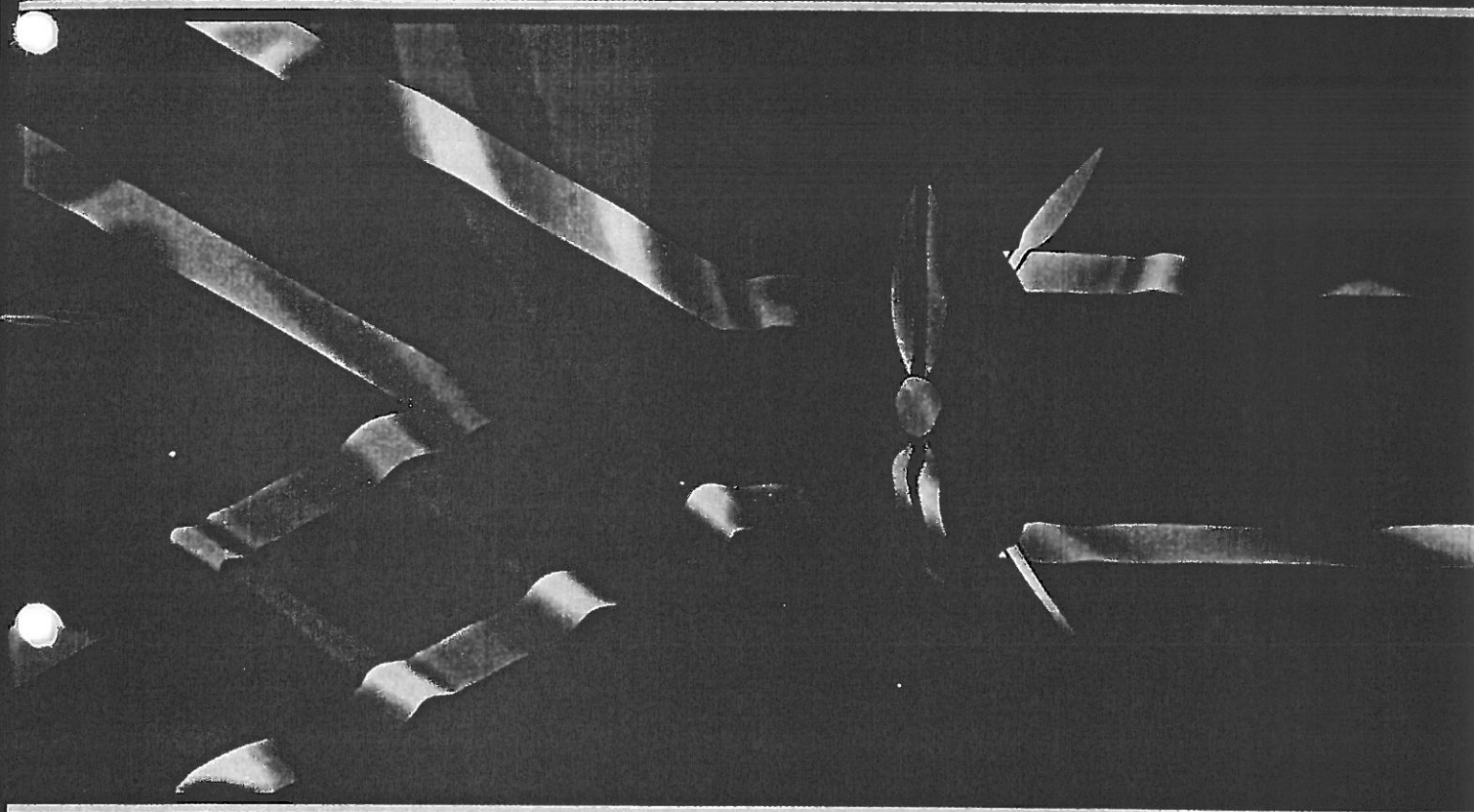




KENYAN-SOUTH AFRICAN DIALOGUE ON DEVOLUTION



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(EDITORS)

Drawing Non-Racial, Non-Ethnic Boundaries in South Africa

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1	Introduction	81
2	Background.....	81
	2.1 Antecedent subnational governments	81
	2.2 Debates surrounding initial boundary determination	83
3	Constitutional framework.....	85
	3.1 Provincial boundaries	85
	3.2 Municipal boundaries	86
4	Experience with provincial and local boundary changes.....	88
	4.1 Provincial government	88
	4.2 Municipal boundaries	90
5	Assessment	92
	5.1 Accommodation of ethnic groups.....	92
	5.2 Limiting the power of the centre?	96
	5.3 Impact on development.....	97
6	Conclusion	98

1 INTRODUCTION

Unlike Kenya, which has established two levels of government, South Africa opted for a three-level state structure of national, provincial, and local governments. The devolved units vary considerably in size and capacity across and within levels of government. Undoubtedly, these variations have had an impact on both the system and functioning of multi-level government. This can be seen in terms of how the devolved units facilitate the objectives of devolution. It can also be seen in the way in which these units, once established, affect the functioning of the devolved state.

This chapter examines the interplay between the size and character of the devolved units and the objectives of devolution. How do the size and character of the devolved units serve the purpose and objectives of devolution? How do they affect the functioning of a devolved state?

2 BACKGROUND

2.1 Antecedent subnational governments

The structural reform of subnational units that South Africa underwent to implement its new constitutional dispensation did not take place in a

vacuum. When the reforms to create new provinces and local governments were initiated, a number of structures and institutions existed. Structural reform was an immensely complicated task, detailed in chapter 19, as it involved reconfiguring four white provinces and ten black ethnic 'homelands' to establish nine provinces and more than 1 200 race-based municipalities to form 284 non-racial municipalities by 2000.

