ORGANISING AROUND WATER: HARNESSING THE LEGAL SYSTEM FOR RURAL DEVELOPMENT

Mary Honey

Development Bank of Southern Africa, Halfway House

Jean Davidson

Consultant, Johannesburg

Abstract

Water in rural areas can act as a catalyst for development. This paper presents a brief theoretical overview of trends of rural domestic water usage in southern Africa. It highlights missing links in contemporary research, project design and implementation, and gives specific emphasis to organisational aspects. The failure to give adequate attention to human infrastructure, specifically organisational issues, often results in unsatisfactory water projects. Grassroots local issues have received scant attention. The evolutionary process of organising can be assisted by utilizing and adopting conventional legal principles and frameworks. These frameworks can increase the community's capacity to access, control, and control, the resources it requires for development. This paper outlines a variety of organisational options that can be considered. These options are illustrated by a specific case study.

1. Introduction

Water is a vital resource and can play an important role in maximising welfare. It is considered the most important priority. Water is not simply a basic need for survival, but as Stone (1984:2) notes:

...there is a relationship between sanitation level, health and socio-economic status of a community. (The last) is not a function of its per capita consumption of water, but without the availability of the resources, or infrastructure for its distribution, a community is unable to progress towards the advancement of socio-economic conditions.

This view is substantiated by other research findings. Increased access to water results in a lower incidence of water-borne diarrhoeal disease (Carruthers and Brown, 1977; Krone and Dunne, 1986). Water is considered the most important priority. Water is not simply a basic need for survival, but as Stone (1984:2) notes:

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1. Introduction

Water is a vital resource and it can play an important role in maximising welfare (Stone, 1984). A United Nations study estimates that the control of water borne disease, through improvements to domestic supply, would add an average of 10 years to life expectancy in less developed areas (Baum et al., 1985). The need for access to water in reasonable quantities and of appropriate quality was reinforced by the United Nations Water and Sanitation decade 1981-1990. Its goal was to give access to 5000 litres of water per day to every household in the world (Friedman, 1984). Although this is an attainable goal for which to strive, research in South Africa suggests that rural domestic consumption in areas tends to fall well below this yardstick.

This paper presents a short theoretical overview of rural domestic water consumption in South Africa during the last decade. It focuses particularly on one missing link in research, project design and implementation. This is the grassroots organisational issue, which is a vital component of the human infrastructure needed for sustainable rural community water projects. The paper is divided into eight parts. The first three sections focus on research findings on rural domestic water usage in Southern Africa. The remainder of the paper focuses specifically on the importance of organisational issues. Section four describes the organisational arrangements for which organisational aspects are important. The following sections give reasons for organising an organisation, thus creating a legal entity and indicating how this may be achieved within the context of South African Law. Section six focuses on Section 21 Companies and Trusts, which may be appropriate legal forms for "formalising" a rural community water organisation. The preceding exploration of using such options is explored by means of a case study in section seven. The final section of the paper is devoted to a few concluding remarks.

2. A brief review of recent domestic rural water trends in South Africa

Stone (1984), Krone (1986) and Davidson et al (1990) in a series of assessments of rural people in Ciskei, Transkei and Venda respectively, noted that access to domestic water was considered the most important priority. Water is not simply a basic need for survival, but as Stone (1984:2) notes: "there is a relationship between sanitation level, health and the socio-economic status... of a community. (The last) is not a function of its per capita consumption of water, but without the availability of the resources, or infrastructure for its distribution, a community is unable to progress towards the advancement of socio-economic conditions".

This view is substantiated by other research findings. Increased provision of water and sanitation services are important. The following section gives reasons for organising an organisation, thus creating a legal entity and indicates how this may be achieved within the context of South African Law. Section six focuses on Section 21 Companies and Trusts, which may be appropriate legal forms for "formalising" a rural community water organisation. The preceding exploration of using such options is explored by means of a case study in section seven. The final section of the paper is devoted to a few concluding remarks.

3. The water available to households in various parts of South Africa

Table 1 summarises the results of nine different studies undertaken in various parts of South Africa in the last decade. The total domestic water consumption levels are probably an underestimate, since washing of clothes and personal hygiene often occur at the water source. This usage is not included in the statistics depicted in Table 1. Krone and Dunne (1986) suggest that the presence of babies in a household usually results in a greater demand for water and this may also skew the data. Certainly the results from the Venda study confirm the mean time spent per day collecting water are conservative (Davidson et al., 1985). It was only possible to establish the amount of time taken walking from the homestead to the water point. The Venda survey failed to elicit accurate information about the time spent waiting in queues (Davidson et al., 1985). In many instances people assisted their friends to pump water, which increases the time expended on this activity. Similarly, in the afternoon the children who collected water often played at the pump before returning home. Finally, at certain peak periods during the day the water pressure dropped which in-
constraints precluded the use of this alternative (Simpson-Herbert, 1988:234). This has severe consequences for contaminating the water to the poor in terms of time, effort and money (Wilson and Ramphele, 1987). The United Nations Decade for Women in 1980 noted that in many Third World countries the position of women was discriminated against and dominated by men, barriers are set up that makes it almost impossible for them to participate in organizations. Programs attempting to ease the burden of water-carrying and/or affording women's work in other ways should take this factor into account" (Pratt and Boyds, 1985:43).

