



## DISTRICT-LOCAL MUNICIPAL RELATIONS: THE CHALLENGES TO COOPERATIVE GOVERNMENT

Professor Nico Steytler  
Ms Janis Jordan

Local Government Project  
Community Law Centre  
University of the Western Cape



### **CAGE Project**

**The Local Government Project at the Community Law Centre is conducting research on the key areas of conflict that arise between district and local municipalities. This research is part of a project on Managing Concurrency of Powers and Functions through Cooperative Government. Funding was contributed by the Conflict and Governance Facility (CAGE), a project of National Treasury, which is funded by the European Union under the European Programme for Reconstruction and Development.**

## Table of Contents

<b>1. INTRODUCTION.....</b>	<b>3</b>
1.1 PROBLEM STATEMENT.....	3
1.2 METHODOLOGY .....	3
<b>2. POLICY AND LEGISLATIVE FRAMEWORK FOR DISTRICT AND LOCAL MUNICIPALITIES .....</b>	<b>4</b>
2.1 CONSTITUTIONAL FRAMEWORK – EQUITABLE AND SUSTAINABLE SERVICE DELIVERY	4
2.2 WHITE PAPER ON LOCAL GOVERNMENT – COORDINATION, SUPPORT AND EQUALIZATION .....	6
2.3 MUNICIPAL STRUCTURES ACT 117 OF 1998 – REFLECTING THE WHITE PAPER’S VISION.....	6
2.4 MUNICIPAL STRUCTURES AMENDMENT ACT 33 OF 2000 – CHANGING COURSE .....	7
2.5 MANAGING THE RELATIONS BETWEEN DISTRICT AND LOCAL MUNICIPALITIES .....	7
2.5.1 <i>District Council</i> .....	7
2.5.2 <i>District intergovernmental forums</i> .....	7
2.5.3 <i>Provincial role</i> .....	8
2.6 INTEGRATED DEVELOPMENT PLANNING PROCESS .....	8
<b>3. LEGISLATIVE FRAMEWORK FOR THE DIVISION OF POWERS OF POWERS AND FUNCTIONS .....</b>	<b>9</b>
3.1 MOVING BEYOND THE LOCAL MUNICIPALITY .....	9
3.2 CONTENT OF OVERLAPPING ACTIVITIES SUCH AS “REGULATION” AND “STRATEGY” ..	9
3.3 OVERINCLUSIVE DEFINITIONS .....	9
<b>4. THE PRACTICE OF DISTRICT MUNICIPALITIES .....</b>	<b>10</b>
4.1 MINISTERIAL AUTHORIZATIONS .....	10
4.2 PROVINCIAL ADJUSTMENTS .....	11
4.3 DISTRICT EXPENDITURE .....	12
<b>5. CAUSES OF CONFLICT .....</b>	<b>13</b>
5.1 ROLE DEFINITION – INTERPRETATION OF SECTION 84 OF THE STRUCTURES ACT .....	13
5.2 ROLE ALLOCATION – SHIFTING OF FUNCTIONS .....	14
5.3 REDISTRIBUTIVE FUNCTION OF DISTRICTS .....	16
5.4 ACCOUNTABILITY FOR SERVICES RENDERED .....	17
5.5 POLITICAL DIFFERENCES .....	17
5.6 CAPACITY STATUS.....	18
5.7 OVERLORDING .....	19
5.8 CONCLUSION.....	19
<b>6. MANAGING CONFLICTS .....</b>	<b>20</b>
6.1 NATURE OF CONFLICTS .....	20
6.2 CLARIFICATION OF POWERS AND FUNCTIONS OF DISTRICT MUNICIPALITIES .....	21
6.2.1 <i>Framework for definitions</i> .....	<i>Error! Bookmark not defined.</i>
6.2.2 <i>Towards defining district powers and functions</i> .....	<i>Error! Bookmark not defined.</i>

6.3 DISTRICT INTERGOVERNMENTAL FORUMS (DIFs) .....	22
6.4 FURTHER RESEARCH.....	23
<b>7. BIBLIOGRAPHY .....</b>	<b>24</b>
<b>8. ANNEXURE 1: Section 84 Structures Act and executive authority to shift powers and functions .....</b>	<b>27</b>
<b>9. ANNEXURE 2: Table of interviews conducted .....</b>	<b>28</b>

# 1. INTRODUCTION

## 1.1 Problem statement

Outside of metropolitan areas, local government is shared by district and local municipalities; the 47 district municipalities and 231 local municipalities share legislative and administrative powers over the same geographical area. This overlapping jurisdiction was bound to raise questions regarding its functionality.

The system of local government is premised on cooperation and a productive atmosphere between district and local municipalities. It has been noted by the National Assembly Portfolio Committee on Local Government that the relationship between district and local municipalities varies from “cordial and cooperative to conflictual and unproductive”.<sup>1</sup> The Western Cape branch of the South African Association for Local Government (SALGA) noted in their minutes<sup>2</sup> that there is “an unwillingness to interact in a cooperative way” among district and local councils. A member of the Free State Provincial Department of Local Government<sup>3</sup> noted that relations between the district and local municipalities counted among the reasons for the bad state of local government in the province. These examples illustrate the urgent need to address the state of relationships between district and local institutions.

This question is what causes conflict and ultimate unproductiveness? Having identified key areas of conflict, the next question to be addressed is: how are these conflicts managed? This question is pertinent in light of the Intergovernmental Relations Framework Act<sup>4</sup> (IRFA) which requires the establishment of District Intergovernmental Forums (DIFs) aimed at managing such relations. The object of this study is thus the identification of the challenges that DIFs must meet. This paper must be read with the “Status quo report on intergovernmental relations regarding local government”, prepared by the Local Government Project, which focuses on the incidence and functioning of intergovernmental forums at district level prior to the IRPA coming into operation

## 1.2 Methodology

In this investigation three sources of information were used. First, a literature survey was done with regard to parliamentary and government papers, both published and unpublished. Second, a questionnaire was sent to the district municipalities of the Eastern Cape, Gauteng, KwaZulu-Natal, Northern Cape, Mpumalanga, Free State (with the exception of *Lejweleputswa* district municipality) and North West (with the exception of *Central* district municipality).<sup>5</sup> Two responses were returned by district municipalities– *Cacadu* in the Eastern Cape and *Siyanda* in the Northern Cape.

---

<sup>1</sup> National Assembly 2003, 9.

<sup>2</sup> Salga Western Cape June 2005, meeting minutes, 26.

<sup>3</sup> Mr T Mathamaho, personal communication.

<sup>4</sup> Act 13 of 2005.

<sup>5</sup> For ease of reading, the names of all municipalities are italicized.

Thirdly, on-site interviews were conducted with district municipalities and their local municipalities. The questions guiding the interview included the following:

- The extent to which the overlap of functions given to district and local municipalities affects their relationship.
- The particular functional areas (as listed in s 84 of the Municipal Structures Act) that pose a problem to the relationship between district and local municipalities<sup>6</sup>
- The methods used to resolve conflicts between the municipalities.
- The linkage that local councillors provide in the district council, the reporting mechanism between district and local councils, and their effectiveness.

