

THE PROMOTION OF GOOD GOVERNANCE THROUGH THE ERADICATION OF THE NOTION OF CROSS-BOUNDARY MUNICIPALITIES

E.J. van Rooyen
University of Pretoria

K. Naidoo
University of Pretoria

- Byars, L. & Zahra, S.A. 1996. *Strategic Management*. Chicago: Irwin
- Davids, F. 1993. *Strategic Management Concepts*. Eighth edition. New Jersey: Prentice-Hall
- Davids, I., Theron, F. and Maphunye, K.J. 2005. *Participatory Development in South Africa-A Development Management Perspective*. Pretoria: Van Schaik
- Du Toit, D.F.P & Van der Waldt, G. 1999. *Public Administration and Management – The Grassroots*. Second edition. Kenwyn: Juta and Company Ltd.
- Hammer, M. & Champy, J. 2003. *Understand and Contrast Continuous Process Improvement and Business Process Re-engineering*. Available from: <http://www.prosci.com/bpr-benchmarking.htm>
- Lynelle, J. 1997. *Integrated Development Planning – A Handbook for Community Leaders*, Braamfontein: Plact.
- Mitchell, L., Timoney, H. & Train, L. 2003. *Business Blue-Book of South Africa*. 64th edition. Cape Town: National Publishing (Pty) Ltd.
- Pinchot, G.B. & Pinchot, E. 1994. *The End of Bureaucracy and the Rise of Intelligent Organization*. San Francisco: Berrett-Koehler Publishers.
- Prosci's *Best Practices in Business Process Re-engineering and Process Design*, <http://www.prosci.com/bpr-benchmarking.htm>
- Robinson, P. 2000. *Strategic Management- Formulation, Implementation, and Control*. Seventh edition. Malaysia: McGraw-Hill.
- Rodriges, C. 1996. *International Management – A Cultrual Approach*. Minneapolis: West Publishing Company.
- South Africa (Republic). *Municipal Finance Management Act, 2003* (Act 56 of 2003). Pretoria: Government Printers.
- South Africa (Republic). *Public Finance Management Act, 1999* (Act 1 of 1999) as amended by Act 29 of 1999. Pretoria: Government Printers.
- Vatala, S.W. 2006. *Financial Autonomy and Viability of Local Government for Cost Effective and Efficient Delivery of Services by Selected Municipal Authorities in South Africa*. Unpublished thesis. Port Elizabeth: Nelson Mandela Metropolitan University.
- Wade, J. 1999. How to Make Re-engineering Work. *Harvard Business Review* 71, number 6. November-December.

ABSTRACT

In terms of the Constitution of the Republic of South Africa, 1993 provincial boundaries were formed by using the erstwhile magisterial districts, which were created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), as building blocks. There were 843 municipalities that were created in terms of that dispensation, and suffice to say, these municipal areas that were formed were based on, amongst other things, skewed settlement patterns, and great spatial separations and disparities between towns, townships and urban sprawl.

The first democratically held municipal elections in South Africa on 5 December 2000 brought to an end the interim system of local government and ushered in a democratic and developmental system based on the Constitution of the Republic of South Africa, 1996. The process of demarcation of municipal boundaries had subsequently resulted in the establishment of 284 municipalities, with 16 cross-boundary municipalities affecting five provinces. Since the establishment of the cross-boundary areas, numerous problems were experienced in administering these municipalities, such as the implementation of differing legislation pertaining to health and traffic; the co-ordination of housing and infrastructure projects; the finalisation of integrated development plans; and differing financial management systems, significantly compromising good governance. Also, the problems pertaining to provincial boundaries were not limited to the cross-boundary municipalities, and most notable, were the problems around the Eastern Cape / KwaZulu-Natal provincial boundary. Consequently, legislative amendments had to be effected to resolve this challenge, and eradicate the notion of cross-boundary municipalities.

In showing how good governance was to be promoted and achieved with the incorporation of affected areas into a single province, this paper therefore deals with the challenges faced in administering cross-boundary areas; the development of legislation to facilitate the eradication of such areas, and government's decision in this regard will then be discussed; and lastly, the paper elaborates on the development of implementation protocols in terms of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005) by the affected provinces.

INTRODUCTION

On 17 February 2006, it was stated in the Mail and Guardian newspaper that the African National Congress supported the decision to do away with the concept of cross-boundary municipalities and redraw provincial boundaries accordingly, understanding that the cross-boundary arrangement hampered effective governance in these areas. The ruling party further stated that the subsequent re-demarcation of municipalities to give effect to the above, whether metro, local or district, needed to be informed by what was the most suitable administrative arrangement for the effective delivery of local services. The African National Congress also urged that all stakeholders have an opportunity to make a contribution on this matter, and warned against "provincial chauvinism". These utterances were made in the light of legislation that was passed on 23 December 2005 that did away with the notion of cross-boundary municipalities, and the subsequent uprising of certain communities in some of the cross-boundary municipalities.

According to Draper (2000:3) there are various definitions of governance, but that there was emerging consensus that the movement towards good governance must include initiatives to strengthen the institutions of government and civil society with the objective of making government more accountable, more open and transparent; more democratic and participatory; and promoting the rule of law. It is further stated that in promoting governance, a range of societal relationships must be addressed, which includes the relationship between governments and citizens; the relationship between politicians and public servants; the relationship between the spheres of government; and the relationship between the legislature and the executive.

