

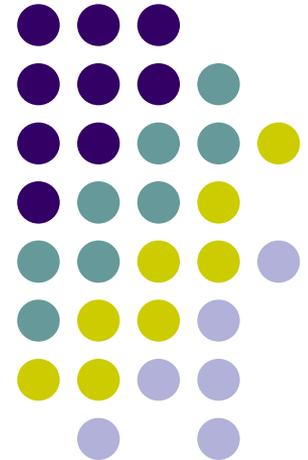
INSTITUTIONALISATION OF SPACES: THE APPROACH OF THE MUNICIPAL DEMARCATION BOARD



PRESENTATION TO THE 2010 DBSA/ HUMAN SETTLEMENTS KNOWLEDGE WEEK

Mr RH Monare
CEO: Municipal Demarcation Board.

21 OCTOBER 2010



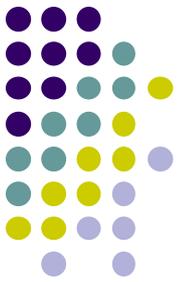


Overview

- Institutionalisation of Spaces in Context.
- Institutionalisation of Spaces Post 1994.
- The Board's Approach.
- The Board's approach as premised in the Constitution.
- Provisions in the Demarcation Act.
- Provisions in the Structures Act.
- Summary of the Board's Approach.



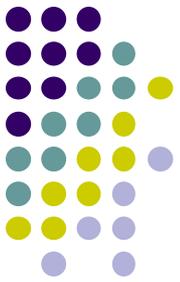
INSTITUTIONALISATION OF SPACES IN CONTEXT



- The term "institutionalisation" widely used in social theory to refer to the process of embedding something (a concept, a social role, a particular value or mode of behaviour) within an organisation, social system, or society as a whole.
- The term may also be used in a socio-political sense to apply to the creation or organisation of governmental institutions or particular bodies responsible for overseeing or implementing policy, or for performing certain functions.
- In this context, institutionalisation must necessarily involve the creation of the spatial definition within which government performs certain functions, or implements certain policies.
- Demarcation is an instrument that has historically been used to create this spatial definition.
- As a result of demarcation, boundaries are created for the operations of levels or spheres of government , such as local or provincial government.
- There is therefore a functional governance component to demarcation.



INSTITUTIONALISATION OF SPACES IN CONTEXT



- These governance boundaries may overlap with political boundaries that circumscribe a segment of the electorate.
- In a democracy, this electorate votes for the level of government that applies to it and can hold this government accountable.
- Demarcation therefore has the power to shape constituencies in order to meet particular political outcomes.
- This power makes demarcation vulnerable to political manipulation.
- In South Africa, demarcation has historically been used to shape electoral outcomes and to structure local government spatially through the Group Areas Act.
- The result was that development resources could be distributed along racial lines to the benefit of whites and at the cost of blacks.
- Demarcation was therefore central to the post-1994 period of government restructuring and reconstruction, particularly at local government level.



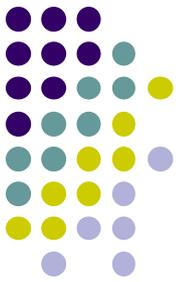
INSTITUTIONALISATION OF SPACES POST-1994



- The 1996 Constitution's vision was that new boundaries would set the spatial framework within which other processes of transforming and developing local government could take place.
- The Constitution made provision for an independent authority to demarcate municipal boundaries.
- The Local Government: Municipal Demarcation Act, 1998, providing for the establishment of the Demarcation Board, was the first piece of local government legislation enacted after the adoption of the 1996 Constitution.
- The demarcation of municipal boundaries was not subject to sanction by government, because the Board is independent and must perform its functions without fear, favour or prejudice.
- The Board was allocated a number of functions in addition to the demarcation of boundaries.
- Also responsible for among other things the delimitation of wards and the assessment of the capacity of municipalities to perform their functions.



INSTITUTIONALISATION OF SPACES POST-1994



- The Board also had to work closely with government departments to align service delivery boundaries to municipal boundaries.
- Through the demarcation process municipalities cover the whole territory of the Republic of South Africa.
- There has also been a compilation of a comprehensive database to advise government on the capacity of municipalities.



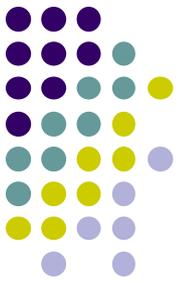
THE BOARD'S APPROACH



- The Board's approach to the demarcation of municipal boundaries, as an instrument to set and to maintain the spatial framework within which other processes of transforming and developing local government could take place, is premised on provisions in:
 - The Constitution of the RSA, 1996
 - Municipal Demarcation Act, (No 27 of 1998).
 - Municipal Structures Act, (No 118 of 1998).
- Extensive powers provided to the Board with respect to municipal boundaries.
- Board was tasked with the rationalisation of the then existing system of local government (transitional metropolitan councils, transitional local councils, regional services councils etc.) into three categories.



