

Allocating Community Benefits: Institutional Options in Support of the Empo-tourism Models

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FOREWORD

The first phase of the Industrial Strategy Project commenced in 1992. The Project has its origins in the Congress of South African Trade Union's (COSATU) efforts to develop policy responses to the malaise afflicting South African manufacturing.

The first phase of the ISP submitted its final report in 1995. This comprised 11 sectoral studies, a number of cross-sectoral studies, and a synthesis volume that proposed an overall industrial strategy for South Africa.

The ISP is now in its second phase and comprises four research themes. One of these examines the relationship between industrial development and the environment, a second focuses on firm-level innovation, a third examines issues in human resource development, and the fourth is concerned with identifying mechanisms to strengthen manufacturing competitiveness at regional and local levels. Examination of the export performance of South Africa's manufacturing sector has been a persistent theme running through the work of the Industrial Strategy Project, and this concern is taken up in this contribution to our series of working papers.

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These are working papers intended to catalyse policy debate. They express the views of their respective authors and not necessarily those of the Industrial Strategy Project.

David Lewis - Director: Industrial Strategy Project

1. INTRODUCTION

This paper * is the fourth in a series of issue papers prepared within the SDI Policy Programme. It aims to support and enhance the application of work already completed on economic empowerment¹ and to guide/influence the planning and development processes applied in respect of each of the individual tourism led SDI's.

The central purpose of this issue paper is to put forward a number of institutional options within which local communities can receive, mobilise and utilise the benefit flows that accrue from the SDI anchor projects. It aims to compliment the work done on the so called empo-tourism models defined in one of the previous issue papers² and as such focuses on the required institutional arrangements for the development node/anchor project itself rather than the institutional arrangements required within the broader regional/local authority context. No attempt has been made to repeat an overview of the SDI process as this has already been well documented in previous papers.

This document has been structured as follows: Section 2 describes why empowerment is necessary and what it means within the SDI context. Section 3 defines what is meant by community benefits. Section 4 summarises the resources available to communities to create benefits. Section 5 deals with who the community is and the difficulties associated with defining same. Section 6 discusses the essential differences between the various forms of community organisations/institutional structures. Section 7 defines the key criteria to direct the decision on the ultimate institutional form. Section 8 focuses on the structures proposed for allocating benefits. Section 9 outlines a basic approach to implementation and Section 10 draws the document to a conclusion.

2. WHAT EMPOWERMENT AND WHAT DOES IT MEAN IN SDI CONTEXT?

As previously stated (Goldin and Jourdan, 1996) - *The SDI's are a programme of strategic initiatives by Government aimed at unlocking the inherent and under-utilised economic development potential of certain specific spatial locations in South Africa. These SDI's must be seen in the context of the new paradigm adopted by the South African Government, aimed at moving away from a protected and isolated approach to economic development, towards one in which international competitiveness, regional co-operation, and a more diversified ownership base is paramount.*

Changing the ownership base of the assets created within the SDI process is an essential ingredient in helping to restructure the apartheid space economy and is central to the debate around what constitutes real empowerment. Empowerment within the SDI process is directly concerned with maximising the flow of (tangible) benefits from the anchor projects to the local communities as well as with the issues of ownership and control in the development process. This is important not only because successful economic investment could reduce the 'communities' dependence on external funding and development, including dependence on government but also because it has a positive impact on the long term sustainability of the development projects and programme.

In so far as the SDI anchor projects are concerned, the key criteria considered in assessing options for economic empowerment include:- community involvement/responsibility in the planning and decision making processes, in the management of tourism and related operations³, and in terms of control over land. It also includes the extent of local/community based equity sharing in tourism and related operations, the extent to which community access to business opportunities is promoted and supported, and the availability of capacity building processes at the local level.

¹ This is based on the notion that one is trying to involve previously disadvantaged people in economic activities which will become an integral part of the economic mainstream, and not simply to buy off rural people so that others may reap the economic rewards.

² The title of this issue paper is "Tourism Development and the Empowerment of Local Communities".

³ Generally speaking this is a long term objective, as tourism is a highly specialised activity, and its management correspondingly so. Only well trained and competent persons should take part in this activity and so this objective calls for sustained training and development of local people to achieve same over the longer term.

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3. WHAT DO WE MEAN BY COMMUNITY BENEFITS?

