

# **Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies**

**Wordsworth Odame LARBI, Ghana**

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## **ABSTRACT**

The State's power of eminent domain has been exercised in Ghana since colonial times under various enactments. The objective has been in pursuit of the socio-economic development for the public good. The result has been the compulsory acquisition of about 20% of the lands in the country for the state. The acquisition and management of state lands have left in their trail several unresolved problems. Among them are the acquisition of lands far in excess of actual requirements, unpaid compensation in respect of some of the acquisitions, encroachment on acquired lands, lack of intergenerational equity in the utilization of paid compensation, change of use of compulsorily acquired land as against the purpose of the acquisition, optimizing the use and economic returns of state lands, private sector participation in the development of compulsorily acquired land, etc. There is another category of lands occupied by the state without any acquisition, depriving the land owners the opportunity to demand compensation. The result is loss of public confidence in the state machinery for the management of land, leading to tension between the state and customary land owners, massive deliberate encroachment of state lands, and challenging the state's legitimacy to claim control over compulsorily acquired lands.

Under the Ghana Land Administration Project, policy proposals are to be developed to deal with the outstanding issues of compulsory acquisition and also make proposals to guide future compulsory acquisitions. The paper will explore alternative policy options for dealing with these issues so as to provide a sustainable framework for managing state lands efficiently and to reduce the tension between the state and land owners.

## **INTRODUCTION**

Eminent domain<sup>1</sup> refers to the power possessed by the state over all property within the state, specifically its power to appropriate private property for public use. Governments therefore have the right of compulsory land acquisition, with compensation, for the broader public service (Deininger, 2003). However, as Kotey (2002, 203) has noted, the exercise of such power is not without controversy. The way in which many developing country governments exercise this right, especially for urban expansion, undermines tenure security, and because often little or no compensation is paid, also has negative impacts on equity and transparency (Deininger, 2003). The effect is that there is massive encroachment by expropriated owners,

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<sup>1</sup> The other two countries are Cape Verde (ranked 105) and Togo (ranked 143)

as well as land sales by land owners in informal markets at low prices in anticipation of expropriation.

Ghana is a small country in West Africa, covering a land size of 239,460 km<sup>2</sup>. It has a population of 21.7 million people (2004 estimate) and a population growth rate of 2.7% per annum. It is one of three countries in West Africa with a medium Human Development Index (HDI), ranked 138 in the 2005 HDI<sup>2</sup>. The country is well endowed with natural resources and has roughly twice the per capita output of the poorest countries in West Africa. It is predominantly an agricultural country. The domestic economy revolves around subsistence agriculture (mainly small land holders) which accounts for 37.3% of GDP and employs 60% of the work force. Agriculture accounts for 75% of export earnings and contributes over 90% of food needs. Arable land forms 17.54% of the total land with 9.22% under permanent crops. 63.3% of the total population is rural with the majority of rural households (about 56.2% of the total population) directly dependent upon land resources for their livelihoods. Sixty-three percent of the total land area is agricultural land with only 0.2% of the crop land under irrigation. The GDP real growth rate for 2006 was estimated at 6%. The highest contribution to GDP is the services sector (37.5%).

All lands are owned by customary institutions and the state can access land principally through the invocation of the powers of eminent domain. Such powers have been used extensively with many undesirable outcomes including massive encroachments, unpaid compensation, change of use acquired lands as against the purpose of acquisition, divestiture of state enterprises to private entities, etc. There is now a search for new policy options for addressing these issues under the Ghana Land Administration Project (LAP) and these are discussed in this paper. The paper starts with a brief description of land tenure in Ghana, followed by a discussion of the legal and institutional basis for compulsory acquisition. The key outcomes of the exercising the powers of eminent domain then follow and policy options and strategies for dealing with outstanding issues are then discussed. The discussion focuses on compulsory acquisition done before the 1992 Constitution came into being.

## **LAND TENURE IN GHANA**

In Ghana land is owned predominantly by customary authorities (stools, skins, clans and families). Together they own about 78% of all lands, the State owns 20% and the remaining 2% is owned by the state and customary authorities in a form of partnership (split ownership).

Customary land represents all the different categories of rights and interests held within traditional systems and which includes stool lands, skin lands, clan lands, and family lands. They occur where the right to use or to dispose of use-rights over land rest neither on the exercise of brute force, nor on the evidence of rights guaranteed by government statute, but on the fact that they are recognized as legitimate by the community, the rules governing the acquisition and transmission of these rights being usually explicitly and generally known, but not normally recorded in writing (Bower, 1993). Such ownership may occur through discovery and long uninterrupted settlement; conquest through war and subsequent

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<sup>2</sup> The compulsory acquisition is used interchangeably with this word in the paper.

settlement; gift from another land owning group or traditional overlord; and purchase from another land owning group. Different customary systems operate in different part of the country but all of them exhibit very strong, dynamic and evolutionary characteristics (Ouedraogo, et al, 2006). They have been adaptable through the years and have supported changing agricultural and farming systems at different times.

Both customary and common law rights exist in land and often co-exist in the same piece of land. The Customary rights and interest include

- the allodial interest which is the highest proprietary interest or right known to exist in customary land that is not subject to any restrictions on rights of user or obligations other than restrictions or obligations which are imposed by statute. Such interest may reside in a stool, clan, family or private person.
- Customary freehold: the rights to land subject only to such restrictions or obligations as may be imposed upon a subject of a stool/skin or a member of a family who has taken possession of land of which the stool or family is the allodial owner either without consideration or upon payment of a nominal consideration in the exercise of a right under customary law to the free use of that land.
- Share cropping where the proceeds of a farm are divided according to pre-determined arrangements, or where the land rather than proceeds are shared.
- Alienation holdings – land acquired outright by a non-member of the land owning community usually for agricultural purposes.
- Community's common property rights – rights to secondary forest produce, rights to water, rights to common grazing grounds, etc.
- A range of derived/secondary rights.

