

Demarcation of new local government boundaries

11.1 Introduction

In accordance with the new constitutional foundation, local governments had to be established for the whole territory of the Republic.¹ Before municipalities could be established, however, it was necessary specifically to determine, or in some cases re-determine, existing municipal boundaries. The Constitution demands that national legislation *inter alia* establish criteria and procedures for the determination of municipal boundaries by an independent authority. The relevant national legislation must further take into account the need to provide municipal services in an equitable and sustainable manner.² In order to comply with the constitutional requirements, national government enacted the Local Government: Municipal Structures Act³ which, together with the Local Government: Municipal Demarcation Act,⁴ provided for the establishment of an independent municipal demarcation board and for the criteria and procedures for the determination of municipal boundaries.⁵

The determination of municipal boundaries was, and still is, an important process in the successful transformation of local government. Although the demarcation of new municipal boundaries would not suddenly solve the many problems municipalities were facing, it indeed set the structural conditions within which other processes necessary for the transformation and development of local government could occur. Such processes would include the fulfilling of the constitutional objectives set out in section 152 of the Constitution. The way in which municipal boundaries are drawn will be important to ensure that municipalities meet their respective obligations.

¹ See the Constitution s 151(1).

² See the Constitution s 155(3) and (4).

³ 117 of 1998, hereafter referred to as the Structures Act.

⁴ 27 of 1998, hereafter referred to as the Demarcation Act.

⁵ For more details regarding the demarcation of local governments under the new constitutional dispensation refer to Bekink (1998) *De Jure* at 319-326.

11.2 The importance of local government boundaries

Municipal boundaries have important political, financial and social effects. This is so because municipal boundaries determine what each municipality is responsible for and the extent of such responsibility. Some of the important functions are as follows:

- A municipal boundary determines the size and character of a particular municipal voting population. Depending on the boundary, the electorate can be wealthy or poor, or the area can have good infrastructure or can be underdeveloped. Because political parties tend to appeal to different constituencies, this may also affect the political outcome of a specific local community.⁶ It is therefore very important that the demarcation process should not be politically biased or manipulated. Politically motivated manipulation of municipal boundaries would compromise efforts to achieve the overall constitutional objectives.
- Often municipal boundaries determine if a municipal area is financially viable or sustainable. The extent of municipal boundaries therefore has an effect on both the potential income and expected expenditure of that municipality.⁷
- A further important aspect regarding municipal boundaries is the fact that boundaries also determined the size and extent of settlements that must be served. This in turn has important implications for municipal infrastructure and service provision.⁸ In short, boundaries have an important influence on social and economic upliftment.
- Many local residents also identify themselves with a specifically demarcated area and its people. If boundaries are drawn in a way that disrupts the social and economic patterns of people's lives, many community members may find it difficult to feel part of a specific municipal entity, because they associate themselves or have interests in other municipal jurisdictions. Such community members may not participate in or commit themselves to the municipality and, by so doing, negatively impact on the effectiveness of that municipal government.⁹

⁶ It must be remembered that the Constitution requires that municipalities provide for democratic and accountable government.

⁷ It is obvious that a municipality will have little potential income if most of the local residents are very poor and if the local economy is weak with almost no tax base to draw upon.

⁸ Again the Constitution requires each municipality to provide equitable and sustainable services to local communities and also to promote economic development. See the Constitution s 152.

⁹ One must remember that community participation is also a constitutional imperative. See the Constitution s 152(2).

- The demarcation of boundaries is also important with regard to the relationship between municipalities themselves. This is particularly true in a system of so-called “wall-to-wall” local government, which South Africa has introduced.¹⁰ In a system of wall-to-wall local government, the way in which municipal boundaries have been demarcated can have very important consequences with regard to the effectiveness and efficiency of some municipalities.¹¹ Depending on how boundaries are demarcated, the positive and negative effects between neighbouring municipalities can be shared between them. It is therefore clear that the demarcation of boundaries can have a significant cross-boundary impact on neighbouring municipalities. It can play a decisive role in determining whether the relations between municipalities are competitive or co-operative.¹²