Community benefits are that range of social and economic opportunities through which people are enabled to take charge of their destiny - in a manner befitting empowered individuals - and as a result improve their quality of life. The SDI anchor projects have been selected on the basis that they provide the strategic opportunity to move from an unsustainable situation to a win/win situation in which communities, government and private sector all benefit from the partnership. From a community perspective the benefits within the SDI anchor projects would potentially come in the form business and enterprise development opportunities⁴ as part of the upstream or downstream activities directly or indirectly associated with these developments, via equity participation⁵ in the tourism developments and tourism operations themselves, via employment resulting from the construction and or operation of tourism facilities and via access to the associated infrastructure development programmed to be developed as part of the tourism developments.

4. WHAT RESOURCES ARE AVAILABLE TO COMMUNITIES TO CREATE BENEFITS?

Theoretically the range of potential resources available within communities to create the kind of benefits referred to in section 3 above usually include human resources; equity; capital; infrastructure; fauna and flora; animals; natural beauty/national heritage; land etc. In the South African context the reality is that human resources, in especially the rural areas, are a limited resource because they have been marginalised by apartheid. This does not detract from the potential that exists but does account for the limitations in capacity which is so evident. For the same reason there is very limited local capital/equity and a generally underdeveloped and in many instances declining infrastructure. What is available in terms of the practical reality is land, existing fauna and flora and certain heritage areas.

The communities in the SDI areas, need improved levels/access to infrastructure and facilities, economic

growth, employment, opportunities as entrepreneurs, and access to training and capacity building. These communities generally do not appear (immediately) to have the resources to address these needs. However these same communities should be able to use their land, fauna/flora and heritage as a means to mobilise the private sector who have capital and expertise but who to date, could not get access to land, fauna/flora etc. This potential for a partnership between community and the private sector, with government providing the necessary policy and regulatory framework, is an important opportunity.

5. WHO IS THE COMMUNITY AND HOW DOES ONE DEFINE SAME?

An issue that often arises and which has been described elsewhere (de Beer and Elliffe, 1997) in the context of the proposed empowerment models is, "Who is the community and how does one define the community at any point in time"? This is a very important question because the benefit flows from the empowerment models need to flow as equitably as possible to 'the community', and certain decisions about how benefit flows should be allocated need to be taken by 'the community', in accordance with priorities agreed to by 'the community'.

The experience to date around the SDI anchor projects is that it is very difficult to define exactly who the community is. Common questions which have been raised in respect of the Wild Coast SDI include: Is "the community" the people who live immediately adjacent to the anchor project area? Is it the population who live within a radius of 30km? Is it only those with successful land claims on the area? Is it all the communities along the Wild Coast who constitute the larger community and who should benefit from the anchor projects? Is it those people resident within an existing local authority area, and does it include or exclude migrant workers? These issues do not suggest that the community cannot be clearly identified but rather allude to the complexities involved, and highlight the importance of (empowering) the community taking on the ultimate responsibility for defining membership. Clearly communities are

⁴ Business development should be based and managed on firm commercial principles. It is absolutely essential to treat the involvement of the 'community' in any such activity as a genuine business investment from the outset, and to get away from the social welfare approach that so often defines 'community participation'. It does the 'community' no favour by creating the wrong perceptions and expectations if this is ignored.

⁵ It is not the intention to provide an equity share to a community gratis and for no consideration. This perpetuates the idea that development is a hand out, and requires no commitment in return. Rather this a normal commercial transaction and the community should invest in the business venture in the same way as any one else would. In the case where the community puts land into the venture and gets shares allocated on that basis, that contribution should be taken into account when deciding whether rent is to be paid to them, and if so, the amount thereof.

well aware of who is who in the area, and apart from some possibly necessary oversight to ensure democratic processes should be able to do this effectively (see ref. to CPA below).

In the case of the Mkambati Nature Reserve on the Wild Coast for example, the local structures from the surrounding communities were approached to agree amongst themselves on a representative committee to engage the SDI process. This has proved to be a very useful structure specifically as regards understanding the dynamics in the area and negotiations around the land claims on the anchor project area. As an approach it further enhances the process of building the necessary relationship with the community so as to ensure effective implementation of the projects.