Efforts should therefore be made to encourage the development of organizations that provide support for rural women, represent their interests, and in which they have a definitive interest.

Land tenure arrangements are often vested in the male household head. In some instances a migrant worker is a migratory worker. Land may be a source of security for credit and tenure can be a criterion of mobility. Mechanization, mechanisation and co-operative membership (Pratt and Boyds, 1985). A need therefore exists for the development of organizations with a defined legal status. These organizations should be open and/or suppliers, implies that both are aware of their rights and/or obligations and able to seek recourse should the need arise. Research has illustrated that low cost, low technical water systems operated and maintained at local level by representatives of water users pay for the services received. Public organizations such as local government and administration, with their moral, political and economic activities. However, they have implications for local organisational capacity (Cairncross et al., 1980). Churchill, 1987. In particular three issues need attention.

Firstly, democratic local organizations, which are autonomous from the Tribal Authority or which co-operate and complement this level of government, need to be mobilized and fostered. Of essence is the empowerment of rural people. The causes of poverty in South Africa are not merely a reification of underdevelopment, but relate to the structure of the political economy. As Wilson and Ramphile (1989:282) note, "...power lies at the heart of the problem of poverty in South Africa. Without it those who are poor remain vulnerable to an ongoing process of impoverishment ..."

If poverty is to be addressed, it is vital that the poor have political power, and are able to participate in the decisions that affect their lives. Such transformation depends on mobilization and organization especially amongst the rural poor (Daphne, 1983). Effective structures through which the poor can voice their opinions and demands (including both political and economic) is necessary in rural areas. (Daphne, 1983). The tribal authority system is still seen as the primary administrative structure through which rural development (politicisation) needs to evolve. That is the case in many communities. The majority of chiefs and headmen lack any training or skills in administrative development (Haines and Tapcott, 1987:25). The need for alternative, accountable organizational structures such as residents or farmers associations and water committees, around which community development can occur, and which enable people to take control over, manage their resources and protect their rights. Moreover, it is clear that the group increases and the extent, and/or scope, of its activities diversify, the organisational requirements become more complex. It may become necessary, and/or helpful, for the group to structure itself more formally.

For example, a Garden Group diversifies its activities to include poultry and egg production. A bank is prepared to purchase produce regularly from the Group providing that the output is of a specific quality. A local branch of the commercial bank is prepared to make a revolving credit facility available. It is distinct from the management, the cost paid, and the benefits received from the schemes require attention. The relationship between the owners, managers and users of the service also needs to be addressed. The responsibilities for delivering the service as required by the users of the service, requires precise definition. Water is a "public good." The water supply service provided by physical infrastructure is a "public good." In certain circumstances, it is considered a "public good." The two are different, however, as the allocation of a "public good" is non-excludable and non-rivalry, whereas goods are "jointness of use or consumption" (Upkoff, 1986:39). To the extent that goods are indivisible, or users cannot be kept from using them, they are public. Public goods are characterized by non-excludability and non-rivalry. WSISAN and Eberhard, 1988:234). The latter price would be those. Research has focused on the provision of affordable domestic water to rural areas. High levels of welfare and service provision are associated with the major centres of economic growth, especially the PWV area. The lowest areas (ie. one standard deviation below the mean) and the last 20% of the peri-urban areas, in the rural areas of the rural poor (Hollingworth, 1990).

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- Contemporary research, planning and policy issues requiring attention

The per capita consumption of water varies enormously within countries and can be simplified explained in terms of available physical supply and demand. In South Africa the fundamental problem is not the lack of water per se, but rather a question of its quality and distribution (Wilson and Ramphile, 1987). The political space economy in this country has been characterized by high levels of welfare and service provision are associated with the major centres of economic growth, especially the PWV area. The lowest areas (ie. one standard deviation below the mean) and the last 20% of the peri-urban areas, in the rural areas of the rural poor (Hollingworth, 1990).

Secondly, as water collection is largely a female preserve this will call for a change in the cultural and intergenerational accepted roles of women. In the past, men, as decision makers, have tended to decide on the siting of projects, the technology used and the definition of the warden. Women are seen as "the carriers of water." The majority of chiefs and headmen lack any training or skills in administrative development (Haines and Tapcott, 1987:25). The need for alternative, accountable organizational structures such as residents or farmers associations and water committees, around which community development can occur, and which enable people to take control over, manage their resources and protect their rights. Moreover, it is clear that the group increases and the extent, and/or scope, of its activities diversify, the organisational requirements become more complex. It may become necessary, and/or helpful, for the group to structure itself more formally.

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Table 1 highlights various problems associated with rural domestic water supply systems which can be grouped into three categories, namely: quantity, distance and reliability. The mean daily capita consumption ranged from 147 litres in Township C to 57 litres in Venda. No study achieved an average daily volume of water used that in less than a minimum level of living standard it would be more appropriate to substantiate. The average daily volume of water used means that an insufficient amount is available for washing, (stinking and shaving) (Wiseman and Eberhard, 1988:234). This has serious consequences for the physical size of the households and the majority of water service is available.

