

**UNIVERSITY OF THE WESTERN CAPE
SCHOOL OF GOVERNMENT**

**Land Restitution and the Implementation Process: A Study of
the Schmidtsdrift Land Restitution Case**

By

Mu-arfia Jonas (8965225)

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CONTENTS

Abstract	ii
Acknowledgements	iv
1. INTRODUCTION	1
- Statement of the problem	1
- Related research	4
- Guiding assumptions of the study	7
- Focus and objectives of the study	8
- Methodology	9
- Limitations and significance of the study	10
- Format of the study	11
2. HISTORICAL BACKGROUND	12
- The first settlements at Schmidtsdrift	12
- The declaration of a native area	12
- The final forced removal from Schmidtsdrift	13
- The occupation of Schmidtsdrift by the SADF	14
3. THE SCHMIDSDRIFT LAND RESTITUTION PROCESS	17
- The first land claims process	17
- The official land claims process	18
- Institutional arrangements	18
- The planning process	19
- Composition of beneficiary community	19
- Profile of the beneficiary community	19
- Finalisation of the Master plan	22
- Components of the Master plan	23

4. THE POLICY CONTEXT AND A REVIEW OF THE IMPLEMENTATION PROCESS	27
- Land restitution and the institutional framework	27
- Land Claims Court and the Commission on the Restitution of Land Rights	29
- Land development policy and the Development Facilitation Act	31
- Slow delivery on finalisation of land claims	33
- Institutional and budgetary constraints	35
- Targeting, access, coverage and bias	36
- Internal tensions at an institutional level	39
- Changes in policy direction and legislative amendments	40
5. OBSTACLES FACING THE PLANNING AND IMPLEMENTATION PROCESS OF SCHMIDTSDRIFT	42
- The legal framework as source of obstruction	42
- Lack of adequate institutional arrangements and project coordination	46
- Budgetary constraints	47
6. CONCLUSION	49
REFERENCES	53
APPENDIX 1: INTERVIEW SCHEDULE	55

Abstract

In South Africa land dispossession and land appropriation were legally instituted with the promulgation of the 1913 and 1936 Land Acts and the 1950 Group Areas Act that saw the forced removal of the majority of Black South Africans from their homes and livelihoods. This policy of racial segregation left in its wake countless examples of families and entire communities being uprooted and forced to eke out an existence on land that often had no or little potential for development. The Tswana people who resided on the farm Schmidtsdrift in the Northern Cape is an example of a community that was forced to relocate to a barren piece of land in Kuruman about 140 km from Schmidtsdrift.

In 1994 with South Africa's first democratic elections a number of policy changes were effected that sought to undo the injustices of the past. The land reform programme initiated by the government provided the Tswana people an opportunity to reclaim their land under the Land Restitution Act No.22 of 1994. The new policy changes were certainly far reaching in addressing the legacy of landlessness but it became clear four years after the initiation of the programme that serious delays with regard to the finalisation of the claims were being experienced. By 1998 only 9 claims of the 26 000 claims lodged with the Commission on the Restitution of Land Claims were finalised. One of the claims that were still awaiting finalisation at this stage was the Schmidtsdrift claim lodged by the Tswana community in November 1996.

It is within this landscape of challenges faced by the land restitution process that this research report examined the obstacles, specifically from 1996 to 1998, experienced by the Schmidtsdrift Restitution Case with regard to the settlement of their claim.

The methodology comprised primary resources such as personal and telephonic interviews and secondary resources such as books, journals, documents and government publications. The researcher also relied on her direct involvement in the Schmidtsdrift Restitution Case as a source of reference.

The major findings were that, serious delays with regard to the settlement of claims at a national level were due to institutional problems and budgetary constraints. The former revolved around a lack of co-operation and tension between the Department of Land Affairs and the Commission on the Restitution of Land Rights as well as problems with interdepartmental transformation and service delivery. Budgetary cuts experienced by the Commission were cited as obstructing the efficiency of the Commission in carrying out its mandates. These factors had repercussions for the Schmidtsdrift Case in that these problems were not only mirrored at a local level but also meant that other problems were not effectively addressed by the Department of Land Affairs. The undue emphasis for example, on a legal settlement became a bureaucratic quagmire that excluded the beneficiaries from direct access to the court for a speedy return to their land which is one of the areas that must be urgently addressed to ensure delivery.

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CHAPTER 1

INTRODUCTION

The birth of the new democracy in South Africa during 1994 saw the emergence of a range of policy changes with an unambiguous emphasis on a developmental approach. This approach encapsulated in policy frameworks is based on the principles of the Reconstruction and Development Programme (RDP), the government's vision document for the transformation of the country to meet the basic needs of people with a focus on sustainable development to meet these demands.

A cornerstone of this transformation process is the land reform programme which sets out guidelines for making land accessible to people who were dispossessed of their land through the 1913 and 1936 Native Land Acts and the 1950 Group Areas Act (Department of Land Affairs, 1997a). The emphasis of the new land policy is on ensuring that people now have rights to the land that they occupy through a process of land restitution, land tenure reform and land redistribution.

It is within this policy context that this research will examine the challenges faced by the land restitution case of the predominantly Tswana community who lodged a claim in terms of the land restitution procedure with the Commission on the Restitution of Land Rights on the 25 November 1996, for the return of their land at the farm Schmidtsdrift in the Northern Cape Province. This claim, which officially became known as the Schmidtsdrift Land Restitution

claim was designated as one of the Presidential Lead Projects of the Land Reform Pilot Programme in the Northern Cape.

Statement of the Problem

South Africa's legacy of racially based policies not only left the majority of citizens without political rights but also left in its wake the entrenched and unequal distribution and systematic dispossession of land of the majority of South Africans. Land was reserved for the benefit and ownership of White South Africans, which excluded Black South Africans from having equal or any access to land (Lipton, 1989). The political dimension of this is significant but the creation of segregated locations also meant that discriminatory measures prevented Black farmers, traders and workers from competing with Whites to ensure that they instead provided a large source of cheap labour. The land question in South Africa is therefore not merely confined to land ownership but has dimensions that affected the very basic existence of the majority of South Africans at an economic, social and political level. Its history is riddled with conflict around land and land ownership.

The 1913 and 1936 Land Acts reserved only about 14 % of the land for the majority of Black South Africans who constituted 70% of the population (Lipton, 1989). This marked the creation of the "Reserves" for Blacks, which later became known as "Homelands" or Bantustans. White South Africans owned the remaining 87% which was the bulk of the land, outside of these Reserves consisting of large towns and commercial agriculture.

Land reform in South Africa has been used as a mechanism for underdevelopment that left the Black majority landless. Tribal Homelands created during the 1950s as a response to the surplus Black labour in “White” South Africa saw the forced removal of millions of Black South Africans to these Homelands.

Another form of resettlement that Black South Africans have been subjected to was the creation of “betterment planning” as a kind of land reform (Letsoala, 1987). Although “betterment planning” originated in 1929, it was significantly extended during 1948 with the aim of reducing the number of Black farmers who owned land and relegating them to other sectors of the economy. Their plots were to be consolidated into economic units and given to Black farmers who were regarded as “potentially competent” farmers as designated by the tribal chief or headman. This kind of planning was fiercely resisted by the people but with grave consequences as the government responded to any opposition to its “betterment planning” with violent harassment and brutality (Letsoala, 1987).

Rural areas continued to be Reserves where people lived in poverty on land that had no or little potential for development (Letsoala, 1987). It is within this context of relocation and forced removal that the Schmidtsdrift community was uprooted from the arable land they occupied. It was only during 1992 that the Tswana community was provided with an opportunity to legally institute a process of claiming their land back which culminated in an official claim during 1996 under the new Land Policy of the South African government.

