

# RESEARCH Report 34

## Schmidtsdrift Community Land Claim

*Karin Kleinbooi*



Belgische Technische Coöperatie nv  
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ON RESTITUTION  
OF LAND RIGHTS

DEPARTMENT OF  
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# Accronyms

|       |  |
|-------|--|
| ACLA  | Advisory Commission of Land Rights                           |
| AGM   | Annual General Meeting                                       |
| CRLR  | Commission on Restitution of Land Rights                     |
| CPA   | Communal Property Association                                |
| NGO   | Non-governmental Organisation                                |
| RLCC  | Regional Land Claims Commission (Northern Cape)              |
| S 42D | Section 42D of the Restitution of Land Rights Act 22 of 1994 |
| SANDF | South African National Defence Force                         |
| SCC   | Schmidtsdrift Claimants Committee                            |

# Key features of the claim

|                                     |   |
|-------------------------------------|---|
| Province                            | Northern Cape Province  |
| District municipality               | Karoo District Municipality   |
| Local municipality                  | Siyancuma Local Municipality (Bo-Karoo)   |
| Type of legal entity                | CPA, registered in 2002 as Schmidtsdrift CPA (CPA/00/0214/A)  |
| Number of households/beneficiaries  | The claimant community consists of approximately 800 households (identified and verified) of which approximately 200 households are currently residing in Schmidtsdrift. The rest of the community members are scattered across Kuruman, Douglas, Campbell, Galeshewe and Kimberley.  |
| Property location and description   | The restored land is 34,114 ha in extent and situated approximately 71 km from Kimberley in a location that was under the management of the SANDF since 1978 and used as a military training base. It consists of the following properties: <ul style="list-style-type: none"> <li>• Baviaans Location No. 20 (3,349.4627 ha)</li> <li>• Boomplaats Location No. 21 (6,364.0399 ha)</li> <li>• Schmidtsdrift Location No. 22 (3,241.5454 ha)</li> <li>• Plaatdrift Location No. 41 (2,911.3523 ha)</li> <li>• Sivonel Location No. 42 (9,270.2458 ha)</li> <li>• Sivonel Location No. 43 (3,372.6005 ha)</li> </ul> |
| Date of lodgement and settlement    | In 1992, the Batlhaping lodged their land claim with ACLA. The claim was settled in April 2000 and land was transferred to the Schmidtsdrift CPA. Three years later, in May 2003, the title deed to the land was transferred to the community.  |
| Hectares awarded                    | A total of 31,816.1782 ha of land was awarded to the community. Other properties that were included in the original claim did not form part of the land restored. These are: <ul style="list-style-type: none"> <li>• the farm Jakkelsfontein No. 27 (3,442.9588 ha)</li> <li>• Schmidtsdrift Uitspanning No. 23 (223.0143 ha)</li> <li>• Farm No. 25 (24.3112 ha)</li> <li>• Farm No. 26 (25.6960)</li> <li>• Schmids Drift Annex No. 24 (24.3112 ha)</li> </ul>   |
| Current land uses                   | The main land use activities are mining, agriculture, livestock (mainly subsistence and partially commercial exploitation), small-scale home vegetable and maize gardening, and housing.  |
| Total cost of grants and settlement | State land was transferred free of charge by the state. A Restitution Discretionary Grant amounting to R2,301,000 was also provided to the claimant community.  |





# 1. Introduction

The historic land of the Schmidtsdrift community lies along the banks of the Vaal River in the Northern Cape province, along the R300 road to Griquastad, approximately 71 km west from Kimberley and 53 km north-east from Douglas. The area is now under the jurisdiction of the Siyancuma Local Municipality and the Pixley ka Seme District Municipality. The Schmidtsdrift Restitution Claim was first lodged with the Advisory Commission of Land Rights (ACLA) in 1992 by the Batlhaping community consisting of approximately 800 claimant households. The claim was subsequently taken over by the Commission on Restitution of Land Rights (CRLR), which also received competing claims on the same land from the Kleinfonteintjie community, the Griqua community and the !Xhu and Khwe! San community.

The claim was identified as a Pilot Project for Restitution and later upgraded to a Presidential Lead Project. After more than five years of negotiations, an agreement was reached with the South African National Defence Force (SANDF), which occupied the land, and a Settlement Agreement was signed on 8 April 2002. Five farms, all unregistered state land,

of approximately 34,000 ha in total, were restored to the Batlhaping community, represented by the Schmidtsdrift Communal Property Association (CPA), which became the legal custodian of the land on behalf of the claimant community.

This report presents a brief diagnostic study of the Schmidtsdrift restitution project and describes the history of the claim. In 1995, before the restitution of the land, the Ministry of Land and Housing Affairs in the Northern Cape commenced with a planning process, engaging the Schmidtsdrift community in the preparation of a local economic development strategy. Eleven years later, notwithstanding the aims that were agreed upon and the protracted planning process, the implementation of such aims have not been realised and Schmidtsdrift today is not much different from the land that was re-occupied in the early 1990s. A number of reasons will be discussed that lead to the failure to translate initial plans into post-settlement support or tangible development.



## 2. Physical description of site

Schmidtsdrift is located along the banks of the Vaal River in the Northern Cape, approximately 71 km west of Kimberley and 53 km north-east of Douglas. The climate is semi-arid with an average annual rainfall below 400 mm. Temperatures range from 8°C to 41°C. The topography is flat with irregular plains and less than 1° slopes running from east to west. The area is covered with shallow soils of surface

limestone layered on shale and quartzite of the Black Reef Formation, and parts are sandy loams or silty or clayed soils.<sup>1</sup> Biologically, the area is classified as Kalahari Thorn (A16) which falls within the Kimberley Thorn Bushveld biome and comprises open savanna vegetation. Forty boreholes, with water deemed suitable for human consumption and for livestock, were recorded on the site.



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<sup>1</sup> Africon. 2004. *Township Establishment Scoping Study*.

### 3. History of dispossession<sup>2</sup>

The history of Schmidtsdrift can be traced back as far as 1827 when Schmidtsdrift was declared Crown Trust Land and was occupied by the Tswana-speaking Batlhaping and a number of Griqua clans of about 400 families who lived alongside each other. Following the 1913 Native Land Act the area was scheduled as the Schmidtsdrift Native Reserve. In the 1950s, the threat of relocation forced some of the Griquas to accept Tswana identity which allowed them to stay on in Schmidtsdrift. This group of about 17 families that broke away from the Griquas became known as the Kleinfonteintjie community. The majority of Griquas were, however, forcibly removed.

In 1968 a further attempt was made to remove over 1,000 households from Schmidtsdrift under the 'black spot' removal policy of the apartheid government, and they were offered alternative land in the Taung district. When arrangements for the removal were under way, it was discovered that the land had already been allocated to the Mayeakgoro people. The alternative was to relocate the Batlhaping community to trust farms in a semi-desert area north-east of Kuruman, approximately 288 km away

from Schmidtsdrift. The community was trucked on army vehicles at gunpoint to land belonging to the South African Development Trust in Kuruman in February and March 1968. The farms in the area of relocation were 34,114 ha in extent with limited services and were unsuitable for either cropping or livestock farming.

Approximately 18,000 small stock and 400 large stock were driven to the new location by foot or by rail. Large numbers of the stock died on the way of exhaustion, heat and lack of water and feed. The compensatory land was not registered in the name of the community and in 1977 the area in Kuruman under Batlhaping occupation was incorporated into Bophuthatswana. The former Schmidtsdrift farms remained state land and in 1974 the South African Defence Force (SADF) Infantry Battalion acquired it and established a military training base. Schmidtsdrift was occupied by the army for a period of 20 years. In 1990 the San (!Xhu and Khwe!) who fought under the SADF in the Namibian War were relocated to Schmidtsdrift and established in what was later called the San 'Tent Dorp' (Tent Town), which was made up army tents.

