



# **Agriculture and Foodsecurity Network: "Inclusive Land Governance – Road to Better Life"**

**Field Days September 7, 2016:  
Land Governance in Switzerland**

## **Visit **2**: Common land use**

compiled by **AGRIDEA**

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**agridea**

ENTWICKLUNG DER LANDWIRTSCHAFT UND DES LÄNDLICHEN RAUMS  
DÉVELOPPEMENT DE L'AGRICULTURE ET DE L'ESPACE RURAL  
SVILUPPO DELL'AGRICOLTURA E DELLE AREE RURALI  
DEVELOPING AGRICULTURE AND RURAL AREAS

## 2 Common land use – “Cradle of Swiss democracy?”

Field day example: **Oberallmeindkorporation Schwyz – a 1'000 year old common land community**

### 2.1 Corporations in Switzerland – historical and legal background

Farmers in the middle ages seldom owned land, because most of it either formed part of the large estates of land-lords, belonged to a monastery or was in collective possession of the village community. Farmers were obliged to pay levies – usually in kind, later more and more frequently replaced by money – to their land owners and were integrated in a system of cultivation requirements, duties and regulations.

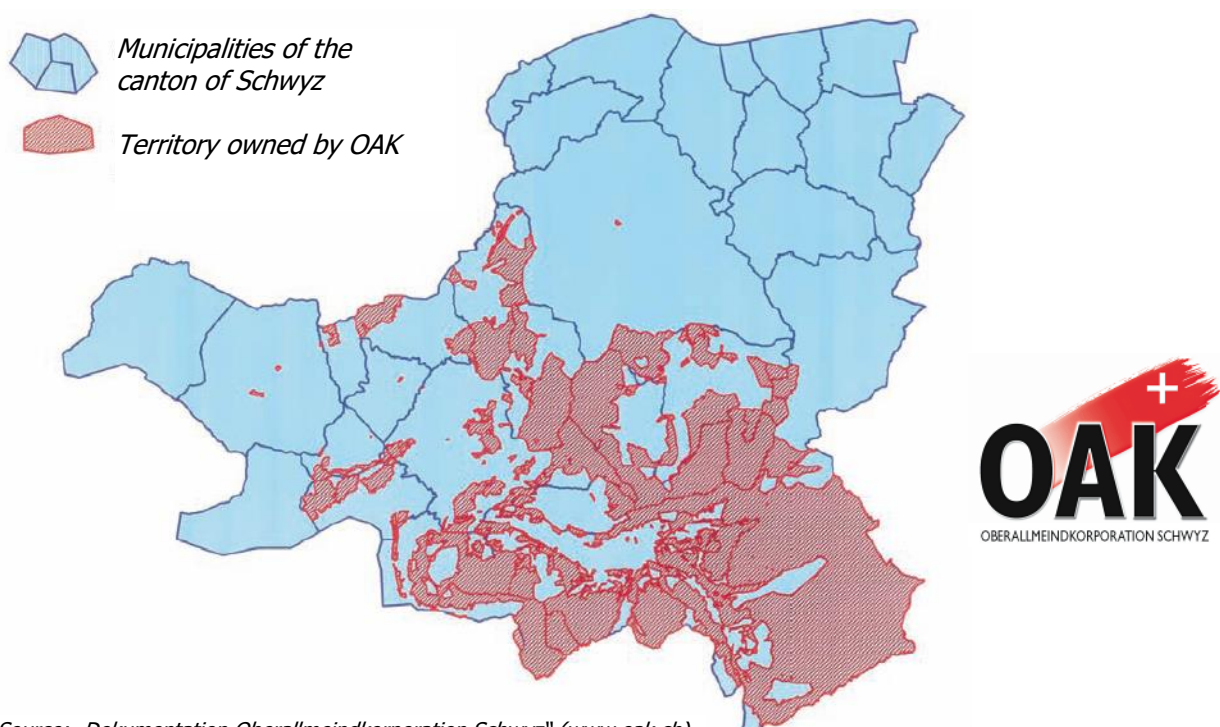
The utilization of village land– commons, pastures, forests, alpine meadows, waters and roads – was shared among the village population. Their common land was managed by associations of persons who eventually adopted corporate structures in the late middle ages, when the organisation of common land use had to be improved because of population growth and rising importance of cattle breeding. More and more the corporations began to restrict the benefit of their common property to a circle of old-established families, defining the participation by ancestry, residence or real estate ownership in the boundaries of the community.

Some of these corporations took on government tasks and developed into village communities, thus becoming the predecessors of today's municipalities. In some areas of Switzerland, whole valley communities and countries ruled their common properties (for example in the cantons of Uri and Schwyz). The development of the liberal Swiss constitution in the 19th century intensified the tendency of corporations to avoid being grasped by the public domain and to become private associations. Many of them changed into corporate civil communities (“Korporationsbürgergemeinde”) who reclaim the right to use their common land up to this day, but without being part of the official structures of municipality.

Corporations in the form of a partnership under public law (art. 52 of the Swiss Civil Code) are particularly frequent in central Switzerland. Among others, the canton of Schwyz has acknowledged public corporations and defines them in the cantonal constitution (art. 75): They are declared autonomous bodies under public law, their existence and self-government within the legal framework is guaranteed, and they can maintain the value of their goods and use them independently.

### 2.2 Oberallmeindkorporation Schwyz – Size and activities

The biggest corporation of the canton of Schwyz (and the whole of Switzerland) is the “Oberallemeindkorporation Schwyz” (OAK). It has more than 16'000 members and owns more than 24'000 ha of land (about 9'000 ha forest, 970 ha nature conservation area, about 8'000 ha alpine meadows (162 alpine economy units) and 450 ha leased out agricultural land) plus quite a number of economic and residential buildings (more than 80 rented apartments) as well as roads and waterworks. With its five main economic activities – forestry, alpine economy, energy, tourism and real estate – the OAK regularly generates a turnover of 8 - 9 Mio CHF per year.



