1. Background to the first LEAP Analysis Workshop

1.1 What is LEAP?

The Legal Entity Assessment Project (LEAP) developed in response to concerns about the long-term viability of institutions established to hold and manage community land within land reform programmes. Its object is to collect concrete information on the actuality of intended community institutions. This material is to inform land reform policy and practice by producing practical recommendations **based on real field experience,** about:
* establishing legal entities,
* providing on-going monitoring and support
* making changes to the current practice of project cycle implementation.

1.2 Structure of LEAP

The Association for Rural Advancement nutured the initial seed of the idea and supported it to germinate into a collaborative project.

The LEAP Steering Committee was established, was drawn from
* the Association for Rural Advancement (AFRA), The Rural Action Committee (TRAC) and the Midlands Rural Development Network (MIDNET) (ngos)
* the Program for Land and Agrarian Studies (University of Western Cape)
* the KZN Provincial Department of Land Affairs
The Steering Committee provides strategic guidance, vision and support, as well as dealing with management and procedural issues (terms of reference, agreements and financial administration).

Three field assessment teams (FATs) carried out participatory field assessments. A legal language team (LEGs) considered aspects of written constitutions. The LEAP Core TEAM consists of the project manager, the leaders of the field assessment teams and the researcher, and is responsible for practical management.

1.3 Participatory field assessments

LEAP had planned to assess some 20 communities in KZN, working closely with district structures and provincial KZN-DLA staff. At the time of the first LEAP Analysis Workshop 7 case studies had been carried out.

The scope of the first seven field assessments in KZN was very broad. Case studies included Communal Property Associations and Trusts, applied in redistribution and land tenure cases, some long-established, some recent. Criteria for the selection of case study entities were decided after a wide consultation. During fieldwork, FATs assessed community institutions - their functions, practices, relations, capacities and difficulties; the support they received; the processes used to set up legal entities and the extent and use of written constitutions, by both the committees / Trustees and by ordinary community members. They also assessed how social processes were affecting and being affected by these new institutions.

1.4 The legal team – LEGs

The legal team consisted of lawyers with experience in setting up legal entities and a language specialist. The legal team assessed written constitutions from a legal perspective and in relation to the reports coming out of the participatory field assessments.

1.5 Learning from LEAP

We predicted that LEAP would challenge some deep seated assumptions, policies and practices around establishment and support for land-holding legal entities. Shared thinking and learning at several levels is built into LEAP:

- Legal entity practitioners, both independents and from ngos, lead field assessment teams, and participate in analysis, report writing and management of the project.

- Steering Committee members bring in perspectives from other provinces.

- Field teams include people from land reform communities, and practitioners with limited experience of legal entities in order to broaden the pool of skill
.
- Staff from the KZN PDLA office and some of the regional offices helped to choose case studies and are involved in the management of LEAP.

- Two analysis workshops are planned for LEAP in order to involve as many roleplayers and practitioners as possible. This workshop is the first of these. Practitioners from other provinces contributed case studies so that conclusions can be of more general relevance.

1.6 The draft analytical framework - measures and factors

The LEAP case studies were carried out without having an already defined conceptual framework. As a result, they contain much detail and are difficult to work with conceptually. From these case studies the Core Team developed a preliminary analytical framework, refining which was a major purpose of the first analysis workshop.

1.7   Further information on LEAP

Further information on LEAP was circulated to participants at the start of the Workshop.

A full list of participants with telephone numbers is given in Appendix 1: *LEAP Analysis Workshop. Participants Contact Details.* Consultants and independents involved in setting up legal entities were represented in the LEAP teams, amongst the lawyers, and amongst the ngos.

2 The Workshop

The programme of the LEAP Analysis Workshop is shown in Appendix 2: *LEAP Analysis Workshop 15-16 July 1999. Workshop Programme*.

