the **politics**
of local governance

Drawing the line:
The politics of demarcation
in South Africa

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Project Description

The Politics of Local Governance Project, an initiative of Isandla Institute, seeks to explore the interface between three domains: the local state, political society (more especially political parties) and civil society/communities/citizens. More particularly, the project seeks to critically engage the four, inter-related, key problems identified as:

1. The reductionist approach that conflates institutionalised participation in the form of 'invited spaces' with meaningful expression of active citizenry (thereby showing intolerance to any other form of community engagement or 'invented spaces' by communities);
2. The dominant political culture across political parties that considers these parties as the 'rightful', if not sole, custodians of citizen's aspirations and interests (feeding into the intolerance mentioned above);
3. Relatively weak and fragmented community organisations, with implications for their ability to claim rights and act as checks and balances to political power and bureaucratic reductionism; and,
4. A general retreat by civil society organisations/ the non-profit local governance sector from what is considered 'political society', in particular the space taken up by political parties.

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Discussion Paper

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Introduction

Boundary demarcation is often a contentious issue and perhaps inseparable from the politics of the day. In South Africa, boundary demarcation dates back to the colonisation of the country and the resistance wars that ensued as a consequence (Ramutsindela 2001; Griggs 1998). The ramifications of boundaries drawn then were formally knitted in the Apartheid system from 1948 onwards, which paved the way for the introduction of the Group Areas Act (1950) and the creation of the Bantustans, amongst others. A lot has been written on the extent to which these areas were deliberately starved of resources by the then regime and became unviable entities as a result. This is the legacy that the democratically elected government had to tackle when it took over in 1994.

In fact, boundary demarcation (embedded in the discussions on federalism vs. unitary state) was one of the contentious points of discussion in the negotiation processes that took place in the early 1990s.[1] The Commission on the Demarcation/Delimitation of States, Provinces and Regions created in 1993 had an immense task of negotiating the internal boundaries of the country by reincorporating former Bantustans and regional boundaries into a new South Africa now configured as nine provinces (de Visser, Steytler & Fessha 2012: 9; Ramutsindela 2001: 65).

The 1996 Constitution adopted the internal boundaries of South Africa based on the work of this commission and further mandated for the establishment of an independent authority responsible for the determination of municipal boundaries through section 155 (3) (b). This then paved the way for the establishment of the Municipal Demarcation Board (MDB) whose mandate was to determine, review and revise boundaries in democratic South Africa. The biggest challenge of the MDB was to establish new, wall-to-wall municipal boundaries across the country – a contrast to the fragmented Apartheid-created system of local government. Subsequent legislation set the terms for its establishment, its status and powers (Local Government: Municipal Demarcation Act, 1998) and defined its duties in relation to municipal categorisation and ward delimitation (Local Government: Municipal Structures Act, 1998). In addition to these, the MDB is also responsible for declaring district management areas.

Even under a democratic dispensation boundary demarcation has proven to be highly contested. For one, people have somehow internalised the boundaries they have lived with for decades to an extent that they are now ingrained in their identity. Also, boundary demarcation has resulted not only in robust contestation with regards to the rationale, procedures/processes and the wisdom of the demarcation decisions, but also engendered attacks on the credibility, impartiality of the MDB and its functioning. Therefore, 'transforming the system of local government from its proliferated, fragmented and racist state before 1994 to a modern system of local government' has become a challenging task for the MDB (de Visser et al 2012: 11).

Recently, there have been calls from various quarters for the role, scope and composition of the MDB to be reviewed. As a result, the former Minister of Cooperative Governance and Traditional Affairs, Richard Baloyi, set up a Demarcation Task Team in 2012 to uncover these issues in detail. The Task Team is yet to publish its findings.

The purpose of this document is to generate a better understanding of the nature of contestation with regards to municipal demarcations in general, and the MDB in particular. It looks at three factors in this regard, namely the role of public participation and influence on decision-making; the role of political parties, and service delivery and governance concerns. The document also highlights some of the controversial demarcation cases that have taken place under the new democratic dispensation. These fall under three categories: cross-boundary demarcation, ward delimitation for local elections and categorisation of municipalities. Before delving into these issues, the document provides a brief summary of the legal framework and criteria for demarcation. The paper concludes with a call for greater transparency and accountability in demarcation processes, including a clear mechanism to manage contestation and uphold unfavourable outcomes.

The legal framework and criteria for demarcation

As early as 1994, there were already disputed boundaries in the country despite the recommendations made by the Commission on the Demarcation/Delimitation of States, Provinces and Regions (see Map below). The formal adoption of the nine provinces in the 1996 Constitution did not automatically resolve this matter. The newly formed MDB inherited this disputed scenario while it engaged in drawing new municipal boundaries across the country. As a result, the MDB was opened up to contestation from its inception.

Map 1: Disputed boundaries pre-1994
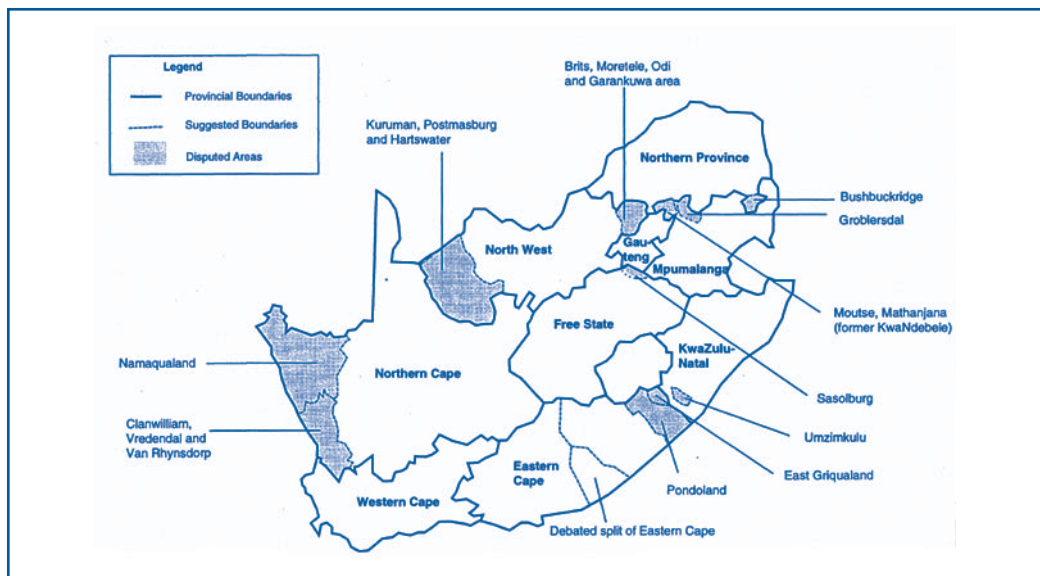
Source: Nel, Krygsman & de Jong (2011)

As indicated earlier, three different (but related) pieces of legislation regulate the mandate and operation of the MDB, namely the Constitution, the Municipal Demarcation Act of 1998 and the Municipal Structures Act of 1998. In South Africa, three different types of demarcation can be identified: cross-boundary, categorisation (Chapter 1 of the Municipal Structures Act) and ward delimitation (see Schedule 1 of the Act). Table 1 summarises who has final authority for each type of demarcation and what the envisaged role of the MDB is.

