

# **TOWARDS CO-OPERATIVE RELATIONS BETWEEN DISTRICT AND LOCAL MUNICIPALITIES**

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Mode II

**By**

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DECLARATION

I, Janis Jordan, hereby declare that this work is original and the result of my own effort. It has never on any previous occasion been presented in part or whole to any Board for any Degree.

I further declare that all secondary information used has been duly acknowledged in the work.

**Student**

Signed ..... Date.....



**Supervisor**

Signed..... Date.....

## ACKNOWLEDGEMENTS

I give *Hashem* glory for granting me the opportunity to bring Him glory by this paper, may it be of material benefit to those who operate in the field of local government.

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## **ABBREVIATIONS**

<b>CDM</b>	Cross-Boundary District Municipality
<b>DM</b>	District Municipality
<b>DPLG</b>	Department of Provincial and Local Government
<b>Freloga</b>	Free State Local Government Association
<b>IDP</b>	Integrated Development Programme
<b>IGRFA</b>	Intergovernmental Relations Framework Act 13 of 2005
<b>IGR</b>	Intergovernmental Relations
<b>LM</b>	Local municipality
<b>MAC</b>	Ministerial Advisory Committee
<b>MDB</b>	Municipal Demarcation Board
<b>MEC</b>	Member of Executive Committee
<b>MSA</b>	Municipal Structures Act 117 of 1998
<b>PIMMS</b>	Planning and Implementation Management Support Centres
<b>RSC</b>	Regional Services Council
<b>SALGA</b>	South African Local Government Association
<b>Wecloga</b>	Western Cape Local Government Association

# ***Chapter 1***

## **Introduction**

### **1.1 PROBLEM STATEMENT**

The political context that prompted the formation of district municipalities in the present form can be summarized as follows: before 1994, there were a few sporadic Regional Services Councils and Joint Services Boards responsible mainly for bulk service provision in rural areas. In many rural areas, the acute imbalances in personal wealth, physical infrastructure and the provision of services were most patent.<sup>1</sup>

District municipalities were first introduced by the Local Government Transition Act<sup>2</sup> (hereinafter referred to as LGTA) in 1993, which provided for the institution of non-metropolitan and rural transitional local government - it included district councils (hereinafter referred to as TDCs) formed along the lines of the old Regional Services Councils and Joint Services Boards.<sup>3</sup>

Another form of non-metropolitan and Rural councils provided for in the Act, were the transitional local councils (hereinafter referred to as TLCs).

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<sup>1</sup> *White Paper for Local Government* 1998:12.

<sup>2</sup> Act 209 of 1993.

<sup>3</sup> "The Transition Act was intended and drafted to govern the reconstruction of government from A to Z. Its principles and terms were separately negotiated...the Transition Act represents a 'turn-key operation', commencing with tentative negotiating forums for local councils, continuing with temporary local government structures, and carrying on until new structures have been democratically elected and put in place." – Executive Council, Western Cape Legislature, and Others v President of the Republic of South Africa and Others 1995 (10) BCLR 1289 (CC) at para 162 (e) and (f).

Provinces decided which of the local government models best suited their province. Consequently, it was possible for the institutions of local government to differ from province to province and there would be a two-tier system of local councils and region-wide district councils throughout non-metropolitan South Africa.

The 1996 Constitution<sup>4</sup> entrenches the two-tier system of local government. That is, the Constitution<sup>5</sup> refers to a district municipality as a “category C municipality” which shares authority with local municipalities in the area of the district.<sup>6</sup> Furthermore, local government legislative and executive competencies are shared between district and local municipalities. The Municipal Structures Act<sup>7</sup> (hereinafter referred to as MSA) restates the constitutional powers and functions of a municipality, and further divides these powers between category B and category C municipalities in terms of section 84.

Concurrent power over a functional area makes consultation between spheres of government and co-operation peremptory; it also requires a productive atmosphere between district and local municipalities since they are the pillars of shared authority. However, conflict situations have arisen between district and local municipalities, affecting *inter alia* the level of service delivery.

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<sup>4</sup> Constitution of the Republic of South Africa, 1996

<sup>5</sup> Constitution of the Republic of South Africa, 1996

<sup>6</sup> S 155(1) Constitution.

<sup>7</sup> Act 117 of 1998.

It has been noted by the Portfolio Committee for Provincial and Local Government that the relationship between district and local municipalities varies from “cordial and co-operative to conflictual and unproductive”.<sup>8</sup> Organised local government in the Western Cape Province, Wecloga, itemized in their minutes<sup>9</sup> that there is “an unwillingness to interact in a co-operative way” amongst district and local councils. Similarly, a member of organised local government in the Free State, Freloga,<sup>10</sup> noted that relations between the district and local municipalities counted among the reasons for the bad state of local government in the province.

The district council comprises 60% indirectly elected representatives from the constituent local municipal councils. The remaining 40% are directly elected representatives to the council.<sup>11</sup> This construction should obviate unco-operative relations between district and local municipalities, yet, a growing concern of officials of the Department of Local Government and Traditional Affairs in KwaZulu-Natal<sup>12</sup> is that uncooperative relations are effecting service delivery. As a consequence, a lack of uniform devotion to good intergovernmental relations has been identified and the need for district municipalities has been put in question.

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<sup>8</sup> Portfolio Committee Report 2003 : 9.

<sup>9</sup> SALGA Western Cape, June 2005 : 26.

<sup>10</sup> Mr T. Mathamaho: Free State Department of Provincial and Local Government (8 September 2005).

<sup>11</sup> Municipal Structures Act 117 of 1998 (Schedule 2: Electoral System for District Councils).

<sup>12</sup> Mr M. Staniland : KwaZulu-Natal Department of Local Government and Traditional Affairs (28 October 2005).

Chapter 3 of the Constitution<sup>13</sup> is dedicated to the promotion of co-operative government and good intergovernmental relations. The latter half of 2005 saw the passing of the Intergovernmental Relations Framework Act<sup>14</sup> (hereinafter referred to as IGRFA), which aims at structuring *ad hoc* forums and institutionalizing their formation where they are non-existent. An important aspect of the IGRFA is the institution of District Intergovernmental Forums. These have been instituted to manage, *inter alia*, district-local conflict relations.

## 1.2 THE AIMS OF THE STUDY

The aims of this study are two-fold. First, to analyse the key causes of conflict that arise within the two-tiered system. It will be argued that two distinct sources of conflict have arisen – broadly termed *institutional regulation* and *intergovernmental relationship*. Second, to determine whether district intergovernmental forums will be able to address the key causes of conflict identified and assist in making the relationship between district and local municipalities more co-operative. It will be argued that well managed district intergovernmental forums, combined with the political will of all represented on the forum, will contribute toward dispute resolution, but may not be able to solve all problem areas identified.

## 1.3 SIGNIFICANCE OF THE STUDY

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<sup>13</sup> Constitution of the Republic of South Africa, 1996

This empirical study of district-local relations are undertaken for the following reasons:

Firstly, the lack of co-operation between district and local municipalities has prejudiced service delivery. The latter part of 2005 was characterized in the media as “the season of strikes”. Mass protest action and civic mobilization, as reported, was spurred, by a general lack in service delivery. Where there is conflict at the level of the service provider, the management of shared responsibility must be prioritized in the interest of service provision.

Secondly, it is important to determine why there is no co-operation at non-metropolitan local level. Where there is a lack in service provision or a conflict area, there must be a stimulus.

Thirdly, the study provides some measure as to the potential effectiveness and/or limitation of district intergovernmental forums – the effect of good relations and mutual accountability, is insufficient to address certain conflict stimuli. The study thus highlights the need for an intergovernmental approach toward co-operative relations at district-local level.

Fourthly, there have been some writers who identified isolated areas of potential conflict as part of a broader study. No writers have undertaken a directed study such as the present. For example, the Ministerial Advisory

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<sup>14</sup> Act 13 of 2005.

Committee on Local Government and Transformation produced a report in 2001,<sup>15</sup> outlining the challenges facing local government in general. An aspect of this report was the problem of district-local relations. Also, the Portfolio Committee for Provincial and Local Government undertook a general study tour in 2003;<sup>16</sup> the focus of the tour was not directed at district-local relations, but at a general survey of the state of South African municipalities. The present study draws from the general conclusions made and adds to the district-local specific list of conflict-causing areas. In sum, no one has taken a consolidated approach to identifying key aspects that collectively contribute to conflict arising between district and local municipalities.

#### 1.4 METHODOLOGY



The investigation into the relationship between district and local municipalities involved a three-pronged approach.

First, a literature survey was conducted with regard to both published and unpublished documents like, an assessment conducted by the Municipal Demarcation Board (hereinafter referred to as MDB) of Local Government Capacity;<sup>17</sup> a Review of the Adjustment of District Functions to Local

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<sup>15</sup> Ministerial Advisory Committee on Local Government and Transformation: *Interim report on the challenges facing local government* (2001).

<sup>16</sup> Portfolio Committee for Provincial and Local Government *Report on Study Tour of Municipalities* (2003) – chaired by Mr Y. Carrim and thus called the “Carrim Report”.

<sup>17</sup> MDB 2005.



Municipalities.<sup>18</sup> Other literature sources included journal articles, newspapers and the Internet.

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>19</sup> Two responses were returned – Cacadu District Municipality in the Eastern Cape and Siyanda District municipality in the Northern Cape.

Thirdly, on-site interviews were conducted with district municipalities and local municipalities within the Western Cape Province and Free State Province. The questions that guided the interview, but were not limited to, concerned the following:

1. The extent of functional overlap and the impact on district local relations in that particular district.
2. The particular areas of functional difficulty and why they pose such a difficulty in the particular district.
3. The methods and structures used to resolve conflict situations.
4. The nature of reporting between the district and local councils including the decision-making capacity of the local council representative to the district council.

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<sup>18</sup> MDB 2005.

<sup>19</sup> The questions included:

1. What is the name, title and function of the interviewee completing the questionnaire?
2. Name an example from the recent past, where a compromise could not be reached between your Category C municipality and a constituent Category B municipality and what was the cause of this conflict?
3. What kind of relationship does your district municipality have with the high capacity, local municipality in your district? What makes this relationship good or bad?
4. Are there existing intergovernmental structures and is the municipal council in the process of implementing the *Intergovernmental Relations Framework Act*?

5. A recent conflict situation bedeviling district-local relations and how resolution was brought about.

Finally, 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 Provinces.

### **1.5 LIMITATIONS OF THE STUDY**

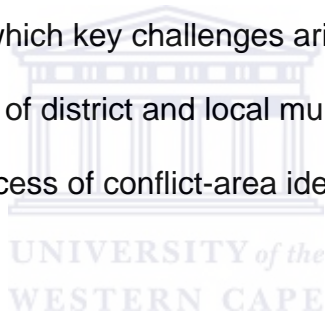
There are some methodological *caveats* to a study such as this. The first of these is that documentary research relies on generalized or region-specific observations. There are exceptions to the general rule this study draws from general findings and contributes, in part, to such generalization. On-site interviews are a sobering facet to generalizations, yet, this introduces further *caveats*.

Interviews were not always conducted with political principals or the municipal manager. Because of the vastness of the study, any study of municipalities is fraught with challenges and differences. That is, the sheer distance between municipal buildings, relative inaccessibility of electronic data and access to funding makes collecting data from across the country a Herculean task. In addition, comparison and generalization of municipalities, is far removed from the reality of a particular municipality, with its particular socio-political circumstances.

## 1.6 AN OVERVIEW OF THE CHAPTERS

**Chapter 1** outlines the rationale for and the manner in which the current study has been undertaken. It also highlights the importance of such a study and balances this with limitations of the study.

**Chapter 2** describes the changes district and local municipalities have undergone. It is for this reason that a brief historical expose of district municipalities within local government serves as the starting point. The current structure of non-metropolitan local government is also sketched to provide the reader with the frame within which key challenges arise. It follows thus, that the current structure and function of district and local municipalities must be established as part of the process of conflict-area identification and where resolution might be sought.



With the state of non-metropolitan government clearly outlined, closer inspection of certain aspects can now take place. It is in **chapter 3** key areas of conflict caused within the institutional relations between district and local councils are highlighted.

With the identification of the key areas of conflict, managing these conflict areas in the spirit and purport of co-operative governance, political negotiation and political compromise is required. **Chapter 4** outlines the way in which intergovernmental relations between district and local municipalities were

managed prior to the IGRFA. It consequently considers the nature of intergovernmental *fora* created by IGRFA in an attempt to determine whether they would be able to deal with the type of conflict areas identified<sup>20</sup> in chapter 3.

**Chapter 5** culminates in the identification of a way forward and the identification of key challenges with recommendations.



