COMPULSORY LAND ACQUISITION AND COMPENSATION IN GHANA: SEARCHING FOR ALTERNATIVE POLICIES AND STRATEGIES

WORDSWORTH ODAME LARBI
GHANA
OUTLINE

• Country location and basic information
• Land tenure in Ghana
• Compulsory acquisition procedures
• Effects of compulsory acquisition
• Compensation
• Policy Options
• Conclusion
Ghana

- Land Area: 239,460 km²
- Population: 21.7 million (2007 estimate)
- Growth rate: 2.7% p.a.
- Agriculture accounts for 37.3% of GDP and employs 60% of workforce
- Agriculture accounts for 75% of export earnings and contributes 90% of food needs
- 63% of total land area is agriculture
- GDP growth rate was 6% in 2006: service sector is the highest contributor (37.5%)
LAND TENURE IN GHANA

- All lands are owned by customary institutions (stools/ skins, clans, families, etc)
- State must acquire land for its development programmes
- 78% owned by traditional authorities
- 20% by state
- 2% split ownership
- Both customary and common law rights exist in land, sometimes on the same piece
- The State exerts a lot of control over administration of customary lands
The Constitution guarantees private ownership of land.
The State can acquire land in the public interest or for a public purpose subject to the prompt payment of fair and adequate compensation.
Compulsory acquisition can be done only under a law that makes provision for prompt payment of compensation.
In case of un-use, owners shall be given first option for re-acquiring property and return compensation paid.
COMPULSORY ACQUISITION – PRE 1992 SITUATION

- Compulsory acquisition was guided principally by the State Lands Act, 1962
- Lands were also vested in the state in trust for customary owners
- Land could be ordered for occupation and use by the President under the Administration of Lands Act, 1962
- Several acquisitions were done during military regimes without due regard to the requirements of the law
  - Incomplete acquisitions
  - Non-payment of compensation
COMPULSORY ACQUISITION PROCEDURE IN GHANA (PRE 1992)

- Processes up to site selection
- Committee’s recommendation

- Processes up to the signing and publication of
  Executive Instrument by the Minister

- Processes for submitting claims
  and payment of compensation

- Appeal procedures
COMPULSORY ACQUISITION PROCEDURE

- Preliminary consideration and recommendations are done by a site advisory committee whose membership excludes land owners.
- Up to the point where an Executive Instrument is published, entire process lies with political Authority.
- Post-instrument processes are managed by statutory agencies – the Lands Commission and the Land Valuation Board.
- It is only after publication of the instrument that affected owners can submit claims for compensation.
- Entire process is long and can take up to two years to complete.
EFFECTS OF COMPULSORY ACQUISITION

• Uncompleted acquisitions making it impossible for expropriated owners to claim compensation (occupation without acquisition)

• Post acquisition management practices causing some legal experts to question whether the acquisitions were in the public interest

• Outstanding compensation
OCCUPATION WITHOUT ACQUISITION

- Large tracts of land occupied by the State without acquisition
- Table 1- occupation without acquisition.doc
  out of 692 sites, only 20.4% have been properly acquired
  79.6% are occupied by the state without any legal acquisition (43,369.91 ha)
- The result is agitation from communities against the use of the land and a lot of encroachments
POST ACQUISITION MANAGEMENT

• Transfer of acquired land to private entities to undertake stated public purpose eg. Divestiture of SOEs
• Use of the acquired land by the State for a different public purpose eg. AU Village
• Use of acquired land by private entities for uses different from the purpose of the acquisition eg. Accra Mall
• Auctioning of government bungalows to the highest bidder for redevelopment
• Use of land for ancillary or reasonably incidental purposes to be provided by private entities eg. Use of public universities’ lands for filling stations
Post acquisition management

• Land acquired in excess of real need and the use of excess sites for other uses eg housing, other state institutions Table 2 - Extent of use of acquired lands.doc
• Use of land by statutory corporations which are now private entities eg utility companies
• Massive encroachments by expropriated owners, thwarting the efforts of the state to develop the acquired land
• Lack of clear directions by the Courts (Nii Tetteh Opresreh II v Attorney General & Anor; Amontia v. MD Ghana Telecom)
• Expropriated owners can claim compensation only after the Executive Instrument has been published
• Legal rights and interest only are eligible for compensation
• Long procedure for claiming compensation
• Huge outstanding compensation in respect of acquisitions done before 1992
• Table 3 - outstanding compensation.doc
• Lack of inter-generational equity in the use of compensation funds
SEARCHING FOR ALTERNATIVE POLICY OPTIONS

• Policy options should address
  – Public interest/public purpose
  – Acquisition processes and procedure
  – Size of lands acquired
  – Inter-generational equity
  – Participation of the public in compulsory acquisition
  – Must be acceptable to the public
POLICY OPTIONS FOR DEALING WITH OUTSTANDING ISSUES

Policy options being considered under the LAP

• Development of guidelines and standards for lands to be acquired by the state eg. for education, health, agriculture

• Complete all outstanding acquisition based on actual needs

• Return lands in excess of actual need to pre-acquisition owners vis-à-vis creation of land banks

• Develop alternatives to monetary compensation including provision of infrastructure, shareholding in viable public institutions, ex-gratia payments, etc.

• Compensation should be changed from lump sum to annual payments to address inter-generational equity issues
SEARCHING FOR ALTERNATIVE POLICY OPTIONS

• Auction undeveloped lands or sell state owned enterprises on acquired lands to pay compensation
• A programmed debt payment schedule out of national budget over a period of time
• Token of appreciation to be paid by the State in respect of acquisitions prior to 1992
• Communities set up trusts into which compensation is paid and managed by trustees
• Return unutilized lands to pre-acquisition owners in lieu of compensation
• Regularize encroachment at penalty and use proceeds to pay compensation

No one approach can solve problem but perhaps a combination of them
CONCLUSION

• 1992 constitution opens a new vista for compulsory acquisition
• National land policy of 1999 provides for acquisition with circumspection
• New laws are needed to deal with compulsory acquisition and compensation
• Policy option requires serious dialogue with key stakeholders
• Governance structures for acquisition must also be improved
• Practical solutions must be found
THANK YOU