In order to fully understand the reasons for the establishment of cross-boundary municipalities in the first place, it must be noted that the boundaries of the nine provinces of South Africa were established in terms of the *Constitution of the Republic of South Africa*, 1993. Schedule 1 of that Constitution defined the areas of the different provinces by specific reference to magisterial districts that were created in terms of the *Magistrates' Courts Act*, 1944 (Act No. 32 of 1944). In most cases an entire magisterial district was incorporated into a particular province, although in certain instances, portions of one magisterial district were incorporated into one province and other portions thereof were

incorporated into another province. The outer boundaries of these clustered magisterial districts then formed the boundary of a province, and by implication, meant that provincial boundaries were based on the boundaries of magisterial districts, rather than by reference to municipal boundaries.

The 843 municipal areas that were created in terms of that dispensation did not enable municipalities to provide democratic and accountable government to its citizenry, nor provide services to the communities in an equitable and sustainable manner. The boundaries also retarded the promotion of social and economic development, a safe and healthy environment, effective local governance, and integrated development.

This had given rise to some difficulties in practice, particularly in relation to the rational and effective organization of service delivery. It has particular significance in terms of the obligations imposed upon provincial governments in relation to local government and related matters within the respective provinces. It is therefore clear that the municipal boundaries, and consequently the provincial boundaries that were determined in terms of the *Constitution of the Republic of South Africa*, 1993 were dysfunctional and not based on any developmental criteria.

The *White Paper on Local Government* (1998:87) acknowledged the above shortcomings, and stated that "many existing boundaries irrationally divide settlements, and in so doing disempower municipalities that seek to plan and provide for the needs of communities within the integrated social and economic area of the settlement. To empower municipalities to operate effectively, the most appropriate geographical extent within which a municipality should exercise its particular powers and functions has to be revisited."

Section 155(3) of the *Constitution of the Republic of South Africa*, 1996 requires that national legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority, appropriate procedures for the proper functioning of the authority, and demarcation criteria for the determination of municipal boundaries. To provide for the above condition, the *Local Government: Municipal Demarcation Act*, 1998 (Act No. 27 of 1998) was enacted, and which consequently established the Municipal Demarcation Board. The legislation further sets out various objectives and criteria to be applied, and specific factors to be taken into account, which includes provincial boundaries as well as magisterial districts.

The drawing of new municipal boundaries was the first step in the further transformation of local government. Much was needed to be done in addition to demarcation to ensure that municipalities had administrations that were properly organised, had stable and adequate sources of income and had well-functioning neighbourhood structures to encourage community participation. In essence, the Municipal Demarcation Board was tasked to consider the boundaries of the 843 municipalities which were created after 1995 and 1996 municipal elections, and which led to the "interim" phase in the transition process. These municipalities were the product of the second phase of the transition to local government, the first being the establishment of appointed "pre-interim" municipalities.

Prior to the 5 December 2000 elections the *Constitution of the Republic of South Africa*, 1996 was amended, and other legislation was enacted, to provide for the demarcation and establishment of cross-boundary municipalities. Following the municipal elec-

tions, 16 cross-boundary municipalities were established affecting five provinces. Since the establishment of the cross-boundary areas, numerous problems were experienced in administering these municipalities. Willemse (2006) states that the creation of such municipalities was necessary to bring interdependent people and economies on different sides of a provincial boundary together in one municipality, and in implementing this arrangement many service delivery and other problems surfaced.

Several attempts were made to resolve the issues, but with little progress. The problems pertaining to provincial boundaries were not limited to the cross-boundary areas, and extended to areas where an entire municipality was wholly located in another province. Most notable, were the problems around the Eastern Cape / KwaZulu-Natal provincial boundary. One of the main challenges experienced with the administration of municipal areas that straddled provincial boundaries was in the daily management of the cross-boundary municipalities.

The power of the Municipal Demarcation Board to determine municipal boundaries does not include the power to determine provincial boundaries. This is so because the power to alter provincial boundaries is expressly reserved for Parliament, which is required to comply with stringent procedures in order to effect an alteration of boundaries. In addition, section 25(e) of the *Local Government: Municipal Demarcation Act, 1998* (Act No. 27 of 1998) expressly makes the power of the Municipal Demarcation Board subject to provincial boundaries. It is quite clear that if the demarcation powers of the Municipal Demarcation Board are unlimited, they are inconsistent with those conferred on Parliament to alter provincial boundaries. Once provincial boundaries have been redefined, it is the task of the Municipal Demarcation Board to demarcate municipal boundaries in terms of the *Local Government: Municipal Demarcation Act, 1998* (Act No. 27 of 1998) – Constitutional Court (2006:Case CCT 73/05:49).

Consequently, legislative amendments had to be effected to resolve the challenges associated with the administration of cross-boundary municipalities, and to alter provincial boundaries.

OPTIONS TO ADMINISTER CROSS-BOUNDARY MUNICIPALITIES AND CROSS-BOUNDARY AREAS

According to the Department of Provincial and Local Government and Municipal Demarcation Board (2000:2), in Jan Kempdorp the provincial boundary between the North West and Northern Cape Provinces dissected the town, and in Benoni and Etwatwa, the provincial boundary between the Gauteng and Mpumalanga Provinces split the local community, not only complicating the local government transformation process, but creating serious difficulties for people living in the same locality who are subject to the laws of two different provinces.

The obvious way to have alleviated such a situation would have been to alter the relevant provincial boundaries, but because of political difficulties with boundary adjustments, section 90 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) provided for the establishment of a single municipality in an area that

straddled a boundary and regulated the exercise of provincial power in that area. In terms of that provision, a cross-boundary municipality could either be administered jointly by the relevant provinces, or the governments of the relevant provinces could enter into an agreement providing for an arrangement whereby the functionaries of only one of the affected provinces exercised executive authority in the entire cross-boundary area. These options are discussed in greater detail hereunder.

