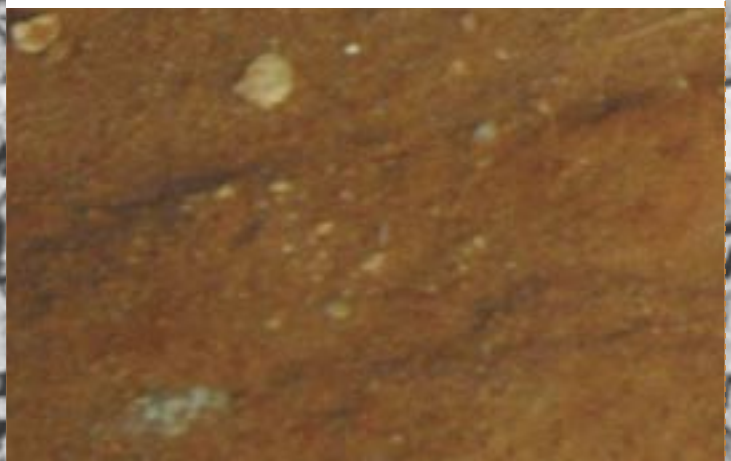
# TERRA

## Urban land reform in post-war Angola: research, advocacy & policy development

by Development Workshop (Angola) and the Centre for Environment & Human Settlements (UK) with support from One World Action (UK) & DFID (UK)



In 27 years of civil war, millions of Angolans fled the countryside for the relative safety of the big cities and their crowded shantytowns. With their meager resources, they built dwellings on land obtained by mostly informal mechanisms, often with little security of tenure.

Based on pioneering research on urban land access in Angola by the NGO, Development Workshop, and the UK-based Centre for Environment & Human Settlements, this book argues that the so-called "anarchic" land development in Angola's cities presents a unique opportunity to develop new approaches to post-war urban land management. The recommendations on policy and practice are grounded in Angola's reality. Drawing on field research and recent international experience in urban land management, the themes discussed include: growth and settlement patterns in peri-urban areas, formal and informal mechanisms to access land, cultural values and perceptions about land, institutional capacity for urban land management, decision-makers' attitudes and perceptions about urban development, and land policy and legislation in Angola.

Equally important this book documents the use of action research as an advocacy tool in the drafting of the 2004 Land Law and in the associated public consultation process. The latter was the first-ever such process with broad popular participation in Angola. While the book focuses on urban land issues, these need to be seen in a wider context of changing governance in Angola, and indeed in the Sub-Saharan Africa region.

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- the local, provincial and national Government officials who facilitated the research and participated directly in this;
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# GLOSSARY

| | |
|---|---|
| COFOPRI | Comisión de Formalización de la Propiedad Informal |
| CEHS | Centre for Environment and Human Settlements (at Heriot-Watt University) |
| CFB | *Caminhos de Ferro de Benguela* |
| CFM | *Caminhos de Ferro de Moçamedes* |
| DFID | Department for International Development |
| DW | Development Workshop |
| EDURB | Empresa de Desenvolvimento Urbana |
| ESCOR | Economic and Social Research Committee Overseas |
| FAPLA | Forças Armadas Pela Libertação de Angola |
| ICT | Information Communication Technology |
| IDP | Internally Displaced Person |
| IDRC | International Development Research Centre |
| IGCA | Instituto de Geografia e Cadastro de Angola |
| INOT | Instituto Nacional de Ordenamento do Território |
| INOTU | Instituto Nacional de Ordenamento do Território e Desenvolvimento Urbano |
| GARM | Gabinete de Reabilitação dos *Musseques* |
| GPL | Governo Provincial de Luanda |
| HIV/AIDS | Human Immuno Virus/Acquired Immune Deficiency Syndrome |
| MGM | Ministério da Geologia e Minas |
| MINADER | Ministério de Agricultura e Desenvolvimento Rural |
| MINDEF | Ministério da Defesa |
| MINOPU | Ministério de Obras Publicas e Urbanismo |
| MINUA | Ministério de Urbanismo e Ambiente |
| MOP | Ministério de Obras Publicas |
| MPA | Ministério das Pescas e Ambiente |
| MPLA | Movimento Pela Libertação de Angola |
| NGO | Non-governmental organisation |
| NORAD | Norwegian Agency for International Development |
| Novib | Novib (OXFAM Netherlands) |
| OWA | One World Action |
| UCAH | Unidade de Coordenação das Ajudas Humanitárias |
| UNCHS | United Nations Centre for Human Settlements (now UN Habitat) |
| UNDP | United Nations Development Programme |
| UNITA | União Nacional para a Independência Total de Angola |

## Map of the Republic of Angola

# PREFACE

This book is the outcome of a series of research studies that Development Workshop-Angola initiated in 2002, just as the decades of armed conflict came to an end. The Government of Angola through the Technical Ad-Hoc Group for Habitat — at the time based in the Ministry of Public Works and Urbanism — commissioned the first of these studies. The book and the in-depth and field-based research that provide the basis for this volume present a wealth of information on urban land in Angola.

This publication comes at a critical juncture. The end of the armed conflict allows the Government, communities, and international actors to focus their attention on pressing issues. The book contributes to the understanding of complex issues related to contemporary developments in Angola, such as:

- the end of the armed conflict;
- rapid urbanization of Angolan society;
- the process of administrative decentralisation;
- participation as a key aspect of good governance.

Like many countries throughout the developing world, Angola is undergoing rapid urbanisation. The armed conflict accelerated the migration of rural population to the cities. Although armed conflict has ended, urban growth continues at a rapid speed because of high natural population growth rates sustained by a very young Angolan population. Providing services and employment opportunities in a way that can keep pace with urban growth presents a major challenge to the public sector.

Part of the challenge is to generate resources to finance reconstruction. The administrative decentralisation of the Government presents a potential fiscal base for the improvement of infrastructure and basic services.

The question of land titling as stated in the new (2004) Land Law, provides an approach to tenure security and explicitly promotes a strategic vision by the Government for poverty reduction.

In this context, I note the importance of the public consultation associated with the drafting of the new Land Law. The research on which this book is based provided inputs and stimulated discussion in the consultation. The process demonstrates the importance of inclusion and good governance practice promoted by the Angolan state through its Government and Parliament.

The recommendations of this book focus on the capacity of respective institutions to plan and regulate the use of urban land. To this end, the Government is responding with the creation and promotion of partnerships with the private sector, non-governmental institutions, and community organisations. It is this vision of which I am convinced, does not only represent a general understanding, but also a challenge to which the information provided by this book will provide guidance.

Finally I would like to congratulate Development Workshop-Angola and the Centre for Environment and Human Settlements and all people that were directly or indirectly involved in the production of this book, being convinced that through their efforts they made an important contribution towards improvement of the living conditions of our population, poverty reduction, and the consolidation of peace in our country.

