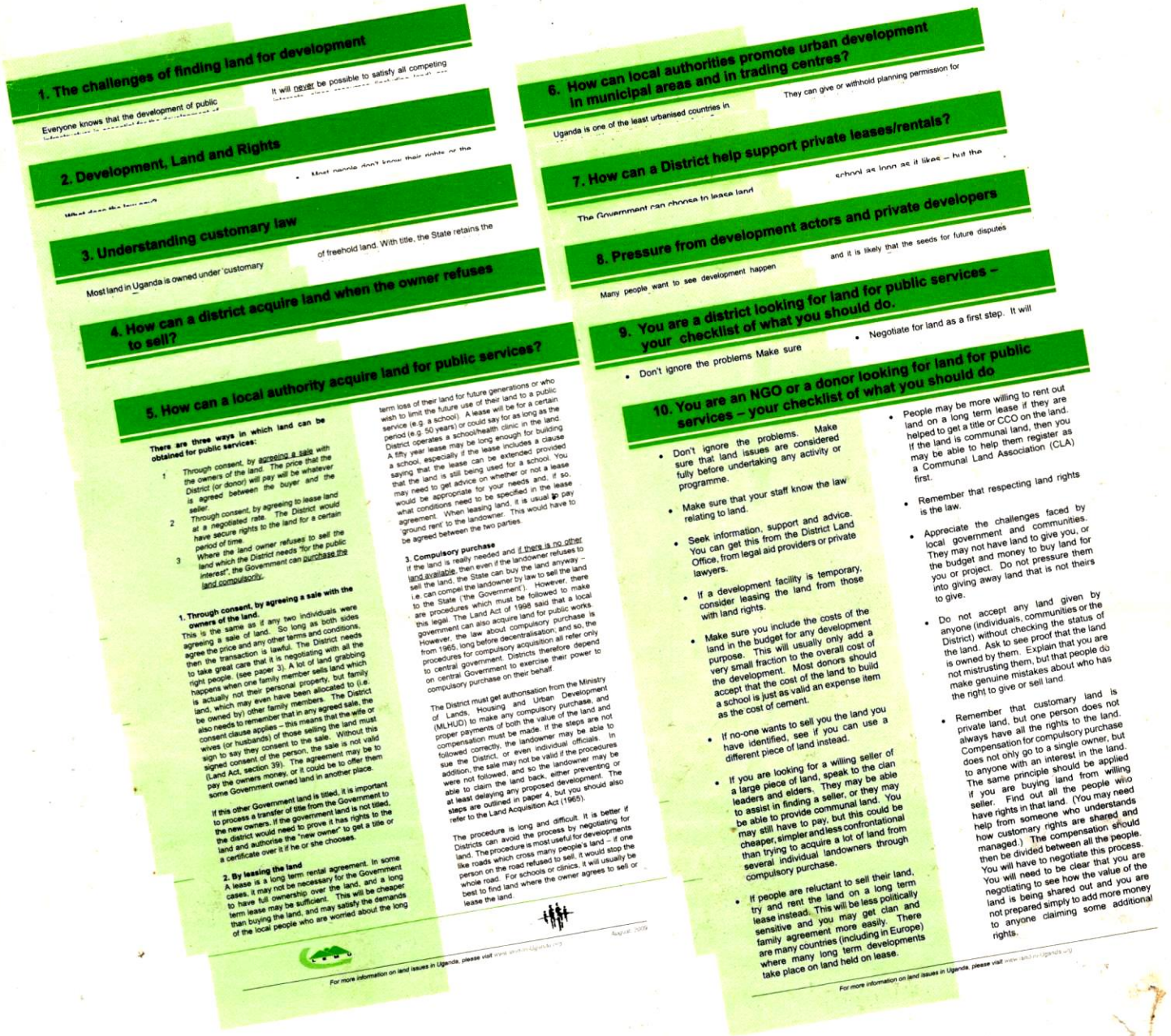
Accessing land for development :
A guide to compulsory acquisition and other alternatives.



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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 to sell ('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 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.

