

**COMPULSORY LAND ACQUISITION AND PAYMENT OF
COMPENSATION IN GHANA.**

CASE STUDY: DIGYA NATIONAL PARK, DIGYA.



By

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DECLARATION

“I declare that, I have wholly undertaken the study or research reported herein under supervision.”

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CERTIFICATION

“I certify that, the student has duly presented her dissertation”

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DEDICATION

This research is dedicated to the Almighty God for His unfailing love, my mother, Madam Abena Pokuaa, my husband, Mr. D.K. Gyasi for his support and encouragement and lastly to my children.

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I am greatly indebted first of all to my creator, redeemer and sustainer who has led me this far in my educational career and through whose guidance and help this script has been possible. I say 'To GOD be the Glory, great things He has done'.

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ABSTRACT

Compulsory acquisition of land is basically the process by which the government or the state takes or acquires land belonging to individuals for public use and benefit such as the provision of basic infrastructure that will promote economic, cultural, health and social wellbeing of its citizens. For this development to take place the government needs to acquire land that will act as platform for such interventions. Whereas in the country, land ownership is guaranteed in the lordship of customary interest, the state has no option than to employ eminent domain to acquire private rights in land without complete accepted agreement from the owners for societal benefit. Yet despite being a core and necessary governmental power, compulsory acquisition has always attracted controversy, both in theory and practice. The need to strictly adhere to the rules and procedures of the legislative tool and also non- payment of compensation has become obvious and apparent. Considering these intricacies and complications involved in the compulsory acquisition process in the country requires some perceptible revision that will promote good practices among governments at local, regional and national levels. The methodology applied on this research was drawing on pragmatic and realistic studies pertaining to compulsory acquisition in Ghana through qualitative and quantitative analytical framework. The research design used for the research was the case study approach to put the study in context. Study difficulties as well as wideranging nature of research were taking into consideration in employing this research. The main focus of the research is however, on the socio-economic impact on the lives of persons whose parcels of land are acquired but fair and equitable compensation has not been paid by the state. The effects of compulsory land acquisition identified included changes in income levels, land ownership structure, farming practices, family composition and cultural and social values, norms and bonds. Other

issues the study considered include, principles underpinning legislative tool, argument in support and against compulsory acquisition. It also goes on to discuss the pattern of land ownership in Ghana and procedures for exercising compulsory acquisition. Some suggestions are made as to how the process can be improved in future. It is hoped that the lessons learned from this case study will be informative to decision makers not only in Ghana but also in other developing countries where government projects caused a lot of discontentment on the part of the people affected on one hand and the government on the other. Hence, the study seeks to outline ways whereby some of these problems can be minimized in order to ensure that compulsory acquisition is effectively carried out in the near future.

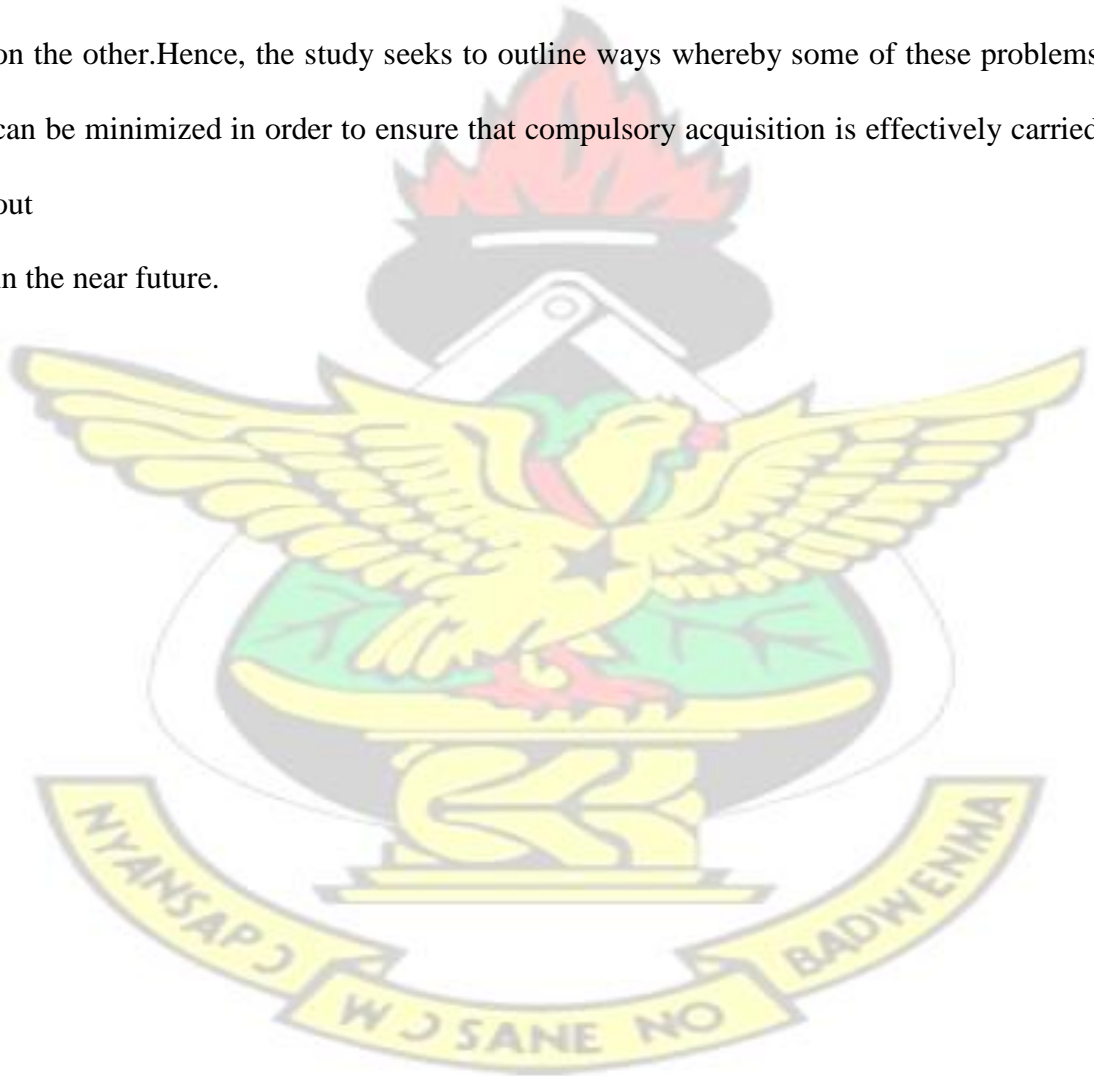


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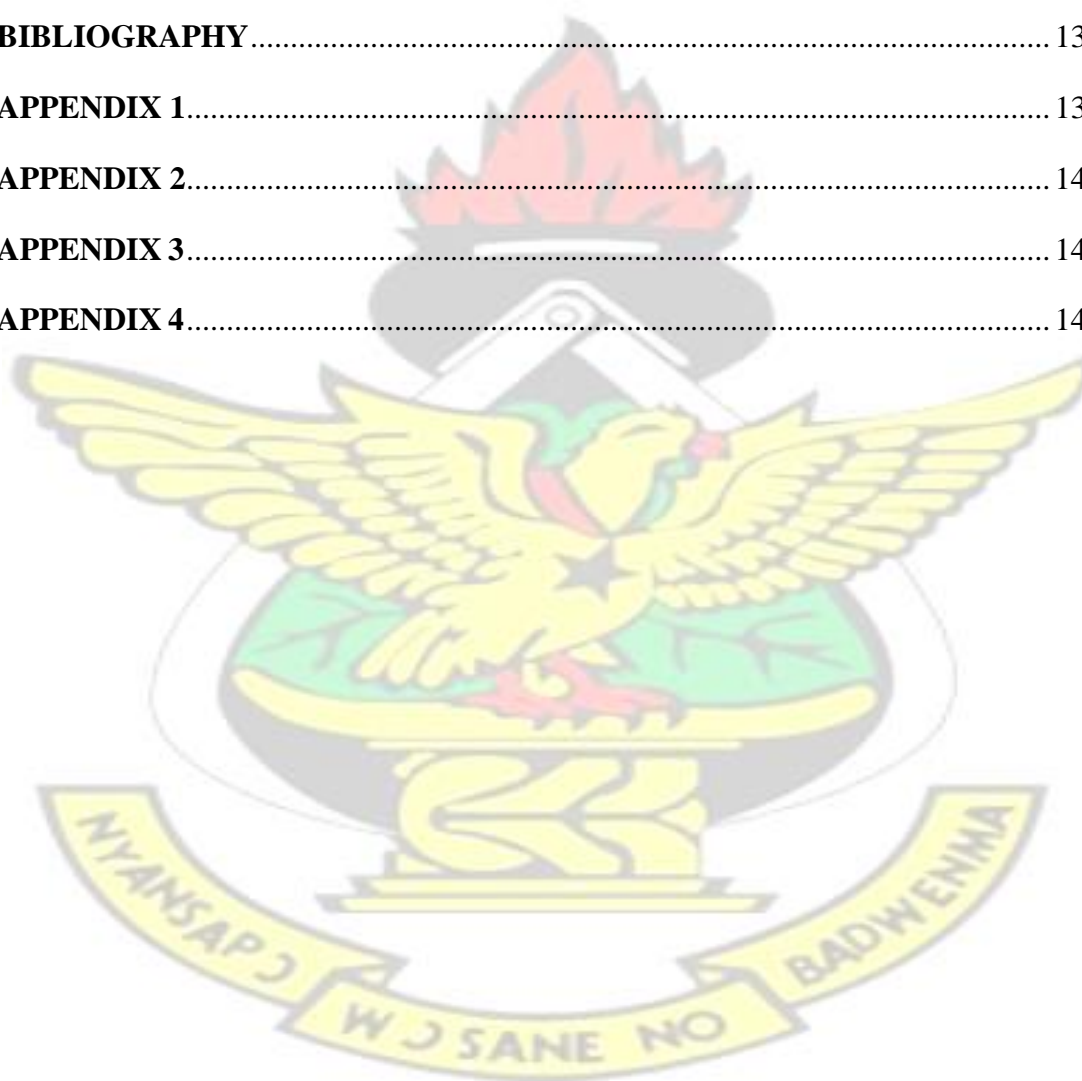
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25. The 1957 Constitution of Ghana
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28. The 1979 Constitution of Ghana
29. The 1992 Constitution of Ghana
30. The French Civil Code Article 545.
31. The Lands Commission Act, 2008 (Act 767)
32. The Local Government Act 1993 (Act 462).
33. The Public Conveyance Act, 1965 (Act 302)
34. The Stool Lands Act, 1960.
35. The Survey Act 1962, Act 127) Amended by Survey Decree 1974 (NRCD, 283)
36. Town and Country Planning Ordinance (with subsequent amendment), 1945
(Cap 84).
37. United States of America Constitution.
38. Wildlife Reserves Regulations (LI710) (2006); Ghana Wildlife Division.

LIST OF ACRONYMS

□ A.F.R.C.D	-	Armed Forces Revolutionary Council Decree
□ D.N.P	-	Digya National Park
□ E.I	-	Executive Instrument
□ E.R.P	-	Economic Recovery Program
□ F.I.G	-	International Federation of Surveyors
□ G.E.S	-	Ghana Education Service
□ G.W.C.L	-	Ghana Water Company Limited
□ G.W.D	-	Ghana Wildlife Division
□ K.M.A	-	Kumasi Metropolitan Assembly
□ L.A.P	-	Land Administration Project
□ L.I	-	Legislative Instrument
□ L.V.B	-	Land Valuation Board
□ L.V.D	-	Land Valuation Division
□ N.D.C	-	National Democratic Council
□ N.L.C.D	-	National Liberation Council Decree
□ NLP	-	National Land Policy
□ P.N.D.C	-	Provisional National Defense Council
□ P.V.L.M	-	Public and Vested Land Management
□ S.O.E	-	State Owned Enterprises
□ V.R.A	-	Volta River Authority

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Land has unique characteristics in terms of complex interactions and processes, high potential for wealth creation, socio-economic development growth and poverty reduction. It is this potential for wealth creation that makes land one of the most important factors for development. Worldwide, land is described as one of the most important asset among politicians, researchers, estate development agencies, urban planners, policy makers and community based organizations.

Sustainable development requires governments to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, and protection and restoration of the natural environment. In the process of providing such facilities and infrastructure is the acquisition of appropriate land. That land may not be on sale at the time it is required. In order to obtain land when and where it is needed, governments have the power of compulsory acquisition of land: they can compel owners to sell their land in order for it to be used for specific purposes.

Compulsory acquisition as described in this study is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society. This power is often necessary for social and economic development and the protection of the natural environment. Compulsory acquisition requires finding the balance between the public need for land on the one hand, and the provision of land tenure security and the protection of private property rights on the other hand. If compulsory acquisition is done poorly, it may leave people homeless and landless, with no way of earning a livelihood, without access to necessary resources or

community support, and with the feeling that they have suffered a grave injustice. If, on the other hand, governments carry out compulsory acquisition satisfactorily, they leave communities and people in equivalent situations while at the same time providing the intended benefits to society.

In 2008, for the first time in history more than half of the entire world population (3.3billion) lived in urban areas and this figure is expected to increase to 5 billion in 2030 (UN-Habitat, 2008). Available data show that urban population will increase from 3.29 billion in 2007, to 4.58 billion people in 2025 over which about 96 percent of this increase will accumulate in developing countries especially Africa and Asia (UN-Habitat, 2008).

The pace of this population growth leads to the provision of services and infrastructure such as water supply, transportation, agricultural expansion, health and recreational facilities that promote human wellbeing in social, economic, physical, environmental and cultural manifestations. At the moment, Ghana's urbanization rate (3.54%) is growing faster with four out of ten people living in urban areas and it is predicted that by 2050, more than 75.6% of the population will live in urban centers in contrast with the rural population (24.4%), if the trend is not changed (Obeng-Odoom, 2010). The quest for land is as a result of the increasing urbanization in our cities and towns coupled with high population growth.

All lands in Ghana 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, and change of use of acquired lands as against the purpose of acquisition, divestiture of state enterprises to private entities, etc.

Government acquires land from stools/skins and families through compulsory acquisition powers. These lands are vested in the President and held in trust by the state for the entire people of Ghana for provision of infrastructure development and proper planning in the interest of the public; governments have been mandated by Acts and Statutes to acquire lands compulsorily with compensation for such purposes (Deininger, 2003).

Compulsory acquisition of land affects the rights of landowners. The National Land Policy Document of 1999 identified one of the problems of the land sector as “compulsory acquisition of large tracts of lands which have not been utilized and for which payment of compensation has been either denied or delayed”. However, as Kotey (2002, 2003) has noted, the exercise of such power is not without controversy. The way in which many developing countries governments exercise this right, especially for urban expansions undermines tenure security, and because often little or no compensation is paid, also has negative impacts on equity and transparency (Deininger, 2003).

By this practice, landowners have been left almost landless, denied of their source of livelihood and have become tenants on their own lands, giving rise to poverty and disputes between the state and the stools as well as within the private land sector. There is now a search for new policy options for addressing these issues and these are discussed under this research work.

1.2 Statement of the Problem

Within the purview of the socio-economic importance of land as a fundamental resource on which development thrives, issues of compulsory acquisition by the state have always had economic, social and environmental implications for expropriated parties.

The Digya National Park was acquired compulsorily under the Wildlife Legislative Instrument 710 on 20th September 1971, for the development of a National Park for the then Game and Wild Life Department. As a result of this acquisition, a large track of land was acquired and its effects have resulted in the eviction of the communities which were within the park. The Park occupies an area of 803,152 acres (Annual report GWD, 2010). On this high potential land, the farmers cultivated commercial crops like cocoa and oil palm. Subsistence crops such as yam, cassava and maize were also cultivated. The main objective of creating the Digya Park was to conserve biodiversity and to preserve its intrinsic features for recreational, educational and scientific use. The acquisition has led to severe poverty on the expropriated owners who were mainly farmers and fishermen and thus depended largely on land for their source of income. The encroachment in the reserve and the constant confrontation between the communities and the government agencies is a reflection of their disapproval of their land taken without any compensation.

To reduce some of these land related problems, the Government, through LAP, has initiated a number of reform programmes aimed at reducing poverty, promoting social stability by improving security of tenure, and simplifying the process of accessing land which would make it fair, transparent and efficient and to develop an efficient land market. The National Land Policy (NLP) sought to provide the necessary

framework for addressing the problems and constraints relating to land to protect the rights of land owners and their descendants from becoming landless or tenants on their own lands. It also sought to ensure payments were made within reasonable time and that compensation was fair and adequate for the land acquired by government from stools, skins or traditional authorities, families and individuals for the country's sustainable social and economic development. This study seeks to analyze the socio-economic effects on those whose lands have been taken but have not been paid compensation. There is a far reaching impact on the socio-economic livelihoods of the affected people as their lands constitute their main source of livelihood and economic sustenance.

It is on account of this, that this project sets forth to investigate the effect of non-payment of compensation on the expropriated persons as a result of their lands been taken using the Digya National Park as case study. To this end, the study delves into measures of the acquisition and outlines suggestions towards making compulsory land acquisition practices more receptive to the affected communities.

1.3 Objectives of the Study

The ultimate objective of the study was to identify the various problems encountered in connection with the non-payment of compensation and to analyze the factors responsible for the delay and its effect on the community. Specifically, the following objectives have been set:

- i. To examine whether compensation has been paid to the land owners at the Digya National Park and if not, why the delay in the payment of the compensation.
- ii. To examine the direct and indirect effects of compulsory acquisition on the socio-economic livelihood of the expropriated persons.
- iii. To examine whether the conditions upon which the land was released have been fulfilled by the Government.
- iv. To draw lessons from these and make recommendations towards policy formulation in respect to compulsory acquisition and to ease the problems facing the affected communities.

1.4 Research Questions

To address the objectives above, the following questions were posed in order to set the tone for the research:

- 1) What was the acquisition procedure in the taking at Digya?
- 2) Was the community involved in the process?
- 3) Were there any set up conditions with the Government and the communities within the park?
- 4) What are the effects of the acquisition on the affected people socially and economically?
- 5) What are the benefits to the people from the acquisition?
- 6) What problems did the people within the catchment area face as a result of the acquisition?

1.5 Scope of the Study

The study was specifically restricted to impact of Non- payment of compensation on the expropriated and the focus was on the socio- economic impact on the displaced communities. The scope of this study covers communities in and around the Digya National Park. The study area chosen is an area acquired by the Government of Ghana for the National Park in the Brong-Ahafo, Eastern and Ashanti Regions. However, the scope of this study was limited to only three towns (Domi, Digya and Kumawu). These towns were purposely chosen due to the extent to which the acquisition has affected them. However, it is important to note that the findings of this research could be applied to any compulsory acquisition in the country.

Specifically, the study tackled the following issues:

- a) The acquisition procedure of the Digya Park
- b) Whether the people benefited from the acquisition
- c) Whether compensation was paid after the acquisition.

These issues were studied to ascertain the extent to which the non-payment of compensation affected the communities around the park and offer recommendations to guide future policy on compulsory acquisition. Though the focus was restricted to the study area, the result would invariably be for land tenure security policies in general.

The initial phase or the entry point of the research was the identification of the research problem. Second phase of the research included the Data collection from the study area that is Digya National Park in the Brong Ahafo, Ashanti and Eastern Regions. The last phase of the study involved the data analysis, interpretation of the data and recommendations and suggestions of the research based on the analysis and interpretation of the data.

1.6 Justification of the Study

There have been series of petitions, allegations and counter allegations from the community, Ghana Wildlife Division and associations over the use of Digya National Park. Despite the number of meetings on different occasions and complaints on files at the Lands Commission, Regional Coordinating Council, etc there has not been any solution to the problem between the Ghana Wildlife Division and the communities.

Due to non-payment of compensation, users of the land find it difficult to relocate and find alternative jobs to earn a living. This has compelled the users of the land to farm within the park. These have often resulted in conflicts between the communities and GWD and much has not been done about it in solving the problem of encroachment. A more recent study, Larbi, 2004 analyses compulsory acquisition practice in the country, but falls short of critically examining the effect non-payment of compensation has on the expropriated.

It is noteworthy that there is very little literature based on empirical studies conducted to support the claims made above in the case of Ghana. This therefore makes the study relevant as it would contribute to the current discussion on land acquisition, by proposing conditions that support and reinforce land acquisition by the state and governance structure that are able to safeguard general livelihood. Suggestions are made on the adoption of an institutional culture on the part of acquiring bodies and the land management institutions on the effects of non-payment of compensation on the expropriated.

The study would serve as the basis for future studies and investigations contribute to existing knowledge on compulsory land acquisition and also rekindle

general awareness on how delayed compensation affects the livelihood of the expropriated. In addition, the study identifies possible channels of communication gaps on the part of the acquiring body and the expropriated. The findings and recommendations will have tremendous importance to government agencies in- charge of formulating and implementing land policies such as the Ministry of Land and Natural Resources, which would find the study useful in drawing and implementing land policies under the current Land Administration Project.

1.7 Limitations of the Study

There were a lot of problems, which were encountered, which thus limit the research to some extent. These limitations were:

- The problem of time and duration under which this research work had to be completed. Considering collecting data from three different Districts and the fact that most of the affected persons had moved away from the park and have resettled in nearby communities, it called for the use of ‘Snowball Sampling Method’ for the data collection.
- The source of funding was inadequate. However, the researcher managed to complete the project work with help from family members and friends.
- Most of the claimants were deceased and unfortunately, some of the successors did not have enough information on the acquired land because of time lapse.
- Access to the park was another limitation to the study. The Park is not easily accessible and the only means of transport to some parts of the park is by canoe which even becomes difficult to use during rainy seasons.

- There was also inadequate data from Ghana Wildlife Division and Lands Commission on the Digya National Park acquisition. These also include the bureaucratic procedures at various government institutions especially the District Assemblies.

Despite these limitations, the author was successful in carrying out the study. This was as a result of the assistance the researcher received from the Park Manager, the Park wardens, some friends and her supervisor that made this research successful.

1.8 Organization of the Chapters

The study is organized into five main chapters. Chapter One introduces the study through ownership of land, compulsory acquisition and payment of compensation, statement of the problem, objectives of the study and limitations. Chapter Two presents an overview and importance of Compulsory Acquisition, Relationship between Compulsory Acquisition and Compensation, Effects of Non-payment of compensation, Present procedure in Compulsory Acquisition, Cases of Compulsory Acquisition and Land Tenure system.

Chapter Three gives the Research Methodology for the study, the Demographic features of the study area and a brief historical overview of Digya National Park. Chapter Four presents and analyses the data gathered from the field whiles chapter Five concludes the study with recommendations as well as the concluding remarks in respect of the study.

