Women’s Land Rights in Post-Conflict Angola

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• Renee Giovarelli, Angola Women and Land Issues (January 18, 2007)(On file with RDI)

The format of this report follows a template developed by Renee Giovarelli for researching and reporting on issues relating to women and land. See USAID, 2008. Women and Property Rights: Findings from Four Country Case Studies and Standardized Tools for Collecting and Reporting Findings.

In Angola, Carolina Matheus Gomes, a lawyer and member of the non-profit Associacao Maos Livres, and Helena Lowe Zefanias with Norwegian People’s Aid, provided information that proved critical to this study.
While the last decade has witnessed the enactment of formal land laws, the majority of Angola’s population—including many government officials—is unaware of the terms of the 2004 Land Law. Not surprisingly, many (if not most) of the provisions of the law are not implemented.

However, the Government of Angola’s (“GoA”) delay in implementing the 2004 Land Law and regulations provides an opportunity to design a strategy for protecting and improving women’s rights to land in Angola.

This report explores both the formal and customary laws that affect women’s property rights, examines issues of widowhood, divorce, polygamy and girl’s inheritance and provides recommendations for strengthening women’s rights to land, including efforts to:

- **Conduct targeted research country-wide.** The actual land tenure situation in most of Angola is generally unknown to everyone except the residents of those regions, and even less is known about the land rights of women. In such a void, a little research in each of the regions of the country will go a long way toward ensuring that any strategy is actually designed to support women’s existing rights and address the major barriers to women’s access to land and land tenure security.

- **Design legal literacy campaigns for women.** Women lack knowledge of their legal rights, including their land rights, marital property rights, and inheritance rights. Absent that knowledge and knowledge about the ability to exercise their rights, equitable laws and procedures are irrelevant. Local NGOs, women’s organizations, community groups, and other interested persons and entities are usually best positioned to design and implement legal literacy campaigns. These entities and individuals work directly with the population, have knowledge of customs and capacities, and are familiar with existing practices.

- **Engage government officials at all levels on land issues.** Government officials at all levels lack knowledge of the land law, regulations, and procedures for implementing the laws, including the formalization of land rights and granting of concessions. Critically, in many areas the GoA also does not have the institutions and capacity necessary to support implementation. Any strategy to support women’s rights to land must include or be linked with a broad plan for assisting relevant government officials in understanding the laws impacting land rights (both formal and customary) and be implemented in tandem with institution and capacity building. In addition, women are under-represented in all of the executive summary

As it emerges from almost 30 years of civil war, Angola has worked hard to establish the rule of law in a highly pluralistic society. Although it has enacted legislation that articulates gender equity, customary laws and traditional practices prevail in the lives of most Angolans. These customs favor men over women, and, as a result, the majority of Angolan women remain trapped by illiteracy, limited economic opportunities, and the need to care for children and relatives. With 70 percent of Angola’s population living on less than $2 per day, and more than half the population reliant on agriculture for their livelihoods, secure land tenure is a critical issue.

In rural areas, sobas continue to control access to land. Women interviewed reported a range of experience with the sobas in their land management roles; some sobas support the land rights of women and actively assist women in disputes over land rights while others may be less helpful or actively opposed to women’s rights to land.
country’s decision-making bodies. Currently 34 of 183 parliamentarians and three of the government’s 27 ministers are women, and less than one percent of the sobas are women. Encouraging women’s participation in decision-making bodies will also support efforts to strengthen women’s rights.

- Develop and pilot procedures for the formalization of land rights that integrate customary law and practices to the extent possible and appropriate. The process of formalizing land rights under the Land Law requires (1) identification of existing rights recognized under customary law and practice; (2) extension of such rights consistent with constitutional and statutory principles of equity and nondiscrimination; and (3) regularization of such rights consistent with the applicable law and regulations. Neither the Land Law nor any other formal or customary law provides procedures to direct this process. Absent clear procedures, that include an understanding of women’s customary rights and the necessary evolution of those rights to a state of true gender equality as contemplated in the Constitution and Family Code, that consideration will almost certainly be neglected. The rights formalized will fall far short of what could have been achieved for women and other disadvantaged groups.

- Provide assistance and training to local traditional authorities regarding land rights, dispute resolution procedures, and women’s rights. Traditional authorities, such as sobas, are often the only administrators, mediators, and adjudicators of land rights whom women will ever encounter. These individuals and local institutions of governance and dispute resolution generally apply customary law and local practice to guide decisions regarding land rights. NGOs and other entities that work with local communities and local governance bodies can develop programs to work with sobas on identifying customary laws and the principles that guide their decisions and help refine and revise those principles to meet standards of equity and fairness.

- Support the work of legal aid centers and land rights lawyers. Legal aid centers and land rights lawyers will likely be required to do the heavy lifting necessary to ensure that women’s land rights are enforceable. Legal aid centers can be encouraged to take test cases, to help disseminate land rights information, staff or guide land dispute resolution bodies, and develop legal literacy programs designed to assist women in realizing their land rights. Legal aid centers can provide women with advice regarding land rights during marriage and what actions to take in the event of divorce or the death of a spouse. Legal aid clinics can also serve as community resource centers, providing women with information regarding other issues, such as domestic violence and HIV/AIDS.

In 2001, roughly 70 percent of Angola’s population lived on less than $2 per day, with 30 percent of those living in extreme poverty, on less than $0.70 per day.
I. INTRODUCTION

The formal and customary systems governing land rights and transactions in Angola are more favorable to women than in many African countries, but they are not yet fully realized and implemented. As it emerged from almost 30 years of civil war, Angola enacted legislation that articulates principles of nondiscrimination and gender equity. A progressive family law proactively provides for the rights of women in common law marriages and the inheritance rights of daughters. However, despite the mandates of the formal law, customary laws and traditional practices prevail. Those customary laws and practices that govern the days of most Angolans favor men, and men dominate Angola’s political, economic, and social spheres.

Some women, especially those with education who are living in urban and peri-urban areas, are making progress. But, the majority of Angolan women remain trapped by geography, lack of infrastructure, illiteracy, limited economic opportunities, and the need to care for children and relatives. Land rights provide a critical asset to all women regardless of their circumstances but most particularly those with the fewest options. The Government of Angola’s delay in implementing the 2004 Land Law and regulations provides an opportunity to design a strategy for protecting and improving women’s rights to land in Angola.

II. BACKGROUND

Angola has a land area of 486,213 square miles and a population of approximately 14 million people. The country’s population is ethnically diverse: the three most prominent tribes are the Ovimbundu (37 percent), Kimbundu (25 percent) and Bakongos (13 percent). One percent of the population is European, principally Portuguese. Almost fifty percent of the country holds indigenous beliefs; forty percent of the population is Roman Catholic, and the balance is Protestant.

While Angola’s official language is Portuguese, the population speaks more than 60 different Bantu-group languages, including Umbundu, Kimbundu, Kikongo, Tchokwe, and Ovambo. Particularly in remote areas, the majority of rural residents use local languages exclusively. Literacy figures vary widely but estimates indicate an average of a 40 to 50 percent literacy rate in adults, with the lowest percentages in rural areas and among women (28 percent of rural women are literate, compared to 46 percent of men).

Angola’s population concentrates in urban areas, along the coast, and to a lesser extent in the central highlands. Approximately 60 percent of the population lives in rural areas, and 85 percent of the rural population depends on small scale subsistence agriculture. The productivity of small-scale agriculture suffers in many regions from inadequate inputs, lack of infrastructure, limited access to markets, and the presence of landmines. Fertile land in areas with access to services and markets is in high demand and the focus of increasing competition between peasant and commercial interests. The less populated areas in the eastern and southern regions of the country are home to pastoralists and hunter-gatherers in addition to sedentary farmers.

The percentage of the population living in urban and peri-urban areas is increasing and putting pressure on land and services. The vast majority of the population in these areas lives in informal settlements that originated as land encroachments with rights recognized as a matter of practice and customary law. The settlements usually lack basic services and strain the resources of the surrounding areas.

The country is ranked 164th of the 175 countries listed on the United Nations Development Programme Human Development Index. In 2001, roughly 70 percent of the population lived on less than $2 per day, with 30 percent of those living in extreme poverty on less than $0.70 per day. In 2005, approximately four percent of the population was living with HIV/AIDS. Sixty percent of those cases occurred among women. By the end of 2005, an estimated 160,000 children had lost one or both parents to AIDS.