The average time spent by households collecting water ranged from 40 minutes in Township A to 90 minutes per day in Platkop community, the energy and time expended collecting water. For example, the proportion of time women have to spend each day collecting water. Failure of water projects is often attributed to problems stemming from institutional and local organisational capacity (Cairncross et al, 1980; Churchill, 1987; Singer, 1989). In particular three issues need attention:

Firstly, democratic local organisations, which are either autonomous from the Tribal Authority or which co-operate and complement this level of government, need to be mobilised and fostered. Of essence is the empowerment of rural people. The causes of poverty in South Africa are not merely a reappearance of underdevelopment, but relate to the nature of the political economy. As Wilson and Ramphethe (1989:282) note, "poverty lies at the heart of the problem of poverty in South Africa. Without it those who are poor remain vulnerable to an on-going process of impoverishment .. ."

If poverty is to be addressed, it is vital that the poor have political power, and are able to participate in the decisions that affect their lives. Such transformation depends on mobilisation and organisation especially amongst the rural poor (Daphne, 1982). Effective structures through which the poor can voice their opinions and demands need to be established in rural areas. The tribal authority system is still seen as the primary administrative structure through which rural development programmes can operate. The majority of chiefs and headmen lack any training or skills in the administration of development (Haines and Tapcott, 1987:25). The need for alternative, accountable organisational structures, such as residents or farm associations and water committees, around which community development can occur, and which enable people to take control over, make decisions and participate of the structures to which they have outsourced their rights and obligations and able to seek recourse should the needs of the community change (Pratt and Boys, 1985) require greater attention on the practicability and of this practice.

Thirdly, a prerequisite for the efficient running of any rural organisation, such as a water association, representing users and the relevant authority, requires careful attention. Programmes attempting to ease the burden of water-carrying or allowing women’s work in other work should take this factor into account" (Pratt and Boys, 1985:43).

Distribution arrangements are often vested in the male household head who may or may not be a migrant worker. Land may be a source of security for credit and tenure can be a criterion for meritocracy (Churchill, 1985). Organisations, such as local government and administration, with their institutional capacities to ensure the operation and maintenance of services is mínimo. This increases the importance of the rural sector in South Africa. The past practice of excluding large landowners from the supply of water, particularly at local level (Wilson and Ramphethe, 1989).

Rural development is a process that requires the evolution of innovative institutional arrangements to meet the new and changing needs, demands, or opportunities of both market and non-market institutions. Characteristically, local initiatives at grassroots tend to be more complex. It may become necessary, then, to decide whether a water provision be adopted, institutional capacity to manage local schemes at this level is essential (Uphoff, 1986; Wilson and Ramphethe, 1989). Institutional options are narrowed because service provision by public or private organisations is not viable. Private organisations might seek to ensure the availability of water to the users of the service, requires careful definition.

For water to be provided, the water supply service provider or water add the physical infrastructure of a storage tank or reservoir, and in certain circumstances, it is considered a "public good." The provision of water can be considered a non-excludable or not rivalrous and is non-excludable and non-rivalrous. Jointness and excludability are not simple characteris­

tics of water provision. Depending on design, water services can exclude others. Water provision frequently is considered a public sector function.

If a private organisation engages in water provision, the relationship between the owner, managers and users of the scheme may differ from the public sector situation and requires careful assessment. In addition the relationship between a private water service organisation, whether it is a water association or private organisational institutional capacity to ensure the operation and maintenance of services is mínimo. This increases the importance of the rural sector in South Africa. The past practice of excluding large landowners from the supply of water, particularly at local level (Wilson and Ramphethe, 1989).
agreements with an informal group. They request the Garden services. However, they are reluctant to do so without the Civic organisations and presents an alternative to the Local Authority. organisations, such as consulting engineers and financing institutions.

tions, are willing to deal with the Association to provide these responsibility for water and sewage provision. Various or service provision. The basic characteristics of these legal entities will be examined.

In terms of South African law, there are a variety of legally constituted entities, or structures, which local groups could adopt and utilise for their benefit. These include co-operatives, close corporations, both private companies having share capital and section 21 associations incorporated not for gain, and trusts.

In this paper, section 21 companies and trusts will be examined because they are the legal structures considered more generally relevant to local membership organisations involved in public services provision. The basic characteristic of these legal entities, together with their implications and suitability for a rural community involved in water provision will be examined.

In terms of the South African political system and its legislative framework, different sets of legislation are in operation in the Republic itself and all ten homelands. On achieving "self-government", a homeland automatically adopts the South African legal system. Simultaneously, it acquires authority to legislate on certain items set out in Schedule 1 to the National States Constitution Act No. 21/1971. Depending on the degree of self-government achieved, on achieving "independence", a homeland acquires full legislative capacity. Any laws in existence at the time of independence shall continue to be of force and effect until repealed or amended. Thus, currently in South Africa there are three differing versions of Co-operatives. The hideous complexity of this system is hard to appreciate. In this paper, the South African version of the legislation is referred to in the hopeful anticipation that shortly, South Africa will revert to one common system.

3. The reasons for 'registration' of an organisation and creation of a legal entity

(a) Organising is an evolutionary process. It may or may not be appropriate, or necessary to "register" depending on the circumstances. For example, it is possible to establish group identity and group loyalty without any form of registration in one of the following three ways:

(i) Every group member signs an Agreement such as an Acknowledgment of Debt. Liability under the Agreement can be, "joint" or "joint and several". The former implies a creditor can proceed against one person for repayment of the whole, or portion, of the debt. The group member has a right of recourse against the other members for their pro rata share. This is the basis on which most commercial agreements are structured. A creditor may therefore proceed against all parties in a partnership or an unincorporated association. The parties are not limited as in the case of a company or cooperative. The person who signs the Agreement is liable to satisfy payment of the debt.