In terms of Communal Property Association Act, for example, the onus is placed on the community itself to define who their members are (rather than some other mechanism imposed from outside). This Act states that: "Community" means a group of persons, which wishes to have rights to, or in particular property determined by shared rules under a written constitution. Having said that the CPA Act also describes democratic processes for setting about the development and agreement of a constitution and defining the membership of the CPA. This is done to ensure representivity and inclusiveness - necessary because of past experience where high profile leaders tend to dominate the ordinary folk and where women tend to be marginalised. The CPA Act seeks to overcome this by providing for the Department of Land Affairs to be involved in the constitution making process. A process similar to this would be useful for the SDI Anchor projects where it may be possible for an institution such as the "Wild Coast Agency/ Authority", if it becomes a reality, to play the role played by the DLA. The implications of this could be that if a community wished to participate in a tourism related anchor project⁶, the establishment of a legal entity would include a CPA type process to ensure representivity and inclusiveness.

It is not the intention of this paper to define in detail the community participation/involvement processes⁷ within the SDI process, but rather to focus on the institutional options for allocating the benefits derived from the anchor projects. Clearly if developments are to proceed in the short term an institutional structure/vehicle needs to be put in place that can represent the community interests in terms of their role in the management and decision making processes related to the various tourism operations, and in terms of the equitable and effective allocation of benefit flows back to the community. The chosen structure would need to be a legal entity with elected representatives charged with representing the community⁸ for a period of time and with whom government and the private sector partners can operate/negotiate and make decisions.

6. VARIOUS FORMS OF COMMUNITY ORGANISATIONS/INSTITUTIONAL STRUCTURES⁹

The flow of financial benefits (from a community, private sector and government the partnership) into the community needs to take place through an appropriate institutional structure. Properly managed this would ensure that priorities are identified and that opportunities around education, health and other community projects are enhanced. This in turn provides opportunities for communities to influence developments and unlock doors to other resources.

There are a number of institutional arrangements that could be considered for both the Wild Coast and Maputo Corridor programmes. It is however clear from the assessment¹⁰ that there are really only three institutional forms that are suitable for application within the SDIs. These are a "Community Trust(s)"; a "Section 21 Company" or a "Community Property Association" (CPA). Each is briefly described and assessed below.

⁶ Provision should be made for individuals from the community with their own cash to invest personally in such ventures. This would enable the entrepreneurial spirit inherent, and often suppressed, in the community to acquire commercial skills and promote greater economic activity in the community (cf. footnotes 7 & 8).

⁷ In the case of the Wild Coast this is managed under the auspices of the Community Participation Co-ordinating Committee. See key issues/pointers section 9 on page 13 of this document.

⁸ Care must be taken to structure the community legal vehicles in such a way as to avoid creating power cliques and cleavages in the community.

⁹ Our thanks to L Mokhesi (DBSA) and G Tonkin (Consultant in Pietermaritzburg) for their advice and assistance in this regard.

¹⁰ Voluntary Associations, Co-operatives, Partnerships, Close Corporations and Friendly Societies were considered but found to be inappropriate for application within the SDIs despite the fact that a good lawyer could within the bounds of the law create a workable vehicle through any one of these forms.

6.1 COMMUNITY TRUSTS

A trust is created when a person, (the founder or donor) who wants to create a trust hands over or undertakes to hand over control of certain assets to another person (trustee or administrator) to be administered for the benefit of another person (the beneficiary - institution or individual)¹¹. A trust is not a separate legal person nor a separate taxable entity. All the assets of a trust vest in the trustees, not in their personal capacity but in a *representative capacity*. The trustee(s) cannot use or take the property for their own benefit. Immovable property held by the trust must be registered in the name of the trustees, again in a representative capacity. If a trustee becomes insolvent, the trust assets do not form part of his personal estate. The trust assets do not under any circumstances form or become part of the trustee's personal estate. However the trustees are jointly and severally liable for the delicts¹² committed by any one of the trustees.

There are a number of advantages to be found in the use of a trust as a mechanism through which to channel benefits to the communities. Trusts provide limited liability in that the trust's liability is limited to the extent of its assets, and does not go beyond that into the personal assets of the trustees. Neither are trust beneficiaries exposed to the creditors of the trust. It is governed by a Trust Deed which articulates its objectives, the appointment and responsibilities of its Trustees and defines how the trust will be managed. It is relatively easy to form and its form and content can be easily changed by agreement, because there are few administrative legal requirements to fulfil. There is provision for continued existence in that Trustees and Beneficiaries can change, but the Trust will continue. Trustees and beneficiaries can be both natural and legal persons (i.e. people and companies, and any entities legally recognised as separate to the persons who make it up). Finally a Trust has certain tax advantages. If it is a business Trust its income is taxed at a lower rate rather than the corporate rate. However in the instance where a Community Trust is formed not for purposes of gain the Trust could apply to the Receiver of Revenue for tax exemption status. Such status makes the idea of an investment partnership rather attractive to the private sector. As such it might be preferable to do this in advance of other things needed to be done to get a Trust set up.

