



International E-mail Conference on Irrigation Management Transfer

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WUA Legislation Country Profiles: SOUTH AFRICA

Constitutional framework Water resources management is a responsibility of the central Government.

1. Name of organization

Water User Association (WUA)

2. Purpose

Irrigation, drainage, subterranean water use, livestock watering.

3. Legal status and capacity

Body corporate.

WUAs have the powers of a natural person of full capacity. Therefore, they can enter into contracts, sue and be sued.

4. Establishment

The Government (Ministry of Water Affairs and Forestry), on the proposal of an interested person or on its own initiative, establishes a WUA, gives it a name, determines its area of operation and approves its statutes.

The law regulates the procedure for establishment: an interested person, with possible assistance of the Government in drafting the proposal, presents a proposal to the Government containing information about the WUA to be established, including, among others, name, purpose, statute and list of members. Then, the Government publishes a notice in the Gazette setting out the proposed establishment of the WUA and calling for written comments on it. Finally, after having considered any comments received, the Government, by notice in the Gazette, establishes the WUA.

The costs of the procedure can be charged to the WUA, once established, or to the person proposing its establishment.

5. Membership

Voluntary

5.1 Eligibility criteria

Procedures for admitting new members and for terminating membership shall be stated in the constitution of the WUA.

Any application for new membership must be addressed to the Management Committee and must then be considered and approved unless there is a good reason to refuse it.

A member may relinquish membership only with the approval of the Management Committee, which may not be unreasonably withheld.

The Government, after consulting with a WUA, can direct that a person be admitted as a member of the WUA on such conditions as are “fair and equitable”.

5.2 Rights and duties of members

To be specified in the constitution of the WUA.

Criteria for voting rights proposed in the Model Constitution are: one vote per water use entitlement, or a pro-rata number of votes in proportion to the quantity of water authorized under a particular entitlement, or one vote for every five hectares that can be irrigated in terms of the member's entitlement, with a possible limit of 10 votes per member.

The liability of members is limited to the amount of unpaid charges and interest thereon owed to the WUA.

6. Internal structure

All members elect a Management Committee, which may appoint a Chief Executive Officer and determine its mandate and functions.

Details about the number of members of the Committee and on the term of their office shall be indicated in the WUA's constitution.

At least 30 days' notice of elections must be given to all members of the WUA.

The Management Committee must present and discuss with all members of the WUA the Annual Report containing an audited financial statement and an account of its activities during the year.

The Management Committee must maintain an updated voters' list.

Statutes. The Act provides for a "Model Constitution" for use by WUAs.

7. Functions, Powers and Rights

7.1 Functions

To be specified in the constitution.

The Model Constitution lists as possible functions of WUAs, among others, regulation of the flow of any watercourse, the construction, purchase, operation and maintenance of waterworks necessary for drainage and irrigation and the supervision and regulation of the distribution of water resources according to the relevant water use.

By implication, WUAs can also operate government-owned infrastructure.

Dispute settlement. No specific provision

7.2 Powers

Levying and collection of assessments WUAs may assess charges on members – according to the pricing strategy for water use set by the Government. They can recover the charges from either the owners of the land or from the person to whom the water is supplied.

WUAs are required to compile an assessment roll, with all the information on the charges that the WUA has decided to levy, for the information of members.

The Government can direct WUAs to recover any charges on water use set by the Government and allow them to retain a portion of all charges recovered. In this case, the WUA is jointly and severally liable to the State with the water users concerned.

Imposition of fines No specific provision

Others: The Government may delegate to WUAs, in writing and subject to conditions, some of its powers. These powers are not specified. However, it is stated that the following powers may not be delegated: power to make a regulation, power to authorize WUAs to collect water charges, power to appoint members of the Water Tribunal and the Governing Board of a catchment management agency.

The Government may delegate to WUAs, in writing and subject to conditions, the power to expropriate property for a public purpose or in the public interest.

7.3 Rights

Water rights

In case of abstraction and storage of water, licences and authorizations may be granted under the condition that the licensee becomes a member of a WUA.

Water use authorizations can be transferred on a temporary basis and on conditions determined by WUAs or by other responsible authorities.

By implication, WUAs can hold water rights.

Rights in the infrastructure WUAs can construct, purchase or otherwise acquire, control, operate and maintain irrigation infrastructure necessary for drainage and for the supply of water for irrigation or other purposes.

The Government may transfer any government irrigation infrastructure to WUAs and the Ministry of Finance may direct that no transfer duty or other taxes be payable.

Rights of way WUAs can appoint authorized persons to enter and inspect property for a number of purposes; for example to clean, repair, maintain, remove or demolish any government waterworks operated by a WUA.

8. Financing

Sources of Income Revenue from the collection of charges. WUAs can raise loans, including bank overdrafts. The Management Committee decides on raising a loan but it must give notice of details about the loan to all members of the WUA at least 21 days before the date of the discussion. A quorum of two thirds of members of the Committee is required to take a decision on raising a loan.

9. Government role

The Government establishes and disestablishes WUAs.

The Government can issue directives which are binding on the WUAs regarding the exercise of any of the WUA's powers and on the admission of new members, with prior notice and allowing the WUA to comment. All directives shall be published in the Gazette.

Under the circumstances listed in the Act (art.96), the Government can take over a power or duty of a WUA, or appoint a person to do so.

10. Dissolution

The Government, by notice in the Gazette, disestablishes a WUA, subject to public notice, stating its intention to disestablish it and after having considered all comments received. Reasons for disestablishment can be: 1. circumstances provided for in the constitution of the WUA (the Model Constitution indicates that a special general meeting of all members can pass a resolution for dissolution of the WUA itself, with a two-thirds majority and a confirmation vote after four weeks); 2. if the functions of the WUA are passed, by agreement, to another water management institution; 3. if disestablishment is in the best interest of the WUA or of its members; 4. if an investigation of the affairs or the financial position of the WUA shows that disestablishment is appropriate; 5. if the Government has taken over a duty or power of the WUA as a result of dissensions among the members of the Management Committee; 6. if the WUA is no longer active or effective.

Winding up of affairs of a disestablished WUA should be provided for in each WUA's constitution; if it is not, the Government shall appoint a person to carry out the task.

11. Federation of Associations

No specific provisions

References

Legislation

National Water Act (No. 36 of 1998). An Act to provide for fundamental reform of the law relating to water resources; to repeal certain laws; and to provide for matters connected therewith, 6 December 1999, is available in the FAOLEX database at URL <http://faolex.fao.org/faolex>