

# LEAP News: July 2002

LEAP Phase 3 got off to a slow start in mid 2001, and then moved into a period of high activity, challenge and pressure. We are collecting our thoughts and want to share them widely.

The purpose of this LEAP NEWS is to let our colleagues know what we are doing in LEAP Phase 3, and to tell new people about who we are and what we are doing. LEAP welcomes dialogue and collaborative work. If you have questions, comments or challenges, or want to tell us about your own related work, please get in touch.

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## 1. Who we are, what we are trying to do and how we are organized

We have created new institutional arrangements for managing LEAP Phase 3. For phase 3 MIDNET is providing the organizational home and management oversight for the project, while a Steering Committee made up of a range of resource people provide strategic guidance. [A1](#) gives more detail on LEAP's institutional arrangements.

The members of the Steering Committee are

- Sihle Mkhize (Association for Rural Advancement - AFRA)
- Rauri Alcock (Midlands Rural Development Network - MIDNET)
- Sithembiso Gumbi (Provincial Department of Land Affairs KwaZulu-Natal)
- Adrian Vorster (Tenure Directorate, Department of Land Affairs)
- Kobus Pienaar (Legal Resources Centre – LRC, Cape Town)
- Prof Ben Cousins (Programme for Land and Agrarian Studies - PLAAS)
- Cheryl Walker (independent researcher)
- Jotham Myaka (Zibambaleni)

The LEAP Core Team carries out day-to-day work and manages implementation of the project. Tessa Cousins is the Co-ordinator. Donna Hornby works mainly on conceptual development. Nondumiso Mqadi is responsible for field reality work. Thelma Trench is responsible for dissemination. Ndabezinhle Ziqubu links LEAP to the PILAR project of AFRA.

Everyone helps with fieldwork and does anything in an emergency. Mbongeleni Hlongwa helps with fieldwork part-time. Paula Loynes continues to give support on work which involves language. Margaretha Wielsma manages the budgets and finances and gives administrative support to the activities.

In this phase we have a number of components to the project which are both distinct and interlinked. This reflects our methodology as a project and is based on our development over time. See [A2](#) and [A3](#) for details.

## **2. Getting clear on how we think about what we are doing - taking conceptual development forward**

We started Phase 3 with a conceptual understanding of tenure and legal entities developed during Phase 2 looking at processes in which people assert, justify and realize rights. The detail is available in [B1](#). We refined this conceptual understanding through a mini-workshop, email interactions, listening in conferences, writing papers, and testing in fieldwork.

The following documents outline this very new thinking and show how we are using it:

- [C4](#) gives the bare bones of the conceptual framework.
- [C1](#) shows how the conceptual framework has influenced the framework of the CPA Review.
- [C2](#) shows how the KZN Provincial Task Team used the conceptual framework in the field assessment and analysis of tenure security at Msikazi, for the CPA Review.
- [E1](#) shows how LEAP used the conceptual framework in a tender to do “capacity building”.

Some of the main shifts in conceptual development are described below.

### **2.1 Tenure security as the main purpose of communal property institutions**

We continue to focus on tenure security as the main purpose of communal property institutions, for groups, households inside the group and individuals inside households and inside the group. All around us we hear different concerns about legal entities in land reform, which imply that legal entities in land reform should meet a range of other purposes. Banks struggle to work with CPAs in setting up income-generating projects and municipalities can't deliver services on privately-owned land. What we are saying about this is that the institutional arrangements for tenure should enable other agreed land use objectives.

### **2.2 Real progress in the search for indicators of tenure security**

Much of the work of Phase 2 was a search for indicators of tenure security, both in literature and in workshops. We ended Phase 2 with a first draft of these indicators, which we shared widely. The first Phase 3 concept development workshop in December 2001 sent us back to the drawing board. Participants couldn't apply the Phase 2 indicators in practice and we realized that they were general indicators of rights rather than indicators of tenure security.

Two breakthroughs happened almost simultaneously in the Core Team:

- about what the indicators should actually be;
- the idea of looking at land administration processes common to both formal and informal systems as the place where tenure security becomes concrete, and can therefore be talked about practically.