Legacy of colonialism and war. The Portuguese landed in northern Angola in 1482. By the 16th century, Angola’s population was supplying slave labor to plantations in Brazil and Sao Tome and later to the Americas. By the 19th century, slavery had begun to evolve into a forced domestic labor system that supported Angola’s growing plantation and mining industries. Oppression by colonialists and lack of access to the most fertile land and other natural resources of the surrounding areas.


2 To put the country in context, Angola has a slightly larger land mass than South Africa but has about one-quarter of South Africa’s population. The World Bank, 2004. LITTLE DATA BOOK (Washington DC: The World Bank).


5 Id.; see also UNIFPA statistics at www.unifpa.org/profile/angola.cfm.


7 Little background information exists regarding these sections of the country. This paper concentrates on provinces where research studies have been conducted and the results published.


resources by indigenous people led to the birth of three different political movements from within Angola in the early 1960’s. The power asserted by these parties – often expressed violently – led to independence from Portugal in 1975, followed by 28 years of civil war waged between the competing political parties, UNITA and MPLA. By the time peace was achieved in 2003, over half a million people had been killed and an estimated four million people internally displaced.

The country has evolved into a multi-party democracy organized into three branches: the Executive (Office of the President, Office of the Prime Minister, Council of Ministers), the Legislative (National Assembly or Parliament), and Judicial. The National Assembly’s legislative authority includes the power to enact laws relating to the land tenure system, rural and urban leasing, the participation of citizens and traditional authorities in local government, and the nationalization and expropriation of property. Despite this allocated power, in practice, the President’s power is primary.

The country is divided into eight provinces, 164 municipalities, and 557 administrative units, known as comunas. Comunas are further divided into sectors, bairros, and bloços. Each province has its own government with governors appointed by central government, and vice governors selected from a different political party than the governor. The provincial government appoints the municipal administrator, who in turn appoints comuna administrators. No formal state institutions currently exist below the comuna level.

**Role of traditional authorities.** Angola’s traditional leaders, known as sobas, are the local governing authority in rural and many peri-urban areas. Sobas traditionally handled a multitude of local governance matters (including land administration and management) in conjunction with village elders. The distinction between the traditional governance structure and the formal structure has blurred in the last decades: in some areas, the sobas have steadily lost power to local government officials while in others they have become employees of the government. However, particularly in remote areas, sobas often continue to serve as the sole governing authority for the population.

Particularly in areas where the capacity and resources of local government are limited, the relationship between the formal government officials (comuna and municipal administrators) and the traditional authorities is critical to a population’s relationship to formal government. Other positions bridging the gaps between traditional and formal governance systems include coordenadores (coordinators) who work in peri-urban areas as social mobilizers. In urban areas where there are no sobas, or their power is diluted by the growth of urbanization, there are bairro coordinators and comissoes de moradores (resident committees).

**Status of women.** Angola has at least nine major ethnolinguistic groups, most of which are considered matrilineal. While men dominate in political, economic, and social position throughout the country, the matrilineal system has left a mark. For example, as discussed more fully in Sections III and IV, in some areas of the country daughters as well as sons commonly inherit land from their parents, and married couples hold property jointly.

However, despite the egalitarian content of the formal laws and some of the customary laws and practices, overall Angolan women have significantly less political, economic, and social power than men. Women’s participation in the formal political and judicial system is limited, and women hold only 12-16 percent of decision-making positions and are under-represented in the local decision-making bodies. Country-wide, fewer than one percent of sobas are women. Women hold a small percentage of jobs available in the formal economy, and the jobs they do hold tend to be in the service sector.

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11 Popular Movement for the Liberation of Angola (“MPLA”), National Front for the Liberation of Angola (“FNLA”), and National Union for the Total Independence of Angola (UNITA).
13 Id., Art. 55.
14 Bairro commissars and Comissoes de Moradores (residential commissions) are the governing bodies in these local areas, to some extent filling the role of soba while also serving as a quasi-governmental body. The commissars and commissions have no official government standing, but continue to exist in many urban areas as holdovers from political parties organized in the years post-independence. These residential commissions can be very powerful in some areas. In Kilamba Kiaxi, for example, the residential commissions are the institutions through which people obtain information regarding available land and are themselves a source of land. Terraestima, 2005, at 18.
15 Sobas are an Umbundu word for customary leader or chief, but the term is used generically throughout the country. Other leaders are regedores (“big sobas”) and skulos, who oversee larger groups. See CARE-Angola 2004, at 5-6. This paper uses the term “soba” to refer to all traditional leaders.
16 Some of CARE-Angola’s recent work is focused on strengthening this link between rural communities and formal government. Noting that sobas are often elderly and may have limited access to the comuna sede (headquarters), among other efforts, CARE designed a comuna development structure, that supports the creation of committees that assist in interfacing with local government. See generally CARE-Angola, 2004.
18 Descent groups include all persons descended from a common female ancestor through the female line. In some cases, junior males inherit from (or succeed to a position held by) older brothers; in others, males inherit from their mother’s brother. Marcia Greenburg, 1997. Women’s Participation in Angola’s Reconstruction and its Political Institutions (WIDTECH USAID).
III. METHODOLOGY

The Project. This Report was prepared in the context of and with reference to USAID Angola’s Land Tenure Strengthening Project (the “Project”), which was managed by ARD, Inc. and implemented by the Angola-based NGO Development Workshop (“DW”), with technical assistance from ARD, Inc. and the Rural Development Institute (“RDI”). The Project grew out of the need to strengthen land tenure and property rights in Angola following the passage of the Land Law and Territory Law in 2004 and implementing regulations, which were enacted in August 2007.

Desk and field research. The Project partners undertook a variety of activities under these components, most notably designing and implementing pilot land rights formalization processes in two areas of Huambo Province: Mombolo village (rural area pilot) and Tchitutula (peri-urban area pilot). In addition to the pilot experience, the following desk and fieldwork contributed to the content of this report:

- background literature review relating to Angola’s history, land laws and policies, and women’s status and rights;
- review and analysis of relevant laws, regulations, and decrees;
- in the pilot and nearby areas, individual interviews and focus group discussions with residents (women and men, separately and together), traditional leaders, and local government officials;
- meetings with local NGOs, members of the legal professions and judiciary; and
- a benchmark survey conducted in the two pilot areas in August 2007, surveying 330 people.

FIELDWORK

The fieldwork was conducted by mixed teams of international and local researchers during five trips taken between January 2007 and March 2008. The fieldwork was designed to:

- collect information to inform the analysis of the applicable formal and customary laws governing land rights, the political structure of the country, and the institutional capacity to formalize and enforce land rights;
- provide an understanding of the nature of the pilot communities;
- inform the creation of procedures for formalizing land rights in the pilot communities;
- provide information for the study of land disputes and creation of a land dispute resolution system;
- supply information for the study on the land rights of women and other disadvantaged persons; and
- collect information to evaluate the land rights formalization process in the pilot areas.

Researchers used rapid rural appraisal techniques to collect data at both pilot sites. Researchers held semi-structured interviews with individual women, individual men, married couples, other household residents, sobas and village elders, and local government officials. The researchers also held meetings with separate groups of women and men in the rural pilot area and a nearby village.

Researchers also met with local NGOs and individual professionals engaged in land rights formalization, women’s rights and empowerment, dispute resolution, and rural development in Angola.

Location of field data collection: Overview of Huambo Province and pilot sites

Researchers collected field data in Huambo Province, including within Huambo city, the village of Mombolo (rural pilot area), the peri-urban settlement area of Bom Pastor, which includes the peri-urban pilot area, Tchitutula, and Lumandi village. The benchmark survey was conducted in the two pilot areas.

The majority of the population of Huambo Province is Ovimbundu and practices Christianity. The church has played an important role in the province; in Mombolo village, many residents received gifts of residential and agricultural land from the local church, which had become a large landowner in the region.

In rural areas, each household may hold approximately six or seven plots; however, the average size of the plots is small. Most households grow subsistence crops and some commercial crops (various grains and vegetables). Both men and women tend to work on the same farm plots and engage in largely the same agricultural activities. Nevertheless, men are more likely to engage in activities that involve the use of small machinery and clearing and preparation of land. Collection of natural resources for subsistence (e.g., fuel wood, water) is primarily the responsibility of the women and children.

Some rural residents are employed in towns and urban areas either on a seasonal or permanent basis. In peri-urban areas, such as the fairly well established area of Bom Pastor in which the peri-urban pilot is located, nearly all women and men engage in various types of informal and formal forms of employment. Many women make a living selling crops or prepared foods and dry goods (e.g., cooking oil,
clothing and other consumer goods) in the local informal markets or in nearby cities. Other women hold formal jobs in local hospitals, schools, and government offices. Most households in the peri-urban area also have small farm plots where women grow food for consumption.