The 1909 Union Convention brought together the four British colonies — the Cape and Natal, and the two more recent additions of the Transvaal and Orange River Colony in Cape Town — to form the Union of South Africa in 1910. Although there were demands for a federal state by some of the delegations, the result was a unitary state composed of four provinces. The province's executive was appointed and responsible to the central government. Although each province had elected councils, the powers of these councils were very restricted. Legislative acts had to be approved by the governor-general and, in any event, were subject to the overriding powers of the central government (Ebrahim 1998).

The size and nature of the subnational governments of the Union underwent significant change with the introduction of the black 'homelands' through the enactment of the Promotion of Bantu Self-Government Act 42 of 1959. The Act was based on the premise that '[t]he Bantu people of the Union of South Africa do not constitute a homogenous people but form separate national units on the basis of language and culture' (Preamble).

This was, however, a ploy to expel black South Africans from the geographical and political terrain of white South Africa. In terms of the policy of 'separate development', as the then Afrikaner leaders liked to call it, each homeland was to be established along ethnic lines. These would ultimately become independent nation states, with their inhabitants eventually losing their South African citizenship. On this basis, the government established ten ethnically demarcated homelands. A mere four of them (Transkei, Bophuthatswana, Venda and Ciskei) became 'independent, sovereign' states, but it was only the apartheid government that recognised them as independent states. The remaining six were labelled 'self-governing territories'.

The South African territory was thus divided into the four 'white provinces' alongside the ethnically-defined homelands, with only 13 per cent of its total land area allocated for the latter, despite the fact that black Africans constituted more than 70 per cent of the population. The homelands were impoverished: located in the rural areas, they had no industrial development. Furthermore, none of them was even territorially contiguous. The most fragmented homeland, KwaZulu, had 48 separate territorial components. The fragmentation 'deeply afflicted the homelands, while benefiting white farmers by making it possible for them to keep their profitable lands' (Eagan and Taylor 2003, 114).

Fragmentation and racial policies were also characteristic of local government structures. The pre-1994 local government was the responsibility of

four provinces which each enacted their own local government legislation,¹ with the national government legislating on matters pertaining to local government as far as black South Africans were concerned. Throughout the history of racial segregation in South Africa, various types of advisory boards, community councils and local authorities were appointed for black urban areas. All of these lacked legitimacy as they had little authority, were starved of income and usually consisted of national government appointees. In rural areas under the aegis of the homelands, tribal authorities administered local government matters. Coloured and Indian communities were governed by separate local government structures which had more clout but were ultimately also subservient to national and provincial governments. White communities were governed by fully fledged local authorities that were established for exclusively white areas.

As a result, no single uniform system of local government existed for the country, and at the onset of the transformation of local government structures in 1994, more than one thousand local authorities operated in one form or another (Ismail and Mphaisha 1997, 3; Steytler and De Visser 2012, 1-9).

It is against the backdrop of this fragmented history of subnational governments that the architects of the democratic South Africa had to carve out the territorial structure of the new subnational units.

2.2 Debates surrounding initial boundary determination

A key feature of the debate about the post-apartheid South African state was the question of whether it should be characterised by a strong unitary state, as favoured by the African National Congress (ANC), or a state devolving significant power to subnational units, as favoured by the National Party (NP) and the Inkatha Freedom Party (IFP). The matter was resolved by opting for a 'centralised federation', although the 'f' word was purposefully avoided, as discussed in Chapter 2.

The next step was the process of provincial demarcation. The task was entrusted to the fifteen-member Commission on the Demarcation/Delimitation of States, Provinces and Regions (hereafter the Commission), which was established on 28 May 1993. The outcome of this demarcation process, which was undertaken between May and November 1993, was eventually adopted by the 1993 interim Constitution. This then gave birth to the current geographical configuration of the South African state, comprising nine provinces.

The Commission was asked to employ ten criteria in the provincial delimitation. The Commission reduced these criteria into four broad categories (De Coning 1994, 208):

¹ For example, local government in the Cape Province existed and operated in terms of the Local Government Ordinance 20 of 1974 (Cape).

- economic aspects (that is, the necessity of limiting financial and other costs, along with the need to minimise inconvenience to the people and the dislocation of services and development potential);
- geographic coherence (that is, historical boundaries, including provincial, magisterial and district boundaries and infrastructures);
- institutional and administrative capacity (that is, administrative considerations, such as the availability and non-availability of infrastructures and nodal points for services; and the question of whether to rationalise existing structures, among them the nominally independent homelands, self-governing territories and regional governments, including reference to the criteria mentioned in the economic aspect category); and
- demographic considerations and cultural and linguistic realities.

No criterion was to be given particular significance over another. Each was given equal weight, and the Commission deemed it necessary to adopt a 'balanced view on criteria' (De Coning 1994, 210). However, it is important to note that the Commission pursued the objective of 'prevent[ing] . . . negative forms of competition between regions, particularly with regard to ethnic and chauvinistic forces' (Egan and Taylor 2003, 110-111). A further objective was the reduction of territorial imbalances in social and economic development (Egan and Taylor 2003, 110-111). The map the Commission eventually proposed took as a point of departure the nine 'development regions' that had been used by the Development Bank of South Africa in the early 1980s.

Similarly, the current boundaries of municipalities in South Africa are inextricably linked to the debate about addressing the country's developmental challenges and particularly to the effort to undo the damage done by apartheid. Before South Africa attained democracy in 1994, local government was a key instrument in the hands of the colonial and later the apartheid government for implementing policies of segregation and exploitation.

Powers to demarcate and establish local government institutions were used to follow through on the grand apartheid strategy. Local government was designed according to the pernicious logic of segregation, with a separate local authority for each racial category. The exploitative dimension manifested itself in the diminishing degrees of autonomy and access to resources which were available to the various racial local authorities. White communities enjoyed the first-class services of a properly elected and well-resourced local authority. In the homelands, no local government system was established other than traditional authorities. Outside of the homelands, black communities were condemned to the care of desperately under-resourced local authorities led by collaborators with the apartheid government. Coloured and Indian communities were placed somewhere in the middle of that equation. Municipal boundaries were key in the creation of 'buffer zones' between the various settlements and in ensuring that black townships remained dormitories from which cheap labour could travel from afar into

white towns to contribute to the local economy without deriving any benefit from it (De Visser 2005, 58).

