



Restructuring Local Government in the Eastern Cape

Discussion document



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Introduction

The restructuring of local government for the final phase of the transition is well underway. As a critical delivery agent for development in South Africa, local government has been elevated to a level of importance never before seen in this country. The experience of local government in the Eastern Cape has been an expression of past inequalities and underdevelopment, particularly in the two former homeland areas. The restructuring of local government in the province must seek to address these inherited inequalities. The major areas where provincial MEC's can impact on the remodeling of the local government system lie in decisions to be made around the types of municipalities, and their related powers and functions.

Section 1: national policy process around powers and functions allocation

- **Background**

During the transition period, a differential model for local government was implemented according to the Local Government Transition Act. Provincial variances occurred because the LGTA was bridging legislation, running concurrently to existing provincial legislation which gave rise to local government. This was because prior to 1994, local government was not an independent sphere, but a creation and extension of the four provincial governments, overseen by provincial administrators. The powers and functions assigned to any form of local authority, be it a District Council, a TLC, TRC etc, were drawn from provincial as well as national legislation. Only in the final phase (post November 2000), will the powers and functions of local government be set by nationally standard comprehensive legislation. Within this legislation, there are spaces for some provincial choices, but only within national guidelines and frameworks. The development of the new local government model has progressed over the last 5 years, as each new piece of policy and legislation built up the new vision for local government. With the final number of councils demarcated in the Eastern Cape, less than half the previous number of councils, the time has come to apply the new systems and structures to these boundaries.

- **The Constitution**

The Constitution is the first place where the allocation of powers and functions between the two tiers of local government (category B and C's) is mentioned. The Constitution outlines the categories A, B, and C. Category A municipalities have exclusive executive and legislative authority in their area (unicity), a category B municipality shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls (local council), and a category C municipality has executive and legislative authority in an area that includes more than one municipality (district council). The section in the Constitution dealing directly with powers and functions states that:

"The national government and provincial government must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of schedule 4 or Part A of schedule 5 which necessarily relates to local government, if –

(a) that matter would most effectively be administered locally;

and

(b) the municipality has the capacity to administer it." (p84)

The schedules list all powers and functions. The specification of capacity needing to be present before a municipality can be assigned a power or function, would be further expanded in the White Paper on Local Government released in March of 1998.

- **White Paper**

Although the White Paper does not have a section dealing specifically with powers and functions, it does hint at issues around the allocation of powers and functions at category B and C level. For example it states that "while new district governments will build on the capacity of the transitional district government system which is in place, it is envisaged that it will assume new roles and responsibilities."(69) Further down on the same page is the statement, "a variable district government system is envisaged in which district exercise different sets of powers vis-à-vis their areas and the local municipalities that comprise them, depending on local circumstances."

Later on in the chapter, another hint is expressed: “some District Councils already provide technical assistance on demand to administratively weak municipalities, mainly in the form of town clerk and treasury functions. This role is likely to continue and possibly even expand” (72). These statements contained in the White Paper, make only oblique mention of the possibility of allocating powers and functions between district and local municipalities, making brief reference to the Constitution rather than fully developing the line of thought. It was not until the release of the Structures Bill, that the full implications of this line of thought became evident.

- Demarcation Act

The Demarcation Act was the first piece of legislation to follow the White Paper. The Act listed the criteria to be used in determining municipal boundaries exhaustively, but failed to prioritise these in any particular order. The Act promises to create logical and functional areas, which better reflect peoples real needs and experiences. The bulk of the text contained in the Act, outlines the creation of an independent national Municipal Demarcation Board, and the procedures and processes it must legally fulfill before declaring a municipal boundary. The Act created the space for considerable rationalization of the number of councils by amalgamating urban and rural areas into functional units. The Act does not deal specifically with powers and functions, and only mentions that capacity of a municipality to provide services should be one consideration, among many, in determining municipal boundaries. The consequences of the final boundary determination are referred to the Municipal Structures Act.

- Structures Act

The Municipal Structures Act of 1998, was the second piece of legislation to flow from the White Paper. It detailed the categories and types of municipalities, as well as the process for establishing the municipalities, the allocation of powers and functions between category C and B municipalities, and electoral systems. The Structures Act was controversial in that it detailed for the first time how category B local councils could be reduced to representative shells with only insignificant powers and functions. The emphasis on district municipalities as having many of the powers and functions of local government was advanced by the Act. The role of provincial governments in choosing municipal types and allocating powers and functions between the district and local councils was laid out at a general level. The Act also outlined how sparsely populated areas could be denied direct local government representation, and instead be managed by district level government (District Management Areas).