CHAPTER TWO

THE LAWS AND PRACTICE OF COMPULSORY ACQUISITION

2.1. Introduction

This chapter starts with a discussion on the Laws and practice of compulsory land acquisition and the social and political benefit as well as its economic value to society. Other issues discussed include a brief description of land tenure system in Ghana, relationship between compulsory land acquisition and compensation, cases of compulsory land acquisition, followed by institutional framework of land acquisition etc.

2.2 Compulsory Acquisition of Land by the State

There is almost universal agreement that in economics where private property ownership is permitted, the state has the power to compulsorily acquire the private property of individuals in the public interest or for the public good, subject to the payment of just compensation (Denyer-Gren, 1998). The process termed compulsory purchase, compulsory acquisition, expropriation; eminent domain by various jurisdictions- ensures (at least) that the good of the individual yields to that of the community, reflecting the supremacy of the state over people and their private property (Knetsch, 1983 as stated in Bempa, 2003). The power provides the state with an overriding interest over access, control and management of land irrespective of the tenure category under which the land is held or owned (Okoth- Ogendo, 2000).

Freedom of the person and the right to acquire, hold and enjoy property are the two pillars on which a democratic society rests. These are characteristics as natural rights of the people. Property is not only an economic asset; it also has emotional and

sentimental value (Denyer-Gren, 1998). However, the right to property is not absolute. This right has always been regarded as being subject to eminent domain, an inherent right of the state, an essential part of the state sovereignty Ding (2007). Eminent domain therefore is subject to two essential conditions: private property is to be taken only for public use; and just compensation must be paid for the property taken (Keith, 1984). Land acquisition, therefore, is a way of direct control over land development. Land acquisition is also the government's tool to assemble land in resolving the land supply problems for development. Thus there are sound theoretical reasons why governments may acquire land compulsorily.

The extent of loss of land rights by owners and occupants may vary considerably, both in terms of the amount of land involved and the types of rights that are affected. This has implications for the extent to which a particular government action is governed by the principles of compulsory acquisition. It also has implications regarding the rights and remedies of people affected by that action.

Compulsory acquisition is commonly associated with the transfer of ownership of a land parcel in its entirety. This may occur in large scale projects (e.g. construction of dams or airports) as well as in smaller projects (e.g. construction of hospitals or schools). However, compulsory acquisition may be also used to acquire part of a parcel, e.g. for the construction of a road. In some cases, the acquisition of portion of a land parcel may leave the remainder of the land intact. The remainder may be large enough for continued use by the owner or occupant despite its reduced value; or it may be so small that the person can no longer use it to maintain a living. In other cases, a new road may cut through the middle of the parcel, leaving the remainder divided into several unconnected pieces, some of which may be without access routes. In some countries,

the governing legislation may allow the landowner to require the acquiring agency to acquire the whole parcel Courtney, (1983).

The use of specific portions of a land parcel may be also acquired for easements or servitudes to provide for the passage of pipelines and cables. Rights acquired usually include the right to enter the parcel to make repairs. The rights acquired may be granted temporarily or permanently, and may be transferable to others.

2.3 Legal and institutional basis for compulsory acquisition and compensation

The most significant vehicle by which the state exercises control over private property rights of land is through compulsory acquisition subject to the payment of compensation. This in Ghana dates back to the colonial government for some public purposes. These purposes include development of schools, hospitals, roads, and other facilities. Current discourse on socio-economic development in many countries in subSaharan Africa has focused attention on the importance of land in development and the contribution that land rights, access to security of tenure can make to economic development, sustainable livelihoods and poverty alleviation in these countries (Toulmin and Quan, 2000; Larbi, 2004).

When land is taken, in the national interest by a statutory power, under an Act or an Instrument granting that power without the agreement of the owner, it may be said to be compulsorily acquired. Black's Law Dictionary (1948) defines compulsory acquisition as the right of the State through its regular organisation to reassert either temporarily or permanently its domain over any portion of the soil of the territory of the state for the common safety. For instance, in 1961, several thousands of families and individuals were displaced through the execution of the Volta River Dam and later

the Barekese Dam. This has rendered the communities landless and loss of jobs which has affected their livelihood.

It is therefore not surprising that powers of compulsory acquisition of land exist in respect of highway construction, public housing, cemeteries, utility services, agricultural purposes and urban renewal, national defence, inland ports, just to mention a few (Bempa, 2003). Government and individuals have to acquire land from their owners before under taking any project or development. Individuals normally acquire land through direct purchase, inheritance or through gift. Government on the other hand may acquire land for development through compulsory acquisition or private treaty.

Governments all over the world have been mandated by Acts and Statutes to acquire land for development in the interest of the public. Article 545 of the French Civil Code provides that no one's property may forcibly be taken away except for public interest for whose sake adequate compensation would be paid. The Article 438 of the Italian Code declares that "no one shall be constrained to surrender his property except for cause of public utility, and subject to previous payment of just indemnity".

The constitutions of many countries provide for both the protection of private property rights and the power of the government to acquire land without the willing consent of the owner. There is, however, great variation. Some countries have broadly defined provisions for compulsory acquisition, while those of other countries are more specific. Constitutional frameworks that have broadly defined provisions concentrate on basic principles and often simply assert the power to compulsorily acquire land as the single exception to fully protected private property rights. For example, the constitution of the United States of America mandates that: "No person...shall be

deprived of...property, without due process of law; nor shall private property be taken for public use without just compensation.” (Article V).

Similarly, Rwanda’s constitution states: “Private property, whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by the law, and in return for fair and prior compensation.” (Title II, Article 23). Such constitutions leave the details of compulsory acquisition to other legislation and, in some instances, to the interpretation of the courts.

Other constitutional frameworks specify in detail the mechanisms by which the government can compulsorily acquire land. They tend to include a specific list of the purposes for which land may be acquired. For example, Ghana’s constitution includes provisions detailing exactly what kinds of projects allow the government to use its power of compulsory acquisition, and specifies that displaced inhabitants should be resettled on suitable alternative land (Chapter Five, Article 20). Chile’s constitution identifies the purposes for which land may be compulsorily acquired, the right of property holders to contest the action in court, a framework for the calculation of compensation, the mechanisms by which the state must pay people who are deprived of their property, and the timing and sequence of possession (Chapter III, Article 19, 24).

Most countries supplement the constitutional basis for compulsory acquisition, whether broadly or specifically defined, with extensive laws and regulations. National or sub-national laws usually describe in detail the purposes for which compulsory acquisition can be used, the agencies and officials with the power to compulsorily acquire land, the procedures to be followed, the methods for determining compensation,

the rights of affected owners or occupants and how grievances are to be addressed. The regulations that accompany these laws may be particularly important as they often provide the acquiring agency with instructions on how to carry out compulsory acquisition during all phases of the process. The laws governing compulsory acquisition are part property law and part administrative law which dictates governance procedures.

According to Bempa (2003) Principles of administrative justice and good governance often require that such powers are bound by legal rules which allow for hearings and appeals, and are subject to judicial review the majority of them need drastic revision, if they are to be effective during periods of rapid urban expansion. Kitay (1985) stated that, it is necessary to adopt and modernize comprehensive legislation and policies, through democratic processes to secure the kind of public support needed for compulsory acquisition.

In Ghana, the Constitutions of 1957, 1979 and 1992 all unequivocally guaranteed private property right. In the colonial era government acquired lands through Ordinances such as the Public Land Ordinance of 1876, Cap 134 and the Road Appropriation Ordinance of 1902. However, after independence the principal laws for compulsory acquisition in Ghana include:

- a. The 1992 Constitution of Ghana
- b. State Lands Act, 1962 (Act 125)
- c. Administration of Lands Act, 1962 (Act 123)
- d. Land (Statutory Way leaves) Act, 1962 (Act 186)
- e. The Public Conveyance Act, 1965, (Act 302)

2.3.1 The 1992 Constitution

The 1992 Constitution of Ghana has enshrined trust in government through eminent domain to compulsorily acquire lands that are necessary for public interest and purpose. Clearly and genuine reasons should be well defined to compel the state exercise such rights and obligations. It is however declared that no property 'shall be compulsory taken possession of or acquired by the state' unless otherwise indicated to 'promote public benefit'. The 1992 Constitution Article 20 (1), gives the State the right to acquire land in the benefit of the public. Section (2) also provides that compulsory acquisition shall only be made under a law which makes provision for the prompt payment of fair and adequate compensation. Clause 5 of the Article also provides that;

“any property compulsorily taken possession of or acquired in the public interest or for the public purpose shall be used only in the public interest or for, which it was acquired..”

Section 6 of Article 20 further states that:

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 amount as is commensurate with the whole
of the property at the time of the re-acquisition

2.3.2 State Lands Act, 1962 (Act 125)

The main law governing expropriation in Ghana is the State Lands Act, 1962 (Act 125). The law with subsequent amendment was enacted to give the President the power to acquire any parcel of land for the public use whenever he is of the opinion that it is in the public interest to do so.

Under the Act, there are three main distinct heads in the acquisition process.

- i. Who can acquire
- ii. By what procedure
- iii.

The provisions as to assessment of compensation

Who can acquire

The Act empowers the President to declare any land required for public use and acquire it in his name and on behalf of the Republic free from any encumbrance upon the publication of an Executive Instrument in the Gazette as enshrined in the LI 285. Although this power to take private property is exclusively reserved for the President, yet owing to the complexities of the process of expropriation the power is exercisable for and on his behalf by the Minister responsible for Lands and Forestry.

Acquisition Procedure

There is an Executive Instrument done by the Minister which simply declares an intention to take the land specified therein and does not by itself transfer either the legal or equitable interest in the land to the president, nor does it establish the relation of vendor and purchaser between the owner and the President.

The declaration has the effect of preventing the owner from altering the land or creating any new interest in the land so as to increase the burden of compensation payable by the state. The declaration also fixes the dates at which values are determined.

One of the main objectives of Act 125 was to facilitate the acquisition procedure. It also prescribes the mode of publication of this instrument. It further provides that claims for compensation by any person having a right or interest in any land that is the subject matter of an executive instrument may be made to the Minister responsible for Lands within three months from the date of the publication in the prescribed manner. The Minister may, having regard to the market value or the replacement value of the land or the cost of disturbance or any other damage suffered thereby, pay compensation in respect of the land or make an offer for land of equivalent value.

This enactment seeks to enhance accessibility of land to developers and investors; since the law presents the granting of leases and licenses in respect of such acquired lands by the President. The management function is currently being performed by the Lands Commission as provided under article 258 of the 1992 Constitution of Ghana.

2.3.3 Administration of Lands Act, 1962 (Act 123)

(With subsequent amendments)

Before the passing of the Administration of Lands Act, 1962 (Act 123), there were three other laws which dealt with stool lands. These laws were the Local Government Ordinance 1951 (Cap.64), the State Council Ordinance 1952 and Municipal Council

Ordinance 1953. The Administration of Lands (amendment) Decree, 1979 (AFRCD 61) also prescribes the various tenure of years to be granted to various land uses and limitations on land sizes to be granted to individuals or corporate bodies.

The main functions of Act 123 include management, the concept of split ownership or power to vest land in trust, power to authorize occupation and use of land, control over stool land dealings and collection of revenue. In terms of management, Section 1 of this Act vested the management of stool lands in the Minister. The Act contained several provisions which gave specific managerial functions to the Minister. Section 14 of the Act authorized the Minister to keep in his custody all deed records, registers accounts and other documents seals and stamps related to stool lands. The 1992 Constitution currently vests all stool lands in the appropriate stools on behalf of and in trust for the subjects. On the concept of split ownership, Section 7(1) provides that;

Where it appears to the President that it is in the public interest so to do, he may by Executive Instrument declare any stool land to be vested in him in trust and accordingly it shall be lawful for the publication of this instrument, to execute any deed or do any act as a trustee in respect of the land specified in the instrument.

Section 7(2) also provides that;

Any moneys accruing as a result of any deed executed or act done by the President under sub-section (1) shall be paid into the appropriate account for the purpose of this Act.

Under this Act, the legal ownership with its incidence of economic functions is separated from the equitable and beneficial ownership which is retained by the stool. The President is empowered to make grants of land by way of a lease or license for development. The Lands Commission performs this function on behalf of the Government.

Section 10 (1) empowers the President to authorize the occupation and use of any land to which the Act applies for any purpose which in his opinion is conducive to the public welfare or the interest of the state; and may pay into the appropriate account out of moneys granted by vote of the National Assembly such annual sums as appear to him, having regard on the other hand, to the benefits derived by the people of the area in which the land is situated from the use of the land, and the proper payments to be made for the land. The money so paid into the account shall be applied in the same way as other revenue collected under this Act". The combined effect of the provisions of the two sections (7 and 10) of Act 123 enables the President as trustee, to give access to land to parties in the public interest.

This Act does not make room for payment of lump sum compensation to affected property owners but rather annual rental compensation 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?

Act 123 also makes specific provisions for the control over stool land transactions. The minister under section 8(1) of Act 123 is authorized to grant concurrence to any stool land disposition. This requirement was re-stated but took the authority from the minister to the Public and Vested Land Management of the Lands

Commission. Under the 1992 Constitution, article 267(3) empowered the Regional Lands Commission to certify all stool land disposition in their respective regions.

2.3.4 The Lands (Statutory Wayleaves) Act, 1963 (Act 186)

This law empowers the President upon request from the Minister (Now Minister for Transport and Communication) for specific public works, to create a wayleave to enable public utility bodies to function without much hindrance. It provides for the creation of the way leave over land in situations where it is required to undertake some: construction, installation and maintenance of works of public utilities and for the creation of rights of way and other similar interest in respect of such works.

Where a person suffers a loss or damage as a result of the carrying out of a survey under this Act or as a result of the installation, construction, inspection, maintenance, replacement or removal of a specified work that person is entitled, except where the loss or damage resulted from or arose out of the acts of that person, the servants or the agents, of that person and subject to this section, to compensation of an amount assessed by the Minister in respect of the loss or damage. In assessing the compensation the Minister may take into account a reduction of an amount by which a person's land has increased in value as a result of the installation or construction of the work.

A claim for compensation under subsection (1) shall be made to the Minister in the prescribed form not more than three months, or a longer period that the Minister may generally or in any particular case direct, after the date of the declaration made by the President under section 1. In short the objective of the acquisition is to facilitate access to land for the purpose of undertaking activities relating to public utilities over,

under or on land. Such works include road construction, the laying of pipe lines, overhead telephone and electricity lines, transformers etc. This creates an encumbrance on the land without the land being expressly acquired and ownership changing. The creation of the way leave does not debar the owner of land over which it is created from using it provided that such a use is not incompatible with the way leave so created.

2.3.5 The Public Conveyance Act, 1965 (ACT 302)

This law provides the President with the power to declare an area as a selected area and to make grants of land in that area and do other acts incidental to the declaration under Section 1(1).

Grants of land in the selected area can be made to persons:

- Deprived of the use of land by reason of the application of the provisions of other enactment e.g. in implementing schemes;
- Deprived of the use of land at Tema as a result of the Tema acquisition;
- Desirous of acquiring land within a planned housing area.

These legislations are necessary to ensure the legal protection of the affected parties as well as the predictability of the compensation procedure and assessment.

2.4 Public Purpose versus Public interest

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, filling stations etc. fall into this category (Larbi et al, 2003). This agrees with the wider ambit under which public interest can be considered to be ‘any right or advantage which endures or is intended to endure generally to the benefit of the whole people of Ghana’. This provides a wide array of situations for which compulsory acquisition can be undertaken and is prone to abuses. 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.

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. Many of the outstanding issues of compulsory acquisition which have created tensions between the state and the preacquisition owners relate to acquisitions done before the 1992 Constitution.

One thorny issue regarding compulsory acquisition is the dichotomy between acquisition for a public purpose and acquisition in the public interest. An acquisition is said to be for a public purpose when the government takes land for a specific and stated purpose. When the state acquires land for a public purpose, the expectation is

that the purpose is specific and it may be for the building of public schools, hospitals, police station or for the construction of roads or dams etc.

On the other hand, when the acquisition is said to be in the public interest, it is not always for a public purpose in fact. What the state actually does is to acquire the land and reallocate it to statutory corporations or private companies undertaking projects sponsored by the government or to private companies in which the Government has majority shares for purposes, which though contributing to public welfare, directly confer a benefit, including profit, on the user. Examples of such purposes include the building of hotels, private estate developments, banks, filling stations, etc.

It has been noted that in many cases the purpose of the acquisition is not clearly spelt out in the executive instrument by which the acquisition is made. In many cases, the purpose is stated in vague and uncertain terms, thus engendering protests from original land owners when attempts are made to use the land for ancillary and supporting activities. For example, the land acquired for the construction of the Airport simply states the purpose of the acquisition as “aerodrome expansion”. Thus original land owners are questioning the right of the state to use part of the land for the construction of the Airport City project.

Article 20(1) of the constitution provides:

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 following conditions are satisfied:

- (a) The taking of possession of 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

(b) The necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property;

Under the current constitutional regime for compulsory acquisition, for the process to be valid, the specific use or uses to which the acquired land is to be put must be stated so as to provide reasonable justification for the compulsory acquisition. Thus it is no longer sufficient simply to state that the land is being acquired in the “public interest”. The relevant constitutional provisions offer the court an opportunity to conduct an active review of assertions of “public interest” as a means of checking the unwarranted use of the state’s power of compulsory acquisition.

2.5 Arguments in Support of Compulsory Acquisition

Compulsory Acquisition provides the state with an overriding interest over access, control and management of land irrespective of land tenure category under which the land is held or owned (Okoth- Ogendero, 2000).

Many policy makers, researchers, NGO’s and CBO’s have criticized compulsory acquisition of land and properties, some on the other hand have also advocated for it, seeing it as a necessary tool for development. Ding (2007) in his paper “Policy and praxis of land acquisition in China,” outlined the following theoretical reasons for the legislation:

□ Provision of public goods

In most developing countries, certain infrastructure requires huge amount of money which is difficult to be provided by the private sector. Such public infrastructure includes dams for water supply, electricity, reservoirs, airports, roads, railways, police stations and urban development such as urban upgrading and regeneration. There are also certain types of infrastructure that government does not want private firms to operate because of their profit oriented motives. In this way, governments will want to provide such facilities which require land for their execution. The only way government can achieve these goals is to acquire land compulsorily using eminent domain. The provision of such infrastructure often leads to equitable distribution of resource among the rich and the poor. If private firms are allowed to operate and provide such facilities, the poor cannot have access to them, because such firms are profit oriented.

☐ **Land use compatibility**

Government may require land compulsorily to ensure compatibility of land uses. This is particularly apparent in developing countries where land ownership and determination of its use is in the hands of private individuals. To prevent haphazard development, government may restrict land use in terms of type and intensity to create harmony, safety, convenience, economy and functionality in our towns and cities. This is particularly obvious in developing countries where there are conflicting land uses due to the customary ownership of land. The payment of compensation for such losses where the land has not changed hands is not widely adopted. However, some countries do provide for compensation in such cases.

☐ **Promote equity and justice**

Compulsory acquisition is used as a tool to ensure fairness, equity and justice among the rich and the deprived especially in the accelerated urbanized cities. Considerably, the poor have limited access to land due to price escalation. Land is regarded as an important asset in the developing world where the rich often wants to own greater percentage of land. The rich with their supremacy often exploits the land market and tenure security deserting the poor since they cannot afford to buy. To control this dilemma, government may enter the land market through compulsory acquisition to ensure justice distribution of land.

There is insufficient provision of public basic facilities such as open spaces, recreational parks and conservation of the natural environment when land is allowed to operate at the profit market place. Meanwhile such provisions in our communities are very important in ensuring sustainable development. The private sector often provides infrastructure that they can easily make profit from. This problem is very critical in the developing countries where there are few parks and recreational centers and also tree planting. In this way government may acquire land compulsorily to provide such facilities.

2.6 Arguments against Compulsory Acquisition

The opportunity cost associated with the compulsory acquisition is the forgone use of land and its conveying cultural, social, economic and health outcomes (Larbi, 2004). Its associated consequences on property owners cannot be measured and quantified. Compulsory acquisition is basically meant to enrich lives but it simply end up making people impoverish, losing their capital assets and deny their access to basic human

rights needed to improve standard of living when their prompt and adequate compensation is denied.

The discrepancies and irregularities that result from unfair payment of compensation lead to social injustice. To implement acquisition effectively and efficiently requires enough resources. There is an abuse of human, social, cultural and economic rights when people are not compensated reasonably. Tensions are likely to rise up between implementing organization and the affected people. For example in China, there are disparities in compensation determination. Lands that are acquired for commercial purposes receive higher compensation than those acquired for public services such as highways, airports, water supply and canals (Ding, 2004). To ensure a good practice, whatever the reason for the acquisition equivalent disbursement should apply.

According to Tzu-Chin Lin and Sen-Tyan Lin (2006) productive structures, commercial activities and people's livelihoods are altered when land is acquired compulsorily. People may be displaced from their suitable homes that will result in modifying their family composition. Social network relationship is also destroyed especially where there are inadequate economic opportunities available at host communities. It also makes especially farmers landless when their farm land is been acquired without replacement. A good practice is to employ land to land option as a livelihood strategy to help quickly restore farmer's life. During compulsory land acquisitions most communities lose their cultural and historical sites and become strangers at their new location.

“The Impact of Compulsory Land Acquisition on Displaced Households in

Nairobi” Syagga and Olima (1996) found out that an average income of household from a project area before resettlement was \$1126 per hector of land per year gained from the production of cattle and crops. An amount of \$ 122,196 was obtained by the entire population from crops and woodlots each year. Following the displacement, the average income obtained by household was only \$205.50 representing 18% of their earlier income which is marked as an intensified reduction.

Compulsory acquisition of land may lead to land tenure insecurity among the affected people. People begin to lack tenure security, if government, who is supposed to maintain law and order, is using eminent domain and fails to pay compensation to the affected persons. There is abuse of trust following the malice in the policy and legislation that protect individuals and communities. It also delays projects especially when land owners are not satisfied with their reimbursement packages.

Strong and controversial are the arguments for and against compulsory acquisition. The most serious problem associated with compulsory acquisition is the failure of Government to make prompt and adequate payment of compensation and the crippling backlog in compensation claims (Denyer-Gren, 1998).