Luanda, 3 September 2005
Eng Diekumpuna Sita José
Minister of Urbanism and Environment

# INTRODUCTION

This book is based on a research programme undertaken by Development Workshop (DW), an Angola-based Non-Governmental Organisation (NGO), and the Centre for Environment and Human Settlements (CEHS), a UK-based university research centre. The programme was implemented with the assistance of One World Action (OWA), a UK-based International Non-Governmental Organisation, and funded by the UK Department for International Development (DFID), under its Angola Programme. DW initiated the idea of the research, requesting assistance from CEHS, based on the Centre's work in this sector in Mozambique, and the proposal for the programme was developed from an initial Participatory Urban Land Workshop held in Angola in November 2001, when a range of Angolan-based stakeholders supported the joint DW-CEHS proposal. The detailed proposal of the research programme was submitted to DFID by DW, OWA and CEHS in July 2002, and approved in October 2002, with the research commencing in November of that year. In the interim DW undertook a study on behalf of the Angolan "Ad-hoc Technical Group for Habitat" (of the then Ministry of Public Works and Urbanism), funded by UN Habitat and the Norwegian Agency for International Development (NORAD), which served as a scoping study for the programme.

The six distinct research projects which comprise the overall DW-CEHS programme were implemented during the period November 2002 to September 2003 predominantly by Angolan personnel within, or contracted by DW, under the overall direction of CEHS. The book is based on the "Synthesis Report" prepared in September 2003 by Dr Paul Jenkins, the Director of CEHS, which drew on the various research project reports. It was edited by Andrew Couldridge and Maribel Gonzales for DW in early 2005. The more detailed research reports — listed in annex 1 — can be accessed through contacting Development Workshop. The principal people involved in the research were: Dr Paul Jenkins and Dr Harry Smith (CEHS); Ana Maria de Carvalho, Pacheco Ilinga and Beat Weber (DW), with inputs from Allan Cain and Carlos Figueiredo (DW management) and consultants Professor Patrick McAuslan and Paul Robson (UK), Miguel Barros and Paulo Felipe (Angola). Other DW staff and students from the University Agostinho Neto, Luanda were involved in the fieldwork components of the programme. The research would also not have been possible without the advice of the (then) Vice-Minister of Urbanism and

Environment Dr Graciano Domingos and the Director of EDURB, Eng Sita José (now Minister of Urbanism and Environment).

The programme was initially conceived as providing a much needed information base for the development of urban policy and land use management projects in peri-urban areas of Angola. Angola has been experiencing extremely high and concentrated forms of rapid urbanisation in the past decades, due to general socio-economic and development trends as well as the long civil war. The effect is felt strongly in both rural and urban areas, with the latter growing very fast in predominantly informal settlements around the previous colonial urban centres. Luanda, as capital, has been the focus for the strongest trend in urbanisation and was estimated at the time of the research to have well over 3 million inhabitants, with at least two thirds in peri-urban areas which are predominantly informal in various aspects, especially concerning rights to land occupation. The programme thus focussed on the nature of informal land settlement as a basis for recognising land rights and responsibilities in appropriate and practical ways, with in-depth studies in Luanda and a key secondary city Huambo. The overall emphasis was on developing urban land management systems which would promote social and economic inclusion, and not the exclusion of the majority of the urban population which had existed from the colonial period. This was seen as being essential as a basis for contributing to overall national development as well as avoiding the continuation of endemic potential conflict in new forms in the country.



In any event the war ceased quite abruptly more or less at the time the research programme proposal was submitted to DFID, permitting it to be considered as an important transitional support from war to peace, still within the overall objective of conflict avoidance, but oriented to a new phase of Angola's national development. Not only did the war end in April 2002, but prior to this in July 2001 the government announced its intention to prepare a new Land Law and a Territorial Planning Law as the basis for development, the former being open to widespread public consultation. The research programme thus changed from one focussed on information provision as the basis for policy and practice recommendations, to also incorporate a strong focus on advocacy concerning the public consultation process, which lasted

from July 2002 to November 2003[1] with the new Land Law being approved in August 2004.[2] Throughout this process a network of Angola-based NGOs — Rede Terra — was instrumental in working with, and representing the voice of wider civil society in land matters, both rural and urban, with DW leading the discussion on urban land affairs, drawing on the ongoing research programme. As such the programme took on the aegis of action-research without losing the original objective of policy and practice recommendations.

This book focuses predominantly on the policy recommendations as the moment for advocacy on the Land Law and its Regulations has now past, although these legal instruments will no doubt be revised in the light of experience. However, one of the final chapters in the book also reviews the advocacy process, with a focus on urban land issues, and as such serves as a point for reflection on the public consultation process. DW and CEHS have also contributed to the development of good practice in this sector, drawing on the research to provide a specialised course on Urban Land Use Management and Planning to a range of participants from the government, private sector and NGO institutions between August and November 2004. This course has provided a series of draft pilot project proposals for implementation to test appropriate options for urban land management and planning practices.

This book is published at an auspicious time for Angola. Not only was a new Ministry for Urbanism and Environment created in May 2003, during the above consultation process, but a new Minister was appointed in October 2004, with extensive experience of policy and practice in urban land issues. We are privileged to have Minister Sita José write a preface to the book. In addition, the advocacy engagement between civil society, NGOs and the government has led to a strong interest in partnership working, and this can be consolidated through pilot projects to test options in practice, as well as continued provision of knowledge services, such as training of key personnel. The book thus can serve as a reference point for monitoring and evaluation of policy and practice development as well as an important information resource.

1 It is considered that the public consultation officially came to an end when the Council of Ministers approved the draft Law, but DW and other organisations in the Land Network continued to work with the Parliament and the Technical Commission who were mandated to introduce changes up until June 2004.

2 The new territorial Planning law was approved in March 2003 without public consultation.

The book focuses, naturally, on urban land issues, but needs to be seen in a wider context of changing governance in Angola, and indeed in the Sub-Saharan Africa region. The public consultation on the Land Law was the first such wide consultation by any government in Angola since the nation-state was created, and as such represents an enormous change in relations between the state and its citizens. The book therefore also aims to contribute to a wider review of the consultation process, as a means to draw on this experience to strengthen even further the good governance which this represents as the basis for future state-society partnerships in Angola. In addition the book will permit the research process and findings to be disseminated to a much wider audience, both nationally and internationally, and therefore also contribute to wider sectoral approaches to urban land management, as well as a wider appreciation of this initial experience of practice in good governance.

Luanda, March 2005

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Allan Cain (Director of Development Workshop), Paul Jenkins (Director of the Centre for Environment and Human Settlements) and Eng Sita José (then Director of EDURB, since October 2004 Minister of Urbanism and Environment) at the opening the first participatory workshop on Angolan land rights organised by Development Workshop and CEHS in 2001.

# EXECUTIVE SUMMARY

This book integrates the findings of a series of linked and coordinated specialised studies into various aspects of urban land affairs in Angola as a contribution to the debate on the new Land Law. It represents the most detailed and extensive study on this subject ever undertaken in the country and incorporates investigation of the political-economic and legal-administrative background for urban land management; actual formal administrative and informal socio-cultural practices in urban land management; issues concerning migration trends, land conflicts and urban poverty; projections of urban growth and overall assessment of institutional capacity in urban land affairs; as well as reviews of current draft legislation, legal approaches in the region and recent international experience in urban land management.