Although each municipality must have clearly demarcated boundaries, the incorrect determination of such boundaries may prevent some municipalities from performing their constitutional obligations effectively. In order to ensure that municipalities have a fair chance of achieving their constitutional obligations within the boundaries given to them, the demarcation process had to be carefully considered and many different factors had to be taken into account.¹³ In this regard the Municipal Demarcation Act has played a pivotal role in ensuring that the demarcation process was efficient, fair and procedurally correct.¹⁴

11.3 Re-determination of the municipal boundaries of the transitional period

During 1995, approximately 1260 local government bodies across South Africa were amalgamated into 843 municipalities. These municipalities spent a lot of time and money on adjusting to their new boundaries, organising staff transfers and integrating administrations. In spite of all these efforts, it soon became clear that because of

¹⁰ Wall-to-wall local government means that every part of the country is covered by a municipality, and every municipality thus shares a border with at least one other municipality. The Constitution s 151(1) confirms the establishment of wall-to-wall municipalities for the whole territory of the Republic of South Africa.

¹¹ Eg, the infrastructure of one municipality may be impacted by the residents of another municipality's enjoying its facilities. The way in which municipalities and their residents interact with one another can have either positive or negative effects on either or both of the municipalities. A municipality could experience higher traffic volumes and maintenance costs, for example, but benefit from more municipal revenue and local investment.

¹² See Bekink (1998) *De Jure* 319 at 320-321.

¹³ Refer to LGIS no 2 “Demarcation” (1999) at 3.

¹⁴ The purpose of the Act is to provide for the criteria and procedures for the determination of municipal boundaries by an independent authority, the Demarcation Board and to provide for other matters that are connected to the demarcation process.

boundary determinations many local governments could not meet their obligated objectives. Some of the problems that arose were the following:¹⁵

- Some district councils were too large and too removed from local councils to be able to understand and respond to their needs.
- Metropolitan governments were divided between metropolitan councils and metropolitan local councils. This led to the tax base of the metropolitan area being split across settlements rather than being budgeted for as a single integrated area.
- Many municipalities were not financially viable and effective. Often this was the result of municipal boundaries that were not drawn widely enough to include a tax base that could sustain and support a particular municipal authority.
- Many parts of the country have been demarcated under the authority of district councils. As district councils are not directly elected councils, such areas were denied their own democratic and accountable local governments.
- It was also established that many municipalities could not cope with their financial and administrative obligations and that there was an urgent need for further rationalisation within the broad system of local government in South Africa.

For the new structures of local government to be successful, more appropriate and efficient boundaries had to be established. District councils had to be strengthened and metropolitan councils had to be redefined as single local authorities. Outside the metropolitan areas and with the exception of District Management Areas, a two-tier combined system of district and local municipalities had to be introduced. There was also a strong need for the number of councils to be reduced, with an emphasis on some rural and urban municipalities being amalgamated to ensure effective planning and service delivery. In light of the abovementioned background, all municipal boundaries had to be re-evaluated and often re-demarcated before the local government elections in December 2000 could be held.

11.4 The municipal demarcation board

11.4.1 *Establishment, functions and general powers of the Demarcation Board*

In compliance with the constitutional requirement that an independent authority had to be established by national legislation to determine municipal boundaries, the min-

¹⁵ See LGIS no 2 "Demarcation" (1999) at 4.

ister Demarcation Act established the Municipal Demarcation Board.¹⁶ The Act affords the Demarcation Board statutory status as a juristic person which is independent and must be impartial. All functions of the board must be performed without fear, favour or prejudice.¹⁷

The main functions of the board are to determine municipal boundaries in accordance with the provisions of the Demarcation Act and any other appropriate legislation enacted in terms of chapter 7 of the Constitution and to render an advisory service in respect of matters provided for in legislation.¹⁸

According to the Demarcation Act, the board is given certain general powers. Such powers include all steps necessary or expedient for the board to perform its functions.¹⁹ However, the board may not borrow money.²⁰ Municipalities should note that the board may require a municipality that may reasonably be affected by a boundary determination to provide the board or any of its committees with facilities for holding meetings.²¹

11.4.2 Membership provisions of the Demarcation Board

The Demarcation Board consists of no fewer than seven and no more than 10 members that are appointed by the President in accordance with specific requirements. The responsible for local government must determine the number of members of the board. The composition of the board must be broadly representative of South African society and must also represent a pool of knowledge concerning issues relevant to municipal demarcation in each province.²²

A member of the board must be a South African citizen and must have a qualification or experience in, or knowledge appropriate to, local government matters in gen-

¹⁶ See the Demarcation Act s 2.

