

Compulsory Acquisition and Compensation in Ghana: principles and practice

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Abstract

The greatest challenge confronting the Government of Ghana in the use of its powers of compulsory acquisition to expropriate private interest in real estate is the ability to pay fair and adequate compensation promptly. Meanwhile, the operative Constitution in the country reinforces commensurate compensation payment based on the principle of equivalent reinstatement.

This paper uses data from an American sponsored infrastructural development project under a compact for the Millennium Development Authority in Ghana to provide a succinct overview of compulsory acquisition and compensation payment. It further analyses valuation-based data to demonstrate emerging compensation issues. Using data on 2,632 real estate assets compulsorily acquired for the project, results show that the valuation profession and real estate market are gradually developing in Ghana. The results strongly suggest values obtained by government valuers for acquiring body and those by private sector valuers for expropriated asset owners are highly correlated. This paper provides significant indicators to guide policy formulation for valuation practices for compulsory acquisition and compensation in the country. It concludes that compensation determination requires sufficient valuation skills and the use of appropriate techniques to yield fair and adequate compensation. Prompt payment, however, depends on the availability of funds.

Introduction

The use of powers of compulsory acquisition by the Government of Ghana to expropriate private interest in real estate is challenged by its ability to pay fair and adequate compensation promptly. This paper aims to highlight compensation principles as applied in Ghana. It also provides empirical evidence on compensation determination from both public and private sector valuers on a specific compulsory acquisition of 2,632 wide-ranging properties. Compulsory acquisition of landed asset by Government or its Ministries, Departments and Agencies (MDAs) in the public interest is, as expected, subject to the payment of fair, adequate and prompt compensation. This principle is now well-known among the people of Ghana. In general, apart from land, buildings and other structures of all types as well as crops – food and cash – may be adversely

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affected by compulsory acquisition to warrant compensation payment. Compensation payment arises when an interest (legal or customary) in a landed asset is extinguished as a result of a compulsory acquisition. Recently, monetary payment for the loss of livelihood has been equated to compensation to occupants of real estate assets, who may not necessarily own an interest therein. In practice, compensation estimation includes elements of disturbance; its quantum is indeed related to the use, type and location of the real estate expropriated. For commercial assets such as shops and fuel stations, compensation assessment may require additional provision for specific element of disturbance to include goodwill.

Post-independence acquisitions have primarily relied on the State Lands Act, 1962 (Act 125) and the State Lands (Amendment) 2005, Act 586. Provisions of these two statutes are rather restricted to the acquisition of “private” interest in real estate. In contrast, “acquisition” of stool² lands has been accomplished using the Administration of Lands Act, 1962 (Act 123). Under Act 125 and Act 586, a lump sum compensation is payable to claimants. Section 10 of Act 123 on the other hand prescribes the payment of annual compensation rental for stool land acquisition taking accounts of the degree of social benefit inherent in the acquisition. Compulsory acquisition procedures are deemed to be opened and publicized to attract claims from Project Affected Persons (PAPs). Under Act 125, the acquisition instrument commonly known as the Executive Instrument is published and publicized in a prescribed manner (see Section 2 of Act 125).

However, Article 20 of the 1992 Constitution of the Republic of Ghana underpins the authority of the State to compulsorily acquire landed property in the public interest subject to prompt payment of fair and adequate compensation. And any aggrieved person shall have access to the High Court for redress on determining matters of ownership right and quantum of compensation.

An unexplored area of specific interest to the real estate profession, particularly valuers or appraisers, is claimants’ non-compliance with the basic requirements of a valid claim. Section 4

² A stool means the seat of a chief of an indigenous group or community which represents the source of authority of the chief. It is a symbol of unity and its responsibilities devolve upon its living representatives, the chief and his councilors (elders). Land owned by such a group or community is referred to as stool land. (National Land Policy, Ministry of Lands and Forestry, 1999). A skin in Northern Ghana is the equivalent of a stool in Southern Ghana.

of Act 125 provides four (4) explicit legal requirements for a valid claim. These are: particulars of claim or interest in land; the manner in which his claim or interest has been affected by the instrument of acquisition; the extent of any damage done; and the amount of compensation claimed and the basis for the calculation of the compensation. It is not uncommon to find one or more of these requirements not provided; most often, in claims submitted by legal firms on behalf of claimants. In contrast, valuation reports submitted by private sector Valuers on behalf of claimants tend to satisfy these requirements.

The time limit for the service of claim is also definite. Valid claims are to be served within six (6) months from the date of publication of the instrument of acquisition, that is, the Executive Instrument. A claim served on Government or the acquiring body outside the statutory six months period can be considered out-of-time. In such an event, the purported claim may be processed and compensation only paid as “ex-gratia” depending on whether it is grossly out-of-time or not. Practically, this may be the same amount as the legal compensation would have been. Claimants under an out-of-time circumstance may however, forfeit the opportunity to negotiate compensation amount.

