

Land reform in Angola: Establishing the ground rules

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INTRODUCTION^{1, 2}

Over three years have passed since the signing of the Luena Memorandum of Understanding, the peace accord between the rebel National Union for the Total Independence of Angola (UNITA) and the Government of Angola, which brought to an end 27 years of civil war. When hostilities ended there were 3,8 million internally displaced persons (IDPs) in the country; now nearly all IDPs have returned to their areas of origin and the majority of those who have not are expected to remain with their host communities. By early 2005 some 280,000 refugees who fled to bordering countries had returned home; around 53,000 remain in camps in bordering countries while estimates of those who remain settled outside the camps range from 83,000 to around 200,000. The transition is expected to last another two to three years until most of the population is stabilised.

In the rural areas of Angola, which suffered enormous hardships as a result of the civil conflict, the challenges are far from over. In fact they are just beginning. More than three quarters of Angola's population lives on less than one dollar a day, and most of these live in rural areas where poverty is pervasive; some 85 percent of rural populations live off subsistence agriculture, in the absence of safety nets. Conditions remain particularly harsh, a number of factors hampering recovery and development of the rural areas, despite some progress in increasing access to people living in 'emergency pockets'. There are limited and fragmented social services and staffing of the health and education sectors remain problematic. The lack of markets is a reflection of transportation problems, a consequence of the limited and uneven progress that has been made in rehabilitating infrastructure such as roads and bridges. A consequence of this is the high retail price of food, which is unaffordable for the majority. The lack of market networks often prevents surplus produce from being transported to areas where they could be sold. Overall, inadequate government funding for the education, health, and social security, welfare and housing sectors, which continues to be geographically uneven, is a critical factor in the pervasiveness of widespread vulnerability in the rural areas.

It is still difficult to determine what might qualify as "normality" in Angola. The situation since the end of the war in 2002 has certainly held a greater promise of peace than any other period since the beginning of the independence struggle in 1961. Yet for this very reason these three years have certainly not been representative or normal in the modern

Angolan context. This may seem an idle quibble, but it serves to emphasise that independent Angola has yet to establish its peacetime character. Hence, the importance of now laying down the foundations for broad-based recovery and peace-building, which is the link between security and development and which is finally being recognised as such.

Building a sustainable livelihood is extremely challenging under such conditions. A key component in (re-)building rural livelihoods that are dependent on natural resource use, is access to and tenure of land.

*People's rights to access land constitute basic building blocks for enhancing and sustaining their food security. Moreover, land rights are an integral part of social capital, giving people the foundation on which to assert self-determination within their society, culture, agro-ecosystem and economic context.*³

In the rural areas, access to sufficient quantity and quality of land is problematic as there are few alternative economic opportunities to subsistence farming. Inequality in access to land is an issue of crucial importance, which is only now starting to receive attention. Opportunities in the urban areas may be marginally better, but the peri-urban community around the major cities is the largest (some 60 percent) and fastest growing sector of the population, and many people in these areas are in an ambiguous legal situation as regards their land tenure.⁴

Angola's protracted period of war kept such concerns off the political agenda, but pressure on the government from civil society to reconsider legislation has grown. Highest on the agenda is the issue of land grabbing by elites. During war land is worth little in commercial terms, but a more stable environment since 2002 has made the appropriation and regularisation of natural resources in strategic areas a fundamental concern. Land plays an extremely important role in development and reconstruction, over and above basic shelter and security. Especially in the urban areas, the "rising prices of land values represent an important source of wealth – individual, collective, private and public....It is a source of income and a versatile component in survival strategies."⁵

The disruption of land occupation in Angola has been very severe: since before independence, Angola has been struggling with issues related to land access, equitable distribution of land and tenure security; "more recently elite interests and political factors feature prominently in areas where there are acute land conflicts between private and community interests; and many 'communities' are not historically linked to the land in question but have occupied it after being dislocated from other parts of the country".⁶ "In fact, the legislative history of Angola, especially during the last 40 years, has resulted in a succession of injustices against the rights of traditional communities and the sustainability of their economies."⁷

THE SOUTHERN AFRICAN CONTEXT

While there are many aspects of land tenure and tensions that are quite distinct to Angola, the country is not alone in facing these issues – tensions around land redistribution have been festering in the Southern African region for some time. The issue of land grabbing by elites is not only an Angolan one; it is an increasingly pressing concern across the region, even where new legal frameworks protect existing local land rights.

In her paper entitled “Design for Equity: Linking Objectives with Practice in Land Reform”, Ruth Hall poses the question of why land reform policies in Africa aiming at equity regularly result in inequitable outcomes. Hall concludes that what we see too often is that efforts to redistribute rural land to the rural landless have tended to reinforce existing forms of inequality, and in cases have given rise to new forms of inequality within beneficiary communities.⁸ Sue Mbaya⁹ has also highlighted that land grabbing and the enclosure of customary lands by powerful indigenous elites and corporations that are acquiring land and property at the expense of the poor is on the rise in most countries in Southern Africa.¹⁰

Poor people have limited access to assets such as land, capital, labour and skills, so if economic growth is to benefit them it must raise the returns of the few assets they hold. Provided the agrarian structure plays a positive role, agricultural growth can and does reduce poverty and inequality. This makes land the most basic livelihood security for many people. Land laws and policies have a profound effect on the growth of a country, the levels of income inequality and wellbeing of its people; they impact on sustainable growth and the economic opportunities of most people in Africa, most particularly the poor.

One aim of the liberation struggles in Southern Africa was the redistribution of land to redress historical and racially based inequities. However, achievements since independence in most of these countries have fallen far short of expectations. Most countries have pursued a range of strategies and approaches to land, which included redistribution and nationalisation. The latter has frequently followed similar objectives to those of the colonial states – a desire to acquire absolute authority over land allocation. Weak managerial and administrative capacity meant that trusteeship by the state has too often translated into political patronage so the benefits of policy improvements have tended to accrue to people who are politically advantaged. The other reality is that land reform has been slow: for political reasons, because of the complexity of land tenure issues, and also because governments have failed to allocate the financial and human resources needed to address the land situation in their countries.

Donors have also shied away from committing funds to land reform, as highlighted by the European Commissioner for Development and Humanitarian Aid, Paul Nielson.¹¹ In part this seems to stem from the political sensitivity of land tenure, with fluctuations in donor attitudes

about the importance of the land question and how it should be addressed. Donors have found it increasingly difficult to justify the allocation of aid resources to land reform in the region; their reasons for this are linked to shifts in world opinions about the orientation of markets, or the role of governments. For example, the belief in the greater efficiency of large farms imposed serious constraints on progressive land policy in non-settler states before and after independence. This belief also discouraged land reform, even though rising land ownership imbalances exacerbated land shortages and land degradation; increased rural poverty was the result. Given reasoning, however, is 'the lack of viable policies and programmes on the part of African governments', as well as policy trends away from the pro-poor agenda that donors feel should be the focus of land reform policies, this despite donors having urged a number of governments into a policy of land titling (individualisation of tenure), on the grounds that customary rights would never be able to provide sufficient basis for agricultural development.¹² In recent years there has been controversy around issues of equity (or poverty focus) versus productivity, which have become competing objectives, and have become antagonistic in practice.¹³

The World Bank now sees the land question as a legitimate item on its poverty reduction agenda, in part because of the failure of the Bank-initiated Structural Adjustment Programmes to live up to the promise of rural development. In the last five years especially, land reform has become the most controversial issue to come out of Southern Africa because of Zimbabwe's efforts to terminate the colonial division of land. Here, as in other parts of southern Africa, public perceptions of land reform have shifted from that of a fight for the redistribution of land as a development issue only, to that of a need for restitution and justice as well, as is reflected in the increased calls for the reform of both legal and administrative aspects of land rights.¹⁴ In several countries in eastern, central and southern Africa important new land tenure laws have been promulgated in the last decade and are in the early stages of implementation.¹⁵ These reforms are addressing fundamental issues, such as land policy principles, land tenure and distribution. The process of reforming land laws includes the redefinition of how property rights in land are allocated and who can use what resources and for how long. Also important are the issues of the legal recognition of customary tenure rights and the strengthening of the rights of tenants, as well as land management and use, land administration, and overall legal structures. These are salient issues to varying degrees in the southern African countries, regardless of the differences in the way that English, French and Portuguese colonial policy treated customary tenure systems, because of the prevalence of dualism and the similarity in effect.