¹⁷ See the Demarcation Act s 3. The independence of the board is a constitutional prerequisite and together with the confirmation of impartiality it should ensure that narrow political interests can be eradicated from the board's functioning. See the Constitution s 155(3)(b).

¹⁸ Such other legislation will include the Structures Act as amended; the Local Government: Cross-boundary Municipalities Act 29 of 2000 as amended. See the Demarcation Act s 4 as substituted by Act 51 of 2002.

¹⁹ See the Demarcation Act s 5(1). These powers of the board include *inter alia* the power to determine its own staff establishment, acquire or dispose of any right in or to property, open and operate its own bank account, insure itself, perform legal acts and also institute or defend any legal action.

²⁰ The Demarcation Act s 5(2).

²¹ See the Demarcation Act s 5(3).

²² See the Demarcation Act s 6(1)–(3) read with s 8 of the Act.

eral or aspects that are specifically relevant to almost all municipalities.²³ Persons disqualified by the Act from becoming or remaining members of the board are, for example,

- an unrehabilitated insolvent
- someone who is placed under curatorship
- someone who is declared by a court of law of the Republic to be of unsound mind
- a person who was convicted after 4 February 1997 of an offence and sentenced to imprisonment without the option of a fine for a period of not less than 12 months.²⁴

Whenever it is necessary to appoint a person as a member of the Board, the minister must invite persons to apply, establish a selection panel to evaluate applications and finally appoint a person.²⁵ The term of office of a member of the Board is five years, and reappointment is possible.²⁶ Apart from appointing the members of the Board the President also appoints one member as chairperson and another as deputy chairperson.²⁷

Conditions of appointment of members must be determined by the minister with the concurrence of the minister of finance, and members are appointed either as full-time members or part-time members.²⁸ All members are obliged to adhere to a code of conduct, and any contravention of the code of conduct is regarded as misconduct.²⁹ Membership of the Board ceases when a person is no longer eligible under section 7, resigns by giving three months' notice or is removed from office by the President.³⁰

²³ Such specialised areas of expertise are: economic development, integrated development planning, community development, traditional leadership, local government administration, municipal finance and services, town and regional planning, legal and constitutional matters affecting local governments; land surveying, public health and also transport planning. See the Demarcation Act s 7(1)(b)(i)–(xii).

²⁴ See the Demarcation Act s 7(2).

²⁵ See the Demarcation Act s 8(1)–(5) as amended by Act 51 of 2002.

²⁶ See the Demarcation Act s 9.

²⁷ Refer to the Demarcation Act ss 8(7) and 10.

²⁸ See the Demarcation Act s 11.

²⁹ See the Demarcation Act s 12.

³⁰ A member may be removed from the board on grounds of misconduct, incapacity or incompetence only. See the Demarcation Act s 13(4)(a). A decision to remove someone must be based on a finding to that effect by an investigating tribunal appointed by the President. See also s 13(4)(b).