The International Finance Corporation of the World Bank has in recent years developed and implemented related policies to regulate payment of compensation for its sponsored projects, particularly in emerging economies. Its operational policies on involuntary resettlement are of specific mention. The World Bank (2007) argues that involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. For this reason, it permits payment of compensation in the form of loss of business income to PAPs who may not necessarily have legal or customary interest in the affected real estate asset. Such payments are made to a category of persons where the involuntary taking of land or real estate assets results in relocation or loss of shelter; lost of any kind of asset or access to it; and loss of income sources or means of livelihood. As a principle, displaced persons are to be assisted in their efforts to improve their livelihoods and standards of living at least to restore them, in real terms, to pre-displacement levels or to levels prevailing prior to the beginning of project implementation, whichever is higher.

This paper uses data from a Millennium Development Authority (MiDA) sponsored project in Ghana, which fits well into the country's legal framework on compulsory acquisition and compensation, and also consistent with the principles under involuntary resettlement. This project is a three-lane dual carriage ways between Tetteh Quarshie Interchange and Mallam Junction in Accra, the capital city of Ghana. The 14.2 kilometre stretch of road due for completion in December, 2011 has displaced 11,000 people, affected over 2,632 permanent and temporary buildings and structures, 14.2 kilometres of pipelines and electric cables realigned and 11 fuel filling stations relocated. The entire project is funded from a US\$ 557 million compact between the governments of USA and Ghana through the Millennium Development Authority.

Required expertise to assess compensation payable to PAPs or expropriated owners is abundantly available in Ghana. The principle of equivalent reinstatement in compensation determination is also well known among valuers and appraisers in the country. Questions however, remain as to what constitute fair and adequate compensation. Acknowledging this challenge in the Ghanaian real estate market, this paper seeks to use data from the MiDA road project to demonstrate the efficiency and accuracy in compensation assessment to satisfy the Constitutional provision of prompt payment of fair and adequate compensation.

The following Section discusses available literature to clearly establish the contribution of this paper. Section 3 describes and categorizes the data and also explains the methodology. Section 4 analyses data to show the level of accuracy of compensation determination as well as matters relating to negotiations and final settlement of compensation. The last Section provides the concluding remarks.

Literature Review

Previous studies have confirmed the powers of the State to compulsorily acquire private real estate assets in the public interest (see Knetsch, 1983; Denyer-Green, 1998; Okoth-Ogendo, 2000; Kesse, 2002; Kotey, 2002). And the rationale for this action by the State has largely been documented in studies such as Darin-Drabkin and Darin, 1980 for the production of housing, public services and other economic activities; Courtney, 1983; Whitehead, 1983; and Rivkin, 1983 for the achievement of economies of scale and least-cost production of public services; and

Lichfield, 1980 for the search for greater equity and social justice in the distribution of land for human activities.

This is not to say that compulsory acquisition is the only means for outright purchase of landed assets for national development. Most public institutions in the country such as the State Housing Company, Ghana Water Company and Electricity Corporation of Ghana are inherently empowered by the statutes establishing them to purchase lands, buildings and other landed interests by private treaty negotiations. Similar mandates are provided under the Local Government Act, 1993 (Act 462) for the Metropolitan, Municipal and District Assemblies in the country.

Most predominantly employed law for real estate expropriation in Ghana is Act 125, which gives the President the widest possible powers to acquire any landed asset for public purposes or in the public interest. A limited number of studies in the country have narrowly dealt with the subject of compulsory acquisition and compensation. One of such studies, nonetheless, provides a clear distinction between acquisition for public interest and public purpose (see Kotey, 2002). The State has over the past years applied its powers of eminent domain to execute projects such as roads, schools, hospitals and electrification through compulsory acquisition of land. Such an option is, however, likely to generate challenges for land administration. For instance, out of 692 of state acquired and occupied sites in the Central Region of the country, only 58 sites were fully acquired, compensation paid and lands fully utilized; 11 sites were fully acquired; compensation paid but lands not fully utilized (Ministry of Lands and Forestry, 2008). A periodic inventory of such acquired and occupied landed assets is necessary to provide inputs for policy formulation. In a related study, Larbi, 1994 provides a qualitative account of the state of undeveloped land acquired by the State in Accra.

A more recent study, Larbi, *et. al.*, 2004 analyses compulsory acquisition practice in the country, but falls short of critically examining compensation assessment. The current paper argues that compensation as a research topic needs to be treated holistically and in two inextricable perspectives – compulsory acquisition and compensation. A number of previous studies have largely treated the topic from the perspective of compulsory acquisition. This paper

makes a significant contribution to available literature by dealing wholly with the issues of compulsory acquisition and compensation. It further finds evidence to show the efficiency and adequacy of compensation determination in the country.

Data and methodology

The core data was generated from a field survey and valuation of 2,632 real estate units – residential and commercial – between 2007 and 2010 under the Millennium Development Authority sponsored Project in Accra, Ghana by the Land Valuation Division (LVD) of the Lands Commission. Specifically, the data is primarily stratified into permanent and temporary property types and described in a manner consistent with the Project implementation. Covering a road corridor of 14.2 Kilometres, the Project was conveniently phased into two lots. Lot 1 categorized into 2 sections of 173 and 167 properties respectively. With five sections, Lot 2 covered a total of 2,292 properties; of which 1,945 were temporary structures and 375 permanent buildings. This total represents 87% of the data employed. The road corridor was compulsorily acquired by the government under Executive Instrument (E. I.) 93 of 2007. But surprisingly, LVD did not receive claims for compensation processing until it had completed its valuation on behalf of Ghana Government and made offers to PAPs.

