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Compulsory Acquisition and Urban Land Delivery in Customary Areas in Ghana

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Abstract

Most land in Ghana is held by communities under customary tenure. About 20% of land in Ghana was acquired through a legal process of compulsory acquisition by the government. This process extinguishes all proprietary and jurisdictional rights, titles, or other interests vested in the stool (traditional authority) or any other person. Among other things, compulsory acquisition aims to provide land for public purposes, to correct economic and social inefficiencies in the use of land and also to deliver on broader goals of social justice and equity in the land sector through the redistribution of land. Most compulsory acquisition laws make provision for prompt payment of adequate compensation for those who are dispossessed, but this has not always been the case resulting in disputes. This paper adopts a case study approach in Tema (Accra) and Aprade (Kumasi), Ghana, to investigate compulsory acquisition and to assess the consequences of this process on urban land delivery. The study seeks to understand why the affected communities have re-occupied land that was acquired from them through compulsory acquisition many years ago. The paper concludes that the general policy on compulsory acquisition is in need of review while the payment of compensation requires further detailed investigation.

Keywords

Customary land, customary tenure systems, traditional authorities, peri-urban land, land tenure, good governance, land administration, compulsory acquisition

1. Introduction

Most governments have laws that allow them to compulsorily acquire land in the public interest (Kasanga & Kotey, 2001; Larbi *et al*., 2004; FAO, 2009). Compulsory acquisition is unpopular since it extinguishes all prior interests and encumbrances in the land. Land rights-holders are compensated by an amount usually determined by a government agency (FAO, 2009), often without much consultation with the affected communities. Contest over the loss of land rights may result in challenges in court or through reoccupation. With customary lands, the payment of compensation is problematic since, by definition, customary rights-owners are inter-generational. This research shows that this is a major hindrance to urban land delivery in customary areas.

2. Methodology

This paper reviews compulsory acquisition in Ghana and its consequences on urban land delivery for the poor. The research is based on an African worldview, where land is the bona fide property of ancestors, the present generation and the generations yet unborn. Previous research provides information on the effects of compulsory acquisition in Ghana and elsewhere. Two case studies were conducted in Tema (Accra) and Aprade (Kumasi), Ghana. Key-respondent in-depth interviews were conducted. These included staff of Tema Development Corporation (TDC), Centre for Scientific and Industrial Research (CSIR) and traditional leaders in both Tema and Aprade. Some clients of TDC were also interviewed. There were also informal discussions with encroachers from both the Tema and Kumasi areas. Evidence from these sources was corroborated and the data was triangulated with that from prior research, revealing the effects of compulsory customary-land acquisition on the peri-urban poor.

3. Land Rights in Ghana

Ghana runs two concurrent tenure systems: formal and customary systems. The customary system was practised since time-immemorial while the current formal system has evolved from the colonial systems of freehold, lease and other lesser titles. Land administration in Ghana is governed by provisions in the 1992 Constitution of Ghana. The 1992 Constitution did not repeal the provisions of the Administration of Lands Act 123 and the State Lands Act 125, both of 1962, which authorised compulsory acquisition of land by government for public purposes and for the common good. The Constitution does, however, make provision for prompt payment of fair and adequate compensation for all interest holders.

Article 267 (1) of the Constitution states that

"All stool lands in Ghana shall vest in the appropriate stool on behalf of and in trust for the subjects of the stool in accordance with customary law and usage." (Government of Ghana, 1992).

A basic tenet of Ghanaian customary tenure is that land belongs to the ancestors, the present generation and the generations yet unborn (Ollennu, 1962; Asante, 1965; Kyeremanten, 1971; Kasanga & Kotey, 2001). It is believed that land is more than an economic asset; it had cultural and social value intimately connected to the identity and status of individuals and collectives and related to social networks (Jul-Larsen & Mvula, 2009). Compensation for compulsory customary land acquisition neglects this intergenerational principle and, from the social and time-invariant African land worldview, can be challenged.

4. Origins of Compulsory Acquisition

Compulsory acquisition reflects the feudal underpinning of English property law according to Benson (2008). The English *Magna Carta* had a primary purpose to curb royal prerogative with regard to the barons by specifying certain laws whereby the king should interact with the barons and others—concessions were made, for example, to the church and the merchants (Benson, 2008, 426). The *Magna Carta* recognised the power of the English king to expropriate for his household, or for

defence purposes, but it required that immediate cash payment be made for such expropriation. Gradually the monarch's power began to dwindle until tenants claimed ownership rights rather than mere possessory rights. Thus the monarch lost the absolute right of ownership (Benson, 2008). The *Curia Regis* – the ruling elite (barons, merchants and knights) grew in power and eventually became the parliament, the representations of new political power, who could petition the throne for special rights and privileges in exchange of support and taxes. Eventually,

"[t]he power to seize property did not disappear as Parliament power grew at the expense of the king's. Rather it shifted to Parliament" (Benson, 2008, 427).

