

INTERGOVERNMENTAL RELATIONS: THE CASE OF CO-OPERATIVE LOCAL GOVERNMENT

*C. Thornhill
School of Public Management and Administration
University of Pretoria*

ABSTRACT

Most contemporary states have multiple levels or spheres of government to provide services to their diverse communities. The local government sphere/level is a creation of each state and its functions and powers are dependant on the structure and policies of the national government. Therefore local government in each country will have unique characteristics. In strongly democratised countries, local government will probably be assigned more powers and functions than in an autocratic system of government.

The article considers the functions and powers of local governments in selected African countries. It is argued that the composition of society in a state will have a particular effect on the system of government as it applies to regions and urbanised areas. A deeply divided society would require a more centralised system of government, while a stable diverse society will allow a more decentralised form of government with a strong local government e.g. as the case is in South Africa.

Co-operative arrangements are required in all states with multiple levels/spheres of government. The success of such arrangements depends on the demarcation of the functions and powers of each level/sphere. It is argued that the South African system still requires acceptance of the democratic system of government created in 1994.

INTRODUCTION

The system of government adopted with the introduction of the democratically conducted general elections in 1994, paved the way for a transformed Republic of South Africa. Although the state was not typified as unitary or federal, strong unitary characteristics can be identified. The constitutional framework provides for three spheres of government which are distinctive, interrelated and interdependent. Thus it

identifies the need for co-operative government to ensure that each of the spheres is allocated distinguishable functions and powers, but the Constitution also requires that each sphere acknowledges the functions and power of the other two spheres. The co-operative relationships that have been developed will be discussed and will be related to the challenges created for adjacent municipalities as a result of the demarcation. The need for the reconsideration of co-operative governmental relations among municipalities will be addressed to determine whether current arrangements promote efficient and effective service delivery.

MULTI LEVEL/SPHERE GOVERNMENT

Most contemporary states have introduced two or more spheres in addition to the national sphere to govern the public affairs concerning their societies. Most states have established national, regional and in some cases sub-regional and in all cases local levels of government. States (cf. De Villiers. 2009; 49 *et seq.*) such as South Africa (nine provinces and 283 municipalities); Australia (six states; two territories; ± 600 municipalities including city, shire and regional councils; Austria (länder; 99 districts; 2 357 municipalities); Germany (16 länder; 13 territorial states and three city states; districts; 12 234 municipalities); Swiss Federation (26 cantons; 2 700 communes); Spain's four levels include, apart from the federal level, 17 autonomous communities plus two in North Africa; 43 provinces and 8 108 municipalities which are considered federative entities; Brazil (26 member states; one federal district i.e. Brasilia and 5 564 municipalities; Nigeria (state and local government). The limited number of examples quoted, indicate that the states have introduced regional and local government levels/spheres) to deal with regional and municipal matters. The structures represent political values and in many cases are based on historical and cultural considerations. South Africa is no exception to the rule, as will be discussed.

Circumstances as well as the geography, social and historical factors play a significant role in the distribution of powers and functions among the levels/spheres. In some countries with stable governments and firmly established constitutions e.g. Germany, the *Basic Law* serves as the supreme law and regulates all other public structures and policies. The Swiss Federal state's Constitution was founded in 1848 and has been ingrained in society as its guiding framework for all policies and structures. The Australian federation consists of six states, created in 1901 (two territories were added later). Some states have a shorter history as far as constitutional government is concerned, e.g. Spain's constitution dates back to 1978 (De Villiers, 2009: 123). As could be expected the powers of e.g. local authorities in the case quoted above, are not clearly specified although local self-government is guaranteed while the autonomous communities compete with the provinces for territorial public authority. In the case of Brazil with a constitution dating back to 1988, the integration of local communities is still a complex problem as the co-operative arrangements are undergoing a process of refinement (De Villiers, 2009: 151). Nigeria's Constitution was passed in 1999 and although each tier has constitutionally guaranteed autonomy in its area of jurisdiction, arguments are raised regarding the financing of the

local governments. The South African Constitution has only been passed in 1996 and the demarcation of municipalities was only undertaken in 1998. The new system of local government, as it is currently in operation, only became fully operational with the last municipal elections in 2006. It could thus be expected that the system requires refinement and that is the reason why the co-operation among municipalities should be considered in detail. This would enable government to adopt policies and introduce measures to improve existing structures and processes to obtain and maintain sustainable municipal service delivery.

