# Expropriation et indemnisation au Ghana: à la recherche de politiques et de stratégies différentes

*Au Ghana, depuis l'époque coloniale, l'État exerce son pouvoir d'expropriation par le truchement de divers décrets, l'objectif étant le développement socioéconomique au service de l'intérêt public. Résultat: près de 20 pour cent des terres du pays ont été expropriées au bénéfice de l'État. L'acquisition et la gestion de ces terres posent plusieurs problèmes non résolus à ce jour. Parmi ceux-ci figurent: l'acquisition de terres dépassant largement les besoins réels; le non-versement d'une indemnisation pour certaines acquisitions; l'empiètement sur des terres acquises; l'absence d'équité intergénérationnelle dans l'utilisation des indemnisations versées; l'utilisation différente des terres expropriées par rapport à l'intention ayant motivé l'acquisition; l'optimisation de l'utilisation et de la rentabilité économique des terres domaniales; et la participation du secteur privé au développement de terres expropriées. L'État occupe également certaines terres sans procéder à aucune acquisition, privant de ce fait les propriétaires de la possibilité d'exiger une indemnisation. Résultat: la population ne fait plus confiance à l'appareil étatique pour la gestion des terres. Il en résulte des tensions entre l'État et les propriétaires coutumiers, d'immenses empiètements délibérés sur les terres domaniales et des contestations du droit de l'État à revendiquer le contrôle de terres expropriées.*

*Cet article examine différents moyens de résoudre les problèmes susmentionnés, susceptibles de fournir un cadre pérenne pour la gestion efficace des terres publiques et d'apaiser les tensions entre l'État et les propriétaires coutumiers.*

# Adquisición de tierras por expropiación y compensación en Ghana: búsqueda de políticas y estrategias alternativas

*En Ghana, el Estado ha ejercido su derecho de expropiación de diferentes maneras desde la época colonial. El objetivo de esta actuación ha sido el desarrollo socioeconómico por razones de utilidad pública. Como consecuencia, el Estado ha expropiado casi el 20% de las tierras del país. La adquisición y gestión de estas tierras ha dado lugar a numerosos problemas que hasta la fecha no han encontrado solución. Entre ellos, cabe señalar los siguientes: adquisición de muchas más tierras de las realmente necesarias; impago de indemnizaciones en determinadas adquisiciones; ocupación de tierras adquiridas; ausencia de equidad intergeneracional en la utilización de las indemnizaciones pagadas; cambios en el uso de las tierras adquiridas por expropiación respecto al propósito de la adquisición; optimización y rentabilidad económica de las tierras estatales, y participación del sector privado en el aprovechamiento de la tierra adquirida por expropiación. Además, el Estado ha ocupado algunas tierras sin haberlas adquirido, lo cual ha privado a los propietarios de las mismas de la oportunidad de reclamar una compensación. Como consecuencia, ha disminuido la confianza popular en la maquinaria del Estado para la gestión de la tierra. Esta situación ha generado un clima de tensión entre el Estado y los propietarios consuetudinarios, la invasión deliberada masiva de las tierras estatales y problemas ligados a la legitimidad del Estado para reclamar el control sobre las tierras adquiridas por expropiación.*

*En este artículo se exploran las opciones disponibles relativas a políticas para hacer frente a las cuestiones mencionadas, con miras a proporcionar un marco sostenible para la gestión eficaz de las tierras estatales y a reducir la tensión entre el Estado y los propietarios consuetudinarios.*

# Compulsory land acquisitions and compensation in Ghana: searching for alternative policies and strategies

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*In Ghana, the state has exercised its power of eminent domain under various enactments since colonial times. Its objective in so doing has been socio-economic development for the public good. The result has been the compulsory acquisition of about 20 percent of the lands in the country for the state. The acquisition and management of these lands have given rise to several unresolved issues. These include: the acquisition of lands far in excess of actual requirements; unpaid compensation in respect of some 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; and private-sector participation in the development of compulsorily acquired land. The state has also occupied some lands without any acquisition, thereby depriving landowners of the opportunity to demand compensation. The result has been a loss of public confidence in the state machinery for the management of land. This has led to tension between the state and customary landowners, massive deliberate encroachment on state lands, and challenges to the state's legitimacy to claim control over compulsorily acquired lands.*

*This article explores alternative policy options for dealing with the above issues so as to provide a sustainable framework for the efficient management of state lands and to reduce the tension between the state and customary landowners.*

## INTRODUCTION

Eminent domain refers to the power possessed by the state over all property within the state and, specifically, its power to appropriate private property for public use. Thus, governments have the right of compulsory land acquisition, with compensation, for the broader public service (Deininger, 2003). However, as Kotey (2002) has noted, the exercise of such power is not without controversy. The way in which this power is exercised in many developing countries, especially for urban expansion, undermines tenure security. Moreover, because often little or no compensation is paid, it also has negative impacts on equity and transparency (Deininger, 2003). The effect is that there is massive encroachment by expropriated owners, as well as land sales by landowners in informal markets at low prices in anticipation of expropriation.