The Common law rights include freehold, leasehold, licenses and easements. Customary lands are managed by a custodian (a chief or a ahead of family) with the principal elders of the community. Any decision taken by the custodian that affects rights and interests in the land, especially disposition of any portion of the communal land to non-members of the land holding community, require the concurrence of the principal elders.

The State exerts considerable control over the administration of customary lands<sup>3</sup>. All grants of stool land to non-subjects of the stool require the concurrence of the Lands Commission to be valid. No freeholds can be granted out of stool lands. Foreigners cannot own more than 50 year leases in stool and state lands (Article 267(5) of the 1992 Constitution). Revenue from stool lands are collected and disbursed by the Office of the Administrator of Stool Lands. Only 22.5% of the revenue eventually gets to the land owners<sup>4</sup>. There is lot of resentment of the traditional authorities to the disbursement formula.

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<sup>3</sup> This is currently limited to stool/skin lands as the definition of stool lands as per the Constitution does not include family lands (Article 295 (1))

<sup>4</sup> According to the Constitution stool land revenue must be disbursed as follows: 10% to OASL as administrative charges. The remaining 90% is taken as 100% and disbursed as follows: 55% to the District Assembly within which the land is located, 25% to the land owning stool and 20% to the traditional council which the land owning stool belongs.

Vested lands (or Split ownership) occurs where the state takes over the legal incidents of ownership (the right to sell, lease, manage, collect rents, etc) from the customary land owners and hold the land in trust for the land owning community. The landowners retain the equitable interest in the land – the right to enjoy the benefits from the land. Vested lands are managed in the same way as state lands. Why will government vest land in itself?

Women's access to land in Ghana is generally not a big problem. Women can own property in their own right so far as they can afford. Customary systems also allow women access to land but in some parts of the country their rights are generally secondary and through male lines (husband or sons). The rights are usually insecure and sometimes not properly defined. Women are generally excluded in the decision making processes involved in land management. Women's rights in land are more precarious in inheritance systems throughout the country. In patrilineal communities women are generally excluded from inheriting land.

## **LEGAL BASIS FOR COMPULSORY ACQUISITION AND COMPENSATION**

The Constitution of Ghana guarantees private property ownership. Article 18 (1) provides that 'every person has the right to own property either alone or in association with other.' Article 20 (1) provides that 'No property of any description, or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the taking of possession or acquisition is necessary in the interest of defense, public safety, public order, public morality, public health, town and country planning or the development or utilization of property in such a manner as to promote the public benefit' and the compulsory acquisition is made under a law which makes provision for the prompt payment of fair and adequate compensation. Article 20 (3) provides that where a compulsory acquisition or possession of land effected by the State in accordance with Article 20 (1) involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values. The Constitution further provides that any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired. Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition.<sup>5</sup>

## **PUBLIC INTEREST AND PUBLIC PURPOSE**

Kotey (2002) argues that acquisition in the public interest could mean acquisition by government for public bodies and statutory corporations, but also for private companies and individuals for purposes which although they may contribute to public welfare, confer a direct benefit, including profit, on the user. Hotels, private houses, real estate development, banks,

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<sup>5</sup> Article 20 clauses 5 & 6 of the 1992 Constitution.

filling stations etc. fall into this category (*see also Larbi et al, 2003*). This agrees with the wider ambit under which public interest can be considered to be ‘any right or advantage which enures or is intended to enure to the benefit generally of the whole people of Ghana’<sup>6</sup>. This provides a wide array of situations for which compulsory acquisition can be undertaken and is prone to abuse<sup>7</sup>.

The 1992 Constitution posits a different regime for compulsory acquisition from the period before the Constitution. Whereas the constitution provides that any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired and that where the property is not used for such purposes, the pre-acquisition owner shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him there is no such provision in the pre-1992 compulsory acquisition laws.<sup>8</sup> Many of the outstanding issues of compulsory acquisition which has created tensions between the state and the pre-acquisition owners relate to acquisitions done before the 1992 Constitution as discussed below. The principal enactments for compulsory acquisition are the State Lands Act, 1962 (Act 125) as amended, the Land (Statutory Wayleaves) Act, 1963, (Act 186), State Property and Contracts, Act, 1960 (CA 6), the Administration of Lands Act, 1962 (Act 123) and the Public Conveyancing Act, 1965 (Act 302). While all of these laws have been used in compulsory acquisition, the principal enactment commonly used has been the State Lands Act, 1962.

## **COMPULSORY ACQUISITION PROCEDURE IN GHANA**

The process for compulsory acquisition is outlined in the diagram below:

The acquisition process is coordinated by the Lands Commission, which serves as the Secretary to the PSAC and the SAC.<sup>9</sup> What is clear from the membership of the Site Advisory Committee is that the land owners are not represented in the acquisition process. Up to the point where an Executive Instrument is signed, decision-making lies entirely with the political authority. Thereafter the Lands Commission and the Land Valuation Board (LVB) take over and handle the operational aspects of the process. In a particular instance the landowners got to know of the acquisition only when surveyors went to the land to demarcate (Kotey 2002).

The most important part of the acquisition process is the serving of notices of the acquisition. Copies of the Executive Instrument are required by law to be served as follows:<sup>10</sup>

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<sup>6</sup> Article 295 (1) of the Constitution.

<sup>7</sup> Some of these abuses are cited in Kotey (2002).