The Municipal Structures Act was an important piece of legislation in that it created a complex set of choices around types of municipality and powers and functions. The notion of an executive mayor was introduced in the Act, creating considerable debate as it starts to break down the divide between councilors and officials, politicians and bureaucrats. Much of the Structures Act can be read as an attempt to strip local government of its mandate where it lacks the capacity to deliver, and re-allocate it at a more centralised level (such as district and provincial government), in order to enforce consistent national standards of delivery. The response to a general poor performance from some municipalities seems to have been to take away the responsibility and place it at a more centralised level until the local level can demonstrate improvement in its ability to reassume the delivery mandate. This may have been a bit hasty given the short period allowed to municipalities to grow into their developmental purpose.

The Structures Act gives the task of establishing municipalities within boundaries already drawn by the Demarcation Board, to MEC's. It states that MEC's must establish municipalities by notice in the provincial gazette, and this notice must specify:

- a. the category of municipality that is established;
- b. the type of municipality that is established;
- c. the boundaries of the municipal area;
- d. the name of the municipality;
- e. the number of councilors as determined in terms of section 20;
- f. which councilors of the municipality (if any) may be designated as full-time in terms of section 18(4);

- g. any adjustments in the division of functions and powers in terms of section 85 affecting the municipality;
- h. any provisions of this Act from which the municipality has been exempted in terms of section 91; and
- i. any other relevant detail.

Each of these points represent a space for decisions to be made by the MEC's, and an opportunity to address local circumstances. These will be explored further in Section 2.

- Powers and functions draft policy

The Municipal Demarcation Board has released a draft policy on functions and powers for municipalities. This policy notes the three role-players in determining powers and functions as follows:

1. The MDB, who will consider the capacity of municipalities to perform functions and exercise powers
2. The Minister, who must publish a policy framework for the allocation of powers and functions
3. The MEC's, who will, within the policy framework, adjust the division of functions and powers between a district and local municipality.

The Board has commissioned a research paper to prepare suitable definitions for the powers and functions contained in the Act. Further, a measurement for assessing administrative and financial capacity will be developed by the Board. Finally, a database is being set up on the capacity of all existing municipalities through financial and administrative questionnaires.

The policy document states that 'capacity' is defined in the Act to include "the administrative and financial management capacity and infrastructure that enables a municipality to collect revenue and to govern on its own initiative the local government affairs of its community" (section 1). It further says "a municipalities capacity to perform a function or exercise a power vested in it in terms of section 84 must be assessed in relation to the intended transfer of the resources in terms of section 14(2)." Section 14(2) of the Act outlines how the proclamation must transfer staff, assets and liabilities from the dissolved council/s to the new superceding municipality. It makes no mention of external transfer of resources. It appears thus that past experience and local revenue is the primary deciding factor in assessing capacity.

The Board interprets the constitutional provision for 'shared authority' in a district area as aiming to "ensure redistribution and sustainability of municipal services". The policy further elaborates on the term 'equitable' (as in redistribution) to mean the allocation of resources according to need. It states that "the reference to 'sustainable' services is to ensure that there is efficiency and efficacy of service delivery in the long run. The underlying principle is thus that the inequalities of the past should be addressed by, inter alia, the appropriate allocation of powers and functions and resources" (4). There is a central tension evident here between powers and functions on the one hand, and resources on the other. The question is, where there are powers and functions will resources follow? Or, where there are resources, powers and functions will be allocated? This question is important for individual local authorities. Take, for example a relatively well capacitated local authority with significant local revenue. Can they expect to be given many powers and functions, as well as rewarded with outside resources? Or will those outside resources (conditional grants, transfers etc) go to those municipalities that lack local resources to perform even the most basic functions?

The process through which powers and functions will be allocated is still fuzzy. However the Board's draft policy has the following revealing statement:
 "Section 84(1) lists the powers and functions of the district municipality, giving the local municipalities in terms of section 84(2), those powers and functions that are not allocated to the district municipality"(4).

This clearly implies that district municipalities are first allocated powers and functions, and then the local municipalities get the leftovers. There will first be a statutory allocation (the Ministry and the Board), and then a discretionary adjustment by the MEC's.