The backlog in compensation claims is said to date back to the 1960s, with no comprehensive programme having been adopted to address the situation to date. Attempts at eliminating the backlog through the issue of land bonds have not worked (Larbi, 2005). The state’s prerogative to compulsorily acquire land has not been judiciously exercised to date. Since independence large tracts of land have been compulsorily acquired with little regard for the rights of the original owners of land. In

Accra alone, 55 compulsory acquisitions covering 14,844ha were made between 1973 and 1990, representing 83% of all post-independence acquisitions in the capital, (Access to Justice Series No. 2, 2003). Incidentally, no compensation has been paid for majority of the acquisitions. The appropriation policy allowed the colonial regime to acquire land without compensation

2.7 Land Tenure System in Ghana

Land tenure defines the relationship between individuals and group of individuals in which rights and obligations with respect to land are specified (Talle, 1990; Bromley, 1991). Land tenure systems include the entire scope of tenure relationships and such set the framework for implementing land policy and land related objectives (GTZ, 1998). Land tenure is a basic instrument over all development policy, performing both direct and active and indirect facilitating role. It can hinder or encourage development since it determines individual's access to land for development.

In Ghana, the highest mode of interest that exists is the absolute, allodial or paramount title. This title could be vested in the individual or traditional land owning group by the rule of native land laws. This title is absolute and not derivative hence the exclusive control over use and occupation of the land is entrusted in the community, which may be a village, family, clan, stool or skin depending on the social and political organization of the community.

The usufructuary or determinable title is another form of interest that exists in Ghana. This is a perpetual right of beneficial use by stool or family members. With this interest, the subject has an inherent right to use any portion of stool land for his own benefit without necessarily obtaining the stool's consent. The interest here is perpetual

in so far as he continues to acknowledge the superiority of the stool and performs all duties required of him as a subject of the stool. The usufructuary title reverts to the stool or family upon the death of the holders without any successor-in-title.

Other forms of lesser interests in land include tenancies, pledges, easement and profit *a prendre*. Tenancy is where land is given out by land owning group to a stranger on some terms and may occupy the property in so far as the tenant continues to observe and perform the terms and conditions of the tenancy agreement. Pledges on the other hand are delivery of possession of land or other property by a debtor to a creditor to hold and use until the debt is paid or the obligation is discharged. Profit *a prendre* are rights enjoyed by stool subjects to collect snails, firewood, etc on land belonging to the community, while easements are right of way enjoyed by subjects on family or stool property.

The extent of loss of land rights by owners and occupants may vary considerably, both in terms of the amount of land involved and the types of rights that are affected. This has implications for the extent to which a particular

government action is governed by the principles of compulsory acquisition. It also has implications regarding the rights and remedies of people affected by that action. Compulsory acquisition is commonly associated with the transfer of ownership of a land parcel in its entirety. This may occur in large scale projects (e.g. construction of dams or airports) as well as in smaller projects (e.g. construction of hospitals or schools).

However, compulsory acquisition may be also used to acquire part of a parcel, e.g. for the construction of a road. In some cases, the acquisition of portion of a land

parcel may leave the remainder of the land intact. The remainder may be large enough for continued use by the owner or occupant despite its reduced value; or it may be so small that the person can no longer use it to maintain a living. In other cases, a new road may cut through the middle of the parcel, leaving the remainder divided into several unconnected pieces, some of which may be without access routes. In some countries, the governing legislation may allow the landowner to require the acquiring agency to acquire the whole parcel.

The use of specific portions of a land parcel may be also acquired for easements or servitudes to provide for the passage of pipelines and cables. Rights acquired usually include the right to enter the parcel to make repairs. The rights acquired may be granted temporarily or permanently, and may be transferable to others.

2.7.1 Land Ownership and Interest

The basic principle, upon which land ownership in Ghana is built, is the fact that land is owned by the community or by groups. These communities are represented by their stools, skins or family heads who stand as the symbol of their identity.

Land ownership in Ghana falls into two main categories: state or public land and customary or private land.

Customary Lands

Customary land represents all the different categories of rights and interests held within traditional systems. The customary sector holds about 80% of the land area in Ghana, under different tenure and management system (Cohen Uphoff, 1977). Land held by the customary sector is held by individuals, families, communities (usually symbolized

by stools and skins). 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 statutes, but on the fact that they are recognized as legitimate by the community.

The rules governing the acquisition and transmission of these rights are usually and generally known, but not normally recorded in writing (Kalbro, 2007). Such ownership may occur through discovery and long uninterrupted settlement, conquest, gift from another land owning group or traditional overlord and purchase from another land owning group. Different customary systems operate in different parts of the country but all of them exhibit very strong, dynamic and evolutionary characteristic (Payne, 1997).

State Lands

The other 20% consists of public land which derives from two legal sources: land which has been compulsorily acquired for public purpose or for the public interest under the State Lands Act, 1962 (Act 125) and land, which has been vested in the President in trust for the benefit of the allodial owners and their communities under the provision of the Administration of Lands Act, 1962 (Act 123). The national constitution and specific legislations give designated land sector agencies (the Lands Commission and the Office of the Administrator of Stool Lands) the right to administer such lands and specifies how revenues from these lands will be shared between the state, the local government and the allodial owners.

Most of the land (about 80%) is owned by the stools and skins. Customary practices have therefore played a dominant role in providing access to land.

Fundamental land ownership is based on absolute or “allodial” title from which all other titles, interest and rights to land are derived. Consequently, there are different types of land tenure systems and land holdings, acquisition, use and disposal of land, which vary from region to region, and between ethnic communities. These interests held in land are either derived from Ghanaian customs and traditions or assimilated from English common Law and Equity. Land administration in Ghana is thus governed by both customary practices and enacted legislations. All lands in Ghana are owned by customary institutions and the state can access land principally through compulsory acquisition.

The State exerts considerable control over the administration of customary lands. 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. There is lot of resentment of the traditional authorities to the disbursement formula.

Vested lands (or Split ownership) occur 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?

2.8 Present Procedure in Compulsory Acquisition

The Government or State has powers of compulsory acquisition and may be exercised for the benefit of government departments, local authorities and a number of para-statal agencies and corporations. There are certain laid down procedures set out in the State Lands Regulations (L.I. 230) (1962).

Whenever it becomes necessary for a Minister or government department to acquire land, it must first of all identify the land, survey it and make site plans. Official search is conducted at the Public and Vested Land Management Division of the Lands Commission to ascertain whether the subject land is free or not. The acquiring authority on the receipt of the requisite information will apply with sixteen copies of such application and site plans to the District Assembly of the District where the land is situated [State Lands Act Regulation 1962, L.I 230 Reg. 1(2)].

The District Chief Executive will convene a meeting of the Site Advisory Committee (Regulation 1). The committee considers the suitability or otherwise of the subject land, the health problems the proposed development may cause and its effects on the aesthetic arrangement of the area etc. The owners of the subject land may oppose the proposed acquisition if it can be conclusively shown that more suitable land is available. This is at regulation 3 (2) of the State Lands Regulation, 1962 (L.I 230).

This objection may be taken at the preliminary stages when the site advisory committee is considering the question. The Minister or chairman of the committee may override this objection ultimately. However, according to (Andoh, 2004) the objection would be a futile exercise since it may enhance the quantum of the compensation, which will finally be paid.

The site advisory committee then submits a recommendation together with the certificate of valuation of the subject land to the Regional Lands Commissioner of that Region, Regulation (5) of the State Lands Regulations, 1962 (L.I 230).

Upon his approval of the recommendation and valuation of the committee, the Regional Minister would then submit the recommendation with the relevant papers to the Minister of Lands and Natural Resources. It is worthy to note that the authority responsible for the assessment of the values for compensation is the Land Valuation Division of the Lands Commission given by the Lands Commission Act, 2008 (767) section (22). The minister upon his consent may decide which of the two, viz the State Lands Act, 1962 (Act 125) or the Administration of Lands Act, 1962 (Act 123), by which the acquisition will be affected. If the proposed appropriation affects stool lands, which is undeveloped and is in a rural area, the Minister is likely to exercise his power under Section 10 of Act 123 for the purchase; in any other circumstance, the land will be taken under the State Lands Act, 1962 (Act 125).

The next procedure is a declaration in an Executive Instrument to be published in a national newspaper on three consecutive times. This declaration by the Minister means that the legal or equitable interests in the land have been transferred to the President. It is also a notice to people who have interest in that land specified in the Instrument. The essence of the notice is to stop further development and grant of interest in the land thereby stop increases in the amount of compensation to be paid by the Government.

The notification is done in the following ways:

- a. A copy of the Instrument is served personally on any person having an interest in the land.
- b. A copy of the Instrument is left with any person in occupation of the land.
- c. served on the traditional authority of the area of acquisition which shall request the chief to notify the people of the area concerned
- d. A copy of the Instrument is affixed at a conspicuous point on the land, and
- f. A copy of the Instrument is published on three consecutive times in a newspaper circulating in the district where the land is situated and in such other manner as the Commission 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. When private properties are acquired compulsorily, compensation must be paid to the expropriated.

2.9 Principles of Compensation

The term compensation is used in a number of other statutes. It has a well understood meaning in respect of workers' compensation. It has a different meaning from damages in the law of contract and tort. When used in the context of deprivation of land it means *recompense or amends*. It means the sum of money which the owner would have got had he sold the land on the open market plus other losses which result from the resumption.

The term takes its meaning from the provisions which define what monetary sum must be paid to the dispossessed owner for the loss of his land (Brown, 1991; Rowan-Robinson & Brand, 1995). The sum payable may represent a sum not only for

the land taken, but also other losses suffered in consequence of the acquisition. The fundamental principle has been to place the affected landowners in the same position, after the acquisition as he was before, nor worse, nor better. This is also called the principle of equivalence (Cruden, 1986).

In other words, the landowner gains the right to receive a monetary payment not less than

the loss imposed on him in the public interest, but, on the other hand, no greater. The underlying theme in the compensation provisions of the land acquisition statutes is to ensure that a dispossessed landowner is no worse off and no better off as a result of his eviction (Brown, 1991). The calculation of compensation is based on the value of the land rights and

improvements to the land, and on any related costs. The determination of equivalent compensation can be difficult, particularly when land markets are weak or do not exist, when land is held communally, or when people have only rights to use the land.

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

- (iii) Replacement value of the land taken; and
- (iv) Cost of disturbance; and
- (v) Other damage (severance and injurious affection); or
- (vi) Grant land of equivalent value

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).

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 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.

Informal occupancy and derived rights (rights derived from allodial owners or freeholders) are currently not recognized 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 asset situated on the land. Procedure for claiming compensation is discussed in the next section.

2.10 Claims for 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:

- (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.

The claims are usually prepared and submitted on behalf of the claimants by professional valuers or appraisers who negotiate with LVD on behalf of claimants for fair values. Claims must be submitted within six months of the publication of the instrument of the acquisition. The claims are submitted to the Land Valuation Division (LVD), the Agency that acts for government. Upon receipt of the claims, the LVD prepares a proprietary plan, which is a composite plan on which each claim submitted is plotted. This enables conflicting and overlapping claims as well as the extent of

conflicts to be ascertained. The LVD is required to make an assessment of fair and adequate compensation payable under the claim.

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.
- (f) 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 the acquisition.

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. In such situations 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 date of the declaration of the acquisition. The improvement can only be made 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.

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 realize 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.

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. 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.

Where the acquisition involves displacement of any inhabitants, the LVD 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. 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.

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 LVD 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, Article 20 (2) requires that compensation for compulsory acquisition of property should be prompt, fair and adequate. The bulk of the outstanding

compensation issues related to compulsory acquisitions were 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 2.1 below:

Table 2.1 Outstanding compensation in the Central Region

NAME OF DISTRICT	NUMBER SITES	OF COMPENSATION(US\$)
Cape Coast	130	22,199,061
Mfantseman	59	1,266,318.40
Akwutu-Effutu Senya	60	23,922,872.05
Agona	55	2,116,739.20
Gomoa	37	1,175,453.00
Ajumako-Enyan Essiam	33	365,017.50
Upper Denkyira	45	1,158,202.00
Assin South	21	235,858.30
Assin North	29	1,761,838.22

Abura-Asebu-Kwamangkese	21	10,460,503.80
Komenda-Edina-Eguafo-	44	10,460,503.80
Abrem		
Asikuma-Odoben-Brakwa	22	130,040.32
Twifo-Hemang	17	590,145.00
Total	573	65,586,353.66

Source: Adopted from Larbi 2008

2.11 Assessment of Compensation

The Land Valuation Division of the Lands Commission is the government agency mandated to among other core functions determine and recommend quantum of compensation payable to expropriated real estate owners. Section 22(a) of the Lands Commission Act, 2008 (Act 767) is explicit on this provision.

Statutes on compensation explicitly define valuation methodology and also prescribe the principle of equivalent reinstatement. Market Value or the Replacement Cost is, most often, the basis of valuation. Three traditional methods are predominantly employed to estimate compensation amount. These are the direct comparison method, particularly for land per se, the investment and replacement cost methods. The direct comparison method compares, for instance, prices of land to arrive at an assessed value for the subject property.

The investment method is also currently used for compensation determination for cash crops. It is premised on the principle that a purchaser will pay more for a landed asset with a high income yielding ability than others with a low income producing

ability. Typically, the valuer or appraiser is required to translate all income streams into a lump sum or capital value as the compensation payable.

The replacement cost approach on the other hand seeks to equate value to cost. It basically consists of estimating the replacement costs of the superstructure – building or structure or other development thereon – and adding to it the value of the land. The two other traditional valuation methods, which are nonetheless, uncommonly used for compensation purposes are the Profit and Residual approaches.

Examples of what may be compensated

Depending on the jurisdiction, the total compensation may be based on:

- The land itself.
- Improvements to the land, including crops.
- The value of any financial advantage other than market value that the person may enjoy by virtue of owning or occupying the land in question.
- Interest on unpaid compensation from the date of possession.
- Expenses incurred as a direct and reasonable consequence of the acquisition.
- Loss in value to other land owned by the affected owner due to the project. In some countries, the compensation will be reduced if the retained land increases in value as a result of the project, a condition sometimes referred to as “betterment”.
- Legal or professional costs including the costs of obtaining advice, and of preparing and submitting documents.
- Costs of moving and costs of acquiring alternative accommodation.
- Costs associated with reorganization of farming operations when only a part of a parcel is acquired.

- Loss in value of a business displaced by the acquisition, or if the business is permanently closed because of the acquisition.
- Temporary loss of earnings.
- Personal hardship.
- Other losses or damages suffered.

2.12 Relationship between Compulsory Acquisition and Compensation

The pre 1993 legal regime did not make payment of compensation an essential condition for the validity of a compulsory acquisition of land. The appropriation policy allowed the colonial regime to acquire land without compensation. Under the Northern Territories Ordinance, 1902 (CAP 111) all the lands of the protectorate, whether occupied or not were put under control and subject to the disposition of the Governor, to be held and administered for the use and common benefit, direct or indirect, of the natives. The effect of this policy was effectively to nationalize all the northern lands which gave the colonial administration unfettered access to land (Kasanga, 2002). A notice with the inscription 'taken for government' was sufficient to vest the land in the Crown and to extinguish all existing rights in the land without compensation.

As stated by Sarbah (1904) and Danquah (1928) the fundamental principle of land ownership in Ghana is that there is no land without ownership by an indigenous community. Land for public use must therefore be accessed either through negotiation or compulsory acquisition as provided by the 1992 constitution. Article 20 (2) provides that compulsory acquisition shall only be made under a law which makes provision for prompt payment of fair and adequate compensation. This therefore conforms to the universal principle. Compulsory acquisition leads to landlessness, poverty and loss of

livelihood. In view of this the expropriated needs to be compensated for the lost opportunity.

Article 20 (1) of the 1992 Constitution gives the State the right to acquire land in the benefit of the public and thus pay justifiable compensation. The State Lands Act 125, 1962 also at Section 1 (i) (3) also gives the President the power to compulsorily acquire land in the interest of the public and thus pay justifiable compensation. The compensation paid must not just be any amount to depict compensation; else it defeats the true meaning of the term compensation. Hence it must be equivalent, fair, prompt and adequate to reflect compensation.

Section 1(2) of the State Lands Act also gives the purpose of the Instrument and the owner the right to receive compensation on Gazetting of the Instrument. It states that “an Instrument made under the preceding subsection may contain particulars in respect of the dates on which the land so declared shall be surrendered and any other matter incidental or conducive to the attainment of the objects of the instrument including an assessment in respect of the compensation that may be paid”.

Lands which could not be specified in the instrument for compulsory acquisition because they were lands subject to the Administration of Lands Act, 1962 has been amended by the State Lands Act, 1962 (Amendment Decree, **1968**). This decree provided that where the National Liberation Council is satisfied that special circumstances exist by reason of which it appears to Council to be expedient that any particular land which is subject to the Administration of Lands Act, 1962 should be declared under this subsection to be lands required in the public interest, the Council may by writing declare that it is so satisfied and there upon it shall be lawful for the

said land to be declared under this section to be lands required in the public interest and the Administration of Lands Act, 1962 shall not apply to any such lands in respect of which an Executive Instrument has been made in accordance with this subsection.

The lands which cannot be acquired include lands which the government already owns, that is, lands previously acquired under statutes with similar provisions such as lands which the government is vested with legal title as trustee, that is, lands under the Stool Land Act, 1960 and the Ashanti Stool Lands Act, 1958 (Act 28) which was in Ashanti. These certainly fall outside the regime, which may be acquired compulsorily. Also all lands on which ancient monuments stand or where there are objects of archaeological interest and which have been preserved as such may not be acquired as given by the Ghana Museum and Monuments Board Ordinance 1957 (No.20).

Lands can only be acquired for the purpose, which is authorized by the enabling Act. This therefore does not mean that, if for instance, Electricity Company of Ghana compulsorily acquires a site for a substation, it will be expected to use it for only that purpose.

Compulsory acquisition without payment of compensation has affected the socio-economic livelihood of affected community members and also created tension between the state and the land owning communities. This has a lot of consequential effects on the displaced persons. There is therefore a relationship between compulsory acquisition and compensation. In most compulsory acquisition cases, payment of compensation completes the acquisition process.

2.13 Non-payment of Compensation

Under the pre-1993 legal regime, the payment of compensation was not an essential condition for the validity of a compulsory acquisition of land. Under the State Lands Act, 1962 (Act 125), the publication of an executive instrument stating that a piece of land was required in the public interest was sufficient. Thus non-payment of compensation therefore did not invalidate an acquisition. To a large extent this situation probably explains the state's propensity to acquire land far in excess of what was required for the designated purpose. Instances abound where land has been acquired and used by the state without any payment of compensation at all.

The post- independence era detached compensation payment from acquisition as asserted by Larbi (2005). The effect was that compensation payment for the lands acquired ceased after 1966 and the National Redemption Council/Supreme Military Council (NRC/SMC) policy of repudiation of national debts worsened the situation. According to Larbi (2005) compensation has not been paid for about 90% of all lands acquired after 1966. This translates into a total of 82,563.24 ha of lands acquired (79.6% of all post-independence acquisitions) for which compensation has not been paid.

The Land Valuation Division estimates (actual current figures lacking) that the state is currently indebted to a conservative figure of about US\$94.1million in compensation payment (Larbi *et al*, 2004). This is the magnitude of the potential debt that should be paid by the state. Under the LAP, an inventory of all compulsory acquired lands throughout the country has been undertaken to assess the exact lands acquired, exact development, exact encroachments (if

any) and whether compensation has been paid or not, and current value of outstanding compensation. The data will enable the government to declare its policy on the compulsorily acquired lands and outstanding compensation – whether it will return unutilized lands, pay outstanding compensation, or tradeoff some of the lands. It must however be emphasized that the non-payment of compensation and its devastating effects has resulted in massive encroachments on the acquired but unutilized lands by the indigenous especially in the urban areas. There are hundreds of cases (Lands Commission, 2001) in the courts for the state to either pay the compensation or return the lands to their indigenous owners due to the serious effects the non- payment has on the displaced persons.

2.14 Effects of Non-Payment of Compensation

The divestiture and privatization of State Owned Enterprises (SOE) under the Economic Recovery Programme (ERP) of the Provisional National Defense Council/National Democratic Council (PNDC/NDC) have also created new challenges for compulsory acquisition. Some of the agencies subject to divestiture have large assets on compulsorily acquired lands such as cocoa, rubber and oil palm plantations for which compensation has not been paid. Information on SOEs is that issues of title are never investigated prior to the decision to divest, resulting in inability of the state to grant title to purchasers in some cases due to the fact that compensation has not been paid to the original owners (Hutchful, 2002). Some of the large acquisitions deprived farming communities of their lands and sources of livelihoods and in the absence of compensation have rendered them landless, poorer and with loss of opportunities for

economic sustenance. Some of the expropriated owners have demanded the return of their lands, making it difficult in some cases for the purchasers of the plantations to have access to the lands, especially in cases where the entire land acquired could not be cultivated (Kotey, 2002).

The cumulative effect of the exercise of compulsory acquisition powers over the years has been increasing resentment against the state. (Knetsch, 1983) rightly argues that such resentment is justified, as compulsory acquisition is unpopular, and almost invariably irritates, upset and shock the landowners. The relationship between the state and expropriated owners is fading, evidenced by several petitions by expropriated owners for their lands, sale of compulsorily acquired lands by the expropriated owners as happened with the land acquired for a police depot and the Olympics complex, as well as the use of 'land guards' by the expropriated owners to prevent the development of some of the compulsorily acquired lands by the beneficiaries.

The 1992 Constitution, which guaranteed freedom of expression and the adoption of political pluralism in the 1990s, broke a 'culture of silence' that had gripped the country for a long time. This has resurrected all the pent-up resentment against the state for the lands compulsorily acquired but not utilized nor compensated, seriously curtailing the state's ability to acquire new lands and even its ability to utilize already acquired lands for purposes which differ from the original purpose of acquisition.

Surely the desire for state control over land and resources in the 'public interest' has not led to the establishment of impartial and benevolent management but on the contrary to the upping of the stakes at play in the battle for land (Larbi *et al.*, 2005).

2.15 Cases of Compulsory Acquisition and Compensation

Compulsory acquisition has always been with problems. Since governments do not have lands of their own, acquisition of land for the use of the public has been with us from time immemorial. For the purpose and relevance of this research, it is worth looking at some, examples of compulsorily acquired lands where compensation was not paid.

2.15.1 Acquisition of the Achimota Sports Complex.

According to (Andoh, 2004) the Government of Ghana in 1975 saw the need to establish an Olympic sports complex and therefore decided to acquire the new Achimota area for such a purpose. At the same time, the State Housing Corporation, which was engaged in negotiation to acquire by private treaty an adjoining area, was facing serious opposition from the owners of the land, so it requested the government to join the whole area to form one for the compulsory acquisition by the issuing of an Executive Instrument EI 408 (1975). At the time of the acquisition, a few scattered and substandard developments were found existing at the southern part of the site as some twelve buildings, and this would not have posed much of a problem when it comes to payment of compensation.