Lord Edward Coke, Chief Justice of the King's Bench, and a parliamentary leader in the struggle for power from the King, declared in 1610,

"the King could not take an estate in land, either with or without compensation because that power belongs to Parliament alone" (Benson, 2008, 427).

There are similarities between England and Ghana concerning the development of the relationship between property, royalty and parliament. In Ghana, property rights have gradually shifted from traditional leaders to the state through compulsory acquisition especially in the urban areas.

5. Compulsory Acquisition and the Poor

Compulsory acquisition can be beneficial to the community both economically and socially. However, Jackson (2010) argues that if a government abuses its power through compulsory acquisition, the costs can far outweigh the benefits and social justice suffers. The poorest of the poor, who have the least legal, political and economic resources bear the brunt of compulsory acquisition (Jackson, 2010). Poor land owners or occupants often have less negotiating power, experience and skills than the acquiring agency (FAO, 2009). They may be unaware of their rights and may under-value their assets. In such a case compensation may seem lucrative. They may simply be put under pressure to accept a low offer and relocate elsewhere. Advocates of relocation, however, seem to lose sight of the fact that one's home/land is more than just a piece of property that can be taken and replaced (Jackson, 2010). Research shows people feel a common connection to their homes, whether these homes are shacks, huts or mansions (Jackson, 2010). Williamson *et al.* (2010) document the range of concepts of land which are related to different aspects of value (Table 2.1, p40-41). Both individuals and institutions share the responsibility of recognising the value of land to people and to protect the land rights of the weak and promoting social justice (Ravenell & Davis, 2006).

6. Compulsory Acquisition in Ghana

6.1 British Colonial Era (1850 -1957)

In pre-colonial days Ghana was a conglomeration of independent states each with peculiar systems of customary land tenure (Asante, 1965; da Rocha & Lodoh, 1999; Larbi, 2006). Asante

(1965) asserts that even when some states formed a federation, this was not accompanied by surrender of land ownership to the federal authority.

The notion of state ownership began with the British colonial administration (Ollennu, 1962; Asante, 1965) claimed that all unoccupied land was Crown-land. Ghanaians successfully argued against this since unoccupied lands were integral parts of customary lands, vested in the stool for the area, and confiscation of customary land was not legal (Macmilliam, 1940). The colonial government was only able to control land use, beneficial enjoyment in the case of alienation of land, and to supervise the granting of concessions to foreigners. They then resorted to compulsory acquisition for state purposes with the payment of full compensation (Asante, 1965). The colonial government did not take land use management seriously until the 1900s, by which time substantial portions of the country had been granted by traditional leaders as concessions to foreign investors. Some traditional leaders did not keep adequate accounts of payments leading to litigation between the leaders and their communities. Misappropriation of community funds and resources led to a series of destoolments of chiefs in the Gold Coast (Macmilliam, 1940). All the known mineral resources of the country were subject to concession agreements between stools and foreign concerns at the time of independence. The legacy of the post-colonial government was one of minimal involvement in land ownership (Asante, 1965; Larbi *et al*.,2004). Table 1 shows the areas acquired compulsorily as at 2004, as a percentage of the total land acquired compulsorily. The colonial government acquired about 34 per cent of the land during its 107 years of rule.

Table 1: Compulsory acquisition in Ghana over time, adapted from Larbi *et al*. (2004, pp. 119)

Regime	**Years in power**	**Land area in hectares (ha)**	**% of Total Area**	**% Area Post-Independence**
British Colonial Rule	1850 -1957	53123.90	33.87	
Conventions People's Party (CPP)	1957 -1966	11983.90	7.64	11.55
National Liberation Council (NLC)*	1966 -1969	39205.40	25.00	37.80
Progress Party (PP)	1969 -1972	1147.59	0.73	1.11
National Redemption Council/ Supreme Military Council/ Armed Forces Redemption Council (NRC/SMC/AFRC)*	1972 -1979	40468.62	25.80	39.02
People's National Party (PNP)	1979-1981	818.14	0.52	0.79
People's National Defence Council (PNDC)*	1981-1992	8758.06	5.58	8.44
National Democratic Congress (NDC)	1992 - 2000	1339.04	0.85	1.29
All Regimes		156844.65	100.00	100.00
Post-Independence Regimes		103720.75		

*Military regimes

6.2 Post-Independence and Pre-1992

At Independence on the 6th of March, 1957, all State property vested in the Governor-General was transferred to the President as custodian for the people of Ghana. Lack of access to land hindered social and economic development programmes. The building of schools, hospitals, roads, accommodation for public and civil servants, offices and recreational facilities and the creation of protected zones such as forest reserves, was affected.