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<sup>20</sup> At the time of formulating this paper, I was privileged to form part of public debate concerning the Intergovernmental Relations Framework Bill and to see such Act being promulgated on 15 August 2005.

## Chapter 2

### Background to district municipalities

#### 2.1 A HISTORICAL OVERVIEW OF DISTRICT MUNICIPALITIES

The entrenching of shared local government originates in the final Constitution<sup>21</sup>. The process of entrenchment is described below.

According to section 68(1) of the Interim Constitution,<sup>22</sup> the Constitutional Assembly consisted of the National Assembly and the Senate, sitting jointly. The Constitutional Assembly was to be guided by the 34 Constitutional Principles contained in Schedule 4 of the Interim Constitution when drafting the final Constitution. The final constitutional text was adopted by the Constitutional Assembly on 8 May 1996.<sup>23</sup>

When the Constitutional Court reviewed the provisions of the constitutional text however, it found that Constitutional Principle XXIV had not been complied with.<sup>24</sup> Constitutional Principle XXIV required that a framework for local government powers, functions and structures be set out in the new constitutional text; it also required that appropriate fiscal powers and functions

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<sup>21</sup> Constitution of the Republic of South Africa, 1996

<sup>22</sup> Act 200 of 1993.

<sup>23</sup> *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the Republic of South Africa 1996 (4) SA 744 (CC).*

<sup>24</sup> *In re: Certification of the Constitution of the Republic of South Africa 1996 (10) BCLR 1253 (CC) at 1349 para 301.*

for the different categories of local government be provided for.<sup>25</sup> Section 155(1) of the Interim Constitution<sup>26</sup> stated only that national legislation must determine '(a) the different categories of municipalities that may be established; [and] (b) appropriate fiscal powers and functions for each category'; this was held to be insufficient to meet the requirements of Constitutional Principle XXIV.

Consequently, the amended text adopted on 11 October 1996 contained three categories of municipality. Section 229<sup>27</sup> also circumscribes the fiscal powers and function for each category thus satisfying the court<sup>28</sup> as to the constitutionality of the amended text.

Section 245 of the Interim Constitution determined that the restructuring of local government was to be done in terms of transitional legislation. The transformation of local government post 1994 took the following form: The Local Government Negotiating Forum (hereinafter referred to as LGNF) produced the Local Government Transition Act (hereinafter referred to as LGTA) 5 of 1993 to deal with the complex issue of local government. The LGTA made provision for three phases of local government transition:

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<sup>25</sup> *In re: Certification of the Constitution of the Republic of South Africa, 1996* (10) BCLR 1253 (CC) at 1349 para 300G.

<sup>26</sup> Act 200 of 1993.

<sup>27</sup> S 229 Constitution.

<sup>28</sup> *Certification of the Amended Text of the Constitution of the Republic of South Africa, 1996* 1997 (2) SA 97 (CC).

- **Pre-Interim:** negotiating forums were established and charged with appointing temporary councils to discharge local government responsibilities. This period extended from the commencement of the LGTA, 2 February 1994, until the first democratic election and marked the formation of non-racial transitional local councils.
- **Interim Phase:** in terms of section 10 of the LGTA, proclamations were passed for the purpose of unifying local government structures; transitional metropolitan councils and transitional local councils were elected and 843 municipalities were demarcated. The interim phase commenced on the date of the first democratic elections.
- **Final Phase:** this phase is characterized by new legislation regulating local government; in 2000, six metropolitan municipalities, 231 local municipalities and 47 district municipalities were demarcated.

During the interim phase of local government transformation, district councils were intended to provide bulk services, fulfilling the responsibilities of the old Regional Services Council and Joint Services Board. It was along these boundaries, that the “new” district municipalities were demarcated in 2000, by the Municipal Demarcation Board (hereinafter referred to as MDB).<sup>29</sup>

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<sup>29</sup> MDB 2005: 17.

The final phase of transition is characterized by new, regulatory legislation. The Municipal Structures Act 117 of 1998 is an important piece of local government legislation informing the local government municipal political systems; the Municipal Demarcation Act 27 of 1998 provides for the demarcation of municipal area; the Local Government Municipal Systems Act 32 of 2000 informs the administrative systems of local government, and the Municipal Finance Management Act 56 of 2003 informs financial systems of local government. These pieces of legislation constitute the key local government legislation.

The local government election of 5 December 2000 brought into being the first democratically elected 284 municipal councils.<sup>30</sup> The second democratic local government elections were held 1 March 2006, upon which 284 municipal councils took effect accommodating the redrafted provincial boundaries and the elimination of cross-boundary municipalities.

## **2.2 LEGISLATIVE FRAMEWORK DIVIDING FUNCTIONS AND POWERS BETWEEN DISTRICT AND LOCAL MUNICIPALITIES**

Shared authority, as mentioned above, originates in the final Constitution<sup>31</sup> of 1996. The powers and functions allocated to district and local municipalities are, however, not circumscribed in the Constitution.<sup>32</sup> The White Paper on

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<sup>30</sup> Steytler *et al* 2005: 189.

<sup>31</sup> Constitution of the Republic of South Africa, 1996

<sup>32</sup> Constitution of the Republic of South Africa, 1996.



Local Government <sup>33</sup> (hereinafter referred to as the White Paper) contains the policies to be implemented by Parliament in allocating the functions and powers in national legislation. The piece of legislation that governs the division of powers and functions between district and local municipalities is the MSA. The amendments effected by the MSA <sup>34</sup> in 2000 concerning the role of district municipalities, caused a shift in the policy originally envisaged in the White Paper. <sup>35</sup>

The powers and functions allocated to a district (Category C) and local (Category B) municipality, as listed in Part B of schedule 4 and 5 of the Constitution, <sup>36</sup> are *shared* because 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>37</sup>

Section D of the *White Paper* is dedicated to *institutional systems*, including district municipalities. The key role of district municipalities are defined as: a district wide development planner; an infrastructural development agent; a capacity builder in as far as it relates to category B municipalities which require assistance within the district; providers of additional administrative assistance where it is required and a service deliverer in as far as it is required to maintain appropriate levels of municipal services. Thus, the role of the district differed from district municipality to district municipality, because it responded to the

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<sup>33</sup> Ministry of Provincial Affairs and Constitutional Development 1998.

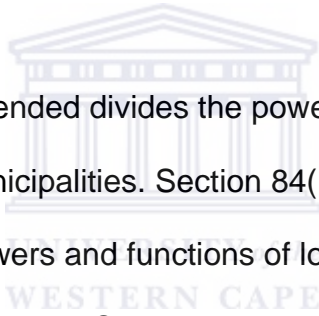
<sup>34</sup> Act 33 of 2000

<sup>35</sup> Ministry of Provincial Affairs and Constitutional Development 1998: 69-72.

<sup>36</sup> Constitution of the Republic of South Africa, 1996.

needs of its particular municipal area. For this reason the division of functions and powers between a district municipality and the local municipalities in the district can thus be asymmetrical; it will depend on need and capacity.

The MSA initially enacted, gave effect to the vision of the White Paper concerning the role and function of district municipalities. The amendments effected in 2000, however, shifted the role of the district municipality from that of a co-ordinator and bulk service provider to that of a direct service provider to consumers in general. Direct service provision by the district municipality, was originally envisaged for the district management areas only.



Section 84 of the MSA as amended divides the powers and functions between district and local municipalities. Section 84(1) lists the functions of district municipalities. The powers and functions of local municipalities are those functions and powers listed in Schedule 4 Part B and Schedule 5 Part B<sup>38</sup>, excluding those listed in district municipalities in section 84(1). 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. The changes affected by the MSA as amended<sup>39</sup> conferred the responsibility of 1) potable water supply, 2) the bulk supply of electricity, 3) domestic waste-water and sewage disposal, as well as, 4) municipal health services on district municipalities to the exclusion of the constituent local municipalities.

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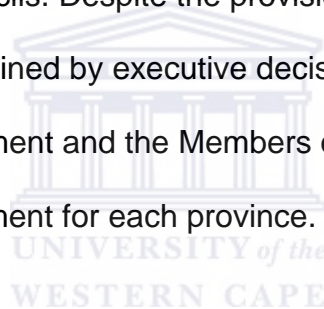
<sup>37</sup> S 155 (1)(b) Constitution.

<sup>38</sup> Constitution of the Republic of South Africa, 1996

Furthermore, in the light of section 155(3)(c) of the Constitution, Parliament effected in the MSA the power to shift functions and powers from a district to a local municipality and *visa versa*, based on a capacity assessment – the capacity to execute a particular function. The effect of shifting of functions between district and local municipalities is explored in Chapter 3.

## **2.3 CURRENT PRACTICE**

When the 47 district municipalities were established in December 2000, some had to start from scratch, while others continued along the lines of their preceding regional councils. Despite the provisions of the MSA, their functions were largely determined by executive decisions of the Minister of Provincial and Local Government and the Members of the Executive Committee for Local Government for each province.



### **2.3.1 Authorizations**

In December 2000 the Minister authorized local municipalities to continue performing district functions for a two and a half year transition period ending 30 June 2003.<sup>40</sup> In January 2003 the Minister revoked his previous authorizations 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

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<sup>39</sup> Act 33 of 2000.

<sup>40</sup> Mare 2004: 8.

industry is completed.<sup>41</sup> Municipal health services have been defined as environmental health and are to be performed by the district municipalities. A district municipality may request local municipalities to perform the function on its behalf.<sup>42</sup> With regard to water and sewage functions, the Minister divided the functions on a province-by-province 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 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 district municipalities, perform the water and sewage function.

Similarly, in the North West, local municipalities perform the functions in two of the district municipalities. In the Northern Cape, local municipalities, in only one of the district municipalities, are authorised to perform the bulk water supply and sewage purification work functions. The authorizations took effect on 1 July 2003.

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<sup>41</sup> Johnson 2002: 7.

<sup>42</sup> Mare 2003: 12.

For the other functions, on the establishment of the new municipalities, the Member of the Executive Committee in the Provinces 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.

### **2.3.2 Adjustments**

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 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. 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.

The Municipal Demarcation Board, as part of their annual capacity assessment, has ranked the functions performed by local municipalities in order of priority. Priority is based on the substantive importance of a particular function. Table 1 illustrates the number and the representation of the national percentage of local municipalities that perform priority 1 functions. They are sorted in descending order according to the number and national percentage of local municipalities that perform the priority 1 function.

<b>Table 1: Priority 1 functions performed by local municipalities</b>		
<b>Function</b>	<b>Number of Municipalities</b>	<b>National Percentage</b>
Municipal Roads	189	81.8
Refuse removal	189	81.8
Cemeteries	183	79.2
Water (potable)	165	71.4
Electricity reticulation	160	69.3
Storm Water Drainage	159	68.8
Sanitation	158	68.4
Traffic and Parking	149	64.5
Fire Fighting	130	56.3
Municipal Planning	123	53.2
Municipal Health Services	106	45.6

Source: MDB 2005:31

### 2.3.3 District Expenditure

Table 2 graphically illustrates two key points: firstly, that district municipalities perform a limited number of functions and that a large portion of the budget is not spent on providing the main end-user services (water, electricity, sanitation).

Table 2: Budgets by category of municipality, 2003-04					
R million	Operating	Capital	Total	Percentage of Total	
				Operating	Capital
Category A (Metros)	42 677 (61.5%)	7 889 (43.7%)	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 %)	5 218 (6.1 %)	51.8 %	42.2 %
<b>Total:</b>	<b>69 286</b>	<b>16 687</b>		<b>80.6 %</b>	<b>19.4 %</b>

Source: National Treasury 2004:24

The figures show that district municipalities have a small operating budget in comparison with the operating budgets of local municipalities. A large percentage of the district budget is spent on capital projects which include general infrastructure projects concerning roads, pavements, bridges and storm-water drains, for example.

The size of district municipal budgets reflect 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.

## **2.4 FISCAL FUNCTIONING OF TWO-TIERED LOCAL GOVERNMENT**

### **2.4.1 Original revenue-raising power**

The Constitution<sup>43</sup> confers original revenue-raising powers on local government to raise their own revenue where it pertains to property rates and services rendered by them. These powers are embodied in national legislation like the Local Government: Municipal Property Rates Act 6 of 2004.

### **2.4.2 Intergovernmental Transfer**

Furthermore, the Constitution<sup>44</sup> determines that local government is entitled to an equitable share in terms of an Act of Parliament. This is embodied in the Division of Revenue Act passed annually, which allocates a percentage of revenue raised nationally, to national, provincial and local government. Also, provision is made for conditional or unconditional grants.

The annual Division of Revenue Act stipulates the types of grants that are available for transfer each year, and stipulates the framework criteria for the application for receipt of such grant.