In cases where the community (Trust) holds shares in an operating company (Ndumo/Rocktail Bay) as distinct from a development (property) company, the opinion has been expressed that it is more of a hindrance than a benefit. The central argument being that profit related returns are slow and in this case minimal. Rents and levies are by contrast payable immediately. Because operating companies generally take several years to become profitable, and, depending on the market, may require substantial capital injection, it follows that if the 'community' cannot afford that, the burden must be carried by the other shareholders, which leads to inequalities and financial distortion. This is particularly so in the case where the community received shares in an operating venture gratis. It seems that 'communities', or preferably, individuals in the community, should be enabled to acquire shares in the operating company as investors in the ordinary sense.

Because a Trust is such a flexible institution there are no built-in protections against mismanagement and manipulation. The statutory oversight of Trusts by the Master of the High Court is perfunctory (indifferent) and minimal, which has its advantages and its disadvantages. There are no requirements to build into a Trust Deed, processes of transparency, democracy, equality and so on, nor are there any requirements which insist on participatory procedures to prepare for a the establishment of a Trust. The safeguards provided by the Communal Property Association Act in this regard are absent. There is also no external agency to which aggrieved members of the beneficiary group may turn which will provide protection and restitution of rights which are being manipulated or ignored, save expensive court procedures, which are also limited by the legal rules under which a court will consider such matters. Our legal rules deem all persons to be of equal capacity and to robustly stand on their own feet. Experience has shown that in the case of communities, power accumulation by an elite is an ever present danger, and the law is slow to recognise that.

6.2 A SECTION 21 COMPANY

A Company is a group of persons who have come together for the fulfilment of a purpose, and who have

¹¹ It is a contract between the Founder and the Trustees to deal with the assets of the Trust in a particular way. There are special rules dealing with Trusts, and the key is the high degree of integrity and responsibility expected of Trustees by the law. It is an extremely flexible instrument which requires a high degree of care in drafting the Trust Deed which must take into account community dynamics and which must focus on the objectives goals and needs of the specific trust. In other words there is no standard Trust Deed which covers all needs.

¹² Meaning a violation of the law - an offence.

been incorporated as such. A company is a separate legal person to the members who make it up and can own property in its own name, can open bank accounts and conduct business in its own name and can sue and be sued in its own name. It is liable for its own debts and the members or shareholders cannot be sued for the debts of the company - the shareholders or members enjoying what is termed limited liability. It is governed by its Memorandum and Articles of Association which articulates its objectives and the regulations that govern its internal affairs. Perpetual succession means it will continue to exist despite changes in membership.

The Companies Act makes provision for different types of companies, one of them being a Section 21 Company, which is an association not for gain, limited by guarantee. This type of company structure does not have a share capital and the liability of its members is limited by the memorandum of association. It is deemed to be a public company for the purposes of the Companies Act and usually has as its main objectives the promotion of education, arts, sciences charity, religion, recreation or any other social or cultural activity or communal or group interest. Its income and or profits (if any) may only be used to promote the main object, and the company may not pay dividends to its members¹³.

In context of land ownership (Rutsch 1997) argues that only trusts and CPAs are suitable vehicles to own land on behalf of a group. He contends that the Companies Act 61 of 1973 in terms of which a section 21 company may be formed, is essentially a commercial piece of legislation, and is not designed for group land use and occupation. Rutsch concedes that it may however be a convenient vehicle to undertake a housing project as developer, where the land is transferred to the individual homeowners or as an adjunct to a CPA to undertake a specific task, such as the management and control of a commercial undertaking to raise funds for the CPA.

There are a number of legal administrative formalities in the formation and administration of companies. This can be both time consuming and expensive because the Registrar needs such time to ensure that the structure is not a commercial activity disguised as a section 21 company. Its structure can be very complex in that ownership is separate to management - members or shareholders own the

company and the board of directors run it - whilst decision-making is often complex due to the prescribed annual general meetings, notice periods and other formalities. Institutionally companies are more complex structures than say trusts but companies (public ones at least) are more open to scrutiny, for instance a public company is obliged to lodge a certified copy of its annual financial statements with the Registrar of Companies (section 38, Income Tax Act 58 of 1962).

