



# Who is the rightful recipient of mining compensation for land use deprivation in Ghana?

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## ABSTRACT

Compensation remains a crucial precondition for the compulsory acquisition of land in many jurisdictions across the world. The compensation regime of Ghana is still characterised by uncertainties with the legislative environment. This paper focused on the determination of rightful recipients of compensation for deprivation of use introduced by the new Minerals and Mining Act, 2006 (Act 703) in Ghana. Using case study and cross-sectional approaches, expropriated farmers, chiefs, estate valuation surveyors and some officials of Newmont Ghana Gold Ltd involved in the land compensation process were interviewed. The study examined the challenges and processes followed at the Newmont Ghana Gold Ltd Akyem Mining Project, where compensation for deprivation of use of land was applied for the first time in Ghana. The study revealed that the major challenge of compensation revolved around which stakeholders were rightfully entitled to receive compensation for the deprivation of the use of land—alodial owners, usufructs, tenant farmers or sharecroppers. In the absence of any concrete legislative direction, a legislative instrument is needed to clearly define the recipients of compensation under the various possible heads of claim.

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## Introduction

In developing countries, such as the Sub-Saharan Africa, land remains a principal asset of poor households (Barbier, 1997). Many livelihoods are anchored on land. However these vital livelihood opportunities that land renders have come under serious threat in recent times as a result of rising large acquisitions for agriculture and mineral prospecting in Africa. The growing phenomenon of land grabbing and foreign direct investment in large-scale land acquisition for commercial farming, mining, timber and rubber production have heightened the risks of private property holders losing out their land rights. The surge in large land acquisitions became pronounced in 2008 (Deininger and Byerlee, 2011), and rising food and bio-energy demands have been frequently cited as the driving factors for these acquisitions. The acquisition of mining concessions has also been a prime player in the expropriation of local landholders across Africa. This explains why Peters (2012) insists the newer acquisitions of land in Africa for food and biofuel production must be considered alongside the rising land acquisitions for mining concessions. In the view of Peters (2012:13):

... the main cause for alarm in the rush to acquire land in Africa is the fate of people who have been using that land, especially

the implications for their livelihoods and their rights to property.

In Angola for instance, people have been forcefully dispossessed of their lands to make way for gold, copper, silver, oil and gas exploitation (Hall, 2011:7). Ghana with large mineral deposits has not been spared the expropriations and displacements of local landowners and farmers due to mining acquisitions. Granting of leases and mining concessions to companies to prospect for gold, diamond, manganese, and oil and gas are commonplace in Ghana and in many parts of Africa. In all these instances, compensation of the affected people is critical if the hardships of the expropriated persons are to be mitigated and sustainable development of the host communities is to be attained. Since most African land tenure regimes are informal and customary in nature, there is an urgent need to revisit the debate on compensation claims especially issues regarding the quantum assessment and identifying the rightful beneficiaries of compensation.

It is not just enough to pay compensation, but it must be paid to the right persons and in the right sums able to reinstate the expropriated people. The concern about payment to the rightful persons becomes even more urgent especially in Africa due to the complexity of the tenure arrangement under the customary law. The customary land tenure arrangement in Africa based on its egalitarian values often gives rise to multiple and sometimes overlapping claims by different parties over a given parcel of land.

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For instance, in the Ashanti areas of Ghana according to Berry (1997), most lands are subject to multiple, overlapping claims by different kinds of social agents and the list of interested parties for a given land are likely to be long (see also Ubink, 2008 for peri-urban Kumasi and Chauveau and Colin, 2007 for south-western Burkina Faso and Cote D'voire). According to Feder and Noronha (1987:147) under Africa land use arrangement:

... one person could cultivate crops, while, on the same land, another could have rights to trees; or land could be used by cultivators during the cropping season and by herders in the off-season or during fallow periods (see also Toulmin, 1999:16–17).

These myriads of interests and rights all stand affected in the acquisition process either by government for infrastructure projects, leasing to mining companies for mineral exploitation or to agro-investors. Even though the loss of these rights must be legitimately compensated, the challenge has been how to sort out the layers of compensation claims and pay the claimants their specific and rightful entitlements.

