Report to the Ford Foundation
From the Natal Midlands Rural Development Network
On the Legal Entity Assessment Project (LEAP): Phase 4 – set-up proposal to explore alternative land tenure systems
1 June 2004 – 30 June 2005

Grant Number 1045-0867 to MIDNET (LEAP)

1. Background

LEAP started in 1999 in KwaZulu-Natal in response to concerns from many parties about the apparent dysfunctionality of the legal entities established under land reform programmes. The initial objective of the project was to better understand the nature of the problems the legal entities were facing, and what factors affected their ability to function. While problems were numerous, it became clear that a conceptual framework was needed for examining cases in the field, and analysing underlying causes of dysfunction and possible solutions, so this was then done. Using this conceptual framework LEAP mapped out the components of common property tenure, through testing concepts in the field with complex realities. In so doing the project developed a framework that provides tools that can assist in specific problem solving with Common Property Institutions (CPIs) as well as help to assess tenure legislation and policy.

As the project evolved from a specific focus on CPIs to a clearer focus on tenure security and the land administration required to manage tenure, discussions across the rural-urban divide led to the recognition that there are common problems and the potential for fruitful work. People working in both the land and housing sectors were experiencing serious problems with the forms of tenure on offer through the various government programmes. Inter-sectoral collaboration across the urban-rural divide led proposals around future work in a phase 4 of the project. Funding was granted to develop these into a more coherent conceptual framework and set of funding proposals.

This report sets out the progress made in this preparatory phase.

2. Objectives of a preparatory phase

In order to reach the broader objective of increase the security of tenure for the poor and vulnerable, individuals and groups, in order to:
- Enhance peoples livelihood strategies;
- Enable improved delivery and maintenance of basic services;
- Enable improved equitable access to local development opportunities.

The preparatory phase set out to:

- Share learnings, ideas and information to build partnerships, capacity and approaches for LEAP phase 4;

- Understand better current practices, problems and work done in urban and rural areas;
- Build a base for developing a conceptual framework across rural and urban sectors around tenure;
- Continue to test concepts with realities in existing project sites and exploring and developing plans in new sites through the building of partnerships.

3. Activities

The activities were adjusted to an extent from the plan in response to the realities of blockages and opportunities. A reflection on achievements and the limits of these will follow in the next section; here the activities are set out along with some reflection on what emerged from them.

3.1. Establishing a project team

The team needed to expand to incorporate new skills and perspectives. The roles and way of working needed to change to account for a more spread geographic location of the team members. After some exploration the team settled into being a six-person team with Lisa Del Grande coordinating, Thelma Trench and Donna Hornby and Lisa in KZN, Rosie Kingwell in the Easter Cape, Lauren Royston in Johannesburg and Tessa Cousins in Cape Town. In November 2004 Lisa left the team to take up new responsibilities in AFRA, at which point Tessa took over the coordination tasks with support from Thelma.

The team met more or less bi-monthly, and otherwise communicated actively mostly via email. This team worked well together but was very aware of the need to not only expand to meet the challenge of the scale of the work that was taking shape, but also the need to diversify the team in terms of race, gender, experience, skills and location. For the new proposed project a team is identified that meets these criteria to our satisfaction. Most of the new members were able to attend the final project meeting with the Steering Committee in mid- May 2005, and that meeting confirmed that this is a dynamic, committed and experienced team that can interact very fruitfully. (details of the new team are in the new proposal)

3.2. LEAP and KZN PPDC Symposium, September 2004

While much of the resources for this symposium came from the previous LEAP phase and was funded by the IDRC and by the PPDC, some resources and time from this phase were allocated to this process and event, as part of the process of conceptual articulation, clarification and sharing of LEAP ideas. LEAP facilitated the process.

Feeling frustrated with the lack of progress with the DLA through 2003 and early 2004, LEAP approached the KZN Provincial Planning and Development Commission (PPDC) in early 2004 to collaborate on looking at the relationship between tenure and planning, arising from the plethora of new emerging legal frameworks. Practitioners

(including planners, surveyors, lawyers and NGO employees) working in the arenas of tenure and of planning were struggling to put the various pieces of the legislative puzzle together with existing systems and practices in communal areas. This was partly the result of the complexity of aligning the various frameworks in ways that will be workable and sustainable and partly the result of the lack of opportunity to relate to the legislative changes holistically.