6.3 A COMMUNITY PROPERTY ASSOCIATION

The Community Property Association (CPA) Act 28 of 1996 has been enacted to enable disadvantaged communities to form juristic persons (CPAs) so as to *acquire, hold and manage property* on a basis agreed to by the members of a community, in terms of a written constitution. Such constitution must comply with the procedure and form laid out in the Act. CPAs are to be established in a manner that is equitable, democratic and non-discriminatory, that ensures that members are protected against abuse of power by other members and that there is full accountability to the members by the CPA. The latter issue is important given that the members of a CPA have agreed to have their rights to or in a particular property determined by shared rules under a written constitution.

There are four instances under which a community may form a C.P.A. The first is when the Land Claims Court has ordered restitution (in terms of the Land Restitution Act) on the condition that an association is formed in accordance with the CPA Act. The second is where the community receives from the state property or other assistance by way of an agreement or in terms of the law on condition that they form a CPA. The third is where property has been donated, sold or otherwise disposed of by any other person on the condition that a CPA is formed to receive same. Lastly where a group acquiring land wishes to form an association in terms of the CPA Act. In both the third and fourth instances the Minister must approve the establishment of the association which he/she will do if satisfied that the community is disadvantaged and that it is in the public interest to do so having due regard for the nature and current use of the land. Provision is further made in the Act for existing Trusts, Associations of persons

¹³ It is required (under its constitution) to use funds solely for investment or the furtherance of its objects, and if it is wound up, it is obliged (under its constitution) to give its net assets to a similar association or body.

and Section 21 Companies to register themselves as a CPA. These are referred to as "Similar Entities".

Registration of an CPA is subject to the drafting of a constitution, the adoption of such a constitution by a full meeting of the members and acceptance by the Director-General of Land Affairs that all the aspects of the Act have been complied with. The key principles to be accommodated in the constitution include:

- * Fair and inclusive decision making processes;
- * Equality of membership;
- * Democratic processes in that all members have rights;
- * Fair access to the property of the association;
- * Accountability and transparency;

Finally the association is required to furnish and present documents and information to the Director-General of Land Affairs in order to enable him/her to monitor compliance with the provisions of the related constitution and the Act.

7. KEY CRITERIA TO DIRECT THE DECISION ON THE ULTIMATE INSTITUTIONAL FORM

Whatever democratically elected community structure is chosen, be it a Trust, a Section 21 Company, a Community Property Association or any other structure for that matter, the following key criteria would constitute the minimum requirements to ensure effective operations¹⁴:

Oversight - this means that the community needs to have at its disposal a mechanism to supervise the effective use of its resources based on agreed upon priorities. It suggests an institution with capacity to do the job and funding to employ staff,

Accountability - this requires that the organisation must be held responsible to manage the overall process properly, and in so doing would be required to account to and through the community for the manner in which it conducts its affairs. It is a basic SDO principle that responsibilities must go hand in glove with benefits. The notion of a fair exchange where communities take responsibility to look after the environment¹⁵, the safety of tourists, whilst also looking to prevent poaching of

natural resources is in itself empowering. Lastly it necessitates fulfilling any legal requirements in terms of reporting on income and expenditure;

Democratisation - those entrusted with the strategic management of the organisation would be members of the community democratically elected for the job for a pre-determined period of time and who would be required to establish community needs and priorities;

Management, Control and Regulatory function - Any organisational structure that is to be responsible for resources and accountable to a community to effectively manage such resources on their behalf, must ensure sound administration and financial management and must have appropriate controls and regulations in place. The knowledge that this is so will give comfort to the respective communities as well as private sector investors interested in forming a partnership;. This implies sound:

- * organisational and administrative procedures;
- * accounting and financial management practices;
- * banking processes and expenditure control; and
- * tax management;

Focus and direction - in understanding the needs and priorities of the community, the organisation should be able to give direction in terms of the agreed areas of focus stating clearly what it will and will not do;

Inclusiveness - the organisation would ensure that all members of the community are included in the process and that they benefit from the income derived from the anchor projects.

8 WHAT COMMUNITY STRUCTURES PROPOSED FOR ALLOCATING BENEFITS?

It is clear from the research that far more important than the structure itself is the preparation of the community and its leaders in managing and administering the investment. It is crucial that the entire process is understood and appreciated¹⁶ by the community, those who will act for the communities

¹⁴ Our thanks to S Golden (formerly the CEO of the International Institute for Location Marketing, and now CEO of Gauteng Tourism Authority) for his advice and assistance in this regard.