HISTORY OF LAND TENURE IN ANGOLA

After emerging from 27 years of vicious and protracted civil war, Angola's government introduced a draft Land Act and draft Territory

Law in July 2002, three months after the negotiated peace settlement was signed with UNITA. The impetus for this was in part a reflection of the growing number of land conflicts that had occurred over the previous ten years, and which had resulted in increasing awareness on the part of the government that the existing 1992 land law was deficient in many ways, and not generally well known by either the public in general or by farmers.

A closer examination of Angola's history of land tenure reveals the potential for recovery that exists in this sector, and also highlights the threat that land in post-war Angola could become a major source of conflict.

The pre-colonial period

In common with many other countries in Southern Africa, the division of land in pre-colonial Angola corresponded to a system of communal possession of land in which any member of the community had the right to cultivate one or more parcels of land occupied by the community. This right would not be lost by the members of the community or group even if the land was temporarily abandoned. Where there was greater demographic pressure, families established closer, more permanent ties to their land that equated to specific rights – much like a bond or socially accepted legal norm that assumes the value of a title.

Angola's land regime under the Portuguese

The first categorical establishment of state primacy comes from 1856 when a distinction was created between land belonging to the state (in other words the Portuguese crown) and 'fallow' land. After the Portuguese abolished the slave trade in Angola in 1858,¹⁶ the colonial government began using concessional agreements, granting exclusive rights to a private company to exploit land, people and other resources. In 1900 there were less than 10,000 whites in Angola, most of whom were *degrádados* – convicted criminals sent from Portugal to Angola. Despite Portuguese expansion, Africans controlled trade in the plateaus of the interior.

At the end of the nineteenth century, a more systematic development of legislation was pursued, with the introduction of a new concept of 'vacant' land, in addition to finding ways to deal with land that had entered the private system. 'Vacant' lands were in effect lands that were 'owned' by indigenous collectives and could not be sold to private citizens without the authorisation of the state. In practice this meant giving limited rights in a political and legal sense to indigenous communities.

Increasingly, political and administrative measures were directed at the submission of Angolans to Portuguese sovereignty and their integration into the monetary economy and the colonial market. In his review of Portuguese legislation between 1880 and 1920, Pacheco states:

The most conspicuous of these measures concerned the payment of taxes, compulsory cultures and different modalities of forced labour. Conflicts between indigenous communities and Portuguese administration appear from that period on, due to abusive occupation of lands by merchants or colonial enterprises, principally in the area between Malange and Luanda.¹⁷

There were ambiguities and contradictions resulting from the concept of 'vacant' lands. The principle of the existence of specific areas of land for the exclusive use of indigenous populations (whilst making the remainder available for European settler concessions) that appears for the first time in the 1920s does not, however, mean that land was recognised as the property of the indigenous people.¹⁸ The authorisation requirement by the state was a reflection of the social structure prevalent in the colony, which comprised the categories of indígena,¹⁹ assimilado²⁰, people of mixed race (mestiços)²¹ and, at the top of the hierarchy, white Portuguese.

The legislation was unclear and open to interpretation in that it recognised the existence of land for exclusive use by indigenous people without attributing to them property rights, whether collective or individual. In practice, state control over the sale of land meant limiting (both in a political and in a legal sense) the rights of indigenous communities. Colonial authorities justified the duality of the law as defending colonial rights and interests and at the same time respecting the uses and customs of the indigenous people, but this justification also contradicted the proclaimed intention of conceding Portuguese citizenship to all Angolans without distinction – provided they became "assimilated", of course.

Modifications to the land law: the 1930s

The late nineteenth century law met with strong opposition and was therefore modified in the mid-1930s. The new legal definition of so-called 'vacant' lands was that they must have been unexplored, 'não explorado', or abandoned for at least ten years. This meant that 'vacant' lands "owned" by local communities fell outside the newly defined categories of the modified 1930s law. It did not mean, however, that lands for the exclusive use by indigenous populations, were recognised as the property of the indigenous. The change in the law opened up for discussion two important issues that remain relevant today. First, what kind of recognition is given to those (individuals and collectives or communities) who have rights to land through customary law? Second, what kind of relationship can exist between different types and forms of law?

The diverse land-use systems that developed varied according to different ecological regions. However, they were also transformed or modified as a direct result of systems imposed by the colonial government in keeping with its own political and economic objectives. Between

1900 and 1940, only 35,000 Portuguese emigrants settled in Angola, and most worked in the cities. In the rural areas, Portuguese settlers found it difficult to make a living, owing to fluctuating prices and the difficulties in obtaining cheap labour for their cultivated lands. As a result, they often suspended their operations until the market prices rose, and instead marketed the produce of Angolan farmers. The communal land systems in the eastern half of the country were a reflection of this area's semi-subsistence agricultural economies. Portuguese farmers were rare in this area; it was home to only 10 percent of the Portuguese population. In the pastoral and agro-pastoral regions of southern Angola where low demographic pressure permitted permanent communal use of land by indigenous groups, communal property was more widespread.

Where there was well-defined agricultural production, individual or family parcels were the norm: in the commercial agricultural areas of the north-west (Uíge, Kwanza Norte, Bengo, and parts of Kwanza Sul) greater demographic pressure resulted in a very different and diversified system, characterised by the more permanent possession of land by community members.

In the 1920s the indigenous communities contested the expropriation of their land for cotton, and again in the late 1940s disputes followed the expansion of coffee plantations (stimulated by price increases). In the wake of World War II and the rapid growth of industrialisation, Portugal developed closer ties with its colony and by 1940 it absorbed 63 percent of Angolan exports and accounted for 47 percent of Angola's imports.²³ When the price of Angola's principal crops – coffee and sisal – jumped after the war, the Portuguese government began to reinvest some profits inside the country. Portuguese citizens were encouraged to emigrate to Angola, where planned settlements (colonatos) were established for them in the rural areas.

The immigration of Portuguese increased in the 1950s, as did the expropriation of lands, which served the drive to establish farms and plantations to grow cash crops for export. This was matched by an ever-growing contempt towards the rights and interests of the indigenous populations. By 1960 the Angolan economy had been completely transformed, boasting a successful commercial agricultural sector (as well as a promising mineral and petroleum production enterprise and an incipient manufacturing industry) that continued to grow in strength. Coffee, which was the main export until it was overtaken by oil in 1973, was the major export crop, growing in the higher altitudes in the north, where the plateau slopes down towards the Congo basin and the climate is warmer. It was grown by some 2,500 large commercial farmers and around 250,000 peasant families during the early 1970s. With around 600,000 ha under coffee, Angola was the fourth largest producer in the world, its output totalling some 200,000 tons a year. In the early 1970s Angola was also the third largest producer of sisal. Cotton was grown in the provinces of Malange, Kwanza Sul and Bengo. Other crops cultivated were sugar cane on large plantations in the coastal areas, tobacco, oil palms and citrus fruits.

At the height of the colonial period there were 300,000 colonial families who occupied 4,5 million ha of land, and used only 11 percent of this, while 4,3mn traditional families occupied 4,5 million ha of land and utilised 60 percent of this.²⁴

The scramble of the 1960s

The start of the 1960s marked a watershed period prompted by UN criticism of forced labour, coupled with racial discrimination as enshrined in the indigenous statutes. Uprisings in Luanda in February 1961 marked the beginning of the liberation war. In March, northern Angola became the scene of a major insurrection by large numbers of BaKongo farmers joined by local plantation contract workers. They attacked both whites and assimilated populations, whether black or mulatto, "evidently regarding these as mere agents of the Portuguese".²⁵ In September 1961 the indigenous statutes were abolished, effectively making all Angolan people equal citizens before the law, at least on paper if not in practice. The following year, colonial labour regulations were revised and regulations were introduced to prevent the alienation of native land and end compulsory cultivation.²⁶ For the first time there was open concern that tensions could erupt between settlers, plantation owners and indigenous people, the resolution of which lay in the colonial government legitimising the occupation of land by the plantation owners. Legal solutions lay in the application of indefinite concepts such as fallow lands, uncultivated lands, vacant lands – all these types of land not owned by anyone became available. Europeans were given title to the land they occupied if the properties had been developed for a continuous period of 20 years, while land areas occupied by the local population (residential or agricultural) were recognised and protected as 'reserve' areas.