The findings have important implications for the 2004 Land Law, for urban planning legislation, and for the regulations and practices that are currently used, or will be required to implement the law and its application in urban land management. The book has been structured to draw together and make as accessible as possible, the findings and recommendations of the various specific studies.

## The process of urbanisation

Urban areas are growing rapidly in many parts of the "South," both from natural population growth and rural to urban migration. The latter is driven by economic opportunity most of all, but also rural lack of opportunity, environmental and climatic change and war or other forms of insecurity. Angola is no different in this respect from many other countries, although the war has led to an acceleration of this process.

Even if the inward migration slowed or stopped with the end of the war, urban areas in Angola, especially Luanda, will continue to grow rapidly for some time due to the demographic profile (dominant age cohorts and fertility rates). Although some people may opt to leave urban areas for rural areas, especially if there are rural development opportunities, or move from one urban area to another, the overall tendency in post-conflict situations is for

limited relocation as many have lost most of their previous livelihood base and cannot afford to lose their current one.

The prognosis is thus continued growth of urban population and for some time at least, growing rates of urban poverty as general social and economic development opportunities lag behind. However, appropriate urban development policies, in parallel with appropriate rural development policies, can maximise the benefits of urban growth in overall economic and social terms and provide a secure base for development.

## Urban development and general development

Urban areas represent real economic and social opportunity and hence their source of attraction. The scale of urban growth is itself a factor in general economic development to some extent in manufacturing production, but especially in the growth of services and markets. As such urban policy needs to positively include urban development and to work with urban development trends and not against them, which international experience has shown to involve extreme waste of human, social and economic resources.[3]

The key is to understand the nature of urban development and its potential, and factor this into general development policies. Urban areas can be "motors for development," but require fine tuning to operate well in the prevailing circumstances. It generally makes better social and economic sense to build on existing investment rather than ignore or destroy this. This implies an incremental approach to urban development which is ultimately more sustainable.



## Main research findings

The vast majority of urban dwellers in peri-urban areas of Angola have occupied land through informal mechanisms, often involving local administrative institutions. These processes have existed from before, and continued during,

[3] This is particularly so for any form of forced relocation of urban population.

the whole period since independence. The most common mechanism has been informal purchase of land with witnessed purchase documents, and an active informal land market exists, for residential rental as well as land and house purchase. While having limited actual land rights in terms of the new Land Law and previous legislation, the vast majority of the peri-urban populations consider themselves secure in their property holdings, but have a very low understanding of the formal legal and administrative context.

There has been no alternative for land access as state supply of land has been virtually non-existent, despite assumed responsibilities after independence. In addition the state capacity to formalise irregular land occupation has been also minimal. However, given the high level of perceived security and limited alternatives for land access, the majority of peri-urban households have made substantial investments in consolidating their land holdings in relation to their economic circumstances and are intending to further invest to improve their social circumstances and pass on their property as inheritance. Despite the lack of adequate land registration and legal and administrative dispute resolution mechanisms, there are however, as yet, relatively few conflicts, and most of these are resolved locally but this situation can change rapidly.

Given the generally high levels of structural poverty, particularly related to high levels of dependency, low levels of social infrastructure provision and informal forms of economic engagement, as well as the high perceived sense of security and limited incidence of conflict, any state intervention, whether legal, administrative and or physical, must build on the existing situation. To attempt to change this outright risks severe social disruption and rapidly rising levels of social unrest. In addition, the existing household investment, albeit inadequate in terms of need, should be the basis for consolidation and not discounted and threatened with complete renewal as this also represents a substantial overall economic investment.

The extremely weak legal, administrative, technical and investment capacity of the government — at all levels — in urban development (urban planning, infrastructure investment, land management, assistance to construction etc.) and the structural constraints on a widespread operation of formal private sector in this, reinforce the need for national government urban policies,

urban development strategies and programmes/projects, to focus on the social and economic inclusion of the majority and not their exclusion.

There are likely limitations on widespread relevant institution building for urban development in the short term (legal, administrative and technical) as this takes time to develop, although this should be a priority for the future. In the interim, state action should focus on partnerships with communities and civil society organisations and the private sector where appropriate, in order to maximise impact. This requires institutional investment and transparent and accountable action with adequate forms of participatory governance.

## Key urban land issues

Secure access to, and transferable rights in, urban land is one of the key components for urban development, as is the provision of urban infrastructure. Inadequate urban land management and improvement can create massive inefficiencies for the whole economy — national and urban — and undermine the more equitable distribution of development opportunity. This then reduces the opportunity for more broadly based economic growth as well as improved living and environmental conditions. The key issues in urban land management are social inclusion, participation in urban governance, and economic opportunity.

Social inclusion has to be the basis for appropriate urban land strategies and should be based on clear land rights — access to land, secure tenure, avoidance/resolution of conflict and transparent administration, including transfer rights. To exclude part of the population systematically from land rights, whether based on legal and or technical grounds or due to limited institutional capacity, essentially undermines governance and the role of the state.



The need for land and for services leads urban populations to resolve these "informally" where "formal" systems cannot. To consider these informal solutions as being illegal, means putting the majority outside the law and in effect undermines the law. Many informal systems, while inadequate in various ways, are more legitimate and more functional than formal systems, especially when these have been inherited from another period or imported from another context.

Urban land is an essential source of livelihood, but can also be a source of wealth creation, and this represents an economic opportunity. The balance, at times delicate, between these two factors needs to be understood and the function of land as a survival mechanism as well as a creator of wealth both need attention, whether protective or regulatory. Urban land thus plays an extremely important role in poverty reduction and economic development, both directly and indirectly.

Mechanisms to incrementally move from informal, unregulated systems, towards formal, regulated systems are essential and this entails intermediate forms of land rights. There have been an increasing number of forms for intermediate land rights developed in various developing countries, including in the Sub-Saharan African region, underpinned by innovative approaches to Land Law and urban land regulations/mechanisms.

These intermediate forms of land rights permit social and legal inclusion, and are a strong element in promoting participation in urban governance. Adequate institutional structures need to be created to permit these to operate in as decentralised a form as possible, thus reducing the high costs of centralised or privatised systems of land management. Such publicly accountable institutions should operate also at local, provincial and national government level where they can provide essential inputs to refining national urban land policies, city-wide urban development strategies as well as specific projects and programmes. They should be composed of the main actors in each situation, and invest in civil society organisational capacity.





## The importance of participatory urban land management

Land is so important for all urban dwellers, in different social and economic situations, that it has an equally important political role. However, attitudes to land are deeply rooted in cultural values. Hence strategies and mechanisms for urban land management need to be sensitive to the political, cultural, social and economic context for which they are directed. This changes from country to country, from one urban area to another, and even within one urban area.

Urban land management is complex and thus there is no one simple approach — simplistic solutions end up being more costly in all ways. The best approaches are based on a clear understanding of the diversity of land interests and the different contexts, and are above all based on open participation in developing the appropriate management mechanisms for these. This can of course draw on international experience, but can also draw on national experience, such as "learning by doing" through pilot projects.