Table 1. Types of demarcation and roles of the MDB and other stakeholders

DEMARCATION TYPE	WHAT IT ENTAILS	WHO IS RESPONSIBLE	ROLE OF THE MDB	WHAT IS AT STAKE FOR COMMUNITIES
Cross-boundary	Ensuring all municipal wards fall under one province	Minister responsible for Local Government	Advisory role to Minister responsible for Local Government	Access to provincial service delivery provision (health, education, housing, social services, etc) Proximity to administrative structures Employment and economic opportunities
Categorisation	Recapitalising municipalities from type B (LM) to type A (Metro)	MDB	Key actor	Municipal services (water provision, electricity, sewerage, refuse collection, street lights, etc)
Ward delimitation	Redrawing ward boundaries for election purposes	MDB	Key actor (to consult the IEC as matter is related to voting districts)	Gerrymandering; potential loss/gain of political representation

Section 24 of the Municipal Demarcation Act outlines the demarcation objectives which the MDB needs to take into account when determining a municipal boundary. The MDB's 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 provision of social and economic development; and

    (iv) the provision of a safe and healthy environment.

(b) enable effective local governance;

(c) enable integrated development; and

(d) have a tax base as inclusive as possible of users of municipal services in the municipality.

In section 25 the Municipal Demarcation Act sets out an extensive list of criteria to be used when demarcating a municipal boundary (See Box 1). A key challenge in this regard is that the legislation does not provide clarity on the weighting between factors or different sets of criteria, nor does it offer

guidance on how to manage competing factors. Basically, this is left up to the discretion of the MDB. Furthermore, boundary criteria are open to interpretation, which means that boundary decisions by their very nature are contested, as is the technical data or knowledge underpinning such decisions.

Box 1. Factors to be taken into account when determining municipal boundaries

a) the interdependence of people, communities and economics 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, health, transport, police and census enumerator boundaries;

(h) existing and expected land use, social, economic and transport planning;

(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 demarcation 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.

In a study commissioned by the MDB and led by a former Commissioner[2], which reviewed international practice for demarcating municipal areas, a distinction is made between technical-consolidation approaches (meant to be objective factors to be considered when determining a municipal boundary), and subjective criteria, which relate to community engagement, where affected communities are consulted about proposed demarcation changes (Cameron & Meligrana 2010: 5-8).

Table 2 further specifies each of these approaches. An unfortunate (and seemingly unintended) consequence of this juxtaposition is that it suggests that technical factors are purely objective, uncontested and not subject to community engagement or interpretation. The advantage, however, is that it explicitly highlights the value placed on community engagement in demarcation processes.

TECHNICAL- CONSOLIDATION APPROACHES	SUBJECTIVE CRITERIA
Economies of Scale (the size of a municipality and the quality of its performance)	The will of the community (community engagement forums)
Socio-Geographic /Settlement Patterns Approach (areas of economic and social activity in relation to administrative structures)	Referanda
Functional Boundaries (number of functions in relation to the size of a municipality)	
Financial Viability (a tax base that ensures financial viability)	
Equity/Redistribution Policies (redistribution of finance and services from richer to poorer areas)	

In sum, demarcation decisions are bound to be contested, stemming from a variety of factors, such as lingering discontent with past boundary decisions, lack of clarity about the weight and importance given to different factors or criteria, lack of clarity on decision-making processes (or perhaps lack of accountability), and service delivery and governance concerns, amongst others. Some of these will be further reviewed below.

The nature of contestation

As mentioned before, boundary demarcation has proven to be highly contested due to a complex set of factors. This section will only focus on three issues, namely: the role of public participation and influence on decision-making; the role of political parties; and, service delivery and governance concerns.

Public participation and influence on decision-making

The weighting of public participation in the overall decision-making processes of the MDB is unclear. In fact, inadequate public participation is often the card drawn by communities when objecting to decisions of the MDB. While both the Constitution and the Municipal Demarcation Act mandate the MDB to independently determine municipal boundaries, to do so without the input of concerned communities goes against the spirit of the very same legal frameworks. At the moment, how public participation is facilitated in demarcation processes, to what end and how much weight it is given in boundary decisions is the sole responsibility of the MDB since the legislation is not explicit in this regard. As a result, some civil society actors have called for the Municipal Demarcation Act to be reviewed and amended claiming that the MDB takes its independence too far by preventing communities from making meaningful inputs into demarcation processes.[3]

In turn, the MDB has been at pains in recent months to illustrate that it employs a comprehensive approach to consulting communities on demarcation matters.[4] In the 2011/2012 financial year report, it prides itself for conducting in-depth consultations with municipalities, traditional leaders, the provinces, and other stakeholders on possible boundary changes (MDB 2012a). The MDB further opened up its processes to allow these stakeholders

to submit new proposals for the redetermination of municipal boundaries (MDB 2012b) along the lines of the recommendations made in the in-depth study led by Cameron where it is argued that "better boundary criteria alone will not improve local government performance…public participation, in particular, is very important" (Cameron & Meligrana, 2010: 42). The study recommended that the MDB:

• "Should be more transparent by releasing the substantial deliberations of its decisions;

• Should provide local government stakeholders with a written justification of how it has applied the Section 24 and 25 criteria for each investigation;

• Improve public participation by making meetings compulsory for all boundary investigations" (Cameron & Meligrana, 2010: 104).

In conclusion, they recommend that the MDB should always hold public meetings before it makes boundary decisions. However, while better boundary criteria alone will not improve local government performance (as the study conducted by Cameron and Meligrana suggests), public participation also does not guarantee that boundary demarcation will be uncontested. What took place recently in Free State due to the mooted categorisation of the Metsimaholo and Ngwathe local municipalities into a metropolitan municipality is a case in point.