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<sup>2</sup> This section is based on Philander, DE & Rogerson, CM. 2001. Rural local economic development and land restitution in South Africa: The case of Schmidtsdrift in the Northern Cape. *Singapore Journal of Tropical Geography*, 22(1):74–89.

## 4. Community profile

The claimant community consists of approximately 800 households descended from the families that were removed from Schmidtsdrift in the 1960s. The struggle to return to the land started in 1990 and became a protracted process. The frustrations experienced as a result of the long wait for resettlement, along with the conditions of overcrowding in the Kuruman area, led to the 'invasion' of Schmidtsdrift by approximately 200 households in 1996, before the official settlement of Schmidtsdrift was concluded. The majority of the claimant community, however, continues to live outside of Schmidtsdrift and have not returned to the land so far. Members are scattered across mainly Kuruman, Douglas, Campbell, Galeshewe and Kimberley. Part of the Settlement Agreement was that a 'co-ordinated gradual phased' process would see to the return of all those claimants who wish to return to Schmidtsdrift.



## 5. Services

A limited range of services is available to the Schmidtsdrift community. These are deemed insufficient by members of the CPA. Ground water is utilised from 40 boreholes, three of which are in close proximity to the settlement and are able to provide long-term potable water. There is no mains electricity supply to Schmidtsdrift. The major

sources of energy are wood and charcoal. Sixty percent of the community use pit latrines, with the remainder having access to a rudimentary waterborne sanitation system.<sup>3</sup> With the return of people to Schmidtsdrift, families erected informal corrugated-iron houses.

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<sup>3</sup> Bigen Africa. 2000. *Schmidtsdrift pre-planning master plan for resettlement*. October. RLCC: Northern Cape.

## 6. Claim lodgement, verification, negotiations and settlement process

The community's struggle to return to Schmidtsdrift started in the early 1990s when the Schmidtsdrift community decided to apply for the return to their land. The settlement of the Batlhaping community claim, as it is commonly known, ran into a protracted process with ACLA and later when the claim was accepted and lodged with the Commission on Restitution of Land Rights in terms of S42 (1) of the Act. Negotiations for the return of the Schmidtsdrift people then continued between the Department of Land Affairs, Department of Public Works and the SANDF, particularly around the need to first relocate the SANDF military training base. In 1995, the restitution case was declared a Presidential Lead Project, placing pressure on the two departments to resolve the claim.<sup>4</sup> By September 1998 the Department of Public Works agreed to provide funds to purchase replacement land for the SANDF so that the Schmidtsdrift claimants could be restored to their land.

### Validation and gazetting of the claim, and verification of members

The second and related delay was caused by the counterclaims of the !Xhu and Khwe! (the San) and the Kleinfonteintjie community. In 1997, objections were raised to the Batlhaping claim by these groups. The San community was actually resident on the land at the time the Batlhaping claim was lodged and has been living there since 1990. In September 1998, the Department of Public Works agreed to purchase alternative land for resettlement of the San, in order to allow the Batlhaping claimants to return to Schmidtsdrift. The claim by the Batlhaping was gazetted in terms of notice 2727 of 1998 (*Government Gazette* 13 November 1998).

The verification of the claim was finalised in 1998 and eligibility for membership was determined in terms of direct descent from the original group of evictees. It was thus established that there were 675 families of the Batlhaping

community and 85 families that originated from the original 17 Klein Fonteintjie community that were eligible for verification as claimants.

### Agreement to merge the claims

In order to avoid a long drawn-out court case based on counterclaims, the Commission motivated for negotiations to reach agreement over the counterclaims. This recommendation was accepted by all three the claiming groups in terms of a framework agreement concluded between them on 5 February 1999. It was consequently agreed to bring the claims of the Batlhaping and Kleinfonteintjie communities together under one claim to be resolved as one community claim. The agreement stipulated that the two communities recognise that each has lost rights in the land and agreed to settle their respective claims as one. In terms of the framework agreement both groups were required to have representation in a single CPA. Following this agreement the Schmidtsdrift Tswana Community Trust and the Fonteintjie Development Trust merged into the Interim Committee of the Schmidtsdrift CPA.

*... the two communities form one community constituted in terms of a CPA .... The parties confirm that this agreement...settles all disputes arising out of the restitution claims and the settlement thereof, they will have no further claims against each other.<sup>5</sup>*

This group of combined claimants was then registered as the Batlhaping claim, and agreed with the Commission for the restoration of approximately 31,000 ha of land.

Under the same framework agreement the current inhabitants, the San, decided to accept financial compensation to buy alternative land in the open market. They were awarded R14 million for this purpose.<sup>6</sup> The subsequent purchase of Platfontein farm resolved the San's relocation. In May 1999, President Nelson Mandela handed

<sup>4</sup> Philander, DE & Rogerson, CM. 2001. Rural local economic development and land restitution in South Africa: The case of Schmidtsdrift in the Northern Cape. *Singapore Journal of Tropical Geography*, 22(1):74–89.

<sup>5</sup> Memorandum Ref: R6/2/2/B/15/1, Schmidtsdrift Tswana Development Trust and the Fonteintjie Community Development Trust framework agreement, 2000.

<sup>6</sup> RLCC: Northern Cape. Unpublished and undated document.

the title deeds to Platfontein to the two San clans. The land of Schmidtsdrift thus became available to claimants of the combined groups of Batlhaping and Klein Fonteintjie. The official total number of claimants in the Batlhaping claim thus included approximately 800 families.

The rights of non-members, who over the years moved to Schmidtsdrift and joined the hundred or so families living

there since 1996, were also recognised in the framework agreement. The agreement stated that:

*the agreement shall not affect the rights of the present occupiers of the so-called compensatory land who are not members of the claimant communities and who may now or in future, in terms of the current or future State land tenure policy, negotiate the upgrading or registration of their tenure rights to the land.<sup>7</sup>*

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<sup>7</sup> Memorandum Ref: R6/2/2/B/15/1, Schmidtsdrift Tswana Development Trust and the Fonteintjie Community Development Trust framework agreement, 2000.

## 7. The Settlement Agreement

The Batlhaping restitution claim was resolved administratively through Section 42D of the Restitution of Land Rights Act of 1994. The Settlement Agreement signed on 8 April 2000 restored 34,114 ha to the Schmidtsdrift community (the joint Batlhaping and Klein Fonteintjie communities) and was approved by the CRLR, the Minister of Land Affairs, the Minister of Public Works, the Minister of Defence, the Premier of the Northern Cape, the Schmidtsdrift Interim CPA (which at the time was still to be registered) and the !Xhu and Khwe! communities (which were awaiting relocation). The Settlement Agreement stated that relocation would be a gradual phasing in and phasing out, as some people returned to the land and others (i.e. the !Xhu and Khwe!) moved out:

*10.1 The relocation of the one group shall not in this process aforesaid, impede on the relocation of the other group.*

*10.2 The co-existence of the one group with the other shall be regulated in terms of further agreements to be entered into, indicated the interim conditions of such and anticipated time frames. This process is to be facilitated by the Premier of the Northern Cape.<sup>8</sup>*

The Settlement Agreement restored the following portions of land:

- Baviaans Location No. 20 in extent 3,349.4627 ha
- Boomplaats Location No. 21 in extent 6,364.0399 ha
- Schmidtsdrift Location No. 22 in extent 3,241.5454 ha
- Plaatdrift Location No. 41 in extent 2,911.3523 ha
- Sivonel Location No. 42 in extent 9,270.2458 ha
- Sivonel Location No. 43 in extent 3,372.6005 ha.

