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Municipal Demarcation decision challenges on financial non-viability of the Vhembe District Municipality

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Abstract: In most cases, when the Municipal Demarcation Board announces its intention to demarcate municipal and provincial boundaries, it faces a backlash from the local community of the affected areas. Some of the concerns raised by the community are lack of consultation when arriving at a decision to determine, redetermine and amalgamation of municipal boundaries.

The resistance by the communities to these boundary changes could be as a result of fear of decline in the level of service delivery, should the areas be moved to another municipal boundary and to certain extent tribalism could be a contributory factor.

Based on the governmentality theory, this article explores the tenets of good governance to be achieved through public participation and to be adopted for local government in order to develop and strengthen structures for local government.

The literature reveals that the impact of municipal boundary changes on the financial viability of municipalities is highly contested. In theoretical terms the literature suggests that the consolidation of municipalities improve effectiveness and efficiency.

Keywords: municipal boundaries, public participation, good governance, financial viability, demarcation.

1. INTRODUCTION

Demarcation is a thorny issue in South Africa (SA) and many municipalities have not been able to fulfil their constitutional mandate and this has led to service delivery protests and violent protests related to demarcation decisions. For example there were protests by the residents of Khutsong area in Merafong Local Municipality who were opposed to proposals and decision by the Municipal Demarcation Board (MDB) to incorporate the municipality into North West Province. The residents of Khutsong wanted to

remain in Gauteng Province. Although the Khutsong case was a cross-boundary demarcation matter where parts of a local municipality are located within the borders of two different provinces, the demarcation decision has led to protests.

There is evidence that the violent protests were sparked by the decision of the MDB to incorporate Khutsong into North West Province. Similarly, the decision by the MDB to relocate Moutse 1 and Moutse 3 areas from the province of Mpumalanga to the Limpopo province also reveals that the violent protests and destruction of public property was sparked by the demarcation decision. The current situation in Vuwani area, in the Vhembe District Municipality Limpopo Province, where the residents protested against the decision of the MBD to incorporate Vuwani town into Malamulele area, which has been incorporated into the newly formed Local Municipality, called LIM345. As mentioned in other cases, the Vuwani violence protests were motivated by MBD's decision and the residents demanding to remain in Makhado Local Municipality.

According to government's decision, the intention of demarcation was to improve municipalities' functionality and economic viability. The government contends that it is necessary in order to address the challenge of financial non-viability. It needs to be stated that in order to resolve demarcation disputes and continued violent protests, the government need to practice consulting by involving the members of the public in agenda-setting, decision –making and policy forming activities of government, or civil organisations and institutions responsible for policy development. The authors argue that public participation is one of the fundamental modes of participatory governance.

Further, in order to expedite the resolution of the demarcation disputes, more generally it is important to emphasise the paramountcy of good governance as foundation for sustained and equitable development as effective participation by all stakeholders, especially at local levels of government. This has come to be viewed as a necessary condition to promote good governance. In post-conflict, post-transition local government in relation to post-demarcation protests and violence, broad-based participation in public affairs needs to be promoted as a means of creating the social capacity necessary for building a cohesive society.

The article begins by providing a conceptual analysis on the meaning of municipal demarcation followed by a theoretical perspective of municipal demarcation decision challenges on financial non-viability in the Vhembe District Municipality. This is then followed by a comparative analysis of successful demarcated municipality and financial viable municipality, which in turn is followed by a discussion on the proper procedures and processes to be followed for achieving acceptable outcome in functional demarcated municipality in South Africa. Conclusion and recommendation are provided in the last section of this article.

2. CONCEPTUAL ANALYSIS OF MUNICIPAL DEMARCATION

Demarcation refers to a physical marking of a boundary on the grounds of using pillars or beacons and production of boundary maps (African Union Commission, 2012:2). A municipality refers to an organ of state within local sphere of government exercising legislative and executive authority within an area determined in terms of the Local Government: Municipal Demarcation Ac, 1998 (Act 27 of 1998), which consists of a political structure, administration and community, and functions in accordance with political

structure, administration and community, and functions in accordance with political, statutory, and other relationships between its political structures, political office-bearers, administration, and the community (Republic of South Africa, 1998. According to Chipu (2011:8), a municipality has a separate legal personality, which excludes liability on the part of its community for the actions of the municipality.

According to Osmani (2008), public participation refers to a process of providing ordinary people with opportunities to influence decisions that have far-reaching consequences for their lives and livelihoods.