Bempah (2003) argues that, since the acquisition of the area in 1975, no compensation was paid in the late 80's and 90's to the landlords for a number of reasons, which have further gone to pose many problems for the government. Before the acquisition there were only twelve buildings on the land but ten years later, the number rose to thirty- five (Accra Planning Team Survey Report,1985) which meant that

developments on the land were increasing, even though that land had been declared an acquired area.

Bempah (2003) also explains that, compensation was delayed in the first place because about three hundred and thirty one claimants brought in claims for a freehold interest in the land, and upon examination of the plans accompanying these claims; it was found out that so many overlapped making it difficult to know who the actual owners were. The non- functioning of the State Lands Tribunal could not help in resolving the land conflicts when it came to adjudicating titles of land, and so compensation could not be paid.

Andoh (2004) further explains that, as a result of the non- payment of compensation and non- use of the land, a lot of problems arose on the site so acquired. The area was encroached upon as the chiefs and owners of the land gave out the land for illegal developments and none of the developers had any documents to authenticate their ownership of the land or title to it. At the same time, none of the structures were covered by development permits issued by the City Engineers Department of Accra Metropolitan Assembly as required by law. Developments were therefore made up of a range of structures erected in areas for roads as well as scattered developments in areas marked for school sites, hospitals and open spaces. This will impede accessibility and encourage flooding, reduce drastically the aesthetic quality of the area and consequently the value of properties that will spring up the area. Provision of utilities like water and electricity will be difficult since the laying of such lines for these purposes will be impossible. One can then say that these have been turned into slum and it will be at extra cost pulling down the same area for planning of the area to be made. Also the idea of using the site for the purpose for which it was acquired had been lost. According to

the chiefs, the land acquired for the National Park was let out to the individuals when they had not received compensation, gave them the idea that it was an act of robbing them of their property just to sell them to others.

These then revealed that lack of payment of compensation, education on the acquisition process and delay in the development of land have contributed to the problem of conflicting land ownership. For any acquisition then, the government ought to consider all these factors and find an appropriate way of dealing with it as well as laid down structures to stand against these. Despite these, the lack of policing the acquired area, delay in the development of the site and the poor financial situation of the State Housing Corporation culminating in the inability to put all their land under effective development and the general shortage of land for development in the area went a long way to aggravate the already existing problems being faced.

2.15.2 Barekese Catchment Area

The Barekese Catchment Area is a large tract of land acquired by the Government of Ghana in the 1960's for the construction of the Barekese Dam. The acquisition affected farmlands, structures and other immovable properties of individuals in the communities within the acquired area. The acquisition affected townships such as Asuafia, Barekuma, Sisanso, Annorhenkrom, Osei Bonsukrom, Fuokukrom, Yaw AmanfoAsumingya, and Nkwantakese. Towns like Anwoma, Amisare, Tonto-Kokoben and

Maabang were resettled at Asuofia in 1975.

Compensation for the crops destroyed have not been exhaustively paid with some still outstanding. However, some payments of compensation for crops were made

to individual claimants by the then Lands Department. In the course of time, the local people started encroaching on the water course within the acquired area. The action of the people compelled the Government to acquire additional lands on the borders of the dam to ward off encroachers. Thus, a site Advisory Committee Meeting held in March 1980 at Offinso, recommended an approximate area of 10,723.25 acres as Restricted Catchment area of the Barekese Reservoir. The local inhabitants were thus restricted and deprived of their lands so affected and banned from entering the area either to harvest their farm produce or cultivate new farms from that date. The Executive Instrument covering the acquisition was published in November 2001 and gazette notification made in December 2001 (Land Valuation Division).

Compensation as approved by both the State Lands Act, 1962 and the 1992 Constitution should be assessed for and paid to all those who can prove to have any form of recognizable interest in the acquired land. Assessment and payment of compensation satisfies and completes the compulsory acquisition process.

After the acquisition of the Barekese Dam Area, the following had to be considered:

1. Compensation for crops affected by the construction of the Dam.
2. Compensation for crops in the Catchment Area.

Information from Land Valuation Division reveals that compensation for crops was paid to only those who were affected by the construction of the dam (Nkwantakese stool and Asokore stool land) out of 12 communities. They were given half payment for their crops in 1999. Those in the Catchment area have still not been paid. In April 2006, two other towns were given half payment for their crops covering 496 acres. Compensation for the land was not paid. The Barekese acquisition was done under the Ashanti

Administration Ordinance. Under the Ordinance, land needed for purposes conducive to the health and welfare of the inhabitants could be acquired in the public interest without the payment of compensation.

As a result of non-payment of compensation and more so because the land had not been protected, the Barekese area was encroached upon as the chiefs and owners of the land gave out the land for illegal development and none of the developers had any documents to authenticate their ownership of the land or title to it. At the same time, none of the structures were covered by development permits issued by the City Engineer's Department of the Kumasi Metropolitan Assembly (K.M.A). In view of this the Lands Commission in conjunction with K.M.A. and G.W.C.L started demolishing properties which fall within the Catchment area in the late 90's. These areas include, Abrepo, Kokoso etc. The chiefs sent the matter to court and an injunction was put on the demolition exercise. A visit to the site showed that the people have started building again even close to the Offin River (the source of water to the dam) and those that were demolished have been rehabilitated.

2.15.3 The Acquisition of Owabi Lands

The site for the Owabi Catchment area was formally acquired by the colonial government in 1930 under Section 20 of the Ashanti Administration Ordinance (LS No 553 34. LS No. 95 33). A total of 4125.71 acres of land was acquired by the appropriation and this affected eleven villages with a total population of 830 at the time. Compensation was paid for buildings and crops. However, compensation for the land itself was not paid as lands acquired under the Ashanti Administration Ordinance did not allow it.

Both Barekese and Owabi acquisitions were done under the Ashanti Administration Ordinance so non-payment of compensation for the land was therefore not a new thing.

There are so many acts and institutions governing compulsory acquisition of land in the country. Despite all these legal structures, compulsory acquisitions in the country are faced with many problems. The inefficiencies in the ordinances, laws and institutions have resulted in poor land management practiced and its consequential effects on the society and the nation as a whole cannot be overemphasized. The Ashanti Administration Ordinance rules out the payment of compensation to land owners where land is acquired for public purposes. This provision is unfair and against natural justice. Displacing people as a result of compulsory acquisition without payment of compensation or resettlement scheme deprives them of their land and disrupt their social, economic and cultural lives. Even though the 1992 constitution provides for a fair prompt compensation, the application of the law has seen some lapses.

In light of the above discussions, it can be inferred that all the acquisitions could be likened to the Digya National Park.

2.16 Settlement Schemes

Until 1993, the state was not under any mandatory obligation to resettle persons displaced by the exercise of its powers of compulsory acquisition. Under Act 125 of State Lands Act, a person whose land had been compulsory acquired was entitled to lump sum compensation or land of equivalent value.

The 1992 Constitution however, provides that where the compulsory

acquisition results in the displacement of people from their lands, the affected people should be resettled by the state on alternative available lands taking into consideration, a continuation of their economic activities, social and cultural values as people.

The acquisition of the Digya National Park affected farmlands, structures and other immovable properties of individuals in the communities within the acquired area as a result of the compulsory acquisition. Unfortunately, only towns like Nkaneku, Asaurukrum and Apapaso had been resettled at Digya by VRA during the construction of the Volta Dam even before the acquisition of the Digya lands. Those who were evicted after the Digya acquisition were not settled.

2.17 Participation by Expropriated Land Owners

2.17.1 Definition of Concept of ‘Community Participation

The definition of “participation” is a matter, which has attracted a considerable disagreement among development scholars and practitioners (Cohen Uphoff, 1977). The World Bank (1990) defines participation as mainly a process whereby those with legitimate interest in a project influence decisions which affect them.

The Five-Year Work Plan of the Ministry of Health (1997-2001) defines participation as “the process of initiation and sustaining dialogue with various members of a particular community in a structured manner with the view to genuinely consulting them as equally in a program of activities that aim at building a team between program managers and community members, to jointly understand health problems in the community, to find common solutions to such problems using as much human and material resources as possible from the community”.

Paul (1987) defines community participation as an active process by which beneficiary or client groups influence the direction and execution of a development project with a view to enhancing their well-being in a form of income, personnel growth, self-reliance or other values they cherish.

2.17.2 Categories of Community Participation

Paul (1987) identified four ascending levels of participation as information sharing, consultation, decision –making and initiating action. According to Paul, all the four levels may coexist in a project. The first two categories present ways to exercise influence, which he terms as low participation; the latter two offer ways to exercise control, which he sees as high participation.

Pretty and Vadouche (1997) have created seven categories describing participation, from least to most participatory namely, passive participation, information sharing consultation, provision of material incentives, functional participation, interactive participation and self-mobilization.

- Passive participation describes the type of participation where locals are told what is going to happen and involved primarily through being informed of the process.
- Information giving describes the type of participation where locals answer questions to pre-formulated questionnaires or research questions and do not influence the formation or interpretation of the questions.

- Consultation describes the type of participation where project beneficiaries rest with external agents who define both problems and solutions.
- Material incentives involve project beneficiaries providing resources, such as land/labour in return for other incentives. They do not have a state in continuing activities once the incentives end.
- Functional participation occurs, when local people form groups usually initiated by and dependent on external facilitators to participate in project implementation. The group may become self –dependent and are usually formed after major decisions have been made, rather than during the early stages of the project
- Interactive participation describes the type of where local participation in joint analysis, which leads to the formation of project plans and the formation of new local institutions or strengthening existing ones. The groups take control over local decisions and practices.
- Self-mobilization describes the type of participation where locals participate by taking initiative independent of external institutions and develop contracts with external institutions for resources and technical advice, but retain control over how resources are used.

In compulsory acquisition projects, three main areas of participation need to be assessed namely the extent and quality of participation, the cost and benefits of participation and the impact of participation on the expropriated land owners.

Compulsory land acquisition causes anxiety among displaced people especially among indigenous families. If governments argue that the main aim of compulsory land acquisition is to ensure equity and protect public interest, then the impact on them should be taken into consideration by involving the affected persons as early as possible to prevent misfortunes.

KNUST



CHAPTER THREE

RESEARCH PROCEDURE AND CASE STUDY AREA

3.1 Introduction

This study sought to assess how compulsory acquisition of the Digya lands has affected the expropriated as a result of non- payment of the compensation due them. This chapter describes the research procedures used in the collection of field data for the study. The research design, sampling and sampling method, geographical characteristics of the study area, the historical development of the park and land tenure system of the area are also discussed.

3.2 *Research Methodology*

3.2.1 Research Design

This section deals with the general procedure employed in the research. The key tools employed in this research study included review of secondary data and direct observation, semi- structured interview, individual/key informant interviews and focus group interviews/discussions.

The study adopted an in-depth, comparative and exploratory design method to operationalize the research objectives and execute the assignment. This approach therefore put the study into two elements: review of relevant literature on the subject of the research and field data collection. In order to answer the research questions of the study, the researcher visited the affected persons in the different parts of the county in which they have settled. Apart from obtaining facts and figures directly from the respondents, the visits were also useful insofar as the researcher is able to see for herself the conditions in which the respondents lived. Some of the ecological differences between the Digya lands and the newly settled areas could easily be discerned. The effect of changed environment and the resulting socio- economic difficulties faced by the displaced persons have been discussed in the body of this research work.

In order to deal with the high risk of bias in the application of the method for data collection, a list of confirming questions was designed for respondents prior to the conduct of the actual qualitative interviews. In all, about 10 farmers were visited and discussions with eight were successful. The respondents for the confirming questions include traditional rulers, opinion leaders, officials from the District Assemblies and Land Valuation Division. The aim of the confirming questions was to ensure that the

sample size of 102 was representative of the communities and suitable for the provision of relevant data for the study.

3.2.2 Data Collection Technique

The findings from the study were based on qualitative and quantitative assessment of the situation regarding impact of non-payment of compensation on the expropriated. The data collection for the study involved an examination of both primary and secondary sources of data mainly from field study and documentary information in the library respectively. Both published and unpublished materials on land acquisition and compensation were consulted.

3.2.3 Primary Data

According to Twumasi (2001) any research technique may fall under two (2) main categories, namely qualitative or quantitative research method. Primary data collected through fieldwork in the study area. Structured questions were designed and executed on the field to selected respondents. The measuring instruments included the use of an in-depth interview schedule in selected towns. This was used in combination with precoded and open ended questionnaire based on the objectives this study sought to address. The 'Open' questions allowed respondents to expatiate in-depth on issues they are addressing. Information on compulsory acquisition and its effect on the expropriated were gathered from some farmers, fishermen, chiefs, opinion leaders and Assemblymen. The interview was adopted in order to gain a thorough understanding of the problem under study. The technique offered the respondents the opportunity to express themselves as much as possible. The interview was conducted in Twi and

English. Akan is the main language spoken and understood by the people in the study area.

Questionnaire schedules were sent to institutions involved in the Digya land acquisition and the compensation payment. These were officials from the District Assemblies, Land Valuation Division and Ghana Wildlife Division. In all 108 respondents, 6 from the institutions and 102 from the communities were considered for the purpose.

3.2.4 Secondary Data

The use of secondary data is meant to make available to this research consistent input that provides an avenue for cross checking of data to identify deviations if any. It serves as a link between the past, present and also help to forecast future trend of event. Secondary desk studies were carried out from the libraries of the universities particularly Kwame Nkrumah University of Science and Technology (KNUST)

Some of the published materials included field reports, files, books, journals and articles on compulsory acquisition, working papers of Ghana Wildlife Division, publications of World Bank on effects of compulsory acquisition on the expropriated, operational manuals and annual reports of some Ministries, Departments and Agencies (MDAS) among others.

The internet facility was also widely used to gather data and information especially on the literature review on the acquisition process and payment of compensation. These two sources of information gave accurate information which helped in making suggestions and recommendations.

3.3 The Study Population

The concept of population is basic to descriptive and analytical research. Mairi Robinson (1996) as cited in Twumasi (2001) defines population as ‘the number of people living in a particular area’. He further describes it as ‘all group that consists of all the possible quantities or values relevant to a statistical study, from which representative samples are taken in order to determine the characteristic of the whole’. There are other local settlers who live in the town but do not form part of the research. The survey was therefore directed on only those who were directly affected by the acquisition.

In this study, the farmers and fishermen, traditional chiefs, opinion leaders etc constitute the population. This was the population this research studied and hence it became pertinent to study the characteristics of the population.

The Table 3.1 below shows the number of towns and people who were affected by the compulsory acquisition.

Table 3.1 Towns and the Number of persons affected by the acquisition

NAME OF VILLAGE	NUMBER OF PERSONS AFFECTED
1. Nkaneku	276
2. Apapaso	34
3. Dome	169



4. Bonaso	64
5. Hunyaso	44
6.Kumawu	84
7.Sumiso	38
8.Surukrom	28
9.Oheme Abonua	5
10. Nsujaso	27
11. Saabuso	4
12 Digya	163
<hr/>	
13 Bompoi	4
Total	940

Source: LVD, 2010

Three communities were purposely selected for study. In the selection of respondents for the qualitative data collection, the purposive and snowball sampling methods were utilized for the conduct of both individual and group interviews on the target customary authorities (chiefs), family heads, opinion leaders and 12 people representing about 11.77% of the sample size of 90 who were also affected was chosen. The qualitative

survey on the other hand, used farmers, fishermen and hunters which constituted 10% of the total population and 88.23% of the sample size of 90 as the main group for the investigation. An equal quota of thirty (30) people was given to each community making the total 90.

Table 3.2 Sample size

NAME OF TOWN	NUMBER OF RESPONDENTS
Digya	30
Dome	30
Kumawu	30
TOTAL	90

Source: field survey

The sample was divided into two categories comprising:

1. Category A = Farmers, Fishermen and Hunters who were affected by the acquisition
2. Category B= Traditional Rulers and Opinion Leaders, family heads. (These were also affected by the acquisition.)

Sample size

1. Category A = 90

2. Category B = 12

Total = 102

The total sample for these categories was therefore 102 comprising men and women between the ages of 48 and 88. As has been categorised above, 90 of the sample were selected from farmers, fishermen and hunters. The total for the other category is 12 comprising the traditional rulers, family heads and opinion leaders who were also affected by the acquisition.

An in-depth interview was also conducted with Key stakeholders and institutions on the basis of their knowledge in the acquisition of the Digya lands, as perceived from their involvement in the acquisition procedure. Three institutions were selected in order to gain a deeper insight into why compensation has not been paid to the displaced. These include the officials from the Land Valuation Division, Ghana Wildlife Division and the districts where the Digya Park is located. Two officers from each of the institutions were respectively interviewed. The total number from the Institutions were therefore 6.

Other Categories

1. Officials of the Land Sector Agencies = 2

2. Officials from Ghana Wildlife Division = 2 3. Officials

from the District Assemblies = 2 **Total = 6**

3.4 Justification of Samples Selected

Based upon the information in Table 3.1, the researcher selected 10% of the total number of farmers, fishermen and hunters directly affected by the acquisition in each town under study which is good to be a representation of the total population. One chief and three opinion leaders who were also affected by the acquisition were selected from each town under study. The acquisition affected three District Assemblies so one person each was selected from two of the Districts for interview. Four others from LVD and GWD were also interviewed. The 102 plus 6 officials from the Institutions making 108 were the total respondents considered under this study. Although this sample constitutes elements of the population, each category differs in one way or the other, hence the categorization.

The significance of the above Categorization was that, it helped to provide adequate information on all classes of people whose livelihood have been affected by the non-payment of compensation.

3.5 Sampling

The researcher, adhering to the objective of the study, selected respondents who were affected by the acquisition. Three towns were purposely selected for the study. These are Dome which is currently the only village within the park, Digya which is the resettlement camp for some of the evictees and Kumawu for those farmers from the Ashanti Region.

3.5.1 Purposive Sampling

The purposive sampling was used in selecting the respondents and the towns. Since a sampling frame for the population was not available, it was not possible to employ a

probability sampling method. Thus a non-probability purposive sampling method was considered. This method is often used when the researcher has a specified purpose and often a predefined group in mind. A purposive sampling is the method of selection that is done according to the purpose of data gathering and by identifying the people that will yield the most valued and appropriate data for evaluation. Three communities were purposely selected since the entire area would have been too wide to cover. The selected towns included Dome, Digya and Kumawu. Most of the expropriated had moved from their original communities to settle at Kumawu and Digya. At the moment, Dome is the only community in the Park. Purposive sampling was however, used in selecting the towns. The purposive sampling was also used in selecting respondents at Land Valuation Division in Kumasi, Ghana Wildlife Division at Atebubu, the Sekyere Afram Plain and Atebubu District Assemblies. Questionnaires and in-depth interviews were administered at these offices. Traditional Authorities like the chiefs and some opinion leaders were also selected from the three towns and interviews were administered.

3.5.2 Snowball Technique and Sampling

The Snowball Technique was used to identify the people who were affected by the acquisition. This sampling technique was used because with the exception of the people at Dome, all the other villagers have moved away from the study area and had resettled in near-by communities. Some have even moved further away from the acquisition area. It therefore became difficult using the probability method. The snowball technique was used to identify the expropriated land owners living at Kumawu and Dwigya. Systematic random sampling was adopted at Dome so as to systematically cover affected persons in the community.

3.5.3 Stratified Sampling

In all 102 farmers, fishermen, hunters, traditional leaders and 6 officials from the institutions were considered for the purpose of this study. The respondents were selected with a stratified sampling. To ensure sample efficiency, 14 household farmers, 6 fishermen and 10 hunters were selected from each of the three towns. Four traditional leaders were also selected from each of the towns. To ensure gender balance, these 3 towns made up of male and female and some of the ethnic groups who were affected by the acquisition were represented. This may not be seen as representative enough but looking at the size and limitations to the study area, it is of the view that a fair representation was made given the diverse background of respondents whose responses may well represent their various groups.

3.6 Field Work

Access to the study area was very difficult especially during the rainy season. It therefore became very difficult for the researcher to administer all the questionnaires herself. Given the volume of task on the researcher, she in fact did train three (3) people for two weeks to assist her in administering the questionnaires on the people in the study area. This was to make the findings of the study more dependable and accurate. The researcher however conducted all the other interviews. For the interviewers to enjoy full co-operation of the respondents, they were chosen from their own locality or area.

The interviewer had the opportunity to have a one on-one interaction with respondents. Questions asked were answered as well as the intention well explained to them. Respondents from the institutions were given ample time to fill questionnaires

which lasted between 3 days to one month after which questionnaires were collected for data analysis.

3.7 Data Analysis

Data gathered from the field study were edited and the quantitative data collected from the questionnaires were analysed using Excel. Bar and pie charts were used for the quantitative data analysis. The qualitative data collected from the in-depth interviews were also analysed descriptively.

3.8 Geographical Characteristics of the study Area

This section of the study outlines the geographical characteristics and economic status of the communities immediately surrounding as well as those within the Digya National Park.

3.8.1 Location and Size

The Digya National Park (D.N.P) stretches from the Sekyere Afram Plains District, Ashanti Region to the Sene District, Brong Ahafo and Afram District of the Eastern Region (Figure 3.2). It is situated between latitudes $7^{\circ}06'$ and $7^{\circ}44'$; North and longitudes $0^{\circ}06'$ and $0^{\circ}42'$ West and covers an area of 803,152 acres. The Guinea Savannah woodland predominates with gallery forest along the major rivers. The administrative headquarters is at Atebubu about 70km from the nearest point of the Park. The Digya National Park lies to the south of the River Sene lying on the Ashanti/Brong Ahafo Regional boundary and to the west of the Digya River as shown

in Figure 3.2 below. The Sene River which has become an arm of the Volta Lake in the area, acts as a barrier between the Park and towns on the northern portion of the Park. This has become a major problem to the development of that part of the Park as it affects transportation. The location of the Park has a positive impact on the socio- economic development of the three regions and the nation as a whole.