The first draft of the new conceptual framework helped the Provincial Task Team for the CPA Review with design of fieldwork at Msikazi and at Grange. It also shaped how we listened to people on the ground and what we captured from discussions. LEAP tested the indicators and land administration processes as a framework for analysis after the Msikazi assessment and revised it some more. Then LEAP worked jointly with DLA on the April 2002 revision of “An Assessment Framework for Communal Property Institutions” which is being used in the CPA Review. We are at last holding conversations about tenure issues at the field level and in Zulu, which are useful to people on the ground and useful to us.

### **2.3 The importance of creating hybrid institutions that work**

Practical experience across Africa is that tenure reform should start with an understanding of what works now. If this is not done, then there is a great risk of creating multiple and competing processes and authorities for land administration, with increased risk of conflict. Even in peaceful and coherent groups, people may become so confused about procedures and authorities that they may have difficulty asserting their rights. Communal property institutions either default to what they were or collapse; tenure security stays what it was or declines; the potential for conflict rises. In LEAP we believe that we should be adapting, not replacing, what works already. This may mean creating hybrid institutional arrangements that work, rather than imposing completely new institutional arrangements.

Confusion in authorities and procedures was a theme that broad membership could name and relate to easily in focus group discussions at Msikazi. The formation of a hybrid institution that works became the basis of a proposed intervention by the DLA planner during feedback at Msikazi.

## 2.4 Land reform timeline as part of a continuum of institutional arrangements

Our original work plan for Phase 3 dealt separately with “setting up new legal entities” and “amendments to existing constitutions”. When it came to implementing this plan we realized that we needed to think about the land reform timeline as part of a continuum of adaptations of institutional arrangements in which tenure becomes more secure.

We began to understand that our task in fieldwork is local level institutional interventions to improve institutional arrangements. This applies whether we are working on establishment of new legal entities, “capacity building” in helping people to cope with the challenges of land administration after legal entity establishment or land transfer, and conflict resolution. New plain language or amended constitution documents and rules become one tool of better institutional arrangements. [C3](#) and [B3](#) offer this understanding in the form of diagrams; and the capacity building work at Grange showed how it might work in practice (see below).

We understand our current fieldwork at Msikazi , Grange, Ntabeni, Gwebu... as part of this continuum. This has been liberating - it makes sense in terms of what we are meeting in the field, and how we deal with it.

## 2.5 External linkages for tenure security

LEAP has long recognized the importance of external linkages in securing tenure in land reform legal entities, for example the need for people to have recourse available close to them if they are unhappy with decisions or hit disputes that they can't resolve. [B1](#) gives details of the some of the LEAP case studies where this arose as a need. During Phase 3 we are trying to understand these linkages, looking at local dilemmas and blocks and **thinking outward from the local situation**, into the structures and policies that should hold tenure security in place, local, provincial, and very broad and national. We are finding that the tenure security thread keeps getting lost among a mass of other pre-occupations.

## 3. Dissemination, networking and policy work

Our work remains highly collaborative and works with real constraints. We have continued to collaborate and correspond with large numbers of other people working on communal property institutions, tenure issues, and establishment of legal entities. We work very closely with

- the PILAR project (Pilot in Land Administration Records) of AFRA - Ndabe Ziqubu is on our Core Team;
- with other non-government organizations through our Steering Committee, MIDNET, workshops and fieldwork;
- with Department of Land Affairs staff at the national, provincial and regional levels in the CPA Review and in fieldwork;
- with academics, researchers and lawyers through our Steering Committee, mini-workshops, attendance at conferences and workshops and in email discussion.

We have drawn up an electronic list of about 135 working documents from Phases 1, 2, and 3.

Our conference papers are available in electronic form. See [B1](#), [B2](#), and [B3](#). We have published some papers which are available in attractive hard copy [B1-Pu](#).

The MIDNET - LEAP - AFRA convened workshop on the Communal Land Rights Bill, 26-27 June 2002 was structured around the LEAP indicators. The report is being prepared.

### CPA Review

With DLA and other non-government organizations, we have worked on the National and Provincial Task Teams of the CPA Review. One of the initiatives of the National CPA Task Team was the diagnostic audit, which is looking across South Africa at the experience, strengths and problems of existing communal property institutions acting as legal entities in land reform (including CPAs and Trusts). They planned to feed the results into larger government process looking at policy improvements and improvements in support around land holding bodies.