2.1   Objectives of workshop

The objectives of the workshop were:
- LEAP to share information about its process and methodology.
- Get input from different kinds of expertise and from different provinces ---> way forward
- To integrate framework for measuring the effectiveness of community institutions
- Identify issues of policy and practice in relation to community institutions that need further investigation.

2.2 Welcome

Richard Clacey (Director: KZN PDLA) welcomed participants. He reviewed some discussions with the new Minister of Land Affairs, who was questioning progress in land reform in the last five years. There is likely to be emphasis on job creation, productive uses of land and sustainability in future land reform projects, and there are questions about the fundamental practice of group ownership.

2.3 Who came to the LEAP Analysis Workshop?

There was much interest in this first LEAP workshop and a wide range of perspectives was represented:

Participant group	Rough number of participants	Notes
Legal Entity Assessment Project (LEAP)	●●●●●●●●●●●●●● ●●	LEAP Core Team, Field Assessment Team, Legal Team and Steering Committee
NGO	●●●●●●●●●●●●●● ●●	From ngos interested in different aspects of land issues; some affiliates of National Land Committee, some not
DLA KZN	●●●●●●●●●●●●●●●● ●●●●●●●●●●●	Director, Deputy Directors and staff from regions, programmes and support units, regional offices,
DLA Other provincial offices	●●●●●●●●●●●●	North West, Mpumalanga, Free State, Gauteng, Northern Cape, Northern Province
DLA National Office	●●●●●	Monitoring and evaluation, Redistribution Policy, Gender Policy, Tenure Directorate.
Department of Forestry	●	
Lawyers and legal people	●●●●●●●	
Universities	●●	
Policy makers	●●●●●●●	
Consultants setting up land reform capacity in Regional Councils	●●●	
KWANALU	●	

2.4 Introduction to LEAP

Simon Norfolk (who chairs the LEAP Steering Committee) reviewed the history and structure of LEAP. He pointed out that LEAP raises issues for policy and practice of legal entities in land reform, and poses challenges to DLA: for example, the internal focus of DLA on CPAs; the way

it frames departmental briefing documents; and the developing recognition within DLA that legal entities may need some kind of support when the project cycle is complete.

2.5 Purposes of legal entities

The LEAP Core Team had identified five main groups of "actors" with possibly different purposes for legal entities (Appendix 3: *Legal Entity Assessment Project LEAP Analytic Framework*).

* DLA Implementation Actors
* DLA Policy Actors
* Community
* Legal Actors
* Development actors

An exercise on purposes of legal entities gave participants the opportunity to explore these for themselves, answering the question **What are these bodies for?** from the perspective of each main group of "actors".   Detail is shown in Appendix 4: *Purposes of legal entities from the perspectives of different actors*.

Notes
- The exercise added some purposes which the LEAP Core Team had not defined.   One example is the idea that legal entities might be an important mechanism for control by government in undermining certain practices (e.g. around gender) and institutions (such as tribal authorities) which it views unfavourably.

- The number of purposes is very large. A legal entity in the context of land reform carries a heavy load of expectations and purposes. There is a widespread expectation that legal entities can uphold certain ideal principles, and values, for example around gender equity, democracy, participation, representation and sustainability of land use and livelihoods.

- Some purposes are common to various actors, for example, enabling definition, allocation and protection of rights, transfer of ownership of land, and providing mechanisms for continuity in management and administration.   Other purposes are specific to particular actors: lawyers are concerned that legal entity documents should stand up in court; development actors see legal entities as enabling access loan and grant finance.

- Some purposes feel contradictory to one another e.g. that a community can control and manage itself in implementing business plans and in long term management is in conflict with the idea that legal entities, especially CPAs, might be a mechanism whereby government can continue to influence directly what happens on the ground.

- The "local" or "community" perspective of purposes of the legal entity was based entirely on the understanding of this by outsiders.

3 The LEAP Analytic Framework

Group work with the LEAP Analytic Framework

Tessa Cousins explained the LEAP Analytic Framework (Appendix 3: *Legal Entity Assessment Project LEAP Analytic Framework*).