All lands in Ghana are owned by customary institutions. Therefore, 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 of acquired lands as against the purpose of acquisition; and divestiture of state enterprises to private entities. There is now a search for new policy options for addressing these issues under the Ghana Land Administration Project 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 exercising the powers of eminent domain then follow. Policy options and strategies for dealing with outstanding issues are then discussed. The discussion focuses on compulsory acquisitions made before the 1992 Constitution came into being (Republic of Ghana, 1992).

## LAND TENURE IN GHANA

In Ghana, land is owned predominantly by customary authorities (stools, skins, clans and families). Together they own about 78 percent of all lands, the state owns 20 percent and the remaining 2 percent 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 includes stool, skin, clan and family lands.[1] Such ownership may occur through: discovery and long uninterrupted settlement; conquest through war and subsequent settlement; gift from another landowning group or traditional overlord; and purchase from another landowning group. Different customary systems operate in different parts of the country, but all of them exhibit very strong, dynamic and evolutionary characteristics (Ouedraogo, Gwisei and Hitimana, 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 coexist 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 imposed by statute. Such interest may reside in a stool, clan, family or private person.
- Customary freehold: the rights of subjects to the free use of 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.
- Sharecropping, where the proceeds of a farm are divided according to predetermined arrangements, or where the land rather than proceeds are shared.
- Alienation holdings: land acquired outright by a non-member of the landowning 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, licences and easements. Customary lands are managed by a custodian (a chief or a head 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 landholding community, requires the concurrence of the principal elders.

The state exerts considerable control over the administration of customary lands.[2] 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 leases of more than 50 years in stool and state lands (Article 267[5] of the 1992 Constitution). Revenues from stool lands are collected and disbursed by the Office of the Administrator of Stool Lands (OASL). Only 22.5 percent of the revenue

[1] For extensive discussion of these, see Bentsi-Enchill (1964), Asante (1975), Bower (1993) and Larbi (1994).

[2] This is currently limited to stool/skin lands as defined in the Constitution. The restrictions do not affect family lands (Article 295[1]).

eventually reaches the landowners.[3] There is much resentment from the traditional authorities to this disbursement formula.

### LEGAL BASIS FOR COMPULSORY ACQUISITION AND COMPENSATION

The Constitution of the Republic 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 others". 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". Moreover, the compulsory acquisition is made under a law that 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 received 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.

### 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 that, although they may contribute to public welfare, confer a direct benefit, including profit, on the user. Hotels, private houses, real estate development, banks, filling stations, etc. fall into this category (Larbi, Antwi and Olomolaiye, 2004). This agrees with the wider case for considering public interest as "any right or advantage which ensures or is intended to ensure to the benefit generally of the whole people of Ghana" (Article 295[1] of the Constitution). This provides a wide array of situations for which compulsory acquisition can be made and is prone to abuse (Kotey, 2002).

The 1992 Constitution posits a different regime for compulsory acquisition from the period before the Constitution. Whereas the Constitution now provides for the possibility of re-acquisition by the pre-acquisition owner (above), there is no such provision in the pre-1992 compulsory acquisition laws. Many of the outstanding issues of compulsory acquisition that have created tension between the state and the pre-acquisition owners relate to acquisitions made before the 1992 Constitution (as discussed below). The principal enactments for compulsory acquisition are the State Lands Act of 1962 (Act 125) as amended, Land (Statutory Wayleaves) Act of 1963 (Act 186), State Property and Contracts Act of 1960 (CA 6), Administration of Lands Act of 1962 (Act 123) and the Public Conveyancing Act of 1965 (Act 302). These acts have been used extensively and their effects are discussed below.

[3] According to the Constitution, stool land revenue must be disbursed as follows: 10 percent to the OASL as administrative charges. The remaining 90 percent is taken as 100 percent and disbursed as follows: 55 percent to the District Assembly within which the land is located, 25 percent to the landowning stool and 20 percent to the traditional council to which the landowning stool belongs.

## EFFECT OF COMPULSORY ACQUISITION

In dealing with compulsory land acquisitions, the state is often faced with three issues:

- outstanding issues in situations where the acquisition process has been completed and compensation paid;
- occupation without acquisition;
- the acquisition process has been completed but compensation has not been paid.

