

District municipalities: Giving effect to shared authority in local government

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1 INTRODUCTION

A new feature of local government outside metropolitan areas is the establishment of 47 district municipalities in December 2000. They share legislative and administrative powers with local municipalities in their area. Overlapping local government powers structures is not unknown in South Africa or elsewhere in the world. During South Africa's interim phase of local government transformation between 1995 and 2000, a two tier metropolitan system was established where both the metropolitan councils and a number of metropolitan sub-councils enjoyed jurisdiction in the same metropolitan area. Two-tier local government is also a feature in countries such as the United States, India, Germany and Spain.

As shared authority in local government in non-metropolitan areas is new in South Africa, it poses a number of theoretical and practical problems. What are the roles and functions of a district municipality? How do they relate to local municipalities? How can legislative and executive authority effectively and efficiently be shared? In the first part of this paper the model underlying district municipalities' powers and functions is examined. Thereafter the evolution of the system in practice is described. Finally, the implications of the new system for local municipalities and provinces are assessed.

2 ROLE AND FUNCTION OF DISTRICT MUNICIPALITIES

Shared authority in local government was first introduced in the 1996 Constitution.¹ While the references in the Constitution to municipalities that shared authority in the same area, are brief, the concept was further elaborated in the *White Paper on Local Government*² (hereafter the *White Paper*) that was issued in March 1998. By the end of that year, the vision of the *White Paper* was concretised in the Local Government: Municipal Structures Act (hereafter the MSA 1998).³ However, even before the new

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

2 Ministry of Provincial Affairs and Constitutional Development 1998 *White Paper on Local Government* Pretoria: Department of Provincial and Local Government.

3 Local Government: Municipal Structures Act 117 of 1998. See Steytler 2000.

system of district and local municipalities came into being on 5 December 2000 with the election of the new councils, amendments to the MSA 1998⁴ made some important changes to the original vision. However, the status quo was maintained for a transition period ending in July 2003.

It will be argued that the model that is emerging is one that sees district municipalities, in the main, as direct service providers, deviating considerably from their original conception as coordinators and supporters of, and equalisers between, local municipalities. This model is, however, place-sensitive: the district municipality need not, in the end, reflect the model articulated in the legislation but is predicated on the executive assessment of capacity.

2.1 Constitutional framework – equitable and sustainable service delivery

In the constitutional text that was adopted on 8 May 1996 by the Constitutional Assembly, section 155(1) provided 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”. When the Constitutional Court reviewed this provision in the *First Certification Judgment*⁵ it found that Chapter 7 dealing with local government did not comply with Constitutional Principle XXIV. This principle read as follows:

A framework for local government powers, functions and structures shall be set out in the Constitution. The comprehensive powers, functions and other features of local government shall be set out in the parliamentary statutes or in provincial legislation or in both.

The Court held that:

At the very least, the requirement of the a framework for LG (Local Government) structures necessitates the setting out in the NT (New Text) of the different categories of LG that can be established by the provinces and a framework for their structures. In the NT, the only type of LG and LG structure referred to is the municipality. In our view this is insufficient to comply with the requirements of the CP XXIV.⁶

The amended text, adopted on 11 October 1996, contained three categories of municipalities – A, B and C. While category A was a self-standing municipality, “shared” local authority was created for the areas falling outside category A municipal areas (metropolitan areas). Section 155(1)(b) states that a category B municipality is “a municipality that *shares* municipal executive and legislative authority in its area with a category C municipality within whose area it falls”.⁷ This means that a category B municipality shares its powers and functions, as listed in Parts B of Schedules 4 and 5, with a category C municipality. In contrast, a category

4 Municipal Structures Amendment Act 33 of 2000 (the MSAA 2000).

5 *In re: Certification of the Constitution of the Republic of South Africa 1996 1996* (10) BCLR 1253 (CC).

6 *Ibid* par 301.

7 S 155(1)(b) of the Constitution.

C municipality is defined as "a municipality that has municipal executive and legislative authority in an area that includes more than one municipality".⁸ In subsequent legislation category B municipalities are termed 'local municipalities' and the category C municipalities, 'district municipalities'. A district municipality is thus composed of a number of local municipalities.

The Constitution leaves the division of authority between category B and C municipalities to Parliament. Section 155(3)(c) provides that national legislation must "make provision for an appropriate division of powers and functions between municipalities when an area has municipalities of both category B and category C".