Bouelangoye (2014: 22) defines governance as articulation and putting into action public policy decisions on the part of the public and private actors instead of only governmental actors. Section 155 (3) (b) of the Constitution of Republic of South Africa, states that the MDB is an independent authority responsible for determining municipal boundaries. In addition to the determinations and redetermination of municipal boundaries, the Board is also mandated by legislation to declare district management areas; to delimit wards for local election; to assess the capacity of municipalities to perform their functions. The President of Republic of South Africa appoints members of the Board (Municipal Demarcation Board, 2016).

The Local Government Municipal Systems Act, 117 of 1998, and the Municipal Demarcation Board Act, 1998, also define the procedures the Board must follow in deciding on boundaries and the manner in which it must consult communities in the demarcation process. In most instances the criterion is that demarcation must ensure that municipalities are functional and more importantly in recent cases towards ensuring that municipalities are economically viable.

Wampler and McNulty (2011: 6) asserts participatory governance refers to state –sanctioned institutional processes that allow citizens to exercise voice and vote, which then results in the implementation of public policies that produce some sort of changes in citizens lives. As alluded above, the proposal for demarcation of municipalities was partly underpinned by a desire to make municipalities financial viable. National Treasury defines financial viability as the sustainability of the municipal budget, and whether the municipality is able to sustainably meet its expenditure commitments from its own revenue and transfers. The emphasis of the definition is that a municipality should be able to fulfil its mandate from available resources in a sustained manner.

The Local Government Fiscal Framework, which is defined by the Money Bills Amendment Procedure and Related Matters Act, 2009, defines financial viability as the state of balancing revenue sources and expenditure responsibilities and if these two aspects balance then the municipality is financial viable.

3. THEORETICAL ANALYSIS OF DEMARCATION

This article follows the theoretical approaches of governmentability and interventionism theories. The governmentability theory emphasizes the governing of human conduct through positive means rather than sovereign power to formulate the law. Governmentability is generally associated with the willing participation of the governed (Huff 2017). The decision by the government and MDB to effect boundary changes should be informed by the active consent and willingness of the local residents affected by the changes, at least according to this theory.

Intervention theory suggests that the interventions of government in the affairs of the state are intimately related with the perceived purpose and role of government in society (Van Der Walt 2016: 4).

According to Argyris (1970: 587) intervention theory emphasizes to intervene into an on-going system of relationship, to come between or among persons, groups or objects for the purpose of helping them.

Liberals argues that government intervention is regarded as interference in people's lives, whilst on the other hand socialists regard such intervention as unnegotiable precondition order, stability and equity in society (Van Der Walt 2016: 4). According to this theory, the government's decision to demarcate municipalities in Vhembe District was based on the rationale of providing order and stability through re-drawing of municipal boundaries. Furthermore, government intervention in society was aimed at addressing the challenges of service delivery, functionality and economic viability of the local municipalities in the district.

The next section discusses the demarcation issues with reference to the Vhembe District Municipality. The discussion also uses case studies where demarcation has taken place, which is the City of Tshwane, in Gauteng Province, Mtubatuba Municipality in KwaZulu-Natal Province, Matatiele Municipality in the Eastern Cape Province and Bushbuckridge Local Municipality in Mpumalanga Province.

4. BOUNDARY DEMARCATION IN THE VHEMBE DISTRICT MUNICIPALITY

Vhembe District Municipality was established in terms of the Municipal Structures Act, 177 which provides for the establishment of municipalities, their categories, competencies and functions. Vhembe is one of Limpopo Province's 6 district municipalities established in 2001, incorporating four local municipalities namely; Makhado, Mutale, Musina and Thulamela (Vhembe District Municipality, 2006:6).

It is situated in the Northern part of Limpopo Province and shares borders with Capricorn, Mopani and Bohlabela District municipalities in the southern, eastern and northern directions respectively. It also shares borders with Zimbabwe in the north, Kruger National Park in the east and Botswana in the North West. The district has an estimated population of 1.2 million (i.e. Africans, Indians, Whites and others) (Vhembe District Municipality, 2006: 6).

The number of households are estimated at 274 480, with the major spoken languages being Xitsonga, Tshivenda, Sepedi, Afrikaans and English. The capital town is Thohoyandou, with the sister towns of Makhado, Musina, Tshilamba, Dzanani, Sibasa, Vuwani, Malamulele, Saselamani and Elim (Vhembe District Municipality, 2006:6).