- [C1](#) gives an overview of the framework for the CPA Review
- [D1](#) is a set of guidelines for better field practice developed for the CPA Review Task Team. It is up for challenge and comment.
- [C2](#) is the report of the CPA Provincial Task Team on the work at Msikazi.

## 4. Field practice

In our field practice we use participatory methods and try to be responsive to what is happening on the ground. This means that we draw on our theory to help us understand what is happening, but not to close out new insights which may challenge that theory. This means that we use the methodologies we have developed as experience to draw but not as a recipe to be followed blindly.

### 4.1 Fieldwork for the CPA Review

The National CPA Task Team asked people from the different provinces to carry out the work of the diagnostic audit, working in provincial Task Teams. In KZN the Provincial CPA Task team consisted of Noma Mkhungo from the Southern Coastal Region DLA office at Port Shepstone, Siphon Kubheka and Zanele Mpangane from the Vryheid DLA office, and the whole of the LEAP Core Team. The first task of this team was the pilot assessment of tenure security at Msikazi, described in [C2](#).

**Coming up:** We are busy with the assessment at Gwebu for the CPA Review and hope to do the bulk of the fieldwork in July 2002.

### 4.2 Capacity building at Grange

One of our core team members took on a capacity building tender in partnership with LEAP at Grange. This was an established CPA, where we applied our thinking on the continuum of institutional arrangements for tenure, developed some participatory methodologies for holding conversations about land administration issues after legal entity establishment, and developed a fresh way to look at definitions of membership in formulating constitutions. The fieldwork approach and methodology are described in [E1](#) and [E2](#).

#### *Better constitution documents*

We continued to draw on thinking from Phase 2 about plain language constitution documents and rules. This thinking is described in [D2](#) and [D3](#). LEAP amended the constitution for Grange, producing a plain language document that deals with the difficulty of defining membership in a constitution that we think is useful and real for people on the ground, as well as a set of rules. The Grange constitution and rules documents are available in both English and Zulu [E3](#), [E4](#), [E5](#), [E6](#).

### 4.3 Fieldwork at Ntabeni – current work

AFRA requested LEAP to do fieldwork in an established legal entity at Ntabeni, where there are serious unresolved differences about land rights. Preliminary reports are available, but this work is still in the early stages.

### 4.4 Fieldwork at Gannahoek – current work

We are busy with fieldwork and translation into Zulu of the content of the constitution at the request of people on Gannahoek where we worked in Phase 1 and 2.

### 4.5 Legal entity establishment – possible future work

We are negotiating to collaborate in legal entity establishment work.

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For more information, use the order form below.