The MSA<sup>45</sup> confers the function upon district municipalities to manage allocated grants and in terms of section 84(1) (p) to collect and impose taxes in

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<sup>43</sup> S 229(1)(a).

<sup>44</sup> S 214.



relation to the functions performed and assigned by national legislation. The Municipal Property Rates Act<sup>46</sup> only affords metropolitan and local municipalities the authority to levy rates on property;<sup>47</sup> a district municipality may only levy a rate on property in a district management area.<sup>48</sup> Property rates, next to surcharges on electricity, constitute a high percentage of municipal income.

The Municipal Finance Management Act<sup>49</sup> (hereinafter MFMA) is the key regulator for the collection and management of municipal funds. It is aimed at efficient and transparent administration of municipal funds by way of three-year budget planning and compulsory public participation. As of 1 July 2004, this Act phased in stringent regulation of the expenditure and revenue-raising capacity of municipalities. A municipal budget constitutes a capital and operating budget and the municipal financial year starts on 1 July.

In addition, the MSA makes provision for inter-municipal support in the form of financial assistance. Section 88(2)(a) reads, “[a] district municipality on request by a local municipality within its area may provide financial, technical and administrative support services to that local municipality to the extent that that district municipality has the capacity to provide those support services.”<sup>50</sup>

Similarly, at the request of district municipality, a local municipality may provide

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<sup>45</sup> S 84(1)(o) of Act 117 of 1998.

<sup>46</sup> Act 6 of 2004.

<sup>47</sup> S 2 (1).

<sup>48</sup> S 2 (2)(9).

<sup>49</sup> Act 56 of 2003.

<sup>50</sup> S 88 (2)(a).

the abovementioned assistance to the district municipality. Thus, the MSA obliges district and local municipalities to draw alongside one another when there is a need.

### **2.4.3 Operating Income and Expenditure**

As outlined by National Treasury,<sup>51</sup> operating income is sourced from revenue for user charges – services rendered for mainly electricity and water; property rates and other, including traffic fines, subsidies, interest on investments, intergovernmental grants, business payroll and turnover levies.

Operating expenditure comprises personnel costs, followed by provision of bulk services, structural repair and maintenance, general expenditure and interest.

### **2.4.4 Capital Income and Expenditure**

Capital income derives from national and provincial infrastructure grants and subsidies and capital expenditure is earmarked for general infrastructure like roads, pavements, bridges and storm-water drains.

The significance of local government activity is best assessed in the light of expenditure comparison by category of municipality.<sup>52</sup> Two observations can be made from the financial data.

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<sup>51</sup>National Treasury *Trends in Intergovernmental Finances 2004/05*.

Firstly, the division of powers and functions, as authorised and adjusted by executive authority, correlates with the budget allocation.

Appendix 4 illustrates that category B (local) municipalities are capacitated to perform priority 1 functions.<sup>53</sup> Contrariwise, it substantiates that the operating budgets, for category C (district) municipalities, are small in comparison with the operating budgets of local municipalities. This illustrates, that although the MSA<sup>54</sup> confers certain priority 1 functions to district municipalities, the constituting local municipalities in fact perform the functions. It can be surmised, then, that the budget reflects that district municipalities perform a coordinating function with regard to priority 1 functions, as envisaged by the White Paper<sup>55</sup> and MSA prior to amendment in 2000.<sup>56</sup>

Secondly, the main source of a local municipality's income is the operating income. The operating income consists of user charges, property rates, and intergovernmental grants. The source of user charges for services, derive from the provision of services like water, sanitation, electricity and refuse removal.<sup>57</sup> This information is included to illustrate the financial impact of shifting powers and functions and to make clearer the reliance on the revenue from the execution of bulk services. This is further explored in chapter 3.

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<sup>52</sup> Refer to Table 2 above: The operating budget and capital budget of the three categories of municipality is tabulated.

<sup>53</sup> Priority 1 Functions: Cemeteries, electricity reticulation, fire fighting, municipal health services, municipal planning, municipal roads, refuse removal, sanitation, storm water drainage, traffic and parking, potable water supply (Refer Appendix 2: 82).

<sup>54</sup> S 84 of Act 117 of 1998.

<sup>55</sup> White Paper on Local Government 1998.

<sup>56</sup> Please Note: the conclusion made is drawn, based on the financial data as provided by National Treasury. However, I have mentioned above that certain districts have retained the direct service delivery function, thus illustrating that there are exceptions to the generalization made in relation to the data.

Furthermore, in an effort to rationalize the electricity distribution, regional electricity distributors (REDs) are envisaged. This will directly impact on the revenue derived from electricity reticulation and distribution.

Armed with a better understanding of what local and district municipalities are empowered to do and how they are empowered to execute their duties, it follows then to consider the extent of legislative regulation of the relationship between these two tiers of local government.

## **2.5 LEGISLATIVE FRAMEWORK REGULATING RELATIONS BETWEEN DISTRICT AND LOCAL MUNICIPALITIES**

It has been stated that co-operative relations between district and local municipalities are essential to the success of the two-tier system of local government. This fact is established in the Constitution<sup>58</sup> and incorporated into selected legislation that promotes intergovernmental interaction.

Chapter 3 of the Constitution is dedicated to intergovernmental relations and prescribes what the relations between governments should be. Secondly, various provisions in the MSA prescribe co-operation. Thirdly, the IGRFA also creates forums for co-operation between district and local municipalities. Finally, the Municipal Systems Act<sup>59</sup> situates development with local government and an integrated approach to such development requires co-

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<sup>57</sup> National Treasury 2004: 26.

<sup>58</sup> Chapter 3 of the Constitution.

operation. Thus, legislation is and the processes of local government are aimed at managing good relations between municipalities with shared competencies over the same geographical area.

Furthermore, the role of the province in managing relations between district and local municipalities is an important one guided by statute. The provincial MEC has an important role to play in anticipating conflict and resolving it.

### **2.5.1 District Councils**

Fundamental to the regulating of relations between district and local municipalities, are the district councils. The composition of and election to the district council is determined in the MSA. The composition of the district council reflects that the district municipality is the sum of the local municipalities and thus there are elements of an intergovernmental relations structure.

Councillors are elected to the district council both indirectly and directly. Sixty percent of the council is indirectly elected to council by the local municipalities in the district; relative to the number of voters in their municipality.<sup>60</sup> The remaining forty percent is directly elected, proportionally representing the voters in a district, including a district management area.

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<sup>59</sup> Act 32 of 2000.

<sup>60</sup> S 18 and Schedule 2 of Act 117 of 1998.

Given the construction of district councils, the balance of power should lie with the local municipalities and district councils should be subject to local municipal authority. However, the electoral system influences this structure in such a way that division of power is relative to party affiliation and relations have often been characterized by discord.

### **2.5.2 District Intergovernmental Structures**

Various informal intergovernmental structures, outlined in Chapter 6, have been formalized in national legislation. National legislation for the purpose of regulating interaction between governmental structures is constitutionally mandated and is embodied in the IGRFA,<sup>61</sup> promulgated in August 2005. The IGRFA regularizes existing intergovernmental structures.

The relationship between district and local municipalities is also regulated by this Act. District Intergovernmental Forums (DIFs) must be established by the mayor of a district municipality,<sup>62</sup> and consist of the mayors of the district municipality and the local municipalities.<sup>63</sup> The district mayor chairs this forum and “matters of mutual interest” are discussed.<sup>64</sup>

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<sup>61</sup> Act 13 of 2005.

<sup>62</sup> S 24.

<sup>63</sup> S 25 (1).

<sup>64</sup> S 26 (1).

### 2.5.3 Duty to support

A further legislative duty is imposed on district and local municipalities, promoting the concept of interrelatedness and a unified state with levels of government. The duty to support each other as articulated in the MSA<sup>65</sup> embodies a constitutional value as expressed in Chapter 3 of the Constitution. It determines that district and local municipalities are under an obligation to support one another at the request of either. This provision encourages an open communication channel and promotes the “interrelated” aspect of the local government sphere.<sup>66</sup>

### 2.5.4 Provincial Supervision



Based on a capacity assessment, the provincial MEC is empowered by the MSA<sup>67</sup> to effect an adjustment to the powers and functions of a municipality. This is conditional upon the fact that the municipality does not have the capacity to perform the function and such adjustment can only be effected, once the Municipal Demarcation Board has made such recommendation. In this way, a potentially conflictual situation can be avoided by consistent monitoring of local government by the MEC for local government.

The provincial MEC also has a regulatory role to play between district and local municipal matters, concerning the resolution of disputes. The MSA stipulates

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<sup>65</sup> S 88 (1).

<sup>66</sup> S 40 (1) Constitution.

that in the event of a dispute arising between a district and local municipality, the MEC is tasked with the definition of roles.<sup>68</sup> This is subject to the fact that the matter must arise out of the performance of a function. According to statute and by definition, this particular role of the province takes effect after the conflict has occurred and upon request by interested parties. It follows then, that these are two limiting factors on the interventionist role of the province in the definition of functions and powers.

In addition, the MSA includes a blanket provision<sup>69</sup> that requires the provincial MEC for local government to support the district municipality as it in turn supports its constituent local municipalities.

### **2.5.5 Integrated Development Planning**

Local government has been identified as the seat of local development. It is thus in promotion of this aim, that district and local municipalities are called to work toward the common aim. The Systems Act alongside the MSA, tasks the district municipality with integrated development planning (hereinafter referred to as IDP) for the district as a whole and the formulation of a framework for local municipal IDPs.

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<sup>67</sup> S 85.

<sup>68</sup> S 89 (3).

<sup>69</sup> S 89 (3).



Consultation is an integral part of the IDP process from initiation to adoption.

The district-wide IDP binds both district and local municipalities and there must be consultation built into the drafting of the local municipal IDPs.

In conclusion, the framework legislation listed is by no means a comprehensive list. A large sum and wide variety of legislation impacts on the relationship between district and local municipalities. The most important of these, however, have been highlighted above, they explicate national sentiment concerning relations between district and local municipalities – it is to be supportive, co-operative and cordial.



## **Chapter 3**

### **Key Areas of Conflict**

#### **3.1 INTRODUCTION**

The working relationship between district and local municipalities has been described as unproductive,<sup>70</sup> uncooperative<sup>71</sup> and generally bad for the functioning of local government.<sup>72</sup> The picture that emerges, however, is ambiguous; in some districts the relations are good and productive, in many others they are 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>73</sup> Crucial factors for good relations included:

- the current boundaries are not substantially different to the old Regional Services Council boundaries;
- the district municipality is built on the established regional services council;
- there is good quality leadership;

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<sup>70</sup> Portfolio Committee for Provincial and Local Government 2003: 14.

<sup>71</sup> SALGA Western Cape 2005: 26.

<sup>72</sup> Mr B. Molotsi: Municipal Manager Northern Free State District Municipality (8 September 2005).

<sup>73</sup> Portfolio Committee for Provincial and Local Government 2003: 14.

- there are effective structures that bring together mayors, municipal managers and senior officials in the district;
- 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>74</sup> In many districts these conditions do not prevail, resulting in “conflictual and unproductive”<sup>75</sup> relations. The two-tiered system of local government is premised on co-operation for good government; the MSA<sup>76</sup> makes it peremptory that local and district municipalities co-operate with one another by assisting and supporting each other. Most districts are newly instituted, IGR structures are not in place and the distribution of financial resources is a contributor to the causes of conflict. This study now seeks to identify key factors that cause conflict in relations between district and local municipalities.

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<sup>74</sup> Portfolio Committee for Provincial and Local Government 2003: 12.

<sup>75</sup> *Supra* at 9.

<sup>76</sup> Act 117 of 1998.

## 3.2 THE DIVISION OF FUNCTIONS AND POWERS BETWEEN DISTRICT AND LOCAL MUNICIPALITIES

### 3.2.1 Definition of functions and powers

It is patent from the reading of section 84 (1) of the MSA that the delineation of functions and powers between district and local municipalities, is neither clear nor definitive with regard to the functions. 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.

It is precisely the interpretation of section 84<sup>77</sup> that has given rise to some disagreement among the stakeholders in local government. In a survey conducted by the National Council of Provinces (NCOP),<sup>78</sup> 98 per cent of the municipalities that responded claimed that the greatest challenge was a misunderstanding of the nature of the two-tiered district-local system.<sup>79</sup>

An example raised in the interviews, illustrates the real possibility of a lack of responsibility for state assets due to uncertain functional definitions.

An interesting area of conflict arose concerning the maintenance of a fire engine. The MSA states that the district municipality is responsible for fire

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<sup>77</sup> Act 117 of 1998.

<sup>78</sup> Less than half of all municipalities responded to the call from Parliament.