Vuwani is small town which falls under Makhado Local Municipality with a population of approximately 10 000 and an estimated 710 households (Stats SA 2011). In 2015 the anti-Malamulele protests began in Vuwani after the MDB announced its decision to incorporate Vyeboom (under Chief Mbangiseni Masia)-which is mostly volatile, Tshikonelo (which was previously under Thulamela Local Municipality), Mulenzhe (which is closer to Thohoyandou and was previously under Thulamela Local Municipality), Mashau (which was previously under Makhado Local Municipality), Davhana (which is closer to Malamulele and previously under Makhado Local Municipality), Tshimbupfe (closer to Malamulele and previously under Makhado Local Municipality), Sinthumule (a small village between Masia and Mashau which was previously under Makhado Local Municipality) and Masakona village. The community protested against the decision and among their grievances are that they were not consulted by the MDB (SABC News 2016).

It should be noted that the distance between Vuwani and Malamulele is 30 kilometres; the two areas have a lot in common. They are predominantly rural and both speak Xitsonga and Tshivenda with families that are inter-ethnic. The areas were previously under Makhado and Thulamela Local municipalities respectively (SABC News 2016).

LIM345 Local Municipality is a Category B municipality which was established in terms of Section 12 of the Municipal Structures Act, (117 of 1998) (MSA), following the local government elections held on 03 August 2016. It has a collective executive system, combined with a ward participatory system in terms of Section 9 of the MSA (LIM345 Local Municipality 2017). The new municipality has 36 wards with 10 allocated to eight problematic villages and 26 to Malamulele area. The municipal offices are located in Malamulele town which is dominated by Tsonga speaking community (SABC News 2016).

According to South African Police Service (2016) protestors from the affected villages in Vuwani cited the following factors as a reason for the violence; *“fear of the unknown-contesting for positions, fear of being led by Tsonga speaking people, lack of knowledge for the locality of the new municipal offices, community service delivery programmes and development, anticipation of losing business opportunities, minimum job opportunities for Venda speaking people”*.

It should be mentioned that on the 21 December 2009, the Malamulele Community Development Forum (MCDF) submitted request for the boundary re-determination to the MDB. Furthermore, the Thulamela Local Municipality resubmitted the same request on 14 December 2014 at the request by the Malamulele Demarcation Task Team (MDTT) by excluding the Malamulele area and determining this area as a separate Category B Municipality in the Vhembe District (MDB 2015: a).

It is argued that different community representatives submitted documents and memorandums to different authorities supporting the proposed boundary re-determination and raised a number of issues which included the following; lack of consultation during the demarcation process in 1999/2000; Poor service delivery by the Thulamela Local Municipality; Discrimination against the Greater Malamulele area (MDB Report 2015: b).

On the 29 January 2015, the MDB released its report on the feasibility study for the proposed boundary re-determination of Malamulele area and determining this area as a separate Category B Municipality in the Vhembe District. The report concluded and recommended that the proposed boundary re-determination of the Thulamela Local Municipality boundary by excluding Malamulele and determining the area as a separate category B municipality within Vhembe District is not consistent with the demarcation objectives (MDB Report 2015: b). As far as service delivery, the report recommended that the MDB should refer the service delivery concerns of the Malamulele community to the Department of Co-operative Governance and Traditional Affairs and also concluded that service delivery concerns are not motivation for boundary re-determination (MDB Report 2015: b).

In March 2016 the MBD announced that Malamulele would be granted a stand-alone municipality and the decision to do so was in contrary to its 2015 decision to refuse to grant the area its own municipality. The MDB's decision further fuelled the tensions in Vuwani after the community realised that they would be incorporated into the new established municipality.

The community of affected villages in Vuwani hold the following perceptions about the new municipality; *“the Premier of Limpopo Province and the National Government consider Malamulele important and better*

than Vuwani people, more attention was given to Malamulele people, they also demand Government attention, the Government was able to reverse the MDB's decision for Malamulele and therefore they can do it for Vuwani, lack of proper consultation by the MDB, the new municipality will be situated in Malamulele, Tsonga people will take charge of the new municipality, no services will be taken to Venda people” (South African Police Service, 2016).

According to Nehode (2016) the Vuwani situation is symbol of tribalism at play between Xitsonga speaking and Tshivenda speaking residents, whom are against being governed by each other. Nehode also asserts that these behaviours were as a result of Bantustan segregation policies developed by then apartheid government to divide Africans based on ethnicity. Maserumule (2016) advances the argument that Vuwani situation clearly demonstrate tribalism and ethnicity which was sparked by MDB demarcation decision to incorporate the area into new municipality.

5. PAST EXPERIENCES OF DEMARCATION IN SOUTH AFRICA: LESSONS LEARNED

The City of Tshwane, which is a Category A municipality in Gauteng Province experienced demarcation in 2008. It was established following incorporation of Motsweding District Municipality, Nokeng tsa Taamane Local Municipality and Kungwini Local Municipality. In this particular case the demarcation involved the incorporation of a district and two local municipalities to merge them with the existing metropolitan municipality (Office of the Premier, 2008).