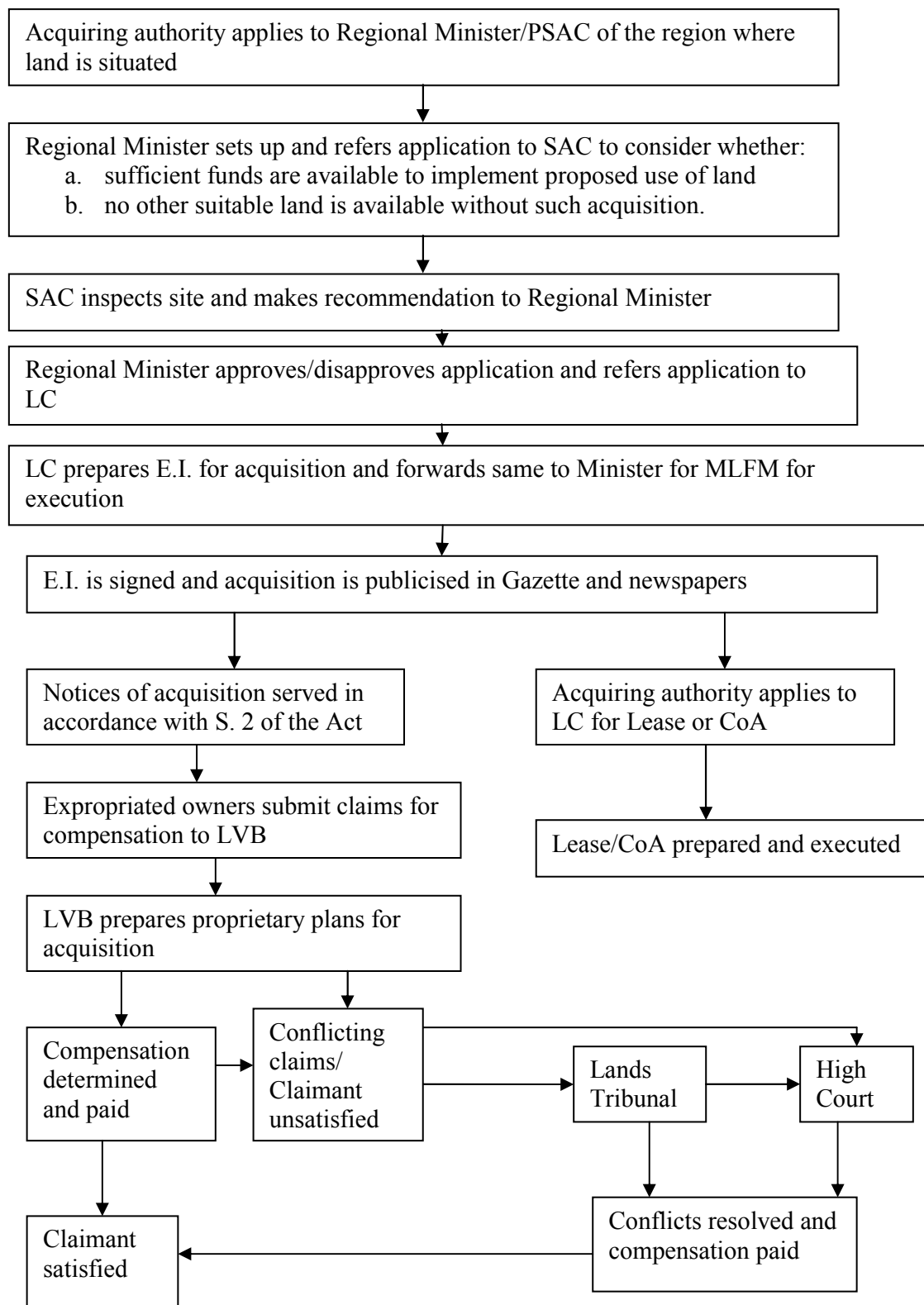
<sup>8</sup> Article 20 clauses 5 & 6.

<sup>9</sup> Membership of the SAC include the District Chief Executive of the district in which the land is situated, representative each of the following ministries: Lands, Forestry and Mines, Health, Water Resources, Works and Housing, representative each of the Town and Country Planning Department, Ghana Water Company, Electricity Company of Ghana, the acquiring authority and the Lands Commission (Secretary).

<sup>10</sup> Section 2 of Act 125 as amended by AFRCD 62.

- a. personally on any person having an interest in the land; or
- b. left with any person in occupation of the land; and
- c. served on the traditional authority of the area of acquisition which shall request the chief to notify the people of the area concerned; and
- d. affixed at a convenient place on the land; and
- e. published on three consecutive occasions in a newspaper circulating in the district where the land is situated and in such other manner as the minister may direct.

It is only after the instrument has been published that the affected owners can submit claims for compensation. The entire process is long and winding and sometimes takes up to two years or more to complete.



- PSAC* - *Permanent Site Advisory Committee*
- SAC* - *Site Advisory Committee*
- LC* - *Lands Commission*
- EI* - *Executive Instrument*
- MLFM* - *Ministry of Lands, Forestry and Mines*
- CoA* - *Certificate of Allocation*
- LVB* - *Land Valuation Board*

## **EFFECT OF COMPULSORY ACQUISITION**

The exercise of the powers of compulsory acquisition over the years has left several undesirable outcomes resulting in debates as to what uses land acquired by the state can be put. Depending on the purpose of the acquisition, the sizes of land acquired may vary, from as small as 8.11m<sup>2</sup> to as large as 179.43 km<sup>2</sup>. Leases of these lands are granted to statutory institutions, corporate bodies and private individuals for development. All tenures of state lands are limited to leaseholds and licenses.

