

**FRONTIERS OF PROSPERITY AND POWER:  
EXPLAINING PROVINCIAL BOUNDARY  
DISPUTES IN POST-APARTHEID SOUTH  
AFRICA**

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A thesis submitted to the Faculty of Humanities, University of the Witwatersrand, Johannesburg, in fulfillment of the requirements for the degree of Doctor of Philosophy (Political Studies).

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## **DECLARATION**

I declare that this dissertation/ thesis is my own unaided work. It is submitted for the degree of Doctor of Philosophy (Political Studies) in the University of the Witwatersrand, Johannesburg. It has not been submitted for any other degree or examination in any other university.

Eddy Mazembo Mavungu

September, 2011

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## **ABSTRACT**

Post-Apartheid South Africa has been plagued by recurrent and protracted provincial boundary disputes since the demarcation of new provinces in 1993. These conflicts have mainly opposed the Government and affected communities with high security, economic, social and political cost. In many respects, these disputes have threatened the very legitimacy of Local Government. However, existing literature exclusively focused on the early Bushbuckridge case. Besides, analysis of this first instance of post-apartheid provincial boundary, though very enlightening, overemphasized socio-economic factors to account for the border dispute, paying little attention to ideological and strategic underpinnings of the clashes. These deficiencies particularly came to light when there emerged in 2005 other provincial boundary disputes in Khutsong, Matatiele, and Moutse. In the face of such countrywide political phenomena, it became clear that early studies of the Bushbuckridge border dispute needed to be complemented in order to enrich our understanding of social, economic and political drivers of these territorial conflicts.

This PhD research distinctively uses a multiple case study approach in order to explain post-apartheid provincial boundary disputes. Drawing on interviews, observations and secondary materials on the three chosen case studies namely the Bushbuckridge, Khutsong, and Matatiele cases, this PhD thesis argues that post-apartheid provincial boundary disputes are complex socio-political phenomena which can best be accounted for by taking into account various socio-economic and political factors including the interplay between historically constituted material conditions of affected communities and their local notions of democracy and development, conflicting regional planning models, Government's democratic deficit, strategic political struggles and limits of judicial arbitration. Interpreting these cases with the proposed explanatory framework clearly demonstrates that under the veneer of provincial boundary disputes, disputants have actually been engaging in battles for socio-economic emancipation, in ideological contestations and strategic political struggles. Physical provincial frontiers are fought over not because of any inherent importance, but mainly because they are represented as proxies for socio-economic prosperity and political power. At a time when the current government is still grappling with at least two provincial boundary disputes and is contemplating reducing the number of provinces, this thesis highlights lessons which should inform future provincial demarcation decisions.

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## **ABBREVIATIONS AND ACRONYMS**

AIC: African Independent Congress

ANC: African National Congress

ANCYL: African National Congress Youth League

AWB: Afrikaner Weerstandsbeweging (English: Afrikaner Resistance Movement)

APC: African People's Convention

BBC: Bushbuckridge Border Committee

BBCC: Bushbuckridge Border Crisis Committee

BBR: Bushbuckridge

CC: Constitutional Court

CDDR: Commission for the Delimitation and Demarcation of Regions

CODESA: Convention for a Democratic South Africa

CONTRALESA: Congress of Traditional Leaders of South Africa

COSAS: The Congress of South African Students

COSATU: Congress of South African Trade Unions

DA: Democratic Alliance

DENOSA: Democratic Nursing Organization of South Africa

DP: Democratic Party

EC: Eastern Cape

FF: Freedom Front Plus

GP: Gauteng Province

ID: Identity document

IDP: Integrated Development Plan



IFP: Inkhata Freedom Party

KMF: Khutsong Ministerial Fraternity

KZN: KwaZulu-Natal

MDF: Merafong Demarcation Forum

MLL: mean living level

MMMAOC: Matatiele. Maluti Mass Action Organising Committee

MP: Member of Parliament

MPL: Member of Provincial Legislature

NAFCOC: National African Federated Chamber of Commerce and industry

NCOP: National Council of Provinces

NEC: National Executive Committee

NP: National Party

NW: North West

PAC: Pan-African Congress

RDP: Reconstruction and Development Program

RNCS: Revised National Curriculum Statement

SA: South Africa

SACP: South African Communist Party

SADTU: South African Democratic Teachers' Union

SANCO: South Africa National Civic Organisations

SAPA: South African Press Association

UCDP: United Christian Democratic Party

UDF: United Democratic Front

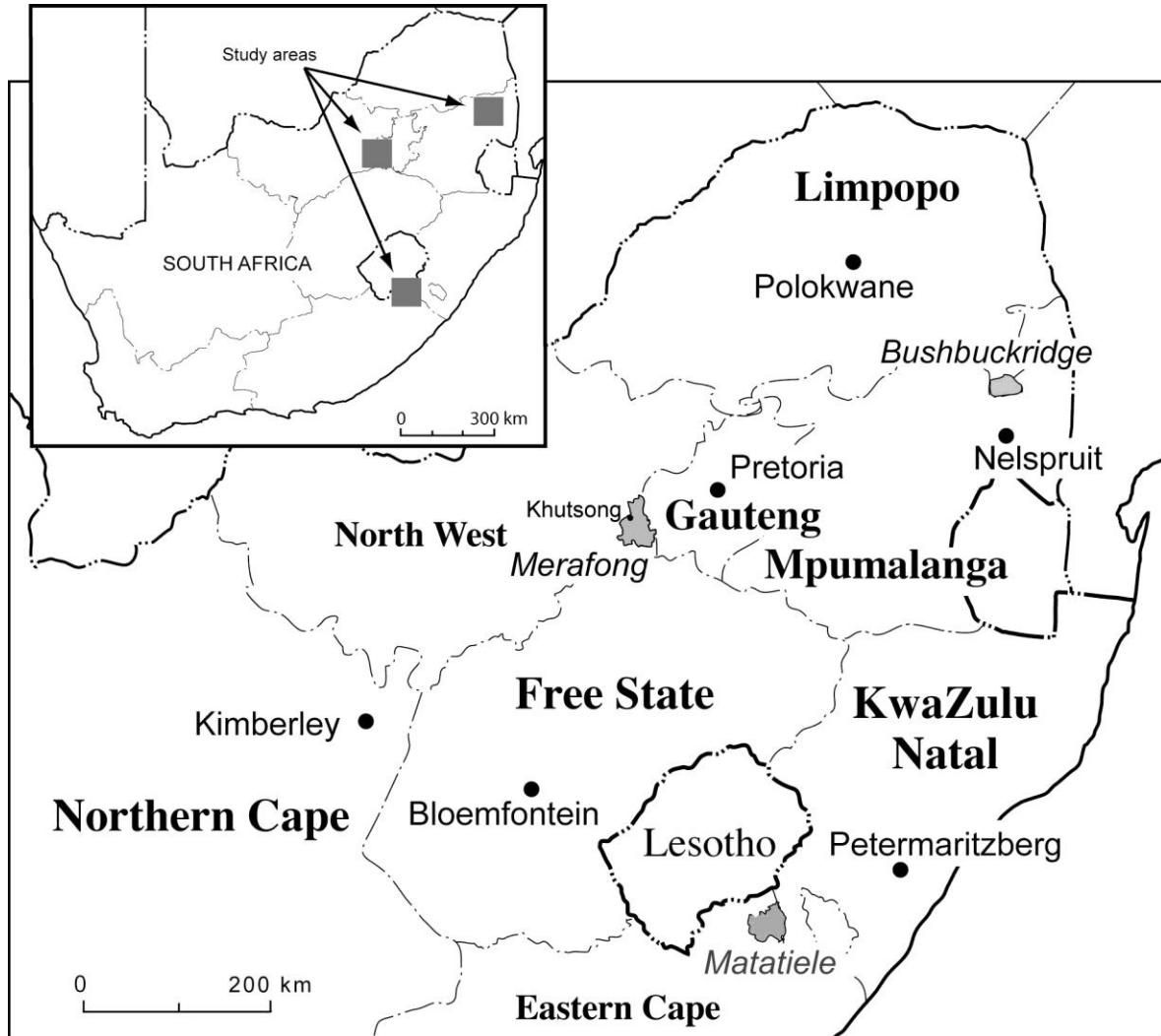
UDM: United Democratic Movement

YCLSA: Young Communist League of South Africa

# **CHAPTER 1: RESEARCHING POST-APARTHEID PROVINCIAL BOUNDARY DISPUTES**

## ***1.1. Introduction***

This thesis uses a multiple case study approach in explaining provincial boundary disputes in post-apartheid South Africa. The latter are recurrent and protracted clashes between local communities and post-apartheid Governments over the provincial location of affected municipalities. Three case studies are here considered namely the Bushbuckridge, Khutsong and Matatiele cases (See map 1.). The thesis outlines a more sophisticated interpretation of post-apartheid boundary disputes which highlights the importance of a complex combination of material conditions, local notions of democracy and development, conflicting regional planning models, Government's democratic deficit, strategic political struggles, and limits of judicial arbitration in accounting for these political phenomena. This explanatory framework clearly shows post-apartheid provincial boundary disputes as battles over what disputants perceive as frontiers of socio-economic prosperity and political power. This chapter first presents the political challenges raised by post-apartheid provincial boundary disputes. It then shows how existing literature has debated these issues before elaborating on this thesis's original approach, its advantages and the resulting argument.



Map 1. The three case studies considered in this thesis: Bushbuckridge, Khutsong(Merafong) and Matatiele

## **1.2. Post-apartheid provincial boundary disputes as political problems**

From the 1993 re-demarcation of new provinces at CODESA, there have been repeated clashes between affected local communities and Government. The post-apartheid re-demarcation of provinces resulted in at least fourteen disputed areas considered in the Interim Constitution of 1993 as “affected areas”<sup>1</sup>. Insurmountable disagreement persisted over these areas either among political parties or between the political elite and local communities. In leaving these boundaries undecided, the 1993 Interim Constitution provided that they could be resolved before the finalisation of the Constitution in 1996. Organisation of local referenda was even envisaged as a mechanism of boundary dispute resolution (South Africa Interim Constitution, 1993, Article 124). Yet, no such referendum had been called for or organised by the 1996 finalisation of the Constitution as the ANC - led Government preferred party driven political settlements (Griggs, 1998).

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<sup>1</sup> The Interim Constitution of Post-apartheid South Africa left undecided the following boundaries: whether Bosbokrand (the area consisting of the Mala district of Gazankulu and the Mapumaleng, district of Lebowa) should stay in the provincial territory of Limpopo or should be included in the provincial territory of Mpumalanga; the continued inclusion of the District of Namaqualand in the provincial territory of the Northern Cape, or its inclusion in the provincial territory of the Western Cape; the continued inclusion of District Groblersdal in the provincial territory of Mpumalanga or its inclusion in the provincial territory of Limpopo; whether Northern Transkei/Pondoland should stay in the provincial territory of Eastern Cape or be included in the provincial territory of KwaZulu-Natal; the continued inclusion of Umzimkulu of Transkei in the provincial territory of Eastern Cape or its inclusion in the provincial territory of KwaZulu-Natal ; whether Pretoria should stay in the provincial territory of Gauteng or should be included in Mpumalanga; the continued existence of Eastern Cape as one province or its division into two separate provinces; the continued existence of Northern Cape as a separate province or its discontinuance as a separate province; whether the area for which the “KwaNdebele legislative authority has been instituted” should stay in the provincial territory of Mpumalanga or should be included in Gauteng; the continued inclusion of the district of Sasolburg in the provincial territory of Orange Free State or its inclusion in the provincial territory of Gauteng; the continued inclusion of the area consisting of the districts of Clanwilliam, Vredendal and Van Rhynsdorp in the provincial territory of the Western Cape or its inclusion in the provincial territory of Northern Cape; whether Gauteng should exclude Odi and Moretele portions of Bophuthatswana; whether KwaZulu-Natal should include Mount Currie; and finally whether Northern Cape should include Kuruman, Postmasburg and Hartswater (*Interim Constitution of the Republic of South Africa*, 1993, Article 124). See map 2 for a visualisation of the geographical location of these disputes.

The prevalence of party political negotiations as a mechanism of boundary disputes resolution proved to be a source of even more complications as factions within the ruling ANC or the tripartite alliance supported conflicting boundary arrangements. The protracted border dispute in Bushbuckridge was such a case of prolonged conflict as a result of “party political boundary demarcation” (Griggs, 1998). The conflict has been described as “the first revolt of a black community against a post-apartheid Government” (Niehaus, 2006). The community conflicted with the ANC-led Government on whether the locality should be demarcated in Limpopo or in Mpumalanga. It was clear that the overwhelming majority of residents preferred Mpumalanga as it was perceived to be geographically closer to the people. From 1996 to 1998, Bushbuckridge was involved in protest, negotiations and a Court challenge against the South African Government while it endured detrimental service delivery backlogs as a result of its undetermined provincial identity. By 1998, the Bushbuckridge dispute had run for four years, had left the community under-serviced and destructive protest had caused at least R40 million worth of damage (Griggs, 1998; Narsiah and Maharaj, 1999). Four deaths were directly caused by public violence that characterised the border conflict (Niehaus, 2005, p. 103). When the ANC party political settlement of the crisis framed the solution as residing in the provincial exchange between Bushbuckridge (Limpopo) and Groblersdal (Mpumalanga), the NP aligned white community of Groblersdal vehemently opposed such horse-trading that would have seen their locality transferred to Limpopo. In a last resort move to have the Government adhere to its promises, the Bushbuckridge Border Crisis Committee (BBCC) unsuccessfully took the State to the High Court of Pretoria in 1998.

The Matatiele provincial boundary dispute erupted as the town was moved from KwaZulu-Natal (KZN) to Eastern Cape (EC) in late 2005. An overwhelming majority of residents had unsuccessfully tried to oppose the change through representations and protest. However, the community was intensely polarised as a minority group driven by ANC councillors and traditional chiefs supported inclusion of the area into the EC. These divisions have sometimes escalated into violent confrontations. They have also compromised service delivery. The conflict has run over more than four years (late 2005 – 2010) during which dissenting residents have brought three Constitutional Court challenges against Government with little success. Following a 2006 Court ruling, Government was forced to rerun a very laborious legislative process to correct defects with the initial Constitution Twelfth Amendment Act of 2005 and the related cross boundary repeal act, but in October 2007, it confirmed the contested boundary decision, thus prolonging the conflict with dissenting residents and internal community antagonism. In one instance of community unrest, a fight broke out on 16 October 2008 between supporters of KZN and proponents of EC who were holding a march allegedly with the municipality logistical support in celebration of the first anniversary of the inclusion of the town of Matatiele in EC. Subsequent to the violent confrontation, shops were burned or looted. A few people were injured and the police made arrests in a bid to reassert law and order.

The Khutsong provincial boundary dispute is remembered as the most violent. Following the move of the Merafong municipality from Gauteng to North West in late 2005, it quickly assumed national and international notoriety for the high level of disruption and public violence which residents of the township unleashed against Government officials, public infrastructure and any third party suspected of supporting the

contested policy. The stand-off lasted for three years (late 2005- 2009) with huge security, economic and socio-political calamities: more than one hundred and fifty arrests, destroyed public infrastructure, vandalised private properties including houses of councillors who were forced to flee outside the township, and disrupted schooling. Residents' recourse to the Constitutional Court did not help to chart a favourable outcome. In 2009, however, due to the emergence of a new ANC leadership and electoral opportunism, the policy was reversed. Another laborious and fast tracked legislative process was put in motion to effect the change.

Moutse residents have also been contesting the transfer of their area from Mpumalanga to Limpopo as a result of the Constitution Twelfth Amendment Act of 2005 and the Cross-Boundary laws Repeal Act of 2005. During the 1970s and 1980s, the area had been transferred from South Africa to Lebowa, from Lebowa to KwaNdebele, and back to South Africa as a result of apartheid regional policies<sup>2</sup>. These transfers happened against the wishes of the affected residents and were accompanied by civil unrest. In 1993, Moutse was listed as an affected area which could call for a referendum to decide whether it wanted to be incorporated in Mpumalanga or in Gauteng. At that time, Moutse residents wanted to be incorporated in Gauteng<sup>3</sup>. Following the negotiations with the ANC-led Government, Moutse residents did not make use of the referendum provision and accepted to be serviced by Mpumalanga. In 1998, Moutse became part of a cross boundary district municipality called Sekhukhune. It constituted the section of the municipality that was serviced by Mpumalanga whereas the remainder of the municipality was administered by Limpopo.

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<sup>2</sup> Constitutional Court of South Africa, *Moutse Demarcation Forum and Others v President of the Republic of South Africa and Others*, 2008, CCT40/2008, *Applicants' written argument*.

<sup>3</sup> *Ibidem*



When cross boundary municipalities were discontinued in 2005, Government decided to incorporate Moutse in Limpopo against the wishes of the inhabitants of the area.

In 2008, the Moutse Demarcation Forum followed the footsteps of the people of Merafong and Matatiele in launching an attack on the constitutionality of the Constitution Twelfth Amendment Act of 2005 and the Cross Boundary Repeal Act of 2005. The Forum argues that the Mpumalanga provincial legislature failed to facilitate public involvement of the residents of Moutse in the legislative process. They also allege that the decision to incorporate Moutse in Limpopo is irrational. Applicants' argument cites extensively previous similar Court cases such as the Doctors For Life International, the Matatiele and Merafong cases. The uniqueness of this case lies in the fact that the Court case has been running concurrently with efforts of a newly appointed Minister of Provincial and Local Government to "resolve the matter extra-curially"<sup>4</sup> by organizing fresh consultation with residents of Moutse. The Court has yet to make a ruling on the quality of public participation that had taken place prior to the adoption of the challenged Acts and on whether Government's decision to exclude Moutse from Mpumalanga is rational.

Balfour, a town situated in Dipaleseng local municipality in the Mpumalanga province has been pushing for its incorporation in Gauteng. The area has been the site of recurrent violent protests driven by a multiplicity of grievances including poor service delivery, the mining industry's insufficient local labour force, local governance issues, and incorporation into Gauteng. Senior politicians including President Zuma visited the town in 2009 and 2010 in order either to quell civil unrest or to secure votes in 2009 general elections and 2011 local elections. They promised to attend to residents' concerns and transform Balfour

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<sup>4</sup> Constitutional Court of South Africa, *Moutse Demarcation Forum and Others v President of the Republic of South Africa and Others*, 2008, CCT40/2008, Submission on behalf of the second respondent, 6 May 2009

into “a model municipality”<sup>5</sup>. At a media briefing on 24 March 2011, Gauteng Local Government MEC Humphrey Mmemezi solemnly declared: "We intend taking Balfour to Gauteng. The people of Balfour have long wanted to come to Gauteng. They believe we are delivering services to the people."<sup>6</sup> Whether and when such intention will materialise is difficult to predict. There isn't at this stage any legislative step taken towards transferring Balfour from Mpumalanga to Gauteng.

Finally, Ga-Ba-Mothibi community has been contesting its incorporation in the North West province and wants to be transferred to the Northern Cape Province. As in the cases of Matatiele and Moutse, a polling process took place in the area to determine the views of the residents with regards to the provincial demarcation. On 4 March 2010, the residents of Ga-Ba-Mothibi joined the inhabitants of Moutse and Matatiele in a protest action aimed at ensuring that the ANC made public the outcome of polls on residents' provincial preferences and fast-tracked the necessary legislative measures to move affected communities in their preferred provinces. As for Matatiele, Moutse, Balfour, the Ga-Ba-Mothibi community continues to wait to be included in the Northern Cape province.

In some other areas, dissatisfaction about provincial boundaries has not yet found political expression. It is thus possible that certain currently silent communities will come to vocally contest their provincial location. Besides, the ANC plan to reduce the number of provinces<sup>7</sup>, if implemented, may spark a new cycle of provincial boundary disputes across the country.

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<sup>5</sup> Nhlabathi, H. Balfour residents lose hope, Mail & Guardian Online 27 March 2011, <http://mg.co.za/article/2011-03-27-balfour-residents-lose-hope>, accessed on 17 August 2011.

<sup>6</sup> SAPA, Balfour to be incorporated into Gauteng, 24 March 2011, <http://www.news24.com/SouthAfrica/News/Balfour-to-be-incorporated-into-Gauteng-20110324>, accessed on 17 August 2011.

<sup>7</sup> <http://www.news24.com/SouthAfrica/Politics/ANC-parks-discussion-on-provinces-20100923>, accessed on



Map 2. Disputed boundaries left undecided in the 1993 Interim Constitution

Many post-apartheid provincial boundary disputes have erupted as a result of the disestablishment of cross boundary municipalities in late 2005. It is thus important to outline the context in which this municipal category was established and later withdrawn.

The status of cross boundary municipality attributed to sixteen municipalities including Merafong, Bushbuckridge, and Moutse was “an unintended consequence of the extended municipal demarcation of 2000, which reduced South Africa’s municipalities from 843 to 284” (Moodley and Mckenzie, 2005, p. 36). It was also a way to allay community dissent on the 1993 demarcation of provinces. A cross boundary municipality was envisaged as an area where communities existing in adjoining provinces were “so closely linked and socially and economically interdependent that the establishment of a single functional municipality will require the determination of a municipal boundary across the provincial boundary in question” (The Constitution of the Republic of South Africa Second Amendment Act, 1998). However, it soon became clear that cross boundary municipalities posed intractable administrative and service delivery complications that contributed a great deal to their poor performance. As a result, major services such as health services, provincial housing, public works, regional planning and development, road traffic regulations, vehicle licences and welfare services were discharged in an uncoordinated manner.

In 2005, the then Minister of provincial and Local Government, Sydney Mufamadi, explained the complexity posed by cross boundary municipalities in these terms:

Many provinces have different legislation for similar functions and if the laws of more than one province need to be administered in a cross-boundary municipality, it is confusing, duplicative and costly. For instance, a cross-boundary municipality needs to have its Integrated Development Plan (IDP) approved by both affected provinces, and integrating programmes and budgets for different provinces into a single IDP can prove impossible. This is an administrative nightmare and it leads to

service delivery being compromised, with cross-boundary municipalities featuring prominently among those municipalities discharging less than 30% of their assigned powers and functions (Moodley and Mckenzie, 2005, p. 36).

To ease service delivery in the affected municipalities, the Department of Provincial and Local Government undertook, in line with a 2002 presidential coordinating council decision, to re-demarcate cross boundary municipalities in such a way that they would fall entirely in one province. The decision had to affect sixteen cross boundary municipalities and six provinces namely Gauteng, North West, Mpumalanga, Limpopo, Eastern Cape and KwaZulu-Natal. This also required an amendment to the Constitution as well as an act repealing the cross boundary municipalities' laws. The process would implicate the Municipal Demarcation Board which is the independent board constitutionally empowered with the task of demarcating municipalities and delimiting wards. Getting rid of cross boundary municipalities thus put in motion two different and overlapping processes, namely the municipal demarcation procedure of demarcating municipalities and the national legislative process of re-determining provincial boundaries. In line with Articles 74 and 118 of the Constitution of the Republic of South Africa, affected provinces were required to approve the Bills and the public was to be involved in the legislative process. How, though, has existing literature explained post-apartheid provincial boundary disputes?

### ***1.3. Existing literature on post-apartheid provincial boundary disputes***

Only early episodes of the Bushbuckridge provincial boundary dispute have attracted sustained scholarly attention<sup>8</sup>. To explain the Bushbuckridge “border dissent”, scholars have stressed economic and developmental factors. Sagie Narsiah and Brij Maharaj have contended that “the struggle of the people of BBR is rooted in the material conditions of their existence. (...) The struggle of the people of BBR is to re-define provincial borders so that their material conditions could be addressed” (Narsiah and Maharaj, 1999, p. 51). In the same vein, Ramutsindela and Simon have argued that “the dispute is not only about the boundary in question but also about opportunities and constraints offered by the process of transformation” (Ramutsindela and Simon, 1999, p. 479). Development prospects are perceived to be brighter in Mpumalanga than BBR demands to be dissociated from its linguistic group in Limpopo. Towns that are economically prospering under the post-apartheid dispensation such as Hoedspruit have not contested their demarcation into Limpopo. For this particular reason, Narsiah and Maharaj insist that the key to explaining dissent of local communities “is not what they are, but how they are” (Narsiah and Maharaj, 1999, p. 43). Poor service delivery in Limpopo and anticipated improvement of the situation in the preferred Mpumalanga relates to the same concern for improved material conditions

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<sup>8</sup> Three published studies have been devoted to analysing the Bushbuckridge boundary conflict from its eruption to the court action in 1998. These are: Ramutsindela and Simon, 1999; Narsiah and Maharaj, 1999; and Niehaus, 2005.

(Narsiah and Maharaj, 1999, p. 43) This materialistic explanation, as this thesis will later argue, overshadows other equally powerful determinants of this conflict.

Scholars of BBR “border dissent” also mention, though in a peripheral manner, residents’ reliance on the promises of nascent democracy. BBR residents held to their right to democratically participate in the definition of their geographical identity. Claims to democratically decide their province were often formulated as a call for direct democracy, for regional self determination or even for the establishment of an independent “People’s Republic of Bushbuckridge” especially after the Court failure in October 1998 (Narsiah and Maharaj, 1999, pp. 45-47).

This drive for a more democratic regional planning paradigm was resisted by the post-apartheid Government which insisted on the unitary and centralised nature of the South African State. The ANC Government opposed resolving boundary disputes through referenda as the latter could cause instability or costly financial and logistical strains. For scholars of the Bushbuckridge provincial boundary dispute, the fundamental reason may be the uncontrollable devolution of power to local communities and its consequences. It is clear that:

Reference by the ANC to the internal borders as unnecessary in a “unitary” state is a reminder that the ANC-led Government is still concerned about the nature of the state. Any ‘behaviour’ such as the claims of residents of Bushbuckridge, which appear to be undermining ‘unitarist notions’, is dismissed as politically irrelevant (Ramutsindela and Simon, 1999, p. 498).

For Griggs, the root cause of protracted and costly post-apartheid boundary disputes is actually the abandonment of local referenda and the prevalence of what he calls “party political boundary demarcation” as a mechanism of boundary definition. In his disapproval of the ruling party ANC-led negotiations over contested boundaries, Griggs argues that

“support of referenda to resolve boundary disputes suggests an interest in moving the entire South African polity toward a system of more direct democracy and community empowerment” (Griggs, 1998).

In their account of the Bushbuckridge saga, Ramutsindela and Simon also mention the important role played by personal interests of politicians at provincial and national level and how this compounded the conflict. The possible transfer of Bushbuckridge into Mpumalanga evoked crucial political consequences such as the deduction of at least two seats in the Limpopo provincial legislature, the increase of NP representation in the National Council of Provinces, erosion of a political base for Bushbuckridge based national MPs and representation of traditional chiefs in the House of Traditional Leaders in Limpopo (Ramutsindela and Simon, 1999, pp. 493-494). They suggest that politicians' careers were at stake as the Premier Ramatlhodi honestly put it: “So if we do not manage the process of implementation [transfer of areas] in a way that would protect us for a period and protect all the sitting MPs for a period then there would be a problem because some people among us here or in Cape Town would have to vacate their seats” (Hansard, 1994, col. 45). This factor goes a long way to explaining the horse-trading that conditioned the transfer of Bushbuckridge on the incorporation of Groblersdal into Limpopo, which residents of Groblersdal vehemently resisted. It also helps to understand why the Bill for the transfer of Bushbuckridge was never debated in 1996 parliamentary session as the Constitution was being finalised (Ramutsindela and Simon, 1999, p. 494).

Even restructuring of metropolitan Local Government during the transition period was fraught with intense disputes often among competing political parties. These conflicts over metropolitan boundaries have been studied by Cameron, Mabin and Pillay (Cameron, 1999).



Cameron has contended that “boundary demarcation was arguably the most heated and controversial part of the entire Local Government democratisation process” (Cameron, 1999, p. 1). However, as will transpire in the course of this thesis, provincial boundary disputes have, in many respects displayed different socio-political dynamics from those observed in the process of demarcation of metropolitan boundaries. What are the limitations of the existing literature on post-apartheid provincial boundary disputes? How does this thesis intend to enrich the scholarship on regional planning and provincial boundary disputes in post-apartheid South Africa?

#### ***1.4. Unique contribution of this thesis***

While existing literature on post-apartheid provincial boundary disputes has been single case oriented<sup>9</sup>, this thesis adopts a multiple case study approach to explaining post-apartheid boundary disputes. Given the recurrence and the cost of provincial border conflicts in the post-apartheid era, a single case research design is less conducive to the emergence of a holistic understanding of the relevant social, economic and political dynamics at work in these disputes. Besides, the two high profile cases of Khutsong and Matatiele have not constituted the subject of a sustained social scientific investigation. A critical analysis of the three case studies which this thesis undertakes embodies the added value of tracking common threads, identifying systemic and structural problems, and discussing the uniqueness or the replication of some of the dynamics found in a particular case of provincial boundary

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<sup>9</sup> Until 1999, scholars’ interest has uniquely focused on the Bushbuckridge case: Ramutsindela and Simon, 1999; Narsiah and Maharaj, 1999; and Niehaus, 2005.

contestation. Lessons emerging from such multiple case study research design are more solidly grounded than if they only transpired from the single Bushbuckridge case study.

Based on such methodological difference, this thesis contends that post-apartheid provincial boundary disputes have proven to be complex political phenomena whose intelligibility passes through taking into account the interplay between material conditions of affected communities and their conceptions of democratic governance and local development, the conflict between Government's functional regional planning model and people's territorial regional planning demands, Government's democratic deficit, strategic political struggles at various levels of governance, and limits of judicial arbitration. Analysed within this proposed framework, post-apartheid provincial boundary disputes appear as battles not over physical provincial lines, but over frontiers of socio-economic prosperity and political power. Let us elaborate on key elements of this argument.

First, this thesis emphasises the interplay between material conditions and local notions of democracy and development as determinants of boundary disputes where previous research has stressed materialistic explanation of this phenomenon. "It has been the contention of this paper that the struggle of the people of BBR (Bushbuckridge) is rooted in the material conditions of their existence", state Narsiah and Maharaj (1999, p. 51). They further elaborate: "the dispute in Bushbuckridge concerns the struggle of a community to access resources, to have their basic needs satisfied..." (*Ibid.*, p. 40). The class dimension is coupled with a racial dimension as expressed by the contrasting of Bushbuckridge and a neighbouring town Hoedspruit:

While the people of BBR languish in a spiral of underdevelopment, the white component of the area, Hoedspruit, continues to reap the fruits of a democratic dispensation in the form of increased tourism and development... Significantly,

Hoedspruit is not lobbying to be included in Mpumalanga and is content to be part of the Northern Province (*Ibid.*, p. 43).

For these scholars, to understand local communities' reaction to unpopular demarcation decisions, the analyst should look at how they are rather than what they are.

This emphasis on the material conditions of local communities as the key determinant of their dissent overshadows the ideological setting that has characterised these disputes. The Khutsong and Matatiele cases further highlight the importance of both material conditions and ideological discourses of popular democracy and local development in resisting Government imposed provincial arrangement. This thesis does not find it relevant to decide which determinant has priority between material conditions and ideology. Whereas Marxists would favour a materialistic explanation of the type developed in the above mentioned statements and idealists would profess the priority of residents' notions of democracy and local development, this thesis rather puts emphasis on the interplay between residents' material conditions and their conceptions of democracy, social justice and development. How people interpret their economic prospects and their social and political rights in the new South Africa is important in shaping their regional preferences and their actions or reactions with regard to provincial demarcation decisions.

Second, this thesis argues that the conflict between Government's predominantly functional regional planning approach and communities' territorial regional planning model constitutes one of the main determinants of the clashes. Narsiah and Maharaj allude to this conflict of regional planning paradigms as "competing meanings of territoriality" (1999). The functional regional planning paradigm conceives regions as nodes in a larger network of units whose interactions are driven and designed from a few centres of power. Functional

explanations of regional planning often claim universal validity and are presented as neutral and scientific. However, the territorial regional planning model emphasizes the involvement of the people of a region in the planning process and the construction of planning measures in a way to meet local needs and to promote equity and a general improvement in the quality of life for all the people in the area. This model approaches the geographical area as a territory and recommends that planning be undertaken in a manner that gives priority to “territorial interests”. The literature on regional planning widely discusses the merits and demerits of functional and territorial regional planning models (Gore, 1984). While some scholars consider these two approaches to be fundamentally antithetic, other scholars think that they are not mutually exclusive. Yet, there is little demonstration of ways in which these two planning paradigms can be reconciled or combined in developing and implementing regional policies. Scholars of South African regional planning agree that functional planning has predominantly shaped regional policies both during and after apartheid (Ramutsindela and Simon, 1998; Narsiah .and Maharaj, 1999).