SOUTH AFRICAN CONSTITUTIONAL FRAMEWORK

Section 40 of the Constitution, 1996, makes provision for three spheres of government, each being distinctive yet interdependent and interrelated. (This compares with the Brazilian system in which the different spheres are acknowledged in the federal constitution (De Villiers, 2009: 154)). In section 41 of the Constitution particular principles are laid down to guide the relationship among the three spheres of government requiring *inter alia* that

- each sphere must not assume any power or function except those conferred on them in terms of the Constitution implying that municipalities must operate within the general framework of the guidelines provided in chapter 7 of the Constitution, 1996
- each sphere must exercise its powers and perform its functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere, implying that municipalities must acknowledge the powers and functions of adjacent municipalities (*cf.* section 84 of the *Local Government: Municipal Structures Act*, 1998). Provinces are required to acknowledge the integrity of municipalities in their respective provinces; and
- each sphere must co-operate with the other spheres of government in mutual trust and good faith and avoid legal proceedings against each other which would also include the specific implications of schedules 4B and 5B of the Constitution, 1996 concerning the legislative competences of the provincial and local spheres of government.

Policies, legislation and activities of the three spheres of government should be co-ordinated to ensure that the provisions of the Constitution, 1996 are adhered to and that policies and actions of one sphere are not in conflict with or are detrimental to those of another sphere. To honour the conditions set in the Constitution Act, 1996; to maintain the unity of the State; and to promote the well-being of its inhabitants; specific provisions have been included in the Constitution to assist in co-ordinating the public sector activities performed in the three spheres *viz.*

- Section 44(2) allows Parliament to intervene by passing legislation even with regard to any matter assigned exclusively to the provinces (schedule 5) when it is necessary to maintain national security; maintain economic unity; maintain essential national standards; establish minimum standards; or prevent one province from an action that may be detrimental to another province or the country as a whole.

- Section 100 provides for national executive intervention in provincial administration and allows national government to intervene if a province does not or cannot fulfill an executive obligation in terms of the Constitution or legislation. This intervention could include taking appropriate steps to ensure the fulfillment of that obligation e.g. by issuing a directive to the provincial executive; or by assuming responsibility for the relevant obligation.
- Section 139 provides for provincial executive intervention in local government in a similar manner allowing national government to intervene in provincial affairs. The provincial executive can intervene in a municipality if it cannot or does not fulfill an executive obligation in terms of legislation. It may do so by e.g. issuing a directive to the municipal council describing the extent of the failure to fulfill its obligations and stating the steps required to meet the obligations; assuming responsibility for the relevant obligation; dissolving a municipality and appointing an administrator until a new council has been duly elected or restored by the provincial government.

The Constitution, 1996 is abundantly clear on the reasons for the possible intervention of the national executive in provincial matters (similar to the justification for the intervention by Parliament in provincial affairs) i.e. to

- maintain essential national standards or meet minimum standards for the rendering of a service;
- maintain economic unity;
- maintain national security; or
- prevent a province from taking unreasonable action that is prejudicial to the interests of another province or to the country as a whole.

Similar reasons are contained in section 139 regarding the intervention of a province in the affairs of a municipality. These provisions clearly illustrate that intervention should only be considered in cases when a sphere acts contrary to the spirit of co-operative government. To illustrate this matter reference could be made to the intervention of the Mpumalanga Provincial Government in the local municipality of Mbombela for not performing effectively with the construction of the 2010 soccer stadium; intervention and the subsequent abolition of the Oogies municipality. Various other provinces have used the same provision to intervene in municipalities which were not performing properly under the so-called: *Project Consolidate*.

Intergovernmental Relations Framework

Establishment of provinces

Before embarking on a discussion of the effects of intergovernmental relations in South Africa, a brief reference to the demarcation of provinces as the second sphere is important. There is no need to discuss the borders of the Republic of South Africa as those were established in 1910 with unification. Those borders were also politically determined by

colonial powers, but have little effect on the current discussion as these borders could be considered as a *fait accompli*.