Three sets of criteria are provided to give effect to the "appropriate division" of powers and functions. First, the division is subject to section 229 of the Constitution that provides a set of criteria for the division of fiscal powers. Second, section 155(4) provides that the national legislation "must take into account the need to provide municipal services on an equitable and sustainable manner". Third, the division can be asymmetrical; the powers of B municipalities within a C municipality need not all be the same.⁹

The broad and imprecise criteria of equitable and sustainable service delivery in terms of section 155(4) must be interpreted in the context of the Constitution. The term "equitable" means that the allocation of resources is according to need: the redistribution of services from well-served areas to those that are under-served.¹⁰ The reference to "sustainable" services, also an object of local government listed in section 151, is to ensure service delivery based on a municipality's capacity to finance such services from its own funds. The explicit purposes of a district municipality can thus be described as follows:

- (a) in order to meet the basic needs of the community, it must ensure that services are provided throughout the district on an equitable manner, that is, according to need; and
- (b) it must ensure that services are provided in a sustainable manner, that is, that the consumers of services can afford them and the supplier can provide them within its own means on an ongoing basis.

These purposes can also be expressed as follows: a district municipality must, first, redistribute resources within a district according to need; second, assist and capacitate local municipalities to enable them to provide, and sustain the provision of, services in their areas; and third, promote economic development in the district because sustainability of service provision (as well as the general well-being of the inhabitants) is dependent on a productive local economy.

8 *Ibid* s 155(1)(c).

9 *Ibid* s 155(3)(c).

10 See use of the term "equitable" in s 214 (equitable share of revenue raised nationally) and s 236 (provision of public funding to political parties on "an equitable and proportional basis"). For the latter, see Steytler 1998.

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

Since the objective of democratic and accountable government is best pursued through local municipalities because they are closer to the people, the district municipality is not meant to dominate local municipalities. The overall objective of the district municipality is therefore succinctly described by the Constitutional Court in the *Second Certification Judgment* as the performance of "coordinating functions".¹¹

2.2 The *White Paper on Local Government: Coordination, support and equalisation*

In giving flesh to these "coordinating functions", the *White Paper* clearly articulated the purposes that district municipalities should pursue as well as the outcomes that they should achieve. Their purposes can be summarised as follows:¹²

- to build local municipalities where there is no capacity;
- to initiate the economic development of the district;
- to plan land use in the district; and
- to provide for the basic needs of people living in deprived areas.

Pursuing these four purposes, district municipalities must produce outcomes that are of two kinds: those that must be produced as a matter of course and those that are driven by need or demand.

The first outcome that must be achieved is integrated development planning for the district as a whole. This is effected by:

- harmonising and rationalising local municipalities' integrated development plans (IDPs) with regard to land use planning, economic planning and development and transport planning;
- effecting vertical communication between national and provincial departments and local municipalities with regard to the other spheres' development programmes;
- promoting economic development through information distribution, training, etc.

The second general outcome is development of the district's bulk infrastructure.

The need- or demand-driven outcomes include the following:

First, bulk services such as waste water and sewerage are provided directly to local municipalities.

11 *In re: Certification of the Amended Text of the Constitution of the Republic of South Africa*, 1996 1997 (1) BCLR 1 (CC) par 77.

12 *White Paper*, 69–72.

Second, technical assistance is provided to local municipalities through:

- sharing of equipment;
- development of co-operative relations between local municipalities;
- planning and legal services; and
- financial management.

Third, municipal services are provided directly both to local municipalities in need of some services, and to areas in need of all services where low population density precludes the establishment of a local municipality.

The vision of a district municipality that the *White Paper* portrays is as a coordinator, an initiator of development and, only as a last resort, a provider of services directly to the public.

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

The MSA 1998, as initially enacted, by and large gave effect to the overall objectives, purposes and outcomes identified in the *White Paper*.¹³ However, a significant shift occurred in the Municipal Structures Amendment Act of 2000 (hereafter the MSAA 2000), transforming the district municipality from a coordinator and provider of bulk services to a regular end-user service provider. The vision underpinning the original MSA 1998 will first be discussed before turning to the changes effected by the MSAA 2000.