However, a closer examination of the South African legislation pertaining to regional demarcation reveals that a form of territorial planning is enshrined in the Constitution and other related statutes. The Constitution guarantees provincial territorial integrity to provinces in such a way that a province has the power to veto any national legislation that envisages altering its powers, functions or boundaries (Constitution of the Republic of South Africa, 1996, Article 74). Besides, provinces are constitutionally bound to consult with the people prior to any approval or disapproval of a national regional policy affecting them (*Constitution of the Republic of South Africa*, 1996, Article 118). Dissenting residents in border disputes areas have advocated a form of territorial regional planning

approach to provincial boundary demarcation. This in-depth study of three case studies of provincial boundary disputes will enrich this debate by outlining ways in which post-apartheid South African State has been grappling with these two apparently conflicting approaches to regional planning. This thesis will show the tensions that arise from the clash of these two models and how these inherent difficulties are being handled in the post-apartheid South African context.

Third, while existing scholarship on the Bushbuckridge saga has referred to democratic deficit as one of the drivers of residents' resistance to State regional policy, this thesis deepens the investigation by pointing to conflicting conceptions of sovereignty as a key cause of recurrent provincial border clashes. Accounting for the "border dissent" in Bushbuckridge, Narsiah and Maharaj identified grassroots call for democracy as a key determinant of residents' resistance: "South Africa is a new democratic dispensation and it is important to the laity that decisions which are perceived to impact directly on their lives be infused with democratic content". (Narsiah and Maharaj, 1999, p. 40). Hence, residents' negotiations with the ANC-led Government were marked by "eloquent enunciations of the right of the people to determine their own destiny" (*Ibid.*, p. 45). They regarded their demand for inclusion in Mpumalanga as a basic right in a democratic society: "Why not let us go to Mpumalanga? This is a new South Africa where people should exercise their rights. In the past we were forced to be part of Gazankulu" (Ramutsindela and Simon, 1999, p. 487). Griggs' general discussion of "the security costs of party political demarcations" in South Africa laments over the prevalence of party political demarcation and considers it as the main reason behind costly and national security threatening boundary disputes. He sees in the use of referenda a better mechanism for boundary demarcation or boundary dispute resolution as

can be read in this statement: “support of referenda to resolve boundary disputes suggests an interest in moving the entire South African polity towards a system of more direct democracy and community empowerment” (Griggs, 1998). In deepening our understanding of the nature of the democratic deficit reflected in post-apartheid provincial boundary disputes, this thesis identifies two conflicting conceptions of sovereignty held by affected residents and the ruling elite. As this thesis will later show, the ruling elite sticks to a representative conception of democracy whereas residents push for direct democracy in line with the Freedom Charter clause “people shall govern”. This conceptual tension is more evident in how each camp interprets the nature and scope of public participation in legislative processes. This thesis argues that this profound conflict between popular sovereignty and state sovereignty greatly accounts for the recurrence and protracted character of provincial boundary disputes in the post-apartheid era.

Fourth, this research also argues that post-apartheid boundary disputes reflect strategic political struggles at local, provincial and national levels which partly account for the protracted and confrontational character of these conflicts. These battles are now predominantly internal to the ruling ANC in contrast to the 1993 process of delimitation of provinces and the demarcation of metropolitan Local Government when contestations of boundaries rather involved all major political parties. In his seminal work on regional planning theories, Charles Gore concludes by affirming the political contingency of regional policies. He further argues that “the adoption of regional policies and their specific nature can only be understood by analyzing how the conflicting interests of various social groups within a country are mediated through the institutional apparatus of state” (Gore, 1984, p. 259). He then calls for social scientists to contribute to the development of such knowledge. This

thesis as a whole can be seen as a response to fill this gap as far as post-apartheid demarcation policies are concerned. In critically discussing the three cases of provincial boundary disputes, this thesis will in a way “theorize the space-time constitution of sectional interests, power relations, and political struggles ... which influence policy” (Gore, 1984, p. 260) and counter-policy. As it will later transpire, the Bushbuckridge, Khutsong and Matatiele demarcation decisions and their Amendments have been the sites of intense political contestations among various interest groups, including ANC councillors, traditional authorities, local business associations and ruling elites at local, provincial and national levels. And the balance of power among competing interest groups has significantly determined which policy decision prevails.

Contrary to existing literature on the Bushbuckridge case, this thesis approaches regional planning as a strategic and contested terrain. For that reason, this thesis shows how strategic political struggles have always interfered with provincial demarcation policies and have contributed a great deal in sparking and intensifying conflicts. The term “strategic” refers, in line with the German philosopher Habermas communication theory, to conscious manipulation of information or procedures in a bid to promote hidden partisan or egoistic interests. This contrasts clearly with sincere and open social interactions aimed at reaching the best possible outcome for the stakeholders or for the society at large (Habermas, 1987).

Existing literature on border disputes (Ramutsindela and Simon, 1999; Narsiah and Maharaj, 1998; Griggs, 1998) does not generally construct such conflicts as fundamentally strategic struggles. Even in unveiling the logic of deceit, broken promises and voluntary delay in the management of border dissent, these accounts do not include and investigate the crucial hypothesis that some State institutions or public officials may, from the very start of

the demarcation process or the boundary dispute resolution process, be driven by partisan interests and hidden agendas to be secured through specific strategies. Whether such pre-existing interests have predetermined the State's position throughout the dispute has not been investigated. Besides, demarcation and dispute resolution have been widely presented as a primary task of the Government rather than a joint endeavour between the State and the public. Moreover, eruption of conflicts in the process of demarcation has been considered as abnormal or pathological. Many accounts have imagined smoother processes of demarcation by improving the involvement of citizens or letting local residents directly decide through such mechanisms as local referenda. Griggs for example has attributed boundary disputes "to the dominance of spatial decision-making by political party negotiations" and has contended that "the use of referenda from 1994 could have by passed all the major problems that characterised both the creation of the provinces and the attempts to resolve ongoing disputes. Referenda, however, are not neutral objects in the construction of bounded spaces. They break the coalition of politicians against public access to the decision-making process and hence could play a role in building a culture of grassroots democracy in South Africa" (Griggs, 1998). These views in the literature have raised expectations that demarcation can be a "straightforward" (Narsiah and Maharaj, 1998, p. 48) or linear process. Besides, as the demarcation and dispute resolution process is dominantly constructed as State monopoly, local communities have been depicted as reactionary to State decisions and as largely at the mercy of politicians. Bushbuckridge residents have been, for instance, presented as victims of false promises by politicians. It is as if they were doomed to lose the battle as suggested in the following lines: "where there has been conflict between community desires and national goals, community participation has tended to be overridden. In this context, the wishes of the



people of Bushbuckridge to be re-incorporated into Mpumalanga were not met, mainly because they were seen to be contrary to decisions that have been taken at provincial and national levels, including those taken at the highest level of the ANC” (Ramutsindela and Simon, 1999, p. 498). Such emphasis on the power of the State has failed to establish the local community concerned as a real actor, a serious challenger whose deeds and attitudes have a bearing in the final outcome of the process. This thesis moves away from the abovementioned limitations. Territorial demarcation and disputes are constructed from the outset as strategic struggles that can only be satisfactorily accounted for in unveiling partisan interests, hidden agendas and covert strategies aimed at securing a specific outcome.

The multiple case study approach and the resultant argument have emerged from a fundamental research question which can be formulated as follows: How does one explain recurrent and protracted conflicts between the post-apartheid Government and local communities over provincial boundaries? In order to operationalise the research question, the research narrows its focus on what disputants see at stake in the conflict and what strategies they develop to advance their respective cause. On one hand, the research question asks: what is at stake in a specific boundary dispute? Is it about ethnicity? Is it about the very nature of the State (unitary or federal)? Is it a reflection of the structural conflict between the representative and the participatory aspect of the South African democratic system? Is it about grassroots calls for direct democracy? Is it mainly about economic concerns or about “emotional attachments” to a province? On the other hand, the research investigates disputants’ strategies. In this regard, this research asks: what has each disputant done to secure a particular outcome? How is the Constitution being used in both sides of the spectrum either in order to claim a constitutional right to a provincial location or in order to

resist local communities' preferences? To what extent is the clash fuelled or shaped by internecine party or alliance divisions? Has the conflict been exacerbated by "political manoeuvring" or "politicking" led by personal or group interests?

In exploring these questions, this research project aims at developing a socio-political explanation of post-apartheid provincial boundary disputes, at critically discussing key factors that drive the resistance of local communities to the State, at critically accounting for various strategies mobilized by disputants in order to advance their cause, and at identifying broad socio-political issues raised by post-apartheid provincial boundary disputes. In this way, this study's investigation responds to Gore's recommendation that any interpretation of regional planning strategies and practices must "analyze the different sectional interests in society, the ways in which these interests are mobilized into political organizations and represented within the institutions of the state, and the ways in which resistance to particular policies is organized, and repressed" (Gore, 1984, p. 248).

### ***1.5. Methodology***

A study of provincial boundary disputes can be approached from various theoretical perspectives. It may be studied from a regional planning perspective, from a regional economics standpoint or from a development planning theoretical approach. This research takes a classic political science approach into this question. It addresses the problem of provincial boundary disputes from political science theories of social conflict and power contestation. Unlike previous scholarly studies on existing literature on the Bushbuckridge provincial boundary dispute, this thesis approaches territorial demarcation and provincial

boundary disputes from the theoretical assumptions that they are contentious matters, conflict ridden practices and thus strategic terrains.

While previous research on this problem has been single case orientated, this thesis adopts a multiple case study research design for advantages that are outlined below. As one would tell from the type of research questions, this study is of qualitative orientation. It is designed around three case studies of post-apartheid provincial boundary disputes. These are the Bushbuckridge, Khutsong and Matatiele cases. A multiple case study approach is better suited to deepen our understanding of socio-political dynamics at play in post-apartheid South Africa. It has among other merits the advantage of highlighting commonalities, particularities and structural issues. The choice of case studies is purposive. The chosen case studies have constituted the most prominent instances of provincial boundary disputes in recent times. Though there will be scope for comparison among case studies, the primary purpose of exploring multiple case studies is not to provide a basis for comparative discourse, but to use them as mirrors that reflect broad socio-political dynamics at play in South Africa's post-apartheid politics. This study approaches the three case studies as a platform that allows deeper debate on post-apartheid politics.

It is acknowledged that the preferred multiple case study approach may limit the scope or depth of issues to be discussed in each specific instance of provincial boundary dispute, especially when the issue is not central to the objectives pursued in this study. A single case study approach would potentially have allowed more depth in accounting for a specific instance of provincial boundary dispute. However, it would have deprived us the opportunity to identify commonalities and specificities as well as the latitude to engage the broader national politics. Since this thesis is primarily interested in providing an explanatory

framework to the problem of provincial boundary disputes in identifying and analysing key drivers of these conflicts across the three case studies, certain peripheral issues such as the politics of patronage, local processes of mobilisation for protests, the specific interests of traditional authorities, references to cultures or history will be raised, but not necessarily pursued in an exhaustive manner. This limitation will make sure the thesis remains focused.

It is important to note that border conflicts did not run simultaneously in the three chosen areas. By the time the dispute erupted in Khutsong and in Matatiele in late 2005, the Bushbuckridge conflict was over. In fact, the piece of legislation that ended the provincial boundary dispute in Bushbuckridge is the same that sparked contestations in Khutsong, in Matatiele, and in Moutse. By March 2009, the Khutsong provincial boundary dispute was resolved, but the Matatiele one was far from being addressed. Despite such temporal differences, these case studies can still be discussed together as instances of post-apartheid provincial boundary disputes and have the potential to unveil broader structural socio-political problems. Besides, these three areas fell within six provinces namely Gauteng, North West, Limpopo, Mpumalanga, Eastern Cape and KwaZulu-Natal. The decision to disestablish each of these areas as a cross boundary municipality had to obtain approval from the two provinces it straddled across. This meant that each of these six provinces was implicated in a provincial boundary dispute. So, a research design around three case studies implicating six provincial Governments and the national Government has the potential to cast a more solidly grounded image of the country's socio-political climate.

Data have been obtained through semi-structured in-depth interviews, focus groups, observation and use of existing secondary materials. The author, with the help of research assistants, has conducted interviews and focus groups meetings in various cities and towns

where informants could be found<sup>10</sup>. The author also made use of direct observation in attending a public hearing session in Carletonville, an ANC election rally in Khutsong, and many sessions of the portfolio committee on provincial and cooperative governance in Gauteng. Visits to the three areas also provided first-hand information on the area, its inhabitants and the nature of the provincial boundary dispute. A great deal of insight has been garnered from Court materials, newspaper reports, written submissions to legislative bodies, and various memoranda and statements.

Since this study's research design is purposefully not ethnographical, the thesis does not aim to capture the lived experiences of individual actors with regards to the boundary dispute nor does it primarily seek to account for the significance of provincial boundaries in the everyday life of specific individuals in the affected communities. These are interesting research questions that would be best investigated through ethnographic research design. However, these questions remain beyond the scope of the present research whose main methods of data collection have been interviews, focus group discussions and official documents.

Informants have fallen within these categories: members of provincial legislatures, officials of the Department of Provincial and Co-operative Governance, traditional authorities in Matatiele and in Bushbuckridge, councillors, members of the tripartite alliance (ANC, COSATU and SACP), members of opposition political parties, members of the Municipal Demarcation Board, activists in anti-demarcation organizations, teachers, traders, and taxi associations. A full list of interviews conducted for the purpose of this research is provided in the appendix 1. Selection of interviewees was dictated by the need to get first

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<sup>10</sup>Towns and cities where interviews and focus groups meetings were conducted include: Johannesburg (Gauteng), Mafikeng (North West), Carletonville (Merafong), Khutsong (Merafong), Newcastle(KZN), Matatiele, Maluti, Bushbuckridge, Hazyview. More details are provided in the Appendix 1.

hand information from actors directly or indirectly involved in provincial boundary disputes on both sides of the spectrum. Being qualitative in its design, this research did not aim at speaking to a representative sample of affected residents and officials. However, as much as the study has pursued in-depth understanding of issues, it has also striven to listen to as much diverse opinion as possible.

Thematic content analysis is the main mode of data analysis employed in this research. Besides, the process of inductive reasoning has been used in order to develop the interpretative framework for understanding post-apartheid provincial boundary disputes.

This research project has faced a few challenges. The author is not fluent in African languages spoken in local communities. However, research assistants were able to compensate for this deficiency and most interviewees could express themselves in English. Researched communities such as Matatiele and Khutsong still experienced a great deal of distrust, tension and suspicion at the time of interviews. This allowed researchers to assess the gravity of the situation created by provincial boundary disputes. However, it also prevented open debate and relaxed focus group discussions. This explains why individual interviews by far outnumber focus group discussions. These two difficulties do not overly affect the value of this study's findings. A detailed account of the methodology is presented in the appendix 1.

## ***1.6. Outline of chapters***

This thesis is organised in six chapters including this introductory section. After the first chapter, the three case studies are presented. The order in which these case studies are

discussed is chronological. Chapter two covers the Bushbuckridge provincial boundary dispute. Chapter three proceeds with the Khutsong case and the Matatiele case is presented in chapter four. The fifth chapter critically analyses common patterns and broader structural socio-political issues raised by the three case studies, taken as instances of post-apartheid provincial boundary disputes. This chapter also discusses the implications of this thesis's findings for future policy making in this area. A concluding chapter sums up key findings.

## **CHAPTER 2: PROVINCIAL BOUNDARY DISPUTE IN BUSHBUCKRIDGE**

### ***2.1. Introduction***

Revisiting the Bushbuckridge provincial boundary dispute, despite extensive and high quality scholarly literature on the case, rests on the usefulness of casting an interpretation of the conflict illuminated by the reading of two later similar instances of provincial boundary conflicts. Placed side by side with the Khutsong and Matatiele cases, the re-examination of the Bushbuckridge case delivers new insights and nuances. On the basis of our own field work in the area and extensively drawing from existing literature, this chapter frames the Bushbuckridge provincial boundary conflict between 1993 and 2005 as a complex political phenomenon which can only be accounted for by highlighting the role played by underlying material conditions, local notions of democracy and development, conflicting regional planning paradigms, Government democratic deficit, strategic political struggles, and limits of judicial arbitration. Each of these factors is elucidated as the chapter strives to provide a socio-political explanation of the Bushbuckridge provincial boundary dispute. Let us begin by providing the geographical and historical context of the locality.



## ***2.2. The geography and historical background of Bushbuckridge***

Bushbuckridge Local Municipality covers the area located in the south- eastern part of Limpopo Province and north-eastern part of Mpumalanga Province (See map 3.). It is bounded on east by Kruger National Park and the sensitive watershed and forests of the Drakensberg Mountains. To the north of the town runs the Olifants River that flows through a stunning gorge into the Kruger National Park. Bushbuckridge town from which the region is named constitutes a small trading and administrative centre approximately midway on a north-south line between Nelspruit, the capital of Mpumalanga and Tzaneen, a major centre of commerce and agriculture in the lowveld of Limpopo. The Municipal area provides a link to Lydenburg and other centres in the lowveld, particularly Hoedspruit, Pilgrim's Rest and Graskop. Bushbuckridge is made up of the Mhala district of the former Gazankulu Bantustan and the Mapulaneng district of the former Lebowa Bantustan. Before the establishment of the two Bantustans, Bushbuckridge formed part of the Eastern Transvaal and was administered by the Graskop local authority.

One of five local municipalities in Elhanzeni District municipality within the provincial territory of Mpumalanga, the municipality of Bushbuckridge has several small urban areas including Acornhoek, Thulamahashe, Bushbuckridge, Marite, Dwarsloop, and Mkhuhlu. However, rural areas make up the most part of the municipality. Small rural villages comprise 29% of the population while dense rural villages represent 61% and about 9% of the population lives in urban centres (The water dialogues South Africa, 2008). The 2001 Census reported a population size of 497, 958 for the municipality. The real population size is certainly higher due to unregistered immigrants. The 2006/07 Water

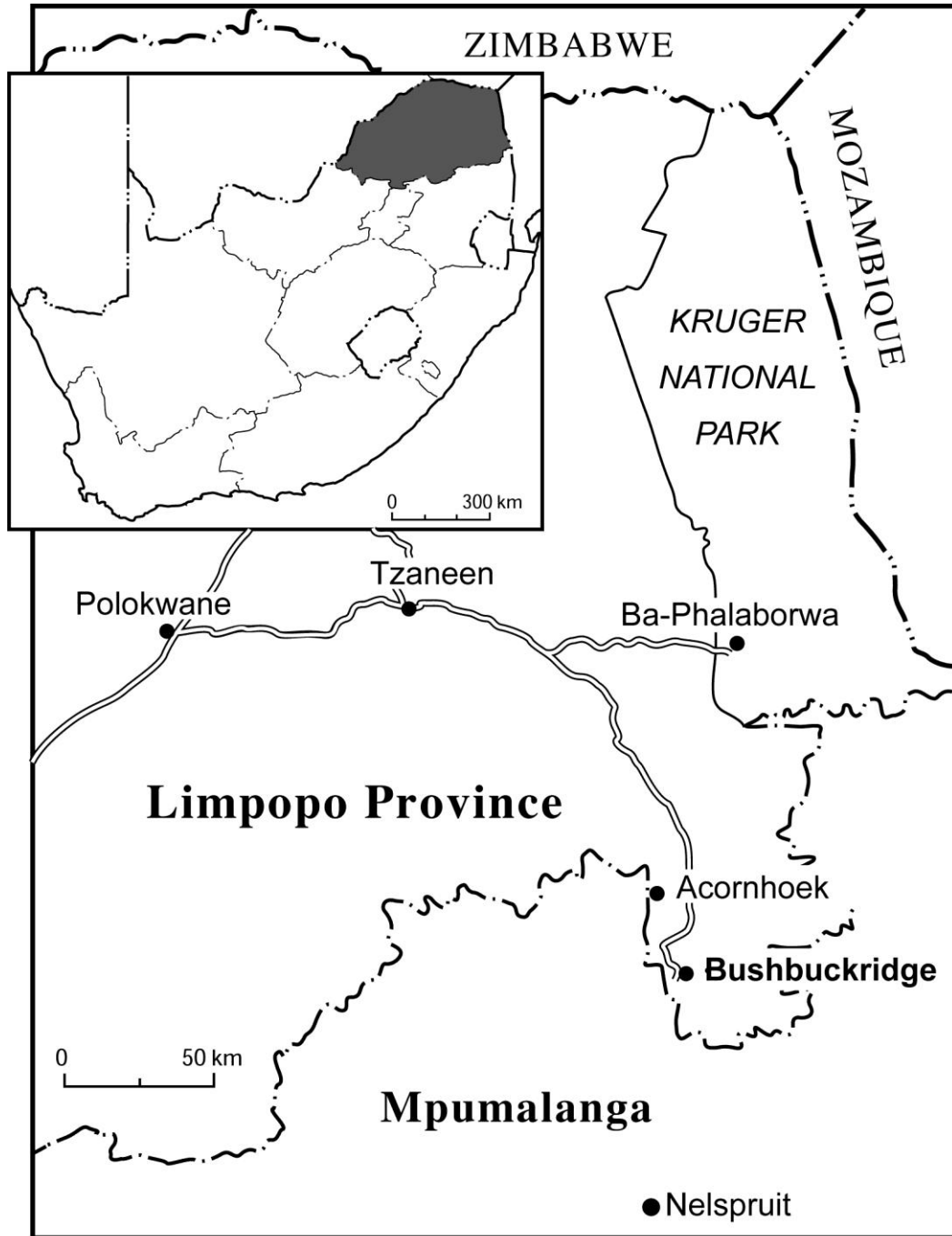
Services Development Plan estimated that the municipality of Bushbuckridge had a population of around 720,000 (The water dialogues South Africa, 2008). The population of the municipality is significantly young as some 65% of the population is under the age of 24 years (Census 2001).

The region stretches on pieces of two old Apartheid Homelands, Gazankulu and Lebowa, as well as parts of the then “white South Africa” consisting of white-owned farms and state lands, including military reserves and a large airbase. The apartheid regime established Gazankulu as the ethnic home for the Tsonga and Shangaans who had migrated from Mozambique. Lebowa was constituted as the land for North Sotho and Pedi. KaNgwane was the “homeland” constituted for Swazi blacks. Ethnicity was largely entrenched by apartheid ethno-regional planning and related policies (Ritchken, 1994 ; Delius, 1996; Niehaus, 2006). Traditional leadership was by the same token manipulated and co-opted as an important element in the apartheid state’s administration of homelands. This does not negate the diversity of nations that inhabited the region with long history of both ethnic hostilities and peaceful cohabitation (Ritchken, 1994; Delius, 1996; Niehaus, 2006).

Black communities in this region have painfully endured recurrent forced removals from their ancestral lands either as a result of overt racist political motives or environmental conservation policies. Through the 1913 Land Act, the area was scheduled as a “released area” and reserved for exclusive occupation of Africans. Since 1930, forestation of large tracts of land and mechanization of production processes on nearby white-owned farms displaced many households which moved into Bushbuckridge. These historical events transformed most black people into rent tenants, put enormous pressure on

rural resources, and decreased agricultural yields. With the advent of apartheid in 1948, large farm lands were purchased for the creation of homelands and nature conservation areas. Many black households were forcibly removed and resettled for the most part on the formerly white-owned Lowveld farms which became dense settlements. Towns and rural areas such as Dwarsloop, Cottondale, Greenvalley, Acornhoek, Buffelshoek, Rooiboklaagte were all formed in this manner (Thornton, 2003).

In 1960, “a betterment plan” by the South African Native Trust further restrained black communities’ access to residential and agricultural land. As a result, “labour migrancy to South Africa's industrial and mining centres now became an imperative for survival” (Niehaus, 2006). In this same year, the introduction of Bantu authorities saw the division of Bushbuckridge into two ethnic zones namely the Mapulaneng Regional Authority for Northern Sotho in the west and the Mhala Regional Authority for Shangaans in the east. In 1973 these structures were affiliated to the Lebowa and Gazankulu Bantustans, respectively. Today, Bushbuckridge still displays the character of a labour reservoir and a marginalised area in the midst of a region in which tourism, commercial farming and game reserves flourish.



Map 3. Geographical location of Bushbuckridge.

The enactment of the Land Restitution Act in 1994 brought hope of restorative justice to individuals and communities dispossessed of their land through racist policies since 1948 and even before. As shown in the work of Thornton (Thornton, 2003), these promises have been marred with complexities which have made arbitration of land claims difficult. Poor or non-existent recording of land ownership organization, difficulties for individuals and communities to produce legally acceptable evidence of past ownership of the land, competing conservation needs for established nature reserves, and conflict over jurisdictional prerogatives between spheres of Government are just some of the factors that have slowed or deadlocked the process of post-apartheid land reform in the region of Bushbuckridge. The land question has generated conflicting claims and interests which the post-apartheid Government has had to confront while facing a revolt on the provincial demarcation of Bushbuckridge since the re-demarcation of regions in 1993.

The area had a recent history of social unrest. Until the 1980s, the region of Bushbuckridge experienced little overt political resistance against apartheid. Movements such as the campaign of Sebatakgomo migrants' association against the imposition of Bantu authorities in Sekhukhuneland and the struggle against child labour led in 1950s by the brothers Matsikitsane and Segopela Mashile, with ANC support, did not assume durable and wider political significance. "Black consciousness" propagated by few students fleeing from Soweto to Bushbuckridge in 1976 failed to make any local impact (Ritchken, 1994; Delius, 1996; Niehaus, 2006).

However, the eighties saw the emergence of the United Democratic Front (UDF) affiliated structures in Lebowa and Bushbuckridge. Two such organisations namely Mapulaneng Crisis Committee and the Brooklyn Youth Organisation established at

Impalahoek in 1986, became the centre of political activism against apartheid. As adult members of the crisis committee were soon detained, young comrades drove the political resistance with new emphasis on freeing their society from evils including witchcraft. It is estimated that between April and May 1986, Comrades attacked more than 150 witches, killing at least thirty-six (Ibid.). The youth movement was to enter into cyclical violent confrontation with members of the Sofasonke ('We Die Together') Civic Union, a new group of adults who disapproved of the Comrades' actions. Mutual violent assaults were only stopped when the Lebowa police arrested several members of both groups. After the unbanning of the ANC, ANC branches mushroomed in Bushbuckridge under the control of teachers and businessmen who managed to win to the ANC camp former adversaries of the youth such as the chiefs (Ibid.).

As new boundaries for provinces were being defined in 1993 at CODESA, the commission for the delimitation and demarcation of regions (CDDR) recommended the inclusion of Bushbuckridge in the Northern Province (Limpopo) against residents' preference for Mpumalanga. Given such resistance, the 1993 Interim Constitution considered Bushbuckridge as an "affected area" with the prerogative to petition for the organization of a local referendum to decide on its provincial location. However, ANC leaders discouraged the use of local referenda in affected areas promising residents that the ANC-dominated Government would effect their inclusion into their preferred Mpumalanga province. For a complex set of political reasons which will become clear in the course of the analysis, this promise did not materialize causing residents to embark on disruptive and violent protest culminating in a Court action in late 1997. Four deaths were directly linked to the Bushbuckridge border conflict (Niehaus, 2005). A number of strikes, school boycotts

and public demonstrations also disrupted the economic and social life in the area, causing destruction estimated at 40 million rands (Griggs, 1998; Narsiah and Maharaj, 1999). The military had to be deployed to protect tourists against possible assault by protesting residents. After the Court failure, the resistance campaign subsided partly because the ANC had instructed its members to pull out from the BBCC. From 1998 to 2005, Bushbuckridge was made the seventh region in Limpopo province, making it possible for all Government departments to have offices in the area. It also had to function as a cross boundary municipality which meant that Mpumalanga would also service the area on an agency basis. In December 2005 when cross boundary municipalities were disestablished across South Africa, Bushbuckridge was finally included in Mpumalanga as long wished by the majority of its residents. It took 11 years, a protracted and violent conflict and its associated consequences for the ANC-led Government to accede to the wishes of affected residents. To understand this saga, this thesis offers the interpretative framework evoked in the introduction. First of all, it is important to look at the role played by underlying material conditions in contributing to the conflict.

### ***2.3. Material conditions of the population of Bushbuckridge***

As a dumping area for forced removals in its neighbourhood and as a reserved area merely needed for its labour force, Bushbuckridge remained -until the dawn of democracy in 1993- in conditions of extreme poverty and underdevelopment. The area had poor road infrastructure. To date, many villages are not accessible by good roads and streets in townships and villages are impassable during the rainy season. The provision of water has

remained one of the biggest challenges in the area. In the 1980s, “there were no taps and people had to walk more than a kilometre to get water. Few people had latrines... cholera is endemic in the rainy season. Furthermore, boreholes are a common supply of water” (Narsiah and Maharaj, 1999: 41). Despite efforts by successive Governments to address the water crisis in Bushbuckridge, communities in the area still lack a reliable source of clean water. Households spend the best part of their time queuing or walking in search of water. The Inyanga dam project which was expected to deliver a long term solution to the water problem in the region has failed to meet its projected completion deadline and may still be delayed for at least two years. Before 1993, all rural areas around Bushbuckridge did not have electricity. Today, electricity is provided in most areas in the municipality of Bushbuckridge though rural villages spend long blackout periods due to electrical faults.

In the early 1990s, Bushbuckridge was also poorly resourced in terms of health, education and policing infrastructure. According to Narsiah and Maharaj, there was no hospital in the area. The nearest hospital was 85 kms away. One could find only one clinic which was open from 8 am to 4 pm and two police stations which catered for a population of 1 million (Narsiah and Maharaj, 1999). In 1996, there were 335 schools catering for a student population of 196,727 with a pupil-classroom ratio of 54:1 in the Mhala district and 58:1 in Mapulaneng (Narsiah and Maharaj, 1999).

The socio-economic profile of the Bushbuckridge population also reflects precarious material conditions. Despite its location in a region where tourism has been flourishing, unemployment is very high. Narsiah and Maharaj reported that with a population of 1 million growing at a rate of 2.5 per cent annually and a high density, unemployment was estimated at 50 - 60% in early 1990s (*Ibid.*). Current estimates place



employment rate below 15% (<http://www.bushbuckridge.gov.za/about.html>). Most unemployed fall within the 25 - 34 age group. Such a high degree of youth unemployment greatly contributes to increasing levels of criminality in the area. The area has attracted little investment and job creation. “We only have few malls in three big townships which employ few people. The majority is unemployed or works outside Bushbuckridge”, lamented an informant. It is estimated that 70% of employed people work outside Bushbuckridge in Hazyview, Nelspruit, Hoedspruit, Graskop or other surrounding lodges. In the 1990s, average household income per month was R 630 way below the mean living level (MLL) of R 970 (Narsiah and Maharaj, 1999). Lack of investment partly explains unemployment: “Investors are not attracted here. There is nothing in Bushbuckridge except few shopping malls. Even tourists avoid passing through Bushbuckridge. They use other routes to the Kruger National Park. Nothing attracts them here. There is no hotel, no facility for them” stated Mr Reinas Khumalo, ANC councillor and chief whip in the Bushbuckridge municipal council. Due to this absence of any local economic base, the municipality of Bushbuckridge is totally dependent on grants from the national treasury. “We have no way to generate local revenue. Except shopping malls in three townships, there is nothing else that can generate income for the municipality. As a municipality, we are now working on an urban renewal project to address this problem”, explained Mr Reinas Khumalo.

By any standard, material conditions are still bad for the majority of the population in Bushbuckridge, despite significant achievement in various development projects undertaken since 1993. These conditions were even worse during the transitional period and community frustrations even higher because of the oppressive apartheid system and a lack of Government structures that people could trust.

In this context, provincial boundaries became a crucial element in the struggle for the upliftment of the area. Boundaries had been used by the apartheid regime as markers separating havens of prosperity and areas of extreme poverty. For residents of Bushbuckridge, the fight against poverty would be tied with resistance against what they saw as an unfavourable provincial boundary arrangement.

In the Bushbuckridge case, material conditions serve as an explanatory factor both at source and end of the dissent. Precarious living conditions made the area more susceptible to revolt against an unfavourable policy. It is in that sense that Narsiah and Maharaj argue that “the dispute derives from historically constituted material conditions of life in the area” (Narsiah and Maharaj, 1998, p. 38). Moreover, the community’s intransigent involvement in a disruptive and protracted conflict against Government sought to secure brighter socio-economic prospects, to “access resources, to have their basic needs satisfied” (Ibid., 1998, p. 40). How inclusion in Mpumalanga could have improved socio-economic opportunities as compared with continued location in Limpopo will be discussed in a later section. However, the dispute had not only a material basis, but also ideological underpinnings.