In Ghana, there are specific legislations that empower the State to compulsorily acquire or purchase private property for public purpose or public interest. The state can exercise this power of eminent domain under a number of legislations depending on the nature and purpose of the acquisition. The applicable legislations include the State Lands Act 1962 (Act 125) for the acquisition of public lands, the Minerals and Mining Act, 2006 (Act 703) for the acquisition of mineral concessions and the Statutory Wayleaves Act 1963 (Act 186) for the acquisition of lands required for public ways such as roads, tramways, lanes, electricity pylons, water and sewage drainages among others. The 1992 Republican Constitution of Ghana under Article 20 (2a) permits compulsory acquisition of private property only under enactments that make provision for the prompt payment of fair and adequate compensation. The necessity for compensation was again emphasised in the National Land Policy (1999:9) that:

... no interest in or right over any land belonging to an individual, family or clan can be compulsorily acquired without payment, in reasonable time, of fair and adequate compensation.

This provision under both the Republican Constitution of Ghana (1992) and the National Land Policy (1999) aims at protecting owners of land from indiscriminate deprivation and expropriation under the disguise of public purpose or public interest.

Notwithstanding the statutory obligation to pay compensation upon compulsory acquisition in Ghana, challenges regarding who is rightfully entitled to these payments or reinstatement packages remain persistent. The Ghanaian customary land tenure system just like what prevails elsewhere in many other African countries has multiple interests and rights co-existing over a given piece of land and these multiple occupants may all have different entitlements and claims under compulsory acquisition. One cardinal principle under compensation is that only people who suffer losses due to an acquisition must be the recipients of the compensation in respect of that loss. The rightful recipients of compensation, the proportions to be received (if the amount is to be shared among the claimants) and under what conditions such compensation claims can be made have remained an unsettled issue in the land acquisition and compensation regime of Ghana. This study therefore presents the experiences of Newmont Ghana Gold Ltd Akyem Mining project in Ghana regarding compensation payment arrangements adopted and to contribute to policies on compensation systems in mining communities in Ghana.

## Literature review

### *Legislative framework for compensation payment in Ghana's mining sector*

There are various legislations and constitutional provisions that regulate mining activities and compensation in Ghana. During the colonial and post-independence era, different legislations were enacted to regulate mineral prospecting activities and compensation for incidental damages and losses. Between 1957 and 2006, the Mining Rights Regulation (Amendment) Ordinance of 1957 and the Minerals and Mining Law, 1986 (P.N.D.C.L. 153) regulated mining operations in Ghana. The Minerals and Mining Law of 1986 among other things catered for compensation issues and set out various heads of claims for expropriators and expropriated people. The Law 153 (now repealed) made provision for the payment of adequate compensation to the owner or occupier of any land for the disturbance of rights and for damages done to the surface of land, buildings or improvements or to livestock, crops or trees in the area of such mineral operations (section 73[1], P.N.D.C.L. 153). The law however had some deficiencies and resulted in low and under compensation for losses and damages from mineral prospecting. The law excluded the value of the land or compensation for the loss of rights to use land by owners and farmers. The landowners and farmers were compensated only for any damaged crops grown on the land and structures erected on it. Communities whose lands were compulsorily acquired for mineral prospecting under the law felt unfairly treated especially regarding zero payments for un-cropped vacant lands and harvested croplands, since only crops and structures were compensated. Agitations and sabotages to mining activities by local communities led to the introduction of the Mineral and Mining Law, 2006 (Act 703) law which sort to cure the deficiencies of the Minerals and Mining Law, 1986 (P.N.D.C.L. 153). The current law makes provision for payment of compensation in the case of land under cultivation and loss of earnings suffered by the owner with respect to the nature of one's interest in the land. Damaged crops are also to be compensated for according to their economic life expectancy. The current law in the assessment of mining compensation for land compulsorily has also taken notice of various identifiable interests held by landowners acquired.

Compulsory acquisition under the Law requires that the holder of the mining right compensates the owner or lawful occupier. Section 74 (1) of Act 703 expressly provides that whenever there is compulsory acquisition of land for mineral prospecting or mining, an owner of land and/or lawful occupier among other things is entitled to compensation for the "deprivation of the use or a particular use of the natural surface of the land or part of the land". Though this head of claim is an improvement to older mining Laws, it is relatively new to the compensation regime of Ghana. It is a novelty in the Law to require that the expropriated persons be fully compensated for any loss arising from deprivation of their land use rights including compensation for ownership of bare or fallow lands, which were not compensated for under the Mining Rights Regulation (Amendment) Ordinance of 1957 and the Minerals and Mining Law, 1986 (P.N.D.C.L. 153).

### *The concept of deprivation of use right under Minerals and Mining Act, 2006*

The Minerals and Mining Act, 2006 (Act 703) introduced into the compensation regime in Ghana the deprivation of use as a head of compensation claim. *Deprivation of the use of land or a particular use of the natural surface of the land* as stated under Section 74 (1)(a) of Act 703 refers to the prevention or denial of the economic and beneficial use of land or restriction of use rights

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