

People's democracy versus government's democracy: lessons from post apartheid provincial boundary disputes in South Africa

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Abstract

Post apartheid provincial boundary disputes provide us with a unique opportunity to assess the quality of the consolidation of democratic governance in South Africa. Drawing from two case studies of boundary disputes in post apartheid South Africa, this paper investigates the extent to which democratic governance has been adhered to by dissenting communities as well as by the government. The paper argues that provincial boundary disputes reflect conflicting conceptions of democratic governance between local communities and the national government. It further argues that even the basic constitutional requirement of democratic consultation of the people likely to be affected by important government decisions has been carried out in a very questionable manner. It follows that democratic consolidation in South Africa is dependant upon the harmonization between the conception of democracy contained in the Freedom Charter and the one enshrined in the Constitution. Constitutional requirement of public involvement in important government decisions needs to be reinvigorated in such a way that it ceases to be a mere formality.

Introduction

Scholars have often examined the extent of democratic consolidation in post apartheid South Africa either by scrutinizing the compliance of state institutions to the rule of law or by interrogating the quality of electoral politics. Dominant questions in this body of literature have been whether democracy can be sustained in one party dominant political system¹; whether voters' choices reflect a move away from racial and ethnic identities engineered by the Apartheid regime² and whether the country undertakes the necessary socio-economic transformation to ensure effective emancipation and inclusion of the majority black population³. This paper rather focuses on actual interactions between the people and government over a contentious matter namely the demarcation of communities in one province rather than another. Deeply contested, the restructuring of provincial boundaries in the post apartheid era presents us with a unique opportunity to explore the extent of democratic consolidation in South Africa.

Two case studies of provincial boundary disputes are presented: the Khutsong and Matatiele cases. These have been the most recent and some of the most contentious instances of border dissent. Exposing reasons behind border clashes, strategies utilized by disputants, and roles played by key protagonists, this paper ultimately argues that boundary disputes have brought to fore conflicting views on regional planning paradigm, on the nature of the South African democratic system, and on the role of public participation in the legislative process. This conceptual antagonism goes a long way into explaining the recurrence and intensity of provincial boundary disputes in the post apartheid era. As for the structure of the paper, presentation of the two case studies is

followed by a section that draws some of the most important lessons as far as democratic consolidation is concerned. A concluding section sums up key findings.

Case study no 1: Khutsong (Merafong Municipality)

Socio-economic context of the area

Khutsong forms part of Merafong City Municipality which straddled the South West of Gauteng and the North East of North West province, 75 km from Johannesburg and 50 km from Potchefstroom. Khutsong owes its existence to its role as township to Carletonville, one of the principal mining areas to the west of Johannesburg and the main centre of economic activity in Merafong City. The Merafong City Local Municipality consists of the suburbs of Greater Carletonville, Forshville, Khutsong, Kokosi, Khutsong South, Wedela, Blybank, Welverdiend and commercial farming areas surrounding these built up areas. At the time the city was still a cross-boundary municipality, most of its inhabitants lived in Gauteng (71%) and the other in North West (29%).

The racial configuration of the municipality population is as follows: black African (83.5%), coloured (0.8%), indian or asian (0.1%), white (15.6%). However, Khutsong is mainly a black African township (99, 7%) with little presence of other groups: coloured (0.2%), indian or asian (0.0%) and white (0.1%)⁴. The municipality counts 52% of employed people, 20.6% of unemployed and 26.7% of economically inactive⁵. Khutsong has one of the worst employment profiles in the municipality: 26.4% of employed, 35% of unemployed and 39.6 of economically inactive⁶. These poor socio-economic

conditions made Khutsong not only susceptible to social unrest, but more determined to fiercely fight for their stay in the wealthier Gauteng province.

The status of cross boundary municipality conferred to Merafong and 15 other municipalities was “an unintended consequence of the extended municipal demarcation of 2000, which reduced South Africa’s municipalities from 843 to 284”⁷. While this municipal category helped to ally tensions in few communities that straddled between two provincial boundaries such as Bushbuckridge, Moutse and Merafong, it soon became an obstacle to efficient service delivery. Cross-boundary municipalities featured prominently among those municipalities discharging less than 30% of their assigned powers and functions⁸. To ease service delivery in the affected municipalities, the department of provincial and local government undertook, in line with a presidential coordinating council decision of 2002, to re-demarcate sixteen cross boundary municipalities falling within six provinces in such a way that they entirely fall in one province.

Conflicting interests between government and the people

From the start of the process, residents of Merafong engaged government in a bid to remain in Gauteng. Under the leadership of the Merafong Demarcation Forum (MDF), an organization formed to fight the excision of Merafong from Gauteng, residents of Merafong held many protest marches and submitted petitions to relevant authorities including the municipal council, the municipal demarcation board, the provincial legislature, the department of provincial and local government and the presidency.

However, the department of provincial and local government stuck to its plan to exclude Merafong from Gauteng. Even after the Municipal demarcation board, following consultation with the people in Merafong, had recommended that Merafong falls under the Gauteng province, the department of provincial and local government maintained its initial plan. The minister introduced the bill to parliament without even alluding to the fact that the proposed legislation was generating local resistance. Before parliament, minister Mufumadi rather argued that the proposed “legislation would set the scene for the reconstruction of the “developmental landscape””⁹.

Reasons for Merafong’s fierce opposition to government’s demarcation policy have to do with poorer socio-economic conditions as well as grim developmental prospects in the North West province. Hence their demands to stay in Gauteng which residents perceive to be wealthier less corrupt, more effective in terms of service delivery, whose capital or major cities are geographically closer to their locality. Residents argue that they “will receive better services from the wealthier Gauteng – to which they have financially contributed”; that the North West has “no capacity”, that its “medical services were inferior, education was worse and social development was not happening”.

“The people shall govern”

To defend their vital socio-economic interests, residents heavily relied on their constitutional right to influence government decisions affecting their lives. Democracy based arguments were extensively used in a bid to advance their agenda. In a

memorandum submitted to authorities, one could read: “The residents of Khutsong are calling on both the National Council of Provinces and the National Assembly to think about their mandate, which is to represent the people of South Africa. The decision to incorporate Khutsong into North West goes against the above principle, and we view this as a serious act to undermine democracy”¹⁰. For many aggrieved residents, the fate of Merafong had already been sealed by the National Executive Committee of the ruling African National Congress (ANC) back in 2004 regardless of the outcome of public hearings which were said to be just a “sham”. This accusation was extensively raised in the court papers as well as in a memorandum submitted to the ANC office. In the memorandum the Merafong Demarcation Forum said that “it was dissatisfied by the manner in which the ANC national executive committee of 2004 decided unilaterally on the incorporation of Merafong into the North West province from Gauteng”¹¹. In various public demonstrations, residents would insist on the imperative that “people shall govern”, “batho pele”, and “the people must tell you” as could be read on posters on 20 September 2007 when the Merafong dispute was being argued in the Constitutional Court. Another community organizer and member of the Communist party, Andries Magodiele expresses it in a contrasted form: “Batho pele, people first, is what the government keeps saying, but they are not putting us first”.