<sup>79</sup> National Council of Provinces 2005:15.

fighting services in as far as “co-ordination of the standardization of infrastructure, vehicles, equipment and procedures”<sup>80</sup> are concerned.

In response to a question concerning the responsibility of the district municipality with regard to the fire fighting service, the executive mayor<sup>81</sup> of a district municipality said that the maintenance of a fire engine is expensive and that one had been “bought, but [we, the municipal manager and I] are still deciding who is responsible for maintenance and whose books it must be on. It is within our functions, but it is still not clear who must control.”

The fire engine, she explained, had been purchased for district-wide use, but that “Mangaung has all their own powers, we do not assist them”. The fire engine had, however, been earmarked as purchased for Naledi Local Municipality, but they did not want the added financial responsibility of the maintenance and neither did the district. Thus, the engine remained parked on district premises due to a lack in certainty as to whose responsibility it was to maintain the vehicle.

The extent of the overlap of function between the district and local municipalities and the uncertainty as to the scope and technical meaning of the provisions, are the particular causes of conflict that bedevil relations between district and local municipalities. This study revealed that the lack of clarity in the division of powers and functions between district and local municipalities is a major cause of conflict.

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<sup>80</sup> S 84 (1)(j)(iii) Act 117 of 1998.

<sup>81</sup> Ms K Choene: Executive Mayor, Motheo District Municipality (7 September 2005).

### 3.2.2 The nature of difficulties that arise from the reading of section

#### 84(1)

#### SECTION 84(1) : MUNICIPAL STRUCTURES ACT 117 OF 1998

***Division of functions and powers between district and local municipalities.***—(1) A district municipality has the following functions and powers:

*(a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.*

*(b) Potable water supply systems.*

*(c) Bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity.*

*(d) Domestic waste-water and sewage disposal systems.*

*(e) Solid waste disposal sites, in so far as it relates to—*

*(i) the determination of a waste disposal strategy;*

*(ii) the regulation of waste disposal;*

*(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.*

*(f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole.*

*(g) Regulation of passenger transport services.*

*(h) Municipal airports serving the area of the district municipality as a whole.*

*(i) Municipal health services.*

*(j) Fire fighting services serving the area of the district municipality as a whole, which includes—*

*(i) planning, co-ordination and regulation of fire services;*

*(ii) specialised fire fighting services such as mountain, veld and chemical*

*fire services;*

*(iii) co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures;*

*(iv) training of fire officers.*

*(k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district.*

*(l) The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of municipalities in the district.*

*(m) Promotion of local tourism for the area of the district municipality.*

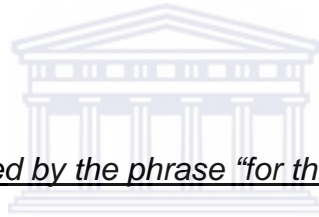
*(n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.*

*(o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.*

*(p) The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.*

*[Sub-s. (1) substituted by s. 6 (a) of Act No. 33 of 2000.*

Upon a first reading of section 84(1), it becomes apparent that the manner in which powers and functions are conferred on districts creates areas of functional overlap.



3.2.2.1 Functions distinguished by the phrase “for the district municipality as a whole” / “for the area of the district municipality as a whole”

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Certain functional areas exemplify overlapping jurisdictions by the circumscribing phrase “for the district as a whole”. Defining a function as a district function or a local function, by means of the phrase, is technical and open to interpretation. An example is that of “airports”. Schedule 4 Part B confers the functional area “municipal airports” to local government and thus, local municipalities too. Section 84(1), however, circumscribes the functional area allocated to district municipalities, by the phrase municipal airports serving the “area of the district as a whole”. Thus, a district municipality is responsible for municipal airports in as far as that airport

services the district as a whole. The problem is then to clarify every airport in the district in terms of that elusive criterion.

Table 3 illustrates the overlap in functional definition concerning the original power conferred in Part B of schedule 4 and 5<sup>82</sup> and the section 84<sup>83</sup> functions distinguished by the phrase ‘for the area of the district as a whole’ to district and local municipalities alike.

*Table 3: Sets out the functional areas dividing powers between district and local municipalities circumscribed only by the phrase “for the area of the district as a whole”*

<b>Local Functional Area</b>	<b>District Functional Area</b>
Municipal Planning (4B)	Integrated development Planning 84(1)(a)
Municipal Roads (5B)	Municipal roads which form an integral part of a road transport system 84(1)(f)
Municipal Airports (4B)	Municipal airports 84(1)(h)
Firefighting Services (4B)	Firefighting services 84(1)(j)

A similar overlap in functional definition is created by the phrase “for more than one local municipality” as it pertains to solid waste disposal sites<sup>84</sup> and the phrase “of a major portion of the municipalities in the district” as it pertains to markets and abattoirs,<sup>85</sup> and cemeteries and crematoria.<sup>86</sup> The problem that follows is thus the potential conflict that arises from unilateral decision-making as to what is meant by “more than one” or “of a major

<sup>82</sup> Act 108 of 1996.

<sup>83</sup> Act 117 of 1998.

<sup>84</sup> S 84 (1)(e).

<sup>85</sup> S 84 (1)(k).



portion”. This is compounded by the absence of a standard or a definitional benchmark to refer to.

That is, in one municipal district a major portion may be defined as three of the five local municipalities in a district and in other municipal districts, four of the five local municipalities comprise “a major portion”.

### 3.2.2.2 Further overlap is created by the content of activities

The conduct circumscribed by the phrases “determination of a strategy” or “regulation”<sup>87</sup> and “coordination of the standardization”<sup>88</sup> creates an overlap in the implementation of the activities. That is, in effecting such regulation or standardization, the authority to implement is held by more than one municipality. An example of a particular overlap created by the activity of “promotion” forms the basis of a key area of conflict outlined in an interview.

The former mayor of Eden District Municipality<sup>89</sup> stated that the MSA affords the responsibility to district municipalities to “promote tourism”. This section reads, “[a] district municipality has the following functions and powers:

Promotion of local tourism for the area of the district municipality”.<sup>90</sup>

The former mayor negatively defines “promotion” in that he says “it does not entail interference in the authority of local municipalities to execute their listed

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<sup>86</sup> S 84 (1)(l) of Act 117 of 1998.

<sup>87</sup> S 84 (1)(e)(i) and (ii).

<sup>88</sup> S 84 (1)(j)(iii).

<sup>89</sup> Mr A. Lamont: Eden District Municipality Tourism Manager (16 August 2005).

function”. District municipalities thus lack concrete guidelines as to what constitutes intrusive conduct into the local function of “municipal tourism”, and what does not. The Motheo District Municipality interpreted the term as requiring proactive participation in spurring tourism.

Motheo District Municipality arranged a soccer match between the district and the closest Lesotho municipality. The match was called an international event promoting good relations between the two nations. Difficulty arose between the district and local municipality, in that the stadium was situated in a particular local municipality which did not derive proceeds for situationally hosting such an event, the monies derived went straight into district coffers.

This illustrates the sentiment held by the former mayor of Eden District Municipality when he says, due to the lack of functional definition the sections lend themselves to interpretation and so-called ‘interference’ takes place, creating conflict situations.<sup>91</sup>

### 3.2.2.3 Overinclusive definitions

A difficulty faced when trying to find some functional definition, is the problem of how adequate the definition is. Definitions fall short when they are either under inclusive, restricting local government powers, or overinclusive, thus extending local government powers beyond their constitutional mandate.

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<sup>90</sup> S 84 (1)(m) Act 117 of 1998.

<sup>91</sup> Mr A. Lamont: Eden District Municipality Tourism Manager (16 August 2005).

Depending on the definition given to a district function it may in fact overlap with a local function.

An example is the definition for “municipal health services” in the National Health Act of 2003. It is overinclusive with regard to other local government functions in Schedules 4B and 5B.

The following elements of the statutory definition of “municipal health services” overlap with other local government functions:

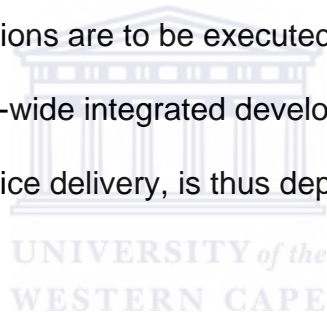
- (a) water quality monitoring (which intrudes on the municipal function of “potable water supply systems”);
- (b) food control (which intrudes on “licensing and control of undertakings that sell food to the public”);
- (c) waste management (which includes “solid waste disposal sites”)
- (d) health surveillance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

This example illustrates the over inclusiveness of a definition, which can upset the allocation of functions between district and local municipalities. While the “municipal health services” function is a district function in terms of section 84 of the Municipal Structures Act 117 of 1998, the “licensing and control of

undertakings that sell food to the public” and “air pollution” are local functions. The imposed definition thus creates numerous points of conflict.

### **3.2.3 Comment**

A lack in functional division has far reaching implications for district and local municipalities alike. The uncertainty as to functional division has a practical effect on the internal organization of municipalities. That is the intra-municipal structure for the operating and conducting of the business of a municipality, is relative to the functions the municipality is responsible to perform. Furthermore, the manner in which the functions are to be executed is influenced by the local development plan and district-wide integrated development plan. Good governance and efficient service delivery, is thus dependent on clear and certain functional allocation.



## **3.3 THE SHIFTING OF FUNCTIONS AND POWERS BETWEEN DISTRICT AND LOCAL MUNICIPALITIES**

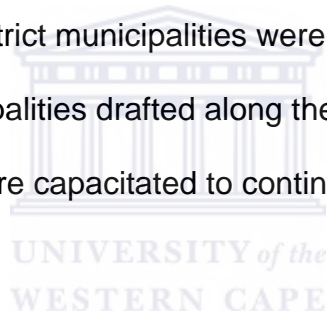
### **3.3.1 How are functions shifted?**

The Municipal Structures Act 117 of 1998 makes it possible to link the functions and powers allocated to a district or local municipality and its ability to perform those functions and exercise those powers. There are two mechanisms provided in the MSA – authorisation and adjustment.

The uncertainty caused, regarding the responsibility for execution of a function given the possibility of a function shift, and the influence the shift in function has on the revenue base of a municipality are the cause of much conflict. In addition, the uncertainty left as to where functional responsibility lies, creates the possibility for duplication, or conversely, the neglect of services.

### **3.3.2 Authorization<sup>92</sup>**

Section 84(3) empowers the Minister for Provincial and Local Government to authorize local municipalities to perform certain listed functions. This became necessary because some district municipalities were newly established, whereas other district municipalities drafted along the lines of established regional services councils were capacitated to continue performing certain functions.



It is important to add that no time frame guiding such authorization is given by statute within which the Minister can operate, thus compounding uncertainty of functional responsibility. Despite the MSA, executive authority determined the functions and powers and the authorizations affected many and diverse municipalities.<sup>93</sup>

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<sup>92</sup> Please note: The exercise of this executive authority is outlined in Chapter 2 above – Current Practice.

<sup>93</sup> Act 117 of 1998.

### **3.3.3 Adjustment<sup>94</sup>**

In addition, section 85 of the MSA the MEC may allocate a local municipality certain district municipal competencies listed in section 84(1), if the district municipality cannot or does not perform the function or exercise the power in the relevant area. This function is exercised in consultation with the MDB. Since 2003, the MDB has conducted capacity assessments and have made recommendations to the MECs following therefrom.

### **3.3.4 Conflict due to a lack of functional certainty**

Following an assessment of the authorization made in 2001, the Ministerial Advisory Committee found that the authorizations have resulted in “uncertainty” among municipalities due to the fact that the municipalities were “anticipating and ...insisting that the division of powers and functions be adjusted in compliance with section 84 of the Structures Act...”<sup>95</sup>

Four other consequences follow from this “uncertainty”: firstly, the formulation of an IDP and budget allocation becomes difficult as well as the finalization of organograms or internal organization of municipalities becomes difficult.

Secondly, delay in authorization leads to insecure employment posts, low work morale and unnecessary resignations.

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<sup>94</sup> Please note: The exercise of this executive authority is outlined in Chapter 2 above – Current Practice.

Thirdly, practical difficulties arise when national departments wish to hand over line function schemes to local government in that there is uncertainty as to who (the district or a local municipality) is authorized to manage such schemes; as it relates to water, sanitation and electricity, etc. Fourthly, in the likely event of multiple “delivery-agents” in a particular ward, conflict is certain – given the division in geographical responsibility. By way of explanation, a corporate services manager<sup>96</sup> relates a story of the arrival of district municipal workers in the local municipality for the purpose of road works. Without warning or clear certainty as to the maintenance of that particular road, barricades were stationed causing much dissatisfaction among the community for a lack of prior notification. The uncertainty as to the responsibility for that particular road was created by the phrasing of section 84(1)(f) which makes the maintenance of municipal roads a district function in so far as the particular road “forms an integral part of a road transport system”.