Section 83(3) lists the purposes of a district municipality as follows: it “must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole”. These purposes can be described as follows: First, with regard to integrated social and economic development, the development planning and services of the district must cohere. Local municipalities should not pursue divergent or conflicting policies that could be to the detriment to the district as a whole. Second, with regard to sustainable social and economic development, the development of the district must be sustainable through promoting bulk infrastructural development and services for the district as a whole, and building the capacity of local municipalities where it is lacking. Third, with regard to equitable social and economic development, the equitable distribution of resources between the local municipalities must be promoted to ensure appropriate levels of municipal services within the area.

Specific outcomes that a district municipality must achieve to further the above purposes can be gleaned from the functions and powers listed in section 84(1) of the Act.

2.3.1 *Integrated development*

In order to effect *integrated development*, there must be an IDP for the district as a whole, which includes a framework for IDPs for the local municipalities.¹⁴

¹³ See De Visser 1999: 10.

¹⁴ MSA 1998 s 84(1)(a).

2.3.2 Sustainable development

In order to effect *sustainable development*, the following outcomes should be achieved:

- Infrastructure is developed in the district for the bulk supply of water, electricity and sewerage. Through the development of infrastructure, cost-efficient supplies and services can be provided.
- Bulk supply of water, electricity and sewerage is directly provided to local municipalities. The economies of scale of bulk supply make for cost-effectiveness and thus affordability.
- The capacity of local municipalities is built, where such capacity is lacking. This can be effected by a number of means. A local municipality may request financial, technical and administrative support.
- Roads that form an integral part of the road transport system of the district as a whole must be maintained, constructed etc. Key to the economic development of the district is the efficient movement of goods and people within the district.
- The passenger transport services must be regulated on a district-wide basis to ensure the integration of the district's economy.
- The airports that serve the district's transport needs must be regulated and managed in the interest of the district as a whole. Airports are important both for intra-district, where the district is large, but more probably, inter-district and inter-provincial communication.
- The district's economy is developed through the promotion of local tourism in the district as a whole.
- The district's economy is developed through the establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the district. The main source of income in many non-metropolitan areas is agriculture. The economies of the local municipalities will benefit from an effective and efficient sale of agricultural produce.

2.3.3 Equitable development

In order to effect *equitable development*, there should be the following services, at an appropriate level, throughout the district:

- potable water supply system;
- electricity supply;
- domestic waste water and sewage disposal system;
- solid waste disposal sites;
- municipal health services;
- fire fighting services; and
- cemeteries and crematoria.

The focus here is on the direct delivery of these services in thinly populated areas, called district management areas, which fall outside the jurisdiction of local municipalities.

Finally, grants received from the national or provincial government must be distributed to local municipalities in need.

As in the *White Paper*, the district municipality is seen as the coordinator of the district, providing bulk supply of services, promoting social and economic development, and seeing to the equitable distribution of services. It is only a direct service provider in the case of need, as exemplified in the district management areas.

2.3.4 *Definition of powers and functions*

In section 84 of the MSA 1998, the local government competencies, listed in Schedules 4B and 5B of the Constitution, are divided between district and local municipalities. The method used is to list all the functions and powers of district municipalities and leave the residue of the Schedule 4B and 5B competencies to the local municipalities. Section 84(1) thus dissects and allocates some of them to district municipalities.

Defining the powers of the two categories of municipalities that share executive and legislative authority in the same area is a complex matter that may easily lead to confusion and conflict. Sufficient clarity is needed to guide municipalities in what they may or may not do. In the 2000 amendment to the MSA 1998 further clarity was sought on a number of issues. The current formulation of the division of functions and powers can be appreciated in the context of the original formulations.

The functions and powers of district municipalities were described in three ways: first, they could provide bulk supply of the water, electricity and sewerage to meet the needs of "a significant proportion of municipalities in the district". Second, they could supply services for the district as a whole (solid waste disposal sites, municipal roads, airports, fire fighting, fresh produce markets and abattoirs, cemeteries and crematoria). Third, they could regulate passenger transport services and promote local tourism for the area of the district municipality.

The functions and powers of a district municipality were thus circumscribed first, by the substantive matter they deal with, and second, by their territorial scope or ambit of application (be it for a significant proportion of the municipalities in the district or for the area of the district as a whole). Only passenger transport services were not qualified with regard to scope.