The latter areas were classified by the legislators as 'second class lands' and were susceptible to demarcation in a ratio of five times the area that was effectively being occupied, 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.²⁷ Legislative and administrative weaknesses, coupled with the fact that few Africans were in a position to meet the formal registration requirements for the granting of concession titles, meant that the majority of Africans could not take advantage of titles in the third class areas. In effect, Europeans on the whole maintained their fazendas (commercial farms) as de facto freehold, rather than as de jure freehold. In 1973 a new Land Law declared that all lands that were not privately owned or in the public dominion, were available for concession, except for those areas under customary tenure.

In the Central Plateau, the most densely populated agricultural region, a scramble for land which began in 1965, resulted in a decrease in the size of family units of peasant farmers from an average of 8.9 ha to 5.6 ha by 1972. Dependent on abundant labour, many estates integrated entire villages into their lands, thereby harming subsistence cultures. It was the injustice of such actions that inflamed many Angolans with nationalist ideas, and injected sympathy for the armed struggle. The cattle-farming and sisal-producing areas of the south and south-west were severely affected by foreign agriculture, resulting in indigenous pastoralists being pushed increasingly onto marginal lands. Appropriation of land became one of the main drivers of discontent, resistance to the Portuguese growing with increasing calls for independence. Portugal responded with counter-insurgency measures, among the most damaging of which was the implementation in 1967 of a resettlement programme that involved the grouping of dispersed Africans in eastern and north-western Angola into large villages. By 1974 more than 1 million peasants has been moved into resettlement villages, causing widespread disruption in rural Angola and a breakdown in the agricultural sector.

The post-independence period

The period of transition to independence from November 1975 was particularly chaotic for the commercial agricultural sector as almost all the country's skilled manpower fled Angola, abandoning thousands of fazendas and small businesses, including the entire rural trading system. In terms of the Constitutional Law introduced by the post-independence People's Movement for the Liberation of Angola (MPLA) government (Article 11), all natural resources became the property of the state; that is, the state became the owner of lands that were not definitively privately owned, and the state as owner could now transmit to others the right of land use. Procedures for abandoned private land to be appropriated by the state, 'because of the unjustified absence of the proprietor for more than 45 days', were applied. Article 13 states that "All the juridical effects of acts of nationalisation and confiscation performed under the auspices of a competent law are considered valid and irreversible without prejudice to what is provided for in specific legislation on re-privatisation."²⁸ Some peasants and farmers were able to recover much of the land that had been appropriated through recourse to due legal process.

Part of the reason that no specific land laws were drafted may lie in the perception that tenure was not an issue because so much land was seen to be available: "Communities effectively ceased to lack lands, and land problems apparently ceased to exist."²⁹ Under the imposition of a single-party political and socialist economic model, the farms that had belonged to white commercial farmers could be nationalised (and in some instances consolidated) into large state farms and trading companies. Some farms

were given to communities organised in terms of a co-operative system, in which case members would split their time between their own land and the co-operative farm. However, “many of the state companies set up after the settler exodus and nationalisations in 1975–77 failed to maintain operations, and the rudimentary attempts at centralised planning led to serious resource misallocations and inefficiency”.³⁰ By the mid-1980s most of them had collapsed and been abandoned.

The privatisation era

The early 1990s marked a radical change in governance with the transition from a single-party system to a multi-party democracy and the adoption of a new economic model, one of a market economy that effectively reduced the state’s role in the economy.³¹ The economic model required a land market and a legislative framework appropriate for the development of a private sector, able to attract foreign investment in commercial farming and cattle breeding. In fact, the cultural and legal dichotomy that existed in the colonial period continued in terms of property. What is evident, in fact, is that economic failure had undermined the legitimacy of the socialist state, leading over time to de facto liberalisation and privatisation, with elites linked to the state and the military finding an increasingly profitable interest in liberalisation.³² In the series of so-called privatisations during this period, powerful politicians obtained concessions for potentially lucrative property and land, although in theory these remained state property. As we shall see, this led to an erosion of ordinary people’s rights in a situation of legal ambiguity.

Law 21-C/92: The law of concession or so-called “Land Law”³³

On 28 August 1992, 17 years after independence, Angola adopted its first land law. Part of a raft of legislation passed in the few months before elections, it was approved in the absence of any public debate and by a legislature that still had no popular mandate. This lack of consultation reflected the authoritarianism inherent in a history of both colonialism and the centralisation of political and economic power of the one-party era.

It must further be noted that the government had scant experience in this field, there being few similar points of reference within the region from which to draw, so the limitations and potential of the “Land Law” must be viewed within their historical context. A fundamental issue of contention with the Land Law is that it accepted the ‘colonial’ cadastral (property register) and provided a legal framework to re-operationalise it; this essentially can be seen as reflecting the need by political actors to maintain control of access to land and natural resources (especially non-renewables) in order to finance their development agendas. Conflicts that had emerged in the Lunda region, “land of the diamonds”, between UNITA and government soldiers, are a likely reason for the apparent

lack of transparency. Urban land issues were almost completely ignored, despite the fact that since the 1950s migration to the cities had been a common phenomenon.³⁴ The 1992 law, however, did contain a number of positive aspects. In the preamble it stated clearly that local community land rights would be protected, and it recognised different forms of land access, including ownership rights acquired through colonial law for non-nationalised land, state authorised concessions between 1975 and the proposed new law, and use and usufruct could be transmitted between persons, or through inheritance. However, as Fernando Pacheco³⁵ highlights, the law was not rooted in any formal, written policies that might have explained the priorities to be promoted through land use, tenure or transactions. Instead, it was based on old concepts and reflected the old ideals of state central-planning principles. Furthermore, it was not so much a land law as a set of regulations for access and titles that failed to include community traditions or customary law rights of small farmers, or recognise squatter rights in the urban areas. It did not address the central issue of the dual character of the formal land tenure regime. "Associations or co-operatives occupying former estates, or populations that recuperated lands that belonged to them before Portuguese occupation are unable to regularise their rights, and the legal status of communities remains unclear in terms of ownership of communal land. The tenure rights of different actors especially regarding the use of natural resources were not defined."³⁶ The rights of both the colonial-era land holders of tenure rights whose property rights has not been nationalised, and the post-independence concessions that had been awarded by the state since 1975 were, however, recognised. Relations among all concerned sectors, including state administration and local powers, were not defined or regulated, and guarantees for agriculture loans were not described.³⁷ The necessary mechanisms through which 'protected tenure rights' could be registered or upgraded were not introduced. That these issues were not taken up was due in large part to the outbreak of civil war and the ensuing 10 years of instability. The regulations to operationalise the law were approved several years later, but never published.

The implementation of Law 21-C/92

In effect, implementation of the land law did not reflect either liberalisation or security of tenure for smallholders. A highly controversial process of privatisation of the previously large state sector began that was carried out in a poorly conceived and disorganised way. "From being a potential candidate for a market economy, Angola passed swiftly through a process of privatisation by the nomenklatura, in which the disciples of Lenin were transformed, overnight, into businessmen in the western mould, taking control of a large part of the state's resources and managing the remainder according to their prerogative as representatives of the people."³⁸

During the period that ensued, new forms of "state" patronage – or crony capitalism – emerged as a few wealthy individuals gained control

over vast natural resources. Privatisation entailed the division and selling off of 33 state-owned coffee plantation companies into about 400 farms, sold to would-be commercial farmers. This also took place in the cattle ranching areas in the south-west. Conflicts first emerged here between commercial farmers and local communities in the early 1990s, simmered throughout that decade, and have since increased, most notably in the latter half of 2003. A dispute that arose over land rights in the Gambos, western Huíla, in 1999, was the first indication that a serious land crisis was brewing. Effectively it was a land grab, benefiting well-connected families of the politico-military elite at the expense of small peasants who had been occupying and tilling much of the land of the former state farms on an *ad hoc* basis, without land titles, since the mid-1980s. Consultation did not take place, which led to a growing resentment and uncertainty among the peasant farmers and pastoralists, the latter finding their land cordoned off by new landowners who limited their movement. The Ministry of Agriculture and Rural Development (MINADER) has conceded that up to 1999, more than two million hectares of land in the whole country had been granted to commercial farmers (close to half the surface given to commercial agriculture before 1975) which largely remains unused.³⁹ There is little evidence about where these concessions are located because of the lack of transparency by the government registration system.