Source: „Dokumentation Oberallmeindkorporation Schwyz“ ([www.oak.ch](http://www.oak.ch))

## 2.3 Oberallmeindkorporation Schwyz – History

The first authentic mention of OAK dates back to the 10<sup>th</sup> of March 1114 – OAK therefor counts more than 900 years! A document of Emperor Henry 5<sup>th</sup> verified that the people of Schwyz had claimed as a collective the common land they were quarrelling about with the monastery of Einsiedeln. From then onward till the decline of the old confederacy in 1798 as a consequence of the French Revolution, the history of the “Old Land Schwyz” (later to become the central part of the canton of Schwyz) was identical with the history of the OAK.

The landmark conflict (“Marchenstreit”) with the monastery of Einsiedeln had by no means ended in 1114, on the contrary: land occupations, raids and robberies of the monastery of Einsiedeln by the people of Schwyz were retaliated with collective excommunications and military expeditions in favour of the monastery. This land dispute reached a climax with the mythical battle at Morgarten 1315, which the people of Schwyz won together with their confederates from Uri and Nidwalden. Morgarten is still an important (and controversial) symbol for the founding legend of the Swiss Confederation. The landmark conflict ended 1350 only and established the territory of the OAK in the boundaries that are still valid today.

Till 1798, the people of Schwyz (“Landleute”) alone decided during the regular people’s assemblies (“Landsgemeinden”) by voting about the corporation’s concerns. After the invasion of revolutionary French troops, so called new settlers (“Niedergelassene”) were admitted to the people’s assemblies and fully participated in the decision making – a difficult dilemma. In 1814 the people’s assembly decided to separate the OAK (and other corporations) from the state resp. canton of Schwyz. The property of the OAK in commons, forests, alpine meadows and agricultural land was confirmed.

Later in the 19<sup>th</sup> century, a conflict about alpine pasture rights (“Sömmerungsrechte”) escalated into brawls during a 1838 people’s assembly: Owners of small livestock (sheep, goats), mostly smallholders, wanted to assign pasture rights according to a smaller unit, the claws, and not as hitherto by horns, the unit that gave an advantage to the big cattle farmers. The “hornmen” opposed and attacked the “clawmen” during the spring people’s assembly with sticks. The assembly had to be repeated under confederate supervision later in the year, but the hornmen prevailed all along with the support of the liberals.

A final settlement between the two hostile groups was reached in 1877 only.

In order to determine the beneficiary members of the corporation properly, their family names were the first time listed in the regulations of the OAK 1884.

In 1993, women were accepted as members of the corporation, but they were refused the right to transfer their member’s rights. But 2005 only could female OAK members enforce the right to transfer their corporate membership to their descendants – by way of a decision of the administrative court to which they had appealed.

The OAK launched its own operating company “OAK Energie AG”, a public limited company under Swiss law for the operation of OAK’s energy branche. And 2010 OAK incorporated “OAK Turismo AG” to manage its tourism activities.



*Drawing of the „Bashing People’s Assmblly” of 5th May 1838 in Rothenthurm  
Source: Selbstportrait der Oberallmeindkorporation Schwyz (www.oak.ch)*

## 2.4 Oberallmeindkorporation Schwyz – Organisation

The governing bodies of the OAK, as defined in the statutes, are the corporation assembly (“Oberallmeindgemeinde”), the board of directors, the general manager and the accounting control. The members are convoked to the assembly each year on the third Sunday of October, the meeting place is the open-air “ring” in Ibach, where the different (geographical) sections of the OAK have their assigned sector in the ring. Votes and elections are decided by rising hands, the tellers estimate the results, and only in case of doubt do they actually have to count the hands.



*Source: „Dokumentation Oberallmeindkorporation Schwyz” (www.oak.ch)*

**Tasks of the OAK assembly:**

The assembly has the authority to elect the 11 members of the board and their president, the 3 auditors and the 6 vote counters, to approve the yearly annual statement and decide on the budget of the following year, to issue or change statutes and to take decisions on OAK-owned companies or on the participation in companies that are not in direct connection with OAK.

**Duties of the board of directors and the general manager:**

The board has to specify the objectives and policy of the corporation, to issue business regulations, to employ and dismiss the general manager and his deputy and to supervise their activities.

The general manager will prepare the decisions of the board, execute its decisions, carry out OAK's finance and accounting matters, maintain the members list and organise and run the OAK administration.

**Aims of the OAK:**

The OAK defines itself as a corporation under public law, emanated from the old dynasties of the ancient corporation. It has its seat in Schwyz and is aimed at securing the value of the corporation's goods and making beneficial use of it. The OAK's earnings can be spent for corporation shares and to support public or charitable enterprises.

**Membership:**

Members of the OAK are all persons already enrolled in the register of the corporation as well as persons who submit a written request to be included in the register and therein prove that they are directly descending from an approved member of the OAK, are enjoying Swiss citizenship, have reached the age of 18 and reside in the canton of Schwyz

The OAK-members rights include the right to vote and the right for collective convocation of the corporation assembly, the right to participate and to place requests at corporation assemblies, the active and passive electoral right, the right to claim a part of the corporations benefits ("Korporationsnutzen"), and access to the records of the corporation's assemblies.

**Corporation benefit:**

Depending on the result of the past year, the OAK board of directors can decide to pay out a cash-benefit ("Korporationsnutzen") to the registered members. In case this benefit distribution is not claimed in due time (within 6 months after public announcement), the member forfeits it.

Mission statement and strategy of OAK:

