



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



Kidido J.K^a, Ayitey J.Z^a, Kuusaana E.D^{b,c,*}, Gavu E.K^a

^a Department of Land Economy, Kwame Nkrumah University of Science and Technology (KNUST), Kumasi, Ghana

^b Department of Real Estate and Land Management, University for Development Studies (UDS–Wa Campus), PO Box UPW 3, Wa, Ghana

^c Centre for Development Research (ZEF), University of Bonn, Bonn, Germany

ARTICLE INFO

Article history:

Received 2 March 2014

Received in revised form

10 October 2014

Accepted 10 October 2014

Keywords:

Compensation

Land use

Deprivation

Recipients

Newmont

Ghana

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.

© 2014 Elsevier Ltd. All rights reserved.

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.

* Corresponding author. Mobile: +233 243 955 047.

E-mail address: ekuusaana@yahoo.com (E. Kuusaana).

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

(Ayitey et al., 2011). Deprivation can either be total or partial depending on the scale of the curtailment. Total deprivation relates to where all the use rights of the interest holder are curtailed while partial deprivation is where particular use rights or some rights of the owner are curtailed. Under total deprivation, the owner or lawful occupier of land is completely denied the use of land for purposes beneficial to his/her occupation of the land for a definite or indefinite duration. However, under partial deprivation, the affected lawful occupier or the landowner still retains some use rights, which may be exercised within a restrictive prescription by the acquiring body. Under a mining lease, deprivation may last for the entire duration of the lease or beyond depending on the scale of damage caused to the land. Deprivation of use may also be permanent if the purpose of the acquisition or use derelicts the land to the extent that, it is rendered completely unproductive when it reverts to the original occupier or owner.

Deprivation of use affects the three dimension of land—functional (*the use or purpose*), physical (*size or shape*) and temporal (*time or duration*) deprivation of use of land or particular use of natural surface. Among the three dimensions, the functional dimension of deprivation is very much important in this study since within the provisions of Act 703, deprivation relates principally to functional use of the land. It should also be appreciated that, the physical dimension determines the extent of curtailment of the use rights or the total physical land area affected while the temporal dimension spells out the period the owner will be unable to use his/her land. As far as deprivation of use is concerned, the establishment of the physical and temporal dimensions is contingent on the functional dimension. Physical and temporal dimensions cannot be established without first satisfying the conditions that certain use rights are indeed curtailed. It is critical to mention that, the concept of deprivation of use of land as contained in the new Minerals and Mining Act, 2006 is not peculiar to Ghana alone. Similar provision exists in the statutes governing mineral operations in other jurisdictions. For instance, The Queensland Mineral Resources Act, 1989 in Australia contains a head of compensation relating to deprivation of use of land. Section 281 (i) makes provision for compensation for:

... deprivation of possession of the surface of land of the owner". Again, the New South Wales also makes similar provision under Section 262 of its Mining Act 1992, No 29. The Act defined compensation loss to include loss caused or likely to be caused by "deprivation of the possession or of the use of the surface of land or any part of the surface ... (Section 262 [b] of the Mining Act, 1992).

The practical application of this concept of deprivation of use of land in Ghana is at the rudimentary stage and some challenges are already emerging, largely due to the nature of customary landholding arrangement operating in the country especially for agricultural land.

Landholding contestations under customary tenure in Ghana

To put into effect the statutory obligation on compensation for deprivation of use of natural surface of land in the mining areas of Ghana, the understanding of the underlying traditional power-relations regarding land ownership under customary system is critical. The disbursements of compensation claims are affected by the customary arrangement on landholding. In Ghana, the question of who has authority to allocate land or is entitled to receive returns to land has remained a thorny issue. At the centre of this contestation is the authority to allocate customary land and entitlements to proceeds from such allocations (Ubink, 2008; Ubink and Quan, 2008). About 80% of the land in Ghana is under

customary ownership (Kasanga, 1988) with the remaining held under State control through vesting and compulsory acquisition from customary owners. Customary lands dominate landholdings in Ghana, and these lands are typically under the authority of chiefs, family heads and *Tendamba*¹. Thus the powers of chiefs over land allocation and entitlement to compensation has been phenomenal. As repositories and enforcers of customary law, some chiefs have been accused of redefining and misinterpreting customary rules in their favour (Ubink, 2008). The Ghanaian chief is more than a landlord (Berry, 2009:30) and is at the center of the ongoing contestation of customary landholding in Ghana. Amanor (2008) reported of the contestation between the paramount chiefs and the village chiefs as well as family heads over the right to allocate land to migrant farmers in the oil palm and cocoa sector of southern Ghana. Boni (2008) reported similarly on the Sefwi area, where chiefs constantly redefine the rules and terms of land transactions to suit their own interest. These contestations become pronounced in high valued land areas such as peri-urban regions as noted by Ubink (2008) and, cocoa and oil palm areas of southern Ghana (see Amanor, 1999).

In mining compensation, the contestations for compensation claims among paramount chiefs, usufructs and tenants are eminent under the new minerals and mining law. In compulsory acquisition, persons who suffer losses both corporeal and incorporeal are entitled to recompense in monetary terms possible. In accessing this restitution value, equity and fairness must apply. People who suffer losses are entitled to compensation proportionate to their losses and people who have not suffered any loss should not receive any compensation. The underlying principle of compensation is to ensure that a dispossessed landowner is not worse off and not better off due to expropriation (Brown, 1991; cf. Alias and Daud, 2011).