Such blatant disregard of the preferences of the majority in affected areas was regarded as orchestrated by key political leaders at national, provincial and local level. Jomo Mogale, the spokesperson of the Merafong Demarcation Forum relates his version of how people’s view was ignored by politicians:

“We had public hearings on 25 November 2005, which were attended by the portfolio committee of the Gauteng and North West legislatures, and the outcomes of the hearings were clear: the people of Khutsong want to remain in Gauteng (...) We had an overwhelming 90 percent vote for Gauteng. The remaining few wanted to go to North West for their own selfish interests (...) In spite of the majority decision, Mufamadi went ahead to lobby parliament to support his proposal”¹².

By pushing such an unpopular bill, the minister of local and provincial government put the entire government at war against rebelling residents who vowed to fight the policy to the last man. Political leaders believed to have played a negative role in the escalation of the dispute also include the then municipal councilor Van de Roy, Defense minister Lekota and Gauteng Premier Mbhazima. Residents accused the municipal councilor Van de Roy and other Ward councillors of supporting government demarcation decision for their own selfish interests. It was alleged that some of these local ANC politicians expected or were promised promotions in the North West provincial government. Such perceived betrayal of community interest made them one of the main targets of public violence in Khutsong. As for the then Defense Minister and chairperson of the ANC Mosioua Lekota, residents of Khutsong saw him as the man who added fuel on the fire by making a series of derogatory and threatening statements. Lekota’s attempts at engaging residents of Khutsong appeared too confrontational and came too late. During a rally in Khutsong on 19 February 2006, “Lekota and Justice Minister Brigitte Mabandla had to be whisked to safety by heavily armed police” as protestors “chanted “voertsek out of

Khutsong” and sang other derogatory songs”¹³. Gauteng Premier Mbhazima Shilowa was not singled out as a key driver of the unpopular decision. Nevertheless, he “did nothing to stop the move, instead he supported it. We went to his office several times but he never came to speak to us. He sent junior staff and never responded to our grievances”¹⁴. So profound was residents’ resentment towards these two leaders that their newly formed breakaway party, Congress of the People (COPE), was threatened of physical attacks if it dared campaign in Khutsong. “They are not welcome here; if they come they would be attacked physically. This is something we are prepared to die for as residents,” said MDF spokesperson Jomo Mogale.

Going beyond the above-mentioned personalities, affected communities identified President Thabo Mbeki as the source of the conflict. The provincial location of affected cross-boundary municipalities was a decision that was highly centralized with many aggrieved communities believing that the president himself decided or accepted their “removal” from their preferred province. That is why much of communities’ advocacy and protest actions was directed to Mbeki. Even when violent protests in Khutsong drove councillors out of the township and turned the area to “hell”, President Mbeki maintained “his policy of quiet diplomacy in Merafong”¹⁵. Mbeki’s indifference towards the unrest in Khutsong, even as he visited other municipalities throughout the country for election campaigns, puzzled more than one analyst: “where is President Thabo Mbeki as Khutsong burns?”¹⁶. A statement by the Khutsong Ministers Fraternity (KMF) expresses a similar complaint: “We don’t know why the president has sided against us. Perhaps he is misinformed.”¹⁷

“Violence: the only language government understands”

Khutsong’s resistance assumed national and international notoriety for its high level of public violence. Yet, residents’ unruly behaviours seem to have been a function of the quality of engagement with government. Prior to 31 October 2005, opposition to government proposed demarcation policy was generally peaceful and channelled through the relevant state institutions. In the period from early November 2005 to 23 December 2005, residents intensified pressure including through violent means in a bid to prevent the enactment of the minister’s plan. An inconclusive meeting between aggrieved residents of Khutsong and the minister of provincial and local government on the 5th November 2005 contributed in entrenching perceptions that government was determined to excise the locality from Gauteng against the wishes of the majority in the area. The meeting was preceded by three days of intense community mobilisation, disruptive demonstrations and violence targeted at local public representatives. This initial violent campaign left a municipal building burnt, councillors’ houses petrol bombed, the mayor’s house stoned, five councillors driven out of the township, telephone booths ripped out and thrown into the streets, many shops looted and 82 people arrested¹⁸.

A series of less disruptive public rallies and handing of petitions followed including massive participation to the public hearing jointly organised by the provinces of Gauteng and North West on 23 November 2004 where residents unequivocally voiced the majority preference to remain in Gauteng and legislators promised to support the majority view. For some technicalities, the Gauteng legislature could not fulfil the promise at the time of voting in the National Council of Provinces (NCOP). In a context where vetoing

the bill would have resulted in unpleasant consequences, on the legislature's analysis, it decided rather to approve Merafong's exclusion from Gauteng, thus renegeing its commitment without taking any step to inform affected citizens of the new unfortunate developments. The Constitutional Court was sharply divided on whether such conduct of the legislature amounted to a breach of a constitutional duty, as we shall discuss later. The 14th December 2005, the day the bill was approved by the NCOP, was the culmination of community anger, with the destruction of valuable public and private properties, vandalism of schools, burning of mayor's house, physical attack on councillor Elias, with 5 policemen injured in a confrontation with stoning residents, and a high number of arrests (57) ¹⁹. This also constituted the day of a total breakdown in the relationship between the residents of Khutsong and the ANC as well as its president Thabo Mbeki. The political divorce was symbolised through the public burning of Mbeki t-shirts and residents' ANC cards. An eleven hour memorandum to President Mbeki, asking him not to sign the bill into law, could not prevent the acting president to seal the fate of the people of Merafong by officially assenting to the bill on 23 December 2005. The unrest in the township was far from over.