Land Info a publication of the Department of Land Affairs, claimed in 1997 that the government had made significant progress in terms of land restitution claims (Department of Land Affairs, 1997b). It listed as one of these, the claim lodged by the Schmidtsdrift Community Trust for the return of their land owned by the South African National Defense Force (SANDF). However, by 1998 two years after Schmidtsdrift claimants have successfully submitted their claim, they were still awaiting the official return of their land as the claim was not finalised. A comprehensive resettlement plan was compiled and completed by February 1997 in consultation with the department of Land Affairs, technical consultants, and the Schmidtsdrift claimants. Yet, a year after the completion of the resettlement plan, coordinated and constructive planning had not commenced for the implementation of this plan.

This situation has been characteristic of the land restitution process in general as confirmed by statistics of the Department of Land Affairs (1998), namely, that of the 26 000 claims registered with the Commission on the Restitution of Land Rights 9 claims were finalised by October 1998. Some of the reasons cited by the Department of Land Affairs for this state of affairs have been attributed to budgetary constraints and a lack of coordinated and interaction and cooperation between itself and the Commission (Department of Land Affairs, 1998).

Related research

Research has been conducted on the progress of land claims and settlement of beneficiary communities. The Riemvasmaak Restitution Case and the Doornkop Restitution Case, which

have reached the finalisation of their claims, were looked at to provide a brief account of the challenges that faced these communities.

Riemvasmaak Restitution Case

Riemvasmaak is situated in the Northern Cape Province and was one of the communities that was awarded their land back in terms of the early restitution process of the land reform programme. The beneficiary community returned to Riemvasmaak in 1995 but their settlement has been characterised by endless delays in development planning in respect of land use options and delivery on infrastructural needs (Lund, 1998). Lund investigated the resettlement process of Riemvasmaak in order to draw from it lessons that could be learnt for other restitution cases.

Lund (1998) concluded that delays with regard to the post-settlement phase and the accompanied waste of resources could have been avoided if:

- An institutional framework emphasising post-settlement support were formulated and implemented;
- Provision for the coordination of existing resources by the identification of clear roles and responsibilities existed;
- Clear, consistent and sustained communication between all stakeholders regarding the planning process was present;
- A planning process that accommodated incremental and adaptive changes in the environment characterised by uncertainty was embarked upon.

Ben and Deborah Cousins (1998), concluded, that the following components are required for land restitution implementation, namely:

- Proper participation and consultation with the community and all role-players;
- A phased approach in terms of short term planning and long term planning as essential for the delivery of basic infrastructure;
- Improved coordination between government departments and the appointment of a coordinator to manage this process.

The Doornkop Restitution Case

Doornkop, situated in the Mpumalanga province is an area from which people were forcibly removed during 1974. The Doornkop community returned to their land during 1994 without any preliminary planning (Wenth, 1996). The Doornkop case was identified as a Presidential Lead Project, which initiated the involvement of government role players in May 1996. By May 1997, however, the situation in Doornkop remained unchanged with the community still living in temporary shacks with neither permanent water supply nor sanitation.

The Transvaal Rural Action Group (TRAC) played a key role on the settlement and planning process of the Doornkop community and conducted a valuable study of the problems related to the planning and implementation process which concluded that (Wenth, 1996):

- There is an absolute necessity for adequate planning before beneficiaries resettle on their land;
- Government procedures need to allow for the overlapping of restitution procedures and preliminary planning procedures;

- The timeous and efficient recognition of land claims is central for a process of sustainable land development;
- A participatory decision making process that involves the inclusion of representatives of the beneficiary community and interest groups is vital to decision making on planning methods and procedures for sustainable rural reform;
- Development should not be regarded as merely a technical procedure but as an approach that recognises the beneficiary community as integral to prioritising, selecting and implementing planning processes;
- The coordination and integration of budgets at different levels of government and between departments are important;
- Adequate institutional arrangements must be effected to ensure delivery.

The relevance of these case studies to the current study is that it may show that the challenges or obstacles experienced in the Schmidtsdrift restitution case are not isolated or unique to that case only. This could then also suggest a causal link between the lack of delivery with regard to land restitution and the effectiveness of the programme planning and implementation process of the Department of Land Affairs. It may therefore, present the need for a careful reassessment of the land reform programme with regard to the claims and settlement process.

Guiding assumptions of the study

One of the guiding assumptions of this study is that land restitution is not merely about the legal transference of land to people who were dispossessed of their land in the past but also

about finding sustainable ways for them to meet the challenges of resettlement. The land reform programme and its policy framework should be seen as only the start of an arduous path of addressing the legacy of Apartheid whereby people or groups of people were dispossessed of their land.

Another guiding assumption is that a critical dimension of the land restitution process should be about finding constructive interventions to overcome the challenges and constraints posed by the inherited political and socio-economic environment. Pivotal to the success of any policy would therefore be the translation of its objectives into a clear strategic programme of implementation that must be evaluated for its effectiveness on a regular basis.

Focus and Objectives of the study

The research report will specifically consider the delay and problems experienced by the Schmidtsdrift community with regard to the settlement of their claim and the implementation or post-settlement process. An analysis of this will include a critical look at the institutional arrangements and programme planning of the Department of Land Affairs in fulfilling its objectives with regard to land restitution in order to posit the Schmidtsdrift case in a broader contextual analysis of land restitution delivery and implementation.

The objectives of the study are thus as follows:

- To provide a background of the Tswana community and their first settlement on the Schmidtsdrift farm as well as the land claims process pursued by them;

- To consider the policy context of land restitution;
- To evaluate the institutional arrangements and programme planning of the Department of Land Affairs with regard to land restitution; and
- To consider the problems the Schmidtsdrift community are experiencing with the claims and implementation process;

The study will conclude with a few recommendations for addressing some of the problems associated with delivery on land restitution.

Whilst it is recognised that the settlement process is clearly dependent on the finalisation of claims, the two phases will not be discussed as disparate processes. They are in fact, processes which are mutually inclusive that can also overlap.

Methodology

Primary resources were used such as personal and telephonic interviews conducted with employees of the Department of Land Affairs, representatives of the Schmidtsdrift Board of Trustees, Asch Consulting Engineers who project managed the pre-settlement phase and non-governmental organisations working in the field of land restitution. The researcher also relied on her direct experience and involvement in the Schmidtsdrift restitution case as a source of information.

Books, journals, documents, newspaper articles and government publications were consulted, as secondary resources.

Limitation and significance of the study

One of the limitations of the study is that it does not provide an in depth analysis of factors that influenced the context within which the post-1994 Schmidtsdrft land issue emerged. A brief historical account is, nevertheless provided.

Another limitation of the study is that the post-1994 Schmidtsdrift land restitution process will only be examined until December 1998. A number of developments have occurred since then such as the actual finalisation of the claim on 8 April 2000 (Dept. of Land Affairs, 2000) which have implications for settlement and local economic development that are not considered in this study. This is due to the practical limitations in conducting fieldwork and primary data collection. A brief analysis of the land restitution process with specific reference to amendments to the Restitution of Land Rights Act No.22 of 1994 to speed up the land restitution process as well as new policy initiatives will, however, be provided using secondary resource material.

The nature of the land restitution process is dynamic, which suggests that changes are happening all the time. It would therefore be difficult to capture or evaluate the process in a final or completed form. Clearly factors in the past have impacted on the community that lead to certain outcomes and in the same way factors in the future can influence developments surrounding the resettlement process. This study merely provides an evaluation of the land restitution policy and the Schmidtsdrift land restitution case within a specific timeframe from the start of the Schimmdtsdrift claims process in 1992 until the end of 1998.

The significance of the study is to provide other land restitution processes both locally and internationally a snapshot into the problems that can beset land restitution despite a comprehensive and impressive policy framework as well as possible ways to address some of the obstacles confronting the implementation process.