Section 74 of the Minerals and Mining Act, 2006 (Act 703) empowers an owner or lawful occupier of land to make a claim for compensation. It is however not clear the rightful person (s) entitled to receive compensation for deprivation of use of land, given the land tenure dynamics in Ghana where multiple parties can concurrently exercise rights over a given piece of land. Even when occupiers and landowners agree to share this head of claim, the proportions of their respective entitlements is not specified in the Act. The rightful recipients must be ascertained with a high degree of certainty and not left to the dictates of the largely ambiguous customary rules. The landholding system in Ghana under the customary law vests immense authority in chiefs, who can reconstruct the rules to deprive their subjects and other occupiers of land who may have suffered huge losses or may be severely deprived of surface right to land due to compulsory acquisition. These power imbalances can create inequity in accessing compensation and impose hardship on vulnerable land right holders. It must be clear which parties within the layers of the customary landholding arrangement are directly affected in land expropriation and should be entitled to what claim of compensation. As noted by the FIG (2010), it is important to clearly identify all parties affected by compulsory purchase and those entitled to compensation such as the parties who are affected by the process and are to be compensated; parties who are affected by the process but are not entitled to compensation; and the larger society who may have lost communal land use rights and may have to be compensated or not.

¹ Tendaana or tendamba are terms used by Dagomba, Frafra, Dagaaba/Waala and some other tribes in Northern, Upper East and West regions of Ghana to mean "land owner" (Tendana is singular and Tendamba is the plural form). In Dagaare, Tenga means land and Daana/Deme refers to owner/owners, respectively.

Interests and rights eligible for compensation in Ghana

There are various types of interests and rights over land in Ghana. These are broadly categorised as allodial interest; freehold (usufructuary) interest which may be customary freehold or common law freehold, leasehold; and lesser interest created by virtue of any right under contractual or share-cropping such as *abunu* and *abusa*² tenancies (see Ollennu, 1962; Da Rocha and Lodoh, 1999; National Land Policy, 1999). Under Section 4(1) of the State Land Act, 1962 (Act 125) any person claiming a right or having an interest in land which is the subject matter of acquisition under the Act can make a claim for compensation by writing to the Minister stating;

- (a) Particulars of his claim or *interest in the land*.
- (b) The manner in which his claim or *interest* has been affected by the instrument....

Similarly, Section 74 (1) of the Minerals and Mining Act, 2006 (Act 703) states that the compensation to which an owner or lawful occupier may be entitled among other things include;

- (a) *Deprivation of the use* or a particular use of the natural surface of the land or part of the land.
- (b) In the case of land under cultivation, loss of earnings or sustenance suffered by the owner or lawful occupier, having due regard to the nature of their *interest in the land*

Interests and surface rights in or over land eligible for compensation are stated in general terms under the legislations. According to Larbi (2008), interests eligible for compensation in Ghana include allodial interest vested in the head of landowning community, freeholds and leaseholds interest. Larbi (ibid) asserts that compensation for freeholds and leaseholds presents few challenges if the interest holders are able to prove their ownership in the form of supporting documentations. In the case of communally owned land or allodial land, compensation is paid to the head of allodial community (i.e. the chief or family head in some communities in southern Ghana or Tendamba in parts of northern Ghana). Customary freeholders are currently not directly compensated for land owned but are expected to receive their compensation through the head of the allodial community to whom compensation for ownership is paid (Larbi, 2008). It must however be noted that personal investments in the form of structures, crops or other improvements by the usufruct holders are compensated directly without recourse to the allodial title holder.

In the case of lesser interests such as customary shared tenancies and short-term occupational rights, the Laws are not particularly clear on their eligibility for compensation. Larbi noted that derived rights (from allodial or freeholders) or informal occupancy rights are not compensated for under the existing legislations. Contrary to Larbi's assertion, such derivative rights are eligible for compensation under Minerals and Mining Act, 2006 (Act 703). The Act specifically makes provision for compensation for the *deprivation of the use or a particular use of natural surface* under Section 74 (1a) to cater for all legitimate (statutory or customary) interests and rights. All lawful holders of land rights affected by compulsory acquisition under the Act can claim compensation for deprivation of use rights. It is instructive to

state that, with the exception of the Minerals and Mining Act, 2006 (Act 703), other compulsory acquisition legislations as noted by Larbi (2008) do not recognise these derivative rights as eligible for compensation. Owners of such rights are compensated only based on the value of their structures, investments and other assets situated on the land.

Study methodology

The Newmont Ghana Gold Limited Akyem Mine was used as a case for this research. A Case study approach was adopted since it is appropriate for the study of the interaction between social actors and social phenomenon (Yin, 2003). The company's Akyem Mine is located in New Abirem in the Eastern Region of Ghana (see Fig. 1). The processes of negotiation and payment of compensation of land use deprivation to the affected landowners and occupiers in good faith³ provided a vital platform to undertake this study. The case study enabled the identification of the compensation recipients, challenges of the approaches adopted and the way forward. This was necessary to help recommend an appropriate process of ascertaining persons rightfully entitled to compensation for the denial of the use of the surface rights. The study made use of both primary and secondary data in addressing the set objectives. Primary data was obtained through field surveys. A total of 10 private estate valuation surveyors directly involved in the compensation exercise in the Akyem Mining Project were interviewed. Five government estate valuation surveyors from the Lands Commission in the Eastern Region of Ghana who took part in the valuation exercise were also interviewed together with 76 affected landowners and farmers. Some of these farmers and landowners also doubled as elected members of the Compensation Negotiation Committee (CNC) that represented affected communities in the negotiation of compensation. Eight (8) chiefs from the affected communities were also interviewed. The study made use of statutes, case laws, and proceedings of the CNC plenaries. The analysis of data was done using descriptive narratives.