Land legislation and regulation are only part of the answer. It is equally important to create institutional capacity and change how people think and act on urban land. There is no point having new laws just for these to be ignored or applied for a minority. More comprehensive land policy approaches however cannot be a task of the state alone, but must engage the private sector, NGOs and communities.

The approach to developing appropriate urban land management thus needs to evolve and draw on experience, and not only be based on legal and administrative definition or importation of international experience. Distinctive Angolan approaches can use research, open discussion with wide stakeholder groups and "learning by doing."

## The opportunity in Angola



For many, the so-called "anarchic" situation in Angola's urban areas concerning land development is only seen as a problem. However, it also represents a unique opportunity to develop new approaches to urban land management that are based on Angola's reality, engage the potential of Angola's urban citizens, and contribute positively to Angola's development.

There will be different solutions and mechanisms for different situations and different objectives. However, these must be as simple and as transparent as possible and devolved to the level where decision-making has most effect. It is essential to avoid creating new bases for social conflict which can rapidly emerge in situations such as peri-urban Angola.

# 10. LAND POLICY AND LAND LEGISLATION

This chapter analyses land policy and land legislation with specific reference to the current debate on land legislation.

## 10.1 LEGAL BACKGROUND

The legal system used in Angola is largely derived from the colonial system imposed by the Portuguese, with adaptations of generally a social nature after independence. Thus the legal system itself can be considered a sub-set of the Napoleonic legal system used in various European countries, which is based on the Civil Code. This differs fundamentally from the legal systems used — for example — in North American and British law, the latter being based on Common Law and having considerable influence in Sub-Saharan Africa through "received law" imported to British colonial territories. In addition it is different from the Roman-Dutch legal system developed in South Africa, which has been another influence on ex-colonies in the Southern African region.[67] Although it has more in common with the French legal system imported to Francophone colonies in Sub-Saharan Africa, the nature of colonial government was significantly different and hence legal practice also differs.[68] As such Angola's inherited legal system displays considerable difference to those of any other country in the region except Mozambique. However, the post-independence trajectories of each of these countries have also led to significant legal differences occurring, with arguably more coherent legal developments in Mozambique, which brought its post-independence warfare and later civil war to an earlier end.





67 The majority of Commonwealth Africa has land laws based on what is called "old" English land law — e.g. Kenya, Tanzania, Uganda, Malawi and Zambia. Swaziland, Lesotho, Zimbabwe and Namibia have land laws based on the South Africa Roman-Dutch system, whereas Cameroon and Mozambique (the only two non-English language Commonwealth countries) have legal systems based on the civil law codes of France and Portugal. "Old" English land law refers to the law prior to the significant land law reform in England in 1925, which in fact was after the "reception" (i.e. colonial imposition) of land law in many British colonies, and which therefore were not reformed in 1925. This major change shifted the legal basis from laws favouring protection of traditional landowning classes to laws favouring market exchange (McCauslan, 2003).

68 The British (and North American) legal system is founded on judicial precedent, and Roman-Dutch law is similar. The Napoleonic system, widespread elsewhere in Europe, is based on abstract legal norms prescribing possible issues in advance through codification.

Since the imposition of colonial land laws at the time of consolidation of colonial rule, these have been adjusted and adapted to changing political and economic interests elsewhere in Africa.[69] In the past decade this process has been speeded up with many African countries reforming land laws, largely to attempt to integrate customary and modern legal systems which had until then co-existed, albeit with difficulties. To date these land law reforms have met with mixed success, especially in implementation as a number have been very ambitious in relation to the legal and administrative capacity, and others have not adequately dealt with the dominant tendencies, as they are still subject to political and economic pressures.

> Land regularisation is a recognised part of the policies and practices of many countries throughout the world and is now mandated as an appropriate policy for dealing with the land and housing problems of the urban poor by the Habitat Agenda adopted in 1996 at the City Summit at Istanbul.

Few land law reforms in the Sub-Saharan African region have adequately focussed on urban land issues, as they have been generally driven by agricultural and rural development interests. This has led to more difficulties in urban development than even prior to reform in some countries.[70] The major problem has been the continued dominant focus on land as the basis for economic development and the subordination of the role of land in social development and redistribution. As the dominant political and economic groups control lawmaking, these groups' interests tend to be the focus for land reform. Thus to a great extent recent land law reforms have been directed to protecting the interests of national elites against international competition. They have also attempted to integrate customary land rights, as these still are widespread in practice. However, the tendency here is to integrate these for economic rather than social reasons.



Angola has the opportunity to learn from some of these experiences as it begins this process later and there is now a growing literature on urban

69 For instance, "old" English land law has been adapted through most of the past century in African countries, especially after the 1950s (before and after independence) – to strengthen market activities, and then in the 1960s-80s period.

70 For example in Uganda (McAuslan, 2003).

land law reform in the region, as well as internationally. The main principles that need to guide such land reform are:

- efficiency — as land is a scarce and non-renewable resource;
- equity — an essential objective in modern democracy-oriented nation-states;
- certainty — security of tenure is essential for economic and social stability; and
- recognition of difference — despite the ideal of a totally integrated holistic legal system operational for all, the historical and actual social, economic, and cultural context means that diversity is prevalent and this needs to be adequately recognised and dealt with in legal terms.

There are rather few models of legal regimes for the operation of the process of land regularisation within Africa. Zambia's Housing (Statutory and Improvement Areas) Act, 1974 is an early example of such a law and heralded a very successful programme of upgrading as it was then known. The Act established procedures for upgrading, a 30-year occupancy right for occupants who had been upgraded, and a simplified system of registration of title managed by local authorities based on the existing national Title Registration Act.

Of current examples, South Africa's 1996 Development Facilitation Act comes close to setting out a framework for dealing with the land development problems of the urban poor. That law is mainly concerned with new development rather than upgrading, though there are matters dealt with there, which are relevant to regularisation, particularly participation and the conversion of informal tenure to formal titles. Similarly the new law in Namibia providing for new forms of urban tenure in informal settlements does not deal with the process of upgrading, concentrating more on the new tenures.

More relevant, however, are provisions in the Tanzanian Land Act 1999 and regulations made there under dealing with regularisation of existing urban informal settlements, of which Tanzania has a very great number. It is for instance estimated that more than 60% of Dar es Salaam's residents live in informal "illegal" urban settlements. The National Land Policy (NLP) of 1995 recognised that these residents had to be made a part of the legal city, and the Land Act which provided for the implementation of the NLP and regulations made in 2000 provide the legal framework for the process of regularising and upgrading these informal settlements and conferring security of title on residents in the areas.

## 10.2 CHRONOLOGY OF ANGOLAN LAWS AND LEGAL REVISION PROCESS

The Law No. 2030 of 1948 was the basis for land law in the colonial period in Angola, with this being subject to numerous local bye-laws in various provinces. The new Constitution at indepence in 1975 established the overall right of the state to all land, which could be transferred to individuals and entities, based on the use of this, i.e. a form of usufruct. In 1992 the Law 21C was approved to regulate the concession of land for agricultural use as the basis for rural development, on the basis of "surface land use" rights. The Decree 46A of the same year developed this, giving the provincial government the right to concession, including in urban areas where the land was under state control. This form of usufruct right was to be conceded for a minimum of 25 and maximum of 60 years, renewable.