¹⁵ "Mechanisms should be in place to ensure that the property is not destroyed environmentally. On taking control, the community must be required to abide by certain unconditional requirements e.g. that a proclaimed nature reserve is not used for any other purpose without the normal due process to alter the status" - Peter Wright - Tourism Consultant

¹⁶ There should be a stipulation that no community leader concerned with the management of the community investment, e.g., trustee or director, be allowed to be employed in the business owned by the community in partnership with others as this confuses roles and can lead to problems.

as directors, trustees etc. and those who are engaged in ensuring effective implementation of the SDI process. The situation as it exists on both the Wild Coast and the Maputo Corridor would suggest that either a Community Trust, or a Section 21 Company or a Community Property Association might be the appropriate legal form under the prevailing circumstances.

From an investment point of view, and more especially a structured finance deal with the private sector, tax free status including donations tax free status from the Receiver would be an important advantage¹⁷. The issue of tax exemption is not specifically mentioned in the CPA Act. It is also apparent that the Receiver is becoming more cautious with regard to Trusts because of the ease with which Trust Deeds can be altered after registration. For this reason the Receiver might be less likely to grant exemptions to Trusts than in the past. Notwithstanding the above it is clear then all three of these structures would qualify for tax exemption which further strengthens the argument that if properly structured all of them would be likely to succeed. As a general rule though these three structures are set up to achieve very specific objectives. These are:

CPA:- provides the institutional structure for a land based approach where the intention is to acquire, hold and manage property;

Section 21 Company:- governed under the companies act implies that this form is essentially a commercial entity and should therefore be used when setting up a commercial venture;

Community Trust:- the trust is a vehicle used for managing investments and financial transactions on behalf of a family or community through which other friendly associations such as village committees, woman's groups, youth groups etc. can be affiliated.

There is no doubt that any good lawyer, will be able to use any of these legal institutions, to create a vehicle whereby beneficiaries are enabled to manage the allocation of benefits and/or use and occupy land as a group. This being the case it follows that it is not the legal institution that is the key to the process but rather the social administrative and management rules that will make the venture a success. The ultimate difficulty in deciding which option to choose lies in the fact that many of the requirements of for example the CPA Act¹⁸, which govern the way the CPA is managed and makes its decisions are in direct conflict with the way a tribe is managed and makes its decisions. Decision making in many indigenous communities is consensual and inclusive, which contrasts with the conventional business view that directors or management take decisions, and shareholders operate through general meetings, and do not interact with the management directly. These