Two years later, the Portfolio Committee reported:

[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

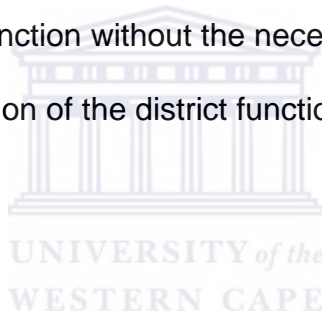
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<sup>95</sup> Ministerial Advisory Committee 2001: 44.

<sup>96</sup> Mr K. Gordon: Swellendam Local Municipality, Western Cape (15 August 2005).

these new allocations are...and how these overlap with and are distinct... .<sup>97</sup>

A further consequence of the shift in powers and functions is the unauthorised execution of certain functions. For the sake of continuity and the delivery of a service, a municipality would deliver a service without the necessary authorization. This has dire implications for financial reporting. For example, the Mangaung Municipality Profile Report submitted to the MDB, states that concerning the health function in particular, they perform a district allocated function on an agency basis, without the function having being authorized or adjusted to them. The municipal manager of a local municipality<sup>98</sup> notes that in the execution of the district function without the necessary authorization, the district budget reflects execution of the district function and the local municipal budget reflects otherwise.



### **3.3.5 Multiple Delivery Agents**

It was stated by the municipal manager of a district municipality<sup>99</sup> 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”. Similarly, the city manager<sup>100</sup> of a local municipality gives the following example of duplication: “[If] we at Mangaung advertise economic development, they will do the same. We tend to have two bloated

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<sup>97</sup> Portfolio Committee Report 2003: 10-11.

<sup>98</sup> Mr K. Mathlatsi: Metsimaholo Local Municipality, Free State (8 September 2005).

<sup>99</sup> Mrs T. F. Kgosidintsi: Motheo District Municipality, Free State (7 September 2005).

<sup>100</sup> Mr M. Matole: Mangaung Local Municipality, Free State (7 September 2005).



structures.” Furthermore, the uncertainty regarding the service structure of a municipality poses the possibility of duplication of functionaries appointed. The city manager expressed the opinion that “[there, for example,] is no point in having a director for water services, when we are performing the function [*for the district*] or [*for the district municipality*] to have an engineer when we already have one”.

### **3.3.6 Effect of shift in functions on revenue-raising ability**

A consequence of the executive authority to shift functions is the uncertainty that is left concerning the revenue base. The operational revenue is mostly comprised of user charges. User charges are derived from the provision of services like water sanitation, electricity and refuse removal. The shifting of these functions influences the revenue derived from delivery of these services.

The conflict between district and local municipalities arises, as explained by the corporate services manager of a local municipality<sup>101</sup> in the alignment of IDP’s and budgets because of uncertainty in functional areas and the revenue that is derived from such income. That is, IDP planning takes place mid-way through the budgetary cycle. Planning is based on anticipated financial projections. Variables like the delivery of services, which form a large portion of the projected amounts, have far reaching implications on planning and alignment.

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<sup>101</sup> Mr V. Senkhane: Moquaka Local Municipality, Free State (7 September 2005).

National Treasury stated in the *Intergovernmental Fiscal Review 2003* that the comparison of budgets and fair progress and analysis is not possible as functions continue to be shifted. The question of sufficient fiscal capacity and good financial management becomes ever evasive in the absence of a comparable trend that derives from a stable, continuous execution of a set function.

### **3.4 THE RACE FOR RESOURCES**

The difficulty raised here is the conflict that arises from competition for available resources. The allocation of revenue becomes a stimulus for conflict, in that, financially capacitating the district occurs at the expense of the local municipalities. Whether the battle is waged with National Treasury for intergovernmental transfers or whether the battle is waged with the district for revenue-raising functions and powers, a local municipality competes with the district municipality in a race for resources.

By way of example, the Portfolio Committee reported that a district municipality 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>102</sup>

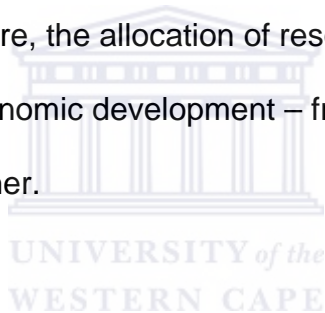
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<sup>102</sup> Portfolio Committee Report 2003: 11.

### **3.4.1 The effect of substantial reallocation of resources**

In 2001, the Ministerial Advisory Committee<sup>103</sup> contemplated the effects of substantial reallocation of powers and functions from the district to local municipalities after the amendments to the MSA. The Committee found that the effect of substantial reallocation of power, empowered district municipalities at the expense of local municipalities and that it effectively created four levels of government, of which two are located locally.

The objectives of local government hinge on the capacity to perform those functions and powers, therefore, the allocation of resources becomes crucial to service delivery and local economic development – from the absence of one, follows the absence of the other.



## **3.5 DISTRIBUTIVE FUNCTION OF DISTRICT MUNICIPALITIES**

### **3.5.1 Bureaucratic delay as a source of conflict**

Section 84(1) (o) of the Structures Act lists the distribution of financial resources as a district function. The reallocation of grants to local municipalities, both conditional and unconditional, must therefore filter through district municipal administration; bureaucratic delay presents the potential for conflict.

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<sup>103</sup> Ministerial Advisory Committee 2001: 54.

The Ministerial Advisory Committee anticipated the potential cause for conflict when stating that, “[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>104</sup>

The Portfolio Committee<sup>105</sup> in 2003 reiterated that a problem causing area in the redistribution of funds is bureaucratic delay. This was further substantiated in the interviews conducted.

The former mayor of a district municipality<sup>106</sup> noted that the President observed on many occasions that he cannot understand why, when he gets to the communities, nothing is happening although money has been allocated. 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 example given by the corporate services manager of a local municipality.<sup>107</sup>

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<sup>104</sup> Ministerial Advisory Committee 2001: 54.

<sup>105</sup> Portfolio Committee 2003: 10.

<sup>106</sup> Mr A. Lamont: Eden District Municipality, Western Cape (16 August 2005).

<sup>107</sup> Mr V. Senkhane: Moqhaka Local Municipality, Free State (7 September 2005).

“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, submit 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”.

### **3.5.2 Distributing resources within the district**

Furthermore, socio-economic development is situated at local level. The district municipality is tasked with achieving “the integrated, sustainable and equitable social and economic development of its area as whole by – promoting the equitable distribution of resources between the local municipalities in its area”.<sup>108</sup> It follows therefore, that one of the functions of district municipalities, is the redistribution of revenue. In the past, for example, the RSC levy imposed on businesses in the urban areas was then distributed across the district. The very policy aimed at promoting equality among diverse communities is said to be the cause of the stalemate inhibiting integrated, sustained and equitable socio-economic development. Local municipalities that have strong towns (economically viable) resist being accountable to and cooperating with, the district authority. Secondary cities deem their district councils as leaching off them through cross-subsidisation leading to conflict situations.

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<sup>108</sup>S 83 (3)(d) of Act 117 of 1998.

## 3.6 ACCOUNTABILITY FOR SERVICES RENDERED

### 3.6.1 Democracy undermined

The shift in functions affected in the Municipal Structures Amendment Act,<sup>109</sup> transforming the district municipality from a coordinator to a regular end-user service provider, has had the effect of misdirecting calls and complaints from dissatisfied consumers to their local municipality instead of the district service provider.

The Ministerial Advisory Committee<sup>110</sup> firmly articulated that political accountability and the democratic process would be undermined by the amended formulation of the MSA.<sup>111</sup> This was substantiated by the fact that, the Committee noted,

“district municipalities do not have wards, 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.”

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<sup>109</sup> Act 33 of 2000.

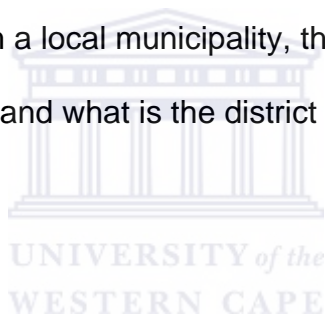
<sup>110</sup> Ministerial Advisory Committee 2001: 54.

<sup>111</sup> S 84 and S 84 (3) of Act 117 of 1998.

Local municipalities, reports the Portfolio Committee,<sup>112</sup> are the target of consumer dissatisfaction and recipients of complaints about inadequate service delivery in local areas. They bear 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”.

### **3.6.2 A lack of public awareness**

The conflict is compounded by the lack of understanding the distinction between a district service-provider and a local service facilitator. It is for this reason, says a councillor from a local municipality, that “...the conflict is caused because people don’t understand what is the district and what is the local [they] complain to us”.<sup>113</sup>



As an end-user service provider, district municipalities are ethically responsible for ensuring that communities are aware it is the district and not the local municipality that is accountable for services rendered. This can only be achieved by fostering public awareness, ensuring public participation, communication and involvement from the local communities concerning decision-making in order to avoid district-local conflict that may arise from misdirected accusations.

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<sup>112</sup> Portfolio Committee 2003: 10.

<sup>113</sup> Portfolio Committee 2003: 10.

## **3.7 POLITICAL DIFFERENCES**

### **3.7.1 Municipal Councils - the political forum for debate**

Municipal councils are the democratic *fora* for political argument, the promotion of political aims and the promotion of majority party policies. The multi-party system with proportional representation ('party list system') and direct election makes for colourful political *fora*.

The district municipal council is designed to ensure local municipality participation. Because the large majority of the district council consists of local municipal councillor representation, the district council should be the forum for district-local alignment of plans and policies. As representatives of the local municipalities the councillors can negotiate the alignment and co-ordination of district-local policies. However, this does not happen in practice.

### **3.7.2 Political compromise bedeviled**

Political gamesmanship is a key area of conflict both intra- and inter-municipal. Potentially, politicians have the ability to consolidate the local government system and for this reason it is important that productive relationships develop between all political parties and municipal structures. The African National Congress (ANC) holds the majority in almost 85% of the municipalities



countrywide, thus, the promotion of majority party policies could mean a unified local government system.

The Portfolio Committee<sup>114</sup> said that some of the problems local government faces, have less to do with the two-tier system and far more to do with intra-political differences. It also notes that the two-tier system becomes a site of broader struggles being waged within parties. This was confirmed in numerous interviews.

### **3.7.3 The effect of different political parties governing at district and local level**

Eden District Municipality, for example, illustrates the potential for conflict where different political parties govern at district and local level.

When asked about the nature of the relationships between the district and constituent local municipalities, the acting municipal manager<sup>115</sup> answered that in the past there had not been co-operation. He added that the main reason was that the strong towns in the district, like George and Mossel Bay, differed in their political make-up to that of the district. He concluded that "...the local municipal political problems, spilled over into the district and there was no co-operation with the district council".

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<sup>114</sup> Portfolio Committee 2003: 12.

<sup>115</sup> Mr A. Lott: Eden District Municipality, Western Cape (15 August 2005).

Similarly, a municipal manager of a local municipality<sup>116</sup> said that the influence of politics on service delivery had caused problems for Hessequa Local Municipality. Where there were two opposing parties governing at district and local level, he said,

“there was continuous undermining and the district council decisions did not go back to the local council. Following that two other opposing parties had control of the leadership and they were at each other, which affected the service delivery. So it was not specific to those parties. In the case of Hessequa, 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.”

As an obvious consequence, both municipal managers noted that political prioritization has led to a negative impact on service delivery in the district area.

In addition, a respondent from the KwaZulu-Natal Department of Local Government and Traditional Affairs<sup>117</sup> said that the main conflict-generating stimulus in the province of KwaZulu-Natal, is 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

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<sup>116</sup> Mr J. Jacobs: Hesseqa Local Municipality, Western Cape (16 August 2005).

<sup>117</sup> Mr M. Staniland : Manager of Local Government in the Department of Local Government and Traditional Affairs, KwaZulu-Natal Province (27 October 2005).

and will rarely receive project funding. “A lack of commitment to co-operative relations”, he said, “must be overcome to improve district-local relations”.

#### **3.7.4 Inter-political conflict and the effect on service delivery**

Intra-political indecision and prioritization of party interests can give rise to much back-and-forth politicking and ultimate delay in the business of the district.

Inter-political conflict is best illustrated by the “ANC and UDM war over water”. The Sunday Times<sup>118</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 region, over which the UDM had a political majority.