Overall, 2,257 temporary structures such as containerized commercial units (known in Ghana as container shops) and wooden structures of several and varied constructional details and types are covered, representing 86% of the data. The remaining 375 permanent real estate units predominantly of single and multi-storey sandcrete construction constitute 14%. These properties were hitherto situated along the shoulders of a two-lane road linking the Tetteh-Quarshie Interchange to Mallam Junction in Accra.

To ensure that the level of information and data assembled is of high quality, the Division applied due diligence in the composition of teams of valuers (appraisers) and technicians. Not only was the team formation carefully done but also work plans were systematically designed and implemented for high efficiency. To meet timelines, good quality control measures including regular review of progress work and rigorous data validation were pursued. Accuracy in both

data collation and value determination was not compromised. Unsurprisingly, very limited inaccurate data estimation was detected and corrected.

Lack of modern valuation standards for field data collection and recording on the scale of this project may have accounted for the observed inaccuracies. The project is one of a mass appraisal; the adoption of computer assisted mass appraisal techniques may have been appropriate. This technique is unpopular in Ghana for General Valuation purposes. It is however, an issue under serious consideration by the Land Valuation Division. Needless to say that without a unique property identification system in the country, an appraisal of a large number of real estate units with timelines is most likely to face some challenges. A unique property identifier is undoubtedly, reckoned to be a prerequisite for a systematic data sorting and analysis.

The Division enjoys a dominant market share of real estate data. However, its deficiency in Information Technology (IT) resource base has remained the biggest challenge in the delivery of valuation services promptly to meet the high demand. The level of IT facilities in the Division is low; capacity of staff, including valuers to employ IT in data analysis and rigorous estimation of real estate values has been marginal.

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. In this paper, compensation values determined principally, by the use of the replacement cost have been employed for the analysis. The Millennium Development Authority has deferred compensation payment for land per se and argues that it is a compensation component to be borne by the Government of Ghana. Analysis in this paper therefore focuses on the replacement cost of the superstructures only.

Analysis and discussion of results

The initial summary of the observations, reported in Figure 1, shows how many of the PAPs did accept their compensation offers as fair and adequate. It also depicts the number of PAPs or claimants who objected to compensation offers resulting in counter claims. Only 33 PAPs out of the total 2,632 rejected the initial compensation offers, representing approximately 1%. The result suggests 99% acceptance rate. At this very high rate, this paper claims that the Constitutional Provision of fair and adequate payment of compensation is achieved for the Millennium Development Authority sponsored Tetteh Quarshie to Mallam Junction project. The importance of this result is the ability of the Government of Ghana to ensure compliance with provisions in the Constitution, and also to achieve smooth implementation of development project without delays and social unrest.

Figure 1: Compensation offers to Projected Affected Persons

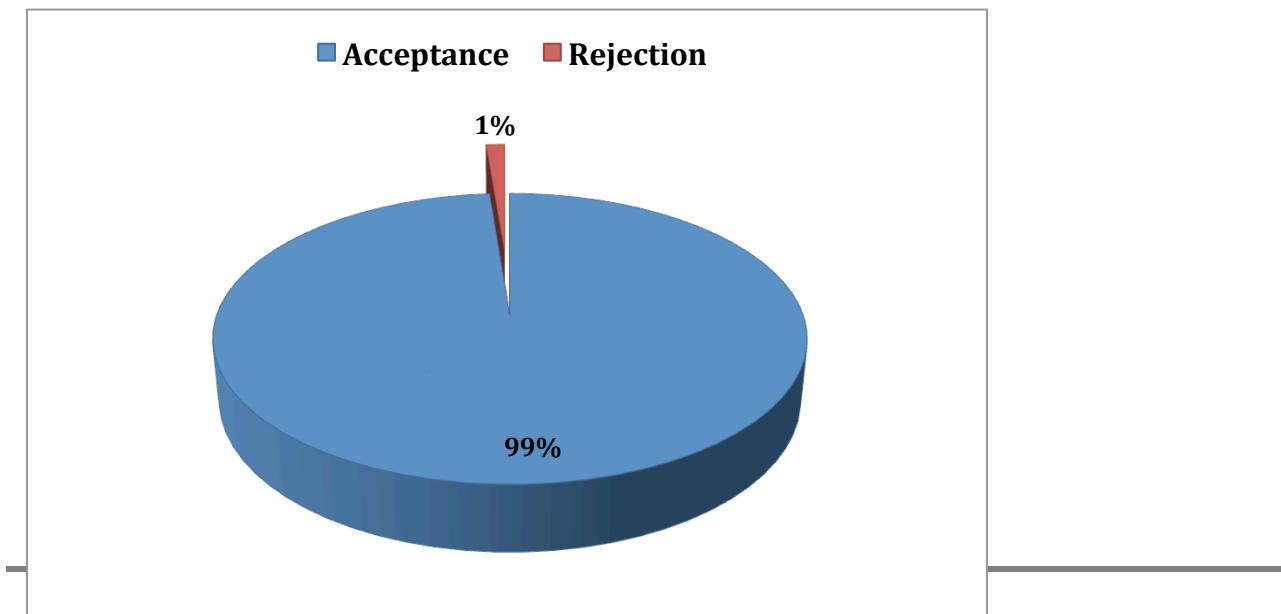
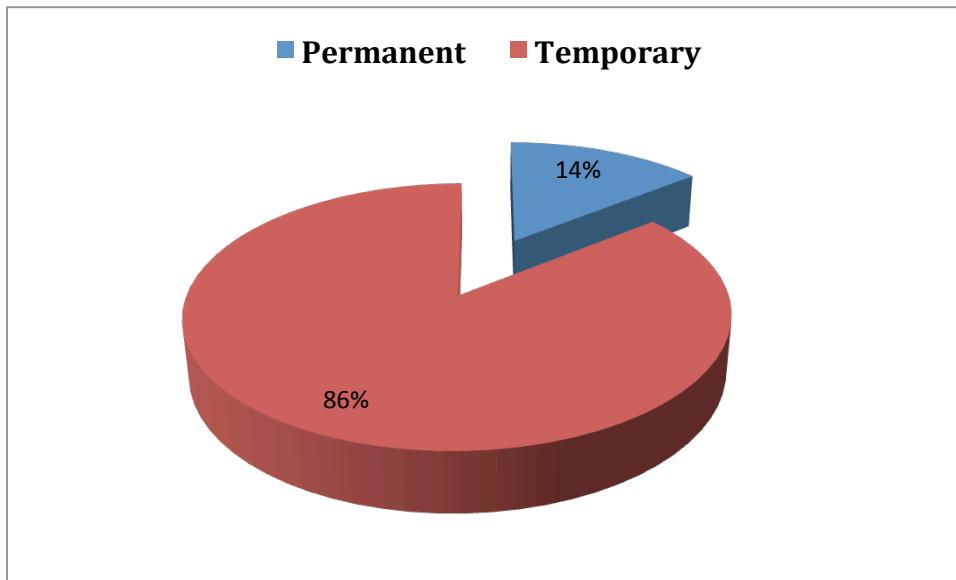


