**STATUS REPORT RICHTERSVELD**

1. **PURPOSE**

To update the Portfolio Committee on the current status of the Richtersveld Sida! Hub Communal Property Association.

**2. BACKGROUND**

A community claim for restoration of rights in land lost was lodged by Mr Henk Smith (Legal Resources Centre) on behalf of the Richtersveld community before the closing date of 31 December 1998.

The land restitution claim was lodged for land mined and operated by the SOE, Alexkor Diamond Mine in Alexanderbay and state-owned land in the Namakwa District, Northern Cape Province.

The claim was referred to the Land Claims Court and a settlement proposal was presented to Cabinet for approval. The Minister of Public Enterprises entered into negotiations and this culminated into the signing of a Deed of Settlement and a memorandum of understanding with Alexkor in 2007. The then Minister of Agriculture and Land Affairs co-signed the Deed of Settlement and in principle, the undertakings and responsibilities of the Department of Land Affairs.

In 2009, the Department of Land Affairs ceased to exist and the Department of Rural Development and Land Reform was established. The Commission on Restitution of Land Rights, a branch in the Department of Rural Development established a task team in order to implement the Deed of Settlement which was made an order of court.

**Background Discussion**

The Richtersveld Community consists of various racial groups that resided together prior to the systematic and traumatic racially motivated dispossession of land.

At the time when the settlement of the restitution claim became a reality, the community was assisted by the Legal Resources Centre and formed their own legal entity known as the Richtersveld Sida! Hub Communal Property Association. The CPA verified and compiled their own list of beneficiaries and submitted same to the Commission and the Department.

Approximately 2,630 beneficiaries were verified in towns in Namaqualand such as Sanddrift, Kuboes, Lekkersing, Eksteensfontein and Alexanderbay. The verification was undertaken by the community leaders.

In October 2003, the Constitutional Court (Case Nr. CCT 19/03) concluded that the real character of the title that the Richtersveld Community possessed in the Richtersveld was a right of communal ownership under indigenous law. The content of the right included the right to exclusive occupation and use of the Richtersveld by members of the community.

The Deed of Settlement signed by the parties in 2007, directed that at least 2 Trusts and a number of companies must be established to manage and operate the various business operations of the CPA. The Richtersveld Investment Trust (RIT) is the sole shareholder in the Richtersveld Investment Holding Company (RIHC).

The financial compensation made available by the Land Claims Commission, was transferred to the Richtersveld Investment Holding Company (RIHC) as follows:

* R50m was transferred for development of the agricultural and mari-culture properties or for other developments which would benefit the CPA members;
* R190m was transferred to be grown and invested in terms of an investment policy and to provide an income for the Richtersveld Investment Trust; and
* R45m was transferred to the CPA for property development by the Richtersveld Property holding Company but which is to be managed by the RIHC).

The property compensation consisted of a number of farms, the land on which the local airport is situated, the township of Alexander Bay, and substantial mining areas. The total property portfolio of the CPA is considerable and amounts to approximately 195 000ha which is spread over a vast and diverse area. Some of these properties are used by Alexkor and rental is payable to the Richtersveld Property Holding Company.

The overall management of the compensation (land and funding) and the implementation structure thereof is extremely complex, as more than 50 directors are required in terms of the original statutes. This excludes members of the CPA executive committee. The undercurrents between these entities, which were created to protect the assets and the CPA, is regarded as one of the elements impacting negatively on the operation, survival and effectiveness of the CPA. Poor understanding of the roles of the various entities, and the limited communication between these entities and the beneficiaries of the CPA, is a major source of conflict.

In terms of the 2007 Deed of Settlement and the CPA constitution, the CPA was required to maintain the membership list. The management of this list is critical as it determines who has access to the resources of the CPA. As a result of the inability of the CPA to keep a proper register of members, the first of a number of court cases and other public disputes ensued from 2009, with the result that the Annual General Meetings of 2009, and 2010 did not take place as planned. Many ‘concerned’ groups mushroomed and aligned themselves either with the previous CPA executive members or Alexkor.

The result is that the CPA membership and the public perception grew that the Richtersveld CPA, the Trusts, and the Companies have become unaccountable, poorly managed and wracked by conflict. In addition, Alexkor has been involved in the affairs of the CPA and its structures in varying degrees. As partners in the Pooling and Sharing Joint Venture (PSJV), there seemed to be no sharing and no understanding of roles and responsibilities.