The economic transformation that started at the end of the 1980s resulted over time in important changes in the overall situation. Policy and practice served to recreate the pre-independence structure, with politicians largely assuming the role of the colonisers. The dualistic character of Angolan society continued, with differentiated treatment of so-called *indígena* (the peasant farmers) and the *assimilado* (the ruling class). In the absence of formal institutions, disconnected practices continued in rural areas; although traditional authorities were given consideration, this occurred outside of any legal or institutional framework. The de-legitimising of the role of the traditional leaders (*sobas*), which began during the colonial period, was continued. Government policy was to give priority to the new commercial farmers rather than to small-scale peasant farmers, which would have done more to raise production, alleviate poverty and reduce household food insecurity than the low-wage employment provided by the *fazendas*. It has been argued that for the government it was a priority to gain and maintain control over natural resources that would finance their development activities.⁴⁰

As highlighted by Paulo Groppo,⁴¹ the 1990s marked a period in which the cleavage between legality and legitimacy (the social acceptance of the laws), began to grow. Land laws cannot be drafted in a vacuum; they must draw upon the values and aspirations held by society if they are to address the gap between legality and legitimacy that has been a source of friction in many African countries, a consequence of more than 90 percent of land remaining outside the existing legal system.

Divisive approaches

Sensitive to these cleavages, the National Directorate of Territorial Planning (DNOR), which was the department responsible for issuing titles, appointed the United Nations Food and Agricultural Organisation (FAO) in 1999 to work in partnership with MINADER to recommend revisions to Law 21-C/92. Their mandate was to interpret the “spirit of the law”, with the specific intention of recognising the customary rights of communities, defined more broadly than just “cultivated lands”. On-the-job training was provided in methodology, the results widely publicised, and a public meeting held in September 2000. (It remains questionable, nevertheless, whether those most affected – the rural and poorest sections of the population – knew about these processes.) This initiative resulted in the first titles being granted in March 2001 to communities that recognised land defined in social terms, not narrowly in topographical terms. However, immediately after the first title was granted, President José Eduardo dos Santos appointed his own advisor to prepare a new draft land law, parallel to the MINADER process of redrafting the land law. The result of this was a draft that was not entirely approved by the government, but pushed through party channels by Dos Santos for approval. In many ways this draft was considered to be inferior to the very law that it was supposed to improve on, and it failed to take account of the FAO/MINADER process.

Draft Land Act and Draft Territorial Planning Law of 2002

In December 2001 an ad hoc Land Commission was formed to combine the two drafts. Approval by the Provincial Governors and top MPLA structures resulted in the draft Land Act and draft Territorial Planning Law being introduced in July 2002.

The government set a three-month period for public consultation on the content and effect of the draft. Civil society was quick to take up the challenge, pointing out that land may appear not to be as great a priority for the elite, members of parliament or the judiciary, as it is for the poor. It is, in fact, more accurate to say that land is a priority for both groups, but that their priorities are different. A more circumspect viewpoint suggests that the sense of urgency may stem from the need of elites to “regularise the land grabs” that had been taking place. The nationally based Land Network (Rede Terra), established in August 2002, and the Huila Provincial Land Forum appealed for continued discussion, and succeeded in pressurising the government into allowing an indefinite period of public consultation.

Subsequently, and in spite of these promises, President dos Santos reiterated in his 2003 New Year message that the draft would go to parliament for approval as soon as possible. In his address he stated the urgency of the land law as it would serve to “define the forms of

ownership of lands, as a factor or production of extraordinary importance to the poor rural population and will also permit the reconstruction of the farming sector and re-define the selective credit policies, with stress to the micro-credit that is a very effective way of combating against poverty in the rural areas.”⁴²

In December 2003 the Cabinet approved revisions to the draft Land Act that contained several improvements, notably recognition of and partial protection of the traditional collective rights of rural communities. However, there were also changes that could have very negative implications:⁴⁴

- Expropriating rural communities’ land would now become a legal possibility because of ‘private utility’ motives – rather than just for public interest, as before.
- All citizens, families and communities would have to complete the official process of legalising their land tenure situation (securing ‘title hold’) within one year.

Several key gaps and problems also persisted, carrying certain risks among. these:

- That there is a difference in status between people living in rural communities and all other citizens in their informal occupation of land.
- That all the investments of the urban poor (through building houses) risked being lost, and the majority of them would become illegal.
- That new – stronger and more discretionary – powers are given to the state, and to a lesser degree to traditional authorities.

In essence, the effect was to weaken, not strengthen, property rights for the poor, and in many instances might result in deeper impoverishment. Weaker and less secure tenure also limits political empowerment. Simultaneously, the position of the authorities has been strengthened. In June 2004, MINADER announced its intention to enforce the land use legislation of 1992 which requires that land conceded by the government be put to effective use, and to subject production on such land to national development requirements. Articles 7.4 and 64 of the 2002 draft law also expressly provided that property rights will be extinguished if the land is not used in conformance with land use dictates.⁴⁵ In cases where it is deemed that agricultural farms are not being used or ‘exploited’, owners risk losing their land to ‘those who need it’. These provisions had not been enforced for more than a decade as a consequence both of the war and of the inability of ministerial administrators to investigate land usage. Because all land belongs to the state, these provisions give the state wide discretionary powers to determine whether a concession should be granted and for how long licenses may be issued. Time frames are generally up to 45 years. Approval is granted by the relevant ministry, which considers each request on a case-by-case basis, though in the case of petroleum (hydrocarbon) mining the approval of the cabinet is required.

Approval of the 2002 Land Law

In the meantime, approval of the Land Bill was postponed, while public debate continued. The government maintained that the urgency of the law was such that its adoption would probably precede acceptance of Angola's new constitution, which is currently under review. Additional impetus for public campaigns and consultations came from the recent formation of another consortium, in southern Huíla, of twelve NGOs dealing in land matters (the Huíla Provincial Land Forum). Their purpose was to promote debates on the issue, gather contributions to the bill on territory's management and develop actions of advocacy in defence of community rights.

A step closer to adoption of the draft law was taken on 10 August 2004 when the Land Bill was approved by the National Assembly,⁴⁵ but not signed into law. During the discussion by the specialised commission, MPs pointed out the lack of guarantees for the rural population as well as the need to clarify issues of original ownership of land, to define ownership of natural resources existing on land owned privately and to review the lands confiscation and nationalisation acts of the national citizens.⁴⁶ It remained effectively in a state of 'limbo' until 18 December 2004 when the Land Act was finally passed into law and promulgated in the State Gazette.⁴⁷

Post-conflict normalisation: An overview of potential fracture points

Angola now faces the monumental challenges of post-conflict normalisation, the achievement of which must rest on a foundation of restoring trust to society. Poverty reduction is an integral part of rebuilding trust; development projects in turn are more likely to bolster peace in areas endowed with high levels of 'social capital'. For peace and stability to prevail, the needs arising from underdevelopment and huge inequalities must be addressed during this (re)construction phase. Land access is a key element in the process.

The research findings of Deininger and Squire⁴⁸ and Deininger and Olinto⁴⁹ show that land ownership inequality retards the rate of economic growth: it creates low and insecure incomes for the rural poor, thereby retarding human capital accumulation and growth, and at the same time acts to buttress high and potentially increasing levels of income inequality over time, creating a vicious circle of growth and inequality. It can also create exclusionary patterns of growth that deepen inequality over time, magnified via their impacts on the accumulation of human and physical capital by the least well off members of society.⁵⁰

But Angola's history around land issues, in addition to these enormous challenges, raises a number of questions about the role of the land act. These questions include whether it will contribute to addressing the country's urgent needs and the expectations of civil society, and whether

instability could be triggered if these expectations are not met.

More specifically, the challenges facing the new land legislation relate to its potential to contribute positively to broad-based recovery; alternatively, the risk that it will compound and/or complicate current land issues, possibly triggering conflict by aggravating old, underlying structural tensions. This highlights: the need to identify the sources of potential grievances; the conditions that could shape the emergence and the character and levels of conflict; the intentions of the legislation; who decides; and, who benefits from the legislative changes.

In 2003 out of 175 countries, Angola ranked 164th on the United Nations Development Programme (UNDP) Human Development Index. Average life expectancy at birth is 40 years; less than 50 percent of the population has access to basic health services; only 38 percent have access to clean drinking water.⁵¹ The World Bank has noted that years of war have increased inequality in income and assets and the IMF estimates that some 70 percent of the population lives under conditions of 'absolute poverty'.⁵² Angola's Gini Coefficient of 0.62 in Luanda is, in fact, close to South Africa and Brazil's which are 0.62 and 0.60 respectively.⁵³ The high incidence and intensity of poverty also reflect the failure of the formal economy to generate livelihoods for the majority of people, households diversifying their incomes with a mix of formal and informal employment or relying entirely on informal work or commerce.