During the negotiations preceding the creation of the democratic Republic of South Africa, the question of provinces were high on the agenda. Although this is not discussed in detail, it is important to refer briefly to the changing of the former four provinces into the current nine provinces. The report by the Development Bank of Southern Africa entitled: *South Africa's nine provinces: a human development profile* (1995) serve as a valuable basis for establishing the rationale for the demarcation of the provinces. The Report considered various characteristics for the demarcation e.g. demography; human capacities; access to land and livestock; opportunities (employment, income); economic structure; and institutional and fiscal arrangements. The boundaries identified, to a large extent coincide with the current boundaries of the nine provinces. During the negotiation processes various opposing views were expressed concerning e.g. the demarcation of the former province of the Cape of Good Hope into three new provinces and the division of the former Transvaal Province into three new provinces. The characteristics identified in the Report define the composition and capacity of the current nine provinces. However, it should be pointed out that at that stage municipalities had not been demarcated. Thus the possibility was created of municipalities being demarcated using criteria that could not be reconciled with those used for the demarcation of provinces.

Guidelines

To ensure that intergovernmental actions are performed in a co-ordinated manner it is advisable to establish guidelines within which policies and administrative practices could be developed. The following guidelines serve as examples (*cf.* Mathebula. 2004:130-136):

- The presence of a supreme political authority or supreme political authority subject to the Constitution, as the case is in the Republic of South Africa (*cf. Constitution of the Republic of South Africa*, 1996, section 2) is required to ensure that co-ordination is enforceable in the case of some structures not complying with this principle. In South Africa the executive authority vests in the President as head of the executive (section 83 (a) and 85 (1), Constitution, 1996). As such he acts subject to the Constitution and legislation (section 84 (1) and is accountable to Parliament as part of Cabinet (section 92 (2) of the Constitution, 1996).
- Public accountability is not only a prerequisite for democracy, but also for proper administrative arrangements. Should insufficient measures exist to call political office bearers and officials to account for their actions or inactions, the possibility of misuse of power is created. Therefore, the Constitution, 1996, provides for accountability by Cabinet to Parliament as already alluded to. In a similar manner the premier of a province is accountable to the provincial executive (sections 125(1) and 133 (2) of the Constitution, 1996). In the local sphere of government the council is both the legislative and the executive authority (section 151 (2)), but the executive committee or the executive mayor, performing its executive function is still accountable to the council acting in its legislative capacity (sections 44 (4) and 56 (5) of the *Local Government: Municipal Structures Act*, 1998 (Act 117 of 1998)).

- Efficiency and effectiveness are corner stones for all administrative actions. Thus to obtain effective intergovernmental relations the structures and processes have to create the conditions for effectiveness. This requirement has been accommodated in section 41(1) of the Constitution, 1996 and in particular in subsection 41 (1) (c) requiring the three spheres to provide effective, transparent and accountable government for the Republic.
- Societal values should be honoured in all policies and executive actions. In the case of the current democratic system of government the need to improve the living conditions of especially the formerly disadvantaged communities is paramount. Thus the three spheres have to co-operate in a friendly fashion and in good faith with one another to ensure that they operate in such a manner that services are provided as required by society irrespective of the sphere responsible for the service. In a similar manner the provinces among themselves as well as the municipalities among themselves have to co-ordinate their executive functions to ensure that adjacent communities receive comparable services and are treated in an equitable way.

Considering the guidelines it should be obvious that the intergovernmental system in South Africa is based on clear foundations. These foundations have been accommodated in the structures established to promote effective and efficient service delivery, but the ultimate success still depends on human beings operating in the various structures and providing the services. The current political debates indicate that the system of co-operative government is being scrutinised intensely. It appears as though the performance of some provinces give rise to concern as to the viability of provinces. In this regard it should be mentioned that in the 2009/2010 national budget The R738 562 766 m of the equitable division of revenue raised nationally was allocated as follows among the three spheres of government.

This implies that nearly 31, 3 % of the equitable share was allocated to provinces and only 3, 2 % to municipalities. The rationale for the concern with the fiscal effects of provinces could thus be deduced from these figures. Linked to this is the apparent inability of some provinces to spend the money allocated or to provide proof through their respective financial statements to the Auditor-General that the money had been

Table 1: Equitable division of revenue raised nationally

Sphere	Amount R '000
National	483 665 383
Provincial	231 050 881
Local	23 846 502
Total	738 562 766

Source: Division of Revenue Act, 2009, Schedule 1

Table 2: Equitable share of municipalities' share of revenue raised nationally

Province	Amount R '000
Eastern Cape	4 715 072
Free State	2 959 217
KwaZulu-Natal	5 850 693
Limpopo	3 900 174
Mpumalanga	2 960 968
Northern Cape	962 852
North West	2 879 610
Gauteng	5 568 593
Western Cape	2 092 724

Source: Division of Revenue Act, 2009 Schedule 3

spent effectively. The issue in this discussion is not the role of provinces, but is mentioned as the provinces are mandated to intervene in a municipality if the latter fails to operate effectively, but no guarantee can be provided that the intervening province operates efficiently and effectively.