**The Commission’s Intervention**

Towards the end of 2011, due to a number of allegations against the CPA leadership and instability within the community, the Office of the Regional Land Claims Commissioner: NC, approached the Land Rights Management Facility (LRMF) to appoint a panellist to compile a fact finding report.

The fact finding report highlighted that the CPA is faced with a myriad of problems relating to lack of governance, lack of reporting to the broader community, lack of financial management skills and lack of general business skills. In addition, most of the structures established in terms of the Deed of Settlement to manage and protect the vast asset base of the CPA was non-operational.

The report however, found that generally, the Richtersveld Sida! Hub CPA is compliant with the CPA Act. However, the distrust amongst the members of the CPA and the resultant disruptions and litigation, meant that the CPA continued to struggle to meet its objectives. Despite the solid work and conciliatory approach of the Receiver (appointed by the High Court in 2011) to build unity, it is evident that the elected Committee was once again divided and needed support to develop the leadership required to rise above personality clashes and entrenched positions of the various concerned groups.

The extremely high level of expectations and frustrations of members of the community, and the inability of the CPA to meet these expectations through its existing structures, and human capacity, required that external assistance be introduced sooner rather than later.

It was abundantly clear that a long term approach is required to untangle the knots within the community and between all the role-players. It is also clear that Alexkor continues to play a major role in the continuous in-fighting between the community members and the CPA leadership. The corrective actions to be undertaken will require a number of resources (financial and human capacity) in order to broker peace and stability within the community.

**Status since 2011**

The Richtersveld CPA Committee has since its reconstitution in July 2011 consisted of two streams – those who had opposed the previous Committee and those who were on the CPA Executive Committee in 2010. The Land Claims Commission had since 2011 implemented a programme of regularization, and concerted attempts were made to align the CPA and its general members around a common goal and to unite the various factions.

Unfortunately, all the Richtersveld entities have been in a state of limbo for some time, especially since the Trust (RCT) indicated that they are unable to cover the operating costs of the entities to the extent that it had done previously. In addition, all the entities (except the CPA) suffered from a perpetual high vacancy rate. The Richtersveld AGM of 29 June 2013 resolved that all the vacancies in the various companies must be filled, and that one representative per town must be elected. In addition, it was decided that the Richtersveld Municipality would also replace their representative.

The term of office of the CPA committee came to an end and it was decided to have new elections in September 2013. The election process was to be managed by the IEC Northern Cape, and a policy was developed to ensure that candidates met certain criteria. The Regional Land Claims Commission requested the panellist, Mr. Fife to assist with the election process on behalf of the department and to assist and support the newly elected committee.

Immediately after the election of the CPA Committee on 14 September 2013, a difference of opinion arose regarding the process to be followed to elect the Chair and Vice Chair of the CPA.

The CPA leadership was spilt on this matter and therefore, the panellist enlisted the assistance of the LRMF who indicated that a legal opinion be sought on this matter. The legal opinion from Mr Roger Chennells (Chennells Albertyn Attorneys) indicated that the CPA leadership is well within its rights, in terms of the CPA Act, to elect the chairperson and vice chairperson. In fact, this is common practice.

There seemed to be agreement and consensus within the CPA after the legal opinion was rendered. However, before a date could be arranged for a CPA meeting, and after certain CPA members lobbied for support within the community, the agreement unravelled.

The Department was requested to intervene and a letter was sent to the CPA requesting that the legal opinion be respected and implemented.

Furthermore, correspondence was sent to the Northern Cape CD: Provincial Shared Services Centre of the Department of Rural Development and Land Reform (DRDLR) and the CD: Restitution indicating that the CPA members are deadlocked into the two positions and that the difference in opinion is splitting the broader community once more.

A CPA meeting was convened on 11 October 2013, a day before the proposed general community meeting to try to resolve this impasse and make the department’s position clear.

After a lengthy debate, the CPA committee elected the two key leadership positions. It was resolved in the meeting that the general meeting scheduled to take place the following day would be cancelled and a community meeting would be held later in October 2013 to introduce the new CPA committee members.

Furthermore, it was resolved that the new committee members would work together to bring peace, stability and unity to the community and that the notion of ‘settling old scores’ would be abandoned.

Unfortunately, after all the time and effort of electing a new CPA, attempts to reconcile the members and ‘healing’ that has taken place since 2011, dissent, bickering and unhappiness and frustration from the ‘old guard’ reared its ugly head. In November 2013 and December 2013, conflict arose within the CPA once more and spilled over into the communities of the various towns. It would seem that the ‘old guard’ were unwilling to relinquish power and caused strife and rebellion within the community since it became clear that they were no longer eligible to hold key positions within the various structures reporting to the CPA and that they would no longer receive salaries.