Format of the study

The format of the research report comprise 6 chapters:

Chapter 1 outlines the problem statement, related research, guiding assumptions, methodology, focus and objectives of the study, limitation and significance of the study as well as the format of the report;

Chapter 2 discusses the historical context of the Schmidtsdrift beneficiary community and the processes leading up to the lodging of their land restitution claim;

Chapter 3 discusses the Schmidtsdrift Land Restitution Claims process;

Chapter 4 outlines the policy context and a review of the claims and implementation process at a national level;

Chapter 5 discusses the obstacles and challenges faced by the Schmidtsdrift community in settling their claim and returning to their land; and

Chapter 6 concludes the study.

CHAPTER 2

HISTORICAL BACKGROUND

The First Settlements at the farm Schmidtsdrift

The farm known as Schmidtsdrift was settled on by an offshoot of the Bathloping tribe, the Tswana people, who settled on this farm during the 1880s as part of what is known as the southern most point of the Tswana “trek” of the last century (Asch, 1997). The farm is 36000 ha in size, bordering the Vaal River and located approximately 70km west of Kimberley in the Northern Cape Province.

The Schmidtsdrift area was blessed with natural resources that provided sufficient water supply and arable land for a climate characterised as semi desert, as recalled by Ben Letebele (1998). The Tswana community was largely involved in pastoral and agricultural farming on a communal basis which were the main forms of economic activity. The area comprised sufficient tracts of fertile and grazing land for the community, as well as a diverse variety of species of vegetation that were used for producing traditional medicines. The Tswana population at Schmidtsdrift was estimated at 7000 at that time.

The Declaration of a Native area

In terms of the 1913 Land Act, the Schmidtsdrift farm was declared a “native area” and was subsequently administered by a Bantu Trust. The family homesteads of the community,

however, remained spread across the farm until the early 1960s when the government replanned the area according to its policy of “betterment planning”. The community tried to resist this attempt at reorganisation by protest action and attempts initiated by their leaders to negotiate with the state but the state responded by deposing their democratically elected headmen and replacing them with leaders of its own choice. The state also used their military force to silence people through brutal means instilling fear of reprisals in the community should they continue to protest and object to the betterment planning policy of the state.

The Tswana people were resettled into six betterment villages on the farm Schmidtsdrift, each with a borehole and a fence erected around it (Asch, 1997). People were nominally compensated for their original homesteads and the grazing and arable land around the original homesteads were apportioned into economic units. The author was unable to verify the exact nature of the compensation due to a lack of knowledge of this on the part of the Schmidtsdrift community members who were interviewed as well as a difficulty experienced in accessing secondary resource material.

A small White village was established at Schmidtsdrift prior to the 1960s, regarded as a ‘white spot’ in the Reserve with a trading store, police station, post office, hotel and a clinic (Asch, 1997).

The Final Forced Removal from Schmidtsdrift

The Schmidtsdrift community was finally subjected to the uprooting of their entire community in 1968, in a most unceremonious manner. The community was moved in about

100 military trucks and relocated to an area about 140 miles away from Schmidtsdrift, on a remote farm 25 km north of Kuruman. The area was completely unsuited to either crop or livestock farming contrary to what the government made the community believe.

The Schmidtsdrift community was, thus, forcibly removed from their ancestral homes and dumped in an area without any adequate provision for shelter or basic resources such the provision of water and sanitation. Many people suffered severe hardships, as they no longer had access to valuable agricultural land. Many livestock was left in Schmidtsdrift as sufficient time was not given to people to prepare for their removal and it is estimated that about 50% of the livestock died on the railway trucks to Kuruman. Personal possessions of the community were also lost or broken. Compensation received from the government for losses the community incurred was arbitrary and unacceptable. For example, families were given an average of ninety Rand for losses that they incurred.

At their “new location” in Kuruman, the community was distributed across nine different localities several miles apart without any adequate infrastructure. This area was incorporated during 1977 into the Bophuthatswana Homeland as part of the government’s policy of “separate development” (Asch, 1997).

The Occupation of Schmidtsdrift by the SADF and the San community

After the forced removal of the Tswana people from the farm Schmidtsdrift, the area was occupied by the South African Defense Force (SADF), which highlighted the government’s disregard for human dignity and the right to a decent abode and land to eke out an

honourable living. The SADF established a training and weapons testing facility on the farm (Asch, 1997).

In 1990 the SADF airlifted members of the ex-31 Battalion, the so-called “Bushman Battalion”, to its base at Schmidtsdrift, after the South West African People’s Organisation (SWAPO) won the elections in Namibia. The reason for the settlement of the ex-31 Battalion, according to the SADF was that it did not trust SWAPO’s assurances of not seeking retribution against the Bushmen who fought in the war against it (Asch, 1997).

In 1993 the Bushman Battalion was disbanded but the SADF continued to maintain a special camp for 3000 civilian dependents of the soldiers, some of who became ordinary members of the permanent force. The San people are to this day housed in tents with very basic facilities on a section of Schmidtsdrift, called Droogfontein. Although the presence of the San people did not present any direct obstacles to the settlement process of the Tswana beneficiaries, the land that they are located on, however, forms part of the area to be awarded to the Tswana community for resettlement in terms of the land restitution provisions of the land reform programme, instituted by the new democratic South African government in 1994.

Alternative land was allocated to the San people by the new government on the farm Platfontein, which is situated on the outskirts of Kimberley. An agreement was reached between the Schmidtsdrift Board of Trustees, the Department of Land Affairs and the San project coordinating committee that the San people could remain on the farm until their settlement process to the farm Platfontein has been finalised. Although the process of

resettling the San community were riddled with conflict, particularly with regard to their "official" status as Namibian citizens, this conflict was confined to discussions and tensions between themselves and the government. The presence of the San people on a part of the land to be awarded to the Schmidtsdrift community at the time their claim was lodged did not present any inherent problem or delay with regard to the settlement or claims process of the Schmidtsdrift community. The reason for an absence of conflict of interests is that the San community were not situated on land that were earmarked for the first phase development of Schmidtsdrift neither did the San community attempt to lay any claim to the land by presenting their case to the Schmidtsdrift Land Claims Court process.

CHAPTER 3

THE SCHIMDTSDRIFT LAND RESTITUTION PROCESS

The First Land Claims Process

In 1992, the Tswana community lodged a claim for the return of their land before the Advisory Commission on Land Allocation (ACLA). The claim was heard in December 1993 at which various proposals for the development of Schmidtsdrift were presented, such as that of the National Parks Board, the then Cape Provincial Administration and the De Beers Consolidated Mining which owns a game ranch nearby. These parties recommended that the land be used for ecotourism and hunting purposes managed by the Tswana community. The SANDF, on the other hand, informed the hearing that it needed the land and that it would cost taxpayers R120 million if they were forced to relocate elsewhere. In April 1994, ACLA announced that it had rejected the land claim, submitted by the Tswana community for their return to Schmidtsdrift.

Angered by this rejection, which happened at the time of the first democratic elections, the Tswana community occupied the Schmidtsdrift land and 150 people were arrested. This incident gave rise to a meeting between the Tswana community and the National Land Committee (NLC). The NLC arranged a subsequent meeting of the representatives of the community with the Premier of the newly demarcated Northern Cape Province, the SANDF and the Department of Land Affairs (Asch, 1997). At this meeting an agreement was reached which specified that the Schmidtsdrift land belongs to the Tswana community.

This agreement was precipitated by the National Ministry of Land Affairs championing a process of addressing the past expropriation of land and forced removal by returning land, ceased by the government under the 1913 and 1936 Native Land Acts, to its rightful owners.

This objective to resolve restitution cases on state owned land was specified in a comprehensive and approved business plan submitted by the Ministry of Land Affairs to the former RDP Office in November 1994. In view of these factors the, SANDF was formally notified by the government to relocate (Department of Land Affairs, 1998).