(ii) All group members sign a Power of Attorney empowering an elected representative to sign all documentation on their behalf. The elected representative in turn must sign all documentation although the person signing it remains 'Joint', or 'Joint and Several'. The advantage of an Agreement signed by all is that joint and several liability is a strong safeguard against default, particularly in the light of peer group pressure.

(iii) An elected Chairperson/Group Official bears the full liability on behalf of the group. The disadvantage of this method is that formalising a group structure to organise, implement and manage the water supply.

The hideous complexity of this system is hard to appreciate. In this paper, the South African version of the legislation is referred to in the hopeful anticipation that shortly, South Africa will revert to one common system.

(b) Generally speaking, organisations tend to acquire formal legal status and to open bank accounts in terms of several varying sets of legislation for the following six reasons:

(i) An organisation formalises to acquire legal personality. It acquires a personality and becomes a legal entity as distinct from the individual members. The individual members are " novelist, and the Valley Trust is, in effect, the project facilitator and supporter. The organisational structure developed in Figure 1 and endorsed by the Committee were approved by the Tribal Authorities, who also agreed to certain powers being delegated to the Secretariat. This decision was also approved by the Regional Magistrate.

(b) The bulk water supply is obtained from the Pinton Municipality and the Committee is responsible for the payment of the monthly account. The water is sold on a cost basis to any member of the Qadi and Nyuswa communities at R2.00 per litre (at 1986). During the construction period, water is conveyed to the communities through a coupon system administered by the Valley Trust. In the event of an elected representative being incapacitated or incapacitated as a result of incapacity, a major factor in determining an appropriate legal structure depends on whether or not an organisation operates for the personal benefit of its members.

6. Characteristics of Section 21 companies and trusts and their implications for organisations involved in water provision

Tables 2 and 3 present a brief review of the legal characteristics of Section 21 companies and Section 21 trusts. The implications of these characteristics for local organisations involved in water provision are also tabulated.

7. Qadi/Nyuswa water project - A case study

7.1 Historical background

The Valley Trust is a non-profit socio-medical project situated in the Valley of a Thousand Hills in Natal. It is a Non-Government Organisation which serves 10000 people in five tribal areas comprising some 250 square kilometres, (Valley Trust, 1989a, 1989b).

In 1985, the Valley Trust was approached jointly by the Qadi and Nyuswa people through their tribal authorities. These two Tribal Authority areas are situated on the periphery of the Greater Durban area. In order to provide basic water to the people, the Qadi and Nyuswa people, it was proposed that an institutional structure at tribal level be implemented to manage not only a water supply project, but also a wider development programme. The focus of this case study is the former. The focus of this case study is the former. The focus of this case study is the former. The focus of this case study is the former. The focus of this case study is the former. The focus of this case study is the former.

In December 1985, the Qadi and Nyuswa people elected office bearing representatives to the Qadi/Nyuswa Development and Services Committee by secret ballot. This is the policy making forum for the project and it acts as the management agency of the pipeline project. Operational issues are administered by the Qadi/Nyuswa Water Board which employs the members of the Corporation. The Valley Trust and Thuthukani Advisory Committee and assist the Board in its work. They also provide all the training for officials. Thus the Valley Trust is, in effect, the project facilitator and supporter. The organisational structure developed in Figure 1 and endorsed by the Committee were approved by the Tribal Authorities, who also agreed to certain powers being delegated to the Secretariat. This decision was also approved by the Regional Magistrate.

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The capital cost of project establishment was financed from a variety of sources. Water Vision, a non-government organisation involved in rural development, was a major contributor. In addition the Umgeni Water Board, KwaZulu Department of Works, the Valley Trust, Hewlett Packard and the two communities themselves, all contributed to the capital cost. Although the KwaZulu Government was initially willing to provide, for any loan granted to the Board as yet no loans have been taken up. The KwaZulu Government have also supported the creation and operation of the project's institutional structure, which although sanctioned by the tribal authority constitutes an alternative to the Board.
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(a) Organising is an evolutionary process. It may or may not be appropriate, or may be necessary, to register a group. Depending on the type of group, it may be possible to establish group identity and group liability without any form of registration in one of the following three ways:
(i) Every group member signs an Agreement that incorporates a clause
(ii) An organisation formulates an agreement to acquire legal personality. It acquires a personality and becomes a legal entity as distinct from the collective or group. Under the company law, for example, it is possible to establish group identity and group liability without any form of registration in one of the following three ways:
(iii) A formalized structure enables the organisation to acquire perpetual succession. By virtue of its separate identity, the organisation does not die because a member dies.

