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Africa: The Curious Case of Umjindi

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When in November last year the South African high court ruled against objections to the merging of a small efficiently managed municipality with its much bigger, financially strained neighbour, many in the community greeted the judgment with derision, saying that it was a forgone conclusion.

The two local municipalities, the smaller Umjindi and the bigger Mbombela, are situated in the country's north-eastern province, Mpumalanga. Mbombela incorporated towns such as White River and Hazyview after the first post-apartheid local elections in 1996. It is also the new name of the province's capital, formerly Nelspruit, which is Mpumalanga's administrative and business centre.

Umjindi residents opposed the proposed merger with their larger neighbour from the moment they heard about it. In early February 2015, consultation meetings with residents of the smaller municipality "ended abruptly" because residents would not let representatives of local government and the Municipal Demarcation Board (MDB) speak, the local newspaper, the Barberton Times, reported. On March 2nd, residents blockaded roads in their wards in protest against the merger.

On March 4th, police had to rescue Umjindi's mayor, Lazarus Mashaba, from an angry crowd at another consultative meeting. Mr Mashaba later told Africa in Fact that his office had not called the meeting, nor had he presided over it, and that the protestors should have directed their anger at the board and not at him.

In the middle of April, the Sowetan reported that an MDB consultative meeting about the proposed merger was disrupted by a "disgruntled group", the Umjindi Community Forum, which threatened to turn Barberton into "another Malamulele, Khutsong and Balfour"--towns that had seen violent service delivery protests--if their opposition to the merger was ignored. According to the newspaper, members of the group said the municipalities should be left independent because of Mbombela's "administrative weaknesses and corruption".

An MDB representative present at the meeting, Sharon Wiggins, told the meeting that the merger had "not been decided upon", and that the view of residents would be taken into consideration. The demarcation had been requested by then minister of cooperative governance and traditional affairs (COGTA), Pravin Gordhan, as part of a plan to "amalgamate dysfunctional communities with better ones", she said, according to the Barberton Times.

Meanwhile, the chairperson of the South African Municipal Worker's Union (SAMWU) in Umjindi said the municipality's employees had only heard of the proposed merger via the media. It would have implications for these workers, he said. A public hearing on May 1st about the proposed amalgamation was "marked by mockery and shouting", the local paper reported. A minority of those present, in yellow African National Congress (ANC) T-shirts, shouted down anyone who presented arguments against the merger.

The following Sunday, Mr Mashaba failed to arrive at a meeting at the town's community hall to address residents on the merger issue. Angered, on May 5th, residents of Umjindi barricaded the main road into the township in protest, saying the council had not consulted with them. A community leader, Vusi Gwebu, said all three political parties in the municipality rejected the merger. In the middle of July, residents were still opposing the merger, objecting that it appeared to be "a done deal".

Social media communiqués shown to Africa in Fact by Philip Minnaar, an Umjindi councillor for the official opposition, the Democratic Alliance (DA), support the claim that the Economic Freedom Fighters and some ANC members joined the DA in objecting to the amalgamation.

In early November, the DA challenged the decision of the MDB to merge a number of municipalities across the country, including those of Mbombela and Umjindi. In a pre-trial submission on behalf of the DA, human rights lawyer Richard Spoor argued that the board had not provided reasons for the re-determination of Umjindi's boundaries, had not disclosed a record of the public participation process, and had also failed to make public any motivation upon which the merger had been based.

The DA subsequently filed an objection against the MDB's plans to amalgamate a number of municipalities around the country, including Umjindi and Mbombela, with the North Gauteng High Court, arguing that the MDB had not offered a reasonable explanation for the mergers, had not considered objections against them, and had not conducted proper consultations with the communities in question. However, the court ruled against the party, with costs.

Johan Lorenzon, an Mbombela attorney, was involved in the litigation on behalf of the DA. "The DA's main attack was that the MDB's process was procedurally flawed," he told Africa in Fact in an email. "The court rejected this argument on the basis that the MDB is not an adversarial body and is merely required to consider all comments on the proposed merger. [It] held that there was sufficient information in the notices for the public to meaningfully comment on the merger[s]. Similarly, the judge was unimpressed with [the] argument that reports of the investigations into the pros and cons of the merger were not provided for people to comment on."

The court concluded that it could not be said that the MDB failed to provide sufficient information simply because accessing the information was "somewhat onerous". But it took this reporter, and the Africa in Fact editor assigned to the article, about a week of searching to locate all the circulars and notices relevant to the Umjindi case in non-fee-based contexts, including the provincial website.