3.1   Case studies and the application of LEAP measures and factors.

We used the seven case studies from the LEAP assessments, three from National Land Committee affiliates: Southern Cape Land Committee SCLC, TRAC and Association for Community and Rural Advancement (ANCRA). We also assigned the Language Report to one group, and another was to look at Robyn Pharoah's report on her research on Women's Participation in Land Trusts. The Participants worked in 6 groups. Each group was given two different case studies to work on, although not all groups managed to get through both. Groups were asked to:

- Listen to the presentation of the case studies;
- Try to apply the MEASURES from the LEAP Analytic Framework, giving each measure a score e.g. from 1 to 10;
- Note if they needed to change the measures to make them more useful;
- Work with the FACTORS to answer the question: "Have they impacted on the effectiveness of this legal entity - are these the key factors? and then suggest additions or removals and which might be most important;
- Note emerging key implications and issues for policy and practice.

Participants' comments on measures and factors are summarised in Appendix 5.

3.2 General comments on the exercise

- Participants had difficulty working with case studies they were not familiar with, in which information felt insufficient and was not organised according to the measures and factors in the LEAP Analytic Framework.

- We ended with a sense that we are still struggling to read what is really happening rather than our assumptions about what is happening.

- The exercise can lead to an understanding of where the community is in terms of its legal entity and where they might need input.

- There were several calls for outsiders not to impose standards that they are unable to apply in their own lives: "It is the first time that people have had to live according to a document..." "How many of us know the constitutions of our own local authority?" "This [very moderate] score looks about normal for most organisations I know!"

- In working with both measures and factors we need to remain clear about the assumptions on which they are based. We also need to make clear links between measures and the purposes for which legal entities are set up.

3.3 General comments on the measures

- There was general agreement that the measures are well-directed. Some need improvement (too vague, not specific enough, need to split concepts to make different measures, refine, redefine...), and some feeling that the assessment may not be broad enough.

- In most groups the numerical scoring exercise was not directly successful or approved as a quantitative evaluation of qualitative measures, but led to further discussion on the measures themselves, the strengths and weaknesses of legal entities and the direction that a legal entity might be taking.

- There were ideas about improved ways to work with the measures. Asking the question: "Have you made it happen?" about a particular measure creates a sense of purpose to find out the direction in which the legal entity is heading. Another idea was to use key words or symbols.

- Measures should all be positive - M.8 was negative and it made scoring difficult.

- Unless aims are set at the start, it is difficult to measure achievements. They recommended a process of setting aims against which achievements can be evaluated, and the need to evaluate feasibility of the set aims.

- Some measures are time bound. For some cases, it was too early to score.

- What are we measuring? People or institutions? It might in fact be a small group of people within an institution.   In applying measures we must specify what structure we are talking about. Some measures beg the question: Are we measuring the effectiveness of this community (which may include other structures like Tribal Authorities) or of a particular structure or committee or small group?

- The measures are not hierarchical, but perhaps they should be.

- The document measures seemed to allow a more straightforward yes or no.

- It feels important to crystallise the assumptions we are making around the measures we are using.

- There need to be more explicit measures on gender equity.

- The measures need to be related very clearly to the purposes

- There was some debate about whether equity is a measure of effectiveness.

- A critical measure of institutional capacity is people's ability to enforce sanctions.

3.4   General comments on the factors

- There seemed to be general agreement that the factors were useful. The work of assessing them was done less thoroughly than for some of the measures.

- In using the factors we should note that legal entities are evolving all the time and so is their institutional environment.

- Factors may apply to different degrees depending on how long the legal entity has been running.

- Working with factors we need to be clear about the purposes of the legal entity process.

- There need to be more explicit factors on gender equity.

- Previous practices can either help or impede.

4. Emerging issues for policy and practice

4.1 Applying the measures and factors

- The use of factors and measures might have applications in working out terms of reference given to consultants, or when assessing their work. We noted that government officials are not equipped yet to go out and say "Do A, B, C, and D.