The Official Schmidtsdrift Land Claims Process

The Tswana community lodged a claim in terms of the land restitution procedure with the Commission on the Restitution of Land Rights on the 25 November 1996, for the return of their land at the farm Schmidtsdrift in the Northern Cape Province. This claim, which became officially known as the Schmidtsdrift Land Restitution case, was designated as one of the Presidential Lead Projects of the Land Reform Pilot Programme in 1995.

Institutional arrangements

The Northern Cape government established the Provincial Steering Committee (PSC) to oversee the process of land reform in the province (Asch, 1997). The Department of Housing and Local Government under the leadership of the provincial MEC is responsible for the implementation of the basic service provision required for land restitution whilst the Department of Land Affairs administers the programme.

The PSC at its inception during 1996 was assigned the responsibility to coordinate and manage RDP funded Land Reform Programmes in the Province and was also tasked with having to initiate the implementation phase for all these projects.

The Planning Process

Asch Consulting Engineers, employed by the Schmidtsdrift Trust, was responsible for the overall coordination of the planning phase and the transition to the implementation phase of the land restitution planning process. As the project team, they were responsible for assisting and working with the community to develop a coherent land use plan.

The Composition of the Schmidtsdrift Beneficiary Community and the establishment of the Board of Trustees

After their forced removal to Kuruman, some members of the Tswana community settled in this area, whilst others moved to different locations across the Northern Cape. The majority of the community was, however, concentrated in the Kuruman and Kimberley areas. The Schmidtsdrift Board of Trustees was elected by the community in Kimberley and Kuruman to represent their interests and to liaise on their behalf with the project team and government departments via regular report-back and decision making meetings.

Profile of the Schmidtsdrift beneficiary community

The exact population size of the beneficiary community was difficult to establish due difficulties experienced in locating especially the original inhabitants who were not located in Kuruman or Kimberley. A survey conducted by Asch (1997) provided information on the

size of the beneficiary community in Kimberley and Kuruman as well as a socio-economic analysis of the beneficiary community using a sample size of 283 families.

- **The population size**

	Kimberley	Kuruman	
Male	163129	13104	
Female	164567	11713	
Total	327696	24817	352513

- **Socio-economic survey**

The survey was confined to the Kuruman and Kimberley areas due to the high number of beneficiaries from these areas that registered their claim as part of the Schmidtsdrift group claim. Due to time constraints a sample size of 283 families was used which was not fully representative but allowed for a snapshot into the socio-economic situation that prevailed which needed to be planned for (Asch, 1997).

Table 1: Percentage of Age distribution (Asch, 1997)

Age distribution	Percentage of population
0-10	-
11-12	-
21-30	8.8
31-40	24.0
41-50	18.37
51+	48.76
Total	100%

Table 2: Percentage of Employed and Unemployed (Asch, 1997)

Age group	Employment status	
	Employed	Unemployed
0-10	-	-
11-20	-	-
21-30	3.2	5.7
31-40	10.6	13.4
41-50	8.1	10.2
51+	-	48.8
Total	21.9	78.1

Table 3: Economic activities (Asch, 1997)

Activity	% of population for various activities	
	To be undertaken at Schmidtsdrift	Current activities
Farming	25.8	3.8
Small business	23.8	0
Teaching	6.4	6.0
Undecided	6.4	6.4

Analysis

The age distribution reflected a high level of people above 51 years of age who were mostly pensioners and therefore assumed not to be part of the economically active group although this may not be the case in reality. Rural poor women, for example, have to carry the burden of caring for their families and this work is not valued economically as formal work, which is also not reflected as part of those who are economically active. The economically active group is, therefore, assumed to be between 20 and 50 years and forms 51.2% of the sample.

21% of this group are employed as reflected in table 2. However, a high percentage, namely, 78% of the sample population interviewed was unemployed. It reflected the need for the facilitation of local economic development and the construction of infrastructure and facilities to stimulate and generate economic activity to ensure the sustainability of Schmidtsdrift and the survival of the beneficiary community. A significant percentage, namely 25% of the currently unemployed group at the time, expressed an interest in farming and 23% in small business initiatives which may be key forms of economic activity for consideration in development planning.

The Finalisation of the Schmidtsdrift Master Plan Document

Although the Schmidtsdrift land claim was not finalised, the process of planning the land development and land use options were initiated in line with the government's position of fast-tracking delivery on land restitution.

A comprehensive plan that was the culmination of two years of intensive work on the part of the project management team and the community, in consultation with representatives of the Department of Local Government and Housing, the Department of Land Affairs and the Ministry of Land Affairs and Agriculture in the Northern, was formulated by the consultants. The Master plan was a draft document that required the ratification and endorsement of all service providing departments within the Northern Cape Government for the successful implementation of the programme.

Components of the Master plan document

The Master plan document comprised amongst others of the following (Asch, 1997):

- **A land audit**

An inventory was taken of existing structures at Schmidtsdrift, and possible options for renovation or conversion for the future needs of Schmidtsdrift, were considered. For example, the old army barracks was ideal for conversion into a school that was proposed as part of an infrastructural development plan.

A record of the existing land use and services such as water, sanitation, electrical and communication networks was made to assess the extent to which these services had to be upgraded or provided altogether.

- **Proposed planning Scenarios**

The community considered three possible planning scenarios for Schmidtsdrift, namely, retaining the entire rural system, urbanising the entire area or having a mixed urban and rural development. The community opted for the mixed urban and rural development option as the viable settlement scenario as it accommodated the diverse preferences of beneficiaries. This preference included a proposal for a section of the overall Schmidtsdrift area to be urbanised with a strip of land along the riverbanks for crop farming. A portion of the land was also being recommended for gaming or wild life farming with the greater part of the land to be used for mixed animal and crop farming.

- **Structural plan proposals**

Proposals for structural plans were considered in relation to identifying the economic role envisaged for the area. Economic activity it was envisaged was to revolve around agricultural produce and the development of small, medium and micro enterprises (SMMEs). Mining, because of the rich diamond deposits, was also identified as a primary source of economic activity for the community.

An entire plan for the redevelopment of Schmidtsdrift was proposed in terms of roads and transport routes, urban and rural settlement areas, the possibility of communal crop and pastoral farming, community facilities, nature conservation and the provision of services such as water and sanitation.

- **The Implementation Strategy**

The implementation strategy was essentially to comprise the adoption of the Master plan, with the inclusion of any amendments made by stakeholders such as the community and government departments for the delivery of service provisions. It was to involve the following steps:

- Submission to the various ministries and their departments for ratification and endorsement;
- Drafting of the business plans for the various components of the development plan;
- Securing development funding for basic service provision;
- A phased development approach to basic service delivery;
- A phased approach in respect of the return of beneficiaries to Schmidtsdrift;

- The development of infrastructure.

A detailed timeframe for the finalisation of the above components formed part of the Master plan document that comprised the following with allowances for minor delays but recognising the need for fast tracking (Asch, 1997):

Stage 1: Securing Funding

Ministerial liaison, development of business plans, business plan submission and approval to be completed by September 1997.

Stage 2: Engineering and Construction

Land surveying, earthworks and roads, bulk service provision, housing and community facilities to be completed by January 1998.

Stage 3: Relocation and economic development

To be completed by March 1998 in accordance with a phased approach as outlined in the relocation strategy.

Although a clearly defined development plan with specific timeframes was formulated there were numerous problems in taking this plan to fruition. A discussion of the obstacles that confronted the Schmidtsdrift Land Restitution Case will be considered but it would be necessary to precede this with an analysis of the national land restitution policy context and programme implementation. The reason for this is to consider whether there are factors at a

national level that may be contributing to certain challenges faced by the Schmidtsdrift case at a local level.