Though festivities of Christmas and New Year constituted a reprieve moment, the period running from 2 February 2006 to 2 March 2006 saw renewed waves of demonstrations and public violence that could be characterised as electoral violence. Whereas earlier acts of violence targeted officials of the State, this wave of attacks was directed towards ANC leaders and ANC members that dissented with the community's defiance campaign. In this crucial electioneering period, the Khutsong unrest became an ANC internal war with local South African Communist Party (SACP) members

distancing themselves from the ANC and ANC being divided in terms of pro and anti-North West members. The first march of the year was peacefully organised by the Young Communist League on 2 February 2006. Yet, on 12 February 2006, a group of 150 SACP members throw stones on ANC members attending a campaign rally in Khutsong stadium. Temperature rose higher with the visit of the chairperson of the ANC Terror Lekota, the premier of North West and Minister Brigitte Mabandla scheduled to address election rallies in Khutsong on 18 and 19 February 2009. Protestors created havoc outside Khutsong stadium where the rally was being held. Ministers Lekota and Justice Minister Brigitte Mabandla had to be whisked to safety by heavily armed police. In the aftermath of Lekota's expulsion, the township remained in a state of volatility leading to the election boycott of 2 March 2006 after the Pretoria high court had rejected on 28 February 2006 Khutsong's application for election postponement. Less than 10% of registered voters²⁰ cast their vote in a climate of intimidation. Hours after elections, a house and a shack belonging to ANC members were set alight. The resultant leadership could only govern from "exile" as they had been violently chased from the township. The inauguration of the new council in Merafong on 3 May 2006 also sparked violent protest with two houses of councillors being burnt. However, it is the official integration of Merafong to the North West in March 2007 that saw renewed disruptions and violent attacks on councillors²¹. Khutsong remained ungovernable and under-serviced for three years even as the new province North West made some attempts at asserting political authority. Schooling in the township was particularly disrupted in 2007 under the instigation of the Merafong Demarcation Forum and teachers' union amid condemnation that youth education was being sacrificed on the altar of political struggle.

The constitutional court's dismissal of the dispute as a "political" matter

Residents' constitutional challenge of government's decision did not advance their cause. It took twelve months for the court to deliver a highly controversial judgement that reflected deep disagreement among judges²². Constitutional court judges fundamentally differed on these questions: Was the public participation process a genuine one or just a sham? Did the process end with the holding of the public hearing session or was the legislature bound to keep the community engaged until the final decision? Was the legislature bound to a decision that accords with the wishes of the people and with its promises at the public hearing and in the negotiating mandate? Was the legislature's final decision to support the excision of Merafong from Gauteng rational or irrational in the light of the outcome of the public hearing and the prerogative of a possible veto provided for in the constitution?

Arbitration of the Merafong constitutional challenge was made complex by the fact that the Legislature's final decision to reject the preferences of residents reneged on its initial position, formulated in the minutes of the public hearing and in its negotiating mandate document. Residents alleged that such disregard of the outcome of the public hearing showed that the participation process was just a sham. A political decision contrary to the wishes of the people had already been taken. However, the Legislature explained in the court that its turn about came as a result of learning at the NCOP meeting that its support for the Merafong cause would require an amendment of the bill, which could not be effected at the NCOP level. Though the legislature could still veto the

bill, it rather decided not to do so and support it as it stood because it identified with other objectives pursued by the bill and was concerned about the detrimental consequences of its veto on the upcoming local elections and service delivery in cross boundary municipalities. Judges were divided on whether the legislature ought to have returned to residents to report back about the difficulties of carrying out its earlier promises.

On whether the Legislature's failure to report back to the community vitiated the quality of its compliance to the constitutional duty to involve the public in the legislative process, the majority holds a minimalist and formalistic view of the right of public participation whereas the minority judgment, especially Judges Sachs' and Madala's reasoning, provides a maximalist interpretation. The majority of judges are satisfied with the holding of the public hearing and the recording of residents' concerns in the Legislature portfolio committee's minute and in the negotiating mandate. For them, that is a proof that the duty to facilitate public involvement was adequately discharged. That the Legislature misconceived its power in the NCOP and had to review its negotiating mandate without bothering to report back to the concerned residents is considered to be minor incidents that do not affect the quality of the public participation process. Legislature's early ignorance of the impossibility to amend the bill at NCOP level is excused by the argument that we cannot expect legislators to know all legal nuances or all relevant facts. That they did not report back is minimized as possibly disrespectful or discourteous, but not rising to the level of the breach of a constitutional obligation. Such disrespectful politicians, the majority judgment suggests, are punished through elections not by courts.

The minority judgment, especially Sachs' ruling, still upheld the progressive interpretation of the right to public participation outlined in the *Doctors for Life International* ruling. According to Sachs, the initial engagement of the legislature with residents of Merafong was not a sham. Yet, it was unreasonable²³ for the legislature not to report back to the people on its changed position with regard to the demarcation of the municipality. Whereas participatory democracy is intended to produce dialogue, mutuality of open and good-faith dealing, and maintenance of good relationship between government and the citizenry, absence of further consultation with residents engendered quite the contrary of these constitutional goals: diminished civic dignity for the majority, rupture in the relationship between the community and the Legislature, a debacle.

The new ANC leadership's confession: "we made a mistake"

Taking seriously the court's advice that the problem called for a political solution, aggrieved residents of Merafong redirected their advocacy actions towards politicians. However, three main factors played in their advantage. Firstly, the new ANC leadership that had emerged from Polokwane in December 2007 with Jacob Zuma as the president sought to distance itself from contested policies of the Mbeki administration and to cast an image of a caring and people-driven government. The re-alignment within the alliance opened channels of easier communication between SACP and COSATU, the two alliance partners that unambiguously supported the cause of the residents and the new ANC leadership. On 25 June 2008, just ten days after the court judgement, a delegation of ANC leaders promised to return calm to Khutsong after meeting residents in the area.

Secondly, the recall of President Thabo Mbeki followed by the resignation of his close allies in government such as minister Mufamadi and Gauteng Premier Mbazima Shilowa gave impetus to the new ANC leadership's intention to reverse the demarcation decision. The new premier of Gauteng, Paul Mashatile, reassured Khutsong residents that a legislative process was underway to get them back to Gauteng. The new minister of provincial and local government, Shiceka, was the most active on this policy reversal at the risk of being accused of undermining the credibility of government. "If the majority of people of Merafong in general (and) Khutsong in particular want to come to Gauteng that is going to happen... We're saying as the ministry we are going to be involved in a process that is going to engage the communities... we want to find lasting solutions in the issues of boundaries to ensure that the people are settled where they want to be... We believe that there should be no person who stays where they don't want to stay". Thirdly, the prospect of an electoral boycott in Khutsong in April 2009 general elections prompted the ANC to ensure its return to Gauteng before voting. This was a strategic imperative in a context of decreasing ANC membership in Gauteng due to the competition of the ANC breakaway party, Congress of the People and the controversy over his presidential candidate, Jacob Zuma. Weeks before the finalisation of the decision by parliament, Gauteng premier and ANC chairperson Paul Mashatile, in a rally held in Khustong, appealed to "residents of the Merafong Municipality to reward the ANC with their votes for bringing them back into Gauteng"(K 221). No wonder why opposition parties have criticised the move as "political expediency" and "an opportunistic political move by the ruling ANC through government structures" (K 220). Many members of parliament have expressed the view that the process was rushed through. In approving the bill that

returned Merafong back to Gauteng, two government ministers formally apologised to residents for the “mistake” of placing them under North West jurisdiction: “We are putting a final nail in the coffin that buries the unhappiness of the people of Merafong in general and in Khutsong in particular... These people were incorporated into the North West province against their will... The Freedom Charter says no government can claim legitimacy unless it is based on the will of the people... Today we are coming to reaffirm the principle that guided the ANC for the past 97 years... “Re entse phoso’-Sesokho (we made a mistake)... ‘Lixhoshwa libhekile’ -isiZulu(we are all fallible).