Interviews were conducted with respondents from organized local government and the provincial departments for local government in the Free State, Western Cape and KwaZulu-Natal.

There are some methodological *caveats* to a study such as this. First, documentary research relies on generalized or region-specific observations. On-site interviews were a sobering facet to generalizations, yet, this introduces further *caveats*. Interviews were not always conducted with the political principals or the municipal managers.

## **2. POLICY AND LEGISLATIVE FRAMEWORK FOR DISTRICT AND LOCAL MUNICIPALITIES<sup>7</sup>**

Shared authority in local government was first introduced in the 1996 Constitution.<sup>8</sup> While the references in the Constitution to municipalities sharing authority over the same area are skeletal, the concept was further elaborated in the *White Paper on Local Government*,<sup>9</sup> issued in 1998. By the end of that year, this vision resulted in the Municipal Structures Act.<sup>10</sup> However, amendments to the Act made fundamental changes to the original vision, even before the new system of district and local municipalities came into being on 5 December 2000 with the first election of the new councils.<sup>11</sup>

The new model that merged sees district municipalities as direct service providers, deviating considerably from the original idea of them as coordinator, supporter and equalizer between local municipalities. This model is, however, flexible as a district's service delivery role depends in large part on the capacity of both the districts and its local municipalities.

### **2.1 Constitutional framework – equitable and sustainable service delivery**

---

<sup>6</sup> Act 117 of 1998

<sup>7</sup> Steytler 2003.

<sup>8</sup> Act 108 of 1996.

<sup>9</sup> Ministry of Provincial Affairs and Constitutional Development 1998.

<sup>10</sup> Steytler 2000.

<sup>11</sup> Municipal Structures Amendment Act 33 of 2000.

The Constitution contained three categories of municipalities – A, B and C. While Category A was a self-standing municipality, "shared" local authority was created for the areas falling outside Category A municipal areas (metropolitan areas). Section 155(1)(b) states that a Category B municipality is "a municipality that *shares* municipal executive and legislative authority in its area with a Category C municipality within whose area it falls."<sup>12</sup> This means that a Category B municipality shares its powers and functions, as listed in Parts B of Schedules 4 and 5, with a Category C municipality.

The Constitution left the division of authority between Category B and C municipalities to Parliament. Section 155(3)(c) provides that national legislation must "make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and category C." Three sets of criteria are provided to give effect to the "appropriate division" of powers and functions. First, the division is subject to section 229 of the Constitution that provides a set of criteria for the division of fiscal powers. Second, section 155(4) provides that the national legislation "must take into account the need to provide municipal services on an equitable and sustainable manner." Third, section 155(3)(c) allows an asymmetrical division of powers.

The broad and imprecise criteria of equitable and sustainable service delivery in terms of section 155(4) must be interpreted in the context of the Constitution. The term "equitable" means that the allocation of resources is according to need; the redistribution of services from well-served areas to under served areas.<sup>13</sup> The reference to "sustainable" services, also an object of local government listed in section 151, is to ensure service delivery based on a municipality capacity to finance such services from its own funds. The explicit purposes of a district municipality can thus be described as follows: a district municipality must, first, redistribute resources within a district according to need; second, assist and capacitate local municipalities in order for them to provide, and sustain the provision of, services in their areas; third, promote economic development in the district since sustainability of the provision of services (as well as the general well-being of the inhabitants) is dependent upon a productive local economy.

Because the purposes of a district municipality is to respond to need and capacity of local municipalities, the Constitution foresees and permits that the district municipality may play a different role in respect of each local municipality in its district. The division of functions and powers between the district municipality and a local municipality in the district can be asymmetrical depending on need and capacity.

---

<sup>12</sup> S 155(1)(b).

## **2.2 White Paper on Local Government – coordination, support and equalization**

The *White Paper on Local Government* articulated the following roles of district municipalities:<sup>14</sup>

- building local municipalities where there is no capacity;
- initiating economic development of the district;
- planning land-use in the district; and
- Providing in the basic needs of people living in deprived areas.

Central to its coordinating function stands integrated development planning for the district as a whole. This is achieved by harmonising and rationalising local municipalities' integrated development plans (IDPs) with regard to land-use planning, economic planning and development, and transport planning. A second principal function is to provide economies of scale in service delivery; bulk-services are to be provided to local municipalities, such as waste water and sewerage. A further function is to provide municipal services directly to areas where, due to low population density, no local municipality can be established. The vision of district municipalities that the White Paper portrays was thus one of a coordinator, initiator of development and, as the last resort, the provider of services directly to the public.

## **2.3 Municipal Structures Act 117 of 1998 – reflecting the White Paper's vision**

The Municipal Structures Act (MSA), as initially enacted, reflected the overall roles and functions identified in the *White Paper*.<sup>15</sup> However, a significant shift occurred in the Municipal Structures Amendment Act of 2000, transforming the district municipality from a co-ordinator and provider of bulk services to that of service provider to end-users.

Section 83(3) lists the overall purposes of district municipalities as seeking “seeking to achieve the integrated, sustainable and equitable social and economic development of its area as a whole.” This purpose entails, first, that districts must see to that development planning and services in the district cohere. Second, districts must promote bulk infrastructural development and services for the district as a whole and build capacity of local municipalities where it is lacking. Third, the equitable distribution of resources between the local municipalities must be promoted to ensure appropriate levels of municipal services within the district.

As in the White Paper, the district municipality is seen as the coordinator of the district and bulk supplier of services and only a direct service provider in district management areas.

In section 84 of the MSA, the local government competencies, listed in Schedules 4B and 5B of the Constitution, are divided between district and local municipalities. The method used is to list all the functions and powers of district municipalities and leave the residue of the Schedule 4B and 5B competencies to the local municipalities.

---

<sup>14</sup> Ministry of Provincial Affairs and Constitutional Development 1998, 69-72.

<sup>15</sup> De Visser 1999.

## **2.4 Municipal Structures Amendment Act 33 of 2000 – changing course**

An amendment to the Structures Act, effected shortly before the municipal elections in December 2000 radically changed the role of the district municipalities. District municipalities now become, to the exclusion of local municipalities, responsible for –

- Potable water supply systems;
- Bulk supply of electricity (including the transmission, distribution and, where applicable, the generation of electricity);
- Domestic waste-water and sewage disposal systems; and
- Municipal health services.

Accompanying these allocations was the provision that the national Minister of Provincial and Local Government may shift the functions back to local municipalities in the future. The new system thus allowed for great variation in the number and type of functions the 46 district municipalities perform, resulting in, as shown below, a de facto asymmetrical system of allocation across districts.

## **2.5 Managing the relations between district and local municipalities**

A number of processes and structures have been established by law to manage the relations between two municipalities exercising jurisdiction over the same geographical area. First, the relationship should be one of mutual support and coordination. The MSA thus obliges district and local municipalities to support one another at the request of either.<sup>16</sup> The most important aspect of the relationship is probably the drafting of a district-wide IDP. There are also a number of structures that must give effect to the objectives of mutual support and coordination. The most important structure is the district council itself.