Figure 2 below illustrates the composition of real estate assets affected by the road project. Unsurprisingly, only 375 out of the total 2,632 were permanent real estate assets – single and multi-storey sandcrete buildings – affected by the road project. This figure represents only 14% of the total as shown in Figure 2. Most real estate assets (86%) are temporary in nature, which were easily removed and relocated subject to the payment of fair and adequate compensation. The low representation and small sample size of permanent real estate assets along the entire Project corridor suggests PAPs anticipated the Project in advance.

Figure 2: Composition of Real Estate Assets affected by the project.



The results therefore imply the Government of Ghana has duly complied with agreements under the MiDA compact to pay fair and adequate compensation. It has also demonstrated its willingness to abide by the World Bank's operational policies on involuntary resettlement.

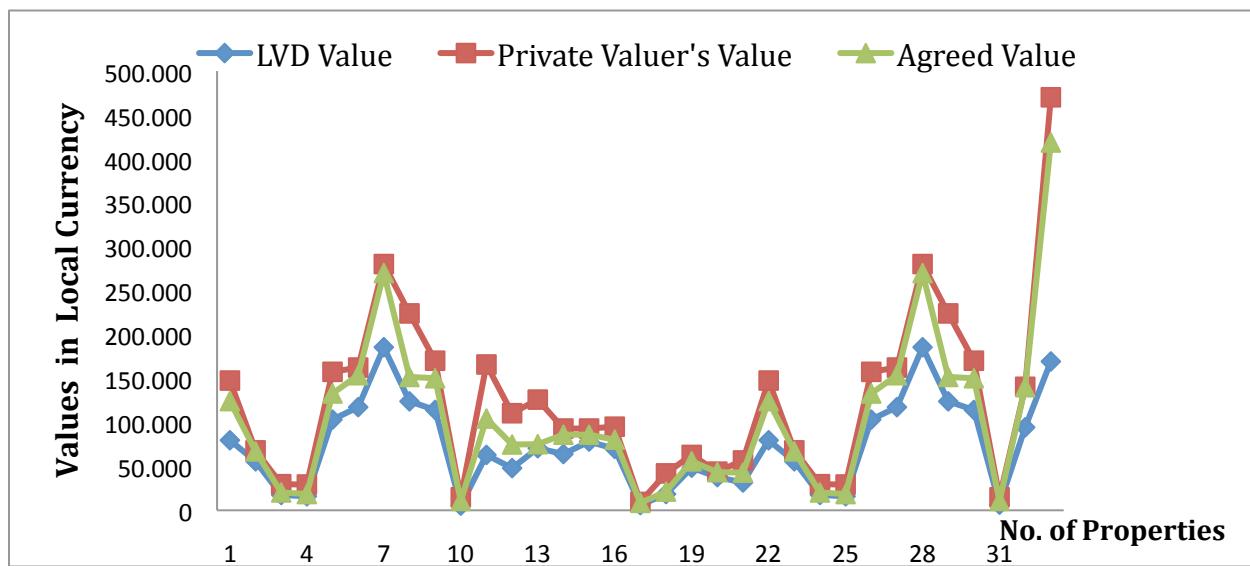
Further analysis is conducted on the 375 permanent assets – 14% of total assets valued with the view to highlighting on the principle of fair and adequate compensation as enshrined in the Republic of Ghana Constitution. And interestingly, as high as 91%; representing 342 owners of

permanent assets accepted the compensation offers as fair and adequate. The remaining 9% representing 33 PAPs rejected their compensation offers.

