

Demarcating municipalities

the aim: viability, the problem: time

The Municipal Demarcation Board has been established and is working. It has very little time to fulfil the formidable task of demarcating municipalities. This article will outline the functions of the Board, its powers and procedures, and the challenges which face it.

'Apartheid boundaries'

One of the many problems South Africa inherited from apartheid is a structure of race-based municipal boundaries. They are based on a policy of spatial segregation at local level; through separation, influx control and a policy of 'own management for own areas', apartheid aimed

to limit the extent to which affluent white municipalities would bear the financial burden for servicing disadvantaged black areas. Municipal boundaries need to be re-demarcated in order to enable redistribution and to achieve democratic, accountable local government that consists of financially viable municipalities.

Demarcation Act

South Africa's Constitution calls for the establishment of an independent authority that will demarcate municipal boundaries and for the establishment of criteria and procedures for the demarcation (s 155(3)(b) of the Constitution, Act 108 of 1996). The Municipal Demarcation Act 27 of 1998 provides for the establishment of a Demarcation Board that will execute the task of demarcating municipal boundaries. This Act, together with the Municipal Structures Act 117 of 1998, which defines the internal structures of municipalities, and the

forthcoming Municipal Systems Bill form the three pillars of future local government.

On 1 February 1999 the Demarcation Board was established and the members appointed by the President.

The Demarcation Board

The Demarcation Board is an independent, juristic person that has to determine municipal boundaries in accordance with this Act, other appropriate legislation (for example the Municipal Structures Act) and the Constitution. The fact that the Board is a juristic person means that it can acquire property, hire people, insure itself, go to court etc (s 5). But the Board cannot borrow money and cannot buy immovable property without the consent of the Minister for Provincial

Affairs and Constitutional Development. Members of the Board are not liable for anything they do in good faith when performing their duty.

The Act says that the Board must be representative of the South African society. Its members should come from all over the country and be knowledgeable and/or experienced in matters that are relevant to municipal demarcation (s 6). Those include, for example, development planning, community development, traditional leadership, municipal finance, town planning etc. Politicians in national, provincial or local government cannot be members of the Board, nor can office bearers of political parties (s 13(3)).

Who sits on the Board?

The following persons have been appointed to the Board by the President:

- Dr Michael Oliver Sutcliffe
(Chairperson)
- Mrs Nkaro Aldefrida Mateta
- Mr V Mlokoti
- Ms R Hartslief
- Mr Prince Duke Dlundta
- Mrs Rosemary Monyamane
- Mr Abraham Petrus Marais
- Mr Kaobitsa Maapa
- Ms Jacqueline Marion Subban
- Nkosi Tshililo Jeffrey Ramovha
- Prof Robert Greg Cameron

The functions of the Board

The Board must determine the boundaries of municipalities in South Africa. The existing municipal boundaries continue to exist until they are replaced by the boundaries determined by the Board (s 44). The Board can determine a boundary on its own initiative or on the request of the Minister or an MEC for local government.

Municipalities can request demarcation

The Board can also act on the request of a municipality with the concurrence of any affected municipality (s 22). This opportunity might prove to be essential for municipalities who do not want to sit back and wait until the Board comes to revisit their boundaries and who want to be participants instead of 'victims'. Municipalities can be pro-active and present a proposal for demarcation in their request, provided that it takes place with the concurrence of all other affected municipalities. In that way

municipalities can have input in the process of demarcation, even though the Board will eventually decide on the demarcation.

Objectives of demarcation

The Board must pursue the following objectives when demarcating an area:

- “...the objective must be to establish an area that would-
- (a) enable the municipality for that area to fulfil its constitutional obligations, including-
 - (i) the provision of democratic and accountable government for the local communities;
 - (ii) the provision of services to the communities in an equitable and sustainable manner;
 - (iii) the promotion of social and economic development; and
 - (iv) the promotion of a safe and healthy environment;
 - (b) enable effective local government;
 - (c) enable integrated development; and
 - (d) have a tax base as inclusive as possible of users of municipal services in the municipality” (s 24).

In short, the Demarcation Board should demarcate *with the aim of establishing municipal areas that are democratic and accountable, financially sound, able to provide good services and able to develop the municipal area.*

Factors that the Board must consider

The Act lists the factors that the Board should take into account when trying to attain those objectives through the demarcation of municipal boundaries (s 25). These factors, together with the aims set out above, carry the entire demarcation process.

