.
2. In the case of any discrepancy between the boundaries of communities which were established in terms of customary practices and those that were measured, the boundaries established by customary practice shall prevail.
3. The boundaries of areas identified in the delimitation should not be altered in the demarcation, in a way that such act shall result in prejudicing communities or good faith occupants.
4. If, during the demarcation of a portion of land a discrepancy is identified in relation to the details of the demarcation of a neighbouring portion of land, which was previously carried out, the following directives shall apply:
 - a) The boundaries established on the portion of land shall prevail;
 - b) If no boundaries have been established on the land, resort to the description of the boundaries contained in the cadastral application;

- c) In the case where the description in the cadastral application does not lead to resolution of the discrepancy, resort to other factual evidence.

Article 17

Local communities

The titling of areas occupied by communities shall contain:

- a) Information and dissemination;
- b) Participatory process;
- c) Diagram and its descriptive memorandum;
- d) Devolution;
- e) Process of demarcation in accordance with the provision of articles 20 and 21 of the present Technical Annex.

Article 18

Good faith occupants

The titling of areas occupied by natural national persons in good faith shall contain:

- a) Information and dissemination;
- b) Participatory process;
- c) Diagram and its descriptive memorandum;
- d) Devolution;
- e) Application of demarcation in accordance with the provisions of articles 20 and 21 of the present Technical Annex.

Article 19

Authorisation of an application for the right of use and benefit of land

The demarcation of a portion of land which is the subject of an application for the acquisition of the right of use and benefit of land, which already has had provisional authority issued in terms of articles 28 and 29 of the Regulation to the Land Law, is made in accordance with the provisions of articles 20 and 21 of the present Technical Annex.

Article 20

Application for demarcation

The application for the demarcation shall contain:

- a) Technical recognition;
- b) Plantation of marks;
- c) Measurements
- d) Elaboration of technical application

Article 21

Application for demarcation

1. The technical application shall include technical and descriptive details.
2. The description section shall contain the demarcation notice.
3. The technical section shall contain:
 - a) Topographic map;
 - b) Diagram of the links to the geodesic network;
 - c) Details of the measurements;
 - d) Calculation of the extent of the portion of land;
 - e) List of the coordinates.