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. This paper holds a strong view that values determined by the Land Valuation Division are fair and adequate, and therefore reliable for compensation purposes. Among professionals (valuers or appraisers) in Ghana, this claim is seemingly debatable. On this account, some private valuers have on a number of occasions represented real estate expropriated owners in compensation determination as in the case of the Tetteh Quarshie Interchange to Mallam Junction Road Project, the focus of this paper.

A few number of PAPs, numbered 33 who rejected their compensation offers submitted counter claims through their Valuers or Appraisers. Figure 3 plots the quantum of compensation sums recommended by the Land Valuation Division (on behalf of Ghana Government), Private Sector Valuers for expropriated property owners and the agreed compensation for settlement.

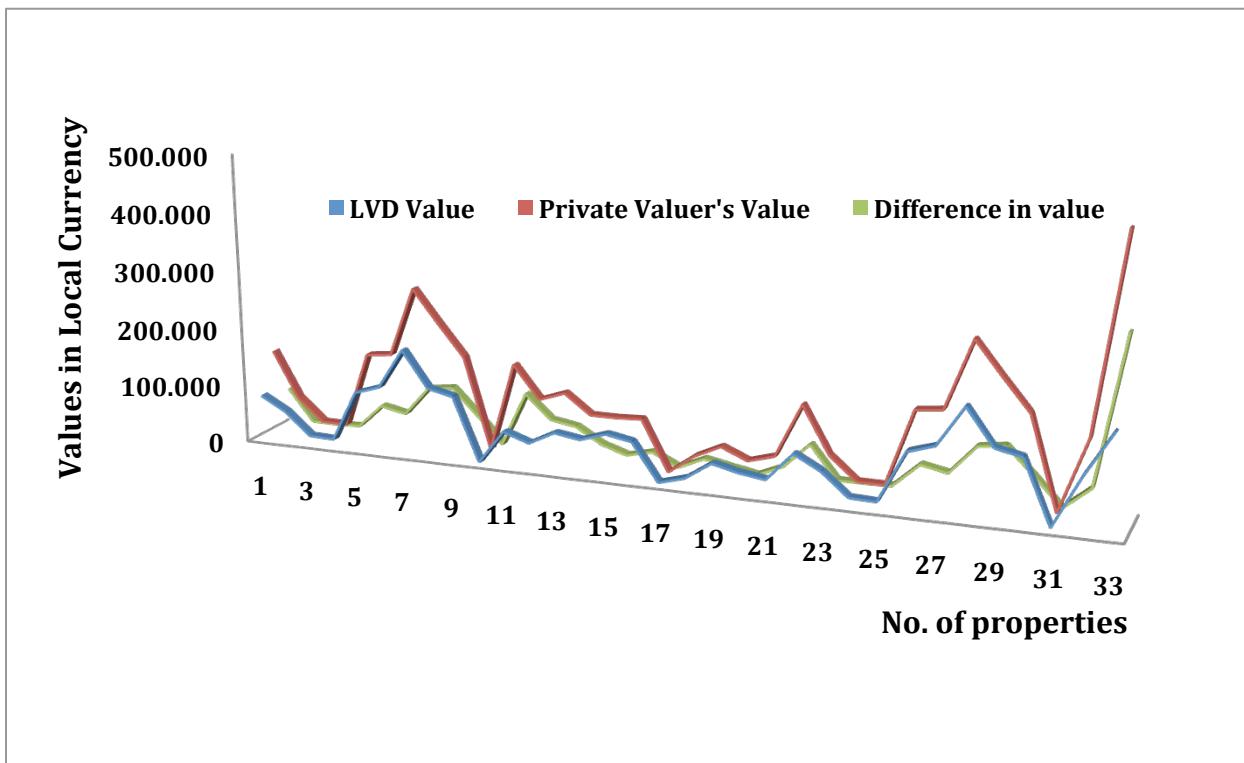
Figure 3: Quantum of compensation – by LVD, Private Valuers and agreed Values



For most of the assets valued, compensation values offered by the Land Valuation Division lie below those determined by the Private Valuers, whilst agreed figures “sit” in between the two values as clearly shown in Figure 3. Six of such compensation values are almost equal in quantum as assessed by both the Government and Private Sector Valuers. And agreed compensation amounts payable are significantly not different from initial offers. In some respects, the graph in Figure 3 confirms the compensation assessed by both Land Valuation Division and Private Sector Valuers. As Government Valuers, the Division is most likely to offer “floor” values to allow for further negotiation, where necessary.

A few other real estate assets were appraised at values wide apart. For example, the Government valuers assessed properties numbered 1, 7, 11, 28 and 33 at values far different from those determined by their counterpart from the Private Sector as can be seen from Figure 3.