#### ***2.4. Local notions of democracy and development***

Residents of Bushbuckridge opposed their demarcation in Limpopo because they strongly believed that they had the right to determine their provincial location and shape the future development of their area. Notions of “people’s power” and popular sovereignty shaped various initiatives that residents embarked upon in an attempt to secure the transfer

of the area to Mpumalanga. This is particularly manifest in campaign actions and discourses. Responding to changing political circumstances, residents successively established the Referendum Facilitation Committee in 1994, the Bushbuckridge Border Committee (BBC) in 1996, and the Bushbuckridge Border Crisis Committee (BBCC) in April 1997 with broad representation from major sectors including churches, political parties, traditional authorities, and business associations. Such structured political organisation is evidence of high political consciousness and faith in the power of the people to determine their destiny. It was significant that the anti-demarcation movement drew support across ethnic lines in a region that had experienced “ethnic wars” in the past. “We were united in this struggle. Unlike other areas such as Moutse where people could be divided, here we stood as one and that was our strength”, argued Themba Godi, the then secretary of BBCC and currently APC president and Member of Parliament. Further evidence of such common beliefs in popular sovereignty is recurrent enunciation of the right to self-determination in various meetings of members of the BBCC held with ANC or Government leaders. A meeting held in Mapulaneng Education College in September 1994 where an agreement to transfer Bushbuckridge to Mpumalanga was reached between ANC leaders and BBCC was concluded with the statement: “the people have spoken”.

Using notions of “people’s power” as a basis to challenge an unfavourable policy had a historical dimension in the area. The past incorporation of the area in the homelands of Lebowa and Gazankulu was fiercely resisted, though never successfully challenged. The post-apartheid decision to include the area in Northern Province was mainly based on such past association with the two homelands that had joined with Venda to form Northern Province. However, for residents the post-apartheid decision was as undemocratic, as

irrational and as forceful as the apartheid one. Years of political activism in the 1980s under the influence of African nationalism, with active involvement of the youth, contributed a great deal in cementing ideas of effective political organisation and popular sovereignty.<sup>11</sup> The leadership of the BBCC was in great part formed of young people who had participated in or inherited the youth activism of the previous decade.

Residents' conception of local development also formed part of the ideological underpinning of their resistance against demarcation in Limpopo. They saw local development as a function of one area's distance from centres of political decisions and of economic activities. Bushbuckridge is one hour away from Nelspruit and its inhabitants work and do business in Hazyview, Nelspruit, and Mpumalanga towns. On the other hand, Pietersburg, the headquarter of Limpopo, is three hours away. Work and business related traffic between Bushbuckridge and Limpopo towns are significantly lower. That explains why the functional argument was the most cited by residents to justify their dissent. Government officials tried to challenge this conception that ties local development with proximity to political and economic centres arguing that South Africa is a unitary state and that "nobody will be disadvantaged by being a citizen of the Northern Province" (Niekaus, 2005, p. 105). However, this argument could hardly convince the people on the ground.

Overemphasis in the existing literature on the historically constituted material conditions as key drivers of Bushbuckridge dissent overshadows an equally significant role played by grassroots notions of democracy and development. In and of themselves, material conditions hardly explain political resistance. One would have to account for why

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<sup>11</sup> Extensive study of these dynamics is provided in Ritchken's thesis: E. Ritchken, 1998 *Leadership and Conflict in Bushbuckridge: Struggles to Define Moral Economies within the Context of Rapidly Transforming Political Economies* (PhD thesis, University of the Witwatersrand, 1994).

communities in similar material conditions may respond differently. To avoid an overly materialistic explanation of the border dissent, it is important to insist on the interplay between underlying conditions of material deprivation and specific shared representations of popular sovereignty and local development as a key driver of the protracted provincial boundary dispute in Bushbuckridge. Armed with historically constituted ideologies of “people’s power”, residents of Bushbuckridge approached the process of provincial boundary demarcation with a territorial regional planning model, thus entering into conflict with the Government’s predominantly functional regional planning approach.

## ***2.5. Conflicting regional planning paradigms***

The initial decision to demarcate Bushbuckridge in Limpopo was mainly based on ethnic or linguistic reasons<sup>12</sup>. Fox has argued that regional proposals pushed by various political parties during the CODESA negotiation “were very close to the language distributions” (Fox, 1995, p. 24). For negotiators at CODESA, it made sense for Northern Sotho and Shangaans, who form the majority group in Bushbuckridge, to be associated with their ethnic counterparts in Limpopo. Such thinking did not take into account the fact that ethnicity had been artificially constructed and politically instrumentalised by the apartheid regime over several years (Ritchken, 1995; Delius, 1996; Mamdani, 1996). A non-ethnicised line of justification considered that Bushbuckridge had been administered from Giyani and Lebowakgomo during the homelands period and that it made sense for the area to continue being administered from Northern Province (Limpopo) which was formed

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<sup>12</sup> Interview with Kgoshi Mokoena, at Mathibela Royal Palace, 21 August 2010; and Interview with Themba Godi, Member of Parliament, APC President and former secretary of BBCC, 9 August 2010, Telephone interview.

of three former homelands namely Venda, Lebowa and Gazankulu. Besides, the initial demarcation decision was based on apartheid era development regions, a model that greatly influenced the post apartheid regional arrangement (Lemon, 1995; Muthien and Khosa, 1998). Bushbuckridge's inclusion into Northern Province (Limpopo) was in line with boundaries of development regions developed by the 1981 Good Hope regional strategy (Tomlinson and Addleson, 1987). Ethnicity and development regions based justifications of the demarcation of Bushbuckridge in Limpopo clearly fall under the functional regional planning paradigm. Under this model, sub-units of the national territory are organised or divided by a central State organ according to the optimal function they can play in attaining certain specific goals such as economic growth, social cohesion, and economic viability.

The ANC Government's attitudes to the border dissent in Bushbuckridge from 1994 to 1998 further confirmed the continuity of functional regional planning in the post-apartheid period. Though it engaged with residents and showed willingness to accede to their regional preferences, the ANC rejected local referenda as a mechanism of boundary demarcation or boundary disputes resolution. Boundary change decisions were centralised at the party top leadership level. In addition, the ANC Government insisted on the unitary nature of the State, thus implying that provinces were irrelevant. In the course of the Bushbuckridge dispute, Government officials would call for the relativisation of internal boundaries: "nobody will be disadvantaged by being a citizen of the Northern Province" (Niekaus, 2005, p. 105). On 19 May 1997, the ANC NEC decided that Bushbuckridge would remain in Northern Province (Limpopo) on the grounds that "the boundary disputes in BBR and Groblersdal had no bearing on the fundamental transformation of South Africa and the creation of a better life for all, and that the constitutional status quo of boundaries

should be respected” (Ramutsindela and Simon, 1999, p. 495). Convinced that provincial boundaries made a difference to their prospects for socio-economic prosperity and access to political power, residents of Bushbuckridge disagreed with this argument. However, Government imposed the contested regional arrangement for more than a decade. During this period, it failed to act on residents’ regional preferences and opposed any settlement through a local referendum.

On the other hand, in their contestations of their inclusion into Limpopo, residents clearly professed an adherence to a territorial regional planning paradigm. They insisted on their right to determine their provincial identity. They rejected the idea that provincial identity could be imposed on them as it had been the case during the apartheid period: “we naturally belong in Mpumalanga”, most informants often stated. In arguing in favour of inclusion in Mpumalanga, residents were less concerned about the broad national consequences of such policy. What mattered to them were primarily the positive benefits of sharing a common province with one’s closest towns and of being closer to the provincial administration headquarters. Such emphasis in popular self-determination, local identity and equity are hallmarks of the territorial regional planning model. The protracted boundary dispute was ultimately rooted on this underlying conflict between the people’s and Government’s approach to territorial planning. The clash between these two approaches to territorial reform reflected two equally conflicting conceptions of democracy.

## **2.6. Government's democratic deficit**

Dissenting residents adhered to an understanding of democratic governance as popular sovereignty, whereas ANC and Government representatives, in reserving the right to make the final decision on the boundary arrangement, stressed the representative nature of the post-apartheid democratic dispensation. For local communities, the advent of democracy raised expectations of a new era of people-driven policies and economic development. The possibility contemplated in the Interim Constitution to resolve boundary disputes through local referenda was consistent with such a political atmosphere. However, soon after the election of the first post-apartheid Government, power to decide on the Bushbuckridge boundary dispute was gradually moved to top ANC national and provincial leadership. Shifting the power to pronounce on this issue from the people to its representatives, while the people still insisted on their preferences, inevitably led to the “first revolt by African people against South Africa's new government”(Niehaus, 2006). Representation need not conflict with popular sovereignty. However, the ANC Government clearly used the representative nature of the post-apartheid democratic system to rule out the implementation of local referenda, to delay and ultimately to oppose the move of Bushbuckridge from Limpopo to Mpumalanga. Such conduct was widely viewed as undemocratic.

Besides, unresponsive representation was undemocratic when one looks at broken promises made by ANC officials. When Bushbuckridge residents contested the recommendation of the CDDR, they were requested by the ANC to calm down and vote for



the ANC which after elections would make sure they were incorporated in Mpumalanga. After the elections, residents had to remind the ANC leadership of the promise. In August 1994, Ngoako Ramathlodi, then premier of Northern Province denied knowledge about the border transfer at a meeting in Mkhulu. Militant comrades took Ramathlodi “hostage” until Mathews Phosa, then premier of Mpumalanga, arrived in a helicopter to rescue him (Niehaus, 2005, p. 101). In September 1994, an agreement to transfer the area to Mpumalanga was reached in a meeting at Mapulaneng Education College. The Mpumalanga provincial legislature subsequently passed a resolution to receive Bushbuckridge in May 1995. But the Northern Province’s resolution to release the area was conditioned by the transfer of Glibersdal from Mpumalanga to Northern Province. This horse-trading provision was the main reason why legislation aimed at facilitating this arrangement failed to garner support in Parliament. The two-thirds majority needed to pass the Bill could not be mobilized as National Party (NP) members supported the white community of Glibersdal in their refusal to be excised from Mpumalanga. In the end, the ANC was left with no option but to impose the status quo on the residents of Bushbuckridge. The ANC conference in 1997 then decided to shift Bushbuckridge ANC structures from Mpumalanga to Limpopo in order to align party structures with governmental administrative organization. The decision to move party structures to Limpopo took protest actions to its highest level with dire security and economic consequences. Resistance culminated on a Court action based in the main argument that ANC and Government failed to honour promises made to residents of Bushbuckridge. In Court papers, the BBCC also argued that the inclusion of Bushbuckridge in Mpumalanga was not supposed to be linked with the transfer of Glibersdal to Limpopo. In response to

the accusation, Government stated that promises made to the people of Bushbuckridge were of a political nature, thus not legally binding or enforceable. Whatever the complications that prevented the rapid realization of electoral promises, the post-apartheid Government's failure to effectively act on its pledge and rejection of legal responsibility on the ground that promises were of political nature constitute a democratic deficit. Perceptions of such deficiency on the part of the first post-apartheid Government undoubtedly contributed to a hardening of positions in the dispute. Various personal or group interests also shaped the dispute in such a manner that they compounded and delayed any swift solution to the crisis.

## ***2.7. Strategic political struggles***

Beneath the proximity and related economic development arguments in support of Bushbuckridge residents' preference for Mpumalanga lay strategic interests of the ANC political elite in the area. Bushbuckridge comprises a significant number of ANC branches which by the strength of their number and active participation "determine outcomes in provincial conferences of the ANC".<sup>13</sup> For the local ANC elite, such leverage could more effectively be politically capitalized upon in Mpumalanga rather than in Limpopo where there exist other more powerful ANC powerhouses including the Capricorn region. One informant stated that Capricorn region holds a hegemonic position in Limpopo party and Government provincial politics. In terms of ANC internal party politics, Bushbuckridge ANC leaders had a choice between a marginal role in ANC Limpopo and a central position in Mpumalanga. Historically, Bushbuckridge ANC branches had participated with

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<sup>13</sup> Interview with Kgoshi Mokoena, in Mathibela Royal Palace, 21 August 2010; and Interview with Malatji. Matome, communication manager of the mayor of Bushbuckridge, in Bushbuckridge, 22 August 2010.

Mpumalanga structures where they had established strong networks. While rejection of Limpopo was for the majority of residents predicated on functional grounds, for local ANC elite who led the resistance, it was about securing their hegemonic position in Mpumalanga ANC politics and associated political dividends. These strategic interests hardly come to light in the existing literature as key drivers of the dispute. It is revealing that the dispute only assumed disruptive and violent forms as at mid-1997 when the ANC took the decision to shift Bushbuckridge ANC structures to Limpopo province to align party organization and Government administrative structures. The decisive role of the shifting of party structures to Limpopo in intensifying the dispute was described by Mr Khumalo Renias as follows:

We were told as ANC structures that we will remain politically in Mpumalanga, but the area would be administrated by Limpopo while Government rounds up everything. But in 1997, there was a resolution that party structures and Government structures had to be aligned. So it was confirmed that ANC structures in Bushbuckridge will fall under Limpopo. As soon as that was implemented, there were protest actions in the region. The leadership both in the party and in Government was invited to Pretoria to deal with the matter. BBCC was formed as a pressure group to fight for the incorporation of Bushbuckridge in Mpumalanga. They went to Court. They did not succeed. They could not.<sup>14</sup>

Precisely because of its significant weight on ANC provincial and national politics, the premiers of Mpumalanga and Limpopo as well as certain ANC NEC leaders had vested interests in Bushbuckridge final provincial location. Divisions within the ANC created paralysis as Kgoshi Mokoena explains: “The ANC itself was divided. There were those who were in favour of the area going to Mpumalanga, and those that were in favour of the area remaining in Northern Province. Not even here, at the national level. In the province of Mpumalanga, the leadership wanted the area to come to Mpumalanga. But some serving

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<sup>14</sup> Interview with Mr Renias Khumalo, ANC councillor and chief whip in the municipal council, in Bushbuckridge, 20 August 2010.

in the NEC of the ANC did not want the area to come to Mpumalanga. Hence the ANC was undecided. It said: let the situation as it is and we will review it later”.<sup>15</sup> The then premier of Mpumalanga, Dr Mathews Phosa pushed for a speedy incorporation of the area in Mpumalanga, but the then premier of Limpopo, Mr Ngoako Ramathlodi and other NEC members such as Colette Shabane opposed the move. Members of the provincial legislatures of Mpumalanga and Limpopo that had Bushbuckridge as their power-base were naturally lobbying for a solution that would not sever them from their constituency. That explains the existence of a local minority group, mostly made of some former politicians in homelands, campaigning for the area to remain in Limpopo. However, as their case was mainly based on personal strategic interests, “they could hardly come to the open and engage on this issue”.<sup>16</sup>

Informants have seen a link between ANC national leadership opposition to Dr Mathews Phosa’s bid for deputy president of the party in 1997 and the party’s refusal to carry out the promise of moving Bushbuckridge back into Mpumalanga. Dr Mathews Phosa, premier of Mpumalanga, unequivocally supported and fast tracked the inclusion of Bushbuckridge into Mpumalanga partly because it would constitute a potentially reliable power base for future provincial and national leadership contests. Kgoshi Mokoena, former leader of Lebowa homeland, former Member of Parliament and chief of the Mathibela traditional authority confirmed this interpretation: “Dr Mathews Phosa wanted this place to be under his province. This area has many ANC branches, at least thirty-four. Even when you go to conference, Bushbuckridge determines the conference in Mpumalanga. He

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<sup>15</sup>Interview with Kgoshi Mokoena (Mathibela traditional authority), in Mathibela Royal Palace, 21 August 2010.

<sup>16</sup> Interview with Mr Reinas Khumalo, ANC councillor and chief whip in the municipal council, in Bushbuckridge, 20 August 2010.

wanted to have Bushbuckridge, because he would know that if I have it I am safe in terms of securing my premiership position”.<sup>17</sup>

It was also believed that certain ANC leaders who did not welcome Dr Mathews Phosa’s ambition for the position of ANC deputy president at December 1997 Mafikeng national conference did not want to push for rapid inclusion of Bushbuckridge into Mpumalanga as this would strength the latter’s position. Dr Mathews Phosa had been nominated by ANCYL and ANC’s Mpumalanga branches while the uncontested presidential candidate and deputy president of the country Thabo Mbeki and President Nelson Mandela backed Jacob Zuma instead. After unsuccessful pressures for Dr Mathews Phosa’s nomination to be withdrawn, he was fraudulently taken out of the race as reported by Gumede: “no one, thus, was more surprised than Phosa himself to learn while on a trip to France that he had withdrawn from the race. To his consternation, Mandela had made the announcement, but an even greater shock lay in store. Phosa arrived home to rumours that he had been a spy for the apartheid regime and was deeply involved in corruption in Mpumalanga. Yet another unwanted bid for the deputy presidency had been successfully thwarted...” (Gumede, 2005, p. 50). Themba Godi, former leader of the BBCC and currently APC Member of Parliament describes the strategic political struggle within the ANC and its impact on the border dispute in these terms: “There was a political chess game. There was an ANC conference in Mafikeng in December 1997. Some people within the ANC looked at Mathews Phosa as someone who was funding our campaign. And he was thought to be running for the position of deputy president. So there was a sense that if Bushbuckridge goes to Mpumalanga that will increase his power base to challenge for

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<sup>17</sup>Interview with Kgoshi Mokoena (Mathibela traditional authority), in the Mathibela Royal palace, 21 August 2010.

positions in Mafikeng. There are people who were looking at it in that sense. So those things also came to play their role”.<sup>18</sup>

Political parties also waged a struggle to capitalize on residents’ discontent in order to raise their own profile. UDM leader, Bantu Holomisa pledged his support to the people of Bushbuckridge. His party currently holds one seat in the Bushbuckridge municipal council. Under the leadership of Patricia de Lille, the PAC got deeply involved. Patricia de Lille visited Bushbuckridge on 26 June 1997 and later unsuccessfully introduced into Parliament a Bill transferring Bushbuckridge to Mpumalanga. Participation of PAC members in the BBCC was active. PAC youth leader Themba Godi’s rise to Parliament is partly a result of his past record as secretary of BBCC. The Democratic Party and National Party also called on Government to give “the people what they want” (Ramutsindela and Simon, 1999, p. 496). The ANC naturally disliked the BBCC transactions with opposition parties and instructed its members to quit the structure or face disciplinary actions. Local ANC members were told that they could not associate with people who criticize and insult their leaders in public. Despite ANC instructions, certain members remained active in the BBCC in a bid to ensure that a successful outcome of the campaign could still be claimed as an achievement of the ANC. The rivalry between political parties and the concern about which party gets the credit for “giving the people what they want” partly explains why the ANC did not have the two-thirds majority support needed to pass the Bill in Parliament despite the fact that almost all political parties supported the cause of the people of Bushbuckridge. The horse trading clause linking Bushbuckridge’s exclusion from Limpopo to Glibersdal’s move from Mpumalanga to Limpopo which could not satisfy the National

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<sup>18</sup> Interview with Themba Godi, member of Parliament, APC President and former secretary of BBCC, 9 August 2010, Telephone interview.

Party further eroded the chance of galvanizing the required support for the passing of the Bill. This inter-political party rivalry driven by strategic political interests added to ANC internal infighting to frustrate any prospect of moving Bushbuckridge to Mpumalanga. In 2005, the final decision to demarcate the area into Mpumalanga was greatly facilitated by the absence of internal party battles on the issue and the ANC's consolidated power in Parliament.

The status of Bushbuckridge as a cross boundary municipality came to an end in 2005 as Government decided to disestablish all the 16 cross boundary municipalities. A 2002 presidential coordinating council report had established that cross boundary municipalities were among the most underperforming municipalities partly as a result of administrative complications and legal complexities brought by the requirement of joint jurisdiction of two provinces (Moodley and Mckenzie, 2005). The report recommended that cross boundary municipalities be discontinued and legislative measures be taken for every municipality to fall exclusively within one province. As for the municipality of Bushbuckridge, it could be demarcated either in Mpumalanga or in Limpopo. From the start of the legislative process, the recommendation of the Minister of Local and Provincial Government was aligned with residents long held preferences for Mpumalanga. Themba Godi argued that Government had learned from its past mistakes and sought to avoid reopening old wounds by demarcating the community in its preferred province<sup>19</sup>.

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<sup>19</sup> Interview with Themba Godi, member of Parliament, APC President and former secretary of BBCC, 9 August 2010, Telephone interview.

## ***2.8. Limits of judicial mechanisms in arbitrating the conflict***

That the dispute continued unresolved until late 2005 was partly due to the limits of judicial arbitration. In October 1997 when it became clear that Government would not transfer the area to Mpumalanga, the BBCC resolved to use the amount of money donated by residents to support the border campaign in a Court action against the Province of Limpopo, the Province of Mpumalanga, the Government of the Republic of South Africa and the African National Congress.

However, the BBCC had weak legal grounds on which to argue their case. In Court papers, it argued that politicians' promises to transfer Busbhuckridge to Mpumalanga raised legitimate expectations and requested the Court to declare the relevant promises legally enforceable. It further submitted that defendants' failure to transfer the area to Mpumalanga amounted to a violation of residents' right to administrative fairness both at common law and in terms of section 24 (b) of the Interim Constitution as well as Article 32 (read with item 23 (2) (b) of schedule 6) of the final Constitution, No 108 of 1996.

Partly as a result of the absence of an enabling legal framework, BBCC made a series of unreasonable requests, namely that the Court order the national Government to table the relevant Bill in Parliament, that Mpumalanga and Limpopo be ordered to approve such a Bill in terms of Article 74 (8) of the final Constitution and finally that the ANC be ordered to instruct its members in provincial legislatures and Parliament to support the Bill. These demands were manifestly ill-conceived. Whether such poor articulation of residents' case had to do with the legal constraints of the time, the circumstances of the dispute or the weaknesses of the legal team, remains an open question.



The judgement, handed down on 26 October 1998, rejected with costs the application arguing that it lacked legal basis and that it requested orders that a Court cannot grant. To the violation of the right to administrative fairness argument, the Court responded that the decision to table or approve a Bill or a motion in Parliament or provincial legislature “are not administrative acts which give rise to a cause of action at common law, nor are they acts that give rise to a cause of action in terms of Article 24 of the Interim Constitution and Article 32 of the final Constitution. Accordingly the relief sought is incompetent at law”.<sup>20</sup> Tackling the legitimate expectations principle, the Court ruled that “the promises and undertakings referred to in the summons do not and cannot be construed as anything more than political promises made by members of a political party as such or as members of the executive of the first, second and third defendants. This does not and cannot form the basis of a legitimate expectation under the common law or in terms of the provisions of the Interim and final Constitutions”<sup>21</sup>. Finally, the Court reasoned that acceding to BBCC’s requested orders turns legislatures into rubber stamps and deprives them of their constitutional prerogative. As to the demand that ANC instructs its members to approve the relevant Bill, the Court argued that if granted, it will reduce those sitting in respective Parliaments to puppets. By virtue of the principle of separation of powers, the judiciary cannot dictate to the legislature what provincial boundary arrangement to adopt. It is limited. Aggrieved residents of Bushbuckridge were sent back to politicians who had failed to honour their earlier undertakings. This clearly suggested that the judiciary is not the right platform for communities seeking resolution of provincial boundary disputes.

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<sup>20</sup> High Court of South Africa, *Judgement in the High Court of South Africa, in the matter between Bushbuckridge border committee, Michael Mangisi Mnisi and the Government of Northern Province, the Government of Mpumalanga, the Government of the Republic of South Africa, the African National Congress*, Case No 15607/97, paragraph 12.

<sup>21</sup> *Ibid.*, para 18.

This Court failure dealt a serious blow to residents' struggle for provincial border change. Themba Godi describes the sentiments of the leadership of BBCC in these terms: "After going to Court and losing and after promises of establishing a joint administration between Limpopo and Mpumalanga, we dissolved the committee and said this is how far we could go. This is what we could achieve and this is where we are putting it to death".<sup>22</sup> Establishment of Bushbuckridge as a cross boundary municipality and its transformation into the 7<sup>th</sup> region in Limpopo also decreased local active opposition.

When Government decided to disestablish all cross boundary municipalities in late 2005, Bushbuckridge was totally transferred to Mpumalanga arguably as a result of lessons drawn from the past protracted dispute.

## **2.9. Conclusion**

The Bushbuckridge boundary dispute was a significant political development in the post-apartheid era as it represented the first revolt of a black community against the ANC Government. The clash between the local community and the State ran over many years, from 1993 to 1998, in a manner that displayed community upheaval and public violence. It culminated in a Court action against the Provinces of Mpumalanga, Northern Province (Limpopo), the Government of the Republic of South Africa and the ANC. Though residents' preferences for Mpumalanga could not be legally enforced, the ANC Government partially addressed the concerns of the community by authorising joint administration of the area by Mpumalanga and Northern Province (Limpopo). The conflict

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<sup>22</sup> Interview with Themba Godi, Member of Parliament, APC President and former secretary of BBCC, 9 August 2010, Telephone interview.

was finally resolved in late 2005 when the discontinuation of cross boundary municipalities prompted Government to attach the area to Mpumalanga rather than Limpopo.

Though this dispute has been extensively studied in existing literature, the originality of this thesis' approach is to revisit this instance of provincial disputes alongside others in an attempt to track common patterns. A later chapter discusses further cross cutting socio-political dynamics at work in post-apartheid boundary disputes. However, examining solely the Bushbuckridge case, it has clearly appeared that to satisfactorily account for the emergence and protracted nature of this conflict, a complex combination of factors should be taken into account: the interplay between historically constituted material conditions in the affected area and local notions of democracy and development, the conflicting regional planning paradigms espoused by communities and the State, Government's democratic deficit, strategic political struggles connected to the border decision, and the limits of judicial mechanisms to provide an adequate solution to the conflict.

This explanatory framework emerges from careful consideration of the Bushbuckridge provincial boundary dispute. This clearly complements and reinterprets previous social scientific analyses of the case. Drawing on previous accounts and on my own field work, this thesis has particularly emphasised the interplay between material conditions and local ideologies of democracy and development as the core of the dispute. Disputing the exaggerated role attributed to economic performance and governmental efficiency in Mpumalanga as one of the main factors behind residents' preferences for Mpumalanga, this account of the Bushbuckridge saga has stressed residents' functional argument and claims that "even if Mpumalanga was under AWB, they would still want to

go there as that is where we belong”.<sup>23</sup> Strategic political interests of the local ANC political elite as well as infighting over leadership positions at the 1997 Mafikeng conference did play a much more determinant role than has been recognised in the existing literature. Finally, the arbitration of the Supreme Court which returned the dispute to the already contested political arena should be regarded as an important explanatory factor for the duration of the conflict. In the final analysis, the Bushbuckridge provincial boundary dispute unfolded as a struggle for the community’s socio-economic prosperity and a contest over political power at various scales. And it is these same socio-political dynamics that play themselves out in the Khutsong provincial boundary dispute.

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<sup>23</sup> *Ibid.*

## **CHAPTER 3: PROVINCIAL BOUNDARY DISPUTES IN KHUTSONG**

### ***3.1. Introduction***

Faced with the 2006 local elections boycott by residents of the black township of Khutsong as a way to oppose the transfer of their municipality from the wealthy Gauteng to the mostly rural North West, President Thabo Mbeki downplayed the significance of the protest saying: “Khutsong is only a drop in the ocean”. In reaction to what they perceived as a derogatory statement, residents of Khutsong mounted over three years, from 2005 to 2008, strong resistance to Government policy. The defiance campaign assumed national and international notoriety partly because of the high degree of violence and public disruptions it involved. At the height of the conflict, Khutsong became synonymous to “chaos”, “hell” as well as “resistance”. At issue was the provincial demarcation of the municipality of Merafong, in which Khutsong is situated, in either North West or Gauteng after the termination of the cross-boundary municipality arrangement. The people of Merafong and the Government found themselves at loggerheads with neither party showing readiness to compromise. Only a change in Government leadership in late 2008 altered the political opportunity structure making possible a denouement.

This chapter is devoted to the discussion of the Khutsong provincial boundary dispute. In analyzing some of its most important episodes and providing an explanatory framework, two questions underpin the investigation: What are the key reasons polarizing the dispute? What are the strategies used by disputants to advance their respective cause? Against this backdrop, this chapter develops a socio-political account of the boundary

conflict in the Merafong municipality, with special focus on Khutsong as it was the driving force behind the resistance. The municipality would have easily moved to North West, had it not been for the intransigent dissent of Khutsong Township.

The central argument of this chapter is that the Khutsong provincial boundary dispute can best be explained by looking at the interplay between historically constituted precarious material conditions and local conceptions of democratic governance and development, at conflicting regional planning paradigms espoused by the disputants, at Government's democratic deficit, at certain strategic political struggles around the boundary decision concerned, and finally at the limits of judicial arbitration of this type of conflicts. As in the previous chapter, what follows expands on each of these explanatory factors and ends with a conclusion which sums up major findings. To begin with, a geographical and historical profile of Merafong municipality and Khutsong Township is in order.

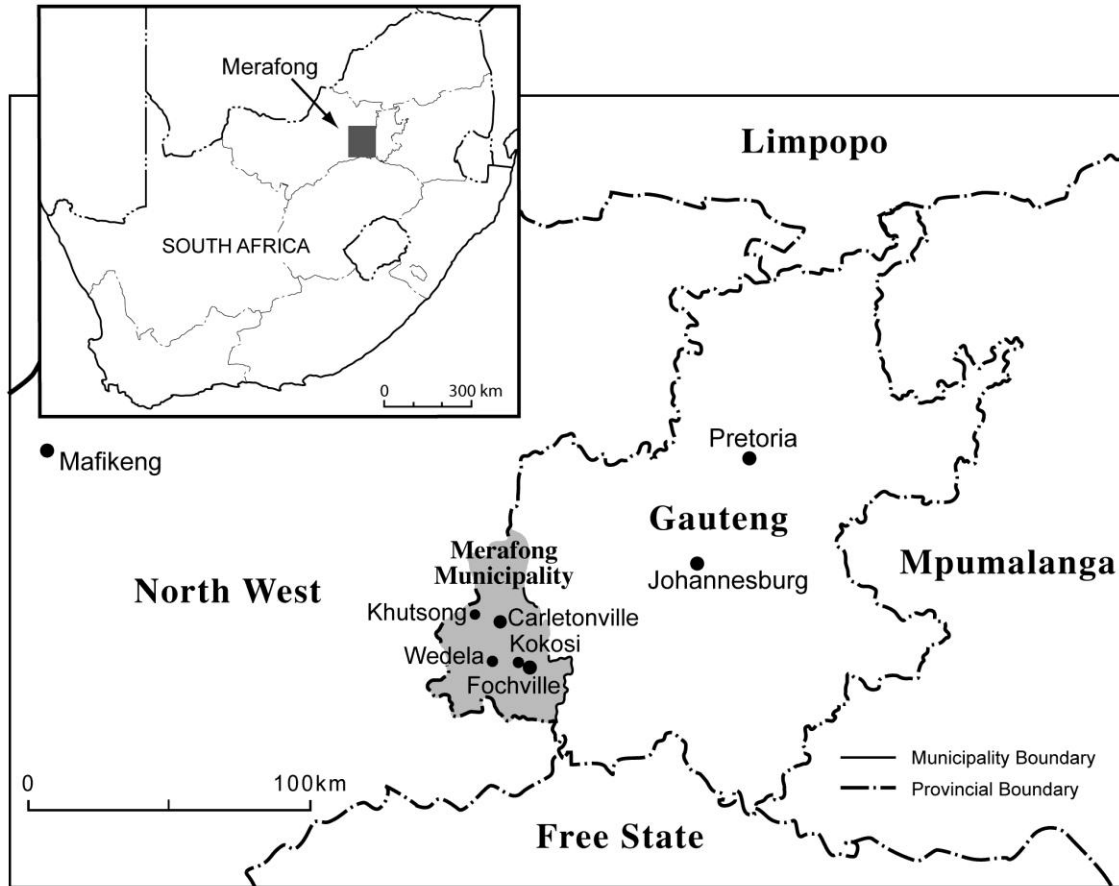
### ***3.2. The geography and historical context of the dispute***

Khutsong, a Tswana name meaning "place of peace", 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 (See map 4). Established in 1958, Khutsong owes its existence to its role as a township to Carletonville, one of the principal mining areas to the west of Johannesburg and the main centre of economic activity in Merafong City Municipality. Carletonville represents the biggest gold

mining complex in the world. This area was first developed with the discovery of gold in the early 1930s.