The PPDC, LEAP and others had undertaken pieces of discrete research on planning and land tenure legislation and on issues that pertain to the implementation of such policy. LEAP and PPDC agreed that it would be of great value to look at these pieces of work in relation to each other, as this would allow practitioners to reflect on where there is and is not alignment, overlap and/or gaps. This would serve to alert practitioners on how to work in a more informed way, and also raise issues that might need to be brought to the attention of policy makers and those commissioning research. LEAP and PPDC collaborated in designing, hosting and facilitating a symposium to look at the land management tools available to meet the development needs in South Africa and particularly the aspect of alignment.

The symposium was entitled "Aligning development planning with communal tenure arrangements – in the context of changing legislation" and was held on the 9th September 2004.

Participants came from several provinces and included government officials from a range of departments and from different spheres of government, most of the members of the KZN PPDC, the chairperson of the national Portfolio Committee on Local Government, ngo staff and fieldworkers, consultants, planners, land surveyors, lawyers and researchers. The overall consensus was that this was a very useful event, bringing people together and starting to agree on a collective way of understanding tenure issues and concepts.

Fourteen papers were presented, of which three were form the LEAP team. The PPDC undertook to publish the papers and conclusions of the symposium. Changes in the PPDC have delayed this, but they assure us it this will still take place. (A list of the papers is given below)

3.3.Engagements with potential partners

Discussions on the ideas for the project had been held prior to the preparatory phase getting under way. There was some continuation and some new interactions. Discussions were held with:
- o Urban Sector Network (USN)
- o Planact
- o Centre for Applied Legal Studies (CALS)
- o Peoples Dialogue/ Homeless People's Federation/Utshani Fund Alliance (the Alliance)
- o Built Environment Support Group (BESG)
- o Association For Rural Advancement (AFRA)
- o Mdukatshani
- o Border Rural Committee (BRC)

- o Cape Town City Council (CTCC)
- o Association for Water and Rural Development (AWARD)
- o Nkuzi Development Agency
- o MANDLOVU Development Institute
- o National Land Committee (NLC)
- o Trust for Community Outreach and Education (TCOE)
- o Development Action Group (DAG)
- o Afesis Corplan
- o Legal Resources Centre (LRC)

The team found these discussions quite difficult to take forward fruitfully initially, for a number of reasons. On the one hand there were the dynamics within the organisations that impacted on their interest and capacity to engage with LEAP, on the other was the rather open nature of the early discussions as the project was still taking shape many found this difficult, wanting more clarity rather than participating in shaping the outcome.

We responded to this in three ways:
- o Seeking greater internal clarity as to what we were asking for, and looking for from others – and so defining that there are different levels of interaction to suggest, which could also change over the life of the project: to be full partners and work with the LEAP team on action research in communities where the NGO has an ongoing relationship; to participate in learning events that LEAP organises and facilitates for internal capacity building on tenure and for sharing with others; or to be a resource coming in on specific parts of the work only.
- o Responding to the request to meet immediate needs by: LEAP undertaking some work for the Alliance, partially paid for by their funder Rooftops; team members taking on individual contract work –with Planact and with AFRA. We thought this would allow us to meet both the partnership objective and provide us the fruitful insights that grounded field work has always offered LEAP work.
- o Developing more concrete sub- project proposals with partners and new team members so they could better envisage the nature of the actual work and help to shape it.

During this period the two national ngo networks (USN and NLC) were both taken up with internal difficulties, as both were moving towards closure of their national offices. This also affected their members' interactions with LEAP. The Alliance was also going through a lot of internal change and difficulty. This made working with them to fulfil the contract with them time consuming and delayed. The opportunity this sad state of affairs has provided is that there is some real interest in finding new ways of working collaboratively as these traditional networks have bogged down, and this an openness to what LEAP is suggesting as a content based collaborative learning approach to tenure that cuts across sectoral divisions. Not all of the discussions have led to clear agreements to work together, but many have. These are detailed in the new proposal.

3.4 The Alliance contract

The Peoples Dialogue/ Homeless People's Federation/Utshani Fund Alliance held a workshop on July 2002 with various SAHPF groups to look at group versus individual tenure, the implications and demands of living with each and the pro's and con's of each. LEAP was invited to give inputs to this workshop. The outcome was that there were differing views from participants regarding individual and group tenure, but people were eager to access sufficient information to make informed choices, and for those living in Communal Property Associations (CPAs) to continue to make these CPAs work.