In both pilot sites and in the village of Lamundu, women (with assistance from children) cultivate the field plots, collect water and firewood, cook, clean the residence and do the washing, and care for children and livestock. Female-headed households are in a particularly vulnerable position in both pilot sites. In rural areas, male labor migration and engagement in the cash economy are placing an increasing amount of household and farming responsibilities on women (and children). In peri-urban areas, households may have more livelihood options than those in rural areas; however, cost of living is higher in peri-urban areas and women who are separated, divorced, or in polygamous relationships often have no support from men and may be solely responsible for meeting all livelihood needs of the family.

Rural pilot site: Mombolo village. Mombolo is a small village with 215 households and a population of about 1,075 persons. Approximately 80 percent of the households are male-headed. The primary language is Umbundu. All but a few households are subsistence farmers. Approximately 60 percent of households received their land through inheritance; the remainder obtained access to land through gifts of land from the church, informal transactions within the village, or transfers within the family. Most households have a residential plot and several field plots. Only a few households have any documentation of a landholding.27

The village has water from a local stream, which is used for crop irrigation. Common crops include maize, banana, potatoes, tomatoes, mangos, avocados, corn, mandioca and peanuts. During the banana season, excess bananas (and sometimes tomatoes) are sold by the roadside up from the village.

Peri-urban pilot site: Tchitutula. Tchitutula is one of the informal settlement areas in Bairro Bom Pastor on the outskirts of Huambo city. Tchitutula has 360 families and a population of about 1,798 persons. Seventy-five percent of the households are male-headed. The primary languages spoken are Umbundu and Portuguese. Approximately 90 percent of the residents have a monetary income, with sources divided relatively evenly among the public, private, and informal sectors. Female-headed households have a higher incidence of employment in the informal sector, while male-headed households have a higher percentage of income from the formal sector.28

Ninety percent of the plots in Tchitutula are owner-occupied, and 84 percent of residents obtained their plots within the last four years. Between 60-75 percent of residents with ownership rights obtained their plots through land purchase.29 The remainder received land through family transfers and inheritance. Almost all residents who purchased plots have documentation of the purchase. Approximately 70 percent also own a field plot.30 Some residents have access to electricity for generators, but there is no piped water connected to the site. The area is expanding rapidly.

IV. LAND SYSTEMS

History. Like many developing countries, Angola has a highly pluralistic legal environment. Systems of formal and customary law operate simultaneously, often in parallel, but almost wholly independent of the other system. Land systems, which are always highly reflective of a country’s history, are often among the most developed and sustained pluralistic environments.31 Angola is no exception.

Prior to the enactment of the current land law in December 2004, Angola’s land was subject to a series of legislative efforts to direct land resources (primarily rural land) to the hands of a few. From colonial times through the 1990’s, Angola’s land laws attempted to identify and (in most cases) contain or circumscribe the land rights of the country’s indigenous population, while at various times supporting the development of commercial farming and mineral extraction enterprises.32

In the colonial period, the Portuguese established large farms and plantations (fazendas) to grow cash crops for export, and many received titles to the land they occupied. At independence, Angola nationalized its land and the majority of Portuguese vacated the farms. The country’s subsequent efforts to collectivize the farms generally failed, and by the 1980’s, most were abandoned and production ceased. In the wake of failed efforts, former farm laborers and local residents often encroached on the land, using it for subsistence farming.

In 1992, Angola adopted its first post-independence land law.33 The law focused on surface use rights to rural land for agricultural use and was limited in scope to issues of land access and

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27 Benchmarking survey results, at 11-12.
28 Id., at 3-6.
29 Approximately ten percent of respondents stated they rented their plots. Id., at 6.
30 Id., at 6-7.
33 Law 21-C/92, Regulamentos de Concessoes, Decreto 32/95 of 8 December and 46/92 of 9 September.
The majority of Angola's population, including many government officials, is unaware of the terms of the 2004 Land Law.

The law recognized the rights of those who received concessions in the post-independence period but did not recognize customary rights of indigenous populations and did not regularize the rights of those who had informally occupied urban areas and abandoned farms. Not surprisingly, a period of intense land grabbing ensued. The government granted new concessions for fazendas, and state-owned plantations were privatized and sold. Commercial farmers received rights to fertile agricultural land, and large cattle ranchers received rights to prime grazing areas.

The law was criticized by civil society groups and some government officials for failing to recognize the customary land rights of the population. The need to create a fair and transparent process for formalizing rural and urban land rights was apparent. After significant effort by civil society groups (whose substantive concerns were ultimately not reflected in the new law), Angola passed the 2004 Land Law. Under the 2004 Land Law, almost all of Angola's land is owned by the government. Individuals may obtain use rights to land depending upon the character of the land and the planned use. Land rights contemplated by the Land Law include long-term leases, surface rights, and rights to land occupied by a traditional rural community. In some cases, the GOA may grant rights to urban land that are akin to "freehold" interests. The law contains no statement regarding the land rights of women and other disadvantaged groups.

The majority of Angola's population, including many government officials, is unaware of the terms of the 2004 Land Law and the regulations. Not surprisingly, therefore, many (if not most) of the provisions of the law have not been implemented. In some cases, officials are unfamiliar with the terms of the law and operate under a combination of superseded legislation and past practice. In other cases, officials take administrative actions regarding land matters that have no effect under formal law. The confusion in the implementation of the formal law is compounded by the lack of supporting mechanisms and institutions, which are either nonexistent or lack capacity to perform functions necessary to support the Land Law. The result is predictable: to date, few people in Angola have secure land rights cognizable under the Land Law.

As a practical matter, however, the paralysis affecting the sphere of formal law appears to have little impact on daily life. In large measure, the country's population accesses, holds, and transacts land in the informal sphere, without regard for the formal law. The population maintains strong and persistent views of land rights, based in large measure on traditional principles and customary practice, which have in many cases evolved into some level of individualized rights, especially in urban and peri-urban settings (although also within traditional rural communities). Among the views held is the widespread belief that individuals and households can acquire ownership rights to land and that owners have substantial power over the land, including the right to alienate it freely. Land is in demand, the informal land market is active in many areas, and land values are increasing.

Land projects. The limited work that donors and local NGOs have undertaken in Angola to address land issues has been efforts to formalize land rights recognized under customary law and practice. The United Nation's Food and Agriculture Organization ("FAO") assisted rural communities in Huila Province apply for recognition of rural community land. Development Workshop ("DW") assisted occupants of an informal settlement in a peri-urban area of Huambo city apply for recognition of land rights under the formal law. The Project that provides the context and source of data for this report also engaged in land rights formalization in rural and peri-urban pilot areas. See descriptions in Sections II and V.

A. Formal land systems for property rights

In contrast to some systems of customary law, which when unchecked and isolated from natural processes of social change can reinforce entrenched rural hierarchies and power structures, formal tenure systems potentially provide a welcome neutrality. Formal systems are often based on constitutional proclamations of equal rights, principles of fair treatment, and the rule of law. The laws in formal systems are codified, public, and usually applicable to all persons—regardless of economic status, ethnic group, gender, or other classification.

Angola's formal legal system is based on a statutory or code system imposed by the Portuguese during the colonial period. The key general legislation that impacts land rights in Angola include the Constitution of the Republic of Angola, the Civil Code, and the Family Code, relevant provisions of which are outlined below.

• Constitution. The Constitution of the Republic of Angola was adopted in 1992. Because Angola does not have a comprehensive, stand-alone written statement of its land policy, the Constitution provides one of the only expressions of possible land policy...

Land is in demand.
objectives. Some of the pertinent principles articulated are: (1) the country’s status as a democratic state based on the rule of law, dignity of the individual, pluralism of expression and political organizations, respecting and guaranteeing rights and freedoms of persons as individuals and members of social groups; (2) the equality of all people without regard to race, color, ethnicity, sex, religion, level of education, economic, and social status; and (3) the equality of men and women within the family. 39

The Constitution provides that the GoA has sovereign over territory, water, air space, soil, and subsoil, and that all natural resources, including land, are the property of the GoA. The GoA shall respect and protect people’s property, including land owned by peasants although the GoA retains the right to expropriate property in the public interest. 41

- **Civil Code (2001) (“Codigo Civil”).** The Angolan Civil Code is based on the Portuguese Civil Code and is the fundamental source of civil law in the country. The Civil Code contains sections on private obligations and contract rights, commercial law, debtor-creditor relations, property rights, and succession. Despite the passage of the 2004 Land Law, the Civil Code continues to govern many land issues – either because they fall outside the ambit of the Land Law or because the Land Law and Regulations specifically defer to the Civil Code as the governing law. For example, the Civil Code provides terms relevant to tenancy rights, inheritance of property, and the GoA’s expropriation of property. The Civil Code also provides procedural remedies such as the right to seek a declaratory judgment on the legality of a government action or nullify a government action.