Figure 4: Assessed compensation values



There may have been some fundamental reasons for Private Sector Valuers to be quoting higher compensation amounts than the LVD. Apart from the view that they would normally quote higher values to allow for downwards negotiation (where necessary), this paper is able to assign other reasons. Typically, differences in compensation determined by LVD and private sector Valuers arose from (1) genuine errors in floor areas, (2) inclusion of professional fees, (3) sufficient evidence to suggest higher cost rates, and (4) evidence to suggest additional elements of disturbance. Negotiated values for compensation payment obviously rest between the extreme values.

Figure 5: Private sector values as against agreed values

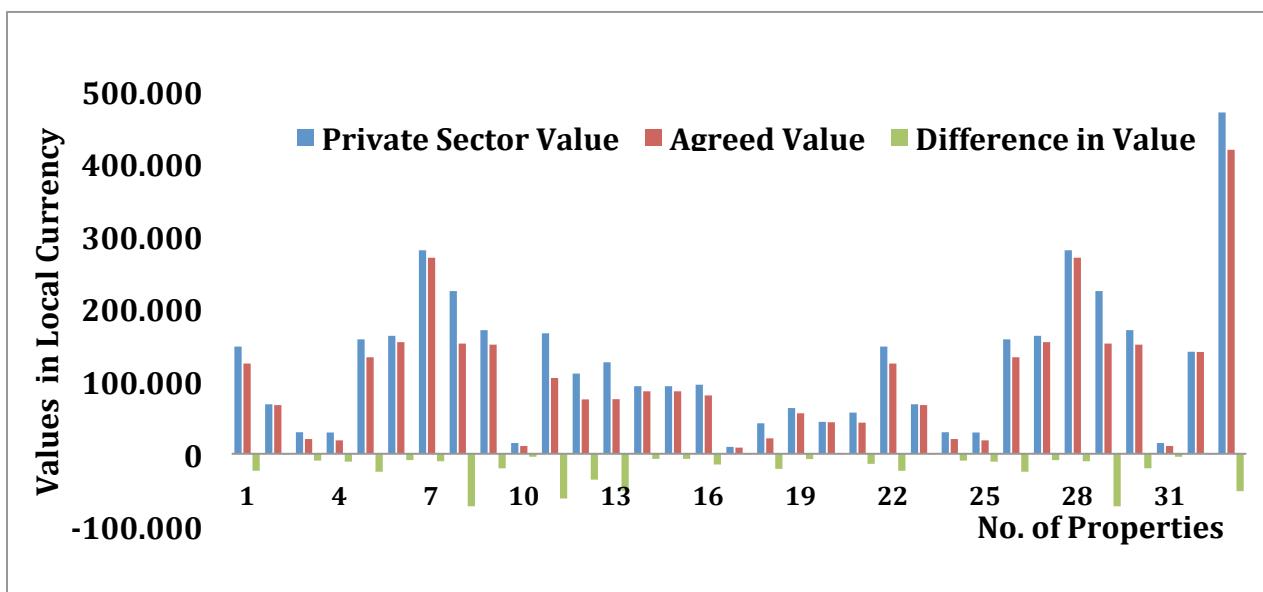
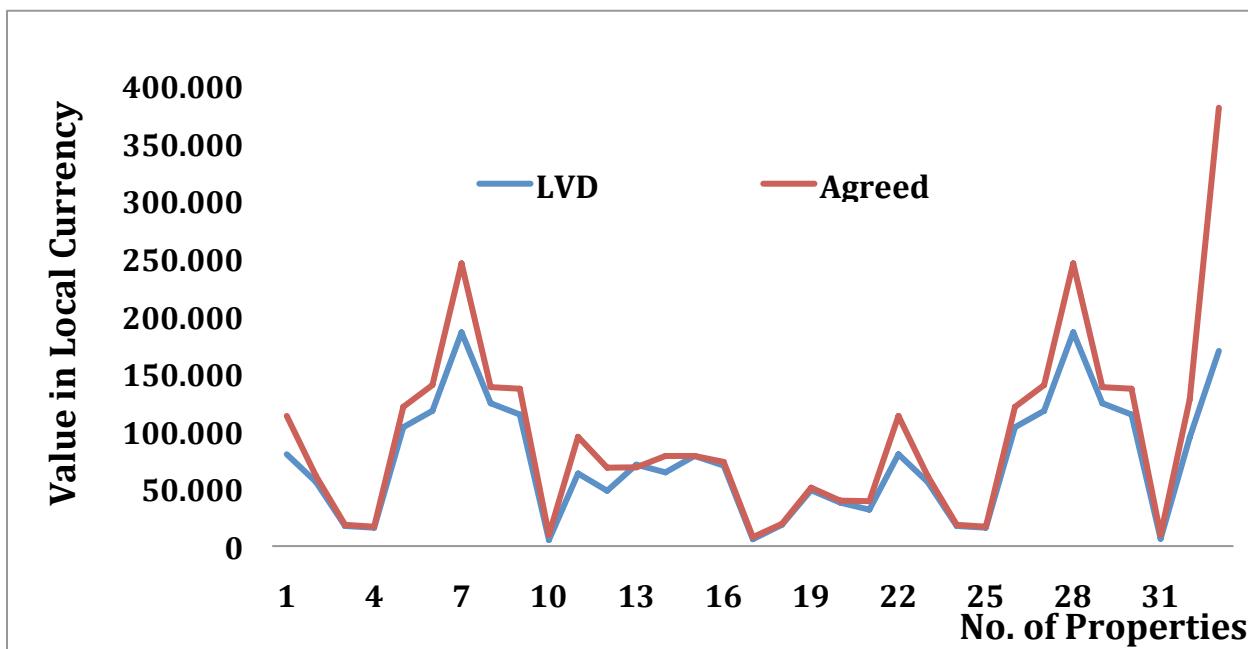