11.4.3 Operating procedures of the Demarcation Board

Meetings of the board are determined by the chairperson unless the majority of the members request the chairperson to convene a meeting. Normally the chairperson or deputy chairperson presides at meetings. The board is further also mandated to determine its own internal procedures.³¹ A decision of the board is decided by a supporting vote of at least the majority of members.³² If the board consists of, for example, ten members, then at least a supporting vote of six members³³ is needed to decide a particular question.³⁴ The board may further also establish one or more committees to assist it, and when the board is appointing members to a committee, the board is not restricted to board members.³⁵ In order to perform its functions properly, the board may delegate any of its powers to a board member, a committee or an employee of the board. However, the power to make a final decision on the determination of municipal boundaries may not be delegated.³⁶ When powers are delegated by the board, the board still retains final responsibility for such powers or performance of such duties.³⁷ Because of the board's restrictive means, it may conclude an agreement with the Department of Provincial Affairs and Local Government, a provincial department or even a municipality in order to provide administrative and secretarial assistance to the board or its committees.³⁸

11.5 Requirements regarding municipal demarcation

11.5.1 Specific boundary determinations

According to the Demarcation Act, the Demarcation Board must determine municipal boundaries in the territory of the Republic and may also re-determine any municipal boundaries. The Board does not have absolute authority during a demarcation process. Any determination or re-determination of a municipal boundary must be consistent with the Demarcation Act and other appropriate legislation enacted in terms of

³¹ See the Demarcation Act ss 15 and 16.

³² A majority of members in this regard refer to a so-called "absolute majority", which will be 50% + 1 of the total number of members of the board. See also Rautenbach and Malherbe (1999) 159.

³³ 50% of 10 + 1.

³⁴ See the Demarcation Act s 17.

³⁵ See the Demarcation Act s 18(1)–(5).

³⁶ See the Demarcation Act s 19(1)(a).

³⁷ Refer to the Demarcation Act s 19(2)(a)–(b).

³⁸ See the Demarcation Act s 20(1).

chapter 7 of the Constitution.³⁹ Any determination or re-determination of a municipal boundary must be published in the relevant *Provincial Gazette*. A very important aspect provided for in the Demarcation Act is that any person that is aggrieved by a determination or re-determination of a municipal boundary may submit objections in writing to the Board within 30 days of publication of that determination.⁴⁰ The Board is obligated to consider any objections and to confirm, vary or withdraw its determinations and publish its decision in the relevant *Provincial Gazette*.⁴¹

The functions of determining or re-determining municipal boundaries are performed by the board: on its own initiative, on request by the minister or an MEC of a province or on the request of a municipality, with the concurrence of any other affected municipality.⁴² Once the Board has determined or redetermined a municipal boundary, it must without delay send such particulars to the Electoral Commission (EC).⁴³ If the EC is of the view that the boundary determination will affect the representation of voters in the council of any affected municipality, then the determination will take effect only from the date of the next election in that area concerned.⁴⁴ If the EC is of the view that a boundary determination will not materially affect the representation of voters in such a council, the determination takes effect from the date determined by the notice in the *Provincial Gazette*. Within 60 days after having received the particulars of the Demarcation Board, the EC must make known its view as set out in subsection 23(2) of the Demarcation Act, by notice in the *Provincial Gazette*.⁴⁵

³⁹ See the Demarcation Act s 21(2). Note that s 26 does not apply where the Board re-determines a municipal boundary in respect of which the MEC and all affected municipalities have indicated in writing that they have no objection to the redetermination. See s 8 of Act 51 of 2002.

⁴⁰ See the Demarcation Act s 21(4). The subsection does not mention re-determinations, but it is submitted that objections against any re-determinations of municipal boundaries are also included. Persons that may object include both natural and legal persons such as private residents, community groups, private companies and even municipalities themselves.

⁴¹ See the Demarcation Act s 21(5)(a)–(c) as amended. Note that any person may, subject to the Promotion of Access to Information Act 2 of 2000, request the Board to provide reasons for its decisions. See s 21(6) as added by s 8 of Act 51 of 2002.

⁴² Refer to the Demarcation Act s 22. The section confirms that municipal boundaries are determined or re-determined either on the initiative of the board self or on request by relevant role players. The instances when the board will act on its own initiative will be discussed below.

⁴³ The Electoral Commission is the commission established in terms of the Electoral Commission Act 51 of 1996 to oversee and monitor national provincial and local government elections in South Africa. See also s 23(1)–(2) of the Demarcation Act.

⁴⁴ See the Demarcation Act s 23(2)(a). This means that the *status quo* is maintained. It is submitted that the reference to the next election does not include any by-elections, as such elections impact on only a specific ward and not the council as a whole.