Only the President was authorised to acquire land compulsorily in Ghana (Kasanga & Kotey, 2001), so the government passed a series of laws to establish itself as a major player in managing the country's land (Asante, 1965; Kasanga & Kotey, 2001). The government acquired considerable power to expropriate land, control land use, as well as to develop and administer large portions of land (Asante, 1965; Kasanga, 2001; Larbi *et al*., 2004). The State Lands Act, 1962 (Act 125) was the main instrument for compulsory acquisition. All it required was the issue of an Executive Instrument in respect of the land to acquire the identified land as in the public interest. This land was then vested in the President absolutely and free from all encumbrances, while compensation was dealt with after the event (Asante, 1965; Kasanga & Kotey, 2001; Larbi *et al*., 2004). Claims of non-payment have persisted and have been a source of conflict between the State and communities.

Stool lands were a special target under the Nkrumah administration (1957-1966) because of the perceptions of misuse of authority and misappropriation of funds from sale of concessions. Stools were virtually reduced to subjects of the government as it sought to curb poor custodianship of land by chiefs (Asante, 1965). However, Kasanga and Kotey (2001) indicate that some stools were targeted because they supported a rival political party.

The Administration of Lands Act (Act 123 of 1962) regulated the dispossession of stool lands. Dispossession of stool land for monetary reward was null and void without the consent of the government. Even allocations under customary tenure required government consent. This law gave enormous powers to the President to expropriate private land in the interest of the public. Payment of compensation was discretionary:

"[A] person dissatisfied with the failure of the Minister to grant compensation or with the amount of the compensation, may appeal to the appeal tribunal." Act 123 section 10 (3), 1962.

Such an appeal was to be lodged with the Minister for transmission to the tribunal within three months of the publication of the Gazette.

With regards to stool lands, the President could, by Executive Instrument, declare any stool land to be vested in the President for the community, if he thought it was in the public interest. Any monies accruing to such stool were paid into the stool land account which was administered by the government. No provision was made for the payment of compensation to the stools themselves. It was under such provisions that various stool lands were compulsorily acquired with no payment of compensation to the communities. All the subsequent governments have used these laws in compulsory acquisition (Larbi *et al,* 2004). The military governments acquired vast tracts of land without the payment of compensation to communities which led to a public outcry (Kasanga & Kotey, 2001).

6.3 The 1992 Constitution and compulsory acquisition

The 1992 Constitution of Ghana guarantees the right to own property, but it also places restrictions on ownership under certain conditions. In Article 18, private or collective ownership is provided for without interference except in the public good and protection of the rights of others. These rights to land ownership are subjected to a number of restrictions and even compulsory acquisition which is governed by Article 20. This specifies that compulsory acquisition should be in the interests of the public and promote public benefit. This must be clearly stated in order that consequences for land rights holders can be weighed against the benefits of acquisition. Use must be for the purpose advanced in the acquisition. Prompt, fair/adequate compensation should be paid, relocation should be conducted if required with due consideration for social and cultural aspects, the High Court can be used to determine compensation or interest, and if the land is not used, the original owners shall be given first option to re-acquire the property and reimburse the State with the compensation paid.

Recently, communities have asked for the return of their property that has not been used (see the case studies in section 7) causing friction between communities and the government. The Constitution did not include a time frame or a framework for identifying such unused land or whether this clause could be applied retrospectively. The other major concern is the distinction between public purpose/benefit and public interest/good.

6.4 Public purpose/benefit, public interest/good

No one shall be deprived of his/her possessions except in the public interest and subject to the conditions provided for by law (Government of Ghana, 1992). One problematic area in compulsory acquisition is the confusion between public purpose and public interest. Acquisition for public purposes is expected to directly benefit the public (da Rocha & Lodoh, 1999; Ravenell & Davis, 2006; FAO, 2009).

The FAO (2009) define public use as including transportation infrastructure, public buildings, public utility infrastructure for service provision, public facilities such as parks, and defence purposes. When land is acquired compulsorily for these activities, ***public purpose*** is clear. It may also be acceptable when government assists private companies to acquire land if their primary business is to provide some of these services (FAO, 2009).

Acquisition in the ***public interest*** may not always be for public purposes. Compulsorily acquired land can be reallocated to private concerns that contribute to public welfare but also make profit. Development projects like shopping malls, fuel filling stations, private estate developments, banks and others fall into this category. The rationale is that the change in ownership will benefit the public (FAO, 2009) through creating economic growth and jobs and by increasing the tax base which in turn allows the government to improve its delivery of public services (FAO, 2009). Compulsory acquisition of land for such private development should be publicly scrutinised to ensure balance between the public need for land and the protection of private property rights (FAO, 2009). Kasanga and Kotey (2001) suggest government should help streamline customary land

delivery so that such profit-making concerns can easily deal with customary land owners without the use of compulsory acquisition.