It was this structural inequity that had to be addressed in the new local government structures. Amalgamation of racially defined and physically separated local authorities was inevitable, as was the debate about erecting institutional mechanisms to facilitate redistribution of resources. An important dimension to the debate about the size and number of local government units was the question of the required number of tiers of local government.

This debate had two dimensions. First, should rural local government be governed by some form of regional structure in addition to the first-tier local government? Proponents argued that such regional structures could facilitate redistribution from urban areas into the rural hinterland (Ministry for Provincial Affairs and Constitutional Development 1998, 69). Secondly, are cities best served by single- or multi-tiered local government structures (Ministry for Provincial Affairs and Constitutional Development 1998, 64)? Proponents pointed to the benefits of having a single, visible, efficient city leadership and the need to facilitate redistribution across the racially defined boundaries of city neighbourhoods (Cameron 2004, 212).

The section below discusses how these debates about the institutional arrangements for provincial and local governments have been settled ultimately in South Africa's Constitution.

3 CONSTITUTIONAL FRAMEWORK

Both provincial and local government are entrenched in the Constitution, and much regarding their nature, size and character is determined by the constitutional framework.

3.1 Provincial boundaries

The current boundaries of South Africa's nine provinces are contained in the Constitution (s 103(2) read with Schedule 1A Constitution). These units are asymmetrical in size and capacity, as reflected in Table 1. The largest province is the Northern Cape, followed by the Eastern Cape, which is, however, less than half the size of the Northern Cape. Strikingly, the largest province, the Northern Cape, is also the province with the smallest population, inhabited by a little more than 1,1 million people (Statistics South Africa 2013, table 2.2). The title for the most populous province belongs to Gauteng, which houses more than 12,7 million inhabitants, followed by KwaZulu-Natal (10,4 million) and the Eastern Cape (6,6 million).

The provinces also differ in wealth and resource distribution. Gauteng is the wealthiest, while resource-poor Eastern Cape is the poorest. Gauteng, the industrial heartland of the country, is also the most densely populated province, which, at 675 persons per square kilometre, is more than five times the average population density of 113 and more than two hundred times the density of the Northern Cape (Statistics South Africa 2013).

Table 1: Geographical and population size of the provinces

Province	Land in square kilometres	Population size in 1000s
Western Cape	129 462 (10.6%)	6 017 (11.4%)
Eastern Cape	168 966 (13.8%)	6 620 (12.5%)
Northern Cape	372 889 (30.5%)	1 163 (2.2%)
Free State	129 825 (10.6%)	2 753 (5.2%)
KwaZulu-Natal	94 361 (7.7%)	10 457 (19.7%)
North West	104 882 (8.7%)	3 598 (6.8%)
Gauteng	18 178 (1.4%)	12 728 (24.0%)
Mpumalanga	76 495 (6.3%)	4 126 (7.8%)
Limpopo	125 754 (10.3%)	5 518 (10.4%)
Total	1 220 813	52 982

(Source: Statistics South Africa 2013, tables 1.1, 2.2, and 2.4)

The Constitution determines provincial boundaries with reference to the maps of municipal boundaries. It contains procedural, but not substantive, criteria to guide the choice of a particular boundary. However, the result is that the number and size of provinces are guaranteed in the Constitution.

A constitutional amendment that alters provincial boundaries must be adopted by a two-thirds majority of the National Assembly and with a supporting vote of at least six of the nine provinces in the National Council of Provinces, South Africa. If the proposed amendment concerns a specific province or provinces, it must be approved by the relevant legislature or legislatures of the province or provinces (ss 74(3)(a)-(b) and 74(8) Constitution). This ensures that the boundary of a province may not be altered without its explicit approval or its playing a role in the national legislative process concerning the constitutional amendment (see *In re: Certification of the Constitution of the Republic of South Africa, 1996* 1996 (4) SA 744 (CC) at para 233). The Constitution demands that the provincial legislature facilitates public involvement when considering whether or not to approve the alteration to its province's boundary (s 118(1)(a) Constitution).²

3.2 Municipal boundaries

The first phase of municipal boundary determination commenced in terms of the interim Constitution. For the first local government election, in 1995-96, provincial demarcation boards demarcated 842 non-racial municipalities, which lasted until the 1996 Constitution's provisions on local government (including boundary determinations) were fully implemented in December 2000. During this period the debate about the number of local government

² In *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2007 (1) BCLR 47 (CC), the Constitutional Court struck down parts of an Act, amending the Constitution to alter provincial boundaries of KwaZulu-Natal and the Eastern Cape, on the basis of the failure to facilitate public involvement. See further below.

tiers was settled by the establishment of a multi-tiered system in rural areas and a single-tiered one in metropolitan areas. As a result, South Africa has two types of local government: metropolitan and non-metropolitan local government. Since 2011 there have been eight metropolitan municipalities, which are single-tiered local government structures, and 44 district municipalities and 226 local municipalities, with the latter grouped into the district municipalities.

Local governments are generally large. With 278 municipalities servicing a population of more than 52 million, South Africa's municipalities rank among the largest in the world. However, their size varies from small rural local municipalities with a minimum of seven councillors to the imposing metropolitan municipality of Johannesburg, with 260 councillors and close to 4,5 million inhabitants.

Unlike provincial boundaries, local government boundaries are not guaranteed in the Constitution, and the number and size of municipalities may thus change without constitutional amendment. However, the matter of who determines local government boundaries is settled in the Constitution. In an apparent recognition of the contentious nature of municipal boundaries, the Constitution removed the power to demarcate municipal boundaries from the political realm and allocated it to an independent institution (s 155(3)(b) Constitution). Legislation has determined that this power is to be exercised by an independent Municipal Demarcation Board (MDB) and not, as is the case in many other jurisdictions, by the executive.

