

CASE STUDY

Limpopo Province, South Africa

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Community association succeeds in securing land thirty years after dispossession

Between 1941 and 1965 communities in the Capricorn District Municipality, Limpopo Province, were dispossessed of their lands. Members of the community were issued 'trek passes' when they refused to become labour tenants on the land they occupied. These passes were old apartheid style documents formalising forced removals. As a consequence, the communities were forced to scatter and relocate. Marobala-O-Itsose Communal Property Association (CPA) was set up in 2003 to address the claim lodged by these communities to reclaim their lands. Nkuzi facilitated the processes to merge the claims into one community claim. In 2004, the community witnessed the restitution of the land, regaining control over their land after thirty years of struggle.

PRINCIPAL ORGANISATIONS INVOLVED

Nkuzi Development Association

Marobala-O-Itsoše Communal Property Association (CPA)

LOCATION

Appelfontein, Boomzien, Combro, Inderhiken and Potsdam in Mogwadi town, Molemole Local Municipality in Capricorn District, Limpopo Province, South Africa

TIMELINE

1996-2003

TARGET AUDIENCE

Policy makers, civil society organisations and communal land governance structures

KEYWORDS

Trek passes, apartheid, eviction, community mobilisation, restitution

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GOOD PRACTICES

towards making land governance more people-centred

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This case study supports people-centred land governance as it contributes to:

- Commitment 3** Recognize and protect the diverse tenure and production systems upon which people's livelihoods depend
- Commitment 7** Ensure that processes of decision-making over land are inclusive
- Commitment 8** Ensure transparency and accountability

Case description

Background issues

Between 1941 and 1965 the community of Marobala-O-Itsoše in north-eastern South Africa, was dispossessed of their land after people refused to become labour tenants on the land they occupied. As a result of this, community members were issued "trek passes" - old apartheid style documents formalising compulsory removals¹ - and forced to relocate to various parts of South Africa, including Moletjie, Mohodi, Bochum, Botlokwa and Mpumalanga province. Over 30 years later, on 2 July 1996, Marobala-O-Itsoše community lodged a claim.

More specifically, the claim was lodged by Molatelo Frans Mathopa, who was chair of a committee elected to bring forth the land claim of five farms: Appelfontein, Boomzien, Combro, Inderhiken and Potsdam in Mogwadi town, Capricorn District, Limpopo Province. The committee was elected concurrently as the gathering and verification of data was underway. The committee was then converted into the Marobala-O-Itsoše Communal Property Association (CPA), established in 2003.

National and local context on land dispossession

The military defeat of Africans in the early 1900s led to their systematic and planned land dispossession through the colonial government's institution of the infamous

¹ A trek pass is a document signed by the former apartheid rulers that was issued to blacks to allow them to move from one designated place to another for particular purposes - usually resettlement and travelling. They were permits issued to regulate black people's movement. If one was to be found in an area designated for whites, authorities would require this person to produce a trek pass or permit. If one was issued such a document for relocation purposes, authorities would ask for the permit in the new place and keep it as proof that one had been authorised to relocate.

Natives Land Act 27 of 1913. Through this Act of parliament the colonial authorities ratified and legalized the exclusion of South Africa's indigenous black majority from land ownership in favour of the white minority, thereby outlawing at least two of the forms of tenancy which had been practised on a wide scale by African farmers - rental tenancy and share-cropping. This resulted in the displacement of African tenants on a massive scale, a displacement which has been described as a mass removal to nowhere.

The designated spaces allocated for Africans amounted to only 13 per cent of South Africa while the white minority was given about 80 per cent of the rich, fertile lands. As a result millions of indigenous people were uprooted from their ancestral lands, often with deliberate cruelty and without compensation. This legacy of land dispossession is still an issue of great contention in contemporary South Africa. Life in these areas is characterised by dire poverty, poor education, violent crime, illiteracy and dissatisfactory service-delivery. In post-apartheid South Africa the land question and the issues of equity and economic justice are central to debates about political and socioeconomic transformation and development of the South African society.

When the 'New South Africa' was ushered in through CODESA, the land question was not resolved. The new constitution which came as a result of the CODESA agreements has not gone far enough to resolve the land question. Between 1994 and 1998 the government brought in a legal framework for land restitution and distribution, allowing people to claim land previously owned by them. Section 25 of the constitution allows expropriation of property in the public interest, and Section 25.4 (a) and (b) states "the public interest includes the national commitment to land reform, and reforms to bring about equitable access to all South Africa's natural resources and property are not limited to land". Section 25.5 empowers the state to "take reasonable legislative and other measures within its available resources to foster conditions which enable citizens to gain access to land on equitable bases". However, land repossession by those whose land was taken away is not normally recognised as a matter of "public interest".