Using specific examples of lands acquired throughout the country, these are discussed below.

### Outstanding issues where the acquisition process has been completed and compensation paid

Table 1 summarizes the main outcomes of the issues arising under this theme.

Owing to the high economic value of state lands in prime areas of Accra (about US$250/m$^2$), the state has started the public auctioning of lands in order to realize the full economic benefits from the land and also to increase the density of development and occupation using private capital. This has not been without problems as the original owners have vehemently opposed such sales. Some legal practitioners take a 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* (unreported ruling of the High Court of Ghana dated 20 April 1999). However, in *Amontia v MD, Ghana Telecom Co.*, the Court of Appeal noted that the provision of a staff housing scheme on land acquired for a wireless station was not inconsistent with the purpose for which the land had been acquired. The court noted that in the development of land acquired for public universities, facilities such as laundry services, hospitals, police stations, shopping malls, 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. 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 of Ghana carried out in 2005 showed that, out of 890 sites, only 288 sites (32.35 percent) had been completely acquired. As many as 602 sites (67.64 percent) were occupied by the state without any acquisition. The

TABLE 1

**Treatment of compulsorily acquired lands**

| Treatment | Examples |
|---|---|
| Lands transferred to private entity to undertake stated purpose of acquisition | Divestiture of Ghana Rubber Estates in the Western Region |
| Lands used by the state for a different purpose | Africa Union Village built on land acquired for airport extension |
| Land transferred to a private entity for a different purpose | Site for the Accra Mall |
| Land substantially used for the stated purpose and portions used for ancillary or reasonably incidental purposes by private entities | Filling stations, laundry services, banks developed on university lands |
| Change of land use resulting from severance | Portion of Achimota School land turned into Achimota Forest Residential Area |
| Land acquired in excess of actual demand and surplus land used for other purposes | Site for Madina Social Welfare portion used for resettlement and the development of the Institute of Local Government Studies |
| Land massively encroached upon by expropriated owners, thwarting the realization of the purpose of the acquisition | Sites for police depot and the National Sports Complex in Accra |

inventory revealed that, in most of these occupations, the acquisition process had been started but had ended at the Site Advisory Committee (SAC) level, revealing the flaw in the law. Once an SAC approved the acquisition, the beneficiary institutions entered the land, in contravention of the laws on compulsory acquisition. Such situations raise 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 has been the case with many cocoa plantations owned by the Cocoa Marketing Board. The purported 20 percent of lands owned by the state is underestimated.

### Compensation

The third issue is the non-payment of compensation. Article 20(2) of the Constitution states that compulsory acquisition of property by the state shall only be made under a law that makes provision for:

- the prompt payment of fair and adequate compensation;
- a right of access to the High Court by any persons who have an interest in or right over the property, whether direct or on appeal from any other authority, for the determination of their interest or right and the amount of compensation to which they are entitled.

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

1. market value of the land taken; or
2. replacement value of the land taken; and
3. cost of disturbance; and
4. other damage (severance and injurious affection); or
5. grant land of equivalent value.[4]

The rights and interests in land that are currently eligible for compensation are the allodial interest vested in the head of the landowning 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 landowning 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 landowning 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, as in cases where the expropriated owner is resettled (as happened with the Volta River Project in the 1960s). The process and procedures are long and convoluted. They involve 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, requiring that the acquisition procedures be gone through all over again.

Customary freeholds, informal occupation and derived rights (rights derived from allodial owners or freeholders) are currently not recognized by the existing law as being rights eligible for compensation. Therefore, owners of such rights 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. Development partners funding projects that involve the displacement of people demand that such people be compensated irrespective of the rights they possess, as is the situation with the many occupiers on the reservation for the N1 highway in Accra (to be constructed with funds from the Millennium Challenge Corporation).

In practice, compensation tends to be based largely on the market value of the affected land, i.e. the sum of money that the land might have been expected to realize if sold on the open market by a willing seller at the time of the declaration of the acquisition. Where the property

[4] *State Lands Act 1962*, Section 4. Item 5 is an alternative to items 1–4.

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 use of the land at the time of the acquisition, and it is the amount required for the reasonable re-instatement equivalent to the condition of the land at the date of the said acquisition (Act 125, Section 7).

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. Therefore, the valuation cannot take into account the intended benefits that the acquired land would bring to the acquiring authority.

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 (Act 125, Section 4[6]).

The outstanding compensation issues relate to compulsory acquisitions made 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 came into effect should be used to address this outstanding issue. In all the acquisition laws, compensation can be paid only when the acquisition process is completed. This process has given rise to three main issues:

- “illegal” occupation of land by the state without acquisition;
- denying expropriated owners the opportunity to claim compensation;
- huge state debt in respect of outstanding compensation.