The substantive areas listed in section 84(1) defined, in broad strokes, the functional areas of district municipalities. They were defined in a similar way to the functional areas listed in Schedules 4B and 5B of the Constitution. Because the functions and powers were described in section 84(1) in such a cryptic fashion, they could give rise to problems of interpretation in practice. The inadequacy of the definitions is apparent when they are compared with the way in which similar powers and duties of metropolitan councils were defined in Schedules 2 and 2A of the Local Government Transition Act (LGTA) of 1993, which listed the powers and functions in the two-level metropolitan government structures.

The equally difficult qualification of district municipalities' functions was the ambit or scope of the substantive areas. The question is whether the phrase "that affects a significant number of local municipalities" limits the functions and powers of a district municipality to provide the bulk supply of water, electricity and sewerage. Was this phrase capable of delineating *ultra vires* conduct with any accuracy? The phrase would thus appear to impose neither an upper nor a lower limit on the provision of bulk supply of water, electricity or sewerage. The conclusion was that the phrase "that affects a significant proportion of municipalities in the district" had no operative meaning insofar as circumscribing the powers of a district municipality is concerned. Because of the inherent uncertainty of the phrase, it had the capacity to generate confusion. Moreover, its legal significance was marginal. There were thus calls from provincial administrations for its deletion.¹⁵

The phrase "for the area of the district municipality as a whole" posed similar operational problems. Did it impose any qualifications on that power? For example, if a district municipality acted within the functional area of solid waste sites, did it mean that it could only do so if and when it provided sites serving the area of the district municipality as a whole? In other words, it could not do less than provide a particular service for the entire district area. Because of the uncertain value or significance of this phrase, there were also calls for its deletion.¹⁶

2.4 Municipal Structures Amendment Act 33 of 2000 – changing course

The MSA 2000, effected shortly before the municipal elections in December 2000 that heralded the new local dispensation, radically changed the role of the district municipalities.¹⁷ In an astounding shift in policy and conception, district municipalities were, to the exclusion of local municipalities, made responsible for:

- potable water supply systems;
- bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity;
- domestic waste water and sewage disposal systems; and
- municipal health services.

Accompanying these allocations was the provision that the national Minister of Provincial and Local Government may shift the functions back to local municipalities.

In introducing the legislation in Parliament, the argument that the Department of Provincial and Local Government advanced at the Portfolio Committee on Local Government was that these functions are not necessarily

15 From MSA 1998 s 84(1)(b), (c) and (d).

16 From MSA 1998 s 84(1)(e), (f), (h), (i), (j), (k), and (l).

17 See Steytler & De Visser 2000: 14.

best performed by district municipalities, but that the appropriate distribution of these functions is best decided by the national line departments. The Department conceded that it, even as the lead department with regard to local government as a whole, was not the appropriate institution to make policy and legislation in these areas. The line Departments insisted that they determine these policies. In most of these functional areas there is not yet national legislation or policy. These provisions can thus be seen as a holding operation until such legislation and policy have been formulated.

The amendment also sought to define some district functions with greater clarity. For example, solid waste disposal sites are a district responsibility insofar 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”.¹⁸

The definition emphasises both the role of districts of standard setting and coordination as well as that of the bulk supplier to effect economies of scale. A similar approach has been followed in defining electricity and fire fighting services.

By removing the ambiguous phrase “affect a significant proportion of municipalities” with reference to water, electricity and sewage, the entire responsibility was placed on district municipalities.

The new definition also removed the qualification “serving the area of the district as a whole”. Instead it qualified the power to deal with waste disposal with reference to more than one local municipality in the district. Whereas district cemeteries and crematoria originally had to serve the entire district as a whole, the new definition sets a more realistic standard; the facilities must serve “the area of a major proportion of municipalities in the district”.¹⁹ The same standard is applied to fresh produce markets and abattoirs.

2.5 Comment

The MSA 2000 not only threw the carefully constructed vision of the *White Paper* and the MSA 1998 into disarray, but also brought in uncertainty regarding where responsibility lies for the provision of basic services. Water, electricity, sewage and health services are core grassroots municipal functions and belong at the lowest level of government – local municipalities. Apart from the dire consequences of removing the income generating services from local municipalities, this allocation creates a democratic distance between the service provider and the consumers.

¹⁸ MSA 2000 s 6(e).

