

A Historical Overview of Compulsory Acquisition of Land in Ghana

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Abstract: *The primary focus of this paper is to examine the trajectory of the development of the law on eminent domain in Ghana. It analyses the various pieces of legislation that have regulated and now do to the exercise of the State's power of eminent domain. In so doing, it points out the paradigm shifts in the enactment of compulsory acquisition laws from the colonial period to the current dispensation, while highlighting some judicial decisions which clarify the ambiguities that characterize compulsory acquisition laws in Ghana.*

Keywords: Ghana, History, Legislation, Compulsory Acquisition, Eminent Domain.

1. Introduction

The individual's right to own property and the State's power of eminent domain—the power to appropriate land belonging to anyone within the borders of the State in the national interest—have co-existed in Ghana since time immemorial. Discussions on the power of eminent domain in Ghana, however, usually place little to no premium on the historical underpinnings of the laws applicable to compulsory acquisition. But we cannot understand the present without paying due regard to the past. This paper seeks to fill that void by discussing the historical evolution of compulsory acquisition laws in Ghana, from the pre-colonial period to the present dispensation.

Compulsory Acquisition: What it Entails

Compulsory acquisition is the power of a sovereign nation or state to acquire private rights in land without the willing consent of its owner or occupant to benefit society in exchange for compensation. [1] In other words, compulsory acquisition is the use of state machinery and authority to deprive a private owner of his rightfully acquired property in the public interest. Where the public interest is at stake, the government typically uses compulsory land acquisition to shift ownership or interest in property from being privately or collectively held to state-owned. [2] Hence, it has been correctly noted that the presence of private property rights is the foundation for compulsory acquisition. [3] The State, in exercising its power to compulsorily acquire private property, affirms the prior existence of the private person's basic right to property. As the right to property is founded in international human rights norms contained in legally binding treaties and in customary law, the State is *a priori* bound by the standards attached thereto.

There are certain standards under the universally applicable international human rights legal regime which may be used to assess the legality of compulsory acquisition. Under these standards, a state's exercise of compulsory acquisition is constrained by three principles: the principles of legality, public interest and proportionality. [4] Taken together, compulsory acquisition is permissible where it is conducted in accordance with municipal and international law in the

interest of the public and in a reasonable and proportional manner, pursuant to procedural safeguards, including prior consultation and compensation. Any measure adopted by a state must be authorized by law and for a legitimate purpose and the reasons for the measure must be proportional to its impact on the right to property, considering any compensation paid to the owner. [5]

One of the most fundamental principles of land law in Ghana is that “there are no ownerless lands”. [6] To wit, every land has an owner. This doctrine dates back centuries and is as relevant today as it was then. [7] Oftentimes, land belonging to stools, sub-stools, families and even individuals were developed for communal or public use through negotiation or in some instances, compulsory acquisition. Compulsorily acquiring land meant that the State would exercise its power of eminent domain to acquire land from owners for the benefit of the public. Unlike in the case of ‘vesting of lands’ — a process of land acquisition by the State in Ghana — compulsory acquisition extinguishes all existing rights or interests in the land which has been compulsorily acquired. [8]

Compulsory Acquisition in the Pre-Colonial Era

Long before the colonial project was hatched in the territories constituting present-day Ghana, there existed various systems of law, referred to today as customary law, which governed the way of life of the inhabitants of those territories. In the pre-colonial ‘State’, compulsory acquisition was executed under the authority of the customary law in various communities and depended on the socio-cultural and political ideals that were the objective at the time. Lands were compulsorily taken possession of for the establishment of ‘public’ facilities such as village shrines, markets and burial grounds. While compulsory acquisition is defined to be a mechanism employed by the State to acquire lands, the power of eminent domain was exercised by stools, families or clans during the pre-colonial era, and not through the State as we know it today. [9]

This power of eminent domain was exercised by extinguishing the rights of individuals over land in favour of the communal plan for the use of the specified land.