A crucial dimension of poverty in Angola has been insufficient public spending on pro-poor social and economic infrastructure and services, and the consequent breakdown of public services, as evidenced by the low allocation of the annual budget to health, education and welfare services. This now seems to be changing: in the 2004 budget, the social sector was allocated 33 percent, the largest share and an increase of 9 percent compared with the previous year; the defence and public order sector followed with 32 percent, a reduction of 5 percent.⁵⁴ The government has in effect delegated its responsibilities for providing these services to humanitarian agencies. Not only are the Angolan people far from realising their right to development, but for many, it is the right to survival that is immediately at stake. Women, in particular, face enormous difficulties in making a living, even though Angola possesses an unusually high proportion of woman-headed households. So, while the emergency resulting from chronic conflict and political instability has passed (although pockets of extreme and urgent need still exist), Angola now faces a persistent structural emergency.

Resettlement of IDPS and refugees

The successful resettlement and reintegration of uprooted populations is a critical component of rebuilding a peaceful society. The civil conflict has caused repeated and massive internal displacement over the years, the first huge population upheaval having begun with the start of the anti-colonial struggle in 1961. Such displacement has disrupted land occupation, with the problem being compounded by the 1992 land law

changes that allowed private ownership and resulted in land falling prey to powerful economic interests.⁵⁵ In the interior, there have been competing claims for land restitution from returning refugees and internally displaced people, as well as those who acquired lands under previous regimes and those who lost them. The reasons for these competing claims are rooted in legislative shortcomings (with ownership unclear, ordinary people's rights to use land have been dramatically reduced), as well in underlying socio-economic inequalities.

Increased calls by returning refugees from neighbouring countries, displaced people and former combatants displaced during the conflict, for land restitution and the resolution of arising land disputes, are highly probable and will aggravate these tensions. The government has a responsibility to protect the rights of "new caseload" refugees to the land they were forced to abandon, but social nets to protect those most vulnerable are weak or non-existent. As stated by the UN in Principle 29 (2) of the Guiding Principles Rights :

*Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possession which they left behind or were dispossessed of upon their displacement. When recovery of such property is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.*⁵⁶

Perceptions that good land is widely available are false; in many areas it is of poor quality and unworkably remote or fragmented. It is only in the Central Highlands that soil fertility is high, and even here there are places where fertilisers are needed to compensate for the marked degradation of soils; elsewhere, larger areas of (less fertile) land are needed in order to guarantee subsistence. Large areas are also remote from markets and services. As there is little surplus land upon which to settle any significant number of IDPs, resettlements have been imposed and in some cases the newly displaced peasants are settled on lands that belong to pastoralist communities. Many of the returning IDPs and refugees will wish to settle in those areas that are more accessible – these are the areas where many of the large farms or plantations are to be found and which have their origin in land concessions given to European farmers during the colonial era.⁵⁷ In accordance with the concepts of communal rights to the use of land, the members of these communities will be able to reclaim their land use rights, within the territorial limits of their respective communities. These could threaten political programmes and improvements among groups as ex-combatants return to live in villages among citizens against whom they only recently waged war, and ethnic, political and gender tensions come into play at the local level, adding controversy to community claims.

It is thus possible that the importance of land as an asset for household survival, competition between peasant and commercial farming, low soil fertility, the limited extent of rural areas with adequate rainfall and

*services, and the limited capacity to effectively regulate land access could lead to conflicts over land. While communities always promise the allocation of land to new returnees, the mechanisms by which this is done, and the quantity and quality of land given, are obscure.*⁵⁸

Another frustration for returnees is not having sufficient capital to cultivate their lands, increasing the risk that the land will remain unproductive for some time. A common argument presented to support the usurpation of land is that it is not productive⁵⁹. As will be made clear in the following section of this paper, peasant farmers are seeking return to their land at exactly the same time that land is under greater pressure than ever before from commercial interests.

The land-grab

With peace, people are beginning to appreciate the true economic potential of land, and with this has come a wave both of land grabs and of the erection of fences to demarcate farms, which in most cases do not have a clear boundary. It is in the process of defining clear boundaries that the problems start. Land conflicts, unheard of 10 years ago, are now occurring increasingly between residents and internally displaced people (IDPs), and between commercial farmers and pastoralists.

Since 1997, land has been grabbed in the fertile Kwanza Sul province near Luanda, and in the relatively peaceful south-west where there has been a proliferation of ranches and commercial farms.⁶⁰ Bledsoe and Pinto point out in their report⁶¹ that many of the traditional cattle raisers and farmers, believing much of the land in the colonial concessions to be rightfully part of the traditional lands, have reclaimed use of old colonial farm concessions. In addition, conflicts are occurring and will continue as government grants new and renewed concessions of the colonial parcels, or as landowners or concessions holders from the past (especially post-1991) reappear and reassert their rights. Thousands of hectares of land, once solely the territory of pastoral people and their cattle, have become fenced in, now the private property of wealthy new landowners, including government officials. Traditional cattle raisers require more land to sustain increased numbers of cattle, but the carrying capacity of the land has been reduced as the total number of cattle have increased significantly over the years. As commercial cattle ranchers encroach upon lands of traditional cattle raisers, cattle corridors are being closed. Pastoral leaders say the land has been taken illegally and their traditions and customs, passed down over centuries, as well as their livelihoods, are under threat. Commercial farmers have reclaimed the use of old colonial farm concessions; they now occupy this land in addition to the traditional community lands.

New fences, as evidenced by the number of newly cut ('green') poles observed in late 2003, have been erected in the Gambos area of Huíla province⁶² with little or no regard for consultation with communities.

Conflicts have arisen as communities have been forcibly removed from their land to make way for the fences (with no compensation), community access to water cut, community land relinquished in exchange for water rights and even small villages enclosed on farms with right of tenure secured in exchange for labour (often at rates as low as 200 Kwanza [US\$2] per month), and cattle corridors closed off. Likewise, the King of the Gambos is now contesting a case in which the community has had its land enclosed by fences on three sides. Provincial government authorities⁶³ insist that in such cases, compensation must be provided by the land owner in the form of infrastructure and services (such as schools and clinics) for the community, but that the role of government institutions can only be to monitor, not to enforce implementation of these requirements.

In addition, a score of Portuguese investors, members of the Chamber of Lusophone Farmers (CAL) will reportedly soon receive farming and ranching concessions in the rich Central Highland Huamabo province.⁶⁴ Reports of conflicts between peasants and commercial farmers are expected to increase in frequency as communities claim that their traditional lands have been demarcated as private farms and awarded as concessions to other communities or individuals. Large tracts of land that were once communally farmed are now in the legal possession of individuals, a case in point being a 312,000 ha farm in Humpata (Huila). Elite interests and political factors feature prominently in areas where there are acute land conflicts between private and community interests; it is these same elite groups and individuals who are reluctant even to lease the land to the displaced or other poor people in case of future ownership claims. It has been claimed that powerful landowners in various parts of the country influenced the location of some camps for displaced people (*deslocados*), to provide pools of cheap labour for their farms.⁶⁵

Because people do not know their rights, be they land or labour related, they remain vulnerable to exploitation. Access to land and secure tenure are essential to effective peace building and post-conflict reconstruction, as the social reintegration of communities will depend to a great degree on their ability to resolve land conflicts and to receive IDPs, ex-combatants and refugees without prejudicing their own livelihoods. The country is now in a period when expectations are high. Set against a backdrop of massive poverty, there is the risk that should the great promises brought by peace be frustrated, social tensions will rise.

There is a well-founded belief that sometimes land is contested "on the face of it" for agricultural use, while the claimants' real interest lies in its potential for mineral exploitation – diamonds, asphalt, gold or manganese. Nevertheless, there is also some cause for optimism. During a FAO programme being carried out in Northern Huila in 2003, a land claim for 5,000 ha presented against the community by a member of the military elite was successfully contested on the basis that he was not from the area; the piece of land in question had in fact been mined for gold during colonial times.