Findings and discussion

The acquisition of 1903 ha of land in Akyem by Newmont Ghana Gold Ltd affected many communities together with their prime agricultural and forestlands. The communities directly affected are New Abirem, Old Abirem, Adjenua, Afosu, Adausena, Hweakwae, Mamanso, Yayaaso, Yaw Tano, Obohema and Ntronang (see Fig. 1). These communities are under the traditional jurisdiction of the Akyem Kotoku Paramount stool. The allodial title over land held by these communities is vested in the Akyem Kotoku Stool⁴. There are however three sub-stools operating under the paramount stool— the Adausena Stool, the New Abirem Stool and the Ntronang Stool. These sub-stools take care of lands largely farmlands under their jurisdictions on behalf of the paramount stool. The flow of traditional powers and land relations in the area is shown in Fig. 2.

The Newmont Akyem Mining project necessitated the total displacement of communities such as Yayaaso, Yaw Tano, Adjenua

³ An occupier of good faith is used to refer to an occupier of land who occupies a piece of land in principle as an owner without notice of subsisting rights of any other third party and knowing very well that his title is non-defective at the time he pays valuable consideration in exchange of it. Such an occupier is sincere in his believe and motive without any malice or desire to defraud others. See <http://legal-dictionary.thefreedictionary.com/good+faith>.

⁴ A Stool in Ghana represents a kingdom or community headed by a chief who also serves as the custodian of land in his jurisdiction especially in southern part of Ghana.

² Abunu is a share tenancy arrangement in Ghana, where a tenant farmer and his landlord share the proceeds of the farm or the matured farm in two equal parts. Abusa on the other hand implies the division of the farm or its proceeds into 3 parts, and while one farmer takes 2/3, the other takes 1/3 depending on their respective values of contributions in establishing the farm. This applied largely to cocoa.

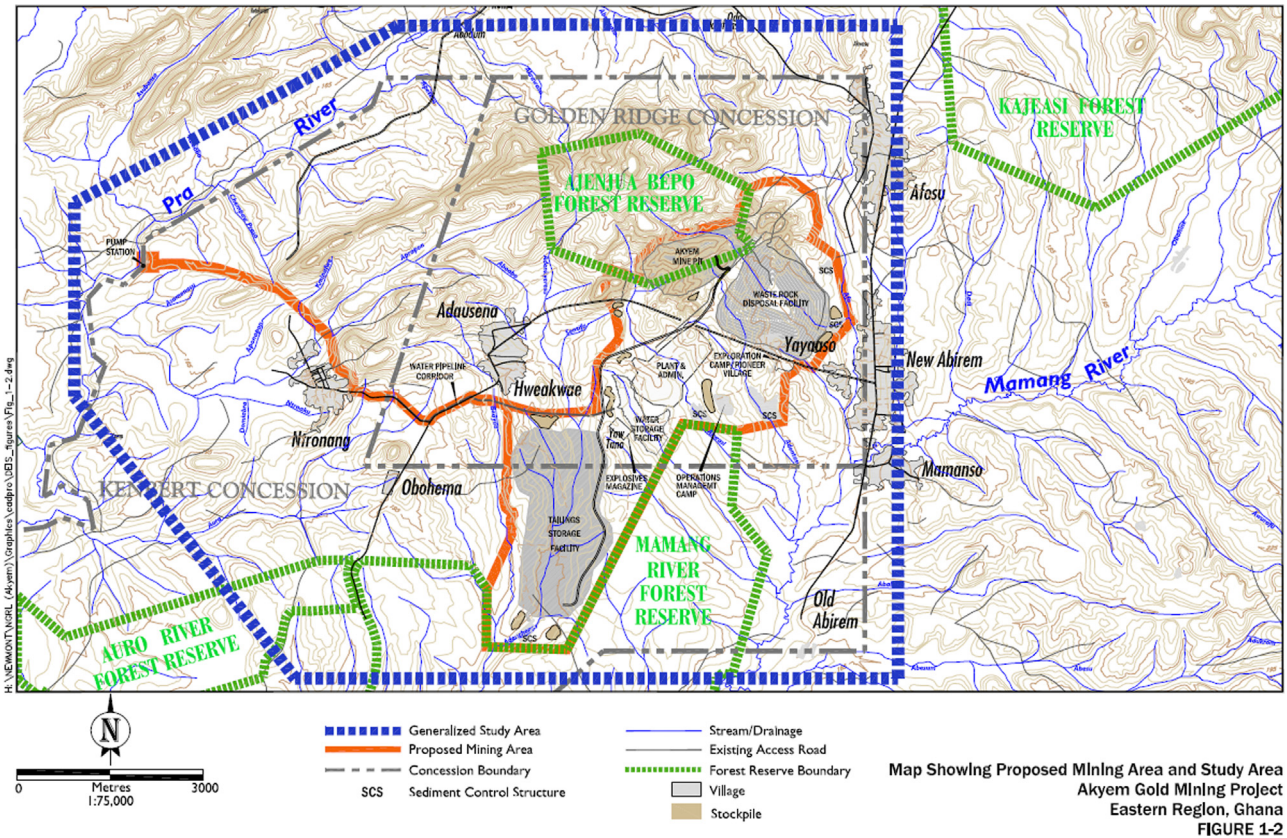


Fig. 1. Map showing the Akyem Mining area and study communities.
 Source: EIS Report, Newmont Ghana Gold (Ltd) Akyem Gold Mining Project, 2008.