The Schmidtsdrift community only received the title deeds to the land in 2003.

The Settlement Agreement had two significant clauses which affected people wishing to return to the land. It made the SANDF accountable for the clearance of unexploded ordinance (explosives) on the land and the training of the claimants in the identification, handling and reporting of such ordinance. According to members of the community such training never materialised and the Commission could not provide evidence to this researcher that the sweeping and clearance of the area had been completed.

The movement of Batlhaping people onto the land before the San community had left led to multiple problems. The San were regarded by the Batlhaping as invaders on land they felt rightfully belonged to them. Culturally, the San operate as gatherers and hunters and tension mounted as San were accused of hunting game belonging to the Batlhaping community and stealing their livestock:

*Hulle het ons wild laat uitsterf en steel ons vee en lewe lekker van ons af terwyl ons sukkel om te bestaan [They helped kill our wild animals. They steal our livestock. So while they live well off us, we are suffering to make a living].<sup>9</sup>*

### Resettlement of the San

The relocation of the San took nearly six years, beginning in 2000, and was finalised only in December of 2006. The provincial Department of Housing and Local Government was responsible for the construction of houses in a new location in Platfontein and for the relocation of the community to Platfontein.

### Settlement grant

In terms of the Settlement Agreement, no funding was required for the acquisition of the land as it was owned by the state:

*... the Department of Public Works relinquished the State land to the claimant community on condition that DLA [Department of Land Affairs] carried the cost of transferring the property to the CPA.<sup>10</sup>*

According to the Settlement Agreement, a Restitution Discretionary Grant of R3,000 per household was awarded to the 767 households to help them to resettle, a total of R2.3 million which was paid over the CPA. In addition, the Nelson Mandela Inauguration Fund awarded Schmidtsdrift R12 million for development purposes. The Schmidtsdrift CPA thus had a total of R14.3 million to facilitate resettling of the households, for post-settlement planning and to implement the necessary development of the restored land.

### Local economic pre-planning for settlement

The settlement of the Schmidtsdrift claim was preceded by a pre-planning phase. In 1995, ASCH Consultancy was

<sup>8</sup> Settlement Agreement, April 2000.

<sup>9</sup> Focus group discussion, 5 December 2006, Schmidtsdrift.

<sup>10</sup> Settlement Agreement, April 2000.



appointed as project managers to assist the community in meeting its basic needs in terms of local governance, administration and capacity building and infrastructure planning for the provision of essential services. The mandate for the consultants was to manage a process of empowerment and capacity building through participatory engagement with the community while providing the technical expertise that is necessary for the project. The aims for the pre-planning process were set out as follows:

- *Facilitate the speedy restitution of the land claim.*
- *Co-ordinate and oversee the return of the claimants in an organised way.*
- *Resolve the land need of the San community that was settled in Schmidtsdrift under the SADF.*
- *Develop a master plan that would set out the provision of infrastructure; land use planning and economic development.*<sup>11</sup>

This pre-planning process was officially launched on 26–27 April 1996 when a planning convention (said to be the first of its kind with restitution) was conducted in an effort to secure a mandate from the community and engage the community in decisions regarding appropriate land use and economic development based on the principles of the Reconstruction and Development Programme. A series of community workshops followed which were meant to lead to a development framework that would focus on 'infrastructure; agriculture; nature conservation and tourism; economic and SMME development; health and welfare project funding; education and training; the role of women, the law; local government and policing; mining; and sports, recreation, arts and culture'.<sup>12</sup> It was felt at the time that this allowed the Schmidtsdrift community enough space 'to effectively make a set of decisions about the development of their land'.<sup>13</sup> A master pre-plan was due to be presented to the community by the end of this process in 1997.

Following the transfer of the land in 2000, three further consultancies were appointed to develop a business and asset management plans. These consultancies were Bigen Africa Consulting Engineers and Project Managers (2000), Ash Consulting Engineers (2001) and Africon Project Managers (2004–2005). A Schmidtsdrift Project Steering Committee was established, chaired by the Regional Land

Claims Commission (RLCC), with participation of a number of representatives of the Schmidtsdrift executive committee (the Schmidtsdrift Resettlement Committee) and other government departments including the provincial Department of Housing and Local Government and the Siyancuma Local Municipality, which worked in conjunction with the various consultants. Two outputs were produced from these interventions:

1. Schmidtsdrift Pre-planning Master Plan for Resettlement (Bigen Africa 2000)
2. Schmidtsdrift Restitution Township Establishment proposal (Africon 2004).

In 2000, Bigen Africa Consulting Engineers and Project Managers prepared a socio-economic profile of the claimant community living in Kimberley, Douglas, Griekwastad and Campbell, as well as those who had already returned to Schmidtsdrift. The report highlighted the measure of poverty among claimants. Unemployment was widespread: 84% of the households earned less than R800 per month and 97% of the households earned less than R3,500 per month, with most incomes being derived from welfare grants and pensions.<sup>14</sup> With almost no economic activity on the land at that stage it was important to explore which forms of land use would be possible and could potentially create sustainable livelihoods for the families that would return to Schmidtsdrift. The potential income-generation businesses were identified as:

- mining (of diamonds)
- livestock and game farming
- irrigation farming
- small enterprises.<sup>15</sup>

A township settlement planning process identified housing, a school, and electricity and water supply as the main infrastructure and service needs. Apart from the building of the school, which is now nearing the end of construction, no tangible settlement development has been implemented to date. The development planning interventions consumed a considerable amount of CPA funds: a total of R5.5 million to date. Currently the CPA has R8.7 million of the total finances received from government and development institutions left in its account. The low level of development evident in

<sup>11</sup> ASCH Consulting. 1995. *Schmidtsdrift Restitution and Pilot Land Reform Programme: A planning and implementation proposal by the Schmidtsdrift Community Consortium*. Unpublished report. Kimberley.

<sup>12</sup> Philander, DE & Rogerson, CM. 2001. Rural local economic development and land restitution in South Africa: The case of Schmidtsdrift in the Northern Cape. *Singapore Journal of Tropical Geography*, 22(1):83.

<sup>13</sup> Philander, DE & Rogerson, CM. 2001. Rural local economic development and land restitution in South Africa: The case of Schmidtsdrift in the Northern Cape. *Singapore Journal of Tropical Geography*, 22(1):74–89.

<sup>14</sup> Bigen Africa. 2000. *Schmidtsdrift pre-planning master plan for resettlement*. October. RLCC: Northern Cape.

<sup>15</sup> See p.13 for further discussion.

Schmidtsdrift, despite all this planning activity, has led to considerable discontent among community members.

The lack of implementation of proposed developments also highlights the weakness of structures, both government as

the manager of the planning process and particularly the CPA executive, which was meant to take the leadership in facilitating the implementation of post-settlement plans on behalf of the community.

## 8. Legal entity, ownership and community profile

At the time of land transfer Schmidtsdrift CPA was not yet officially registered and the community was represented by an interim committee that was established in 1996. This committee was a signatory to the Settlement Agreement. The Schmidtsdrift CPA was eventually registered in 2002 in terms of the Communal Property Association Act 28 of 1996. A ten-member executive committee was established to manage the affairs of the CPA. This executive committee represented the members drawn from both the Batlhaping and Kleinfonteintjie communities. As the legal owner of the land, the Schmidtsdrift CPA, in terms of its constitution (as amended in May 2004), is obliged to manage the affairs of the CPA and to act as custodians of the land and all the movable and immovable assets on behalf of the community. The term of office for this committee, according to the constitution, is two years, with elections due following the two-year term at the third annual general meeting (AGM) of the Association.<sup>16</sup> The first chairperson serving office in the registered CPA was Mr T.R. Sebolao.