The town of Fochville was established first, followed by Carletonville in 1948 and Wedela in 1978. Although these towns are considered separate entities, they were combined to form the Merafong City Municipality in 2004. Amalgamated areas included the then Carletonville Transitional Local Council as well as parts of Gatsrand rural council which were situated within the boundaries of Gauteng Province with the then Fochville Transitional Local Council, Wedela Transitional Local Council, as well as the surrounding farm portions which were situated within North-West Province. This explains why Merafong local municipality functioned as a cross boundary municipality until 2005. Under this dispensation, most of its inhabitants lived in Gauteng (71%) and the other part in North West (29%). The Municipality consists of the suburbs of Greater Carletonville, Fochville, Khutsong, Kokosi, Khutsong South, Wedela, Blybank, Welverdiend and the commercial farming areas surrounding these built-up areas.

Merafong, a Sotho name for “place of gold”, located in the West Rand District Municipality, has the second largest population (215,865) in the District after Mogale City Local Municipality (SA Stats, 2007), and the largest average family size (5.2) (Merafong City Annual Report 07/08). Khutsong is by far the most populated town with 33.2% of the municipality population (Ricon [Pty] –Regional explorer data base, 2001; Merafong City Annual Report 07/08). The racial configuration of the municipal 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%; Coloured (0.2%), Indian or Asian (0.0%) and white (0.1%)) (Ricon [Pty] –Regional explorer data base, 2001).



Map 4. Geographical location of Merafong and Khutsong



Before diving into the analytical framework that this thesis puts forward in explaining the Khutsong provincial boundary dispute, an overview of the escalation of the conflict is in order.

From October 2005 to March 2009, the residents of Merafong under the leadership of the Merafong Demarcation Forum were involved in a fierce dispute to prevent the municipality of Merafong from being transferred from Gauteng to North West Province. Prior to 31 October 2005, opposition to Government proposed demarcation policy was generally peaceful and channelled through relevant institutions. On 24 and 25 September 2005, peaceful rallies were held in Westonaria and in Merafong with the active support of the SACP and COSATU. In October 2005, residents submitted representations in response to the Municipal Demarcation Board's notice of their incorporation in North West. Noting the overwhelming resistance to the inclusion into North West, the Municipal Demarcation Board withdrew the proposed plan and confirmed that Merafong would remain in Gauteng. On 30 October 2005, residents of Khutsong held a celebration rally for what appeared to be the final victory on this issue. The triumph was short-lived as the Municipal Demarcation Board, on 31 October 2005, notified the municipality that Government's plan to incorporate Merafong into North West had been reintroduced.

Hence, over 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 Government's plan. This was the period of the legislative process comprising the passing of the Bill in the National Assembly, its referral to the NCOP, the holding of public hearings in Provinces, the approval of the Bills in provincial legislatures, its approval by the NCOP, and finally its enactment by the President. An inconclusive meeting between

aggrieved residents of Khutsong and the Minister of provincial and Local Government, Mr Sydney Mufamadi, on the 5<sup>th</sup> November 2005 contributed to entrenching perceptions that Government was determined to excise the municipality 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 burned, 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 arrested.<sup>24</sup>

A series of less disruptive public rallies and handing in 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 technical reasons, the Gauteng legislature could not fulfil the promise at the time of voting in the NCOP. In a context where vetoing the Bill would have resulted in unpleasant consequences, on the legislature's analysis, it decided rather to approve

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<sup>24</sup> On 2 November 2005, violent protest took place 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 3,000 and 6,000 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 6,000 residents, after a rally, started looting businesses; the homes of Mr Des Van Rooyen (Mayor) and other councillors' were bombarded with stones and a crowd petrol bombed councillors' 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 (Centre for Development and Enterprise, 2006).

Merafong's exclusion from Gauteng, thus reneging on its commitment without taking any step to inform affected citizens of new 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 14<sup>th</sup> December 2005, the day the Bill was approved by the NCOP, saw the culmination of community anger, with the destruction of valuable public and private properties, vandalism of schools, burning of the mayor's house, physical attack on councillor Elias, with five policemen injured in a confrontation with stoning residents, and a high number of arrests (57).<sup>25</sup> This also constituted the day of total breakdown in the relationship between the residents of Khutsong and the ANC as well as its president Thabo Mbeki. The political divorce was manifested through the public burning of Mbeki t-shirts and residents' ANC cards. An eleventh hour memorandum to President Thabo Mbeki, asking him not to sign the Bill into law could not prevent the acting president from sealing 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 the 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

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<sup>25</sup> On 11 November 2005, a march was organized to submit a memorandum to the police station. On 23 November 2005, residents attended the public hearing in Carletonville which was jointly organized by the Gauteng and North West provincial legislatures. On 7 December 2005, disruptive protest took place in Khutsong and seven protestors were arrested by the police. On 12 December 2005, a march went to submit a memorandum to chief magistrate Howard Raath. The 14 December 2005 experienced 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. (Centre for Development and Enterprise, 2006).

demonstrations and public violence that could be characterised as electoral violence. Whereas earlier acts of violence targeted officials of the State, this wave of attack was directed towards ANC leaders and ANC members who dissented from the community's election boycott campaign. In this crucial electioneering period, the Khutsong unrest became an ANC internal war with local SACP members distancing themselves from the ANC, and the ANC being divided in terms of pro- and anti-North West. 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 some 150 SACP members threw stones at 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 who was scheduled to address election rallies in Khutsong on 18 and 19 February 2009. This was the first time that an ANC national leader had arrived in the township since its failed campaign to stay in Gauteng. Angry residents prevented people from attending the ANC rally and accused the ANC of dividing the community by bringing in residents from a nearby informal settlement to attend the rally. On 19 February 2009, some 2,500 protesters 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. Reports said that Lekota reacted strongly to the protesters, who chanted "voetsak (fuck off) out of Khutsong" and sang derogatory songs. Within these two troubled days, police arrested some 128 people charged with public violence. 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 an election postponement. Less than 10% of

registered voters cast their vote in a climate of intimidation.<sup>26</sup> Hours after elections, a house and a shack belonging to ANC members were set alight. The elected township leadership could only govern from “exile” as they had been violently chased from the township.

Khutsong residents persevered over three years in their fierce opposition to inclusion in the North West, seizing every opportunity to protest and petition the Government while they also brought the matter to the Constitutional Court. On 21 April 2006, a march jointly held with the residents of Moutse, also resisting inclusion in Limpopo, ended up with a fire being set alight on the lawns of the Union Building, Pretoria. The inauguration of the new council in Merafong on 3 May 2006 also sparked violent protest with two houses of councillors burned. However, it is the official integration of Merafong into the North West in March 2007 that saw renewed disruptions and violent attacks on councillors.<sup>27</sup> The North West Premier Edna Molewa was sworn at by residents who told her to bring back Gauteng Premier Mbhazima Shilowa.

From April 2007, schools in Khutsong became an important site for contestation of the demarcation decision. Key leaders of the Merafong Demarcation Forum were teachers in Khutsong schools which were among the first institutions of the public sector to interact with the new administration of North West Province. A series of school boycotts started on 12 April 2007 that disrupted a great deal of teaching in Khutsong schools. Disruption of schooling in Khutsong lasted for three months with dire consequences on children’s education, vandalised school infrastructure and breakdown of relationship in the school

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<sup>26</sup> A mere 232 of 29,540 registered voters cast their ballots on polling day –and 12 of these were spoilt. This compares with 13,422 voters in the 2000 municipal elections, a turnout of 57,2 % (The Centre for Development and Enterprise, 2007, p. 31)

<sup>27</sup> On 26 February 2007, the premier of North West announced 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 councillor. Schools were disrupted (Centre for Development and Enterprise, 2006).

community. At least three teachers were suspended in connection with their involvement with the demarcation forum. A recovery camp for Khutsong matric students in Taung was not only the source of more controversy, but marred with violent incidents opposing students to the host community.

Khutsong remained ungovernable for three years even as its new provincial entity, North West made some attempts at asserting political authority. Any symbol of North West Province encountered strong rejection and North West officials had to be heavily protected by the police during visits in Khutsong. Residents specifically complained about the deterioration of health services. Distrust within the community was also at its highest level given divisions over the demarcation issue and the violent incidents. Delivered on 13 June 2008, the judgment of the Constitutional Court, while dismissing the MDF application, reflected deep divisions among the judges.

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 to their advantage. First, 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 the SACP and COSATU that unambiguously supported the cause of the residents and the new ANC leadership. In the aftermath of xenophobic violence in May 2008, the MDF organised a march to Luthuli house with great participation of African immigrants in an effort to broadcast a message of peaceful integration and submitted a memorandum that was well received by the new general

secretary, Gwede Mantashe. 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. This was followed by a series of ANC meetings involving ANC North West, ANC Gauteng, and the Merafong community under the leadership of the ANC national office. By late 2008, these meetings had resolved the return of Merafong back to Gauteng.

Second, the recall of President Thabo Mbeki followed by the resignation of his close allies in Government such as Minister of Provincial and Local Government, Sydney Mufamadi and GP premier Mbazima Shilowa gave impetus to the new ANC leadership intention to reverse the demarcation decision. From his first week in office, the new premier of GP, 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, Sicelo Shiceka, also declared the determination of his cabinet to reverse the decision.

Third, 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 (COPE) and the controversy over the moral integrity of ANC 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” (Du Plessis, 2009). No wonder then that opposition parties criticised the move as “political expediency” and “an opportunistic political move by the ruling ANC through

Government structures” (Bateman, 2008). Many members of Parliament expressed the view that the process was rushed through.<sup>28</sup> The reincorporation of Khutsong to Gauteng came about as a result of another costly formalistic legislative process which caused dissatisfaction from minority groups. On 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)” (Mkhwanazi, 2009).

To explain this protracted and violent provincial boundary conflict, the following sections develop the interpretative framework which emphasizes the interplay between historically constituted material conditions and local notions of democracy and development, the conflict between disputants’ regional planning paradigms, Government’s democratic deficit, strategic political struggles, and limits of judiciary arbitration.

### ***3.3. Material conditions of the population of Khutsong***

Historically constituted precarious material conditions rendered the township susceptible to resistance and social unrest. These poor socio-economic conditions also

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<sup>28</sup> Statement by the NCOP delegate, Mr Madala Abram Mzizi on briefing the Gauteng legislature on the Constitution Sixteenth Amendment Bill, 20 February 2009. These exchanges were observed by the author who attended four meetings of the Gauteng provincial legislature’s Local Government portfolio committee on 20 February 2009, 27 February 2009, 3 March 2009, and 6 March 2009. More details on these meetings are provided in the appendix 1.



constitute a state of affairs which residents of Khutsong strove –through border dissent-, to emancipate themselves from. In this regard, the role of material conditions in explaining the dispute is to be understood in terms of both galvanizing factors and targeted goals. They are at the source of the discontent, but also the end to which the resistance is geared. How did material conditions contribute to and drive the provincial boundary dispute in Khutsong?

The socio-economic profile of Khutsong's population as well as the physical characteristic of the settlement pointed to dire material conditions which constituted a source of resentment. The municipality of Merafong counted 52% employed people, 20.6% unemployed and 26.7% economically inactive (Merafong City Annual Report, 2007/2008). Khutsong had one of the worst employment profiles in the municipality: 26.4% employed, 35% unemployed and 39.6% economically inactive (Ricon [Pty] Ltd – Regional explorer data base, 2001). Some 70.6% of Khutsong's inhabitants were classified as having no income while the percentage of this category in the whole municipality is 43.9%. Top earners (in the range of R3,201 to R25,000) in the township constituted a mere 1.8%. Khutsong's employment, education and income levels were substantially lower than those of the entire Merafong City Municipality.

In addition, the dolomitic nature of the land which renders 90% of land in Khutsong unfit for human habitation is one of the causes for Khutsong's under-development. It has been a deterrent for investment in the area while other similar risk ridden areas have been handled positively. Mining resources from the area have not been utilised to uplift Khutsong and other similar townships in the region. The Local Government has embarked on a resettlement plan for Khutsong. However, the dolomite

crisis in Khutsong has been so poorly handled that it has engendered confusion and mistrust over the years. Whereas, starting in the 1960s, other dolomitic lands in Carletonville were brought under control via the establishment of the Far West Rand Dolomite Water Association with the assistance of the Council of Geoscience, Khutsong did not receive similar assistance. “Centurion and Carletonville are also dolomitic, but the pipes and infrastructure in these two places have been handled well”, said a municipal official (The Centre for Development and Enterprise, 2007, p. 37). Thus the township continued to grow despite the ever increasing instability of the dolomitic land resulting in structural damage to homes and depreciation of their value. The municipality and individual councillors also acted in a manner that left residents confused about the nature of the dolomitic threat. The municipality managed to have Khutsong declared a disaster area and to secure a resettlement plan for Khutsong, but this was not effectively communicated to residents. The municipality and councillors continued to develop in the area. “Why are these infrastructural projects allowed to continue when our officials know that they ultimately want to resettle the community”, a protest leader reacted at news that a road construction project had been awarded (*Ibid.*). Lack of clarity on the issue led community members and leaders of the protest to look at the dolomitic issue as “simply a ploy used by the mining companies not to invest in Khutsong” and an excuse used by the Merafong City municipality for “its failure to develop the area” (*Ibid.*).

The Centre for Development and Enterprise report strongly highlights the importance of historically constituted material conditions in explaining Khutsong’s border protest. Authors of the report argue that “poverty and unemployment and the perceived failure of the mines in the area to contribute to broader development were a fertile breeding

ground for protest” (Centre for Development and Enterprise, *ibid.*, p. 43). This is conveyed by a youth leader in these terms: “When people are hungry, they are capable of doing anything. People are poor around here. We’ve got a social democratic Government, but ... democracy is killing us. People are given matchboxes to live in... In fact, the demarcation issue is but one of the factors that led to the protest” (*Ibid.*). Dissatisfaction with service delivery was also common in some areas of Khutsong as a community leader stated: “some areas in Khutsong are not provided with basic services such as running water, refuse removal and sanitation. Furthermore, where these services are provided, they are of such a low standard” (*Ibid.*). Khutsong’s infrastructure is also worse compared to other neighbouring towns. Khutsong’s poorer socio-economic standing in the municipality can be partly explained by the fact that other areas are closer to the mines, more important feeder areas for jobs in the mines and draw more benefit from this proximity. Yet, this creates resentment and feelings of exploitation as can be read in pronouncements from a councillor: “During my tenure I argued that mines should pay something to the Merafong Municipality. If you look at Khutsong, does it compare with other mining towns? Do you see any life here? No, our mines are useless. Our area is being destroyed daily by capitalists’ mining companies, yet we receive nothing in return. Areas such as Krugersdorp, Randfontein and Kagiso benefit from the mining activities around here” (*Ibid.*). Frustration and resentment ran deep even before the provincial boundary dispute. The decision to move the locality from the wealthier Gauteng to the poorer North West was perceived as having the potential to worsen an already precarious situation.

The centrality of service delivery and social development based arguments in residents’ justifications of their preferences for Gauteng reflect the importance of existing

and projected material conditions in shaping the resistance. The overarching perception is that service delivery and prospects for social development are brighter in Gauteng Province compared to North West Province. Gauteng's provision of education is perceived to be richer in content, more advanced in terms of use of technology and adequate infrastructure, more resourceful, and more effective. Khutsong and Carletonville schools have been provided with computers and benefit from Gauteng's online program, whereas North West schools in Kokosi are "without computers because they are poor" and "all schools in North West are lagging behind with information technology"<sup>29</sup>. The Wedela submission pointed out that "the MEC for education has introduced a nutritional programme for all schools in Gauteng and it is doubtful whether North West will have a similar programme on a sustainable basis".<sup>30</sup> The Carletonville branch of South African Democratic Teachers' Union (SADTU), for instance, saw the Gauteng Department of Education as way ahead of its North West counterpart when it came to curriculum issues, human resources management, and infrastructure development. "We cannot afford to leave Gauteng Department, which is in forefront in curriculum issues i.e. currently the process of RNCS; implementation in 2006 is at an advanced stage. What about the North West? Moving to North West would cause a serious confusion", could be read in SADTU's submission to Government.<sup>31</sup> It also adds: "in Gauteng difficulties around provision of teachers and administration staff is a thing of the past. It depends on the effectiveness of the manager of the school in terms of submission. But in the NW schools have applied for such services from the Department and no supply hence very poor management and administration of

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<sup>29</sup> *Merafong city submission: View of the community of Wedela, submission to the Gauteng provincial legislature, 2005.*

<sup>30</sup> *Submission by Congress of South African Students (COSAS), 25 November 2005.*

<sup>31</sup> *Submission of the South African Democratic Teachers' Union (SADTU), Carletonville branch, to Gauteng legislature, 2009*

schools which resulted in misadministration of schools”.<sup>32</sup> Regular supervisory visits in schools; special attention to child headed families; orphans and needy learners; provision of temporary teachers; quicker filling of vacant positions; and better financial aid opportunities for learners are some of the Gauteng benefits which residents argue are not at all or scarcely provided in North West.

Health and emergency services are also better in Gauteng as compared to North West, pro-Gauteng residents argued. There are enough clinics in Carletonville and Khutsong whereas in Kokosi, only two clinics exist without “medicine and staff to provide services after hours”.<sup>33</sup> No hospital exists in Kokosi resulting in pregnant women being always referred to Carletonville Hospital or Potchesfroom hospital. The majority of Merafong residents access secondary and tertiary health care in Gauteng and will continue to do so even if the municipality was to fall under North West for functional reasons. This would constitute an additional burden on Gauteng Province if the municipality does not fall under its jurisdiction. Emergency services such as fire brigade and ambulances are run by the Gauteng West Rand district municipality which serviced even areas of Merafong that fell in the North West under the cross municipality dispensation. Residents believe that it is unlikely that North West will provide them with similar services and that “it is unthinkable that accident victims on the N12, R28 and N14 where it currently runs through the West Rand District in the Westonaria and Merafong City areas, would be taken to secondary and tertiary medical facilities in the North West Province in Potchefstroom”.<sup>34</sup> North West’s under-resourced position aside, efficiency demands that emergency services be provided by

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Merafong city submission: View of the community of Wedela, submission to the Gauteng provincial legislature, 2005.*

<sup>34</sup> *Ibid.*

Gauteng given the short distance and functional link to its major cities such as Johannesburg.

Concerning home affairs services, Merafong residents are happy that Gauteng has offices in Khutsong and Carletonville where registration for identity documents is done daily on an effective and efficient manner. The same benefit is not available to Kokosi residents who are said to be “suffering because their Government in North West cannot afford to bring services closer to them”. Identity documents are a necessary requirement for accessing welfare and other Government services. Access to home affairs services in the North West part of Merafong municipality is perceived to be difficult as attested by this testimony: “Officials from Potchefstroom are sent every Tuesday to register people without ID. Registration is done manually. People are expected to walk to town to register for IDs. If a person does not get an opportunity to register on that day, he must wait for the next Tuesday”<sup>35</sup>. A similar scenario applies to Government social services for which there are offices in Khutsong and Carletonville whereas in Kokosi, there is no dedicated office for these services. “They use municipal offices in Kokosi. They cannot afford to hire offices because they are poor”, complain Gauteng proponents.<sup>36</sup> “In Gauteng, pensioners are paid for three days, whereas in Kokosi, pay for pensioners is provided once per month. If you fail to avail yourself on the pay day, you must wait for next month”, they add.<sup>37</sup> Besides, Merafong-Gauteng is said to have enough staff for social services whereas in Merafong-North West communities are serviced by only one social worker and volunteers. As Merafong was integrated in North West in 2006, residents noticed that certain community structures including the Mothusampilo, the home based care, Tshepo Themba Development

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<sup>35</sup> *A resident's submission to the Gauteng Legislature, 2009.*

<sup>36</sup> *Ibid.*

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

centre and all the crèches suffered from absent or inadequate funding. The existence of a multipurpose community centre and eradication of the bucket system in Merafong-Gauteng are also celebrated as benefits one would not leave to go to North West where such a multipurpose centre does not exist and the bucket system is still prevalent.

In addition to service delivery and social development concerns, residents also justified their attachment to Gauteng on economic considerations. The local economy of the Merafong is hard hit by the down-scaling of the mining sector as a result of the financial crisis. This creates significant job losses with associated increasing levels of poverty. The crisis caused by a declining mining sector is not helped by the dolomitic challenge which prevents establishment of industrial or agricultural activities on a large scale in order to absorb mining sector job losses. In this difficult socio-economic context, residents ask “to what extent the North West Province would be able to absorb such job losses into its provincial economic dynamics and to what extent the North West Province would provide the economic base or impetus for the survival of the communities of Merafong city”?<sup>38</sup> For them, it is unlikely that North West will be able to help the local economy to cope and reinvent itself. Scepticism on North West capacity to re-launch Merafong local economy is unambiguous: “the material probability that the North West Province would not be able to provide a dynamic and empowering economic environment to counter the down-scaling of the mining sector and to absorb its impact in the long term is cause for grave concern”.<sup>39</sup> But so is residents’ acceptance that “the City region of Gauteng provides a far more feasible empowering economic environment to counter the steadily

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<sup>38</sup> *Merafong City submission: View of the community of Wedela, 2009.*

<sup>39</sup> *Ibid.*

declining mining activities of the West Rand”.<sup>40</sup> Indeed, existing poor material conditions in Khutsong, the driving force behind the border dispute, and concerns over service delivery and local economic development greatly shaped the uncompromising and violent rejection of Government’s policy. This explanation would be overly materialistic if insufficient attention is paid to ideological underpinnings of the resistance -namely local notions of democracy and development.

### ***3.4. Local notions of democracy and development***

Recourse to democratic principles abound in residents’ justification of their dissent. A memorandum submitted to authorities said: “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” (Ndaba, 2005). 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 contrasted form: “Batho pele, people first, is what the Government keeps saying, but they are not putting us first”. In a 2009 submission, the Khutsong branch of YCLSA stated: “The YCLSA Khutsong branch is not in any way prepared to accept any deviations from the WILL of the

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<sup>40</sup> *Ibid.*



masses of Merafong. Our guiding revolutionary documents are very clear that ‘THE PEOPLE SHALL GOVERN’ not that the masses shall be guided to govern. According to the Greek Philosopher, ‘Democracy can’t be guided’”. In a post-apartheid South Africa where representative democracy is the instituted form of governance, these calls for popular sovereignty à la Freedom Charter were bound to clash with politicians’ views of their role.

Distinctive conceptions of local development also shaped residents’ stance on the boundary issue. It was believed that only Gauteng has the resources to develop Khutsong and other poor townships in the area. Given the contribution of mining in the creation of wealth in Gauteng, Merafong and in particular Khutsong are seen to be entitled to investments from Gauteng especially in the current economic crisis. So deeply entrenched is such a belief in economic mutuality and inseparability between Merafong and Gauteng that Jomo Mogale could say: “Our revenue for the mines does not go to the North West Government, it goes to the Gauteng Government. It goes to the West Rand Council. Even when Merafong fell into North West, mining sector money was going to Gauteng. You see. Carlton Centre was supposed to be built here in Carletonville. That is why it is called Carlton Centre because of the romantic issue here. The Marshal tours, the Chamber of commerce were built with the revenue of the mines from Merafong. Why is it that we should now be taken to North West where we have never contributed financially? We have contributed a lot in Gauteng. So we belong here”.<sup>41</sup>

Local development is also seen as a function of distance of one’s locality to major economic centres. Besides, it is regarded as greatly facilitated when provincial demarcation

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<sup>41</sup> Interview with Mr Jomo Mogale, Spokesperson of the Merafong Demarcation Forum, in Khutsong, 07 March 2009.

corresponds with the existing flow of goods and movement of people. On several occasions, pro-Gauteng residents pointed out that the flow of goods and movement of people were naturally and functionally driven to Gauteng rather than North West. “We spend our money in Gauteng” as some residents put it. Monetary and material flows to (and from) Gauteng reinforce the belief that their communities should be served by Gauteng rather than any other province. This arrangement is believed to return value for residents’ expenses in Johannesburg and other towns in Gauteng as well as proximity to Government departments in Gauteng. On close inspection, residents of Merafong and the Government professed adhesion to two conflicting schools in the regional planning debate. This fundamental conflict is at the centre of the clash between the people of Merafong and Government.

### ***3.5. Conflicting regional planning paradigms***

In holding to a conception of democracy as popular sovereignty and prioritising imperatives of local economic development and social equity as key determinants of provincial boundary demarcation, residents of Khutsong ascribed to the territorial regional planning model. In the affected community’s eyes, all that mattered was the interests of Merafong and its right to determine its provincial identity. For this reason, they expected politicians to deliberate in a way that did not override local preferences. In other terms, legislators at national and provincial levels were bound to pro-Gauteng wishes expressed by residents in public hearings and various submissions. This is clearly a regional planning model that views Merafong as a territory whose fate should be determined not by national

or provincial leaders in pursuit of certain broad national or provincial interests but by the inhabitants of the locality for the sake of local interests.

In contrast, Government's justification of its contested policy was framed within the functional regional planning paradigm. Securing a significant "equitable share" for North West featured as the key motivation for Government to insist on excluding the whole of Merafong from Gauteng.<sup>42</sup> The North West Province had already lost parts of its areas and inhabitants to Northern Cape and Gauteng. In disestablishing the cross boundary municipalities that straddled between North West and Northern Cape, namely Phokwane Municipality, Ga-Segonyana Municipality, Kgalagadi District Municipality and Francis Baard District Municipality, "a substantial portion of the geographical areas which previously fell under the North West Province became part of the Northern Cape Province".<sup>43</sup> Besides, in including the whole of the metropolitan municipality of Tswane in Gauteng, "North West Province lost approximately 412,583 inhabitants".<sup>44</sup> Hence, the need to make sure the whole of Merafong was demarcated in North West, which stood to gain approximately 308,237 inhabitants, improving significantly its "equitable share".

Government also sought to take away additional strains that would fall on Gauteng if it had to cater for the whole of Merafong municipality. This would, on Government analysis, have necessarily increased the number of persons living in informal settlements to which Gauteng would have to provide services while being overwhelmed by increasing demands

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<sup>42</sup> "Equitable share" is the State revenue allocated to provinces in terms of the applicable Division of Revenue Act enacted every year pursuant to Article 214 of the Constitution. The distribution of equitable share to provinces is one of the important financial instruments through which provinces are able to provide services to their inhabitants and support that municipalities are able to provide municipal services to their local communities equitably, and on a sustainable basis. One of the primary considerations which is ordinarily taken into account in determining the equitable share of each province is the number of inhabitants in the provinces.

<sup>43</sup> Constitutional Court of South Africa, *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others*, 2008, CCT41/07, *Answering affidavit of first and third respondents*.

<sup>44</sup> *Ibid.*

from migrants and persons living in informal settlements. These policy justifications were presented for the first time to the Constitutional Court and had never been discussed at the provincial or local sphere of Government. It is thus difficult to know whether they were mere rationalisation in an attempt to pass the Court's rationality test. It is clear that the contested policy sought to instrumentalise the local unit in order to achieve national goals of provincial viability and service delivery load balancing.

Functional regional planning reasoning also shaped Gauteng's decision to let Merafong municipality join North West. Though it had promised Merafong residents that it would support its cause at the NCOP, Gauteng Province was faced with the impossibility to amend the Bill at the NCOP level as it could only approve or disapprove the Bill. It had the constitutional power to veto the part of the Bill that excised Merafong from Gauteng, but decided not to exercise its veto power. In the final voting mandate, the Gauteng legislature justified its stance on national and provincial interest grounds. It argued that vetoing the Bill would prolong the situation of cross boundary municipalities across the province, fail to create viable and sustainable municipalities with proper revenue base and produce other undesirable consequences. In the minority judgement, Justice Moseneke argued that the legislature misconceived its power in the legislative power and acted irrationally. Justice Sachs reasoned that the legislature was obliged to at least inform residents of Merafong of its changed position. Whatever the appreciation of this conduct of the legislature, its use of national and provincial interests arguments to override reasonable local preferences amounts to functional regional planning thinking. People's conception of their power over their local territory and Government's functional approach to territorial reform were bound

to clash. In the course of the confrontation, Government displayed significant democratic deficit which greatly contributed to hardening grassroots resistance.

### **3.6. Government democratic deficit**

Indicators of the Government's inadequate adhesion to democratic norms include unresponsiveness, inappropriate cooperation between the three spheres of governance, absence of policy justification and broken promises to Merafong residents. As far as unresponsiveness is concerned, residents complained that the Minister of Local and Provincial Government, Sydney Mufamadi and Gauteng premier Mbazima Shilowa did not take seriously their objections to Government policy. Even after the Municipal Demarcation Board, following consultation with the people in Merafong, had withdrawn its initial proposal of demarcating Merafong in North West, the Minister maintained his policy and was determined to push it through Parliament. Despite having received dissenting submissions from residents of Merafong and having met with a delegation from Merafong on 5 November 2005, the Minister introduced the Bill to Parliament without even alluding to the fact that the proposed legislation was generating local resistance. Before Parliament, the Minister argued that the proposed "legislation would set the scene for the reconstruction of the 'developmental landscape'".<sup>45</sup> Jomo Mogale slammed the Minister's conduct in these terms: "We had public hearings on November 25, 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

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<sup>45</sup> SAPA, 13 December 2005.

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” (Ndaba, 2005). Pointing at Minister Sydney Mufamadi as one of the main instigators of the ensuing social unrest in Khutsong, a resident in Khutsong remarked that “as long as President Thabo Mbeki and Minister Mufamadi, who is in charge of Local Government, continue to ignore the cry of the residents of Khutsong, or continue to use the police in order to beat the people of Khutsong to submission, the crisis will continue”.<sup>46</sup> As for former premier Mbazima Shilowa, his failure to oppose Merafong’s exclusion from Gauteng was seen as complicit: “Shilowa 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”.<sup>47</sup> The municipal mayor Des Van Rooyen was likewise seen as betraying the cause of Merafong after his council had made a strong submission for the area to stay in Gauteng.

Political leaders were not just unresponsive, but were also seen arrogant. This attitude profoundly humiliated and frustrated residents, consolidating their determination to fight back by all means. Mosioua Lekota’s attempts at engaging the residents of Khutsong appeared too confrontational and came too late. He responded to residents’ anger by reading them the riot act, blaming the local leadership and calling on the police to arrest unruly protesters. 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 ‘voetsak (fuck off) out of Khutsong’ and sang other derogatory

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<sup>46</sup> SAPA, “disgusting silence” from cabinet, 21 August 2007.

<sup>47</sup> SAPA, Khutsong “no-go area” for dissidents -Mogale, 29 October 2008.

songs”.<sup>48</sup> The then ANC chairperson and Defence Minister later conceded that conditions for a free and fair election did not exist in troubled Khutsong. However, it is the then President Thabo Mbeki’s derogatory dismissal of Khutsong’s campaign which hurt residents the most. On visits through certain polling stations, President Thabo Mbeki was reminded by journalists about election boycotts in Khutsong. He responded: “why focus on Khutsong? Khutsong is just a drop in the ocean. Whether they vote or not won’t make any difference”<sup>49</sup>. The statement caused Khutsong residents to radicalise the resistance as Gladys Matshoele, MDF organiser and Khutsong SACP secretary, stated: “that derogatory statement made us unite and we said: let us show him that the small drop in the ocean can have a big impact in his political life. So then we told ourselves we are going to make sure that this area becomes ungovernable”.<sup>50</sup> Even as violent protest intensified in Khutsong, President Thabo Mbeki attended imbizos in other non-troubled areas prompting reporters to question the president’s “quiet diplomacy” on Khutsong. They wondered: “Where is President Thabo Mbeki as Khutsong burns? Last week he was in Kimberley, then in Soshanguve, then Manenberg and Langa. In other words, everywhere but Khutsong”.<sup>51</sup> Thabo Mbeki’s distant attitude was interpreted as active opposition against the wishes of the people of Merafong as expressed in a statement from Khutsong Ministerial fraternity: “We don’t know why the president has sided against us. Perhaps he is misinformed”.<sup>52</sup>

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<sup>48</sup> [http://www.news24.com/News24/South\\_Africa/Politics/0,,2-7-12\\_1886111,00.html](http://www.news24.com/News24/South_Africa/Politics/0,,2-7-12_1886111,00.html). Accessed on 28 December 2009.

<sup>49</sup> Interviews with Gladys Matshoele, treasurer of SACP Khutsong and Merafong Demarcation Forum organiser and with Yvonne Ntshabele, teacher at Badirile school in Khutsong, Branch Executive member of SACP in Khutsong and Secretary of Merafong Demarcation Forum, in Khutsong, March 2009.

<sup>50</sup> *Ibid.*

<sup>51</sup> Vukani Mde and Karima Brown, Khutsong exposes absentee leaders, 27 Feb 2006, <http://emm.newsexplorer.eu/NewsExplorer/clusteredition/en/20060227,bday491a300767b93f5898a564d1ef2fc1fd.html>. Accessed on 28 December 2009.

<sup>52</sup> SAPA, Mbeki given “Khutsong’s gospel”, 09 May 2007. <http://www.pretorianews.co.za/index.php?fSectionId=&fArticleId=nw20070509153751164C350311>.