THE POLICY CONTEXT AND A REVIEW OF THE IMPLEMENTATION PROCESS OF LAND RESTITUTION

The new the land reform programme as encapsulated in the Land Policy of 1997, is the result of broad consultation with individuals, groups and organisations working in the area of land reform. The government regards it as a comprehensive attempt, to undo the injustices of the past. Its vision is building national reconciliation and stability, ensuring economic growth and improving household welfare and eradicating poverty. This vision has an undeniable focus on the poor and provides a policy framework for socio-economic upliftment.

The aim of the land reform programme is essentially to redress the historical dispossession of land as a result of the 1913 and 1936 Native Land Acts and the 1950 Group Areas Act (Department of Land Affairs, 1997a). It consists of three main areas, namely:

- land tenure reform, which is about providing tenure security to people through the Extension of Security and Tenure legislation;
- land redistribution, which is about providing people access to land within urban and rural areas for residential and productive purposes; and
- land restitution that provides for the reallocation of the land to people and communities who were dispossessed of their land, after 1913.

The land reform programme is guided by eight principles. Three of these principles are of particular relevance to this research on land restitution. One is the emphasis on a needs-based approach whereby mechanisms and structures are put into place to ensure that the needs of communities are taken into account. The second principle is that the government should play the role of facilitator particularly in relation to the rural and urban poor by informing people of their options and disseminating information about the land reform programme. The third principle is the establishment of partnerships between the government, communities, individuals and other agencies through democratic decision-making (Department of Land Affairs, 1997a).

Land Restitution and the Institutional Framework

The establishment of appropriate institutional arrangements by the Department of Land Affairs, is based on the need for an integrated development approach that encompasses a delivery system involving cooperation between service providers such as non-governmental organisations (NGOs) and different public sector departments for consistent evaluation of the effectiveness of the land reform delivery system.

Whilst the Department of Land Affairs needs to co-opt other service providing departments, it also has to plan for a long term service oriented administration to work with outside agencies and the community. The latter is seen in terms of land transfers not merely being once-off transactions but as a process that requires continuous institutional support to maintain and administer land rights and development. For this reason, the Department of Land Affairs, recognises the importance of training core field staff at provincial and local

government level to service the administration of land reform (Department of Land Affairs, 1997a).

Institutional arrangements are thus based on the following operational principles:

- The implementation of mechanisms and procedures by the government to facilitate cooperation between itself and partnerships that it enters into with the private sector, NGOs and community-based organisations (CBOs);
- The establishment of sound coordination between departments and the three spheres of government at an administrative level as the basis for the success of the land reform programme; and
- The establishment of a monitoring and evaluation system to track progress on land policy measures for appropriate and speedy feedback to managers as well as the public to ensure that policy measures achieve their stated goals.

The Lands Claims Court and the Commission on the Restitution of Land Rights

The Land Claims Court and the Commission on the Restitution of Land Rights are institutional provisions made by the government to administer the process of land restitution (Department of Land Affairs, 1996). The Restitution of Land Rights Act, No. 22 of 1994, provides the legal framework for this process as well as for the, “*restitution in rights of land in respect of which persons and communities were dispossessed under or for the purpose of furthering the objects of any racially based discriminatory law*” (Human Rights Report, 1996, p16). The Commission, according to this Act, has the responsibility of investigating and processing claims that are received. The Land Claims Court is responsible for

adjudicating claims and must ratify agreements mediated by the Commission as well as arbitrating in cases where no agreements can be reached. The chief responsibility of the Land Claims Court is to determine restitution, forms of compensation and rightful ownership.

Recognising, from local and international experience, that the finalisation and implementation of claims can be a difficult and a drawn out process, the government established the following framework, that is open to review and adjustments, to accommodate possible delays (Department of Land Affairs, 1997a, p52):

- A three-year period, from 1 May 1995, for the lodging of claims;
- A five-year period for the Commission and the Court to finalise all claims; and
- A ten-year period for the implementation of all Court orders.

The Land Claims Court is also tasked with the responsibility of resolving the form of restitution that will be granted to claimants based on the principle of fairness and equity. Some claimants may want their land restored and others may want some form of financial compensation. Each case is treated on its own merits and the Land Claims Court will rule on the final form of restitution, with due consideration to all facts and motivations placed before it. A restitution package is then considered that can be in the form of (Department of Land Affairs, 1997a, p52):

- The restoration of land from which the claimants were dispossessed of which is the route the Schmidtsdrift restitution case followed;
- Provision of alternative land;
- Payment of compensation for land that claimants were dispossessed of;

- Alternative relief consisting of a combination of the above; or
- Priority access to state resources in the allocation of housing and land that are part of development programmes.

Land Development Policy and the Development Facilitation Act No. 67 of 1995

Land development, according to the White Paper on South African Land Policy, is “the process of identifying, acquiring and releasing land and water resources for development” such as the provision of schools, housing, hospitals, recreational facilities and the upgrading of premises for these purposes (Department of Land Affairs, 1997a, p77). It is to establish a framework and procedures to facilitate the speedy release of suitable land for urban and rural development programmes. This is the context in which land restitution is to provide for, and administer the transfer of land by ensuring that the process is one that creates an enabling framework for sustainable development to flourish. The Development Facilitation Act, No. 67 of 1995, is regarded as the means by which this can be achieved.

The Development Facilitation Act has a number of important features, and provides for the following (Department of Land Affairs, 1997a, p52):

- Measures to overcome bottlenecks in existing regulations to facilitate and expedite land development projects, with specific reference to the provision of serviced land;
- The formulation of “land development objectives” or development performance as tools to guide development decisions for fast tracking procedures that could otherwise be cumbersome and drawn out;

- The creation of development provincial tribunals consisting of public service and land development experts. The purpose of these tribunals, as a new institutional arrangement, is to allow for faster decision-making in respect of development planning, management of conflict resolution between stakeholders and to ensure improved community involvement in land development; and
- The allocation of roles and responsibilities to local, provincial and national government with regard to land development to ensure better coordination between the spheres of government involved in the land delivery system.

Whilst the rationale for this Act is commendable, the serious backlog in finalising restitution claims as shown by the poor statistics of the settlement of merely 9 claims by October 1998 out of a total of 26 000 claims received, despite the existence of the measures prescribed by the Act, is indicative of the need for a re-evaluation of the existing institutional arrangements and perhaps a complete overhaul of the administrative set-up.

The emphasis of the Act on fast tracking the process by establishing provincial tribunals have its merits as shown by the initiative of the Northern Cape government in establishing the Provincial Steering Committee to oversee the restitution process. But this process was being hamstrung by a lack of inter-departmental cooperation, to be expanded on in chapter 5.

The policy framework in terms of land restitution is clearly comprehensive. However, planning and embarking on a programme of this nature must clearly be a formidable task. The complexities and demands involved in promoting a rights-based culture and making land

accessible to people together with a development approach that must be people-centred and grassroots driven certainly requires considerable management at a programmatic level. In this respect there is a need to consistently and vigorously evaluate the programme with respect to whether it is reaching its target group, whether it is delivering on its stated objectives and whether sufficient funds have been allocated relative to the size of the programme. It is within this evaluative framework that certain areas of the implementation of the land restitution programme are examined below.

The slow delivery in finalising claims

The first annual report of the Commission on the Restitution of Land Rights for the period March 1995 - March 1996, tabled by the Chief Land Claims Commissioner at the time, Joe Seremane, highlighted the institutional difficulties the Commission had to face that affects the overall land reform process. The land claims statistics at the time, stood at 7095 claims lodged with only one claim settled (Human Rights Commission, June 1996).

On 18 September 1998, two years after the first annual report of the Commission on the Restitution of Land Rights, Mr. Seremane presented a review of the land reform process, to the parliamentary portfolio committee on land affairs and agriculture. The central focus of his report was the slow delivery of land to restitution claimants. The statistics he presented was of only nine claims delivered, thus far, of the 26 000 claims received by the Commission (Mail and Guardian, 16-22 October 1998).