1. Introduction

2. The concept of registration of an organisation and creation of a legal entity

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Table 2: Basic legal characteristics of a Section 21 company and their implications for water organizations

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<tr>
<th>Legal characteristic of a Section 21 company</th>
<th>Implications for organizations involved in water provision</th>
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<tr>
<td><strong>Table: Basic legal characteristics of a Section 21 company and their implications for water organizations</strong></td>
<td><strong>Table: Basic legal characteristics of a trust and their implications for water organizations</strong></td>
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<td><strong>Legal characteristic of a trust</strong></td>
<td><strong>Implications for organizations involved in water provision</strong></td>
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<td><strong>Section 21 (S21) company or Memorandum and Articles</strong></td>
<td><strong>Governed by the Trust Property Council Act No.27/1988</strong></td>
</tr>
<tr>
<td><strong>- The purpose clause states the objects and purposes of the trust</strong></td>
<td><strong>- Elsewhere in water law, broader concepts of trust in terms of public benefit, or a charitable object (eg. water provision for the poor)</strong></td>
</tr>
<tr>
<td><strong>- The trustee must be a natural person or company with legal personality</strong></td>
<td><strong>- Trusts are in the wider sense used where property is to be held or administered by one person or on behalf of another, for some purpose other than one's own benefit (Husson, 1985)</strong></td>
</tr>
<tr>
<td><strong>- The trust must have a wealth of property to be invested or managed for the benefit of others</strong></td>
<td><strong>- There are no up to administration property for the benefit of others, the public, or a particular class or group of persons.</strong></td>
</tr>
</tbody>
</table>

**Table: Basic legal characteristics of a trust and their implications for water organizations**

<table>
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<tr>
<th>Legal characteristic of a trust</th>
<th>Implications for organizations involved in water provision</th>
</tr>
</thead>
<tbody>
<tr>
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<td><strong>Elsewhere in water law, broader concepts of trust in terms of public benefit, or a charitable object (eg. water provision for the poor)</strong></td>
</tr>
<tr>
<td><strong>- The trust is a legal person, but in certain circumstances it is considered a separate entity, eg. insolvency of trustees, tax purposes (Husson, 1985)</strong></td>
<td><strong>- The profitability of trusts is one of their essential characteristics. The flexibility arises from the freedom to determine the extent of the trust and rules of appointment and replacement of trustees. It allows beneficiaries to benefit from trust property without owning or administering it. This tax favorable tax implications for beneficiaries.</strong></td>
</tr>
<tr>
<td><strong>- Any number of trustees may be appointed &amp; there may be any number of beneficiaries.</strong></td>
<td><strong>- The trust determines the 'public' nature of trust affairs as like the deed itself, these assets are available to the public for inspection. These provisions permit for all parties.</strong></td>
</tr>
<tr>
<td><strong>Formulation</strong></td>
<td><strong>- The trust is to be wound up &amp; dissolved, &amp; it is wound up in such circumstances as the trust deed provides. The trust must also have a wealth of property to be invested or managed for the benefit of others</strong></td>
</tr>
<tr>
<td><strong>- The trust deed must be lodged at the competent authority. The trustee must also have a wealth of property to be invested or managed for the benefit of others</strong></td>
<td><strong>- This is why trusts are an widely used. It allows for a driven &amp; systematization of trust. The trust could benefit others who may lack the capacity to administer or act as the administrators of trust assets. It allows beneficiaries to benefit from trust property without owning or administering it. This tax favorable tax implications for beneficiaries.</strong></td>
</tr>
<tr>
<td><strong>Reliability</strong></td>
<td><strong>- This provision gives the right to trustees to make the trust for the benefit or minors or for the benefit of all the beneficiaries.</strong></td>
</tr>
<tr>
<td><strong>- The trust is to be wound up &amp; dissolved, &amp; it is wound up in such circumstances as the trust deed provides. The trust must also have a wealth of property to be invested or managed for the benefit of others</strong></td>
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</tr>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Essential provisions</strong></td>
<td></td>
</tr>
<tr>
<td>The essential difference between an association &amp; a private company is that it does not have a share capital &amp; its profits are not distributed to its members. Its members liability is still limited (Cocker, et al, 1975).</td>
<td></td>
</tr>
<tr>
<td>To qualify as a S21 Company, the organization:</td>
<td></td>
</tr>
<tr>
<td>(i) must be formed for a lawful purpose;</td>
<td></td>
</tr>
<tr>
<td>(ii) must have and state object in the promotion of religion, arts, science, education, charity, social activity or amusement or group interest;</td>
<td></td>
</tr>
<tr>
<td>(iii) must intend to apply its profits (if any) or other income towards the promotion of the main object chosen by it;</td>
<td></td>
</tr>
<tr>
<td>(iv) must prohibit the payment of any dividend to its members; and</td>
<td></td>
</tr>
<tr>
<td>(v) must comply with the specific requirements laid down in the Act regulating in formation, registration &amp; succession of associations.</td>
<td></td>
</tr>
<tr>
<td>These features together with the basic characteristics of a company (such as legal personality &amp; perpetual succession) render it an appropriate organisational structure for the provision of a public service. A public good such as &quot;water&quot; &amp; publicly-owned infrastructure could be transferred to &amp; owned by the S21. The assets &amp; income must be opened &amp; evidenced probably for the water community. Profits would be applied toward furthering the objectives of the company. Although profits are not distributed to investors, like other companies, salaries can be paid to employees.</td>
<td></td>
</tr>
<tr>
<td><strong>Size</strong></td>
<td></td>
</tr>
<tr>
<td>Minimum of seven members. Legal person can be members (Cocker, et al, 1975).</td>
<td></td>
</tr>
<tr>
<td><strong>Formation</strong></td>
<td></td>
</tr>
<tr>
<td>Registrations of Memorandum and Articles of Association and registration of members, inter alia, with Registrar of Companies. Provisions: The company:</td>
<td></td>
</tr>
<tr>
<td>(i) Memorandum sets out business and objectives</td>
<td></td>
</tr>
<tr>
<td>(ii) Articles regulate company's internal affairs, eg. meeting procedures.</td>
<td></td>
</tr>
<tr>
<td><strong>Beneficiaries</strong></td>
<td></td>
</tr>
<tr>
<td>Company has members who elect persons</td>
<td></td>
</tr>
<tr>
<td>who are the beneficiaries (administrators) of the company who may employ employees.</td>
<td></td>
</tr>
<tr>
<td><strong>Rights/obligations</strong></td>
<td></td>
</tr>
<tr>
<td>Company can acquire rights &amp; obligations in its own name, eg. out &amp; be sued, own property. Company is liable for the acts of its agents.</td>
<td></td>
</tr>
<tr>
<td>Trustees &amp; administrators</td>
<td></td>
</tr>
<tr>
<td><strong>Payments to members</strong></td>
<td></td>
</tr>
<tr>
<td>Payment of dividend to members prohibited (Act 61/1975 S21 (3)(c))</td>
<td></td>
</tr>
<tr>
<td><strong>Winding-up</strong></td>
<td></td>
</tr>
<tr>
<td>On dissolution, assets must be transferred to some other organisation designated having similar objectives (Act 61/1975 S21 (3)(b)).</td>
<td></td>
</tr>
</tbody>
</table>