The Joint Administration Model

The Department of Provincial and Local Government and Municipal Demarcation Board (*ibid.*) state that the establishment of a municipality is an involved process and requires the MEC for local government to exercise various discretionary powers in terms of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), the most important of which are contained in sections 12, 14, 18(3) and (4), 20(3) and 85. Other powers are also conferred on MECs for local government in relation to municipalities once they have been established, for instance sections 48(1), 55(1), 81, 86, 87(1), 88(3) and 91.

In terms of section 90(2)(b) of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), the MECs for local government of the affected provinces must jointly exercise executive authority with regard to a cross-boundary municipality, except where the provincial governments have entered into an agreement which provides for an alternative arrangement. If a provision empowers the MEC to make a determination in relation to a municipality by notice in the *Provincial Gazette*, the two MECs must in the case of a cross-boundary municipality agree on the determination and then publish it as a joint decision in the *Provincial Gazettes* of both provinces.

The joint exercise of executive authority by MECs for local government does not only pertain to the provisions of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) but also in terms of other provincial and national legislation which confers executive authority with regards to a municipality on a MEC for local government. Also, the joint exercise of executive authority only applies to the MECs for local government and not to other MECs and functionaries. If provinces affected by a cross-boundary municipality opted for this system, the other functionaries of these provinces would have to continue exercising their statutory powers in the areas under their jurisdiction.

The result would therefore be that legislation that is the responsibility of the local government MECs, would be jointly administered in the cross-border area whilst other provincial legislation would have to be administered in the area by the two provinces separately. The legislation of the different provinces would still apply to the separate provincial segments of the cross-boundary area. This model of administering the cross-boundary area therefore requires consensus and uniformity between the MEC's, as far as local government matters are concerned.

It is clear that it would be difficult to implement this arrangement in the cross-boundary area, resulting in communities being confused as to which sector department from which provincial must render services to them, and which provincial government should be responsible in that regard. The Commonwealth Foundation report "Citizens and

Governance: Civil Society in the New Millennium" cited by Draper (2000:7) state that "Citizens want and expect efficient and effective performance from their governments. They want public institutions to provide for the essential services that assure the economic, social and physical security of all citizens."

The Single Administration Model

The joint administration model does not apply where the two affected provinces enter into an agreement in terms of section 90(3) of the *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998). Such an agreement may provide for an arrangement whereby the functionaries of only one of the affected provinces exercise executive authority in the whole cross-border area. In terms of such an arrangement:

- The functionaries of the one province may, on an agency or delegation basis, exercise powers in the area on behalf of the functionaries of the other province; and
- The legislation of the one province may, for the sake of uniformity, be applied to the cross-border area as a whole.

To apply the legislation of the one province to the cross-boundary area as a whole, would require special legislation enacted by the legislature of the other province whereby that province "incorporates" the laws of the administering province in that part of the area that falls within its jurisdiction. The incorporating legislation would identify the laws of the administering province to be applied in the area by way of a reference to the title and number of the law and contain a statement to the effect that the province adopts these laws as its own for the relevant area, with no need to re-enact the full text of the other province's laws.

According to the Department of Provincial and Local Government and Municipal Demarcation Board (2001:5) this model is wider and more flexible than the joint administration model as it could be applied, apart from the MECs for local government, also to other provincial MECs and functionaries depending on the terms of the agreement between the two provinces. "Executive authority" in this model includes any executive authority that may be exercised by the province in the cross-border area, for example health or transport.

This model requires complete consensus between the two provinces and a willingness of the one province to relinquish a measure of political and executive power in the area concerned. Relinquishing legal control over cross-boundary areas of a province could result in the reluctance of the province that has given up its authority, to allocate proportionate funds to that area of its province, seeing as it no longer has control. The ceding of authority to one administration may also involve the transfer of records including contractual agreements, and electronic systems and databases, which could have implications for projects that were not finalised.

While the legislation had provided for "mechanisms" to administer the cross-boundary areas, the challenges that were present made it extremely difficult to implement the options available. This could have been attributed to "the fact that overwhelming attention

has been paid to the involvement of provinces and the national government in intergovernmental relations, while local governments have been neglected and even to a large extent ignored. This is clearly illustrated in the lack of structures and processes and processes within the provinces to involve local governments in policy matters." (De Villiers, 1997).

CHALLENGES EXPERIENCED WITH THE ADMINISTRATION OF CROSS-BOUNDARY MUNICIPALITIES

While the *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998) provided the above approaches to deal with the cross-boundary municipalities, the quantum and uniqueness of the problems experienced with the administration of these areas were manifold. Challenges extended to most line function departments and sectors within the cross-boundary areas, and is discussed in greater detail hereunder.

Provincial Legislation

Many of the provinces have different legislation for similar functions and if both laws need to be administered in a cross-boundary municipality, this was confusing, duplicative and costly. The application of two different sets of provincial legislation within the same municipal boundary is not conducive for good governance and administration. To administer the different provisions, parallel administrative procedures need to be available, resulting in the duplication of, amongst other things, staff and functions.

Housing

Priorities and policies pertaining to housing projects and the subsidy of such projects differ between provinces thereby impacting on housing delivery. Also, in Gauteng for example, applications to remove a restrictive condition from a title deed to a property are dealt with by municipalities, while in the North West, similar legislation was administered by the province and an applicant would have to seek approval from the provincial government.