The above statistics, indicate a serious backlog in the delivery of land claims that could steadily lead to non-compliance with the stated objective of finalising claims within a 5- year period from the 1 May 1995, the date allocated for the commencement of land claims registration.

Given the backlog of claims, it appears that the period for the finalisation of claims were based on an over-ambitious and idealistic time-frame referred to as “political time” by Rossi and Freeman (1993: 420). Proper programme development and planning that incorporate designs based on grounded and valid information in terms of the extent of the problem and realistic time frames in which to deliver on objectives should have been evaluated before legislation or the policy framework was adopted.

This situation certainly calls for drastic interventions to ensure that the Department of Land Affairs gets back on track to meet its objectives in terms of finalising claims. The Department of Land Affairs has attempted to fast track the process by an amendment Bill introduced during 1997, that allows for communities or individuals direct access to the Land Claims court to lodge a claim as opposed to going via the Commission on the Restitution of Land Rights. However, this process has been initiated without the consultation or participation of the Commission that could be indicative of a relationship characterised by grave miscommunication between the Commission and the Department of Land Affairs.

Institutional and Budgetary Constraints

The 1998 Mid-term review of the Land Reform Pilot Programme, states that there are serious delays in delivery on land reform, despite a comprehensive policy on departmental co-operation as set out in the new land policy (Department of Land Affairs, 1998a). It mentions, amongst other issues, the problem of having to juggle a number of processes to ensure delivery such as, cooperation between national, provincial and local government, the emphasis on public service transformation for improved service delivery and the need for decentralisation.

The report also stresses the importance of finding ways to weave land reform with integrated development planning at the level of provincial and local government. It focussed largely, on meeting the challenges of developing an institutional framework and appropriate development planning that must be fine-tuned for delivery.

Problems with the institutional arrangements between the Department of Land Affairs and the Commission on the Restitution of Land Claims involved the lengthy procedure that must be followed by the Commission for requests to the Department of Land Affairs as well as the complex administrative nature of the institutional framework. For example, the Commission is officially a structure that is independent of the Department of Land Affairs but in reality is heavily dependent on it for various administrative functions such as information, funding and research expertise. Budgetary constraints were cited as the most frustrating aspect that is hampering the work of the Commission (Brown et al, 1998).

The Commission was allocated an amount of R14 051 000 for the 1996/1997 financial year and R6 945 000 for the 1997/1998 financial year for administrative and operating expenses that also includes a contribution towards legal aid (Commission on Restitution of Land Rights, 1997). Despite the increase in the number of claims lodged which would justify a budget increase; the Commission's budget was on the contrary decreased. The annual report states that the allocated amount is completely insufficient to adequately cover its administrative and operating costs. Representations were also made to the Department of Land Affairs querying, the 60% budget cut from the 1996/97 financial year to the 1997/98 financial year which was not motivated by the Department at all (Commission on Restitution of Land Rights, 1997).

Targeting, access, coverage and bias

The target group or beneficiaries of land restitution has been defined in a very broad sense by the Land Restitution Act No.22 of 1994 as all people who have been dispossessed of land as a result of the first racially based legislation enacted in 1913. It thus excludes all cases of dispossession of land that occurred prior to this or which were not as a direct consequence of this Act.

Specific targets were set to finalise land claims within stipulated time-frames as a measure of the extent to which the target group would have benefited or participated in the process. Although the land reform programme was widely advertised and popularised it largely depended on voluntary participation, that is, people or communities who were dispossessed

of land were expected to come forward to lodge claims. In this respect 54 218 claims were lodged with the Commission between 1994 and 31 December 1998, of which approximately 20% of the claims were rural and 80% were urban-based. 26 of the claims lodged were finalised by the 31 December 1998 which translated into the transfer of 167 534 hectares of land to approximately 11 359 beneficiary households (Dept. of Land Affairs, 1998b).

The former minister of Land Affairs and Agriculture, Derek Hanekom has in an open letter to the Department of Land affairs, the Commission on Land Restitution and the Land Claims court categorically stated that the department will not meet its targets and “are at risk of losing the support and patience of claimants” (Business Day, 1998). Targets presented in the White paper on Land Policy propose a total of 18 years for the finalisation of land claims. This is calculated in terms of three years for the lodging of claims, five years for processing and finalisation and 10 years for implementing and development. However, it appears that at the present rate of delivery the department of land affairs has already fallen behind by close to ten years (Business Day, 1998).

The Department of Land Affairs “promised” that atleast 30% of agricultural land would have been transferred via the land reform programme to beneficiaries by 1999. However, only three years into the programme, it had already started scaling back its target considerably, referring to it as unrealistic. The director general of the Department of Land Affairs, Geoff Budlender admitted that, “the initial target was plainly vastly over-optimistic. It was completely unrealistic to assume we could achieve that figure in the first five years. There was nothing scientific about the initial stated objective. We now have a more sensible target”

(Financial Mail, 1997). This confirms that the initial target set for land restitution was not based on an informed evaluation with realistic and practical time frames. It highlights the tension between politicians and evaluators with regard to public programmes. The former is inclined to set broad and vague programme objectives or outcomes in order to satisfy its constituency for the delivery on public programmes during its period of elected office. The latter, on the other hand, would be very specific and quantify outcomes with an emphasis on feasibility studies with regard to resources, structures and processes in order to provide an informed time-frame, for delivery based on collected data.

In terms of participation in the programme there has been an exceedingly high level of participation by the target group in view of the number of claims lodged. It is, however, difficult to evaluate whether full coverage has been achieved by the cut off date for land claims as of December 1998. To quote Rossi and Freeman (1993: 241) "In all likelihood, no program has ever achieved total coverage of intended target population. Even in the best of programs, there are some persons who refuse to participate, others who are not aware that they can participate, and still others who are declared ineligible".

The high percentage of urban claims lodged, namely 80% of the total claims, by the end of 1998 indicates an urban bias in terms of the total number of claims lodged in terms of the land restitution programme. This could be related to the geographical location of land claims information and service sites, such as the Land Claims Courts, the Commissions on the Restitution of Land Claims and the various Departments of Land Affairs which all operate within urban centres. It could also be indicative of urban claims, which were predominantly

of an individual nature therefore reflecting a higher percentage of urban claims lodged as opposed to group claims that characterised claims lodged predominantly in the rural areas.

Internal tensions at an institutional level

Public programmes exist within a political and social context that have direct impact on the service delivery compliance with the original programme planning. In this respect the land restitution programme has been characterised by power struggles between the national Department of Land Affairs and the Commission on the Restitution of Land Rights that also appeared to have racial undercurrents that further strained relations between these two key stakeholders. For example, Seremane, the former Chief Land Claims Commissioner, claimed that in his experience Black commissioners were less likely to receive adequate financial or resource assistance as opposed to White commissioners (Mail and Guardian, 1998).

This racial tensions underlying the transformation process together with the overall picture of progress on land restitution can undoubtedly contribute to a lack of morale and bureaucratic inertia by officialdom within both the Commission and the national Department of Land Affairs that further affects the delivery on the land restitution programme. These kinds of conflicts at leadership level also appears to confirm the notion that racial tension cannot merely be erased by the “stroke of a pen” but needs to be managed in terms of the conflicts that will emerge in the process of transformation that programme planning and evaluation need to cater for, especially with respect to stakeholder viewpoints and perspectives.

Clearly, the pre-settlement phase of the restitution process is experiencing serious problems with regard to delivery. Because the process of finalising the claims and the settlement process are interrelated, the problem of delivery at this level certainly has serious implications for the actual restoration of land to beneficiaries and development planning. The implications of this being the prolonging of the eventual return of beneficiaries to their land and the emergence of a sense of despondency and skepticism among beneficiaries regarding the government's seriousness about delivering on land restitution. This is reflected in a statement by Mrs. Molusi of the Schmidtsdrift Board of Trustees, "We, as the Board, have to show the people that we are positive about getting our land back, but is the government really serious about us? Will we have our land registered in our name, atleast in our lifetime?" She, however, also resolved not give up working hard at realising their goal of returning to their land.