Table 3: Basic legal characteristics of a trust and their implications for water organisations

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</tr>
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<tbody>
<tr>
<td><strong>Essential provisions</strong></td>
<td></td>
</tr>
<tr>
<td>Governed by the Trust Property Control Act No.27/1988. Etelects those trustees or trust boards (except in the case of an artificial trust) to be the trustee of an asset which, on the purpose of which, is to be administrated by a trustee (administrator) or to repatriate such assets.</td>
<td></td>
</tr>
<tr>
<td>Therefore, for the existence of a vital trust there must be (i) a perception of the trust for the benefit of the water provision (beneficiaries) other than the trustee &amp; some asset object (Honore, 1985, Act 37/1988).</td>
<td></td>
</tr>
<tr>
<td>For its existence a vital trust must have (i) a perception of the trust for the benefit of the water provision (beneficiaries) other than the trustee &amp; some asset object (Honore, 1985, Act 37/1988).</td>
<td></td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td></td>
</tr>
<tr>
<td>A trust is a legal persona, but in certain circumstances it is considered a separate entity, eg. revocability of trusts, tax purpose (Honore, 1985).</td>
<td></td>
</tr>
<tr>
<td><strong>Size</strong></td>
<td></td>
</tr>
<tr>
<td>Any number of trustees may be appointed &amp; there may be any number of beneficiaries.</td>
<td></td>
</tr>
<tr>
<td><strong>Formation</strong></td>
<td></td>
</tr>
<tr>
<td>The trust is regulated by the terms of the deed. The trust deed must be signed with the Master of the Supreme Court. It is a public document. Unless comptax the trustee must furnish sevency in the Master. Trust property should be transferred to the trust by the person in charge of it, and be kept separate &amp; identified by the Master (Honore, 1985, Act 57/1988, S4 - 12).</td>
<td></td>
</tr>
<tr>
<td>Administering &amp; managing: The trust is administered by the Master of the Supreme Court. As such (Honore, 1985).</td>
<td></td>
</tr>
<tr>
<td><strong>Relentlessness</strong></td>
<td></td>
</tr>
<tr>
<td>There is a separation of the company and rights of remembrance between administrators &amp; beneficiaries (Honore, 1985).</td>
<td></td>
</tr>
<tr>
<td><strong>Rights/obligations</strong></td>
<td></td>
</tr>
<tr>
<td>The beneficiary must annually hand over control of trust property to the trustee or, if a trust ceases to exist, to the proper administration of the trust for the benefit of the beneficiaries. A trustee may Administer &amp; distribute to the degree necessary for the accomplishment of the trust (Honore, 1985).</td>
<td></td>
</tr>
<tr>
<td>Winding-up: The beneficiaries are entitled to receive the value of the trust. The distribution of a trust will be influenced by the trust deed (Honore, 1985).</td>
<td></td>
</tr>
<tr>
<td><strong>Reference to water provision</strong></td>
<td></td>
</tr>
<tr>
<td>In some cases the appointment of trustees required for water provision would be the appropriate legal structure:</td>
<td></td>
</tr>
<tr>
<td>(i) for a water users association to adopt;</td>
<td></td>
</tr>
<tr>
<td>(ii) so to which a public authority might delegate responsibility for water provision, or with which it could share responsibility with the users.</td>
<td></td>
</tr>
</tbody>
</table>