The outcomes can be summarized as follows in relation to situation where compensation has been paid for the land acquired but the land has been:

- a. transferred to a private entity to undertake the stated public purpose. For example, the divestiture of the Ghana Rubber Estates.
- b. used by the State for a different public purpose. For example, the building of the AU Village in Accra
- c. transferred to a private entity for a different purpose. For example, the development of the Accra Mall.
- d. The auctioning of government bungalows to the highest bidder for the redevelopment of run down bungalows into prime properties as has happened in Accra.
- e. substantially used for the state purpose but portions are required for ancillary or reasonably incidental purposes to be provided by private entities. For example land acquired for the University of Ghana portions of which have been used for petrol filling stations.
- f. applied substantially for the purpose of acquisition but a small portion left over is applied to a new use different from the purpose of the acquisition. For example the land turned into Achimota Forest Residential Area, which was part of the land acquired for Achimota School.
- g. only a portion of the land has been utilised for the purpose of the acquisition and there is undeveloped portion which is surplus to requirements. For example, lands acquired for the Social Welfare in Madina in Accra.
- h. Where the beneficiary institution which used to be a public corporation has now been turned into a limited liability company. For example, Ghana Telecom, Ghana Water Company etc.
- i. Massive encroachments by expropriated owners, thwarting efforts of government to put land to the intended use, such as the land acquired for the Police Depot and the National Sports Complex in Accra..



Currently the economic value of state lands in prime areas (*about \$250/m<sup>2</sup>*) have necessitated the public auctioning of lands to increase the density of development and occupation using private capital and also to realize the full economic benefits from the land. The social considerations that underpin the provision of housing by government for its employees seem to have given way to economic considerations thereby raising questions about the public interest in the development. Some legal practitioners take a very narrow view of the meaning of public purpose and therefore advocate for return of acquired lands to the pre-acquisition owners in the event of any change of use of any portion of the land, as was the decision of the High Court in *Nii Tetteh Opremreh II v Attorney General & Anor*<sup>11</sup>. However in *Amontia v MD, Ghana Telecom Co.* the Court of Appeal noted that the provision of a staff housing scheme of land acquired for wireless station was not inconsistent with the purpose for which the land was acquired<sup>12</sup>. In the development of land acquired for public universities, provision of facilities like laundry services, hospital, police station, shopping malls, petrol filling stations, basic schools, internet cafes, and hostel facilities are not run by the university but by private entities and are open to the general public. These uses are ancillary to the establishment of the public university and are not inconsistent with the purpose of the acquisition. The public good in this case, being job creation and tax revenue.

## **OCCUPATION WITHOUT ACQUISITION**

The next critical issue of compulsory acquisition is the number of sites occupied by state agencies without acquisition. Thus as noted by Okoth-Ogendo (2000) the state is both an inefficient administrator as well as a predator on land that in law or in fact belongs to ordinary land users. An inventory of state acquired/occupied lands in the Central Region shows how serious the situation is and is shown in Table 1 below.

For almost of these occupations the acquisition process was started but ended at the Site Advisory Committee level. Once the SAC approved the acquisition, the beneficiary institutions entered the land, in contravention to the laws of acquisition.

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<sup>11</sup> Unreported ruling of the High Court of Ghana dated 20 April 1999.

<sup>12</sup> 2006 2 Ghana Monthly Law Reports.

**Table 1:** Compulsory acquired/occupied sites in Central Region

	DISTRICT	ACQUISITIONS BASED ON E.I.		OCCUPIED LANDS	
		No of sites	Area (ha)	No of sites	Area (ha)
1.	Mfantiman	27	618.59	55	1,260.09
2.	Cape Coast	60	3,559.75	101	5,992.25
3.	Awutu-Efutu-Senya	1	116.45	72	8,384.69
4.	Upper Denkyira	0	0	51	1,943.78
5.	Asikuma-Odoben-Brakwa	0	0	27	880.04
6.	Twifo-Hemang Lower Denkyira	0	0	22	2,329.77
7.	Agona	0	0	66	1,581.41
8.	Assin North	7	781.37	29	3237.13
9.	Assin South	0	0	21	1,178.92
10.	Ajumako-Enyan-Esiam	0	0	33	487.18
11.	Gomoa	41	880.76	0	880.76
12.	Komenda-Edina-Eguafo-Abirem	5	1,703.33	42	14,307.95
13.	Abura-Asebu-Kwamankese	0	0	32	905.94
	<b>TOTAL</b>	<b>141</b>	<b>7660.25</b>	<b>551</b>	<b>43,369.91</b>

*Source: Report on Inventory of State acquired/occupied lands in Central Region, Land Administration Project, 2005.*

From the Table it can be seen that of the 692 sites acquired or occupied by the state only 20.4% has been properly acquired (under Executive Instruments) and for which records are available at the Lands Commission. 79.6% of the sites are occupied by the state without any legal acquisition. In terms of size the state is occupying 43,369.91 ha of land without any legal acquisition. It means the expropriated owners cannot put in claims for compensation, causing a lot of resentment from the communities and agitation for the return of these lands. Such situations raise critical governance issues in the use of compulsory acquisition powers. The situation is compounded where such lands are divested by the state to private entities as is the case with many cocoa plantations owned by the Cocoa Marketing Board. The purported 20% of lands owned by the state is highly under-stated. Table 2 shows the extent of use of the acquired lands.