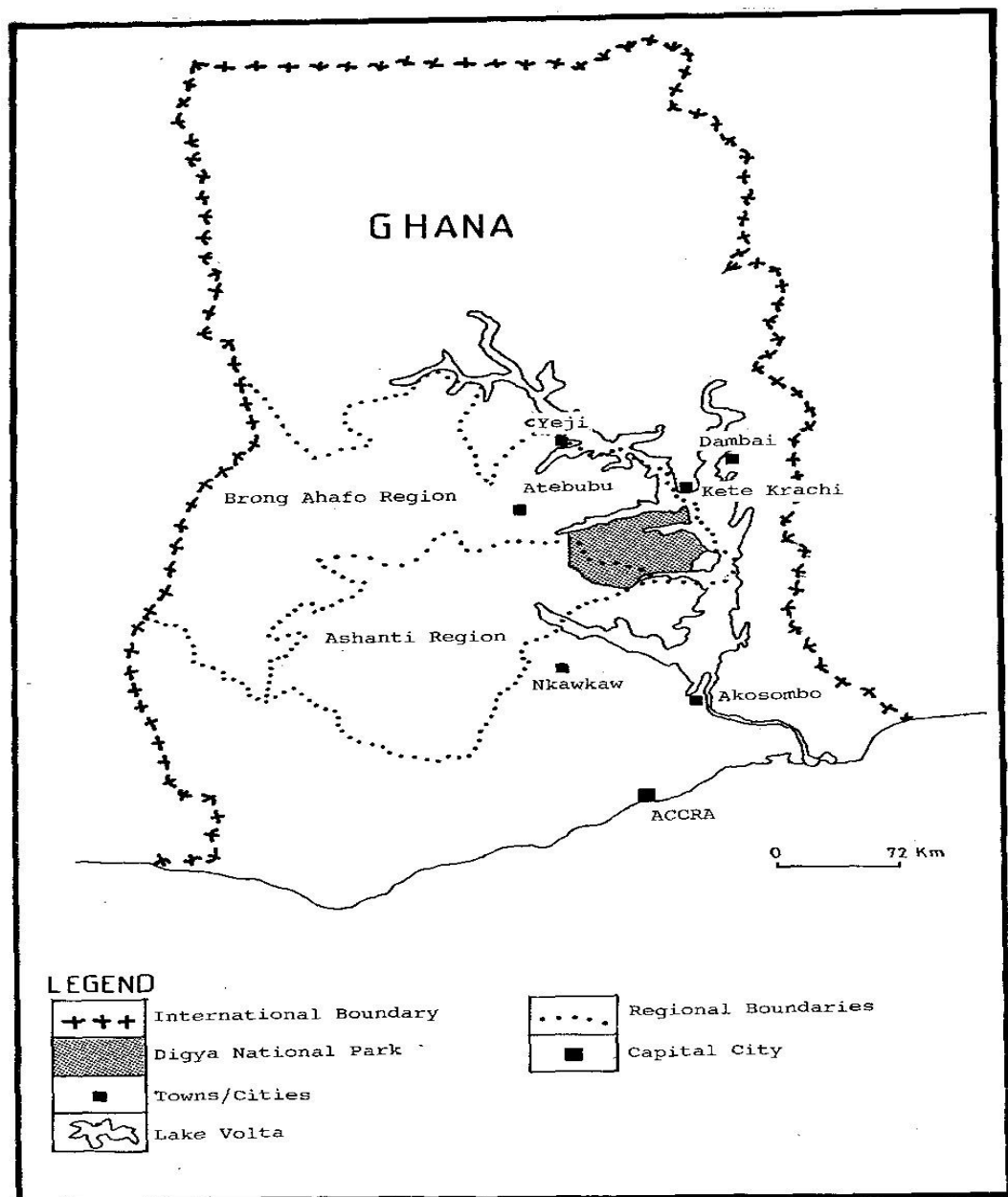


Figure 3.1: Study area in National and Area Context

Source: Ghana Wildlife Division

3.8.2 Vegetation and Climatic Description

The southern part of the Digya National Park, which is Sekyere Afram Plains, is covered with semi-deciduous forest. Within this are the Bunnfum Forest Reserve and the Bomfobiri Nature Reserve. The northern part of the Park which lies within the Sene District is covered with Guinea Savannah woodland which has short deciduous trees due to the type of farming practices adopted by the people.

Tall grasses like the elephant grasses and other species are also identified in the area. The vegetation basically consists of transitional and forest zones. Flood plains of the larger rivers, streams and swampy sites within the area are covered with forest trees. The ground water table is high enough to sustain forest vegetation throughout the dry season. The rich forest and soil in the periphery have promoted agriculture in the area. In addition, the rich vegetation in the study area has led to the development of the Digya National Park. This has served as a center of attraction. Apart from its beautiful scenery as a tourist center, its other objectives include education, preservation of wildlife, leisure and amusement

However, recent bush burning has virtually destroyed the Bonnfum Forest Reserve, hence its effect on climate and rainfall pattern and consequently on the farming practices in the surrounding communities. The climatic conditions in the area conform to the general conditions that prevail within the middle belt of Ghana. Monthly mean temperature is around 26°C. Maximum temperature is between 29°C and 31°C and this was recorded in March and April. The minimum temperatures are between 20°C and

23°C which are experienced in August. The area experiences a double maximum rainfall in a year. April to July is the period for the major rainfall while September to October is the minor period. Mean annual rainfall is about 1191.2mm. Humidity is high during the wet months of the year and low during the dry seasons. Relative humidity within the area is about 80% average in the southern parts and 60% for the northern parts of the Park, as recorded by the Meteorological Services Department. This has provided opportunities for the emergence of fishing as a major economic activity in the area. This therefore makes it difficult for the fishermen to leave the park.

3.8.3 Economic Activity

The research has revealed that, the local people living in and around the Digya National Park are mainly farmers and fishermen. Most of the settled farmers engage in commercial crop farming. The type of crops grown is determined by whether the area is forest or savannah land. Forestlands are primarily used to cultivate cash crops like cocoa and oil palm. Plantain and cocoyam are also grown for sale. Yam is the principal commercial crop grown in savannah lands. Maize, groundnuts and cassava are either cultivated separately or intercropped with yam. Rice is also grown where appropriate. Fishing is the major occupation of the communities along the Sene, Digya arm and certain parts of the Volta Lake. These people from diverse ethnic origins have migrated to their present locations to take advantage of the inundation caused by the damming of the Volta River. The fish is generally smoked and transported to the big towns for sale or sold to fish mongers who transport them to the big towns.

Rearing of livestock is done on a small scale by some of the people in the fishing communities along the Sene River. Hunting is also done by those living in the major

farming communities during hunting seasons. Many of these farming communities started as hunting camps. Acquisition of the Digya lands has therefore distracted their economic activities rendering them jobless.

3.8.4. Historical Development of Digya National Park

Digya became legally gazetted as a National Park in 1971 under the Wildlife Reserves Regulations (LI 710) under the administration of Ghana Wildlife Department. On the 22nd October 1909, an area estimated at about 64,750ha was acquired from the Kwahus and Kumawus for the creation of a Game Reserve. This area was legally constituted as the Kujani Bush and Obosum-Sene Game Reserve on 30th November 1911. The Obosum-Sene Reserve was unfortunately de-gazetted in 1960 with the false notion that there was no worthwhile wildlife in the area. *Source: Ghana Wildlife Annual Report, (2006).*

In the late 1960s, a reassessment of the area was ordered for a possible rereservation of the Volta Basin into a National Park. The potentialities of the area were found to be enormous and LI 710 eventually established it as Digya National Park in 1971 with the aim of developing a game reserve to preserve the lives of several species of wild animals and converting the area into a tourist site.

Communities that were enclosed within the park boundaries were to be resettled at places of their choice. Natives who descended from Kumawu opted to be resettled at Saabum, whilst those from Kwaman chose Adanso. The people from Kwahu decided to return to their original places at Kwahu area. The subjects of Nkomihene resettled at Defour and Kadjeji whilst those of Adjadehene chose to resettle at Dodi-Adjade in the Ntonaboma exclusion area.

After 1971, the communities within the boundary were moved. The people of Nkaneku village joined the people at Dome village located at the southern part of the Sene River. A zone of influence of 1295ha was demarcated for them in 1988. The family of one man, wife and children (numbering 16) were permitted to stay in Saabusu to guard a Mausoleum of a chief who was killed during the evacuation (Annual report GWD, 2006). However, compensation for the land as well as the crops and the structures were not paid.

3.9 Management of the Digya National Park

This section outlines the administrative and managerial practices in the Digya National Park.

Digya National Park is the second largest park controlled by the Ghana Wildlife Division (G.W.D) and one of the most neglected reserves in terms of infrastructure, staffing and logistics support even though it is the first wildlife reserve to be established.

The Park has its headquarters at Atebubu with two park managers. There are game wardens employed to manage and control encroachment within the park. Digya National Park is one of the six National Parks in Ghana. According to the Park manager, a management objective plan has been drawn for the Digya National park in accordance with the Ghana Wildlife Policy and in the light of the socio- economic survey. The main objective for creating the Park is to conserve biodiversity and to preserve its intrinsic features for recreational, educational and scientific use. Digya National Park has not achieved these objectives due to mismanagement, together with the inadequate staffing levels, transport, fuel, spare parts and staff welfare issues. The task of the Senior Game

Warden was, therefore, limited to solving daily emergencies without the opportunity to plan ahead (Annual report GWD, 2010).

The internationally accepted definition for National Parks stipulates that human activity and extractive use should not materially alter the area precluded. In the middle of the 1980s and 2006, evacuation exercises to get rid of all forms of human interference took place due to human activities which had degraded the Park. The Park is up to date suffering from encroachment from farmers and fishermen and until these are totally evacuated, the management plan for Digya National Park cannot be successfully implemented. Nevertheless, even though, about 70% of the National Parks in Ghana are been degraded there is still the great need to manage them in conformity with internationally accepted strategies and criteria to reflect the aspirations and needs of the Ghanaian public.

3.10 Land Tenure in the Digya area

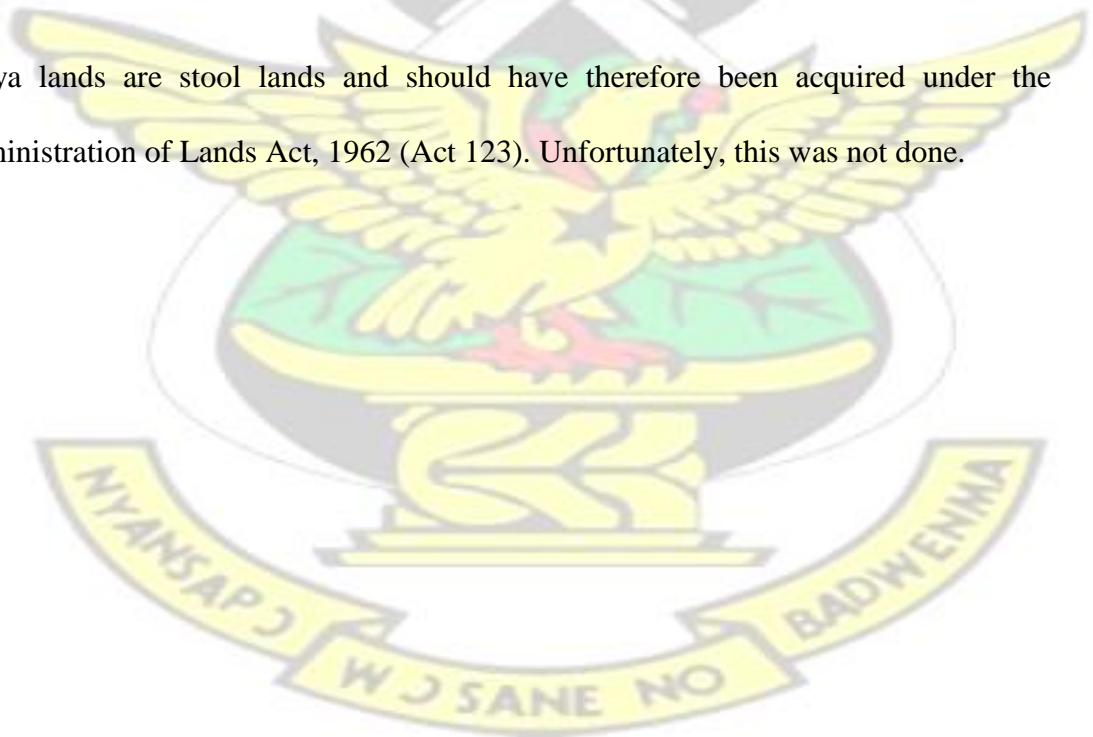
Land is vested in traditional rulers in this part of the country where the Digya National Park lies. Chiefs of the various communities hold the land in trust for the ultimate stool. The chiefs are generally natives of the stool.

Indigenous inhabitants can use land anywhere provided the piece of land falls within the jurisdiction of their chief and is not being farmed on by another person. Settlers on the other hand have to obtain approval from the chief or headmen for the land. They pay an initial introductory fee of one bottle of schnapps to announce their presence in the community. Later, an approach is then made to request farmland with two bottles of schnapps and some cola nuts and an amount of money. The amount of money to be paid depends on the particular locality. Land leased to individuals or

companies for large-scale farming is the sole prerogative of the paramount chief. Land for government project is also negotiated for from the paramount chief and the necessary compensation paid to him. Whenever any of the landowners is in need, especially on festive occasions or to meet important government officials, word is sent to all tenants for voluntary contributions. These contributions comprise of foodstuff, livestock, fish and money.

The Digya lands were acquired from the original owners under L.I 710 on the 20th of September 1971 covering an approximate area of 803,152 acres. A lot of properties were affected which should have been compensated in the implementation of powers of compulsory acquisition. Customary rights, family rights and societal forms of property rights should be recognized within the acquisition process.

Digya lands are stool lands and should have therefore been acquired under the Administration of Lands Act, 1962 (Act 123). Unfortunately, this was not done.



CHAPTER FOUR

PRESENTATION AND ANALYSIS OF RESEARCH DATA

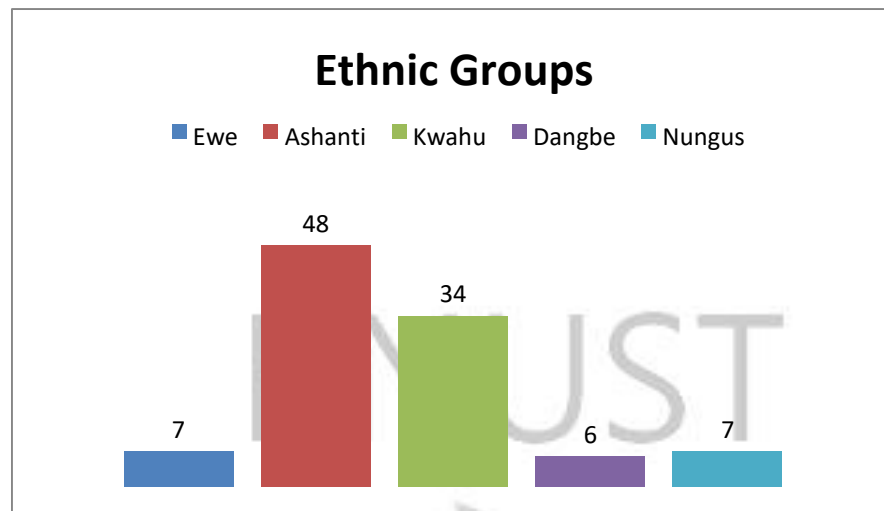
4.1 Introduction

This chapter discusses the acquisition and causes of the delay in the payment of compensation and its effects on the expropriated. There are a number of factors that caused the delay in the payment of compensation and these have a lot of direct and indirect effects on the people. Management of the park is also under siege. Some of these factors are examined in the following sections and the data from which these deductions are made include interviews, documented reports and direct observations.

4.2 Demographic Characteristics

4.2.1 Ethnic Composition of the Respondents

The study shows that the Digya National Park (DNP) is surrounded by various tribes. These include the Ashanti, Kwahu, Nungus, Ewes and the Dangbes. Settlers of different ethnic origin occupy the rest of the area. The respondents were between the ages of 44 and 88.



Source: Field Survey, 2010

Figure 4.1: Tribes Compositions of Respondents

The study covered 102 respondents who were affected by the acquisition. The distribution of the 102 people shows that 48 are Ashanti natives, 34 are Kwahu, 6 are Dangbe, 7 are Ewes and 7 are Nungus. The Ewes, the Dangbe and Nungus dominate the fishing communities whilst the Ashantis and the Kwahus dominate the farming communities. Local communication is diverse. The Kwahus and the Ashantis are the indigenes but the rest are settlers who migrated to the area in the sixties.

4.2.2 Occupational Distribution of the Respondents

Table 4.1: shows the occupational pattern of livelihood in the various communities living in and around the Digya National Park. Farming is the main source of livelihood and economic base of the people living in and around the Digya National Park and the settler farmers do almost all the commercial crop farming. Fishing is the major occupation of the communities that border the Sene and Digya rivers and part of the Volta Lake. The study shows that 15 of the respondents were fishermen.

Table 4.1: Occupation Distribution of the Respondents

Occupation	Total
Farming	63
Fishing	15
Hunting	11
Trading	10
Others	3
Total	102

Source: *Field Survey 2010*

There were 63 farmers and 11 of the respondents were also hunters. There are still some people within the communities recognized as hunters, even though it may now be secondary employment. Few of them have livestock as a supplementary source of income especially those in the farming communities. Other economic activities (3%) include the distillation of local gin (Akpeteshie), honey hunting, basketry and petty trading. This indicates that the people depend largely on the land for their sustenance. Their lives will be at risk if they do not receive adequate compensation for their loss.

4.3 Ownership of the Land

A fundamental principle of land is that there is no land without ownership (Sarba, 1904; Bentsi-Enchil, 1964) by an indigenous community. In Ghana land is owned predominantly by customary authorities (stools, skins, clans and families).

Table 4.2: Ownership of the land

Who own the land?	Number of persons
Individual	10
Stool	80

Families	12
Total	102

Source: Field Survey, 2010

The study shows that before the Government acquired the area compulsorily, a greater proportion of the land was in the hands of the stools. According to the study, 80 of the respondents indicated that, before the acquisition of their lands by the government, their lands were in the hands of the stools and 10 said theirs were in the hands of individuals who had been granted leases by the stools while 12 said their lands were family lands.

4.4 Payment of Compensation

Compulsory Land Acquisition is basically the main means of the government or the state's access to land for development. At the same time the only thing left with the expropriated is his right to receive a just fair and prompt compensation for the land taken. To implement compulsory acquisition effectively and efficiently requires enough resources. There is an abuse of human, social, cultural and economic rights when people are not compensated reasonably. In the following sections, items affected by the acquisition are discussed.

4.4.1 Component of Compensation Claim

The acquisition of land for the Digya National Park is one of the largest compulsory acquisitions made in the country, covering about 803,152 acres.

After the acquisition, three issues arose, which were:

1. Compensation for the land
2. Compensation for crops

3. Compensation for buildings /structures

Table 4.3: Heads of claims submitted for Compensation

Claims	No. of persons	Payment of compensation
Claims for Crops	43	12
Claims for Buildings / land	44	0
Claims for Land only	15	4
Total	102	16

Source: Field Survey 2010

Table 4.3 above shows that out of the 102 respondents, 43 indicated that their crops were affected by the acquisition, 44 also had their buildings together with their lands affected, whilst 15 of the respondents indicated that their lands were affected by the acquisition.

4.4.2. Compensation for the Land

Records at Land Valuation Division (LVD) shows that the acquisition affected 16 villages but only 11 could be reached due to difficulty in getting to some of the communities. The compensation for the land was assessed at Eighteen Million, Four Hundred & Thirty and Twenty-One old cedis (¢18,436,021.00) at the time of the acquisition i.e. 1971 by the defunct Lands Department. Claims that were lodged for compensation with respect to land were thirty (30) in number.

The Regional Valuer asserts that a total amount of Five Million, Eighteen Thousand and Forty- Eight old cedis (¢5,018,048.00) was paid to some of the claimants. These payments according to the Regional Valuer, however, generated protest which

ended up in the form of a legal suit which resulted in an injunction on the payment. The balance of Thirteen Million, Four Hundred & Seventeen Thousand, Nine Hundred & Seventy-Three (¢13,417,973.000 (as at 1976) is yet to be paid. However, if these monies are paid, the time and magnitude of the payment do not commensurate with the land acquired looking at the time value of money. Time value on money is an important concept to investors because a cedi today is worth more than a cedi promised in the future; the cedi in hand today can be used to invest and earn interest on capital gains. This money that has not been paid has depreciated as time goes by as a result of change in the general level of prices. This has affected the living conditions of the expropriated. It is best to have deposited the money in a savings account or in an asset that appreciates in value over time.

From Table 4.3, out of the sample of 15 whose lands were affected only 4 persons said they received compensation for their lands. The research has revealed that 11 respondents said they did not receive any compensation for their lands.

Greater parts of the Digya lands belong to stools and some few individuals. According to the Park Manager, the Government commenced due process to compensate about 30 stools, groups and individuals who claimed ownership of the land. However, following a counter claim by another group on behalf of the Paramount chief of Kumawu area a high court ordered government to freeze the payment until the problem was resolved. These payments have still not been made because according the Park Manager, the E.I has not been published.

The Chief of Kumawu said neither compensation nor resettlement was offered to those affected by the Digya acquisition by the Government. It must be noted that the

1992 Constitution does not recognize usufructuary interests in land as compensable interests. The rights and interests in land that are currently eligible for compensation are allodial interest vested in the head of the land –owning community. Currently, no compensation is paid directly to holders of customary rights such as customary freeholds (usufructuary interests). All such holders are expected to be compensated by the head of the land–owing community to whom the compensation for the allodial interest is paid. Usufruct holders are only entitled to be paid for the value of their crops on the land. Significantly, there are no formal mechanisms for ensuring that in the few cases in which adequate compensation is paid, chiefs do pay individual interest holders a portion of the compensation paid by the government. The fact that most rights are compensated for only in terms of the value of the standing crops is gross undercompensation for the real losses suffered and tends to aggravate the deprivation caused by such acquisitions.

4.4.3. Building/Structures

Information from Land Valuation Division reveals that after the acquisition of the site, a site advisory meeting was held and the defunct Lands Department was requested to value the permanent buildings/structures to be abandoned within the park. However, according to the Regional Valuer at Land Valuation Division, the buildings/structures were referenced and recorded by the then Department of Social Welfare and Community Development, as the intention then was to resettle the communities that were affected by the acquisition. There is therefore no record of these buildings/structures in their office, since no cash compensation payment was involved. The Park Manager on the other hand said that records on the buildings could not be traced from their files. So far as records at Lands Commission show, no

buildings/structures affected had been referenced by the Division or for that matter the erstwhile Lands Department and consequently no compensation has been assessed and paid on buildings. Only crops and lands were valued and some few farmers and land owners were paid.

4.4.4 Crops

Crops were affected by the acquisition and these were enumerated by the erstwhile Lands Department in 1976. As stated at the interview with the Land Valuation Division, the total crop compensation for the eleven villages as assessed at that time (1976) was Two Hundred and Sixteen Thousand, Two Hundred and Eight Cedis, Eighty Nine Pesewas (¢216,208.89) . (Details attached as table 4.4 below). This amount could not be paid to the beneficiaries because of a Kumasi High Court Order made on the 1st September, 1976 restraining further compensation payments involving land and crops in the acquired area.