- There were questions about applying the results from scoring specific case studies. If we get scores of 0-1 or 2-3 on a particular case study, would DLA do something?

- The methodologies for assessment is key – it is in itself and intervention, and this must be recognised.

4.2 Ownership of the legal entity document

- Several groups noted that the legal entity document often did not accommodate the needs of people on the ground or their existing rules, practices and institutions, or explore other avenues of land ownership. There is a tension between "new SA" vision and "Old SA" practices, as well as with DLA norms and standards.

- DLA, courts and judges currently own legal entity documents, and we can't ask communities to use them beyond meeting DLA and community purposes for land transfer. It is in later land management provisions that legal entity documents fall down.

- Communities sign the document because they must in order to take land transfer, but on the whole it has nothing to do with them. When communities try to take control they end up challenging DLA and the lawyers. Communities must perform certain functions otherwise there will be perpetual aftercare.

- It is impossible for people to really set out rules and allocate land when they are away from it BUT if people are on the land without rules there are problems. There is a methodological challenge here.

4.3 Legal entity documents:

4.1.1 *Content issues*
What should the content of the legal entity document be?

- Legal entity documents should record actual agreements. It was seen that this is often not

happening, and that community agreements are later changed, often without people's knowledge, in the processes of drafting and getting approval.

- They have to be understood by illiterate people ("You remember what you understand").

- Land use rules should not be in the legal entity document. The community can work out such land use rules. The constitution does need to give the space to create these rules.

- The document should be clear about the long-term entry and exit procedures so that it is clear what will happen to children in a few decades.

- For dealing with issues like rapes there is an outside function. This should be separated from the adjudication and allocation functions of the legal entity.

- Group 6 noted the possibility of constitutions that are adopted by the community but insufficient in terms of the CPA Act. The Tenure Directorate has to work within the legislative framework of the CPA Act. Entities have to comply with the Act to be legal, unless the Act is amended. There is experience of a company [in a joint venture?] saying that it was not legally covered - in this case the offered solution was a document that was not official but which the community could use.

- Do beneficiaries know/understand what consequences will be for them if they break the rules?

- We noted that there are some aspects of inheritance and polygamy that can't be approved in a CPA. Perhaps these should be left to people to deal with outside the constitution, concentrating on the things that must be in the legal entity document (such as specific provisions around rights, required by the schedule).

4.1.2   *Language Issues*

Group 3paid particular attention to the language of legal entity documents in their case studies. They noted some problems with the legal entity documents, which suggest things to pay heed to when drafting future legal entity documents:

- Cross-referencing the document to other documents, such as Acts, which are not available is a problem.

- The use of legal jargon (Legalese), which is difficult even for "non-law" English speakers to understand, and makes direct translation into vernacular languages impossible;

- The use of Western cultural concepts which are also difficult to translate;

- The slavish use of outdated models or precedents unsuited to the situation;

- The need and opportunity for simplification of documents - "too many words".

Several questions and issues were raised about the language used in legal entity documents:
- People have a constitutional right to choose the language in which their legal entity is written - all languages are constitutionally equal.

- Are documents legal when they are signed, but are not fully understood?

- Would the use of constitutions that are not in English or Afrikaans and contain local cultural concepts require reformulation of legislation?

- Translation into Zulu of a constitution written in legalese has been tried at University staff level and been found impossible. Translation from the same provisions in plain English or Afrikaans (which has no legalese) presents no difficulty. Translation from the local language to English or Afrikaans might need a glossary for culturally unknown terms. Again the question arises as to whose purposes the documents must serve - those of the people living by it or outsiders.

- A double translation is happening - legalese into English and English into Zulu which is read to adults by children in the case of illiterate parents.

- We noted that Zulu is not the only African language in which legal entities might need to be produced.

- How acceptable is a translation for business and bureaucratic purposes where the registered document is in some other official language?