What was initially thought to be a case of inadequate public participation proved to be more than that. As discussed later in this document, despite being consulted by the MDB and the criteria applied as per the legislation, residents simply did not agree with the merger based on service delivery concerns, while political factionalism was also central to the story. In the case of Khutsong, where residents rejected plans for the Merafong Municipality (Gauteng) to be incorporated into the North West province in an attempt to abolish cross-border municipalities in the country, it is unlikely that residents would have consented to the move even if they were thoroughly consulted by the MDB, MEC's and the Minister responsible for local government.[5] Khutsong residents were categorically clear that North West province was poorly resourced and less developed compared to Gauteng province and that they had better chances of access to speedy, quality service delivery in Gauteng than in North West province (Ndletyana 2007: 106).

These two cases illustrate that the work of the MDB can be contested on the basis of whether 'due process' has been followed (i.e. whether the affected community has been consulted) as well as on the basis of varying interpretations of supposedly 'objective' criteria. For residents of Zamdela, the categorisation cannot go ahead as such a move would delay the development of their community due to the anticipated bailing out of Ngwathe from the Metsimaholo coffers. For residents of Khutsong, incorporation into North West would have negatively affected their livelihoods and the proximity to administrative structures (and possibly employment opportunities) would have been affected.

The MDB has had to defy the wishes of communities at times in the interest of fulfilling its mandate and legislative imperatives. And as Cameron and Meligrana (2010: 54) suggest in their study, "good demarcation suggests that boundary

choices cannot be reduced to the will of the community only, particular when they fly against the more objective demarcation criteria". This suggests that civic education about demarcation imperatives and the role and mandate of the MDB is critical. Crucially, in such instances when correct procedures have been followed in the process of investigation and decision making, the critical question that remains is where the responsibility lies for protecting the integrity of demarcation decisions. While the MDB obviously has a role to play in this regard, surely public representatives (including those holding political office) ought to uphold the integrity and credibility of the MDB, regardless of the decision made. This raises a particular challenge to political parties, which may (and in fact do) disagree with boundary decisions made by the MDB.

The role of political parties

As indicated earlier, politics of the day often go hand-in-glove with boundary demarcation. As a consequence, community politics at times have fuelled contestation of demarcations. There have been instances where the MDB has had to navigate inter- and intra-party politics while conducting its work. In turn, aspersions have been thrown at the MDB, questioning not only its integrity but also its impartiality and political neutrality.

The African National Congress (ANC) resolved in this regard in its 53rd National Conference (December 2012) and in the party's 4th National Policy Conference held in June 2012. The ANC further resolved that government should appoint a Panel of Experts to review the work of the MDB. The party also called on the MDB to

take into account the financial implications of re-demarcating municipalities, the challenges of unviable municipalities, the need for ward boundaries to break down racial barriers and a reduced frequency of re-demarcations (ANC 2012a: 30; ANC 2012b: 31). The Metsimaholo Concerned Residents' Committee has also questioned the independence MDB after it allegedly cancelled a meeting with the residents under the instruction of Premier Magashule.[6]

As a result, politics were central to the Zamdela riots witnessed at the beginning of 2013. Metsimaholo and Ngwathe local municipalities fall under the Fezile Dabi District municipality in the Free State province (Coloured in dark blue in map 2). Residents of Zamdela claimed that Premier Magashule is the one pushing for the merger of Metsimaholo with the impoverished Ngwathe municipality where he wields power, into a metropolitan municipality (Allan and Heese, 2013). Merging these municipalities, the tale goes, Magashule would further entrench his hold over the new municipality and his patronage networks would now benefit from the proceeds of Metsimaholo, a municipality with a healthy financial standing. At
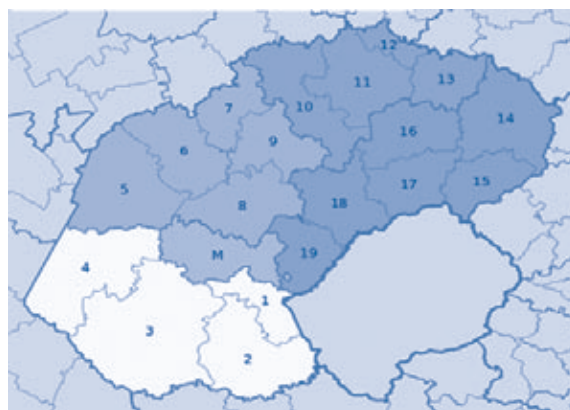
Map 2 Free State Municipalities
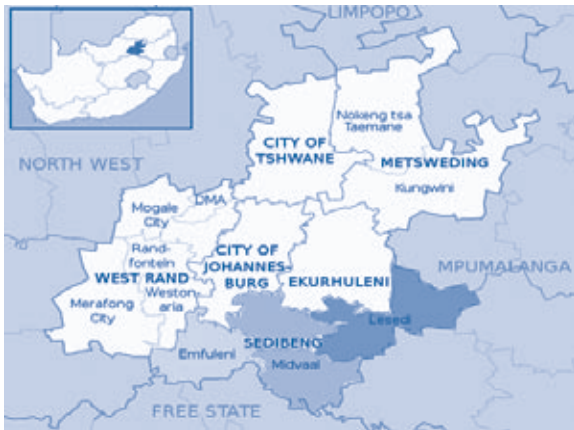
Map 3 Gauteng Municipalities

the heart of this case are factional battles within the ANC in this province.

Similarly, the MDB has, inadvertently perhaps, found itself caught up in tussles between political parties. A case in point is the opposition to the categorisation of the Midvaal and Emfuleni local municipalities into a metropolitan municipality by the Democratic Alliance (DA). This case has brought into sharp focus the politics behind boundary demarcations. These two local municipalities together with Lesedi local municipality currently fall under the Sedibeng district municipality located in the South of Gauteng (see map 3). Of the three municipalities, Midvaal is the only non-ANC led municipality in Gauteng. The DA has run the municipality since 2000.[9]

Apart from merging Midvaal with Emfuleni, the MDB further proposes that another metropolitan municipality, namely Ekurhuleni, absorb Lesedi municipality. According to the DA, such a move, even if backed by compelling rationale on the part of the MDB, is simply a threat to their power.