⁴⁵ See the Demarcation Act s 23(3). Note that the MEC in the province concerned must publish the notice within three months of the date of the notice published by the Electoral Commission (EC). See s 10(b) of Act 51 of 2002.

11.5.2 Demarcation criteria

When the Demarcation Board is considering whether to determine or re-determine a municipal boundary, it must have an overall objective in mind to establish an area that would adhere to certain requirements. These requirements are:

- to enable the municipality for that area to fulfil its constitutional obligations as set out in section 152 of the Constitution
- to enable effective local governance in that area
- to enable and provide for integrated development and
- to have a tax base as inclusive as possible of all users of municipal services in that municipal area.⁴⁶

In order for the Board to attain the overall objective and to comply to the required criteria of section 24, the Board must take certain factors into account when it is determining a municipal boundary. These factors are the following:⁴⁷

- (a) the interdependence of people, communities and economies as indicated by:
 - (i) existing and expected patterns of human settlement and migration;
 - (ii) employment;
 - (iii) commuting and dominant transport movements;
 - (iv) spending;
 - (v) the use of amenities, recreational facilities and infrastructure; and
 - (vi) commercial and industrial linkages;
- (b) the need for cohesive, integrated and unfragmented areas, including metropolitan areas;
- (c) the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
- (d) the need to share and redistribute financial and administrative resources;
- (e) provincial and municipal boundaries;
- (f) areas of traditional rural communities;
- (g) existing and proposed functional boundaries, including magisterial districts, voting districts, health, transport, police and census enumerator boundaries;
- (h) existing and expected land use, social, economic and transport planning;

⁴⁶ See the Demarcation Act s 24(a)–(d). All the relevant requirements must be considered before the Board makes its determination.

⁴⁷ See the Demarcation Act s 25(a)–(e).

- (i) the need for co-ordinated municipal, provincial and national programmes and services, including the needs for the administration of justice and health care;
- (j) topographical, environmental and physical characteristics of the area;
- (k) the administrative consequences of its boundary determination on:
 - (i) municipal creditworthiness;
 - (ii) existing municipalities, their council members and staff; and
 - (iii) any other relevant matter; and
- (l) the need to rationalise the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, financial viability and macro-economic stability.

From the factors mentioned above one can see that the determination process of a municipal boundary is a very involved and often difficult process. In many instances specialised guidance, expert advice and thorough pre-conducted investigations are required. The Demarcation Act does not specify how the Board should go about ensuring that all of the factors have indeed been complied with. This is perhaps an unfortunate lacuna in the Act, which could enhance the chances of legal challenges to actions of the Board. Such challenges could be minimised if the Board took every possible precaution to ensure that all relevant criteria were taken into account before a decision was finalised.

11.5.3 Demarcation procedures

The Demarcation Act determines specific demarcation procedures that must be followed by the Demarcation Board. The Act requires that before the Board considers any determination of a municipal boundary it must publish a notice in a relevant local newspaper stating the Board's intention and invite written representations and views from the public.⁴⁸ Written representations or views must be submitted within a specified period, which period may not be shorter than 21 days.⁴⁹ It is further required that when the Board publishes a notice referred to in subsection 1 it must convey the content of the notice by radio or another appropriate means of communi-

⁴⁸ Note that only one notice in one newspaper is required. The Board should ensure that the language of the notice is in the official language that is most used in that area.

⁴⁹ See the Demarcation Act s 26(1)(a) and (b).

cation, in the area concerned.⁵⁰ The Board is further required to send a copy of the notice to

- the MEC in the province concerned
- each municipality affected by the matter
- the magistrate of the area if any magisterial district is affected
- the provincial house of Traditional Leaders.