Another indicator of Government democratic deficit is found in the lack of prior consensus between the three spheres of Government on the demarcation decision. It turns out that the provincial Government and the Merafong municipal council never really bought into the stated objectives of this policy. Had the national Department of Local and Provincial Government convinced the provincial Government and the municipal council of the appropriateness of demarcating Merafong into North West, these two entities would not have shown opposition to this policy. It emerges from public submissions to the provincial legislature that the municipal council initially opposed the policy and advocated in favour of Merafong falling totally within Gauteng. The submission reads: “the Merafong City Local Municipality, taking all relevant factors into account, and after consultation with the community, herewith submit a fully motivated request that, should action be taken to do away with cross-boundary municipalities, the total area of jurisdiction be included in the Gauteng Province”.<sup>53</sup> Later on, the Mayor Des Van Rooyen abandoned the municipal council’s early position without any justification. Some residents alleged that councillors’ late approval of the controversial policy had been bought in exchange for promotions in the North West provincial Government. As a result, councillors’ houses and municipal buildings became primary targets of public violence by Khutsong residents when the crisis escalated into violent protest.

Similarly, the provincial legislature initially promised to make sure that Merafong municipality was not demarcated in North West. “The portfolio committee on Local Government... recommends to the house amendment to schedule 1A of the Constitution Twelfth Amendment Bill [B33B-2005] to provide for the inclusion of the municipal area of

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Accessed on 28 December 2009.

<sup>53</sup> *Motivation by Merafong City Local Municipality to be included in Gauteng province*, Merafong City, Office of the Executive Mayor, 10 November 2005.



Merafong into the municipal area of the West Rand District municipality of the Gauteng Province”<sup>54</sup> concludes the assessment of the views of the public canvassed during public hearings held on 25 October 2005. The negotiating mandate for the vote in the NCOP was adopted in line with this conclusion. Until 30 November 2005 when the Gauteng negotiating mandate was presented to the select committee of the NCOP, the position of the legislature was unchanged. Whatever the persuasion exercised on the Gauteng provincial legislature, it altered its stance on the matter between the 1<sup>st</sup> December 2005 and the 5<sup>th</sup> December 2005. Whether it was reasonable and rational for the Gauteng provincial legislature to trade its constitutional right to provincial territorial integrity with other issues of “national interest” remains an open debate. The Gauteng legislature, with all the good will invested in facilitating public involvement in the legislative process, found itself in a *fait accompli* situation. It is not an exaggeration to conclude that the final policy decision of excluding Merafong from Gauteng was imposed on the municipal council, the provincial legislature and the people of Gauteng. This is easily achieved in the ruling ANC in which loyalty to “instructions from above” is a cornerstone virtue (Gumede, 2005).

A further dimension of Government democratic deficit was the absence of any justification as to why it was found more appropriate to demarcate Merafong as a whole in North West rather than in Gauteng following the disestablishment of cross boundary municipalities. COSAS justified its opposition to Government policy on the grounds that it did not “give us any substantive and compelling reasons as to why Merafong should go to North West as opposed to Gauteng Province”.<sup>55</sup> Such explanation deficit raised suspicions, mistrust and consolidated perceptions that the policy was irrational. “The fact that there are

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<sup>54</sup> Ms Refiloe Letwaba, Gauteng Legislature, Local Government portfolio committee, Negotiating mandate on Constitution Twelfth Amendment Bill.

<sup>55</sup> *Submission by Congress of South African Students (COSAS)*, 25 November 2005.

no reasons forwarded for the proposed move to North West is a clear indication of arrogance on the side of Government and we strongly believe that the views of the people must be taken into account”, added COSAS.<sup>56</sup> In Court papers, The Merafong Demarcation Forum contests the rationality of the Constitution Twelfth Amendment Act by arguing that “the reasons provided for the change of stance on the Amendment do not make sense and are, in fact, not reasons at all”.<sup>57</sup>

In pushing the National Assembly to adopt the Twelfth Amendment Bill, the minister of provincial and Local Government did not provide detailed and municipality-specific justifications for his proposal. It was taken as sufficient justification to pursue the suppression of cross boundary municipalities. Why a municipality would be demarcated exclusively in one province rather than the other was not justified either by the Minister of provincial and Local Government or by the National Assembly at the adoption of the Bill. So shocking was such lack of justification on the part of Government that the Constitutional Court judges stated that this amounted to undemocratic conduct and did not facilitate judicial arbitration of the dispute. As the criticism was formulated in the context of the Matatiele provincial boundary dispute, the next chapter will discuss further the significance of the judicial attack on the opacity of Government policy. It is at a late stage, under interrogation from the Constitution Court, that Government put forward reasons behind its decision to demarcate the whole Merafong in North West. It was difficult to find out whether these reasons did indeed inform the decision-making process or whether they were merely plausible explanations which could help Government get off the hook. What is clear is that neither the equitable share nor the population load-balancing arguments had

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<sup>56</sup> *Ibid.*

<sup>57</sup> Constitutional Court of South Africa, *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* (2008), para 180.

been presented or discussed with the Gauteng Province, the Merafong municipal council or the residents of Merafong.

Lastly, failure of the Gauteng provincial legislature to honour its promises and to report back to the people of Merafong on its unsuccessful attempt to secure their inclusion in Merafong constituted a democratic deficit problem. Constitutional Court judges were divided on whether there was a Constitutional duty for the provincial legislature to report back to the people of Merafong. 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 held a minimalist and formalistic view of the right of public participation whereas the minority judgment, especially Judges Sachs' and Madala's reasoning, provided a maximalist interpretation. The majority of judges were 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 was sufficient evidence 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 was considered to be minor incidents that did not affect the quality of the public participation process that had taken place. The legislature's early ignorance of the impossibility to amend the Bill at NCOP level was excused by the argument that we cannot expect legislators to know all legal nuances or all relevant facts. That they did not report back was minimized as possibly disrespectful or discourteous, but not rising to the level of the breach of a Constitutional obligation. Such disrespectful conduct, the majority judgment suggested, is punished through elections not by Courts.

The minority judgment, especially Sachs' ruling, upheld the progressive interpretation of the right to public participation outlined in the *Doctors for Life International* ruling.<sup>58</sup> According to Sachs, the initial engagement of the legislature with the residents of Merafong was not a sham. Yet, it was unreasonable for the legislature not to report back to the people on its changed position with regards to the demarcation of the municipality<sup>59</sup>. Whereas participatory democracy is intended to produce dialogue, mutuality of open and good-faith dealing, and maintenance of a 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. On close scrutiny, the two camps disagree on the implications of the conduct of the provincial legislature, but all find such behaviour objectionable in a democratic society. Perceived Government democratic deficit contributed a great deal in radicalising and prolonging resistance against the unpopular policy. Moreover, the dispute was informed by groups' and individuals' strategic political agendas as well.

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<sup>58</sup> Delivered on 17 August 2006, one day before the second judgement on the Matatiele provincial boundary dispute, the ruling, in the matter between an international health organisation named *Doctors for Life International* and the National Assembly and others, constituted a landmark pronouncement on the nature and the scope of the right of the public to be involved in legislative processes. The judgement struck down three health related acts on the basis that the National Assembly had failed to involve the public in its legislative processes. See *Doctors for Life International v The Speaker of the National Assembly and Others*, CCT 12/05, 17 August 2006. The judgement on the Matatiele provincial boundary dispute which also invalidated the Constitution Twelfth Amendment Act as it related to Matatiele extensively drew on the doctrinal strides made in the *Doctors for Life International* case.

<sup>59</sup> Three important elements should have led the legislature to resume some degree of consultation with the community. First, the legislation was unusual: it is one of the rare matters on which the provincial legislature has been given the veto power. Second, its sociological consequences on the lives of residents were real as they stood to be functionally and emotionally affected by the legislation. Third, 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 favourable to the wishes of the majority of the people in Merafong.

### **3.7. Strategic political struggles**

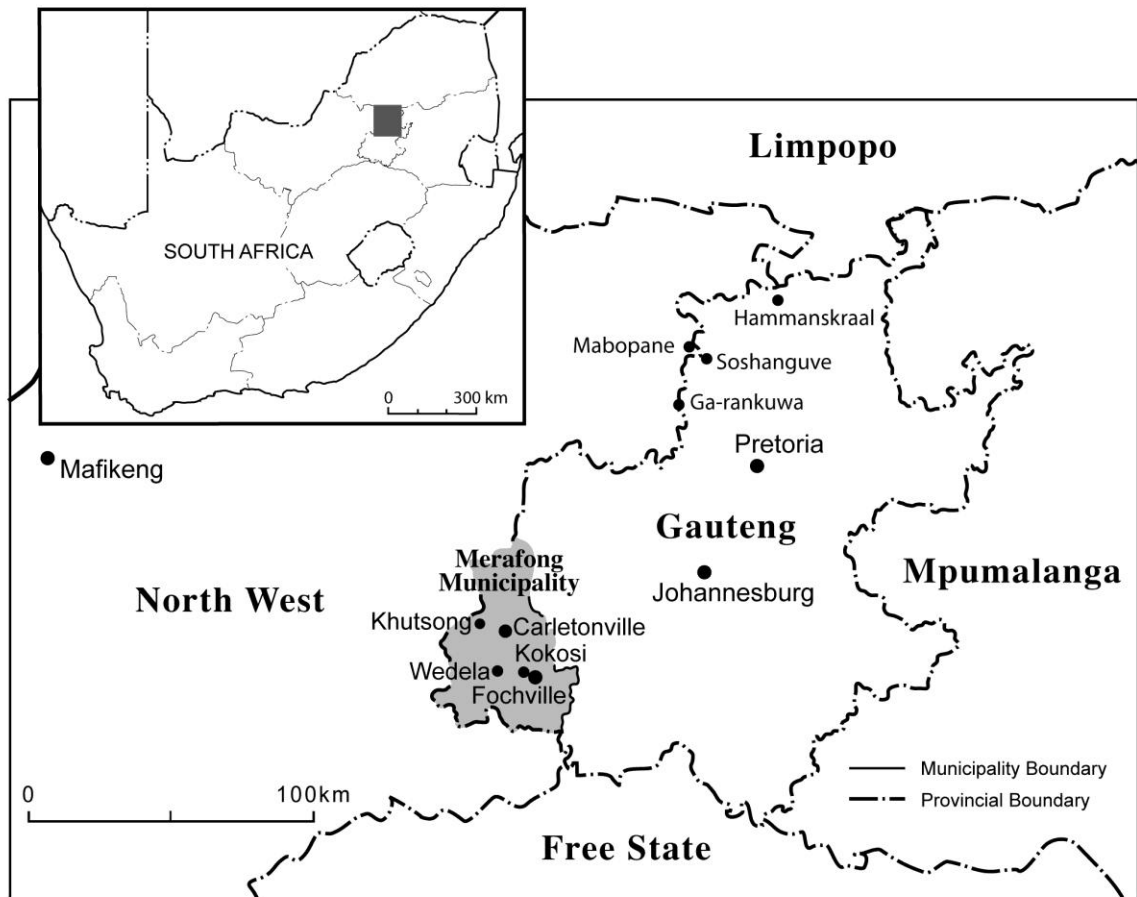
Certain sectional strategic interests have underpinned the border conflict. On close examination, both the 2005 contested policy to exclude Merafong from Gauteng and the 2009 fast-tracked decision to reverse the earlier policy seem to have been directly linked to strategic political interests of the ANC. In pushing for Merafong to be included in North West, Government sought to compensate the province for the population lost incurred as a result of moving Mabopane, Garankuwa and Hammanskraal, in the north of Gauteng, to the metropolitan municipality of Tswane(Pretoria) in Gauteng (See map 5). Members of opposition parties have alleged that this decision was dictated by a need for the ANC to consolidate its metropolitan electorate and ensure unchallenged control of the metropolitan municipality.<sup>60</sup> According to these critics, the ANC electorate was strategically more important for the consolidation of ANC dominance in Tswane (Pretoria). Inclusion of these communities in the metropolitan area can be justified on proximity and functional grounds just as Merafong residents would do to defend their preferences for Gauteng. However, members of opposition parties charged that the Government preferred having these North West areas included in Gauteng, precisely in the metropolitan area of Tswane (Pretoria) because of the electoral advantage it would offer to the party<sup>61</sup>. To avoid further encroaching on the North West territory, the Government was left with no choice but to attach the whole of Merafong in North West.

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<sup>60</sup> Interview with Mr Herman Droenewand, DA MPL in North West provincial legislature, in Mmabatho/Mafikeng, 09 March 2009; with Mr Andrew Gerber, FF MPL in North West provincial legislature, Mmabatho/Mafikeng, 09 March 2009; with Chris Hantingh, DA MPL in North West provincial legislature Mmabatho/Mafikeng, 09 March 2009 and with Malusi, UCDP MPL in North West provincial legislature, in Wedela (Merafong), 12 March 2009.

<sup>61</sup> *Ibid.*

If true, these allegations point to some level of gerrymandering in the early decision to demarcate Merafong in North West. The reversal of this decision in 2009 was partly linked to the need to secure Khutsong's pro-ANC votes at general elections. 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 the moral integrity of ANC 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" (Du Plessis, 2009). No wonder then that opposition parties have criticised the move as "political expediency" and "an opportunistic political move by the ruling ANC through Government structures" (Bateman, 2008).



Map 5. Former North West Areas such as Mabopane, Hammanskraal, Soshanguve, Garankuwa falling entirely in Tswane Metropolitan municipality in Gauteng since 2006.

Many members of Parliament have expressed the view that the process was rushed through. On briefing the Local Government portfolio committee on the Constitution Sixteenth Amendment Bill that aimed to redemarcate the whole of Merafong in Gauteng, the NCOP delegate Honourable Madala Abram Mzizi (IFP) stated that many legislators at provincial and national level complained that the relevant Bill was being rushed. The chairperson of the portfolio committee, Ms Refiloe Letwaba countered the criticism by arguing that it was less about rush than a drive to safeguard the interests of the people of Merafong.<sup>62</sup> “The people of Khutsong have spoken. We have to embrace their views. It is democracy at work”, Ms Letwaba often stated during the hasty legislative process. The DA Chief Whip in Gauteng legislature Mr Jack Bloom questioned the credibility of this discourse: “this policy reversal is again a political thing in reality. A big quote coming from the ANC these days is : ‘It is democracy at work’. Why does it work some times and not others”?<sup>63</sup>

Personal interests of certain provincial and local politicians stood to be served or damaged both by the 2005 policy and its reversal in 2009. Merafong councillors’ change of position from preference for Gauteng to support of North West was explained by residents as motivated by promises of promotions in North West Province. Regarded by the community as traitors, councillors, their property and municipal facilities became primary targets of public violence in the municipality. Besides, opposition party members of North West provincial legislature opposed the release of the Merafong municipality to Gauteng in 2009. Some of them stood to be severed from their constituencies in Fochville and Wedela.

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<sup>62</sup> These exchanges were observed by the author who attended four meetings of the Gauteng provincial legislature’s Local Government portfolio committee on 20 February 2009, 27 February 2009, 3 March 2009, and 6 March 2009.

<sup>63</sup> Interview with Mr Jack Bloom, DA Chief Whip in Gauteng Legislature, in Johannesburg, 5 March 2009.



These DA, FF, and UCDP North West MPLs argued that, to correct Khutsong's forced removal from Gauteng, Government was again forcing Fochville, Kokosi, Greenspark and Wedela into Gauteng. Sections of the white population and local politicians in the previously North West parts of Merafong (Wedela, Greenspark, Kokozi, Fochville) did not support the inclusion of the whole of Merafong in Gauteng where they claimed to have little social and political connections. A white farmer voiced his opposition to the Bill at public hearing in Carletonville civic centre in these terms:

We support the struggle of the people of Khutsong. But now Government is pushing Wedela, Kokozi and Fochville in Gauteng. The same mistake they did for Khutsong, they are doing it for us. We have never been part of Gauteng, now suddenly we must be part of Gauteng. So they correct a mistake by making another mistake. Government said no one will be moved against their will. Now people in Wedela, Kokozi and Fochville are being moved against their will.<sup>64</sup>

A white school teacher from Fochville equally objected to the Bill citing a long productive relationship with North West and familiarity with its officials:

We are quite happy in North West. We have spent long time to know people working in various Government departments. It is the third time that we will be moving now. No one consulted with us as a school and as a community. Actually, there has been no consultation in Fochville area that I am aware of. The ANC said no one will be forced to make a change.<sup>65</sup>

Having his electoral base in Wedela, Mr Malusi, a UCDP MPL in North West likewise attacked the credibility of the public participation process leading to the policy reversal:

We have not been sufficiently consulted. There was intimidation in the public hearing. Residents of other places such as Wedela could not feel free to voice dissenting views. People fear for their lives and their property as Khutsong residents

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<sup>64</sup> Observation captured during my attendance of the public hearing session in Carletonville on 25 February 2009.

<sup>65</sup> *Ibid.*

have been very violent in the past. We think that they should have organised separate hearings in places such as Wedela, Kokosi and Fochville.

He then warned of future unrest in Kokosi, Wedela and Fochville as a result of their “forced” inclusion in Gauteng.

An ANC Member of Gauteng legislature dismissed this opposition as driven by narrow interests and as the lamentation of losers:

A few individuals in these opposition political parties just protect the interests of their narrow constituency... They want to preserve seats here or there, they look at their very narrow interests. No one tries to see what is in the interest of the majority of the people in that area. What is best for these people putting aside one’s political interests? I know that Freedom Plus and other small parties cannot be happy with this decision. Some will lose their seats in NW legislature; some will lose control over few wards as there might even be redemarcation of wards within the municipality. We will swallow them over a few wards they used to control in the past. That is why they are not happy. But why can’t they approach blacks and canvass for votes? Why do they maintain a racial constituency? We will swallow them.<sup>66</sup>

As is apparent in this statement, political parties and individuals sought to promote and secure their strategic interests. Even at such local level, ANC politicians have looked at demarcation policy and counter-policy as a means to contain and defeat opposition parties.

### ***3.8. Limits of judicial mechanisms***

For Merafong residents, the most important lesson emerging from the Court’s dismissal of their case was that the dispute needed political settlement. It took twelve months for the Court to deliver a highly polarised and controversial judgment.<sup>67</sup>

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<sup>66</sup> Anonymous interview, Gauteng Legislature, March 2009.

<sup>67</sup> 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 Merafong Demarcation Forum. See

Constitutional Court judges fundamentally differed on key inquiries: 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 power of a possible veto granted to it by the Constitution?

The majority judgment considered that public participation in the legislative process had been properly facilitated despite legislators' failure to act on promises made to residents of Merafong and to report back to the people on the unfavourable development. As for the rationality attack, the Court applied a minimal rationality test which enquired on whether the legislation was directly linked to a legitimate policy goal. In this regard, the legislature's reliance on the urgency of disestablishing cross boundary municipalities, on the need to create sustainable and viable provinces, on the necessity to boost North West's equitable share and willingness to avoid perceived adverse consequences of a veto was enough to satisfy the Court.

On deeper analysis, the Court's dismissal of the application did not amount to an acceptance that Government's policy was adequate. It was in a sense a declaration of the Court's incompetence to rule on the matter. To achieve the goal of disestablishing Merafong as a cross boundary municipality, different ways were available, namely to locate Merafong either wholly in Gauteng or wholly in North West. The Court acknowledged its

limits: “from economic, geographical and other perspectives the choice can be debated, but it is one for the legislature to make. It is not for this Court to decide in which province people must live or to second-guess the option chosen by the Gauteng Provincial Legislature to achieve its policy goals and thus to make a finding on how socially, economically or politically meritorious the Twelfth Amendment is”.<sup>68</sup> Based on the Constitutional principle of separation of powers, this position of the Constitutional Court says it all on its inability to substantively weigh among Government’s policy options when procedural requirements have been adhered to.

### **3.9. Conclusion**

This chapter has focused on the Khutsong provincial boundary dispute. In explaining the protracted and violent boundary dispute between Government and the people of the Merafong municipality, the chapter has developed a sophisticated interpretative framework which places emphasis on the interplay between underlying precarious material conditions and local notions of democracy and development, on the clash between Government’s and residents’ regional planning models, on Government’s democratic deficit, on strategic political struggles relating to the boundary decision, and on the inability of the judiciary to substantively address the dispute. In doing so, the chapter has shed more light on “the space-time constitution of sectional interests... power relations, and political struggles” (Gore, 1984, p. 260) which have influenced policy and counter-policy regarding the provincial demarcation of the Merafong municipality.

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<sup>68</sup> Constitutional Court of South Africa, *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* (2008), para 114.

The combined effect of historically constituted material conditions and ideas of popular sovereignty and special entitlement to Gauteng's wealth rendered the township unreceptive to any change perceived against its interests and particularly predisposed to violent resistance. Residents of Merafong feared that exclusion from the wealthier Gauteng Province would dramatically compromise service delivery in all its aspects as well as their economic development. Arguments pointing to the lower standard of services in the North West Province, especially the issuing of home affairs documentation, emergency services, the management of schools, health care services, abounded and were recurrent. Whereas North West was represented as a rural and poor province, Gauteng was embraced as "the economic hub of the country" and "home". It was seen as the only province capable of supporting Merafong to weather the storm caused by the mining downscaling and associated consequences. Merafong residents are convinced they are entitled to such support as the mining industry in Carletonville contributed a great deal to Gauteng wealth. Expectations of higher standard services and economic development underpinned by strong feelings of special entitlement constituted the driving force behind popular resistance to Government demarcation policy. These socio-economic demands were couched in a political discourse that emphasized the need for laws to be based on rationality and popular sovereignty.

The chapter has also argued that Government's functional approach to regional planning prevented any serious consideration of the preferences of the majority of Merafong residents. The Minister of Local and Provincial Government, like an architect remotely mapping the optimal configuration of regions, sought to transform underperforming cross boundary municipalities into "developmental landscape" using

criteria such as the need to guarantee “equitable share” and balanced population load. For residents of Khutsong, distance to centres of Government services, integration with close economic centres and local interests, factors usually associated with territorial regional planning, should have militated for attaching the area to Gauteng. Moving from diametrically opposed assumptions and interests, these two sides were bound to clash.

The perceived undemocratic character of Government decision-making contributed a great deal to the violent confrontation. Government perceived unresponsiveness, indifferent and arrogant conduct of key Government officials, central Government’s overriding conduct with regard to the provincial and local spheres of governance, late and the poor policy justification and provincial legislature’s inability to honour promises, were all factors that diminished the democratic content of the contested policy. As a result, they contributed in lending some legitimacy to grassroots resistance, including disruptive protest.

Both the 2005 demarcation decision and the 2009 policy reversal may have been linked to political strategic struggles in which the ANC stood to gain the most and other opposition parties had the most to lose. This shows that gerrymandering stills informs territorial reform in post-apartheid South Africa. When called to arbitrate the dispute, the Court’s inability to weigh Government’s policy options prolonged the conflict in driving it back into the political arena. In the final analysis, the provincial boundary dispute in Khutsong was less to do with some inherent value attached to provincial delimitations than with securing brighter socio-economic opportunities for the affected community. Besides, various disputants also sought to conserve or maximise their hold on political power. In order to broaden knowledge of the relevant socio-political dynamics in play in post-

apartheid provincial boundary disputes, this thesis moves to another case -namely the Matatiele provincial boundary dispute in KZN and Eastern Cape (EC).

## CHAPTER 4: PROVINCIAL BOUNDARY DISPUTE IN MATATIELE

### ***4.1. Introduction***

On Thursday 16 October 2008, violence broke out in Matatiele Town. A march in celebration of the incorporation of the town to the Eastern Cape (EC) had been forcefully disrupted by dissidents in support of the demarcation of the municipality into KZN. The marchers had been bussed from surrounding areas to Matatiele Town with alleged logistical support from the municipality. The confrontation was expected, but nothing was done to call off the march. As a result, shops were looted. Others were even burnt down. In an attempt to reassert order, the police arrested nine individuals. One person was shot in the shoulder and laid down. When an EC ambulance arrived to pick up the injured person, pro-KZN activists objected: “Leave him alone. We need an ambulance from KZN”.<sup>69</sup>

This disturbing episode of the generally peaceful Matatiele provincial boundary dispute revealed in unambiguous terms the depth of community antagonism caused by the 2005 decision to move the town of Matatiele from KZN to EC. Since then, the area has lost peace and cohesion. The overwhelming majority of residents has fiercely opposed the policy through a wide range of political actions including petitioning, demonstrations, and Court challenges. A minority has aligned itself with the local political elite and traditional authorities to support the Government decision. In the face of intense protest and damaging

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<sup>69</sup> Sapa, 16 October 2008  
[http://www.iol.co.za/index.php?set\\_id=1&click\\_id=13&art\\_id=nw20081016162809246C441901](http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=nw20081016162809246C441901).  
Accessed on 10 November 2010.



Court challenges, Government did not budge until late 2009 when it opted for fresh engagement with the people of Matatiele.

In line with the explanatory framework emerging from the Bushbuckridge and Khutsong cases, this chapter also argues that the Matatiele provincial boundary dispute is best interpreted by highlighting the important role played by underlying material conditions, local notions of democracy and development, conflict between functional and territorial regional planning paradigms, Government's democratic deficit, strategic political struggles, and the limits of judicial arbitration. Before providing analysis on each of these factors as they pertain to the Matatiele case, it is opportune to present the geographic setting of Matatiele and the historical context of the provincial boundary dispute.

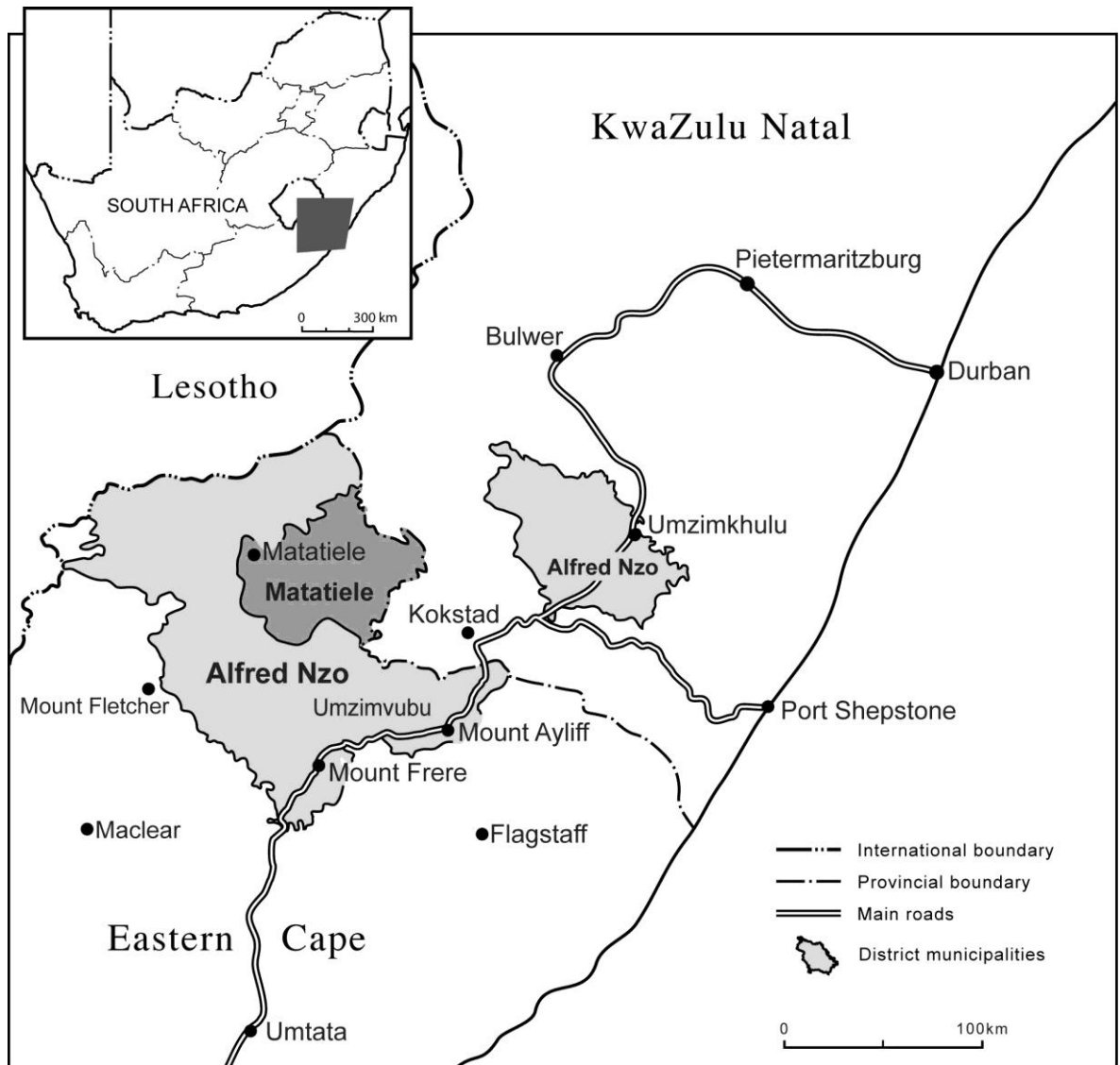
#### ***4.2. Geography and historical context of the dispute***

Matatiele, a mid-sized town serving the farming and trading communities of East Griqualand in the foothills of the western Drakensberg, Eastern Cape (EC), on the border with KZN and 20 km from the southern frontier of Lesotho, is the reference point for all of the Northern Transkei (See map 6). The residents in and around Matatiele, as in most of the Northern Transkei region, are generally bilingual in isiXhosa and seSotho. Many speak some English. Some also speak as a home language (or as a language of heritage) Phuthi, especially residents in Tsitsong and Tšepisong. Amahlubi is the majority ethnic group in the area.

In its current status, the Matatiele local municipality is comprised of three areas: Matatiele town, Cedarville and Maluti. Together with the municipality of Umzimvubu, it

forms part of the district municipality of Alfred Nzo which falls in the EC Province. The Matatiele municipality comprises 24 wards and a population estimated at 194,692.

Matatiele has long witnessed instability in its provincial identity. As a result of apartheid spatial segregation, this area has experienced spatial fragmentation, confused provincial identity, racial polarisation and ethnic antagonism. Originally, Matatiele and the Maluti area constituted a single unit in the Cape colony before moving to the Natal Province. 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 and relocating Africans into rural areas which formed homelands while ensuring that whites remained in the urban areas. The Interim Constitution in 1994, using magisterial districts to delimit the nine provinces, established the current Matatiele town as the magisterial district of Mount Currie in KZN, and the current Maluti as the magisterial district of Matatiele in EC. In 1995, a majority of the Trengove Commission recommended that the district of Mount Currie be excised from the Province of KZN and incorporated into the Province of the EC whereas a minority report advocated that Mount Currie remain in KZN. Neither option was adopted.



Map 6. Geographical location of Matatiele.

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 KZN. 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 in the EC (see map 7). The separation of Matatiele town from its surrounding Maluti rural areas remained unchanged and continued to be the subject of much discontent. Many voices insistently called for the reunification of the town and its rural villages.<sup>70</sup>

All stakeholders agree that Matatiele Town and its surrounding Maluti area need to form one municipal unit in order to address the legacy of apartheid segregation. Whether the unified entity should be included in KZN or in the EC is the question that has since 1993 divided not only the Government and its constituency, but more so the affected residents themselves. In 1993, ANC national leaders asked its Matatiele/Maluti constituency to “elect a people’s Government that would ensure the unification of Matatiele and Maluti and its inclusion in the province that the majority of the people will wish to see themselves in”.<sup>71</sup> In 1995, the ANC-led Government failed to act on either the majority or minority recommendations of the Trengove commission. As a result, Matatiele and Maluti areas remained separated. In 2005, the Matatiele-Maluti area between KZN and EC was considered by Government as “cross-boundary jurisdictional enclave similar to cross-

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<sup>70</sup> 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.

<sup>71</sup> Interview with Philip Galo Mandla, AIC President, leader in the MMMAOC and Matatiele Poverty Alleviation Network, and MPL in EC Province, Matatiele, 8<sup>th</sup> November 2009.

boundary municipalities”.<sup>72</sup> Given administrative and functional difficulties experienced in cross boundary municipalities, the Department of Local and Provincial Government, under the leadership of Minister Sydney Mufamadi, sought to scrap this ineffective municipal arrangement. As was the case for Merafong and Bushbuckridge, Matatiele town and its Maluti rural areas needed urgent restructuring. According to Government, these two entities posed similar challenges as cross-boundary municipalities, though not having the official status of a cross boundary municipality. They belonged to two different provinces while they constituted a cohesive and integrated community. Such assimilation to a cross boundary municipality was strongly contested in legal proceedings that dissident residents instituted in resistance to the Government decision to move Matatiele town from their preferred KZN to EC. Residents could not understand why legislation dealing with cross boundary municipalities should be used to exclude their town from the Province of KZN. Nevertheless, all the parties admitted that the demarcation of the town and its surrounding rural areas in two different provinces was a territorial anomaly that needed intervention.