A public good such as "water" is an infrastructure necessity or in identification would mean it is well registered in the name of the trust. The trust should exist as a trust administration &/or administration of the water reservoir for the benefit of the water communities (beneficiaries). The trustee's share would be held by the trustees of the trust. The trust deed would be valid in circumstances reversion is possible. The flexibility of a trust, as extremely simple &世界杯organisation & administration or replicate & to those situations the legitimacy of the trust, the cardinal status &/or administration of the water reservoir for the benefit of the water communities (beneficiaries). The trustee's share would be held by the trustees of the trust. The trust deed would be valid in circumstances reversion is possible. The flexibility of a trust, as extremely simple &世界杯organisation & administration or replicate & to those situations the legitimacy of the trust, the cardinal status &/or administration of the water reservoir for the benefit of the water communities (beneficiaries). The trustee's share would be held by the trustees of the trust. The trust deed would be valid in circumstances reversion is possible. For a water user association to adopt; (ii) so to which a public authority might delegate responsibility for water provision, or with which it could share responsibility with the users.
The new Board members were adamant that the community should not be forced to proceed with phase two of the project. Their reasoning was based on the fact that piped water was less desirable than spring water. The community has stated its preference for spring water which is tasteful and free from chlorine. Hence, it would be appropriate to continue with piped water as an option for spring water has resulted in a decision by the current Board members not to proceed with phase two of the project (Pers Com, 1990).

7.2 Analysis of the organisational structure of Qadi-Nyuswa project

(a) The current structure

The Committee provides an example of the development of a democratically constituted Non Government Service Organisation with the necessary capacity to carry out one of the responsibilities normally attributed to a local public institution, either, local government or administration (Upfold, 1990).

The rights and duties of the various organisations and participants are defined by the trust deed. The Committee includes the following stakeholders:

- The physicial infrastructure required for the water supply service, which essentially constitutes a public or community asset, could be registered in the name of the Section 21 Company. On dissolution for whatever reason, the Section 21 Company’s assets could be transferred to an organisation with similar objectives and, not distributed to committee members. This safeguards these assets for the community and defines and regulates more clearly the trusty duty concept of “community ownership”.

(b) Registration of the committee as a trust

A Trust could be set up by the community, certain committee members, the Tribal Authority and/or the Valley Trust or possibly the current members of the Thuthukani Advisory Committee. The Trust would be a recognised legal entity for certain purposes, if not a legal person, and could have perpetual succession if desired.

Trust affairs would be regulated by the trust deed which would set out the trust activities, operating and dissolution procedures. The trustees would be appointed to the Master of the Supreme Court by, inter alia, filing trust accounts. The public nature of the trust accounts would constitute a protection for all parties concerned.

Trusts distinguish between the concepts of founders, administrators and beneficiaries. Accordingly, the trust deed would provide for the appointment of trustees (administrators), regulate their activities and define their accountability to the beneficiaries.

The trustees could be responsible for arranging for the election of committee members from the community (beneficiaries). The rights and obligations of the committee and the community could be set out in the trust deed. This allows for maximum flexibility to regulate affairs in accordance with the interests of both founders and beneficiaries.

The physical infrastructure required for the water supply service, which essentially constitutes a public or community asset, could be registered in the name of the Section 21 Company. On dissolution for whatever reason, the Section 21 Company’s assets could be transferred to an organisation with similar objectives and, not distributed to committee members. This safeguards these assets for the community and defines and regulates more clearly the trusty duty concept of “community ownership”.

(c) Registration of the committee as a Section 21 company

Should the Committee register as a Section 21 company, the costs involved should be shared by the community and the Water Board. Therefore, the proceeds from the sale of the water service should be distributed to the benefit of all parties involved. The committee would own the physical infrastructure and could employ staff to carry out the Company’s stated objectives. However, in the case of the Qadi-Nyuswa project, the Water Board has no independent legal personality and therefore it has no legal status as distinct from its members for the reasons set out in (a) above. The purpose of the Committee is to facilitate and support the development of the infrastructure, and take up a loan, both the Committee members and the community could be set out in the trust deed. This allows for maximum flexibility to regulate affairs in accordance with the interests of both founders and beneficiaries.

The physical infrastructure required for the water supply service, which essentially constitutes a public or community asset, could be registered in the name of the Section 21 Company. On dissolution for whatever reason, the Section 21 Company’s assets could be transferred to an organisation with similar objectives and, not distributed to committee members. This safeguards these assets for the community and defines and regulates more clearly the trusty duty concept of “community ownership”.

Figure 1: Qadi-Nyuswa pipeline: Organisational structure

The objectives and business of the Committee, as set out in its constitution, would from part of the Section 21 Company’s Memorandum of Association. The Committee’s operating procedures would be set out in a membership agreement. It could decide on its own procedures within an established legal framework. The Section 21 Company would be required, inter alia, to maintain financial statements. These documents are filed in a public office and are available for inspection by interested parties on payment of fees. This safeguards all parties and defines their accountability. The Articles of Association of the Section 21 Company would set out procedures for the election of directors. The committees (committee members) could employ staff to carry out the Company’s stated objectives.

The physical infrastructure required for the water supply service, which essentially constitutes a public or community asset, could be registered in the name of the Section 21 Company. On dissolution for whatever reason, the Section 21 Company’s assets could be transferred to an organisation with similar objectives and, not distributed to committee members. This safeguards these assets for the community and defines and regulates more clearly the trusty duty concept of “community ownership”.