Case study no 2: Matatiele/Maluti

Geography and socio-historical context of the area

Matatiele, a mid-sized town serving the farming and trading communities of East Griqualand in the foothills of the western Drakensberg, Eastern Cape, on the border with KwaZulu-Natal and 20 km from the Southern frontier of Lesotho, is the reference point for all of the Northern Transkei. The residents in and around Matatiele, as in most of the Northern Transkei region, are generally bilingual in Xhosa and Sotho. The current Matatiele local municipality is made of three areas: Matatiele, Cedarville and Maluti. Together with the municipality of Umzinvubu, it forms part of the district municipality of Alfred Nzo which falls in the Eastern Cape. The municipality comprises 24 wards and a population estimated at 194 692 of which 13% is employed, 22% unemployed and 65% economically inactive.

This area has long witnessed instability in its provincial location and apartheid spatial segregation which has left a legacy of confused provincial identity and deep racial and ethnic antagonism. Originally, Matatiele and the Maluti area constituted a single area in the Cape colony. Matatiele was an urban development while Maluti was a rural area. In 1978, the Steyn Commission recommended that Matatiele and Maluti be separated, and that Maluti become part of the Transkei while Matatiele remain in Natal. This was in line with the apartheid policy of separate development. The interim constitution in 1994, using magisterial districts to delimit the nine provinces, established the current Matatiele as the magisterial district of Mount Currie, and the current Maluti as the magisterial district of Matatiele. During 1995, a majority of the Trengove Commission recommended that the District of Mount Currie be excised from the province of KwaZulu-Natal and incorporated into the province of the Eastern Cape. A minority report recommended that Mount Currie remain in KwaZulu-Natal. Neither option was adopted.

During the 2000 municipal demarcation process, the municipal demarcation board established the Matatiele Municipality in the area that was described as Mount Currie in the interim Constitution. This municipality was incorporated into Sisonke District Municipality in KwaZulu-Natal. The magisterial district of Matatiele (the Maluti area) was demarcated to form part of a local municipality known as Umzimvubu and placed within Alfred Nzo District Municipality, which fell within the Eastern Cape. The separation of Matatiele from its surrounding rural areas remained unchanged and continued to be the subject of much criticism and demands for the unification of the town and its functionally and economically linked rural villages²⁴.

In 2005, this boundary area between KwaZulu Natal and Eastern Cape was considered by government as “cross-boundary jurisdictional enclave” similar to cross-boundary municipalities.” Which called for urgent restructuring. Government sought to address these regional planning anomalies by scrapping cross boundary municipalities to which the Matatiele area had been assimilated to. The outcome was the unification of Matatiele and Maluti into one municipality demarcated in the Eastern Cape and the inclusion of the Umzimkulu municipality in KwaZulu Natal. It is this excision from KwaZulu Natal of the Matatiele town that some residents resisted from the very initiation of the government policy in late 2005.

Sharp divisions between pro-Eastern Cape and pro-KwaZulu Natal residents: efficient service delivery versus history and culture

Border dispute in Matatiele has not just been a clash between government and the people, but also among residents. All stakeholders agree that Matatiele Town and its surrounding Maluti rural area need to form one municipal unit in order to address apartheid spatial fragmentation. Whether the unified entity should be included in KwaZulu Natal or in the Eastern Cape is the question that has since 1993 remained contentious. In 2005, government policy to incorporate the reunified Maluti/Matatiele municipality into the Eastern Cape split the community between pro-Eastern Cape (EC) and pro-KwaZulu Natal (KZN) residents with both sides putting forward strongly held views in justification for their preferences. Pro-KZN residents seem to outnumber the pro-EC ones, judging from submissions to provincial legislatures and the recent testing of

the views of the residents organized by the minister of cooperative and traditional affairs²⁵. Of course, pro-Eastern Cape residents would caution against using these two public events as a basis for extrapolation of the level of support of the two options. Organisations in support of KZN include the African Independent Congress (AIC), the local Democratic Alliance, the local SACP, COSATU, most business associations and two traditional authorities.

Reasons for resisting incorporation into Eastern Cape are essentially socio-economic, developmental and functional. According to Mandla Galo of Matatiele/Maluti Mass Organising Committee, residents of Matatiele “wanted to be part of KZN because it had better infrastructure and was more organized”²⁶. Perceptions of pervasive corruption and ineffective governance in Eastern Cape also inform residents’ preferences for KZN. Sections of the farming community have justified their preference for KZN on the ground that “the area is closely associated with KZN. They believe that their interests can be more effectively served from Pietermaritzburg as the capital”²⁷. The proximity to the provincial capital has been an important factor as stated by a reporter in these unambiguous terms: “Another problem the community had with the demarcation was that the capital of the EC, Bisho, was nine hours away from Matatiele while KZN’s capital Pietermaritzburg was only three hours away”²⁸. According to some residents, health and emergency services are better discharged from Pietermaritzburg or Durban than from Port Elizabeth, Umtata or Bisho. Ethnicity based reasons are sometimes cited by pro-KZN residents. They claim that the majority ethnic group in the area “Mariubi” is culturally closer to Zulu culture than they are to Khosa ethnicity. Others also hint that

Sotho people feel neglected in the EC and would rather prefer being in KZN. However, support for KZN is expressed across ethnic groups.