The title deed to the land was registered in May 2003 in the name of the Schmidtsdrift CPA, granting them full ownership of the land on behalf of the 800 member households. All minerals rights were, however, reserved for the state.

An assessment of the claimant community was done by Bigen Africa in order to establish a socio-economic profile.<sup>17</sup> The report found that the capacity of the community was diverse, with some skilled members (self-employed taxi operators, teachers, construction workers, miners, etc.). It also highlighted high levels of illiteracy and poverty, and a heavy dependence on pensions and grants. Only a third of the total Schmidtsdrift beneficiary population was at the time of the survey (2000) involved in farming, but more expressed an interest in farming (mainly livestock, with less interest in irrigation farming). Four years on, the situation appears not to have changed significantly for the members currently residing in Schmidtsdrift (based on the researcher's own observations and interviews with community members):

*... We are unemployed. We live off our pensions.<sup>18</sup>*

### The Schmidtsdrift Communal Property Association

The CPA is governed by its constitution, according to which the CPA committee will have the following powers and responsibilities:

*To acquire, hold and manage in its name for the benefit of and on behalf of its member property movable or immovable.*

*The provision of appropriate infrastructure including schools, clinics, roads, housing and other social institutions.*

*Assist in the training and development of its members in acquiring appropriate agricultural, technical and other skills to enable them to use property productively and efficiently.*

*To provide and promote a healthy environment of social upliftment for all its members.*

*To enter into agreements, grant rights of occupation, enter into participation agreements and award special membership to any other party whose involvement with the association will be of benefit to all members of the association.*

*To liaise and work with the department or any other organs of state in the acquisition and development of their property.*

*To take any other steps that may serve to address poverty, unemployment, socio-economic needs and historical disadvantages among its members.<sup>19</sup>*

The constitution also stipulates that 75% of the members appointed to the executive committee must be residing permanently in Schmidtsdrift, and that at least 50% of the committee members serving at any given time should be drawn from the Kleinfonteintjie community. This committee

<sup>16</sup> Schmidtsdrift CPA Constitution.

<sup>17</sup> Bigen Africa. 2000. *Schmidtsdrift pre-planning master plan for resettlement*. October. RLCC: Northern Cape.

<sup>18</sup> Focus group discussion, 5 December 2006, Schmidtsdrift.

<sup>19</sup> Schmidtsdrift CPA Constitution.

is subject to the aims and objectives of the constitution and has fiduciary responsibilities in relation to the association 'and shall at all times act in the best interest of the association.'<sup>20</sup>

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<sup>20</sup> Schmidtsdrift CPA Constitution.

## 9. Economic activities

The constitution of the Schmidtsdrift CPA makes provision for the use of the land for residential purposes as well as for farming and commercial purposes.<sup>21</sup> The main economic activities of the Schmidtsdrift community prior to removal from their land was pastoral farming with goats, sheep and cattle, while the Vaal River provided sufficient water for small-scale agricultural and household use. Members then supplemented their income by working in the Kimberley diamond mines. The same activities are still in place today but on a very limited scale. The Schmidtsdrift Investment Policy (undated document) which was prepared by the Schmidtsdrift CPA provides objectives and guidelines, albeit vague, for land use, job and wealth creation. The policy states that a business plan should be developed by the executive to source funding and develop businesses. The investment options highlighted in the policy included the following elements:

- The use of land should be contractual and charged for, whether it is used by the members or by private investors.
- Labour-intensive farming should be encouraged to create jobs and the cultivation of lucerne is specifically mentioned as one of the main crops.
- It gives guidelines on the holding and control of livestock to prevent overgrazing.
- The mining policy underwrites clearly the way in which mining operations and community participation should be maintained specifically stating that 'agreements should be on a fifty/fifty basis ... and must clearly display in writing the benefits to the community'.<sup>22</sup>

Six years into resettlement, however, the investment policy has still not been translated into a business plan and there is ongoing conflict over the commonage and the uses thereof. Overgrazing is evident, uncertainty exists among the members in the community around mining and most of the objectives in terms of the development of farming have not been realised.

### Current land use

The Schmidtsdrift land is currently organised as follows:

- 23,000 ha of grazing land (with an estimated carrying capacity of 18 ha per large stock unit, or 1,278 LSU in total). Current livestock belonging to community members on this land is estimated as 1,500 sheep, 1,200 goats, 450 cattle and an unknown number of donkeys (i.e. about 80% of the recommended number, in total).
- Approximately 200 ha with irrigation potential.
- Limited game farming in Camp 6.
- A number of old buildings being used by the CPA and the Siyancuma Local Municipality.
- The Schmidtsdrift bakery, which employs six women from the community.
- A new primary school under construction.
- 800 demarcated residential sites each of 350m<sup>2</sup>, with a mix of informal and formal dwellings.
- Small household vegetable and maize gardens.
- The community has water rights of 37.8 ha from the Vaal River.
- Mining – A joint venture is in place with the black-owned mining company New Diamond Corporation (Proprietary) Limited.<sup>23</sup>
- Limited individual diamond mining involving members and non-members.

### Future land use opportunities

The potential areas of economic development at Schmidtsdrift were highlighted by a team of consultants reporting to the project steering committee.<sup>24</sup> The Bigen Africa report in 2000 specifically mentioned mining, livestock and game farming and the potential for irrigation agriculture which could include vegetables, lucerne and wheat production.<sup>25</sup> The intention was that these economic areas would form the basis of external support to the community.

<sup>21</sup> *Schmidtsdrift CPA Constitution.*

<sup>22</sup> In other words, 50% to the community and 50% to any external investor. Schmidtsdrift Investment Policy, prepared by CPA, undated.

<sup>23</sup> 82% of the firm is in the hands of black shareholders, and of the nine board members, seven are black; two-thirds of the executive directors are black. According to the records, four out of seven executive managers are black. The Schmidtsdrift mining project has the potential to produce 1.6 million carats of diamonds over its operational life.

<sup>24</sup> The project steering committee consists of representatives of the Schmidtsdrift Resettlement Committee, the Department of Local Government and Housing, the provincial Department of Agriculture, Land Reform and Environmental and Nature Conservation Land Unit, Siyancuma Local Municipality and the RLCC: Northern Cape.

<sup>25</sup> Bigen Africa. 2000. *Schmidtsdrift pre-planning master plan for resettlement.* October. RLCC: Northern Cape.

# 10. Mining – Shareholder and Joint Venture Agreement

As mentioned above, mining in Schmidtsdrift was identified in the settlement planning by Bigen Africa (2000) as one of the key areas for economic development that have the potential to generate funds and provide an opportunity for job creation for the members in the CPA. Mining had a long-standing history in the Schmidtsdrift community and individual diamond mining was a familiar activity practised in earlier years. The assessment by Bigen Consultants concluded that mining could be developed as an economic asset that would provide opportunities for employment, build community assets, generate income and lead to profit-sharing.