The panellist tried to mediate and broker an agreement, but the battles raged on and a resolution seemed hopeless.

One of the key challenges since 2012 was the high number of vacancies in the other 8 structures which make up the Deed of Settlement implementation structure.

The IEC: Northern Cape managed the elections during August and September 2013.

A number of independent Directors and Trustees were to be nominated by the Richtersveld CPA to the above Company and Trust Boards.

It is evident from the Entity elections that extensive change has taken place within the Richtersveld leadership. This has led to a great deal of uncertainty, and has impacted on organizational memory and stability. Whilst regularization of the CPA was achieved, tensions within the CPA Committee remained and reached a high level after the August and September 2013 elections.

A number of former and current CPA Committee members are alleged to have interests in the operations of the Pooling and Sharing Joint Venture (PSJV), as well as the Richtersveld Mining Company (RMC), and the Richtersveld Rehabilitation Company. This has impacted on the relationship between the CPA Committee, the Richtersveld Trusts and Companies, and Alexkor.

It has been noted during interactions with the CPA Committee and during an interview with the Richtersveld Investment Trust that inter-institutional relationships and communication are at an extremely low-level. Dissatisfaction, mistrust and loathing reared its ugly head once more.

These tensions between the institutions and Alexkor have cascaded to community level as numerous attempts have been made by members to remove the CPA Committee since mid-November 2013. The tensions are linked to disputes within and between the various entities which should be reporting to the CPA but are clearly not. The institutions, especially the Richtersveld Investment Trust refuse to acknowledge the over-arching authority of the CPA.

The CPA Executive Committee is divided into many ‘camps’ and so is the community at large.

According to the current CPA committee, those seeking to oust them are using devious methods to obtain support from community members. Some of these methods are buoyed by Alexkor.

Substantial progress has been made in the filling of the vacancies in the Richtersveld Entities. However, governance policy and practice needs substantial enhancement across all the Richtersveld entities. The relationship between the entities was on the decline due to the changes in leadership and general mistrust among members.

Poverty and unemployment remains rife within the community and the fact that the perception has been created that only some are benefitting has been causing more conflict and this has escalated in some instances to violence.

Even though conflict exists within the CPA, it seems to be less about the CPA and more about the battles taking place between the RMC and Alexkor.

During February 2013, oversight visits were undertaken by the then Deputy Minister of DRDLR, Mr L Tsenoli, Deputy Minister of Public Enterprises, Mr Magwanisha and Deputy Minister of Mineral Resources, Mr G Oliphant, Deputy Land Claims Commissioner, Mr T Mdontswa and departmental officials to the various towns in the Richtersveld. The objective of these sessions was to gauge the ‘mood’ of the beneficiaries and to resolve some of the conflict.

It was apparent that regular meetings were not held. The beneficiaries were adamant that they must be paid the dividends of the investment (R190m) made on their behalf.

The following resolutions were taken after the oversight visits:

1. It was resolved that a Stabilization Plan would be drafted and implemented by the stakeholder departments (DRDLR, DMR, DPE).
2. It was resolved that a legal opinion would be sought by the DPE with regards to the payment of the interest from the investment to the beneficiaries.
3. It was resolved to conduct a forensic audit on the dealings of any and all governance structures since the implementation of the Restitution award.
4. Normalisation of the governance structures and community workshops would be conducted in order to workshop beneficiaries on what is contained in the settlement agreement.
5. Implementation of development initiatives, such as the recapitalization and development of all the once thriving farms, etc.

Unfortunately, most of the resolutions were not implemented. However, the legal opinion sought by the DPE was very clear in that the beneficiaries could not be paid out the interest of the R190M investment (amounting to approximately R40m). The Deed of Settlement, which was signed in Parliament, will need to be redrafted and amended in order to consider such a payment. Therefore, the decision was that the payment will not be considered.

Various political principles attempted to meet with the Richtersveld community in order to mediate the ever present conflict. These attempts are successful for a little while and soon after conflict erupts again.

A number of subsequent meetings were held between DRDLR, the Commission and DPE attempting to unlock/unblock the conflicts that seem to be never-ending.

During one of the meetings, it was decided to establish a task team between the Commission, DPE and DRDLR to deal with the issues in the Richtersveld. The task team will report directly to the Deputy Minister of DRDLR and the Deputy Minister of DPE.

