

The birth of a new generation of municipalities

The second pillar of new local government has been erected: on 18 December 1998 the President signed the Municipal Structures Act 117 of 1998 into law. This Act, which provides for the establishment of a new generation of municipalities, came into operation on 1 February 1999. Together with the Municipal Demarcation Act 27 of 1998 and the forthcoming Systems Bill, it aims to lay the foundation for future local government in South Africa. The Structures Act is a voluminous piece of legislation which gives flesh to the categories of municipalities, as identified in the Constitution, and defines the different types of municipalities that can be established within each category. The Act also divides the functions and powers between categories of municipalities. It regulates matters connected with local government and its internal systems and structures, including electoral systems.

In this first part of a series on the Municipal Structures Act, the different categories and types that the Act introduces will be presented as well as the procedure for establishing municipalities after demarcation by the Demarcation Board. The article will also deal with rural local government and with a controversial aspect of the Act, namely the concept of a 'megacity'.

Categories and types

The Constitution together with the Municipal Structures Act establishes a system of categories and types of municipalities. What is the difference between categories and types? A category is a constitutional 'brand' of municipality, dependent on the existing situation in that area (in other words, is it a big city, a desolate rural area or something in between?). A type is a way of structuring the municipality (for example, with or without a mayor, with or without ward committees, etc) which is introduced by provincial government.

Categories

There are three categories of municipalities: **Category A** - the 'metropolitan area': one municipality that has the exclusive authority to administer and make rules in its area. **Category B** - the 'local municipality': it shares that authority in its area with the 'district municipality' of the district in which it falls. **Category C** - the 'district municipality': it has authority to administer and make rules in an area, which includes more than one local municipality (s 155(1) of the Constitution).

In what category does a certain municipality fall and who makes the decision about the category? The Minister of Constitutional Development decides on the categories. He or she decides whether a certain area will be a metropole, a rural ('district management') area or have the normal combination of district and local municipalities.

Types

The Structures Act lists a number of possi-

ble types for each category. It is up to each province to determine in provincial legislation which types can be established in the province. In the final instance, it is the MEC for Local Government who decides what type a certain municipality will be when he or she establishes the municipality after it has been demarcated by the Demarcation Board.

What types are there?

The Structures Act lists the types that are possible within each category (ss 8, 9 and 10). See table opposite.

The distinguishing aspects of the different types

There are five different aspects that distinguish the types from each other.

1. Some types have an 'executive committee', that collectively exercises the executive authority over the municipality. In other words, a small group of persons can be assigned to administer the municipality like a 'mini-cabinet'.
2. There are types that have an 'executive mayor': one person, in most instances assisted by a 'mayoral committee', is afforded executive authority.
3. In a 'plenary executive system', the municipal council is the only organ that has executive authority.
4. Big cities can have a 'subcouncil system', where subcouncils, linked to a certain urban area, can exercise powers delegated to them by the 'overall' metropolitan council.
5. A 'ward system' allows for matters of local concern to be dealt with by committees established for wards.

Some combinations between the five aspects are possible.

The municipality's 'birth-certificate': the section 12 notice

After the Demarcation Board has demarcated the boundary of a municipality, the MEC has to establish the municipality by notice in the *Provincial Gazette*, the so-

Structures Act

called 'section 12 notice' (s 12). This notice serves as a comprehensive 'birth certificate' for the new municipality. It must include the most important legal aspects of the municipality, such as the category (which has been decided upon by the Minister), type, boundary and number of councillors (in s 20, the criteria for the number of councillors are set out). Before he or she can establish a municipality, the MEC must consult organised local government in the province and also consider the views of the public and of any existing municipalities that are likely to be affected by the establishment of the new municipality.

With the establishment of the new

municipality, the old municipality in that area will cease to exist. The MEC must regulate the consequences of a new municipality superseding an old municipality (s 14). He or she must deal in particular with the transfer/retrenchment of staff, what happens to the councillors, the transfer of assets and liabilities and the (extent of the) continued application of any by-laws, regulations and resolutions of the old municipality.

If the rules and regulations of the old municipality continue to apply in the new municipality, they must be reviewed, and where necessary, rationalised by the new municipality (s 15).

