



PUTTING JUSTICE INTO PRACTICE: COMMUNAL LAND TENURE IN EBENHAESER, SOUTH AFRICA, 2012 – 2017

BACKGROUND

In 2009, South Africa's program to restore the land rights of citizens who had been deprived of their communal land under the system of racial apartheid was stalled. With no legal framework in place to guide land transfers in the former blacks-only so-called homelands, newly appointed land reform minister Gugile Nkwinti turned his attention to former communal "coloured reserves," which had been created under apartheid for exclusive use by mixed-race people.

Land reform ministry officials selected the community of Ebenhaeser, on the arid west coast of the Western Cape province, as a rural flagship project. The aim was both to transfer to the 2,100 community members the land held in trust by the government and to settle a long-standing restitution claim. In 1925, the whites-only government had evicted the coloured community from the most fertile lands along the Olifants River valley and resettled people on inferior land.

Turning the impoverished residents of Ebenhaeser into independent landowners required active involvement by officials of the national restitution commission, the provincial land reform office, and the local municipality as well as residents and the white farmers whose lands were being claimed.

REFORM STRATEGY

In 2012, Michael Worsnip, head of the Western Cape land restitution commission, brought all of the stakeholders together and reinvigorated a project steering committee. The group developed a plan that integrated different aspects of the tenure reform project.

The restitution commission took the lead on investigating and restoring Ebenhaeser's ownership over the fertile valley farms, which were owned by commercial wine farmers at the

KEY ISSUES

- **Strengthening communal tenure security**
- **Restitution of land rights**
- **Communal land administration**

time. Officials of the provincial land reform office appointed David Mayson, a private land rights expert at Phuhlisani Solutions, a Cape Town consultancy, to organize the community and design a land-use management system for the existing communal land.

ACTIONS TAKEN

Starting in mid 2012, Mayson began meeting with Ebenhaeser residents to establish a communal property association (CPA), which would represent the community on the project steering committee. Title deeds for the commercial and communal land would be registered in the name of the CPA, which would become the entity responsible for Ebenhaeser's land administration.

The first step was to draft a CPA constitution stipulating that every fulltime resident 18 years of age or older would be a member of the association. After the constitution was adopted by referendum in late 2013, community members elected a 17-member CPA executive committee charged with overseeing the tenure reform process.

With the CPA in operation, Mayson guided the community in drafting and submitting a land development plan. The plan detailed the extent of the restitution claim. It outlined how the CPA intended to manage the commercial farms obtained through restitution. And it called on the land reform ministry to provide \$9.6 million in business support.

Based on its examination of title deed records and historical documents, the restitution commission ruled in favor of the claimants in 2014—although the scope of the claim was somewhat reduced. During a ceremony attended by Minister Nkwinti, the ministry signed a \$26-million settlement agreement with the CPA. In addition to promising to transfer 1,919 hectares of government-owned land (down from 3,861 hectares in the original claim), the agreement committed the ministry to using a portion of the \$26 million to buy and transfer to the CPA 44 commercial farms covering 1,566 ha (down from the original claim’s 53 farms covering 1,606 ha).

The commission’s next task was to negotiate with the 44 affected farmers to sell their land to the ministry, which would then transfer the farms to the CPA. But the commission was able to convince only 22 farmers to become willing sellers; the remaining 22 took the commission to court to challenge the extent of land included in the settlement. In early 2017, the case remained in the hands of the land claims court.

Despite resistance from some farmers, the CPA worked closely with the restitution commission, the deeds registry, and the land surveyor general to purchase its first farms. In December 2016, Ebenhaeser’s CPA became the legal owner of nine commercial wine farms.

The next step was to create a detailed plan that set forth how the CPA would administer land use once it also became legal owner of its 18,288 hectares of existing communal land. With input from consultants, CPA leaders conducted a land-rights inquiry and designed a system of irrigation of plots and allocation and management of grazing areas.

RESULTS

The CPA was scheduled to vote on whether to adopt the land-use plan during a meeting in mid 2017. The move would pave the way for Ebenhaeser to also obtain its 18,288 hectares of communal land. By early 2017, the CPA was also hard at work on harvesting its first grapes on the nine commercial farms it now owned. But by March 2017, lack of post-settlement support from the land reform ministry threatened to undermine the CPA’s ability to use the land productively. Whereas the Western Cape agriculture department attempted to fill the gap by providing infrastructure and mentoring support, a lack of funding for basic equipment and salaries plunged the community into renewed uncertainty. And although the project made strides in enhancing the community’s land tenure, doubts remained concerning the residents’ ability to use their newfound security.

LESSONS LEARNED

- A legal framework to guide tenure reform in communal areas is vital. The lack of a law to guide the process in the former homelands made it nearly impossible to make any progress in those regions.
- In many of the communal areas of South Africa, the key question is whether traditional leaders should become legal landholding entities. Despite the lack of capacity that hampered many CPAs, Ebenhaeser’s experience offers an alternative to granting legal ownership to traditional leaders.
- A strong, high-level project steering committee was critical for driving implementation. The project required cooperation between a range of different stakeholders. And the creation of a central venue encouraged that collaboration.
- Providing communities with financial and human resources support after they obtain ownership over communal lands is crucial. Documentation proving they were landowners was not enough to immediately enable the Ebenhaeser CPA to use its land productively or access credit.

For related interviews and in-depth analysis of the Ebenhaeser land reform project, see the full case study:

<https://successfultsocieties.princeton.edu/publications/communal-land-tenure-ebenhaeser-south-africa>

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