Schmidtsdrift lies within an area of extensive alluvial diamond workings, and has a history of diamond mining. Under the Restitution Settlement Agreement the parties agreed that 'mineral rights in the land to be restored shall be reserved in favour of the State.'<sup>26</sup> A mining company called New Diamond Corporation Schmidtsdrift Mining Enterprise (NDC) made an application to the Department of Minerals of Energy for a prospecting permit on the total area of Schmidtsdrift, which was expected to yield 120,000 carats a year over a mine life of 17 years. This was regarded as a benefit that would have a positive impact on the community, and the prospecting permit was issued on 22 October 2002 on the basis of Heads of Agreements that were concluded between the Schmidtsdrift Interim CPA and the company in October 1999. Prospecting and mining commenced immediately.

In 2003, NDC entered into a Shareholders' Agreement with the Schmidtsdrift CPA for an indefinite period. A new company, Schmidtsdrift Mining Enterprises (Proprietary) Limited (registration number – 1999/024334/07), was established to carry out the business of prospecting and mining of precious stones and minerals. Schmidtsdrift CPA acted in its capacity as the owner of the land and NDC as the mineral rights holder over the entire land area. The company that was set up is managed by ten directors, eight of whom were appointed by the mining company and two nominated by the CPA, with all decisions made by majority vote. The joint venture granted the community 200 ordinary shares of R1 each (20% of shares) in Schmidtsdrift Mining Enterprises (Proprietary) Limited, while the remaining

80% (or 800 ordinary shares of R1 each) are owned by NDC. The equity stake in Schmidtsdrift Mining Enterprises also granted the CPA a 5% royalty payment of the annual turnover of the company. The CPA's proceeds were to be directed into local development activities.

Finance for the new company was to be provided from its own revenue, but also, as necessary, from the shareholders (including the CPA), as set out in the Agreement:

#### *Additional capital*

- *If the company requires capital in order to finance its capital expenditure and working capital requirements, then the company shall endeavour to finance these from its own resources and outside sources, based on its own creditworthiness, but only to the extent and upon terms which are commercially acceptable in the opinion of the board, failing which the shareholders shall provide such funding pro rata to their shareholding in the company for the time being ('additional capital loan').*
- *Should either shareholder fail to lend its required pro-rata portion of the additional capital loan ('recalcitrant shareholder'), then the other shareholders ('contributing shareholders') shall be entitled to lend such amount in the place and stead of the recalcitrant shareholder.*

#### *Terms relating to loan accounts*

- *Unless otherwise provided in this agreement or agreed in writing by all of the shareholders and the company, like terms and conditions shall apply to the loan accounts of each of the shareholders against the company from time to time, whether as to the rate of interest, payment of such interest, repayment of the capital amount or otherwise.*
- *It is agreed that loan accounts shall bear interest at the prime rate. Amounts lent and advanced by the contributing shareholders to the company on behalf of the recalcitrant shareholder pursuant to 5.1.2 shall bear interest at the prime rate plus 2%. Interest shall be payable bi-annually in arrears on 30 June and 31 December of each year that the loan account in question is outstanding.<sup>27</sup>*

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<sup>26</sup> Settlement Agreement, April 2000.

The payment of dividends remains the prerogative of the board and will be determined subject to the policy that no dividends will be declared and/or paid by the company for so long as any shareholders' loans (and any interest earned thereon) remain outstanding.

In 2005, a first royalty payment, of R4 million, was paid to the CPA after a long dispute with the NDC.

The Shareholders' Agreement further stipulates that the NDC undertakes to prepare a strategic and business plan for the company in which it undertakes to:

- *Observe the principles underlying the Minerals and Petroleum Resources Development Act 2002 and the accompanying Broad-based Socio-economic Empowerment Charter and the Scorecard and specifically the following broad-based equity ownership;*
- *Promotion of procurement of goods and services from enterprises owned and controlled by the historically disadvantaged South Africans.*
- *Human resources development; broad-based equity ownership, promotion of procurement of goods and services by historically disadvantaged South Africans and human resource development for the Schmidtsdrift beneficiaries.*<sup>28</sup>

The Shareholders' Agreement further stipulates a number of development goals and promotes broad-based equity ownership, the hiring of community members to fill positions, human resource development and training of community members.

In 2004, a contracting company, Emmanuel Diamonds CC, was appointed to carry out prospecting and mining for and on behalf of Schmidtsdrift Mining Enterprises, for a duration of five years. According to a newspaper article, NDC claims that of the 117 people employed by the company at Schmidtsdrift, 112 are from the local community – 23 of these are female, while about 30 of them had no previous work experience.<sup>29</sup> But according to the community no jobs were created. They reported that the sub-contractor, Emmanuel Diamonds CC, came in with its workforce and created no opportunities for employment for the people of

Schmidtsdrift.<sup>30</sup> Community members are now questioning the legality of the joint venture agreement (and the sub-contract to Emmanuel), as it was concluded at a stage when the CPA had not yet received the title deed to the land. Community members allege that these agreements were entered into by only a few committee members of the Interim CPA Executive, without any consultation with its membership. The community claims further that the agreements were done without their mandate and they cannot accept it until it is rectified.

Given all the resentment around the mining deal it is also clear that the terms and conditions of the agreement between the various parties are not well defined or understood by the community. Further unhappiness stems from the limited community involvement in the mining and the lack of tangible benefits to the community nine years into the shareholding agreement.

Since entering the joint venture with NDC, the CPA has so far secured one royalty payment of R4 million in 2004. The reasons cited by NDC for the failure of royalty payments to the community was due to the fact that the Schmidtsdrift Mining Enterprises (Proprietary) Ltd was operating at a loss and has not made a profit. The CPA threatened to take the NDA to court and, when faced with the prospect of negative publicity, the first royalty was paid to the CPA.<sup>31</sup> No other royalty payments have been made since 2004. The agreement, according to the Shareholders' Agreement, was that the royalties would be used by the community for its identified development activities. Although the first royalty payment has been transferred into the CPA's account, it has not been allocated for any specific purpose in Schmidtsdrift to date, while a number of urgent needs are evident. The delay in spending the funds is causing further unhappiness among community members. It appears also that some community members do not understand how the joint venture and Shareholders' Agreement operate and a few seemed unaware that a royalty was paid to the community:

*For the last 3 to 4 years we never got any benefit from the joint venture. We have to pay because we are shareholders but instead of gaining we stand to lose the only real wealth of the community.*<sup>32</sup>

<sup>27</sup> Shareholders' Agreement between NDC & Schmidtsdrift CPA in relation to Schmidtsdrift Mining Enterprises (Proprietary) Limited, 6 August 2003, Kimberley.

<sup>28</sup> Shareholders' Agreement between NDC & Schmidtsdrift CPA in relation to Schmidtsdrift Mining Enterprises (Proprietary) Limited, 6 August 2003, Kimberley.

<sup>29</sup> Halwindi, N. 2003. *Diamonds bring new glitter to Northern Cape communities*. 18 April. <http://www.miningweekly.co.za/>

<sup>30</sup> NDC was not available for comment.

<sup>31</sup> Personal interview with Victor Mokgoro, 4 December 2006.

<sup>32</sup> Focus group discussion, Schmidtsdrift, 6 December 2006.

# 11. Agriculture

The Schmidtsdrift Pre-Planning Master Plan for Resettlement of October 2000 identified the potential for various agricultural activities, including livestock, game farming and irrigated cropping (including vegetables, lucerne and wheat).<sup>33</sup>

Schmidtsdrift is a semi-arid area with a range of grasslands and has suitable conditions for livestock (including sheep, goats and cattle) and game farming. Livestock remains the main subsistence economic activity for households at Schmidtsdrift and involves a large number of the households currently residing there. Although it does not provide a regular income, most farmers are able to maintain a subsistence lifestyle and sell livestock in times of financial need.