- **Family Code (1989) (“Codigo da Familia”).** The Family Code governs issues relating to the composition of the family, marriage and marital rights, and parental obligations to children. In pertinent part, the Family Code provides for the equality of women and men within marriage, recognition of registered and common law marriage, spousal rights to separate and community property (at their election), and the obligations of spouses in the event of separation and divorce. 44

**Land policy.** Angola does not have a stand-alone, comprehensive, written statement of its national land policy and, accordingly, has no clear, overarching principles to guide land related legislation and regulations or to prioritize plans for economic growth and development with issues relating to land access, tenure security, land use, and land administration. The 2004 Land Law contains no policy statements regarding the rights of women and other marginalized populations and no statement of non-discrimination in land access and the regularization of informal land occupations. The Land Law reflects no awareness of the barriers to land access, tenure security, and general well-being faced by the majority of the country’s population, including women.

**2004 Land Law and regulations.** The country’s Lei da Terras de Angola (Lei 09/04, de 9 de Novembro) (“Land Law”) became effective February 2005. Under the law, the GoA owns and exercises ultimate authority over all land and natural resources and has an irreversible right to expropriate land. The Land Law reaches all rural and urban land to which the GoA can confer transferable rights to individuals and collective persons. The general terms of the Land Law do not extend to public land that cannot be the subject of private land rights, such as public roads or reserved land. The Land Law also does not extend to privately owned land, such as land owned by the Catholic Church and foreign embassies. 46

The Land Law broadly classifies conveyable land within its private domain as urban, rural, and rural community land. Rural communities are legal entities and have standing to defend their collective rights under the Land Law. The GoA holds the “direct domain” and has the authority to confer or transfer the “useful domain” of land to individuals and entities. 47 The state can grant: (a) private property rights to urban land; (b) useful customary domain to rural communities; (c) useful civic domain; (d) surface rights; and (e) temporary occupation rights.

The transfer of land rights does not include a right to any natural resources. The recipients’ use of all land rights received remains subordinate to the economic and social purposes for which the GoA granted the rights, and all GoA land grants and transfers are subject to the requirement of useful and effective usage of land, which is established by land evaluation and land use instruments. 48

The law requires those who occupy land without rights or title recognized by the Land Law to apply for a concession title within three years of the date of publication of the regulations (estimated to be September 2010) or risk loss of rights. 49

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39 Articles 2-3, 18, and 29.
40 Articles 6 and 10.
41 Article 12. Any confiscation of land in accordance with the law is valid and irreversible. Article 13.
42 These areas are identified in the outline of the Land Law and Regulations in the next section.
43 Significantly, the Civil Code used to provide for some protection for those occupying land informally for long periods, but the 2004 Land Law trumped those provisions, subjecting those with informal rights to eviction if they fail to apply for a concession in a timely fashion. 2004 Land Law, Art 84.
44 See e.g., Civil Code, 2001, Sections 289 and 1276.
45 The paper discusses the Family Code in more depth in Section VII.
46 Articles 21-29. Estimates of the amount of privately held land vary, but do not exceed ten percent of total land, and the amount may be far less.
47 Articles 37 and 70.
48 Articles 10, 18, and 37.
49 Under the Regulations, time periods established in the regulations can be extended once for an equal period. (Articles 6-7) A local Angolan lawyer believes that the time extension provision would allow for the extension of the three-year period to file applications for concessions to be extended to six years. The process to make application for an extension under such a legislative provision is relatively simple, but those interviewed were uncertain what standards are applied to determining a request for extension (though both believe the request would not be arbitrarily denied). Personal interview with Carolina Matheus in Luanda, January 2007.
B. CUSTOMARY SYSTEMS FOR PROPERTY RIGHTS

While the last decade has witnessed the enactment of formal land laws, customary law has substantial continued relevance in Angola. For a majority of Angola’s population, some measure of customary law – along with traditional practices – govern land access, control of land and its production, transfers of land, and land use.

No statistics are maintained that identify what percentage of the country’s land is under private tenure as opposed to communal tenure, but much of Angola’s communal land has evolved into some type of more individualized tenure. In Huambo Province, which is distinguished from much of Angola by the fertility of its land, organizations working with land issues report that individualized tenure is the norm, while in areas with low demographic pressure and more isolated communities (especially in the eastern and south eastern regions of the country) some form of communal tenure is more common.

Even in areas where land rights are highly individualized, informal practices are prevalent. Most of the country’s population is unfamiliar with the formal land laws and considers its rights and obligations relating to land governed by evolving principles of customary law and traditional practices. Those customary principles and practices related to land can be highly localized. Most, however, share the following general characteristics:

- **Land ownership.** Under customary law, land is regarded as owned by a universal deity and the ancestors of living occupants; land is held by a community (or individuals within a community) and administered for the benefit of the community by the soba. This belief has persisted among much of the Angolan population through the period of Portuguese control, the nationalization of land at independence, 28 years of civil war, the displacement of approximately three million residents, and the adoption of two formal land laws.

- **Land management and administration.** Traditionally, the soba was (and in many areas still is) responsible for managing the community’s land, making allotments to individuals and households, establishing the areas of land for common use, setting rules regarding communal land and its resources (and, in some circumstances, the use of land allotted to individuals), and adjudicating land disputes. In rural areas, the sobas continue to oversee land transactions and the inheritance of land. In peri-urban areas, the comuna administrator fills this role or shares authority with the soba.

- **Rural land access for community members.** All members of the community (and those joining the community who are deemed trustworthy of integration including, most recently, ex-combatants) are entitled to have use of a portion of land. Inheritance is the main source of rural land for most community members, followed by arrangements for leasing, borrowing, and sharecropping. In addition, the soba’s allocation will usually be based on the size of the household, planned use for the land, and the availability of land to allocate.

- **Urban/peri-urban land access.** In most urban and peri-urban areas, land access (particularly in informal settlements that distinguish most land holdings in those areas) is less dependent on inheritance and allocations of land by traditional authorities and more dependent on the land market. Individuals and households desiring plots often begin by staying with relatives, then renting a plot, and ultimately buying a plot. In urban and peri-urban areas, if sobas are present, they are often without any authority over land allocation. For land matters, bairro commissioner and residential committees often serve as the source of land and tenure security. These institutions are informal, arising from political parties in the years following Independence, but they may also have qualities of traditional authorities. In areas where

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51 We have been unable to locate any statistics and upon inquiry, were told that the government does not gather or maintain that data. Some NGOs have conducted studies that include land tenure information, but the data cannot be extended beyond the study areas. See e.g., Filipe, 2005. The Right to Land and a Livelihood and Rede Terra, 2004. Levantamento Sobre Concessoes de Terras na Província do Kwanza-Sul, 1992-2002 (Luanda: Rede Terra).

52 Development Workshop, which works on land issues in Huambo Province, estimates that most of the land in the province, including rural land, is subject to some form of individualized tenure.

53 One study of ex-combatants’ sources of land found, however, that ex-combatants were more likely to purchase or rent land in a village than obtain land through the soba. Development Workshop, 2006, at 41-43.

54 The rights of women are discussed in the following section.
municipal offices are functioning, a coordinating commission may handle a land request with participation of the provincial level department of the Ministry of Public Works and National Institute for Spatial Planning (“INOTU”).

As currently conceived and practiced, customary law may be inherently inadequate to the challenges to land rights created by the pace of the anticipated economic development in Angola. While a few provisions of the 2004 Land Law and Regulations recognize customary law or traditional practices, the ambit of customary law is highly circumscribed and always subject to formal law. As competition for land and urbanization increases and authority of traditional rulers continues to erode or be diluted by growth of governmental bodies, formal law will increase in importance. Unless strategic efforts are made to include traditional systems and institutions in the design of formal mechanisms and institutions, they will rapidly become impotent. Those who ignore (or who are ignorant of) the formal legal system will be impotent.

V. LEGAL AND CUSTOMARY LAND RIGHTS FOR WOMEN

Angola’s formal law establishes a constitutional right of non-discrimination on the basis of sex and provides for the equality of men and women within the family. As detailed below, the Family Code governs rights and responsibilities of spouses in registered and unregistered marriages. However, the egalitarian nature of the formal law is not fully realized in practice. As noted in Section I, Angola’s customary law is influenced by the matrilineal system traditionally recognized in many communities, but, despite this tradition, women’s rights are considered less then those enjoyed by men.