¹⁹ *Ibid.*

While a considerable debate raged regarding the appropriate division of powers and functions between district and local municipalities, and capturing the division in section 84 of the MSA 1998, the MSA 1998 at the same time allowed for the asymmetrical division of powers and functions. Through executive action the national or provincial government could shift functions between municipalities. This became imperative with the allocation of the service functions to district municipalities towards the end of 2000; there would otherwise be a total mismatch between functions and powers and the capacity to perform them.

3 PLACE-SENSITIVE POWERS AND FUNCTIONS

The MSA 1998 contemplates that there could be a mismatch between the functions and powers of a district and a local municipality and its ability to perform those functions and exercise those powers. This mismatch may vary from one local government to the next within the same district. In addition to the two existing ways in which the division of powers can be adjusted to ensure a fit between functions and powers and capacity, the MSAA of 2000 added a further two.

3.1 Temporary authorisations by MEC

To deal with the problem that a district or a local municipality may not be able to fulfil a specific function allocated to it in terms of section 84 (other than those relating to water, electricity, sewage and health services), the provincial government may, during a two-year transitional period after the December 2000 elections, temporarily authorise either the district or the local municipality, as the case may be, to perform that function which has not been allocated to it.³⁰ The responsible Member of the Provincial Executive Council (MEC) may issue such an authorisation if the following requirements are met:

- the district or local municipality cannot or does not perform a function, or, if for any other reason, it is necessary to ensure the continued performance of the function in that area; and
- the Demarcation Board has recommended the authorisation.

If the MEC does not agree with the Board's recommendation, the Minister of Provincial and Local Government may override the decision of the MEC.

The effect of authorisations is that the district or local municipality does not lose the function: the authorisation merely allows another municipality to also perform it. Where an authorisation is issued, the MEC must also regulate the legal and practical consequences thereof, which may include the transfer of staff and of assets and liabilities. The authorisation is effected by notice in the *Provincial Gazette*.

³⁰ *Ibid* s 18.

3.2 Adjustments of division by MEC

Section 85 provided that the MEC may adjust the division of powers between district and local municipalities, as determined in section 84, on the following condition: where either the district or the local municipality does not have the capacity to perform a specific power, then the other municipality may be allocated that power. For example, if a local municipality cannot deal with air pollution, the MEC may allocate that function to the district. The MEC can only make such an adjustment on the recommendation of the Demarcation Board. It was initially thought that the Board would make such assessments before the establishment of new municipalities. In practice, however, it was impossible to assess the capacity of non-existing municipalities. Section 85 took effect only after the first elections. This means that an assessment of municipalities' capacity was to be done only after the new municipalities were established.

3.3 Temporary allocations by MEC

Where the provision of services by a local municipality collapses or is likely to collapse because of the municipality's lack of capacity, or for any other reason, the MEC may allocate with immediate effect any function and power to the district municipality that may be necessary to restore or maintain those basic services.²¹ This is a temporary allocation and the MEC must restore to the local municipality its function or power when it is in a position to resume provision of basic services.²²

3.4 Authorisation by the Minister of Provincial and Local Government

In terms of section 84(3) the allocation of the key functions relating to water, electricity, sewage and health services have become matters of national concern, falling under the supervision of the national Minister of Provincial and Local Government. A local municipality may be authorised by the national Minister to perform these functions.

The following process must be followed: First, the Minister must consult with the national cabinet minister responsible for the functional area in question (for example, the Minister of Water Affairs), and the MEC for local government in the province. Second, the authorisation must comply with national legislation that governs the functional area. Where an authorisation is issued, the Minister must also regulate the legal and practical consequences of it, which may include the transfer of staff and assets and liabilities. The authorisation is effected by notice in the *Government Gazette*.

21 MSA 1998 s 87(1). The reverse position also applies where the district municipality is the failed service provider.

22 *Ibid* s 87(4).