A total of 64 farmers are involved with a farmers' association that was established in 2004 and this group owns close to 3,000 livestock. In addition, various other farmers from within and from outside Schmidtsdrift are grazing livestock and cattle on the commonage. Members of the farmers' association indicated their unhappiness with these farmers grazing illegally and felt they are abusing the resource they rely on to sustain their families.

A number of factors hamper the development of agriculture at Schmidtsdrift. Henry Seleka, a farmer and resident of Schmidtsdrift, reported that the main problem facing small-scale farmers is the lack of management of the land.<sup>34</sup> This has resulted in a 'free for all' approach towards the commonage and certain other parts that were not designated as grazing areas. The result is overgrazing, no rotational grazing, stock theft and no maintenance of resources. The situation has caused a lot of anger among the farmers who are dependent on the land. In turn, this has led to an unpleasant relationship between the farmers' association and the CPA committee, which they feel is responsible for the commonage. The small farmers would like to see the land divided into camps, with a proper management system being implemented to conserve the commonage, but their pleas for proper maintenance of the commonage have not received any attention from the CPA executive.

Members of the farmers' association reported that they would like to receive support from the executive committee

to enable order on the commonage, to grow livestock numbers according to the carrying capacity of the land, which in turn would help them to increase their sales and generate bigger incomes. Farmers generally make very limited sales of livestock due to the fact that access to markets is limited and because of their view of their livestock as their only wealth. They are therefore reluctant to sell unless absolutely necessary. In a meeting with Farm Africa this was cited as a survival strategy because of the high dependence on livestock to meet family needs. These and other problems facing livestock farmers were highlighted in a study conducted by Farm Africa in 2006, and the following issues were pointed out, with particular reference to the farm infrastructure:

- Fences are needed and where they exist they need repair.
- Roads to cattle posts need to be scrapped.
- Windmills need repair.
- Water tanks are leaking.
- Boreholes and troughs need repair.
- The submersible pumps need repair.
- The land is overgrazed.
- More land is needed because mining is taking up valuable grazing land.

Schmidtsdrift falls under Siyancuma Local Municipality (based in Douglas) and the Pixley ka Seme District Municipality (based in De Aar), but receives agricultural extension services from the Upper-Karoo District Municipality. In conjunction with the Department of Agriculture, the district municipality has developed plans for infrastructure development to repair fences and boreholes, water pipes and windmills. These plans have not been shown to or discussed with the community.

Farm Africa, an NGO working in the area, facilitated a farmer development programme which ran up to November 2006. The most valuable outcome of the Farm Africa programme was a stock bank of livestock that farmers were able to build up. Farm Africa purchased 88 goats (85 ewes and 3 rams) and 26 Van Rooy sheep/whitehead Dorpers (25 ewes and 1 ram). Twenty-three households benefited from the first loan arrangement (see Appendix 1), whereby each household is entitled to receive five ewes on loan and must repay the loan with six ewe lambs aged six months. Every participating

<sup>33</sup> Bigen Africa. 2000. *Schmidtsdrift pre-planning master plan for resettlement*. October. RLCC: Northern Cape.

<sup>34</sup> Personal interview with Henry Seleka, member of Schmidtsdrift CPA (farmer), 5 December 2006.



farmer has to pay R100 as a deposit and a monthly fee of R60 over 18 months. After the repayment of the ewe lambs and the required monthly payment, the farmer becomes the owner of the stock. The deposit and monthly fees are used for the purchasing of medication and fodder and as a contribution towards remuneration of a herdboy. This system helped set up those farmers who were not able to start up flocks of livestock but were interested in livestock farming or who wanted to expand their own livestock numbers. So while the stock bank assisted farmers, farmers also helped maintain and grow the livestock stock numbers in the stock bank.



This initiative did not, however, address the problems around use of the commonage. While the Schmidtsdrift constitution and the investment policy stipulate the role of the executive committee in the management of the commonage, and the rules for land use, none of the existing farmers have been granted formal grazing rights. There is no documentation which provides guidance on the allocation of user rights to livestock farmers and the provisions under which those rights may apply or may be lost. Furthermore, no officially verified count of the number of stock grazing at present is available, except for a count conducted by Farm Africa in 2006.<sup>35</sup> Apart from members of the farmers' association, there is no clarity around what other members of the community (or outsiders) are farming on the commonage and where they live. In general, farmers feel they are not supported, farming activities are uncoordinated, no grazing rules exist and the needs of farmers are not being met. Farmers mentioned numerous problems that they faced, including the following:

- Livestock numbers are not controlled.
- The overgrazing of lands continues unmonitored.
- Infrastructure is not maintained and fences are broken or non-existent in many parts of the commonage.
- Access to water remains problematic; boreholes are in poor conditions.
- The dipping system is in poor order.
- There is no plan for the development of agriculture at Schmidtsdrift.

While the small farmers here supported by Farm Africa, other initiatives emerged that were not related to the farmers association. A small group of young farmers (between 18 and 23 years) are involved in an agricultural training project for goat farmers managed and facilitated by the Department of Agriculture. The department provided

training in the management and marketing of livestock to this group of 20 youngsters, and to a smaller group of women who have formed a co-operative. The Department of Agriculture's extension officer involved with the training explained that its objective is the establishment of these young farmers. The medium-term goal was to incorporate these youngsters into a co-operative with an already-established group of women and to provide assistance to this group in marketing the livestock. In order to assist these young farmers, the Department of Agriculture will provide a 'start-up kit' consisting of a small number of livestock, animal medicines and equipment necessary for farming with livestock. It is hoped that these young farmers with new skills and equipment would support the broader farming community.

The department (it appears without consultation) also took a decision to support goat farming in Schmidtsdrift and will assist in facilitating access to international markets where there is a demand for goat meat.<sup>36</sup> This led to the training of a new generation of young farmers in the community, as discussed. This initiative, however, appears not to be fully understood or accepted by the older established livestock farmers. One of the farmers expressed discomfort with the fact that there is no support from the municipality, the Department of Agriculture and especially the CPA executive for farmers who have been long established:

*Hulle sit met die geld wat aan ons almal behoort en ons sukkel terwyl daar geld is. [They sit with the money that belongs to all of us and we suffer while there is money available].<sup>37</sup>*

<sup>35</sup> Schmidtsdrift Lease Agreements, 2006, Farm Africa, Kimberley.

<sup>36</sup> Gerrit Stemmet, Department of Agriculture, Northern Cape.

<sup>37</sup> Halwindi, N. 2003. *Diamonds bring new glitter to Northern Cape communities*. 18 April. <http://www.miningweekly.co.za>

## 12. Membership and rights

Membership of the CPA vests in households, with each household being considered as a single member. The specific rights of households, or their members, are not clearly defined in terms of what people are entitled to and for how long, their responsibility in terms of the right and under which circumstances the right would be terminated or reconsidered.

Not all the members of the community have moved back to Schmidtsdrift. Some of them continue to reside in Douglas, Gasehunelo, Kimberley and Campbell. One of the major problems over which no clarity exists is the distribution of benefits by the executive committee. The Schmidtsdrift constitution offers no guidance as to how benefits must be distributed among members, and at present it appears that only those residing in Schmidtsdrift are able to share in 'the little that we are able to distribute through the school building and the subsidisation of the bakery which benefits a group of five women' (Personal interview, CPA chairperson). People residing outside of Schmidtsdrift do not generally benefit, although some have begun grazing livestock on the land. Many members do not attend meetings of the CPA and therefore do not partake in the limited decision making that takes place, and appear unlikely to gain access to any benefits.