It is argued that should this merger proceed, the DA-run Midvaal, which has a smaller population is likely to be swallowed by the ANC-dominated Emfuleni municipality (Berkowitz 2013). In that way, the merger will allow the ANC to win what it currently fails to achieve through the ballot. This has caused the DA to question the integrity of the MDB as a result of the implications of this proposed categorisation.

The timing of demarcations have further fuelled suspicions and allegations that demarcations are done around election time under the guise of influencing election results.[10] In this case, the MDB defends its demarcation processes arguing that it follows two broad cycles between local elections; namely (i) the municipal boundary redetermination (ii) Ward delimitations which is captured in the diagram below.

The MDB further offers the following as an explanation of the diagram:

• "Immediately after the local government elections, municipal boundaries are reviewed, and this provides the opportunity for all interested parties the opportunity to make proposals for boundary re-determination. This cycle takes approximately 24 months.

• After the Review Process of municipal boundaries Municipal Wards are then delimited for the next local elections. This second cycle takes approximately 18 months.

• Elections were held on 18 May 2011, and the review of municipal boundaries commenced in June 2011." (MDB 2012)

Broad Process and Timeframes within current Legal Framework: 2011 – 2016
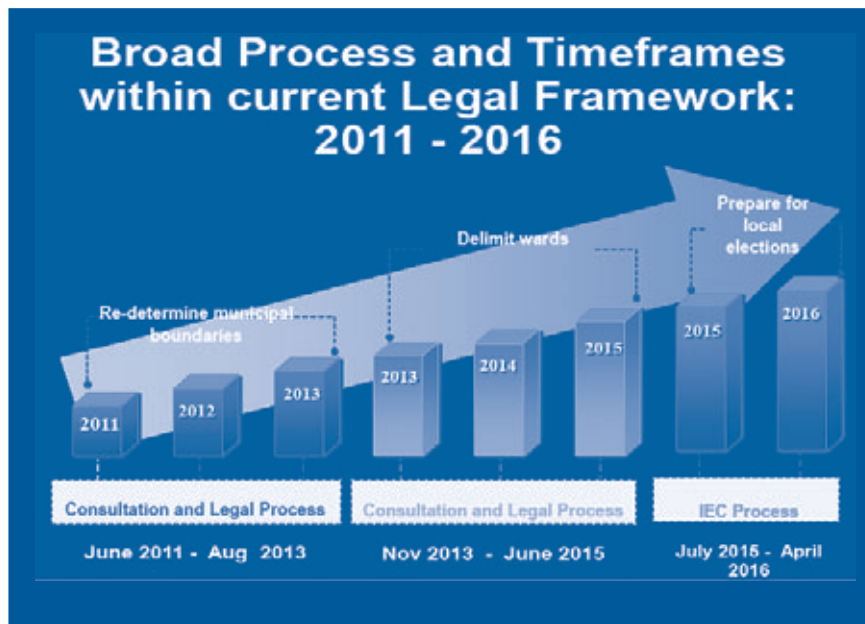
Source: Municipal Demarcation Board, November 2012

This suggests that there may be no escaping the fact that demarcations, and more particularly ward delimitation, are likely to occur on the eve of elections. However, this is unlikely to stop people from questioning the impartiality of the decisions of the MDB as long as those decisions appear to favour one party over the other or one community faction over the other. In light of the fact that the President of the country (who is also the President of the ruling party) appoints the Chairperson of the board from a list of three individuals, decisions that appear to favour the ruling party may be particularly badly received.

Service delivery and governance concerns

As indicated earlier, concerns about service delivery provision is one of the factors fuelling discontent with boundary demarcations in the country. Table 1 further highlights what may be at stake for communities. As it happens, this applies

to the cases of Khutsong and Zamdela, already elaborated upon above, and that of Bushbuckridge, an area incorporated into Limpopo province in 1994. Residents of Bushbuckridge preferred to be incorporated into Mpumalanga as opposed to Limpopo province. While geographical proximity to Nelspruit, the capital city, ranked the highest in terms of reasons for resident's choice to be part of Mpumalanga, service delivery concerns were also central (Ramutsindela & Simon 1999: 488). Residents did not feel that the administration in Limpopo prioritised their development compared to other areas in that province. The development indicators of the two provinces sighted at the time also proved that Mpumalanga was a better-resourced province than Limpopo (Ramutsindela & Simon 1999: 489). Bushbuckridge has since 2006 been incorporated into Mpumalanga province after the Constitution's Twelfth Amendment Act was passed in 2005.[11]

In the case of Zamdela, it appears that the concerns of the residents are justified. According to Allan and Heese (2013) "the overall socioeconomic environment in Metsimaholo, as reflected by our productivity index, provides better living and working conditions than Ngwathe (a measurement that takes into account not only basic services, but also economic infrastructure and municipal spending). Ngwathe only falls in the third quintile of productivity index scores, while Metsimaholo makes it into the first (top 20%)". The pair further argues that Metsimaholo delivers more to its residents than Ngwathe, with each resident allocated an additional R1, 000 more of spending over a four-year period. In general, residents of Metsimaholo believe that service delivery provision from a newly formed and bigger municipality will disadvantage them as the proceeds from their municipality will now have to be shared with their poorer neighbours.

They cite the fact that their municipality would have to bail out the cash-strapped Ngwathe, which reportedly owes Eskom a substantial amount of money. Allan and Heese (2013) further argue that the 2011-12 financial year financial returns submitted by the Ngwathe municipality to the National Treasury indicate "an almost complete failure by the municipality to spend its capital budget". They add that Ngwathe's rating on the Department of Water Affair's Blue Drop rash of red non-compliance indicators shows that the municipality has unsafe water while Metsimaholo shows up excellent drinking water quality (including in Zamdela).

Residents of Zamdela have not only raised service delivery concerns against Ngwathe but also governance related issues. The police are currently investigating corruption charges against the former Mayor of this municipality, Max Moeketsi Moshodi. This however has not stopped the ANC in the province from promoting Moshodi.[12] He is now the Mayor of Fezile Dabi District municipality (with Ngwathe under its jurisdiction).[13]

Conclusion

As South Africa approaches the twentieth anniversary of its democracy the imperative to ensure equitable service delivery and development is particularly strong. Given the performance and overall viability of a significant number of municipalities, resolving boundary disputes and consolidating municipalities is part of the solution to a number of bigger questions facing local government in South Africa. One of these relates to the question of unviable municipalities, which have no compelling tax base and therefore no revenue. Another question relates to the quality of leadership and governance; while the MDB may need to apply itself to what constitutes appropriate 'political entities of scale', where the size and geographical spread of a municipality enables rather than hinders fair representation and participation, there are wider concerns with the quality of local governance that fall outside the ambit of the MDB. Furthermore, the contestation primarily from political parties shows that the loss of power is a real concern and that (re)drawing boundaries may have unintended consequences on the plurality of local democracy.