One of the requirements for good government is efficient service delivery to the respective communities within a province. Thus co-ordinated actions among adjacent municipalities are required. To emphasise the role of municipalities in the provision of services reference to the allocation of the equitable share to this sphere of government is important. The following figures reflect the allocation per province:

In addition to this revenue, municipalities are also funded to improve municipal infrastructure. These comprise:

Integrated National electrification Programme

- Electricity Demand Side Management
- Neighbourhood Development Partnership
- Public Transport Infrastructure and Systems
- Rural Transport Services and Infrastructure
- 2010 FIFA World Cup Stadiums Development (specific municipalities)

Recurrent grants are also made in respect of the

- Municipal systems Improvement
- Local government Financial Management
- Water Services operating Subsidy
- 2010 World Cup Host City (only specific municipalities)

- Neighbourhood Development Partnership
- Integrated National Electrification Programme (ESKOM)
- Backlogs in the Electrification of Clinics and Schools
- Electricity Demand Side Management (ESKOM)
- Water Services Operating Subsidy
- Regional Infrastructure
- Backlogs in Water and Sanitation at Clinics and Schools

The extensive lists quoted above, indicate clearly that a municipality's services cannot be considered in the area of its own jurisdiction only. Most of the grants referred to have a sub regional and even regional character e.g. water provision, integrated electrification, transport infrastructure and sanitation. It could thus be stated that co-operation among municipalities in the municipal sphere is non-negotiable. The question to be attended to concerns the effectiveness of the existing co-ordinating structures.

Structures

In the countries alluded to above different mechanisms have been established to co-ordinate the policies and executive actions of the different spheres of government. No clear classification could be made of Australian local government as different states have adopted different policies concerning the local sphere. Local government in Australia is actually in a precarious position as a subservient and dependent sphere of government to the states (De Villiers, 2009:53). In an independent poll in 2008 five of the eight states/territories local government was considered as the least efficient tier of government (De Villiers, 2009:55). Co-operation mainly concerns functional co-ordination e.g. fire services, ambulance services and police services (*Ibid.*, 62-63). In Austria municipalities co-operate in different ways ranging from informal co-operation to knowledge transfer and co-operation regulated by law. Germany makes use of municipal administration unions in fields such as water, waste water management, trade promotion, schools, culture (especially youth) and welfare (*Ibid.*, 95). Spain with its rather complex local government structure makes use of work groups i.e. bodies without legal status and bodies with legal status (*Ibid.*, 131). Sao Paulo as the largest city in Brazil with its 10,5 m inhabitants have a major effect on adjacent municipalities with each having one million inhabitants and more (De Villiers, 2009: 156). The result is that the co-ordination among these municipalities is mainly focussed on integrated management, but it should be borne in mind that municipal authority is assigned asymmetrically. In other areas the emphasis is on Integrated Regional Development. However, this has not achieved major positive results due to resistance by municipalities concerned about too much federal involvement in their affairs (*Ibid.*, 157)

Co-ordination among the three spheres of government in South Africa is arranged in accordance with the *Intergovernmental Relations Framework Act, 2005* (Act 13 of 2005) giving effect to the requirement in section 41 (2) of the Constitution, 1996. This Act *inter alia* provides for the establishment of different forums to promote sound intergovernmental relations. The Act establishes a framework to facilitate intergovernmental relations

and provides for mechanisms to resolve intergovernmental disputes. The Act *inter alia* provides for:

- the President's Co-ordinating Council as the overarching inter governmental forum
- national intergovernmental forums
- provincial intergovernmental forums
- municipal intergovernmental forums
- the settlement of intergovernmental disputes

In this regard the provisions of section 5 of the *Local Government: Municipal Finance Management Act, 2003*, should be acknowledged as national Treasury and the provincial treasuries have co-ordinating roles to fulfil regarding financial management. In a related manner the provisions of related legislation have to be acknowledged as co-operation is a precondition for efficient and effective service delivery by each individual sphere. The different structures are not discussed, but should be considered as these forums have an important role to play in co-ordinating policies and actions in the three spheres.