To defend their preferences, Pro-KZN residents heavily relied on their constitutional right to influence government decisions. In the context of Matatiele's constitutional challenge of government decision, the main thrust of the complaint was that residents had never been given the opportunity to voice their opinions on the legislation. On the day of hearing at the Constitutional Court, a resident, George Moshoeshoe, put it simply: "We've never been part and parcel of the Eastern Cape and they never spoke to us"²⁹. After renewed consultation, ordered by the constitutional court, at the end of which both the KZN and EC legislatures approved, for a second time, the excision of the Matatiele town from KZN, aggrieved residents complained that the majority view expressed during public hearings had been ignored. A third constitutional court challenge of the government decision, launched by a network of Matatiele organisations called Poverty alleviation network, is predicated on the accusation that the KZN legislature approved the bill without consideration of the views expressed in public hearings.

Pro-EC residents are equally opinionated. They have the advantage to count many local political leaders in their camp. In defence of their preference, the pro-EC camp put forward an arsenal of history and culture based arguments. They argue that Matatiele had been part of the Cape colony even before its inclusion in Natal. Rural areas surrounding Matatiele have always been part of the Transkei and of the Eastern Cape since 1994. Proponents of EC place a great deal of emphasis on their cultural differences from the Zulu culture and express fears of falling victims of Zulu cultural and political hegemony

in KZN³⁰. Some informants strongly believe that the KZN provincial government, under the dominant influence of Zulu people, may outlaw or fail to adequately promote their cultural practices, especially circumcision. It is in its relationship to traditional authorities and land that the Zulu hegemony inspires deep fears that are reminiscent of old era of tribal rivalries and ethno-nationalist wars³¹. Hence traditional chiefs and ANC councillors' appeal to residents' nationalist sentiments asking them not to sell the people and the land to KZN.

Whether perceptions that traditional authorities, cultural practices and land would be endangered under the KZN administration are founded or unfounded cannot easily be decided on the basis of existing evidence. It remains that these strongly held views are shared among a non-negligible section of the inhabitants of Matatiele/Maluti area under the influence of the majority of traditional chiefs and ANC councillors. However, for the pro-KZN residents, the idea that people may be prevented to practice circumcision or other cultural practices in KZN is far-fetched given the protection guaranteed in the constitution. As for the fate of traditional chiefs in the KZN, though this camp does share the same apprehension as the opposing group, it insists that the interests of the people rather than personal gains of traditional chiefs should guide the community position on this matter. Pro-EC residents' efforts to portray inclusion in KZN as subjugation under the kingship of King Zwelithini and selling of own's ancestral land are dismissed as desperate instrumentalisation of ethno-nationalist sentiments in the furtherance of chiefs' and Councillors' personal interests.

Government against the majority view

Government's 2005 decision sided with the pro-EC camp amid protestations from a broad range of pro-KZN organisations. The Matatiele Maluti Mass Action Organising Committee emerged as the umbrella organization with the objective of resisting excision from KwaZulu Natal. Initially, the municipality of Matatiele joined the dissenting front. It stood as one of the applicants in the first episode of the constitutional court challenge. However, the new municipal leadership arising from the 2006 local elections withdrew without notice from the applicants list. After failing to persuade government through petitions, meetings with officials and public demonstrations, members of the MMMAOC remained under the perception that the ANC had betrayed them. A new party called AIC, African Independent Congress, was registered to compete with the ANC locally in Matatiele. The new party secured 10 seats in the municipal council of Matatiele thanks to the proportional representation arrangement, but eight councilors subsequently floor-crossed to the ANC. In 2009 elections, the AIC also gained one seat in the provincial legislature in the Eastern Cape, an impressive performance in comparison to old parties such the PAC that could not make it to the provincial legislature. The other major resistance mechanism was the constitutional court attack against the 12th constitution amendment act.

During the legislative process in late 2005, the minister's proposal was pushed through two state institutions, the municipal demarcation board and parliament, which could not be influenced in the same way. The Municipal demarcation board would engage with affected municipalities on proposed changes and often recommended modification to the minister's proposal in line with pro KZN residents' concerns. Yet, the

minister would reconfirm its initial plan and push it through parliament³². Reflecting on the minister's interaction with both institutions, Judge Ngcobo controversially concluded: "Thus what the Minister could not achieve through the Board was to be achieved through a constitutional amendment."³³

The constitutional challenge initially rested on the argument that the minister of local and provincial government had usurped the power of the municipal demarcation board. The Constitutional Court unanimously rejected this claim as unfounded. It was found that parliament did not usurp any power by enacting a municipal configuration that conformed to the minister's proposal rather than to the municipal demarcation recommendation. In rejecting Matatiele's application and refusing the postponement of 2 March 2006 local elections, the constitutional court decision disappointed residents. However, its request for further submission on whether government complied with procedural requirements in enacting the impugned law was a display of commendable judicial activism. This gave rise to a second round of constitutional enquiry into the Matatiele case which found that the provincial legislature of KZN did not hold any public hearing in Matatiele and that this failure made the legislation invalid as far as the boundaries of the municipality of Matatiele were concerned. The court decided to suspend the invalidity order in an effort to afford government enough time (18 months) to correct the legal defect.

However, the renewed legislative process, completed in October 2007, was corrected only in form. The final outcome substantially deviated from embracing the views of the majority of the people of Matatiele. The ANC led provincial legislature of KZN approved for the second time the exclusion of Matatiele town from its provincial

territory against the wishes of the majority in the area and amidst protestation by all the opposition parties. “It is a day that the ANC betrayed its own supporters”, said George Mari, an IFP Member of provincial parliament, adding that such betrayal was a clear indication of “political gerrymandering”³⁴. Other opposition parties’ members warned that ignoring the views of the majority of affected residents would lead to violent protests of the type witnessed in Khutsong and would “mess up public participation and people would in future fail to attend such government initiatives”³⁵. The thirteen constitution amendment act, that confirmed the inclusion of Matatiele town in Eastern Cape, is still the object of a third constitutional attack by a network of Matatiele organisations called poverty alleviation network.

The rise of Jacob Zuma to the ANC and country leadership as well as the appointment of a new minister for cooperative governance and traditional affairs opened opportunities of fresh engagement with border dissidents. An NEC ANC decision on 30 March 2009 asked the minister of cooperative and traditional affairs to test the views of residents in border disputes areas such as Moutse and Matatiele in order for cabinet final decision to be informed by people’s preferences. This move marked a clear rupture from the top down approach that had characterised the Thabo Mbeki and Mufamadi era.