The policy outlines that the MEC may re-allocate a function or power only if the municipality which currently holds the power and function lacks the capacity to perform it, and after consulting the Board on its assessment conclusions. The ministerial policy framework for adjusting powers and functions (which MEC's will have to work within), will be published for comment in mid-March, and gazetted in early April. The Board's policy draft outlines various broad options for allocating powers and functions. These are:

1. "Maintain the status quo as far as possible and allocate powers and functions to those municipalities that do have the capacity to perform them. The result would be wide variations throughout provinces and the country, "which would not be conducive to fulfilling the constitutional objectives for local government".
2. Strict application of the legislation to give category C and B municipalities exactly the same powers and functions. "By taking the capacity of a city compared to the capacity of a local council in a rural area into consideration, this option appears to be inappropriate."
3. The district council holds significant powers and functions and consequently the capacity. The Structures Act envisages a key and strong role for district municipalities, and the MDB therefore favors this option.
4. Minimal resources are retained at the district, and capacity and powers and functions are vested at the local council level. "

This reinforces the earlier observation that District Council's get first bite at the powers and functions, and Local Council's get the leftovers. This has political implications for local representation, and where decision-making powers over resources lie. It has already been observed through the category B investigation process that multiple TLC's are being combined to create more regional than strictly local government. On top of that now, it appears that the bulk of powers and function will rest with category C municipalities (i.e. the six DC's).

The policy document ends with a timetable:

- The Board considers the capacity of municipalities to perform the functions and exercise the powers vested in a municipality - 14 February 2000.
- The Minister publishes a policy framework for the allocation of powers and function - by 15 March 2000.
- The MEC's adjust the division of functions and powers between a district and a local municipality.

With the broad national policy process around shaping municipalities emerging, it is worth looking at provincial processes as they currently stand.

Section 2: provincial policy spaces around powers and functions and types

Each of the points going into the provincial proclamations (section 12 notices) which will create the new municipalities, is a possible space for provincial input through MEC's.

The category of municipality that is established

The category of municipality (A, B or C) as outlined in the Constitution, has been determined by the Minister and the Demarcation Board. Although the MEC was consulted, the decision rested firmly with the Minister and the Board. In the Eastern Cape the Port Elizabeth/ Uitenhague/ Despatch area has been declared a category A (unicity), and the rest of the province has category B's and C's (for an explanation of the categories see the earlier section on the Constitution). The Demarcation Board has finalized 6 category C municipalities for the province (same number as before), and about 39 category B's (a drop from 94 TLC's, to about 39 category B's). There is therefore little the MEC can do now to influence the categorization of municipalities, other than to confirm national decisions in the provincial establishment notice. He does, however, have a greater say around municipal types that emerge within the categories.

The type of municipality that is established

The minister must publish guidelines for municipal types, which the MEC's will use to make decisions regarding their local application. Legislative difficulties around determination of metro's at the end of 1999, resulted in these draft guidelines being revised (they were never publicly released), and remain outstanding.

The types as contained in the Structures Act are as follows:

"The different types of municipality that maybe established within each category of municipality are defined in accordance with the following systems of municipal government or combinations of those systems, as set out in sections 8, 9 and 10:

- a. Collective executive system which allows for the exercise of executive authority through an executive committee in which the executive leadership of the municipality is collectively vested.
- b. Mayoral executive system which allows for the exercise of executive authority through an executive mayor in whom the executive leadership of the municipality is vested and who is assisted by a mayoral committee.
- c. Plenary executive system which limits the exercise of executive authority to the municipal council itself.
- d. Subcouncil participatory system which allows for delegated powers to be exercised by subcouncils established for parts of the municipality.
- e. Ward participatory system which allows for matters of local concern to wards to be dealt with by committees established for wards."

These indicate five different forms of municipal governance, which are used to come up with multiple combinations for each category of municipality. It is worth briefly explaining each of the five forms, in order to make sense of the full set of options. The first three types are executive systems. They describe the structures through which the municipal council exercises its executive powers and performs its executive functions. The last two systems are participatory systems. They refer to structures to which the municipal council may delegate powers, to be exercised in part of the municipal area. All municipalities must have one of the executive systems, which are then combined with one or both of the participatory systems. Participatory systems cannot be used on their own, in other words, the municipality must have executive power. The range of types as outlined in the Structures Act follow:

Types of category A municipalities

There are the following types of category A municipalities:

- a. a municipality with a collective executive system;
- b. a municipality with a collective executive system combined with a subcouncil participatory system;
- c. a municipality with a collective executive system combined with a ward participatory system;
- d. a municipality with a collective executive system combined with both a subcouncil and a ward participatory system;
- e. a municipality with a mayoral executive system;
- f. a municipality with a mayoral executive system combined with a subcouncil participatory system;
- g. a municipality with a mayoral executive system combined with a ward participatory system; and
- h. a municipality with a mayoral executive system combined with both a subcouncil and a ward participatory system.