After intensive discussions LEAP was appointed by People's Dialogue to draw together research and experience on the tenure options available and applicable to the types of projects initiated by the Alliance. The purpose was to enable leaders and staff to assist groups more effectively in finding the most appropriate and sustainable tenure model for their project. LEAP was tasked to summarise lessons from documents written in the past few years, as well as to interview a few people from the Alliance in order to draw on the realities of their experience. LEAP agreed to this as it seemed like a way to explore whether a working relationship with the Alliance could be developed, and it would offer the team some grounded work in an urban housing context, and a chance to see how to make LEAP work useful for the practical concerns people face in an urban context. The funding for the contract was inadequate to complete the task so the work was also funded from the preparatory proposal funding.

Interviews were held in four provinces, a literature review done, and then a report drawn up. This report was to be given in a report back session to the interviewees. One report back was arranged in Cape Town with the draft report and some draft materials that would need to be developed for community level report backs. While the report was very positively received and report backs were agreed to in principle, the organisation has not taken the necessary steps, and it seems unlikely that they will now. Thus the report was finalised and delivered, along with the draft presentation materials. LEAP certainly found the interaction and the challenge of engagement very fruitful, and it clarified that the tenure questions are largely being approached by ngo staff and officials in a manner that is not very helpful to communities.

3.5 Literature review and conceptual development

A literature review was planned to take place early on in order to help to build and expand the LEAP conceptual framework to take new urban and development planning elements into account. We found that the base conceptual work which drew from the team's experience and existing understandings and the literature review work was more interactive than we had anticipated. We quickly found that terminology was problematic – in that different sectors use terms differently, and that terminology is very loaded with values, political and economic paradigms. Thus this aspect of the work was more complex and took more time than anticipated and involved a mix of literature review and intensive interaction between team members on base concepts and terms. This was done in Core Team and Steering Committee meetings and in electronic interactions. Writing papers was helpful in formulating clarity amongst us.

It is clear to us all that there will be an ongoing process of building this understanding through the life of Leap - and that the work done so far is getting very positive feedback form the various forums where it has been presented even as we worked it into shape.

One focus of the literature review was to draw out what the work and thinking on vulnerability and tenure is: specifically with concerns about gender, HIV AIDS, poverty – and the intersection of these. It is clear there is a lot more to understand about this, and that children may need to be a specific focus of attention.

The final outcome was one document, which incorporates the literature review with the conceptual thinking, and which sets out the concepts and frames the new problem statement and points of departure for the project. See the accompanying document "Perspectives on Land Tenure Security in Rural and Urban SA, An analysis of the tenure context and a problem statement for Leap".

3.6. Policy

There was no plan to engage actively in policy during this preparatory phase. However for continuity we continued to contribute to the DLA's contracted "Diagnostic study into the functioning of the communal property associations in land reform in South Africa" done by CSIR, as a member of the Reference Group. This was very frustrating, as work done earlier by the DLA team LEAP was part of was not worked with well by the CSIR, who performed poorly, delivering an inadequate product in the view of most of the reference group. Staff with experience of tenure continue to leave the DLA, which makes continuity of processes problematic, and the political will to take the problems created for CPAs by the current approaches to their set-up and running is utterly absent.

3.7. Papers, Presentations and Dissemination

A number of papers and presentations were written and given in this period – some of them with only partial LEAP time input, but all drawing heavily on the work done with LEAP. These fora provided valuable feedback to the team, and were invariably very positive, which was heartening.

LEAP/ PPDC Symposium papers and presentations by LEAP team members:

- o "Back to basics: perspectives on land management concepts";PowerPoint presentation by Lauren Royston
- o "Square pegs for round holes? Some questions relating to the emerging Land Management Frameworks in South Africa": paper by Rosalie Kingwill
- o "Piloting Local Administration Records – securing individual tenure in group ownership": Donna Hornby

Two papers were presented by LEAP team members at a workshop on housing at Wits University "The perpetuating challenge of informal settlements" 8-10 November 2004. Lauren Royston presented a paper: "*Barking dogs and building*

bridges", in which she questioned some of the assumptions in the widely applied theory of de Soto on ownership and titling. Donna Hornby presented her paper, prepared for the LEAP/ PPDC Symposium, *"Piloting Local Administration Records – securing individual tenure in group ownership*". Both papers were very well-received and led to vigorous debates on formal and informal tenure management systems. It was clear there that LEAP is doing cutting-edge work. The papers are on the Wits Housing website. The University of Cape Town Press have agreed to publish a book on the Perpetual Challenge workshop.