A. MARRIAGE

The Family Code recognizes both registered marriages and de facto (common law) marriages. The Family Code requires spouses to register marriages, but recognizes the de facto union of couples who have cohabitated for three years and are otherwise capable of entering into a registered marriage.60 The vast majority (anecdotal evidence suggests 80 percent or more) of marriages in Angola are de facto marriages because formal marriage requires registration, which is time consuming, bureaucratic, and costly. Weddings can also be costly.

Separate and community property. Angola recognizes that married (registered and de facto) individuals may hold separate property, community property, or both. The Family Code requires couples to elect whether to hold property individually within the marriage or to adopt a community property approach. If the couple elects a community property system, the spouses each have equal, undivided shares to property earned and received during the marriage. If the couple makes no election, the presumption of community property governs.61 A spouse cannot alienate community property without the consent of the other spouse.62 At death, community property carries no automatic right of survivorship; spouses can gift their 50 percent share as they wish at their death. Those spouses who have not reached the three-year requirement for common law marriage can make an application in court for a Declaration of Joint Ownership of Property.

None of the residents of the pilot sites interviewed were aware of the provisions in the Family Code. However, in the two pilot areas, joint ownership of property during marriage was reported to be customary: married couples expect that they will jointly own land that they purchase or are given (such as in grants of land by the church in Mombolo) during marriage or at the time they are married. In the peri-urban pilot area of Tchitutula, the majority of residents acquired their plots after they were married and within the last four years. Women and men interviewed stated that they believed they had joint rights to the land. Several couples in Tchitutula (peri-urban pilot area) reported that they discussed the subject of how they would own the property obtained during their marriage before they began living together. In every case, the couple agreed that they would jointly own their land.

Dowry. Many Angolan tribes recognize a system of dowry. Dowry is based on the bride’s family’s resources and may be gifts of clothing or livestock. The average dowry in the rural pilot area is three or four cows. In some areas of the country, the groom’s family may also be required to pay lobolo (“bride price.”) In the rural pilot area, for example, the groom’s family customarily provides gifts of cattle, clothing, and food to the bride’s family.

Polygamy. The Family Code does not permit polygamy,63 but the practice is common in the rural and peri-urban

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56 A general discussion of these principles in a broader African context is included in FAO, 2006. Agrarian Reform, Land Policies, and the MDGs: FAO’s Interventions and Lessons Learnt during the Past Decade, produced for the 24th Regional Conference for Africa, ARC/06/INF/17, and the studies cited therein.
57 The content of the section is based on the cited sources, including the background paper prepared by Renee Giavarelli, Angola Women and Land Issues (January 18, 2007), and the gender report for the Project researched and drafted by Safia Aggarwal, USAID-Angola, 2007. Strengthening Land Tenure and Property Rights in Angola: A Profile and Planning Tool for Women and Other Disadvantaged Groups in Pilot Areas. See also Filipe, 2006. The Right to Land and a Livelihood, the fieldwork conducted in the course of the Project, an interview with Carolina Mathews (Gomes), a Lunada-based Angolan lawyer (and member of the non-profit Associacao Maos Livres) who has experience in the area of women’s rights, land issues, and general civil practice; conversations with Helena Lowe Zefarias, who was active in the Norwegian People’s Aid land tenure study, the NPR draft materials for public awareness building on women’s land rights, and conversations with staff of Development Workshop and CARE in January 2007.
58 Articles 112-113.
59 Articles 49-53.
60 Article 56
61 Article 25.
pilot areas. Women in polygamous relationships who were interviewed in the course of the Project stated that with fewer men available for marriage they had no option but to marry into a polygamous household. In the peri-urban pilot area, one woman interviewed who was in a polygamous relationship resided with her birth family and did not receive financial support for the children. Her husband supports only the wife with whom he resides. In another case, the husband provides both wives with a house, but he provides financial support for raising the children to only one wife.

B. DIVORCE, ABANDONMENT, SEPARATION, AND DIVISION OF PROPERTY

Under the Family Code, in the event of divorce, the court must take into account the life conditions of the spouses, the children, and the causes of the divorce in determining the disposition of the family residence, but the Code provides no formulas for dividing property. The Family Code prescribes that both parents have equal responsibility to support their children, and if children remain with the mother, the father must pay for maintenance for the children.62

Individuals interviewed in Luanda and the city of Huambo, who are in common law marriages, were unfamiliar with the Family Code. All reported that in the event of divorce most couples will divide their property from the marriage equally, although provision for children will be made a priority in making property allocations. The couple will handle the division of property themselves with the involvement of the families as necessary. Disputes are referred to elder family members or respected members of the community. No one interviewed knew of anyone who pursued a property case through legal channels, including use of the Family Council established by the Family Code.

Divorce, separations, and abandonment of the wife are not uncommon in rural and peri-urban pilot areas. Women in rural areas often move to their husbands’ villages upon marriage and often live and cultivate land owned by the husband’s family. In some areas, if the women are subsequently abandoned, separated, or divorced, the former husband or relatives of the husband may force the women from the husband’s land. Whether these women are welcome back in their natal homes is a matter of local custom and far from assured.

If the women are subsequently abandoned, separated or divorced, the former husband, or relatives of the husband, may force the women from the husband’s land.

Men and women interviewed in the peri-urban pilot area reported that if a couple separates or divorces, or the husband abandons his wife, the woman would not have rights to any of the husband’s family assets. Property is not divided as prescribed under the community property system, and the customary practice of holding property jointly during marriage reportedly does not survive the end of the marriage in these communities.

In these cases of loss of land rights, women are unlikely to have the assets necessary to lease or purchase land and they are often forced to resort to the most insecure and least lucrative arrangements: they may borrow land, sharecrop, or squat on former commercial farms, making sporadic payments to landlords. In all of these cases, the land that women can access is most likely to be among the lowest quality.63 In some areas, the sobas may support the rights of divorced women seeking land from their fathers. However, the women’s success depends on the active support of the sobas as opposed to settled principles of customary law.64

Mombolo is an exception. In Mombolo, divorce and separations are rare. Couples often seek assistance from extended family members, elders, and/or the soba to help resolve intra-household disputes before they escalate. During interviews, women and men stated that if a woman is divorced or abandoned, the families will make some allowance for her by providing a house and some piece of land to farm. If families refuse to provide for a woman, she can go to the soba who will make an arrangement on her behalf. Women may not receive a full half share of marital property in the event of divorce or separation, but all interviewees stated that women receive a sufficient share to support their needs. It is unknown how common this practice is in other parts of Angola.

C. INHERITANCE

The succession provisions of Angola’s Civil Code allow for testamentary disposition of property in accordance with the testator’s wishes. Intestate provisions grant property to surviving spouses and children equally.65 As a matter of practice, however, daughters may not inherit land or will inherit a smaller amount than sons. Families divide their land based on the theory that daughters will receive land when they marry, while sons will be required to provide sufficient land to support a wife and children and care for elderly parents.66

62 Article 11.
63 Similarly, ex-combatants often resorted to borrowing and renting arrangements to access land, and most relied on their families for such arrangements. Id., at 41-45.
64 Even in areas where there are female sobas, women’s land rights are not assured. Filipe, 2005, at 27.
65 These statements require verification and further development upon receipt of the new translation of these provisions of the Civil Code. While local lawyers stated the Code prohibited discrimination in inheritance on the basis of sex, at least one provision favors male children to manage the affairs of the decedent, suggesting a need for further translation and research. (Art. 2080(4))
66 One group of approximately eight men interviewed in Mombolo in March 2008 on the subject of inheritance stated that if their sons were lucky enough to marry wealthy women who had their own land, the men would give more of the land to their daughters because the sons would not need so much. However, they believed their sons should have some parcel of land of own as a matter of principle.
Many of the women interviewed in Mombola, and a few of those interviewed in Tchitutula, stated that they had inherited land from their natal families. Some women treated the land as their own, while others either considered the land owned jointly with their husbands or under their husbands’ sole control despite the origin of the land. Most of the women interviewed in both pilot locations in March 2008 stated that they planned to have their daughters inherit some land. In a few cases in Tchitutula, women stated that they planned to give their plots to their sons because the sons would provide for them in their old age and would also be expected to care for their sisters as necessary.

Daughters who do not receive land through inheritance have the right to challenge the decision by bringing an action under the Civil Code. However, very few women are likely to do so because: (1) women often have no knowledge that they have a legal right to family land; (2) they have no knowledge of how the legal system functions and no notion, therefore, of how to pursue a claim; (3) they often do not have the financial resources to pursue a claim; and (4) they would be very unlikely to raise the issue of a right to land within the family, let alone bring a legal action against a family member.