Types of category B municipalities

There are the following types of category B municipalities:

- a. a municipality with a collective executive system;
- b. a municipality with a collective executive system combined with a ward participatory system;
- c. a municipality with a mayoral executive system;
- d. a municipality with a mayoral executive system combined with a ward participatory system;
- e. a municipality with a plenary executive system; and
- f. a municipality with a plenary executive system combined with a ward participatory system.

Types of category C municipalities

There are the following types of category C municipalities:

- a. a municipality with a collective executive system;
- b. a municipality with a mayoral executive system; and
- c. a municipality with a plenary executive system.

Determination of types for provinces

Provincial legislation must determine for each category of municipality the different types of municipality that may be established in that category in the province.

The PE metro as a category A municipality has greater choice than the category B and C municipalities, since only metro's may have subcouncils. Since all other municipalities in the province are B's and C's, these will be concentrated upon. Appropriateness of the three executive types can be summarised as follows:

1. Collective Executive System

Designed for large councils responsible for a wide range of issues. This system is also designed to be implemented where an executive mayor is not desirable. This combines strong collective political leadership, with strong managerial experience in municipal officials.

2. Mayoral Executive System

Designed for large cities and smaller, more rural areas where a strong mayoral figure is needed to push a development agenda. This system requires a strong leader personality to really drive a development agenda. This executive mayor is not directly elected by the electorate, as it applies in London and New York, but rather by the municipal council, who can also recall him/her. The power of the mayor is therefore not absolute.

3. Plenary Executive System

Designed for small councils, or those with limited powers and functions. This system works best in areas with small populations, ensuring local representation, without the full set of powers and functions residing in that council (the powers and functions would typically be removed to a district level). In the Structures Bill, the term used was 'developing municipalities'.

In addition the ward participatory system (which involves the creation of ward committee's to have input into neighborhood issues) can be attached to all these three options for category B municipalities, to increase local accountability and consultation. For category C municipalities, these participatory systems cannot be added, since districts are already reminiscent of wards in terms of local councils sending representatives to the DC. Therefore category C municipalities simply choose one of the executive systems (see above).

The likely considerations the MEC must make in choosing between these types, range from political considerations in the executive-mayoral type, to considerations of population size (is it big enough to need ward participation), to the service history and viability of the council (for plenary types). Small towns and rural areas are most likely to be plenary types, the larger areas with ward participatory systems. Only larger towns and cities are likely to be given a mayoral or collective executive system, which is more complex and high profile than the plenary system. This may lead to the impression that small town rural local government is being downgraded to representative shells with few significant powers and functions. This must be guarded against. Even at a category C level there is provision for plenary types, which are most likely to be applied to the DC's in former homeland areas, which have a poor performance history. This delineation of developed areas having one system and undeveloped areas another, may accommodate local specifics, but does it necessarily solve the problem of underdevelopment?

The boundaries of the municipal area

The boundaries of the municipality have been determined by the Demarcation Board, and although the MEC's were consulted, their role in boundary determination has been limited to the provision of information and advice. The notices which the MEC must publish, therefore confirm the Board's declared boundaries.

The name of the municipality

This goes a long way toward creating a sense of local identity, and in the context of combining more than one urban settlement, as well as rural settlements, could result in some sensitive power relations. The naming of a municipality is important in building common purpose and consumer compliance in the future. The way in which the MEC decides on a name is not outlined in the Structures Act. Transformation/facilitation committee's set up in local areas are most likely to negotiate and recommend a name which the MEC simply confirms in the notice (See section 3 for more detail). Should local negotiations prove difficult, the MEC will have to play a conflict resolution role.

The number of councilors

A formula for the number of councilors has been developed nationally, but the MEC may deviate from this number by:

- a. increasing the number of councilors if extreme distances, a lack of effective communication in the municipality or other exceptional circumstances render it necessary; or
- b. decreasing the number of councilors if it is necessary to achieve the most effective size for-
 - i. active participation by all councilors at council meetings;
 - ii. good and timely executive and legislative decisions;
 - iii. responsiveness and accountability of councilors, taking into account the possible use of modern communication techniques and facilities; or
 - iv. the optimum use of municipal funds for councilor allowances and administrative support facilities.

There are numerical limitations on the extent of deviation an MEC can make, ensuring only slight variation between provinces where necessary. Nonetheless, the MEC may alleviate the feeling that people in rural areas falling under a plenary type are being stripped of representation, by increasing slightly the overall number of councilors.