In a press release shortly after the court ruling, the MDB stated that it had "considered all objections" relating to 13 cases around the country in which it had made a decision to re-demarcate municipal boundaries, including that of Umjindi. The chairperson of the board expressed herself as "happy that the aspersions cast upon the Board's independence... are baseless as confirmed by the judgment today".

But critics continue to argue that the demarcation is politically motivated, to the benefit of the ANC. "These clearly change the landscape in favour of the ANC in next year's upcoming local elections," the DA's Mr Minnaar told Africa in Fact. "A case in point is the split into two of what was traditionally a DA dominated area in Umjindi, ward 9. Both halves will now be incorporated with areas that are ANC strongholds. The split could see the DA left without a ward seat in the greater Barberton area. Our best hope might be securing one or two proportional representation seats."

The ruling party denies accusations of under-handed motives for the merger. According to the Umjindi ANC constituency office, the consolidation of wards and the addition of new wards such as those added to Mbombela were necessary because the municipality's boundaries had in any case been redefined by the expansion of township developments or informal settlements in the municipality.

At two consultation meetings conducted by the MDB, one in Barberton and the other in Mbombela, in February and March 2015 respectively, Mr Mashaba stressed that Umjindi was "not viable" and the merger would be to the benefit of both municipalities to operate as one for the sake of access to more government funding and a bigger tax base, both paving the way for better service delivery.

"The majority of our municipalities in Mpumalanga are grant-dependent due to low revenue collection," a communications officer from Mbombela, Joseph Ngala, told Africa in Fact. "Mpumalanga is rurally-based, and economic factors are not so favourable for the majority of our people to be able to pay for municipal services, leaving our municipalities with a low revenue base. The proposal for the amalgamation is seen as a viable approach to assist both municipalities to deliver basic services."

Yet a brief history of Umjindi does not support Mr Mashaba's claim regarding Umjindi's non-viability. Instead, it paints a picture of a municipality that was nearly put under provincial administration around 2008-2009, only to be turned around during Mr Mashaba's term of office as mayor, which began after the 2011 local government elections.

Under Richard Lukhele, who served as mayor from 2000 until 2011, the town was "rated among the best in the province, receiving "unqualified with findings" reports by the auditor general (AG) in 2006/2007 and 2007/2008. The municipality won several COGTA awards, recognising local government performance. But in 2008 Umjindi's situation inexplicably took a turn for the worse, with consistently negative AG reports for the next five years.

When Mr Mashaba took over as mayor in 2011, Umjindi was virtually broke. Service vehicles, such as rubbish dump trucks and water tanks were held up at the depot due to lack of maintenance or fuel. The municipality was failing to meet payments to suppliers and creditors, according to the Barberton branch of SAMWU. The municipality owed payments to local businesses for various services. One of them, NTT Toyota in Barberton, said that in 2013 it was "forced to hold onto [council] vehicles brought in for servicing" as other payments had been outstanding for nearly two years.

However, Umjindi achieved a dramatic turn-around in its financial performance after 2011. The AG's report for 2011/2012 said that the council was "one of five auditees [in the Enhlanzeni district municipality, under which Umjindi falls] that improved". According to its audited financial report for the period ended 30 June 2014, the municipality collected revenue of R262,581,146 (about \$31.85m as of December 31st 2011) and received capital grants and subsidies of R114,911,845 (\$13.94m) in 2014.

By the end of June 2014, the municipality recorded a surplus of R38.8m (\$4.7m), short-term debt of R26m (\$3.15m) and no long-term debt. Umjindi's director of corporate services, Derek Ndlovu, confirmed that the municipality received an unqualified report from the AG for 2014. Yet Mr Mashaba says that Umjindi households owed an average of R11,000 (\$1,334) for rates and taxes, which had put a strain on the municipality's positive financial position, a scenario that contributed to the MDB's determination.

By contrast, Mbombela recorded a deficit of R139.3m, short-term debt of R230m and long-term debt of R267.5m in 2013/14, according to its financial statement for that year. The AG gave Mbombela unqualified reports from 2010 to 2014, but service delivery in the municipality is problematic. As an example, districts such as Lehawu in KaNyamazane, one of the municipality's biggest townships, have running water for only one or two days a week and residents are forced to depend on water delivered in tanks.

Independent organisations concur in rating the smaller community as better in a number of respects than the larger.

The South African Institute of Race Relations' 2014 80-20 Report on Local Government scored Mbombela's service delivery at 5.45 (out of 10), while Umjindi's was 6.36; this ranks Mbombela at 144 out of 235 and Umjindi considerably higher at 100. Meanwhile the local government ranking conducted by Good Governance Africa (GGA--see pages 91-96 in this issue of Africa in Fact) also shows that Mbombela does not compare favourably to Umjindi, even given a larger range of variables. GGA's ranking of Mbombela is 101, while Umjindi is ranked as 75 out of 234.