Health

Most provinces have different legislation pertaining to health and have set up different administrative systems for the delivery of district health services, and which could result in different health legislation and administrative systems will apply within a single municipal area. According to the Department of Provincial and Local Government and Municipal Demarcation Board (2001:9) the *Gauteng District Health Services Act*, 2000 (Act No. 8 of 2000) provides that the district municipalities will be responsible for the District Health System and that the local municipalities will undertake most of the implementation. This approach was chosen because of the adequate capacity available at local level. On the other hand, the legislation applicable in the North West Province supports a different, provincial model, and stipulates that funds will not be channelled to the district municipality.

Furthermore, funding for health comes from two different provinces and each province's subsidy must be used within its provincial area of jurisdiction. This hampers the distribution of resources by the municipality and affects the rendering of equitable services to all residents.

Roads, Transport and Traffic

Policy relating to transport varies between provinces. For example, the erstwhile Pretoria Metropolitan Municipality was a transport authority, whereas this function was undertaken at provincial level in the North West Province.

Most provinces have different legislation relating to traffic, and a cross-boundary municipality has to administer both laws, resulting in confusion for road users in the municipality.

Other problems include:

- Permission to erect road signs must be sought from both provincial departments;
- Different vehicle registration number systems and tariff structures for services rendered;
- Traffic officers employed within one cross-boundary municipality end up reporting to two provinces with two different systems;
- There are disparities in salaries that are paid to officials within the cross-boundary area;
- Traffic fines will be dealt with by two different magistrates courts, depending on where the offence occurred; and
- The issuing of taxi licences for taxis operating in the cross-boundary municipalities could be uncontrolled if the licensing authorities are based in different provinces.

Integrated Development Plans

A cross-boundary municipality will need both provinces to "approve" its Integrated Development Plan ("IDP"). The co-ordination and integration of programmes and budgets of two different provinces into the single IDP may be extremely difficult where priorities for, and progress with IDPs differ from province to province.

At the level of town planning, there are different regulations and procedures that apply for decision-making in different provinces, and this means that officials in a cross-boundary municipality need to be able to process applications based on the regulations of each province. Applications in a cross-boundary municipality also need to be forwarded to both provinces (and circulated to all the relevant departments) for comments, resulting in considerable duplication and a waste of time.

Intergovernmental Grants and Funding

For all provincial functions where grants or funding is received, a cross-boundary municipality will need to have duplicated financial systems or develop more complicated financial accounting systems to "ring fence" funds received from each province, provide the necessary progress reports in the different formats, monitor two different sets of

expenditure, and so on. An assessment of the funding implications, for example a project or programme funded by a donor agency, may be province specific. The receiving province may not be part of the donor programme and therefore the funding would cease at the point of transfer. Alternatively, changes would need to be made to the funding agreement at national level, which in some cases would be a lengthy and difficult process. Depending on the importance of the project, it may be necessary in such cases for the province to continue funding from their own reserves.

Powers and Functions

The *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998) provides an appropriate division of powers and functions between municipalities when an area has both category A and B municipalities. In some instances, all local municipalities within a district could be authorised to perform the water and sanitation function, whereas in an adjacent district there are no authorisations. The re-determination of municipal boundaries could result in a local municipality, which is authorised to perform the water and sanitation function being absorbed into a district where there are no authorisations, and visa-versa. This may have an impact on service delivery and or the management of the function in the district. The implications would be more serious in cases where a local municipality is moved from the district with no authorisations into a district where all the locals are authorised. In such instances, the "receiving district" would need to render the service, or the local would need to be authorised to perform the function.

General Comments

Different standards and levels of service delivery in adjacent provinces; different legislation for similar functions; duplication in municipal administrations to administer functions; the same function being performed in one province by the provincial government and in the other province by the municipality, rendered the system of joint administration difficult. According to the Department of Provincial and Local Government and Municipal Demarcation Board *ibid.* if consideration was given to the problems experienced prior to the elections to finalise agreements, and other issues such as the concurrence on the boundaries of cross-boundary municipalities, and the establishment notices, it would be much more difficult to get a workable administrative and legislative system in place for sound municipal government, administration and service delivery in these areas.

Also, it must be accepted that an agreement at provincial level will not necessarily be accepted at local level, and could require intervention from national departments. Further, provinces have vested interests and to reach agreement on all the issues raised, would take a lot of time, energy and financial resources. The different systems, legislation, standards, and the differences between provinces where a particular function is performed locally in one province and provincially in another province, created specific challenges. Many permutations of governance could be created with the possibility that each Department at a national and provincial level could decide on its own governance arrangement.

The outcome of the above was that it would be difficult to create a set of agreements between provinces which completely dealt with all of the issues. In addition, the application of two different sets of provincial legislation within the same municipal boundary is not conducive for good governance and administration.

Extensive work would also be required to audit laws to identify all the legislation applicable in a cross-boundary area, and to identify the differences between similar pieces of legislation. It was imperative that all details of laws, or sections of laws, that create administrative problems in cross-boundary areas be identified and specific administrative arrangements be negotiated bilaterally by the respective sectoral MECs. Consensus would also be required on the application of legislation in a cross-boundary area, and new provincial legislation would need to be enacted.

Practical re-organisation of functions, systems, staff, infrastructure and funding to give effect to the agreements between the relevant provinces, would be required. Such re-organisation would not only affect a single department (local government) but all other departments that had an interest in local government matters. Uncertainties and delays during the negotiation process, the enactment of provincial legislation, the drafting of agreements and the practical application of agreements could adversely affect service delivery.