The demarcation decision was sanctioned by the Minister of Provincial and Local Government. The reason for the demarcation was to reduce the number of municipalities in Gauteng. It should be noted that the decision was in line with Gauteng global regional strategy. The incorporation of one district and two local municipalities into larger metropolitan area was to speed up service delivery and also to allow communities from smaller municipalities to benefit from bigger municipalities' good infrastructure and to enhance project efficiency (Republic of South Africa, 2015).

The City of Tshwane merger came into effect in May 2011. The authors argue that the re-determination of boundaries of the municipalities involved affected the financial viability of the City of Tshwane. The evidence indicates that the transactional costs associated with the merger and it was estimated at around R1,04 billion, although the Gauteng Provincial Government provided the city with a once-off grant of only R20 million (City of Tshwane, 2011).

As a result of the merger, the financial figures of 2011/12 financial year especially the expenditures in incorporated municipalities increased drastically. Most of the expenditures were not budgeted for and the incorporated municipalities reported a decline in revenues (City of Tshwane, 2011).

The three incorporated municipalities did not collect enough revenue to increase the city's tax base, because these municipalities were relatively poor and a large percentage of their population was poor. Consequently, the city had a huge financial deficit during the transitional period. The city reported R800 million in expenditure and collected R 385 million in revenue and had a shortfall of minus R500-million (Division of Revenue 2015/16 in Republic of South Africa, 2015).

Mtubatuba Municipality, this is in KwaZulu-Natal Province experienced boundary demarcation in 2011. The boundary of the municipality was extended to include a portion Mpukunyoni Traditional Council.

The authors also argue the boundary changes resulted in huge expenditure changes. Astonishingly, the municipality's the total expenditure increased by 18 percent, from R 72-million to R85-million in just one year after re-deamination. The significant increase in the total expenditure (National Treasury, 2013).

The municipality's total expenditure increased because of capital expenditure, as it has to extend infrastructure provision to the incorporated areas, especially Mpukunyoni, which had huge backlogs. Although the municipality's revenues increased alongside expenditures, however it is because the municipality's transfers from government were increased. It should be noted that during the period of 2011/12 financial year the municipality's own revenue were stagnant which indicates that its revenues base did not increase as a result of demarcation process (National Treasury, 2013).

Matatiele Local Municipality is located in the Eastern Cape Province; in 2006 the MBD moved it from the Sisonke District Municipality in KwaZulu-Natal Province and incorporates it into Alfred Nzo District Municipality in the Eastern Cape. The boundary re-determination included the town of Matatiele and Cedarville, the magisterial district of Maluti-which previously fell under the Umzithubu Local Municipality. The incorporation of the municipality into Eastern Cape, compelled Matatiele to establish new 24 wards and this led to increased administrative costs (Vacu & Ncube, 2015).

As far as financial viability, the municipality experienced a deficit on its budget prior to demarcation and a financial surplus before demarcation. In addition, the municipality reported an increase in capital expenditure after demarcation in 2007. The financial figures show a huge leap from R7.4 million in 2005/6 financial year, (before demarcation) to R26.6 million in 2006/7 financial year (after demarcation) (National Treasury, 2011).

The authors argue that the Matatiele demarcation case has unique circumstances when compared with other cases, to put it simple the municipality had a number of areas which were affected by boundary changes. The municipality's taxes base did not improve because it experienced a huge service delivery back log from the newly incorporated areas; the municipality also experienced a sharp increase in its debt from R6.6 million to R46 million. A larger proportion of the amount of the debt was inherited from Maluti areas, because the municipality was unable to charge municipal rates on those areas (Matatiele Annual Report, 2006/7).

As far as administration costs are concerned, Matatiele had a unique situation where its human resources increased by 100 per cent in order to meet the demand of its services from the newly incorporated communities. On governance issues, the municipality established new wards and this had a positive impact in the sense that it improved communication between the municipality and the community (Republic of South Africa, 2015/6).

The Bushbuckridge Local Municipality is located in Mpumalanga Province. In 2006 its boundaries were re-determined from Bohlabela District Municipality which is in Limpopo Province and incorporated into Ehlanzeni District Municipality in Mpumalanga Province. In this case it was a provincial boundary demarcation and the municipality received water and sanitation authority and service delivery functions.

However, the municipality's taxes base did not increase as a result of demarcation (Facu & Mkhululi, 2015). In the 2005/6 financial year after demarcation the municipality reported a 15 per cent overspending and in 2010/11 the municipality overspent and had a surplus of 50 per cent (National Treasury, 2011).