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Landholding entities whose lands were compulsorily taken possession of for communal purposes were allocated alternative lands and/or resettled as a form of compensation. However, the exercise of this power was rare due to the effective utilization of land owned by individuals and more principally, the ample availability of land for a host of group projects. [10]

Compulsory Acquisition during the Period of Colonialism

Following the formalization of colonial rule in the Gold Coast, [11] the British Settlements Act of 1843 permitted the British Crown to “*establish such laws, institutions and ordinances, and to constitute such courts and offices as may be necessary for the peace, order and good government*” of the territories concerned. In furtherance of these powers, the Crown enacted the Public Lands Ordinance of 1876 (CAP 134), which laid the foundation for compulsory acquisition as we know it today. The preamble of CAP 134 stated that it was “*An Ordinance regulating the acquisition and vesting of lands for the public service*”. Following its enactment, the Ordinance was first restricted in application to the then southern part of the Gold Coast before it was amended to include the Ashanti kingdom. The lands in the Northern protectorate were appropriated, and not acquired, further evidencing the two-pronged approach adopted by the British in its dealings with the Gold Coast.

Section 2 of the Ordinance provided that “*Lands required for public service may be purchased or taken: and shall vest in the Colonial Secretary in trust for her Majesty.*” It will be observed that what qualified as “public service” was never defined and left to be all-subsuming. Individuals whose land had been compulsorily acquired were compensated after having gone through a strict examination and validation process. Sections 6 and 7 of the Ordinance conferred a statutory right on a person who claims to be entitled to compensation for acquired land to submit his claim to the Commissioner of Lands within three months of the service and publication of the notice of acquisition.

Between 1894 and 1897, the colonial government attempted to enact the Crown Lands Bill in the southern part of Gold Coast. The Bill sought to vest all “waste” lands and “public lands” in the British crown. This attempt was met with much resistance and outcry and resulted in chiefs and citizenry taking to the streets in protest, notably encouraged by the Aborigines’ Rights Protection Society (ARPS). Resistance to these bills was not limited to protests. Newspapers articles, editorials, demonstrations and delegations to the colonial government were employed by the citizenry to make their displeasure known to the government of the day. Consequently, Queen Victoria refused to assent to the Bill and the matter was put to rest for a brief period. The British government was thus restricted to acquiring land on a need-only basis [12].

Compulsory Acquisition in the Post-Colonial Era

Until Ghana gained her independence in 1957, acquisition of lands under the Public Lands Ordinance of 1876 was the order of the day. However, the Ghana (Constitution) Order in Council, 1957 provided detailed rules on the power of eminent domain by ensuring safeguards against

expropriation, requiring the payment of adequate compensation and affording landowners the opportunity to seek redress at the Supreme Court under section 34(1). The aforementioned section read, “*No property, movable or immovable, shall be taken possession of or acquired compulsorily except by or under the provisions of a law which, of itself or when read with any other law in force in Ghana-*

- a) *Requires the payment of adequate compensation therefore;*
 - b) *Gives to any person claiming such right a right of access, for the determination of his rights (if any), including the amount of compensation, to the Supreme Court of Ghana.*
-”

This monarchical Constitution drafted by British lawyers was quickly accepted in order to facilitate Ghana’s independence. It was however short-lived and was replaced when Ghana became a Republic in 1960; the first of four civilian republics over a sixty-three-year period.

Compulsory acquisition under the 1960 Republican Constitution had its genesis in the White Paper for Government Proposals for a Republican Constitution [13]. It read, “*That no persons shall be deprived of his property save in accordance with law, and that no law should be made by which a person is deprived of his property without adequate compensation other than a law imposing taxation or prescribing penalties for offences or giving restitution for civil wrongs or protecting health or property.*” Following a plebiscite held pursuant to the Constituent Assembly and Plebiscite Act, 1960 (Act 1), which was the first Act of Parliament passed by the legislature of the Republic of Ghana, numerous changes were made to the draft following its approval.