As indicated earlier, it was to be expected that transforming the system of local government to a more inclusive system will be a complex task. Contestation therefore should not necessarily have a negative connotation attached to it; it should in

fact be seen as a positive sign of vibrant democratic system. Of concern, though, is the manner in which contestation tends to play itself out in South Africa. Not only has it led to violence and loss of life in some areas, damage of property in others, generally it showcases the erosion of trust between communities, elected leadership and the (local) state institutions. This draws attention to the fact that there are no clear mechanisms in the system to nurture and manage healthy forms of contestation and, where appropriate, provide recourse.

Contestation over power often takes the form of 'tackling the player, not the ball'. In South Africa, this has become evident in the attacks on many of the Chapter 9 institutions, for example, which is often fuelled by a deep-rooted disagreement about where the final authority resides, particularly when decisions are perceived as unfavourable to existing loci of power. Notwithstanding any deficiencies on the part of the MDB in executing its mandate and responsibilities, the criticism directed at the institution from political parties and the ruling party in particular (which has perhaps informed the rationale for establishing the Demarcation Task Team) suggests that this is part of the problem. Political parties have failed to uphold the integrity of the MDB and its decisions, even (or perhaps, especially) when its decisions have an unfavourable outcome on their power base.

Undoubtedly, the re-determination of municipal boundaries, the categorisation of municipalities and the delimitation of ward boundaries have to be conducted with due diligence and care. While some of the boundary proposals will be contested by communities (and political parties) at times, the MDB has a duty in such cases to satisfy affected communities and the country that it has conducted public participation across the board, and demonstrate that the views of concerned communities are weighted and accounted for. Institutionalised accountability to communities is a particularly weak feature of the governance system in South Africa and the MDB is one among many actors and institutions that needs to make its decision making processes more inclusive and transparent. This may quell the calls for an amendment to the legislation in order to prescribe the weighting of public participation and views of citizens on demarcation decisions.

Last but not least, educating citizens (and perhaps civic organisations, such as political parties) about the role and functions of the MDB is vital. In the end, and assuming due process has been followed, communities and political parties, have to learn to accept that 'drawing the line' is essentially about balancing objective and subjective matters in the interest of better service delivery provision and development.

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Endnotes

1   See, History of the South African Constitution. Accessed, 19 June 2013. http://www.constitutionalcourt.org.za/text/constitution/history.html

2   The study recommends a number of reviews to be effected to enable the MDB to conduct its work in an efficient and credible manner. The study also includes recommendations/advice on data requirements, skills sets and other resource requirements (Cameron & Meligrana 2010: vii).

3   Zamdela: A failure of public consultation process, Daily Maverick, 31 January 2013. Accessed, 25 June 2013. http://www.dailymaverick.co.za/article/2013-01-31-zamdela-a-failure-of-the-public-consultation process/#.Udu1eTtHLWU

4   For more information on these, see the various media releases/ briefings on the MDB website www. demarcation.org.za

5   In 2005, Parliament passed the Constitution Twelfth Amendment Act and the Cross-Boundary Municipalities Laws Repeal and Related Matters Act to effect a resolution of the ANC's 51st National Conference. The party resolved in that conference to abolish cross-boundary municipalities in the country as they posed organisational difficulties for the party's branches. The party preferred that all branches and regions in a municipality fall under one province.

6   Zamdela quiet after protest, News24, 10 April 2013. Accessed, 25 June 2013.
http://www.news24.com/SouthAfrica/News/Zamdela-quiet-after-protest-20130410

7   See also, Blood, smoke and tears: Zamdela's burning, Daily Maverick, 23 January 2013. Accessed, 25 June 2013. http://www.dailymaverick.co.za/article/2013-01-23-blood-smoke-and-tears-zamdelas-burning#.UdVIiztHK5c

8   The extent of factionalism in Free State was laid bare in December 2012 on the eve of the ANC's 53rd National Conference when the Constitutional Court had to make a ruling on a case brought by local ANC members challenging the legality of the provincial conference that elected the Provincial Executive Committee (PEC) led by Premier Magashule. The court ruled in favour of the local ANC members thereby annulling the election of the PEC and effectively barring them from voting in the party's 53rd national conference.

9   See, Joint Statement by Janet Semple, Tim Nast and Marti Wenger, DA Gauteng leader, DA mayor of Midvaal, and shadow minister   of Cooperative Governance and Traditional Affairs, on the Midvaal municipality (27/05/2010). http://www.polity.org.za/article/da-joint-statement-by-janet-semple-tim-nast-and-marti-wenger-da-gauteng-leader-da-mayor-of-midvaal-and-shadow-minister-of-cooperative-governance-and-traditional-affairs-on-the-midvaal-municipality-27052010-2010-05-27, and see also: Tensions run high over Midvaal merger, SABC news online, 11 April 2013. Accessed, 24 June 2013. http://www.sabc.co.za/news/a/53bb70804f39839385518f1e5d06aea0/Tensions-run-high-over-Midvaal-merger-20130411

10 Sasolburg: Shifting borders at election time, Mail & Guardian, 25 January 2013. Accessed, 25 June 2013. http://mg.co.za/article/2013-01-25-00-shifting-borders-at-election-time

11 The Twelfth Amendment Act of the Constitution is available at:
http://www.info.gov.za/view/DownloadFileAction?id=67899

12 Mayor being probed for graft promoted, Sowetan, 30 may 2013. Accessed, 08 July 2013.
http://www.sowetanlive.co.za/news/2011/05/30/mayor-being-probed-for-graft-promoted

13 A letter by the South African Municipal Workers Union (SAMWU) addressed to the ANC leadership in the Free State details a number of concerns to this effect. See, 'ANC must intervene in Free State before it is too late', SAMWU press statement, 20 February 2012. http://www.cosatu.org.za/docs/cosatu2day/2012/pr0220a.html