Changes in policy direction and legislative amendments

During 1999, the new Minister of Land Affairs and Agriculture, Thoko Didiza announced a new proposed Land Redistribution and Agricultural Development (LRAD) programme that focussed on releasing 15 million hectares of agricultural land in the next five years (Department of Land Affairs, 2000). This programme focussed on developing a class of commercial black farmers in addition to providing access to land to the poor which was the key focus of the land reform programme pursued by the former Minister. It appears that the rationale of the new policy is to not only ensure access to land by the poor but to also ensure that the economic empowerment of the previously disadvantaged be facilitated. This it seems

would be to change the current balance of agricultural economic power that is still concentrated in the hands of a minority of white farmers and to thus address the legacy of land dispossession that resulted in the enrichment of a white minority since the advent of colonialism. An Integrated Sustainable Rural Development Strategy to be embarked on by the government is intended to address the current imbalances in access to land and the sustainable development of land in an integrated way.

The policy approach followed by the new Minister in addition to redirecting the focus of the land reform process was also to address the delays experienced in the land restitution process. A Restitution Review Committee was established in July 1998 to review the restitution process with reference to the legislative framework and institutional arrangements with regard to the settlement of claims (Republic of South Africa, 1999). The Review Committee in its report recommended amendments to the Restitution of Land Rights Act No. 22 of 1994 to address the legislative and institutional bottlenecks that were experienced since 1994 in order to speed up the restitution process. These amendments were encapsulated in the Land Restitution and Reform Laws Amendment Bill, 1999 that allowed for a shift of emphasis from a judicial process whereby claims had to be processed solely by the Land Claims court to one where an administrative process could also be followed. An administrative process would allow for mass claims to be dealt with faster thus addressing the undue delays experienced by claimants.

It would be useful at this point to consider an analysis of the problems experienced by the Schmidtsdrift restitution case.

CHAPTER 5

OBSTACLES FACING THE PLANNING AND IMPLEMENTATION PROCESS OF THE SCHMIDTSDRIFT RESTITUTION CASE

The legal framework as a source of obstruction

By December 1998 the Schmidtsdrift land was still not awarded to the beneficiaries since the submission of their claim on 25 November 1996. The settlement of the claim, according to Ben Letebele, a member of the Schmidtsdrift Board of Trustees, is being partly, hampered by a court order by two Griqua families, namely, the Wellen and Engelbrecht groups for their inclusion in the Schmidtsdrift restitution claim. The details must be finalised by the Land Claims Court. The Board of Trustees has attempted to have the matter expedited but the lengthy court procedures and court dates have been out of their control.

There has been undue emphasis on a legal settlement, which places the responsibility on the land claims court to determine and finalise land claims. This process has been overwhelmingly bureaucratic and has left restitution claims solely at the discretion of the land claims court. This process has been beset by tension, as the Schmidtsdrift community has to rely on lawyers to represent their views to the courts. The judicial system has not responded favourably to the needs of the community for a speedy return to their land, by considering ways of expediting the matter. Instead it has continued to regard its internal legal procedures as paramount, according to Letebele. Claimants do not have direct access to the

legal proceedings and the courts appear to be more of an obstruction to the speedy return of land to beneficiaries as opposed to facilitating the process.

Although, development planning has been initiated by the government in response to the needs of those people who have been dispossessed of their land and key role-players such as the Board of Trustees representing the beneficiaries together with NGOs, CBOs and government departments have been identified, the planning process it seems is being hamstrung by the judicial system before the Schmidtsdrift community can have any rights to their land.

According to Letebele, even the departments have been incapable of speeding up this process as they do not have jurisdiction or authority over the court and cannot either influence the process nor make submissions to it. He further states that this process is hampering the development of Schmidtsdrift and the implementation plan as infrastructural construction cannot take place as the land still officially belongs to the SANDF. Cooper, of Asch consultants also expressed this view. Only basic service provision can be provided which is covered by the Development Facilitation Act yet the very same Act (which is to ensure an enabling environment for the facilitation of speedy settlement) appears ineffective in terms of addressing the struggle of the Schmidtsdrift community to have their claim settled.

By December 1998, there were 90 families living at Schmidtsdrift in informal housing who have relocated from Kuruman. 240 sites for housing construction have been pegged but plans

for their construction cannot be initiated due to the claim that has not been awarded. Interim measures are being employed that are proving to be extremely costly to government departments who do not have an alternative but to render a service to the people who have settled in Schmidtsdrift already. An example, of this is the Education Department in the Northern Cape, which has been spending R20 000 per month since January 1998 on transporting children from Schmidtsdrift to the adjacent town of Douglas, to attend the school in this town.

The legal process can, undoubtedly, be a form of protection for the beneficiary community but it also provides the space to those determined to obstruct the process as displayed by the actions of certain members within the SANDF.

There are, allegedly, some members of the SANDF in the Northern Cape who do not support the transformation process and have used the legal space to delay the actual legal transference of the Schmidtsdrift land. According to Cooper, a number of members at the Northern Cape SANDF base are not in favour of the transference of the Schmidtsdrift land to the Tswana community because it signals a victory for those who have been previously disadvantaged against the previously advantaged White communities under Apartheid.

Institutional defiance has become the modus operandi of the SANDF characterised by drawn out procedures for clearing Schmidtsdrift of land mines and other explosive materials used by the SANDF for training which has implications for the speedy return of the land to its rightful owners. Cooper also asserts that he has detected that certain elements within the

SANDF who have not fully accepted the claim lodged by the Tswana community is deliberately hampering the process by not granting permission for the development of Schmidtsdrift to proceed whilst awaiting the outstanding legal settlement of the claim and deed of transfer.

Cooper recognises that whilst it is difficult for the Department of Land Affairs to intervene constructively to address this situation because of the clandestine nature in which these members of the SANDF operate, he believes that the Department could find creative ways of dealing with this but are too under-resourced and overloaded to act decisively.

Cooper claims that the National Ministry of Land Affairs lacks the political will to address the situation as they are more occupied with in-fighting and having to maintain a public image of being in control of the process. Land restitution has been earmarked as an important area to address the current crisis of landlessness, and the Ministry would want to create the illusion of success as an open admission of failure by politicians would result in reprisals from the executive level of government. Cooper feels that mere lip-service is being paid by officials to address the situation by their admissions of delays and attempts to take corrective action in the media, as he has made several attempts to address delays on the Schmidtsdrift matter, which were ignored by top government officials.

The amendments to the Restitution of Land Rights Act No.22 of 1994 that allowed for the claims process to be handled administratively as opposed to being confined to a judicial

process were introduced at a stage where the Schmidtsdrift case was already being heard in the Land Claims Court. The court was therefore required to complete the process.

Lack of adequate institutional arrangements and project coordination

The problem of the absence of proper institutional arrangements to facilitate the land restitution process is an obstacle that is being faced by the Schmidtsdrift restitution case. It seems that despite the recognition of the government of this as a major challenge and the commitment it expresses to overcome this in reviewing its policy framework, the situation in reality is not being effectively addressed.

The implementation phase, in the Schmidtsdrift case, is being hampered by a lack of coordination between departments to finalise and agree on an implementation plan. The Department of Land Affairs is struggling to obtain sustained cooperation from other line departments who should participate in the development planning and contribute funds. There are conflicting views on the reasons for this. The Department of Land Affairs believes that other line departments do not regard land restitution as a priority and are hesitant to commit resources, contributing this to other “pressing priorities” (Snyders, 1998). Whilst, on the other hand, for example, the Department of Health and Welfare, believes that they are willing to support the programme if the Department of Land Affairs has a clearer strategy of what the health requirements for settlement are and steers the process in a programmatic and systematic way (Arendse, 1998).