Matatiele’s fate was intimately linked with that of the municipality of Umzimkulu which had constituted an enclave in KZN. This EC municipality fell almost totally within the geographical territory of KZN. It was a matter of no debate that Umzimkulu naturally belonged to the KZN Province. To address these demarcation problems, Government embarked on a process that would see the reunification of Matatiele and Maluti within the EC Province and the transfer of Umzimkulu municipality to KZN. As a result, EC Province stood to lose Umzimkulu with its 174,338 inhabitants, but was being compensated with the economically active town of Matatiele with its 16,226 inhabitants.

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<sup>72</sup> Constitutional Court of South Africa, *Matatiele Municipality and Others v President of the RSA and Others* [2006], ZACC 2; 2006 (5) SA 47 (CC); 2006 (5) BCLR 622 (CC) (Matatiele 1), para 13.



Map 7. The provincial location of Matatiele in the period from 2000 to 2005

The process of reconfiguring the Matatiele provincial boundary started in late 2005 implicating institutions such as the Department of Local and Provincial Government, the Municipal Demarcation Board and Parliament. After it had considered submissions from the residents of Matatiele, the Municipal Demarcation 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 KZN citing "well motivated" submissions from residents. However, the Minister maintained its decision to move the reconfigured Matatiele to EC and relied on Parliament to rubber stamp the policy.

After failing to persuade Government through petitions, meetings with officials and public demonstrations, members of Matatiele Maluti Mass Organising Committee (MMMAOC) became disillusioned with the ANC. Disenchanted, they quickly registered a new party called the African Independent Congress (AIC), to compete in the March 2006 local elections. As they campaigned to win seats for the local council in the 2006 local elections, MMMAOC members also launched a Constitutional attack on the Constitution Twelfth Amendment Act of 2005 and the related Cross-Boundary Municipalities Laws Repeal and Related Matters Act on grounds that Matatiele had been improperly assimilated to a cross-boundary municipality and that the Minister had usurped the Municipal Demarcation Board's power by overriding the latter's decision on the boundary between KZN and EC.

Applicants' central claim was rejected by the Constitutional Court and the local elections were allowed to proceed as planned. However, in an unsolicited move that could be qualified as judicial activism, the Court called for further submissions on Government compliance with Constitutional procedural requirements to examine whether the challenged

act was adequately passed. The Court found that the provincial legislature of KZN did not facilitate public involvement in the legislative process before approving the Bill, as required by Article 118 of the Constitution. For that reason, the legislation was declared unconstitutional, but the ruling was suspended for 18 months to afford Government time to rectify the defect. Despite this legal victory, Matatiele remained in the EC, awaiting a corrective legislative process.

However, the rectified 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 and affected residents.

Unlike areas such as Merafong and Bushbuckridge where border disputes have mainly opposed Government to the local community, the Matatiele case has displayed sharp divisions within the community itself. The area has seen the emergence of two camps, a pro-EC and a pro-KZN one, with both sides holding strong views in justification for their preferences. Pro-KZN residents by far outnumber the pro-EC ones, judging from submissions to provincial legislatures and the recent test of the views of the residents organized by the new Minister of Co-operative and Traditional Affairs, Mr Sicelo Shiceka.<sup>73</sup> Though forming the minority view, the pro-EC group with influential support of local ANC leadership and traditional authorities, has been more effective in persuading the

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<sup>73</sup> After three years of unresolved dispute, the Zuma administration decided to re-engage with the residents of Matatiele. One of the measures taken in that regard was the organization of an informal electoral process through which residents had to cast votes on their provincial preference. It took place from 28 to 31 October 2009.



national Government to demarcate Matatiele/Maluti in EC. The disagreement over the provincial boundary has divided the community and has generated much personal animosity.

In late 2009, the Constitution Thirteenth Amendment Act of 2007, that confirmed the inclusion of Matatiele town to EC, was attacked by a network of Matatiele organisations called the Poverty Alleviation Network. Yet, the Court found that the legislative process had conformed to constitutional standards. The rise of Jacob Zuma to the ANC and country leadership as well as the appointment of a new Minister for Local and Provincial Government opened opportunities of fresh engagement with border dissidents. A visit of Matatiele by a high level alliance delegation constituted of ANC national secretary general, Gwede Mantashe, COSATU general secretary Zwelizima Vavi, and SACP general secretary Blade Nzimande allowed the alliance leadership to realise the sharp antagonism between pro-KZN and pro-EC camps and the lack of clarity on what constituted the majority view in the area. President Zuma visited the area in person and urged local authorities for improvement in service delivery. An NEC decision on 30 March 2009 mandated the Minister of Co-operative and Traditional Affairs to test the views of residents in border disputes areas such as Moutse and Matatiele in order for the Zuma cabinet's final decision to be informed by people's choice. This move constituted a clear departure from the top down approach to provincial boundary decision making that characterised the era of President Thabo Mbeki and Minister Sydney Mufamadi.

The testing of the views of the people of Matatiele/Maluti through an electoral process was of course a progressive move, heralding a territorial approach into regional planning. Yet, its implementation from 28 October to 31 October has failed to appear

transparent, free and fair in the eyes of the pro-EC camp which has denounced the process and its outcome as “useless”, “partisan”, “flawed” and “illegal”. The end result of this process revealed that 89% of voters support KZN while only 11% are in favour of EC.

That cabinet made it clear that the final decision will not be based solely on the outcome of the polling exercise keeps some EC proponents optimistic. Yet, it is difficult to think of an alternative boundary arrangement that will avoid the terribly destabilising defect of creating winners and losers. In the context of the Matatiele provincial boundary dispute, few voices have been advocating for scrapping provinces all together. To account for the Matatiele provincial boundary dispute, this thesis employs the interpretative framework which emphasises the interplay between material conditions of the people of Matatiele/Maluti and local notions of democracy and development, conflicting regional planning paradigms, Government’s democratic deficit, strategic political struggles and limits of judicial arbitration. Focus falls on each explanatory factor in order to shed more light on this complex case.

#### ***4.3. Material conditions of the population in Matatiele/Maluti***

The Matatiele municipality comprises 24 wards with a population estimated at 194,692 of which 13% is employed, 22% unemployed and 65% economically inactive based on Statistics South Africa Census of 2001 and adjustment following the amendments to municipal boundaries that took place on 1 March 2006. Some 41% of the households have no income while 90% have an annual income of less than R19, 200 (Matatiele municipality draft IDP 2007-2011).

Socio-economic considerations are by far the most cited by KZN supporters. These reasons refer to a wide range of governance areas in which KZN is rated significantly higher than the EC: infrastructure, emergency services, health services, education, housing, transparency. Residents are not only convinced of better services with KZN Province, but they also fear deterioration of the status quo as their municipality has been moved to a less efficient, less resourced and more corrupt EC Province. “To obtain identity documents would be more difficult. Submitted documents get easily lost in EC. Then one is called to resubmit again. One ends up with long delay in getting the much needed service” complained residents in the public hearings prior to the passing of the Constitution Thirteenth Amendment Act of 2007.<sup>74</sup> According to Mandla Galo, chairperson of MMMAOC, residents of Matatiele “wanted to be part of KZN because it had better infrastructure and was more organized”.<sup>75</sup> The Drakensberg Taxi Association chairperson lamented bad roads in EC and pointed out that good maintenance of roads in KZN is one of the reasons they want to remain in this province.<sup>76</sup>

Quality of health services prominently features as an area of great concern in residents’ rejection of EC. A number of respondents have pointed out that services have deteriorated with the transfer of Matatiele to EC. Chief Jeremiah Moshoeshoe stated that “clinics lack oxygen, blood and provide poor health services. There was a time when

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<sup>74</sup> Interview with MPL Mbuso Kubheka, President of the KZN legislature portfolio committee on local Government and traditional affairs, Newcastle, 5 April 2009.

<sup>75</sup> SAPA, Matatiele looking for a “home”, 27 September 2005, [http://www.news24.com/Content/SouthAfrica/Politics/1057/1d5c1f8c871641cabb70812a1b008c/Matatielooking\\_for\\_a\\_home](http://www.news24.com/Content/SouthAfrica/Politics/1057/1d5c1f8c871641cabb70812a1b008c/Matatielooking_for_a_home), accessed on 29 June 2010.

<sup>76</sup> Interview with Davidson Lebeko, the chairperson of the Drakensberg Taxi Association, Matatiele, 11 November 2009.

people would say: ‘you go to Matatiele hospital, you go to a death camp’<sup>77</sup>. This sinister picture was echoed by a woman street vendor in these terms:

When someone is sick, we are told there are no ambulances to transport them and have to hire private vehicles only to discover (on getting to hospital) that there are a lot of parked ambulances. When one calls for an emergency service, the phone rings forever and one is compelled to take their sick person onto the bus. This used not to be the case under the KZN administration. While they were not familiar with our rural areas, they made efforts like requesting one to wait at the bus stop to direct the ambulance accordingly and their response was very quick. The ambulance would even be coming from Pietermaritzburg. In Matatiele clinics, medication given to our sick persons is only panado irrespective of one’s illness or diagnosis<sup>78</sup>.

AIC Councillor Makolwa noted that:

The best services are rendered by hospitals in Pietermaritzburg or Durban. Yet, when a resident is in bad condition, he is transferred to Umthata in the EC. In case he dies, it is costly to have the corpse transferred back to Matatiele. Transferring corpses from Pietermaritzburg or Durban is less expensive and there are many taxis on that route.<sup>79</sup>

He argued that reliance on ineffective emergency services from EC once cost life to victims of an accident. Councillor Makolwa recalls the drama:

There was Mvenyane bus that was involved in an accident in 2008 at around 8.00 am. We had to wait for emergency services from Bisho, but they took long time to arrive on the accident scene. And when they came they had inadequate equipment. We then decided to call KZN emergency services that quickly came. Some 21 people died. Matatiele residents were angry at us as the EC Province came with inadequate equipment. Had the service been closer, some people would have been saved. This whole change put our people in danger.<sup>80</sup>

As with regards to the education sector, residents and professionals complain about the lack of tertiary institutions in EC resulting in most students attending KZN universities,

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<sup>77</sup> Interview with Chief Jeremiah Moshoeshoe, Ongeluksnek farms (Matatiele), 8 November 2009.

<sup>78</sup> Focus group interview with women street vendors: Mapulane Tsoaeli, Maradebe Njobe, NG Makae, in Matatiele, 9 November 2009.

<sup>79</sup> Interview with AIC councillor Makolwa, in Matatiele, 9 November 2009.

<sup>80</sup> *Ibid.*

poor management of schools in EC, human resources management problems and pervasive corruption. “Our boys go to school to Durban or to Pietermaritzburg. There are no tertiary education institutions in this region”, noted the chairperson of Drakensberg Taxi Association.<sup>81</sup> Two pro-KZN Matatiele teachers described dysfunctional and inefficient practices such as lack of transparency in the selection of senior teachers, inconsistencies and discrepancies in how temporary and permanent teachers are treated, tribalism, unnecessary workshops serving the interests of service providers which turn out to be associated with education officials, wasteful expenditures, and mismanagement of sport and recreation activities to the detriment of learning and teaching curriculum. Human resources mismanagement is viewed in terms such as this:

Some educators are underpaid, but others are overpaid without explanation. It happens that people are paid more than they expect without any explanation. Here in EC, they are confused. There are temporary educators that are being paid more than permanent teachers. Temporary educators are getting housing allowances and medical subsidies and yet there are permanent teachers that do not get those benefits. These are not errors. And you must not think that these temporary teachers are treated in the same way.<sup>82</sup>

Irregular collusion of education officials’ business interests and school activities seriously compromise learning quality in schools:

Department of Education organizes workshops where we do not get to learn anything. They invite service providers who use the workshop to advertise themselves and make money. And at the end of the day, you have travelled long distances and missed lessons for nothing. These workshops are so many, for teachers, principals, etc. If you look closely, you will see that officials from the Department of Education have all companies (catering companies, stationery companies, and accommodation companies). They seem to organize these several workshops with the purpose to spend money and get service providers make profit.<sup>83</sup>

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<sup>81</sup> Interview with Davidson Lebeko, the chairperson of the Drakensberg Taxi Association, in Matatiele, 11 November 2009.

<sup>82</sup> Anonymous focus group interview with two teachers, in Matatiele, 10 November 2009.

<sup>83</sup> *Ibid.*

All these malpractices leave teachers deeply demobilized: “we are sick and tired of EC. As teachers we have tried to support the EC, but we are sick and tired”.<sup>84</sup>

Similar disenchantment emanated from two street vendors for whom EC has not delivered on promises to support hawkers association and provide housing. The chairperson of the Masibambane Hawkers Association elaborated on their grievances:

When the EC administration took over, they made us join NAFCO in 2006. We paid joining fees varying from R45 to R90, depending on the nature of business. Up to now, we have not seen any improvement and no one tells us what is happening. We were hoping to get support from this initiative as we had been promised cooperatives. The sad thing is we were never given any receipt as proof of payment and they promised to build a stock store for us. Nothing has happened. All this has rendered the hawkers ungovernable.<sup>85</sup>

Speaking on the housing problem, another street vendor said:

We were also promised RDP houses by KZN. This has never happened after the EC took over. In fact, the EC administration has never attempted to help us in any way. I have personally tried to speak to Parliament in Cape Town alerting them to the complaints about the municipality as the municipality has divided people and selected those they favour and did not allow us in their meetings. The municipality had not given any reason why they were doing this. We are told that the houses had been given to people without following the list which was drawn some time ago.<sup>86</sup>

Poor material conditions in EC are thought to be linked with pervasive corruption and patronage politics in the province. Accusations of widespread corruption and patronage in EC provincial departments and municipalities were recurrent in conversations with participants. These perceptions undoubtedly informed residents’ rejection of EC. At the time of interviews, reports of embezzlement of 28 million rand in Alfred Nzo district

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<sup>84</sup> *Ibid.*

<sup>85</sup> Focus group interview with women street vendors: Mapulane Tsoaeli, Maradebe Njobe, NG Makae, in Matatiele, 9 November 2009.

<sup>86</sup> *Ibid.*

municipality had just surfaced in the media. Exposed corrupt practices included recurrent embezzlements of public funds, awarding of tenders to business associates or friends, clientlist appointments to municipal jobs, and suppression of debates on financial reports. It was argued that corrupt practices take place within patronage networks that permeate key party political structures from the municipal to the national level. For pro-KZN residents, municipal officials resist provincial change because their long established corrupt patronage networks within EC risk being dismantled while establishing similar networks in KZN political structures may prove challenging. As AIC Councillor Makolwa put it:

Here, they give tenders to their people regardless of their competency. Corrupt networks in EC risk being destroyed. If moved to KZN, these local leaders will have to start afresh or will not get anything.<sup>87</sup>

Chief Jeremiah Moshoeshoe concurred: “embezzlement of funds is terrible here”.<sup>88</sup> Even a pro-EC resident such as Ms Klopper admits there appears to be more corrupt practices in EC in comparison to KZN. However, she is adamant that residents should not flee but rather contribute to fixing the problem:

We love EC even if the service delivery level is low. If we all run away from EC, who will fix the province? Instead of running away from the province, we need to cry louder for us to be heard. Leaving the province will not help. Who will fix EC if no one is there to complain?<sup>89</sup>

While Ms Klopper’s statement underscores the limitations inherent with pro-KZN residents’ attempt at addressing a governance problem with an exit strategy, her provincial preference may be biased by her participation in a school transport contract with the EC Department of Education. Like her, many holders of contracts with the municipality or the provincial

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<sup>87</sup> Interview with AIC councillor Makolwa, in Matatiele, 9 November 2009.

<sup>88</sup> Interview with Chief Jeremiah Moshoeshoe, in Ongeluksnek farms (Matatiele), 8 November 2009.

<sup>89</sup> Interview with Ms M. Klopper., in Matatiele, 7 November 2009.

administration support the status quo for fear of increased competition or inexistent “support networks” in KZN.

#### ***4.4. Local notions of democracy and development***

From the residents’ perspective, the Matatiele provincial boundary dispute has emerged from an ideological background which sees the post-apartheid era as the democratic moment and democracy as involving more than just consultation. From the transition period, the majority of residents in Matatiele/Maluti have desired the reintegration of the town with its rural surroundings and their inclusion in KZN Province. The apartheid separation of Matatiele and Maluti and the subsequent inclusion of Maluti in Transkei have long been held as illegitimate. This explains resistance against this policy which was ultimately implemented by force. Against this backdrop, residents of Matatiele/Maluti saw the end of apartheid as an opportunity for the people to define by themselves their local identity and provincial location. As the provincial arrangement agreed upon at the 1993 multiparty negotiation maintained the status quo, residents of Matatiele/Maluti urged the ANC to ensure they were demarcated in KZN. In response, ANC leaders asked residents to first vote the ANC into Government and the necessary territorial reform would follow. So, the apartheid illegitimate territorial policy in the area as well as initial promises made by the ANC shaped residents expectations for a people-driven regional policy in the post-apartheid era.

The notion that people should fully participate in shaping their provincial identity has been deeply entrenched within the population. It formed one of the principal reasons



for opposing Matatiele's exclusion from KZN. On the day of hearing at the first Constitutional Court challenge, a resident, George Moshoeshoe, put it simply: "We've never been part and parcel of the EC and they (Government) never spoke to us" (Musgrave, 2006). The decision to move Matatiele to EC was found unconstitutional precisely on the basis that the KZN legislature failed to involve the people of Matatiele in its legislative process.

Besides, local notions of democracy go beyond requirements of consultations. Dissenting residents fundamentally reject the view that Government may override the community majority view. The notion that "instructions from above" should override local preferences is just unacceptable to dissenting residents. The latter constantly appeal to the notion of popular sovereignty contained in the Freedom Charter; as Chief Jeremiah Moshoeshoe puts it: "The views of the people are important. Whenever you move communities, you have to consult with them. As the Freedom Charter says people shall govern. It is a matter of checking the views of the people".<sup>90</sup> Failure of the KZN legislature to agree with the preferences of the majority of residents in Matatiele/Maluti in correcting the early constitutional defect was attacked anew in the Constitutional Court and in public opinion as unacceptable in a truly democratic society. The post-apartheid era was embraced by the residents of Matatiele/Maluti as time for more democratic decision-making. Such democratic character meant more than just the requirement to consult the people. It has been represented a state of affairs in which the voice of the majority can prevail, even against Government's initial position.

As far as local conceptions of development are concerned, the majority of residents see local development as conditioned by proximity to provincial headquarters and other

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<sup>90</sup> Interview with Chief Jeremiah Moshoeshoe, in Ongeluksnek farms (Matatiele), 8 November 2009.

major economic centres. In addition, they see development as greatly facilitated in a situation where provincial location corresponds with the pre-existing flow of goods and people. In this regard, 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” (Musgrave, 2006). 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” (Adams, 2005, p.4). If Government is to be close to the people, then residents think it makes more sense for them to be governed from Pietermaritzburg rather than from Bisho. Proximity to provincial structures is believed to make a difference because “when a problem has not been addressed by the municipality, we want to be able to easily contact the provincial authorities”.<sup>91</sup>

Economic and social functionality, as it relates to the flow of people and goods, has greatly shaped preference for KZN and resistance to Government policy. The typical functionality-based argument would be expressed as follows: “We do most of our business with KZN. Our boys go to school in KZN. Most people travel towards KZN and have relatives there. We hardly go to Bisho and any other town in the EC”.<sup>92</sup> Against this backdrop, pro-KZN residents find it hypocritical that certain pro-EC leaders have houses in Pietermaritzburg or Durban where their families go for education, holidays and entertainment while they continue pushing for Matatiele to remain in the EC. For AIC

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<sup>91</sup> Interview with E. T. Hehlela, the Headman of Chief Jeremiah Moshoeshe, in Ongeluksnek farms (Matatiele), 8 November 2010.

<sup>92</sup> Ideas recurrent in conversations with pro-KZN residents.

councillor Makolwa, self-interest can explain what he sees as an ambivalent position towards provincial boundaries:

Chief Magadla, head of CONTRALESA in EC, supports EC whereas he has a house in Pietermaritzburg where his kids and himself go for holidays. In the past, he used to advocate for KZN, but he suddenly changed his mind for self-interest. He is not alone in the category. There are also other people who contradict their actions.<sup>93</sup>

Of course, people are free to move and operate wherever they like. The point of this argument is that the conduct of municipal and traditional leaders is such that they implicitly recognise that KZN offers more opportunities than EC. While their families and themselves access these resources, they prefer the municipality as a whole to stay in EC. For pro-KZN activists, this ambivalent conduct shows clearly that the most important reason the local political elite support EC has to do with their political career and not the benefit of the majority of affected people.

Linking development with proximity to economic and political centres is dismissed by pro-EC politicians as “homelands” thinking or remnants of the “influx control” era. Besides, for an influential minority in the Matatiele/Maluti community, the move to KZN would have detrimental consequences on traditional authorities, cultural practices and land. Proponents for 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 KZN. Among pro-EC residents, it is common to hear utterances such as these: “Circumcision is very important to us. Zulu don’t practise it. We may not be free to exercise this cultural practice as we are used to in the EC”; “The Sotho town Nqutu has 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

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<sup>93</sup> Interview with AIC Councillor Makolwa, in Matatiele, 9 November 2009.

people”; “Most pro-KZN are not circumcised. That’s partly why they would prefer KZN where circumcision is not practised”<sup>94</sup>. These respondents strongly believe that the KZN provincial Government, under the dominant influence of the Zulu people, may outlaw or fail to adequately promote their cultural practices, especially circumcision. Some point to such precedents in Nqutu, the only Sotho village in KZN where the practice of circumcision is said to have been disturbed by neighbouring Zulu people. A Matatiele ANC councillor expressed dangers for culture and traditional chieftancy in these terms:

There are cultural concerns. Umzinkulu that shifted from EC to KZN has experienced disrespect of its culture. Their culture is not being respected in KZN. The chiefs used to be paid in EC. They are not paid in KZN.<sup>95</sup>

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 wars. “Our traditional Chiefs will not enjoy the same recognition in KZN. All traditional Chiefs are remunerated here in EC. This may not be the case in KZN where some may not be recognised as such”, stated Mr Mayibongwe Mhlonyane, a pro-EC informant<sup>96</sup>. The figure of King Zwelithini is perceived as having the potential to overshadow and subjugate traditional Chiefs moving to KZN. These perceived threats were expressed in these terms:

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 Zwelithini; we will all become subjects of King Zweletini with obligation to pay him tribute and gifts when he comes to visit these areas. We don’t want that”.<sup>97</sup>

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<sup>94</sup> Interview with Mayibongwe Mhlonyane, a member of the Uncedo Taxi Association, in Matatiele, 12 November 2010.

<sup>95</sup> Anonymous interview with ANC councillor, in Matatiele, 10 November 2010.

<sup>96</sup> Interview with Mayibongwe Mhlonyane, a member of the Uncedo Taxi Association, in Matatiele, 12 November 2010.

<sup>97</sup> *Ibid.*

It is not just traditional authorities, but also land that are feared to fall under the control of the KZN provincial Government and King Zwelithini. Hence traditional Chiefs and ANC councillors' appeal to residents' ethno-nationalist sentiments asking them not to surrender the people and the land to KZN. "This is the land people have fought and died for. We can't just let it go", said an ANC councillor<sup>98</sup>. Residents in Maluti areas were galvanised not to hand over "Mantanzima's land". Chief Lebenia looked at the inclusion in KZN as having the potential to resuscitate ancient tribal wars. Asked on what might happen if the area was finally demarcated into KZN, some pro-EC ANC councillors declared that armed resistance and other protest actions would ensue.

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 the 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 from practising circumcision or other cultural practices in KZN is far-fetched given the protection guaranteed by 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. "What does it mean for ordinary residents if their chief is being paid but they cannot find a job or don't get adequate services?" asked the chairperson of the Drakensberg Taxi Association<sup>99</sup>. Chief Jeremiah Moshoeshe had a similar line of questioning: "If most of

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<sup>98</sup> Anonymous interview with ANC councillor, in Matatiele, 10 November 2010.

<sup>99</sup> Interview with Davidson Lebeko, the chairperson of the Drakensberg Taxi Association, in Matatiele, 11

your people move to KZN, but you as Chief insist on staying in EC, who are you going to be Chief of in EC? Shouldn't Chiefs follow the view of the majority of their people?"<sup>100</sup> Pro-EC residents' efforts to portray inclusion in KZN as subjugation to the kingship of King Zwelithini and selling out own ancestral land are dismissed as desperate instrumentalisation of ethno-nationalist sentiments in the furtherance of Chiefs' and Councillors' personal interests. The perception of a minority group that traditional leadership, cultural practices and land are more secured in EC than in KZN and their readiness to place more value on these issues than economic advantages only underscores the heterogeneous character of local conceptions of development. It remains true that the majority considers that the interests of the community would be better served in KZN as there exists functional linkage to its political and economic centres. Hence, a further contributing factor in the Matatiele provincial dispute is the conflict between the territorial regional planning model held by the dissenting residents and the functional regional planning model informing Government's approach to provincial boundaries.

#### ***4.5. Conflicting regional planning paradigms***

Government's official justification of the decision to move Matatiele town to the Eastern Cape clearly falls within the functional regional planning paradigm. At insistent request from the Constitutional Court, the Minister of local and provincial Government, in a supplementary affidavit, reaffirmed the rationality of moving Matatiele to EC arguing that "placing Matatiele in the EC, in the Government's view, made geographical, spatial and

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November 2009.

<sup>100</sup> Interview with Chief Jeremiah Moshoeshoe, in Ongeluksnek farms (Matatiele), 8 November 2009.

economic sense”.<sup>101</sup> On close consideration of Government’s justification, reasons explicitly justifying inclusion of Matatiele in the EC rather than just the correctness of unifying the formerly separated Matatiele and Maluti areas evolve around the contested idea of cultural affinity between Matatiele and EC, the controversial economic link between Matatiele and the surrounding municipalities in the EC and the requirement of population load balance between the two provinces. Government submits that:

It took into account the fact that the whole area of Matatiele and Maluti was culturally more interconnected with the people of EC than with the people of KZN. There were cultural institutions and linkages amongst the people being AmaHlubi, a segment of the Xhosa cultural group, the people of the area are interdependent and speak the same languages and share the same traditional values and practices.<sup>102</sup>

This statement is strongly rebutted by applicants who rather postulate cultural proximity with KZN:

What is stated therein is simply not true and is misdirection on the facts. The AmaHlubi people speak Zulu, Xhosa and Sotho because of their geographical position but they are spiritually and culturally linked with the people of Estcourt in KZN who are Zulus. The Amahlubi are the dominant group in the Matatiele area and are not connected culturally with the people of EC.<sup>103</sup>

Government’s economic argument depicts Matatiele as an economic growth centre not only for its closer surrounding areas, but also other surrounding localities in EC such as Mount Ayliff, Mount Frere, Mount Flecher, and Qumbu. It is envisaged that its sport and recreation facilities would benefit less resourced areas in the EC. Since these EC towns “are dependent on the Matatiele town for their economic needs . . . , it is important for all the

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<sup>101</sup> Supplementary affidavit of second and third respondents, in: *Matatiele municipality and ten others and President of the Republic of South Africa and twelve others*, case No CCT 73/05, delivered on 9 March 2006, para 7.

<sup>102</sup> *Ibid.*, para 5.8.

<sup>103</sup> Applicants’ response to Supplementary affidavit of second and third respondents, in: *Matatiele municipality and ten others and President of the Republic of South Africa and twelve others*, case No CCT 73/05, delivered on 14 March 2006, para 18.

people who contribute to the fiscus for the area to derive benefit from the development of the area”<sup>104</sup>. It is assumed that the best way for the surrounding localities to benefit from Matatiele’s development is for them to belong to the same province. However, dissidents respond that these surrounding localities are rather closer and more functionally linked to other satellite towns such as Kokstad, Umtata, and Port Shepstone. They reject the economic argument arguing that “nowhere in extensive investigation and ultimate report of the Municipal Demarcation Board in July 2003 was it suggested that the presence of the Matatiele local Municipality in KZN affected any economic growth elsewhere”.<sup>105</sup> They also state that there is no evidence in support of the view that “such ‘separate treatment’ [Matatiele falling within the KZN Province] made it difficult to capitalize on the economic growth that could be achieved for the ‘area’”.<sup>106</sup>

Finally, Government motivates its policy by the necessity to balance population size between the two provinces. EC Province had 6,501,201 people whereas KZN counted 9,761,032 people (SA statistics, 2001). It is clear that EC Province stood to lose even more people, had the Maluti area people been moved to KZN, in addition to the loss incurred for the exclusion of Umzimkulu. However, dissidents criticize Government’s inconsistency with regard to the population size balance argument: “If it had truly been Government’s intention to balance demographics between provinces, it would not have deprived the EC of 174,338 people in exchange for a gain of 16,226 people”.<sup>107</sup> On dissidents’ analysis, population exchange in the Umzimkulu and Matatiele swop of provincial locations can only be understood as a “voter swop” or “a package deal” to “ensure that a large number of

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<sup>104</sup> Supplementary affidavit of second and third respondents, *op. cit.*, para 5.9.

<sup>105</sup> Applicants’ response to Supplementary affidavit of second and third respondents, *op. cit.*, para 14.c.

<sup>106</sup> *Ibid.*, para 13.

<sup>107</sup> *Ibid.*, para 30.



committed ANC voters are added to KZN, which is a marginal ANC province (which only holds one half of the seats in the provincial legislature) in exchange for a relatively wealthy area to be ‘given’ to the EC in return”.<sup>108</sup> This accusation of gerrymandering will be further unpacked when the thesis discusses the strategic political struggles that have shaped the dispute.

On the other hand, dissenting residents insisted both on the sovereign will and developmental interests of the discrete community of Matatiele/Maluti as the key determinants of their provincial location. Such reliance on local sovereignty and social equity is at the core of the territorial regional planning approach. Residents argued that their economic and developmental interests would be better served from a closer provincial capital. Their preferential provincial arrangement is the one that conforms to existing transport and economic functional linkages with KZN and its major towns. Inclusion in KZN is perceived to best serve local interests. For that reason, the demarcation in EC is resisted as illegitimate even if it has been duly enacted and pursues other rational objectives. Furthermore, residents unambiguously manifest their adhesion to territorial regional planning when they reject the Government’s overruling of majority preference. On correcting the defect for which part of the Constitution Twelfth Amendment Act had been invalidated, Government consulted more broadly, but reconfirmed the impugned policy against the wishes of the overwhelming majority of residents. This departure from the view of the people to be affected by the decision has been regarded as unacceptable and prompted the third Constitutional Court challenge on the Matatiele case. That representatives may override preferences of the people is rejected by border dissenters, especially in the South African political structure characterised by party political

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<sup>108</sup> *Ibid.*, para 24.

centralism. Such dissatisfaction with representative democracy is a clear call for a more direct form of decision-making on issues as critical as provincial location. Far from being a political accident, the Matatiele provincial boundary dispute stemmed from a conceptual clash between Government's functional regional planning approach and residents' territorial regional planning thinking. This also reflects a conflict between practices of representative democracy and calls for direct democracy at least on provincial boundary demarcation. However, the conflict has also been fuelled by Government's democratic deficit.

#### ***4.6. Government's democratic deficit***

In a number of aspects, Government's conduct has been perceived as undemocratic, leading residents to resist in a bid to "safeguard our democracy". First, the Minister's plan to exclude Matatiele from KZN had to be pushed through Parliament with no support from the Matatiele municipal council and the Municipal Demarcation Board. The municipal council of Matatiele was itself aggrieved by the policy and stood as one of the complainants at the first Constitutional Court challenge. The Municipal Demarcation Board, the independent body tasked with demarcating municipalities, differed from the Minister's proposal and reasoning. After considering submissions from the Matatiele community, it withdrew its recommendation for the exclusion of Matatiele from KZN, citing "many well motivated submissions"(Municipal Demarcation Board, 2005). Dissent from these two statutory bodies was ignored by the Minister of Local and Provincial Government who lobbied Parliament to support the Bill. ANC party loyalty mechanisms

were relied upon to ensure cooperation from ANC national and provincial legislators and to get the Matatiele municipal council to pull out from the Court case. Such lack of consensus across state bodies and reliance on “party discipline” to impose controversial decisions appeared undemocratic and lent some legitimacy to popular opposition.