During this time, the CPA Executive Committee started enquiring when Alexkor would be paying the R45M due to it in lieu of rental of the properties used by Alexkor. The community rallied their efforts and anger towards Alexkor for failure to pay the R45M. The Minister of DPE, Ms L Brown, scheduled a meeting towards the end of October 2015 with Alexkor, some of the Richtersveld entities and the Commission to determine why the problems in the community continue to persist and why Alexkor is cited as causing more harm than good in the community. Alexkor indicated that they are unable to disburse the R45M due to persistent leadership problems within the Richtersveld and the fact that the Richtersveld Property Holdings Company that is supposed to receive the money, is not properly constituted. Minister Brown requested that the issues must be resolved immediately in order to ensure that the R45M is paid before 25 December 2015.

The community remained divided, especially since those within the community that long wanted to oust the CPA executive saw this as an opportunity to garner support from the community at large. It was made to seem that the current CPA executive was unable to ensure that the community receives what is due to them.

A meeting was held with the State Attorney in Cape Town charged with the registration of transfer of the properties as well as the payment of the rental from Alexkor. During this meeting, Alexkor again stated that they are unable to disburse the money since the Property Holdings Company is not properly constituted and the Directors are not properly trained to receive the money, they also declared that the tax implications for Alexkor must first be clarified. They posed the question whether the Deed of Settlement made provision for the funds to be disbursed to each individual beneficiary. The CPA raised their concerns and those of the community and they alleged that Alexkor are using delay tactics to pay what rightfully belongs to the community. They indicated that the community is at the end of their tether and are eagerly awaiting the payment of the R45M. The community has not yet received the benefit of the settlement of their land claim. At least the payment of the R45M by Alexkor to the beneficiaries will bring some relief to the devastating poverty. However, it was resolved that the Deed of Settlement (DoS), which was made an order of court, states that the R45M must be paid to the Property Holdings Company and it is not legal to decide which clauses of the DoS to adhere to and which clauses to ignore. Therefore, in order for payment to be made to any other institution other that the Property Holdings Company will constitute a breach of an order of court and cannot be entertained. During this meeting it was decided that the Deed of Settlement must be amended and that the community must be part of this process.

The dissident group is continuing to cause havoc in the community. They appointed legal council in order to oust the current CPA stating that the term of the current CPA has come to an end and therefore they are no longer a legally constituted CPA. This group has written a number of letters and called a number of meetings with various groups seeking support for their dubious plans.

It is a known fact that Alexkor has been reporting losses in their mining operations even though they are seeking to renew their mining agreement with the Richtersveld Mining Company (RMC), the Pooling and Sharing Joint Venture (PSJV) and other structures. Alexkor has been supporting certain activities and certain CPA members in order to gain support for their activities.

The CPA Committee has been operating without operating funds for the past two years since the various Trusts and Alexkor refused to fund them as they have been doing in the past. The CPA has not been enjoying support from stakeholders and yet they are expected to manage a large business empire.

**Current Status - 2016 to date:**

The Internal Audit Unit on the DRDLR conducted a forensic investigation into the financial affairs of the CPA. The report has been concluded and forwarded to the Minister. The report recommends that a comprehensive forensic audit of all the Richtersveld institutions must be undertaken by an independent company. The external independent audit has not yet commenced an instruction from the Minister is awaited. An external audit must be commissioned by following the tender procedures due to the nature and extent of the audit.

The CPA was regularized by the Commission and found to be generally compliant with the CPA Act except for regular communication with the general members of the CPA and on-going internal conflict. The term of office of the CPA Executive members have expired and an elective AGM was planned for April 2016. However, the CPA was unable to convene the AGM due to lack of resources and the unrelenting infighting between members.

There is on-going litigation between various members of the CPA and the CPA executive. As soon as an agreement is brokered, it unravels due to mistrust and miscommunication.

There is much confusion in the community and because of the perception that only a select few are benefitting either through Alexkor or the Richtersveld structures, the conflict is escalating once more.

The community is adamant that they are ‘rich poor’ people because they have funds tied up in the Investment Trust as well as rental funds owed to them by Alexkor.

The PSSC: NC arranged a pre-elective AGM meeting for 20 October 2016 in Port Nolloth to check the readiness of the CPA to hold an AGM. The meeting did not take place as the executive committee members of the Richtersveld Sida! Hub CPA did not attend.

