Communal Property Institution Capacity Assessment Tool

Introduction to communal property institutions

Communal property institutions (CPIs)

Participants in the land reform programme can hold property through different forms of communal property institution (CPI). These include communal property associations (CPAs), trusts, non-profit companies, close corporations and cooperatives.

For land reform projects communal property associations and trusts are the most common form of entities that hold land. A communal property association is a specific legal entity for holding restored land and is established by Section 8 of the Communal Property Associations Act No. 28 of 1996. Trusts are governed by the Trust Property Control Act No. 57 of 1988. In 2013 it was estimated that some 1 341 communal property associations and a similar number of land-holding trusts had been registered since 1994.[1]

Potential

The land reform programme transfers assets to the poor. This ought to provide a pathway out of poverty for the communities involved. But for this to happen, the land transferred must retain or enhance its productivity and the institutions that administer the assets must do so effectively and in the interests of their members.

Community private partnerships (CPPs)[2] offer an opportunity for communities to provide land and find investors to bring capital and skills to the development of the land. This is done through properly structured agreements that provide one avenue through which land owned by communities can be put to productive use.

Challenges

Like most common property institutions, communal property institutions must incentivise individuals to work in the common interest. To do so they create sufficient authority to hold the group together and to protect the group's rights.

Typically they face three challenges: They have limited resources; there are no incentives to comply with administrative requirements; and there are no sanctions for those who do not comply.

Three recurring issues characterise many of these institutions:
- Financial and other benefits may fail to emerge quickly enough for the communal property institution and its members, whether in the form of dividends, rental income, the realisation of capital gains, or the creation of social assets. This results in a mismatch between the community's expectations and what is commercially feasible, which in turn means that partners' perceptions

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[1] The Department of Rural Development and Land Reform's report to a Vumelana Workshop on Communal Property Institutions, March 2013.

[2] Community private partnerships are commercial partnerships established between communities and private investors. Communities retain land ownership and lease their properties to investors who pay rent, make capital investments and manage operations. These partnerships create productive enterprises on restored land, employ members from local communities and impart skills. They are lease-based contractual arrangements that allocate risks and responsibilities to parties that can reasonably assume them. Typically, equity share options can be exercised by communities in the operating company when the risk profile of the enterprise looks attractive to the community. (Business Trust (2010) *Commercial Partnerships for the Development of Restored and Communal Land.* Johannesburg: Business Trust)

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may not align with reality.

- Communal and individual benefits are often not well defined which, can lead to free-rider problems and related conflicts.

- A breakdown in governance arrangements, transparency and accountability can lead to conflict and institutional collapse.

A systematic assessment of the CPI's capacity and needs can help to identify strengths and weaknesses and show where capacity building is needed.

The Capacity Assessment Tool

CPI capacity development needs

Capacity development needs are likely to differ from one organisation to another. If the CPI is to be effective, there are a number of broad areas in which it must function:

- Basic governance arrangements must be in place such as an up-to-date constitution and properly elected governing bodies and committees.

- Relationships with members must be systematically managed by having an up-to-date member register as well as policies for entry and exit, benefit distribution and dispute resolution.

- Day to day administration must be managed by establishing operating policies and acquiring the skills and other resources needed.

- Finances must be accounted for and independently audited. Clear reports must be made to members through annual general meetings and other means.

- The property belonging to the community must be registered and managed in accordance with policies agreed to by members.

The capacity assessment tool

The CPI Capacity Assessment Tool is designed in Excel and provides the approach for practitioners to assess an organisation's capacity and needs. It can also serve as a project monitoring, evaluation and reporting framework, and helps track progress as support is provided to the institution. The tool is designed to be used by development practitioners in projects that are supported by Vumelana. It is hoped that it will also be useful for other practitioners and the governing bodies of communal property institutions. The tool consists of a capacity assessment grid that produces a capacity development profile.