### **2.5.1 District Council**

The composition of the district council reflects that the district municipality is the sum of the local municipalities and the electorate of the district as a whole. Sixty per cent of the council is indirectly elected to the council by the local councils in the district in proportion to the numbers of voters in their local municipality. The remaining forty per cent is directly elected, proportionally representing the voters in a district, including a district management area. The council is thus composed of both representatives of the local municipalities and representatives of the district electorate. Given the 60 per cent weighting in favour of local municipalities, the balance of power should lie with the local municipalities and district councils should be subject to local municipal authority. Despite this structural bias in favour of the local municipalities, this has not had the required effect; relations between the two municipalities have often been characterized by strife.

### **2.5.2 District intergovernmental forums**

---

<sup>16</sup> S 88(1).



In a large number of districts, informal intergovernmental forums have sprung up to promote cooperation between the district and the local municipalities.<sup>17</sup> Their functioning is out in the accompanying Centre report on “Status quo report on intergovernmental relations regarding local government”. The IRFA has institutionalized these forums in a new executive intergovernmental relations structure for each district. A district intergovernmental forum (DIF) must be established, consisting of the mayors of the district and local municipalities. The district mayor chairs this forum to discuss “matters of mutual interest”. The objects of these forums and their functioning are set out in the accompanying paper mentioned above.

### **2.5.3. Provincial role**

Provinces are given a limited yet significant role in managing the relationship between districts and locals. The MEC for local government must support the district municipality to give effect to its constitutional duty of supporting its constituent local municipalities.<sup>18</sup>

More interventionist is the provincial role in managing conflicts that may arise over the allocation of powers and functions, given the fact that these definitions in the MSA are not detailed. The MSA stipulates that in the event of a dispute arising between a district and local municipality, the MEC must define the roles. This provincial responsibility takes effect only after the conflict has occurred and the assistance of the MEC is requested.

## **2.6 Integrated development planning process**

One of the key areas where close cooperation is required between the district and the local municipalities is in the design of the district IDP. In terms of the Municipal Systems Act (Systems Act) each district municipality must adopt a framework for integrated development planning of the area as a whole.<sup>19</sup> The importance of the district IDP framework is that it binds both the district and the local municipalities.<sup>20</sup> The framework must address those matters that require alignment between municipalities. It must also specify the principles to be applied and coordinate the approach to be adapted to those matters. The framework must then determine procedures for consultation between the municipalities when they are drafting their own IDPs.

The provinces are tasked to assist the municipalities in the drafting process. The MEC for local government may facilitate the coordination and alignment of Integrated Development Planning (IDP) of a district municipality and local municipality. Further, under the Systems Act the MEC may take steps to bring resolution to

---

<sup>17</sup> Steytler, Fessha & Kirkby 2005.

<sup>18</sup> S 89(3).

<sup>19</sup> Act 32 of 2000, s 27(1).

<sup>20</sup> S 27(2).

disputes or differences that arise in connection with planning, drafting, adoption or review of the IDP between a district and local municipality.<sup>21</sup>

### **3. LEGISLATIVE FRAMEWORK FOR THE DIVISION OF POWERS OF POWERS AND FUNCTIONS**

As pointed out above, the division of powers and functions between district and local government entail identifying from the list of functional areas in Schedules 4B and 5B those areas that fall within the domain of the district municipalities, while leaving the remainder to local municipalities.

It is quite apparent from the reading of section 84(1) of the MSA and the Schedules that the division is neither precise nor detailed. Indeed, one of the reasons that prompted the revision of section 84 in 2000 was to obtain greater clarity. The following difficulties can be identified.

#### **3.1 Moving beyond the local municipality**

A number of phrases in section 84(1) of the MSA seek to distinguish between functions or services that extend beyond a single local municipality. The phrase “serving the district area as a whole” applies to the following functional areas:

- “roads that form an integral part of a road transport system for the area of the district municipality as a whole”;
- Fire fighting services; and
- Promotion of local tourism.

Whether a service is for district as whole, is an interpretive question, open to the interpretation of the different municipalities. Equally difficult is to find the exact ambit of the phrase: “Serving the area of a major proportion of the municipalities in the district”. This applies to fresh produce markets and abattoirs, cemeteries and crematoria. What a “major proportion” is, require again a judgment based on facts and policy consideration. The easiest qualification is the reference to more than one local municipality with reference to “solid waste disposal sites, bulk waste transfer facilities, waste disposal facilities”.

#### **3.2 Content of overlapping activities such as “regulation” and “strategy”**

District municipalities are given broad district-wide functions, such as “to regulate” or “stategise”, that of necessity overlap with local functions. It is not always easy to distinguish the “higher” level of activity of the district municipality from the implementation activities of the locals. The function to “regulate passenger services” impacts on locals’ competencies relating to “municipal public transport”. Likewise, determination of strategy with regard to waste disposal overlaps with each local’s competency relating “refuse removal, refuse dumps and solid waste disposal”.

#### **3.3 Over inclusive definitions**

---

<sup>21</sup> S 31.

Depending on the definition given to a district function it may overlap with a local function. The clearest example is the statutory definition of “municipal health services”. The National Health Act’s definition overlaps with local functions (given in brackets):

- (a) water quality monitoring;
- (b) food control (which overlaps with “licensing and control of undertakings that sell food to the public”);
- (c) waste management (which overlaps with local aspects of “solid waste disposal sites”)
- (d) health surveillance of premises (which overlaps with “local amenities”, “markets”, etc);
- (e) environmental pollution control (which overlaps with “air pollution”, “noise pollution”, “refuse removal”, etc); and
- (f) disposal of the dead (which overlaps with local functions of “facilities for the accommodation, care and burial of animals” and “local cemeteries and crematoria”).

This imposed definition, then, results in a number of points of conflict between district and local municipalities.

#### **4. THE PRACTICE OF DISTRICT MUNICIPALITIES**

When the 46 district municipalities were established in December 2000, some had to start from scratch, while other continued along the line of their preceding regional councils. Despite the provisions of the Structures Act, their functions were largely determined by executive decisions of the Minister and the MECs.

##### **4.1 Ministerial authorizations**

In December 2000 the Minister authorized local municipalities to continue performing these district functions for a two and a half year transition period ending 30 June 2003.<sup>22</sup> In January 2003 the Minister revoked his previous authorisations and dealt with each of the four functional areas separately. With regard to the bulk supply of electricity the local municipalities will continue to provide the services until the national restructuring of the industry is completed.<sup>23</sup> Municipal health services have been defined as environmental health and are to be performed by the district municipalities. A district municipality may, however, request local municipalities to perform the function on its behalf.<sup>24</sup> With regard to water and sewage functions, the Minister dealt with them on a provincial basis taking the particular circumstances of each into account. For example, all the local municipalities in Gauteng, Free State, Northern Cape and the Western Cape will continue to provide bulk water supply and sewage purification, while in the Eastern Cape, only two local municipalities will do so. A similar pattern is apparent in KwaZulu-Natal; only the local municipalities that

---

<sup>22</sup> Mare 2003.

<sup>23</sup> Johnson 2002.