4.4   Setting up the legal entity

- Who should be doing legal entities? Lawyers or who? Whoever is doing it needs to be closely linked to the project manager.

- There is a need to challenge the idea that poor work is equivalent to work on which less time is spent. Quality and focus of the process affect the outcome more than the time actually spent.

- There were questions about who is represented in committees. One group was not sure if having active indunas is a good thing or not. Questions included Do the indunas or the elected representatives carry more weight? and Is the Inkosi running the Trust through his indunas? People who spend time away like migrants do need to be represented in the Trusts. They are often better able to articulate to outsiders. But we must ask if they are being given more weight than people who live there. We ended with: Is it for us to worry? Should this be our concern?

- People living together is a sensitive issue and we should not try to create a community where it doesn't really exist.

4.5 Legal and legislation issues

- Are there situations where the CPA does not need to be used? (Group 6, looking at M.13 - measure on conflict resolution).

- With respect to the repeated comment that "CPAs have failed" and the use of terminology like "a CPA": The CPA is a set of principles, not a particular type of legal entity in its own right. The principles of a CPA apply to voluntary associations, trusts, companies and similar entities. These principles include the right of oversight by the state of what are fundamentally private organisations. The assumption that CPAs have failed was questioned repeatedly.

- We noted that ownership in statutory law is not the same as capacity to retain rights.

4.6 Monitoring and evaluation of legal entities when they are being produced and in the longer term

- Although DLA has the right of oversight of legal entities registered in terms of the CPA Act, how does DLA monitor a Trust, for example, and what does DLA do if a community refuses to conform?

- That the concerns of the facilitator can affect the process of setting up a legal entity is a real factor, but unacceptable. Monitoring of legal entities and more specifically consultants' input is necessary, but currently lacking in DLA.   The person setting up the legal entity should be working closely with project managers.

- There should not be room for the driving concerns of the facilitator to have an impact on the legal entity. How is the outcome (i.e. the legal entity document) produced? DLA pays someone to do it, and this raises issues around management of the process by DLA staff. As long as DLA staff managing consultants are rewarded for speed and volume rather than quality of delivery they will not get involved in quality and capacity issues.   What is needed is well-managed access to land rather than an effective CPA.

4.7 Legal entities in relation to the whole land reform project cycle

- As long as the legal entity is seen as a milestone step to elsewhere, we will have a problem. We need to think about the point at which the legal entity process begins and decide if the processes we are doing will destroy or build the legal entity. We need a broader more integrated view of where legal entities fit into the project cycle. One suggestion was parallel milestones, or processes in tandem.

- Speed of registration may affect the choice of the legal entity. Registration is part of the legal entity process; we should not separate registration issues from the rest of the process. CPA has glitches, but so do Trusts - e.g. lack of supervision by the Master of the High Court.

- There was a question about the timing of making rules about resource use and management - that people need experience before they can make decisions about rules, and that making rules may not be possible before planning happens.   It is impossible to design rules about land allocation if people are away from the land, BUT if you are on the land you need rules. A suggested guide was to get the rules in place before people move on. We note the comment above that rules shouldn't be part of the legal entity document, although there should be a framework for making rules - this would allow a community to make rules as the need developed.

- Attention to the beneficiary list is perhaps more important for entrenching the rights of women than the number of female committee members. In the case of the beneficiary list an important question is "Were there polygamous marriages?" and "What happened if there were?".

4.8 Institutional relationships issues

- Customary law is not recognised, and thus the relationship between the legal entity and Traditional Authorities is confused. There is confusion between jurisdiction and ownership.
- There is a difference in values between DLA and communities: we see this in gender

equity.

5. Detailed work on specific topics

The group identified topics to work with further. These were sorted into groups and participants chose the groups in which they wanted to work. Each group ended up with a mix of ideas, possibilities and recommendations.