Out of the 43 respondents whose crops were affected as shown in table 4.2, 12 indicated that they were among the people who were paid compensation for their crops, 31 said they were not paid any compensation for their crops.

The 1992 Constitution Article 20, (2) which is further supported by the State Lands Act 125, 1962 section 4 states that the acquiring authorities must pay prompt, adequate and fair compensation to the affected land owners as a result of their lands taken. Investigations from Land Valuation Division revealed that the verification and upgrading of the valuation to current values for compensation for the land and the crops due to pressure from the landowners were made in March 2002. Approval for compensation for the land was given by the Governing Board of the Valuation Division

in 2004 but the approved compensation is still with Ghana Wildlife Division (G.W.D.) awaiting payment. This means that G.W.D never put the compensation sum in their annual budget. Table 4.2 reveals that the affected crops were valued in 1976 but all payments could not be effected due to the court case. After the determination of the case, the valuation for the crops were revised and approved in October 2005 and neither the crops nor the land has been paid. Below is the detailed revised and approved compensation for the crops.

Table 4.4: Assessed Compensation for crops

NAME OF VILLAGE	NUMBER OF PERSONS AFFECTED	REVISED CROP COMPENSATION VALUE (2005) [OLD CEDIS]	CROP COMPENSATION VALUE (1996) (OLD CEDIS)
Nkaneka	276	3,302,919,700.00	64,441.86
Apapaso	163	2,169,410,800.00	37,722.74
Domi	169	2,134,105,000.00	35,993.64
Bunaso	64	1,155,951,200.00	24,671.29
Hunyaso	64	245,381,250.00	5,563.01
Kumawu	64	1,497,750.00	50.9
Sumiso	38	641,260,450.00	10,636.77
Surukrom	48	789,505,850.00	21,238.70
OhemeAbo	5	18,115,000.00	387.18
ua			
Digya	27	448,517,250.00	15,244.05

Sabuso	4	41,049,750.00	858.75
Total	803	10,947,714,000.00	216,708.89

Source (LVB Kumasi) 2010

Part and non-payment of compensation often result when implementing agencies have little resources. Though lands are required for public interests and purposes, appropriate and just payment must apply. Larbi (2008) noted that out of 692 sites acquired by the government, only twenty percent were properly acquired with the remaining 80% without any legal acquisition procedure followed. Where compensation is fully initiated affected people can easily restore back their livelihoods. Whereas people's lives may be at danger when they do not receive merit compensation.

4.5 Causes of the Delay in the Payment of Compensation

4.5.1 Counter claims

The State Lands Act, 1962 provides at Section 4 and its subsequent amendment AFRCD/62, that those who have been expropriated must within six months from the date of publication of the instrument made for the acquisition, tender in all available documents to prove the type of interest owned in the land to the Executive Secretary of Land Valuation Division (L.V.D) for subsequent assessment for the payment of compensation. According to The Regional Valuer (L.V.B), individuals who claimed to have freehold interest in the land were found to be false. Records at Lands Commission indicate that majority of lands and holdings in the Park belonged to stools. Out of the list of 30 land owners only Agogo and Beposo put in their claims. He further asserted that, Nkomi as a stool never put in any claim. However, there were claims from some individuals and this was challenged by the occupants of the stools.

The search has revealed that, on the Kumawu Stool, certain individuals claimed to be the owners of the land and the sum of One Million Five hundred Old cedis (¢1,500,000.00) paid to them. This was challenged in the Kumasi High court in 1976.

According to the Director of GWD there were several “superior” chiefs who claimed ownership to the land. He said the chiefs kept on changing so the Division found it difficult to know the accredited stools they should deal with.

4.5.2.1 Blanket High Court Order

It was revealed from field investigations that, compensation for the land and crops were assessed by the defunct Lands Department at the time of the acquisition in 1971. The government started paying compensation to those who had put in their claims. These payments however generated protests which ended up in a legal suit known as Nana Osei Wusu and 4 others versus Nana Kwabena Agyei and 2 others. Payments of the land compensation as well as the crops were restrained by the Kumasi High Court in September, 1976 in Suit No. HC.24/.

4.5.2.2 The facts of the court case

The government of Ghana acquired the Digya-Kogyae lands for use as a national park and a game reserve in 1971. The Kyidomhene and Osiakwahene (sub-chiefs) respectively of the Kumawu Traditional Area in collusion with two other sub-chiefs (also defendants to the original suit at the High Court) and with the aid of other persons, fraudulently claimed and received for themselves the compensation paid out by the government in respect of the acquisition even though they were not entitled to them,

since the Digya-Kogyae lands belonged to the Kumawu stool. Consequently, certain individuals, all of whom were subjects of the Kumawu stool, for themselves and on behalf of the Oman of Kumawu, successfully instituted an action at the Kumasi High Court for the recovery of the compensation received by the fraudulent claimants. The actions were instituted for the recovery of about ₵1.5 million old cedis at that time. The lands acquired formed part of the area known as the Digya-Kogyae on the Afram Plains in the Ashanti Region.

The State Lands Act, 1962 (Act 125) section 4 provides that upon the consent of the Minister, he may decide whether to use the State Lands Act, 1962 (Act 125) or the Administration of Lands Act, 1962 (Act 123), by which an acquisition will be effected. If the proposed appropriation affects stool lands, which is undeveloped and is in a rural area, the Minister is likely to exercise his power under Section 10 of Act 123 for the purchase. In any other circumstance, the land will be taken under the State Lands Act, 1962 (Act 125). In the case of Digya, their lands were stool lands and at the rural area. It was evident in the case that in the Digya acquisition no instrument for the acquisition of the land was, in fact, made, as required by the provisions of section 7 of Act 123. Nor was one made under the provisions of section 1 of Act 125.

4.5.2.3 Outcome of the case at Appeal/ Supreme Courts

This section provides a summary of the judgment by both the Appeal and the Supreme Courts. The decision of the courts was that since the Digya-Kogyae lands were stool lands, the applicable Act that ought to be invoked by the government in compulsorily acquiring the land was the Administration of Lands Act, 1962 (Act 123). It is therefore essential that all the provisions of the law leading to the acquisition should

have been observed and in accordance to the Act. Therefore, a valid instrument was to be made and published, as required by law, vesting the lands in the Republic for the public interest and compensation been paid unto the appropriate stools. Moreover, the order of the court below for the payment into court of the compensation paid was therefore made to stand. The Court further noted that the State Lands Act, 1962 (Act 125), could not be invoked by the government to acquire the land because section 1 (1) of that Act clearly exempts land subject to the Administration of Lands Act, 1962 (Act 123), from the operation of Act 125. According to the court, there was no evidence on record that Act 125 was applied in acquiring the land. There was also no evidence that the President by virtue of section 7 of the Administration of Lands Act, 1962, ever vested the lands in question in him in trust for the Kumawu stool.

It must also be pointed out that the Wild Animals Preservation Act, 1961 (Act 43), and the regulations made thereunder, do not make any provision for acquisition of land and for the payment of compensation. Section 11 (1) of Act 43 merely enables the President to establish reserves within which it shall be unlawful to hunt, capture, or kill any bird or other wild animal except those which shall be specially exempted for protection. However, both the Appeal Court and the Supreme Court ordered the Chief Wildlife and Game Officer to have L.I. 710 and the relevant instruments published in the local papers to complete the acquisition procedure.

When the instrument is published the amount of compensation paid into court should upon the request of the Administrator of Stool Lands, be paid into the appropriate stool lands account for subsequent disbursement. In the instant case, until the Executive Instrument is published the acquisition remains unlawful because the

Wild Animals Preservation Act, 1961 (Act 43), that was used in acquiring the Digya lands does not make provision for payment of compensation.

Moreover, the crops were not under any dispute and as such the ban on the payment of compensation for the crops was irrelevant. After the final determination of the case, the Court ordered LVD to review the valuation of the crops for payment and also GWD to publish and complete the valid instruments for subsequent payment of the outstanding compensation on the land.

4.5.2.4 General lessons from the case

The above case provides some interesting lessons that can be learnt for Ghana. It is evident that the procedure at the Lands Office in respect of stool land acquisitions was not followed. Under Act 125 section 1 (1) claims can only be made after the gazette and later a publication in the local papers. This careless behavior on the part of the government officials has brought untold hardships on the communities. Moreover, the injunction on the payment for the crops was not necessary since that was not under any dispute.

All these contributed to the delay in the compensation payment. This case started in 1976 at the Kumasi High Court and travelled through the Appeal Court in 1981(CA case No. 135/79) and ended up at the Supreme Court in 1993

4.5.3 Government Institutions.

Before any land could be taken over by the President/ Public Institution, the Executive Instrument by the Minister would be published to declare the intention of the acquiring agency to take over a specified land in a specified area. The interest(s) in the land is

transferred only when the instrument of declaration is published. However, in most cases the mere constitution of a Site Selection Committee is assumed to be the end of the acquisition process.

Compensation for the object, according to Larbi (2005) shall be determined based on market value. This means, that market value is the primary reference for the compensation. Market value refers to Open Market Purchase price of the property as at the valuation date, assuming the highest and best use of the property. LVD was ordered by the Court to review the approved figures for compensation. But the question now is, since the approved compensation by the governing board of LVD (2004, 2005) is still with Ghana Wildlife Division (G.W.D.) awaiting payment, when is the open market price of the properties going to be paid or is there going to be an interest on the approved figures? Investigations gathered at LVD shows that GWD is not pursuing the issue of settling the compensation. The process for land acquisition and payment of compensation shall be implemented in accordance with the legislation and internationally recognized best practice so as to be fair to the expropriated.

The Land Valuation Division is empowered to conduct its own valuations and determine the compensation payable and inform the landowners. Claimants are entitled to submit their claims through their valuers who negotiate with LVD for the final determination of the compensation payable. Very often where a landowner objects to the amount, his only recourse is to the High Court, an avenue which tends to be intimidating to individual landowners and one which invariably involves great delays and cost. Land Tribunals which have the statutory mandate to adjudicate on such matters are not functioning effectively, with the result that compensation claims remain pending and unpaid indefinitely.

Interview with traditional leaders of Domi, Digya and Kumawu (all of which have large areas within the acquired area) revealed that compensation was not paid to all the traditional leaders at the time, or to their residents and some of the expropriated owners are therefore demanding the return of their lands. However, records at LVD indicate that some traditional leaders and farmers received compensation for their properties before the injunction on the payment.

4.5.4 Problems faced by LVD during the Verification Exercise

Information gathered at the Land Valuation Division (LVD) indicates that after the final determination of the suit in 1993, the Supreme Court ordered LVD to review the crop valuation for payment since the crops were not under any dispute, the crop valuation (which involved over Eight Hundred (800) farmers) was reassessed in 1996 and 2002 but the values still remains with GWD up to date without payment.

Meanwhile, due to the time lapse and the number of farmers involved in the crop enumeration exercise, and the fact that the LVD did not carry out the enumeration, it became necessary for the office to undertake a verification exercise in all the sixteen villages to ascertain the rightful owners before the review. According to the Regional Valuer, only eleven (11) villages could be covered by the crop enumeration exercise and the subsequent upgrading of the valuation to current values (2002) due to lack of access to those places. These have been detailed under Table 4.4

The constraints to the Department in the assessment of the compensation to be paid as indicated by both LVD and GWD are:

- a. Lack of records on the compiled data on crops.
- b. Most of the claimants were deceased.

- c. Lack of proof of assessed form ('Form F') from the claimants.
- d. Lack of access to the place.

The study has revealed that during the verification exercise for the upgrading of the values, it was realized that some of the claimants were deceased and this delayed the exercise.

Table 4.5: Form 'F'

Do you still have your 'F' with you?	Total
Available	36
Missing	42
Burnt	13
Original owner deceased	11

Source: Field Survey 2010

Investigations revealed that, 11 of the claimants indicated that the original owners of the land were deceased whilst 42 indicated that their assessed forms (Form F) were missing. Also 13 people said their 'Form F' got burnt during a fire outbreak in the communities in 1983. Only 36 people indicated that they had their form 'F's available. The indication of this was that without the form 'F's (these have the details of the affected crops), LVD would not be able to assess the quantum of compensation to be paid to the farmers.

Another constraint to the assessment of the compensation was lack of access to the Park. Four of the towns which are at the northern section of the park beyond the Sene River could not be visited due to lack of access to the place. According to the

Regional valuer, the only means of transport to that of the park is the canoe but it becomes very difficult to use during the wet seasons.

Other problems include lack of funds to organize trip to the four communities which LVD could not visit during the verification exercise to source for information on the claimants there. All the above problems contributed to the delay in the payment of the compensation.

4.6. Effects of the Non-Payment of Compensation

The important role land plays in the lives of people is enormous, therefore improper management of the acquisition process as a result of not following due process of the law have great impact on the social and economic activities and in effect violates human rights such as property rights, housing, food and basic standard of living. There is no doubt that compulsory land acquisition had immense effects on the income levels, landownership structure, cultural and socio-economic values.

The Digya acquisition and the non-payment of compensation as indicated in Figure 4.6 has revealed that the communities in terms of their Education, Employment, Health, Cultural and socio-economic values has been affected.

Table 4.6 Effects of Non-Payment of Compensation

How has the non-payment of compensation affected you and your family? Total	
Employment	43
Education	21

Health	21
Cultural/socio- economic effects	17

Source: Field Survey, 2010

4.6.1 Employment

The livelihood of the people depends on the land. To deny them of their land is to deny them of their source of income and sustenance. Some opinion leaders, including the chiefs of Dome and Digya, the Assemblymen of the area and nine elders were interviewed. According to them, most of the people are not employed because there are no economic activities in their new settlement area and also do not have any skills or qualification to be employed in any white collar job even if some existed. The people are restricted from farming, building and employing farm laborers within the Park. They could not go on their normal duties. The research has revealed that 43 of the respondents have lost their jobs and are without any job at the moment as indicated by the respondents.

A basic tenet of Ghanaian customary tenure is that land belongs to the ancestors, the present generation and the generation yet unborn (Ollennu, 1962; Kasanga & Kotey, 2001) It is believed that land is more than an economic asset; it has cultural and social networks (Jul-Larsen & Mvula, 2009). Compulsory acquisition can be beneficial to the communities both economically and socially if the expropriated are fairly compensated. However, Jackson (2010) argues that if governments abuse their powers through compulsory acquisition by not paying compensation, the cost can far outweigh the

benefit. Poor land owners or occupants tend to lose their source of livelihood when they are not properly compensated.

4.6.2 Education

A woman at Dome had this to say *'students school fees were paid by us, now that we have stopped working due to this unbearable situation, how we could send them to school when we were not working? What shall we do to regain our work? Our children are being destroyed. Is it good for Ghanaians to suffer this way?'* The project does not offer the people any alternative employment avenues. Analyzing the above information 21 out of the total expropriated indicated that they could not send their children to school after been ejected without payment of compensation.

4.6.3 Socio- economic effects

Despite the legislative provision in the constitution, compulsory acquisition of stool, skin and family lands for public needs according to the study has created a lot of problems on the people resulting in some cases an entire community being rendered landless and aggravating the poverty situation. Their denial of access to farm land without any compensation has a huge impact on the people socio- economically. Farmers have become impoverished now that their lands have been taken. This research has revealed that 21 of the respondents said they could not pay their medical bills or buy drugs and the false hope gave some mental agonies which even increased their health problems.

Villagers had to look elsewhere for land to farm, since the Government did not provide any alternative land. Those who have relocated in other places are being

regarded as strangers and discriminated against by the original users of the newly secured lands.

Another important aspect is that even if farmers were provided with compensation, there is always a period in which these farmers will not have any income as they have to cultivate the land first. Land deprivation is the leading form of capital loss and poverty creation. This is so because people have lost both the natural capital and the capital they created with their own hands i.e. by working on their lands.

4.6.4 Split families

Land acquisition and without resettlement split up some of the large families. According to the Assemblyman at Digya, families were forced to break up/split due to the acquisition and settled on different locations. He said before the acquisition most of the families lived as extended families. After the land was acquired, most of these extended families broke up and now nuclear families came up in their place. The younger dependents at the time moved away in search of jobs elsewhere and later formed their own nuclear families.

Families who split did so when they were unable to buy enough land in one place for their needs since they had not been paid their compensation. The Assemblyman at Kumawu said that the split had forced family members to live far apart making it expensive to visit one another. The chief at Digya contended that there is now loss of culture. He said chiefs no longer have subjects because of breakdown of society.

Compulsory acquisition can be abused when land owners are not paid their due compensation and this reduces land tenure security, increase tensions between the government and citizens, and reduce public confidence in the rule of law (FAO, 2009).

4.6.5 Other Effects

A visit to the site showed remnants of abandoned cocoa farms and some scattered oil palm trees here and there. This means that the people were cash crop growers who depended on their farms for their financial support.

Moreover, there are a lot of dilapidated buildings; most of them are in bad situations due to the fact that they have lost their jobs and as such do not have money for maintenance. For instance, at Digya and Domi most of the buildings are in deplorable condition.

4.6.6 Eviction from the Park

Table 4.7 Eviction from the Park

Were you forced to leave your former place?	Total
Yes	72
No	30

Source: Field Survey, 2010

The Park Manager of the Wildlife Division, accounts that prior to the first eviction in 1976, there were 16 communities in the park, with population ranging from 50 to 824 persons. He gave an estimated population of the area as 7184, made up of fisher folks, farmers and fish mongers. According to him, there were two categories of persons residing in the villages- those considered indigenous to the area and those considered settlers. These people were evacuated to make way for the development of the Park in 1976. According to the respondents they were promised both cash compensation for

their crops, lands and resettlement. Unfortunately, these were not provided but they were forcibly evicted. According to the Park Manager, most of them returned to the Park later on so a second evacuation became necessary in 2006.

The study has revealed that 72 said they were forced to leave the place in 1976. About 30 responded that they left the place themselves. The District Chief Executive at Atebubu stated that the second evacuation exercise took place in 2006 and a wooden motorized boat carrying 150 evictees capsized in the Volta Lake. From the interviews conducted most of the evictees recounted the harassment they received from the wildlife wardens and the loss of their properties during these evacuations.

According to article 20 of the Ghanaian Constitution “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 Land Valuation Division and the Ghana Wildlife are the main state actors to ensure implementation of these constitutional provisions.

The people were not resettled after the acquisition and therefore had to gain access to land through the traditional system at neighbouring communities. Gaining access to land through the traditional system entails cost to the households. If the state is delegating the resettlement and payment of compensation to organizations, it is still obliged to protect the right to food and shelter of the affected people in this process. Any cost related to that has to be born either by the state or the acquiring body. In the case of Digya, access to land and resettlement is a necessary prerequisite to restore livelihoods and the economic well-being of the affected people.

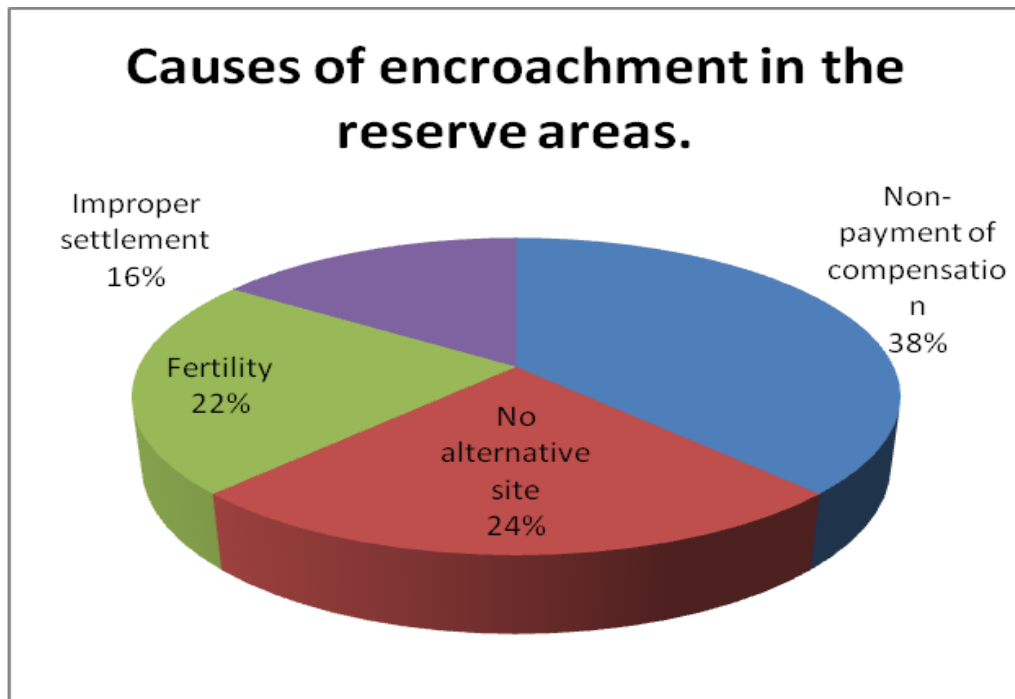
Amnesty International also condemned the forced eviction calling on Ghanaian

Authorities to “ensure that all evictees are provided with basic shelter and housing as well as access to food, safe drinking water and sanitation and medical services,” The organization said the evictions were in violation of Ghana’s regional and international human rights obligations, including the right to adequate housing, which includes the right not to be forcibly evicted.

The Assemblyman at Dome said that the Centre for Public Interest Law is helping the communities receive their cash compensation or resettlement. In view of this a civil suit was initiated at the Accra Fast Track Court in 2007, which has postponed the eviction indefinitely. Their lives continue, as the eviction has stopped, for now, and the court case drags on.

4.6.7 Encroachment

Again, as a result of non-payment of compensation, the Digya National Park was encroached upon as the chiefs and their people always returned to the Park and even give out the land to illegal settlers for farming and fishing. In most cases of compulsory acquisition, disuse of the land results in encroachment.



Source: Field Survey, 2010

Figure 4.2: Causes of encroachment

4.6.7.1 Causes of encroachment

The major problem of managing the Digya reserve is encroachment, which interferes with the protected area and negatively affects the ecosystem. Several factors as indicated by figure 4.2 above are responsible for the encroachment; the major ones include the fact that the natives were inadequately compensated for the land appropriated. Other important causes of the encroachment include the following:

4.6.7.1.1 Lack of farm lands

The produce (yield) from the reserved area is also very high and the people therefore prefer cultivating in the reserved area, thinking the land still belongs to them. Since G.W.D has not yet paid compensation to them, they are unable to exercise full control over the land.