Which councilors of the municipality (if any) may be designated as full-time

The Act says in section 18(4) that the minister must produce a policy framework for MEC's to decide on full-time councilors. This framework is also not yet available. There is no further elaboration in the Act. The decision made by the MEC again is likely to relate to political considerations, and the range of issues which the municipality faces (i.e. how many powers and functions it has). Presumably a full-time councilor is only necessary where a council is large and complex enough to require constant daily attention from political leaders. Many potential councilors will see this as a career opportunity, and the positions are likely to be politically charged, with people intent on climbing the political ladder likely to see these positions.

Any adjustments in the division of functions and powers

This is a very important opportunity for the MEC to intervene in the shaping of local government in the province. From a national perspective, the Eastern Cape has some of the poorest performers at local government level, and the logical response to that will be to strip local councils in areas such as the Transkei, of their powers and functions. The MEC has a chance to ensure that this is not done in such a way as to undermine local democracy.

Chapter 5 of the Structures Act deals with powers and functions, stating that:

1. The MEC for local government in a province may, subject to the other provisions of this section, adjust the division of functions and powers between a district and a local municipality as set out in section 84(1) or (2), by allocating, within a prescribed policy framework, any of those functions or powers vested-
 - a. in the local municipality, to the district municipality; or
 - b. in the district municipality (excluding a function or power referred to in section 84(1)(a), (o) or (p), to the local municipality.
2. An MEC may allocate a function or power in terms of subsection (1) only if-
 - a. the municipality in which the function or power is vested lacks the capacity to perform that function or exercise that power; and
 - b. the MEC has consulted the Demarcation Board and considered its assessment of the capacity of the municipality concerned.

As an explanation of the Demarcation Board's role, the Structures Act states that

The Demarcation Board must-

- a. consider the capacity of a district or local municipality to perform the functions and exercise the powers vested in the municipality in terms of section 84(1) or (2) when-
 - i. determining or redetermining the boundaries of the district and the local municipalities; or
 - ii. requested in terms of subsection (2)(b) by the MEC for local government in the province concerned to do so; and
- b. convey its assessment in writing to the relevant MEC.

The Structures Act makes provision for disagreements when it says that "if an MEC disagrees with the Demarcation Board on the capacity of the district or local municipality and adjusts the division of functions and powers between the district and local municipality, or refuses to adjust the division, contrary to the assessment of the Demarcation Board, the MEC must furnish reasons to the relevant municipalities and the Minister before finalising an adjustment in terms of subsection (1)." In the final instance, where the MEC does not agree, the Minister has the final decision, and can undo what the MEC may have decided. This indicates that any major deviations will have to be strongly argued.

MEC's also have an important monitoring role to play over time, in order to continually oversee capacity to perform a power or function. The Structures Act states that:

- The MEC must amend the relevant section 12 notices to give effect to any variation or withdrawal of any allocation or reallocation in terms of subsection (7).
- a. If a function or power has been allocated in terms of subsection (1) the MEC for local government in the province must regularly review the capacity of the relevant

municipality and reallocate that function or power to that municipality when that municipality acquires the capacity to perform that function or exercise that power.

b. A reallocation in terms of paragraph (a) must be made with the concurrence of the receiving municipality or, in the absence of such concurrence, after having consulted the Demarcation Board.

It also says later that “the MEC for local government must reallocate that function or power to the original municipality when that municipality is in a position to resume the provision of those basic services.” How the MEC assesses this, presumably flows from the policy-framework on assessing capacity which the Demarcation Board is still working on.

When the Structures Act says that “the MEC for local government in a province must assist a district municipality to provide support services to a local municipality”, it implies capacity-building support to reside at provincial government level. The provincial responsibilities to ensure capacity should have staffing and financial implications, connected to capacity-building and long-term monitoring and intervention functions. A special section set up within the department will most likely be needed to fulfill this growing function.

Finally the Structures Act makes provision for MEC's to resolve disputes concerning performance of functions or exercise of powers:

“If a district and a local municipality perform a function or exercise a power of a similar nature and a dispute arises between them concerning the performance of that function or the exercise of that power, the MEC for local government in the province, after consulting them, may, by notice in the Provincial Gazette, resolve the dispute by defining their respective roles in the performance of that function or in the exercise of that power.”

The danger is that an over-reliance on DC's may result in this province, due to the weakness of local structures. Our DC's are not all in a position to make up for shortfalls in local performance. Testing of capacity, especially over time, is also an issue in the province, as capacity can be seen as relative. Generally capacity is low in the province, but some areas definitely have more than others. Does the MEC use absolute, or relative capacity assessments? And finally who assesses the province's capacity?