**Table 2: Extent of use of the acquired lands**

No.	District	No. of sites	Total Area (Hectares)	Area Utilised (Hectares)	Encroachment (Hectares)
1	Cape Coast	161	1,304.94	653.31 (50%)	14.39 (1%)
2	Mfantiman	72	582.39	253.52 (44%)	13.13 (5%)
3	Awutu-Effutu-Senya	64	914.19	611.44 (67%)	9.73 (1%)
4	Agona	66	265.95	32.02 (12%)	16.27 (6%)
5	Gomoa	41	470.72	154.88 (33%)	Nil
6	Ajumako-Enyan-Essiam	33	487.00	96.27 (20%)	Nil
7	Upper Denkyira	40	273.90	258.55 (94%)	5.38 (2%)
8	Assin South	19	676.94	44.64 (7%)	493.01 (73%)
9	Assin North	34	1,603.74	226.22 (14%)	22.37 (1%)
10	Abura-Asebu-Kwamangkese	30	33.01	16.02 (49%)	0.34 (1%)
11	Komenda-Edina-Eguafo-Abrem	91	6,361.82	5,422.54 (85%)	182.65 (3%)
12	Asikuma-Odoben-Brakwa	24	381.47	205.51 (54%)	8.29 (2%)
13	Twifo-Hemang Lower Denkyira	32	1,005.83	95.89 (10%)	111.46 (11%)
	<b>TOTAL</b>	<b>707</b>	<b>14,361.90</b>	<b>8,070.81 (54%)</b>	<b>877.02 (7%)</b>

*Source: Inventory of State acquired/occupied lands in Central Region, Land Administration Project 2005*

## COMPENSATION

Article 20 (2) of the Constitution states that compulsory acquisition of property by the State shall only be made under a law which makes provision for:-

- (i) the prompt payment of fair and adequate compensation; and

- (ii) a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority, for the determination of his interest or right and the amount of compensation to which he is entitled.

The various claims for which an expropriated owner may be compensated are:

- (i) market value of the land taken; or
- (ii) replacement value of the land taken; and
- (iii) cost of disturbance; and
- (iv) other damage (severance and injurious affection); or
- (v) grant land of equivalent value.<sup>13</sup>

### *Rights and Interests Eligible for Compensation*

The rights and interests in land that are currently eligible for compensation are the allodial interest vested in the head of the land-owning community, freeholds, and leaseholds. Freeholds and leaseholds usually present little or no compensation problems as long as the affected holders are able to establish their interests (often with supporting documents). Compensation for communally-owned land is paid to the head of the land-owning community. Currently no compensation is paid directly to holders of customary rights such as the customary freehold. All such holders are expected to be compensated by the head of the land-owning community to whom the compensation for the allodial interest is paid. Compensation is largely paid in cash except in cases where land of equivalent value is given to the expropriate owner. The latter case usually happens where the expropriated owner is resettled, as happened with the Volta River Project in the 1960s. The process and procedures are long and winding and involves resettlement on either part of an already acquired land or land yet to be acquired for the purpose of resettlement of persons to be displaced. This will require going through the acquisition procedures all over again as outlined above.

Informal occupancy and derived rights (rights derived from allodial owners or freeholders) are currently not recognised by the existing law as being rights eligible for compensation. Owners of such rights therefore are not entitled to compensation as of right. If any payments are made they are ex-gratia and are based on the value of the structures and other assets situated on the land.

### *Procedure for Claiming Compensation*

On the publication of the E.I. for an acquisition, any person claiming a right or having an interest in the land subject to the instrument or whose right or interest in any such land is affected in any manner, is entitled to submit a claim within six months from the date of the publication of the E.I. specifying the following:

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<sup>13</sup> State Lands Act, 1962 section 4. Item v. is alternative to items (i) to (iv)

- (i) particulars of claim or interest in the land;
- (ii) the manner in which the claim or interest has been affected;
- (iii) the extent of damage done; and
- (iv) the amount of compensation claimed and the basis of the calculation.<sup>14</sup>

The claims are usually prepared and submitted on behalf of the claimants by professional valuers. Claims must be submitted within six months of the publication of the instrument of the acquisition.<sup>15</sup> The claims are submitted to the Land Valuation Board (LVB), the Agency that acts for government.

Upon receipt of the claims, the LVB prepares a proprietary plan, which is a composite plan on which each claim submitted is plotted. By so doing, conflicting and overlapping claims as well as the extent of conflicts are ascertained. The LVB is required to make an assessment of fair and adequate compensation payable under the claim<sup>16</sup>. In so doing, the LVB is to have regard to the following principles:

- (a) the market or replacement value of the land;
- (b) the cost of disturbance or any other damage suffered thereby;
- (c) the benefits to be derived by the people of the area in which the land is situated from the use for which the land is acquired;
- (d) no account is to be taken of any improvement on the land made within two years prior to the date of publication of the EI unless the improvement was made in good faith and not made in contemplation of acquisition<sup>17</sup>.

In practice, compensation tends to be based largely on the market value of the affected land i.e. the sum of money which the land might have been expected to realise if sold in the open market by a willing seller at the time of the declaration by EI. Where the property under compulsory acquisition is one that cannot easily be sold on the market, the replacement value may be used as the basis of valuation. This has been defined as the value of the land where there is no demand or market value for the land by reason of the situation or of the purpose for which the land was devoted at the time of the declaration made under section 1 of the State Lands Act, 1962, and is the amount required for the reasonable re-instatement equivalent to the condition of the land at the date of the said declaration.<sup>18</sup> Other principles underlying the valuation of land for compulsory acquisition are that the value to be assessed should be that accruing to the owner of the land and not the acquiring authority. The valuation cannot therefore take into account the intended benefits that the acquired land would bring to the acquiring authority.