As much as the testing of the views of the people of Matatiele/Maluti through an electoral process was a progressive decision, its implementation from 28 October to 31 October has failed to appear transparent, free and fair in the eyes of the pro-Eastern Cape camp which has denounced the process and its outcome as “useless”, “partisan”, “flawed” and “illegal”. The end result of this process revealed that some 89% of voters support KZN and only 11% are in favour of Eastern Cape. The pro-Eastern Cape camp

dismisses the result citing a long list of irregularities: partiality of electoral officials as members of the KZN province, multiple voting, voters canvassing on queues, lack of consistency in ballot papers, late opening of some voting stations, systematic bullying and harassment of voters, timing of the voting during normal working days, making it difficult for students and workers to vote, the ink was not indelible, poor coverage of villages³⁶. In one voting station, violence ensued and three pro-Eastern Cape residents including the speaker of Alfred Nzo district municipality were arrested allegedly for attempting to stealing ballot boxes from electoral officials. The arrest has heightened tensions with residents fearing that the animosity may escalate into “bloodshed”.

That cabinet made it clear that the final decision will not be based solely on the outcome of the electoral process keeps some Eastern Cape proponents optimistic. Yet, it is difficult to think of an alternative local boundary arrangement that will avoid the terribly destabilising defect of creating winners and losers. Getting rid of provinces seems the only solution to this recurrent fight over provincial location. Residents of Matatiele/Maluti, especially the pro-Eastern Cape ones, view this option as the only promise of peace in their troubled area. This is a policy line that ANC Polokwane national conference recommended. But implementing this policy will trigger resistance from opposition parties and other powerful interested groups.

People’s democracy versus Government democracy

Functional regional planning versus territorial regional planning

Clashes between government and local communities over provincial boundaries reflect deep conflicting views on regional planning paradigm. While the national government holds that “regions do not matter” as far as they all belong to the South African state that make sure all regions are provided with appropriate services, local communities insist that it matters whether they fall in Gauteng rather than in the North West province (in the case of Khutsong), in KwaZulu Natal rather than in the Eastern Cape (in the case of Matatiele). Whereas the former is concerned about achieving national goals such as “equitable share” and “regional viability”, the latter views economic prospects, service delivery and quality of life as more important. In regional planning jargon, the national government adopts a functional approach to regional planning whereas local communities call for a territorial approach that ensures that local preferences and social equity are given priority over any other national goal. Functional regional planning is mostly a centralized process with little regard to the views of the people to be affected by policies. It is by its very nature an undemocratic mode of regional planning. On the contrary, territorial planning gives precedence to the views of the local people over other provincial or national interests, to social equity over other technical considerations. Seen in this manner, territorial regional planning rests on a democratic vision of regional governance.

Scholars of the South African regional planning process have argued that functional paradigm has dominated the post apartheid regional planning (Ramutsindela & Simon, 1998; Narsiah S. and Maharaj B., 1999). Ramutsindela has further suggested that post apartheid regional restructuring has consolidated apartheid geographies by its failure to undo the Bantustans and integrate marginalized territories into the national economic

circuit. Apartheid regional planning was fundamentally functional with all its excesses manifest in forced removals, confinement of blacks in rural territories and limitations of their freedom of movement.

Post apartheid provincial boundary disputes reflect communities' efforts to escape from this regional planning model. No wonder why references to "forced removal", "forceful integration into North West", "bulldozers" abound in protesters' statements. In some areas as in Khutsong, in Moutse, and in Matatiele, imposed provincial location has resuscitated painful memories of forced displacement. In opposition to this, local communities advocate control over which province they belong. These conflicting regional planning models are not irreconcilable as Gore admits. The success of future demarcation policies in South Africa will depend on the capacity to harmonize these two approaches. Recent initiative of the government to collect residents' provincial preferences through an electoral exercise prior to making a final decision on the disputed provincial location of the municipality is a qualitative step in that direction.

Representative democracy versus direct democracy

Provincial disputes also bring to the fore at least two opposing conceptions of democracy. Government officials emphasize the representative nature of the South African democratic system. Aggrieved residents advocate a form of direct democracy which resonates with the vision enshrined in the Freedom Charter in the statement: "People shall govern". Explaining the KZN ANC decision to maintain Matatiele into Eastern Cape despite dominant preference for KZN, the MPL Mzwakle Sithebe said that the

majority of public submissions at the public hearings were “emotive”, but that “whilst emotions are understandable, we (the legislature) need to determine what is just and fair”. In introduction to the public hearing in Merafong, the chairperson of the portfolio committee on local government insisted that the decision laid with the legislature not the public. The constitutional court also reinforced the representative nature of the South African democratic system when it suggested that the only sanction against disrespectful politicians was to vote them out at next elections.

On the other hand, protesting residents claim that the will of the people should prevail. “People shall govern”, “Batho pele”, “The people must tell you” are common slogans that run in these protestations. Memoranda are full of statements that appeal to the notion of direct democracy such as these: “the residents of Khutsong are calling on both the National Council of Provinces and the National Assembly to think about their mandate, which is to represent the people of South Africa. The decision to incorporate Khutsong into North West goes against the above principle, and we view this as a serious act to undermine democracy”³⁷. Reference to the democratic vision enshrined in the Freedom Charter is recurrent in residents’ utterances. “The YCLSA Khutsong Branch is not in any way prepared to accept any deviations from the WILL of the masses of Merafong. Our guiding revolutionary documents are very clear that “THE PEOPLE SHALL GOVERN” not that the masses shall be guided to govern”³⁸.

Public participation in the legislative process: a formality or a genuine elicitation of people’s view?

This tension is also manifest in conflicting conceptions of the duty of the legislature to involve the public in the legislative process. Government officials and members of parliaments insist that they are not bound by the views of the majority expressed in public hearings. They explain that they have the latitude to make their mind which may lead to decisions against the will of the majority. Both the Khutsong and Matatiele cases have seen legislators embarking on decisions that ignored the majority views. For concerned residents, such disregard of the outcome of public participation defeats the purpose of this crucial democratic exercise. It has led to widespread perceptions that public participation mechanisms are nothing more than a “sham”. Opposition political parties, which hopelessly lack the numerical strength to block ANC sponsored legislations, also complain that “if public consultations yielded no change, it was ‘going to mess up public participation’ and people would in future fail to attend such government initiatives”³⁹.

Even constitutional court judges have displayed sharp divisions on their interpretation of public participation. Some uphold a conception of representative democracy that sees public participation as restricted to electoral exercise. Others add to electoral democracy the requirement of ongoing citizenry participation, but without according it any decisive strength in the law-making process. Citizens should be formally involved in the legislative process, but their wish may or may not prevail. If they feel disregarded, they have the possibility of sanctioning politicians at next elections. A third strand thinks that the public participation clauses establish an alliance between legislators and the public in such a way that any rupture of this alliance or dialogue, which arises for instance when legislators renege their promises to the constituents without bothering to

report back to them or explain the reasons of their turn-about, defeats the purpose of public participation. It is with this line of argument that Judge Sachs found, in a minority judgment, that the legislature's failure to report back to the people of Khutsong about their change of mind was unreasonable and amounted to a breach of a constitutional obligation. A fourth interpretation of public participation reflects a form of direct democracy. This is particularly evident in Judge Madala's minority judgement on what he termed "the Merafong debacle": "Having sounded the views of the community which were overwhelmingly against the proposed transfer of Merafong in its incorporation into the North West Province, the next development was the formulation of the negotiating mandate and the final voting mandate. At this stage we enter into a hazy area where the Gauteng Legislature, armed with a mandate from the people, did an about-turn. Having formulated a negotiating mandate, the Legislature deviated from that mandate and took a different position in the final voting mandate, which reduces their conduct to irrational. It appears as though the Legislature misunderstood its role in the legislative process. It did not bother to go back to the community."⁴⁰

Conclusion

The aim of this paper was to critically discuss the two case studies of provincial boundary disputes in a bid to examine the extent of democratic consolidation in post apartheid South Africa. This study's unique approach lies in its focus on the interactions between the people and government on a disputed issue in order to discern compliance or lack of it to core democratic values, principles and processes.

The case study of Khutsong reveals that government goals and people's aspirations with regard to provincial boundaries restructuring were sharply in conflict. By scrapping cross boundary municipalities and placing Merafong into the North West province, government sought to eliminate an important impediment to service delivery, enhance North West's "equitable share" and population size. In the minister's words, the restructuring would set the scene for the reconstruction of the "developmental landscape". Government approach is a functional one as it subordinates territorial units to the fulfilment of certain broad provincial or national interests such as "equitable share", "provincial viability", balanced population and territorial size. This paradigm is met with resistance from communities such as Khutsong for which proximity to Johannesburg, greater development prospects in a wealthier Gauteng and higher quality of services from its departments should override all other technical considerations. Khutsong residents insisted that their preferences must prevail and made use of every possible means, including extensive violence, to resist inclusion in the North West. It is ironical that Khutsong residents displayed high level of political intolerance and unruly behaviours while at the same time relying on democratic principles to advance their cause. The Khutsong case also saw the constitutional court fail to enforce the high standard of public participation formulated in some earlier judgments such as the Doctors for Life International. After three years of protestations, the new ANC leadership, in a move criticised as electoral opportunism or political expediency, fast-tracked the return of Merafong back to Gauteng. Some ANC politicians claimed that by reversing their earlier policy, it was "democracy taking its course" and the triumph of the Freedom Charter clause "people shall govern".

Matatiele boundary dispute is a legacy of apartheid spatial fragmentation and ethnic differentiation. Post apartheid efforts at undoing the separation of Matatiele town with its surrounding rural areas and demarcating the new unit either in KZN or in Eastern Cape have proven divisive especially on the choice of the province. Supporters of KZN base their preferences on service delivery and functional grounds. Proponents of inclusion in the Eastern Cape mostly cite cultural and historical arguments. Whereas the Thabo Mbeki administration largely ignored the majority pro-KZN view expressed in public hearings and written submissions, prompting a series of three constitutional court challenges on the matter, the Zuma presidency has sought provide a sustainable solution to the unrest. However, a progressive initiative of the department of cooperative and traditional affairs aimed at testing the views of residents in Matatiele/Maluti in order to identify the majority view has failed to appear free and fair in the eyes of the pro-Eastern Cape camp.

While it is clear that border dissenters seek to secure a better socio-economic future in the province of their preferences, it has emerged that their clash with government reflects conflicting conceptions of regional planning, democracy, and public participation. Whether such disputes will be prevented or better managed in future depends largely on the possibility of harmonization of underlying conceptual antagonism.

Notes

¹ Johnston, A, "The 1999 Election and the Prospects of Consolidating Democracy in South Africa", in Konrad- Adenauer- Stiftung Seminar Papers Consolidating Democracy in South Africa, 1999; Friedman, S, "No Easy Stroll to Dominance: Party Dominance, Opposition and Civil Society in South Africa", in Giliomee, H and Simpkins, C (eds), *The Awkward Embrace, One Party Domination and Democracy*, Tafelburg, Cape Town, 1999; Lodge, T, *Politics in South Africa: from Mandela to Mbeki*, 2003 ;

² Rupert T and Hoeane T, Interpreting the South African election of 2 June 1999, *Politikon*, Vol 26, No2, November 1999, pp. 1-14; Hoeane T, A re-interpretation of South African electoral studies: race, ethnicity and democracy in the 1994 and 1999 elections, thesis (Phd), University of the Witwatersrand, 2002.

³ Democracy in the time of Mbeki, edited by Richard Calland and Paul Graham, Cape Town, IDASA, 2005.

⁴ Ricon (Pty) –Regional explorer data base, 2001.

⁵ Merafong City Annual Report 2007/2008

⁶ Ricon (Pty) Ltd –Regional explorer data base. 2001

⁷ Sharivan Moodley, Katharine Mckenzie, *Delivery*, 36

⁸ Sharivan Moodley, Katharine Mckenzie, *Delivery*, 36

⁹ South African Press Agency (Sapa), December 13, 2005

¹⁰ Star December 13, 2005

¹¹ Sapa, 25 June 2008

¹² Star December 13, 2005

¹³ http://www.news24.com/News24/South_Africa/Politics/0,,2-7-12_1886111,00.html

¹⁴ Merafong Demarcation Forum, spokesperson, Jomo Mogale

¹⁵ Lebohang S., Mbeki to face angry residents in court, Star 30 May 2007

¹⁶ <http://www.businessday.co.za/articles/specialreports.aspx?ID=BD4A161131>

27 Feb 2006.

¹⁷ Sapa, 09 May 2007

¹⁸ On 2 November 2005, violent protest broke up in Khutsong with these happenings: residents barricaded roads with burning tyres, car wrecks, large rocks and branches of trees; rocks were thrown at vehicles wanting to leave the suburb; some people wanting to go to work were intimidated, groceries bought in town were damaged; matric exams were stopped and learners were forced to leave school; twenty seven youth were arrested for looting shops. On 3 and 4 November 2005, well attended rallies took place in Khutsong stadium with respectively 3000 and 6000 attendees. On 5 November 2005, a march was organized and a delegation met with the minister of provincial and local government, but no solution to residents' concerns was provided except a promise to forward residents' grievances to parliament which was considering the legislation. These three days were marked by these disruptive events: angry residents set the municipal building on fire, looted shops, streets were barricaded with burning tyres, rocks, branches of trees and car wrecks, telephone booths were ripped out and thrown into the streets; on 4 November 2005, police reinforcements were called to assist when 6000 residents, after a rally, started looting businesses; the homes of Mr Des Van Rooyen (mayor) and other councilors were bombarded with stones and a crowd petrol bombed councilors' houses causing five of them to flee; on 5 November 2005: marchers arrived at the extension four traffic lights and youth set rubber tyres alight; police used rubber bullets to disperse angry crowds; 43 people were arrested for looting.

¹⁹ On 11 November 2005, a march was organized to submit a memorandum to the police station. On 23 November 2005, residents attend the public hearing in Carletonville which was jointly organized by the Gauteng and North West provincial legislatures. On 7 December 2005, disruptive protest takes place in Khutsong and seven protestors are arrested by the police. On 12 December 2005, a march goes to submit a memorandum to chief magistrate Howard Raath. The 14 December 2005 experiences the highest level of public violence and vandalism: Khutsong residents burnt T-shirts with President Mbeki printed on them; residents burnt ANC membership cards; a municipal truck was set alight; smoke from burning tyres engulfed the township and the streets were barricaded with boulders and old car wrecks; schools were vandalized; the library was destroyed and electronic equipment was stolen, those costs being estimated to be R8 million; a R350 000 council building used by the Southern African National cancer association was destroyed; Khutsong's stadium, swimming pool, roads and infrastructure were badly damaged; the police shot at protestors as their armoured vehicles came under fire from protestors throwing stones and bottles; residents used dustbin lids to shield themselves from rubber bullets, birdshot and stun grenades; the residents divided into smaller groups and destroyed 10 houses, and also torched Mayor Des Van Rooyen's house; Councillor Elias "Rachpark" Legoete's minibus, car and house were set on fire; he was injured in the attack and had to be hospitalized; five policemen were injured; fifty seven people were arrested; five houses were burnt down.

²⁰ 232 voters out of 34 000 cast their vote on 2 March 2006 local elections in Khutsong.

²¹ On 26 February 2007, the premier of North West announces that government was working on the final stages concerning the integration of Merafong into North West. On 1 March 2007, violent protest erupted in Khutsong. Six houses were petrol bombed. 12 people were arrested including an ANC councilor. Schools were disrupted.

²² The majority position dismissed Merafong's application with the support of six judges. The minority judgment with the concurrence of four judges ruled in favour of the affected community.

²³ Three important elements should have led the legislature to resume some degree of consultation with the community. Firstly, the legislation was unusual. It is one of the rare matters on which the provincial legislature has been given the veto power. Secondly, its sociological consequences on the lives of residents were real as they stood to be functionally and emotionally affected by the legislation. Lastly, strong expectations had been created by two objective factors namely the proposal of the municipal demarcation board and the initial position expressed in the negotiating mandate, both of which were favorable to the wishes of the majority of the people in Merafong.

²⁴ Most inhabitants of Matatiele Town come from the surrounding villages. These rural areas constitute the most important consumer and labour base for the town. The separation of these two areas was only based on apartheid policy. Residents of surrounding villages hence consider Matatiele to be their land and claim a right to ownership of what they regard as their town.

²⁵ Public submissions in October 2008 to the KZN revealed that out of 5000 submissions only 80 supported Eastern Cape. From 29 October to 31 October 2009, the department of cooperative and traditional affairs organized a poll to test the preferences of residents of Matatiele/Maluti. The result has been contested by the pro-EC camp but it says something on where the majority seem to reside: 89% of pro-KZN and 11% of pro-EC

²⁶ [http://www.news24.com/Content/SouthAfrica/Politics/1057/1d5c1f8c871641cabb70812a1b008c/Matatiele looking for a home 27/09/2005](http://www.news24.com/Content/SouthAfrica/Politics/1057/1d5c1f8c871641cabb70812a1b008c/Matatiele%20looking%20for%20a%20home%2027/09/2005)

²⁷ Mercury 25 August 2005, p. 4

²⁸ Sapa, 30 March 2006

²⁹ Sapa, 30 March 2006

³⁰ Utterances such as these are very common among pro-Eastern Cape: "Circumcision is very important to us. Zulu don't practice that. We may not be free to exercise this cultural practice as we are used to in the Eastern Cape"; "Sotho Gotu have already experienced disturbances in the performance of their circumcision rituals in KZN"; "here, boys go to mountains for circumcisions. This may not be accommodated by KZN people". "Most pro-KZN are not circumcised. That's partly why they would prefer KZN where circumcision is not practiced".

³¹ "our traditional chiefs will not enjoy the same recognition in KZN"; "all traditional chiefs are remunerated here in Eastern Cape. This may not be the case in KZN where some may not be recognised as such". The figure of King Zweleti is perceived as having the potential to overshadow and subjugate traditional chiefs moving to KZN. "Some of our traditional chiefs may end up being treated as "induna"". "In KZN, they say that there is only one king. And that is King Zweleti". "We will all become subjects of King Zweleti with obligation to pay him tribute and gifts when he comes to visit these areas. We don't want that".

³² In response to the municipal demarcation board's call for public comment on the minister's proposal, the board received some 3 248 individual petitions and a petition of 10 000 signatures from the Matatiele Maluti Mass Action Organising Committee (MMAOC). After it had considered the comments, the Board, on 18 October 2005, issued a provisional re-determination which, contrary to the minister's initial proposal, included the integrated Matatiele/Maluti as one municipality in KwaZulu Natal. However, on a renewed request from the minister and the parliamentary portfolio committee on justice and constitutional development, the board published a notice reflecting the minister's initial proposal. The proposed enlargement of Matatiele to include Maluti and its inclusion in the Eastern Cape was the arrangement that was finally adopted by parliament.

³³ See Matatiele 1 judgment. This conclusion of Judge Ngcobo has been vehemently criticized by his colleagues. Though it is clear that the municipal demarcation board developed a territorial configuration different from the minister's and that the minister actively sought to override the municipal demarcation board's recommendation, the inclusion of the new formed municipal entity in either KZN or Eastern Cape called for a constitutional amendment that only parliament could undertake.

³⁴ Sapa, November 01, 2007

³⁵ Sapa, November 01, 2007

³⁶ Irregularities denounced in statements addressed to Luthuli House by these organizations: Matatiele Uncedo Service Taxi Association (3/11/2009), Contalesa-Matatiele(3/11/2009), Matatiele/Maluti Bus Association(4/11/2009).

³⁷ Star December 13, 2005

³⁸ Submission of the Young Communist League of South Africa to the Gauteng Legislature

³⁹ Sapa, November 1, 2007

⁴⁰ Merafong Judgement, case CCT 41/07 paragraphs 209-210. 13 June 2007.