According to the inventory undertaken for Central Region, as at December 2005 the outstanding debt in respect of compensation payment in that region was more than US$65 million. 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 that turns an unwilling seller into a willing seller. If this is the case, then the resentment of communities against the occupation of their land by the state 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 that the state can settle all amounts from its budget. Even in cases where compensation has been paid, there are problems associated with intergenerational equity in the utilization of the compensation money. Thus, even though an amount sufficient to rebuild the entire La township at the time was paid to the La Stool for the acquisition of land for Accra Airport in 1947, there is no monument or development to show how the amount was utilized. This has led the current generation to think that the compensation either was not paid or was inadequate – a cause for community agitation against the state.

The issues that require policy directions include:

- How the compensation debt should be handled and paid.
- In situations where the acquired land has been encroached upon and the purpose of acquisition has been defeated, how the state should treat those who have lost their land rights as a result of the acquisition and subsequent encroachments.
- Where the compulsorily acquired land has been divested to private entities, which should be responsible for the payment of compensation. This becomes a critical issue where part of the divested property has not been fully developed.

- How the state ensures intergenerational equity in the use of compensation money so that subsequent generations will also benefit from payments for compulsory acquisition.

## SEARCHING FOR POLICY OPTIONS

In discussing available options, it is instructive to discuss briefly the lessons learned from the inventory exercise and cabinet directives to provide direction for the development of policy and to deal with the outstanding issues. The key lessons include:

- The state is occupying more land than estimated. The full implication of the extent of expropriation may not be known until an inventory has been concluded for the entire country.
- There is a need to review the acquisition processes and procedures to enable would-be expropriated owners to participate in the process.
- Government directives were to the effect that, wherever it was possible, 50 percent of the acquired lands should be returned to the original owners in situations where compensation had not been paid and where land had been acquired in excess of actual demands. However, there are no standards to guide the implementation of these directives.
- Government will not open for negotiations any land for which compensation had been fully paid, irrespective of the current use of the land. This stance still provides a source of conflict between the state and citizens as some of these lands have been put to commercial uses.
- Up-to-date and accurate land records are important for improving governance in land administration and for reducing tension between the state and its citizens.
- Local knowledge should not be discounted. Local communities knew even the areas that had not been formally acquired, the extent of land being occupied and the uses to which the lands were being put.

In searching for options for dealing with the issues such that the use of compulsory purchase powers will not be considered as *ultra vires*, three issues must be considered:

- the use of compulsory purchase powers outside the statutory wording of the legislation;
- the misuse of the powers;
- 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 (Denyer-Green, 1994).

In *Amontia v MD, Ghana Telecom*, the Court of Appeal 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." This admonition must guide the evaluation of any policy options and the new land laws to be drafted.

Several options have been implemented in the past in dealing with compensation payments. They have included: lump-sum payments (which created the intergenerational 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); and annual compensation rental (which has become a huge debt as the rents have been reviewed over time to reflect the current values of the land). These old methods have proved ineffective and unpopular even though they provide good lessons and guidance.

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

- 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 acquired in excess of actual need.
- Complete all outstanding acquisitions based on actual needs so that expropriated owners will have the opportunity to submit claims for compensation. This will require high expenditure in terms of surveying, inventory and completion of the procedures for compulsory acquisition.
- Return lands in excess of actual need to the pre-acquisition owners in order 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.
- The state should consider 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, and the national interest.
- The basis of compensation is changed from lump-sum to annual payments in order to ensure intergenerational 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 a lump sum but ensure that the uses to which the funds are put will fulfil the requirements for intergenerational equity.
- 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.
- A programmed debt payment schedule out of national budgets over a period of time. This will have to be weighed against potential disturbance to the stability of the economy that the injection of huge sums of money may cause.
- The state agrees with expropriated owners through local and national discussions the fact that the state is not able to pay all the outstanding compensation and provides a token lump sum to be paid to all expropriated owners for the pre-1992 acquisitions. This will close the chapter on the outstanding issues. Even here the amount involved may run into billions of dollars and seriously affect the national budget.
- Trusteeships, with each expropriated community setting up a trust into which the compensation money is paid and managed by trustees. This may also address the intergenerational equity issue.
- Return unutilized lands to the pre-acquisition owners in lieu of payment of compensation.
- Regularize encroachments at penalty and use the proceeds to pay compensation.

No one option may be sufficient in seeking solutions to the outstanding issues. However, a combination of some of the above may provide the necessary solution.