This can be carried out by registered post, by electronic means or by hand, and all of these parties are then invited to submit written representations.⁵¹

As soon as the period for written representations has expired, the Board is obliged to consider all representations submitted to it and may take a decision on the determination. The Board is also permitted to hold a public meeting, to conduct formal investigations or to do both.⁵² If the Board decides on holding a public meeting it must publish a notice in a newspaper circulating in the area stating the time, date and place of the meeting and invite the public to attend the meeting. During public meetings a Board's representative must explain the issues at hand, allow the public to air their views and answer relevant questions.⁵³ When the Board decides to conduct an investigation, however, it may conduct such an investigation itself or designate an investigating committee to conduct the investigation on its behalf. During formal investigations the Board or investigating committee has specific powers.⁵⁴ The Demarcation Act further specifically addresses the situation where a demarcation affects existing municipalities. In such cases the legal, practical or other consequences of a municipality's wholly or partially being incorporated into or combined with another municipality must be dealt with in terms of the Municipal Structures Act.⁵⁵

⁵⁰ It is important that the notice should be published as widely as possible to ensure that all interested parties have an opportunity to respond. In this regard it would be advisable for the Board to undertake not only radio publication of the notice but, eg, to send out flyers to all local residents via the relevant municipality concerned. See the Demarcation Act s 26(2).

⁵¹ See the Demarcation Act s 26(3).

⁵² Refer to the Demarcation Act s 27.

⁵³ These aspects are confirmed in the Demarcation Act s 28(1)–(3).

⁵⁴ See the Demarcation Act ss 29 and 30. Such powers include to (a) summon by written notice a person who in the Board or committee's opinion has information which is material to the investigation to appear before the Board or committee and to give evidence or to produce specified documents; (b) call a person present at a Board or committee meeting to give evidence or produce documents; (c) administer the oath or solemn affirmation; (d) question that person or have such person questioned by a person designated by the Board or committee; and (e) retain for a reasonable period a document produced at a meeting.

⁵⁵ The Demarcation Act s 31.

11.6 General administrative and other matters regarding the Demarcation Board

11.6.1 *Manager of the Board*

The Demarcation Board must appoint a person as the Manager of the Board. Apart from having certain responsibilities, the Manager is also the accounting officer of the Board.⁵⁶

11.6.2 *Aspects regarding the finances of the Board*

The Demarcation Board is funded mainly by money appropriated annually by Parliament to enable it to perform its functions. Money from other sources may be received through the National Revenue Fund. During each financial year the Board must submit an estimation of the Board's income and expenditure for the next financial year to the minister of Provincial Affairs and Local Government, as well as to the Minister of Finance. Any money paid to the Board that has not been used at the end of a financial year must be refunded to the National Revenue Fund, unless otherwise agreed by the two Ministers mentioned above.⁵⁷ As accounting officer, the Manager of the Board must comply with certain accountability requirements, and the financial statements and records of the Board must be audited annually by the Auditor-General.⁵⁸ Lastly the Act confirms that the Board is accountable to Parliament and must annually submit to both houses of Parliament a written report on its activities during a financial year. A copy of the report must also be submitted to each provincial legislature.⁵⁹

11.6.3 *Miscellaneous matters concerning the Demarcation Board*

The Demarcation Board is protected against civil liability, as the State Liability Act⁶⁰ applies in respect of the Board.⁶¹ No member of the Board is further liable for anything done or omitted in good faith when performing a duty or exercising a power in terms of the Demarcation Act.⁶² According to section 41 of the Act, the minister may make regulations under the Demarcation Act if such regulations are not inconsistent

⁵⁶ The responsibilities of the Manager are set out in the Demarcation Act s 33.

⁵⁷ See the Demarcation Act s 36(1)–(4).

⁵⁸ The Demarcation Act ss 37 and 38.

⁵⁹ Refer to the Demarcation Act s 39.

⁶⁰ 20 of 1957.

⁶¹ Any reference to minister in the State Liability Act must be construed as a reference to the chairperson of the Board.