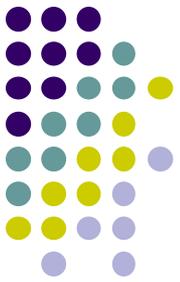
THE BOARD'S APPROACH AS PREMISED IN THE CONSTITUTION



- Chapter 7 of the 1996 Constitution deals exclusively with local government and addresses issues such as:
 - The objects of local government;
 - The status of municipalities;
 - Their developmental duties and powers and functions;
 - Their establishment, categories and types, local elections, internal procedures, privileges, by-laws and organised local government.
- The roots of the Municipal Demarcation Board's approach can also be found in this Chapter of the Constitution, which states: "National Legislation must....establish criteria and procedures for the determination of municipal boundaries by an independent authority" (Section 155 (3) (b)).



PROVISIONS OF THE DEMARCATION ACT



- The Demarcation Act was the first law to give effect to the provision in Section 155 (3) (b) of the Constitution.
- The Act provides for:
 - The establishment of the Municipal Demarcation Board;
 - Appointment of members of the Board;
 - Conditions of Service;
 - The powers, functions, administration and operating procedures of the Board;
 - Legislation requires that the Board must determine, and if necessary re-determine, municipal boundaries.
 - Outlines the objectives that the Board must have when determining a municipal boundary, the factors that need to be taken into account by the Board and the demarcation process.



PROVISIONS OF THE DEMARCATION ACT



- Section 24 and 25 of the Municipal Demarcation Act set out the criteria for demarcation and, more specifically, the objectives of demarcation and factors to be taken into account by the Board when it determines a municipal boundary.
- The Municipal Demarcation Act states that when the Board determines an outer boundary for a municipality, its objective must be to establish an area that meets a number of criteria.
- The boundary and the area contained in it must enable the municipality proposed for that area to fulfil its constitutional obligations, which are as follows:
 - The provision of democratic and accountable government for local communities;
 - The provision of services to the communities in an equitable, and sustainable manner;
 - The promotion of social and economic development;
 - The promotion of a safe and healthy environment.



PROVISIONS OF THE DEMARCATION ACT



- Since these criteria derive from the Constitution, the supreme law of the land, they can be described as being overarching and a basic guideline for everything done by the Municipal Demarcation Board.
- The Demarcation Act also clearly outlines the process for the determination or re-determination of municipal boundaries.
- Before determination of a municipal boundary Board must publish a notice in terms of section 26 of the MDA in a newspaper circulating in the relevant areas.
- The notice states the Board's intention to consider the matter and invites the public to make written representations and views to it within 21 days.
- The Board considers all representations and views submitted to it. If necessary the Board may hold a public meeting and/or conduct a formal investigation.
- The Board then publishes its determinations in the provincial gazettes and allows a period of 30 days for objections.
- The Board considers all objections and either confirms, varies or withdraws its determinations.



PROVISIONS OF THE DEMARCATION ACT



- After the initial demarcation process, the Board recognised that it will continue to exist and will continue to refine the municipal boundaries to ensure effective, efficient, developmental and sustainable local areas in the country.
- Thus a fully operational IT System was considered as key to communicate with all stakeholders and a GIS to produce Maps.



PROVISIONS OF THE STRUCTURES ACT



- The second piece of legislation to expand on the provisions of the Constitution was the Municipal Structures Act.
- The Constitution specifies three categories of municipalities that had to be created through the demarcation process:
 - Category A (Metropolitan): A municipality that has exclusive municipal executive and legislative authority in its area.
 - Category B (Local): A municipality that shares municipal executive and legislative authority in its area with a Category C (District) municipality within whose area it falls.
 - Category C (District): A municipality that has municipal executive and legislative authority in an area that includes more than one municipality.
- The Structures Act expanded on the Constitution by defining the categories and types of municipalities, the establishment of municipalities, and aspects of municipal councils such as the composition, membership, operation and dissolution, internal structures and functionaries and functions and powers.



PROVISIONS OF THE STRUCTURES ACT



- In terms of Section 2 of the Municipal Structures Act, 1998, an area must have a single Category A municipality if the area can reasonably be regarded as:
 - a) A conurbation featuring:
 - i. Areas of high population density;
 - ii. An intense movement of people, goods and services;
 - iii. Extensive development; and
 - iv. Multiple business districts and industrial areas.
 - b) A centre of economic activity with a complex and diverse economy;
 - c) A single area for which integrated development planning is desirable;
 - d) Having strong interdependent social and economic linkages between its constituent units.
- The importance hereof is that once an area complies with the criteria stated in Section 2 it must have a Category A municipality.