6.5 Compensation

Compulsory acquisition can be abused (Kasanga & Kotey, 2001; Larbi *et al.*, 2004; Abdulai *et al*., 2007; Benson, 2008; FAO, 2009), especially if there are no procedures laid down and implementation is discretionary. Unfair compensation can reduce land tenure security, increase tensions between the government and citizens, and reduce public confidence in the rule of law (FAO, 2009).

Jackson (2010) acknowledges the need for compensation but still argues that monetary compensation, even when it is considered 'just' is never enough. No compensation can equate the subjective value of the property to the displaced person. This is especially true with customary African land: the value to the customary person must include socio-cultural aspects which cannot be adequately determined or compensated, while the wider community of the dead and those not yet born are not considered.

Where it is absolutely necessary that compulsory acquisition must be used, legislation should outline the basis of compensation, and guarantee the procedural rights of people who are adversely affected. FAO (2009) suggests affected persons should have the right of notice, the right to be heard, and the right to appeal. They also, advocate fair and transparent procedures and equivalent compensation. That is, people should not be worse off than before the acquisition and compensation. Both *de facto* and *de jure* rights must be compensated equitably using the principle of equivalence (FAO, 2009). Where occupants have no legal land rights, they may be entitled to resettlement assistance and to compensation for assets other than land (FAO, 2009). However, from an African worldview, these efforts at compensation ring hollow in that they fail to acknowledge the social value of land and the land tenure afforded through extra-legal land rights.

Management and use of financial compensation may represent a challenge in customary areas (FAO, 2009). Leaders may divide the compensation according to custom and discriminate against women and other vulnerable groups. A solution may be to direct compensation towards local service investment such as in schools, clinics and other public infrastructure (FAO, 2009). According to the African worldview, compensation for customary land should be intergenerational, since paying only the present generation denies future generations of their land rights. Inter-generational compensation would greatly reduce the tendency of dispossessed indigenous people to re-possess their land. A percentage of the compensation could be invested and paid in perpetuity to benefit future generations of right-holders.

6.6 Encroachment

Encroachments on land acquired compulsorily abound as current community members (indigenes, ethnically and traditionally tied to the land) feel landless and disinherited, or compensation was never paid. Otherwise, relocation was not executed and access to land is problematic. Some strangers (those who have arrived from other areas) may not be aware of the

purported acquisition and deal with the stool, and even if they are aware they may perceive the stool to be the credible owner of the land. This easy access to State land is compounded by the costs of land acquisition from traditional leaders (Antwi & Adams, 2003). Kasanga and Kotey (2001) observed severe encroachment on government acquired land in Wa. They also noted stagnation in land development due to incomplete compulsory acquisition procedures.

7. Case Study Areas

This study is based on field data from Tema (Accra) and Aprade (Kumasi) in Ghana (Figure 1).

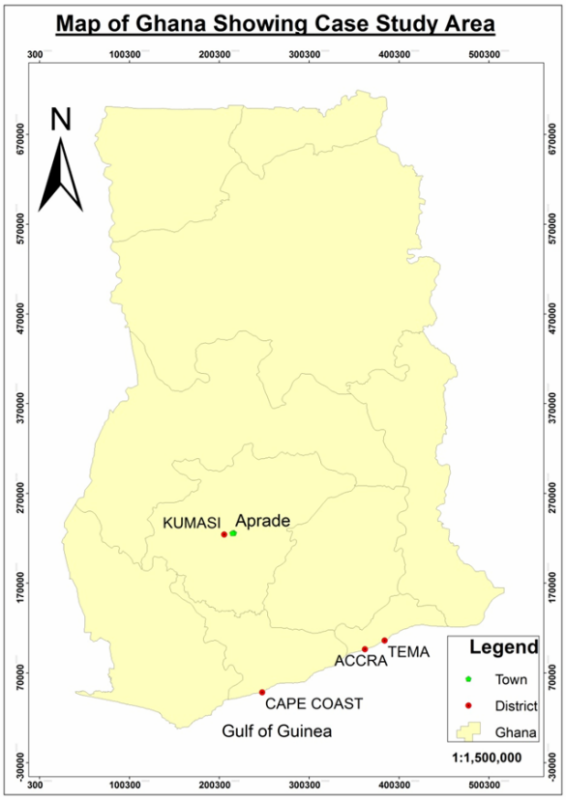

Figure 1: Map of Ghana showing study areas

7.1 Tema Development Corporation (TDC)

Land in most parts of Accra is held under customary tenure and managed on behalf of the communities by traditional leaders, such as the chief and his elders, or a head of family and the principal members (Ollennu, 1962; Asante, 1965; Kasanga & Kotey; 2001). Like most areas in sub-Saharan Africa, customary tenure functioned well until colonisation and subsequent economic development.