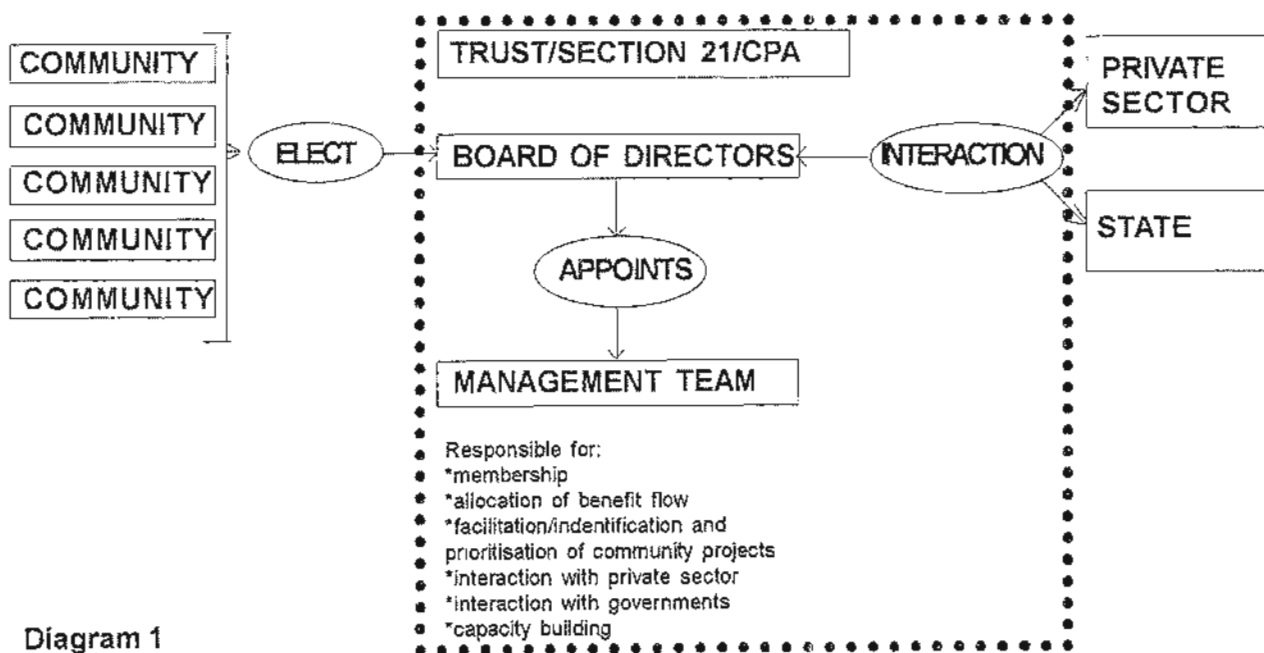


Diagram 1

¹⁷ The obvious advantage of not paying tax apart, structured finance deals become very viable if one is to channel the flow of funds through a non-taxable entity. This has the effect of lowering the cost of capital and is a huge incentive to the private sector. The Receiver allows this form of redistribution as it provides direct benefits to communities without any up front investments from government.

¹⁸ The application of the full intent behind the equitable, democratic and non-discriminatory approach of the CPA could be a threat as it shifts the power base away from the Traditional Leaders.

principles are important for the SDI irrespective of the legal form that is finally chosen.

Within the context of the above, it is proposed that the community elect a Board of Directors/Trustees (every three to five years)¹⁹. The Board will be responsible to appoint a permanent Management Committee to undertake the following key functions: membership, allocation of benefit flows from community enterprises, identification and prioritisation of community projects, interaction with the private sector, interaction with the State, and capacity building. Conceptually the structure and responsibilities for the institutional structure chosen is as indicated in diagram 1.

9 BASIC APPROACH TO IMPLEMENTATION

The implementation process requires the involvement of all the relevant stakeholders and should be supported by a sound communication/information process. The purpose of this exercise is to *firstly* achieve consensus among all the stakeholders so as to form a common vision on the proposed developments; *secondly* to build the structures and tools necessary to operationalise the empowerment models; and *thirdly* to provide the necessary information to (where necessary) educate stakeholders, and to allow effective implementation to take place.

With regard to participation a specific time table must be put in place in which to galvanise the vision and get community support. Core objectives should be set and these objectives should be met and agreed one at a time. Similarly the time frame agreed should be reasonable²⁰, supported by a process to ensure that all reasonable things are done to get people involved and to complete preparation in time, after which, implementation must be allowed to go ahead. Relationship building should not hold the process to ransom.

Some key issues to be considered within the community participation process²¹:

- Communities benefiting from SDI projects must be given the opportunity to say their say at a relatively early stage in the process and should

be empowered by being presented with the real alternatives;

- Community interaction should be balanced between 'open' and 'closed' debates i.e. open forums for ALL interested stakeholders, interspersed with closed meetings with the main representatives. This is for practical efficiency and is not intended to exclude anyone;

- It is essential to be aware of different groupings such as the civics, youth groups, women's' groups and traditional leaders. In many areas there is still tension and power struggles between the traditional leaders and the civics, and one should not be seen to be favouring one at the expense of the other;

- In setting up institutional structures it will be very important for communities to know where the representatives are coming from, and a fairly substantial process of identifying community groups might need to be followed;

- All community representatives also represent their own interests, and most people have some difficulty in separating the two. One should always be aware that somebody who is supposedly championing a 'community position' could well be looking after his/her own interests.

- The process of distribution of income is core to the whole process and can make or break a project if there are perceptions for example that the traditional leaders are siphoning off funds for themselves. In the CAMPFIRE project in Zimbabwe all the money generated is placed into a big basket (so people can see it in there), and is then handed over at a public ceremony where everybody can see who gets what. They also give the community total say over what to do with it - in a good year most of it would go to community projects such as schools or clinics, but in bad years they might decide to hand all of it out to individual families to buy food²²;

- Accountability and responsibility must go with the receipt of benefits. One of the saddest

¹⁹ It is suggested that the Board should include a reasonable spread of advisors with different skills, but mainly business oriented, all the time ensuring that the overall control remains with the community.

²⁰ The term reasonable suggests on the one hand a balance between the perceived speed of the SDI process and a long drawn out process promoted by some participation persons and on the other a reasonable degree of effort/input to get agreement on all issues.

²¹ Our thanks to Peter Norton for his inputs in this regard.