DEMARICATION OF MUNICIPALITIES

The Constitution, 1996 provides for the demarcation of South Africa into municipalities (cf. section 151(1)) The Act requires the whole of the country must be divided into municipalities. Thus it could be argued that all activities undertaken by any sphere of government or any organ of state (cf. section 239) or any corporate body takes place within the boundaries of a municipality.

The *Municipal Government: Demarcation Act, 1998* (Act 27 of 1998) is the vehicle used to establish the Demarcation Board to determine the boundaries of municipalities. The Board is also authorised to re-determine the boundaries of municipalities (cf. section 21(1) (b)).

Criteria

To determine the boundaries, the Board has to take into consideration *inter alia*:

- the interdependence of people, communities and economies;
- the need for cohesive, integrated unfragmented areas including metropolitan areas;
- financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
- the need to share and redistribute financial and administrative resources;
- existing and expected land use, social, economic and transport planning;
- the need for co-ordinated municipal, provincial and national programmes and services;
- and
- topographical, environmental and physical characteristics of the area.

Although the argument is repeated, it should be emphasised that the application of the criteria for demarcation by the Demarcation Board in 1998 did not necessarily take the criteria for the demarcation of provinces into consideration. The Demarcation Board acted

according to its own principles and interpreted the abovementioned criteria with a view of establishing viable municipalities according to the criteria in the relevant legislation.

Performance of municipalities

The results after demarcation indicate that some municipalities are unable to perform their assigned functions. For example in 2006 the following statistics can be cited (Municipal Demarcation Board 2008: 132-138):

- 203 are unable to provide sanitation to at least 60 % of the inhabitants
- 155 are unable to supply water to at least 80 % of the inhabitants
- 182 are unable to remove waste from 60% of the houses
- 122 unable to supply electricity to 60% of their houses
- 116 unable to supply housing to 60% of the inhabitants
- 42 unable to complete 50% of their basic tasks
- 139 are earmarked to receive assistance under Project Consolidate

The Demarcation Board reported (MDB: 2007.88) that district municipalities in Mpumalanga could perform only 32,6 % of their functions with some capacity; in Limpopo they could perform only 40% of the functions and in North West only 35,8 % of their assigned functions could be performed as against 46, 2% in Gauteng and 50% in the Eastern Cape. The average is 40% of the functions are performed by district municipalities with some capacity.

The municipalities quoted above are not necessarily border related, but the statistics provide an indication of the plight of municipalities in South Africa. It should be obvious that co-operative action could assist dysfunctional municipalities in providing basic services. The demarcation or redemarcation of municipalities could therefore be considered as of immediate concern and requires urgent attention.

Cross boundary municipalities

The criteria used for the demarcation of municipalities resulted in a number of municipalities with boundaries crossing the boundaries of provinces as determined in the interim *Constitution of the Republic of South Africa, 1993* (Act 200 of 1993) and retained in the current *Constitution of the Republic of South Africa, 1996*. The *Cross Boundary Municipalities Act, 2000* (Act 29 of 2000) was passed in an effort to solve the administrative problems experienced by municipalities whose areas of jurisdiction crossed provincial boundaries. The problems encountered emanated from different interpretations provincial governments attached to policies adopted nationally under schedule 4 (concurrent competence) of the *Constitution, 1996*. Some provinces also passed legislation and adopted policies under schedule 5 of the *Constitution, 1996* regarding matters over which they have exclusive competence.

Section 1 of the *Cross-boundary Municipalities Act, 2000* (Act 29 of 2000) enabled the MEC of one province to establish a municipality in an adjacent province. Section 2 determined that municipalities thus established must be done with the concurrence of the legislatures of

the provinces concerned and only if the re-determination had been authorised by national legislation i.e. by amending the Constitution, 1996 accordingly. This Act provided for the establishment of nine cross-boundary municipalities involving (Schedule to Act 29/2000):

Provinces	Municipal area
North West & Northern Cape	Local Municipality CBLC 1
Mpumalanga & Gauteng	Local Municipality CBLC 2
Mpumalanga & Northern Province	Local Municipality CBLC 3
Mpumalanga & Northern Province	Local Municipality CBLC 4
Mpumalanga & Northern Province	Local Municipality CBLC 5
Mpumalanga & Northern Province	Local Municipality CBLC 6
North West & Northern Cape	Local Municipality CBLC 7
North West & Gauteng	Local Municipality CBLC 8
North West & Northern Cape	District Municipality CBDC 1
Mpumalanga & Gauteng	District Municipality CBC 2
Mpumalanga & Northern Province	District Municipality CBC 3
Mpumalanga & Northern Province	District Municipality CBDC 4
North West & Gauteng	District Municipality CBDC 8
North West & Northern Cape	District Municipality DC 9
Mpumalanga & Gauteng	Metropolitan municipality East Rand (concerning the boundary between Mpumalanga and Gauteng)
North West & Gauteng	Metropolitan Municipality of Pretoria (concerning the boundary between North West and Gauteng)