In addition, restitution has been turned into a willing-buyer/willing-seller agreement, whereby "willing-buyers" are the landless aspirant farmers under the redistribution programme. Clearly, a misnomer, since they are not willing, but coerced through the Settlement and Land Acquisition Grant (SLAG) and later the Land Redistribution and Agricultural Development (LRAD) grants. The land for restoration is designated in terms of The Restitution Act of 1994.

The Marobala Community is one of the communities that claimed land before the 31st of December 1998.

Solution

The Marobala-O-Itsoše Communal Property Association (CPA) was established as a legal entity in charge of overseeing and administering land after the settlement of the claim by the Regional Land Claims Commission.

Immediately following the lodgement of the land claim, Nkuzi began engaging with Marobala-O-Itsoše community on governance matters. At the time there were several land claims that had been brought forward by individuals. Nkuzi facilitated the process and brought together separate land claims as one. This was because many individuals

who brought forward land claims, actually mentioned other families with whom they lived on the claimed land. This presented a chance to merge all claims into one, giving them more weight together. The Land Claims Commission was established to manage this process, and did so smoothly.

On the 31st of January 2004, Marobala-O-Itsoše community saw the restitution of 7147.7195 hectares of land to its community. This initiated a new era of community integration and participation in community development initiatives of job creation, livelihood security and communal governance.

Nkuzi together with the CPA achieved the restitution of the lands through the following efforts:

- Transportation of community leaders to staged sit-ins in provincial and national offices of the Department of Land Affairs, now Department of Rural Development and Land Reform.
- Facilitation of claimant verification processes - this was done in a participatory manner to ensure that the elderly members of the community, who witnessed the dispossession, could serve as key assets to the process.
- Mapping of the claimed land.
- In loco inspection to verify boundaries.
- Collection and documentation of oral information to support the land claim.
- Organisation of workshops in order to allow the community to make an informed decision on the land holding entity to set up after the restoration of land, in case they got their land back. The community was informed of various options. The key ones were Communal Property Association (CPA) and Trust. The legal entity option of their choice would assist to facilitate registration and transfer of land into the name of the group and they would have either a committee or trustees to govern such matters. Marobala-O-Itsose land claimants opted for a CPA and to date their land is registered and administered by the CPA committee which is elected every 3 years.
- Facilitation of the drafting of the CPA's constitution, registration of the CPA, holding of community elections. Community members elected amongst themselves the people to become committee members. This was done in a dedicated meeting called during one of the general community meetings held during the year.
- Organisation of workshops to discuss settlement options to ensure that claimants were equipped to make an informed decision - the options were restoration, alternative land and financial compensation.
- Support to the first CPA committee to ensure that CPA complied with the regulatory requirements.
- Support to the CPA committee to compile reports - both narrative and financial - on the matters of competence of the CPA.
- Support to the committee to regularly update beneficiaries and verify claimants in consultation with a panel of elders during general community meetings.

Activities

1995-1998: Lodgement of land claims and first interaction with Marobala-O-Itsose

Nkuzi's work with the Marobala-O-Itsose community begun with the lodgement of the land claim by individuals and groups in the area of Makhado, a town north of Polokwane. In September 1997, the work extended to Polokwane itself.

At this time, several individual claims were lodged and Nkuzi facilitated the processes to merge the claims into one community claim, once it became clear that the different individuals were in fact lodging separate claims from the same area of land. During this time Nkuzi also supported potential claimants in Limpopo province to lodge claims before the cut-off date of 31 December 1998. Nkuzi led the campaign in Limpopo province, which was put into effect in collaboration with the Commission of the Restitution of Land Rights (CRLR), with offices in Pretoria.

Following this, the processes to expedite the land claims were initiated. Documents and relevant information required for the settlement of the claim were collected. In addition, activities of in loco inspection, mapping exercises, claimant verification, settlement options and land holding options, began to take place.

1999-2001: Community-led campaigns

In this timeframe, the main activities included community organisation, mobilisation and dialogue focused on the necessity to prioritise rural land claims, given that the government had already begun addressing the urban land claims. The land claimants were supported by Nkuzi to stage sit-ins in government offices and organise marches. Provincial conferences were organised where government representatives were invited and asked to report on their plans regarding rural land claims.

In addition, land claimants were supported in their interaction with landowners, the government and other key stakeholders with the purpose of expediting their land claims. Social movements and religious organisations were also involved in this process. Land claimants were also involved in learning exchanges with South African land rights organisations as well as with international ones such as the Brazilian Landless People's Movements (MST).

2002-2004: Results beginning to show

Finally, the land claimants from Marobala-O-Itsose began to have their demands heard by the government. With the assistance of Nkuzi on matters such as claimant verification and legal entity-CPA registration, workshops were conducted to prepare the group for productive land use. In February 2004, the claim was settled. The first CPA committee was supported to ensure that there was compliance with the requirements.