<sup>24</sup> Mare 2003.

include Pietermaritzburg, Richards Bay and Newcastle will perform bulk water supply and sewage purification functions. In Limpopo the district municipalities retain authority over bulk water supply and sanitation except for the local municipalities in one district and the capital town of Polokwane. In Mpumalanga local municipalities in three of the four districts will perform the water and sewage function. In North West that is the position in two districts while in the Northern Cape local municipalities in only one district are authorised to perform the bulk water supply and sewage purification work functions. The new authorization took effect on 1 July 2003.

## 4.2 Provincial adjustments

For the other functions, on the establishment of the new municipalities, the MECs sought to maintain the status quo; the local municipalities were authorized to continue with the functions previously performed by the transitional local councils before December 2000. During the course of the last two years, MECs in the provinces have, with a few exceptions, allocated the powers and functions of refuse removal, local municipal roads and community services to local municipalities.<sup>25</sup>

Since 2003 the MDB has done a yearly capacity assessment of all district and local municipalities and made recommendations to the various MECs to which some responded and adjusted the powers between the two categories of municipalities. According to the MDB<sup>26</sup> on the *status quo* of adjusted functions, the most commonly adjusted district functions since 2002 were that of solid waste removal and control of cemeteries and crematoria.<sup>27</sup> The effect of this provincial executive power is that there are some differences between the powers exercised by district and local municipalities in different provinces.

The MDB reports that more than 80 per cent of local municipalities in the Eastern Cape, Free State and Mpumalanga have the solid waste removal function adjusted to them. Similarly, 80 per cent or more of the local municipalities in the Eastern Cape, Free State, Mpumalanga and North West Province are empowered to perform the control of cemeteries and crematoria function. It is for this reason that the MDB recommends restoring the adjusted function to the district municipality because it would not have an impact on service delivery.

Table 1 reflects the number of local municipalities performing priority 1 functions, namely the most important municipal functions.

<b>Table 1: Priority 1 functions performed by local municipalities</b>		
<b>Function</b>	<b>Number of municipalities</b>	<b>National percentage</b>
Cemeteries	183	79.2
Electricity reticulation	160	69.3

<sup>25</sup> Department of Provincial and Local Government 2004, 7.

<sup>26</sup> Municipal Demarcation Board 2005a, 20.

<sup>27</sup> S 84(1)(e) 'solid waste removal' & s 84(1)(l) 'control of cemeteries and crematoria'.

Fire fighting	130	56.3
Municipal health services	106	45.6
Municipal planning	123	53.2
Municipal roads	189	81.8
Refuse removal	189	81.8
Sanitation	158	68.4
Storm water drainage	159	68.8
Traffic and parking	149	64.5
Water (potable)	165	71.4

Source: Municipal Demarcation Board 2005, 31

### 4.3 District expenditure

This limited number of functions that districts perform correlates with their expenditure. In the National Treasury report *Trends in Intergovernmental Finances*,<sup>28</sup> the operating and capital budgets of the three categories of municipality are given as follows:

<b>Table 2: Budgets by category of municipality, 2003-04</b>					
<b>R million</b>	<b>Operating</b>	<b>Capital</b>	<b>Total</b>	<b>Percentage of Total</b>	
				<b>Operating</b>	<b>Capital</b>
Category A (Metros)	42 677 (61.5%)	7 889 (47.3%)	50 565 (56.8%)	84.4%	15.6%
Category B (Local)	23 905 (34.5%)	6 286 (37.7%)	30 190 (35.1%)	79.2%	20.8%
Category C (District)	2 705 (3.9%)	2 513 (15.0%)	5 218 (6.1%)	51.8%	48.2%
<b>Total</b>	<b>69 286</b>	<b>16 687</b>	<b>85 974</b>	<b>80.6%</b>	<b>19.4%</b>

Source: National Treasury 2004, 24

It is clear that the operating budgets of district municipalities are small in comparison with the operating budgets of local municipalities. Almost half of their budgets are spent on capital projects.

The size of the district budgets reflects that they are not providing the main trading services (water, electricity, sanitation), which are the main source of municipal revenue and on which user charges can be levied.<sup>29</sup>

Given how the legal framework has been implemented, the focus of the inquiry turns now to the relations between district and local municipalities. As noted above, the relationships have not been characterized by harmony and cooperation. What, then,

<sup>28</sup> National Treasury 2004.

<sup>29</sup> National Treasury 2004, 26.

are the structural and operational factors that may cause conflict? It is important to identify the root causes because it is within this environment that the new DIFs must operate and, most importantly, effect changes for the better.

## 5. CAUSES OF CONFLICT

As noted above, in a number of official reports and documents, concern is expressed about the working relationship between district and local municipalities. The picture that emerges, however, is ambiguous; in some districts the relations are good and productive, in others not.

Examining the reasons for success indicates the causes of unproductive relations. The Portfolio Committee for Provincial and Local Government identified certain general conditions that indicate the likely efficiency of the two-tier system in any given district.<sup>30</sup> Crucial factors for good relations included:

- the current boundaries are not substantially different to the old Regional Services Council boundary;
- the district municipality is built on the established regional services council;
- there is good quality leadership;
- there are effective structures that bring together mayors, municipal managers and senior officials in the area;
- mayors serve on the district council;
- there is consensus concerning distribution of financial resources; and
- there is a good understanding of legislation and policies.

In the above-mentioned instances, the district-local relations could be described as “very good and beneficial”.<sup>31</sup> In many districts these conditions do not prevail, resulting in “conflictual and unproductive”<sup>32</sup> relations. Most districts are new creations, IGR structures are not in place and distribution of financial sources is the cause of conflict. This study now seeks to identify key factors that cause conflict in relations between district and local municipalities.

### 5.1 Role definition – interpretation of section 84 of the Structures Act

The lack of clarity in the division of powers and functions between district and local municipalities is a major cause of conflict. In a survey conducted by the National Council of Provinces (NCOP), although over 80 percent of the district and local municipalities that responded (less than half of all municipalities) nearly all of them (98 per cent) claimed that the greatest challenge was misunderstandings of the nature of the two-tiered district-local system.<sup>33</sup> Nearly half of the responded cited indistinct role clarification was a problem besetting intergovernmental relations.

---

<sup>30</sup> National Assembly: Portfolio Committee for Provincial and Local Government 2003, 14.

<sup>31</sup> National Assembly: Portfolio Committee for Provincial and Local Government 2003, 12.

<sup>32</sup> National Assembly: Portfolio Committee for Provincial and Local Government 2003, 9.

<sup>33</sup> National Council of Provinces 2005, 15.

It is not difficult to appreciate that there is uncertainty as to the scope and technical meaning of section 84(1) of the Structures Act which sets out the district functions. As noted above, the definitions of section 84(1) contain at least three kinds of difficulties: first, the distinction when a matter is no longer a local matter but a district one; second, the broad definition of some functions; and third, the over inclusiveness given to some district powers. In all these cases an overlap of functions occurs.