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<sup>14</sup> State Lands Act, 1962 section 4

<sup>15</sup> State Lands (Amendment) Decree 1979 (AFRCD 62)

<sup>16</sup> State Lands Act, 1962 9Act 125) section 4 (2)

<sup>17</sup> Act 125, section 4 (3), (5) and (6)

<sup>18</sup> Act 125, section 7

Where compensation for land is assessed but cannot be paid owing to a dispute, Government is required to lodge the accrued amount in an interest-yielding escrow account pending the final determination of the matter. The lodged amount plus interest thereon is payable to the person so entitled upon the final determination of the matter.<sup>19</sup>

Where the acquisition involves displacement of any inhabitants, the LVB or other agency designated by the President will be required to settle the displaced inhabitants on suitable alternative land with due regard for the economic well-being and social and cultural values of the inhabitants concerned<sup>20</sup>.

The State Property and Contracts Act, 1960 (CA 6) provides for rules to be followed in determining the amount of compensation to be awarded for property acquired under that Act. Compensation is to be awarded in respect of:

- (a) the market value of the property acquired which is deemed to be the amount which the property might have been expected to realize if sold in the open market by a willing seller at the date of the declaration of the acquired land;
- (b) any damage sustained at the time of and by reason of the acquisition by any person with an interest in the property acquired by reason of the severing of such property from any other property of such person;
- (c) any damage sustained at the time of and by reason of the acquisition by any person with an interest in the property acquired by reason of such acquisition injuriously affecting any other adjoining property in which such person has an interest;
- (d) the reasonable expenses incidental to any changes of residence or place of business of any person with an interest in the property acquired made necessary by the acquisition;
- (e) the reasonable expenses incurred in the employment of a person qualified in land valuation and costing of buildings.

The court is also allowed to consider:

- that where the property is, and but for the acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for property for that purpose, the compensation may, if the Court is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement, and in every such case compensation is not to be awarded under the provisions of (a) or (d) above, but where the circumstances permit, under the provisions of (b) and (c) above;
- in determining the compensation to be awarded, the Court is not to take into consideration any increase in the market value of the property acquired, by reason of any improvements made to it within a period of two years immediately preceding the

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<sup>19</sup> Act 125, section 4 (6)

<sup>20</sup> Act 125, section 4 (4)

date of the declaration of the acquisition, unless it is proved that such improvement was made bona fide and not in contemplation of proceedings being taken for the acquisition of the property under the Act<sup>21</sup>.

Under the State Lands Act (Act 125), compensation is payable in the event that there are no conflicts in the claim submitted and the amount claimed is acceptable to government, or after successful negotiation between the claimants and the government. Recent government directives require the LVB to submit details of claims and claimants to the Serious Fraud Office (SFO) and Attorney General's Office for vetting and clearance before payment. This is to avoid payment of fraudulent claims. Payments are therefore made only when the SFO clears the claims, and the claimants. As already indicated earlier in this paper, Article 20 (2) requires that compensation for compulsory acquisition of property should be prompt, fair and adequate.

The bulk of the outstanding compensation issues relate to compulsory acquisitions done before the 1992 Constitution. It has been held in *Amontia v MD, Ghana Telecom* that the Constitution does not have retrospective effect. It implies that compulsory acquisition and compensation laws that operated before the Constitution is used to address outstanding issues, governed by the five main pieces of legislation mentioned above. In all these provisions, compensation can be paid only when the acquisition process is completed as described above. This process has left three main unresolved issues:

- a. the 'illegal' occupation of land by the state without acquisition.
- b. The denial of expropriated owners the opportunity to claim compensation
- c. Huge State debt in respect of outstanding compensation.

The details for the Central Region is shown in Table 3 below:

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<sup>21</sup> Section 11

**Table 3:** Outstanding Compensation of acquitted/occupied lands in the Central Region.

	<b>DISTRICT</b>	<b>No. of Sites</b>	<b>Compensation (US\$)</b>
1.	Mfantiman	59	1,266,318.40
2.	Cape Coast	130	22,199,061.05
3.	Awutu-Efutu-Senya	60	23,922,872.05
4.	Upper Denkyira	45	1,158,202.00
5.	Asikuma-Odoben-Brakwa	22	130,040.32
6.	Twifo-Hemang Lower Denkyira	17	590,145.00
7.	Agona	55	2,116,739.20
8.	Assin North	29	1,761,838.22
9.	Assin South	21	235,858.30
10.	Ajumako-Enyan-Esiam	33	365,017.50
11.	Gomoa	37	1,175,453.00
12.	Komenda-Edina-Eguafo-Abirem	44	10,460,503.80
13.	Abura-Asebu-Kwamankese	21	204,307.90
	<b>TOTAL</b>	<b>573</b>	<b>65,586,353.66</b>

*Source: Report on inventory of state acquired/occupied lands in Central Region, Land Administration Project, 2005*

Only 22 sites representing 3.8% which have been legally acquired have been compensated. The bulk of the outstanding compensation relates to sites occupied by the state without legal acquisition. Denyer-Green (1994) argues that one purpose of compensation should be to overcome opposition from expropriated owners by the payment of a price which turns an unwilling seller into a willing seller. If this is the case then the resentment of communities against the occupation by the state of their land without compensation is justified as they have no means of even putting in claims for compensation. The situation is the same in all other regions. The indebtedness of the state in outstanding compensation is huge and there is no way the state can settle all from its budget. In the 96.2% of cases where compensation has been paid, there are problems associated with inter-generational equity in the utilization of the compensation money. Thus even though £8,000 was paid to the La Stool for the acquisition of land for the Accra Airport in 1947, there is no monument or development to show the benefit of the funds, leading the current generation to think that the compensation was either not paid or was inadequate – a cause for community agitation against the state.