Peri-urban land

There are also many problems related to urban and peri-urban land as irregular development is widespread and unquantified. There is also an increasingly active market in urban and peri-urban residential properties. Pressure on the outskirts of the principal urban centres has often resulted in land conflicts as land ownership became private, but without titles: people have papers showing they bought the land, but no title deed. Under the constitution, the land belongs to the state, but people have surface rights. Over the years there has been substantial migration to the cities such that today rates of urbanisation exceed 60 percent and the peri-urban community is the largest of this sector of the population,⁶⁶ and the fastest growing. Many of these people have purchased plots of land (in good faith) through informal markets, occupying without title, though not illegally in terms of the protection offered under the civil code.

Peri-urban Lubango (Huíla province), for example, has experienced a growing number of conflicts in recent months, involving both communities and residents of old colonial farmsteads being forcibly displaced.⁶⁷ On the outskirts of Luanda cases have recently been reported of communities being forcibly removed (in contravention of the government's Norms for IDP's) to make way for new developments, and promises of new housing as compensation failing to materialise. The potential for conflict is compounded because so far the government has failed to make land officially available on the commercial market, except for middle- and upper-class housing, or new commercial developments; land is not demarcated for the growth or development of *musseques*, (zones of self-built houses) and expansion and removals are disorganised. Hence people are increasingly "squatting" in areas that are devoid of any services, further aggravating levels of poverty. Allan Cain, the director of Development Workshop, an NGO concerned with urban development, highlights a critical concern that the new Land Act "risks annulling all these informal occupations and making all of those people who occupy land informally, illegal. These rights need to be articulated and regulated, and rules need to be set up. Regularising land rights will unblock a lot of people's own capital for improving their housing conditions."⁶⁸ In early December 2003, Amnesty International called for a moratorium on compulsory evictions, claiming that more than 5,000 people had been forcibly removed from their homes in three incidents between 2001 and 2003.⁶⁹

Food security and revival of agriculture

An abjectly poor population, returning refugees and IDPs lack sufficient food stocks, seeds, tools and livestock. Unable to resume normal agricultural production in the near future, they have little chance of feeding themselves. While many have continued to have access to food aid, this aid is generally not being provided in their home communities. In mid-2002 the UN estimated that at least 4 million people were

vulnerable to famine, half of whom were dependent on aid. A year later some 15 percent of all Angolans – more than 2 million – remained highly vulnerable and entirely dependent on external food assistance to survive. World Food Programme vulnerability assessments carried out in mid-2004 indicated that there were signs of increasing food production, but some 1.05 million people remained food insecure despite the distribution of seeds and tools to over 600,000 families. Logistical constraints, the lack of rural markets or sufficient inputs, and the inaccessibility of some areas, continue to constrain food production. The revival of agricultural activities is also severely affected by the large number of land mines that litter the countryside (estimates vary from 7 million up to 15 million⁷⁰), affecting access and undercutting food production as vast stretches of land are not yet safe for cultivation.

Furthermore, because Angola has experienced a loss of critical assets and capacity it is likely that it will continue to rely on humanitarian assistance for some time to come. Many ordinary Angolans have, in fact, begun to see the NGOs and their donor patrons as the main provider of basic social services, humanitarian relief and resources for rehabilitation, rather than the state. MINADER is hugely under-resourced. It does not have sufficient staff, they are underpaid, generally are unable to operate in the field for want of vehicles, and have no funds to provide support in the form of extension services, seed banks, tools, or grain storage facilities. Given that the 2003 Inter-Agency Consolidated Appeal (CAP) for Angola was the last and the 2004 Consolidated Appeal for Transition⁷¹ received less than 60 percent of its appeal for US\$262 million, it is critical that efforts to assist in the recovery of agriculture be effective in enabling vulnerable households to produce their own food, and not depend only on general food distribution. Current pledges to the World Food Programme (WFP) are insufficient, and until the government is seen to be assuming responsibility, fewer donors are willing to fill the gap. It is unacceptable that a country as rich as Angola should be dependent on the international community. As Douglas Steinberg, director of Care, Angola, stated in April 2003:

Were the government to fully account for its resources and allocate them to meet Angola's humanitarian and development needs, the Angolan people would face a radically different future. Until the government assumes its responsibility, few are willing to fill the gap. In either case, external funding is likely to diminish over time, particularly as Angola transitions from an emergency to a development context.⁷²

To give perspective to this it is worth reflecting that Angola has shifted from being a net exporter to a country heavily dependent on international food aid. In the early 1970s Angola exported more than 100,000 tones of maize each year, yet by the 1990s the country was producing only about half of its cereal needs. Coffee exports in 1993–97 were on average about one percent of their level in the early 1970s.⁷³ Cultivation of most other cash crops, including sisal, sugar cane, cotton and tobacco has almost

ceased. With a mere three percent of eight million hectares of arable land estimated to be under cultivation, the country can only produce a small amount of its total food needs. For several years the WFP has been delivering food to an average of one million people each month.

While the MPLA did little to promote peasant agriculture after 1975, it is the war that has truly ravaged the agriculture sector, agro-processing and domestic trade. There has been a critical loss of assets and capacity – key agricultural, health, education and transportation infrastructure have collapsed or been destroyed. Much agricultural land has been untended and left fallow for years or rendered useless by landmines. Seeds and tools (including animal traction) are scarce, and inputs almost entirely sourced from relief agencies. Labour is also scarce in some areas as more than half of the households are headed by women. Many women-headed households have high dependency ratios with elderly and young to care for.

There is now no longer a unified national market; it has been replaced by a coastal enclave economy. Most of the rural areas have receded into a very basic form of subsistence economy, more or less completely cut off from markets. There are several causes for this: most obviously, the extended state of insecurity over the past three decades, the extreme shortage of skills, macro-economic instability and uncertainty, distortionary policies, and the severe and prolonged deterioration in physical infrastructure and services. Road and rail infrastructure has been severely damaged, and the cost of air transport from the hinterland to the coastal towns is exorbitant. The net result is that since independence, the non-oil sectors of the economy have been in prolonged recession.

Most rural people do not have access to a sustainable income base outside of agriculture, and the high unemployment levels exacerbate the demand for land. Even if food becomes available in the local markets, most households will not have the cash to buy it. There is an urgent need to diversify and expand the agricultural and the non-agricultural base of rural households. The use of natural resources as a central part of livelihood strategies is not only limited to agriculture and the full-time cultivation of land. A wide variety of habitats and resources constitute “commons” that contribute to rural livelihoods – water for domestic use, livestock and irrigation; grazing and browsing for livestock; wildlife habitats providing food and medicine; building materials; edible plants; or raw materials for products and handicrafts. There is also a range of potential economic activities that can take the form of sub-contracts, joint ventures or leasehold agreements associated with ecotourism, wildlife based enterprises or commercial forestry.

Prerequisites for a new policy

For the first time in almost three decades, Angola is now in a position to realise its tremendous potential. Establishing food security is the main means for stabilising the population and a vital step in moving from humanitarian relief towards broad-based development. The

government of Angola believes the country will be agriculturally self-sufficient within three years.⁷⁴ Certainly agriculture, and land tenure, are prerequisites not only for immediate recovery, but also for obtaining the longer-term benefits of diversification. This, however, necessitates a thorough and early reconsideration of policies, a key component of which is property rights. If the rights of the poor are not strengthened, they will continue to lose out to the wealthy and powerful through land grabs, and they fail to recover the natural capital that they lost in wartime.

Debate and consultation are critical to the process leading to the approval of a land policy and a new land law; the drafting of workable law requires genuine involvement of all categories of stakeholders, both government and non-governmental institutions, central and local institutions, communities and private sector organisations. Most Angolans are illiterate and poor, and have little or no knowledge of the law and their legal rights to property. They therefore stand little chance of standing up to powerful public representatives. It is therefore critical that the process be characterised by an open and democratic approach, negotiated and not imposed. It is, furthermore, critical that the methods of consultation include translation into mother tongue where necessary, an analysis of the history of ownership, cultural links and population movements, as well as strong community empowerment (as opposed to NGOs merely facilitating the processes).

Women's rights and other gender-related issues also need to be addressed in all discussion of land policy. Women are particularly vulnerable because massive displacement has resulted in a disproportionately large number of households headed by women. Women, who are essentially temporary custodians of land passing from father to male heir, are without land rights as customary rights leave land in the control of men; upon divorce, separation or death, a woman faces the risk that the husband's family takes everything of value (including land) from the wife. Women also have the least social power and no effective decision-making powers, as evidenced by recent reports that women and female-headed households returnees are being disadvantaged by being allocated lesser quantities of land than men. The introduction of formal legal rules, though land reform and titling and registration, cannot afford to fail to recognise the rights of women.