A task team has been established between the Land Claims Commission, the Department of Rural Development and Land Reform and the Department of Public Enterprises. There has been a number of tangible results thus far in that all meetings with the CPA are attended by task team members and resolutions are implemented. The CPA now has an avenue where there complaints are heard and issues relating to Alexkor are dealt with swiftly.

The Department of Public Enterprises (DPE) contacted the Commission with regards to the payment of the R45M owed by Alexkor to the Richtersveld Property Holdings Company. In terms of the Court Order (Deed of Settlement), Alexkor must pay the R45M in lieu of the use of the properties in Alexanderbay. Alexkor is ready to transfer the funds but the community insists that the funds must be disbursed to individual beneficiaries.

The Commission scheduled a meeting with the CPA executive on 19 April 2017 in Springbok to discuss the payment of the R45M. The Executive once again reiterated that the R45M must be paid directly to each beneficiary because they have not yet received any benefit from the settlement of the claim. In addition, government is holding on to the R190M that was part of the settlement of the claim. The R190M has gathered interest and none of the beneficiaries benefitted from this.

A community meeting was held on 13 May 2017 in Alexanderbay where the matter of the payment of the R45M from Alexkor was tabled. The majority of the general members resolved that the R45M must be paid directly to the beneficiaries (approximately 3000 beneficiaries).

The Commission explained the process as follows:

1. The beneficiary list as at end of 2014 (when the last AGM was held) must be verified by all stakeholder departments (DPE, DRDLR, RLCC and the CPA).
2. A variation order must be sought from the Land Claims Court in order to amend the Deed of Settlement (Court Order).
3. Payment will be made electronically via Absa Bank and therefore all beneficiaries must submit certified banking details.
4. Once the R45M has been paid, there will be no ‘slush’ fund to pay any other person that was not on the beneficiary list as at December 2014.

Verification of the beneficiary list was conducted in July 2017 in all towns (Alexanderbay, Kuboes, Eksteensfontein, Lekkersing, Sanddrift and Port Nolloth). Documents were submitted by members. The final verification lists will be signed off by the stakeholder departments and the CPA on 21 September 2017 in Alexanderbay. These lists will form part of the court papers.

A meeting was held with the State Attorney, Senior Advocate R William, Advocate B Joseph, the DPE and the RLCC on 15 September 2017 in order to discuss the variation order sought. Counsel indicated that it will not be an easy feat since we must indicate on what basis we are seeking the variation to the court order and whether circumstances has changed such that the payment must be made to individual beneficiaries. In addition, Counsel advised that the CPA must be the applicant in this matter and not DPE.

The community at large insist on payment to individual beneficiaries and the changed circumstances relate to the fact that the Property Holding Company is dysfunctional and cannot be properly constituted because there has been no AGM or elections.

During the meeting with the CPA in September 2017 in Alexanderbay, it became apparent that the CPA lacks the proper skills to manage the its vast assets base and has no meaningful asset register.

The Commission on Restitution of Land Rights has fulfilled its obligations in terms of the Deed of Settlement which was made an order of court in 2007. The most notable outstanding matter relates to the payment of the R45M due by Alexkor and the concomitant transfer of the properties from Alexkor to the CPA.

**Recommendations for Intervention:**

In light of the discussion above, it is recommended that:

1. The task team established between DRDLR and the DPE is supported by the two Departments, led by Land Tenure Administration,
2. A ‘Rescue/Communication Plan’ must be compiled by an independent panellist or Transactional Advisor/s and should consider the key elements of a governance enhancement programme which goes beyond the Richtersveld Mining Company and the CPA since all the institutions need to cooperate and align themselves in the interest of improving the livelihoods of the Richtersveld community,
3. An AGM and elections must be held urgently in order to elect a new executive.
4. The DRDLR to request the LRMF to nominate a panellist to serve on the CPA on behalf of the Department, or alternatively, the Department nominates and official to serve on the CPA,
5. The DRDLR and the DPE to work in collaboration to resolve the strife within the community and to workshop the amendments to the Deed of Settlement,
6. The DRDLR and the DPE to draft a Terms of Reference for the appointment of a Project Management Team which includes a Transactional/Institutional Adviser to unravel the knots and tensions between all the structures and to work with the panellist to resolve the unrelenting conflict within the CPA structures and the community at large.
7. The Project Management Team must compile a training schedule to ‘upskill’ the CPA executive members.
8. A community meeting must be scheduled with the Minister of DRLDR and the Minister of DPE in order to communicate the above action plan.

**END**