3.5 Practice

In December 2000 the Minister authorised local municipalities to continue performing these district functions for a two-and-a-half-year transition period, ending 30 June 2003.²³ In January 2003 the Minister revoked his previous authorisations and dealt with each of the four functional areas separately. With regard to the bulk supply of electricity the local municipalities will continue to provide the services until the national restructuring of the industry is completed.²⁴ Municipal health services have been defined as environmental health and are to be performed by the district municipalities. A district municipality may, however, request local municipalities to perform the function on its behalf.²⁵ The Minister dealt with water and sewage functions on a provincial basis, taking the particular circumstances of each into account. For example, all the local municipalities in Gauteng, Free State, Northern Cape and the Western Cape will continue to provide bulk water supply and sewage purification, while in the Eastern Cape only two local municipalities will do so. A similar pattern is apparent in KwaZulu-Natal; only the local municipalities that include Pietermaritzburg, Richards Bay and Newcastle will perform bulk water supply and sewage purification functions. In Limpopo the district municipalities retain authority over bulk water supply and sanitation except for the local municipalities in one district and the capital town of Polokwane. In Mpumalanga, local municipalities in three of the four districts will perform the water and sewage function, as will local municipalities in two districts in the North-West. In the Northern Cape local municipalities in only one district are authorised to perform the bulk water supply and sewage purification work functions. The new authorisation took effect on 1 July 2003.

On the establishment of the new municipalities the MECs sought to maintain the status quo for the other functions. The local municipalities were authorised to continue with the functions previously performed by the transitional local councils before December 2000. During the past 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.²⁶

3.6 Comment

A clear and consistent model of the allocation of functions and powers was not achieved. First, the theoretical model of the district becoming the major service provider to communities has not materialised in a number of provinces. The reality of capacity and resources made a consistent application of the new vision of district municipalities unfeasible. What has emerged is thus a very case specific construction of the powers and functions of district municipalities. This renders the system more complex

23 Maré 2003: 8.

24 See Johnson 2002: 7.

25 Maré 2003: 8.

26 Department of Provincial and Local Government 2001: 7.

to administer. It will result in different types of district and local municipalities. The large local municipalities retained most of their traditional powers and functions. The district municipalities will increasingly become the service providers in rural areas.

4 IMPLICATIONS OF DISTRICT MUNICIPALITIES ON LOCAL MUNICIPALITIES AND PROVINCES

When the initial conception of the district municipality was as a coordinator and the equitable distributor of resources, the locus of service delivery was the local municipality. The 2000 amendments shifted this focus by creating, on paper, strong districts municipalities with direct service delivery responsibilities. Although this has not happened consistently in practice, this shift in focus has important implications for district municipalities' intergovernmental relations with local municipalities as well as with provincial governments.

4.1 Implications for local municipalities

The new role of district municipalities has a number of repercussions for local municipalities. First, a democratic deficit may manifest itself. Local municipalities argue that they, with their system of wards and ward committees, will be held politically responsible for the delivery of basic services. Public demands will not be directed at the district council, miles away from the point of service delivery, but at the ward councillors in the local council, who cannot be held responsible. Conversely, if local municipalities do not provide essential services they will be perceived as empty shells, a perception that will impact negatively on democratic participation.

Second, the relationship between local and district councils is far from settled. With 60% of the seats in a district council occupied by local councillors, their interaction with the proportional representation councillors gives rise to interesting dynamics. As the functioning of district councils mature, the exchange between local and district councillors will be determined by where the political dominance lies. Evidence suggests that the relations between many local municipalities and their districts councils are far from satisfactory. With ambiguity in the division of powers, turf battles are inevitable. In KwaZulu-Natal, conflict is further exacerbated where in some instances the party in control of the district municipality is different from that in charge of the local municipality.

Third, the financial viability of many local councils is threatened by the removal of the old core activities and consequently, their revenue raising capacity. Over a fifth of local government's own revenue is derived from surcharges on fees for services delivered – mainly on electricity and water. Removing the functions of electricity reticulation and water supply from local municipalities also means the end of the revenue derived from these services.

4.2 Implications for the provinces

A well-defined relationship between provinces and local government is still to be worked out. Until 2000 provinces had direct relations with all

municipalities in the province. In terms of the Constitution, provinces are expected to monitor and support local government, which includes local municipalities.²⁷ However, this support role is now taken over by the district municipalities; the very purpose of district municipalities is to provide support for local municipalities.²⁸ The objectives of a district municipality are to build the capacity of local municipalities and to promote the equitable distribution of resources between local municipalities in the district to ensure appropriate levels of municipal services. This means that where a local municipality lacks the capacity to provide a particular service, the district municipality must step into the breach.

