

# Perspectives

## on KwaZulu-Natal

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### **District municipalities in court battle with national government**

Three district municipalities in KwaZulu-Natal are involved in a court battle against 67 respondents including the South African president, several provincial politicians and local municipalities in the province.

The district municipalities - Uthukela (based in Ladysmith), Zululand (based in Ulundi) and Amajuba (based in Newcastle) - have contended in the Pietermaritzburg High Court that they are entitled to an equitable share of revenue raised nationally. They claim that the Division of Revenue Act (No. 1 of 2001), according to which this constitutional right was affected, is constitutionally invalid because it failed to recognise and give effect to this entitlement.

District or category C municipalities were not mentioned at all in the Division of Revenue Act and are effectively excluded "from a share, equitable or otherwise, of revenue raised nationally", according to Acting Judge Anton van Zyl who presided over the matter in Pietermaritzburg.

The district municipalities won the first round of the battle in the Pietermaritzburg High Court last month. Acting Judge Van Zyl found that the Division of Revenue Act is inconsistent with the Constitution and invalid to the extent that it excludes category C municipalities from sharing with category A and B municipalities in the local government allocation of revenue raised nationally. The three district municipalities have now applied for the decision to be confirmed by the Constitutional Court. The application hinges on the Constitution, which states that local government and each province "is entitled to an equitable share of revenue raised nationally to enable it to provide basic services and perform the functions allocated to it".

The legal representatives for the respondents - who included the president of South Africa, the ministers of finance and local government, the premier of KwaZulu-Natal, the Municipal Demarcation Board, the KwaZulu-Natal Local Government Association and various municipalities in KwaZulu-Natal - called for the case in the Pietermaritzburg court to be dismissed. They argued that the district municipalities "do not enjoy individual constitutional entitlement to equitable shares of national revenue", according to Acting Judge Van Zyl.

During the case the district municipalities described the serious repercussions that resulted from their exclusion from the Division of Revenue Act. Acting Judge Van Zyl stated in his judgement: "They (the district municipalities) contend that by depriving category C municipalities of revenue raised nationally their ability to continue their functions would be detrimentally affected and, so the argument goes, their existence may ultimately be threatened as well. It was argued that category C

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municipalities, if deprived of national funding and having to rely solely upon such revenues as they can raise locally, would be unable to undertake and sustain the co-ordinating and other services which they are constitutionally enjoined to provide."

Acting Judge Van Zyl found it difficult to believe that the framers of the Constitution had in mind a framework that would permit an entire category of municipalities to be deprived of an equitable share of revenue raised nationally. "It would, to my mind, not only defeat the objects of creating viable local government capable of discharging the duties imposed upon this sphere of government, but more importantly it would prejudice countless citizens resident or employed in the areas beyond the borders of local municipalities and administered by district municipalities."

According to the Local Government: Municipal Structures Act (No. 117 of 1998) the functions and powers of a district municipality include

- (a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality
- (b) Potable water supply systems.
- (c) Bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity
- (d) Domestic waste-water and sewerage disposal systems
- (e) Solid waste disposal sites, in so far as it relates to -
  - i. The determination of a waste disposal strategy;
  - ii. The regulation of waste disposal;
  - iii. The establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district
- (f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole.
- (g) Regulation of passenger transport services.
- (h) Municipal airports serving the area of the district municipality as a whole.
- (i) Municipal health services.
- (j) Fire fighting services serving the area of the district municipality as a whole, which includes

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- i. Planning, co-ordination and regulation of fire services;
- ii. Specialised fire fighting services such as mountain, veld and chemical fire services;
- iii. Co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures;
- iv. Training of fire fighters.
- (k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district.
- (l) The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of municipalities in the district.
- (m) Promotion of local tourism for the area of the district municipality.
- (n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.
- (o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.

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

While the district municipalities asked for interim relief, the respondents opposed such payments. However, Acting Judge Van Zyl said that there were too many variable factors which ultimately would influence the determination of the equitable share accruing to an individual category C municipality. He also found that there was no provision for a dedicated reserve fund out of which government could make interim payments to the district municipalities contending this matter or any other category C municipalities who may also then come forward and make claims. "Applicants' equitable shares of revenue raised nationally may have been wrongly withheld from them when the Act was promulgated, but such shares have in the meantime been applied elsewhere and are no longer identifiable or accessible. To give effect to such an order for interim relief may well therefore cause significant budgetary disruption at national level," Acting Judge Van Zyl said. The judge also stated that if the ultimate decision of the Constitutional Court did not require equitable shares of revenue raised nationally to be paid over to district municipalities, either retrospectively or at all, then any money paid over would have to be repaid. "I am mindful of and understand the cry for assistance and that these municipalities will not be able to maintain their levels of service delivery pending final determination of their rights, but if that claim fails they would have maintained an artificially high level of expenditure during the intervening period which would then come to haunt them. It may indeed be fiscally more prudent for them in the meantime rather to reduce their expenditures, not to rely upon interim financing which may only result in debt creation and should their efforts ultimately be successful and they receive retrospective payments, then apply this windfall in making up lost grounds as best they can in the interests of the inhabitants they represent."

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In the application to the Constitutional Court the municipal manager of the Uthukela District Municipality, Casparus van der Merwe Rautenbach states that Uthukela faced a crisis in August and September 2001 and he estimated at that time that the district municipality would be able to last three months with reduced funding. However, Uthukela has survived by increasing its overdraft facilities from R1.2 million to R5 million. Van der Merwe Rautenbach said that the district municipality has also been forced to use a share of the equitable share payments received by two category B municipalities which is not required immediately. As of January 31, Van der Merwe Rautenbach estimated that the district municipality had an actual deficit of R3.8 million and that the deficit by the end of June 2002 would be R8.2 million.

According to Van der Merwe Rautenbach, Uthukela provides potable water to about 300 000 people. It regarded the drastic downscaling of water provision as "unthinkable and reckless" because the region is faced with a cholera outbreak which had already claimed 25 deaths and resulted in 7 600 reported cases.

Zululand district municipality's municipal manager Johannes de Klerk said that many projects that relied on the equitable share to function had ceased to operate or had run into large deficits. Seventeen projects concerned with the provision of essential services of water and sanitation had been ceased due to the lack of finances. De Klerk described the settlement of Coronation, which is in a former coal mine. "When the mine closed down the mine employees were retrenched and stayed on in the workers compound. Some of the mine homes were sold to the community. This settlement has to be provided services and Zululand district municipality provide water, electricity, refuse removal and sewerage removal, but has received no equitable share to do so. The majority of the people in the settlement are indigent and the consequences of cutting services would be disastrous."

Cholera Update as of February 27, 2002

District municipality	Total cases to date	Total deaths
Uthukela	7 942	25
Zululand	24 514	48
Amajuba	1 331	10

Vusimuzi Xaba, the municipal manager of Amajuba district municipality, said that the municipality had abandoned several projects which were "essential for health and service provision" due to the equitable share being withheld. The municipality had also not been able to purchase a water tanker for transportation of potable water to rural areas and a potable water purifier. "These items were essential to improve health and access to clean water thereby reducing the threat of cholera outbreaks, which are prevalent in the area."

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