Figure 4 reports assessed compensation, showing the differences between values determined by LVD and Private Valuers. LVD values diverged from those determined by Private Valuers, varying in most cases. And also showing significant deviation for few PAPs such as Properties numbered 1, 11, 13, 28 and 33 where the differences are significantly more than values assessed by LVD. Again, values recommended by Private Valuers have generally remained higher than those by LVD because the latter in the first instance would not include professional fees. Also, disturbance claims by Private Sector Valuers have remained higher in most cases than the quantum assessed by LVD. The negotiations between the two independent valuers have offered opportunities to review the mutual basis for disturbance claim assessment. Levels of adopted unit

cost rates for the replacement cost approach have also been higher for the private sector than those employed by LVD.

Real estate industry practice in Ghana suggests expropriated property owners are motivated to demand “ceiling” quantum of compensation whilst LVD, the government valuers are prepared to offer “floor” compensation. It is not uncommon for the private sector Valuers to adopt upper limit of cost rates and land values as against the high tendency for LVD to employ minimum levels. Availability and quality of market data on real estate transactions have increasingly been limited in the country. The valuation profession and real estate market seem to be gradually growing. Much would therefore be required from both private and public sector valuers to collaborate more effectively to develop a systematic real estate database for the industry and to guarantee consistent application of valuation unit rates.

Figure 6: LVD vs. Agreed values (professional fee excluded)



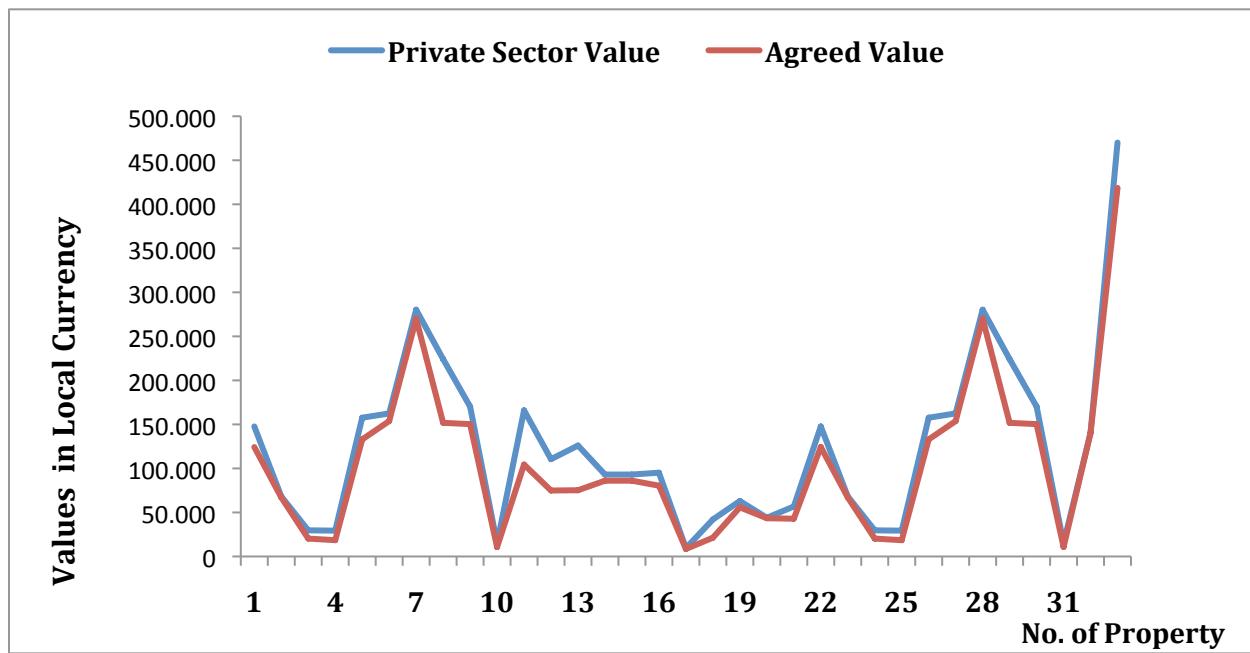
Beyond the comparison of LVD values with those assessed by the private sector, this paper, further analyses values of the latter to also show variations with agreed compensation. Figure 5 depicts the relationship between assessed quantum of compensation by the private sector and agreed compensation with LVD for 33 real estate units. It also indicates the difference between

private sector values and the agreed compensation for each property. As shown in Figure 5, differences in values – private sector assessed and agreed – are again relatively big for properties numbered 7, 11, 12, 22, 28 and 33. Values assessed by private valuers are once again in excess of agreed compensation paid in most cases.