This Act thus created municipalities that were under the jurisdiction of only one provincial government. It obviated the problem of a section/area of a municipality being subject to the jurisdiction of one province, while another section/area had to comply with the provincial legislation and policies of another province. Administratively such an arrangement resulted in conflicting policies having to be followed by a municipality. To give effect to the Act, the Constitution, 1996 had to be amended to change the boundaries of provinces to accommodate the affected municipalities in one province. This was effected by the Twelfth Amendment to the Constitution, 2005.

The Act establishing cross-boundary municipalities was repealed by Act 23 of 2005 (*Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005*) dealing with all provisions concerning cross-boundary municipalities as provided for in the Local Government: *Cross-boundary Municipalities Act, 2000 (Act 29 of 2000)*; Re-determination of the Boundaries of *Cross-boundary Municipalities Act, 2000 (Act 69 of 2000)* and Re-determination of the Boundaries of *Cross-boundary Municipalities Act (Act 6 of 2005)*.

The *Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005* provides for the repeal of the acts mentioned in the previous paragraph. This required a number of transitional arrangements to obtain continuity in contracts and in service provision. It also had a direct effect on intergovernmental relations as the receiving province (i.e. the province now responsible for the whole municipality) and the releasing province (i.e. the one in whose area the affected municipality was) were required to ensure the continuation of licences, permits and authorisations; appointments made; and any rights, privileges obligations, or liabilities accrued or incurred, had to continue until these legally bound measures were revoked, withdrawn or replaced by the receiving province (section 4(1)). The MEC for local government in the receiving province could also amend the relevant section 12 notice issued in terms of the *Municipal Structures Act, 1998*, to regulate the implications of the relocation of such municipalities (section 4 (2)).

The complex technical detail of Act 23 of 2005 is not discussed in detail. However, it is important to note that the amendment to the boundaries of provinces resulted in a number of constitutional amendments i.e. the twelfth (redefining the boundaries of the affected provinces in schedule 1A) thirteenth (amending the boundaries of the provinces of Eastern Cape and KwaZulu-Natal regarding DC 43 Matatiele), and sixteenth (concerning the redefining of the respective boundaries of Gauteng and North West) amendments. The implications of these amendments are inter alia that Parliament had to give effect to schedule 1 of the interim *Constitution of the Republic of South Africa, 1993 (Act 200 of 1993)*. Thus every time a boundary is amended, the Constitution, 1996 also has to be amended. In the case of Matatiele, the Constitutional Court ruled that insufficient consultation was conducted by the KwaZulu-Natal Provincial Government. This necessitated the thirteenth amendment to the Constitution. The case of CBDC 8 (Merafong District Municipality) also raised concerns regarding the original redefining of provincial boundaries. Similar views were raised by Bushbuckridge and the Moutse communities regarding their location in the assigned provinces. These municipal jurisdictions are politically sensitive, but also have dire administrative consequences

Municipal co-ordination

Composition

The municipal co-ordinating structures include district intergovernmental forums to promote sound intergovernmental relations between district and local municipalities. These forums are established in accordance with the provisions of section 24 of the

Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005). Such forums consist of:

- the mayor of the district municipality;
- mayors of local municipalities in the district; and
- the administrator of a municipality (if such official has been appointed) who would then chair the forum.

It should be noted that no provision is specifically made regarding metropolitan municipalities. It appears as though the involvement of this category of municipality was ignored although they are intimately involved in adjacent local and district municipalities due to their common boundaries with both the category B and C municipalities. In the case of adjacent municipalities with common boundaries, but within different provinces such forums could assist in co-operative action to benefit the affected communities by providing more efficient and effective service delivery.