Any provisions of this Act from which the municipality has been exempted

This is a legal term, and refers only to minor adjustments in the event of a dysfunctional council, in need of by-elections, or where a temporary collapse of services has occurred. This provision was made with temporary provincial intervention in mind.

Any other relevant detail

Traditional leaders would fall under any other relevant detail. This is again a legal term that is inserted to cover any unforeseen eventualities. With regard to traditional leaders, which is an important concern in this province, the Structures Act says the following:

- a. The MEC for local government in a province, in accordance with Schedule 6 and by notice in the Provincial Gazette, must identify the traditional leaders who in terms of subsection (1) may participate in the proceedings of a municipal council.
- b. The number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 10 per cent of the total number of councilors in that council, but if the council has fewer than 10 councilors, only one traditional leader may so participate.
- c. If the number of traditional leaders identified in a municipality's area of jurisdiction, exceeds 10 per cent of the total number of councilors the MEC for local government in the province may determine a system for the rotation of those traditional leaders.

The MEC for local government in a province, after consulting the provincial House of Traditional Leaders, may by notice in the Provincial Gazette-

- a. regulate the participation of traditional leaders in the proceedings of a municipal council; and

b. prescribe a role for traditional leaders in the affairs of a municipality.

The traditional leaders issue is going to take some sensitive local negotiating, with traditional leaders already flexing their muscle with the Demarcation Board, it is going to be important that they not be allowed to move into the newly created spaces in rural local government, and undermine local democracy. It may turn out that traditional leaders once again ignore legitimate local government systems and opportunities for them to participate, and continue to run parallel competing systems of local authority.

How the MEC chooses to use each of these policy spaces above, is becoming evident in the structures being set up to facilitate the re-organisation of local government in the province.

Section 3: provincial engagement with the process, and structures in place to oversee the process.

At a provincial level, a number of structures have been set up by the department of Housing and Local Government to engage with the process of restructuring local government. There seem to be three different provincial structures:

1. A Provincial technical task team
2. A Provincial technical working group
3. Political Forum

The technical task team seems to be a fairly political body which makes major decisions, with the working group making recommendations to the political side (which includes members of the provincial legislature). The Demarcation Board member from the Eastern Cape, who is also a regional director for the dept of Housing and Local Government in Umtata, chairs the working group. The third structure, the political forum, is simply a consultative body including opposition parties, which has no direct function other than to keep informed of progress. These three structures are therefore largely political bodies, assisted by officials of the department of Housing and Local Government. NGO's are not included at this level, a decision which was taken by the legislature after requests were received from a small number of NGO's to participate in the restructuring of local government. The legislature felt that the more appropriate place for NGO's, is in something called the 'strategic management team/s', which are still to be set up. These are seen as being technical assistance teams with specific expertise to service the facilitation committee's. It is likely that there will be one strategic management team for each of the 7 facilitation committees. It appears that the facilitation committee's may approach organizations of their own choosing. However, the section 14(5) notices do not mention this reported 'strategic management team', only a technical support team to be made of municipal CEO's.

Section 14(5) notice released by the MEC

The MEC for Housing and Local Government recently released the section 14(5) notices, which were sent to all municipalities in the Eastern Cape, creating 7 municipal Facilitation committees. Six of the committee's cover district council areas, and one covers the PE metro. The MEC does reserve the right to establish local committee's where necessary (for example for East London, King William's Town area).

These committee's are set up in terms of section 12 of the Municipal Structures Act "to facilitate the disestablishment of the existing municipalities in the new municipal area and the establishment of a new district municipality and local municipalities in that area" (p2). The Committee's have been set up to advise the MEC on these matters. The MEC has determined the name of the committee (using the old DC name, and Pedu in the case of PE metro), and the seat of that committee (usually a major center and seat of current DC). The number of people in the committee's is around 20. The process for setting up the committee's is that the MEC will within 30 days of publication of the notice, designate one of the CEO's of the existing municipalities to invite all councilors of existing municipalities to a meeting, to be chaired by the CEO, to nominate persons for appointment to the Committee. The committee "must be composed in such a way that parties and interests represented in the councils of the existing municipalities in the new municipal area, are represented in the Committee in broadly the same proportion in which they were supported in the last election of those councils."(p3) The MEC will determine the number of nominations to which the different parties and interests are entitled. The Committee will continue to operate until the first meeting of the new DC after the local government elections.