The CPA Committee

From the establishment of a land claims committee to the establishment of the CPA, the community elected its leaders from within its own members. The community was decisive in determining who should lead the CPA. Community members also participated in the drafting of the Marobala-O-Itsose CPA constitution. Because community members were involved in committee elections, there was a pervasive sense

of ownership of the process and outcome of the elections that was empowering to the whole community.

The elections of new committees - renewed every 5 years - took place in 2004, 2009 and 2014. Not all community members are eligible to vote. Each household is afforded a vote, as established by the constitution. This is so as to create an egalitarian system among households, where big households do not overpower small households. This upholds the values of democracy and fairness, which are at the foundation of the Marobala-O-Itsose community.

Verification takes place transparently, during a general meeting where members are expected to confirm each other as rightful claimants. Claims are verified with the entire membership, especially with the elders who witnessed the removal personally.

Land use and land allocation for community members are also strongly linked with membership involvement. The executive committee is tasked with implementing and reporting back to the members on decisions regarding land use taken at meetings. Records are kept with the committee concerning allocations and beneficiaries are informed of all decisions taken.

Annual general meetings are prescribed by the CPA constitution. The Marobala-O-Itsose committee follows this constitution and members are kept informed on the state of general operations and financial matters of the CPA through reports issued to them. These reports are then submitted and kept by the Department of Rural Development and Land Reform of South Africa.

Importance of the case for people-centred land governance

This case shows that an action taking place 30 years after land dispossession can prove successful when there is a concerted effort. The Marobala-O-Itsose community grounded their work on a participatory egalitarian system, which enabled all members of the community to take part in decision-making with regards to the land claim. This was a fundamental key of their success. This experience is as an example for other CPAs wanting to replicate the same model of compliance by the land governance structures, which are mainly formed by land reform beneficiaries.

Changes

Baseline

More than 5 individual land claims were lodged on the Marobala farms. The claims were lodged without prior consultation with other rightful claimants due to pressing deadlines and because people lodging them did not know how and where to locate these other claimants. It was only during the claimant verification process that it was understood that the individual claimants had lodged their claims on behalf of the community but

without any mandate to do so. Some of the individual claims fell off as they were not valid and were without prima facie evidence that people had been dispossessed of land rights due to government laws.

Achievements

On the 31st of January 2004, Marobala-O-Itsoše Community witnessed the handover of 7147.7195 hectares of land back to its community. This huge achievement was the result of decades of work and of the involvement and participation of community members. It led to important changes such as better livelihood security and community governance.

The CPA became an established institution holding regular meetings and annual general meetings. The CPA committee elections are held at the expiry of the running committee's term resulting in the change of the committee leader. Today the CPA also has smaller subcommittees to ensure the effective functioning of the main committee. These subcommittees address key relevant areas of work that have to do with land, including work relative to poultry, vegetables and livestock.

Evidence

Key achievements resulting from the implementation of this case include the CPA coming second at a national good governance competition and being awarded a prize of Rands 100,000. On the 4th of October 2014 at the Vumelana award presentation, the Marobala-O-Itsose CPA was recognised by the government as one of the best CPAs in South Africa, a recognition that emerged from the comments of the chief director responsible for land claims in Limpopo province.

Article in a regional newspaper - Polokwane Observer (2015) *Marobala-O-Itsose wins 2nd Prize of Vumelana* www.vumelana.org.za

Lessons learned

Lessons for civil society

A crucial lesson for civil society is that achieving community empowerment requires that all members of the community are reached and engaged with. This implies that civil society be able to support communities to achieve their own goal and become agents of their change, rather than rely on civil society organisations to act for them.

In this light, transparency and ownership of the processes can also be achieved when the community is involved in decision-making as well as in other CPA initiatives. Awareness of the processes and participation allow for members to avoid feeling estranged from the outcomes and hence minimise conflicts that could otherwise erupt.

Dissemination of information is a process that should be viewed as a sustained effort, not a one off event. Both civil society and policy makers have a responsibility to continue to dispense information to citizens.

Lessons for policy makers

Important lessons for policy makers include the consideration that the offering of support to communities, does not necessarily have to be in the form of giving money. Financial support is extremely important. However, sometimes creating spaces where people can engage with each other and discuss their common issues has a more significant impact. Similarly, listening to communities' voice and their concerns over the issues they are facing, gives them a sense of validation in terms of being heard and respected.

Challenges

People who were not eligible to benefit from land restitution were included amongst the claimants, being somehow part of the community making the claim. One of the CPA's chairpersons was found to include as beneficiaries of the land claims relatives and friends who were clearly not among the people who had been forcefully dispossessed of their lands. All of this, took place at the expense of the rightful claimants who instead were being side-lined and prevented the opportunity to participate and benefit from the land claim. When the committee members caught on to this, the chairperson took the matter to court. He was found guilty and ordered to enact the verification of the beneficiaries and claimants.