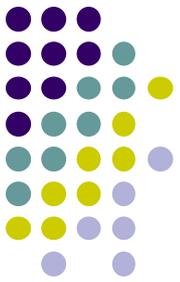
PROVISIONS OF THE STRUCTURES ACT



- The Structures Act also provides for the Board to delimit those local and metropolitan municipalities that qualify to have wards, into wards.
- By its delimitation of municipal wards, the Municipal Demarcation Board creates the spatial environment within which citizens/voters can exercise their basic rights, express themselves with respect to the councillors to be elected, and local matters such as service delivery.
- Municipal Wards must be delimited in preparation for each local government elections in the country.
- The rationale behind delimiting wards for every local election is that, in any particular local or metropolitan municipality, there must at the time of going to elections be more or less an equal number of registered voters in each ward in a municipality.



PROVISIONS OF THE STRUCTURES ACT



- The Board is also charged with advising the MEC's (provincial cabinet ministers) responsible for local government, on how to adjust certain powers and functions between local and district municipalities, to enhance service delivery.
- In terms of the SA Constitution local governments or municipalities have executive authority in respect of, and has a right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5 to the Constitution.
- Thirty Eight (38) local government functions listed in Schedules 4B and 5B to the Constitution.
- The 38 local government functions are divided, in terms of the Constitution between category B (local) and category C (district) municipalities. The precise division is in legislation.



Municipal Powers and Functions in terms of Legislation: The 38 Functions



Schedule 4 Part B	Schedule 5 Part B
<ul style="list-style-type: none"> Air pollution Building regulations Child care facilities Electricity and gas reticulation Firefighting services Local tourism Municipal airports Municipal planning Municipal health services Municipal public transport Municipal public works Pontoons, ferries, jetties, piers and harbours, Stormwater management systems in built-up areas Trading regulations Water and sanitation services 	<ul style="list-style-type: none"> Beaches and amusement facilities Billboards and the display of advertisements in public places Cemeteries, funeral parlours and crematoria Cleansing Control of public nuisances Control of undertakings that sell liquor to the public Facilities for the accommodation, care and burial of animals Fencing and fences Licensing of dogs Licensing and control of undertakings that sell food to the public Local amenities Local sport facilities Markets Municipal abattoirs Municipal parks and recreation Municipal roads Noise pollution Pounds Public places Refuse removal, refuse dumps and solid waste disposal Street trading Street lighting Traffic and parking

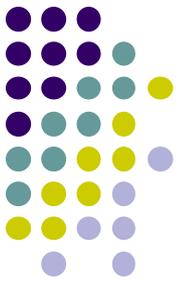
PROVISIONS OF THE STRUCTURES ACT



- Legislation empowers MECs responsible for local government, to authorise:
 - Local municipalities to perform district functions
 - District municipality to perform local municipality functions.
- To this end, Board carries out Municipal Capacity Assessments:
 - To determine the capacity of each district and local municipalities to perform the 38 local government functions listed in Schedules 4B and 5B to the Constitution
 - To advise MEC's for local government regarding adjustment and re-adjustment of powers and functions between local and district municipalities;
- However there are four functions – so-called “the Minister’s functions” which the MECs may not authorise. These can only be authorised by the National Minister of Cooperative Governance and Traditional Affairs (responsible for, among other things, local government at National level) :
 - Water
 - Sanitation
 - Electricity
 - Health



SUMMARY OF THE BOARD'S APPROACH



- Demarcation as an instrument for the creation of the spatial definition within which local government performs its constitutional functions, and the creation of the spatial environment within which citizens/voters can exercise their basic rights, express themselves with respect to the councillors to be elected, and local matters such as service delivery..
- An approach that is firmly premised on provisions in:
 - The Constitution of the RSA, 199
 - Municipal Demarcation Act, (No 27 of 1998).
 - Municipal Structures Act, (No 118 of 1998).
- Informed by the 1996 Constitution's vision that new boundaries would set the spatial framework within which other processes of transforming and developing local government could take place.
- Emphasis on criteria for demarcation and, more specifically, the objectives of demarcation and factors to be taken into account by the Board when it determines a municipal boundary.

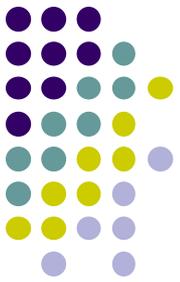


SUMMARY OF THE BOARD'S APPROACH



- A clear process for the determination or re-determination of municipal boundaries, that emphasises the need for consultation with all relevant stakeholders during the process.
- Maintenance of infrastructure to continue to refine the municipal boundaries to ensure effective, efficient, developmental and sustainable local areas in the country.
- Independence, and carrying out of mandated functions without fear, favour or prejudice.





Questions and Comments