The chief of Digya indicated that in 1989, many of the people lost their lives when the wildlife wardens visited atrocities on them in their quest to evacuate them from the land. They added that even though they were forcibly evacuated at the time, they returned to their present location because they could not find a better means of life. They argued, *“Considering the lack of job opportunities in the country, we cannot imagine the state of hardship we shall suffer should we be evicted from our present settlements”*. The chief at Dome said that their ancestors lived there and they have grown to be farmers and fishermen there. He continued “That is the only life that we got to know so we cannot leave here without compensation or proper settlement.”

The regional valuer asserts that lack of farmland for some of the evicted communities has resulted in encroachment. He went on further to say that the presence of game in the acquired area attracts hunters and others go in for timber, firewood for domestic use.

4.6.7.1.2 Lack of Resettlement

Improper resettlement has also contributed to the encroachment in the DNP. According to the people interviewed, at the time of the acquisition, no attempt was made by the Government to resettle them. Thus, residents remained and continued to fish and farm in the park. The State Lands Act 125 sec (4) (4) states that where the compulsory acquisition or possession of land affected under this Act involves displacement of inhabitants, the Lands Commission or any other government Agency directed by the President shall settle the displaced inhabitants on suitable alternative land with due regard for their economic well-being as well as social and cultural values of these inhabitants. In spite of these provisions in the Act at the time of the Digya acquisition,

no attempt was made to resettle the inhabitants. They were ejected without any proper settlement and as such the inhabitants returned to the park.

In the history narrated by the park manager of the Wildlife Division, there were 16 villages belonging to nine chiefdoms, located within the Park's boundaries when Digya National Park was created. He went on to say that, by 1976, all of the 16 villages had been relocated outside the park. This assertion cannot be sustained in the face of interviews conducted with village residents who had been in the Park for over 40 years, who stated that neither they nor their chiefs were part of any relocation by the Government of Ghana, hence their inability to leave the Park.

The Odikro of Digya stated that as far back as 1973, some government agencies, namely Ghana Water and Sewerage Corporation, Ministry of Education, Ministry of Finance and Economic Planning and other related agencies were tasked to conduct a feasibility study at Adoso and plan a comprehensive program for resettlement. Unfortunately, he said the people rejected that area because of superstition and lack of amenities. They rather preferred to be resettled at Hiamankyene but their request was turned down because that piece of land was also part of the proposed National Park. He said that even though they have not received the compensation due them, they were been restricted from farming, building and employing farm hands. The Personal Secretary to Kumawu chief explained that it was impossible for people to move from their ancestral home when no arrangements had been made to resettle them.

The Assemblyman at Domi, when asked, why they were reluctant to leave the place had this to say: *"we were not properly consulted and educated on the reservation*

and compulsory acquisition. We were reluctant to move out of our settlement without knowing where to go.”

An interview conducted with the Deputy Park Manager about the effects of the encroachment indicated that destruction of wildlife habitats leads to decrease in animal numbers.

This means that GWD has to monitor and control the activities of the encroachers so as to protect the Park. Monitoring activities of encroachers such as farming, logging, and illegal hunting goes with high cost thereby swelling the Parks operational cost of high risk.

The Ghana Wildlife Division argues that the forced evictions are necessary because the land was set aside as a forest reserve. It has been realized that the forced evictions were carried out without adequate prior consultation, adequate notice and compensation or alternative accommodation, a violation of Regional and International Human Rights obligations which include the right not to be forcibly evicted.

4.6.8 Conflicts

4.6.8.1 Causes of Conflicts

The process for land acquisition and payment of compensation shall be implemented in accordance with the legislation and internationally recognized best practice. Even though Government was supposed to pay compensation to both the chiefs and the people of the area and also resettle them as stated in the Constitution, this has not been done. This, according to the assembly man of the area often results in conflict between

the officials of GWD and the people of the area which sometimes result in loss of lives and property.

The establishment of illegal settlers inside Digya National Park has been another major source of conflict between the settlers and Wildlife officials. The squatter settlement emerged after the creation of the Volta Lake, which provided fishing and farming opportunities. Most of them did not comply with the eviction order because there was no resettlement arrangement in place. In many of the communities, complaints were made about the attitude of the wildlife staff. Allegations against staff include the misuse of power, brutality against or mistreatment of suspected poachers, boundary and other social complaints.

The Park Manager had this to say, *“the administration of the park opposes hunting and logging inside the park. Those who do so do it illegally and are arrested whenever they are found”*. Since the Digya National Park was established villagers have been harassed, beaten and arrested by rangers for trying to access their farms. This according to the Assistant Farm Manager, often leads to confrontation between the staff of GWD and the communities.

According to the assistant Park Manager, there are times staff of GWD are molested, intimidated and some believed to have been murdered in cold blood. He said three (3) members of staff died mysteriously in the Park in 2005. The cumulative effect of the exercise of compulsory acquisition powers over the years has been increasing resentment against the state. Knetsch (1983) rightly argues that such resentment is justified, as compulsory acquisition is unpopular, and almost invariably irritates, upset and shock the landowners.

4.6.8.2 Conflict resolution.

According to The Park Manager, there have been series of arrests by the Police and the Wildlife Officers of those who violate the park laws and regulations

Table 4.8 Means of conflict resolution

Mode of resettlement	Responses	Percentage
Arbitration	75	78.88
Court settlement	9	5.55
Park Authorities	18	15.55
Total	102	100

Source: Field Survey, 2010

From table 4.8, out of the sample of traditional authorities and community members interviewed on the field about how the conflicts were resolved, seventy-five (75) indicated that most of the conflicts were resolved through arbitration. Nine (9) people also indicated, conflicts were resolved through court settlement. Encroachers are often arrested by park wardens and these are sent to court. Eighteen (18) people indicated that some of the conflicts do die a natural death since most of the youth arrested in the communities run away from the villages.

4.7 Participation

A Government body may claim land for public use as long as compensation is paid to the residents of the land and also proper consultations are made. An interview with the traditional leaders indicated that the Digya land acquisition lacked consultation with the land owners. Because the Digya Island was stool land prior to the Government's

acquisition, the approval of the stools for such acquisition should have been sought. Unfortunately, this was not done. The absence of the people on the board has a lot of consequences as it has slowed down the implementation of the project especially where there is conflicting views among land owners and government.

If governments argue that the main aim of land acquisition is to ensure equity and public interest, then the impact of the acquisition on the people should be taken into consideration by involving the affected persons as early as possible to prevent misfortunes. If this is done, they will bring problems confronting them at the initial stage on board as these issues can be dealt with through a cordial remedy.

The implication for participation is that, the people will see the reserve as theirs and therefore act as watchdogs to assist in the protection of the reserve from undesirable activities.

There is a general problem of those displaced not being involved directly in the decisions which affect their lives on the issue of resettlement and compensation. In the absence of this the affected persons will not have the opportunity to have their rights and the acquisition process explained to them in good time. In this case, they are not able to make informed choices, comments and arguments.

The compulsory acquisition of land and the management of such lands is a process fraught with legal, economic, social, moral and organizational difficulties. The process is a top-down approach with expropriated owners excluded from the decisionmaking process- an approach to policy making and implementation which Pretty (1997) asserts has failed miserably all over Africa. This has caused affected communities to form resistance groups pre-empt or subvert any attempt to develop the

Park. It is highly unlikely that the state will be able to acquire large tracts of lands as it did in the 1970s, given the current constitutional provision.

One problem in land acquisition is the enthusiasm by governments to adhere to the process and procedures accordingly. It is therefore important that acquisition implementation agencies should adhere to the processes of the acquisition applying transparency and precision. Many international organizations for example (FAO) have specified a guide to enable governments undertake this exercise. From the analysis, it is clear that government failed in following the procedure in the application of compulsory acquisition. The land owners were not consulted. As noted by Kotei 2002, there are situations where affected people only become aware of the acquisition at the time they see surveyors on their land making demarcation.

4.8 Conditions upon which the land was released

This section outlines the infrastructure and services available in the communities immediately surrounding the Digya National Park. Before the government acquired the Digya lands in 1971, the chiefs and their people were assured that they were going to be settled at Hiamankyene and Kegyebe and some services would be provided for them. They were also assured of their prompt and fair compensation.

The chief at Kumawu said they agreed to release their lands to G.W.D. on the grounds that the following services would be provided by G.W.D:

1. That the authorities of the Game and Wild Life now Ghana Wildlife Division would resettle the people in some of the towns. Ghana Wildlife would pay compensation to the people whose farms and properties were affected.

2. Amenities like schools, clinics, community centers, market, police station, electricity etc. would be provided to the communities. They were also assured that services like access roads, houses, health centres and good drinking water would be provided before they are asked to leave the Park. According to the chief at Kumawu, with the exception of the Nsuta – Aframso road, none of the amenities had as yet been started; none-theless, they were requested to move out of their homes which were within the affected area. They complained that no provision had been made for their resettlement at Hiamankyene where water and other facilities were available.

The GWD officer contended that the delay in the provision of the amenities was due to the fact that none of the agencies involved, Ghana Water Company, Ministry of Food and Agriculture, Regional Town and Country Planning, PWD and the Ashanti Regional Administration had started doing anything.

4.9 Current infrastructure and services

4.9.1 Roads

Although there are roads linking most of the communities to the major marketing centers and district capitals, only tractors and in some cases big trucks can plough them.

The Assistant Park Manager stated that during wet seasons the roads become very difficult to use. The southern and the Kwahu parts become inaccessible from the park headquarters due to the flooding of the Sene River at Seneso. According to him, the canoe is the most common means of transport among the communities residing along the Sene, Volta Lake and Digya Arm. An observation of the infrastructure and services in the communities surrounding the park shows that the communities are not readily accessible.

4.9.2 Water Supply

Despite the assurance given to the communities most of the communities are without good drinking water.

Table 4.9 Water Supply

Towns	Bore holes	Pipe born	Stream/ River	Total
Domi	24	–	6	30
Digya	15	8	7	30
Kumawu	4	23	3	30

Source: Field Survey, 2010

Bore holes had been constructed by World Vision International in most of the communities. According to Table 4.9, 24 of the respondents at Domi indicated they depend on the bore hole for their source of water but 6 of them said they prefer using the stream. At Digya, 15 and 8 people said they depend on bore holes and pipe born water respectively. In the case of Kumawu 4 and 23 of the respondents indicated they rely on bore holes and pipe born water respectively. Almost all the communities the researcher interviewed said they also depend on running streams that dry up during the dry season. Many people according to the Assemblyman at Digya had contracted bilharzias from it. Women from such communities travel long distance to obtain water for domestic needs.



Source: Field Survey, 2010

Plate 1: Borehole at Dome

4.9.3 Health Status

The health status of the communities within the immediate vicinity of the Digya National Park in general is poor. Diseases prevalent in the communities include malaria, anemia and bilharzias. Access to health facilities is very poor particularly during the wet seasons and distances one has to travel to reach health facilities range from 8km to 10km on bicycle or tractor. However, a health facility has been provided at Digya (a resettlement camp by VRA) to cater for those at the camp and its environs.



Source: Field Survey, 2010

Plate 2: Health center and a school at the resettlement camp (Digya)

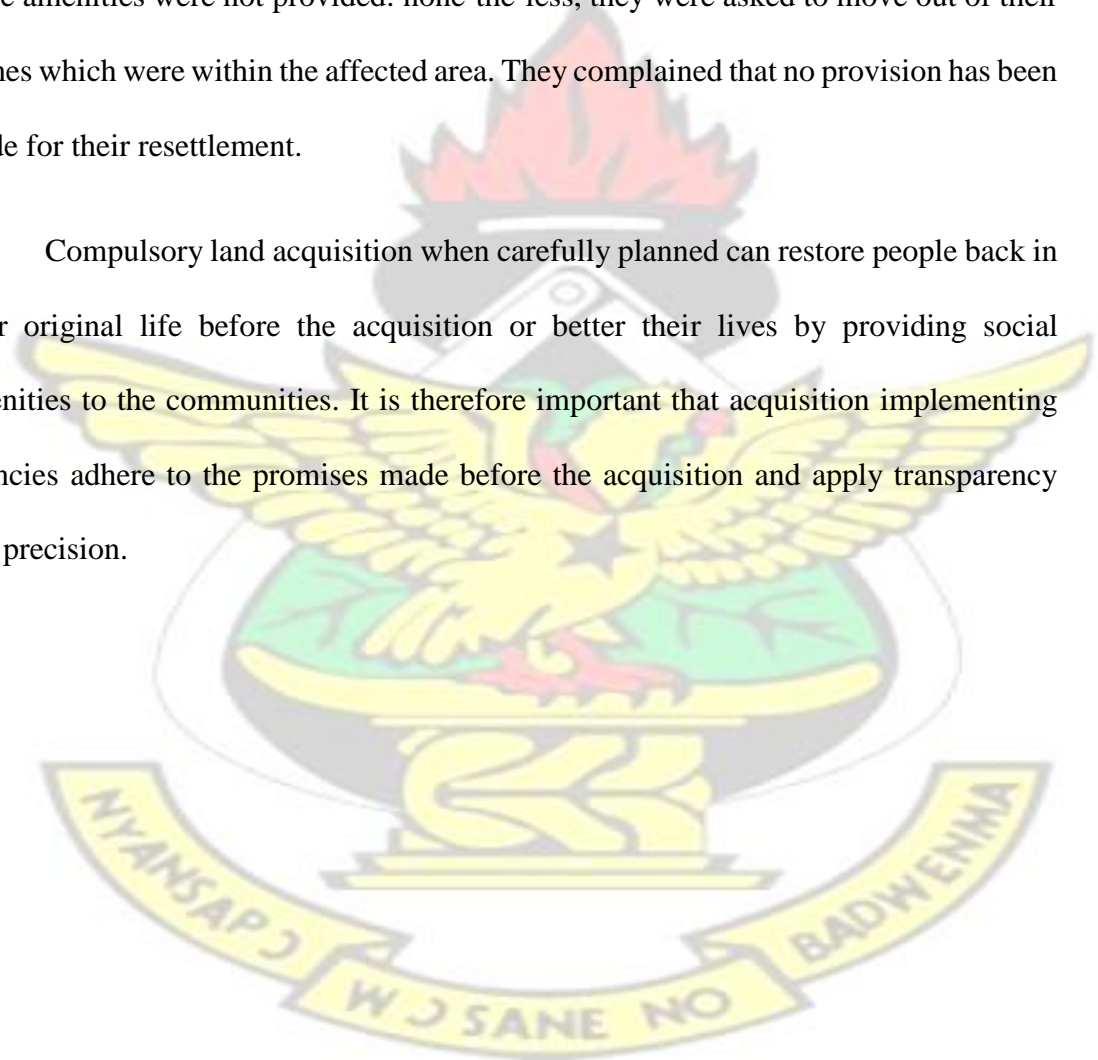
4.9.4 Other Public Infrastructure

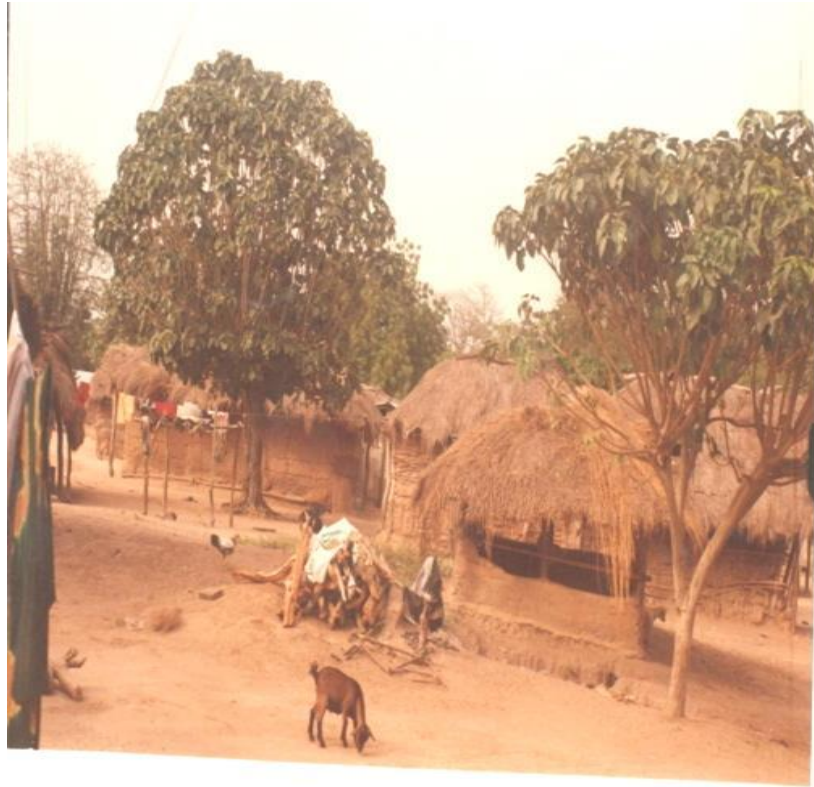
At Dome, it was realized that Public infrastructure such as schools and markets are generally neglected in terms of maintenance and are therefore in poor state. Many of the school buildings are grass roofed and hardly survive during rainy seasons. Markets

are usually held in the open and under grass roofed sheds as indicated by the pictures below.

The study has revealed that only those who moved to Digya received a hospital and a school (see the picture above). The Domi community which is currently the only community in the park did not receive any service at all. The people were promised that these amenities would be provided before they were asked to leave their homes but these amenities were not provided: none-the-less, they were asked to move out of their homes which were within the affected area. They complained that no provision has been made for their resettlement.

Compulsory land acquisition when carefully planned can restore people back in their original life before the acquisition or better their lives by providing social amenities to the communities. It is therefore important that acquisition implementing agencies adhere to the promises made before the acquisition and apply transparency and precision.





Dome village A market scene at Dome

Plate 3: Dome Village

In principle, infrastructural developments, which sometimes form the basis of compulsory land acquisition for public purpose rather becomes a disadvantage to such communities or people since public interest are placed above community interest in practices. However, in principle that is not the situation.

4.10 Benefit of the Park

An interview conducted with the Deputy Farm Manager, about the benefit of the Digya National Park to the communities around the park indicated the following:

- Employment (60% of the workforce come from the fringe communities)
- The farmers receive farm inputs (seedlings eg mangoes and citrus) from GWD
- The park protects the Volta Lake and other water bodies
- Biological and other ecological inventory and important home for some endangered species.
- Ponding grounds
- Micro climate for farmers in the vicinity-rainfall in the communities is better than areas distant from the Park.

According to the farm manager, the Park serves as feeding grounds for fish to the Volta Lake and the Sene river and that is why the fishermen are not ready to move out. He also said the area is fertile due to the reserve.

4.10.1 Perceived benefits to the people:

- i. Fishermen want to use the large merchantable trees that fall in the reserve for making canoes.
- ii. Quite a number of the herbal plants that are scarce outside abound in the park. These could be obtained for medicine.
- iii. Exploitation of the numerous palm trees for palm wine to be used in the distillation of Akpeteshie.
- iv. Utilization of ropes and poles from the park for building purposes.
- v. Utilization of dead trees in the park for fire wood.

The people are of the contention that, the resources in the Park are for them and the future generations and when the above benefits are given to them they would ensure its protection.

4.11 Impression on the Acquisition

Table 10

Do you think it was necessary for the Government to acquire all that stretch of land for the National Park?	Total
Yes	32
No	70

Source: Field Survey

This research solicited impressions on the acquisition and out of the sample of 102 land owners; only 32 of the respondents have the impression that the acquisition was necessary. The remaining 70 of the respondents gave a negative response.

The response indicated above shows that there has been very little formal conservation education with the resultant general lack of knowledge as to the purpose of the Park's creation. There is therefore, lack of appreciation for the Park. This lack of appreciation could be due to the fact that the first users of the land were hunters who operated without restraint. The farming and fishing communities see the Park as an obstacle to their aspirations. They said it has deprived them of their livelihood.

On the other hand, the 32 people who feel appreciation for the reserve recognize it as a government venture established to check desertification and also serve as tourism to the country.



CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter presents a summary of the main findings, the conclusion arrived at and the recommendations to the study. The study was undertaken to assess how compulsory acquisition without payment of compensation affects communities whose lands are acquired. The Digya National Park was used as a case study.

5.2 Summary of Findings

Based on the stated objectives, the study used statistical procedures, to analyze data collected by interviewing people whose lands were compulsorily acquired by the Ghana Wildlife Division.

The main findings of the study are summarized as follows:

5.2.1 Payment of Compensation

All compulsory acquisition cases must effectively go with compensation so as to satisfy the constitutional provisions of the acquisition process. In the case of Digya acquisition, it was observed that most of the people did not receive their compensations and this has rendered the land owners landless.

5.2.2. Causes of the delay in the Payment of Compensation

The study identified the following as the main reasons why full Compensation has not been paid to date

Law Suit

The study revealed that the main cause of the non- payment of the compensation was a protracted litigation which put a ban on the payment of the compensation. An attempt was made by the Government in paying the compensation but there were fraudulent claims from the Kumawu area. This resulted in a legal action that restricted the payment. The case was finally determined in 1993 and those who received the compensation illegally were ordered to refund them to the court registrar for subsequent payment to the appropriate stools. GWD and LVD were ordered to see to the payment of the remaining compensation to the other claimants. LVD revised the compensation sum in 2005 but the payment has not been effected.

Lack of commitment

There has been no comprehensive programme adopted by GWD to address the compensation situation to date; the Division has not been able to secure funds for the compensation payment. Since independence large tracts of land have been compulsorily acquired with little regards to the rights of the original owners of land.

5.2.3 Effects of Nonpayment of Compensation

The Digya acquisition has revealed that the acquisition has affected the communities in the following areas.

5.2.3.1 Employment

In all the communities surveyed, most of the people are without land therefore making them poor. Some of the interviewees have indeed been found to remain without

sustainable source of livelihood, particularly without land in the absence of compensation. This has rendered them landless, poorer and with loss of opportunities for economic sustenance. Most people are not employed and as such could not educate their children.

5.2.3.2 Socio- economic effects

Villagers had to look elsewhere for land to farm, since the Government did not provide any alternative land. Those who have relocated in other places are being regarded as strangers and discriminated against by the original users of the newly secured lands.

In all the communities visited most of the buildings have major cracks on walls due to the fact that they have lost their jobs and as such do not have money for maintenance. Their source of revenue generating from their farm produce has been deprived of them and lack of employment among the youth. Such situation leads to negative social vices such as prostitution in the communities.

Another implication arising out of the Digya land acquisition is the displacement of the community. The people's community sense of social life and bonds are displaced because of breakdown of social network. People become internally displaced persons within their communities to the extent that the provision of social amenities that enhances the general living standards of people and sense of belongingness is lost because of the displacement that comes with such improperly following due process of the law in compulsory acquisition.