The Sunday Times reported that the King Sabata mayor, Dowa Mgudlwa, took the adversarial route, claiming 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 supply to the rural areas. According to district officials, “the UDM has undermined good relations between the two municipalities by failing to co-operate on service delivery initiated by the district”. King Sabata mayor responded, “the provincial government has starved

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<sup>118</sup> Sunday Times 22 February 2004.

the local municipality of much needed funds and have snubbed my attempts to discuss the issue”.

### **3.8 STATUS ATTRIBUTED TO FINANCIAL VIABILITY**

Status is accorded by the National Treasury, in terms of the MFMA, to municipalities.<sup>119</sup> A grading is accorded relative to the level of capacity a municipality has, in order to fulfill the implementation requirements of the Act. The grading exempted certain classes of municipalities from compliance with the Act for a specified period – from the date of coming into operation the MFMA has applied to all high capacity municipalities while the low capacity municipalities have three years grace, with medium capacity municipalities falling in between. An unforeseen consequence is the discord that has arisen as a subsequent to the classification of district and local municipalities into classes of high, medium and low capacity.

It is thus possible for a district municipality to be classed as medium capacity and a local municipality to be classed a high capacity in the same district area, for example, Motheo district municipality is classed as medium capacity and Mangaung Local Municipality is classed as high capacity. The implication of a high capacity local municipality in relation to a medium or low capacity district municipality is illustrated by the sentiment held by an executive mayor of a district municipality: “we feel honoured when

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<sup>119</sup> Act 56 of 2003.

Mangaung [Local Municipality] attends one of the meetings” of the district municipality.<sup>120</sup>

The Portfolio Committee for Provincial and Local Government has also recorded that some district municipalities were dissatisfied that they are graded the same as some of their constituent local municipalities.<sup>121</sup>

### 3.8.1 A question of size

The higher classification of a local municipality to that of the district municipality is often the product of the size of the local municipality. A large local municipality such as Mangaung (Bloemfontein) and Buffalo City (East London) would have more resources and skills than the district municipalities within which they are located.

Practice has shown that local municipalities that have strong towns resist cooperating with, the district authority. The Motheo District Municipality with the large population of Bloemfontein comprises of Mangaung Local Municipality, Mantsopa Local Municipality and Naledi Local Municipality. The District Municipality is a tenant of Mangaung Local Municipality, situated above a food chain store. The

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<sup>120</sup> Ms K. Choene: Motheo District Municipality, Free State (7 September 2005).

<sup>121</sup> Portfolio Committee 2003: 11.



main urban centre is Bloemfontein situated in Mangaung Local Municipality; the municipal building itself is termed “die glaskasteel”.<sup>122</sup>

Mangaung Municipality comprises the former administrations of Bloemfontein, Botshabelo and Thaba Nchu, including additional staff from the former Bloem Area District Council.<sup>123</sup>

The Mangaung Local Municipality and the Motheo District Municipality have entered into agency agreements for certain functional areas, where Mangaung has undertaken to perform the function on behalf of the district. In a few instances, the municipality lists certain functions as “performed without the necessary authority in terms of the MECs adjustments.”

The municipal manager of Motheo District Municipality,<sup>124</sup> in response to a question on the nature of the relationship between themselves and the local municipalities in the district,<sup>125</sup> said the following:

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<sup>122</sup> Refer **Figure 1**: Photograph by Janis Jordan.

<sup>123</sup> Mangaung Local Municipality Integrated Development Plan 2002-2007: 24.

<sup>124</sup> Mrs T. F. Kgosidintsi: Motheo District Municipality, Free State (7 September 2005).

<sup>125</sup> When I visited Motheo District Municipality, I passed the municipal office a few times as it was situated on the second floor, above a collection of fast food stores. I happened to find parking in front of Nandos, next to a Fire Engine. I was soon to find out that the Fire Engine had been purchased by the district municipality for Naledi Local Municipality. The sheer insignificance of a small, wooden, free-standing sign that read ‘Motheo District Municipality’ illustrated the true

“There is duplication of tasks. The district will open a centre, the province will open a centre in the next street and the local, Mangaung, will open a centre twice the size as both centres previously opened.

Mangaung is so big, it is almost bordering on being a Metro, in fact, they are so big, and we are their tenant. They are at least a City, that makes them sometimes forget, and also us, their constitutional role - that they are still a local and we are a district. They find it a joke for instance with the allocation of health services that have to be dealt with by districts, they laugh. We know we can't but we need to get into a service level agreement.

On the other side, the relationship that we have with Naledi is unhealthy. We tend to forget that they are a sphere, their highest authority is their council and we must not think for them just because we sign the cheques. With Mantsopa there is just the right mix they account to us but are assertive enough also. We are a dysfunctional family. If there is a council meeting, we feel privileged if we hear that Mangaung is coming, because we are nothing to them.”

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significance of the role of the district municipality; I also found out that the district municipality was in fact a tenant of Mangaung.

Naledi Local Municipality has been identified as one of the municipalities who can most benefit from Project Consolidate. The focus areas<sup>126</sup> are identified as: financial viability, effective management of service delivery infrastructure, resources mobilisation and the provision of housing and services.

The executive mayor of Motheo, Cllr K. Choene, had this to say in relation to their responsibility toward struggling Naledi,

“... we are assisting with upgrading of their landfill and we have got a budget to assist Naledi. We distributed our budget within Naledi and Mantsopa and we [managed] to pave all interlinking roads and have upgraded their roads with tar. We still have to discuss disaster management, but we have assisted Naledi and Mantsopa with training of volunteers and [purchased] two-way radios.”

It has thus come to be understood that a reference to high, medium or low capacity, is a reference to the level in the rung that municipalities are distinguished by. The measure of authority held by a municipal institution is therefore perceived as relative to financial viability and not its entrenched constitutional status.

### **3.9 OVERLORDING**

#### **3.9.1 The nature of Overlording**

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<sup>126</sup> As highlighted by SALGA on the briefing concerning the financial state of municipalities in



The relationship between district and local municipalities has often been defined as that of “big brother or sister” by the district municipality over that of its constituent local municipalities. Conflict arises when impetus is given to the sentiment that the two-tiered system of local government is hierarchical, and district level government amounts to a fourth sphere of government. This is best illustrated by the statements of a district municipal manager saying, “...we tend to forget that they are a sphere” and “...the relationship with Naledi is unhealthy...we must not think for them, just because we sign the cheques”.<sup>127</sup>

Local municipalities are not separate spheres. They do, however, fall within the sphere of local government that is distinguished from the national sphere and the provincial sphere of government.

The Portfolio Committee reported disenchantment with the two-tiered system in that certain local municipalities said: “we have doubts about the need for districts”. 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 recently, the forthcoming abolishment of the RSC levy has put further question marks behind district municipalities. A district municipal

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the Free State - Minutes for the Local Government and Administration Select Committee 2005.  
<sup>127</sup> Act 117 of 1998.

manager<sup>128</sup> noted that the Minister's announcement that RSC levies may be withdrawn from district municipalities was made too early. With the RSC levies constituting the bulk of district income, "the Minister's announcement," he said, "has 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."

### **3.9.2 The role of district municipalities**

There are two divergent views as to the role of district municipalities. The policy definition is to be found in the White Paper,<sup>129</sup> and legislated into section 83(3) of the MSA. The perceived view is outlined to illustrate the potential for conflict as a result of what has come to be termed "overlording".

#### **3.9.2.1 Policy definition of the role of the district municipality**

The White Paper, which embodies the policy conception of local government that informs legislation, defines the role and responsibilities of district government as follows: district-wide integrated development planning; the

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<sup>128</sup> Mr K. Mahlatsi: Metsimaholo Local Municipality, Free State (8 September 2005).

<sup>129</sup> Ministry of Provincial Affairs and Constitutional Development 1998.

provision of bulk services as required; capacity building of local municipalities and where there is inadequate administrative capacity, the provision of appropriate levels of municipal services.

These guiding principles were translated into section 83(3) of the MSA in the following manner: the district municipality “must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole”. These purposes may be defined as follows<sup>130</sup>:

- Integrated social and economic development: the development planning and services of the district must cohere; local municipalities should not pursue divergent or conflicting policies which can be to the detriment of those municipalities or the district.
- Sustainable social and economic development: the development of the district must be self-reliant and cost-effective through promoting bulk infrastructural development and services for the district as a whole and building capacity of local municipalities where such capacity is lacking.
- Equitable social and economic development: to promote the equitable distribution of resources between the local municipalities to ensure appropriate levels of municipal services within the district.

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<sup>130</sup> Steytler 2000 : 2.

The intended role of the district has come to be blurred. The perception is that there has been a shift from that of coordinator and capaciator to competitor of local government.

### 3.9.2.2 The perceived role of district municipalities

The redistribution of financial resources by the district municipality and the provision of services directly to the consumer, create the perception that the district municipality is indeed the bigger brother.

A district municipal councillor<sup>131</sup> said “there needs to be a big brother or sister” but “local municipalities insist that they are autonomous and refuse to acknowledge the district’s role.” The implication of financial instability of a local municipality for the role of the district municipality is clearly illustrated by the statement made by a district councillor, as reported by the Portfolio Committee,<sup>132</sup> saying “[poor] B’s (local municipalities) see us as their Messiah”. In addition, the manager for local government in the KwaZulu- Natal Department of Local Government and Traditional Affairs,<sup>133</sup> said that a local municipality “looks to the hand who feeds them, feeds them finance that is”.

#### **Comment:**

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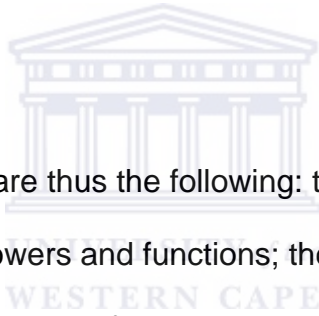
<sup>131</sup> Portfolio Committee 2003: 11.

<sup>132</sup> Portfolio Committee 2003: 11.

<sup>133</sup> Mr M. Staniland: Manager KwaZulu-Natal Department of Local Government and Traditional Affairs (27 October 2005).

It would be interesting to monitor the effect of revised grading by the National Treasury on conflict that results due to overlording. Renewed thinking is required to overcome misperceptions concerning a purely economic title like 'high capacity' and the perceived role of a district municipality. Perhaps the legal-politico concept of two-tiered local government has contributed to the misunderstanding of shared local government authority at district-local level. We are in the early stages of transition from three-tiered to three-sphered government and it would seem that some archaic legal-politico thinking remains constitutionally entrenched in two-tiered local government.

### **3.10 CONCLUSION**



The problem areas identified are thus the following: the division of powers and function; the shifting of powers and functions; the competition for resources; bureaucratic delay arising from the redistributive function of district municipalities; the lack of district accountability for services rendered by them; political strife within a party and between parties; status issues attributed to financial viability and overlording.

In order to achieve the aims as set out in this paper, each conflict needs to be weighed and sorted into those that the District Intergovernmental Forums are able to deal with and those that they are not.

Weighing and sorting of the identified conflict areas, can only be achieved by looking at the nature of the conflict. In order to determine their nature, we must determine the source of the conflict. In this regard, 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 others 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, many 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 delivery.

These three sources can be classed into two types, that is, a type that stems from *institutional regulation* and a type that stems from the *intergovernmental relationship* between them. Institutional regulation encompasses conflict caused by ambiguous national legislation and unclear allocation of functions and powers caused by the shifting of functions. Intergovernmental relations encompass all forms of conflict that is sourced from communication and interaction, or the lack thereof, between district and local municipalities.

It is shown in the next chapter that certain key areas of conflict cannot be addressed at the level of DIFs that are instituted for the promotion of co-operative government. Clear division and definition of functions and powers, for example, require an integrated and interspherical approach to the management of conflict like functional definition and shifting of powers and functions. The IGRFA anticipates the fact that not all areas for discussion falls within the bounds of section 26(1) of the Act; therefore it includes the 'referral clause' included in the spirit of a co-operative approach to matters of mutual interest.<sup>134</sup>

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<sup>134</sup> S26 (2) of Act 13 of 2005.

Given the firm entrenchment of district municipalities hitherto and the inclusion of the municipal institution in new legislation (the IGRFA), the sentiment expressed above, concerning the question of the need for district municipalities, only serves to illustrate the attitude of some local municipalities toward intergovernmental relations. The source of conflict is firmly embedded in intergovernmental relations between the municipalities themselves.