Rosie Kingwell prepared and presented a paper *"Seeking equilibrium: Land Rights adjudication in off register, formalizing and non-formal contexts in South Africa*" at an expert group meeting on secure land tenure: "new legal frameworks and tools" organized by the UN in Nairobi 10-12 November 2004. This was nominated as the best FIG (the international professional body of surveyors), paper of the month, and it is on the FIG website. All papers from Experts Group Meeting are to be published by FIG and possibly UN

Lauren Royston gave a presentation on "*Forms of Tenure*" at the "Tenure and Social Transformation in the Western Cape": A Potter Foundation Workshop, organised in partnership with the Environmental and Geographical Science Department, University of Cape Town and the MANDLOVU Development Institute, held February 24-25 2005.

Rosie Kingwell did a presentation to Presentation at Afesis Corplan Seminar on Urban Land Access and Tenure, East London. 14 April 2005, "*Revisiting the formal and informal land tenure divide*".

The LEAP website was updated, and will be updated again after the end of this month. A LEAP newsletter was written and sent out widely. This both informed people of project progress and of materials available.

3.8 Proposal for Future Work

Various approaches to a new phase were drafted and discussed. Four sub proposals were developed and submitted for critique to a meeting of the Midnet executive Committee, the Steering Committee and the new proposed team members. This meeting decided it would make more sense to have one project proposal, even though it may in fact be funded in a variety of ways. The final result then is a proposal that sets out the thinking as well as an approach for a three year project that spans South Africa and urban and rural contexts. See the new Leap Proposal for this in detail. This proposal is currently being discussed with a variety if potential funders.

4. Achievements and limits to these

4.1 Share learning's, ideas and information to build partnerships, capacity and approaches for LEAP phase 4

While this did not play out as we had envisaged, or in the time frame we had envisaged, we were able to do some substantial sharing of the ideas and to set in place partnerships so that a project with considerable diversity is agreed to by an exciting group of people and organisations. This provides a sufficient base for the more substantial sharing and capacity building in the implementation of the plan now agreed to, should we be able to find the necessary funding. It was not possible to substantial capacity building in this preparatory phase, as there was a lot of ground work to do to develop the expanded focus.

4.2 Understand current practices, problems and work done in urban and rural areas

There is a reasonable understanding which was considerably enhanced through doing the work with the Alliance and through the interactions both in the development of the proposal and in the workshops and conferences team members participated in. Team members drew on work they had and were doing beyond LEAP, and this confirms the value of working with practitioners who have a considerable range of ongoing working experience on related matters. The literature review also confirmed much of what we understood, only adding to this to a limited degree. This too confirmed that the project is working on the cutting edge of such work, and has a good set of networking relationships across the rural and urban sectors that are engaged in tenure issues. There certainly are areas where our understanding is limited – and these become the focus for the projects work, and these is widely acknowledged as poorly understood. The research questions (see the new Leap Proposal) where these areas are identified.

4.3 Build a base for developing a conceptual framework across rural and urban sectors around tenure

The past work of LEAP, the experience and frameworks for understanding of new team members and the literature review have all contributed to developing a conceptual base that the team and Steering Committee are confident is useful. The conceptual base has been tested in interaction in various for a locally and internationally. There are certainly areas for more conceptual development and this continue to be refined and added to.

4.4. Continue to test concepts with realities in existing project sites and exploring and developing plans in new sites through the building of partnerships.

The concepts were tested mainly in the Alliance work, and in the work AFRA is doing in Ekuthuleni. That was very useful indeed for forcing a fairly simple articulation of concepts and thus clarity of thought. New sites were identified for future work, and indeed what faces the team is selecting from the possibilities for the best possible range of situations that offer both relevant diversity and sites where action research and taking up of felt problems is appropriate to the community and the organisation working with the community.

5. Financial report

For the period 1 June 2004 to 30 June 2005 (13 months)

Budget line Items	Budget Amount in US$	Amount received in ZAR
Contract Time	36 000.00	231 012.00
Travel	6 750.00	43 315.00
Meetings and Workshops	21 600.00	138 328.00
Publications and dissemination	3 000.00	19 096.00
Administration Costs	5 250.00	34 000.10
Total:	**US$ 72 600.00**	**R 465 751.10**

Budget line Items	Budget Amount	Amount disbursed in ZAR	Balance
Contract Time	231 012.00	231 012.00	0.00
Travel	43 315.00	49 615.00	-6 300.00
Meetings and Workshops	138 328.00	138 328.00	0.00
Publications and dissemination	19 096.00	12 796.00	6 300.00
Administration Costs	34 000.10	34 000.10	0.00
Total:	**465 751.10**	**R 465 751.10**	**0.00**

Notes to the financial report:

There was an over expenditure of the travel budget item, which was due to inviting the new proposed team members to the final Steering Committee meeting.