The Luanda Provincial Government announced an emergency programme in 1994 to deal with unplanned land use in the urban area (Resolution 30/94). It subsequently developed Bye-Law 1 in 1996 to permit its implementation in conceding the usufruct (surface) right, linked to a programme of land and infrastructure development with private sector partners — the Luanda Sul Programme. This was a base for the later approval in 2000 at Central Government level of the Plan for Management and Growth of Luanda (Resolution 27/00 of the Council of Ministers) as a base for a Master Plan. The Master Plan was never finalised despite two follow-up regulations: Dispatch 57/2000, creating a working group to update and coordinate all laws and regulations affecting provincial government, and Dispatch 82/2000 which indicated the intention to commence a comprehensive and systematic urban planning and upgrading programme.[71]



The process of drafting a new Land Law began in 2002 with the appointment of a Land Technical Commission by the Council of Ministers. A first draft was published in July that year and presented for public consultation. A second draft was produced by the Technical Commission in November 2003 and eventually sent to the National Assembly for their consideration. The National Assembly reviewed and approved a somewhat revised version of the Law in

[71] Benguela is another province where the government has also established some subordinate legislation.

August 2004. It was signed by the President and became law in November 2004. The Law specified that regulations or bye-laws would be drafted and become effective within six months of this date.

## 10.3 THE DRAFT LAND LAW

The draft law, as it was conceived in 2002, was mainly concerned with conferring increased powers on state officials to manage land and determine who gets what land and on what terms. As such it ignored the experiences of other countries in Africa and the manifold defects of the state-centralised administrative systems of land management. For instance, the principles set out in the draft law made no reference to any form of participatory land management, or even the social obligations of the owners of land, a principle of land ownership more or less now universally accepted.

It would have been unlikely that the original draft law would have met the needs of the people for obtaining or holding a plot with some guarantee of secure tenure. It also did not establish a local system of dispute settlement to meet the inevitable conflicts that arise over land, especially after more than two decades of civil war. Returning IDPs and large areas of informal urban settlements are situations continuing to give rise to occupation of land without formal legal authority, and disputes over the occupation of land. However, neither of these issues was addressed in the draft land law. Indeed, the draft law specifically outlawed acquisition of land by *usupacião*, i.e., acquisition of a right to occupy land by virtue of a factual occupation of the land for a specific period of time. In the past three decades of dealing with informal urban settlements worldwide, it is now widely recognised that the only way to confront the challenges presented by such settlements is to:

- recognise that they are there to stay;
- develop legal frameworks for providing the residents with rights to be where they are;
- create mechanisms for participative urban planning within and for such settlements; and
- integrate the settlements into the formal legal framework of the city.

DW recommended to the Technical Commission the inclusion of an additional section to the second draft of the Land Law which was designed to provide a legal framework for the regularisation and granting of legal security of tenure to the residents of unauthorised urban settlements in Angola.

Experience in other countries in Africa has shown that it is neither practical nor just to try and remove the hundreds of thousands of "illegal" occupants of land within cities and on the peri-urban land around cities. What needs to be done is to recognise that such people have come to stay and wish to make a positive contribution to the life and development of the cities wherein they reside. The first and most important step in recognition of the contribution that residents in informal areas can make is to grant them legal security of tenure of the land they are occupying. This will encourage them to invest in their homes and commercial activities and so improve both their and the cities' environment.

Regularisation is concerned with tenure issues, not town planning or compulsory acquisition of land issues which is either the subject of, or will need to be the subject of, other legislation. The aim of regularisation is to determine the interests in land which exist in the large unauthorised settlements in and around the urban areas of Angola, record them and allocate them to the occupiers and users of land in those areas. It is a form of urban land rights adjudication, which is an essential precondition to any proper planning and development of those areas.

The proposals made by DW were based on these principals of international best practice and drafted by one of the authors of the 1996 Habitat II Agenda. (McAuslan, 2003). The recommendations were included as an annex to the second draft law when it was sent to the National Assembly for parliamentary debate.



The need to coordinate the Land Law with the Territorial Planning Law was evident. Some articles of the draft land law sought to relate the acquisition of an individual urban plot to compliance with urban planning programmes. It is clear that informal urban settlements will not comply with these. The only formal route to obtaining a lawful urban plot is dependent on urban planning, whether through a new sub division or regularisation. In addition to the capacity to implement urban plans, this relationship also leads to the

importance of town planning standards, which may be set unrealistically high. Assuming that the law can bring about a "city beautiful" by enforcing such standards, is effectively another obstacle to providing for low-income city dwellers to have secure and legal tenure to their land occupation.

The issue of fair compensation for land occupied in good faith was not adequately provided for. If informal urban settlers were to be cleared off their land with no compensation payable, then the injustice of the law would be compounded. In general it could be argued that the lack of administrative capacity would mean that in practice things would go on as before; i.e. the land-poor in urban areas will continue to occupy land without regard to what the law may state, and they will not in practice be moved. It could thus be argued that the draft law, if put into practice, would be extremely difficult to implement on a large scale.

The draft land law did not comply with the principles enshrined in the Habitat Agenda and its Global Plan of Action, which were approved at the City Summit in Istanbul in June 1996, and to which the government of Angola was a signatory. As it was originally conceived, the draft law may have worsened the conditions of those who were living in informal urban settlements.

There are now many examples of laws applicable to urban land both in countries in Africa and elsewhere which endeavour to provide for access by the urban poor to land, for their security of tenure and for their involvement in the planning and management of their own urban communities. The Government of Angola can learn from these experiences and can adapt the land law and its regulations accordingly.

There are several constraints on the implementation of any new land law in Angola, not least the weakness of the judicial capacity nationwide. A law has little value if it is not widely implemented or implementable. This may be because it requires institutional and other resources that are beyond the capacity of the context. In either case the law itself is not enough and the law needs to be based as much as possible on what is practicable, including wide "informal" practices as well as the institutional capacity.

The new Land Law will require adequate regulation and the building of administrative and judicial capacity in order for it to become effective.

The new Land Law published in December 2004, did not incorporate many of the recommendations presented by civil society organisations and NGOs in its final form. However, some improvements had been introduced in later drafts, and through advocacy in the National Assembly, became part of the final law. These included the protection of collective customary rights as well as a three-year extension period of time to allow informal occupiers of land to regularise their plots and acquire titles. MINUA, which will lead the implementation of the Land Law, is looking to develop a framework of regulations and local bye-laws to facilitate this regularisation process.

## 10.4 SPECIFIC RECOMMENDATIONS ON INTERMEDIATE AND EVOLUTIVE RIGHTS

The action-research programme team drew up a set of recommendations for MINUA to consider for incorporation into the regulations or bye-laws of the new Land Law. These were focussed on the creation of intermediate and evolutive land rights as a basis for peri-urban consolidation and upgrading to maximise the role of domestic investment and minimise social hardship. It was recommended that the statute of a form of intermediate and evolutive land rights be instituted in the regulations of the new Land Law, since they were not included in the law itself. While these were primarily seen as being of use in the urban areas and specifically in the case of, "peri-urban" or "suburban" land, there could also be a role for them in rural areas.