The MDB determines municipal categories, municipal boundaries, and ward boundaries. First, in determining the categories of municipalities, the board decides whether an area will be governed by a single-tiered metropolitan municipality or by the two-tiered combination of district and local municipalities. Initially this power was allocated to the national executive, but an early Constitutional Court judgment recalibrated the balance of power between central government and the Demarcation board in favour of the board (Cameron 2004, 212).³ The criteria are provided for in legislation. For an area to qualify for the single-tiered metropolitan governance structure, a number of criteria must be satisfied. Amongst other things, the area must have a high population density, intense movement of people, goods and services, extensive development and multiple business districts (s 2 Municipal Structures Act). Regarding metropolitan governance in South Africa, see Chapter 12.

Secondly, the MDB determines the outer boundaries of municipalities and thus establishes the size and thereby much of the character of South Africa's local governments. The objectives of demarcation as well as the substantive

³ In *Executive Council of the Western Cape v Minister for Provincial Affairs and Constitutional Development* 1999(12) BCLR 1360 (CC) at paras 34-59, the Constitutional Court determined that the Demarcation Board, and not the national Minister, determines the categories of municipalities.

criteria for demarcation are determined in legislation. They revolve almost exclusively around functionality. The objectives speak of democracy, accountability, equitable and sustainable service delivery, development, environmental issues as well as effectiveness, integrated planning and an inclusive tax base. The criteria for boundary demarcation refer to issues such as the financial viability of the envisaged municipality; the need for redistribution within the envisaged municipality; topographical and physical characteristics; patterns of settlement, transport and migration; spending within the area; and so forth (ss 24 and 25 Municipal Demarcation Act 27 of 1998). The only criterion that approximates an ethnic dimension is the reference to 'traditional rural communities', a criterion that was included as a concession to traditional leaders, who stood to lose much power with the introduction of 'wall-to-wall' democratic local government (Cameron 2004, 217).

Thirdly, the MDB determines the ward boundaries for directly elected local councillors, thereby fulfilling a critical electoral function.

The statutory criteria for the delimitation of wards leave the MDB with little discretion. The number of councillors per municipality is determined nationally with some scope for provincial deviation (s 20 Municipal Structures Act). All wards in a municipality must have approximately the same population size, a principle which is enforced through a strict norm providing that the number of registered voters per ward may not vary by more than 15 per cent compared to other wards in the same municipality. The MDB is furthermore expected to maximise the democratic potential of wards' communities and avoid the fragmentation of communities where possible.

The legislation governing the above three functions compels the board to consult extensively with communities and organs of state affected by its proposed decisions.

4 EXPERIENCE WITH PROVINCIAL AND LOCAL BOUNDARY CHANGES

Since the determination of provincial boundaries in the 1996 Constitution, some far-reaching changes were effected in 2006, in addition to which there have been changes to the 2000 municipal boundaries. This section discusses these matters in greater detail.

4.1 Provincial government

Provincial boundaries have seen a few changes since their adoption in 1994. In 1998, the government, with a view to mitigating the racial dimension of provincial boundaries (these had been drawn on the basis of the apartheid-era magisterial boundaries, which used racial criteria), introduced the Constitution Third Amendment Act, which allowed for the establishment of cross-boundary municipalities (that is, municipalities that cross provincial boundaries). Each of these municipalities was placed under the supervision of two

provinces. In many respects, the arrangement ended up creating an administrative nightmare, with a single municipality being regulated or affected by the laws and policies of two provinces (Goodenough 2004, 58). In 2005 a decision was made to integrate communities that crossed provincial boundaries, thereby ensuring that each municipality would fall within the boundaries of only one province.

The change came in the form of the Constitution Twelfth Amendment Act of 2005, which altered the boundaries of seven of South Africa's nine provinces, with the Free State and the Western Cape being the only two provinces that were not affected. The amending Act repealed the provisions that allowed cross-boundary municipal areas, and effected a number of boundary changes, some of which provoked strong objections from the affected communities.

Two boundary changes in particular provoked the strongest resistance. The first relates to the decision to include Matatiele Local Municipality in the Eastern Cape as 'compensation' for 'losing' the Umzimkulu areas to KwaZulu-Natal. The second boundary change related to the decision, apparently made as 'compensation' for the loss of territory to Gauteng, to transfer part of Merafong Local Municipality from Gauteng to North-West, in the process of which the entire cross-boundary metropolitan municipality of Tshwane became part of Gauteng.

The people of Merafong brought a legal challenge of the Gauteng Provincial Legislature's decision to support the proposed boundary change, on the basis that there had been no public participation prior to the decision (despite clear community opposition to it). The Constitutional Court ultimately found that there had been sufficient public consultation and the challenge failed (*Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* 2008 (5) SA 171 (CC)).

Residents of the Matatiele community also challenged its incorporation into the Eastern Cape, on the same ground: the KwaZulu-Natal provincial legislature had not provided for the necessary public participation before approving the constitutional amendment. The court in the *Matatiele Municipality* case agreed, ruling that the transfer of Matatiele had not been validly enacted because the KwaZulu-Natal Legislature had not invited the necessary public participation before approving the amendment. The ruling, however, did not come into effect immediately, as the court opted to suspend the ruling of invalidity for 18 months, giving Parliament the opportunity to re-enact the changes with the necessary public participation. The provisions transferring Matatiele to the Eastern Cape were later re-enacted by Parliament.

A second court challenge by members of the Matatiele Community against the provisions, again on the basis of insufficient consultation, was not successful. After the boundary changes were effected in 2006, the communi-

ties of Merafong Municipality continued their protests and were ultimately more successful as Merafong Municipality was transferred back to Gauteng five years later. This decision was formalised by the Constitution Sixteenth Amendment Act of 2009.