The MDB<sup>34</sup> has suggested that local government functions could be classified into three categories: district, shared and local. Some functions are clearly applicable only to district or local municipalities, but there are a significant number of shared functions, that is, functional areas in which both the district and the local may operate. The MDB's list of shared functions includes:

- Fire-fighting services
- Local tourism
- Municipal airports
- Municipal planning
- Municipal public transport
- Cemeteries, funeral parlours and crematoria
- Markets
- Municipal abattoirs
- Municipal roads
- Refuse removal, refuse dumps and solid waste disposal.

It is not surprising that these shared functions are those mentioned by the respondents in the interviews as causing conflict. The former mayor of a district municipality (currently the manager of tourism) stated that there is no certainty about the district's function of "promotion of local tourism in the area of the district municipality" and the local municipalities' general competence of "local tourism".<sup>35</sup> Promotion, he says, does not entail interference in the authority of local municipalities to execute their listed function. Yet it happens, creating conflict.

The functional area of firefighting is a further example. An executive mayor of a district municipality reported that the district had purchased a fire-engine for a local municipality but the engine remained parked on district premises because of uncertainty as to whose responsibility it was to maintain the vehicle.<sup>36</sup>

## **5.2 Role allocation – shifting of functions**

The Structures Act allows for the shifting of functions between district and local municipalities through the processes of authorisation by the Minister and adjustment by the MEC. This possibility causes uncertainty regarding the responsibility for execution of a function and the influence that the shift in function may have on the revenue base of a municipality. The uncertainty is exacerbated by the fact that the

---

<sup>34</sup> Municipal Demarcation Board 2005b, 4.

<sup>35</sup> Interview 16 August 2005.

<sup>36</sup> Interview 7 September 2005.

authorizations and adjustments are not subject to any timeframe. In addition, the uncertainty also creates the possibility for duplication of services.

Soon after the districts' establishment, the Ministerial Advisory Committee<sup>37</sup> noted that the authorisations have resulted in "uncertainty" among municipalities because municipalities were "anticipating and insisting that the division of powers and functions be adjusted in compliance with section 84 of the Structures Act". This uncertainty had four consequences. First, preparation of an IDP and budget becomes difficult, as well as the finalization of organograms, both matters that could adversely affect the credit worthiness of municipalities. Second, delay in authorisation might lead to insecure employment posts, low work morale and unnecessary resignation. Third, practical difficulty arises when departments wish to hand over schemes to local government since there is uncertainty as to who is authorised to manage such schemes.

The Portfolio Committee found two years later that: "[many municipalities] feel that the process of finalizing the division [takes] too long and has not been consultative enough...Both district and local municipalities raised the need to provide greater certainty and clarity on what precisely the new division of powers and functions are, what their technical meanings are, and what the financial implications of these new allocations are...and how these overlap with and are distinct."<sup>38</sup>

A further consequence of the shift in powers and functions is the unauthorised execution of "shifted" functions. For the sake of continuity in the delivery of a service, a municipality would continue to deliver a service after the function has been shifted away, said a municipal manager of a local municipality.<sup>39</sup> What is more, he notes, is that the execution of the function is "unfunded" in the sense that the district budget reflects execution of the district function and the local municipal budget reflects none.

In some case, the shifting of functions has resulted in the duplication of service delivery, much to the annoyance of everyone concerned. It was stated by the municipal manager of a district municipality that "the province announces a function for the district to execute and the local laughs because they know we cannot do it, they have to be our agents and can charge us what they like".<sup>40</sup> Similarly, the municipal manager of a local municipality gives an example of duplication saying, "[if] we at Mangaung advertise economic development, they will do the same. We tend to have two bloated structures. There is also no point in them [the district] having a director for water services, when we are performing the function or to have an engineer when we already have one."<sup>41</sup>

---

<sup>37</sup> Ministerial Advisory Committee on Local Government and Transformation 2001, 44.

<sup>38</sup> National Assembly: Portfolio Committee for Provincial and Local Government 2003, 10-11.

<sup>39</sup> Interview 8 September 2005.

<sup>40</sup> Interview 7 September 2005.

<sup>41</sup> Interview 7 September 2005.



A great source of conflict is the impact a shift in responsibility when it involves the trading services providing vital income through the levying of user charges. This conflict arises, explained the Corporate Services Manager of a local municipality, when the IDP and the budget must be aligned because of uncertainty in the location of the trading services.<sup>42</sup> The Portfolio Committee reported that a district municipality also complained, “the water function has been taken away from us...[we] have to have a service delivery role, otherwise [we] will not be able to build our own identities. If we deliver services, we can raise revenue. (Otherwise) where do we get money from?”<sup>43</sup>

### **5.3 Redistributive function of districts**

One of the functions listed in the MSA for a district municipality is to redistribute financial resources to local municipalities.<sup>44</sup> Where the channeling of grants, conditional and unconditional, must filter through district municipal administration, bureaucratic delay may cause conflict.

The Ministerial Advisory Committee anticipated the cause for concern: “Modern principles of public financial management are not necessarily promoted by compelling two levels of local government (as opposed to the national fiscus) to redistribute resources horizontally and vertically”.<sup>45</sup> The Portfolio Committee<sup>46</sup> noted in 2003 that bureaucratic delay was causing conflict.

This concern was repeated in the interviews conducted. The former mayor of a district municipality noted that the President correctly observed on many occasions that he cannot understand why, when he gets to the communities nothing is happening although money has been allocated.<sup>47</sup> The answer, the former mayor suggests, can be found by studying the channels through which the money is to reach the communities. He argues that it should be the municipality closest to the communities who should get the funds directly.

The detrimental effect of bureaucratic delay on local economic development is best illustrated by the following example given by the corporate services manager of a local municipality.

“We submit our budgets at the end of May so that by the end of July we will be able to start with our projects. The district, however, submits their budget later so that we only receive our approval in October/November by which time it is too late to start because it is December/January period and when we return, it is February and the end of the financial year. Five months are wasted by a bureaucratic block.”<sup>48</sup>

---

<sup>42</sup> Interview 7 September, 2005.

<sup>43</sup> National Assembly: Portfolio Committee for Provincial and Local Government, 11.

<sup>44</sup> S 84(1)(o).

<sup>45</sup> National Assembly: Portfolio Committee for Provincial and Local Government, 53.

<sup>46</sup> National Assembly: Portfolio Committee for Provincial and Local Government, 10.

<sup>47</sup> Interview 16 August 2005.

<sup>48</sup> Interview 7 September, 2005.

## 5.4 Accountability for services rendered

When end-user service functions (water, electricity, sanitation and health) were allocated to district municipalities, the complaint was local municipalities, being the first line of contact with the public, will carry the brunt of consumer dissatisfaction with those services. The Ministerial Advisory Committee argued that political accountability and the democratic process would be undermined by the split in direct service provision: “District municipalities do not have ward and residents do not have access to ward councillors. Therefore, transferring the bulk of local municipal services to districts undermined the principle of open, accountable and democratic government and relatively easy access to decision-making, as district municipalities are removed from local communities.”<sup>49</sup>

Local municipalities, reported the Portfolio Committee, are the target of consumer dissatisfaction and recipients of complaints about inadequate service delivery in local areas.<sup>50</sup> They bare the brunt for irresponsibility in administering resources, and hence they argue “we are on the ground, we feel the heat from the people, not the districts”. Residents do not understand the distinction between a district service provider and a local service facilitator. It is for this reason, said a councillor from a local municipality, “the conflict is caused because people don’t understand what is the district and what is the local [they] complain to us”.<sup>51</sup> Having to carry the can for services they are not responsible for, has not improved local municipalities’ relationship with their districts.