5.1 Language

Newsprint

Language newsprint

PROPOSAL 1
Constitutions must be in the language of users - reflecting their agreements and their decisions.
   * DLA gets council's opinion on legality of registering in people's own language.
   * and on if it is it <u>legal</u> for people to sign something they do not understand

Concerns
- Registration by CPA/ Master may be questioned, and thus become a long process.
- Attitude of "business' to a local language

PROPOSAL 2
Agreement in own language, <u>recognised by DLA</u> (Later legalisation should not undermine this). And another document "glossary" that goes with it that explains the understood and agreed meaning.

Note: When dispute arises in future then "legal" version will prevail, i.e. "people's" document is not of same legal status.

PROPOSAL 3
-     Format constitutions for easy reading, putting important aspects first.
-     Start doing this now, in next legal entities formed. (Immediate action, set new examples).
-     Explore use of diagrams as well as words.

PROPOSAL 4
DLA assess (or to get expertise in) documents against measures LEAP has developed - as a procedure. e.g. documents should be plain Zulu.

PROPOSAL 5
Provisions should remain simple and not be over-elaborated (e.g. a "meeting", not several different kinds of meeting with unknown types of notice).

PROPOSAL 6
DLA should issue a format that would record agenda and attendance in case of a minutes requirement.   Re: decision making/Tape recording/Minuting.

Clarification
    The group suggests some proposals can be started immediately so as to reach best practice as

soon as possible.

Discussion
* Registration in people's own language may create difficulties for loaning banks. One solution is to use a translated version in a language that people can understand.

* According to the national Constitution, government has an obligation to promote all languages. Rather than have a constitution that is only available to a whole lot of outsiders, we should register them in a language that people understand and then translate back into English (DLA official).

* Lawyers draft with a view that a document will be used in a dispute situation, which ends with legal concepts and documents. Agreements feel translatable; and lawyers could write out legal concepts and ideas to explain to people (lawyer)

* Sworn translators use the same legal language as lawyers and carry power.

* The constitution should carry agreements made in the processes of setting up a legal entity - there should not be separate documents for these*.*

Suggested action

* It was suggested that LEAP should take forward some of the aspects in consultation with DLA.

* DLA could try out some ideas e.g. using Proposal 1 as the ideal.

5.2. Alternatives for land ownership

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Alternative Land Ownership Systems
- Rights to land and land ownership
- People can acquire land collectively and decide on land use.

Current Situation
- Grants and services manual
- DLA assumption of grouping people for land acquisition.
- DLA requirement/stipulation that land can only be transferred to Legal Entities, this contradicts practices on the ground.
- Confusion and conflict caused by CPA. Constitutions being ignored: (Legal Entities): CPA vs Practices on the ground.

RECOMMENDATIONS
* "Supply-driven" approach as opposed to "Demand-driven" approach.
* New ways of recording rights (collective and individual)
* More initiatives from Provinces and NGOs on policy inputs (changes)
* Cognisance should be given to community-based structures and Tribal structures.
* Explore other alternatives within the Deed Registration Act, No. 47 of 1937.
* CPA vs Tribal and other local structures.
* "One-size-fits-all" Policy.
* Grants: Can rural people afford to buy land at current prices?

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Clarification

- The group explained "one-size-fits-all" policy is one that attempts to cover all situations even where differences are obvious. Why should two or three grants be given at a time?

- The "supply-driven" approach is one in which government buys land and gives plots to those who ask for them. Individual ownership becomes possible.

- The group notes that there are no forums for implementers and ngos to have inputs into policy.

- They are not saying that CPAs are not working.

Discussion

- Why does DLA think that it is necessary to stick around, creating the image of "The land is not really yours - I own it too".

- The CPA is paternalistic. But it allows poor people to get access to assistance, in a system that is set up to support private ownership. Therefore it is not necessarily paternalistic, but a way to get redress not generally accessible to poor people.

- Tenure reform is looking at offering alternatives to people.

- Is it possible that tribal structures could be registered as similar entities in terms of the CPA Act? Upgraded, they would fit into a CPA, but CPA principles do not usually operate in a tribal authority.

