

Changing municipal boundaries

The Municipal Demarcation MDB (MDB) is entrusted with the often-difficult task of demarcating municipal boundaries. Disputes around cross-boundary municipalities and the changing of municipal boundaries have recently been the focus of violent protests by communities affected by these decisions. The recent string of court decisions on the issue is an indicator of the extent to which these processes affect communities at grassroots level. The MDB recently published a proposal about the incorporation of the Paarl, Wellington, Stellenbosch and Drakenstein municipalities into the Cape Town Metropolitan Municipality. The notice attracted much attention in the media and raised important questions around how the MDB engages with proposals received from the public.

The process of delineating and changing municipal boundaries has attracted political tension and community outrage from across the social spectrum. This is attributable, in part, to what the Constitutional Court has described as “the degrading realities inherited from an apartheid history” that have impacted very practically on the ability of certain municipalities to meet even the most basic obligations of service delivery.

The extent to which demarcation processes are riddled with conflict is demonstrated in the recent case of *Matatiele Municipality and Others v President of the SA and Others* (see page 3).

In this case, members of the Matatiele community resorted to violent protest in an attempt to prevent the transfer of their municipality, in KwaZulu-Natal, to the Alfred Nzo District Municipality in the Eastern Cape, claiming that the latter has a poor record of service delivery. The Court, in delivering judgment, emphasised the

importance of participatory democracy and public involvement in legislative and other processes.

While the constitutional imperative of public consultation is a necessary stepping-stone to accountable governance, as demonstrated in *Matatiele*, this process is not without its pitfalls. The uproar in the media around the notice relating to the proposed re-determination of the Cape Town Metro demonstrates the contentious nature of these processes. According to reports, the notice, requesting public comment, was published in response to a suggestion submitted by a member of the public.

The Mayor of Cape Town, Helen Zille, expressed shock at first learning about the proposal and the 30-day deadline for public comment from newspaper reports. She stated that it was a “ridiculously short period of time within which to comment on such a far-reaching proposal”. Concerns around the proposed re-determination centre on the vast area that the new metropolitan municipality would span and the

KEY POINTS

- The process of delineating and changing municipal boundaries has, in the past, attracted political tension and community outrage from across the social spectrum of South Africa.
- Without fettering the discretion of the MDB as an independent institution, it would be prudent for the MDB to set a standard regulating the types of proposals that merit publication.

capacity for effective and efficient administration of service delivery by the re-constituted municipality. The notice furthermore provides no background to the proposal or framework for the feasibility of implementing such major changes in the affected municipalities.

Process

In evaluating the process undertaken by the MDB in publishing the notice and soliciting public comment in this case, it is clear that the MDB acted within the scope of its authority as defined by the Demarcation Act. Section 22(1) of the Demarcation Act confers on the MDB, as an independent institution, the authority to determine or change a municipal boundary either:

- on its own initiative;
- at the request of the MEC for local government; or
- at the request of a municipality “with the concurrence of any other municipality affected by the proposed determination or re-determination”.

In these instances, the MDB is compelled by section 26 of the Demarcation Act to publish a notice stating its intention to consider the matter and inviting written representations and views from the public within a specified period not shorter than 21 days. The notice must be published in a newspaper circulating in the area concerned and its contents must be conveyed in the same area by radio or other appropriate means of communication. In addition, a copy of the notice must be sent to:

1. the relevant MEC for local government;
2. each municipality that will be affected by the MDB’s consideration of the matter;
3. the magistrate concerned if a magisterial district is affected; and
4. the relevant provincial House of Traditional Leaders if the boundary of a traditional authority is affected.

However, where the MDB acts on its own initiative after receiving a request from a member of the public, the public notification procedure outlined above does not need to be followed. Upon receiving such a request, the MDB may require that member of the public furnish the information as required by it. It may also solicit the views of those listed under 1–4 above.