**Widows.** Cases of widowhood are common in the rural and peri-urban pilot areas. If widowed, the fate of the woman largely depends upon the families and the soba. Women are often at risk for eviction by their in-laws, particularly in rural areas. In some cases, widows are allowed to stay on their husbands’ land but only as holders in trust for the children; they do not have the right to lease or sell the land, and the land’s use is controlled by the in-laws. In other cases, the widow may decide to leave because of tensions and conflicts with the in-laws. If a widow returns to her birth family, she may or may not receive a plot to farm from her parents or brothers.

One study in Kuanza Sul Province found that when a man dies, his relatives often take the rights to his land, not his widow. The study found that only 23 percent of widows use the land left by the deceased husband, and six percent were cultivating land provided by the soba. The sobas reported that they help widows to obtain other land for cultivation so they can remain in the village if they wish. All women in the survey had gone to their husbands’ home after marriage, and almost all widows said that they preferred to stay in their husband’s village because they had community ties there. The survey found that 47 percent of the widows did not go back to their home village upon the death of their husbands, and in every village, some widows with children had no land.

As a matter of customary law and practice, widows may remarry (and this is not uncommon for younger widows), but remarried widows lose any rights to land from their previous marriages. In general, elderly widows and those with grown children appear to have more secure rights to their deceased husbands’ lands than younger widows, a result reflecting the stronger community ties of the older widows in their in-laws’ village than of the younger widows.

Customary practices regarding children of the widows vary. Women in both pilot sites reported that if they were widowed, inheritance would depend upon the husband’s acceptance of the children. Other women in Lumandi village noted that whether or not a widow’s sons would inherit land would depend upon the age of the children at the time of the husband’s death. If the widow leaves to return to the birth family but has adult sons, they would inherit her husband’s land. However, if a widow with young children returns to her birth family, the children are unlikely to receive land from her in-laws.

The sobas in the pilot areas appear to have favorable views regarding widows retaining rights to their husbands’ land. Each of the three sobas interviewed stated that the women should not be evicted from their husbands’ land if widowed. In contrast, women in Lumandi reported that eviction of the widow by the in-laws was not uncommon. If requested, sobas may intervene and if the matter could not be resolved, the soba would give the widow another plot of land. Residents and sobas alike agreed that land farmed by widows often has low productivity; some attribute the productivity to the poor quality of lands given widows, while others note that widows often have inadequate labor.

Childless women are among the most vulnerable, particularly in rural areas. If a couple is unable to produce children, the problem is often blamed on the woman. Moreover, multiple births of girls are sufficient reason for a man to seek another wife. If the woman has no children (and in particular no sons), she may be abandoned. If her husband dies, her in-laws can dispossess her of her land. The practice of levite (marrying brother of the deceased husband) is common in some areas of Angola and protects the widow from becoming destitute.

VI. FORMALIZATION AND DOCUMENTATION OF WOMEN’S LAND RIGHTS

Angola’s Land Law and regulations make no explicit mention of the rights of women. However, the Constitution’s statements of gender equality and nondiscrimination on the basis of sex are arguably implied in all legislation through the supremacy clause. The Land Law’s provisions regarding land concessions and processes to formalize land rights should, therefore, (as a matter of formal law) apply equally to women and men.

There has been little opportunity to date to test whether principles of gender equality extend to land legislation in practice. Since the enactment of the 2004 Land Law, the government of
Angola has made little effort to formalize land rights (of either women or men) in Angola.

The GoA has granted some concessions of agricultural land to commercial interests under the prior land law, and there continues to be an active informal land market. However, land rights formalization activities under the 2004 Land Law were held in abeyance awaiting the regulations, which were published in August 2007. Since that date, those involved in the land rights formalization project that provides the context for this report have been unable to obtain any GoA acknowledgement of land rights under the Land Law or information about GoA plans for granting concessions or formalizing rights.\(^70\)

**In order for land to play a key role in economic growth and poverty alleviation, a functioning land administration system must support secure, easily transferable land rights.**

VII. WOMEN’S INVOLVEMENT IN LAND TRANSACTIONS

Under the Land Law and Civil Code, the transferability of land depends on the nature of the land right held. For example, holders of concessions for urban land may sell their concession in accordance with the auction procedures set forth in the law and regulations. However, holders of more temporary concessions may be restricted from transferring any portion of those rights.

The formal law has little impact on the transfer of land in the rural and peri-urban pilot areas.

Customary law and practice allow landholders to alienate land temporarily through a variety of means, including leases, rental agreements, borrowing arrangements, and loans. Historically, customary law prohibited permanent transfers because the land was thought of as being held in trust for ancestors and unborn generations and could not, therefore, be permanently transferred. However, as communal land systems evolved to include individualized tenure, the system recognized permanent transfers. In urban areas and regions with rich agricultural land, the majority of landholders have individualized rights, and these areas support active informal land markets.\(^71\)

Residents of Mombolo and Lumandi villages reported during various rounds of fieldwork that they lease or sell land to others within the village when necessary to raise extra cash. In Mombolo, there have been no land sales to third parties from outside the village or neighboring villages within the last 20 years. However, use mortgages are common. Under a use mortgage, a landowner grants another village resident the right to cultivate a parcel of his land in exchange for a lump sum payment. When the landowner repays the debt to the resident, the landowner retakes possession of the land.

Women do not appear to have a high level of involvement in land transactions in the rural areas. If they own land with their husbands, the husbands tend to manage land transactions such as leases. However, where women have their own land, they may enter into lease arrangements, especially when the land is inherited from their natal family. Some widows interviewed consider themselves as temporary custodians of land for their children, and only the male children would have the authority to sell or lease land.

In Tchitutula, most residents purchased their land from private parties or middlemen within the last four or five years. Some women purchased their plots with their own resources, often saved from employment in civil service or teaching. In many cases, married spouses both contributed their earnings and saving to purchase the plot. Land is scarce, and land sales are now very rare. During interviews conducted in March 2008, no residents interviewed reported that they were considering selling their land. Some of the parcels were rented out, although most commonly to members of extended families.

VIII. GOVERNANCE AND INSTITUTIONS: WOMEN’S PARTICIPATION AND LEADERSHIP

A. POLITICAL INSTITUTIONS

Women are under-represented in all of the country’s decision-making bodies. Currently 34 of 183 parliamentarians and three of the government’s 27 ministers are women. Less than one percent of the sobas are women.

B. RELIGIOUS INSTITUTIONS

Churches are critical sources for education, social services, and information for women in Angola. Most women are affiliated with a church and participate in the church’s sociedade da senhoras (women’s group).\(^72\) In Mombolo, women attend separate church services every weekday morning beginning at 5 a.m. and socialize as a group for a period of time after the conclusion of the service. In Tchitutula, women regularly meet as a group after the Sunday church service. During the meetings, women socialize and may discuss a range of matters and community issues.

C. WOMEN’S ORGANIZATIONS

As a matter of culture and practice, the women living in the rural and peri-urban pilot areas do not form groups for social, economic, or political purposes. Women report engaging in some activities together, such as selling goods in the market, traveling to other areas,

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or attending to tasks such as gathering firewood, but they often chose to be with female relatives or are solitary (or with their children). There are no informal or formal women’s groups or cooperatives in Mombola or Tchilutula.

**D. LAND ADMINISTRATION AND MANAGEMENT**

In order for land to play a key role in economic growth and poverty alleviation, a functioning land administration system must support secure, easily transferable land rights and be capable of: (1) maintaining comprehensive, clear, accessible land records; (2) creating mechanisms for the efficient and effective transfer of land for a reasonable fee; and (3) providing accessible avenues for handling land disputes fairly, predictably, and in a timely fashion. Angola’s system does not currently support these elements of a functioning land administration system – either in design or in practice. The system suffers from an incomplete design, incomplete (or nonexistent) data on land holdings, a lack of records, cumbersome, time consuming, and imperfectly understood transaction processes, high transactions costs, lack of information and processes to determine land values, and lack of institutional capacity to create and maintain records and manage transfers.

The informal systems of land administration and management operate in a void that makes women’s participation or leadership in land administration and management particularly difficult. In rural areas, sobas continue to control access to land. Women interviewed reported a range of experience with the sobas in their land management roles; some sobas support the land rights of women and actively assist women in disputes over land rights, while others may be less helpful or actively oppose women’s rights to land.