5.3 Tension: Legal entities community-based and owned vs values of DLA and the constitution

This group explored the tension between community based and owned legal entities and the values held in DLA and the constitution. There were questions about methods and roles? purposes? policies? and what we can do about it?

Newsprint

Tension: Legal entities DLA-driven - community-driven
* What is a community?

* Issues of communal land ownership

* Pushing the idea that they have to comply with our requirements
    - Formalities

* Entities being expected to do too much.
    - Social engineering
    - Development
    - Capacity building/getting people to participate.

* Must get back to basics
    - Land holding, acquisition, management
    - Delimited powers

* Responsibilities for these issues must be shared - across sectors and government departments and communities.

* Must move away from documents to practice
    - Conscientise communities not just set up quotas.

* ALL actors must be "sensitive" to gender issues etc. **BUT** what does this mean?

* Broaden scope beyond gender issues
    - Youth
    - Class
    - Aged etc.
    and their ability to participate.

* What does this participation mean?
    - What are its boundaries?
    - Who should ensure it?

* In fact, may be we need to take a step back
    - Research and lobbying.

* GENERAL Comment:
    Why aren't community representatives here?

WHAT IS CREATING TENSION?
* Tension - our understanding of community (what) no of people.
* DLA pushing issue. Legal Entity.
* (Interface between community values ---> bureaucratic values)
* Legal entity is required to do a lot i.e. social engineering; is it fair to ask communities, entities to do all these? (need to stick to purposes).

What has Worked? (CPA)

*   Create mechanisms of land transfer (codified existing rules/practices).
*   Stick to land matters

        acknowledge culture. Has enough time lapsed? for an assessment of legal
        entities.

*   You cannot ignore issues of land. Allocation/gender in traditional structures.
*   DLA approaches to group.
*   Ownership - problematic: are there other mechanisms to deal with this? (Should
        emphasis be on groups/are we forcing this situation?)
*   CPA (legal entities) need to have de-limited powers.
*   Integration of all role players in changing society.
*   Shift away from policy - bureaucracy to facilitating a process (taking people
        through the process).
*   What do the communities need? Who do they want to own/hold land for them?

*   Need to conscientious communities to constitutional obligations???
*   Election of women (gender) in committees is depending on their participation in
        community meetings.
*   Which institutions are responsible for gender change, how are they doing it?
        (future).
*   Definition of participation by communities and outsiders??

Institutions: All government departments, NGOs
*   Role of youth in LR (it is not to succeed) Sensitiveness to age, class, gender,
        religion, disabilities.
*   What does sensitivity mean?

By creating strategies, mechanism to address these issues and not necessarily
        entrenched in the constitution.
*   Why is it as it is: what would need to change; or is not as we would like it to be?
*   Why are communities not here?
*   Literacy does not effect on participation. (Measures of participation - other legal
        entities, linkage to project type.

Clarification

This group raised and named the contradictions we are dealing with...

- "What is a community?" A complex of different interests - we need to always bear this in mind.

- Ideas may be being imposed on people - e.g. communal ownership. There might already be existing structures, like Tribal Authorities.

- Making people conform to a bureaucratic system or values which might not be what people can handle, means that it is likely that people will revert to what they had before

- A whole bunch of responsibilities has been loaded onto legal entities, including societal engineering, reworking societal values, carrying out development, building capacities.... Is it fair to dump these on people and then hold them accountable? This can lead to tokenism.

- Getting back to basics... Legal entities are to purchase, hold and manage land. There

should be a separate process for societal issues - avoid them in documents and note that broader society, not only DLA needs to take responsibility for these. However, talk these issues through in communities - be sensitive to the role of youth, but involve them - help people to become more aware of constitutional, class and religious issues.

- Participation may be just sitting and being there - women may talk to husbands later. Where are the boundaries? Where does the responsibility lie?

- Stepping back even more... Why can't people act as they should be acting?   Why is the legal stuff not working as it should? .....