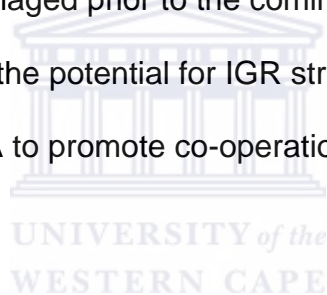


## **Chapter 4**

### **Towards facilitating co-operative relations between district and local municipalities**<sup>135</sup>

#### **4.1 INTRODUCTION**

The overview of intergovernmental relations that is to follow, suggests that forums have been failing to facilitate the co-operation of district and local municipalities to coordinate their constitutional mandates and achieve efficient service delivery. The aim of this section is, then, to examine how (1) district-local relations have been managed prior to the coming into force of the IGRFA<sup>136</sup> and, (2) to explore the potential for IGR structures that are institutionalized by the IGRFA to promote co-operation and achieve efficient service delivery.



#### **4.2 MANAGEMENT OF INTERGOVERNMENTAL RELATIONS PRIOR TO IGRFA**

The Department of Provincial and Local Government<sup>137</sup> in the process of developing the Intergovernmental Relations Framework Bill,<sup>138</sup> posed questions to the departments of local government in five provinces -

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<sup>135</sup> Much of the research in this chapter is extrapolated from a paper written by N. Steytler, C. Kirkby and Y. Fessha entitled *Status Quo Report on intergovernmental relations regarding local government*, unpublished paper, Community Law Centre, University of the Western Cape.

<sup>136</sup> Act 13 of 2005.

<sup>137</sup> DPLG 2004 : 1.

<sup>138</sup> B3B of 2005.

Mpumalanga, Gauteng, Free State, Western Cape, Eastern Cape and the North West. The questions were aimed at eliciting the following information:

1. The nature of IGR forums in the district
2. The nature of the membership and title of the forum
3. The terms of reference of the forum
4. Whether the forum had interlinking subsidiary bodies.

The study revealed that an impressive variety of intergovernmental structures has emerged. For the purposes of the current discussion, the common forums, their title and terms of reference are outlined below.

#### **4.2.1 District Advisory Forum<sup>139</sup>**



In the Western Cape District Advisory Forums (DAFs) were instituted in the Western Cape District.<sup>140</sup> The MEC established five DAFs, one forum in each of the five district municipalities in the Western Cape. The forums congregated the relevant mayors and municipal managers in a given district municipal area. These were instituted for the main purpose of assisting and advising the MEC on monitoring and supporting local government in the province.

The forum's terms of reference included advising the MEC on matters relating to

- local government operations in transition;

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<sup>139</sup> Mettler 2002: 12.

<sup>140</sup> Provincial Gazette 5384, Provincial Notice 79 - dated 9 March 2001.

- considering matters relating to the section 12 establishment notices;
- coordinating joint integrated development planning;
- advising the MEC on transfer of assets;
- staff liabilities and records;
- co-ordinating of service delivery measures;
- co-ordinating financial arrangements;
- co-ordinating the preparation of budgets;
- a forum for sharing of best practice;
- facilitating communication on, and formulating joint responses to, national and provincial policy and legislative processes; and
- considering matters referred to them by other forums and considering and request of the MEC.

Their purpose also included coordinating the smooth transition in 2000 to the new local government dispensation by seeking continuity in service delivery, coordinating the financial arrangements to support the new local government order.

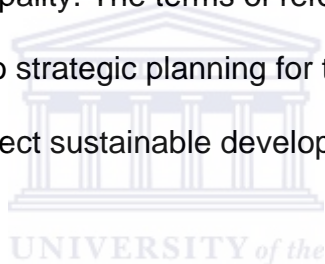
#### **4.2.2 District Mayor's Forum**

In the provinces District Mayors Forums (DMFs) were established to convene the political heads in a district municipal area. The membership to the DMF usually consisted of the district mayor and the local municipalities' mayors in the district.

The terms of reference of the DMF were to ensure that the new systems of local government were implemented in a coordinated manner. This encompassed a coordinated approach to integrated development planning, service delivery matters, budget planning, capacity building initiatives and the formulation of policy and communication on related matters.

#### **4.2.3 Municipal Manager's Forum**

The Municipal Managers Forum (MMF) comprised the chief executive officers in the district and created a platform for sharing of best practice that had been developed within each municipality. The terms of reference were focused on business, especially related to strategic planning for the whole region, plus service delivery in order to effect sustainable development.



The membership of the MMF comprised the municipal managers and other senior municipal officials of the district municipality and local municipalities in the district.

The Free State Province had Municipal Managers' Forums as a subsidiary forum of the Mayor's/ Speaker's Forums.<sup>141</sup> In KwaZulu-Natal three district municipalities created Municipal Managers Forum scheduled to meet at least four times per year.<sup>142</sup> In Mpumalanga, in the Gert Sibande District Municipality, for example, a Municipal Management Forum was formed.<sup>143</sup>

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<sup>141</sup> Steytler, Fessha & Kirkby 2004: 29.

<sup>142</sup> *Ibid* 31.

<sup>143</sup> *Ibid* 35.

Similarly, in Limpopo Province it was reported that Municipal Manager's Forums were instituted in Capricorn and Sekhukhune District Municipalities.<sup>144</sup>

#### **4.2.4 IDP Forum/ Focused Forums**

A wide variety of focus groups were established along the line functions in the district areas. An example of such a forum was the Integrated Development Planning forum, which comprised the responsible officials in the various municipalities. The terms of reference included consultation on and coordination of local IDPs with the district-wide IDP.

The membership consisted of the members in the IDP Departments in the district municipality and local municipalities. In some districts it included the manager of the Planning and Implementation Management Support Centre (PIMMS), a DPLG support structure.

It was common for an IDP Forum to have two subsidiary bodies – the IDP Steering Committee and the IDP Representative Forum. In addition, the IDP Forum was inter-sectorally aligned with municipal departments like corporate services.

Examples of IDP Forums were to be found in the North West Province and the Eastern Cape. In the North West they were generally called District

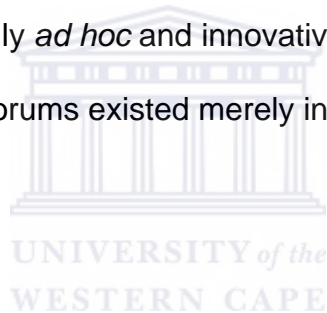
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<sup>144</sup> *Ibid* 37.

Development Forums. In the Eastern Cape Province, the name Local Economic Development Forum was preferred, under the umbrella of which integrated development planning was the central theme.<sup>145</sup>

### **4.3 THE EFFECTIVENESS OF IGR STRUCTURES PRIOR TO COMING INTO OPERATION OF THE ACT**

In general, committed meeting attendance was lacking contributing to ineffective use of the structures. A possible reason was that many forums were not creatures of statute. Some forums, although they were not formally regulated, were not necessarily *ad hoc* and innovatively formulated their own internal regulation.<sup>146</sup> Other forums existed merely in name and members lacked commitment to attend.



Some districts relied entirely on informal communication and were successful in achieving certain aims in comparison to other municipalities with IGR forums who struggled with inter-municipal strife and ultimate service delivery backlogs.

The success of an IGR forum is relative, in part, to the perception of effectiveness held by the members.

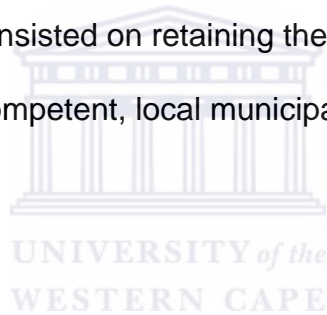
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<sup>145</sup> *Ibid* 27.

<sup>146</sup> As noted above Cacadu District Mayors' Forum was created with a constitution in 2003. By the internal regulation of meeting times, the members chose to attend meetings regularly.

Some members held that a talk shop or broken telephone had no material effect on development and progress in the district and that the district council serves the same purposes.

The perception that district municipalities have the role of a “big brother” in relation to the local municipalities also contributed to the lack of faith in the effectiveness of IGR structures. Rather, they were seen as forums for district municipalities to assert themselves. This notion was compounded by the fact that district mayors were usually appointed as chairperson and thus able to dictate the agenda. Conversely, in the instances where local municipalities had strong towns and the district insisted on retaining the leadership role, the stronger, more functionally competent, local municipality simply ignored the IGR forum.



Finally, the problem of proliferation in IGR structures and other specialized bodies, contributed to the overall lack of functionality of many forums, although not all. The lack in committed attendance, miscommunication, a top-down approach toward local development, misperceptions as to the effectiveness of the forums and the attitude that the forum is another platform for the district to assert itself in its relationship with local municipalities, collectively resulted in ineffective IGR structures.

#### 4.4 INSTITUTIONALIZED IGRFA STRUCTURES

Before promulgation of the IGRFA the overall purpose of intergovernmental forums was to facilitate the transformation of local government to the current dispensation. The challenges facing local government have now shifted to broader issues of local economic development and the coordination of shared functions and powers. The need for organization of and tailoring of the intergovernmental structures that were in place has become apparent in the light of the new challenges.

In addition, the significance of the IGRFA is further highlighted by the fact that it established the statutory entrenchment of informal structures with supporting guidelines and mechanisms to assist the new IGR structures across the board.

The Intergovernmental Relations Framework Act 13 of 2005 was signed into law by the President on 10 August and took effect on 15 August 2005. For local government the following must occur: at district level the district and local municipalities must convene a District Intergovernmental Forum “to promote and facilitate intergovernmental relations between the district municipality and the local municipalities”.<sup>147</sup> This forum must draft a protocol to structure and regulate the internal functioning. In other words, they must develop their own terms of reference.

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<sup>147</sup>S 24 Act 13 of 2005.



The composition of the forum is regulated by section 25. Its members are the district mayor, the mayors of the local municipalities in the district area and in the event of provincial intervention, the administrator of a municipality subject to an intervention.<sup>148</sup>

The district mayor, who is the chairperson, convenes meetings and sets the agenda.<sup>149</sup> An important provision regarding the meetings of DIFs is that a majority of the local municipalities in the district may submit a written request to the chairperson, to convene a meeting and include a particular matter for discussion.<sup>150</sup>

The discretion as to the frequency of meetings is left to the chairperson with one exception. The IGRFA requires that at least once per year the forum must be convened with “service providers and role players concerned with development in the district”.<sup>151</sup> Similarly this provision gives local municipalities, the leverage to insist on meeting regardless of conflict *inter se*.

In order to comply with the provisions of the IGRFA certain district municipal areas have reconstituted existing intergovernmental structures. In the Cacadu District Municipality, for example, the Intergovernmental Forum was modified in mid-2005 from the District Mayor’s Forum (DMF) to comply with the IGRFA. In an August 2005 meeting, the Forum rescinded the old DMF constitution and

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<sup>148</sup> S 139 Constitution.

<sup>149</sup> S 25 (2).

<sup>150</sup> S 27.

<sup>151</sup> S 27 (5).

adopted the new “Rules to Govern the Internal Procedures of the Cacadu District and Local Intergovernmental Forum”.<sup>152</sup>

#### **4.5 CONCLUSION**

A fact that holds true for intergovernmental structures created before and after the IGRFA is that a willingness to co-operate politically is an integral part of co-operative government. Co-operative government can only be achieved with political motivation and the duty arising out of holding public office to prioritise the aims of local government above that of local politics.

The IGRFA thus includes elements necessary to overcome the challenges faced by pre-IGRFA *fora*, including the following: integrated linkages between national, provincial and local intergovernmental structures; and determining of their own internal regulation including a dispute resolution mechanism. As noted above, the only matter an Act cannot predetermine or prescribe is the commitment of individuals and organized persons to make forums work efficiently and constructively.

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<sup>152</sup> Minutes of *Cacadu* Intergovernmental Forum meeting (22 April and 10 August 2005).

## **Chapter 5**

### **Challenges facing District Intergovernmental Forums**

#### **5.1 ADDRESSING INTERGOVERNMENTAL CONFLICT**

At the outset of this paper, two objectives were outlined: firstly, to identify key areas of conflict affecting co-operative relations between district and local municipalities and, secondly, to assess whether the IGRF Act could address such conflict areas.

Chapter Three addressed the first of these objectives. Two questions must be asked in addressing these objectives, firstly, what is the nature of the conflict areas identified and secondly, given the nature of the key areas of conflict identified, can district IGR *fora* address the type of conflicts raised?

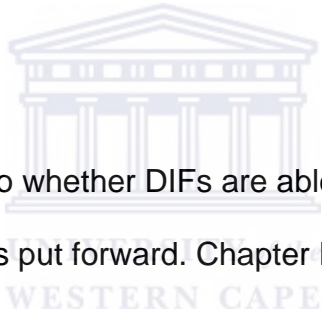
##### **5.1.1 The nature of the conflict areas identified**

Three sources of conflict were identified in Chapter Three and these sources were then classified into two types of conflict situations. The first type of conflicts can be termed *institutional regulation*. The conflict areas that fall within this type are: the division of powers and functions; the shifting of functions and powers between district and local municipalities; the competition for resources and the distributive function of district municipalities. These areas of conflict are

sourced mainly from ambiguous national policy and uncertainty that stems from the shifting of powers and functions between district and local municipalities.