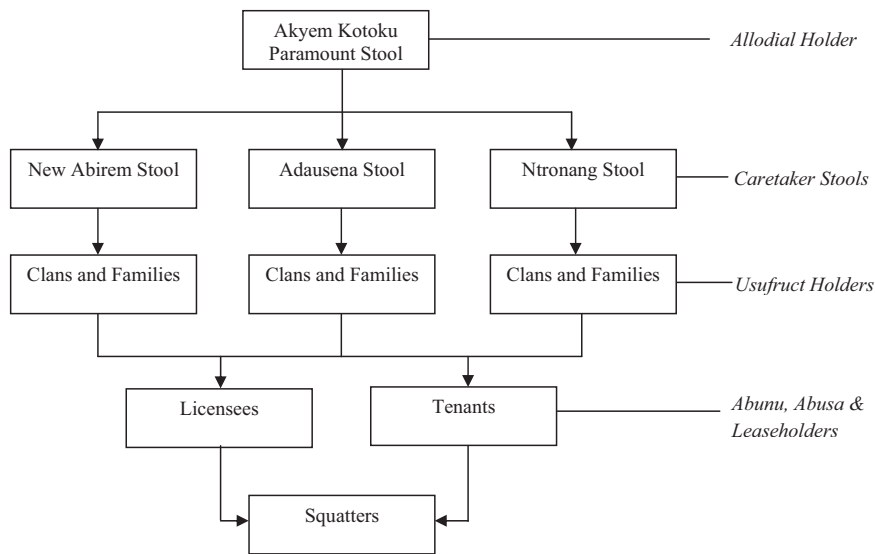


Fig. 2. Land ownership arrangement in the Newmont Akyem Project Area.
 Source: Authors Construct, 2013.

and many hamlets dotted within the mine concession area. Farmlands (both cropped and un-cropped), part of the Adjenua Forest Reserve, fishponds and varied forms of economic activities within the concession area have been directly affected. These disruptions in land ownership and deprivation of use necessitated the payment of compensation to the interest holders within the mine concession area. Payment of compensation in respect of the loss of land use rights, structures and other valuable assets were done

under three arrangements—compensation for structures, crops and deprivation of the use of natural surface of land. Compensation for structures included residential properties, farm huts, wells, fishponds, schools, kiosks, churches, and hencoops. Crop compensation covered food crops, cash crops and tree plantations such as teak and cinderella trees. Deprivation of use rights covered cropped land and bare lands. It was reported that built-up settlements were compensated for by replacement of alternative

plots on the resettlement sites and those who relocated were given cash payment using the prevailing plot rates in the nearby New Abirem and Afosu areas.

Payment of compensation for the structures and crops presented minor challenges in terms of identifying the owners entitled to receive the compensation. Owners of crops and structures were easily identified and paid the compensation due them based on the rates agreed upon through the negotiation process. A committee comprising estate valuation surveyors representing the mining company (Newmont), the affected farmers and community members, traditional rulers within the concession area, representatives of affected farmers, government valuation surveyors from the Lands Commission (Land Valuation Division) and representatives from the Birim North District Assembly negotiated the entire compensation package. This committee was called the Compensation Negotiation Committee (CNC). The CNC held several plenaries to negotiate compensation rates and criteria for payment.

Difficulties however emerged with respect to the compensation for deprivation of use of land or particular use of natural surface as provided for under section 74 of Act 703. The challenges as identified in the compensation process of the Akyem Mining Project from our qualitative data is summarised in two folds. The first challenge concerned the valuation approach to be adopted in assessing deprivation of use. The second challenge bordered on the rightful recipients of compensation for deprivation of use of land. These critical issues needed to be settled before the actual payment of the compensation could be made. The lack of express regulation under Act 703 specifying valuation methodology and recipients of compensation for deprivation of use made the case more difficult and very ambiguous. For example in the case of cropped land with both a landlord and a tenant-farmer, it was uncertain which of the two was entitled to receive the compensation for the deprivation of the use of land and if compensation were to be shared, the proportions due to each party is not stated under the current mining Law (Act 703).

The other intricate scenario was whether the stool was entitled to this compensation claim. The paramount stool demanded the compensation for deprivation of the use right. The Queen Mother, who was the caretaker of the Akyem Kotoku Stool at the time of the land acquisition, maintained that as an allodial owner, the stool was entitled to all the compensation relating to the land. She argued that farmers and other occupiers of land have been compensated for their investments in the land under the compensation for crops and immovable structures. Thus, the stool was the rightful claimant for compensation for land. Besides the stool, there were also claims by the usufructs that are subjects of the stool and directly use the land. This group of landholders also claimed to be the rightful recipients of compensation for the deprivation of use. This contestation needed to be addressed in the absence of clear legislative instructions. The arrangement outlined below with respect to compensation for deprivation of use of land was established at the plenary of the CNC. Through interviews with the members of the CNC and estate valuation surveyors who were involved in the valuation exercise, we present the arrangements reached at the plenary of the CNC on the disbursement of compensation for land use deprivation as follows.