Given the above situation and problems surrounding the administration of cross-boundary municipalities, the Presidents' Co-ordinating Council and subsequently Cabinet decided as follows (Mufamadi, 2002):

- the notion of cross-boundary municipalities be done away with;
- provincial boundaries be reviewed so that all municipalities fall in one province or the other;
- the Department of Provincial and Local Government undertakes investigations and develop an implementation plan that will allow affected municipalities to be located within the jurisdiction of one province; and
- the *Constitution of the Republic of South Africa*, 1996 be amended to provide for boundary changes in respect of the areas affected by cross-boundary municipalities.

LEGISLATION DEALING WITH THE ERADICATION OF THE NOTION OF CROSS-BOUNDARY MUNICIPALITIES

In order to implement the resolutions adopted by the President's Co-ordinating Council and Cabinet, the *Constitution of the Republic of South Africa*, 1996 had to be amended to re-determine the geographical areas of the nine provinces of the country. Secondly, legislation had to be developed to repeal provisions in relevant legislation that provided for the establishment / administration of cross-boundary municipalities, and to provide for consequential matters as a result of the re-alignment of former cross-boundary municipalities, and the re-determination of the geographical areas of the provinces.

The above was facilitated through the enactment of the *Constitution Twelfth Amendment Act* of 2005, and the *Cross-boundary Municipalities Laws Repeal and Related Matters Act*, 2005 (Act No. 23 of 2005), respectively.

Constitution Twelfth Amendment Act of 2005

The *Constitution Twelfth Amendment Act* of 2005 re-determines the geographical areas of provinces in accordance with the demarcated areas of municipalities as reflected by maps published by the Municipal Demarcation Board. At the same time, this amendment repeals the empowering provision in section 155(6A) of the Constitution of the Republic of South Africa, 1996 which had provided for the establishment of cross-boundary municipalities. Consequently, the geographical areas of provinces reflected in the *Constitution Twelfth Amendment Act* of 2005 does not provide for any cross-boundary municipalities, and provides for all municipalities to be located in one province only.

The annexure indicates the areas / municipalities that were affected in this regard, and the decision taken with regards to which province the cross-boundary areas have been located. This paper is confined to indicating the decision taken by government as to how cross-boundary municipalities and cross-border areas were clustered to form provinces, and those not deal with the merits of the actual decisions taken in this regard.

Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (act no. 23 of 2005)

The *Cross-boundary Municipalities Laws Repeal and Related Matters Act*, 2005 (Act No. 23 of 2005) must be read together with the *Constitution Twelfth Amendment Act* of 2005 due to the fact that legislation amending the Constitution may not include provisions other than constitution amendments and matters connected with the amendments.

The *Cross-boundary Municipalities Laws Repeal and Related Matters Act*, 2005 (Act No. 23 of 2005) repeals all provisions in the *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998) providing for cross-boundary municipalities, as well as repeals the following legislation in their entirety:

- *Local Government: Cross-boundary Municipalities Act*, 2000 (Act No. 29 of 2000);
- *Re-determination of the Boundaries of Cross-boundary Municipalities Act*, 2000 (Act No. 69 of 2000); and
- *Re-determination of the Boundaries of Cross-boundary Municipalities Act*, 2005 (Act No. 6 of 2005).

Thus, all provisions enabling the existence of cross-boundary municipalities had been repealed. The *Cross-boundary Municipalities Laws Repeal and Related Matters Act*, 2005 (Act No. 23 of 2005) then further provides for consequential matters as a result of the re-alignment of former cross-boundary municipalities, the re-determination of the geographical areas of provinces, as well as for:

- Demarcation of newly established municipalities in a province; and
- Deemed established of new municipalities in a province.

Through this process, the re-alignment of the affected municipalities in the KwaZulu-Natal and Eastern Cape Provinces affected by the re-aligned provincial boundary are also addressed. The further result is that the:

- Newly established municipalities are regarded as the successor in law of previous cross-boundary municipalities; and
- Municipal Demarcation Board and the Independent Electoral Commission may take any steps in respect to these municipalities to prepare for local government elections.

Further provision is also made for the continued validity of licences, appointments, rights, etc. in areas relocated in a receiving province and issued or obtained in a releasing province. Also, an MEC for local government may, by amending an applicable notice issued in terms of section 12 of the *Local Government: Municipal Structures Act, 1998* (Act No. 117 of 1998), regulate any legal, practical or other consequences of the relocation of an area relocated in so far as such regulation is necessary to ensure the proper functioning of a municipality in whose area of jurisdiction such relocated area falls.

In order to provide for transitional arrangements regarding the transfer of provincial functions, assets and liabilities, the *Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005* (Act No. 23 of 2005) further provides that as soon as the reconfigured boundaries of the provinces take effect, any function exercised or service delivered by the provincial government of the releasing province in the area in question, must be exercised or delivered by the provincial government of the receiving province. Any asset, right, obligation, duty or liability associated or connected with the exercise of such function or service vests in the provincial government of the receiving province.

The *Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005* (Act No. 23 of 2005) also provides for the conclusion of an implementation protocol between affected provinces, in terms of section 35 of the *Intergovernmental Relations Framework Act, 2005* (Act No. 13 of 2005).

Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005)

In its long title and preamble, the *Intergovernmental Relations Framework Act, 2005* (Act No. 13 of 2005) provides for the establishment of a framework for the national government, provincial governments and local governments to promote and facilitate intergovernmental relations; to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes; and to provide for matters connected therewith.