Roles

Particular reference should be made to district intergovernmental forums as they could have a direct effect on the co-operation among municipalities in adjacent provinces due to common boundaries. The role of district intergovernmental forums are summarised as follows in the *Intergovernmental Relations Framework Act, 2005* (section 26)

- drafting national and provincial policy and legislation relating to matters affecting local government interests in the district;
- implementing national and provincial policy and legislation with respect to such matters in the district;
- providing mutual support in accordance with section 88 of the *Municipal Structures Act, 1998*;
- providing services in the district;
- undertaking coherent planning and development of the district;
- co-ordinating and aligning strategic and performance plans and priorities in the district; and
- performing any other matter of strategic importance affecting the municipalities in the district.

The Act (13 of 2005), as already alluded to, does not specifically make provision for metropolitan municipalities as far as municipal forums are concerned. Such municipalities are included in the definition of municipalities. However, section 28 of the Act provides for the establishment of intermunicipality forums. Such forums enable two or more municipalities to establish an intermunicipality forum to promote and facilitate intergovernmental relations between them and could thus include metropolitan municipalities. Section 29 assigns the following roles to such forums:

- information sharing, best practice and capacity building;
- co-operating on municipal developmental challenges affecting more than one municipality; and

- any other matter of strategic importance which affects the interests of the participating municipalities.

It is obvious that legal provision is made to promote intergovernmental relations among the three spheres of government. In the municipal sphere various options exist. These options provide for the possibility of district and metropolitan municipalities engaging in co-operative agreements to share services and to assist one another in municipal matters. However, there is no legally defined obligation on category A municipalities to co-operate or share capacity with either category B or C municipalities. Municipalities have to decide how these provisions are to be implemented to obtain the maximum benefits from co-operative action for the delivery of efficient and effective municipal services.

It should be mentioned that the role of district municipalities as envisaged in the *White Paper on Local Government* is beginning to fade (Mlokoti, 2009.60). For example in the Report by the Demarcation Board for 2007/2008 it was reported that in 44 cases refuse removal was transferred from district to local municipalities; fire services were adjusted from district to local municipalities in 36 cases and cemeteries in 38 district municipalities were transferred to local municipalities (MDB: 2008. 5). In various cases functions were also transferred from local to district municipalities e.g. 56 municipalities transferred fire services to districts; 33 transferred public transport and 29 transferred tourism. The emphasis on the role of district municipalities in municipal intergovernmental forums should be reconsidered in view of the complexities of adjacent municipalities with common boundaries, but demarcated into different provinces. The problem is becoming even more complex as a result of the dysfunctional relationship between district and local municipalities (*Ibid.*, 60). Thus it could be argued that the establishment of municipal intergovernmental forums may not be an effective mechanism to assist adjacent municipalities to improve service delivery. In fact the continued existence of district municipalities could be in jeopardy (*Ibid.*, 82-83)

ADMINISTRATIVE EFFECTS OF SYSTEM OF IGR

The cross-boundary nature of the affected municipalities have been abolished through the relevant amendments to the Constitution, 1996 as already alluded to. However, the constitutional effects as well as the legal effects still have to be considered.

Firstly, the boundaries of municipalities have been demarcated in accordance with the criteria set in section 21(1) (b) of the Demarcation Act, 1998. The criteria resulted in municipalities being created to inter alia provide for financially viable structures. Some of these demarcations unfortunately stretched across boundaries that had been created for provinces in the interim Constitution, 1993 which did not consider the possible effects of the future demarcation of municipalities. Provinces were and still are responsible for a number of functions performed concurrently with municipalities e.g. health, housing (in some municipalities) and planning. Schedule 5 of the Constitution, 1996 also assigns functional areas of exclusive legislative competence to provincial legislatures. Thus provinces may, in accordance with the functions assigned, formulate policies affecting

municipalities e.g. on ambulance services, provincial planning and sport facilities. When the cross boundary-municipalities were incorporated into only the boundaries of one province municipalities had to amend policies regarding the trans-boundary component to meet the receiving province's policies.

Secondly some of the provinces are perceived to be better resourced and thus better capacitated to assist municipalities in the performance of their duties. This was one of the reasons forwarded by the District Municipality of Merafong why the community opposed being incorporated into North West and why Bushbuckridge preferred to be part of Mpumalanga and not part of Limpopo. However, as alluded to earlier, the performance of district municipalities in the respective provinces show only marginal differences.