Decisions are to be taken by vote, which requires a majority. One third of all members have to be present for voting to take place, and where a deadlock occurs, the Chairperson has the deciding vote. The Committee can establish not more than three subcommittee's. The Committee must appoint a technical support team consisting of the CEO's of the existing municipalities, or persons designated by the CEO's. This technical support team must provide technical assistance to the Committee, implement the decisions made by the Committee, and generally assist and advise the

Committee on the exercise of its functions. The function of the Committee is to advise the MEC, after allowing public comment on:

- (i) a proposed name for the new district municipality and each new local municipality to be established in the new municipal area;
- (ii) the proposed type of the new district municipality and each of the new local municipalities;
- (iii) the designation of full-time councilors; and
- (iv) the division of powers and functions between the new district municipality and each of the new local municipalities.

This division of powers and functions shows no possibility of giving provincial government a local government power or function. The reason why this is worth considering, is that a number of our DC's are not capable of providing services where the local municipalities are incapable. It seems then, that they must first attempt the mandate and fail, before the MEC can intervene. Unless a massive capacity-building and skills attracting campaign is launched to build these DC's into functional institutions before the local government elections, the danger is that services to local areas will all but collapse in areas such as the Transkei.

In addition, the Committee must advise the MEC on the legal, practical and other consequences of the disestablishment of the existing municipalities in the new municipal area as envisaged in section 14(2) of the Municipal Structures Act, including –

- (i) the transfer of staff from the existing municipalities to the new district municipality and each new local municipality to be established in the new municipal area;
- (ii) the transfer of assets, liabilities and administrative and other records from the existing municipalities to the new district municipality and each new local municipality, taking into account the interests of creditors of the existing municipalities; and
- (iii) the continued application of any by-laws, regulations and resolutions of the existing municipalities to or in the new municipal area and the extent of such application.

The Committee's also have to provide the MEC and the Demarcation Board with the details necessary to prepare a section 12 notice (establishing proclamation), and assist the MEC in disestablishing municipalities and the Electoral Commission in preparing for elections in the new councils.

The section 14(5) notice ends by saying that the Committee may call a meeting of stakeholders that have a material interest in the disestablishment of the existing municipalities to report on progress with matters. Presumably this would be creditors, and perhaps also staff of the municipalities?

This notice leaves many questions unanswered. For example, how does labour feature in these negotiations? Which councilors are likely to try to get nominated onto the Committee, why is the role of officials so limited, and is it wise to allow people with direct interests to decide the future of the municipality? How do you ensure common practice among committee's, and what active checks and balances are there on their power other than legal provisions for the MEC to disband the committee at any time. How do you ensure the committee's work within the existing policy frameworks and legislation, and not simply become a law unto their own due to a lack of understanding of the legal framework, or other ambitions for that matter. There is also a worrying potential urban bias in the choosing of the centers for the committee's. The choice of larger centres means that rural councilors must travel to these centers to attend meetings, and it also entrenches these towns as the obvious future choice for the site of the DC offices.

Presumably the contentious issues such as restructuring of local service provision, and institutional restructuring and decentralization (location of administrative offices), staff redeployment and retrenchment will be dealt with at the level of regional facilitation committee's as far as possible. This approach leaves the people who will be affected by these decisions, to fight it out among themselves. With jobs and careers at stake, it could be a bumpy ride.

Summary of policy positions and spaces

Although the legal-structural policy spaces for MEC's to tailor the restructuring of local government to provincial specifics are limited, MEC's can still push certain development agenda's with national government on behalf of local government interests, through more informal lobbying. Some of the major policy positions or concerns that need attention in the Eastern Cape can be summarised as follows:

- Urban and rural integration

The issue of financing rural development and service provision, particularly backlogs, requires pushing for resources to be directed at underdeveloped areas. With rural and urban local government structures combined, rural interests will have to be forcefully argued if they are to receive attention. Special arrangements for rural 'desks' on combined councils, need to be further discussed and debated.

- Powers and functions, types

There is a relationship between powers and functions and types, as certain types imply certain ranges of powers and functions. The plenary type in particular, implies few powers and functions residing at the local level, and many to be removed to district level. The fact that a District Council can also be a plenary type, further implies a strong role for the provincial government in providing capacity for local service delivery. There must be a cut-off point where fewer powers and functions renders a municipality consigned to insignificance. The past experience with TrepC's illustrated that where no services or financial functions are performed at local level by the rural council (in other words it is purely a representative talk-shop structure) local democracy is undermined. There must be a basic minimum set of powers and functions in order to give meaning to local democracy. This is a space for provincial policy to set such a basic minimum standard before applying the national framework for allocating powers and functions.

- Capacity of District Council's

The new emphasis on the role of DC's in solving the problems of local councils, may make sense at a national level, but provincially the woes of DC's in the eastern half of the province, creates a capacity concern. These circumstances are unusual, and require special attention and resources. The Provincial government is not in a position to tackle this problem alone, and should be lobbying national government for assistance and resources to address the legacies of the past which have resulted in artificially weak district and local councils in the former homeland areas.