Under the 1992 Land Law a centralised vision of the state as controller of the economy prevailed, and so participation of civil society was not considered a necessity. Now, after so many years of civil conflict there is a strong need for people to be better educated and informed about their land rights and the benefits of a land law, for advocacy and for broader consultation. For the first time in Angola's history, a law was open for public debate, and for this the government must be commended, although credit must be given to the role of the NGOs and media in raising public awareness. Various studies were conducted and the Land Act did go through several revisions, but it was nevertheless more a question of

government imposing its ideas, than a process of consultation or of taking on board the suggestions from civil society and NGOs. Furthermore, the level of debate in parliament was considered to be poor, with voting along party lines indicating little engagement in the subject matter. MPLA members voted in a solid block in support of the adoption of the land law, while the opposition either voted against, or abstained.

There is a need for a formal land policy that guides creation and implementation of the priorities to be promoted through land use, tenure or transactions. There are no formal, written policies that describe these. As already indicated, the 1992 Land Law did not reflect either liberalisation or security of tenure for smallholders. Again, with the new Land Act, there is uncertainty over a possible conflict of interests over intent: social equity and the preservation of traditional ways, or economic development. There is also the need for coherence among a range of related laws: those related to land, natural resource management, water, forests and fisheries for example.

A central and fundamental issue is the need to integrate land policy into a development strategy that is part of a wider social and economic development vision. In the rural areas this would be reflected in the protection of existing local land rights and at the same time the promotion of new investment that is needed so badly. The country needs to build market economies, to move from subsistence farming to commodity production, and to create infrastructures to support small- and medium-scale enterprises, particularly rural markets and trading networks. A major challenge facing the country is adjusting to the rapid urbanisation. Luanda alone has almost one quarter of the national population,⁷⁵ and a recent study has indicated that its population may reach 5.4 million by 2010.⁷⁶ What this calls for is greater attention to urban planning, investments in urban infrastructure and the development of low-cost housing on serviced sites. It is estimated that some 80–90 percent of the urban population do not have legal title and the government lacks the capacity to survey and provide titles in the three-year time frame that has been set. The implications of this are that the vast majority of urban dwellers will become informal occupiers of their land. In effect this will “criminalise” the poor majority.

Land activists maintain that the new law gives greater priority to the economic rather than the social value of land. Communities see land as representing not only their guarantee of survival, but also their culture and heritage; “Social representations of land and land tenure systems give structure to the relation between man, land and agricultural production.”⁷⁷ There is a growing belief that the government is unable, or unwilling, to reconcile such a vision with its own approach, which is informed by a technocratic and purely economic view, and which excludes the community social and rights-based value system and fails therefore to respect traditional law.

It is important to recognise and value the role of customary systems and those who manage them, without institutionalising them and

removing their inherent flexibility and legitimacy in the eyes of the local people. The very real possibility of an active and informal land market within and between traditional communities cannot be overlooked. If formal laws do not correlated with customary and traditional realities, there is the risk that these will be ignored by the traditional communities. However, while the only real communal lands in Angola exist in areas of low demographic pressure (primarily in the eastern and south-eastern half of the country), there is an important caveat to be added here: the caution against re-investing power in local traditional leaders, who have shown little support for women's rights.

There is considerable merit in developing the very good potential for commercial agriculture, but this should not be used as a guise for the increasing number of land takeovers. Huambo and Bié provinces have seen a revival of claims for old fazendas, purchased at 'knock down prices', with local populations being pushed onto poorer land or reduced to being employees.

In the opinion of the Minister of Assistance and Social Reinsertion, João Baptista Kussumua, one of the main challenges of the post-war period is the revival of rural communities and reactivation of their economy, which he says is central to a strategy of reducing poverty.⁷⁸ But if the law satisfies only agro-industrial needs (which in all likelihood will justify the concessions already given to favoured people), and does not ensure the protection of rural community interests, such as water rights, a new social conflict could emerge. Agricultural rehabilitation, generally considered politically neutral, can easily take on political dimensions, in which case rehabilitation is clearly not enough. It has been suggested that the seeds of the next conflict lie in precisely this outcome, should the call for investment by the coastal people who own land in the traditional Ovimbundu territories on the Central Plateau be met.

The government must develop an equitable, consistent land-use policy balanced between agri-business and smallholders. At the same time, policy with respect to agriculture should not see the agrarian economy split into two, namely modern and traditional, but rather see the two as complementary and engaged in a dynamic interaction based on partnership and shared resource use. The issue is particularly important in ensuring stability of the process of re-entry and reintegration of displaced people. While land per se does not ensure the means of making a living, it is a safety net that should not be threatened. Policy needs to promote both equity and productivity, identifying how these can complement each other. Issues of equity need to permeate all aspects of policy, and not be limited to vague statements, which invariably translate into a gap between vision and reality.

Another concern is the capacity of state structures to perform the devolved responsibilities that are envisaged by the new land law – juridical, regulatory, fiscal, cadastral and to fulfil their judicial and administrative responsibility at all levels of government to resolve the huge number of land disputes. Angola inherited limited experience of

governance and public infrastructure at the time of independence, and the human and physical capital that did exist was decimated by war. The mandates of certain ministries overlap, and there have also been tense and poorly defined relationships between provincial and central level institutions. Angola now needs to develop a transparent, functioning, efficient and effective land administration system that also integrates the reality of customary land management systems into formal national legislative and administrative frameworks.

The cadastro or legal land registry has not been updated since 1975 and negotiations for the granting of land have not always been conducted in an appropriately formal and objective manner. As already noted, the chaotic administrative history has made it possible for elites to take advantage of local communities. A user-friendly dispute resolution system is needed, for without negotiations it is more likely that tensions could develop into open conflict. Negotiation and consultation processes to harmonise formal local government and traditional customs are also needed. As questions of land reoccupation are best handled by local land management structures, with little intervention from the state, decentralisation is critical as it would militate against the development of inter-institutional issues (national level versus provincial level) and other problems that could lead to conflict. Consensual agreements can be reached if the appropriate guiding framework and adequately trained facilitators are in place.

Not only is the country struggling to rebuild its legal and administrative framework, but there is also a concern that the requirement of only three years (itself a concession by government, which previously stipulated one year) for people to apply for the regularisation of their right to the land they are occupying, cannot easily be met.⁷⁹ Access to information is still limited, and many people still have no formal identification documents, either because they have lost their papers in the upheaval of war, or because they have been living in areas controlled by UNITA and inaccessible to state employees. Others have been refugees in neighbouring states. The vast majority of people do not have the necessary papers providing legal ownership of property. While the new law seems to make it easier for the relatively well-off to secure urban housing property rights, it increases the vulnerability of disadvantaged communities as it does little to address the issue of land held informally. The risk then is that informal landholders will be illegal occupants of the land they live on. The government needs to establish a process for extending formal land rights at no cost to those occupying irregular urban and peri-urban lands. As Allan Cain, has stated:

In the major cities, especially around the capital, Luanda, many families who fled fighting in the countryside ended up occupying or buying land on the informal market from people who usual had no legal title to it. In peacetime, this is now prime property for commercial interests and the poor run the risk of being turned out of their homes as businesses with deep pockets clamour to snap up city-centre and suburban real estate.⁸⁰

It is worth noting that such a process seems already to have begun, as evidenced by evictions in Boavista (July 2001)⁸¹, Soba Kapassa (December 2002)⁸², and Benfica (March 2003). A report by Amnesty International entitled "Mass forced evictions in Luanda – a call for human rights-based housing policy" issued in November 2003 called for a moratorium on forced evictions, claiming that over 5,000 had been forcibly removed from their homes in three mass evictions between 2001 and 2003. In the report they raise the concern that the "system for registering land and housing almost collapsed during the war and was unable to cope with the expansion of households in Luanda."⁸³ As appositely stated by Melville, "...if those who benefit from the legislation are the already well-connected, whose principle motivation for exercising their property rights is speculative, then the economic growth driven by the development of private land-ownership will be diverted away from those most in need and most capable of delivering results...The privatisation of government-owned real estates also provides a further opportunity for the well-connected to acquire private property rights at nominal cost, to force up rents and to force out residents who were occupying rooms and apartments beyond the scrutiny of the wartime state."⁸⁴ In a similar vein, there needs to be an inventory of all natural resources in the country, systems and training set up for administrative matters such as participatory methodologies, geographical information systems, monitoring and evaluation. The law circuitously permits the mere classification of land as being within or needing to be within the public domain, to be a sufficient declaration that the land is needed for a public benefit.