In peri-urban areas, comuna administrators and bairro-level authorities and comissões de moradores – bodies that operate between the formal and informal spheres – provide access to land and “regularize” encroachments. The population recognizes these bodies, which grew out of the operations of political parties after independence, as having authority over land in urban and peri-urban informal settlements. Women interviewed in Tchilutula who participated in the purchase of their plots report that they were able to deal directly with local administrators and experienced no difficulties with the process.

**E. DISPUTE RESOLUTION BODIES**

The mechanisms and processes for the resolution of land disputes are housed within parallel formal and traditional systems. The formal systems are inaccessible to the majority of the population because of cost, location, and procedural formalities. The formal systems also lack social legitimacy and are simply not functioning in large parts of the country. Traditional systems have more social acceptance but are localized, have limited impact, often lack neutrality, reflect existing social hierarchies at the expense of equality, and are impotent against the formal law.

Land disputes fall into the following categories: government land expropriations and attendant evictions; boundary disputes; third party (nonlocals) assertions of rights to land, access by marginalized groups (e.g., widows, divorced women, ex-combatants, pastoralists, daughters seeking inheritance rights, hunter-gatherers); ambiguity in nature of land rights held; encroachment (with special concern about conflicts between occupants of former commercial farms versus new owners taking possession under government concession); land speculation/land grabbing; and land transfer disputes. In many study areas, the number of ongoing disputes has, to date, been minimal. However, in almost all areas, the populations interviewed report concern about the impact of increased development and growth on land access and tenure security and predict that the number of land related conflicts will increase substantially in the years ahead.

Angola’s land dispute resolution framework includes both adjudicatory and conciliatory systems. Traditional village-based systems applying customary law generally offer participatory, conciliatory methods of dispute resolution. The adjudicatory system resides in the courts, which apply formal law and established procedures. There are limited links between the two systems, and the populations served by each are distinct.

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73 In some cases during fieldwork for the Project, researchers found that women in some communities were more responsive during individual interviews than interviews held with groups of women.


79 One link is evident in Huambo, where, if a soba is unable to resolve a dispute, the parties take the matter to the comuna or municipal administrator. Development Workshop, 2005, at section 7.2.
Traditional dispute resolution. Historically, Angola’s sobas governed the people within the soba’s established jurisdiction (usually a village). In conjunction with village elders and local councils, sobas traditionally handled a multitude of local governance matters, land matters and conflict resolution. In peri-urban and urban areas, sobas are often not present or may have limited power, and bairro coordinators and comissões de moradores (residential committees) often fill the soba’s role. Particularly in areas where the capacity and resources of local government are limited, these customary and community institutions may carry more authority than formal governmental institutions.

The social legitimacy of the traditional and community institutions allow sobas to continue to manage conflicts within their jurisdictions. Sobas and their assistants mediate and resolve disputes. Public spaces known as onjandjos provide areas in which a village may hold informal courts, a process that lends transparency to matters of public concern. The procedures followed by sobas in resolving matters vary among locations, but, in general, they apply settled principles of customary law, and their approach is highly conciliatory.

When women were asked where they are likely to go in case of a dispute, their responses varied. In the rural area of Mombolo, women stated that they would approach the soba or the pastor. In the peri-urban area, women stated that they would take a land dispute to the pastor, their birth family, the soba, or a neighbor (in that order). According to the representative in the formal court of Katchiungo, women do occasionally access the formal courts for assistance but mainly for cases of domestic violence and never for land-related disputes.

There appears to be little connection between formal and informal dispute resolution mechanisms and laws, although sobas are often used as witnesses in formal courts and called upon to support claims of land ownership by an individual or household where no written land records are available. Discussions with the sobas and NGOs in both rural and peri-urban areas revealed that the most common disputes that they receive are not related to land, rather they were related to domestic violence. For those disputes that were land related, most were intra- or inter-family disputes; cases of disputes with outsiders were noted as rare occurrences. The only land-related cases received by the sobas from women in the rural pilot site were widows requesting access to land. In urban areas, OMA in Luanda receives frequent cases of conflict between husbands and wives related to housing, such as cases where a woman and her children may be evicted if a man decides to sell or rent the house.

The traditional system of dispute resolution has some weaknesses. First, to the extent that the process employed by the soba seeks consensus, the process reinforces accepted standards of behavior and existing hierarchies and social structures. Conciliation and mediation can trivialize disputes by putting current grievances in context of past behavior, history, and family status. Thus, to the extent that a party to a dispute seeks application of a new standard – such as equality of land access regardless of gender – she may need to convince the soba (and community) of the value of the principles she wishes to have applied or pursue her claim under formal law in a civil court to obtain the desired decision.

Second, there are often very limited solutions to many disputes regarding land. Boundary disputants may reach a compromise. A plot may be divided among competing claims. Land may be awarded to one party at the expense of another. However, beyond these types of remedies, few options exist. One of the most common remedies in the formal legal system, the payment of compensation or damages, is often unavailable because people have limited resources and few assets.

Third, as currently conceived and practiced, the traditional system of dispute resolution is not designed to handle claims brought by outsiders under formal law. While a few provisions of the 2004 Land Law recognize customary law or traditional practices, the ambit of customary law is highly circumscribed and always subject to formal law. As discussed more fully in the following section, while a court will likely seek evidence from a soba regarding a land case within the soba’s jurisdiction and will treat any evidence offered with respect, the soba’s own ruling on the controversy carries no weight with the court. A soba’s legal authority is trumped by formal law.

Formal law and institutions of dispute resolution. Angola’s formal legal system is based on a statutory or code system imposed by the Portuguese during the colonial period and revised multiple times following Independence. Angola’s judicial system is structured around a central Supreme Tribunal, which operates primarily as an appellate court (although it can exercise some original jurisdiction). Trial courts with original jurisdiction are provided for at the provincial and municipal levels. The President appoints the Supreme Tribunal (without confirmation by the National Assembly) and provincial judges, who in turn appoint municipal judges. Judges need not be licensed lawyers and are often lay persons. Under the Civil Code, land disputes can be brought at the provincial or municipal level. As a practical matter, almost all cases are heard in provincial courts: as of 2000, all 18 provinces had functioning provincial courts; municipal courts were operating in only 12 of 140 municipalities.

80 Terrafirma, 2005, at 19.
81 In answer to questions regarding land tenure security, ex-combatants stated they believed their land rights more secure if they had gone through a process of conferring with the soba regarding their land rights. Development Workshop, 2005, at 53-54, and 87.
82 Note that in some peri-urban and urban areas, there is some evidence that the residents, who almost uniformly take their disputes to the bairro coordinators and residential commissions, offer informal payments to those groups as part of the process and in an effort to ensure a favorable result. See Terrafirma, 2002, at 19.
84 The information in this section is drawn from Filipe, 2006, The Right to Land and a Livelihood, and personal interviews with Carolina Matheus (Gomes), a Lunada-based Angolan lawyer [and member of the non-profit Associacao Maos Livres], Helena Lowe Zefanias with Norwegian People’s Aid in Luanda, and the staff of Development Workshop and CARE in January 2007.
85 Constitution, Article 125.
The Constitution, Civil Code, and 2004 Land Law and regulations provide three different avenues for resolution of disputes, available in various circumstances:

- Civil court procedure;
- Mediation and arbitration (ADR); and
- Traditional dispute resolution (limited).

Land cases brought in civil court in Angola are long and costly. An average case initiated at the provincial court level may run two years, and twice that time is not unusual. Appeal of the trial court’s decision is a matter of right, and the case may take several years to be heard. The status quo relating the land will be maintained during term of the case, absent extraordinary circumstances.

In regular (non pro bono) cases, the Angolan Bar Association has minimum fee schedules that the lawyers must follow. Lawyers can (and most do) charge much more than the minimum, setting their fees for disputes based on the value of the case, the client’s availability to pay, the time the case will require, and the firm’s practices. Many firms charge a fee of $100 to discuss the case with a lawyer, whether or not the lawyer takes the case. If the case involves land, the lawyer’s fee will take into account the value of the land; in title disputes, the lawyer may charge 10 percent or more of the land value.

Attorney’s fees are non-refundable. Clients must pay 35 percent of the total charge in advance of any work. The client must pay the balance of the fee before any settlement, the close of trial, and any verdict. Fees are not dependent on results obtained; there is no practice of taking cases on contingency in Angola. No statistics regarding the nature of parties pursuing land claims in Angola are currently kept, but the length of lawsuits and costs of engaging legal counsel make it unlikely that any individual without significant resources would proceed with a private lawsuit without assistance. As women generally have fewer financial resources than men, are less likely to be educated, and have less mobility because of obligations to family, they are even less likely to look to the formal court system for justice.