## 5.5 Political differences

Having two political structures that must cooperate on numerous matters sets the stage for political contestation. The logic of the structure is that with 60 per cent of the councillors being local representatives, the local councils should dominate the district council. However, this is not the case as the many conflicts between district and local suggest. An obvious source of conflict is where different political parties govern at district and local level. However, the Portfolio Committee has noted that intra-party differences are also played out in the two councils.<sup>52</sup>

Inter-party competition has been prevalent. When asked about the nature of the relationships between the district and local municipalities, an acting municipal manager of a district municipality responded that in the past there had not been cooperation.<sup>53</sup> In his opinion the main reason was that the strong local municipalities in the district differed in their political make-up to that of the district. He also said that one of the reasons for intervention in a local municipality, was the political history of

---

<sup>49</sup> Ministerial Advisory Committee on Local Government and Transformation 2001. 54.

<sup>50</sup> National Assembly: Portfolio Committee for Provincial and Local Government, 10.

<sup>51</sup> National Assembly: Portfolio Committee for Provincial and Local Government, 10.

<sup>52</sup> National Assembly: Portfolio Committee for Provincial and Local Government, 12.

<sup>53</sup> Interview 15 August 2005.

municipal government in the area: “The local municipal political problems, spilled over into the district and there was no cooperation with the council”.

Similarly, a municipal manager of a local municipality<sup>54</sup> said that the influence of politics on service delivery had caused problems. He said:

“Previously the New National Party (NNP) was in control of the district and the Democratic Alliance (DA) was in control of the local. There was continuous undermining and the district council decisions did not go back to the local council. The opposing parties who had control of the leadership of the two councils were at each other, which affected the service delivery. In our case, our majority party was not the one in control of the district and so our concerns were not prioritized. Now that we are both ANC, I can see how the concerns of the opposing party’s municipality are being sidelined.”

Both municipal managers note that politicization of matters had a negative impact on service delivery in the district area.

These are by no means isolated examples. Inter-political conflict is further illustrated by the “ANC and UDM war over water”. The *Sunday Times*<sup>55</sup> reported conflict over the provision of water services by the ANC-controlled *OR Tambo* district municipality as opposed to the UDM-controlled *King Sabata Dalindyebo* local council, to the populous Umtata area. It was reported that the mayor of *King Sabata*, Dowa Mgudlwa, took the adversarial route in claiming that the provincially-supported district municipality was trying to deprive his cash strapped municipality of revenue. The district municipality claimed that the mayor was failing to provide reliable services to the district and withholding water supply to the rural areas. According to district officials “the UDM has undermined good relations between the two municipalities by failing to cooperate on service delivery initiated by the district.” The *King Sabata* mayor said that “the provincial government has starved the local municipality of much needed funds and have snubbed his attempts to discuss the issue.”

Finally, KwaZulu-Natal Department of Local Government and Traditional Affairs<sup>56</sup> also reported that the chief conflict-generating stimulus in the province was political strife among district municipalities and their constituent local municipalities. A local municipality with a different majority party control is sidelined and ignored in decision-making and will rarely receive project funding. A lack of commitment to cooperative relations, he says, must be overcome to improve district-local relations.

## 5.6 Capacity status

---

<sup>54</sup> Interview 16 August 2005.

<sup>55</sup> ‘Eastern Cape becomes election battleground’ *Sunday Times* (22 February 2004).

<sup>56</sup> Mr M Staniland, manager of local government in the Department of Local Government and Traditional Affairs, KwaZulu-Natal (27 October 2005).

A further cause of conflict is the status accorded by the National Treasury in terms of the Municipal Finance Management Act to municipalities. For the implementation of the MFMA, the National Treasury has classified municipalities into high, medium and low capacity municipalities. From the date of coming into operation the MFMA applied to all high capacity municipalities while the low capacity municipalities have three years grace, with medium capacity municipality falling in between. An unforeseen consequence of this classification is the strife it would cause between a district and a local municipality with different status.

The implication of a high capacity local municipality in relation to a medium or low capacity district municipality is illustrated by the following sentiment expressed by an executive district mayor: “We feel honoured when [local municipality with a high capacity status] attends one of our meetings”.<sup>57</sup> Conversely, a district with a higher grade as a local municipality may look down on the latter. This was acknowledged by a district municipal manager: “the district will make makes decisions on behalf of the local municipality because it has a low capacity grading.”<sup>58</sup>

## **5.7 Overlording**

Questions have also been raised whether the districts are assuming the role of “big brother or sister” over their constituent local municipalities. Although the two-tiered system of local government is not supposed to be hierarchical, signs of status differentiation have been reported, giving rise to conflict. The Portfolio Committee<sup>59</sup> reported a district municipal councillor saying that “there needs to be a big brother or sister” and that “local municipalities insist that they are autonomous and refuse to acknowledge the district’s role.” This role of the district is then portrayed as one of saving local municipalities from financial ruin. A district councillor<sup>60</sup> expressed this sentiment in saying “[poor] B’s (local municipalities) see us as their Messiah”. This view is confirmed by the manager for local government in the KwaZulu-Natal Department of Local Government and Traditional Affairs.<sup>61</sup> The perception is thus that redistributive function of districts along with the provision of direct services give districts the perceived role of big brother to the local municipalities.

## **5.8 Conclusion**

The combination of conflict generating factors has made some local municipalities to question the need for districts. The Portfolio Committee reported disenchantment with the two-tiered system in that certain local municipalities said, “we have doubts about the need for districts”.<sup>62</sup> It was also said that strong local municipalities expressed the fact that they possessed the capacity to fulfill powers and functions allocated to the district municipality and doubted the district municipality’s capability to do so. More

---

<sup>57</sup> Interview 7 September 2005.

<sup>58</sup> Interview 7 September 2005.

<sup>59</sup> National Assembly: Portfolio Committee for Provincial and Local Government 2003, 11.

<sup>60</sup> National Assembly: Portfolio Committee for Provincial and Local Government 2003, 11

<sup>61</sup> Mr M Staniland, manager of local government in the Department of Local Government and Traditional Affairs, KwaZulu-Natal (27 October 2005).

<sup>62</sup> National Assembly: Portfolio Committee on Provincial and Local Government 2003, 10.

recently, the forthcoming abolishment of the RSC levy has put further question marks behind district municipalities. A district municipal manager noted that the Minister's announcement that RSC levies may be withdrawn from district municipalities was made too early.<sup>63</sup> With the RSC levies constituting the bulk of district, municipal income, "the Minister's announcement," he said, "had an unanticipated effect, on the view held by local municipalities, on the future of district municipalities and, compounded the view of some that district municipalities were unnecessary."

