

5. How can a local authority acquire land for public services?

There are three ways in which land can be obtained for public services:

- 1 Through consent, by agreeing a sale with the owners of the land. The price that the District (or donor) will pay will be whatever is agreed between the buyer and the seller.
- 2 Through consent, by agreeing to lease land at a negotiated rate. The District would have secure rights to the land for a certain period of time.
- 3 Where the land owner refuses to sell the land which the District needs "for the public interest", the Government can purchase the land compulsorily.

1. Through consent, by agreeing a sale with the owners of the land.

This is the same as if any two individuals were agreeing a sale of land. So long as both sides agree the price and any other terms and conditions, then the transaction is lawful. The District needs to take great care that it is negotiating with all the right people. (see paper 3). A lot of land grabbing happens when one family member sells land which is actually not their personal property, but family land, which may even have been allocated to (i.e. be owned by) other family members. The District also needs to remember that in any agreed sale, the consent clause applies – this means that the wife or wives (or husbands) of those selling the land must sign to say they consent to the sale. Without this signed consent of the person, the sale is not valid (Land Act, section 39). The agreement may be to pay the owners money, or it could be to offer them some Government owned land in another place.

If this other Government land is titled, it is important to process a transfer of title from the Government to the new owners. If the government land is not titled, the district would need to prove it has rights to the land and authorise the "new owner" to get a title or a certificate over it if he or she chooses.

2. By leasing the land

A lease is a long term rental agreement. In some cases, it may not be necessary for the Government to have full ownership over the land, and a long term lease may be sufficient. This will be cheaper than buying the land, and may satisfy the demands of the local people who are worried about the long

term loss of their land for future generations or who wish to limit the future use of their land to a public service (e.g. a school). A lease will be for a certain period (e.g. 50 years) or could say for as long as the District operates a school/health clinic in the land. A fifty year lease may be long enough for building a school, especially if the lease includes a clause saying that the lease can be extended provided that the land is still being used for a school. You may need to get advice on whether or not a lease would be appropriate for your needs and, if so, what conditions need to be specified in the lease agreement. When leasing land, it is usual to pay 'ground rent' to the landowner. This would have to be agreed between the two parties.

3. Compulsory purchase

If the land is really needed and if there is no other land available, then even if the landowner refuses to sell the land, the State can buy the land anyway – i.e. can compel the landowner by law to sell the land to the State ('the Government'). However, there are procedures which must be followed to make this legal. The Land Act of 1998 said that a local government can also acquire land for public works. However, the law about compulsory purchase is from 1965, long before decentralisation; and so, the procedures for compulsory acquisition all refer only to central government. Districts therefore depend on central Government to exercise their power to compulsory purchase on their behalf.

The District must get authorisation from the Ministry of Lands, Housing and Urban Development (MLHUD) to make any compulsory purchase, and proper payments of both the value of the land and compensation must be made. If the steps are not followed correctly, the landowner may be able to sue the District, or even individual officials. In addition, the sale may not be valid if the procedures were not followed, and so the landowner may be able to claim the land back, either preventing or at least delaying any proposed development. The steps are outlined in paper 4, but you should also refer to the Land Acquisition Act (1965).

The procedure is long and difficult. It is better if Districts can avoid the process by negotiating for land. The procedure is most useful for developments like roads which cross many people's land – if one person on the road refused to sell, it would stop the whole road. For schools or clinics, it will usually be best to find land where the owner agrees to sell or lease the land.