The reason for the proposal on evolutive rights is to rationalise the variety of existing "informal" land practices that have occurred in massive urban land occupations for many years with and without implicit acceptance by the state and its local actors. The inadequate capacity of the state in urban land management has led to a series of "informal" land practices, some involving low levels of administration, some forms of market action, some based on forms of intra-family transfer and others — all of which are seen as broadly legitimate if not legal. To these can be added "traditional" forms of land

administration within urban areas, albeit modified. The widespread nature of these "informal" practices is such that significant proportions of the urban population of Angola, and thus of the country are involved.

Despite informal land occupation, this peri-urban population, albeit with limited resources, has made a significant investment in the built environment that represents the bulk of their collective savings potential. The location of this population is often intimately tied to their economic engagement, whether in the formal or the informal sector. Urban land occupation thus represents a basis for both wealth creation and poverty mitigation. As such it is unlikely that massive relocation will be either economically desirable or socially possible. Realistically, even with peace and rural development alternatives, the proportion of the national population in urban areas will continue to grow, and a significant proportion of the urban population growth is likely to remain poor. The research has demonstrated that the possibility for the state or private sector to provide urban land for this backlog and projected demand is also realistically limited despite renewed attention and the dedication of resources to this area of development. Therefore consolidation of peri-urban areas represents a potential to tap and consolidate domestic investment while at the same time minimising social hardship. The priority, where possible, should be to upgrade and regularise peri-urban land occupation and as part of peri-urban land rights. This approach also draws significantly on recent international experience, as documented in Chapter 3.

The essential aspects of the proposed intermediate land rights were that they be:

- intermediate between full land rights such as freehold or surface rights to land and precarious rights or the basic property rights enshrined in the Civil Code;
- evolutive in that they permit the possibility, given certain circumstances, to evolve through manifestations of these rights to the full rights;
- defined to permit the clarification of what these rights entail, as opposed to the generality of full rights or basic property rights, with respect to such issues as transferability, compensation, and limitations.

The principles underpinning the proposed intermediate and evolutive land rights include:

- the acceptance of regularisation of land occupation where possible, with the reordering, upgrading and requalifying of the nature of the land use taking into consideration the value of the land;
- the principle that land has to be valorised by the state, even where there is no formal land market, through taxation instruments which are based on actual land transaction costs, or as close to these as possible;
- the basis of the actual land instruments, to be the subject of detailed regulation, should draw on actual practices in peri-urban areas as much as possible, representing customs and legitimacy.

The intermediate and evolutive land rights could include for example the following:

a) A temporary residency permit which:

- would be invoked in peri-urban areas where regularisation is not possible for a limited number of established reasons;[72]
- would be non-transferable;
- would be limited in period of validity;
- would establish limited rights to compensation of property built prior to its application;
- would be allocated by the local municipality on the basis of evidence of right established locally;
- could be applied to land which had customary land tenure;
- would carry a limited one-off land charge to cover administration.



[72] These reasons need to be established in the regulation and would include the overall land use plan for the area and suitable ecological situation.

b) A provisional occupancy permit which:

- would be invoked in peri-urban areas where regularisation is possible for established reasons;
- be transferable within the immediate family;
- would have a defined period of validity, such as 15 years, with renewable status if no upgrading is imminent;
- would establish rights to compensation of property built prior to its application and any improvements authorised thereafter;
- would be allocated by the local municipality on the basis of evidence of right established locally;
- could be applied to land which had customary and collective land tenure;
- would carry a limited initial and annual land tax to cover administration.

c) A provisional surface land permit which:

- would be invoked in peri-urban areas where regularisation is planned or underway;
- would be transferable through a registered transfer process, such as notarised sale;
- would have to be taken up within a defined period to be validated, e.g. 5 years, with renewable status if upgrading is delayed for recognised reasons;
- establishes rights to compensation of property built prior to its application and any improvements authorised thereafter, as well as the land value or equivalent;
- would be allocated by the local municipality on the basis of a regularisation process or a new plot demarcation process;
- would carry a more onerous initial and annual land tax to cover the regularisation process;
- would permit the individual to request full individual surface title through individual topographic demarcation.

The above forms of occupancy rights need to be detailed in discussion with the legal and technical entities engaged in formulating the Land Law Regulations, and should draw on practice, such as through pilot projects,

for their refinement over time. They should be applied taking into consideration in all circumstances:

- the actual capacity of urban areas in terms of local administration, including community level organisations;
- the decentralisation of activities to local levels where possible;
- the involvement of other actors in the land regularisation process, such as civil society, non-governmental organisations and the private sector, where appropriate;
- maximising cost recovery of the land upgrading process from beneficiaries through land taxation and the direct return of this into land development.

The recommendations were added as an annex when the Land technical committee sent their final draft to Parliament. The recommendations, however, were not incorporated into the final law. Members of the technical committee recommended that these proposals be taken into account when drawing up the bye-laws that will regulate the implementation of the legislation.

# 11. ACTION RESEARCH AS AN ADVOCACY TOOL TO INFLUENCE ANGOLA'S LAND POLICIES

## 11.1 BACKGROUND

When DW first started studying the land question in the mid 1990s, Angola was still embroiled in cycles of civil war. Conflicts over land were lost in the general preoccupation with higher-level conflicts of the day and had not been viewed as a major issue since the country's independence from Portugal in 1975. The expropriation of Angolans' lands and the accumulation of lands by colonial settlers could be considered one of the key determining factors fuelling the liberation war for independence.

During 27 years of civil war, literally millions of people fled fighting in the countryside and headed for the relative safety of the big cities. They set up homes in *musseques* and shanty towns, building their basic dwellings on land obtained by a variety of informal mechanisms and investing what little money they had in home improvements. But the informal land occupation or purchase documents that they obtained, if any, were not legal titles and were invariably of little value when presented in a dispute over land with the state or a private company.

As peace approached, disagreements over land became more frequent. In the rural communities, fertile, agricultural ground with relatively easy access to urban markets was in high demand and the cause of a few disputes among resident and returning populations of IDPs, refugees, and demobilised ex-combatants as well as more powerful official interests. In the towns, the urban poor risked being uprooted from their homes, as their sprawling *musseques* were located on prime real estate, ideal locations for elite housing developments, offices, and roads.

DW had realised early on that the conditions were in place for land conflicts to spiral, possibly even pose a threat to lasting peace in the country. That concern prompted it to engage in advocacy and research work around the land issue. Research can be a powerful advocacy tool for policy development, and CEHS has considerable experience in action-research to this end (Jenkins & Smith, 2004; Jenkins, forthcoming 2006). It was thus possible to bring

together DW and CEHS in a partnership to undertake research as the basis for advocacy, and the research programme was conceived in this format.