Drawing the line:
The politics of demarcation in South Africa

Report of the Roundtable dialogue

Cape Town

11 July 2013

Programme for the Roundtable dialogue- 11 July 2013

09.30-10.00   **REGISTRATION (Tea & Coffee)**

10.00-10.30   **OPENING:**

Welcome, Mirjam van Donk, Director, Isandla Institute

Presentation of discussion paper: Drawing the line: The politics of demarcation in South Africa, Pamela Masiko-Kambala, Policy Researcher, Isandla Institute

10.30-12.00   **SESSION ONE: PERSPECTIVES ON DEMARCATION:**

Landiwe Mahlangu, Chairperson: Municipal Demarcation Board

DISCUSSION

12.00-13.00   **LUNCH**

13.00-15.00   **SESSION TWO:** PERSPECTIVES ON THE POLITICS OF DEMARCATION:

Paul Berkowitz, Journalist: Daily Maverick

Timothy Nast, Executive Mayor: Midvaal Local Municipality

Ebrahim Fakir, Manager: Political Parties and Parliamentary Programme, Electoral Institute for the Sustainability of Democracy in Africa (EISA)

DISCUSSION

15.30-15.45   **WRAP UP AND CLOSE**

About the Roundtable

Isandla Institute hosted a Roundtable dialogue titled "Drawing the line: The politics of demarcation in South Africa" on 11 July 2013. The purpose of the event was to unpack the politics behind boundary demarcation in post-apartheid South Africa. The Roundtable dialogue deliberated on the following issues, amongst others:

- The politics of boundary demarcation in relation to cross-boundary demarcation, categorisation of municipalities and ward boundary delimitation
- Sensitivities around these types of demarcation and how communities respond to them
- The role and mandate of the Municipal Demarcation Board
- The role of municipalities and communities in demarcation processes

The event drew together selected representatives from government, political parties and civil society organizations and political analysts in a robust conversation about the politics of demarcation in the country.

Opening

Mirjam van Donk, Director of Isandla Institute, opened the meeting and welcomed participants. She welcomed the speakers of the day and also noted apologies received from Fatima Hassan, the newly appointed Executive Director of the Open Society Foundation of South Africa (OSF-SA), and the African National Congress (ANC), which indicated that it has suspended all external activities in respect of former President Nelson Mandela's health status.

Van Donk introduced Isandla Institute, an urban policy and planning think-tank concerned with advancing 'the Right to the City'. She further elaborated on its programmatic areas and highlighted some of the milestones of the organisation. Van Donk thanked OSF-SA for supporting Isandla Institute's project 'The Politics of Local Governance' since 2011 and noted that the event concluded the 2-year project. From August onwards, Isandla Institute's Local Government programme will focus on the concept of a Civic Academy as a vehicle to enliven community engagement in local development, routine accountability and the establishment of communities of practice.

Van Donk noted that the topic of discussion for the day has generated a lot of discussion and has evoked strong emotions, in some instances even protest politics. The evidence suggests that boundary demarcation in general and the role of the Municipal Demarcation Board (MDB) in particular are highly contested. In reviewing definitions of the phrase 'drawing the line', van Donk came across differing interpretations. What most interpretations have in common is a sense of firmness or decisiveness underpinning a statement, act or decision. It is not arbitrary, but informed by sound decision-making based on principles or other considerations.

Clearly, drawing the line in as far as boundary demarcation is concerned is highly contested. Van Donk observed that contestation is an issue that current day South Africa does not appreciate or manage very well. In closing, she noted that the intention of the Roundtable was to unravel whether contestation was about the process of boundary demarcation (i.e. the process of

investigation, decision making and reporting, as well as the interpretation and weighting of supposedly objective factors) or about the role and functioning of the MDB. In the case of the latter, the question arose whether this was a reflection on its functioning or whether there are deeper issues at stake, i.e. a more fundamental disrespect for its autonomy and integrity.

Pamela Masiko-Kambala, Policy Researcher in the Politics of Local Governance project, then presented Isandla Institute's discussion document titled "Drawing the line: The politics of demarcation in South Africa" (See part A of this report or www. isandla.org.za).

Session 1: Perspectives on demarcation

Landiwe Mahlangu, Chairperson of the Municipal Demarcation Board (MDB), was the main speaker in this session. Mahlangu shared his appreciation for the opportunity presented by this Roundtable and was happy that an institution other than the MDB was interested in distilling the important function of demarcation. This was important in light of the reigning confusion about the role of the MDB versus issues falling outside of its ambit. Starting his presentation, he explained the process of establishing the MDB and its reporting processes (with the MDB reporting to Parliament, not the executive). He reflected on the uniqueness of the country's MDB. Established through the Constitution as an independent authority, the organisation has the highest level of autonomy compared to demarcation boards internationally. Section 10 of the Municipal Demarcation Act

speaks to the qualifications needed for one to be appointed as a member of the Board. Another function of the MDB relates to capacity assessments of municipalities; the MDB reports to the MECs and the Minister responsible for local government in this regard.

Mahlangu then talked about the different focus areas of the three Municipal Demarcation Boards to date. He pointed out that the first board, appointed in 1999, was mainly a technical board of experts tasked with creating wall-to-wall municipalities across the country. Although Mahlangu conceded that this board made no provision for incorporating public participation in its decision-making processes, it nonetheless achieved a lot in its short space of existence (15 months). The second board, appointed in 2000, focused mainly on 'determination' of municipal boundaries, while the focus of the third (and current) board has been on 're-determination' of municipalities. Mahlangu clarified that provincial boundary demarcation does not fall within the ambit of the MDB. These boundaries are set out in the Constitution and can only be changed through Parliamentary processes.

Mahlangu highlighted five fundamental drivers of demarcation in South Africa, namely: 1. reverse apartheid created legacy and geography; 2. spatial transformation and justice; 3. effect integration; 4. deepen democratisation; and, 5. realisation of developmental local government. He pointed out that the MDB considers various factors in boundary determination, including economic development, capacity, viability, functional alignment and spatial planning.

Mahlangu then reflected on serious concerns facing the MDB, such as:

1. Coming to terms with re-fragmentation in the country illustrated by a growing pattern of people preferring apartheid created boundaries (e.g. Flagstaff, Sterkspruit, Soweto, Malundele, Tikwe, etc).

2. Managing the relationship between the MDB and the Executive (with regards to political interference).

3. The need to address urbanisation and its effects on settlement patterns (how to draw static boundaries when people are constantly on the move).

