

# CROSS-BORDER MUNICIPALITIES

## A CROSS TO BEAR?

**S**ixteen cross-border municipalities, at district, metropolitan and local level, will be established come the municipal elections in November. This is a bold experiment which is not without its political and administrative difficulties.

### Why cross-border municipalities?

When the boundaries of provinces were drafted in 1993, they posed a number of difficulties for effective and efficient local government. In a few cases the provincial boundary divided local communities down the middle. For example, the Gauteng/Mpumalanga boundary divided Benoni from Etwatwa. When political difficulties prevented the adjustment of the provincial boundary, the notion of cross-border municipalities (CBMs) was developed.

### Legislative provisions

Through an amendment to the Constitution in 1998, the possibility of creating CBMs was created. This process was taken further in the Municipal Structures Act (MSA) of 1998. This Act sets a number of requirements for the establishment of such a local authority.

- First, the Municipal Demarcation Board must demarcate such a municipality.
- Second, the legislatures of the two provinces involved must consent to the proposed CBM by way of resolution.
- Third, an Act of Parliament must authorise the establishment of the CBM.
- Fourth, the Demarcation Board finally demarcates the area of the CBM.
- Fifth, the MECs of the two provinces must then establish jointly the CBM by issuing a section 12 notice. This includes determining the type of the municipality and the number of councillors.

legislatures can terminate the existence of the CBM by passing a resolution calling for the disestablishment of that municipality. In that case, the Demarcation Board must redetermine the boundaries of the municipal area in such a way that the municipal boundaries do not cross a provincial boundary.

### Nature of a cross-border municipality

In a CBM the two MECs exercise their executive authority in terms of the MSA and any other legislation **jointly**. This means that all decisions must be by consensus and where necessary, decisions must be published in the provincial gazettes of both provinces. This applies only to the authority of the MEC for local government. All other provincial functionaries and legislation of the different provinces will still apply to their respective areas of the CBM.

The two provinces may, however, before or after the establishment of the CBM, agree that the CBM be governed differently. Such an arrangement may include that -

- one province transfers its executive authority to the functionaries of the other province on a delegation or agency basis; and
- all or any legislation of the one province is suspended and the laws of the other province are applicable. In such a case, the province in whose territory the other province's legislation is to apply, must incorporate the other's provinces legislation by passing legislation to that effect.

### Provincial resolutions

The Demarcation Board had demarcated the following areas as CBMs:

#### Between Mpumalanga and Gauteng:

- Cross Border District Council (CBDC) 2 - Cullinan/Rayton/ Ekwangala/Bronkhorstspuit
- Metropolitan area East Rand/

(CBLC) 2 - Bronkhorstspuit/ Ekwangala/ Ekandustria

#### Between Mpumalanga and Northern Province:

- CBDC3 - Groblersdal/Moutse/ Marblehall/Steelpoort/Burgersfort/ Thubatse
- CBDC4 - Bushbuckridge/ Hoedspruit/ Makutswi
- CBLC3 - Marblehall
- CBLC4 - Groblersdal
- CBLC5 - Steelpoort/Burgersfort/ Ohrigstad/Eastern Thubatsi
- CBLC6 - Mhala/Mapulaneng

#### Between North West and Northern Cape:

- CBDC1 - Kuruman/Mothibistad
- CBDC9 - Kimberley/Ritchie/ Delportshoop/Warrenton/Hartswater
- CBLC1 - Kuruman/Mothibistad
- CBLC7 - Hartswater

#### Between North West and Gauteng:

- CBDC8 - Wedela/Westonaria/ Krugersdorp/Magaliesdorp/ Gatsrand
- CBLC8 - Carleton/Wedela/ Fochville
- Metropolitan area Pretoria/ Mabopane/Winterveld/Diloye/ Ga-Rankuwa/Temba/ Hammanskraal

#### Between Eastern Cape and KwaZulu-Natal:

- CBDC5 - Kokstad

By the end of May this year, resolutions were passed by all the legislatures mentioned above, with the exception of the Eastern Cape and KwaZulu-Natal. The provincial governments of these two provinces have not been able to reach an agreement on the principle that a CBM should be created in East Griqualand. The Demarcation Board was thus compelled to redemarcate the boundaries of this proposed CBM. Of the provinces that have agreed to CBMs, none has to date reached agreement regarding the transfer of authority

# LITIES:

Some provinces have already embarked on the process of establishing CBMs. The number of councillors for the CBMs between Gauteng and North West Province and Gauteng and Mpumalanga have already been determined by the MECs of these provinces in joint provincial gazettes.

## **National legislation**

A Local Government: Cross-Border Municipalities Bill has been tabled in Parliament. It authorises the MECs for local government of the provinces, which have passed resolutions for the approval of CBMs, to establish these municipalities.

## **Evaluation**

The establishment of CBMs is clearly the second best option to a border adjustment. The administration of a CBM appears to be fraught with difficulties. In one municipal area two provincial governments must exercise joint authority. Joint decision making may be both time consuming and difficult to achieve. Keeping two sets of laws operating in different parts of the municipal area would also undercut the very purpose of having a cross-border municipality. The preferred approach will be for the two provinces to agree that a CBM be subjected to one provincial authority and to one set of provincial laws. This entails that one province must be willing to sacrifice some of its political and executive authority over its own territory. Although no such agreements have yet been concluded, it is hoped that now, with the establishment of the CBMs, the provinces will engage in negotiations to make this novel form of local government a workable solution to the imperfections of provincial boundaries. If this solution does not work out, the provincial boundaries must be readjusted.

Nico Steytler

Local Government Project  
Community Law Centre, UWC