⁶² See the Demarcation Act s 40.

with the Act or any other Act of Parliament. The Act also makes it an offence if people disrupt, hinder or do not co-operate with the Board in instances where they are legally required to.⁶³ Lastly, the Act also provides for a transitional arrangement, in that the boundaries of municipalities which existed before the Act took effect would continue to exist until superseded by new boundaries determined under the Act.⁶⁴

11.7 Conclusion

During the transitional process of local government in South Africa, the Local Government Transition Act⁶⁵ allowed for the establishment of separate Demarcation Boards for each province.⁶⁶ Within the new structure of local government there is only one national independent Demarcation Board, which makes independent determinations.⁶⁷ The Demarcation Board gets its powers from not only the Demarcation Act, but also from other national legislation.⁶⁸

The demarcation process of the new municipal boundaries was by no means a simple task. Many of the previous boundaries were drawn in a way that divided settlements irrationally and thus prohibited municipalities from providing effective services. In order for municipalities to operate efficiently and effectively, the most appropriate geographical municipal area had to be determined. In general, municipal boundaries should surround a functional area and should not be fragmented.⁶⁹ The demarcation process was difficult in many regards, but the process and functions of the Board are far from over. It is submitted that the process of re-demarcation and re-evaluation of existing municipal boundaries is continuous. There can be no doubt that in the new local government system the process of re-determining municipal

⁶³ For more on the offence and penalties, see the Demarcation Act s 42.

⁶⁴ See the Demarcation Act s 44. According to s 45, the Demarcation Act took effect on the date on which the Municipal Structures Act came into effect.

⁶⁵ 207 of 1993.

⁶⁶ See the LGTA ss 10E, 10I(3) and 10K. Note that these sections were repealed by a schedule to the Demarcation Act.

⁶⁷ During 1999 a total of 11 members were appointed to the Demarcation Board by the President. The Board consists of a chairperson, a deputy chairperson and nine other members, each representing a province. Only the chairperson and deputy chairperson have been appointed on a fulltime bases. See the Demarcation Act and also LGIS no 2 "Demarcation" (1999) at 8.

⁶⁸ See, eg, the Structures Act as well as the Cross-boundary Municipalities Act and the Local Government: Municipal Electoral Act 27 of 2000.

⁶⁹ See the White Paper on Local Government (1998) at 98–100.

boundaries is a dynamic and ongoing feature of the overall development of local government.⁷⁰

It is also important to remember that it is extremely difficult for the Demarcation Board to determine municipal boundaries that will address all problems in municipal areas; constant monitoring and performance evaluation is needed. In this regard, boundaries are important to ensure financial and administrative prosperity. Often people argue that towns that function well and are financially strong should be left alone when the demarcation of boundaries is considered. It is argued that such towns should not be burdened with the debt or incapability of other nearby towns. Other commentators suggest that such exclusion is unfair and is detrimental to poor areas or towns. It is submitted that after the overall demarcation process has been completed, flourishing municipalities should not be penalised with the burden of struggling and poorly managed municipalities unless the problems are closely linked to the manner in which municipal boundaries have been drawn.

The demarcation process under the Demarcation Act also targeted the total number of municipalities that were to be established. The total number of municipalities had to be reduced. Reality has shown that local democracy is best served by local governments that are effective and sufficient in delivering services and not by the total number of municipalities. In order to achieve a more rationalised system of local government, national government has envisaged a smaller number of municipalities with larger areas to serve. It is hoped that such rationalisation should bring more savings and efficiency if managed properly. The amalgamation process had a considerable impact on municipal administrative structures, and in many cases there is a significant over-capacity of staff with regard to certain expertise while other skills are urgently needed.

It must be remembered that municipal boundaries are not the only important boundary determinations in South Africa. Many other boundary determinations such as provincial boundaries and magisterial jurisdictions are also of significant importance. According to the principle of co-operative government, the different bounda-

⁷⁰ The three broad principles/objectives of the demarcation process are to ensure integration of all areas that belong together, to ensure all municipalities are financially viable and capable of performing their functions and to ensure effective local democracy and local governance.

ries should not be determined independently from each other, and all relevant role players should be included in such processes in the future.⁷¹

⁷¹ According to research done in 1998, a total of 777 traditional authorities, 48 health regions, 180 health districts and 4700 magisterial jurisdictions were considered in the demarcation process of local government boundaries. See LGIS no 2 "Demarcation" (1999) at 23.