The second type of conflict includes those conflict areas that stem from among municipalities themselves, thus termed *intergovernmental relationship*. The conflict areas that can be included in this type are: a lack in district accountability for services rendered; political differences; status misperceptions and overlording.

### **5.1.2 The scope of District Intergovernmental Relations Forums in addressing conflict**



In answer to the question as to whether DIFs are able to address a particular type of conflict, the following is put forward. Chapter Four above outlines the roles and the nature of DIFs. In general, their role is to serve as a consultative forum for the district municipality and the local municipalities in the district, and to discuss and consult each other on matters of mutual interest.

The Oxford English Dictionary defines *mutual* as “experienced or done by each of two or more parties towards the other or others” and *interest* as “a subject in which one is concerned or a group having a common concern as it relates to politics”. The Act provides some definitional guidance to the meaning of “matters of mutual interest” by including some matters that the forums must

discuss.<sup>153</sup> In addition, the Act also provides for “any other matters of strategic importance which affect the interests of the municipalities in the district”.<sup>154</sup> The effect of this provision is that the scope of a DIF to deal with matters of mutual interest is extended to include any matter that impacts on district-wide governance.

Table 5 below divides the conflict areas that fall within the function of a DIF as outlined in section 26(1) and those which do not.

<b>Table 5: Resolution of conflict at the level of district intergovernmental forums</b>	
<b>Conflict resolution at the level of DIFS for the following areas:</b>	<b>Conflict resolution beyond the scope and capability of DIFS include the following:</b>
1. bureaucratic delay	1. the division of powers and functions
2. lack of public awareness as to district responsibility for services	2. the shifting of powers and functions
3. political strife	3. the competition for resources
4. the perception of status attributed to financial viability	
5. overlording	

#### 5.1.2.1 Dealing with Bureaucratic Delay

One of the roles of a DIF is to address the implementation of national and provincial policy and legislation.<sup>155</sup> This section makes provision for discussion and consultation in the DIF for the fast tracking of the processing of funds or

<sup>153</sup> S 26 (1).

the platform for establishing reasons for the bureaucratic delay and possibly the formulation of a more efficient inter-municipal resolution or recommendation in terms of agreed procedures in this regard.<sup>156</sup> Secondly, a more general role of a DIF is to address the provision of services in the district.<sup>157</sup> The acquisition of necessary financial resources in order to fulfill obligations like service provision brings the resolution of the conflict termed bureaucratic delay, within the realm of DIFs.

5.1.2.2 Dealing with the lack of public awareness as to district responsibility for services

This conflict area is interwoven with the provision of services and thus falls squarely within the role of a DIF which includes matters of mutual interest pertaining to the provision of services in the district.<sup>158</sup>

A DIF is thus able to address the conflict area by mutual consent between district and local municipalities to disclose the responsible authority in respect of invoices or statements sent to service end users; by agreeing to circulate leaflets and advertise the service provider at distribution points. Beside marketing the original service provider, administration could be arranged in such a manner as to indicate that payment for services are made to the direct

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<sup>154</sup> S 26 (1)(h).

<sup>155</sup> S 26 (1)(b).

<sup>156</sup> S 32 (2).

<sup>157</sup> S 26 (1)(e).

<sup>158</sup> S 26 (1)(e).

service provider – such an agreement could be reached at the level of a DIF with a resultant implementation protocol to guide the way forward.

### 5.1.2.3 Dealing with political strife

Consulting each other on matters of mutual interest fosters co-operation between district and local municipalities. Strife and political conflicts are dispelled by the implementation of mutual support as legislated in the MSA – local and district municipalities are compelled to co-operate by assisting and supporting one another, be it by means of financial, administrative or technical support.<sup>159</sup> As such, the role of a DIF in so far as it pertains to coherent planning<sup>160</sup> and the co-ordination of strategies<sup>161</sup> is aimed at circumventing political strife by way of political compromise and the prioritization of district-wide needs by means of negotiation.

Political strife is best addressed in DIFs given the composition, representation and the fact that they formulate their own terms of reference. The terms of reference, therefore, should embody the principles of co-operative government and intergovernmental relations as stipulated in the Constitution.<sup>162</sup>

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<sup>159</sup> S 88 of Act 117 of 1998.

<sup>160</sup> S 26 (1)(f).

<sup>161</sup> S 26 (1)(g).

<sup>162</sup> S 41 (1) Constitution.

The DIF is ideally situated, therefore, as a forum where political differences can be discussed and where for the sake of the district as a whole, political differences could take second place to district wide priorities.

#### 5.1.2.4 Dealing with the perception of status attributed to financial viability

A consultative forum like a DIF is an ideal platform for clearing such misperception as to a municipality's ability to govern as opposed to fulfillment of national requirements in terms of a particular piece of legislation. It is thus submitted that this cause of conflict falls within "matters of mutual interest".

#### 5.1.2.5 Dealing with overlording



The underlying cause of this form of conflict is a misunderstanding of shared local government and the flawed opinion that it is hierarchical. There is no better platform to dispel such misunderstanding than in a DIF. The very intention behind the formation of a DIF is that parties thereto carry equal weight in matters affecting the district as a whole and each be consulted accordingly.

#### 5.1.2.6 Dealing with the competition for resources

Intergovernmental transfers are effected by National Treasury in accordance with the Division of Revenue Act (DoRA) each year. The national legislature thus allocates a percentage of revenue raised nationally in the form of the



equitable share and conditional grants to local government. Decision-making authority in matters pertaining to the allocation of financial resources, in sum, does not sit at the level of district forums. It is this fact alone that places conflict resolution in matters pertaining to competition for resources outside the realm of DIFs as far as intergovernmental transfers are concerned.

#### 5.1.2.7 Dealing with the division of powers and functions

The Municipal Structures Act divides local government functions and powers between district and local municipalities. This division includes delimitation or listing and definition of powers and functions.<sup>163</sup> The delimitation or listing of powers and functions, allocated in national legislation, to local and district municipalities, falls outside the role and function of a DIF.

As a consultative forum, DIFs are powerless to remedy ambiguities in the law and the methods used to confer district or local powers and functions. The executive power of a DIF extends as far as the drafting of an implementation protocol which serves as a political contract between the two tiers of local government. The measure of success in implementation of ambiguous legislation is thus relative to the ability of a particular DIF to reach consensus, the ambiguity remains in law.

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<sup>163</sup> See 3.2 above

#### 5.1.2.8 Dealing with the shifting of powers and functions

Among the consequences that flow from the exercise of executive power concerning the re-allocation of functions and powers to district and local municipalities, the main concern is the lack of certainty as to who is performing what function at any given time. A DIF is unable to provide functional clarity because the authority to decide on the shifting of functions falls outside of this body. Conflict resolution in this regard falls within the realm of the Premier's Intergovernmental Forum or a particular provincial intergovernmental forum.<sup>164</sup>

However, the DIF is able to address the shifting of powers and functions if the matter arises in the Premier's Intergovernmental Forum and is referred to a DIF for discussion because it affects the district.<sup>165</sup> In addition, the need for shifting of powers and functions should be circumvented in future, due to the mandate of support issued by section 88 of the Structures Act and on this basis a DIF is able to address a problem that arises concerning mutual support.<sup>166</sup>

#### **5.1.3 Conclusion**

In section 24, the IGRFA states that the role of District Intergovernmental Forums is "to promote and facilitate intergovernmental relations between the district municipality and the local municipalities in the district." Given the broad

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<sup>164</sup> S 26 (2) of Act 13 of 2005.

<sup>165</sup> S 26 (1)(c) of Act 13 of 2005.

<sup>166</sup> S 26 (1)(d).

role allocation, could *effective* management of district-local relations occur at the level of DIFs?

It has been suggested above, that DIFs are best situated to address intergovernmental conflicts derived from district-local relations themselves and are able to effect substantive processes in executing decisions made - given the composition, representation and the formulation of its own terms of reference. In other words, the IGRFA empowers intergovernmental forums, although not an executive decision-making body, to adopt resolutions or make recommendations based on agreed procedures to deal with issues pertinent to the intergovernmental relationship.<sup>167</sup>

The difficulties in the *intergovernmental relationship* between district and local municipalities, in general, has been ascribed to teething problems in the roll-out of the third phase in the transition of local government and poor communication among the district municipality and the local municipalities therein. In this regard, the implementers of new local government legislation require some tolerance and patience. Assistance and not persistence is required from national departments for compliance and the political wisdom to use the platforms for co-operation constructively.

The broad umbrella principles of co-operative government and intergovernmental relations, for example, the fostering of friendly relations,

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<sup>167</sup> S 32 (2).

encompass general courtesies that should eradicate poor communication and bad relations that result in conflict.<sup>168</sup>

The DIFs will not be able to deal with all the difficulties that beset district-local relations where they arise from institutional regulation. These matters can only be addressed at a provincial and national level and may require legislative intervention.

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<sup>168</sup> S 41 (1) Constitution.

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## APPENDICES

### **Appendix 1:**

Table of interviews conducted

<b>Date</b>	<b>Province</b>	<b>Municipality</b>	<b>Interviewee</b>
16 August 2005	Western Cape	Eden (District)	Municipal Manager: <i>Mr Lott</i>  Manager of Tourism/Former Mayor: <i>Mr A. Lamont</i>
16 August 2005	Western Cape	Hesseqa (Local)	Municipal Manager: <i>Mr J.Jacobs</i>
12 February 2006	Western Cape	Cape Winelands (District)	Municipal Manager: <i>Mr K. Chetty</i>
15 August 2005	Western Cape	Swellendam (Local)	Manager of Corporate Services: <i>Mr K. Gordon</i>

7 September 2005	Free State	Motheo (District)	Executive Mayor: <i>Ms K. Choene</i>  Municipal Manager: <i>Ms T.F.</i> <i>Kgosidintsi</i>
8 September 2005	Free State	Northern Free State (District)	Municipal Manager: <i>Mr B.</i> <i>Molotsi</i>
7 September 2005	Free State	Mangaung (Local)	City Manager: <i>Mr</i> <i>M. Matole</i>
7 September 2005	Free State	Moqhaka (Local)	Mayor: <i>Mr</i> <i>Lebona</i>  Manager of Corporate Services: <i>Mr V.</i> <i>Senkhane</i>
8 September 2005	Free State	Metsimaholo (Local)	Municipal Manager: <i>Mr K.</i> <i>Mahlatsi</i>

**Appendix 2:**

Priority 1 functions so termed by the Municipal Demarcation Board

<b>Table : PRIORITY 1 FUNCTIONS</b>	
Cemeteries	
Electricity reticulation	
Firefighting	
Municipal health services	
Municipal planning	
Municipal roads	
Refuse removal	
Sanitation	
Storm water drainage	
Traffic and parking	
Water (potable)	



### **Appendix 3:**

The 42 district municipalities are tabulated below on a provincial basis.

<i>Table 1: Provincial listing of District Municipalities</i>		
<b>Province</b>	<b>Number of District Municipalities</b>	<b>The Names of the District Municipalities</b>
Western Cape	5	Cape Winelands DM Central Karoo DM Eden DM Overberg DM West Coast DM
Northern Cape	4	Frances Baard DM Karoo DM Namakwa DM Siyanda DM
Eastern Cape	6	Alfred Nzo DM Amathole DM Cacadu DM Chris Hani DM O.R. Tambo

		Ukhahlamba DM
Free State	5	Lejweleputswa DM Motheo DM Northern Free State DM Thabo Mofutsanyana DM Xhariep DM
KwaZulu-Natal	10	Amajuba DM Ilembe DM Ugu DM Umgungundlovu DM Umkhanyakude DM Umzinyathi DM Uthukela DM Uthungulu DM Zululand DM Sisonke DM
Mpumalanga	3	Ehlanzeni DM Gert Sibande DM Nkangala DM
Limpopo	4	Capricorn DM Mopani DM Vhembe DM Waterberg DM

North West	4	Bojanala DM Bophirima DM Central DM Southern DM
Gauteng	1	Sedibeng DM
<i>Source: MDB Report 2005:16</i>		

#### **Appendix 4**

Capital expenditure comparison of the three categories of municipality for 2003-2004

Table 4: Budgets by category of municipality, 2003-04					
R million	Operating	Capital	Total	Percentage of total Operating Capital	
Category A (Metros)	42 677	7 889	50 565	84.4%	15.6%
Category B (Local)	23 905	6 286	30 190	79.2%	20.8%
Category C (District)	2 705	2 513	5218	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>
<i>Source: National Treasury 2004, page 23</i>					