## 11.2 NEED AND FOCUS FOR RESEARCH

With the old Land Law dating back to 1992 seen as outmoded, poorly applied, and ignoring the urban context, the government had indicated in July 2001 its plan to update the legal framework. DW was concerned that there existed a profound information gap, especially a lack of knowledge about the actual situation on the ground, at a time when there were massive post-war population movements with resulting new urban land occupation patterns emerging. There was a risk that decision-making and legislative processes could have weak practical application. Worst, it could produce a legislative process, which not only failed to deal with current challenges, but also inadvertently contributed to exacerbating the problems.

As early as November 2001, DW spearheaded two one-day participatory workshops on the land issue, with assistance from the CEHS. Attended by more than 50 members of the government and civil society, including representatives from Luanda, Huambo, and Benguela, these workshops effectively launched DW's research and advocacy work — eight months before the Government published the draft version of its new Land Law. These workshops highlighted the misconceptions and lack of knowledge surrounding land issues among those in positions of decision-making, especially on urban land issues.



The then Ministry of Urbanism and Public Works (now the Ministry of Urbanism and Environment) commissioned DW to undertake a "scoping exercise" (undertaken in November 2001-July 2002), which was designed to provide an overview of the range of land and housing rights issues in peri-urban areas. The results of the scoping exercise confirmed DW's earlier concerns, made a case for much more detailed investigations, and opened the possibility to input to the newly opened public consultation on the draft law. It also underscored the need for the government to facilitate and formalise the regulation of land titles.
The government released a draft of new land legislation in July 2002 and

opened it to public consultation. The new legislation presented an opportunity to contribute to conflict resolution, reconstruction, and poverty reduction. Research about how land was accessed by the poor and war-affected populations was thus of vital importance for the consolidation of peace, reconstruction, and development of the country (Development Workshop, 2003).[73] The main research investigated a range of issues, including: informal and formal mechanisms for land access, institutions involved in land management, institutional attitudes to land, poverty, migration and land conflicts. It also provided an opportunity to open key issues up to wider debate, including attracting the attention and support of other interested parties in Government, the private sector, and civil society.

## 11.3 DISSEMINATING THE FINDINGS

DW faced a two-pronged challenge to use the research findings as they emerged. First, it had to influence the Land Technical Commission as it prepared the draft Law, and later, the National Assembly as it fine-tuned the land bill. At the same time, it had to raise awareness of the issue among the general public and promote debate. To address these, DW used a variety of strategies to work with government, the private sector, and civil society as described below. Several factors facilitated DW's work in this regard.

The Government of Angola had been one of the signatories of the Habitat II Agenda in the UN Conference on Human Settlements in Istanbul in 1996. Together with UN Habitat, the government had begun the process to bring Angola into compliance with the international human settlements principles. Therefore within government there was already some commitment to international norms that could be built upon. Further, the Habitat II Agenda provided a useful context against which the proposed Land Law could be analysed.

Angola's involvement in the Habitat Agenda process was also a factor that prompted the government to take the unprecedented step of seeking input and

[73] Development Workshop, Land access in peri-urban Angola: Its role in peace and reconstruction, September 2003.

advice from civil society about the proposed changes to the Law. This was the first law that had been opened to public consultation in Angola and marked an important development in Angola's opening to civil society and democratic evolution. The Land Law consultation followed closely after the Luena Accords that ended the civil war and initiated a phase of reintegration of the formerly warring parties into a more plural political process. The government set up a Land Technical Commission in 2002 whose role was to study the law and consult publicly around it.

For the Angolan civil society, input into the consultation process was facilitated by *Rede Terra* (Land Network), a coalition of NGOs looking at the land rights situation in rural and urban areas. Founded by DW, along with a number of NGOs in November 2002, *Rede Terra* became a focal point for civil society consultation and information around the Land Law. While *Rede Terra* was predominantly focussed on the effects of the proposed changes on the rural population, DW led the discussion on urban land affairs, drawing on the ongoing research programme. This ensured that urban issues were included in the overall debate.

A series of participatory workshop presentations of work in progress were organised over the period September to December 2002 to present results of the "scoping exercise." The Scoping Report, which was produced by September 2002, and subsequently published as a government document (as it was commissioned by the then Ministry of Urbanism and Public Works), was the first core document presented to the Land Technical Commission and the Presidential Advisor who led the legislation drafting team. The research findings and its conclusions and recommendations, being contained within a Government owned study, carried more weight and credibility than an unsolicited document carrying the same messages would have had.



The openness of the Technical Commission to proactive inputs was a positive factor in the dissemination work. DW produced a detailed commentary on the first draft of the Land Law from the perspective of the Habitat II Agenda and comparative legislation from the southern African region. It also recruited a renowned international legal expert who had been part of the UN technical group and who advised on preparation of the Habitat principles

in Istanbul in 1996.[74] This led to the preparation, with additional CEHS inputs, of a proposed set of statutes as clauses for inclusion in the draft legislation that would bring the law into compliance with international land tenure norms and regional African best practices for regularising informal settlements. The Technical Commission agreed to include the commentary and proposed clauses as an annex to the next draft of land legislation that was being prepared.

Throughout 2003 the research programme continued to produce a regular supply of draft reports and studies that were delivered to the Land Technical Commission, Government and civil society policy and opinion makers and were fed into the ongoing public consultation process. A key piece of research that was designed to inform the programme's policy and influencing strategy was the Institutional Attitudes Study (see a summary of findings in Chapter 9) undertaken by CEHS with DW assistance. In the absence of a debate or clearly articulated position on land policy, the research team showed that the Land Law was based on a set of commonly held assumptions which occupied the "virtual space" normally set aside for "policy" and had embedded policy assumptions, which were not discussed nor made explicit. This study set out to clarify and publicise these assumptions or implicit policies by inviting key informants — policy makers in government and those opinion makers in civil society and the media — to speak openly (albeit anonymously) about their visions and ideas around urban development and land settlement policies.

A striking similarity emerged from both government and civil society key informants. There was a common perception that urban growth was a negative phenomenon that government should and could reverse through a concerted effort of master planning and the creation of rural or new planned urban growth poles. The "growth pole model" was one current in the period before the civil war (1960s and 1970s) and the dominant perception was that many plans and projects, stalled in the early years of war after independence, still existed and could be dusted off for application in the post-war era.

The opportunity to air these ideas and policy assumptions openly also presented a chance to discuss and debate them. Concepts in the field of planning over

[74] Professor Patrick McAuslan of the Law Faculty at Birkbeck College the University of London.

the last several decades have progressed beyond master planning and growth poles. Some of these earlier growth models have produced expensive and embarrassing failures across Africa and other developing regions. Current planning models are based on strong community participation and public consultation and are focussed increasingly on local levels like the municipality or community. International norms promote informal settlement regularisation of tenure and urban upgrading of basic services. Today urban growth is seen as an inevitable and integral part of national development that presents as many opportunities as challenges.

The joint DW-CEHS research studies, published and circulated through 2003 and 2004, have continually and effectively raised key questions around some of the suppositions and prejudices illustrated in the Attitudes Study. The research findings, while highlighting the critical condition left at the end of the war, also confirmed that the urban trends in Angola where not unlike those being experienced in many other developing countries. Natural urban growth and inner-city population movements had for instance already overtaken rural migration as the major factor for growth of the peri-urban settlements. The research also demonstrated the existence of a lively real estate market, albeit unregulated and considered "illegal," but presenting opportunities for Government to finance urban and infrastructure upgrading from rates, fees and eventually taxation from land titling and regularisation.

