

During initial meetings it became clear that an escalating conflict in the area would not serve anyone's interests, and that it was imperative that mechanisms be created to address the different issues. Establishment interests in the area realised that unless the fundamental issue of land for the tribe was addressed, the area could become conflict-ridden and dysfunctional.

A short-term committee was set up with representatives from the AmaSwazi and establishment interests to deal with the day to day issues of the situation, while an approach had to be developed to address the core issue – land.

The first complicating factor is the absence of any clear policy on land disputes. At present the only mechanism for channeling land claims is the Advisory Committee on Land Affairs (Acla) which, apart from its purely advisory status, has severely limited terms of reference.

Acla's brief is merely to advise on the allocation of South African Tribal Trust lands. This puts the AmaSwazi in a corner because all the Tribal Trust land in the region is already subject to claims and counter-claims from other tribes, while the land that they claim is not Tribal Trust land.

This situation is further complicated by the fact that at present there are approximately 63 landless tribes in South Africa, all of whom are waiting for some indication on how they might go about pursuing their land claims.

As a result of these two factors, Idasa and IMSSA have been working on developing a multi-disciplinary programme which could assist the interested parties to resolve this dispute. Idasa has facilitated the creation of a

multi-disciplinary team to work on the project, with skills including agricultural planning, legal advice, environmental assessment, history, agricultural economy, development planning, facilitation and mediation.

'Support for the Western notion of the sanctity of current ownership of land will simply entrench the injustices of the past'

As a result of the complexities surrounding the land claim and the variety of levels at which it will have to be tackled, the following combination of approaches will have to be used:

- issue-based – to enable identification of the most realistic and appropriate options which may be pursued;
- integrated – to ensure that key sectors and actors are involved at the appropriate levels;
- participative – involving local groups and individuals from inception to ensure capacity building and ownership of the process;
- strategic – to optimise opportunities.

The modus operandi must involve identifying key actors and interest groups and the issues which they tend to protect. It is at this level that alternative options for dealing with the land claim may be introduced and debated, and common ground established.

However, common ground on its own is often not sufficient to bring groups together around an emotive issue such as land. Additional incentive is likely to be required. This may be identified by linking common-ground issues to vested interests in order to achieve a sustainable balance between the

different groups.

Part of the strategy is likely to involve tackling issues surrounding the land claim on a variety of fronts, including, for example:

- engaging with all the major interest groups, particularly the AmaSwazi, and working through what they perceive to be the central issues and the resolution;
- identifying alternative land for settlement;
- establishing ownership, cost and past claims to the land;
- reaching agreement from all major groups on which block of land could be used for the permanent settlement of the affected tribe;
- locating possible sources of funding for land purchase, including possible compensation from a Supreme Court case and investment from major sub-regional interests (farmers, tourism groups, timber companies, and so on);
- gaining provincial approval for the establishment of a township on the land purchased that might be more informal or more closely settled than normal;
- undertaking a farm planning exercise and establishing different agricultural and non-agricultural enterprises that could be pursued on a viable basis;
- locating funding for capacity building, training and the establishment of a serviced settlement and a number of viable economic enterprises.

It is our local belief that, in the absence of a statutory mechanism to address problems of this nature, it is necessary to develop programmes and processes that can allow the different interest groups to create their own solutions.

Jerome Ngwenya is regional director of the IMSSA Community Conflict Resolution Service. Charles Talbot is regional co-ordinator in Idasa's Natal office

Local courts proposal gets good reception

By DANIEL NINA

Is there a need to establish community courts in the 'new' South Africa? Apparently such a need does exist, and the Eastern Cape branch of the SA National Civic Organisation (Sanco) launched its proposal on this issue at a recently held conference in Port Elizabeth which was hosted

by Idasa.

What is a community court? A community court – in terms of the Sanco proposal – represents a step beyond the organic mechanisms of dispute resolution currently in operation, like people's courts and street committees. The community court would be organised in a formal way under the Department of Justice in a new political dispensation.

The court would consist of a panel of judges which would be elected by the community itself. The judges would be guided by the principles of the bill of rights of the new constitution, the proceedings would be conducted in the local language, and matters would be resolved by common sense.