In Figure 6, LVD assessed values are matched against agreed compensation to show their credibility and level of acceptability. One particular noticeable characteristic between the two values is the much higher difference for properties numbered 7, 11, 22, 28 and 33. Notwithstanding such differences, the contemporaneous correlation between the two set of values is 0.93.

On the other hand, Figure 7 shows the relationship between assessed values by the private sector Valuer and those agreed on for compensation payment. The contemporaneous correlation is much higher at 0.98 but with private sector values in most cases higher than the agreed compensation amount.

Figure 7: Private sector values vs. Agreed values (professional fee included)



A Final analysis of the results focuses on the relationship between LVD assessed values and agreed compensation to further show their credibility and level of acceptability.

Figure 8: LVD values vs. Agreed values (professional fee included)

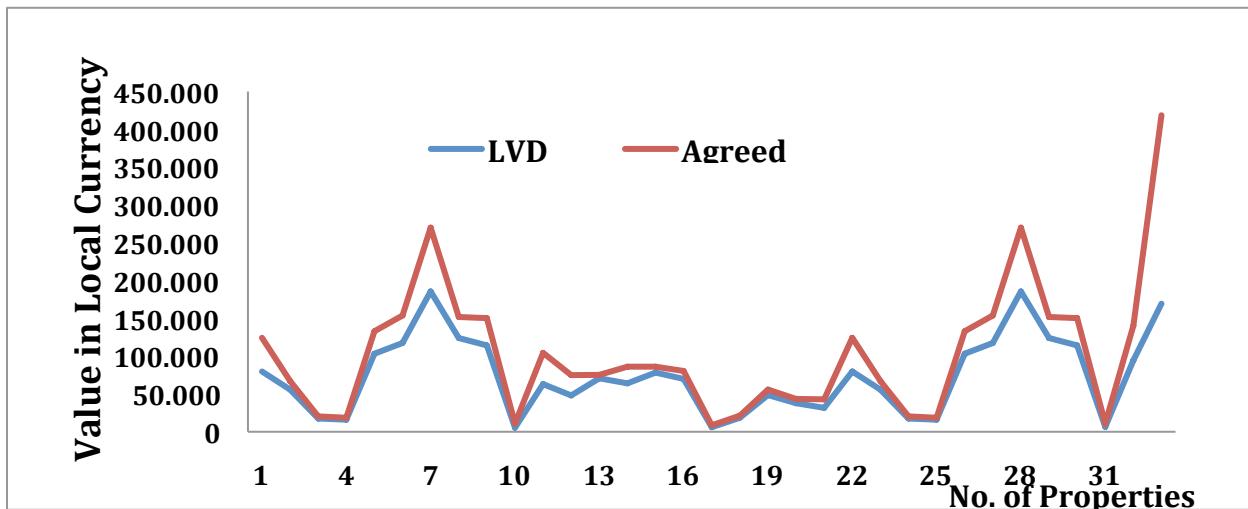


Figure 8 illustrates additional findings which are compared with Figure 7 to further highlight the objectives of this paper. Agreed compensation values are, indeed, not significantly different from LVD values generally, yielding the same contemporaneous correlation of 0.93 as obtained for the analysis without professional fees.

The right to adequate and fair compensation is fundamentally enshrined in the Constitution. Government acting through the Land Valuation Division of the Lands Commission, as shown in Figures 7 and 8, has paid fair and adequate compensation. Even when initial offers were rejected, LVD has negotiated on behalf of Government to pay compensation sums that are, in most cases, not significantly different from initial offers.

Conclusions

In line with statutory provisions, the compulsory acquisition process was completed prior to commencement of the Project. The publication of the Executive Instrument 93 of 2007 permitted PAPs to submit their claims. Counterclaims were only received from 33 PAPs after LVD had gone ahead to ascertain compensation on behalf of Government and communicated offers. It appears the time limit for the service of claim elapsed. Statutory provisions are set to be

enforced; respective state institutions and organisations are to be empowered and supported to comply accordingly. It would be important to set the precedent for the government to save huge sums of compensation through recurrent valuations. It is not uncommon to find claimants who may have slept over their legal rights only to return to LVD months or years after the statutory six months period to demand compensation payment at current values.

Achieving fair and adequate compensation demands a collaborative effort between public and private sector valuers to establish a modern systematic real estate database. It is perceived by private sector valuers that unit rates adopted by the LVD for valuation purposes are relatively low. On the contrary, LVD valuers hold

the view that unit rates from the private sector valuers are highly pegged. Most often, these perceptions become central and critical at negotiations to arrive at fair and adequate compensation. Availability and accessibility to a credible database would undoubtedly provide a more reliable market data.

Compensation determination requires sufficient valuation skills and the use of appropriate techniques to yield fair and adequate amount payable. Prompt payment, however, depends on the availability of funds. There are a significant number of other pertinent issues on compulsory acquisition and compensation in Ghana that have not been analysed and discussed in this paper. These are topical issues for further research so that we can better understand the principle of equivalent reinstatement in compensation matters.

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