In terms of section 35(3) of the *Intergovernmental Relations Framework Act, 2005* (Act No. 13 of 2005) an implementation protocol must—

- identify any challenges facing the implementation of the policy, the exercise of the statutory power, the performance of the statutory function or the provision of the service and state how these challenges are to be addressed;
- describe the roles and responsibilities of each organ of state in implementing policy, exercising the statutory power, performing the statutory function or providing the service;

- give an outline of the priorities, aims and desired outcomes;
- determine indicators to measure the effective implementation of the protocol;
- provide for oversight mechanisms and procedures for monitoring the effective implementation of the protocol;
- determine the required and available resources to implement the protocol and the resources to be contributed by each organ of state with respect to the roles and responsibilities allocated to it;
- provide for dispute-settlement procedures and mechanisms should disputes arise in the implementation of the protocol;
- determine the duration of the protocol; and
- include any other matters on which the parties may agree.

It is clear from the above provisions in the *Intergovernmental Relations Framework Act, 2005* (Act No. 13 of 2005) that an implementation protocol had to be very comprehensive and had to provide for a myriad of issues in ensuring that all challenges were dealt with in order to promote, amongst others, good governance.

Implementation Protocols

At the presentation of the *Intergovernmental Relations Framework Bill, 2004* to the Portfolio Committee on Provincial and Local Government, Msengana-Ndlela (2004) states:

a significantly new innovation that is being introduced in our new governance system through this Bill, is the concept of "implementation protocol". It is proposed that an implementation protocol must be considered by the organs of state when, amongst others, the implementation of a policy or service has been identified as a national priority. This would be the case for example, when government seeks to accelerate programmes such as the Integrated Sustainable Rural Development Programme and the Urban Renewal Programme.

According to Steytler (2004), the object of an implementation protocol is to facilitate joint projects, where a service to the public is best delivered through the combined effort of more than one organ of state. The implementation of a protocol is clearly an executive act done in terms of the protocol, and the parties to the protocol are responsible for its coordinated execution. Once concluded, the implementation of a protocol will be done by the parties / signatories to the protocol.

Section 5 of the *Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005* (Act No. 23 of 2005) provides that the relevant provincial governments may enter into an implementation protocol to provide for transitional arrangements regarding the transfer of provincial functions, assets and liabilities. It further provides that where agreement on the content of the protocol cannot be reached when the reconfigured boundaries of the provinces took effect (1 March 2006), then the matter must be referred to the National Council of Provinces.

The National Council of Provinces is mandated to assist the provincial governments concerned in any manner necessary in order to reach agreement within two months after 1 March 2006. If no agreement is reached within that period, then any function exercised or service delivered by the provincial government of the releasing province in the area in question must be exercised or delivered by the provincial government of the receiving province, and any asset, right, obligation, duty or liability associated or connected with the exercise of such function or the delivery of such service vests in the provincial government of the receiving province.

As there were no indications that the National Council of Provinces had intervened to provide assistance in this regard, it is presumed that the affected provinces had finalised the required implementation protocols within the required timeframe, ensuring that there was no disruption in services that were rendered in the cross-boundary areas.

The *Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005* (Act No. 23 of 2005) also provides that the President's Co-ordinating Council is responsible for co-ordinating the implementation of the protocol, and it is therefore expected of the Minister for Provincial and Local and Premiers to report to that forum on the status of implementing the protocols by relevant provinces.

CONCLUSION

This paper has detailed the reasons for establishing cross-boundary municipalities and cross-boundary areas; the challenges faced by municipalities in administering these areas; the development of legislation that facilitated the eradication of the notion of such areas; and the development of implementation protocols to ensure the continuation of service delivery and to provide for transitional arrangements regarding the transfer of provincial functions, assets and liabilities was finally discussed.

However, it should also be noted that the constitutionality of the *Constitution Twelfth Amendment Act* of 2005 is presently being tested before the Constitutional Court, and that judgement in this regard has been reserved by the Court.

Subsequent to the January 2006 Cabinet Lekgotla, Fraser-Moleketi (2006) reminds one that the year 2006 marks the beginning of the second term of local government, and that over the past five years, important lessons were learned about the implementation of the policy and legislative frameworks for local government. It is further stated that Project Consolidate and the Municipal Izimbizo Program had brought capacity, accountability, governance and policy related issues into sharp focus, and that Cabinet Lekgotla approved three strategic priorities to ensure that challenges facing local government are eradicated.

The three priorities are to:

- "Provide mainstreamed hands-on support to local government to improve municipal governance, performance and accountability;
- Address the structure and governance arrangements of the State in order to better strengthen, support and monitor local government; and
- Refine and strengthen the policy, regulatory and fiscal environment for local government and give greater attention to the enforcement measures."

It is clear from the above that the government has placed extreme significance on the fostering of good governance in local government, there needs to be involvement and inclusion of all roleplayers to facilitate ownership of the process. Also, in ensuring that the former cross-boundary areas are able to successfully turn around the difficulties previously experienced in administering their areas, there needs to be high level engagement with the respective premiers' offices and the Department of Provincial and Local Government, in order to developing a common approach to reporting to the President's Co-ordinating Council.

Also, to ensure that special attention is given to the former cross-boundary areas, these areas should automatically fall under the auspices of Project Consolidate, and receive hands-on, targeted support from all quarters – all spheres of government, including all line function sectors and departments.