What was hitherto land to be acquired solely for a public “service” was now, under article 13 of the 1960 Republican Constitution, a declaration of the president which read, “*That no person should be deprived of his property save where the public interest so requires and the law so provides*”. Regrettably, the 1960 Constitution went a step backwards in the advancement of the individual’s property rights. Its predecessor constitution had provided for the payment of compensation and the right of access to the court for a determination of the rights of persons whose lands may be compulsorily acquired. These requirements were conspicuously omitted in the 1960 Constitution. More intriguingly, the only guarantee in that Constitution which could potentially safeguard the individual’s property rights—the public interest prerequisite—had no significant effect. As the Supreme Court held in *Re Akoto and 7 Others*, [14] the declarations embodied in article 13 of the Constitution were not justiciable rights but merely a statement of aspirations that the President would aspire to attain. This meant that the scanty provision on compulsory acquisition embodied in the President’s declaration was essentially ineffectual. There was therefore no opportunity under the Constitution to challenge any arbitrary deprivation of property through compulsory acquisition, even if such acquisition was clearly not serving any public interest ideal.

It would be observed that CAP 134 used the term “public service” while the 1960 Constitution adopted “public interest”. The switch from “public service” to “public interest” under the new Constitution was a major yet subtle change which set the tone for future constitutions, the latter being a much broader purpose of acquisition. Both CAP134 and the 1960 Constitution continued to provide for compulsory acquisition concurrently until the former’s repeal in 1960.

The law on immovable property saw another development with the enactment of the State Property and Contracts Act, 1960 (C.A. 6), which repealed the Public Lands Ordinance of 1876. Upon its enactment, C.A. 6 vested all property of the Crown in the President in trust for and on behalf of the people of Ghana. [15] It is worthy of note that the vesting done under C.A. 6 was in respect of “property”, and not only land. Thus, all movable and immovable property which hitherto was vested in the British Crown was now vested in the President.

Compulsory acquisition under C.A. 6 was no longer for “public service” or “public interest” as had been the case under the Public Lands Ordinance and the 1960 Constitution respectively; it was now for “public purposes”. [16] Section 5 of C.A. 6 was a novel piece of legislation as it extended the powers of the Minister responsible for lands to cover the acquisition of lands for industrial purposes within any area declared by an executive instrument to be an industrial area. Before the enactment of C.A. 6, however, particular areas had previously been acquired by the Crown and delineated as areas “other than for public services” [17], evidencing the Crown’s acknowledgment that not all acquired lands were to be used for public services.

On 14th June 1962, the Administration of Lands Act, 1962 (Act 123) and the State Lands Act, 1962 (Act 125) were assented to by the President and came into force. Act 123 did not directly have its focus on compulsory acquisition. It was enacted to “consolidate with amendments the enactments relating to the administration of Stool and other lands” [18]. Nevertheless, it empowered the President to authorize the use of any land to which the Act applied for any purpose which, in his opinion, was “conducive to the public welfare or the interests of the State”. [19] Act 125, on the other hand, was enacted “to provide for the acquisition of land in the national interest and other purposes connected therewith”. [20] Acquisitions conducted under Act 125 were simply executed once an Executive Instrument issued by the President declared that a piece of land was required for the “public interest”. [21] Any such declaration was enough to extinguish all subsisting rights and interests in the land in favour of the State. These pieces of legislation remained the primary statutes for the expropriation of land by the State from 1962 until the enactment of the Land Act, 2020 (Act 1036) in 2020.