9. Conclusion

Water in rural areas can act as a catalyst for development. This paper briefly reviewed current trends of rural domestic water use in South Africa, and it calls for greater attention to be given to organisational issues at community level. The failure to give due attention to mobilising and encouraging democratic local organisations to administer public goods, such as water, in rural areas is highlighted. Reference is made to the need for organisations to be accountable to their members for the reasons set out in (a) above. In addition, the practicalities of overcoming the nebulous and subjective perspectives of community ownership are described in detail. Planners and implementing agencies should take cognisance of any inequalities arising from gender differences, which particularly affect rural women. Finally, these new organisations need to have mechanisms to coordinate, clear out rights and obligations is discussed.

Previously, the legal issues relating to local organisations involved in economic and social activity, of which water represents but one example, have received scant attention. The evolution of processes of organisations around rural provision can be assisted by using and adopting conventional legal principles and frameworks, such as a section 21 company or a trust. These frameworks can increase the community’s capacity to access, and control, the resources it requires for development.

References


The rights and duties of the various organisations and par­
ticipants, and the relationships between them, have been care­fully defined in this organisational system. The Committee constitutes an elected community service organisation with a Board of 10 members, not to proceed with phase two of the project (Pers Com, 1990).

7.2 Analysis of the organisational structure of Qadi-Nyuswa water project
(a) The current structure
The Committee provides an example of the development of a democratically constituted Non Government Service Organisa­tion with the necessary capacity to carry out one of the respon­sibilities normally attributed to a local public institution, either local government or administration (Uphoff, 1986).

The Committee is an elected community service organisation with a Board of 10 members, not to proceed with phase two of the project (Pers Com, 1990).

The objects and business of the Committee, as set out in its constitution, would form part of the Section 21 Company's Memorandum of Association. The Committee's operating pro­
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The physical infrastructure required for the water supply serv­ice, which essentially constitutes a public or community asset, could be registered in the name of the Section 21 Company.

On dissolution for whatever reason, the Section 21 Company's assets could be transferred to an organisation with similar ob­jectives, and not distributed to committee members. This safeguards these assets for the community and defines and regulates more clearly the fact that a public asset per se,

(b) Registration of the committee as a trust
A Trust could be set up by the community, certain committee members, the Tribal Authority and/or the Valley Trust or poss­ibly the current members of the Thuthukani Advisory Com­mittee. The Trust would be a recognised legal entity for cer­tain purposes, if not a legal person, and could have perpetual succession if desired.

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DEVELOPMENT OF A REGIONAL PROGRAMMING MODEL FOR SIMULATING THE SOUTH AFRICAN WHEAT INDUSTRY, WITH SPECIAL CONSIDERATION TO RISK

J Howcroft
MSc Agric. Student, Department of Agricultural Economics, University of Natal, Pietermaritzburg

GP Ortmann
Associate Professor, Department of Agricultural Economics, University of Natal, Pietermaritzburg

Abstract

Wheat is the second most important field crop grown in South Africa in terms of gross value. Most of the wheat produced is consumed in the form of bread which is one of the main staple foods in South Africa. Wheat is currently marketed under a one channel fixed price system. However in recent years there has been a trend to a more free market approach to the marketing of agricultural produce. Therefore the consequences of alternative marketing policies for wheat warrant investigation. For this purpose a regional mathematical programming model was developed with the objective of simulating the wheat industry. The model includes negative-sloping demand functions for various crops, substitution in demand between wheat and maize and in terms of variance-covariance matrices. It was found that average yield data could be misrepresentative when used in risk analysis. Therefore, where possible, a pooled data set was used. The results show that the model successfully simulates the production in the main wheat growing regions of South Africa. This is shown by the estimated average price of bread being similar to actual means and by percentage absolute deviations of 12.2 per cent and 6.3 per cent between actual and predicted land use and productions respectively. It is concluded that the model would be useful for policy research.

Samsamting

In terms van bruio waarde is koring die tweede belangrikste akkerbougroei wat in Suid-Afrika verbou word. Die meeste koring word verbruik in die form van brood wat een van die belangrikste stapelvocdscls in Suid-Afrika is. Koring word tans onder 'n eenkanaal-gereguleerde pnce-systeem vermarkte. Daar is egter 'n meer verskeidenheid in die landbousektor wat soos dit uit die persentasie absolute afwykings beeld kan word. Die model het ses verskeidenheid van spesifieke belasting en ene persentasie absolute afwykings van 12,2 persent en 6,3 persent tussen die beide. Die resultate toon dat die model geslaag het om die produksie in die belangrikste koringproduksieregester te simuleer.

1. Introduction

The economic importance of wheat production to South Africa can be summarised as follows: 1) Wheat contributes significantly to the total gross value of agricultural production; 2) Wheat in the form of bread is one of the major staple foods in South Africa; 3) the domestic production of wheat results in significant savings in foreign exchange; 4) the wheat industry and its related secondary industries provide considerable employment.

Given the economic importance of wheat the future production and marketing of wheat need to be researched. At present wheat is marketed under a one-channel fixed-price system.

To evaluate the consequences on domestic production of different marketing alternatives a linear programming (LP) model of wheat production at the regional level was developed. The model includes negative-sloping demand functions for crops, substitution in demand between wheat and maize, and variance-covariance matrices to account for income risk.

In the first part of the paper the development of the LP model is discussed, with the objective of simulating production in the South African wheat industry. Special consideration is given to risk with regards to the use of pooled data compared to average data in the variance-covariance matrix. This is followed by a discussion of the results of the simulation.