Available in electronic form

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No.	Title	Scope	Yes I want this
A1	Memorandum of Agreement Institutional Arrangements of the Legal Entity Assessment Project. 11 March 2002. 5pp	Describes LEAP's task and institutional arrangements: the Steering Committee, the Core Team, and the role of MIDNET as an institutional home for the project. Includes a diagram.	
A2	Outline of LEAP logic at 8 February 2002. 3pp.	A vividly coloured and readable diagram to show what drives us: the objectives of the LEAP project, the methodology and activities we use, and the outputs we are seeking. Useful information for people undertaking shared work with us.	
A3	Common property institutions: Improving and assessing organizational performance in providing security of tenure. The Legal Entity Assessment Project (LEAP) KwaZulu-Natal, South Africa. January 1999 – June 2002. 8pp.	A pamphlet tracing the conceptual journey of LEAP, mainly in diagrams. The last page describes how the project is organized and gives some history of Phases 1 and 2.	
B1	LEAPING THE FISSURES. Bridging the gap between paper and real practice in setting up common property institutions in land reform in South Africa . Prepared for the CASS/PLAAS CBNRM Programme 2 <sup>nd</sup> Annual Regional Meeting. Legal aspects of governance of CBNRM". 16 – 17 October 2000. 27 pp.	Combined work of LEAP and AFRA. Describes key problem areas of communal property institutions with case studies and pulls together LEAP's conceptual understanding at the end of Phase 2.	
B2	LOOKING BEFORE YOU LEAP. An analysis of some of the consequences of state devolution in land and resource tenure. Prepared for the CASS/PLAAS CBNRM Programme 3 <sup>rd</sup> Annual Regional Meeting Maputo, October 2001. 17pp.	Examines the CBNRM concepts of devolution and decentralization, describes and analyses a case study in which the institutional arrangements for community based natural resource management in a highly successful project collapsed, and examines the implications for the role of state.	
B3	USING LOCAL PRACTICES AND RECORDS TO SECURE INDIVIDUAL TENURE RIGHTS IN COMMON PROPERTY SITUATIONS. Lessons from the case studies on what might work on the ground. Paper written for the Department of Land Affairs' National Land Tenure Conference, 26-30 November, 2001, Durban. 14 pp.	Describes and analyses work on recording systems, especially from the Ekuthuleni case study, working from PILAR and LEAP perspectives.	
C1	An assessment framework for communal property institutions. April 2002. 19pp	Describes the background to the CPA Review, and sets out the approach to be used. Result of collaborative work between LEAP and DLA.	
C2	Assessment of the Msikazi CPA. May 2002. 23pp. Includes Executive summary.	Outlines and evaluates the approach and methodology used at Msikazi, for assessment of institutional arrangements for tenure security during pilot fieldwork for the CPA Review. Includes the latest version of the conceptual framework, and shows how the Provincial Task Team used it practically in fieldwork.	
C3	Diagram of the "institutional arrangements continuum". March 2002. 1pp	Shows what we mean by the continuum.	

No.	Title	Scope	Yes I want this
C4	LEAP's FRAMEWORK – the bare bones. June 2002. 2pp	A very brief outline of our latest conceptual framework.	
D1	DO's and DONT's for working with (setting up or supporting) common property institutions. Presentation to national CPA Task Team meeting 9 April 2002. 3pp.	Condensed practical tips for planning and carrying out work with common property institutions. Useful in planning legal entity establishment, thinking about capacity building, and doing assessments of a range of common property institutions. Up for challenge, additions and comment.	
D2	Some tips for drafting legal entities in simple language. August 2000. 8pp.	Still a very useful document about writing plain language constitutions.	
D3	Unnecessary complications in translation. Paula Loynes. June 2000. 3pp.	A letter to the Pan-South African Language Board examining the implications of legalese in constitution documents.	
E1	REPORT on capacity building for the Grange community. June 2002. 12pp	Gives an overview of the capacity building work at Grange, describes the approach used, examines the findings using the conceptual framework, and makes recommendations for follow-up work. Includes an interesting theoretical approach to the problem of conceptualizing membership.	
E2	Methodologies used in Grange Capacity Building Project. 2002.	Appendix 1 to the report above. Describes the methodologies used in a series of workshops during a capacity building tender for Department of Land Affairs. Sets out in a table the workshop sequence used, the objectives of each session, and the methods used. Some photographs.	
E3	GRANGE COMMUNAL PROPERTY ASSOCIATION CONSTITUTION. June 2002. English. 8pp.	The Grange constitution after amendments during LEAP capacity building. An example of a plain language constitution which describes membership in a new way.	
E4	GRANGE COMMUNITY RULES English. June 2002. 9pp	The community rules developed during LEAP capacity building. They are open-ended. Read with the Constitution, they show what LEAP thinks goes in rules, and what goes in the constitution.	
E5	Grange Communal Property Association. Umthethosisekelo. Constitution in Zulu.	The amended Grange constitution translated into Zulu	
E6	IMITHETHO YOMPHAKATHI WASE GRANGE. Grange Community Rules in Zulu	The amended Grange community rules translated into Zulu	

### Available in published hard copy

No.	Title	Scope	Yes I want this
B1-Pu	LEAPING THE FISSURES. Contact The Receptionist / Secretary, Programme for Land and Agrarian Studies (PLAAS), School of Government, University of the Western Cape, Private Bag X17, 7535 Bellville, Capre Town South Africa. email: vmagerman@uwc.ac.za Price approx R30.	Published as a PLAAS occasional paper	

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