4.2 Municipal boundaries

The boundaries of local government also went through some major changes. The initial round of determination of municipal categories for the first fully fledged democratic local government elections in 2000 produced six metropolitan municipalities: City of Johannesburg, City of Cape Town, Ekurhuleni (East Rand), Nelson Mandela Bay Municipality (Port Elizabeth), eThekweni (Durban) and Tshwane (Pretoria). For the 2011 local government elections, the MDB added two further metropolitan municipalities, namely Buffalo City (East London) and Mangaung (Bloemfontein).

The board's identification of the initial six metropolitan municipalities did not raise much controversy. However, the elevation of Buffalo City and Mangaung to the metropolitan ranks signalled that the label 'metropolitan municipality' was no longer reserved exclusively for the megacity. For example, the City of Johannesburg, with its 4,5 million inhabitants and its budget exceeding R30 billion (Ksh 225 billion),⁴ dwarfs Buffalo City, with its 750 000 inhabitants and budget of R5 billion (Ksh 42,5 billion). Buffalo City's population density is 298 per square km while the same unit in Johannesburg is occupied by 2 696 inhabitants, on average (Statistics South Africa 2013). Already in 2007, Steytler concluded that Buffalo City and Mangaung 'pale in significance' when compared to Johannesburg, Cape Town and eThekweni (Steytler 2007, 14), yet both qualified for metropolitan status. This indicates, at the very least, that the abovementioned criteria for the much-aspired-to metropolitan status leave the board with significant leeway but also a complicated task.

In its first decade of operation (1999–2009), the Demarcation Board managed to steer clear of major controversy. The fact that the demarcation of municipal boundaries is entrusted to an independent body governed by legislation which limits its discretion by means of criteria as well as rules regarding participation has significantly enhanced the legitimacy and quality of boundary decisions. The board's decisions have generally been evidence-based, resulting, for example, in a significant overlap between municipal boundaries and the spaces where people live and work (Cameron 2004, 220).

The board has always been acutely aware of the need to include stakeholders in its decision-making (Cameron 2004, 218; Goodenough 2004, 25). However, in the early part of its second decade of operation it has indeed faced some controversy. When a contentious proposal to merge Ngwathe and

⁴ Average cross rate for financial year 2013/14: ZAR1.00=KSh8.50; US\$1.00=ZAR10.12.

Metsimaholo local municipalities arose early in 2013, riots erupted and lives were lost. Although this was the result of many factors beyond the board's control, its handling of the public participation process drew much criticism.

In 2013, the board decided to add a ninth metropolitan municipality by proclaiming the Midvaal/Emfuleni area as a metropolitan municipality, to be instituted in 2016. The decision is a reconsideration of the board's 1999 assessment that the area did not fulfil the criteria for metropolitan status (Sutcliffe 2010, 32; Cameron 2006, 87), and is controversial. It absorbs the only opposition-run (that is, Democratic Alliance-run) municipality in Gauteng into a larger area with political demographics that suggest power will be handed back to the ANC (Grootes 2013). After a court challenge by the Democratic Alliance in Gauteng the Board eventually withdrew its decision. The scope of this chapter does not allow a discussion of the merits and demerits of the withdrawn decision, but it is clear the board will have to tread carefully to sustain its status as a trustworthy and truly independent institution.

Leaving aside accusations of partisan decision-making by the board in the Midvaal/Emfuleni matter, it seems, though, that the drive towards having larger numbers of metropolitan municipalities has more to do with the eagerness of urban municipalities to be delivered from the uncomfortable union with their district municipalities, a phenomenon explained below.

The two-tiered system of local government outside of the eight (and soon-to-be nine) metropolitan municipalities has been the subject of debate since it started operating. There were four objectives to establishing large districts within which local municipalities would operate. First, the district would have the size and financial power required to redistribute resources from urban areas into the rural hinterland. Secondly, the district would have the capacity to assist weaker local municipalities. Thirdly, the district would have the appropriate size to deliver services that require economies of scale. Fourthly, the district would ensure coherent planning at a regional level (Ministry for Provincial Affairs and Constitutional Development 1998, 68-73).

A number of developments thwarted those objectives. First, in its drive to integrate the historically separated local authorities, the MDB established large local municipalities that already included significant tracts of rural land. It soon became clear that much of the urban-rural redistributive effort was going to be located within the local municipalities. Secondly, a national tax-reform measure meant that district municipalities lost their revenue-raising powers, making them entirely dependent on grant funding (Mlokoti 2007, 7). Combined, these two factors resulted in the district municipality losing much of its potential to redistribute. In most parts of the country, the district municipalities also struggled to emerge as strong regional planning entities. Both national and provincial governments are laying claim to the regional planning portfolio, and with the jurisdiction of local municipalities

being as large as it is, not much regional planning remains for district municipalities.

The fact that demarcation of local government boundaries is never complete and is seen as an important lever to improve the viability of municipalities is evident in the national government's request in January 2015 to the MDB to investigate the boundaries of more than 80 municipalities in preparation for the 2016 elections. According to the Minister of Cooperative Governance and Traditional Affairs, municipalities should be considered for amalgamation 'where a municipality is both weak on functionality and viability'. In some cases, the Minister even suggested that the board abolish the local municipality so that the area is governed as a district management area (Department of Cooperative Governance and Traditional Affairs 2015). Aside from the merits of the Minister's argument, this is a strong indication that district municipalities are not providing support to weak local municipalities, a situation which renders the third rationale for district municipalities invalid.

All in all, the only rationale that remains for district municipalities appears to be located in their capacity to deliver certain regional and bulk services. The emerging consensus seems to be that the second tier of local government (district municipalities) is not needed where a strong first tier (local municipalities) exists. This prompted the ANC to adopt a resolution that calls for 'strong local municipalities not being located in Districts' (African National Congress 2012, 28). The policy development that the government will undertake to implement the ruling party's resolution is likely to result in the proclamation of more stand-alone municipalities, possibly under a legal framework that loosens the criteria for metropolitan status.