# 13. Challenges facing the communal property association

A number of concerns with the lack of functioning of the executive were highlighted by both the committee and the members. The current chairperson of the CPA is Victor Mokgoro (a former trade unionist for the mine workers around the Kimberley area), whose term of office began in 2003. The term of the current committee was due to expire in February 2006 at the third AGM. However the 2006 AGM did not materialise at the end of the period due to an incomplete financial auditing process and an investigation into the business affairs of Schmidtsdrift.<sup>38</sup> This is clearly in contravention of the Schmidtsdrift constitution. According to the RLCC there appear to be fundamental problems in the management of Schmidtsdrift CPA, which became clearer during the auditing process, which is being conducted by an external auditing firm. A ten-month delay in completing the audit added to the concerns raised by both the committee and the members around the progress of Schmidtsdrift. A number of issues were raised as problems with the CPA executive that created conflict both within the executive as well as within the community. This included problems arising from the lack of skilled executive members and their inability to take leadership as well as the inability to deliver on the expectations of the community.

The dysfunctional relationship over the management and the distribution of resources started surfacing in the community in the run-up to the AGM of May 2004. According to interviews with official and community members, the CPA management was under pressure from the community who were at this stage divided about the CPA leadership and the utilisation of community resources. Two splinter groups developed: the Khuduthamaga (Council of Traditional Leaders) and the Lekgotla la Borre (Council of Men), representing people who felt their needs regarding development have not been met. A motion was filed in the Kimberley High Court by representatives of these groups against the CPA and RLCC, calling for an AGM. However, by then, the date had already been set for the AGM. The motion was later dismissed but it highlighted the strained relationship of the CPA with its members. Various factions developed over time as a result of the community's disillusion about the CPA executive committee. The

community members felt that the CPA did not manage the needs of the community and failed to execute their tasks.

As a result, there is a resentment among community members, especially over the lack of progress with housing and services, the lack of local economic development, the ambiguous mining agreement, the ongoing conflict over the lack of management of the grazing land, the lack of assistance with outdated and broken farming equipment and the lack of farming infrastructure:

- *The CPA is not there for us. I think they [are] only there for them to gain. I am still poor and Schmidtsdrift is busy deteriorating.*
- *Did we come back for this? They [CPA] do nothing for us.*
- *They have not helped us with a single cent with farming.*<sup>39</sup>

During this period of conflict, the office of the RLCC, which is supposed to oversee the affairs of the CPA, appeared oblivious to the problems that were surfacing and their only concern appeared to be that the AGM took place as scheduled. A CPA executive committee consisting of a chairperson, secretary, deputy chair, treasurer and eight additional members was subsequently elected.<sup>40</sup>

In the AGM of 2004 a number of challenges were highlighted:

- *To unite the Schmidtsdrift around the leadership and one vision.*
- *Implementing the objectives of the Association.*
- *Development of Disposal of Assets policy and Register (Inventory).*
- *Setting up of a committee to investigate the vehicles story with clear terms of reference and time frames to report back.*
- *Development of land use rules for the Association in consultation with Agriculture, Nature Conservation and Land Claims Commission.*
- *Establishment of subcommittees.*
- *To align the financial year to the AGM date (constitutional amendments).*

<sup>38</sup> Personal interview with Peter Mokomela, 4 December 2006, RLCC: Northern Cape.

<sup>39</sup> Focus group discussion, 5 December 2006, Schmidtsdrift.

<sup>40</sup> Personal interviews with Peter Mokomela and Victor Mokgoro, 4 December 2006; Undated report on the Schmidtsdrift Communal Property Association Annual General Meeting, RLCC: Northern Cape.

- *Development of job description for office workers in consultation with Labour Department.*
- *Management of Register of Members.*
- *Development of policy around usage of CPA vehicles.*
- *Development of game management plan in consultation with Nature Conservation.*<sup>41</sup>

In the two years of office for the current committee the chairperson admitted that the above issues have remained largely unattended. It appears that no attempt was made to unite the different factions in the community, address the uncertainty of rights, manage the assets of the community or initiate development activities identified in the constitution and development plan.<sup>42</sup> The management of land use on the commonage continues unsupervised. No record exists of how many people are currently using the commonage and if so, who has user rights and who does not. No one seems to know if the numbers of stock grazing on the commonage adheres to the carrying capacity, and no system of maintenance of the commonage is in place.<sup>43</sup> According to the minutes of the 2004 AGM, the management of game animals came to a halt and it is alleged that CPA funds were stolen and communal vehicles were damaged and stolen. CPA records do not show any action having been taken to address these concerns.<sup>44</sup>

The CPA chairperson acknowledged the lack of leadership especially with regard to the management of assets, the abuse of grazing land and the inability of the committee to create economic opportunities, all of which are negatively affecting the relationship between the CPA committee and the members of the community:

*As the chairperson I try to take the lead but I can't make decisions. The biggest problem we encounter as a community and CPA is that we as the leadership do not feel we have all the skills to run a town and its community. We are not skilled in terms of our roles and responsibilities and we haven't received any training in terms of office and legal matters and we don't know the provisions of the law. It has created problems with the community because there were certain expectations for things to happen and they didn't happen.*<sup>45</sup>

Mr Mokgoro suggested that some of the long-standing problems in the CPA could have been avoided if there had

been proper training for committee members when they took office. The 2004 AGM resolutions called on the RLCC to carry out a number of urgent tasks, but the Commission does not appear to have responded to this. Key demands to the RLCC from the AGM were for:

- *Capacity building of the new committee on Management and Meeting Procedures, and.*
- *Introducing them to stake holders and strategic partners.*<sup>46</sup>

Mr Mokgoro was of the opinion that if there had been a proper induction and handover of records when the new committee took office in May 2004, the committee would not have been so weak. Important documents such as the registration of the CPA, the proof of the community's water rights and the day-to-day records of community business were never handed over by the previous secretary of office. At the 2004 AGM it was suggested that if these records still exist they should be retrieved and that the current committee (2003–2006) should incorporate unfinished business in their work plans. Unfortunately those minutes of meetings and committee reports were never recovered. It appears with each new office term everything concerning the development of Schmidtsdrift has resumed from point zero without taking into account what had already been done. Processes are reinvented, creating conflict between the executive committee and the community. According to the chairperson, after attempts by the committee to involve them in assisting with the shortcomings of the committee, the Commission took a hands-off approach in this regard:

*The Commission says that they cannot help us because we have conflict. The government should step in.*<sup>47</sup>

It appears that no attempt was made by the Commission to mitigate the conflict and the numerous factions in the community.

The chairperson was also of the opinion that the lack of proper remuneration has had a negative impact on office-bearers in the past and drove officials to corruption and abuse of CPA assets. According to the chairperson, the committee positions are voluntary and there is no real commitment from those elected, resulting in office-bearers not fulfilling their roles. Here he referred to 'people

<sup>41</sup> Schmidtsdrift AGM report, May 2004, RLCC: Northern Cape, Kimberley; Personal interview with Victor Mokgoro, 4 December 2006, Schmidtsdrift.

<sup>42</sup> Personal interview with Victor Mokgoro, 4 December 2006, Schmidtsdrift.

<sup>43</sup> Farmers evaluation workshop, 9 October 2006 and 20 November 2006, Farm Africa and LRC, Schmidtsdrift.

<sup>44</sup> Schmidtsdrift AGM report, May 2004, RLCC: Northern Cape, Kimberley.

<sup>45</sup> Personal interviews with Victor Mokgoro, 4 December 2006, Schmidtsdrift.

<sup>46</sup> Schmidtsdrift AGM report, May 2004, RLCC: Northern Cape, Kimberley.

<sup>47</sup> Personal interviews with Victor Mokgoro, 4 December 2006, Schmidtsdrift.