BIBLIOGRAPHY

- Department of Provincial and Local Government, 1998, *White Paper on Local Government*, Pretoria.
- Department of Provincial and Local Government and Municipal Demarcation Board, 2001, *Discussion Document on Cross-boundary Municipalities*, Pretoria.
- De Villiers, B. 1997. Future Challenges for Local Government in the 21st Century, *Local-Provincial Intergovernmental Relations: A Comparative Analysis*, University of Pretoria, 3-5 June 1997.
- Draper, G.M., 2000. Reflections on Governance at the Turn of the Century, Paper Prepared for the 2000 CAPAM Biennial Conference, Cape Town, South Africa.
- Gauteng Provincial Government: *Gauteng District Health Services Act, 2000* (Act No. 8 of 2000).
- Moleketi-Fraser, G., 2006. *Briefing by Minister of Public Service and Administration during the Parliamentary Media Briefing Week, Governance and Administration Cluster*, Pretoria, 7 February 2006.
- Mufamadi, F.S., 2006. *Cross-boundary Municipalities in Perspective*, Minister for Provincial and Local Government, 26 February 2006, Pretoria.
- Municipal Demarcation Board, 2000, *An Integrated Framework for Metropolitan and District Councils in South Africa*, Pretoria.
- Msengana-Ndlela, L. 2004. Address by the Director-General of the Department of Provincial and Local Government, Ms Lindiwe Msengana-Ndlela, to the Portfolio Committee on Provincial and Local Government. National Parliament, Cape Town, 9 November 2004.
- Republic of South Africa. *Constitution of the Republic of South Africa*, 1993.
- Republic of South Africa. *Constitution of the Republic of South Africa*, 1996.
- Republic of South Africa. *Constitution Twelfth Amendment Act* of 2005.
- Republic of South Africa. *Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005* (Act No. 23 of 2005).
- Republic of South Africa. *Local Government: Municipal Demarcation Act, 1998* (Act No. 27 of 1998).

Republic of South Africa. *Local Government: Municipal Structures Act*, 1998 (Act No. 117 of 1998).

Republic of South Africa. *Intergovernmental Relations Framework Act*, 2005 (Act No. 13 of 2005).

Republic of South Africa. *Magistrates' Courts Act*, 1944 (Act No. 32 of 1944).

Steytler, N. 2004. *Submissions on the Intergovernmental Relations Framework Bill*, 2004, Community Law Centre, 2004.

Willemsse, R. 2006. *End of Cross-boundary Municipalities*. Community Law Centre, Local Government Bulletin, Vol. 8, No. 1 March 2006.

ANNEXURE

Category 1: (Metro's and District Municipalities Moved as a Whole)

No.	Municipality	Names of areas incorporated / disestablished municipalities
1.	Ekurhuleni Metro (Mpumalanga and Gauteng).	(Khayalami, Kempton Park/Tembisa, Edenvale/Modderfontein, Brakpan, Greater Germiston, Greater Nigel, Springs, Greater Benoni, Boksburg, Alberton, Eastern Gauteng SC, Greater JHB, Eastern JHB, East Vaal, Midrand/Rabie Ridge/Ivory Park, Suikerbosrand, Randvaal, Bronberg).
	DECISION:	Municipality incorporated into Gauteng Province.
2.	Tshwane Metro (North West and Gauteng).	(Greater Pretoria, Pretoria, Centurion, Northern Pretoria, Hammanskraal, Eastern Gauteng SC, Pienaarsrivier, Crocodile River, Western Gauteng, Winterveld, Temba, Ga-Rankuwa, Mabopane, Eastern DC, Roodeplaat).
	DECISION:	Municipality incorporated into Gauteng Province.
3.	CBDC 1: Kgalagadi District Municipality (North West and Northern Cape).	(Kuruman, Kathu, Vanzylsrus, Deben, Mothibestad). See CBLC 1.
	DECISION:	Entire District incorporated into the Northern Cape Province – includes the Moshaweng, Ga-Segonyana and Gamagara Local Municipalities.
4.	CBLC 1: Ga-Segonyana Municipality (North West and Northern Cape).	(Hartswater, Jan Kempdorp, Pampierstad, Vaalharts). See CBDC 1.
	DECISION:	Municipality incorporated into Northern Cape Province as part of Kgalagadi DC.

No.	Municipality	Names of areas incorporated / disestablished municipalities
5.	CBDC 2: Metsweding District Municipality (Mpumalanga and Gauteng).	(Bronkhorstspuit, Cullinan, Eastern Gauteng SC, Roodeplaat, Elands River, Bronberg, Ekangala, Highveld DC, Pienaarsrivier). See CBLC 2.
	DECISION:	Entire District incorporated into the Gauteng Province – includes the Kungwini and Nokeng Tsa Taemane Local Municipalities.
6.	CBLC 2: Kungwini Local Municipality (Mpumalanga and Gauteng).	(Bronkhorstspuit, Ekangala, Bronberg). See CBDC 2.
	DECISION:	Municipality incorporated into Gauteng Province as part of Metsweding DC.
7.	CBDC 3: Sekhukhune Cross Boundary District Municipality (Mpumalanga and Limpopo).	(Northern DC, Bosveld DC, Hlogotlou/Lepelle, Eastern Tubatse, Dilokong, Tubatse/Steelpoort, Ngwaritsi/Makhuduthamaga, Nebo North, Nokotlou/Fetakgomo, Highveld DC, Lowveld Escarpment DC, Groblersdal, Marble Hall, Moutse, Steelpoort/ Ohrigstad/Burgersfort). See CBLC 3, 4 and 5.
	DECISION:	Entire District incorporated into the Limpopo Province – will include Makhuduthamaga, Fetakgomo, Greater Mable Hall, Greater Groblersdal, and Greater Tubatse Local Municipalities.
8.	CBLC 3: Greater Marble Hall Municipality (Mpumalanga and Gauteng).	(Greater Nebo-North, Groblersdal TRC, Hlogotlou/Lepele, Marble Hall, Moutse, Ngwaritsi/Makhudu-Thamaga). See CBDC 3.
	DECISION:	Municipality incorporated into Limpopo Province as part of Greater Sekhukhune DC.
9.	CBLC 4: Greater Groblersdal Municipality (Mpumalanga and Limpopo).	(Groblersdal TLC and TRC, Hlogotlou/Lepele, Lydenburg TRC, Moutse). See CBDC 3.
	DECISION:	Municipality incorporated into Limpopo Province as part of Greater Sekhukhune DC.