²² Generally speaking the institutional structures proposed for the SDI process (CPA, Trust & Section 21 Company) would not allow for the distribution of cash to individual families unless this was legally defined as one of the core objects and built into the constitution.

legacies of apartheid is the development of the 'handout mentality';

Opportunities for capacity building in managing projects and funds and to source funds for further projects must be optimised.

It is suggested that 'community participation', more especially in the tourism ventures themselves, should be limited to that which makes sense and works. If there are individuals in the 'community' that are articulate, sophisticated and able to interact with business partners, well and good. But if not, then 'community participation' should be seen as a process, with integration of the members of the community into the venture as they acquire the skills and expertise to do so competently and meaningfully. The way the venture is structured should reflect this. This does not mean that the community should be marginalised or sidelined. It means that their participation should be seen as a process inducted over a period of time. Where the stream of benefits can meaningfully be introduced immediately this must be done but where they do not achieve meaningful benefits, delay them until they do.

The benefits which one seeks from the promotion of economic activities for the benefit of 'communities' would, *inter alia*, be the following:

1. The generation of a core economic activity in an area which will enable 'spin off' economic activities to evolve;
2. Land utilisation (measured against other possible uses to which the land can be put) in the form of rental for land - both fixed and linked to turnover, occupancy or the like, or as contribution to capital investment;
3. Ownership or part ownership in the development company (being the company which leases the land and erects the lodge or whatever on it, and leases that to an operating company, if the investment is structured in this way), subject to the condition that the interest of the 'community' in this company is paid for by the community, either by raising the capital from a lending institution, which must be repaid, or by obtaining grant funding from a donor. It has already been argued that it does not make commercial sense for the 'community' to get the shares at no charge, neither does it engender a feeling of real ownership;
4. An opportunity to invest in the operating company at market related costs. This should be available to both the 'community' and individuals in

the community. This can be achieved by creating options or simply through ordinary business practice.

5. Job opportunities and opportunities to acquire skills to enter the job market. This includes management and business/financial/economic skills which can pass through into the 'communities' own business activities.

In considering the *institutional form* the agreed upon objectives need to be synthesised and translated into a structure capable of delivering effectively against the objectives. Legal and financial support would be required to do this with care being taken to ensure that the final product is a reflection of, and stands supportive to, the needs of the particular community it is intended to serve. This structure would of necessity need to be measured against the existing tribal system which is well embedded in the collective and individual psyche's of those who live by it. The implication of this is an institution that recognises and respects the tribal way of doing things, including its decision making methods, and which therefore poses no threat to the tribal system and its leadership. At the same time there should be adequate accountability and mechanisms which can be used by members to obtain relief where their rights and interests are ignored, threatened or abrogated. And because a new institution is being created, mechanisms that induce democracy and equality can be provided within the provisions of the new constitution(s).

Finally the *communication/interaction* process within the SDI approach, necessitates involvement from the key stakeholders being National Government, Provincial Government and their related line departments or statutory bodies, co-ordinating structures set up to manage the process at provincial and/or inter-provincial level, Local Government in and around the areas of SDI activity, local communities and ultimately the Private Sector from whom investment will be sourced.

10. CONCLUSIONS

It is clear from the above that there are three possible options in terms of institutional structures that could manage the allocation of benefits to communities. These are the Communal Property Association (CPA), the Community Trust, and the Section 21 Company. The final decision of which way to go requires legal and financial support in terms of setting up the form and the constitution, both of which must reflect the objects of the organisation.

Secondly there should be provision in the founding documents which allow for the adoption of rules and regulation etc. and for their amendment from time to time, by a process which includes democratic and participatory procedures, but which is simpler than the process to adapt the founding agreement itself.

Thirdly it is a lot simpler to establish a Community Trust than it is a CPA or a Section 21 Company. In the circumstances on many of the SDI anchor projects it might not be possible to go through the procedures required to establish a CPA or Section 21 Company because of time constraints. In such cases a Trust could be established with a concomitant application to the Minister under section 2(3) of the Communal Association Act to be accorded "similar entity" status, so that the principles, benefits and procedures of the CPA Act will be made applicable to the Trust.

Fourthly the nature of the tribal system must be included into the broader process to ensure effective management and allocation of benefits.

Lastly exemption from tax in terms of S 10(1)(cB) of the Income Tax Act of "receipts and accruals of any company, association or trust, with the sole or principal objective of nature conservation activities" (this is the focus of the majority of our current SDI tourism anchor projects) provides good opportunities for structured finance deals and consequently for private sector involvement.

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