This is off-set by an under-expenditure in the publications and dissemination budget. This was in part due to finding that much of what was presented will be published by others (as explained in 3.2. and 3.7 above); and that we were not able to complete the production of the pamphlet as the final work was completed at the end of the project, and simplifying it is taking more time than we anticipated. However Midnet has agreed to cover the costs to the value of R6,000 of this over the coming two months.

6. Conclusion

This preparatory phase was challenging, and fruitful. The objectives have been satisfactorily met, although not quite in the way envisaged in the detail of activities and timing. A project has been developed that is ambitious in scope, and a team and set of partnerships of high quality have come on board with this, which is exciting. The challenge now is to raise the funding support to implement the plan. We had hoped to be able to start that sooner, but were not ready to do so as the conceptual work and the proposal were only completed in May.

We had hoped to have a simplified and concise pamphlet to use for broader sharing by the end of the project – and this is drafted but is not completed. Midnet will provide the funding to complete this over the coming two months. In the meantime fundraising will be undertaken by various team members in a coordinated strategy.

The Ford Foundation will be requested to provide some support for this proposal, focusing on capacity building aspects and some of the Core Team costs. A proposal for this component, along with a report on progress on obtaining other funding support, will be submitted in August 2005.

8. Products

Copies of the following accompany this report.

- o Perspectives on Land Tenure Security in Rural and Urban SA; An analysis of the tenure context and a problem statement for Leap. May 2005.

- o Leap Project Proposal: Tenure security and land administration in rural and urban South Africa A learning approach to increasing the security of tenure of poor and vulnerable people, in order to enhance their livelihoods and access to services and local economic development. June 2005.

- o "Back to basics: perspectives on land management concepts"; PowerPoint presentation by Lauren Royston

- o "Square pegs for round holes? Some questions relating to the emerging Land Management Frameworks in South Africa": paper by Rosalie Kingwill

- o "Piloting Local Administration Records – securing individual tenure in group ownership": Donna Hornby

- o "Barking dogs and building bridges"; Lauren Royston

- o "Seeking equilibrium: Land Rights adjudication in off register, formalizing and non-formal contexts in South Africa" Rosie Kingwell

- o "Forms of Tenure" Lauren Royston

- o "Revisiting the formal and informal land tenure divide"; Rosie Kingwell

- o "First Phase Study on Tenure Options for the SA Homeless Peoples Federation/ uTshani Fund/ People's Dialogue Alliance" LEAP team
- o AND the Draft "Toolkit for Tenure", developed for the Alliance to work with the above report; Thelma Trench

Papers and presentations at the LEAP/ PPDC Symposium, to be published by the KwaZulu Natal Provincial Planning and Development Commission

- o Introduction to Land management system perspectives : (*Lauren Royston: LEAP– Development Works)*

- o Role of Ingonyama Board as a land manager *(Mdu Shabane : Dept Land Affairs)*

- o Role of Local government in Land management (*Ruth Bhengu : MP: Chair Local Government Portfolio Committee*)

- o Traditional administration systems in KZN *(Donna Hornby : LEAP)*

- o Intersection of LUMS and customary land use issues *(Cathy Ferguson,: TPI; Mpilo Sithole : UKZN; Nancy Odendaal : UKZN)*

- o Rural townships and emerging planning and development issues *(Anne Vaughn : MXA; Peter Sapsford : MXA)*

- o Considerations (principles) made in developing Development Bill *(Steven Berrisford)*

- o Planning for housing in informal settlements upgrades *(Carien Engelbrecht:)*

- o Aligning Land use management frameworks with CLRB in communal systems *(Rosalie Kingwill : LEAP – Mbumba Development Services)*

- o Piloting Local administration Records – securing individual tenure in groups ownership *(Donna Hornby : AFRA)*

- o Cadastral tools for implementing Communal Land Rights Act - Surveyors perspective (*M. Van den Berg : MHP; R Hillerman : DTLGA; C. Williams Wynn: SGO; Jay Jackson : UKZN*)

- o Alternative extra-legal land markets in KwaZulu-Natal *(Peter Rutsch : Rustch Inc.; Annette Von Riesen:)*

- o Township Residential Property Markets research findings *(Kecia Rust: TRPM)*

- o Role of financing institutions *(DBSA)*

This narrative and financial report is hereby certified as being correct:

Name ………………………………………….

Position ………………………………………..

Signature ………………………………………

Date ……………………………………………