The Provincial Steering Committee, according to Mrs. Molusi, had its last substantial meeting during the middle of 1997 when Asch consultants presented their master plan to departments and the phased relocation process was discussed. Since then the committee met with only a few representatives when there were crises to be handled, such as when people decided to relocate at the beginning of 1998 on the Schmidtsdrift land and basic service provision was urgently required.

The importance of a coordinator or project management team is thus essential for progress on land restitution. This is emphasised in the Riemvasmaak and Doornkop experiences, and in the Schmidtsdrift case the presence of project management team provided for a thorough planning process and development plan that is also required for managing the settlement process.

Budgetary constraints

Trust members, the NGO respondents and the consultants expressed the view that budgetary provisions by the various departments to deliver on land restitution are not being adequately or seriously considered. It is felt that this may be due to departments being already overburdened with delivery on their priority areas and the problem of land restitution not having been adequately built into the process of service delivery.

In the Northern Cape, for example, the Department of Tourism has recognised the potential which the Schmidtsdrift area holds as an ecotourism attraction because of the wild life and its ideal setting along the Vaal River. But the Northern Cape as a province requires considerable

marketing because of its dry and semi-desert climate that does not appeal to many tourists. For this reason the Department of Tourism has already allocated a large portion of its 1997/1998 budget to an overall tourist strategy for the Northern Cape, according to Dean Snyders, coordinator of the Northern Cape Land Restitution Pilot Project. This has implications for Schmidtsdrift in that ecotourism can only be seriously considered in the next financial year, which could affect local economic development for the area as ecotourism has been earmarked as a source of job creation for the beneficiary community.

The principle agent, Asch Consulting Engineers, on the planning phase was approached by the Schmidtsdrift Board of Trustees to project manage the development phase of Schmidtsdrift. They have expressed their willingness to do so but also on condition that funding for this will be secured, as there were endless delays with regard to the payment of the settlement planning that they conducted. The Provincial Department of Land Affairs contributed the delays to bureaucratic procedures and red tape between its office and the Department of Local Government and Housing, which administers the planning grant.

The issues raised with regard to the Schmidtsdrift land restitution case with regard to the obstacles and challenges faced by the beneficiary community is certainly not exhaustive.

However, the identification of some of these issues, it is hoped, may provide an understanding of not only the complexity of the land restitution process but also the realisation that real people, namely, the beneficiaries, are involved. People who have been subjected to much degradation in the past but who still display so much positive endurance despite fleeting moments of despondency.

CHAPTER 6

CONCLUSION

The new land policy clearly heralds a shift along with other policy initiatives, away from a prescriptive top-down rule-bound approach to service delivery and implementation to one that is participatory and which recognises the importance of building partnerships between government and civil society for sustainable development. But putting in place the formal policy framework is merely the start for the development and transformation process as a discussion on a review of the land claims and implementation process of the land restitution programme revealed. It highlighted a number of shortcomings such as budgetary and institutional problems that require corrective measures to ensure that the programme remains on track.

The Department of Land Affairs has made certain critical decisions to fast-track the restitution claim's process, such as an Amendment Bill allowing for the direct lodging of a claim with the Land Claims Court, but further corrective measures are required to ensure that the programme fulfills its stated objectives. For example, the annual budgets of both the Department of Land Affairs and the Commission on the Restitution of Land Rights need to be considerably, increased in relation to the increase in the pace of service delivery.

Appropriate institutional arrangements with a focus on departmental cooperation at national, provincial and local government level needs to be initiated as well as the implementation of

effective conflict management strategies to heal the rift that exists between the national Department of Land Affairs and the Commission.

Acute staff shortages that affect the capacity of the Department of Land Affairs and the Commission on the Restitution of Land Rights to deliver must be addressed by reprioritising and refocusing service delivery to core products in order to at least ensure some visible progress on the overall implementation of the land restitution programme.

The land restitution programme is critical to the transformation and reconciliation process in the country that can greatly contribute to nation building and engendering a sense of security and pride in the nation. A key focus of the programme should, therefore, be the people or beneficiaries of the land restitution programme. There is a need to improve their level of participation in decision-making processes pertaining to the land claims process and programme implementation. An example of this is the lack of access the Tswana community had to directly influence their restitution process at a legal level, as the consultants and lawyers became their sole spokespersons. There is therefore a need to include in spatial targets direct access by beneficiaries to organs of land restitution established by the government as a key objective to ensure that the programme make a real difference to the lives of those people it is meant to benefit.

The government can be commended for responding to the delays experienced in the finalisation of the land claims process by having introduced the Land Restitution and Reform Laws Amendment Bill of 1999 that allowed for claims to also be settled administratively as

opposed to only via the Land Claims Court. However, the proceedings of the Schmidtsdrift case continued to be heard by the Land Claims Court as the process was already underway and the court was therefore required to settle the claims process. The Schmidtsdrift community, therefore, did not benefit from the legislative amendments initiated by the new Minister, Thoko Didiza.

It is difficult to understand or even justify the hampering of the entire Schmidtsdrift development plan by the legal process. But more than this it is a travesty of justice that a community who has experienced the worst of this country's history of human degradation through forced removals must be put on hold by a legal obstruction. This is almost incomprehensible given not only the government's programme of reconstruction and development, but also the exorbitant cost implications and the unsustainable nature of this. The R20 000 spent by the Education Department per month is ludicrous in the light of the budgetary constraints government departments' face. This money could be put to more sustainable and effective use if a systematic approach is employed to overcome the legal constraints by all the stakeholders and a coherent plan to take the development process forward is formulated.

Key areas for the success of an implementation and resettlement strategy, extracted as lessons from the Schmidtsdrift experience, depend on the extent to which the following areas are addressed:

- Building the capacity of communities to ensure effective participation in decision-making and development planning;

- Ensuring effective cooperation between all stakeholders such as government departments, community representatives, NGOs, CBOs or consultants;
- Public service transformation and capacity building;
- Agreement from all stakeholders on a planning process that incorporates identifying the dimensions of development planning, and setting short, medium and long term objectives;
- The appointment of a coordinator or project management team to facilitate the process of implementation;

Finally, the challenge to the government is to recognise those factors that impact on the implementation process and to engage them in ways that will seek to enhance and foster development. This is undoubtedly not an easy task, which could be undone within specific timeframes and with prepackaged solutions. Clearly, when one is dealing with people, facilitation and flexibility are fundamental to a development approach that seeks to ensure and promote sustainable solutions to poverty and landlessness. However, the current situation of spiraling delays with regard to delivery on land restitution has to be urgently addressed to restore the faith of beneficiary's such as Mrs. Molusi, from the Schmidtsdrift land restitution case, that the government is in fact intent on reversing the current backlog to speed up not only the finalisation of claims but also the development of land for economic survival and sustainable rural development. It is hoped that the Land Restitution and Reform Laws Amendment Bill of 1999 will address the bureaucratic judicial process for many claimants even though it came too late for the Schimmdtsdrift community.

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APPENDIX 1: INTERVIEW SCHEDULE

1. Arendse, R., 10 July 1998. Former Assistant Director – Policy and Strategy, Department of Health and Welfare, Northern Cape Province.
2. Cooper, G., 21 August 1998. Director, Asch Consulting Engineers.
3. Letebele, B., 25 July and 29 September 1998. Executive member of the Schmidtsdrift Board of Trustees.
4. Manie, S., 28 September 1998. Project Manager, Asch Consulting Engineers.
5. Matthews, H., April 1999. Department of Land Affairs, Northern Cape.
6. Molusi, L., 29 September 1998. Member of the Schmidtsdrift Board of Trustees.
7. Sampson, J., 2 February 1999. Land Restitution Unit, Surplus People's Project.
8. Snyders, D., 17 August 1998. Project Manager, Land Restitution Pilot Project in the Northern Cape Province.