

**Presentation to the Civil Society Forum on Land and Agrarian Reform  
Communal Property Associations in Crisis**

22<sup>nd</sup> August 2000

This input was prepared to be delivered in the given 10 minutes, and I was instructed not to assume deep familiarity of listeners with land reform. This short presentation cannot do justice to the complexity of the topic, but will try to highlight some key points.

At some point in land reform programmes land needs to be transferred to a legal entity that can hold the land. The Communal Property Associations Act of 1996 created a legal mechanism to enable communities and groups to hold land in common. Its purpose was to make it easier for members of disadvantaged and poor groups to establish a group ownership system for land. The group forms an association called a Communal Property Association (a CPA) to hold and manage land in terms of a written constitution. The Act requires that CPAs are managed in a non-discriminatory and equitable manner, and that the committee be accountable to its members. The CPA is registered with the Minister of Land Affairs, who then plays an on-going monitoring and inspection role. In the event of disputes the Director-General can be called upon to appoint a mediator.

Land reform policy (in the White Paper) stated that in principle people should be able to choose the tenure system that is appropriate to their circumstances, and stated a commitment to supporting and developing a variety of tenure options. This was in recognition that group and individually based ownerships systems, and mixes of these, can all play valuable roles. A CPA is not the only legal mechanism for group holding of land, but it was particularly designed to be on the one hand easy for disadvantaged people to use and on the other to support equitable practice and thus protection of vulnerable member's land rights.

Now there is a common view that "CPAs don't work", both within and outside of the department. This is arising as there are indeed numerous problems in the field, commonly those of conflicts within the group, takeovers by particular power groups within communities, obvious lack of management of the property and no further support provided to the new institution. There are however criticisms that arise from other concerns

Two important ones to note are:

Some chiefs have objected to CPAs, seeing them as institutions that undermine their role and authority, with the CPA emphasis on equity, democratic process and accountability to membership.

Some see common property as the inferior, poor persons option, with individual freehold title being the first prize and only really workable land holding option. This is not new, and is commonly held by those who strongly promote free market models. This same thinking led to a number of land reform initiatives in Africa to individualize tenure.

The Legal Entity Assessment Project has been examining these issues, primarily through work in KZN, over the past year and a half. The projects works with community groups, the provincial staff of the Department of Land Affairs, service providers who undertake contracts from DLA to establish CPAs and academics. Our findings, in brief, follow:

While there are a variety of situations and experiences from different community groups these are some common views expressed:

- The process of establishing the legal entity or CPA is very rushed, although getting the land takes a long time.
- People are not really given choices, it is made clear what they “should” “choose” (and this depends on what the official or service provider likes best, a CPA or a Trust usually)
- People are asked to make rules about things they have no experience of yet, not being on the land yet, or never having had to manage it
- Constitutions are produced that people cannot understand, and often most people never even see. The language is usually legalistic and complex and documents are long.

It is fairly clear that people listen for the rules of the game, say what they need to get this part done with quickly so they can get the land they are seeking without more delay, and do not really understand the potential implication of having founding, legal documents that do not reflect their real practices.

LEAP is seeing the following:

- CPAs are meant to widen people’s choices and be user-friendly; in fact the reality is that they are an imposed legal and value system that do not match customary rules and practices.
- The founding documents that we have seen are problematic; they are inaccessible, unintelligible and contradictory on the key issue of membership definition.
- There is a gross simplification of this complex institutionalization process:
  - as “legal entity establishment” becomes a milestone to be passed as quickly and cheaply as possible
  - new institutions are created or flown in, rather than using an approach of working with and adapting existing institutions.
  - Social equity concerns are reduced to clauses in constitutions and quotas of women in committees
- There is no institutional support or holding framework for these new institutions, they exist in a vacuum (and thus don’t often don’t really exist apart from on paper). Even the minimal requirements in the CPA Act for annual monitoring and responding to requests for mediation are not met by the DLA currently. Compare

this to the huge infrastructural support in the deeds and survey institutions that exists in order to support individualized tenure systems

### What is needed

Common property will remain important to poor people to access land and resources to support their livelihoods. To develop viable and supported options for this is crucial if we hold concerns for tenure security and social equity for many of the most vulnerable in our society. LEAP proposes that two key elements are needed to move ahead substantially:

1. That we consciously learn from the experience garnered to date. This is a complex area of work: communal tenure systems, social relations and institution building. There are not simple quick-fix answers to some of the difficulties faced in the field, but there is a considerable body of experience we can draw on and so not retreat to unworkable simplifications.
2. The necessary resources must be allocated and institutional systems put in place to support viable and protected common property tenure options

While there is some (scattered) real interest in the first area, there are not currently encouraging signals from the DLA's side with regard to the second. Rather the reverse is expressed in the new policy documents, and this should be of concern to all of us in the sector.

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