5 ASSESSMENT

The following assessment of South Africa's approach to dealing with the size and character of devolved units has three aspects. First, given South Africa's troubled history of racism and divisive ethnic policies, it examines whether the structures of government above relate in some way to the protection of minorities or ethnic groups. Secondly, as an important policy objective underlying decentralisation, are the devolved units a counterweight to the power of the central state? Thirdly, the assessment considers the impact of devolved units on development.

5.1 Accommodation of ethnic groups

With regard to provinces, many scholars argue that South Africa has rejected ethnicity as a factor involved in determining provincial boundaries. Egan and Taylor (2003, 110) remark:

If [ethno-national politics were the primary motivation behind regional delimitation], demographic patterns suggest that the current Western and Northern Cape provinces would have been joined into a more predominantly Afrikaans-speaking region, with eastern

parts of the Western Cape ceded to the mainly Xhosa-speaking Eastern Cape and northern parts of the Northern Cape ceded to North West, which might also have gained north-west Free State and far-western Gauteng. Gauteng would have been more ethnically homogenous if it had been merged with Mpumalanga and possibly even with KwaZulu-Natal.

It is indeed true that ethnicity was not the primary consideration in drawing up provincial boundaries. However, most of the provinces are in fact home to a particular ethnic group.⁵ A close look at the population make-up of each province suggests there is a clear concentration of each ethnic group in a particular province. As Fessha (2010, 113) argues:

While pockets of Xhosa speakers can be found in the Free State, Northern Cape and Western Cape, it is in the Eastern Cape that they have disproportionate concentration. The same applies to the Zulu-speakers who are numerically dominant in KwaZulu-Natal, although they are dispersed throughout the country. In fact, over two-thirds of the residents in the Eastern Cape, KwaZulu-Natal and the North West speak a single language. The numerical dominance of the Sesotho speakers in Free State (64.2%) and Sepedi speakers in Limpopo (52.9%) cannot also be disputed.

The only two provinces that are not clearly numerically dominated by a particular ethnic group are Gauteng and Mpumalanga. Table 2 shows the linguistic composition of each province.

Table 2: Percentage of population by first language and province

Languages (first)	WC	EC	NC	FS	KZN	NW	GP	MP	LP	SA
Afrikaans	49.7	10.6	53.8	12.7	1.6	9.0	12.4	7.2	2.6	13.5
English	20.2	5.6	3.4	2.9	13.2	3.5	13.3	3.1	1.5	9.6
IsiNdebele	0.3	0.2	0.5	0.4	1.1	1.3	3.2	10.1	2.0	2.1
IsiXhosa	24.7	78.8	5.3	7.5	3.4	5.5	6.6	1.2	0.4	16.0
IsiZulu	0.4	0.5	0.8	4.4	77.8	2.5	19.8	24.1	1.2	22.7
Sepedi	0.1	0.2	0.2	0.3	0.2	2.4	10.6	9.3	52.9	9.1
Sesotho	1.1	2.5	1.3	64.2	0.8	5.8	11.6	3.5	1.5	7.6
Setswana	0.4	0.2	33.1	5.2	0.5	63.4	9.1	1.8	2.0	8.0
Sign Language	0.4	0.7	0.3	1.2	0.5	0.4	0.4	0.2	0.2	0.5
Siswati	0.1	0.0	0.1	0.1	0.1	0.3	1.1	27.7	0.5	2.5
Tshivenda	0.1	0.1	0.1	0.1	0.0	0.5	2.3	0.3	16.7	2.4
Xitsonga	0.2	0.0	0.1	0.3	0.1	3.7	6.6	10.4	17.0	4.5
Other	2.2	0.6	1.1	0.6	0.8	1.8	3.1	1.0	1.6	1.6
Total	100	100	100	100	100	100	100	100	100	100

(Source: Statistics South Africa 2013, table 2.8)

The territorial structure of South Africa, wherein most of the provinces are inhabited by a specific ethnic group, has contributed to the participation and representation of ethnic communities in their respective provincial adminis-

⁵ In the South African context, an ethnic group is more or less identified with a language group. This is particularly the case with the African languages. Afrikaans and English speakers do not necessarily share an ethnic attachment.

trations. It 'has provided "regional elites" with the means for political participation and representation in the leadership structure of their respective provinces, promoting the self-management of communities' (Fessha, 2010). The fact that the Constitution leaves decisions about language usage up to the provinces contributes further to the self-management of these communities (s 6 Constitution). In conclusion, it can be argued that the current territorial structure of South Africa has accommodated the different ethnic communities but without defining the provincial boundaries, and hence the provinces, in explicitly ethnic terms.

The fact that ethnic accommodation has not been explicit, nor perhaps even deliberate, has assisted South Africa in establishing a polity in which political mobilisation is not primarily driven by ethnicity. It has contributed to the absence of the articulation of political and other demands in explicitly ethnic terms. In fact, the correlation between ethnicity and provincial identity is not evident. For example, the abovementioned protests against the decisions of governments to transfer certain municipalities to other provinces were vehement but not driven by issues of identity or even the sense of 'belonging to a particular province'. They were motivated instead by concerns related to service delivery (see Fessha 2010).⁶

With regard to local government, the impact of municipal boundaries on minority accommodation is not clear. In practice, no overt or hidden ethnic dimension can be discerned in the demarcation of municipal boundaries. The transformation of the system of local government from its proliferated, fragmented and racist condition prior to 1994 into a modern system of local government has revolved almost exclusively around functionality, with ethnicity playing a minor role, if any at all.