The capital of the Gold Coast was moved from Cape Coast to Accra (see Figure 1) in 1877 (Agyei-Mensah & Aikins, 2010). This change put a lot of pressure on land in Accra. Land was required for government use, infrastructure, industrial and commercial development. This, coupled with rapid urbanisation and the need for shelter, "stretched the land delivery system in Accra to breaking point" (Kasanga and Kotey, 2001, 22). In order to meet the growing need for land, the government acquired a substantial amount of land in the Greater Accra region compulsorily.

The Tema Development Corporation (TDC) was established by the Tema Development Corporation Ordinance No. 35 of July 1952, and was directed to develop a new township and port. TDC is the statutory body mandated with the sole responsibility to plan and develop the compulsorily acquired land for various land uses and to manage the township. TDC was given a lease of 125 years term, and has revolved through a series of structural and legislative changes over the years, under a series of military and democratic governments, giving it a wealth of experience in urban land management (Tema Development Corporation (TDC), 2010). The TDC currently functions under Legislative Instrument (LI) I 469 as amended by LI1468 of 1989.

In 1952, the government compulsorily acquired about 166 square kilometres for the construction of a harbour, industrial and commercial establishments and a township (Kasanga & Kotey, 2001). The land was expropriated from Nungua, Tema and Kpone traditional authorities (TDC Key Informant 1, 2011). The TDC was mandated to plan and develop the Tema Acquisition Area. In achieving its objective, TDC works closely with the Tema Municipal Assembly. The town soon grew to become the largest planned development in the country with the harbour serving neighbouring landlocked countries like Burkina Faso, Mali and Niger. Tema is now the industrial hub of Ghana located about 25 kilometres east of Accra.

TDC is managed well by professionals. All land transactions are documented and urban infrastructural services are adequately provided in the area. Consequently there is high demand for land and the price of land keeps on rocketing. The price of a serviced plot at the time interviewed (November 2011) was pegged at US$22 000.00 (Twenty-two thousand United States dollars) per residential site. Boakye (2008) asserts that about nine square kilometres of the Tema acquisition was meant to be used for urban agriculture, but most of this has now been converted to residential use.

7.1.1 Major Challenges

Encroachment

Encroachment was identified as a major threat to the operations (TDC Informants 1, 2, 3 & 4, 2011; TDC client 3, 2011). The TDC has constructed corner monuments for all their acquisitions, but some have been destroyed by encroachers. The whole land area of 140 hectares belonging to Community 23 has been encroached upon (see Figure 2). There are more than ten thousand (10000) illegal buildings in the area. There have been several demolitions, but rebuilding continues. Armed land guards are often used to protect illegal developments on TDC land. The TDC has petitioned the government for a military task force to counteract these actions, yet encroachment still occurs (TDC Informants 1, 2 & 5, 2011). “Now the sheer numbers make it impossible to demolish again so we have given up” (TDC Informants 1 & 2, 2011).

The TDC decided to sell the plots to the illegal occupants who were mainly retirees and retrenched workers except for those who built in waterways and service corridors whose buildings would be demolished. The project committees decided that since these people did not respect the TDC bylaws, they had to pay the normal price for an un-serviced site plus a fifty percent penalty (TDC Informant 1, 2011). None of the illegal occupants could pay that amount.