Discussion
- While legal entity doesn't have to be social engineering, it is possible to state formal rights in a constitution.

5.4.   Management of legal entity establishment processes

Report

This group started their discussion by asking At what point should legal entity processes begin? They examined the question from <u>DLA perspective</u>.

Using experience of working with labour tenancy examples they noted that

- In the past legal entities were seen as the "extra bit", but officials are currently working towards integration of legal entities into the project cycle.

- With labour tenancy cases it is possible to bring legal entity issues in from the stage of interim agreements. By this time
    - it is clear that DLA has a project
    - a group identity is emerging (noting that a beneficiary list is not the same thing as group identity!) - possible to start raising the issue of women's rights as beneficiaries
    - leadership is emerging - possible to start raising the issue of women leaders
    - DLA is getting comment from other stakeholders.

- DLA needs documents which enable better practice around legal entities:
    - Documents which outline **desired outcomes** e.g. that community uses and understands document policy issues;
    - Documents which provide **guidelines**, for example, for managing consultants;
    - Internal and external **terms of reference** which include <u>steps</u> to desired outcomes for assessment and monitoring.
    - **Proformas and checklists**.

Processes and documents would possibly not be located in same way in different provinces.

There is a need for **shifts in management of legal entities**:

- Rewards and incentives need to shift - Project Managers would have to rewarded for best product rather than spending budgets or handling large volumes of cases.
- Mechanisms for best practice would need to be worked out.
- Management would have to be re-orientated to new methods of assessment.
- Monitoring and assessment methods, which should include service providers.

Existing DLA structures in which these changes might be initiated (In KZN):

- The Implementation Support Unit, in which outcomes, guidelines etc. might be developed
- PPMS, which might work with incentives/rewards/systems.

There is a question about the feasibility of taking these management shifts to scale.

DLA needs to "get its ducks in a row" with Regional Councils

5.5. Monitoring

WHY MONITOR
- Identify problems
- Understand how Legal Entities are functioning
- Identify mechanisms/processes (potential) for fixing
- Guide practice
- NB: Ascertain whether Government (Land Policy and Constitutional) commitments are being implemented (ID blockages to translation).

WHAT TO BE MONITORED?
- Process of implementation (to establish 'Best Practice')
- Whether aims, objectives and Principles of land reform/constitution being implemented.

KEY ISSUES
- Define concepts - sustainability, gender equity etc. ---> Criteria/indicators for measuring success in implementation.

HOW TO MONITOR
- M & E Directorate to monitor in broader context of land reform
- NGOs ---> case studies in field
- Provincial/District officials ----> in field.

KEY ISSUE
· Mention made of need for CPA monitoring unit   --> Is this the right route?

HOW TO FIX
* M & E takes to others to fix
* Key intervention ------> broad community/interest group. Info dissemination.
* Informing people about rights and options for fixing.
* Potential mechanisms for fixing
    - Master of High Court (final)
    - Intervention in terms of Act
    - Solution by Agreement
    - Mechanisms created by constitution/Deed (other pieces of legislation.
* Conservation of Agricultural resources, environmental management

\#   These are all highly legalistic mechanisms -----> Problems complex social relations (power and authority).

\#   Legal mechanisms must be Last resort
    - Police intervention
    - Civil action
    - Negotiation, Mediation, Arbitration.

\#   Test drive/experiment with mechanisms
    - Reflect on experiences/outcomes
    - Response determined by nature of problem.

M & E problems
-----> Relationship between province and national
-----> Policing vs monitoring

Role definition
- Explore possibilities at different levels

Masters [of the High Court] should be invited to next analysis meeting.

Clarification
- The group recognised the need for more work to define the concepts around gender and sustainability.
- They examined the question - How to fix problems? A lot of their discussion was about legal interventions, but they realised that these kind of problems are difficult to shift using legal interventions and recognised that they need to use these only as a last resort.
- Role definition needs to change

Discussion
- We do not yet have M& E that can identify where things start to go wrong.