## CONCLUSION

The practice of compulsory acquisition in Ghana raises issues of governance in land management. Compulsory acquisition will still be used in the future to provide land for development in the public interest. As a new land bill is being prepared for the country, the laws on compulsory acquisition will have to be revised to take into account the provisions of the 1992 Constitution. It is necessary to construct provisions that provide for: quality management of the expropriation processes; protection of property rights; just and fair compensation to all those who lose their rights; a pro-poor approach to compensation; reduced uncertainty in the valuation process; and

the promotion of good governance in the expropriation process. Expropriation-related land tools, such as better planning processes, transparent compensation procedures, good enumeration of expropriated owners, and mechanisms for conflict resolution must be developed to support the process. Consideration should be given to increasing the amount of compensation well above any market value in order to accelerate acquisitions and avoid wasting time and money on negotiations. The state should even be given a limit within which to agree on compensation, losing the right to acquire the land should it fail to do so within the given time frame. It is time to think outside the box and develop innovative approaches to compulsory acquisition that promote equity and transparency. The policy options available to the state require serious dialogue with the key stakeholders, the identification of champions, and a dialogue with the hierarchy of the chieftaincy institution up to the National House of Chiefs.

## REFERENCES


**Asante, S.K.B.** 1975. *Property law and social goals in Ghana: 1844–1966.* Accra, Ghana Universities Press.

**Bentsi-Enchill, K.** 1964. *Ghana land law: an exposition, analysis and critique.* London, Sweet & Maxwell.

**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 organized by the RICS. London, University of East London.

**Deininger, K.** 2003. *Land policies for growth and poverty reduction.* Washington, DC, World Bank/ Oxford University Press.

**Denyer-Green, B.** 1994. *Compulsory purchase and compensation.* London, Estates Gazette.

**Kotey, N.A.** 2002. Compulsory acquisition of land in Ghana: does the 1992 Constitution open new Vistas? *In* C. Toulmin, P.L. Delville & S. Traoré, eds. *The dynamics of resource tenure in West Africa* pp. 203–214. London, GRET/IIED, James Currey & Heineman.

**Larbi, W.O.** 1994. *Urban land policies and the delivery of developable land in Ghana.* University of Reading, UK. (PhD thesis)

**Larbi, W.O., Antwi, A. & Olomolaiye, P.** 2004. Compulsory land acquisition in Ghana: policy and praxis. *Land Use Policy*, 1(2): 115–127.

**Ministry of Lands, Forestry and Mines**. 1999. *National Land Policy.* Accra.

**Okoth-Ogendo, H.W.O.** 2000. Legislative approaches to customary tenure and tenure reform in East Africa. *In* C. Toulmin & J. Quan, eds. *Evolving land rights, policy and tenure in Africa*, pp. 123–134. London, DFID/IIED/NRI.

**Quedraogo, H., Gwisei, D. & Hitimana, L.** 2006. *Land reform processes in West Africa: a review.* Club du Sahel.

**Republic of Ghana.** 1992. *The Constitution of the Republic of Ghana.* Accra, Government Printer.

# Gestion des terres domaniales et publiques au Népal

*Au Népal, la majorité de la population rurale pratique une agriculture de subsistance. On constate un taux élevé de migration des paysans sans terre des montagnes vers les plaines et des zones rurales vers les zones urbaines à la recherche de terres plus adaptées à l'agriculture et de meilleurs revenus. Il en résulte un empiètement massif sur les terres domaniales et publiques. Il existe plusieurs dispositions juridiques pour la préservation et la gestion des terres domaniales et publiques, mais en l'absence d'une politique foncière détaillée, d'une législation foncière intégrée et d'un bureau chargé de leur préservation et de leur gestion, ces terres subissent un appauvrissement continu. Cet article formule des recommandations pour une meilleure gestion des terres domaniales et publiques au Népal.*

# Gestión de tierras estatales y públicas en Nepal

*La mayor parte de la población rural de Nepal se dedica a la agricultura de subsistencia. Existe una gran tasa de migración de personas pobres sin tierras desde las montañas hasta las llanuras y desde las zonas rurales a las urbanas en búsqueda de tierras de cultivo y medios de vida mejores. Como consecuencia, se ha producido una intensa ocupación de las tierras estatales y públicas. Existen diversas disposiciones jurídicas para la preservación y gestión de las tierras estatales y públicas, pero se han ido debilitando progresivamente como consecuencia de la falta de una política global y una ley integrada referentes a la tierra, así como de una oficina responsable de la preservación y gestión de dichas tierras. En este artículo se hacen recomendaciones para la mejora de la gestión de las tierras estatales y públicas de Nepal.*