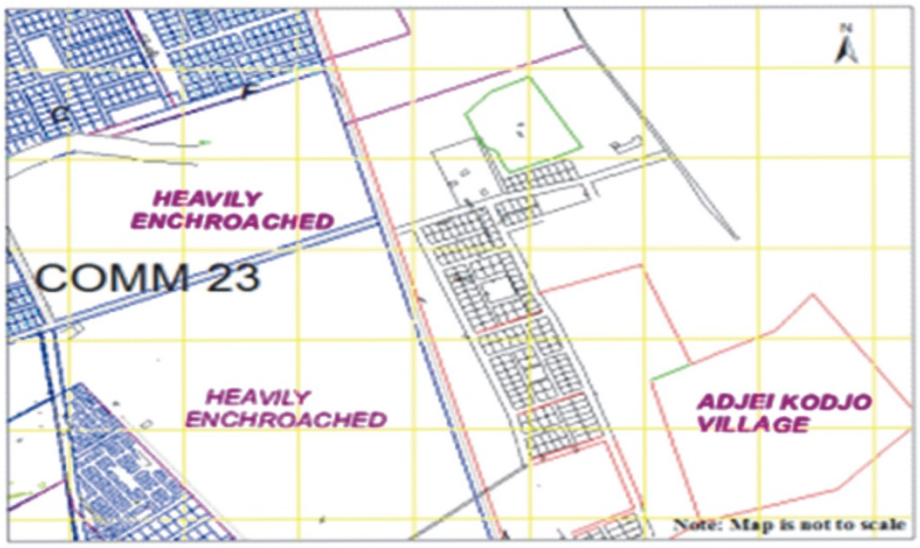

Figure 2: Encroachment in Community 23

One of the 'encroachers' remarked, "I am not from this area and cannot just come and build here I acquired the land from the rightful owners" (personal communication, 2011). The interviewee, however, declined to give details of the source of his purchase. An elderly man retorted, "This land belongs to my fore-fathers, my fathers farmed here and I have been farming here all my life my children have nowhere else to go" (personal communication, 2011). He denied any knowledge of payment of compensation to members of his family or himself.

After about two years the Committee has revised its earlier price and now asks the illegal occupants to pay an amount less than the un-serviced site. "Even with the new amount most of the people cannot pay judging by the type of structures they have put up" (TDC Informant 2, 2011). The TDC is arranging for the encroachers to pay in instalments (TDC Informant 2, 2011). Figure 2 shows a map of Community 23 and the extent of encroachment. The encroached areas are haphazardly developed with no regard to planning laws and regulations (see Figure 3).

Litigation

There is a constant battle between TDC and the original owners of the land. Adjei Kodjo village, (see Figure 2), litigated against the TDC for four years in the High Court and a further two years in the Appeals Court. Even though TDC has never lost a case, such protracted disputes do not augur well for urban development (TDC Informants 1 & 2, 2011). Residents of Adjei Kodjo were insisting their forefathers were not compensated. However, when the Lands Commission produced documentation as to the compensations paid to the various families, the indigenes became irate due to the small amount of compensation paid out to their family heads (TDC Informant 2, 2011).

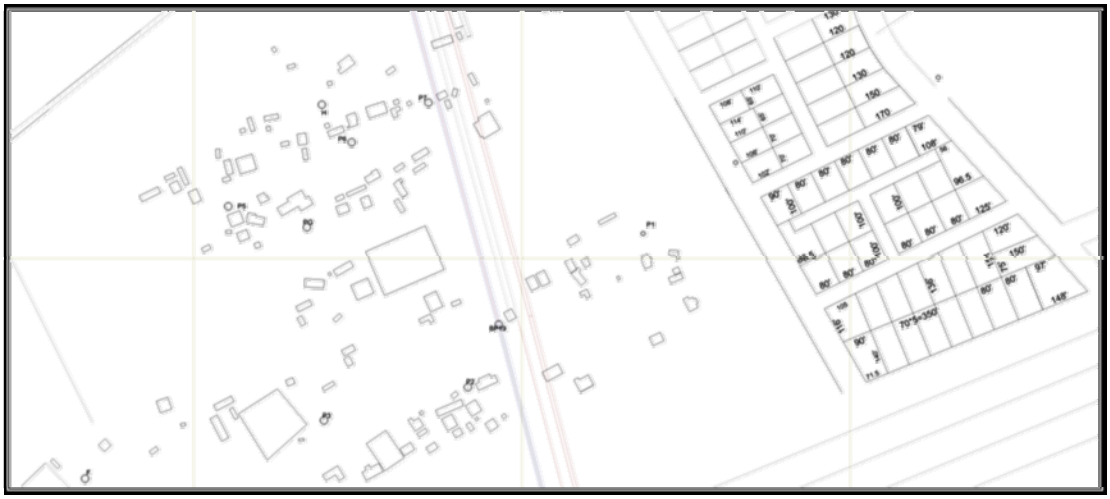

Figure 3: Sample of unplanned encroachments in Community 23

In another development, the Nungua Stool sued the Attorney-General (A-G) and TDC at the Lands Division of the High Court seeking an order for the release of land for a hospital. The Stool is seeking to place an order of perpetual injunction to restrain TDC from entering the land (Myjoyonline, 2012).

In a further incident in 2010, the youth of Kpone prevented residents of Tema from burying their dead relations in the Kpone Cemetery because they wanted the land occupied by TDC to be released to them, claiming a need for land for housing (Ghanaian Chronicle, 2011). The TDC claimed the only land left with the Kpone acquisition is 80 hectares and was ready to return 40 hectares to the Kpone Traditional Council, but the youth insist they want all their land released back to them (Ghana News Agency, 2010; Ghanaian Chronicle, 2011). The Minister for Water Resource, Works and Housing set up a committee to look into the matter. At the time of writing (May 2013) the report of the committee was not out. The youth complain that, among other things, TDC has turned Kpone into a dumping ground. That is where they have their landfill site, cemetery and small scale vehicles mechanic operations (Ghanaian Chronicle, 2011).