Second, the fact that the initial decision to exclude Matatiele from KZN lacked justification highly troubled not only affected residents, but even Constitutional Court judges. The majority judgment written by Justice Ngcobo criticized a “lack of candour on the part of Government as to why it was regarded as appropriate to place Matatiele municipality in the EC”.<sup>109</sup> Justice Sachs added:

The problem with the record in the present matter is that whereas there is an abundance of material dealing with re-configuring provincial boundaries so as to eliminate cross boundary municipalities, there is very little indeed from which to discern the governmental objective behind transferring Matatiele to the EC. Nor are there clear pointers in the statute itself.<sup>110</sup>

At the time, the Court formulated directions for Government “to provide further information concerning the objectives sought to be pursued by the relocation of Matatiele to the EC”, arguing that “such information could be of considerable assistance to the Court in finalising this matter”.<sup>111</sup> Such lack of justification came close to being construed by certain judges as arrogance of power or dictatorial tendencies particularly in the light of State counsel’s insinuation that “Government knows best, end of enquiry”.<sup>112</sup> Faced with such an “information deficit”, the Court reminded Government that public policy ought not

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<sup>109</sup> Constitutional Court of South Africa, *Matatiele Municipality and Others v President of the RSA and Others* [2006], *op. cit.*, para 84.

<sup>110</sup> *Ibid.*, para 101.

<sup>111</sup> *Ibid.*, para 84.

<sup>112</sup> *Ibid.*, para 109.

to be arbitrary or based on “naked preferences”. The denounced information deficit amounted to a lack of openness, transparency and democratic deficit.

Third, the Court’s finding that the KZN legislature failed to facilitate public involvement in its legislative process is further indication of the democratic deficit which affected the policy. The people of Matatiele were constitutionally entitled to be afforded a reasonable opportunity to participate in the provincial boundary decision. However, the KZN legislature failed to call for written or oral submissions. In his ruling, Justice Ngcobo emphasised both the participatory and representative traits of the South African democratic system, arguing that “elections are meaningless without massive participation ... and the participation by the public on a continuous basis provides vitality to the functioning of representative democracy”.<sup>113</sup> Against this background, voluntary or involuntary omission of public hearings by the KZN legislature constituted a blow at the heart of the South African democratic system.

Fourth, the renewed legislative process aimed at correcting the initial defect, though it passed constitutional muster, appeared formulaic and thus a “sham” process. Reviewing the public participation component of this legislative exercise, the Human Rights Commission of South Africa later stated that public participation had the characteristics of a sham process. In their own words, “It would appear that the involvement of the public was merely undertaken to fulfil an obligation in terms of a judgement rather than to give a new/fresh opportunity to revisit the Bill and to seriously engage with the community regarding their views on the Bill”.<sup>114</sup> Accusations of sham public involvement constituted the core of the third Constitutional Court challenge against the enacted policy. However,

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<sup>113</sup> *Ibid.*, para 115.

<sup>114</sup> South African human rights Commission, *interoffice memorandum, on 13<sup>th</sup> Constitution Amendment Bill KZN public hearings*, 14 January 2008.

Government had made it difficult for the judiciary to identify any procedural inadequacy; just as a criminal who manages to tamper with crucial evidence would go off scot-free.

Fifth, poor justification of the policy to keep Matatiele in EC against the majority opposition deeply compromised the democratic legitimacy of the decision. The thesis has referred to the controversial arguments based on alleged cultural affinity, economic links and the need for population load balancing. On close analysis, the most problematic issue was not that the KZN legislature rejected the affected community majority view, but that it did so with no “cogent reasons”. During the legislative session that approved for the second time the exclusion of Matatiele from KZN, members of opposition political parties held a high moral ground, helplessly reminding the house that “the people of Matatiele had spoken” and that there was no valid reason to resist their “well motivated” demands.<sup>115</sup> They called on ANC members to honour their party’s credentials of a people-driven movement citing personalities such as Chief Albert Luthuli and Olivier Tambo. To these ANC MPLs allegedly “being forced to follow a route they do not agree with”<sup>116</sup>, was sent a call to emulate famous ANC dissidents such as Feinsteins and Govender.<sup>117</sup> “Has courage failed you just when it should be answered?”<sup>118</sup> desperately asked DA MPL Burrows before concluding: “This house can, by majority, veto Matatiele-Maluti going to the EC . It can

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<sup>115</sup> *Debates and proceedings of the third KwaZulu-Natal Legislature*, Fourth session, third legislature, Thursday, 1 November 2007.

<sup>116</sup> *Ibid.*

<sup>117</sup> ANC dissident and author of “After the party”, Andrew Feinstein pushed during his tenure as ANC MP for a thorough investigation into the South African arms deal. However, he resigned in 2001 when the ANC refused to launch an investigation into the matter. Pregs Govender is a well know feminist activist and independent writer. She served as ANC MP from 1994 to 2002. In 2001, she was the only MP to vote against the arms deal and chaired hearings on the gendered impact of HIV/AIDS. The findings were presented to the ANC Caucus at a time of official silence on the issue. She resigned from Parliament in 2002.

<sup>118</sup> *Debates and proceedings of the third KwaZulu-Natal Legislature*, *op. cit.*

insist that the people have spoken and that they wish to be part of our province”.<sup>119</sup> Acting otherwise was condemned as “betrayal”, “messing with people’s life”, “messing up with public participation”, “messing up with democracy”, “Mugabeism at its worst”.<sup>120</sup> Using its majority position to pass undemocratic laws was said to be tantamount to ruling by force: “The manner you are governing the county won’t work, the tactic of using the majority vote by force won’t help instead it will be destroyed by fire. We don't care about anyone, we have our country”.<sup>121</sup>

The Zuma administration has sought to address this democratic deficit by re-engaging with residents and holding a poll in Matatiele/Malu in order to determine the majority view. It was found that an overwhelming majority preferred the area to be demarcated in KZN, though pro-EC residents questioned the credibility of the poll. Whether the policy will be reversed on the basis of the poll results and lessons from the protracted local unrest remains to be seen. That the voice of the overwhelming majority of residents has been sidelined for so long cannot be explained otherwise than by pointing to the strategic political interests of certain individuals and groups.

#### ***4.7. Strategic political struggles***

The initial Government decision to move Umzimkulu to KZN, though it made geographical sense, also achieved the ANC strategic goal of consolidating political support in KZN where ANC and IFP compete for provincial dominance: KZN gained 174,032 people from Umzimkulu, a traditionally ANC electorate. Residents of Matatiele have seen

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<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

their exclusion from KZN as compensation to the Alfred Nzo District and to the EC for letting go Umzimkulu. On their analysis, the simultaneous change of provincial location of Umzimkulu and Matatiele is a “voter swop” or “a package deal” to “ensure that a large number of committed ANC voters are added to KZN, which is a marginal ANC province (who only held one half of the seats in the provincial legislature from 2004 to 2009) in exchange for a relatively wealthy area to be ‘given’ to the EC in return”.<sup>122</sup> Given the practice of gerrymandering in post-apartheid territorial restructuring (Cameron, 1999), this accusation cannot be dismissed.

It appears then that the ANC political elite in Alfred Nzo district had vested interests in having Matatiele in EC rather than letting Maluti areas join Matatiele in KZN. This latter option would have left the district with only one municipality, Umzimvubu, which would have called for the disestablishment of the district altogether. Political offices and jobs were on the line. This partly explains why the majority of ANC councillors have opposed the preferences of residents for KZN. Besides, for the ANC political elite based in Maluti areas, the move to KZN would mean severance of long cultivated political ties with ANC and Government structures in EC. These networks are crucial to local politicians’ upward political mobility and the success of neo-patrimonial deals. Many pro-KZN participants interpreted the councillors’ opposition to the majority view as based on the need to preserve their corrupt networks in EC. It was argued that corrupt practices take place within patronage networks that permeate key party political structures from the municipal to the national level. For pro-KZN residents, municipal officials resist provincial change because their long established corrupt patronage networks within EC risk being dismantled while establishing similar networks in KZN political structures may prove

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<sup>122</sup> *Ibid.*, para 24.

challenging.

Preservation of strategic personal interests has also motivated most traditional authorities' stance on the border dispute. Support of the majority of traditional chiefs for EC is seen as driven by their self-interest and their positions in CONTRALESA. "Most traditional chiefs do not want to be part of KZN as they are benefiting from the system. Some of these chiefs have positions in EC. So they have their hands tied" said the pro-KZN Chief Jeremiah Moshoeshoe.<sup>123</sup> It is commonly believed that traditional authorities protect the recognition enjoyed in EC and associated monetary benefits. EC supporters tended to portray inclusion in KZN as leading to subjugation to the Zulu King and giving out one's ancestral land. This argument appealed to residents' ethno-nationalist sentiments, leading a councillor to vow that there would be armed resistance and bloodshed had Matatiele/Maluti been moved to KZN. However, traditional authorities' strategic interests were questioned by pro-KZN activists. Given the strong influence of both ANC councillors and traditional authorities, their preference for EC has prevailed for the past five years. Taking into consideration strategic political interests of ANC, its councillors and traditional authorities helps to explain why the majority view has been repeatedly ignored and the polarisation has sometimes reached confrontational dimensions.

The border dispute led a section of pro-KZN activists to the formation of a new "grassroots political party" which entered the electoral competition in an effort to "defend people's democratic right to choose where they want to live". The new party managed to secure 10 seats in the municipal council in the 2006 local elections. It performed better than long established small parties such as the PAC, the UDM, and the DA. In 2009 general elections, AIC gained one seat in the provincial legislature. As a result, Mr Mandla Galo,

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<sup>123</sup> Interview with Chief Jeremiah Moshoeshoe, in Ongeluksnek farms (Matatiele), 8 November 2009.



the chairperson of the MMMAOC and AIC leader, became a member of the provincial legislature serving in Bisho, Eastern Cape, where he continues to advocate for the reversal of the decision that incorporated Matatiele in Eastern Cape. In 2011 local government elections, AIC also fielded candidates in the KZN province. The party garnered 13, 43% of the votes in the municipality which translated into 7 seats in the municipal council, a slight decrease in comparison to the 2006 performance. This underperformance may be attributed to the stagnation of the demarcation issue. As in the Bushbuckridge and Khutsong cases, the Matatiele provincial dispute has also been prolonged partly because of the limits of judicial arbitration.

#### ***4.8. Limits of judicial mechanisms***

The Constitution Thirteenth Amendment Act of 2007, that confirmed the inclusion of Matatiele town in EC, was attacked by a network of Matatiele organisations called the Poverty Alleviation Network. Applicants claimed that the KZN provincial Government decision to exclude them from its territory did not take into account the outcome of the public participation process which was overwhelmingly opposed to the policy. They argued that the KZN legislature members, here referring to ANC MPLs, did not apply their mind to the representations of affected residents of Matatiele, but rather followed instructions from their national party leadership. Against this backdrop, they charged that public participation was merely a sham as the outcome was “predetermined” and that the resultant legislation is irrational because it was “not based on rationality or merit factors but on

political or ulterior factors which in the spirit of a democracy have no place”<sup>124</sup>. They further alleged that “people from as far away as Mt Frere were bussed” to attend the public hearing in Matatiele in order to “deliberately sabotage it” and water down their voices.<sup>125</sup> Speakers of KZN provincial legislature, EC provincial legislature and National Assembly naturally opposed the application claiming that public participation conformed to constitutional standards and that there was no legal basis to suggest that the enacted legislation was irrational.

Justice Nkabinde summed up the substantive issues for the Court to determine in the dispute: (1) whether failure on the part of the respondents to consult only with the *discrete* group, as identified in *Matatiele 2*, renders the facilitation of participation by the respondents unconstitutional; (2) whether failure on the part of the National Assembly to receive oral submissions from interested parties constitutes non-compliance with the constitutional obligation; and (3) whether the National Assembly and the KZN Legislature considered the representations made by the residents of Matatiele; (4) whether the Thirteenth Amendment Act is rationally connected to a legitimate governmental purpose.<sup>126</sup>

The unanimous Court judgment, written by Justice Nkabinde, rejected all contentions put forward by the applicants. Referring to calls for written submissions, organized public hearings and to invitation of applicants to the KZN legislature, the Court concluded that “objectively, it is manifest that participation was facilitated”.<sup>127</sup> Second, applicants’ contention that the KZN legislature ought to have consulted only with the

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<sup>124</sup> *Applicants’ founding affidavit*, 2009, para 16.3.

<sup>125</sup> *Ibid.*, para 14.21.

<sup>126</sup> Constitutional Court of South Africa, *Poverty Alleviation Network and others versus President of the Republic of South Africa and others* (2010), para 22.

<sup>127</sup> *Ibid.*, para 50.

“discrete” community of Matatiele was declared to have “no merit”.<sup>128</sup> Third, the Court ruled that the fact that the National Assembly did not receive oral submissions which other spheres of Government catered for did not render the process of public participation “nugatory”.<sup>129</sup> Fourth, applicants’ contention that “Parliament and the KZN Legislature did not consider their representations but merely went through the motions in inviting submissions and arranging public meetings so as to secure constitutional compliance regardless of the outcome of the process” was found unconvincing.<sup>130</sup> The Court pointed to various minutes which recorded the views expressed by residents and purported to devise courses of action on how to deal with residents’ concerns, especially those relating to service delivery. The Court went on to affirm the autonomy of the legislature: “Although due cognisance should be taken of the views of the populace, it does not mean that Parliament should necessarily be swayed by public opinion in its ultimate decision”.<sup>131</sup> It warned that credibility of public participation in a legislative process should not be judged on the outcome: “the fact that the process of engagement is not reflected in a change to the legislation, or in the accommodation of the representations submitted to Parliament, does not necessarily mean that reasonable public participation did not take place or that the views of the public were not considered”.<sup>132</sup> Elsewhere, the Constitutional Court made it clear that views expressed in public participation processes are not binding on legislators and that “public participation in the legislative process is supposed to supplement and enhance the democratic nature of general elections and majority rule, not to conflict with or

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<sup>128</sup> *Ibid.*, para 51.

<sup>129</sup> *Ibid.*, para 58.

<sup>130</sup> *Ibid.*, para 59.

<sup>131</sup> *Ibid.*, para 62.

<sup>132</sup> *Ibid.*, para 63.

even overrule or veto them”.<sup>133</sup> Examination of the above four allegations resulted in the conclusion that Government complied with the requirement of public involvement in the legislative process as provided for in Articles 59 (1) (a), 72 (1) (a) and 118 (1) (a) of the Constitution, respectively.

It remained to investigate applicants’ rationality attack on the legislation. The challenge was twofold. First, applicants alleged that the legislation was irrational as “Matatiele was never a cross-boundary municipality and therefore that it should never have been included within the scheme of the Twelfth Amendment Act of 2005”.<sup>134</sup> In this regard, the Court observed that both applicants and respondents agreed that Matatiele was rather a cross jurisdictional enclave and posed governance challenges given apartheid separation of the town with its rural surroundings. It further noted that the impugned act intended to correct this state of affairs with a view to improve governance and service delivery. For the Court, the rationality test requires the legislation to be linked to a legitimate governmental purpose. When there are more than two ways to achieve a legitimate policy goal, as was the case in Matatiele which could see the reunified entity fall either within KZN or in EC, it is for the legislature to decide. This position is predicated on the minimal nature of the Court’s rationality test<sup>135</sup>, and the principle of separation of power as explained in the Merafong case:

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<sup>133</sup> Constitutional Court of South Africa, *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* (2008), para 50.

<sup>134</sup> Constitutional Court of South Africa, *Poverty Alleviation Network and others versus President of the Republic of South Africa and others* [2010], para 69.

<sup>135</sup> See for example *Affordable Medicines Trust and Others v Minister of Health of RSA and Another* [2005] ZACC 3; 2005 (6) BCLR 529 (CC); 2006 (3) SA 247 (CC) at paras 74-9; *Merafong* above n 7 at paras 62-6; *United Democratic Movement v President of the RSA and Others (1)* [2002] ZACC 21; 2002 (11) BCLR 1179 (CC); 2003 (1) SA 495 (CC) at para 55 (UDM 2); *Pharmaceutical Manufacturers Association of SA and Others*; *In Re: Ex Parte Application of President of the RSA and Others* [2000] ZACC 1; 2000 (3) BCLR 241 (CC); 2000 (2) SA 674 (CC) at paras 85 and 90 (*Pharmaceutical Manufacturers*); *New National Party of South Africa v Government of the RSA and Others* [1999] ZACC 5; 1999 (5) BCLR 489 (CC); 1999 (3) SA

What is required, insofar as rationality may be relevant here, is a link between the means adopted by the legislature and the legitimate governmental end sought to be achieved. It is common cause that doing away with cross-boundary municipalities is desirable for improved service delivery and governance. This is the purpose of the Twelfth Amendment. More ways than one of achieving the objective are, however, available, namely to locate Merafong either wholly in Gauteng or wholly in North West. From economic, geographical and other perspectives the choice can be debated, but it is one for the legislature to make. *It is not for this Court to decide in which province people must live or to second-guess the option chosen by the Gauteng Provincial Legislature to achieve its policy goals and thus to make a finding on how socially, economically or politically meritorious the Twelfth Amendment is.*<sup>136</sup>

So, the first argument of the rationality attack could not succeed. The second argument alleged that the legislation was irrational because the decision was “predetermined”, “the law makers were instructed to vote in a certain manner”, and “the ruling party instructed its members in Parliament on how to vote on the Constitution Thirteenth Amendment Act”.<sup>137</sup> In response to this argument, the Court observed that the allegation called for investigation beyond the “rationally enacted Constitution Amendment” into the motives of Parliament and the ruling party: “This the Court cannot do”, admits Justice Nkabinde.<sup>138</sup> The Court’s rationality test deals with the stated purpose of the legislation not legislators’ motives:

The Court cannot concern itself with the individual motives of legislators. There is good reason for this: if the Court preoccupies itself with what precedes the passing of the legislation (the motive), to the exclusion of its actual purpose, it would fail to focus on the proper object of the enquiry, which is the rationality of the legislation and not necessarily the motives of those who enacted it.<sup>139</sup>

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191 (CC) at paras 19 and 24 (New National Party) and *S v Makwanyane and Another* [1995] ZACC 3; 1995 (6) BCLR 665 (CC); 1995 (3) SA 391 (CC) at para 156.

<sup>136</sup> Constitutional Court of South Africa, *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* (2008), para 114.

<sup>137</sup> Constitutional Court of South Africa, *Poverty alleviation network and others versus President of the Republic of South Africa and others* (2010), para 72.

<sup>138</sup> *Ibid.*, para 73.

<sup>139</sup> *Ibid.*

In the end, the application was dismissed with the Court declaring its inability to enquire on one of the central complaints namely that the legislation pursued partisan political objectives to the detriment of the affected population.

#### **4.9. Conclusion**

The Matatiele provincial boundary dispute is undoubtedly a legacy of apartheid regional planning and reflects current attempts at redressing past territorial abnormalities. It is against this background that one can understand the wide consensus on the need to move Umzimkulu municipality to KZN and to unite Matatiele town and its surrounding Maluti areas. However, there have been deep divisions on whether the reunified Matatiele/Maluti municipality had to fall within the KZN or EC Province. In discussing this case study, the chapter has outlined an interpretative framework that rests on the role played by the interplay between residents' poor material conditions and their local conceptions of democracy and development, the conflicting regional planning paradigms, Government's democratic deficit, strategic political struggles, and limits of the judicial arbitration.

Throughout the analysis, it has emerged that Government, through the Department of Local and Provincial Government and Parliament, has pursued the policy of excluding Matatiele town from KZN against the view of the majority of the affected population. Convinced of the transformative nature of the policy, but also aware of its contested character, Government heavily relied on its majority position in Parliament and in provincial legislatures to pass the required Constitutional Amendment Acts to alter provincial boundaries. With such strong power and a lack of concurrence from the

Municipal Demarcation Board, contestations from the municipal council and protestations from the majority of residents did little to stop the enactment of the contested boundary arrangement. It also appears that Government initially avoided any direct interaction with dissenters and even ignored their existence, presenting the proposed act as “developmental”. The Constitutional Court ruling invalidating the Constitution Twelfth Amendment Act of 2005 forced it to facilitate public involvement in the legislative process. However, it was manifest that the renewed legislative process was run as a mere formality to comply with the constitutional obligation of public participation. In passing the Constitution Thirteenth Amendment Act of 2007, special attention was accorded to accumulating as much evidence as possible of formal public involvement in the process whereas the outcome clearly seemed “predetermined”.

It is less the rejection of the majority view than poor justification of such a controversial decision that strikes analysts. Little explanation was provided as to why the new Matatiele/Maluti unit was to fall within the EC and not KZN. Under the Constitutional Court’s directions, the Department of Local and Provincial Government argued that the shift of Matatiele town to EC was based on cultural affinity with the province, its potential growth pole position within the area, and the need to balance population size between the two provinces. Dissidents rejected these reasons as based on inaccurate facts, in particular the cultural argument. Besides, none of these reasons rest on independent experts’ recommendations. Hence, there has been no consistency in the way the policy was justified across state institutions involved in the legislative process including the Department of Local and Provincial Government, the National Assembly, the NCOP, and provincial legislatures, as they developed different and sometimes contradictory discourses to

legitimize the same decision. Given these deficiencies, it is hard to discredit dissenters' contention that Government's justification has been "changing and contradictory", that the contested policy has been shaped by political ulterior motives namely compensation for Umzimkulu "voter swop" and accommodation of the interests of ANC local politicians who feel more at home in EC than in KZN for historical and cultural reasons and whose political career prospects appear brighter in EC than in KZN.

Pro-KZN residents, under the leadership of MMMAOC, have heavily relied on their constitutional right to influence Government policy. Confronted with blatant unresponsiveness, they mobilized a range of political actions including demonstrations, petitioning, and Court challenges. Given the community split on the boundary issue and the backing of the pro-EC local elite by ANC national structures, KZN proponents could only hope that the Constitutional Court would force Government to adhere to the wishes of the majority. These expectations were misplaced as the Court made it clear that Government is not bound to views expressed in public participation processes, even where such views clearly reflected majority position. Whether it is consistent with democratic values that Government facilitates public participation with "predetermined" outcomes or opposes an overwhelmingly majority position without strong justification are questions that go beyond what the Constitutional Court could offer.

Because Government's conduct has left so many questions unanswered, the majority of residents still consider the conflict unresolved. They still hold on to the idea that demarcating the Matatiele/Maluti area in KZN makes more sense on functionality, social and economic development and cultural grounds. Preference for KZN rests more on pragmatic reasons such as service delivery standards, levels of transparency and existing



flows of goods and services. Reference to historical or cultural proximity with KZN is marginal. Yet, there is also an ideological underpinning to the Matatiele local resistance which consists in a critique of the prevailing state sovereignty type of democracy and advocacy for a popular sovereignty type of democracy.

As for the pro-EC group, its numerical insignificance has been compensated by the presence of key local political and traditional leaders. The local political elite has used its position within ANC structures to push for the inclusion of Matatiele town in EC and to lobby against any policy reversal. It is alleged that ANC councillors and traditional chiefs have sometimes conditioned access to state resources or traditional assets on a resident's provincial preference. Just as its adversary, the pro-EC camp has pushed its cause through petitioning and public demonstrations, sometimes organized with logistical support from the municipality. Ethnic and nationalist sentiments have also been instrumentalised in a bid to portray KZN as a threatening "other". To justify their emotional attachment to EC, residents within the pro-EC camp mainly evoke history and culture. They appear more concerned about the interests of traditional authorities and cultural practices such as circumcision which they claimed may be endangered by moving to KZN. They pay little attention to whether or not living conditions would be improved for most residents as a result of having Matatiele/Maluti in EC. Despite this apparently nationalist approach to the provincial boundary between KZN and EC, which is held by a minority, the conflict appears to be mainly about securing socio-economic prosperity. The majority of residents think that such a brighter future can more effectively be attained in KZN rather than in EC. Personal socio-economic benefits also inform the support or rejection of a specific provincial boundary arrangement. Besides, disputants including political parties,

councillors and traditional authorities seek to maintain or maximise their hold on political power. Provincial boundaries are thus approached as frontiers of prosperity and political power.

As the Zuma administration reconsiders ways to resolve the Matatiele provincial boundary conflict, it is unlikely that the final solution will manage to mend the border divisions within the Matatiele/Maluti community. Some suggest that only the scrapping or reduction of provinces will achieve such a result. The future of provinces in South Africa has also attracted recent academic attention (Ruiters, 2011). The ANC is seriously considering both options. Before a decision is made, it is important that conflict management mechanisms be put in place to avoid the border disagreement escalating into “bloodshed”.

## **CHAPTER 5: THE EMERGING PATTERNS**

### ***5.1. Introduction***

This chapter seeks to provide a comparative discussion of the explanatory framework developed in the three case studies. The key argument of this thesis is that post-apartheid boundary disputes are rather complex political phenomena that have been shaped by the interplay between material conditions and local notions of democracy and development of affected communities, conflicting regional planning paradigms, Government's democratic deficit, strategic political struggles, and the limits of judicial arbitration of this type of conflict. This has been demonstrated in the context of each case study from chapter 2 to chapter 4. This set of explanatory factors has not played itself out in exactly similar manner in every case study. So, it is of interest to examine parallels and contrasts across case studies and provide necessary explanation where necessary.

The chapter then moves to a discussion of the implications of our analysis for future policy making in the area of boundary demarcation and boundary conflicts resolution.

### ***5.2. Emerging patterns***

The multiple case study approach employed in this thesis has revealed that the three instances of post-apartheid provincial boundary disputes have been shaped by similar explanatory factors, though with certain case-specific features.

### **5.2.1. Material conditions of affected communities**

In the three case studies, historically constituted precarious material conditions constituted a breeding ground for protest as well as the predicament from which residents sought to escape by waging protest campaigns against Government policy. These poor socio-economic conditions are partly a legacy of apartheid spatial segregation, particularly the homeland policies. However, they are also a result of post-apartheid neglect, corruption, and an ineffective system of Local Government.

Material conditions arguments have case-specific formulations. For instance, in Bushbuckridge, the emphasis was less on the preferred province's higher capacity to deliver services to the residents than on functionality and proximity which in turn have socio-economic benefits. In contrast, in Khutsong and Matatiele, residents believed that the preferred provinces would more effectively undertake service delivery and social development. In other words, Khutsong and Matatiele's preference for Gauteng and KZN involved a value judgment of North West and EC governance capacity whereas Bushbuckridge's preference of Mpumalanga did not imply either that Limpopo was ineffective or that Mpumalanga would be more efficient in terms of service delivery and socio-economic development. Besides, in contrast to the two other case studies, Khutsong residents heavily relied on a special entitlement to be serviced and uplifted by Gauteng in exchange for mineral wealth extracted from their area. Also, influence of perceived corrupt governance on residents' rejection of a particular province has been more pronounced in Matatiele as compared to the other two case studies. Corruption has often been cited as deeply compromising the availability and quality of services in EC municipalities. It may have been the case that Mpumalanga and Limpopo were not clearly perceived as different

when it came to corruption and effective governance. Yet, in the Matatiele case, it was clear to most participants that EC was more corrupt and less effective. The fact of the matter is that the three provinces are said to “approach the Chabal-Daloz model of a state with feeble capacity, resting on a politics of vertical patronage networks” (Hyslop, 2005, p. 786).

### **5.2.2. Local notions of democracy and development**

All three communities based their claims on a popular sovereignty conception of democracy. Being in majority black and ANC voters, their reference slogan has been the Freedom Charter’s “People shall govern” clause. Though post-apartheid South Africa has enshrined a form of representative democracy, affected communities have not been prepared to accept that their majority view may be overridden by politicians at least on the issue of provincial boundaries. This ideological stance reinforced in the long history of the liberation struggle combined with the pressure to secure better material conditions resulted in clashes between communities and Government.

As far as local notions of development are concerned, it is striking that in the three case studies development of one’s locality is perceived as dependent upon one’s distance to economic and political centres. In addition, residents see development as facilitated in a situation where provincial demarcation corresponds to the existing flow of goods, movement of people, employment and spending patterns. However, only in Matatiele, have we experienced an influential minority view which places more weight on culture and tradition considerations than on socio-economic development. This alternative perspective

into the provincial boundary dispute has compounded the conflict and delayed its resolution.

### **5.2.3. Conflicting regional planning paradigms**

The three case studies demonstrate that Government's justification of its regional decisions has been consistently formulated within the functional regional planning framework. Government's regional planning model echoes classic functional regional planning theorists who advocate that regional planning policies be used as tools for the realisation of "regional equilibrium", "interregional income equalization" (Orlin, 1933), "growth pole centres" (Perroux, 1955; Boudeville, 1966) or "urban industrial growth pole" (Hirschman, 1958). This paradigm has a long pedigree in South African history of regional planning (Tomlinson and Addleson, 1987). However, it is ironic that the post-apartheid Government would still use an ethnic argument to justify a regional policy as it did in the Bushbuckridge and Matatiele cases. Government's pursuit for centrally defined goals such as "equitable share", "population load balance", "ethnic alignment" and "economic viability" through territorial demarcation rests on a firm commitment to a unitary State.

On the other hand, affected residents have consistently justified their resistance appealing to notions of direct democracy and a territorial regional planning framework. Affected communities seem to adhere to the call long uttered by territorial regional planning theorists: "The time is ripe for the containment of functional power and its subordination to a territorial will" (Friedman and Weaver, 1979, p. 227). Their reliance on self-determination, equity, local veto right is perceived to threaten Government's capacity

to restructure the South African territory and economy. So, the clash between affected communities' territorial regional planning approach and Government's functional regional planning model ultimately reflects a contest over the nature of the post-apartheid State.

A cross case studies analysis also reveals how weak or sometimes non-existent have justifications for demarcation decisions been. This is indicative of absence of accountability and deficient "deliberative democracy" (Guttmann and Thompson, 2004). Besides, it is striking that affected communities accept the constitutional representative and participatory democracy as enshrined in the Constitution, but are not ready to tolerate that Government officials override local preferences. This is not only contradictory, but also source of institutional instability. It demonstrates the contested nature of the existing democratic arrangement.

#### **5.2.4. Government's democratic deficit**

It has emerged that Government democratic credence has been seriously damaged in the course of the three provincial boundary disputes. Undemocratic conduct has included moving provincial boundary decision-making power from communities to Government or party leaders, unresponsiveness, broken promises, lack of accountability, inappropriate cooperation between spheres of Government, absence of policy justification, failure to facilitate public involvement, and "sham" public participation facilitation.

In all three communities, there has been a strong perception that democracy was under threat and that the people have to stand up to safeguard it. For affected residents, it was important that border decisions that significantly shape their livelihoods are infused with democratic content. Apart from obvious undemocratic practices such as those cited

above, Government and the people often clashed on the understanding of the democratic element that ought to have shaped decisions. Government officials and legislators have thought that, after taking input from the people, it was up to them to decide what is good for the people. On the other side, the people have not been prepared to accept that their regional preference may be overridden by politicians. In addressing popular perceptions of democratic inadequacy, consultation may not be enough. What is needed is clear demonstration that public inputs have significantly shaped the policy. In the three cases, such a level of legitimacy could not be achieved, partly because certain strategic political struggles were simultaneously waged on provincial boundary arrangements.

### **5.2.5. Strategic political struggles**

There have been allegations of gerrymandering in the three instances of provincial boundary demarcation. Government demarcation decisions may have been linked to ulterior motives to consolidate the ANC electorate. Practices of gerrymandering characterised both the first post-apartheid delimitation of provinces and the demarcation of metropolitan areas (Muthien and Khosa, 1995; Cameron, 1999). As Cameron observed in his study of the demarcation of Cape metropolitan area, “despite strong technical submissions by both the majority and minority reports, party political considerations ultimately decided the outcome of the Cape Metropolitan Council boundary debate” (Cameron, 1999, p. 130). In the context of the demarcation of Johannesburg metropolitan area, a revised model of internal boundaries, developed with great influence from the ANC, was contested by the DP as “a crude attempt by the ANC to gerrymander the borders of



Johannesburg's substructures" and by the NP as "new boundaries clearly designed to favour the ANC in the upcoming elections" (Mabin, 1999, p. 187). As for Durban, Udesh Pillay has described several months of intense, often acrimonious and heated debate and deliberation during which political parties such as ANC, IFP and DP tried to make sure that "the new demarcation and delimitation of the Durban area (a prerequisite for local elections) in as far as possible worked to their advantage, in the hope of ensuring certain electoral outcomes" (Pillay, 1999, p. 212). In contrast with this pattern of political contestation over metropolitan boundaries among political parties for the sake of electoral advantages, the rural provincial boundary disputes considered in this study have not reflected the same intensity of multiparty competition. This can be explained by ANC dominance in the affected areas and scant interest from opposition parties. These factors make it even easier that gerrymandering plans, as alleged in the context of the Khutsong and Matatiele disputes, go unchallenged.