Rural local government

It does not always make sense to have local municipalities in rural areas where there is low population density and very little activity. In those areas, local municipalities are not conducive to the fulfilment of the objectives of local government. The Minister can declare these areas 'district management areas' (s 6). There are no local municipalities in a district management area. It is governed by a district municipality only. The Minister can only declare an area to be a district management area on recommendation of the Demarcation Board and after consulting the MEC in the province.

Urban local government

The megacity

The Structures Act introduces the concept of a megacity, and in so doing follows an international trend to transform multi-tiered structures of metropolises into single-tiered systems whereby the entire city is governed by one single local authority. This has caused a controversy in local government circles. There were heated debates in Parliament on the Bill: an IFP MP publicly tore up a page of the Bill in protest, and opposition parties repeatedly threatened to take the Bill to the Constitutional Court.

Metropolitan area

The Constitution foresaw the need for a special category of municipality in metropolitan areas (s 155(1)).

In a 'normal' situation, there would be both a local ('category B') and district ('category C') municipality existing in the same area. This is not the case when a certain area is designated as a 'metropolitan area'. The Minister decides whether a certain area is a 'metropolitan area' and whether it must therefore have a category A municipality only (s 4). The criteria, as set out in section 2, are:

"An area must have a single category A municipality if that area can reasonably be regarded as-

- (a) a conurbation featuring -
 - (i) areas of high population density;
 - (ii) an intense movement of people, goods and services;
 - (iii) extensive development; and
 - (iv) multiple business districts and industrial areas;

Municipal Types

Category A

'Metropolitan Municipality'

- *collective executive type*
establishes an executive committee
- *collective executive / subcouncil type*
establishes an executive committee and metropolitan subcouncils
- *collective executive / ward type*
establishes an executive committee and ward committees
- *collective executive / subcouncil / ward type*
establishes an executive committee, metropolitan subcouncils and ward committees
- *executive mayor type*
elects an executive mayor
- *executive mayor / subcouncil type*
elects an executive mayor and establishes metropolitan subcouncils
- *executive mayor / ward type*
elects an executive mayor and establishes ward committees
- *executive mayor / ward / subcouncil type*
elects an executive mayor, establishes ward committees and establishes metropolitan subcouncils

Category B

'Local Municipality'

- *collective executive type*
establishes executive committee
- *collective executive / ward type*
establishes executive committees and ward committees
- *executive mayor type*
elects an executive mayor
- *executive mayor / ward type*
elects an executive mayor and establishes ward committees
- *plenary executive type*
municipal council itself has all the executive authority
- *plenary executive / ward type*
municipal council has executive authority but can establish ward committees that deal with matters of local concern to wards

Category C

'District Municipality'

- *collective executive type*
establishes an executive committee
- *executive mayor type*
elects an executive mayor
- *plenary type*
municipal council itself has all the executive authority

- (b) a centre of economic activity with a complex and diverse economy;
- (c) a single area for which integrated development planning is desirable; and
- (d) having strong interdependent social and economic linkages between its constituent units.”

Before deciding, the Minister must consult the MEC, the Demarcation Board, SALGA and organised local government in the province. The decision to identify an area as a metropolitan area must be published in the *Government Gazette*. The Minister identifies the core city of the metropole, the Demarcation Board determines the outer boundaries.

Metropolitan subcouncils

The metropolitan subcouncils replace the existing metropolitan substructures. A metropolitan municipality (of the ‘subcouncil-type’) can establish metropolitan subcouncils with their own names, by passing a by-law. Each subcouncil is linked to an area within the municipality consisting of a group of adjoining wards. Those wards are clustered into groups by the metro council (after consulting the Demarcation Board).

The metropolitan subcouncil will consist of the councillors representing the wards, that make up the ‘subcouncil area’, and an additional number of councillors determined by the metro council.

The difference between the new and the former system is that the metropolitan subcouncil does not have any ‘original’ powers or duties. It has only those duties and powers that are delegated to it by the metropolitan council (s 64). The only ‘original’ power that the subcouncil has is the power to make recommendations to the metropolitan council on any matter affecting its area.

Challenge

Presently, the Cape Metropolitan Council (CMC) is challenging the Act in the Cape High Court for its constitutionality. The CMC argues that the Act encroaches on the institutional integrity of local government because it introduces a fixed range of possible municipal types, from which provincial governments must choose, instead of providing criteria by which each municipal council can determine its own type.