The *Division of Revenue Act* passed annually provides for money to be allocated by Parliament to provinces and to municipalities according to predetermined criteria. However, it seems as though some provinces are in better financial positions. In the *Division of Revenue Act, 2009* e.g. R38, 9m has been allocated to Gauteng as equitable share and R16m to North West. In the same year Mpumalanga was allocated R19m and Limpopo R29,8m, this if the number of inhabitants of provinces are concerned the difference is of no consequence. The preferred provinces (especially in the second example) seem to be administratively better capacitated to assist municipalities in implementing the Municipal Infrastructure Grants than some of the under capacitated provinces. Should a municipality be included in a receiving province that is perceived to be worse off than the releasing province, opposition could be expected.

Thirdly, some communities in former cross-boundary disputed municipalities are still opposing their inclusion in a particular province e.g. Moutsi and Bushbuckridge. Should these requests be acceded to, all existing agreements with a province they may have entered into will have to be renegotiated. It is obvious that such process could have a detrimental effect on the efficiency of service delivery e.g. in the case of education the releasing province and the receiving province may not be able to reach an agreement on the provision of services e.g. to the school affected by sharing a common boundary with another province.

Fourthly, the inhabitants of a municipality which shares a common boundary with another one in an adjacent province may be required to travel long distances to the provincial offices of the home province for a service which could be easily reached in the next province due to the location of its service centre. The existing legal requirements could thus have a detrimental effect of the efficiency of the service rendered by the provincial government.

CONCLUSION

Considering the current intergovernmental relations it could be argued that the demarcation of provinces done in view of the establishment of the democratic Republic of South Africa in 1994 did not consider the demarcation of municipalities. The Demarcation Board considered the criteria determined in the relevant legislation when it demarcated municipalities in 1998. However, it appears as though no effort was made

to reconcile the criteria for demarcating provinces with the criteria for the demarcation of municipalities. The cross-boundary challenges and in particular co-ordinating services only became apparent once the municipalities were operationalised. The efforts to regulate the boundary challenges proved to be unsuccessful and the legislation had to be repealed.

Lack of proper consultation and ignoring societal considerations affected the finalisation of the boundaries of provinces. A valuable lesson was learnt i.e. that rational criteria alone cannot be used when working with communities. Attention must be paid to existing cultural affiliations and perceptions of communities. Governmental and administrative arrangements have to accommodate factual as well as value considerations.

The last chapter on municipal boundaries have not been written. The South African system of local government and administration is relatively young. Amendments to boundaries and even the reassignment of functions and powers will take time to finalise and to obtain a stable system. Similarly, v the co-ordinating mechanisms created in terms of the *Intergovernmental Relations Framework Act, 2005*, should be revisited to redefine the jurisdiction of the various structures to improve intra-governmental relations among municipalities and between local government and provincial government.

BIBLIOGRAPHY

- Development Bank of Southern Africa. 1995. *South Africa's nine provinces: a human development profile*. Halfway House: The Bank.
- De Villiers, B. (Ed). 2009. *Crossing the Line: dealing with cross-border communities* Occasional Papers. Johannesburg: Konrad Adenauer Stiftung.
- Forum of Federations. 2009. <http://www.forumfed.org/en/events/event.php?id=379> accessed 2009/05/25.
- Mlokoti, V. 2009. *The two tier system of local government to enhance the local sphere in the delivery of services*. Unpublished MPA dissertation, Pretoria: University of Pretoria.
- Municipal Demarcation Board. 2007. *National Report on Local Government Capacity: District and Local Municipalities*. MDB Capacity Assessment 2007/2008. Pretoria: The Board.
- Tapscott, C. 2000. *Intergovernmental relations in South Africa: the challenges of co-operative government*. *Public Administration and Development*. 20. pp. 119–228. Republic of South Africa.
- Constitution of the Republic of South Africa, 1993 (Act 200 of 1993)*.
- Constitution of the Republic of South Africa, 1996 (as amended Fifth, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth)*.
- Intergovernmental Fiscal Relations Act, 1997 (Act 97 of 1997)*.
- Local Government: Municipal Demarcation Act, 1998 (Act 27 of 1998)*.
- Local Government: Municipal Structures Act, 1998 (Act 117 of 1998)*.
- Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)*.
- Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (Act 23 of 2005)*.

Local Government: Cross-boundary Municipalities Act, 2000 (Act 29 of 2000).

Re-determination of the Boundaries of Cross-boundary Municipalities Act (Act 6 of 2005).

Re-determination of the Boundaries of Cross-boundary Municipalities Act, 2000 (Act 69 of 2000).

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

Division of Revenue Act, 2009 (Act 12 of 2009).