The main outstanding issues are:

1. How should the compensation debt be handled and paid?
2. In situations where the acquired land has been encroached upon and the purpose of acquisition has been defeated how does the state treat those who have lost their land rights as a result of the acquisition and subsequent encroachments?



3. Where the compulsory acquired land has been divested to private entities who should be responsible for the payment of compensation? This becomes a critical issue where part of the divested property has not been fully developed.
4. How does the state ensure inter-generational equity in the use of compensation money so that subsequent generations will also benefit from payments for compulsory acquisition.

## SEARCHING FOR ALTERNATIVE POLICY OPTIONS

In searching for answers to the above issues and alternative options one of the critical issues to determine is the meaning of public purpose such that the use of compulsory purchase powers will not be declared as *ultra vires*, which according to Denyer-Green (1994, 40) can be said to include three matters:

- a. the use of compulsory purchase powers outside the statutory wording of the legislation;
- b. the misuse of the powers;
- c. a breach of the rules of natural justice – these rules require impartiality by the decision-maker and the right to hear and be heard in a matter affecting a person's interest.

The Court of Appeal in *Amontia v. MD, Ghana Telecom* noted that law is very dynamic and progressive. Therefore what constituted an interpretation thirty or forty years ago may not hold substance in the present day. What this means is that, because society itself is changing so fast with development, law cannot be static. Law as an engine of society must be seen to move along with the developmental trends, otherwise chaos, anarchy and confusion will be the sure recipe that results therefrom.

Several scenarios have been practised in the past including lump sum payment which created the inter-generational equity problems; land bonds which became problematic because rising inflation eroded the value of the bonds and at a point the Central Bank could not honour the bonds, annual compensation rental which has become a huge debt as the rents have been reviewed over time to reflect the value of the land. Search for alternative policies and strategies would therefore have to take these factors into consideration.

The policy options available to the state must address the outstanding issues and these must generally be acceptable to the public. The following options may be considered:

1. Develop appropriate guidelines and standards for compulsory acquisition. Currently, there are no standards for compulsory acquisition for various uses – education, health, agriculture etc. This has created the situation where lands are deemed to have been acquired in excess of actual need.
2. Complete all outstanding acquisitions based on actual needs so that expropriated owners

will have the opportunity to submit claims for compensation. This will require a high expenditure in terms of surveying, inventory, and completion of the procedures for compulsory acquisition.

3. Return lands in excess of actual need to the pre-acquisition owners to reduce the compensation burden. The dilemma is that when the state needs land in the future it may have to acquire at a higher price.
4. The State considers alternatives to monetary compensation including provision of infrastructure, special projects, off-loading of government shares in viable companies and ex-gratia payment to affected landowning groups and communities taking into account factors such as location of the land (urban/rural), size of land involved, national interest, etc.
5. The basis of compensation is changed from lump sum to annual payments to ensure inter-generational equity. The dilemma is whether the state must be indebted to a particular community forever for acquiring land for national development projects? Alternatively the state should pay lump sum but ensure that the uses to which the funds are put will fulfil the requirements for inter-generational equity.
6. Auction the undeveloped lands and use the proceeds to pay compensation or divest some of the state-owned enterprises on acquired lands and use the proceeds to pay compensation.
7. A programmed debt payment schedule out of national budgets over a period of time. This will have to be weighed against any inflationary tendency the injection of huge sums of money may have on the economy.
8. The state agrees with expropriated owners through local and national discussions the fact that it is not able to pay all the outstanding compensation and token lump sum paid to all expropriated owners for the pre-1992 acquisitions to close the chapter on the outstanding issues. Even here the amount involved may run into billions of dollars and can seriously affect the national budget.
9. Trusteeships – That each expropriated community sets up trusts into which the compensation money is paid and managed by trustees. This may also address the inter-generational equity issue.
10. Return unutilised lands to the pre-acquisition owners in lieu of payment of compensation.
11. Regularise encroachments at penalty and use proceeds to pay compensation.

No one option may be sufficient for addressing these issues but perhaps a combination of some of the above may be able to provide solutions to some of the issues.

## CONCLUSION

The 1992 Constitution has opened a new vista for compulsory acquisition in Ghana and has provided elaborate framework for dealing with compulsory acquisition and compensation. It is likely that the factors that occasioned the problems discussed in this paper will not arise in the future, as the National Land Policy (1999) provide that compulsory acquisition will be pursued with great circumspection. Nevertheless the outstanding issues but be dealt with within a broad policy framework which will provide guidance for future acquisitions. They are issues that do not lend themselves to easy resolution. Yet they must be addressed to reduce the tension between expropriated communities and the state. The policy options opened to state require serious dialogue with the key stakeholders, the identification of champions, particularly and a dialogue with the National House of Chiefs. The governance structures for compulsory acquisition must also be improved. Practical solutions should be found for the issues at stake.

## REFERENCES

1. Bower, P. 1993, Land Tenure Policy and Development in Tenure n. the holding of office or of land or other permanent property of accommodation etc. the period or condition of this. Paper presented at International Conference organised by the RICS, University of East London.
2. Deininger, K. 2003, Land policies for growth and poverty reduction, Washington DC. The World Bank/Oxford University Press.
3. Denyer-Green, B. 1994, Compulsory purchase and compensation, London, Estates Gazette.
4. Kotey, N. A. 2002, Compulsory acquisition of land in Ghana: Does the 1992 Constitution open new Vistas? In Toulmin, C., Delville, P.L. and Traoré. S (Eds). The dynamics of Resource Tenure in West Africa, London, GRET/IIED, James Currey & Heineman.
5. Larbi, W.O., Antwi, A. and Olomolaiye, P. 2004, Compulsory Land Acquisition in Ghana: Policy and Praxis, Land Use Policy, Vol.1 Issue 2, April, pp 115 – 127.
6. National Land Policy, 1999, Accra, Ministry of Lands, Forestry and Mines.
7. Okoth-Ogendo, H.W.O. 2000, Legislative approaches to Customary Tenure and Tenure Reform in East Africa. In Toulmin, C. and Quan, J. (Eds), Evolving Land Rights, Policy and Tenure in Africa, London, DFID/IIED/NRI.
8. Quedraogo, H., Gwisei, D. and Hitimana, L. 2006, Land Reform processes in West Africa: a review, Club du Sahel.
9. The Constitution of the Republic of Ghana, 1992, Accra, Government Printer.