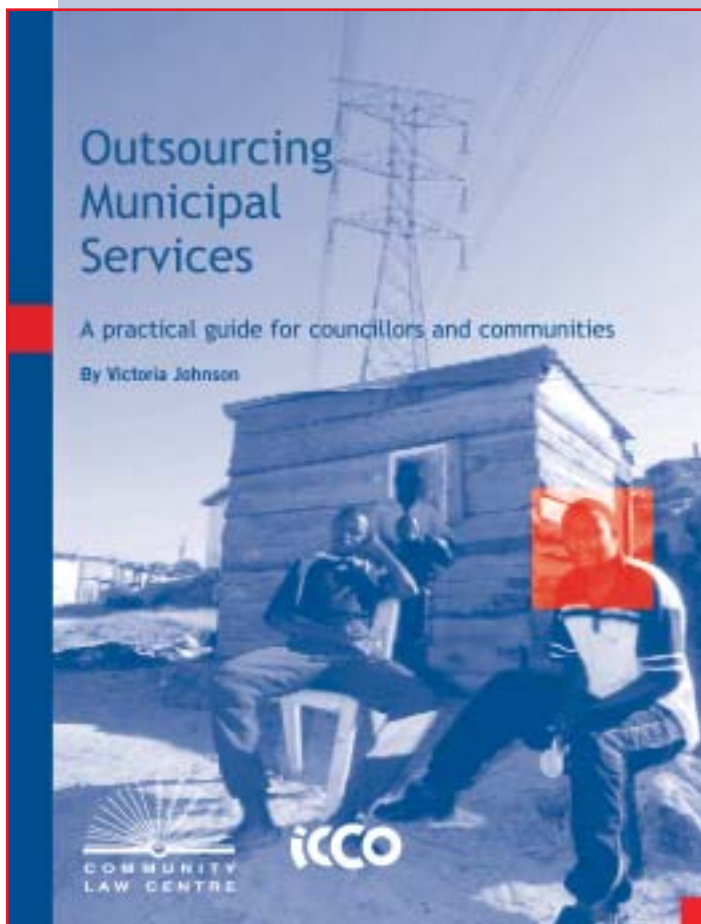
Having complied with the above requirements it is therefore at the discretion of the MDB whether to follow the route of public notification. The procedure outlined above, however, relates to instances where the MDB has decided, on receiving a proposal from a member of the public, to publish a notice. The Act does not seem to regulate how the MDB decides when a proposal received from the public has sufficient merit to warrant publication.

Comment

The MDB, in exercising its discretion in this case, decided to follow the public notification route. While it acted well within the ambit of its authority in publishing the notice, the comments by prominent leaders relating to the lack of prior consultation before publishing the notice have generated debate.

Important questions raised by this incident relate to how the MDB balances the imperative of facilitating public participation against that of screening requests or proposals by the public which have little or no substance. Without fettering the discretion of the MDB as an independent institution, it would be prudent for the MDB to set a standard regulating the types of proposals that merit publication. This may go a long way towards minimising unwarranted public concern, which hampers the effective functioning of the MDB.

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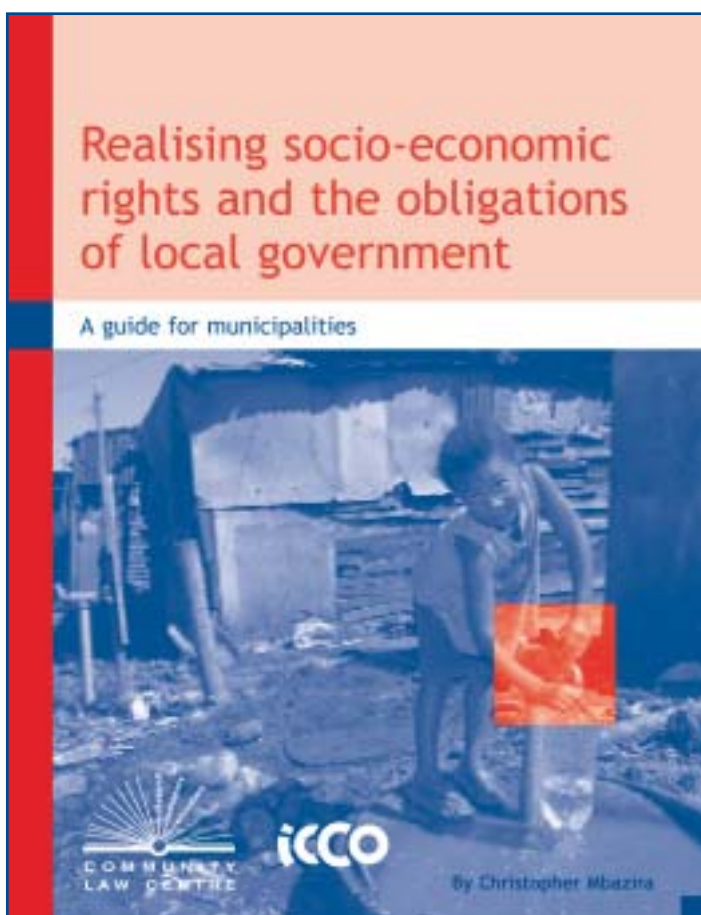


This guide outlines the policy and legal context within which outsourcing of municipal services takes place and highlights the typical rewards and risks associated with outsourcing. It gives a broad overview of the procedures involved and aims to explore the practical issues likely to face a municipality wanting to outsource (a) particular service(s) and how best to deal with these issues in the interest of all stakeholders.

Publications

The guides can be downloaded from the Community Law Centre's website on www.communitylawcentre.org.za/privatisation/publications.php

The publication of these guides is part of a broader research project on the privatisation of municipal services at the local government level, and is funded by the Dutch Interchurch Organisation for Development Cooperation (ICCO).



This guide is primarily aimed at municipal officials, councillors and members of the public who seek a general overview of the socio-economic rights obligations of municipalities. While the Constitution guarantees a number of socio-economic rights, these rights are yet to become a reality for the majority of South Africans. Municipalities are at the centre of realising these rights because they are the sphere of government closest to the people. The guide also contains a checklist that may be used by municipalities to determine whether or not a programme adopted to deliver socio-economic rights is reasonable, not only in conception but implementation as well.