5.2.3.3 Forced Eviction

Another effect of the acquisition is the eviction of the residents from their various villages. Because the people have not been paid their due compensation, they still see the Park as theirs and often encroach on the land. The encroachers are sometimes evicted by GWD. Because the people were not resettled or paid their due compensation they returned to the Park and another evacuation exercise took place in 2006 and over 100 people lost their lives in a boat disaster.

5.2.4 Services

The people were promised some social facilities such as schools, markets, water supply and clinics before they released their lands. Unfortunately, these have not been provided. A visit to the site showed that these facilities have not been provided. Roads are very poor making access to the communities very difficult. Most of the communities depend on running streams that dry up during the dry season. Also, Access to health facilities is very poor particularly during wet seasons and people travel to the nearest hospital at Digya for limited health supplies. Markets are usually held in the open and under grass roofed sheds.

5.3 Recommendations

The analysis of the issues relating to delayed compensation as a result of the acquisition of the Digya National Park brings to the fore various problems for which solutions have to be found. Accordingly, the following suggestions have been made in the hope that they will contribute towards the resolution of the problems associated with compulsory acquisition.

5.3.1 Adequate Payment of Compensation

The study has shown that the non-payment of compensation since 1971 has rendered the people landlessness, loss of livelihood and other social effects. It is recommended that the government put in place an appropriate and independent body for compensation devoid of interference to ensure the realization of the fundamental human rights of citizenry so that land owners are not worse off in the acquisition process as directed by the 1992 Constitution of Ghana. This is necessary to ensure the legal protection of all affected parties as well as the predictability and transparency of the compensation procedure and assessment.

It is recommended that the State Lands Act, 1962 (Act 125) be amended to make provision for payment of interest in the event of delays. Also, interest shall be paid on outstanding compensations from the valuation date till the full payment is made.

5.3.2 Creation of Alternative Employment Opportunities

The compensation sum has not been paid to the people and even those paid out are not sufficient to form any basic capital for even petty trading. It is recommended that, the government should take steps to ensure adequate opportunities to earn a living for those whose livelihoods have been negatively affected by the acquisition. The people should be given preference in the recruitment of workers to fill some places at GWD especially the unskilled could be employed as labourers who will be doing jobs which may not need much skills. The skilled ones should also be given consideration in other areas.

5.3.3 Reviewing the Legal and Administrative Processes

One critical suggestion towards the reduction of delays in the payment of compensation is an approach that is required to liberalize the law, transform the central organs of the state for land management, and allow compulsory acquisition to be determined on a market basis. This system should operate within a well-sharpened legal framework (Aryetey and Tarp, 2000; McAuslan, 2000) that can help remove the existing risks and uncertainty surrounding the use of compulsory acquisition powers and land management in general. Such a law should be made in the context of Article 20 (5) and (6) of the 1992 Constitution, emphasizing the pre-emptive rights of expropriated owners. Insofar as the current law does not make provision for the exercise of the preemptive rights it is unconstitutional. The new law should ensure that an Executive Instrument for compulsory acquisition is accompanied by a budget for the payment of compensation.

One major factor that contributed to the delay in the payment of the compensation was a protracted litigation over ownership of the land (stools and usufructuary interest) which led to a subsequent court injunction on further payment. To speed up cases relating to land disputes, it is suggested that the State Lands Tribunal provided under the State Lands Act, 1962, (125) be resourced and adjudicate on cases solely related to land to speed up the delivery or dispensation of justice.

5.3.4 Usufructuary interest

An overview of the operations of LVD reveals that its work is often hampered by conflicting claim to title, especially with regard to allodia titles and usufructs. This often delays the assessment of compensation and hence payment of the affected properties.

There is therefore an urgent need for the development of a scheme for the identification, investigation and sorting out of allodia titles. This would significantly enhance the service delivery of LVD and help to reduce the backlog of land cases pending in the courts.

In the case of Digya land acquisition the crops and the structures were not under dispute. It was only the land which was under dispute but the court order affected all compensation payments. It is further suggested that compensation should be paid for items which are not under any disputes while the part of compensation which is under dispute as at the date of possession shall be deposited with the courts and managed in accordance with National Legislation.

Usufructuary interest in land are recognized as interest worthy of compensation and usufruct holders must be compensated for the value of their land and not the value of the crops on the land only as is currently the case.

This would go a long way to ensure that members of the communities are properly compensated individually and to ensure that whole communities are not dispossessed of their land and deprived of their means of livelihood, thus aggravating the poverty situation unduly.

5.3.5 Acquisition Process

In most cases of compulsory acquisition, the mere constitution of a Site Selection Committee is assumed to be the end of the acquisition process. It is recommended that the process of compulsory acquisition be set up in a time frame. It should be carried out

within a reasonable time to limit the harm caused by the process itself to affected parties interest in the property. In U.K. for example the time frame is 3years (Larbi, 2004).

5.3.6 Provision of Social Amenities

It is further suggested that G.W.D. should solicit for help from World Vision who has already constructed some few bore holes for some communities to construct more bore holes for those communities which do not have good and safe drinking water and allow them to pay some amount for maintenance. Also the Government should provide schools, clinics and markets for the communities whose lands have been taken. Roads should also be constructed to ease the transportation problem. A bridge should be constructed on the Sene River to ease access to the southern part of the Park.

5.3.7 Settlement

The study noted that in many cases, compulsory acquisition of land by the state has resulted in the indigenous people/original land owners being rendered virtually landless without any proper compensation or resettlement. To minimize the adverse effects of compulsory acquisition on the lives of community members, the constitutional requirement of resettlement in cases where the compulsory acquisition results in the displacement of inhabitants should be scrupulously enforced. It is important that this obligation should be enacted into law, possibly by an amendment of the State Lands Act. In this regard, the phrase “suitable alternative land with due regard for their economic well-being and social and cultural values” stated in the Constitution should be interpolated to require the grant of adequate land, both for habitation and also the livelihood of the settlers, and to ensure that the land given to the settlers are not given

on terms which would place them in a worse situation than existed prior to the acquisition of their land.

5.3.8 Adequate Community Participation in Compulsory Acquisition Process

It is further recommended that the state must ensure, prior to any compulsory acquisition that all factors feasible, alternatives are explored in consultation with affected persons. It is also suggested that the communities should be involved in the acquisition procedure so that they act as watchdogs to assist in the protection of the acquired land from undesirable activities. Land owners should be informed and participate fully in the management and receiving appropriate cash compensation.

All the theoretical underpinnings, benefits and justification of compulsory acquisition have not been realized in Ghana. Rather, all the adverse socio- economic consequences are evident. It is therefore necessary that a new approach to compulsory acquisition be adopted; one that considers the consequences of land acquisition in economic, social and political terms and also recognizes the indigenous owners as partners in development and proceeds on principles of partnership and negotiation.

5.3.9 Other recommendations

1. There must be co-ordination among the institutions related to land issues like Lands Commission, the District Assemblies etc. These institutions should also show their commitment in compulsory acquisition processes. This in effect will make Compulsory Acquisition process more efficient and swift.

2. The acquiring bodies must ensure that payment of compensation is done as early as possible. For this purpose, the Site Advisory Committee can be made to ensure that funds are available before the acquisition process is undertaken.
3. Provisions should be made to ensure that in times when compensations are delayed, the value must be updated to reflect the current value factoring in the current rate of inflation.

Finally, compulsory acquisition should not result in rendering individuals homeless or vulnerable to the violation of their human rights.

5.4 CONCLUSION

Boynton and Hawkins (1993) contend that adequate compensation should be based on the principle of equivalence, that is, an owner should not be left worse off than if his land had not been acquired. In most compulsory acquisition no payments are made in respect to the lands acquired despite the provisions in the State Lands Act and the 1992 Constitution of Ghana. This in effect has resulted in an untold hardship on those whose lands have been taken.

The Digya acquisition has marginalized the communities in terms of quality education, health and other social and economic infrastructure as a result of the non – payment of compensation to the expropriated. Government projects that could potentially contribute to improving the quality of life have in many cases turned out to be a curse, further exacerbating their marginalized and subsistence existence. The Digya National Park has also resulted in mass eviction and dislocation of whole communities, their access to farm land, the main source of livelihood destroyed, and their total economic, social and political organization needlessly disrupted. Compensation figures

for various losses as a result of compulsory acquisition are often undervalued and payment unduly delayed.

According to FIG Policy Statement on compulsory purchase and compensation, compulsory purchase is not the preferred option if other routes to land acquisition can be pursued. Such as voluntary means, land exchange or compulsory purchase of partial rights.

However, there are circumstances where due to the scale of the project or complexity of ownership structure, compulsory purchase may be the only feasible option. In such situations, the respect for the right of affected persons shall be implemented. Compensation should be paid so that the affected parties do not suffer loss.

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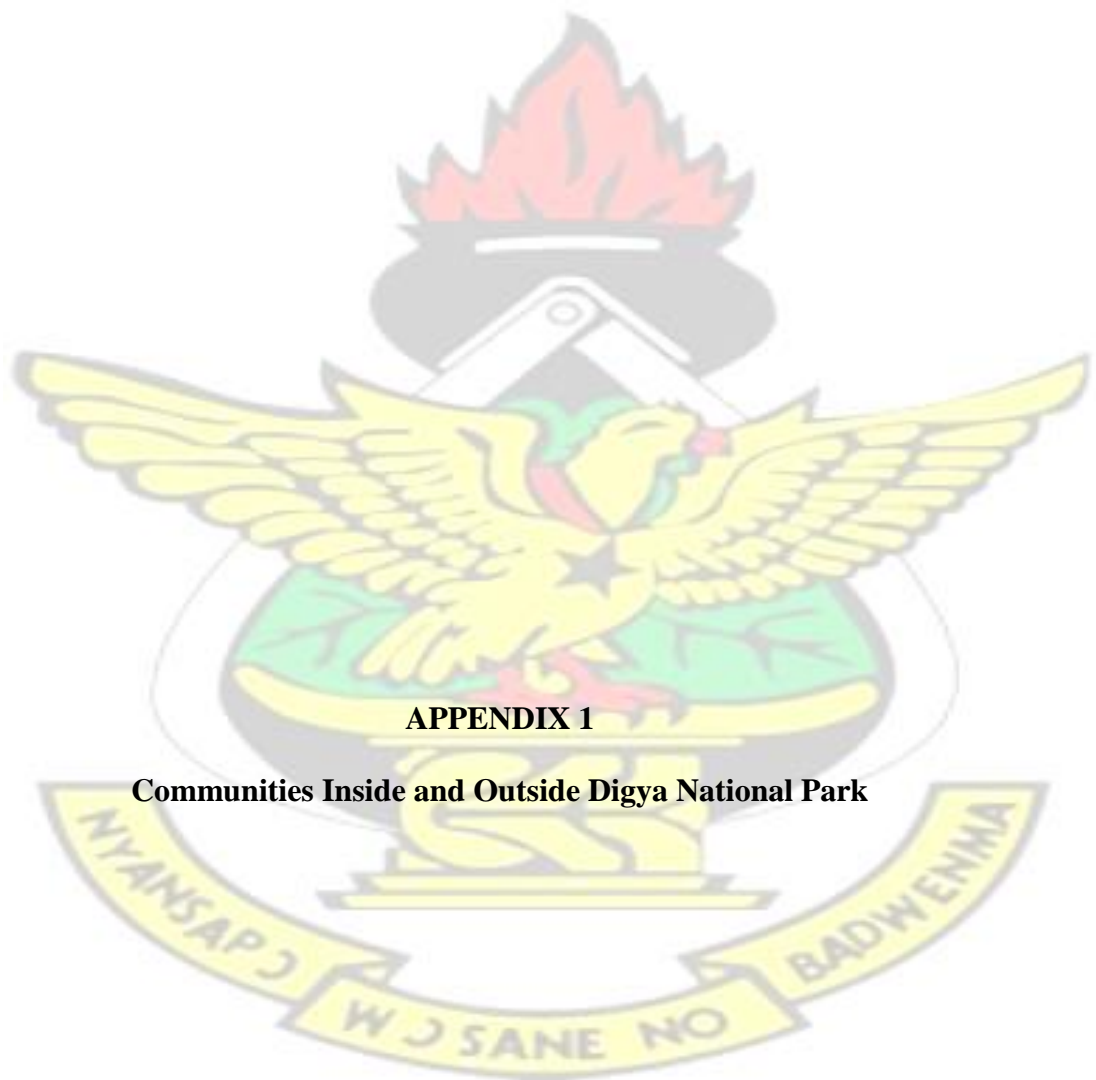
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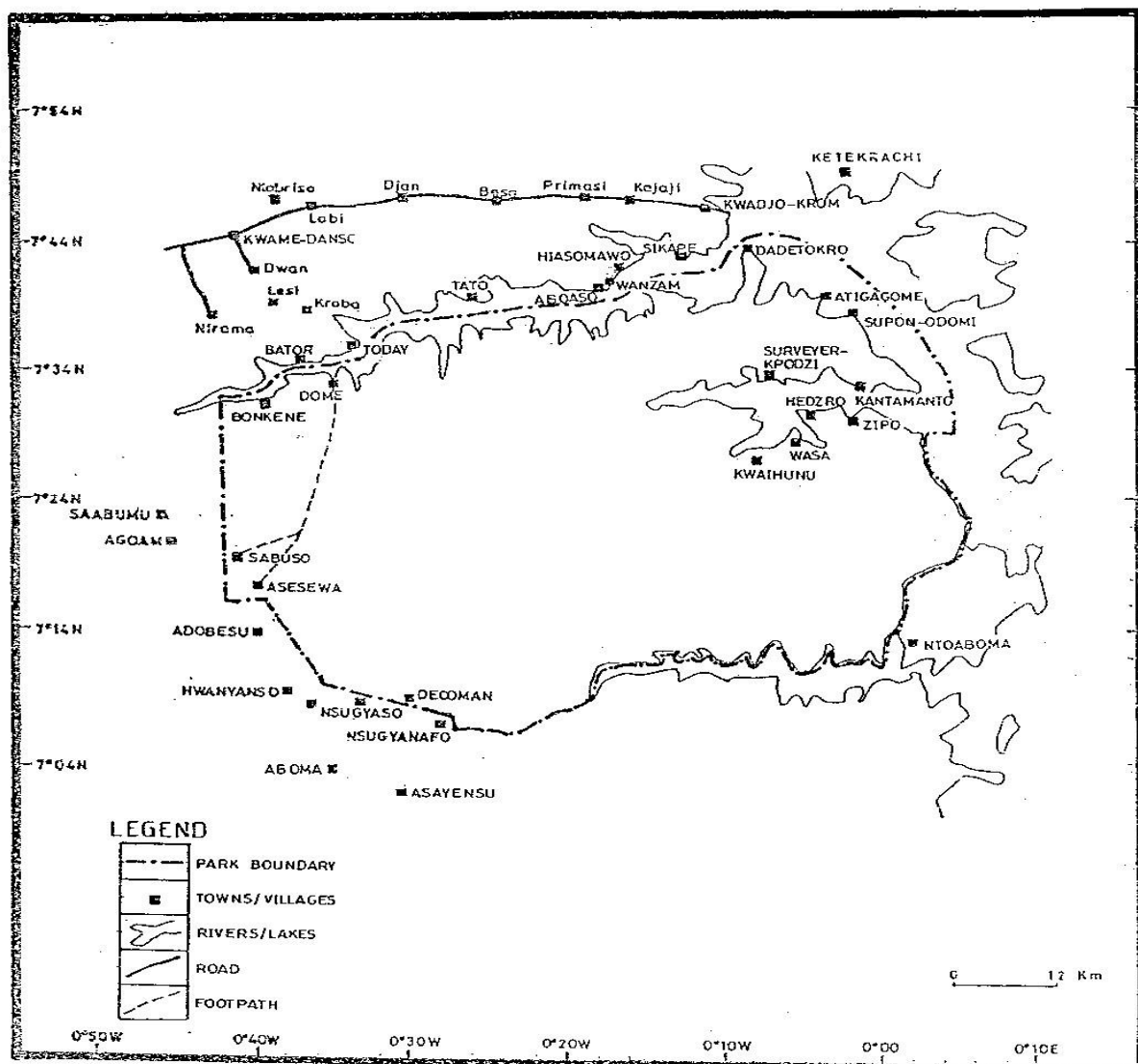
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APPENDIX 1

Communities Inside and Outside Digya National Park



APPENDIX 2

QUESTIONNAIRES

KWAME NKRUMAH UNIVERSITY OF SCIENCE AND TECHNOLOGY

COLLEGE OF ARCHITECTURE AND PLANNING

DEPARTMENT OF LAND ECONOMY- KUMASI

COURSE: MPHL LAND MANAGEMENT

THESIS: COMPULSORY LAND ACQUISITION AND THE EFFECT OF THE
NON- PAYMENT OF COMPENSATION ON THE EXPROPRIATED.

CASE STUDY: DIGYA NATIONAL PARK.

INTERVIEW GUIDE FOR THE DISTRICT ASSEMBLY

1. Name of Assembly:.....
2. Was your land affected by the acquisition of the Digya National Park? Yes / No
 - b. If yes, how many acreage of your land was acquired?.....
3. To what extent has the Digya national park affected the people living around the park?
 - a. Forced eviction b. Loss of income c. Loss of property d. Restrictions
4. To what extent has the people benefited from the acquisition?
 - a. Provision of services b. Resettlement camps
5. What problems did the people within the area face as a result of the acquisition?
 - a. Nonpayment of compensation b. Forced eviction c. Harassment d. Restrictions
6. Were some people resettled? Yes / No
 - b. If yes where were they resettled?

7. Were there any forced eviction? Yes /No

b. If yes, what caused that?

a. Refused to leave b. No means of transport c. No provision for alternative shelter

8. What were the economic and social effects on the lives of the communities?

a. Health b. Education c. Lack of income d. Livelihood

9. Has there been any conflict between the natives and staff of Game and Wildlife? Yes /No

b. If yes how was it settled? a. Arbitration b. Court settlement c. Others

10. Were there any set-up conditions with the Government and the communities within the park? Yes / No

b. If yes what were the conditions

i. Provision of roads ii. Health centers iii. School buildings iv. Shelter

v. Payment of compensation

c. Has the condition been fulfilled? Yes/No

11. Did you participate in the acquisition process? Yes/ No

b. If yes what role did you play?

i. Part of the acquisition committee ii. Provided alternative sites

12. In your opinion, do you think it was necessary for the Government to acquire all that stretch of land for the National Park?

13. Do you receive royalty from Game and Wildlife Division? Yes/No

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APPENDIX 3

INTERVIEW GUIDE FOR GAME AND WILD LIFE DEPARTMENT

Name of Respondent

Position.....

1. What was the acreage of the Digya National Park?.....
2. When was the land acquired?.....
3. What was the purpose for the acquisition?
 - a. Wildlife conservation
 - b. Tourist attraction
 - c. Others
4. How many villages were displaced in the process of the acquisition?
5. Please name them
6. Were some communities resettled? Yes/ No
7. If yes, where were they settled?
8. Were they compensated? Yes/ No
9. Were some people forced to leave ?Yes/No
10. If yes, what kind of compensation was paid to them?
 - a. cash b. resettlement c. Others
11. Did the compensation cover structures and land? Yes / No
12. Did the people participate in the resettlement process? Yes/ No
13. What role did the Game and Wild life play in the acquisition process?
 - a. Biological and Ecological Inventory b. Payment of compensation
 - b. Resettlement scheme
14. Are you aware of any encroachment activities within the reserve? Yes/No
15. What kind of encroachment
 - a. Hunting b. Farming c. Fishing d. Poaching

16. In what ways has the encroachment affected the operations of Game and wildlife? a. Decrease in animal numbers b. Increase operational cost
- b. High risk d. Any other
17. What measures have you put in place to protect and manage the reserve?
- a. Constant monitoring b. Patrolling c. Education e. Others
18. Which other bodies are also responsible for the protection and management of the reserve?.....
19. If there are, how do you liaise with them in this exercise?
20. Has there been any conflict between the people and the staff of the Game and Wildlife? Yes/No
21. If yes how was it settled?
- a. Court settlement
- b. Chiefs and park authorities c. NGOs
22. What problems did your office face in the discharge of your duty?
- a. Finance b. Logistics c. Roads d. Infrastructure e. Accommodation
23. Has there been any violation of the Game and Wild Life laws and regulations by the communities? Yes/No

APPENDIX 4

INTERVIEW GUIDE FOR LAND SECTOR AGENCIES

1. Name of institution.....
2. What was the entire acreage of the Digya National Park?
3. What is the current acreage?.....
4. Does any legal instrument back the acquisition? Yes/No
 - b.If yes, what was the purpose of the acquisition?
- 5 How many towns were displaced during the acquisition?
6. Has there been any submission of claims to the Land Valuation Board from the issuance of the Executive Instrument up to date? Yes/No
 - b. If yes, has compensation been paid? Yes/No
 - c. If yes, when was it paid?.....
 - d. If no why has it not been paid?
7. What kind of compensation was paid? a. Crop b. Structure
8. How was the compensation assessed? 9. Has the E.I. been published?
Yes/ No
 - b. If yes, in which year and under which instrument/.....
10. Who is managing the land now?.....
11. Has there been any encroachment on the land? Yes /No
13. If yes, what factors, in your opinion has given rise to the state of encroachment within the park?
14. What problems did your office face in the discharge of your duty?

APPENDIX 5

INTERVIEW GUIDE FOR THE DISTRICT ASSEMBLY/TRADITIONAL AUTHORITY

1. Name:.....
2. Town.....
3. What is the acreage of land within your jurisdiction?.....
4. Was the land affected by the acquisition? Yes / No
 - b. If yes, how many acreage of your land was acquired?.....
5. Did you receive any compensation for the acquired land? Yes / No
6. Was the compensation paid enough? Yes /No
7. Which people received the compensation?
8. To what extent has the Digya national park affected the people living around the park?.....
9. To what extent has the people benefited from the acquisition?
10. What problems did the people within the area face as a result of the acquisition?
11. Were some people resettled? Yes / No
 - b. If yes where were they resettled?
12. Were there any forced eviction? Yes /No
 - b.If yes, what caused that?
13. What were the economic and social effects on the lives of the communities?
14. Has there been any conflict between the natives and staff of Game and Wildlife?

Yes /No

b. If yes how was it settled?

15. Were there any set-up conditions with the Government and the communities within the park? Yes / No

b. If yes has the condition been fulfilled?.....

16. Did you participate in the acquisition process? Yes/ No

b. If yes what role did you play?

17. In your opinion, do you think it was necessary for the Government to acquire all that stretch of land for the National Park?

18. Are you allowed to farm or hunt within the reserved area? Yes /No