How did this idea develop? In February this year, the Eastern Cape region of Sanco decided to reorganise its existing anti-crime committees (ACCs). The ACCs are community-based bodies of voluntary members, which deal with crime prevention and intervention. The ACCs investigate criminal activities in the community and hand over alleged culprits to the police. In addition to the reorganisation of the ACCs, Sanco realised that the communities of the Eastern Cape also need to put into operation adequate mechanisms of dispute resolution.

A community courts workshop series was started in March with the support of Idasa. The intention was to work out a proposal for

More than a female complaint

By NDUMI GWAYI



The concept of gender has often created much confusion among women and the public in general. But where do the distortions lie in what has become known as the 'gender vs women' debate?

It is perhaps important, firstly, to mention that there is no concept like gender in African languages. Hence 'sex' and 'gender' basically have the same meaning (just like the the relative pronouns he/she). This initial confusion surfaced in discussions within our Gender Focus Group in the Border region, and levelling the playing field was therefore a logical step to bring everyone on board and to reach a common understanding.

As an advocate of human rights for all, I regard women's rights as crucial to a democratic future. It should be the responsibility of all South Africans, men and women, to redress current imbalances of power in this area. This understanding suggests a gender approach to addressing our societal misconstructions. Gender is an integral part of all forms of power.

While women do need to address issues affecting them as a biological and socio-political grouping, the tendency to categorise women often means that differences such as class and race are overlooked. These differences only surface in forums where gender relations are examined in the variety of settings in which they occur.

Thenjiwe Mtintso of the SA Communist Party once argued that the fight by 'black brothers and sisters against national oppression' was a misnomer without a focus on gender oppression. She referred to a particular trend in the liberation struggle that clearly defined the source of gender oppression and also espoused women's emancipation. Yet it fell short of defining 'the notion of non-sexist society seriously enough to unambiguously address patriarchal relations'.

It is therefore crucial that people explore ways of challenging the status quo at the level of power relations, and it is not possible for one section of society (women) to do this effectively on their own.

During her address to our Gender Focus Group on this debate earlier this year, Thoko Matshe of the Women's National Coalition said the social roles people play in society were at the centre of the concept of gender. These social constructions, she said, were loaded with psychological and physical traits that are artificial and attributed to all men

and women.

Gender roles are also oppressive to males in many respects and groups working with these issues would do well to take advantage of this strategic gap to broaden involvement in the struggle against gender oppression. We need a co-ordinated gender-awareness drive to ensure that a new political dispensation overcomes these stereotypes and makes power accessible across the board both legally and constitutionally.

Gender should not be used as a substitute for the term 'women' as this encourages emphasis on social life areas that are traditionally regarded as the domain of women.

Social relations should ensure that women's rights are addressed by all to encourage participation of all sectors of society in the decision-making processes that affect their lives.

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(The Gender Focus Group can be contacted through the East London office.)

a uniform model of ACCs and community courts for the Eastern Cape region. After three workshops, the delegates of Sanco were able to draft a proposal that satisfied their needs.

This proposal was positively received by all the participants in the conference. They included members of different NGOs working in the areas of crime prevention (Nicro, Cape Town), dispute resolution (Community Dispute Resolution Trust and IMMSA) and paralegal training (LHR and Community Law Centre). Members of the South African Police and the attorney-general's office in Port Elizabeth followed the proceedings with interest, and several academics also participated.

Keynote speaker Albie Sachs had eloquent words for the project, and compared this initiative with the popular tribunals of Mozambique, where ordinary citizens were involved in dispensing justice.

Nonetheless, Sachs was cautious as regards the implementation of the project of community courts and the need to protect the civil and human rights of each individual. In this sense, he argued that further discussions at the national level would be necessary before implementation.

Max Mamase, regional co-director of Idasa, strongly defended the need for community courts in a future political dispensation. He argued that this initiative had to be seen within the context of a developing civil

society, which is working for the democratisation of the government; a civil society which is working for the creation of structures which will decentralise power, allowing more participation to the private citizen.

Sanco will enhance its proposal with the contributions made during the conference and will then decide what to do with the final version of the proposal. Regardless of the outcome of the final draft, the conference has opened the debate on the topic and any restructuring of the judicial system will need to take this proposal into account.

Daniel Nina is a researcher with Vista University and co-ordinated the community courts conference.