Allodial title holders and usufructs

In the specific case of the Akyem Newmont Project's compensation exercise, the stool as the allodial holder was excluded from the recipients of the compensation for deprivation of use over land where there existed usufructs or other lesser interests. The deprivation of use rights over land is a loss to the user or occupier and must be paid to the customary freeholders and other lesser

rights holders who are in direct possession and use of land. The allodial holder or the stool is only entitled to receive compensation for deprivation of use right over virgin land under no usufructuary occupation. However, from the data in the Akyem Case Study, the land within the mining concession area has been completely appropriated by both subjects and strangers for farming activities. No portion of the land could be described as vacant. Thus, in the absence of any un-appropriated land, the rightful recipients of compensation for the deprivation of the use of land were usufructs or customary freeholders and other lesser interest holders who were in direct occupation of land.

It was only the annual ground rent that was identified by the valuation team to be the direct entitlement of the allodial holder (Stool) in the project area. Ordinarily, the Stool with respect to mining concessions is entitled to the Annual Ground Rent under Act 703 section 23(2) from the mining company. The section provides that:

- (1) A holder of a mineral right, shall pay an annual ground rent as may be prescribed.
- (2) Payment of annual ground rent shall be made to the owner of the land or successors and assigns of the owner except in the case of annual ground rent in respect of mineral rights over stool lands, which shall be paid to the Office of the Administrator of Stool Lands, for application in accordance with the Office of the Administrator of Stool Lands Act 1994 (Act 481) [Section 23 (2), Act 703].

Since the area under consideration is a stool land under the Akyem Kotoku Stool, the Office of the Administrator of Stool Lands (OASL) is responsible for the collection and disbursement of the ground rent on behalf of the stool in accordance with the Office of the Administrator of Stool Lands Act 1994 (Act 481) and Article 267 of the Republican Constitution of Ghana (1992).

The arrangement arrived at by the CNC regarding the allodial holder (Stool) and usufructs entitlements to compensation for the deprivation of use of land need to be placed within appropriate legal context for a better appreciation. The position of case law from colonial times has been in favour of the allodial holder (stool) as the rightful party to receive compensation for land which usufruct or customary freeholder occupies. In *Owusu v. Mantse of Labadi* ([1933] WACA 279), as reported in [Kasanga \(1988\)](#), the decision of the court was to the effect that, the proper party to receive compensation was the stool, the subjects (usufructs) being entitled to a share thereof, upon its distribution in accordance with the native custom. Again, in *Re Osu Mantse and Ors* ([1959] GLR 163) Ollennu J relying on the ruling in the *Owusu v. Mantse of Labadi* case, held that the occupant of the Stool was the appropriate person to receive compensation for the acquisition of stool land over which usufructuary rights are exercised.

However, subsequent exposition after these rulings provided the most contemporary pathway for deciding on the rightful recipients of compensation for the deprivation of use of land where both allodial and usufructuary interests exist. A proposition by Brobby, reported by [Kasanga \(1988\)](#), offers a profound perspective in dealing with the difficulties over whether a Stool is entitled to receive compensation for the deprivation of the use of land. Brobby argued that the earlier cases on the allodial holders' entitlement to compensation were wrongly founded. He stated that:

When vacant land is acquired and the only interest is allodial interest, then the Stool is the rightful party to receive compensation. But when a usufruct is acquired the only logical party to receive compensation is the usufructuary titleholder because it

is he who loses a valuable interest⁵. The stool should not be entitled because the allodial title is of no value in this situation as cited in Kasanga (1988:73).

For vacant lands that are not directly under the control of any usufruct (either by way of fallow or some temporal non-use), the stool can claim for the deprivation of use. However, when it comes to cropped land or active fallow land, the affected persons are the landlord usufruct and his tenant farmer (s) if there are any. These are the persons who are directly deprived of their valuable use rights and not the allodial titleholder with some remote reversionary interest⁶. The reversionary interest of the allodial holders is of no value if it has the same lifespan as the subsisting interest i.e. the customary or common law usufructuary interest. The arrangement in Akyem was largely aligned to the propositions that regard allodial interest as inconsequential in compulsory acquisition where usufructs exist on the land.

The case of sharecroppers (abunu and abusa tenants)

The position of sharecroppers or caretaker farmers regarding entitlement to land use deprivation compensation after receiving crop compensation was another level of the contestation. Sharecroppers also argued that they were entitled to compensation for deprivation of use of land since they are actually the ones deprived of the use of land. On the position of sharecroppers, the estate valuation surveyors together with other participants in the negotiation process were of varied opinions. Some of the valuation surveyors we interviewed held the view that the interests and investments of sharecroppers are in the crops on the land and once crops are compensated over their entire economic life span⁷, then no deprivation claim arises. Others also argued that, if the acquisition had not taken place, the farmer would still be in occupation of the land together with the landlord indefinitely. In this respect, a sharecropper is deprived of the use of the land alongside the landlord and may require alternative livelihoods or farmland involving high level transaction costs. The estate valuation surveyors involved in the mining valuation together with the affected farmers and landlords generally accepted this position that sharecroppers are eligible to receive compensation for the deprivation of use of land they were directly occupying.