- Financing new local government mandates

Where powers and functions are moved, finance must follow. Past experience has shown that this does not always happen, or the finance is insufficient to perform the function. The provincial MEC can protect the interests of local government and play an advocacy role in ensuring that national departments do not abuse local government by off-loading their functions without their finances. A movement of a function from a national department to a local council, should see a growth in local staff and finances and a corresponding shrinkage of staff and finances at the national level. Where this does not happen, it needs to be challenged at the highest levels. In addition the equitable share for local government needs to be increased. While this means drawing resources away from the national and provincial spheres (as the pie is limited), the moving of functions to local and district councils is evidence of the need for a greater share to come to local government.

- Restructuring service provision

The new local councils which combine urban and rural areas will have to review areas of service provision, and extend services into rural parts. Conflicts may arise, which the MEC would be in a good position to mediate, ensuring that rural interests are not ignored. The restructuring of service provision is also bound to raise the possibility of privatization as a quick-fix solution. Some kind of provincial position on the whole question of privatization would help guide councils considering this option. While national guidelines on privatizing municipal services are emerging through the Systems Bill, provincial circumstances need to be accounted for in interpreting national policy.

- Participation by civil society and labour

The commitment to community participation and consultation in matters of local government, needs to be extended to the negotiation of new municipal structures in local areas. The lack of space

for consultation of civil society and especially labour, in the section 14(5) notices, is worrying. Municipal unions should be preparing for negotiations around retrenchment of municipal staff, since the number of councils in the Eastern Cape has been reduced by half. In addition the restructuring of service provision and administrations will have staff implications. If provincial government is to give meaning to community participation and consultation as a political commitment, it must encourage and accommodate this at local, district and provincial level.

- **Redistribution between richer and poorer areas**

The national battle between the department of finance, the demarcation board and the ministry of provincial and local government, as to how new municipalities will be financed; is not progressing fast enough to ensure a change by the time elections are held. Questions of financing local government should have been resolved before demarcation took place, but unfortunately the demarcation proceeded under the assumption that the allocation of resources and local revenue-generating powers would be reviewed to fit new boundaries. The DOF has shown little or no commitment to reviewing redistribution of revenue between category C municipalities, which is still not legally possible. For the Eastern Cape this is a major issue, as DC's in former CPA areas have much greater resources than those in former homeland areas. Urban areas are benefiting where rural areas are not. The creation of the PE metro, which will now take the RSC levies away from the Western DC, only emphasizes the need for resolving the debate in favor of redistribution to poorer areas.

This attention to poorer areas will only succeed if the province rejects the idea being considered at national levels that 'unviable rural areas' (particularly in the former Transkei), will never be viable in the short-to medium-term. Any proposals for separate financing of the 'unviable areas' may consign them to long-term degradation and marginalisation. This needs to be guarded against.

- **Local government elections and the need for an informed electorate**

The local electorate need to be aware of what kinds of structures have been created for them to elect councilors to serve on. The confusing array of types and powers and functions, may undermine local turnout for elections, as people may not understand where their vote goes, or how local structures were decided upon. While community participation is the ideal within the Facilitation Committee's, the need for provincial information campaigns to keep the electorate informed, is absolutely vital. The IEC cannot be expected to perform this function, as it is already responsible for the logistics of conducting local elections. Province is best placed to fulfill this educative role, as it decides on the types and will know why specific choices were made locally.

Conclusion

Given that the process of restructuring local government is determined at national level by legislation, and at provincial level by national frameworks, the number of spaces for intervention are limited. The response by the department of Housing and Local Government has been to set up a plethora of structures, which will meet to discuss matters. This emphasis on structure, rather than content, is worrying. These structures are very dominated by councilors and officials of the department of Housing and Local Government. A specific decision was made to exclude NGO's. This does not bode well for broader public consultation in the shaping of local government in the province. Fundamental questions around the role of the local state are being lost in the din of detail, removing the debate from the grasp of the average citizen. This will surely backfire when citizens are asked to vote for a local government category and type, with a list of powers and functions which they do not understand, and have not been part of negotiating. The policy debates need to be taken forward at the level of civil society, particularly in sectors such as labour and local community organizations, who need to be brought into the process which will fundamentally alter local democracy, impacting directly on their daily lives. With less than half the number of councils to survive the November 2 000 elections, and changes in powers and functions to reside at local level significant, local government will be a very different entity in the province beyond November.