## CONTACTS

Wordworth ODame Larbi  
Land Administration Project  
Ministry of Lands, Forestry and Mines  
P. O. Box MB 212

Accra  
GHANA  
West Africa  
Tel. + 233 21 666 711  
Fax + 233 21 666 801  
Email : [odamekay@gmail.com](mailto:odamekay@gmail.com)  
Website: [www.ghanalap.gov.gh](http://www.ghanalap.gov.gh)

## **BIOGRAPHICAL NOTES**

Dr Wordsworth Odame Larbi is a land policy specialist, combining a background of extensive expertise in land administration, land policy formulation, implementation and analysis. He holds a PhD degree in Land Management and Development from the University of Reading, UK. He has worked in the field of land administration and land policy for the past twenty years, combining practice with research and occasional teaching. He rose through the ranks to become the Chief Executive of the Ghana Lands Commission. He has considerable understanding of the policy formulation processes, in analyzing intents, interests and instruments underlying various land policies, implementation strategies and analysis of impact of land policy as well as institutional framework within which policies are formulated and implemented. He coordinated the formulation of the Ghana National Land Policy, prepared the Project Concept Document for the Ghana Land Administration Project and was the component leader for the Legal and Policy Framework component of the Land Administration Project. He is currently the Project Director of the Land Administration Project. He has considerable experience also in land policy issues in the West African Sub region. He has written considerably on the subject. He has taught as an adjunct lecturer at the Urban Management Programme at GIMPA. He has been external examiner for the MSc Programme in Environmental Studies at KNUST. He has since 2008 been appointed as an external examiner to the Department of Land Economy, KNUST. He has the capacity to work under pressure, meet dead lines and is a good team player.

## ***MEMBERSHIP OF PROFESSIONAL ASSOCIATION***

Fellow of the Ghana Institution of Surveyors.

## ***PUBLICATIONS***

*Compulsory land acquisition in Ghana – Policy and praxis*

**Land Use Policy, Volume 21, Issue 2, April 2004, pp 115 – 127.** (with Adarkwah Antwi and Paul Olomolaiye).

*Land valorization processes and state intervention in land management in peri-urban Accra, Ghana, International Development Planning Review, Volume 25, Number 4, 2003, pp 355 – 371.* (with Adarkwah Antwi and Paul Olomolaiye)

*Land, land everywhere and not a place to build?*

**Ghana Club 100, Vol 3, December 1999, pp. 81.**

*Farming in the shadow of the city: changes in land rights and livelihoods in Peri-urban Accra*, **Third World Planning Review**, Volume 21, Number 4, 1999, pp 373 – 391. (with Maxwell, D., Lamptey, M.G., Zakariah, S., Armah-Klemesu, M.).

*Farming in the shadow of the city: changes in land rights and livelihoods in Peri-urban Accra*, **Cities Feeding People Series, Report No. 23, 1998, Ottawa, IDRC.** (with Maxwell, D., Lamptey, M.G., Zakariah, S., Armah-Klemesu, M.).

*Spatial planning, development control and urban fragmentation in Accra*, **Third World Planning Review**, Volume 18, Number 2, May 1996, pp 193 – 215.

**The urban land development process and urban land policies in Ghana**, ‘Our Common Estate Series’, Royal Institution of Chartered Surveyors, London, 1995.

**Urban land policies and the delivery of urban developable land in Ghana**, Unpublished PhD Thesis, University of Reading, Reading, 1994.

## **CONFERENCES**

1. Decision Makers Meeting: Good Land Administration of Lands, Windhoek, Namibia, 7 – 8 December 2006.  
**Paper presented:** Land Administration Reform in Ghana: Meeting people’s aspirations.
2. 5<sup>th</sup> Regional Conference of International Federation of Surveyors on ‘Promoting Land Administration and Good Governance, Accra, 9 – 12 March 2006.  
**Paper presented:** Land Administration Reforms in a Plural Environment,
3. Rural-Urban Encounters: Managing the environment of the Peri-urban interface, Development Planning Unit International Conference, University College, London, 9 – 10 November 2001.  
**Paper presented:** Changing livelihoods in Peri-urban Accra: Breakdown of customary land ownership?
4. Commonwealth Association of Surveying and Land Economy – International Seminar on ‘The Surveyor and Sustainable Development in the 21<sup>st</sup> Century’, Accra, Ghana, 10 – 11 March 1999.  
**Paper presented:** Land management challenges.
5. International Land Tenure Conference, University of Cape Town, Cape Town, South Africa, 25 – 27 January 1998.  
**Papers presented:** (i) Tenure transformation at the urban periphery of Ghana.  
(ii) Creating and managing a Geographic Information System for land management in Ghana.
6. International Real Estate Conference, Orlando, Florida, U.S.A. 23 – 25 May 1996.  
**Paper presented:** The commercial property market and international monetary system in Ghana.
7. Resource person at several seminars and workshops organized in Ghana for stakeholders.