Since the sharecroppers were accepted as being entitled to receive compensation for deprivation, it was then necessary to determine how to apportion compensation among the sharecroppers and their usufruct landlords. In the absence of any clear guidelines on how this apportionment should be approached, there was a negotiation between affected usufructs (landlords) and the sharecroppers who were in the majority. A compromised position prevailed where the landlords (usufructs) agreed to cede a third of the deprivation compensation to their tenant farmers. It should be noted that, this arrangement as agreed upon in Akyem was an innovation in response to the complexity involved in apportioning the compensation among the various entitled recipients. This, innovation notwithstanding its appropriateness was not based on any legislative directive, it was largely informed by the fact that; sharecroppers (*abunu, abusa and caretakers*) had

received crop compensation which reflected their investments in the land and were not entitled to the reversionary interest in the land. Again, usufruct landlords are most affected in deprivation of use since their interest duration span longer than that of the tenant farmers and thus were reasonably entitled to a greater share (two-third) of any amount paid as compensation for deprivation of use of land where both usufruct and sharecropper rights are affected in the same parcel of land. Also it must be noted that since most of the tenancy agreements were on 1:2 (*abusa*) crop share bases between the landlords and tenants, this ratio provided the basis for the sharing of the crop compensation especially with cash crops such as cocoa and oil palm. The sharing proportions depended on the kind of tenancy agreement existing before the land acquisition (either *abunu* or *abusa*) and who actually provided the investment fund. For the specific case of food crops, compensation sharing ratio between the landlords and tenant farmers was on a 50:50 bases.

The case of leasehold farmers

In the Akyem Project area, there also existed farming leases mostly for cocoa and oil palm. From our interactions with the sub-chiefs and usufructs, it was revealed that the usufruct holders mostly granted the leases to migrant farmers⁸ for durations between 10 and 30 years. In determining the persons rightfully entitled to receive compensation for the deprivation of use over these leased lands, estate valuation surveyors used the duration of the mining lease granted to Newmont Ghana Gold Ltd to set the benchmark. The lease granted to Newmont Ghana Gold Ltd was for a period of 16 years commencing from January 2010. At the commencement of the mining lease, some of the agricultural leaseholders had an unexpired term running beyond the lease term (see Fig. 4). In this case, the lessees were considered to be the only occupiers deprived since by the time the mining lease expires; they will hypothetically still be in possession of the land. They were thus entitled to receive full compensation for deprivation of use of land without recourse to the original grantors. However, leases which had unexpired term less than sixteen years (16) (see Fig. 4), compensation for deprivation of use of land was apportioned between the lessees and the lessors since all of them will be deprived of the land use within the mining lease duration. These scenarios are illustrated below in Figs. 3 and 4.

Communal rights deprivation

Communal land use rights such as access to forest resources, water bodies, recreational grounds, medicinal herbs, fuel wood, and snails among others have been curtailed in the acquisition area to make way for mineral prospecting. The inability of community members to exercise their rights over resources '*freely gifted by nature*' constitutes a deprivation of use of land as a collective community right. This deprivation is not specific to an individual interest holder but a deprivation to the entire community. In principle, this community-wide deprivation should also be compensated for just as compensation for the deprivation of use of individual interest holders. However, deprivation of these rights is complicated to assess in monetary terms according to the

⁵ The watchword *valuable interest* is used to refer to any interest in land that can be quantified in monetary terms. Since this is what property owners lose when their land is compulsorily acquired, they are entitled to monetary compensation for such a loss.

⁶ *Reversionary interest* refers to interest retained by a landlord or a landowner when land is granted to a tenant for use. It is the reversionary interest that enables the landlord to repossess the land when the lease period elapses.

⁷ The *economic lifespan* of a property or for tree crops refer to the productive life span within which period the property is capable of generating streams of income to the investor.

⁸ The term *migrant farmer* is also used in other literature as *settler farmers*. During the cocoa boom in Ghana in the early 1900s, many farmers from the north of the country and Burkina Faso moved southwards to benefit from the new prospects of cocoa farming. Since they did not own land and mostly did not have money to rent one, they relied on flexible landlord-tenant arrangements. Sharecropping was the major approach in which, the crops or cultivated land was shared in proportions of halves (*abunu*) or 1/3 to the landlord and 2/3 to the farmer or the vice versa depending on their respective levels of contrition to the establishment of the farm (Hill, 1963).

Lease Term (16yrs) Total compensation for Land Deprivation	
Unexpired Farm Lease Term (10yrs) (Compensation for Lessee)	Reversionary interest within the mining lease period (6 years) (Compensation for Lessor)

Fig. 3. Illustration of a farming lease with 10 years unexpired term.

Source: Authors' illustration, 2013.

Lease Term (16yrs) Total compensation for Land Deprivation		Reversionary Interest Period of Non-compensation for the Deprivation of Use of Land
Unexpired Farm Lease Term within the mining lease term (15yrs) (Compensation for Lessee)	1yr Reversion (Compensation for lessor)	

Fig. 4. Illustration of a farming lease with 20 years unexpired term.