## **6. MANAGING CONFLICTS**

Although there are mumbling among local municipalities about the need for district municipalities, their place in the local government dispensation is not questioned at the national or provincial levels. Indeed, the IRFA has strengthened the position of districts by making them the partner in provincial-local relations; in the Premier's Coordinating Forum the Premier meets with the mayors of districts and metro's and only one representative of organized government. Given this reality the conflict-generating conditions must be addressed. This, of course, is one of the objectives of the district intergovernmental forums. This begs the question whether the DIFs would be suitable institutions for this task.

### **6.1 Nature of conflicts**

To manage the conflicts that arise between district and local municipalities, the sources of these conflicts must be addressed. Three principal sources can be identified:

- the rules of the two-tiered system of local government,
- interventions from the national and provincial executives, and
- the intergovernmental relations within districts.

First, some of the conflict-generating conditions flow from the rules of the two-tiered system. The lack of clarity on powers and functions, leading to shared competencies and the resultant contestation and duplication, flows from the definitions in the MSA. Moreover, the confused role of district municipalities – some being service providers and other not - stems from an ambiguous national policy.

Second, the uncertainty on the allocation of powers and functions and their shifting to and fro, is in itself a source of conflict. Moreover, the manner in which these provisions have been used by the national and provincial executives has exacerbated tension. The capacity assessment of municipalities by the National Treasury for purpose of the MFMA has had unforeseen consequences by aggravating already strained relations between the two tiers.

Third, much of the conflicts originate from the municipalities themselves. Local municipalities have not always invested in the district councils by electing the local leadership to the district council. Poor communication with residents has left communities confused about who should be held accountability for poor service

---

<sup>63</sup> Mr B Molotsi, municipal manager, *Northern Free State* district municipality (8 September 2005).

delivery. Party politicking has also stood in the way of cooperative relations. The attitude of both sides to the place and role of the other is a further contributing factor to poor relations. An overlording attitude by districts does not lead to constructive relations, nor a questioning attitude by local of the very existence of districts, leads to cooperative government.

Given these sources of conflicts, a two-pronged approach to district-relations is required. The first approach entails the clarification of the division of powers and functions, while the second focuses on the improvement of relations through the establishment of district intergovernmental forums.

## **6.2 Clarification of powers and functions of district municipalities**

The first step in dealing with poor district-local relations is to examine the institutional arrangements and fine tune them if required. In particular greater clarity is required with the role definitions contained in section 84(1) of the Structures Act. The framework developed for the definition of Schedules 4B and 5B in the first paper of this project,<sup>64</sup> finds application also with regard to defining district powers and functions.

Definitions of district powers and functions are sector-specific requiring a detailed analysis of each functional area. To devise appropriate definitions, a three step process should be followed:

- (a) Develop and adopt official guideline definitions;
- (b) Develop and adopt statutory definitions; and
- (c) If required, negotiate the practical implementation of definitions.

The first step is to develop a set of guideline definitions that will guide all spheres of government in the exercise of their constitutional powers. The Minister responsible for local government can issue such regulations in terms of section 92 of the Municipal Structures Act in order to provide a holistic approach to district powers and functions. The aim of the Guidelines is three-fold:

- (a) They will give district and local municipalities guidance with regard to the ambit of their powers and functions.
- (b) They will guide the national and provincial departments when they draft statutory definitions of powers and functions concerned with a particular sector of government.
- (c) They will guide the provincial governments in defining the scope of their monitoring and support functions with regard to municipalities.

The Guideline definitions would not, however, have the binding force of law, but would provide municipalities and sector departments at both national and provincial level with a framework in terms of which the details of a particular functional area can be determined. The Guidelines should be developed in consultation with the various line departments and local government to achieve an informed and sector-specific definition as possible.

---

<sup>64</sup> Steytler &, Fessha 2005.

The clarification of the powers and functions of district should be accompanied by a policy clarification on the overall function of district municipalities. The ambiguous position of districts, where some are services providers and others are coordinators, is not conducive to sound government within provinces. The uncertainty about the duration of executive allocations does not promote good planning. What is required is a clear policy on districts: what will their role be over the next decade? Clarification around the basic premises of the institution would give guidance to the respective municipalities' interaction with one another.

The second step is sector specific legislation. All three spheres of government may adopt definitions of the local government competences. The national and provincial governments may do so in terms of their supervisory legislative authority, while district municipalities can define their powers in by-laws within the confines of the framework of the MSA. Any such definitions should be guided by the Guidelines issued by the DPLG, which may meet to some extent the dangers of over- or under-inclusiveness of definitions.

Before any national or provincial law is adopted defining local government competences, a full process of consultation with local government should have been conducted. This must occur in terms of section 154(2) of the Constitution as further elaborated in the IFRA. Of relevance are the intergovernmental forums where legislation affecting local government must be discussed.

A district municipality can define the ambit of its powers and functions in a by-law. Such by-law is, however, subject to valid national and provincial laws. To assist municipalities, and to give effect to their duty of support, both the national and provincial governments may issue standard by-laws, defining, among other things, municipal competences.

The final step towards defining competences is using the political process of cooperative government whereby the contours of district powers can be finally settled. This can be done through the conclusion of protocols and memoranda of understanding on a particular competency through the DIFs.

### **6.3 District intergovernmental forums (DIFs)**

While the first step is to demarcate the distinctness of district and local municipalities, the second step is aimed at facilitating closer, cooperative relations between them. Already before the enactment of the IRFA, in many, if not most, districts intergovernmental forums were initiated to facilitate good relations. In some provinces the initiative came from the provincial government. In most provinces it were the municipalities in the district themselves that took the initiative, convening the mayors in a consultative forum. The details of these forums and their functioning are set out in the accompanying paper prepared by the Community Law Centre.<sup>65</sup> The IRFA has now institutionalized these forums.

---

<sup>65</sup> Steytler, Fessha and Kirkby 2005.

Given the broad mandate of the DIFs, the question is whether they would be able to impact constructively on the relationship between district and local municipalities. Would these institutions be able to address some or all of the conflict-generating conditions that bedevil district-local relations? It is submitted that they may well deal with some but not all of the issues, depending on the source of the conflict.

First, while role definition should be tackled by the Department of Provincial and Local Government through the issuing of regulations clarifying the definitions, no definition answers all questions. There will always be room for interpretation. As was suggested with regard to the demarcation of powers and functions between the provinces and local government, the final step towards defining competences is using the political process whereby the contours of competences can be finally settled.<sup>66</sup> This can be done through the conclusion of protocols and memoranda of understanding on a particular competency. The DIFs are tailor-made for such a function.

Second, the conflicts generated by the municipalities themselves are eminently suitable to be addressed in these forums. Where the redistributive function of the districts is marred by bureaucratic delay, the DIFs are the institutions where such issues are raised and dealt with. On the other hand, DIFs may be constrained to deal with accountability issues when residents place complaints about service delivery at the wrong door. One of the greatest challenges for DIFs is to deal with political differences. Reaching agreement and unity of purpose is no great achievement where it happens within a single party as negotiations usually take place outside the forum and within party structures. The true test of effective intergovernmental relations is to negotiate across party lines. This is the essence of multi-party democracy in practice. Again, the DIFs are the suitable instrument through which the interest of the district as whole could be pursued jointly. Finally, through the consultative nature of a DIF, the political leadership of a district may deal with perceptions of overlordship and questioning of the district's existence.