<sup>47</sup> Personal interviews with Victor Mokgoro, 4 December 2006, Schmidtsdrift.

running away in mid-term' or not contributing to the tasks of the executive committee. So while the constitution makes provision for reimbursement of expenses and the compensation of certain posts on the executive committee, the chairperson expressed the need for committee members to be remunerated for service to the community:

*We should be paid because it is a full-time job. I can't go out to look for another job.*<sup>48</sup>

The chairperson reported that because of the lack of a proper remuneration system, corrupt executive members started to abuse their positions for personal gain through the abuse of the mining opportunity that was identified as one of the assets that would be applied to create economic development for the whole CPA.

While the constitution makes provision for the reimbursements of office-bearers in two instances, it is

regarded as inefficient by the committee members:

*The Committee have the powers to: 'reimburse themselves from time to time [from] the assets of the Association' in as far as reasonable proven expenses were incurred in the execution of Association tasks (i.e. travel and subsistence)*<sup>49</sup>

It also makes provision for:

*...meeting allowances of R150 to all office-bearers and a monthly allowance of R2,500 for the services of the secretary to the Association who in turn should at all time be available for Association duties.*<sup>50</sup>

And while the CPA constitution set limits to the powers of the committee, it does not provide clear guidelines and a mechanism to settle tensions and disputes.



<sup>48</sup> Personal interviews with Victor Makgoro, 4 December 2006, Schmidtsdrift

<sup>49</sup> Schmidtsdrift CPA Constitution.

<sup>50</sup> Schmidtsdrift CPA Constitution.

## 14. Conclusions

The community of Schmidtsdrift has received little benefit to date from the restoration of its land. The land was handed over to the community without any clear plan for the use of the land or clarification of the rights or members. Despite the involvement of numerous consultants, and the expenditure of millions of rand, no development plan has been implemented. The support provided to the community by the RLCC and other official agencies has been minimal, both before and after the handover of the land. The CPA itself is highly dysfunctional. At a meeting of farmers and two supporting NGOs, where many problems were highlighted with the CPA executive, two key issues were mentioned in reference to the function and the role of the CPA: (a) the term of committee members is too short and (b) 50% of the committee members do not live on Schmidtsdrift while the constitution clearly requires that 75% of the members should live on the land.<sup>51</sup> These issues and the lack of capacity among committee members or the general lack of knowledge among members about their rights and responsibilities have weakened the CPA and its committee.

Schmidtsdrift presents various developmental opportunities, but none of these has been adequately defined for the benefit of the community. Farmers have received little support from the Department of Agriculture or other bodies in improving their output of livestock. The potential for irrigated cropping has not been developed, and appears unlikely to be developed. Probably the greatest potential lies in development of the diamond mining resources on the land, but this has been greatly compromised by the refusal of the state to restore mineral rights to the community, and what appears to be a highly disadvantageous deal with a commercial mining company. The community appears to

have received no support from the Department of Minerals and Energy or other official body in negotiating this deal, and there are no systems in place to monitor compliance or protect the interests of community members.

The role of the RLCC in this case appears to be particularly problematic, both in terms of the Settlement Agreement and the subsequent lack of development support. At a minimum, it might be expected that the RLCC would co-ordinate the involvement of other state agencies, including local government, in this project, but this does not seem to have occurred. The Settlement Agreement drawn up by the RLCC would also appear to be severely flawed, in that it does not specify the rights and responsibilities of members and does not commit state agencies to provide specific support. The failure to develop a comprehensive plan for the use of the restored land at the time of handover is cause for concern, and it is not clear why such a plan has not emerged to date, despite the involvement of numerous consultants and the expenditure of considerable sums in professional fees.

The lack of development raises questions about the will of agencies to support, co-ordinate and manage the re-settlement process of communities. Secondly, it emphasises the importance of a strong CPA that can manage resources and represent the community in negotiations regarding their resources. There would appear to be a strong case for major intervention by the RLCC at Schmidtsdrift, in order to develop a comprehensive land use plan, to capacitate the CPA and its executive committee, to oversee agreements with commercial partners and to co-ordinate support from all relevant state agencies.

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<sup>51</sup> Personal interviews with Victor Mokgoro, 4 December 2006, Schmidtsdrift.

# 15. Appendix

## LEASE AGREEMENT

### MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN

SCHMIDTSDRIFT EMERGING FARMERS REVOLVING FUND

Herein after referred to as the Lender

And

Name of member.....

I.D no.....

Herein after referred as the borrower

### The following conditions will apply:

#### The leased animals:

- The leased animals remain the property of the SDFRF until the requirements of the payments are met.
- The leased animals must be mature, healthy and marked with the registered mark of the SDFRF
- The leased animals will be repossessed without compensation if neglected
- Special arrangements will be worked out between the management of SDFRF and the borrower if the female (ewes) are not serving, kidding, very sick or died.

#### The borrower:

- Must be a registered, fully paid up member of the **SCHMIDTSDRIFT EMERGING FARMERS**
- Agreed to pay R100.00 (one hundred rand) as a deposit and R60.00 per month for 18 months
- Paying 100% interest on each month outstanding payments.
- Agreed to pay six (6) six month old healthy animals (5 female and 1 male) back to the SDFRF
- Must be available for training sessions as provided by FARM-Africa, Department of Agriculture and or any other recognised service provider
- Allow access to the SDFRF management or representatives for monitoring and evaluation purposes.
- Keeps records of animal health, feeding and lambing rates of the project animals.

#### The lender:

- Provide animal health treatments to the leased animals
- Arrange training and support programs for the borrowers
- Assist and arrange marketing opportunities
- Provide a registered mark to all project animals
- Perform monitoring and evaluation sessions of leased animals
- Keeps records of payments, animal health, feeding and lambing rates of the project animals
- Reposes leased animals in case of proven negligence by the borrower

#### Lease period:

- The lease on the 5 ewes will be for a period of 1,5 years (18 months) commencing from the date of the first monthly fee after the deposit was paid.

#### Breach of contract:

- Should the borrower fail to make any payments as agreed, then the lender shall be entitled to cancel this

agreement and reposes the animals without giving the borrower prior notice. No refunding for any previous payments or expenditure undertaken by the borrower.

- Three months and more in arrears with payments will automatically disqualify the borrower from further participation on the goat project.
- Proven negligence which could lead to animal losses due to injuries to animals, malnutrition etc
- Non co-operation with the rules and regulations of the Schmidtsdrift Emerging Farmers Association and their revolving fund.
- Selling of animals without SDFRF management’s permission.
- Not make animals available for treatments and monitoring and evaluation sessions
- Marking the animals with markings other than that of the SDFRF.
- Any actions of dishonest towards the Schmidtsdrift Emerging Farmers Association and their revolving fund.

**Death of borrower who co-operated within the rules of the SDFRF**

- Special arrangements will be worked out between the management of SDFRF and the borrower’s next of kin.
- Can be replaced by close family member of the same household
- Can be refund with all payments made to the SDFRF

**Monitoring and evaluation (Inspection):**

- The lender shall be entitled at all reasonable times to visit the leased animals as representative of the SDFRF or by way of the Animal Health Services of the Department of Agriculture.

**DOMICILIUM:**

**The Lender at**  
**P.O Box**  
**Schmidtsdrift**  
**Tel no.**  
**Fax. No**

**The Borrower at:**

**Thus done and signed at Schmidtsdrift on the .....day of .....2006**

.....

**Chairperson: Schmidtsdrift Emerging Farmers Association**

**Witnesses:**.....

.....

**Borrower**

**Witnesses:**.....