Notwithstanding that the State’s power of compulsory acquisition was statutorily regulated, the system was characterized by numberless abuses. Indeed, the Constitutional Commission whose proposals birthed the 1969 Constitution decried the arbitrary manner in which the Government, in exercise of its power of eminent domain, deprived citizens of their property. It observed that

properties were acquired, ostensibly in the public interest or for the public benefit, but were later handed over to “favored personalities” at ridiculously low prices. [22]

And so, while recognizing the indispensability of the power of eminent domain in the running of any State, the Commission noted that measures needed to be put in place to arrest the shameless abuse of that power by the State. It therefore proposed that where property is compulsorily taken over in the public interest or for the public benefit, it must be used “solely for that public purpose or the public benefit generally”. [23] This proposal found its way into the 1969 Constitution, article 18(4) thereof, which provided that “Any such property of whatever description compulsorily taken possession of, and any interest in or right over property of any description compulsorily acquired in the public interest or for public purposes, shall be used only in the public interest or for public purposes.” This then paved the way for the subsequent adoption of this requirement of using compulsorily acquired lands for the purpose for which they were acquired in subsequent constitutions and the Land Act.

Article 18 (1) of the 1969 Constitution essentially sought to outline the factors that may justify compulsory acquisition and the essential prerequisites that must be met prior to the acquisition, stating: “No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired by the State except where the following conditions are satisfied, that is to say,

- a) *the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and*
- b) *the necessity therefore is such as to afford reasonable justification for causing any hardship that may result to any person having an interest in, or right over, the property, and*
- c) *provision is made by a law applicable to that taking possession or acquisition*
 - *For the prompt payment of adequate compensation; and*
 - *Securing to any person having an interest in, or right over, the property a right access to the High Court of Justice, whether direct or an appeal from any other authority, for the determination of his interest in right, and the amount of any compensation to which he is entitled; and for the purposes of obtaining prompt payment of that compensation.”*

Prior to the coming into force of the 1969 Constitution, there had been little clarity as to what constitutes ‘public service’ or ‘public purpose’ or ‘public interest’ to form the basis of compulsory acquisition. It is therefore encouraging to see that in article 18, what was hitherto an overly broad basis for what qualifies as acquisition for public services, interests or purposes has been given some parameters for determination. Consequently, the State was limited to acquiring land for the defence of the State; public safety, order, morality or health;

town and country planning purposes; or for such use as would promote public benefit.

The 1969 Constitution, for the first time, gave substantial premium to the right to protection from arbitrary deprivation of property. Hence, it introduced numerous provisions aimed at striking a fair balance between the right to own property and the State's power of eminent domain. That is hardly surprising since that Constitution was the first in our constitutional history to have introduced elaborate provisions on fundamental human rights.

The 1969 Constitution was short-lived, following another military insurrection three years after its coming into force. Ghana was restored to constitutional rule, after another military insurrection, with the promulgation of the 1979 Constitution, which came into force on 24th September 1979. Article 24 of the 1979 Constitution was a reproduction of article 18 of the 1969 Constitution on protection from deprivation of property, confirming the State's fidelity to protecting individuals from expropriation without compensation and without redress in the courts.

Compulsory Acquisition Under Military Rule

Ghana's politico-legal history is characterized by many military insurrections. On 24th February 1966, the democratically elected government of the first Republic, the Convention's People Party (CPP), was overthrown in a coup d'état by the National Liberation Council (NLC). By 13th January 1972, the second Republic, which was ushered in by the 1969 Constitution, was toppled by the National Redemption Council (NRC), which later became the Supreme Military Council. This regime was subsequently overthrown by the Armed Forces Revolutionary Council (AFRC) on 4th June 1979. The new Republic that was ushered in by the 1979 Constitution shortly after the AFRC takeover did not last. It was shown the exit by the Provisional National Defence Council (PNDC) military insurrection on 31st December 1981.

In light of the fact that a great part of Ghana's history is characterized by military insurrections, a recount of the history of compulsory acquisition in the country would be incomplete without consideration of the *status quo* during the reign of these military governments.

It must be emphasized that the military regimes did not radically change the laws that regulated compulsory acquisition. Under these military regimes, compulsory acquisition was still regulated by the State Lands Act of 1962, albeit with a few amendments. For instance, the Act was amended by the NLC government in 1968 through the State Lands (Amendment) Decree, 1968 (NLCD 234). The NRC equally amended it under the State Lands (Amendment) Decree, 1974 (NRCD 307), while the AFRC amended the Act under the State Lands (Amendment) Decree, 1979 (AFRCD 62).