4. Weighting technical versus subjective issues

5. The reality that districts have largely not lived up to expectations.

6. The growing illegitimacy of 'invited spaces' for public participation versus 'invented spaces'

7. Governance and political contestations in municipalities which complicates transformation efforts.

Mahlangu also talked in detail about the current approach employed by the board in conducting its work, which includes examining the impact of size on the viability of municipality, using an expanded stakeholder consultation and involvement process, and evaluating the capacity assessment model of the MDB to increase its utility and coverage.

In the course of the discussion, participants talked about the creeping cessation threats which are sometimes linked to power, resources and tribalism. Others commented on whether it was feasible and desirable for places like Soweto to become autonomous municipalities, given its link to the broader economy of Johannesburg. There was also discussion about the eventuality of merging municipalities in the country as many municipalities remain dysfunctional and unviable. Doing so can be a logical way of fast-tracking transformation (through cross subsidisation) and to prioritise municipal performance.

Currently there are three vacancies on the MDB and the fourth board is due to be appointed in 2014. Questions were raised on how to strategically position the next board and the immediate issues it should confront when in office. A suggestion was the board could establish an internal appeals unit or mechanism to enable aggrieved communities to lodge appeals with the MDB first instead of resorting to courts. Also, the board should start looking at urbanisation and migration issues that effectively impact on boundaries. Others felt that the mooted revision of demarcation legislation in the country needs to pronounce on the extent to which public participation should be weighted in decision making process of the MDB. In this regard, participants were encouraged to send their recommendations to the Department of Cooperative Governance and Traditional Affairs (COGTA) which is tasked with drafting the revised local government legislation to be tabled in Parliament at a later stage.

Participants also commented on the need to ensure equity with regards to the number of Councillors versus size of the constituency served, to also allow for discretion to deviate by 10% from the average. It was pointed out that the Northern Cape province would bring about a contradiction in this regard. That province has bigger wards (due to its vast land size) compared to the number of constituents. At the end of the

discussion, participants stressed the importance of civic education and the need to re-orientate those working in the state regarding the importance of public participation in decision-making.

Session 2: Perspectives on the politics of demarcation

The main speakers in this session were Paul Berkowitz, a Journalist with the Daily Maverick, Timothy Nast, Executive Mayor of Midvaal Local Municipality, and Ebrahim Fakir, Manager of Political Parties and Parliamentary Programme at the Electoral Institute for the Sustainability of Democracy in Africa (EISA).

Berkowitz highlighted various post-apartheid challenges and underscored the importance of transforming the legacies of the past that still haunt the country. He referred to the apartheid created spatial patterns that are still mirrored in post-apartheid South Africa. He implied that the MDB had a duty to alter the geographical boundaries in the interest of inclusion and social cohesion.

In terms of contemporary demarcation issues, he argued that the MDB is often forced to take the flack on matters that are out of its control, as these pertain to issues that are often in the domain municipal leadership and political parties. For example, he pointed out that regardless of how accurate and professional the MDB conducted its work, evidence suggests that most communities highlight failures in municipal outputs and service delivery as reasons for contesting sound decisions of the MDB. He then asked where municipal leadership and political parties was when tensions and cracks manifested in places like Marikana, Zamdela and Rustenburg. He wondered how one

can ensure that municipalities perform tasks set out in Section 34 of the Municipal Structures Act with regards to public participation at such crucial times.

Focussing on the Midvaal and eMfuleni case, Berkowitz asked whether the burden of proof on the viability of the merger between the two local municipalities should not rest with the ANC. He questioned whether prior to the merger proposal the party had conducted a feasibility study to determine what implications the merger would have for affected municipalities.

On whether demarcation processes in the country hinder or promote multi-party democracy, he argued that there is no straightforward answer. What he pointed out as a matter of fact was that the public has the least say in these processes. As an example, he noted that powerful Councillors (mostly Proportional Representation candidates) are chosen by the party and not the people. His concluding comments suggested that the demarcation process serves the interests of the end-user rather than the people. After all, he argued that demarcation requests do not in fact come from the public. Political and economic interests capture the process, and not the people.

Nast started by complimenting the fact that South Africa has an independent MDB as elaborated in Mahlangu's presentation. He further indicated his support for the Demarcation Task Team set up by COGTA's former Minister Baloyi, which is meant to uncover various problems in demarcation processes and is expected to review the frequency of demarcations in the country. While arguing against the merger of Midvaal and eMfuleni into a Metropolitan municipality, Nast noted that a

change in a ward boundary is more than just drawing the line. In many instances it is in fact a change to one's family. He argued that it often impacts on where one works, where one sends one's children to school, which clinic someone goes to, and so forth.

Nast argued that there seems to be a policy 'flip-flop'. From 1995 the country moved from a centralised to a decentralised system of governance. However, the current threat to merge some municipalities effectively reintroduces centralisation. He added that although it's difficult to calculate how much municipal mergers cost, it is likely to be massive. By way of example, he noted that merging Midvaal with Emfuleni local municipality could result in significant labour relations disputes as different municipalities may have different policies on matters such as leave or overtime. He also indicated that such a merger would result in equalisation of tariffs across the municipalities, a matter that will directly affect residents currently paying low tariffs.

He noted that Johannesburg South is the fasted growing area in Gauteng and that there is no escaping the fact that a metropolitan municipality would be a natural progression as a result of this. He however argued that this is not the right time to do so. In essence, he argued that both Midvaal and eMfuleni currently do not fit the profile of a metropolitan municipality. The same applied to the neighbouring Merafong municipality, where questions still linger on whether it should not have been incorporated into North West province. He further argued that Metsimaholo local municipality should have been incorporated into Gauteng (instead of Free State) because it is part of an

industrial area which ties in with the economic landscape of Johannesburg South.

Nast made a case for demarcations to be conducted routinely, rather than in on ongoing and haphazard manner which contributes to instability. He proposed that this could be done every 10 years, in tandem with the release of Census results.

The last part of Nast's presentation tackled broader local government issues. He questioned whether it is realistic to expect part time ward councillors to serve an area consisting of 12,000 people. He therefore called for a careful balancing of the ward composition in relation to the number of public representatives available. Already the conclusion is that government is losing touch with the people and he argued that this is largely due to the size factor.

He also argued that in terms of size, some local municipalities are actually minor regional structures. He added that there is a need to introduce sub-councils as a means to decentralise local planning and bring a stronger community perspective to bear on council processes. Lastly, he pointed out that the public does not fully understand demarcation processes and criteria and that public education is therefore important. He noted that participation is not always public, but can be dominated by political party branches. Nonetheless, he concluded by stating that it is essential that the MDB needs to balance public views in relation to other demarcation criteria.