Besides, the local ANC elite in Bushbuckridge and in Matatiele have sought to secure their entrenched political networks in the preferred province mainly for the sake of individual political careers and the perpetuation of existing patronage relationships. Aspirations for higher political offices or a need to protect current political positions and its associated benefits have also shaped provincial boundary disputes as it has been shown in the three case studies. This is a clear indication of the politicization of boundary changes. They have the potential to alter the national, provincial and local political structure and dissolve existing alliances and dismantle individuals' political bases. For this particular reason, provincial boundary changes have been objects of fierce political contestation. This echoes Cameron's observation on post-apartheid metropolitan boundary disputes when he

noted that “the fight for political power was the most intense in the major metropolitan areas, precisely because the stakes and resources were so much higher” (Cameron, 1999, p. 4).

Opposition parties have also attempted to capitalize on residents’ discontent against the ruling ANC in order to raise their profile. In Matatiele, an ANC break away party, AIC, campaigning against Government’s demarcation decision, managed to gain seats at the local municipality and one seat in the EC legislature. However, political exploitation of residents dissatisfaction with ANC Government has generally had limited success. Affected communities have remained strong ANC electorates. Protest against ANC Government has hardly led to electoral sanctions. In Khutsong, ANC voters boycotted the 2006 local elections instead of shifting loyalty to a different political party.

### **5.2.6. Limits of the judicial arbitration**

In the course of the three provincial boundary disputes, communities called for judicial arbitration. However, the Bushbuckridge community had little legal ground on which to base its challenge. Bushbuckridge’s inclusion in Limpopo had been a result of political compromise at the multiparty negotiations platform in 1993. BBCC ended up requesting the court to deliver unconstitutional orders, what no Court could do. On the contrary, the Khutsong and Matatiele communities had solid constitutional grounds on the basis of which to challenge Government decisions. Both communities heavily relied on the constitutional requirement of public involvement in legislative processes and the imperative of rationality attached to the exercise of political power. Four judgments, of

which only one reflected a unanimous decision of the constitutional Court, have made pronouncements on the Khutsong and Matatiele cases, often dismissing their complaints. In the three disputes, Courts state their limits and throw the issues back to the political arena. Courts' inability to offer desired relief to aggrieved communities may well be a result of a formal interpretation of the duty of public involvement and a minimalist rationality test. Whether Courts can do better than this remains an open question that requires further Constitutional law research.

### ***5.3. Discussion***

Several provincial boundary disputes are presently still unresolved, namely the Matatiele, Moutse, Balfour, and Ba-Gamothibi cases. Moreover, the ANC Government has announced plans to reduce the number of provinces in accordance with a party resolution taken in Polokwane in December 2007. The DA has already criticized the plan as detrimental to the South African Constitutional democratic order and indicative of ANC desire to offset power challenge at provincial level. In this context of imminent restructuring of provincial boundaries and pending border disputes, it is opportune to discuss the implications of our thesis for future policy making. The following discussion assumes that territorial reform has to be pursued with a view to maximize social harmony, democratic legitimacy and social justice.

### **5.3.1. Spatial challenges may be best addressed by non spatial policies**

It goes without saying that provincial boundary disputes in areas such as Matatiele, Khutsong, Bushbuckridge, and Moutse reflect post-apartheid Government and communities' efforts to deal with the legacy of apartheid regional planning policies which were based on segregation and racial discrimination. Ironically, post-apartheid provincial demarcation policies "tend to cement the geography of the former Bantustans" (Ramutsindela, 2007, p. 43) and reproduce "the socio-spatial and economic inequalities which appears to be still very high and perhaps increasing" (Giraut and Maharaj, 2002, p. 49). In essence, provincial boundaries and sometimes even municipal boundaries still stand as dividing lines between poverty and wealth, between ineffectiveness and efficiency, between corrupt government and relatively transparent government, between underdevelopment and development. It is for this mix of social, economic and political disparities that affected residents relate to provincial boundary changes as a matter of life or death.

A long-term strategy in preventing boundary disputes should include the reduction of spatial disparities. Spatial distribution of social, economic, cultural and political resources should be undertaken in an equitable and sustainable manner so that internal administrative boundaries cease to be a significant enabler or barrier to accessing these goods. A common reaction from Government officials has been to respond to border dissidents that provincial boundaries do not matter, that South Africa is a unitary State which will service all its citizens wherever they find themselves. For this statement to mean

much more than just a rhetorical utterance, the South African State has to systematically and structurally address spatial inequities.

To achieve this goal, non-spatial policies may actually be more effective than spatial policies. As “aspatial” policies can be as spatially powerful as spatial ones, “spatial policies cannot achieve their objectives unless they work in concert with sectoral and macro-economic policies” (Gore, 1984, p. 216). This is to say that the long-term solution to provincial boundary disputes may not be provided by recurrent boundary restructuring policies. More emphasis has to be placed on socio-economic policies which alter the structural underdevelopment, chronic poverty and political challenges related to provincial boundary disputes. These non-spatial policies may for instance push for the creation of sustainable job opportunities across regions, the establishment of local economic development strategies in municipalities, the emergence of more transparent and effective Local government, speedy land reform and effective rural development.

### **5.3.2. Optimizing distance to services and adhering to existing functional patterns**

A defining feature of affected residents’ local conceptions of development has been the notion that their locality’s wellbeing depends on its distance from major economic or political centres and the correspondence between its provincial location and the existing flow of goods, services and people. These views may not be misguided as many territorial demarcation guidelines consider them to be critical. The reality is that these criteria may be overlooked when they conflict with other factors considered more important.

When a clash can be anticipated between Government's plan and affected residents' preferences, it should be commendable to opt for the boundary arrangement that minimizes distance to services and adheres to existing transport, employment and spending patterns. A factor that helped to delay tensions in the Bushbuckridge boundary dispute between 1998 and 2005 was the establishment of the municipality as the seventh region (district) within the Limpopo Province. This meant that all Government departments had to open offices in Bushbuckridge. The proximity of Government services made a difference in managing the protracted dispute.

### **5.3.3. Promoting cross boundary services for provincial border localities**

Even with the most excellent optimisation using distance and functional patterns criteria, there may still exist towns or villages geographically closer to a different provincial jurisdiction. For these localities, accessing certain emergency services from a neighbouring province or district may just be more effective. In this case, quality services should not be denied just on the basis of administrative considerations.

Government could put in place the necessary administrative tools that will make it possible for provincial border localities to access emergency services from the closest centre, be it in a different province or district. In the European Union, mechanisms have been put in place for border towns to be able to cooperate on a number of issues of mutual interest including conservation and emergency services (Hoffschulte, 2009). That these cross boundary services can even be implemented at interstate level makes it all the more compelling for them to be provided for at intrastate level. It is true that South Africa has no

encouraging experience of what was called “cross boundary municipalities”. They had to be disestablished due to administrative complexities. However, targeted cross boundary services may be implemented in an improved administrative environment with more effective cooperative governance. The enabling context will have to precede the establishment of standard and targeted cross boundary services.

#### **5.3.4. Developing national standards on traditional authorities**

There should not be fears on the part of traditional authorities that they risk losing recognition or other related advantages by moving under a different provincial jurisdiction. In the context of Matatiele boundary dispute, concerns of this sort have contributed a great deal in shaping anti-KZN sentiments and deepening antagonism within the local population. Had there been more clarity and certainty on the fate of traditional authorities and other related matters such as cultural rights guarantees and land, the pro-Eastern Cape camp in Matatiele would have little to be concerned about if they were asked to fall under KZN jurisdiction. Interviews with traditional authorities in Bushbuckridge also revealed different institutional arrangements and treatment for traditional chiefs, headmen and members of traditional councils in Limpopo and Mpumalanga. This lack or poor implementation of national common standards creates uncertainty which informs resistance to provincial boundary change.

### **5.3.5. The democratic nature of territorial reforms decisions**

A key finding of this research is that border dissent is shaped by both material conditions and local notions of democracy and development. This means that residents have opposed unfavourable demarcation policy not only on materialistic grounds, but also on an ideological basis. They have rejected a particular type of democracy or development reflected in the Government's policy and its decision-making process. For affected residents, it is important that decisions that so seriously affect their lives be not only procedurally democratic, but substantively so. The notion of popular democracy often advocated by dissidents does not always cohere with the current constitutional arrangement which envisages a representative and participatory form of democratic governance. Government officials have to educate their constituencies on the possibilities and limits of the current constitutional democratic order and have them accept that Government may not be bound to public opinion. Nevertheless, legislators have to do everything in their power to assure that their decisions are substantively democratic and are perceived so by affected constituencies.

A number of elements of an undemocratic decision have particularly frustrated dissenting resident. The most recurring have been the following: absent or poor policy justification; non-adhesion, especially by the national Government, to the principle of cooperative governance; systematic rejection of recommendations formulated by technical and independent state bodies such as the Municipal Demarcation Board; and "sham" public participation mechanisms. In improving the democratic character of territorial policies or any other policy, Government should pay particular attention to such elements.



### **5.3.6. Avoiding tight timeframe for provincial boundary change legislation**

The Khutsong and Matatiele boundary disputes were greatly affected by the lack of necessary time for deliberation and consultation on the Bill. In 2005, there was a pressure to finalise the process before the holding of March 2006 local elections. For the electoral calendar to be adhered to, municipal restructuring policies had to be concluded in December 2005 after only 2 months of engagement with affected communities. It is under these circumstances that the KZN provincial legislature omitted to facilitate involvement of the people of Matatiele in the legislative process. This was an omission that caused the legislation to be declared unconstitutional in 2006 though the order of unconstitutionality was suspended for 18 months to afford Government time to rectify the defect. In 2009, the Bill to return Khutsong to Gauteng was again rushed giving dissidents less time to engage legislators and raising accusations of political expediency. In both the Matatiele and Khutsong second rounds of legislative process, it was clear that public hearings were embarked upon just as a formality as the final decision had already been taken and even announced in the Khutsong case.

Democratic and sound governance takes time. It is important that bills that aim at changing provincial boundaries be dealt with within a reasonably sufficient period and preferably long before elections.

### **5.3.7. Minimizing partisan and individual political interference in demarcation decisions**

The process of provincial boundary changes has always been a politically contested terrain. Political parties, interest groups and individuals have always sought to secure strategic interests such as political dominance, electoral advantage, political offices, tenders, existing political networks, and so on. Some of these interests may be antithetical to the public interest or the interests of the majority of affected communities. The three case studies considered in this research have revealed strategic political struggles between competing groups or individuals as well as gerrymandering allegations against the ruling party.

A key starting point of this research has been that provincial boundary demarcation decisions are ultimately political. As such, they will remain a contested ground with various interest groups competing to advance sectional agendas. To minimize destabilizing effects and the disruptive potentials of such struggles, the State has to mediate among competing interests. As Gore puts it, development strategies or regional planning policies have to be understood as “the outcome of a negotiation of conflicting powerful interests in society mediated through the institutional apparatus of the state” (Gore, 1984: 247). In doing so, the State has to ensure that public interest prevails over partisan or individual agendas. The three case studies have illustrated instances where strategic political struggles prevented the realization of the interests of the overwhelming majority. In the three instances, Government has considered reversing its early policy, but after years of violent conflict and associated destruction of property and social cohesion. To prevent such huge social, economic and political cost in the future, Government needs to ensure it minimizes the

interference of partisan and individual interests in the policy-making process. It has particularly to guard against using boundaries to promote the interests of a specific group or political party.

#### **5.4. Conclusion**

This chapter has provided a comparative discussion of the key arguments developed in each case study. In undertaking this cross-case studies analysis, this chapter sought to highlight parallels and contrasts. It has also provided explanations for these similarities and dissimilarities. This comparative exercise has further demonstrated the relevance of the explanatory framework which this thesis has developed in a bid to provide a socio-economic and political account of post-apartheid provincial boundary disputes.

The second section of the chapter has discussed policy implications emerging from this thesis. Seven propositions have been formulated not as ready-made prescriptions, but as ideas capable of stimulating debate and informing deliberation.

## CHAPTER 6

### CONCLUSION: FRONTIERS OF PROSPERITY AND POWER

This thesis has tackled both a practical and theoretical problem. Recurrent provincial boundary disputes have posed real challenges to the post-apartheid Government. They have been associated with high security, social, economic and political costs. In many respects, they have threatened the legitimacy of Government, especially at the local level.

While these provincial border conflicts have been multiplying and intensifying, there has been limited social scientific research capable of explaining them. Existing literature exclusively focused on the early Bushbuckridge case. Besides, discussion of this first instance of post-apartheid provincial boundary dispute, though very enlightening, presents certain limitations. It has overly relied on socio-economic factors to account for the border dispute, paying little attention to the ideological and strategic underpinnings of the clashes. These deficiencies particularly came to light when, in 2005, there emerged in 2005 other provincial boundary disputes in Khutsong, Matatiele, and Moutse. In the face of such countrywide political phenomenon, it became clear that early studies of the Bushbuckridge border dispute needed to be complemented in order to enrich our understanding of social, economic and political drivers of these territorial conflicts.

Against this backdrop, this research has aimed at providing a socio-political explanatory framework for post-apartheid provincial boundary disputes. To achieve this objective, this thesis has employed a multiple case study approach. Some of the most well-known cases of provincial boundary disputes in the post-apartheid era have been considered. These three instances of border disputes, namely the Bushbuckridge, Khutsong

and Matatiele cases, have involved all spheres of Government, at least six provinces and have collectively spanned from the transition period to the present time. A multiple case study methodology has yielded results that could hardly have been obtained with past single case study research of this phenomenon. Thanks to a concomitant examination of socio-political dynamics surrounding three cases of provincial boundary disputes, the thesis has been able to develop, through inductive reasoning, a general interpretative framework pertinent across cases, an enlightening view of parallels and contrasts as well as explanatory account of specificities.

Throughout its five chapters, this thesis has demonstrated that post-apartheid provincial boundary disputes are complex socio-political phenomena which can best be accounted for by taking into account various socio-economic and political factors including the interplay between historically constituted material conditions of affected communities and their local notions of democracy and development, conflicting regional planning models, Government's democratic deficit, strategic political struggles and limits of judicial arbitration. While this list is by no means exhaustive, these are the most important factors that we have seen come into play in the three provincial boundary disputes. Interpreting these cases with this explanatory framework has clearly shown that under the veneer of provincial boundary disputes, disputants have actually been engaging in battles for socio-economic emancipation, in ideological contestations and strategic political struggles. Physical provincial frontiers are fought over not because of any inherent importance, but mainly because they are represented as proxies for socio-economic prosperity and political power

In the three localities, residents' poor material conditions predisposed them to resist a policy they perceived would worsen their already precarious socio-economic situation. Besides, residents sought to secure improved material conditions by holding on their preferred provincial choice. That precarious material conditions played an important role in shaping border dissent is confirmed by the fact that more affluent white communities in Merafong and Hoespruit have not displayed similar resistance against North West or Limpopo. To avoid an overly materialistic explanation of these disputes, this thesis has emphasized the interplay between these material conditions and local notions of democracy and development. Democracy has often been construed as "people's power" in the sense that the view of the people must prevail even when they conflict with their representatives' collective choice. Development has been seen as facilitated by proximity to economic and political centres as well as by a provincial arrangement in line with existing transport, spending, and employment patterns.

This material and ideological setting has led affected communities to adopt a territorial regional planning paradigm which places a premium on local interests and social equity. This model was bound to clash with the post-apartheid Government's predominantly functional approach into regional planning. Based on the notion that South Africa is a unitary state, the Government has often resisted people-driven territorial reforms as this may limit its power. Instead of demarcating communities in preferred provinces, the Government has repeatedly taken unpopular decisions in the name of promoting "equitable share", viable provinces, population equilibrium, or the controversial goal of ethnic alignment.

In pushing these policy goals, even against the force of popular resistance, the Government has inevitably failed to uphold key democratic values namely responsiveness, accountability, rationality, and participation. Perceptions of the Government's democratic deficit have deeply alienated affected residents, driving them to even stronger resistance for the sake of "safeguarding our democracy". As far as democratic governance is concerned, the most perplexing for the analyst is less the deviation from majority view than absence or poor justification for such conduct.

To understand why the Government would maintain its stand against protracted popular resistance to poorly justified policy, the analyst is led to acknowledge the influence of undeclared party, group and individual interests which necessarily interfere in demarcation policies. These strategic political struggles, assuming various forms including gerrymandering, preservation of one's political networks, consolidation or fear to lose one's political electoral base or constituency, and expectations of higher political offices profoundly shape provincial boundary demarcation decisions, prolong provincial border disputes and compound their resolution. Because most of these strategic interests can be veiled and maintained intact even through constitutionally adequate processes of public participation, Courts have proven unable to put to rest provincial boundary disputes. What their arbitration has often done is to return the conflict back to the already contested political arena. Courts' inability to offer desired relief to aggrieved communities may well be a result of a formal interpretation of the duty of public involvement and the use of a minimalist rationality test.

One of the merits of this interpretative framework is to show the link between recurrent and protracted provincial boundary disputes and other socio-economic struggles

in the post-apartheid era. It also reflects how these conflicts intersect with other underlying contests for political power at local, provincial or even national level both within the ANC and among various political parties. Finally, it has brought to the fore the fragilities and limits of the post-apartheid democratic constitutional order. In a nutshell, post-apartheid provincial boundary disputes are deeply connected to ongoing socio-economic and political struggles. Under the appearance of provincial boundary disputes, disputants have actually been engaging in battles for socio-economic prosperity, in ideological contests and strategic political struggles.

The argument developed in this thesis has both theoretical and practical value. On a theoretical level, it significantly enriches existing scholarship on regional planning in general and boundary disputes in South Africa. Socio-economic and political dynamics at play in the three instances of provincial boundary disputes constitute key factors that one is likely to observe in any post-apartheid provincial boundary dispute.

The interpretative framework arising from the three case studies helps to explain not only instances of provincial boundary disputes, but also other post-apartheid political struggles. That is to say that the thesis has revealed socio-economic and political dynamics that are characteristic of post-apartheid politics. In this regard, this thesis has broader theoretical significance.

On a practical level, this thesis has the potential to enlighten policy-making in the area of boundary demarcation and boundary disputes resolution. It is assumed that better understanding of the key drivers of provincial boundary disputes will help prevent and effectively manage such crises in the future. The thesis has formulated insights which can invigorate and guide deliberations in policy formulation circles. At a moment when at least



two provincial boundary disputes are unresolved<sup>140</sup> and the Government seriously considers the plan to reduce the number of provinces,<sup>141</sup> this thesis is most timely.

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<sup>140</sup> At the time of completion of this research project, the Matatiele and Moutse provincial boundary disputes are still unresolved though the ANC leadership has succeeded in convincing residents that the matter will be settled favourably. Active protestation has thus subsided in these two areas. However, exchanges with Mr Nkontwana Nhlakanipho, advisor of the Minister of cooperative governance and traditional affairs revealed that any change of the current provincial boundary arrangement can only be carried out after the 2011 Local Government elections (interview with Mr Nkontwana Nhlakanipho, in Midrand, 07 July 2010).

<sup>141</sup> <http://www.news24.com/SouthAfrica/Politics/ANC-parks-discussion-on-provinces-20100923> ,accessed on 01 February 2011; <http://www.timeslive.co.za/Politics/article674048.ece/ANC-to-decide-on-provinces-within-three-months> ,accessed on 01 February 2011. The current debate on the future of provinces has also attracted scholarly attention (Ruiters, 2011).

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# **APPENDIX 1: FURTHER DISCUSSION ON THE RESEARCH METHODOLOGY**

## ***1. THE DATA COLLECTION PROCESS***

It is opportune to elaborate further on the research process from which this thesis has stemmed. Attention shall be focused on detailing the process of data collection and the subsequent step of data analysis.

Information collected for the purpose of writing this thesis has mainly been obtained through primary and secondary sources. Primary data were gathered through personal visits to the areas chosen as case studies namely Bushbuckridge, Khutsong, Matatiele; through individual interviews or focus group interviews and through observation. Secondary materials have included sources such as several newspaper reports, Court materials, legislation, policy documents, municipal reports, public submission to Parliament and provincial legislatures, and various other reports. Let us specify each of these data collection sources in turn.

### **1.1. Primary sources**

#### **1.1.1. Individual and focus group interviews**

##### **1.1.1.1. Bushbuckridge**

In the course of this research, I visited the municipality of Bushbuckridge on three occasions: from 27 April to 6 May 2007, from 15 November 2007 to 22 November 2007 and from 18 August 2010 to 24 August 2010. The two visits in 2007 were merely exploratory and were linked with other research projects at the Wits Rural Facility in the vicinity of Acornhoek (Bushbuckridge). The third visit was specifically devoted to the conduct of interviews and collection of additional data. My visits helped develop familiarity with the

geographical setting, human settlement patterns and socio-economic realities of the Bushbuckridge area.

On my third trip to Bushbuckridge, I managed to interview the following persons:

Themba Godi. 2010. Member of Parliament, President of ACP, and former secretary of BBCC, Telephone interview: 9 August.

Reinas Khumalo. 2010. ANC councilor and Chief whip of the Bushbuckridge municipal council, Bushbuckridge: 20 August.

Andries Mapayila. 2010. Municipal manager of the Bushbuckridge municipality, Bushbuckridge: 20 August.

Kgoshi Mokoena. 2010. Chief of the Mathibela traditional authority and former member of Parliament, Mathibela traditional authority: 21 August.

Maurice Ndlovu. 2010. Secretary of COSATU-Bushbuckridge, leader in DENOSA, health professional, Bushbuckridge: 22 August.

Prince Ndlovu. 2010. Former leader of BBCC, Hazyview: 22 August.

Matome Malatji. 2010. Communication manager of the municipality of Bushbuckridge, Bushbuckridge: 22 August.

Dibakoane Noel. 2010. Councillor in the municipality of Bushbuckridge, Shatale: 23 August.

Selection of participants was guided by the need to capture the views and experiences of actors in the Bushbuckridge saga as well as current municipal authorities. With regard to this particular case study, the number of interviewees was kept to a minimum as significant information on the border dispute had already been captured in existing literature. The dispersed human settlement pattern made visits and the conduct of interviews particularly challenging.

### 1.1.1.2. Khutsong

The municipality of Merafong is within easy reach from Johannesburg. This made possible several visits and participant observation in the area. I made six visits to the municipality of Merafong on these dates: 15 February 2009 (exploratory visit); 21 February 2009 (General elections rally in Khutsong), 25 February 2009 (Public hearing in Carletonville); 3 March 2009 (interviews); 7 March 2009 (interviews); and 12 March 2009 (interviews). The process of data collection on the Khutsong case study also took me Mafikeng (Mmabato) and Gauteng provincial legislature in Central Johannesburg for interviews with members of the provincial legislatures. I also took part in three sessions of the portfolio committee on Local Government of the Gauteng Legislature. As for the Busbuckridge case study, the choice of interviewees was guided by the need to get information from main protagonists on both sides of the dispute and from opposition parties such as DA, FF, and UCDP. Here is the list of interviewees:

Yvonne Ntshabele. 2009. Teacher at Badirile School in Khutsong, Branch Executive member of SACP in Khutsong and Secretary of Merafong Demarcation Forum, Khutsong: 1 March.

Gladys Matshoele. 2009. Treasurer of SACP Khutsong and Merafong Demarcation Forum organiser. Khutsong: 1 March.

Paul Willenburg, 2009. DA MPL in Gauteng provincial legislature, Johannesburg: 3 March.

Herman Droenewand, 2009. DA MPL in North West provincial legislature, Mmabatho(Mafikeng): 09 March.

Chris Hattingh, 2009. DA MPL in North West provincial legislature, Mmabatho(Mafikeng): 09 March.

Jack Bloom. 2009. DA chief whip Gauteng provincial legislature, Johannesburg: 5 March.

Andrew Gerber. 2009. Freedom Front Plus MPL in North West provincial legislature, Mmabatho(Mafikeng): 9 March.

Jomo Mogale. 2009. Spokesperson of the Merafong Demarcation Forum, Khutsong: 07 March.

Mahlakeng. 2009. ANC MPL and chairperson of the portfolio committee on Local Government, North West Provincial legislature, Mmabatho (Mafikeng): 9 March.

Refiloe Letwaba. 2009. ANC MPL and chairperson of the portfolio committee on Local Government, Gauteng provincial legislature, Johannesburg: 12 March 2009.

Malusi. 2009. UCDP MPL in North West provincial legislature, Wedela (Merafong): 12 March.

### **1.1.1.3. Matatiele**

Visit to Matatiele municipality took place from 07 November 2009 to 15 November 2009. I also visited surrounding rural areas and farms. Interviewees were drawn from the municipal council, traditional authorities, civil society and various interest groups including members of the tripartite alliance (SACP-COSATU-ANC), and local taxi associations. The field work on the Matatiele case study also took me New Cattle in KZN where I had to interview the Chairperson of the portfolio committee on Local Government and traditional affairs in KZN provincial legislature. An IFP member of the same committee was interviewed in Johannesburg. Here is the list of all interviewees with whom I exchanged on the Matatiele case study:

Bhengu. 2009. KZN IFP MPL, Johannesburg: 3 April.



Kelibone Florencia Mankayi. 2009. Chairperson of UNCEDO Matatiele Taxi Association (MUSTA), Matatiele: 11 November.

Kubheka, Mbuso. 2009. KZN ANC MPL and Chairperson of the portfolio committee on Local Government and traditional affairs, Newcastle: 05 April.

Jeremiah Moshoeshoe, 2009. Traditional authority, Ongeluksnek farms (Matatiele): 8 November.

Mandla, Galo, 2009. AIC President, leader in the MMMAOC and Matatiele Poverty Alleviation Network and MPL in EC province, Matatiele, 8 November.

Klopper, M. 2009 , Resident of Matatiele, Matatiele: 8 November.

Hehlela, E. T. 2009. headman of chief Jeremiah Moshoeshoe, Ongeluksnek farms (Matatiele): 8 November.

Tsoeli Mapulane, Njobe Maradebe, NG Makae, residents and street vendors, Matatiele: 9 November.

Makolwa, 2009. AIC councillor in the municipality of Matatiele, Matatiele: 9 November  
Anonymous teachers, Matatiele: 10 November 2009.

Anonymous. 2009. ANC councillor of the municipality of Matatiele, Matatiele: 10 November.

Gebashe, Thabani Samson. 2009. ANC Councillor and ward councillor 9, Matatiele: 10 November.

Libenya. 2009. Traditional chief, Matatiele: 10 November.

Macoba, Nomonde Primrose. 2009. ANC councillor and ward councillor 10, Matatiele, 10 November.

Mankayi, Kelibone Florencia. 2009. Member of the Uncedo Matatiele Taxi association, Matatiele, 11 November.

Mhlonyane, Mayibongwe. 2009. Member of the Uncedo Matatiele Taxi association, Matatiele, 11 November.

Lebeko, Davidson M. 2009. The chairperson of the Drakensberg Taxi association, Matatiele, 11 November.

To discuss the phenomenon of post-apartheid provincial boundary disputes with reference to the three areas considered in this study, I interviewed an official of the Department of cooperative governance and traditional affairs: Nkontwana, Nhlakanipho, advisor to the Minister of provincial and cooperative governance, at Midrand, on 17 July

### **1.1.2. Observation**

I took part to the following meetings:

1. Meeting of Gauteng legislature's Local Government portfolio committee: 20 February 2009

The agenda included the briefing by the NCOP delegate on the Constitution of the RSA Sixteenth Amendment Bill, 2009 in conjunction with the Cross-Boundary Municipalities Laws Repeal and Related matters Amendment Bill.

2. General elections rally in Khutsong: 21 February 2009.

3. Public hearing session in Carletonville: 25 February 2009.

4. Meeting of Gauteng legislature's Local Government portfolio committee: 26 February 2009.

The agenda included the adoption of the Negotiating Mandate on the Constitution of the RSA Sixteenth Amendment Bill, 2009 in conjunction with the Cross-Boundary Municipalities Laws Repeal and Related matters Amendment Bill.

5. Meeting of Gauteng legislature's Local Government portfolio committee: 3 March 2009

The agenda included among other items a presentation by the Department of Local Government on the Committee's Focused Intervention Study (FIS) topic: The assessment of Public Participation in Local Government: Public Participation in their localities –successes and challenges.

6. Meeting of Gauteng legislature's Local Government portfolio committee: 6 March 2010

The agenda included adoption of the Final Voting Mandate on the Constitution of the RSA Sixteenth Amendment Bill, 2009 in conjunction with the Cross-Boundary Municipalities Laws Repeal and Related matters Amendment Bill.

## **1.2. Secondary sources**

Secondary source materials have included:

- Newspaper reports
- Court materials
- Legislations
- Policy documents
- Municipal reports

-Public submissions to Parliament and provincial legislatures

## **2. THE DATA ANALYSIS PROCESS**

This research made use of thematic content analysis in interpreting collected data. The five key factors presented as parts of the interpretative framework for understanding provincial boundary disputes in the post apartheid era are a result of an inductive reasoning process.

## **3. AREAS OF DISCUSSION DURING INTERVIEWS**

Interviews focussed on exploring participants' understanding of the key drivers of a specific provincial boundary dispute. The conversation further probed interviewees' perception and evaluation of various strategies mobilized by disputants in a bid to advance their cause. Questions were asked differently depending on the position of the interviewee either as a supporter of the Government, of dissenting local communities or an impartial observer.

Areas of discussion or themes included the following questions:

1. The national government knew very well that residents preferred Gauteng to North West (Khutsong), KwaZulu Natal to Eastern Cape (Matatiele), Mpumalanga to Limpopo (Bushbuckridge), why did it not accept such preference from the outset?

2. Do you think that local residents are justified in dissenting with State regional policy (in the way it affects them)? Why?
3. Why, in your view, local residents have used illegitimate means (violence, etc) to voice their opposition?
4. To what extent the Government strategy, the dissent of residents and their strategies of resistance are informed by ethnic factors? ( in other words: Does ethnicity play a role in State demarcation decisions, in the way residents resist the State, and in strategies of resolving the conflict? If yes, are such manifestations of ethnic consciousness in conflict with the building of national or provincial identity?
5. Do residents' claims to determine their provincial location threaten the unitary character of the South African State?
6. Boundary disputes are instances where representatives at provincial and national level, have promoted policies that are contradictory to the preferences of constituencies whose interests they are supposed to uphold. Is it accurate to state that in these instances, representatives have betrayed their constituencies?
7. Are there indications that some representatives felt divided between support for a national policy and the need to uphold interests of their local constituencies?

8. To what extent residents' concerns about service delivery or development prospects are valid and justified by facts?

9. What imperatives can justify severing a municipality from a province to which it seems more functionally linked?

10. As far as service delivery is concerned, do you think that residents' refusal to belong to an ineffective or poor province is perceived as a matter of life or death?

11. Have the dissent and the escalation of the dispute displayed party or alliance divisions? How decisive were such divisions in precipitating or exacerbating the conflict?

12. Do you think that the crisis (in its eruption and escalation) has been shaped by personal interests as well (at provincial level, national level, or local level)? Can you illustrate?

13. Do you think that the way a particular person or institution has handled the issue of boundary demarcation or boundary dispute has had a bad or a good impact on the whole process or on the dispute?

14. Why would residents of the dissenting local community have "emotional attachments" to their preferred province?

15. As far as the legislation on the scrapping of cross-boundary municipalities is concerned, what are the most important processes that took place between the presidential committee resolution in 2001 and the referral of the matter to the municipal Demarcation Board?

16. Why did the National Assembly start the process of adopting the legislation that had the effect of re-demarcating certain municipalities (Constitution twelfth amendment Act and the cross-boundary municipalities repeal Act) while the Municipal Demarcation Board was still in the process of consulting with municipalities with regard to those changes? How can one explain such duplication of processes?

17. What has been the Municipal Demarcation Board decision with regard to the three areas (Bushbuckridge, Khutsong, Matatiele)?

18. How was the legislation studied, debated and passed in provincial legislatures, in National Council of Provinces (NCOP), and in the National Assembly?

19. How were the representations of some dissenting communities dealt with at the Municipal Demarcation Board level, in provincial legislatures and in Parliament?

20. How has Government (at the local level, provincial level, national level) responded in face of local residents' disapproval of the demarcation decision?

21. What has been the nature of engagement or interaction between resistant local communities and Government?

22. How satisfactory was your (communities') previous status of "cross-boundary municipality" or your previous provincial location?

23. What strategies did the community put in place to ensure it was not detached from their preferred province?

24. Why has Bushbuckridge been finally demarcated in Mpumalanga after the State had for years resisted such outcome?

25. From the time the community knew it was demarcated in the "wrong" province, what did it do? With what effects?

26. How crucial is the role of the Constitutional Court in having these disputes settled?