Court Delays

There are instances when the court places an injunction on development while a dispute is heard. This is a major cause of delay for TDC developments (TDC Informant 2, 2011). On the other hand the indigenous communities see the delays as part of an orchestrated plan to deprive them of their birth rights. Massive encroachments which make governments unpopular when demolished, is considered a risky but the easiest way out for indigenes to get part of their birth right (Nii, 2011, personal communication).

Government Intervention

Government does intervene in disputes. Especially in election years, local political motives interfere with directives. The encroachments at Community 23 and Kpone are typical examples (TDC Informants 2 & 3, 2011) of lack of control due to political reasons.

Advantages of TDC over traditional land delivery

The TDC lands are perceived to be relatively more secure than those of traditional areas for the following reasons:

Security of tenure

The TDC delivers leases to its clients. TDC clients reveal that they are content with delivery although the land is relatively expensive and leases shorter than the 99 year leases obtained from traditional authorities "I rather have twenty years of peace than 100 years of litigation" (TDC client 2, 2011). Another factor is that the TDC by-laws specify that if a married rights-holder dies intestate, the lease is transferred to the spouse. In customary areas a woman may be disadvantaged if her husband dies (TDC client 1, 2011).

Documentation

With TDC land there is up-to-date record-keeping of all land transactions. Even though employees change, the TDC structure and processes are reliable: "There will never be a situation where somebody will refuse to recognise your land rights as some new traditional leaders do" (TDC Client 3, 2011).

Urban Infrastructure

The TDC serviced sites have all the basic urban infrastructures such as roads, water and sewage disposal facilities (TDC Clients 1, 2 & 3, 2011), unlike in customary areas.

7.2 Aprade (Kumasi) case study

The Centre for Scientific and Industrial Research (CSIR) is a leading research institution in Ghana comprising 13 institutions, four of which are located in Kumasi. The Soil Research Institute is located in Kwadaso on a leased land. The Building and Road Research Institute (BRRI), the Crop Research Institute and the Forest Research Institute are all accommodated on a compulsorily acquired land called the 'Science Village'. The CSIR acquisition was from Aprade (see Figure 1), Fumesua, Kokobra and Kyerekrom traditional areas. A large tract of land (567 hectares) was compulsorily acquired in 1962, under the State Lands Act of 1962. The total acquisition was divided between the three CSIR institutions with BRRI being allotted the Aprade Area. In 1972, the military government, by another executive instrument, extended the acquisition by adding a further 13 hectares (Ksi Informant 1, 2012).

Following the 1962 acquisition, the affected village of Aprade was supposed to have been relocated, however, the document did not specify as to how and where they were to be relocated. The resettlement programme did not materialise and the population of the town has increased without additional land. The original small village has now developed into a vibrant peri-urban area because of its proximity to the Kumasi and Accra - Kumasi Road. Aprade people are now considered illegal on their own traditional land; they are 'encroachers' without a choice.

7.2.1 Encroachment

The indigenes of Aprade slowly but surely encroached onto the CSIR land "About 85% of our land has been encroached on and very soon we will have no land to carry on our mandate" (Ksi Informant 1, 2012). The CSIR went to court for an injunction to stop all encroaching developments. Houses were demolished under the guidance of the Lands Commission, but some encroachers continue to build even though the injunction has been in place for the last two years. The CSIR has appealed to the King of Asante (Asantehene) for his intervention and he has advised them to withdraw the case from the formal court, and to leave the case for the traditional authorities to handle. A committee of eminent chiefs has been formed to settle the case amicably (Ksi Informant 1, 2012).

7.2.2 Compensation

The customary leaders in Aprade claim they have not received any compensation and since they were not relocated they have nowhere else to go. An elder of the village (Ksi Elder 1, 2012) said that it is against Asante culture and practice to be relocated in time of peace, and that they cannot leave their heritage. "Our forefathers lived, died and were buried here, we have nowhere to go" (Ksi Elder 1, 2012). According to the officials at the CSIR there is evidence that some elders received cash from the Land Valuation Board but they cannot conclusively state that full compensation was paid (Ksi Informant 1, 2012).

7.2.3 Boundaries

What of the demarcation and monumentation of the boundaries of the science village? An official of the CSIR reports that most of the monuments, placed according to the plans at acquisition, have been destroyed (Ksi Informant 2, 2012).

Some disputes arise over boundaries. The boundary dispute between the CSIR and the Chief of Kokobra developed over time. When the Chief was installed, he went to the CSIR (Forrest Research Institute) to be shown the boundary between the CSIR and Kokobra (Ksi Informant 2, 2012). A CSIR 'surveyor' was delegated to show the Chief the boundary. The Chief then planted trees along that boundary. When the encroachment issue arose it was discovered that the boundaries pointed out to the chief were incorrect. The area pointed out to the chief was part of CSIR land. The new Chief had already leased all his land up to the encroaching boundary and the 'surveyor' who had shown him the boundary had died. The late 'surveyor' was apparently not a registered surveyor; he had only worked with the registered surveyors during the demarcation (Ksi Informant 2, 2012). This is an example of sheer negligence by the beneficiaries of compulsory acquisition.