The 1968 NLC amendment introduced something very significant into the Act that is worth pointing out. Recall that the Administration of Lands Act was primarily applicable to stool lands. Accordingly, the State Lands Act in its original formulation disallowed the compulsory acquisition of land which was subject to the Administration of Lands Act. In the

1968 amendment, a provision was inserted into the State Lands Act which empowered the NLC to compulsorily acquire land which was subject to the Administration of Lands Act, 1962 (Act 123), whenever the NLC was satisfied that any special reasons existed requiring such. Thus, any land which was hitherto subject to the Administration of Lands Act, acquired under this authority given to the NLC, ceased to be land to which Act 123 was applicable.

Compulsory Acquisition under the Fourth Republic

Under the Fourth Republic, article 20 of the 1992 Constitution underpins the authority of the State to compulsorily acquire land in the public interest. This power is, as in previous constitutions, subject to the payment of compensation and an affected person has the right to seek redress in the courts of law on matters of ownership and the amount of compensation to be paid. [24]

Unlike all the previous Constitutions, however, it is only the 1992 Constitution which has provided the right of pre-emption in instances where land acquired was not used for its stated purpose. The 1992 Constitution requires that any land compulsorily taken possession of shall be used for the purpose for which it was acquired; and where the land is not used for the stated purpose, the pre-acquisition owners have the right to take back their land, subject to the return of the whole or part of the compensation paid, or any amount commensurate with the value of the land at the time of the re-acquisition. [25] This constitutional right, however, cannot be exercised by landholding entities whose lands were acquired prior to the coming into force of the 1992 Constitution, as the Constitution generally operates prospectively. [26]

The Constitution vests the government with the power to compulsorily acquire land for public interest or for public purposes upon fulfilling certain preconditions. [27] According to article 20(1) of the Constitution, the exercise of the power of eminent domain is not valid unless the acquisition is necessary and in the interest of public defence, safety, order, morality, health, town and country planning or the development or utilisation of property in a manner that promotes the public benefit. Additionally, the State, in the exercise of the power of eminent domain, must clearly state the necessity for the acquisition and must provide reasonable justification for causing any hardship that may arise from the acquisition. [28]

Aside from the 1992 Constitution, compulsory acquisition under the current dispensation is governed by the Land Act, 2020 (Act 1036). It is worth emphasizing that the State Lands Act and all its amendments continued to be applicable in regulating compulsory acquisition until their repeal under the Land Act, 2020.

Among other things, the Land Act delineates more clearly the purposes for which land may be compulsorily acquired by the State. Quite apart from the grounds stated in the Constitution for compulsory acquisition, the Land Act adds that the State may exercise the power of eminent domain towards the provision of any public transport systems, public waste management systems or any public utility service. [29] Also, the Act seeks to make the constitutional

requirement of prompt, fair and adequate compensation more effective. Under the Act, no compulsory acquisition can be undertaken or facilitated by the Lands Commission unless funds for the payment of compensation and other costs incidental to the acquisition have been paid into an interest yielding escrow account. [30]

Over the years, Ghanaian scholars have had their say on what constitutes public purpose and public benefit within the context of compulsory acquisition. According to Kotey, any acquisition made for 'public purpose' is narrower in scope than one procured for public interest. Such acquisition occurs when the government acquires any land for a specific purpose including for the construction of a specific social purpose. [31] On the other hand, any land acquired in the 'public interest' refers to any acquisition of land by the government for its use or for use by third parties including public corporations, private entities or individuals for purposes which confer different benefits (which are not mutually exclusive) to the public and the private entities involved. [32] In this regard, an acquisition in the public interest could be made for the benefit of the public, as well as for the benefit of third-party users in the form of profit or commercial investments. [33]