Source: Authors' illustration, 2013.

valuation surveyors we interviewed. Furthermore, Act 703 under section 74 subsection (1.g) prohibits payment of compensation for “loss or damage for which compensation cannot be assessed according to legal principles in monetary terms”. In the case of the Akyem Mine Project, these communal rights were excluded from the list of items eligible for compensation because the market values of losses were not readily assessable. The arrangement in the Akyem case denied the affected communities all valuable benefits. People who prior to the acquisition had access to forest products such as snail, mushroom, timber, medicinal herbs, wild fruits, hunting and access to water bodies, had these rights curtailed and in some cases completely erased. A farmer at a focus group discussion in Adausena lamented:

... we cannot hunt for grass-cutters and other games any more. We made sales from the captured games and the wild fruits to help sustain our families but we have now lost all these benefits in the name of mining (46 year old male farmer, Focus Group Discussion, 2011).

While it is acknowledged that, the valuation and payment of this communal deprivation of use right is difficult; some form of compensation methodology is needed to approximate these losses.

Conclusion and the way forward

Generally, foreign direct investments (FDIs) in Africa will receive re-christening from 'land grabs' to 'land investments' if issues of compensation are properly resolved at the host community level. The compensation regime in Ghana even under the Minerals and Mining Act, 2006 (Act 703) continues to grapple with uncertainties about deprivation of use of land. There persist contestations for compensation in customary land tenure among the different layers of interest holders as was evident in the Akyem Mining Project. The claim by the paramount Stool of Akyem Kotoku to be rightfully entitled to receive a portion of compensation for the deprivation of the use of land was contested by the usufructs and tenant farmers during the compensation negotiation process. This uncertainty regarding the authority to allocate land and receive accrued benefits is commonplace in Ghana. Amanor (2008) and Ubink (2008) noted similar contestations involving

chiefs and their subjects over right to allocate land and receive the proceeds thereof. The specific experience of the Akyem Mining Project also brings to fore the compensation value of the allodial interest in Ghana. From the prevailing customary law perspective, the allodial interest is the highest or paramount interest in land in Ghana beyond which no other interest exists (see Ollennu, 1962; Bentsi-Enchill, 1964; Kasanga, 1988; da Rocha and Lodoh, 1999; Kassanga and Kotey, 2001; Blocher, 2006; Kwapong, 2009). However, the allodial interest is the least valuable interest in land when it comes to mining compensation. It is titular in nature and its economic value is very limited. This is because investments and improvement in land, which are the basis for compensation assessment, take place at the private ownership level and not at the collective community level. The exercise of traditional control over land as well as entitlement to customary services from tenants are the inherent benefits customary law and practices bestow on allodial interest holder (the stool).

Adequate understanding of how interests in land are related in superiority and economic value remains lacking among estate valuation surveyors. It is our view that the value of an interest in land is determined by a number of factors including value of investment in the land, level of demand and duration of use. As was found in our study, the allodial holder (the Akyem Kotoku Stool) was excluded from the recipients of compensation for deprivation of use of land because such a compensation claim borders largely on the denial, attenuation or diminution of valuable land use rights held by individuals or groups directly occupying the land. In the Akyem Project, usufructs, tenant farmers and caretakers who were directly deprived of their farmland and residential properties merited to be reinstated.

It is also appreciated that the Akyem experience documented in this study reinforces the challenges bedeviling compensation processes in Ghana. There is an urgent need for the passage of the Legislative Instrument (LI) to offer clear guidelines on how compensation for deprivation of use should be assessed and what criteria should be adopted in ascertaining entitlements. The LI should be explicit on what constitutes deprivation of use of land and list potential claimants of the compensation. The LI in the definition of compensation claimants should take into account the power imbalances in the customary land tenure in Ghana. It is also expected that an LI will assist valuation surveyors, mining companies, local government institutions and other relevant

stakeholders in the resolution of compensation challenges. The courts in Ghana must also be clear in their judgements about the portion of compensation that should be allocated to the allodial interest holders. Past judgements have gone in favour of stools as rightful recipients of compensation for land acquisition and usufructs are only regarded as tenants of the stool. Usufructs are the direct users of land and stand deprived in any compulsory acquisition. This group of interest holders should be rightfully entitled to receive compensation for deprivation of use of land and not the stool.

Valuation of intangible assets and communal goods should be given attention by estate valuation surveyors in Ghana. Contingent Valuation methods should be considered to put monetary value on communal land use rights and to ascertain their fair value for compensation. Broadening the scope of the traditional valuation methods to cover intangible assets will make it possible for communities affected by compulsory acquisition to be compensated for their valuable communal assets and services which within the current law are uncompensated due to limitations on the level of monetization. Since the disbursement of compensation for deprivation of communal rights will be challenging, allodial trustees should channel such revenue into providing social facilities for the benefit of the larger community instead of intercepting cash payments. It is expected that, the innovations in Akyem case will inform policy and legal reforms on compensation in Ghana and open the way for estate valuation surveyors to further explore this subject for better approaches.

Legislations and policies

- The Republican Constitution of Ghana, 1992.
- The Minerals and Mining Law, 1986 (PNDC Law 153) (Repealed).
- The Minerals and Mining Act, 2006 (Act 703).
- National Land Policy (1999), Accra.