7.2.4. Adjudication of record

Aprade is asking that a section of the acquisition be returned for their expansion. This same area is being claimed by Fumesua. The elders of Fumesua have stated clearly to the Committee that they are not insisting that the land in question be released to them but if it should be released to anybody, then it should be to the rightful owners (Ksi Informant 1, 2012). Without adjudication records it will be difficult to know who owns what and where. The release of the land in question may be a recipe for chaos.

8. Analysis and Discussion

Compulsory acquisition is necessary for governments to carry out development in the public good and for public purposes. It is important, however, that the process of acquisition is carried out with caution to minimise its negative effect on individuals, communities and their livelihoods. It should be executed only when affected individuals and communities can be compensated with payments and/or other land equivalent to their original holdings (FAO, 2009). The 1992 Constitution of Ghana is a good starting point to end the abuse of compulsory acquisition and its negative impacts. To reap the full benefits, however, there should be strict adherence to the principles of good governance, active public participation by all role-players and adherence to the rule of law. Compulsory acquisition however, has been undertaken in a top-down approach with no community involvement or participation with disastrous long-term consequences (Kasanga & Kotey, 2001; Larbi *et al*., 2004; Abdulai *et al*., 2007).

Compulsory acquisition could be more efficient and more bearable for affected communities if managed well. Policies should be transparent and define the specific purposes for which the government requires the land, fair procedures for acquiring land and providing equitable and timely compensation for all rights-holders. Active community participation and good governance in traditional and formal land administration could transform communities from their present antagonistic relationship to partners in development (FAO, 2009).

Land rights in customary areas mostly have no records (Arko-Adjei, 2011). It is crucial that, prior to compulsory acquisition, all rights and boundaries in the area be systematically adjudicated and registered as per the Land Title Registration Law (PNDC Law 152). This should ensure that rightful owners receive fair compensation. Also, should the land not be used for the intended purpose and needs to be re-acquired, the adjudicated records would make it easier to identify original owners, without ambiguity, so they can be given first option to re-possess their ancestral land.

Lump-sum compensation has been the single most important cause of encroachments in the case study areas. The recipients leave nothing for future generations who, from an African worldview, have rights in the land according to custom. Lump-sum compensation may not be suitable for jurisdictions that believe in inter-generational land ownership. Most often, no provision is made for the future generations when compensations are received. There is a need to find innovative compensation methods that compensate the present population but also recognise the rights of future generations. It may be important to invest part of the compensation paid in order to provide a sustained yield for generations to come. Beneficiaries could partner with the communities and share a percentage of their annual profits. Alternatively, a percentage of the annual ground rent could be channelled back to the community. Any such improvements will require legislative amendments.

The majority of the urban poor cannot have access to formal land because of the high prices such as in TDC developments, and those who dare encroach, as in the case of the CSIR lands in Aprade, live with constant threat of demolition and eviction and cannot have title and so lack tenure security. Pro-poor approaches to land access needs to be investigated from an African worldview.

9. Conclusions

The compulsory acquisition of land has always been a delicate issue, especially where there has been a history of abuse of the system. This is increasingly so nowadays in the context of rapid urban growth, high demand for land and changes in land use in peri-urban areas in Ghana. The government is under increasing pressure to deliver public services in the face of increasing urban poverty. Since the Ghanaian government does not own enough land and it is unlikely that land needs of the governments can be satisfied on a willing-buyer willing-seller basis, the government will have to continue to rely on the use of the unpopular process of compulsory acquisition. If poorly executed, this tool has been shown to leave people homeless, landless and without livelihood support.

Compulsory acquisition after independence, and prior to the 1992 Constitution of Ghana has been characterised by autocratic approaches, with little or no consultation with affected communities, inadequate or non-payment of compensation and many disputes. Compulsorily acquired land has benefited politicians and the urban elite, to the detriment of indigenes and the urban poor majority. The resulting effect is encroachment, litigation and mistrust between traditional and formal authorities. Lack of access to formal land has led to insecure tenure on compulsory acquired land.

The provisions in the 1992 Constitution seek to correct the injustices of the past. Judicious use of compulsory acquisition should leave customary land owners with relatively larger portions of land at cheaper cost and provide secure tenure for the majority poor, without the threat of eviction or demolition by government institutions.

This paper has also shown that an African worldview offers a fresh perspective and has the potential to unlock solutions to land management in Ghana which are locally relevant and more sustainable than those previously adopted.

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