Fakir started his presentation noting that he, like van Donk, had looked up the etymology of 'demarcation'. The word derives from marking out, drawing boundaries, delimiting and, importantly but often ignored, redistributing. In terms of its

functions, demarcation is a technical exercise used for dividing or demarcating a country into logically, administratively serviceable and manageable units. It is also used as a technical policy instrument to achieve particular goals such as resource allocation and reallocation. The redistribution aspect of demarcation is multi-dimensional; it can be used to redistribute people, place and race. This, he argued, should be done cautiously because too much change results in too much contestation at times.

Fakir, like Berkowitz, argued that the MDB is somehow compelled to deal with bigger redistributive politics as it is expected to redress apartheid's insidious use of demarcation (through Group Areas Act, balkanisation of the country, tribal identities, cheap labour, and so forth). He argued that this is an enormous obligation that should be dealt with by the government (executive) and the ruling party instead of an institution such as the MDB. Having read the resolutions of the ANC's 4th National Policy Conference and its 53rd National Conference, he was convinced that the party is delegating its duties of tackling bigger transformational issues on the MDB, which results in an undue burden on the MDB. Fakir also pointed out that the appointment of members of Chapter 9 institutions in the country is becoming increasingly contested. In his view, it is inevitable that the Chairperson of the MDB will be perceived as a political deployee just by virtue of the nature of the selection process. [The chairperson is selected by the MPs of the ruling party and appointed by the President, who chooses from a list of three applicants]. Fakir argued that this was immaterial as cadre deployment is an instrument used by

governments worldwide. The critical issue, of course, is whether the selected or deployed person is suitably qualified to do the job at hand and whether he or she can balance the independence, mandate and influence of the organisation in order to achieve policy goals.

Fakir further argued that demarcation can be used as a political instrument aimed at achieving specific political goals. As a result, it is inevitable that demarcation will be subject to political contestation. While noting that 'gerrymandering' is not a significant feature with respect to elections in South Africa, it however can matter in relation to electoral politics where used as an instrument to capture political power or to dilute the power of the opposition where it governs. A cynical view would take the proposed merger of Midvaal-Emfuleni as a case in point, whereas the generous view would argue that the ANC supports the mergers of these municipalities, including that of Metsimaholo and Ngwathe in Free State, in order to foster cross-subsidisation across municipalities. After all, it could be argued that merging poorer municipalities with fairly stable ones is the only logical means to ensure the equitable redistribution of resources in the interest of development and transformation.

Fakir talked extensively about the Khutsong case as an illustration of the 'redistribution' aspect of demarcation, which was complicated by both inter- and intra-party factionalism. The proposal implied moving Khutsong out of the wealthy Gauteng province and incorporating it into the poorer North West province. Residents of Khutsong opposed the proposal sighting fears of poor service delivery provision that will arise as a result of the move. This resulted in a protracted campaign to defy the move

which ranged from court applications, boycotting elections, rendering the area ungovernable through violent protests, blockades, and so forth. Fakir highlighted that had Merafong been incorporated into North West, the increase in the number of inhabitants of that province would have resulted in a direct increase to the province's equitable share from the national Treasury's budget. This would have resulted in a redistribution of the budget. Unfortunately, the benefits of the proposal were not explained properly to the residents. Political dynamics within the ANC also played a part; at the time, Thabo Mbeki's power within the ANC was weakened. Opposition parties liked the idea of the merger, but also wanted to capitalise on Mbeki's demise. Sadly, local politicians also failed to make people aware of the opportunity that would have accrued had Khutsong been incorporated into North West province. A positive spin-off from the unity of Khutsong residents was an assertion of provincial, rather than ethnic, identity. Many believe that this has cushioned the area from the wave of xenophobic attacks in 2008.

Fakir also spoke in detail about the court case on the incorporation of Matatiele into the Eastern Cape from KwaZulu-Natal province. The court ruling upheld the rights of the provincial legislature and public representatives in state management to make decisions about provincial boundaries. It also emphasised the right of legislatures and the people to be part of decisions that affect them.

Discussion

The session was followed by a lively discussion. Participants pointed out that the drawback to the independence of the MDB creates continuous pressure on the organisation to re-demarcate frequently and to justify its existence. It was suggested that there seems to be a push to phase out District municipalities and replace them with Metropolitan municipalities where possible. As the ANC appears to be in favour of this, the MDB almost has no option but to categorise more municipalities into Metros for the sake of fulfilling this plan. Others argued that the country cannot do away with District municipalities entirely as they play a great role in provinces such as KwaZulu-Natal.

It was pointed out that the Demarcation Task Team appointed by the former Minister of COGTA is also expected to look at the concerns related to frequency and timeframes of demarcations in the country.

Participants noted that municipalities are often absolved of their duty to conduct public participation on demarcation matters which by default end up being the responsibility of the MDB. Participants found it disconcerting the manner in which the political society often dismisses the importance of identity issues when considering demarcations. The MDB also falls in this trap, preferring to purely consider it as a neutral and technical exercise. The resounding conclusion was that demarcation has both a capital 'P' (i.e. Politics) and a small 'p' (referring to community politics), noting that the notion of redistribution in itself is political.

The Chairperson of the MDB reflected on the role and impact of litigation in the evolving role of the MDB. He pointed out that the board has never lost a single case in its demarcation history, which he credited to the prudence of its decisions. He

also noted that majority of these cases were brought to court on the basis of public participation. In this regard, he praised the architects of the Constitution which makes gerrymandering impossible in the country, including at the ward level. He assured participants that the board looks at the desirability and viability of mergers from all angles before it takes decisions, and thereby is not only influenced by either technical or political factors. He pointed out that Khutsong residents lost their case at the Constitutional court, but that ultimately even the court's decision was trumped by politics. The ANC did an 'about turn' and reincorporated Khutsong back into Gauteng to satisfy bigger political and factional goals.

In closing, Van Donk noted that politics and contestation are part and parcel of demarcation. She pointed out that there is a difference between having a say, and having the final say, and that political parties and communities alike often struggle to accept this difference. She noted that the critical issue is to have one's say acknowledged, which points to the need for greater transparency and accountability in demarcation decisions on the part of the MDB and other relevant parties involved.

List of Participants

NAME	SURNAME	POSITION	ORGANISA-TION	CITY	EMAIL
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