Given these duties of district municipalities, what, then, is the role of the province? Are provinces now superfluous with respect to local municipalities? The answer is no; however, a change of role definition is required. The primary responsibility of providing assistance to local municipalities falls on district municipalities. This changes the focus of provinces' two-fold role of monitoring and support.

4.2.1 *Monitoring*

The first function is to monitor the relationship between district and local municipalities. The new system of shared authority is complex and gives rise to numerous conflicts. The role of the province is to get the balance between the two levels right. Who must do what? Who can do what? To give appropriate answers to these questions requires close monitoring of both categories of municipalities. Moreover, the MSA 1998 is premised on the fact that the relationship between district and local municipalities is not a fixed one. It requires constant adjustments. Monitoring will thus have to be done continuously.

Flowing from this monitoring role, provinces must perform a conflict resolution function. The MSA 1998 provides that if a dispute arises between a district and a municipality concerning the performance of a function or the exercise of a power, the MEC for local government, after consulting the two municipalities, may resolve the dispute by defining their respective roles.²⁹

The role of the province is thus more as a manager or overseer, rather than as a service provider. It must fine-tune the relationship between district and local municipalities. For this an in-depth knowledge of the functioning of the respective municipalities is needed.

4.2.2 *Support*

The primary supporting role of provinces is in respect of district municipalities. As the objective of district municipalities is to provide support for local municipalities, provinces carry the responsibility of ensuring that the districts are able to perform this role. The MSA 1998 specifically provides

27 S 155(6).

28 MSA 1998 s 88.

29 *Ibid* s 86.

that the province "must assist a district municipality to provide support services to a local municipality".³⁰ But first, the province must ensure that the district municipalities are themselves functioning adequately. In a number of provinces, totally new district municipalities were created. In Limpopo province, for example, there are six district municipalities, replacing the two district councils. For district municipalities to play their assigned role thus initially requires considerably assistance and guidance from the provincial governments.

Where the relations between the district and the local municipalities are characterised by conflict and dissention, a province will have to assist. It may establish special structures to facilitate interaction between the district and the municipalities. The District Advisory Forums in the Western Cape are instructive in this regard.³¹ The Minister of Local Government established a District Advisory Forum in each of the five districts. The members are the relevant mayors and managers of both the district and local municipalities, meeting with the Minister or his nominee under the chairpersonship of one of the mayors. The aim of the forum is to identify problems experienced by the municipalities in the process of consolidation and integration. While the Forum must try to take all decisions on the basis of consensus, the MEC or his nominee plays a constructive role in seeking to mediate conflict and resolve issues amicably.

5 CONCLUSION

The establishment of district councils for all areas outside the metropolitan municipalities is one of the key features of the new system of local government. District councils were originally conceived of as the institutions that would pursue the integrated, equitable and sustainable development of local municipalities. In the 2000 amendments to the MSA 1998 this vision was changed and district municipalities were reconceptualised as primary service delivery agents. Moreover, whereas the MSA 1998 dictated a uniform approach to the role and function of district and local municipalities in the key areas of health, water and electricity, now separate pieces of legislation will be necessary for each sector on the basis of sector-specific policies. The recent authorisations by the national Minister of Provincial and Local Government indicate that an asymmetrical approach will be followed in the allocation of core functions.

It is no longer possible to talk about strong district municipalities and weak local municipalities, or vice versa. With powers and functions now dependent on executive authorisations, the role and function of each municipality would have to be assessed in the light of the powers they have been given. Where a local municipality does not provide basic services, their role requires reconceptualisation – what are their functions and how will they be financed? Is their role to be, in the main, a communication channel between residents and the district municipality, which

30 *Ibid* s 88(3).

31 Smith 2002. 11.

commences with the institutions of participatory democracy – the ward committees? Will they be required to play the role of agent for the district municipalities in delivering services.

Whatever the answers to these questions, the provinces have a significant role to play in ensuring that this complex system works. They need to ensure that the relations between district and local municipalities are functional and productive. The necessary support must be provided where there are shortcomings and where relations are strained. Effective monitoring will be essential to detect where the system fails. Above all, all parties must work cooperatively on the understanding that the aim of the system is to realise the objects of local government as set out in section 152 of the Constitution:

- to provide democratic and accountable government;
- to ensure the provision of services to communities in a sustainable manner; and
- to promote social and economic development.

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