Capacity assessment grid

The capacity assessment grid covers five assessment components namely governance, member management, administration management, financial management and property management.
- Each assessment component comprises a number of focus areas with a brief descriptor of each one. For example, the governance component assesses the organisation in terms of its constitution and governing committee structure, as well as the AGM and accounts.
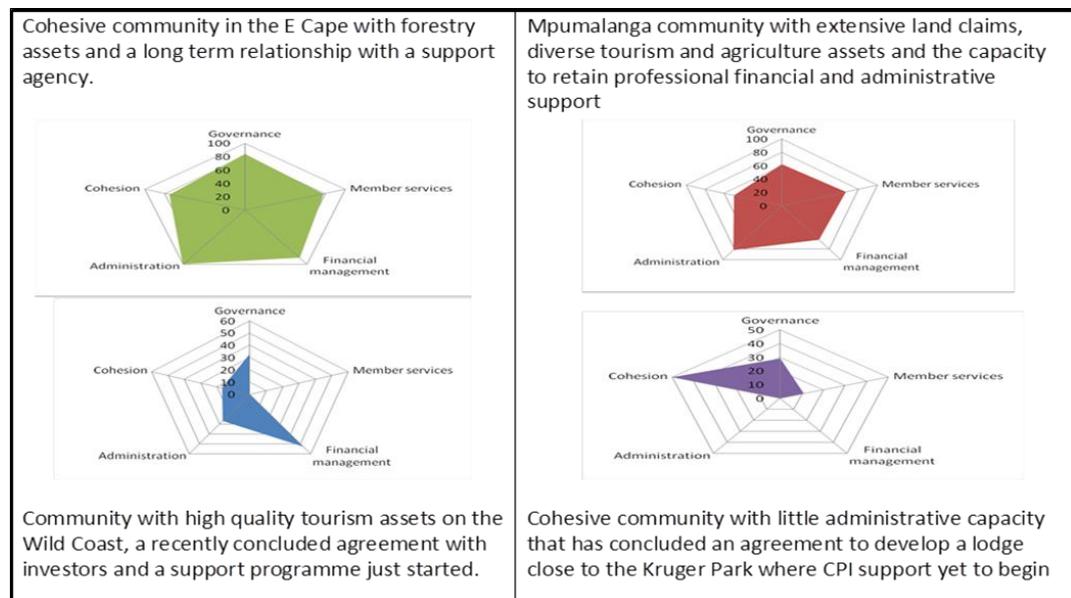
- The assessor completing the tool is required to select a Yes/No answer for each of the questions and can provide more detail in a comment.

- The last column in the tool provides some guidance in terms of what action is required if the answer to any of the key questions is "No".

An extract from the governance area is shown below:

FOCUS AREA	QUESTION	MEANS OF VERIFICATION	Yes / No (please select from dropdown	ACTION REQUIRED IF THE ANSWER IS NO
Constitution Valid registered constitution that underpins the governance and operation of the CPI.	Does the CPI have an approved constitution?	Constitution		Draft a constitution and get it approved
	Does the constitution meet the requirements of the relevant legislation?	Check list		Revise the constitution and get it approved
	Has the constitution been registered with the DRDLR?	Registration certificate		Register constitution with DRDLR
Governing committee structure The governing committee members have the appropriate skills and capacity.	Have the CPI governing committee and sub-committees been duly elected?	Record of elections		Conduct elections
	Do committee members have adequate skills?	Skills review		Develop training programme
	Have the committee Terms of Reference been agreed?	Committee TOR		Prepare TOR and get them approved
	Has a code of conduct been agreed to by the committees?	Signed Codes		Draft committee code

Project profiles

The outcome of the capacity assessment is a profile of the communal property institution showing where the strengths and weaknesses lie and providing a list of actions required to improve its governance and administration. Profiles of four different communal property institutions are illustrated below.

Cohesive community in the E Cape with forestry assets and a long term relationship with a support agency.

Mpumalanga community with extensive land claims, diverse tourism and agriculture assets and the capacity to retain professional financial and administrative support

Community with high quality tourism assets on the Wild Coast, a recently concluded agreement with investors and a support programme just started.

Cohesive community with little administrative capacity that has concluded an agreement to develop a lodge close to the Kruger Park where CPI support yet to begin

Using the tool

When to use the tool

In addition to ongoing monitoring, which will be conducted by the CPI administrator, the tool is used by Vumelana at three key points in the project:

- Initial assessment of assistance required by the institution:

  o On the signing of a community private partnership agreement, the capacity assessment tool is used to produce a baseline of the CPI's capacity to govern and administer the project and control its finances. This will guide the type of assistance required and help to structure the CPI support programme.

- Progress assessment:

  o Interim assessments are conducted periodically during the life of the project. This is done by the relevant CPI administrator or an external evaluator with the assistance of the CPI administrator.

- Final assessment:

  o On completion of all Vumelana support to the CPI, the CPI capacity assessment tool is completed once more using the most current information. This assesses the progress and impact Vumelana support, relative to the baseline data.

How to use the tool

- [Click here](#) to download the assessment tool.

- Gather as much information as possible from the project records to do a desktop review of the project, including:

  o application documents submitted
  o review panel documentation, etc.

- In preparation for engagement with the CPI, complete the CPI capacity assessment tool using the desktop information reviewed. This produces an upfront understanding of the project and assists in focusing the engagement on the key issues to be clarified in more detail.

- Meet the CPI to verify the information.

- As far as possible, the tool should be completed in collaboration with the party who will be responsible for its ongoing updating and monitoring, to ensure understanding and buy-in. This is usually the CPI administrator or relevant CPI committee member.