6. RESEARCH METHODOLOGY

In this article qualitative research design is followed and it uses a naturalistic approach that seeks understanding phenomenon in context-specific setting (Golafshani 2003: 600). According to Hancock (2002:1) qualitative research attempts to increase the understanding of the author regarding why things are the way they are in our social world and why people act the way they do.

According to Business Dictionary (2013:1) research methodology refers to the process which can be used to collect information and data for the purposes of making decision. Muaz Jalil (2013:6) asserts that research methodology refers to the mode of data collection, this include whether qualitative or quantitative data required, or a mix of the two. The article uses secondary research (also called desk research) and it consists of research about what has already been written or found at the library, that is information found in books, databases and journals (Driscoll 2011:153).

7. DATA ANALYSIS, INTERPRETATION AND FINDINGS

According to Kawulich (2004:97) data analysis is the process of reducing large amount of data collected to make sense of them. The authors analysed the data in such a way that they were able to see patterns, identify themes, discover the relationships, develop explanations, make interpretations, mount critiques and generate theories.

In this article, the authors analysed data by reviewing published and unpublished literature on municipal demarcation of boundaries in SA. The data reviewed include reports and books found in the library, databases, internet sources, official and unofficial government documents, legislations, and unpublished thesis/dissertations.

The findings of the article reveal that the communities which are affected by demarcation decisions strongly feel that government and MBD does not consult them extensively when decisions are made regarding redrawing of boundaries for both municipal and provincial. The situation in Vuwani also demonstrates the disconnection between government leaders and the community on the ground.

The Vuwani situation so far has been the most violent and long lasting boundary demarcation dispute in the history of post-apartheid local government transformation. Even during the authorship of this article the community protests were still continuing, although the new municipality is now operational in Vhembe District Municipality. The community in Vuwani (particularly the Venda speaking people) fear that should the new municipality run by Xitsonga speaking people of Malamulele, the level of service delivery would decrease. The study did not find any evidence that such boundary demarcation would compromise service delivery of other ethnic group in Vhembe District Municipality.

The findings also reveal that demarcation of municipal boundaries does not necessarily result in financial viability. The picture painted by the previous municipalities both local, district and metropolitan which experienced demarcation is not clear to conclude that taxes base were increased. Most of these municipalities either experienced budget deficit, over expenditure, high transitional costs, excessive administrative costs and service delivery backlogs due to boundary re-determination.

8. CONCLUSION AND RECOMMENDATIONS

- This article explored municipal decision challenges on financial non-viability in the Vhembe District Municipality. The discussion demonstrated how demarcation is a complex issue in South Africa.

Vuwani area, which most of the article sought to explore presented a complex chapter for boundary demarcation in South Africa. Although there were disputes in other parts of the country where demarcation has happened such as Matatiele and Khutsong. However, the Vhembe District Municipality's Vuwani situation has proved to have different dynamics due to mixed ethnics in the community.

- Demarcation in this particular context focused on achieving financial viability and functionality among municipalities which were identified by government in 2015. It is important for government to note that viability is not the only factor which demarcation can be kicked-off based on. Although it is important that municipalities are able to generate their own revenue in order to remain financial sound, government should consider other alternative measures to assist municipalities to be able to generate revenue.
- For example government should invest public funds in rural development in order to urbanise rural municipalities such as LIM345 Local Municipality and Thulamela Local Municipality, in that way these entities can be able to use some of their infrastructure such as business complex or commercial buildings to rent out to local people in order generate revenue for these municipalities.

The authors make the following recommendation regarding municipal boundary demarcation:

- (a) Public participation: public participation serves as the pillar for any functioning democratic government; as illustrated by governmentability the people should be consulted on decisions which are going to affect their lives. The boundary demarcation issues, at least from the past experiences have demonstrated its problematic side as far as governance is concerned.
- (b) Financial viability: as illustrated by other scholars in the literature that financial viability remains a contested concept to be used as a barometer to measure the effectiveness of a municipality. The recommendation is that more clear definition of the concept needs to be developed in order to include service delivery aspect of local government, because sometimes a municipality could be declared financially viable but its local residents remains trapped in poverty.
- (c) A separate funding model should be developed for municipalities undergoing demarcation process and government should bear the costs associated with demarcation.
- (d) Facilitation of communication channels for demarcation and government should be more transparent about demarcation issues.
- (e) Social cohesion: the government should prioritise social cohesion issues in order to heal the wounds of the past, especially along the matters of tribalism.

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