References

- Alias, A., Daud, M.N., 2011. Payment of adequate compensation for land acquisition in Malaysia. *Pac. Rim Prop. Res. J.* 12 (3), 326–349.
- Amanor, K.S., 2008. The changing face of customary land tenure. In: Ubink, J., Amanor, K.S. (Eds.), *Contesting Land and Custom in Ghana, State, Chief and the Citizen*. Leiden University Press, Amsterdam.
- Amanor, K.S., 1999. *Global Restructuring and Land Rights in Ghana: Forest Food Chains, Timber and Rural Livelihoods*. Scandinavian Institute of African Studies, Uppsala.
- Ayitey, J.Z., Kidido, J.K., Tudzi, E.P., 2011. Compensation for land use deprivation in mining communities, the law and the practice: case study of Newmont Gold Ghana Limited. *The Surveyor Journal of Ghana Institution of Surveyors* 4 (1), 32–40.
- Barbier, E.B., 1997. The economic determinants of land degradation in developing countries. *Biol. Sci.* 352, 891–899.
- Berry, S., 2009. Property, authority and citizenship: land claims, politics and the dynamics of social division in West Africa. *Dev. Change* 40 (1), 23–45 (Institute of Social Studies).
- Berry, S., 1997. Tomatoes, land and hearsay: property and history in Asante in the time of structural adjustment. *World Dev.* 25 (8), 1225–1241.
- Bentsi-Enchill, K., 1964. *Ghana Land Law: An Exposition, Analysis and Critique*. Sweet and Maxwell, London.
- Blocher, J., 2006. *Building on Custom: land tenure policy and economic development in Ghana*. Yale Hum. Rights Dev. I. J 9.
- Boni, S., 2008. Traditional ambiguities and authoritarian interpretations in Sefwi land disputes. In: Ubink, J., Amanor, K.S. (Eds.), *Contesting Land and Custom in Ghana, State, Chief and the Citizen*. Leiden University Press, Amsterdam.
- Brown, D., 1991. *Land Acquisition*, third ed. Butterworths, Sydney.
- Chauveau, P., Colin, J., 2007. Changes in land transfer mechanisms: evidence from West Africa. In: Cotula, L. (Ed.), *Changes in “Customary” Land Tenure Systems in Africa*. Russell Press, ISBN: 978-1-84369-657-5.
- Da Rocha, B.J., Lodoh, C.H.K., 1999. *Ghana Land Law and Conveyancing*, second ed. DR & L Publishing Services, Accra.
- Deininger, K., Byerlee, D. (2011). The rise of large farms in land abundant countries. Do they have a future? In: Policy Research Working Paper 5588. The World Bank.
- FIG (2010). *Compulsory Purchase and Compensation, Recommendations for Good Practice*, International Federation of Surveyors (FIG), Publication No. 54, Copenhagen, Denmark.
- Feder, G., Noronha, R., 1987. Land rights systems and agricultural development in sub-Saharan Africa. *Res. Obs.* 2 (2), 143–169.
- Hall, R. (2011). *Land Grabbing in Southern Africa: The Many Faces of the Investor Rush*. Paper Presented to the STIAS (Stellenbosch Institute for Advanced Studies) Colloquium on Land Reform, Agrarian Change, and Rural Poverty in Southern Africa, Stellenbosch, South Africa, 8–9 March.
- Hill, P. (1963). *The Migrant Cocoa Farmers of Southern Ghana*. Cambridge: Cambridge University Press.
- Kasanga, R.K. (1988). *Land Tenure and the Development Dialogue, The Myth Concerning Communal Landholding in Ghana*, Occasional Paper 19, Department of Land Economy, University of Cambridge, Granta Editions Ltd.
- Kassanga, K., Kotey, N.A., 2001. *Land Management in Ghana: Building on Tradition and Modernity*. International Institute for Environment and Development, London, Russel Press, Nottingham, UK.
- Kwapong, O., 2009. The poor and land: a situational analysis of access to land by poor land users in Ghana. *J. Rural Community Dev.* 4, 51–66.
- Larbi, W.O. (2008). *Compulsory Land Acquisition and Compensation in Ghana: Searching for Alternative Policies and Strategies*, FIG/FAO/CNG International Seminar on State and Public Sector Land Management, Verona, Italy, September 9–10, 2008.
- Ollennu, N.A., 1962. *Principles of Customary Land Law in Ghana*. Sweet and Maxwell, London.
- Peters, P. (2012). *Conflicts Over Land and Threats to Customary Tenure in Africa Today*, CID Working Paper No. 247, September 2012.
- Toulmin, C. (1999). *Land Tenure and Resource Access in West Africa: Issues and Opportunities for the Next Twenty Five Years*. In: A Working Paper Presented to Department for International Development (DFID), UK. International Institute for Environment and Development (IIED).
- Ubink, J.M., 2008. *In the Land of the Chiefs: Customary Law, Land Conflicts, and the Role of the State in Peri-urban Ghana*. Leiden University Press, Leiden.
- Ubink, J.M., Quan, J.F., 2008. How to combine tradition and modernity? Regulating customary land management in Ghana. *Land Use Policy* 25 (2), 198–213.
- Yin, R.K., 2003. third ed. *Case Study Research: Design and Methods*. Applied Social Research Methods Series, 5. Sage Publications, London.