No.	Municipality	Names of areas incorporated / disestablished municipalities
10.	CBLC 5: Greater Tubatse Municipality (Mpumalanga and Limpopo).	(Dilokong, Hlogotlou/Lepele, Lydenburg TRC, Ngwaritsi/Makhudu-Thamage, Ohrigstad/Eastern Tubatse, Steelpoort/Burgersfort, Thubatse Steelpoort). See CBDC 3.
	DECISION:	Municipality incorporated into Limpopo Province as part of Greater Sekhukhune DC.
11.	DC 9: Frances Baard District Municipality (North West and Northern Cape).	(Diamantveld DC, Kimberley, Ritchie, Barkley-West, Ulco, Delpoortshoop, Windsorton, Hartswater, Pampierstad, Jan Kempdorp). See CBLC 7.
	DECISION:	Entire District incorporated into the Northern Cape Province – includes the Local Municipalities of Sol Plaatjie, Dikgatlong, Magareng, and Phokwane.
12.	CBLC 7: Phokwane Municipality (North West and Northern Cape).	(Banknara/Bodulang, Huhudu, Kuruman, Mothibistad, Rooiberg). See DC 9.
	DECISION:	Municipality incorporated into Northern Cape Province as part of Frances Baard DC.

Category 2: (District Municipalities Re-arranged)

NO.	MUNICIPALITY	NAMES OF AREAS INCORPORATED / DISESTABLISHED MUNICIPALITIES
13.	CBDC 4: Bohlabela District Municipality (Mpumalanga and Limpopo).	(Northern DC, Bushbuckridge South/North/Midlands, Hoedspruit/Makhutswi, Lowveld Escarpment, Kruger Park South, Sabie Park). See CBLC 6.
	DECISION:	District Municipality disestablished. Bushbuckridge Local Municipality included into the Ehlanzeni District Municipality, and the Maruleng Local Municipality included into the Mopani District Municipality. The southern portion of the DMA (Kruger National Park) included into the Ehlanzeni District Municipality, and the northern portion of the DMA included into the Mopani District Municipality.

NO.	MUNICIPALITY	NAMES OF AREAS INCORPORATED / DISESTABLISHED MUNICIPALITIES
14.	CBLC 6: Bushbuckridge Municipality (Mpumalanga and Limpopo).	(Sabie Park, Bushbuckridge Midlands, BBR North, BBR South). See CBDC 4.
	DECISION:	Municipality incorporated into Mpumalanga Province as part of Ehlanzeni DC.
15.	CBDC 8: West Rand District Municipality (North West and Gauteng).	(Carletonville, Krugersdorp, Westonaria, Randfontein, Western Gauteng SC, Magaliesburg RC and TRC, Gatsrant, Vaal River, Fochville, Wedela, Southern DC). See CBLC 8.
	DECISION:	Newly constituted District (Mogale City, Randfontein and Westonaria Local Municipalities) incorporated into the Gauteng Province. Merafong Local Municipality included in the Southern District Municipality within the North West Province.
16.	CBLC 8: Merafong City Local Municipality (North West and Gauteng).	(Carletonville, Fochville, Gatsrant, Southern DC, Wedela). See CBDC 8.
	DECISION:	Municipality to be excluded from the municipal area of the West Rand District Municipality and included in the municipal area of the Southern District Municipality.

Category 3: (Kwazulu-natal and Eastern Cape Provinces)

KWAZULU-NATAL PROVINCE:

Sisonke District Municipality:

Previously consisted of:

- (i) Ingwe Local Municipality;
- (ii) Kwa Sani Local Municipality;
- (iii) Matatiele Local Municipality;
- (iv) Greater Kokstad Local Municipality; and
- (v) Ubuhlebezwe Local Municipality.

Newly configured Sisonke District Municipality:

- (i) Ingwe Local Municipality;
- (ii) Kwa Sani Local Municipality;
- (iii) Umzimkulu Local Municipality;
- (iv) Greater Kokstad Local Municipality; and
- (v) Ubuhlebezwe Local Municipality.

EASTERN CAPE PROVINCE:

Alfred Nzo District Municipality:

Previously consisted of:

- (i) Umzimkulu Local Municipality; and
- (ii) Umzimvubu Local Municipality.

Newly configured Alfred Nzo District Municipality:

- (i) Umzimvubu Local Municipality; and
- (ii) Matatiele Local Municipality.

The whole magisterial district of Maluti together with the district management area, ECDMA44, and the small Matatiele area within Umzimvubu were excluded from the Umzimvubu Local Municipality and incorporated into the Matatiele Local Municipality. The remainder of Umzimvubu Local Municipality and the "new" Matatiele Local Municipality constitute the Alfred Nzo District Municipality.