The minister and the MDB appear to have initially claimed that Umjindi was a "dysfunctional community" and that this was the reason for its incorporation into a larger, better functioning municipality. However, their reason for the merger was later reformulated as the need to ensure the viability of the new, as-yet-to-be-formed municipality, as reflected in later MDB circulars. To date COGTA has not made public the composite functionality sustainability/ viability indices of municipalities on which its determinations were based.

Yet some members of the MDB appear to have known that Mbombela did not compare well on a number of criteria with its smaller neighbour. "Mbombela was found to be dysfunctional with Umjindi being better," the MDB's Ms Wiggins told reporters at the time of residents' protests. "Both need to draw from each other's strength".

Interestingly, the Financial and Fiscal Commission (FFC), in its Submission for the Division of Revenue 2015/16 argues explicitly against municipal demarcations that are not financially justified.

"Demarcation processes are costly, can be disruptive and distract from a municipality's core business... [and] actually result in unintended economic consequences with significant transaction costs... and a negative effect on own revenues," it says.

The FFC, whose role it is to advise government on its expenditure of public money, recommended that "the financial and fiscal implications of boundary re-determinations are prioritised and established before any demarcation decision is pronounced". It also recommended that "government should bear the costs of the restructuring" in the form of a grant to facilitate effective planning, building capacity for change management and "facilitating communication about the demarcation".

In its study the FFC notes that "the criteria used by the MDB to determine municipal boundaries have been questioned and even condemned for contributing to the establishment of financially unviable and unsustainable municipalities". It adds that the ANC, at its 53rd national conference in 2012, resolved that "the MDB should take into account the financial implications of its re-demarcation of municipalities".

Yet neither the minister nor the MDB appear to have done so in relation to the merger of Umjindi with Mbombela. A plan outlining the financial implications has yet to be drawn up. "It's pretty immature to talk about figures now," George Mthethwa, communications officer for the Mpumalanga department of cooperative governance and traditional affairs, told Africa in Fact. "An amalgamation task team has been established to deal with this matter including financial implications for the amalgamation process."

Mr Mashaba compared the process to a corporate merger, apparently forgetting that such a process could not take place without extensive due diligence studies, including an evaluation of the likely financial impact. "A new or revised budget/financial plan will have to be devised for this new entity, and within that a strategy will have to be drawn up to deal with any debts carried over from the old entities. What that will be I cannot say, because it's a work in progress by the experts in that field," he told Africa in Fact.

Residents of Umjindi's Emjindini township accuse Mr Mashaba of "selling out" by advocating the merger. While he agrees that his administration turned Umjindi around financially and enabled it to meet its service delivery requirements, he maintains that the municipality is dysfunctional. "Being part of the bigger municipality will give us access to more money and other resources such as equipment," he says. "The fact of the matter is in the long term, Umjindi, standing alone, is not viable."

The minister's rationale in recommending this particular demarcation remains opaque, as does the MDB's role in assessing it. However, somewhat surprisingly, a source within the ANC's provincial structures in Mpumalanga agrees that Umjindi's merger with Mbombela was to some extent politically motivated. "There are some powers that be in Mpumalanga that see enormous economic benefits in controlling a metro--the ultimate goal behind the merger," the source said.

According to the MDB, metros are large, densely populated urban conglomerations, often covering multiple cities. The country's metropolitan governments operate a single-tier system that establishes one institution to govern the metro area in question. Existing metros include Johannesburg and Tshwane (formerly Pretoria) in the province of Gauteng, and the Nelson Mandela Bay metropolitan municipality in the Eastern Cape.

The new municipality merging Mbombela and Umjindi will consist of 45 wards, according to Mr Mthethwa-- the number needed to qualify for metro status. Mr Mthethwa played down the suggestion that the municipality would aim for metro status. But a source in ANC's provincial structures, who declined to be identified, disagreed. "Metro status is the intended goal," the source told Africa in Fact, adding that plans were in place to incorporate the neighbouring local municipality of Thaba Chewu (formerly Lydenburg) in the new municipality, which has yet to be named.

The source added that the merger would result in political and economic benefits to well-placed local politicians, including access to and control of more extensive public assets, such as public transport systems and larger police departments, as well as the perks associated with such status. "Metros

[are] mini-governments within the province whose leaders wield an enormous amount of power," the source said. "In most cases, they are more powerful than the premier."