Legal aid. Angola’s Bar Association has the foundation for a pro bono representation system. The Bar Association requires all registered lawyers to donate a certain amount of time each year to providing legal services to the poor. A person desiring an attorney under the program applies with the Bar Association, which in turn applies some basic eligibility criteria, including verifying the person’s need for free services. The Bar Association assigns eligible applicants for free legal aid to a lawyer or law firm. The Bar pays the expenses of the case and gives a small stipend to the lawyer.

The system is criticized because lawyers routinely avoid service or, within firms, they assign the cases to the most junior lawyers. Where poor clients are lucky enough to receive an experienced lawyer, the lawyer often has little incentive to spend the time necessary to provide the best representation. No statistics are kept on how many pro bono cases are taken but the number is estimated to be very low and does not provide an accessible avenue into the court system for most people.

Mandatory mediation and arbitration. The 2004 Land Law includes an alternative dispute resolution (“ADR”) system; the law mandates mediation and conciliation and requires non-binding arbitration before a provincial level tribunal. The law gives few details. The provincial government is responsible for organizing arbitration panels. The panels will conduct proceedings in Portuguese and must reach a decision within 6 months of the date it is empanelled.

According to local practitioners, Angola has no experience with ADR, except in the context of commercial contracts where provisions are drafted to meet international standards and the parties are usually sophisticated business interests who are well represented by legal counsel. Trial attorneys are familiar with the process of negotiation and settlement as a required pre-trial activity in Angola, but the process occurs before a trial judge and does not involve mediation. ADR has yet to be institutionalized within the court system, and the vast majority of lawyers (and persons managing ADR procedures) are unfamiliar with the processes involved. Angola has had insufficient experience with ADR system to make a judgment about how women’s rights will be treated in an ADR system.

Permissible use of traditional dispute resolution process. The Land Law provides that where rural communities have conflicts related to the rights of possession, management, use and production of rural community land, or issues related to the useful domain of rural community lands, those communities shall use their customary methods of deciding the dispute.

Anyone aggrieved by the decision reached has a right to appeal to the mandatory mediation, conciliation, and arbitration process outlined in the law and described above.

The section is silent on several key points such as whether sobas can apply principles of
customary law, even if they conflict with formal law, whether non-community members are bound by the traditional procedure, and what law applies in arbitration or trial. In addition, the traditional system used will be subject to the weaknesses and limitations discussed above, including the potential to perpetuate historical biases and existing social hierarchies.

IX. ACCESS TO INFORMATION ABOUT WOMEN’S LAND RIGHTS

Women receive little information regarding land rights under the formal law system. Both women and men in the pilot sites were familiar with land rights and property rights under customary law and practice and able to articulate how land would be dealt with in various situations such as divorce or death. None interviewed had the same knowledge of rights under the formal law system.

With regard to information about the Project, some women received information from the soba, and some from the Project demarcation teams. In the rural areas, sobas may receive information from different sources to pass on to community members. The soba in Mombolo received Project information from the Project staff.

X. CONCLUSION AND RECOMMENDATIONS

The formal and customary legal systems governing land rights and transactions in Angola are more favorable to women than in many African countries. The formal laws articulate principles of nondiscrimination and gender equity and proactively provide for the rights of women in common law marriages and the inheritance rights of daughters. The customary system and traditional practices favor men, who dominate the political, economic, and social spheres. However, the matrilineal heritage shared by many Angolan tribes has had a positive influence on the position of women; in many parts of Angola, women inherit land, hold marital property jointly and share decision-making authority with their husbands as a matter of customary law and practice.

One of the challenges ahead will be to preserve such valuable elements and procedures of the customary legal system that already have social legitimacy, while charting an evolution toward a single legal system governed by principles of fairness, equity, transparency, conciliatory processes, and other desired principles.

At this stage, much still remains to be understood about Angola’s population, especially its women. The information that is available reveals uneven progress. In the peri-urban pilot area, most women hold their plots jointly with their husbands. Women who are educated may have positions in civil service or work as teachers and medical aids. Some women are purchasing house plots as security for themselves before they are married or after divorce or the death of their husbands. But traveling only three hours by car from the peri-urban pilot site to the rural pilot site, the situation is very different. In Mombolo, women are trapped by geography, lack of infrastructure, illiteracy, limited economic opportunities, and the need to care for children and relatives. They have far fewer options. Customary law restricts the rights of women when they are the most vulnerable, such as in the event of abandonment, divorce, or the death of a husband.

Land rights provide a critical asset to all women regardless of their circumstances, but most particularly those with the fewest options. The GoA’s delay in implementing the 2004 Land Law and regulations provides an opportunity to design a strategy for protecting and improving women’s rights to land in Angola. The following are recommendations for possible components of a strategy:

• Conduct targeted research country-wide. The actual land tenure situation in most of Angola is unknown to most everyone but the residents of those regions. Even less is known about the land rights of women. In such a void, a little research in each of the regions of the country will go a long way toward ensuring that any strategy is actually designed to support women’s existing rights and address the major barriers to women’s access to land and land tenure security.

• Design legal literacy campaigns for women. Women lack knowledge of their legal rights, including their land rights, marital property rights, and inheritance rights. Absent that knowledge and knowledge about the ability to exercise their rights, the equitable laws and procedures are irrelevant. Given the high levels of illiteracy among women, dissemination of any written materials is not likely to be very effective means of reaching women. Likewise, because women in Angola appear to have limited experience with organizing groups and engaging in joint activities, more individualized methods (such as radio addresses) of providing information to women are necessary. Local NGOs, women organizations, community groups, and other interested persons and entities are usually best positioned to design and implement legal literacy campaigns. These entities and individuals work directly with the population, have knowledge of customs and capacities, and are familiar with existing practices—knowledge that is essential to a successful campaign.

• Engage government officials at all levels on land issues. Government officials at all levels lack knowledge of the land law, regulations, and procedures for implementing the laws, including the formalization of land rights and granting of concessions. Critically, in many areas, the GoA also does not have the institutions and capacity necessary to support implementation. Any strategy to support women’s rights to land must include or be linked with a broad plan for assisting relevant government officials in understanding the laws impacting land rights (both formal and customary) and be implemented in tandem with institution and capacity building.

• Develop and pilot procedures for the formalization of land rights that integrate customary law and practices to the extent possible and appropriate. The process of formalizing land rights under the Land Law requires (1) identification of existing rights recognized under customary law and practice; (2) extension of such rights consistent with constitutional and statutory principles
of equity and nondiscrimination; and (3) regularization of such rights consistent with the applicable law and regulations. Neither the Land Law nor any other formal or customary law provides procedures to direct this process. Absent clear procedures that include an understanding of women’s customary rights and the necessary evolution of those rights to a state of true gender equality as contemplated in the Constitution and Family Code, that consideration will almost certainly be neglected. The rights formalized will fall far short of what could have been achieved for women and other disadvantaged groups.

The Project that created the context for this report has created a draft operations manual and conducted pilots for the formalization of land rights. This initial effort needs to be followed by many more. Once a sufficient amount of experience has been documented, a standard set of procedures can be developed that are suitable to be used country-wide.

- **Provide assistance and training to local traditional authorities regarding land rights, dispute resolution procedures, and women’s rights.** Traditional authorities such as sobas are often the only administrators, mediators, and adjudicators of land rights whom women will ever encounter. These individuals and local institutions of governance and dispute resolution generally apply customary law and local practice to guide decisions regarding land rights. In some cases, those sources provide women with land rights. However, those sources can also be applied to discriminate against women. NGOs and other entities that work with local communities and local governance bodies can develop programs to work with sobas on identifying customary laws and the principles that guide their decisions and help refine and revise those principles to meet standards of equity and fairness.

- **Support the work of legal aid centers and land rights lawyers.** Legal aid centers and land rights lawyers will likely be required to do the heavy lifting necessary to ensure that women’s land rights are enforceable. Legal aid centers can be encouraged to take test cases, to help disseminate land rights information, staff (or guide) land dispute resolution bodies, and develop legal literacy programs designed to assist women in realizing their land rights. Legal aid clinics can also serve as a community resource center, providing women with information regarding other issues of particular concern, such as domestic violence and HIV/AIDS.

A project undertaking all of these components would be ideal, but even one or two will make a difference. So little has been done for women’s land rights in Angola that the challenges may often appear daunting. But, they should not be paralyzing. The opportunities to use the Land Law to provide women with the basis to substantially improve their lives and the lives of their families are as great as the perceived challenges to such a goal.

*The majority of Angola’s population, including many government officials, is unaware of the terms of the 2004 Land Law.*
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