There are obviously matters that fall outside the sphere of influence of DIFs. Where the uncertainty of the allocation of functions stems from the national or provincial governments, DIFs can't remedy it. They can, however, present a negotiated view to the other governments on the appropriate allocation of a particular function.

#### **6.4 Further research**

This paper has identified key problems besetting the functioning of districts. In the accompanying paper, the efforts by district themselves (sometimes with the assistance of the province) to deal with those problems are fully explored. That paper provides the baseline study in terms of which the impact of the IRFA can be measured. Will the DIFs live up the challenge of facilitating cooperative government in districts?

---

<sup>66</sup> Steytler, Fessha and Kirkby 2005.



## 7. BIBLIOGRAPHY

### Legislation

Intergovernmental Relations Framework Act 13 of 2005.

Local Government: Municipal Structures Amendment Act 33 of 2000.

Local Government: Municipal Systems Act 32 of 2000.

Local Government: Municipal Structures Act 117 of 1999.

Constitution of the Republic of South Africa Act 108 of 1996.

### Parliamentary Papers

Ministerial Advisory Committee on Local Government and Transformation (2001) *Interim Report on the Challenges Facing Local Government*.

National Assembly: Portfolio Committee for Provincial and Local Government (2003) *Report on Study Tour of Municipalities*.

National Council of Provinces: Select Committee for Local Government and Administration (2005a) *State of Eastern Cape Municipalities: Department and SALGA Briefings* (13 September 2005).

National Council of Provinces (2005b) Select Committee for Local Government and Administration *State of Mpumalanga Municipalities: Department and SALGA Briefing* (8 September 2005).

National Council of Provinces: Select Committee for Local Government and Administration (2005c) *State of Western Cape Municipalities: Department Briefings* (6 September 2005).

National Council of Provinces: Select Committee for Local Government and Administration (2005d) *State of Free State Municipalities: Department and SALGA Briefings* (6 September 2005).

National Council of Provinces (2004) *Analysis of findings submitted to the National Council of Provinces* (conducted for the Parliament of South Africa Information Services Section: Research Unit).

Ministry of National Treasury for the Republic of South Africa (2004) *Trends in Intergovernmental Finances: 2000/01-2006/07*.

### Department of Provincial and Local Government

Ministry of Provincial Affairs and Constitutional Development (1998) *White Paper on Local Government* (Pretoria).

Department of Provincial and Local Government (2004) 'Existing Intergovernmental Relations Forums: Questionnaire'.

### Municipal Demarcation Board

Municipal Demarcation Board (2005a) *National Report on Local Government Capacity (Assessment Period: 2004/2005)* available at <<http://www.demarcation.org.za>>.

Municipal Demarcation Board (2005b) *Review of the Adjustment of District Functions to Local Municipalities* available at <<http://www.demarcation.org.za>>.

Municipal Demarcation Board *Division of Functions and Powers: Discussion Document* (18 July 2001).

### Articles

Atkinson, D., Van der Watt, T. & Fourie, W. (2003a) 'Hologram project: role of district municipalities' (Human Sciences Research Council).

Atkinson, D., Buso, N., Pienaar, D. & Makgoba, S. (2003b) 'Municipal administrative restructuring in non-metropolitan areas: final report' (Human Sciences Research Council).

Atkinson, D., McIntosh, A., Smith, K. & de Visser, J. (2002) 'A passion to govern: Third-generation issues facing local government in South Africa' (Human Sciences Research Council).

De Visser, Jaap (1999) 'Division of powers and functions' 1(3) *Local Government Law Bulletin* 3.

Johnson, Victoria (2002) 'Electricity restructuring: Short-circuiting municipalities?' 4 *Local Government Law Bulletin* 7.

Mare, Charmaine (2004) 'The "big four" functions: Finality in sight' 5 *Local Government Law Bulletin* 8.

Steytler, N., Fessha, Y. and Kirkby, C. (2005) 'Status quo report on intergovernmental relations regarding local government' forthcoming.

Steytler, Nicolas (2003) 'District Municipalities: Giving effect to shared authority in local government' 7 *Law, Democracy & Development*.

Steytler, Nicolas (2000) 'District Municipalities: Their role and functions' 2(3) *Local Government Law Bulletin* 1.

Steytler, Nicolas and De Visser, Jaap (2000) 'Amendments to the Structures Act: Last minute changes' 2(3) *Local Government Law Bulletin* 14.

<b>8. ANNEXURE 1: Section 84 Structures Act and executive authority to shift powers and functions</b>	
<b>Functions which may be shifted by minister after consultation with line function ministers:</b>	<p>Potable water supply systems</p> <p>Bulk supply of electricity which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity</p> <p>Domestic waste water and sewage disposal systems</p> <p>Municipal health services</p>
<b>Functions which may be shifted by MEC after recommendation from MDB:</b>	<p>Solid waste disposal sites, in so far as it relates to –</p> <ul style="list-style-type: none"> <li>(i) the determination of a waste disposal strategy;</li> <li>(ii) the regulation of waste disposal;</li> <li>(iii) the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.</li> </ul> <p>Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole</p> <p>Regulation of passenger transport services</p> <p>Municipal airports serving the area of the district municipality as a whole</p> <p>Fire fighting services serving the area of the district municipality as a whole, which includes—</p> <ul style="list-style-type: none"> <li>(i) planning, coordination and regulation of fire services;</li> <li>(ii) specialized fire fighting services such as mountain, veld and chemical fire services;</li> <li>(iii) co-ordination of the standardization of infrastructure, vehicles, equipment and procedures;</li> <li>(iv) the training of fire officers.</li> </ul> <p>The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district.</p> <p>The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of the municipalities in the district.</p> <p>Promotion of local tourism for the area of the district municipality.</p> <p>Municipal public works relating to any of the above functions or any other functions assigned to the district municipality</p>

**9. ANNEXURE 2: Table of interviews conducted**

<b>Province</b>	<b>Municipality</b>	<b>Interviewees</b>
Western Cape	<i>Eden</i> (district)	Mr Lott, municipal manager  Mr A Lamont, manager of tourism (ex-mayor)
Western Cape	<i>Hesseqa</i> (local)	Mr J Jacobs, municipal manager
Western Cape	<i>Cape Winelands</i> (district)	Mr K Chetty, municipal manager
Western Cape	<i>Swellendam</i> (local)	Mr K Gordon, manager of corporate services
Free State	<i>Motheo</i> (district)	Ms K Choene, executive mayor Ms T F Kgosidintsi, municipal manager
Free State	<i>Northern Free State</i> (district)	Mr B Molotsi, municipal manager
Free State	<i>Mangaung</i> (local)	Mr M Matole, city manager
Free State	<i>Moqhaka</i> (local)	Mr Lebona, mayor Mr V Senkhane, manager of corporate services
Free State	<i>Metsimaholo</i> (local)	Mr K Mahlatsi, municipal manager