Instances of ethnic groups seeking political advantage from advocating a particular municipal boundary are very rare. However, some did emerge, which signals that ethnic mobilisation around local government boundaries is not foreign to South Africa. In 2014, residents of Malamulele, which is part of Thulamela Local Municipality in the Limpopo province, demanded 'secession'. They argued that Thulamela Municipality neglected Malamulele and that this neglect was based partly on the dominant ethnic identity in Thohoyandou, the urban node in Thulamela. Thohoyando is predominantly

⁶ There is, of course, increasing concern about the emergence of ethnic divisions in the political arena. Some have identified the dominance of a particular ethnic group in the current administration. The term 'Zulufication' is often used to describe cabinet appointments in the Zuma administration. See 'Mbeki: Tribalism rears its ugly head' available at <http://www.citypress.co.za/politics/mbeki-tribalism-rears-ugly-head/> (accessed on 3 February 2014). See also 'Zuma favours KZN, suffers from "laager" mentality — Bantu Holomisa' available at <http://www.citypress.co.za/politics/zuma-favours-kzn-suffers-laager-mentality-bantu-holomisa/> (accessed on 3 February 2014). There is, however, little agreement on whether the Zuma administration indeed has a significantly skewed ethnic balance in its cabinet appointments.

Tshivenda-speaking and was the capital of the former homeland Venda, while Malamulele is largely Xitsonga-speaking and was formerly part of Gazankulu, a homeland for Xitsonga speakers (Ndletyana 2015). The Municipal Demarcation Board refused, sparking violent protests and a two-month-long shutdown of all services in Malamulele. The board conducted a further feasibility study and held its position.

With reference to the ethnic argument, it commented:

The proposed boundary re-determination will perpetuate spatial fragmentation, separate communities along ethnic/tribal and re-introduction [sic] of apartheid boundaries. With the high concentration of the Tsonga community in the Malamulele area and the Venda community in the remainder of the Thulamela Local Municipality, this will result in the separation of the two communities along tribal lines reminiscent of the apartheid past (Demarcation Board 2015, 115).

Concerns have been raised about both the size of local governments, and the possible loss of local democratic potential as a result, and the viability of rural municipalities (Cameron 2004, 224). There have also been concerns about executive interference in the Demarcation Board's decision-making and the possibility of political bias. However, no accusations of ethnic bias in the Municipal Demarcation Board's demarcation of external municipal boundaries have ever surfaced, and the board's handling of Malamulele suggests that its frame of reference is focused on objective factors related to functionality and viability.

It could perhaps be argued that there was a sub-ethnic dimension to the resistance of traditional leaders against local government boundaries. When local government structures were demarcated in the former homelands, traditional authorities objected to those boundaries. However, the fact that their objections did not disappear even after the board had ensured that traditional areas would not be divided by a municipal boundary justifies the conclusion that they were objecting to the democratisation of local government structures rather than the municipal boundaries (Cameron 2004, 223). Nevertheless, traditional leaders continue to assert claims on municipal outer boundaries. Part of the Minister of Cooperative Government and Traditional Affairs' 2015 proposals to the MDB involved 19 cases in KwaZulu-Natal in which the alignment of traditional areas and municipal boundaries was being sought.

One area where demarcation has raised debate about ethnic or racial boundaries is in the delimitation of ward boundaries within municipalities. The board has had to face arguments to the effect that its constituency boundaries are racially contrived as they often encircle racially homogenous suburbs or areas. This is despite the fact that the board was initially intent on the exact opposite, namely diffusing racial and ethnic politics by creating inclusive constituencies that no longer followed the racial and ethnic boundaries of old. However, South Africa's history of strict racial segregation of white, coloured and black areas, combined with the key purpose of the delimitation being to serve an electoral system, proved too hard to overcome.

Firstly, there is the fact that apartheid resulted in suburbs, townships and settlements having an overtly racial character in their population make-up. This character stubbornly remains, partly as a result of the government's inability to reverse these engineered demographics. Secondly, the strictures within which the board has had to work in delimiting wards (that is, the fixed number of councillors, the legal insistence on equal ward sizes and the use of voting districts as building blocks for wards) have meant that it reluctantly has had to revert to ward boundaries that are sometimes largely racial in nature. Thanks to the effort to carve out the constituencies that are necessary for the electoral system work and which follow demographic realities, these boundaries often perforce end up following racial lines.

5.2 Limiting the power of the centre?

The contribution of provincial government to limiting the power of the centre and thus promoting democracy has not been significant. Despite the fact that these governments are democratically elected by a provincial electorate, their democratic potential has not been realised. This is linked largely to the ANC's overwhelming political control over provincial leadership. While the party is structured internally into provinces and provincial party leaders play an important role in creating a list of candidates for election, this, as Chapter 6 on political structure indicates, has not made provincial governments major actors that limit the power of the centre. Rather than acting as a counterweight to it, by and large they toe the line of the national government.

Nevertheless, the subnational political scene is not devoid of opposition politics. The space for provincial government has seen the emergence of an opposition-led administration in the Western Cape. With KwaZulu-Natal, a province where the IFP enjoys most of its support, having fallen under the control of the ANC after the 2004 election, the Western Cape is currently the only opposition-led province and the only one where the provincial government does not act as an administrative agent in all facets of provincial governance. In areas in which provincial governments are competent, the opposition-led Western Cape government serves as a check on the exercise of power by the national government by taking its own policy and legislative initiatives.

The establishment of large, single-tiered metropolitan municipalities has also played a valuable role in limiting the power of the centre. Metropolitan municipalities are headed by executive mayors who wield significant political clout, with certain of them commanding budgets in excess of some provincial budgets. The combination of size, single-tiered governance structure and substantial own-revenue renders metropolitan municipalities important players that act as a counterweight to central government authority. It is telling, for example, that in its effort to realise a multi-billion rand infrastructure investment programme, the national government established a

Presidential Infrastructure Coordinating Council of which metropolitan mayors are members, alongside the nine provincial premiers (s 3 Infrastructure Development Act 23 of 2014). The central government requires the collaboration of its biggest cities to pursue its state-led development agenda.