In the absence of a freehold system, concessions are granted but these come with a number of conditions. This gives the government considerable technical leeway. Concerns have been raised by land activists with regard to the many different reasons presented for the taking of land, in the absence of an expropriations law.⁸⁵ Under the new law, government tools for expropriating confiscated land are, in fact, greatly increased. There is also no principled way for determining just compensation because there is no land market and there is no land valuation function or expertise. In effect this is tantamount to a reduction of rights. However, the government has promised that these concerns have been heeded and will be detailed in the by-laws that have yet to be developed. Development Workshop, is playing an active role in discussing with government the importance of consultation and the establishment of clear rules for expropriations and compensation.⁸⁶

Final thoughts

Angola is characterised by huge inequalities in wealth, which have increased because of the country's recently developed oil wealth. As appositely stated by Rafael Marques, "(the) country's wealth is so vast as to make it impossible to create a strong enough commitment on the part of the international community to encourage the adoption of a macroeconomic stabilisation programme which would restore the economy

to the eventual benefits of its people. Mineral wealth has corrupted the decision makers.⁸⁷

While structural conditions do not in themselves imply that conflict is inevitable, cleavages in the social system can lead to violence if events that provoke, accelerate or create instability occur on top of structural realities. In such situations, any meaningful empowerment of one group of people is likely to be perceived by some other group to be at their expense. This brings into question whether the Land Act has the potential to accentuate wealth disparities, capitalising on poverty. In other words, is the intent of the law and the economic agenda behind the current land issues designed to favour a narrow elite, or will it act to reduce disparities, such as those that are particularly acute in the former UNITA-controlled areas of the central highlands? The agricultural populations in these areas are the most seriously affected by economic policies that favour urban areas and the most severely penalised by oil-induced distortions.⁸⁸

Angola is set to continue with the (incomplete) transition from a centralised economy to a market economy.⁸⁹ However, precisely because the MPLA and UNITA – the two parties which define and dominate mainstream political discourse – do not have any substantive differences of opinion with respect to Angola's future, in the absence of the required level of debate there is a political vacuum⁹⁰ This makes it all the more important that the transition to a free market system be accompanied by changes in the way that land resources are managed and owned, failing which land allocation could prove to be inequitable, to sustain the colonial legacy, and to be difficult or impossible to reverse. Central to ensuring the credibility of peace will be to change economic policies that favour a narrow elite, who in their behaviour are barely distinguishable from the old Portuguese colonial masters. Frustrated expectations, the consequence of policies that favour a narrow minority, raise the likelihood of tensions being triggered.

The most pressing need is to halt the ongoing concession process, which lacks transparency. It is a process that tends to award concession to relative few who have access to the laws, rules and mechanisms, as well as access to credit.⁹¹ The practice of making large land concessions to a privileged few has made possible the continuation of the former communist ruling class in its role as an elite. With regard to the issue of state land, the law needs to provide a definition of the nature of state land title, and clarify state rights to land and natural resources.

Concerns have been voiced about the continuation of the land grab, which began in the late 1990s when a few wealthy individuals gained control over vast natural resources. Circumstances are changing rapidly in the country and the changing economic conditions are likely to increase competition for access to land. The rapid changes in social mobility may also result in a breakdown in social consensus and open the door for possible conflicts. The likelihood of tensions is raised even more when there is confusion and conflict between customary rules and modern laws.

There are numerous questions about who is receiving the major land concessions and for what purpose. This also raises the question of whether the new law is deliberately failing to be definite – is the covert intention to leave the bureaucrat with greater discretionary powers that will serve to ensure vested interests are not tampered with? An encouraging development in February 2005 was the announcement by President dos Santos of the formation of two presidential commissions to review Angola's economic and urban planning legal and regulatory regimes to ensure that both reflect Angola's new economic realities.⁹²

The potential for Angola to move from conflict to reconstruction and then sustained development is greater than ever before. Nevertheless, there remains a risk that the country will be condemned to further decades of poor governance and localised violence if challenges such as those outlined in this paper are not addressed. As the Commission on Human Security states in its recent report, "Cease-fire agreements and peace settlements mark the end of violent conflict, but they do not ensure peace and human security... [the] chance that renewed violent conflict will erupt ... is even higher when control over natural resources is at stake."⁹³

In the end human, security depends on the interweaving of various dimensions: during periods of reconstruction, the focus has to be on addressing poverty while engaging in economic policy reform. Issues of reform and reconstruction cannot be compartmentalised into separate strategies developed under different ministries. If recovery is not broad-based, it can increase inequality by allowing an elite to strengthen its position while poor communities stagnate. Conflict will also be determined by the potential for political groups to mobilise on behalf of the marginalised, especially when they have external support. With the FAO, the World Bank and other agencies now committed to the concept of community tenure it seems likely that more and more communities will agitate for land rights.⁹⁴ This is of particular relevance in noting that land tenure is not only a development issue; it is also a rights-based issue – that is, rights to land are not just a source of economic production, but are also a basis of social relationships and cultural values, and a source of prestige and often power.⁹⁵ Addressing the issue of land tenure reform in terms of equity and justice cannot occur separately from broader political reform and economic transformation. It is only by giving people real rights that they can engage fully in development.

ENDNOTES

- 1 Jenny Clover is a Senior Researcher at the African Security Analysis Programme, Institute for Security Studies.
- 2 The author would like to thank the following people for their invaluable assistance in the course of the research undertaken: Dr. Allan Cain, Director of Development Workshop, Dr. Paulo Groppo, Land Tenure Systems Analysis Officer, FAO, Rome and Dr. João Porto, Head of the African Security Analysis Programme, Institute for Security Studies.

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- 16 The Portuguese used Angola principally a source for the thriving slave trade across the Atlantic and by the 1700s Luanda had become the greatest slaving port in Africa.
- 17 F Pacheco, *ibid*.
- 18 The principles of Portuguese occupation were based on administrative differentiation of groups. However, cultural assimilation effectively prevented most indigenous people from becoming 'civilised Portuguese'. This racially based discrimination was consecrated in the Statute of Indigenous Peoples of the Portuguese Provinces of Angola, Mozambique and Guinea. Almost everything was regulated in a specific way for whoever did not have Portuguese citizenship. See F Pacheco, *ibid*.
- 19 *Indígena(s)* – An African or *mestiço* without *assimilado* status – that is, uncivilized. Before the abolition of the status (and the distinction

- between it and that of *assimilado*) roughly 99 percent of all Africans were *indígenas*. Ibid.
- 20 *Assimilado(s)* refers to those Africans and *mestiços* considered by the colonial authorities to have met certain formal standards indicating that they had successfully absorbed (assimilated) the Portuguese language and culture. Individuals legally assigned the status of *assimilado* assumed (in principle) the privileges and obligations of Portuguese citizens and escaped the burdens, e.g., that of forced labor imposed on most Africans (*indígenas*). The status of *assimilado* and its legal implications were formally abolished in 1961. Library of Congress, in <http://memory.loc.gov/frd/cs/angola/ao_glos.html>
 - 21 *Mestiço(s)* was the term used alone in a social context for the offspring of a mulatto and a white – mixed white and African ancestry. Several varieties, depending on the nature and degree of mixture, was recognised by the Portuguese and *mestiço*. Most *mestiços* were urban dwellers and had learned to speak Portuguese either as a household language or in school. Ref: Ibid
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 - 30 T Hodges, op cit, p 92.
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 - 32 T Addison, op cit, p 21.
 - 33 *Lei de Licenciamento da Titularidade do Uso e Aproveitamento da Terra para Fins Agrícolas*
 - 34 During the colonial period, migration was driven by economic imperatives; after independence, the collapse of the economy, most especially felt in the rural areas, was a strong push factor.
 - 35 F Pacheco, op cit, p 16.
 - 36 *Open access*: tenure where there is no control on access to resources: specific rights are not assigned to anyone and nobody can be excluded. *Communal*: a rights of commons exists within a community where each member may have a right to use independently the holdings of the community. *Private*: the assignment of rights to a

- private party who may be one person or a group of people, or a corporate body such as a commercial entity or non-profit organization. *State*: property rights are assigned to some authority in the public sector. See R Ramirez, "A conceptual map of land conflict management: Organizing the parts of two puzzles", FAO Rural Development Division, March 2002.
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- 55 As discussed in the following subsection.
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