The Superior Courts of Ghana have made pronouncements which help bring clarity to the long-standing debate between 'public purpose' and 'public interest' in the exercise of the State's power of eminent domain. [34] Although many grounds have been set out for compulsory acquisition to be exercised, judicial decisions on the subject have had their focus on "public interest" or "public purpose". It is noteworthy that the Constitution defines "public interest" to include "any right or advantage which enures or is intended to enure to the benefit generally of the whole of the people of Ghana". [35] The scope of public interest, expressed in such inclusive terms in the Constitution, has been explained by the Supreme Court as being wider than that expressly stated in the Constitution. [36] Hence, in *Republic v Yebbi and Avalifo*, [37] the Supreme Court held that the public interest would be deemed satisfied even if the benefit enures only to a section of the Ghanaian populace.

The Supreme Court was confronted with the meaning of public interest or public purpose relative to compulsory acquisition in the case of *Nii Kpobi Tettey Tsuru III v Attorney-General*. [38] The Court, speaking through Dotse JSC, observed that public interest or public purpose had to be given a broad, expansive and liberal meaning so as to encompass any use of property that would be beneficial to members of the entire community or open to the public. On that basis, the Court noted that:

"once the use to which the land is to be put, is not restricted to any personal or individual interest, but one to which the general public will have a benefit, or the benefits of the project will enure to the entire country either directly or indirectly, the public interest purpose will be deemed to have been adequately catered for. ... In this context, public purpose or public interest must be taken to mean any use of property to which members of the public have access to or are entitled to have beneficial enjoyment or use

whenever desired or circumstances permit, in contra distinction to restrictive use." [39]

On the basis of this expansive interpretation given to public interest or public purpose, the Supreme Court held in the case of *Okudzeto Ablakwa and Another v Attorney-General and Another* [40] that the grant of an interest in land that was compulsorily acquired to be used for housing public officials to a private developer was a use in the public interest because "*the three blocks of flats to be constructed (as per the terms of the grant) will obviously be available to members of the public who can afford the cost involved in renting or buying them.*" In so holding, the Court made haste to rely on the decision in *Nii Kpobi Tettey Tsuru III v Attorney-General*, where the Court earlier held that the use of compulsorily acquired land for the construction of a Wireless Station and "Executive Mansions for visiting Heads of States who were to attend the Ghana @ 50 Independence Anniversary and the African Union Conference" was consistent with the purpose for which the land was compulsorily acquired.

In the *Nii Kpobi Tettey Tsuru III* case, as the Supreme Court found, the actual purpose of the acquisition was not only for the construction of a Wireless Station as the trial judge had intimated but also for "extension to residential area". This therefore makes the *Nii Kpobi Tettey Tsuru III* case markedly distinguishable from the *Ablakwa Case*, since the acquisition in the former had as part of the purposes an extension to residential area.

Rationalizing these decisions of the Supreme Court, the Court is to be understood as saying that the use to which the compulsorily acquired land is put need not necessarily be the same public purpose for which it was acquired, so long as the new use is serving a different public purpose or interest.

It would therefore seem, as *Dowuona-Hammond* notes, that "the Ghanaian courts have focused on the question whether the use to which the land is being put confers any benefit on the public or not. And in so doing, have shown a distinct inclination towards a liberal and accommodating definition of public interest in this context [41] She argues that a rigid interpretation of 'public interest' under article 20(1) would be "unduly stifling and would undermine the government's utilization of previously acquired lands for productive projects". [42]

Yet, this approach may not be altogether helpful as it may lead to the activation of a public power for private gain. Using the decision in the *Ablakwa Case* as its basis, an abusive Government may compulsorily acquire land, citing any public purpose or interest, only to transfer the acquired interest to a private person to be developed. This would be justified simply because an individual may be able to purchase it, depending on the person's financial capability.

2. Conclusion

The development of the law on compulsory acquisition in Ghana had a remarkably interesting trajectory. The legislative history began with the overly broad and illimitable power of the colonial state to acquire land

compulsorily. But over the years, constitutional and legislative provisions have helped to water down these overly broad powers, thereby giving maximum protection to the right to protection from arbitrary deprivation of property.

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