5.3 Impact on development

Given that the provinces vary in terms of resources and wealth, it is not clear whether the asymmetry translates into a variation in development or service delivery. This lack of clarity has to do with the multi-level system of government in South Africa which, as mentioned in this and other chapters, is highly centralised, with provinces enjoying few exclusive powers to access their own revenue. By implication, the provinces do not have the autonomy to pursue their own developmental policies, and in many respects they serve as implementing agents pursuing the policies of national government.

There is, however, a perception that some provinces are in a better position than others to deliver services, and it seems to underlie the protests that some cross-border municipalities experienced when the government decided to integrate communities that crossed provincial boundaries. The perception was that some of the resource-rich provinces, like Gauteng, provide better services than the resource-poor Eastern Cape or North West. It is not unfounded. Census 2011 reveals that '[i]n Gauteng one in every hundred households is without any toilet facility whereas in Eastern Cape one in eight households has no toilet facility' (Statistics South Africa 2011, 86). The percentage of households that have their refuse removed by a local authority is another major indication of the variation in service delivery levels across the provinces. In Limpopo, only 21.8 per cent of households have access to refuse removal services. By contrast, 91.1 per cent of households in Western Cape have refuse removed by a local authority (Statistics South Africa 2011, 97).

This variation in service delivery cannot be seen in a vacuum, though. It must be seen against the backdrop of the restructuring of the state, which, as mentioned earlier, required provinces to incorporate the former homeland administrations with their under-skilled and under-trained workers. The point is that the variation in service delivery may not necessarily be a function of a demarcation process that resulted in provinces which vary in resources and wealth.

With respect to local government, the impact on development of the choices made in relation to the structural configuration is difficult to measure. In general, there is no doubt that great strides have been made in extending basic services to marginalised communities, which is perhaps the most important mandate for local government. Access to water and electricity, both of which are basic services provided by municipalities, has improved significantly ever since the system of local government was introduced. Half of the South African population was classified as water-deprived in 1993, but

by 2010 this had been halved. Electricity deprivation fell substantially in the period under study. In 1993 more than half of the population lived in a dwelling without electricity: by 2010 this had fallen to one-fifth. The gains in sanitation, the third biggest basic service provided by municipalities, were more modest, with a 10 per cent drop being recorded in the number of dwellings without sanitation, from 57 to 47 per cent (Finn et al 2014).

At the same time, the image of communities protesting against municipalities and complaining about service-delivery backlogs, maladministration and corruption has become a common occurrence. Recent research indicates that between 2007 and 2011 there were on average 11,6 protests per month in South Africa, with the first eight months of 2012 averaging 28,3 protests per month. Not only are protests on the increase, they are also becoming more violent, with 79.2 per cent of protests turning violent in the first eight months of 2012 (De Visser and Powell 2012). Many communities have yet to experience the development gains referred to earlier. Nevertheless, it is difficult to attribute this solely to local government, let alone to its structural configuration.

Whether or not the choices with regard to rural local government institutions have resulted in the upliftment of rural communities is hard to say. South Africa has an urban population rate of 61 per cent and an urbanisation rate of 1.21 per cent. The Census 2011 revealed significant migration away from rural areas and small cities to primary and intermediate cities. The reasons for these patterns are many and probably have little to do with local government structures. However, it is safe to say that South Africans increasingly prefer to live in big towns and cities. There is no doubt that this phenomenon will significantly influence future decision-making concerning the structural configuration of local government in South Africa.

6 CONCLUSION

The contours of the South African state's internal boundaries are far from settled. This is true of both provincial and local boundaries. For almost a decade now, there has been a discussion on the future of provincial boundaries, but the ebb and flow of the provincial demarcation debate has not helped in the crystallisation of policy options for provincial boundaries.

Initially, the declared objectives included the abolition or reduction of the number of provinces in the repertoire of options that have to be taken into account in reconsidering the future of provinces (Department of Provincial and Local Government 2007). A few years passed before the matter was taken up again. When it was, the policy options were watered down. The revised objective now is to 'reform, rationalise and strengthen provinces'; the vehicle to achieve this is to have 'fewer provinces which are functional, effective, economically sustainable, integrate communities on non-racial basis and do away with ethnic boundaries' (ANC 2012). The radical alternative of abolishing provinces, it seems, is no longer an option.

Yet it is not clear whether it is at all advisable to introduce fundamental changes that would entail the reduction of provinces and the redrawing of boundaries. As is evident by now, the boundaries, albeit inadvertently, have helped to accommodate ethnic groups by providing their respective elites with a means for political participation and representation. To call for the abolition of 'ethnic boundaries' that — if the behaviour of South African political actors is anything to go by — do not exist, is, perhaps, inviting ethnic mobilisation to enter the political arena. Furthermore, provincial demarcation exercises that are primarily driven by a desire to abolish 'ethnic boundaries' are less likely to give attention to other relevant factors. It is also not clear whether the governance problems that plague the provincial governments are attributable to the existing territorial structure. Finally, there is no guarantee that the demarcation process will help to improve the functionality and effectiveness of provincial governance.

The question, then, is: '[W]hy try to fix the provincial system that is dysfunctional not because of conflict-generating boundaries but maladministration through a demarcation process which will have no or even a deleterious impact on provincial governance?' (De Visser et al 2013, 288).

If there is any lesson to be derived from the South African experience, it is the need to avoid a demarcation process which is driven only by one particular consideration, political or otherwise. No one factor alone should be given particular importance; conversely, the process should be based on the understanding that subnational demarcation must be informed by a range of factors. Moreover, once provincial boundaries have been demarcated, the temptation to introduce disruptive fundamental changes must be resisted. Reforms that are motivated by political incentives are better avoided, and this starts perhaps with the establishment of an independent demarcation body.

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