Meanwhile the process of revising the Land Law gained momentum. In late 2003 the Land Commission produced a second draft which responded to some of *Rede Terra's* concerns about communal land rights, but only left informal occupiers a period of 12 months to formalise the legal titling of their land. The legislative process was then passed on to the National Assembly. DW and *Rede Terra* were both invited to present their research findings to members of the National Assembly and to political party groupings in the National Assembly. By 2004 the focus had shifted to the National Assembly; the Technical Commission had only the role of providing information and advice, if requested.



Civil society in Angola has as yet little experience with concepts of lobbying and policy influence and gaining the attention of members of the National Assembly. On the other hand, members of the National Assembly and political

party groupings also have little experience or resources for doing their own research or public consultations on specific issues or pending legislation. The findings of the research demonstrated some serious concerns that remained with the second draft of the Land Law and the opportunity to present these issues to members of the National Assembly was widely welcomed.

The numerous specific issues raised by the research risked overloading busy members of the National Assembly with too much information or complex analysis. The research findings were therefore distilled into two principal arguments. First, that the proposed Land Law did not adequately address the reality of the majority of Angola's poor who occupy land informally and have no title to their land. Second, that the state institutions had inadequate capacity to deal with land titling. The draft Law's provision to allow only one year for people to regularise their titles to land, meant that instead of protecting the vulnerable, the Law risked making thousands of informal land holders illegal occupants of their own homes. It was important to bring to the legislators' attention that the Law must respond to the real conditions of the day and the post-war context of massive urbanisation of the country along with existing occupations. An ideal situation and capacity for large-scale planning and resettlement does not exist. The starting point was not one where land was empty and certainly in urban areas much of the land is already occupied.

To further advocacy at National Assembly level, DW adopted the innovative idea, suggested by CEHS, of enlisting the help of a former politician, a retired member of the ruling party who had a lecturer post at one of the capital's universities. This consultant had good contacts within the government and, more importantly, was held in high esteem by members of the National Assembly across the entire political spectrum. In this phase of advocacy, meetings were held with each party leader and relevant research documents were provided and explained. Briefings of the research results were arranged with each party group and with several multi-party National Assembly standing committees. All the members of the National Assembly who attended these briefings were very receptive and eager to get as much information as possible. The idea of feeding research findings to the National Assembly was an innovation in parliamentary affairs in Angola — especially since the initiative came from civil society. The fact-sharing sessions were a success and

eventually led to a meeting, initiated by the Speaker of the National Assembly himself, in which more than 70 members of the National Assembly participated and engaged in active discussion, an achievement almost unheard of in Angolan parliamentary history.

The final draft of the Law eventually presented to the National Assembly for voting was modified to partially address the two key issues argued from the research. Senior government leaders conceded that the weak administrative and master planning capacity of the state could not permit the regularisation of informal titles within one year after publication of the law. Civil society argued for five years; eventually parliament agreed on a three-year regularisation period in the Law that was passed in August 2004. A consensus was not reached in the National Assembly and the Law was voted through on the strength of the ruling party's majority. The Land Law that was finally published and came into force in December 2004 has left many issues unresolved and many questions raised in the research studies still unanswered. The public consultation on the Law and the issues identified by the research studies however had successfully put land on the public and political agenda, where it is likely to remain in the years to come.

## 11.4 LAND FIRMLY ON THE AGENDA

The DW-CEHS research programme, and the way it was put it to use, had several positive effects, not least the major achievement of enabling civil society contributions and putting the whole issue of land rights and land tenure firmly on the public and political agenda. The whole process of constructive engagement in this way has made political parties much more aware of the development issues related to urban policy and land, and are now able to understand these in greater depth. All parties now have to have a position on these. Although the advocacy process exposed real knowledge gaps of members of the National Assembly, it also helped fill in some of those gaps, and as such this is a good practical example of "proactive" as opposed to "confrontational" advocacy — although this does not preclude the need for the other in many contexts. Due to the proactive "positive criticism" with concrete alternative proposals grounded in solid research, those responsible

for formulating the new Law were both much better informed and eventually will be more accountable via an increasingly interested press for their actions.

The media has provided good coverage on land issues. During the last two and half to three years there has been an increased attention to land tenure issues. Forced removals or perceived violations of people's rights around land cannot happen without the press drawing attention to it. The national media in particular, but also some international publications, also expanded their coverage to include the legal process and its implications, as well as specific cases of conflict. This substantially greater awareness had some trickle-down benefits on the Law itself and helped encourage the National Assembly to provide more time (three years) for the process of land regularisation.

## 11.5 LESSONS LEARNED

DW and its partners did important work in voicing the concerns of civil society, but not all of their suggestions have been acted upon; many issues remain unresolved. While the new Law permits the regularisation of informal occupancy and sets a time frame for this to be carried out, it stops short of recognising this process as a basic right. The Law also — as yet — failed to recognise the principle of progressive upgradeable rights, which would have provided the government with a flexible tool during the years that it will need to develop formal settlement plans lacking in the many urban and municipal districts of the country. MINUE, which has taken over leadership and promotion of the land legislation since 2004, does, however, see these pending issues as being best dealt with in the bye-laws and detailed regulations that are still to be developed in the months to come.

While most members of the National Assembly were very receptive and open to the arguments presented by the research studies, on the day the bill was up for approval it was passed by the National Assembly without amendments apart from the extension of the period for regularisation of titles. Some of the constraints on the impact of the advocacy may be traced to a lack of capacity to absorb all the complex information presented up by the DW-CEHS research.

However, the application of the voting discipline of the dominant political party likely played a larger role. As a result, the Law that was given its final seal of approval by the President in December 2004 did not change substantially through the consultation process. It has, however, put in place a framework to allow people to claim legal title, although it stopped short of guaranteeing that those requesting a formal title would receive it. It did not incorporate all the issues that civil society was arguing for nor did it incorporate all of the principles of the Habitat II Agenda. Although advocacy work did have the effect of ensuring that traditional land rights were incorporated, the issue of urban land right regulation was not incorporated into the law but was deferred to the subsequent process of developing bye-laws.

Nevertheless, as the land consultation process was the first of its kind in popular participation in Angola the ability to influence policy through targeted and proactive advocacy is an extremely important step forward to wider and deeper democracy. The consultation process, and the advocacy role within this, needs to be viewed primarily in this light. In addition the strong partnership working ethos built up so far through the process provides the basis for continued refinement of the law, through regulations and practice, that provide ongoing opportunities to help produce a more realistic and workable land management system.

Overall, the whole process has been considered extremely positive in that it achieved a level of openness and debate in an atmosphere of goodwill that is hoped will establish a norm for Angola in the future. The land debate has not yet ended and the quest to make the Law fair to those it is designed to protect goes on. The opportunity remains for DW and its partners in civil society to exert their influence within the process to define the bye-laws or regulations that will accompany the new Law, and this needs to be the new focus for attention, through pilot projects and continued action-research activities.