Follow-up

Despite the CPA's success in institutional management, it is now important to ensure that the four sub-committees embark on productive use of their land, which has been fallow for a long time. Support is needed on agro-ecological training in order for the community to use the land productively.

The departments of Agriculture, Rural Development and Land Reform, should be engaged to support the CPA through government programmes like the Consolidated Agricultural Support Programme (CASP) and the Recapitalisation Programme (RECAP).

Finally, the CPA should start collaborating with other entities with similar objectives in order to facilitate knowledge sharing, learning and solidarity.

Supporting material

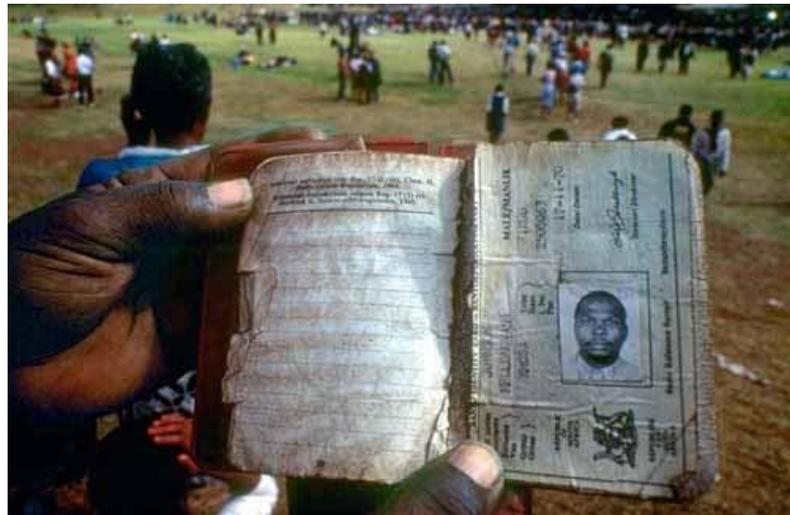
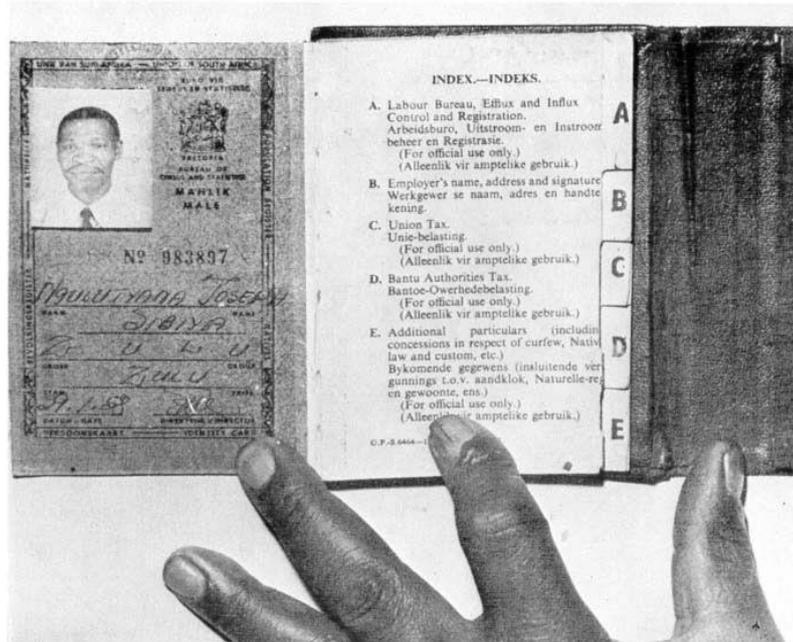
References and further reading

Nkuzi Development Association (2006) *Annual Report* <http://nkuzi.org.za/annual-report-2006/>

Portfolio Committee on Agriculture and Land Affairs (1999) Brief by Nkuzi Development Association on land Restoration in Northern Province.

Photos, videos

Pictures 1 and 2: Images of pass books which differed from homeland to homeland. Homeland is an area where a particular tribe or ethnic group was forced to live in by the former apartheid regime



Picture 3: One of the Marobala farms



Pictures 4 and 5: Participants in a governance workshop



Contacts

Nkuzi Development Association

105 Schoeman St., Polokwane, 0700, South Africa

Tel.: 015 297 6972

Web: <http://www.nkuzi.org.za/>



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Authors: Motlanalo Lebepe, Matsimela Takalo (NKUZI) and Amira Kheir (ILC Secretariat)

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INTERNATIONAL LAND COALITION SECRETARIAT

at IFAD, Via Paolo di Dono 44 , 00142 - Rome, Italy tel. +39 06 5459 2445 fax +39 06 5459 3445

info@landcoalition.org | www.landcoalition.org