The factors are -

- how people move in the area, where they go to work, spend leisure time and spend money, how goods and services move and who services whom in the area;
- the need for integrated areas and the need to avoid fragmentation – specific mention is made of the creation of metropolitan areas;
- the financial and administrative capability of a municipality to perform municipal functions;
- existing municipal and provincial boundaries (eg to what province has a municipality always belonged?) as well as areas of traditional rural communities (eg does the demarcation cut right through such an area?);
- functional boundaries, such as voting and magisterial districts, health, trans-

- port, police and census boundaries;
- how the land is being used and how it is expected to be used (industrial, agricultural, residential etc);
- the need for co-ordinated municipal, provincial and national programmes and services, including the needs of the administration of justice and health care;
- topographical, environmental and physical characteristics;
- the administrative consequences of

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- demarcation on the municipality’s credit-worthiness (say a former ‘rich’ municipality merges with a ‘poor’ one), on existing municipalities and their council members and staff etc;
- the need to rationalise the total number of municipalities (the Minister can make regulations in which targets and objectives for the rationalisation of municipalities are prescribed).

Undoubtedly, the contentious nature of some of these factors will come out in the demarcation process. Discussions will be held over issues such as the need for decreasing the number of councillors, the demarcation of a metropolitan area, and which municipality will profit in its tax base from an industrial area.

Procedures of the Board

Demarcation procedure

The Board must announce its intention to consider a determination of boundaries in a newspaper and on the radio, and it must invite the public to submit written representations and views (s 26). The following persons and/or organs must also be notified and they can comment on the matter: the MEC, each municipality that will be affected, the magistrate, if a magisterial district is affected, and the provincial House of Traditional Leaders if a boundary of a traditional authority is affected.

The Board is obliged to consider all representations and views. Thereafter it can make a final decision. The Board can also decide to hold a public meeting where it

allows the public to ask questions and air their views, or it can decide to conduct a formal investigation (s 27).

The formal investigation can be done by the Board itself or by an investigating committee, established by the Board. The Board (or an investigating committee) has the power to force a person, by means of a summons, to appear before the Board to give evidence or to hand over documents. It can also administer an oath, or solemn affirmation, to persons it is questioning (s 30).

Only the Board can make a final decision on a boundary determination; it cannot delegate that power to any of its committees or members. Questions before the Board are decided by a supporting vote of at least the majority of the members (s 17). When the Board has made a final decision it should send the particulars of the determination to the Electoral Commission. The Electoral Commission decides whether the new boundary affects the present representation of voters in the councils of any affected municipality. If it does, the determination will take effect only after the next municipal election. If it does not, the determination will take effect from a date determined by the MEC (s 23). A boundary determination must be published in the relevant *Provincial Gazette*. The notice should say when the determination takes effect (s 21(3)).

Appeal against a demarcation

Any person who is aggrieved by a demarcation, may, within 30 days after publication, submit written objections to the Board. The Board must consider these objections and can change or confirm its decision (s 21(4) and (5)).

Board members’ independence and credibility

Members of the Board should perform their duties in good faith and without fear, favour or prejudice and should refrain from any acts that compromise the Board’s credibility, impartiality, independence and integrity. They must disclose any private interests in matters before the Board and withdraw from the proceedings, unless the Board decides otherwise. Members should not use their position or privileges for private gain or to benefit another person. Full-time Board members are not permitted to engage in any other paid work, without the consent of both the Board and the Minister (s 12).

Assistance

The Board may establish committees to

assist it. Members of these committees are subject to the same rules pertaining to conduct, as those applicable to members of the Board. Those committee members are also subject to the same rules concerning the (dis)qualifications for being a member. The assisting committees can have advisory members.

The Board can ask municipalities who will be affected by demarcation to make facilities available for the holding of meetings.

Offences

To obstruct proceedings of the Board or a committee, to threaten or influence the Board or committee members or to

fail to answer to a summons constitute offences, and can be punished by a fine or imprisonment (s 42).

Challenges

The Board has a huge task on its hands. It has to work towards a situation where there is a rationalised number of viable, democratic municipalities while, at the same time, it needs to be sensitive to the views of the communities that will be affected. But the greatest challenge for the Board might very well be the time factor. There will be pressure on the Board to demarcate as many municipalities as possible before the next local elections, to prevent the holding of local

elections on the basis of 'apartheid boundaries'. In terms of the recent constitutional amendment (see page 7), elections will be held around 1 November 2000. The fact that the IEC will need 4 to 6 months for voter registration, the preparation of ballot papers etc, leaves the Board with less than one and a half year to finalise as many boundaries as possible. However, the issues and interests at stake do not permit the demarcation process to turn into a race against time.

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