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10. You are an NGO or a donor looking for land for public services – your checklist of what you should do

- Don't ignore the problems. Make sure that land issues are considered fully before undertaking any activity or programme.
- Make sure that your staff know the law relating to land.
- Seek information, support and advice. You can get this from the District Land Office, from legal aid providers or private lawyers.
- If a development facility is temporary, consider leasing the land from those with land rights.
- Make sure you include the costs of the land in the budget for any development purpose. This will usually only add a very small fraction to the overall cost of the development. Most donors should accept that the cost of the land to build a school is just as valid an expense item as the cost of cement.
- If no-one wants to sell you the land you have identified, see if you can use a different piece of land instead.
- If you are looking for a willing seller of a large piece of land, speak to the clan leaders and elders. They may be able to assist in finding a seller, or they may be able to provide communal land. You may still have to pay, but this could be cheaper, simpler and less confrontational than trying to acquire a lot of land from several individual landowners through compulsory purchase.
- If people are reluctant to sell their land, try and rent the land on a long term lease instead. This will be less politically sensitive and you may get clan and family agreement more easily. There are many countries (including in Europe) where many long term developments take place on land held on lease.
- People may be more willing to rent out land on a long term lease if they are helped to get a title or CCO on the land. If the land is communal land, then you may be able to help them register as a Communal Land Association (CLA) first.
- Remember that respecting land rights is the law.
- Appreciate the challenges faced by local government and communities. They may not have land to give you, or the budget and money to buy land for you or project. Do not pressure them into giving away land that is not theirs to give.
- Do not accept any land given by anyone (individuals, communities or the District) without checking the status of the land. Ask to see proof that the land is owned by them. Explain that you are not mistrusting them, but that people do make genuine mistakes about who has the right to give or sell land.
- Remember that customary land is private land, but one person does not always have all the rights to the land. Compensation for compulsory purchase does not only go to a single owner, but to anyone with an interest in the land. The same principle should be applied if you are buying land from willing seller. Find out all the people who have rights in that land. (You may need help from someone who understands how customary rights are shared and managed.) The compensation should then be divided between all the people. You will have to negotiate this process. You will need to be clear that you are negotiating to see how the value of the land is being shared out and you are not prepared simply to add more money to anyone claiming some additional rights.

LEMU
Land and Equity Movement in Uganda (LEMU)
"Making land work for us all"

NORWEGIAN REFUGEE COUNCIL

Accessing land for development :
A guide to compulsory acquisition and other alternatives.

Acquiring land for public services and works

A guide to the laws governing the acquisition of land for public services.

The law of Uganda gives people secure rights over their land, whether or not they have title. The law also allows the State ('the Government') to take land for public purposes, in order to fulfil its responsibilities for providing schools, health facilities and roads, and for ensuring public health and security. These laws and regulations set down when the State can take land even if the landowner is unwilling to sell the land which the State needs. They also set down the procedures which must be followed, and the compensation which must be paid.

There are many cases in Uganda where the law is not being followed, not because of any wish to break the law, but simply because many people are not clear about what the law says. It is very important that the rules of the country are followed correctly:

- people's rights to land must be respected
- the Government must maintain relations of trust with its citizens
- development agencies must respect the laws of the country where they work and must respect the legal rights of the people they are supposed to be working for
- it is very important that Government, both at national and local level, is seen to be obeying the law, if Uganda is to be able to maintain a rule of law in the country.

This guide is aimed to help **public officials, NGOs and other stakeholders,** who may wish to implement development projects or undertake public construction on private land. This guide tries to provide clarity on the rules, present options on how to acquire land, and to make suggestions on preventing possible disputes. This guide can be used in all parts of the country, as the same laws and procedures apply everywhere. The examples used in this guide as case studies are from Northern Uganda. However, names and some details have been changed in order to protect the anonymity of the people concerned. This is because the situations there – many years of conflict followed by many efforts at reconstruction – have made these kinds of land conflicts more frequent. However, similar cases and conflicts could be found in other parts of the country.

1. The challenges of finding land for development

Everyone knows that the development of public infrastructure is essential for the development of Uganda, and that this can only happen if land is made available. Equally, everyone accepts that people need land in order to develop themselves and the economy of the country. If people's land rights are not respected, then they can fall into destitution; and where people fear their land can be taken at any time, they will not invest in developing their land. The days when a Colonial Administration could simply take any land which it felt it needed are fortunately over. Everyone recognises the rights of both sides – but it is not so simple to reconcile their competing needs.

the challenges faced by the government

- The process to be followed is very complicated and few local governments, particularly at sub-county level, know what the procedure is. There is little support given to local authorities
- Local governments do not have a great deal of funds to pay for land, either for buying land under a formal procedure of compulsory acquisition or for paying negotiated 'compensation'.
- Local governments come under pressure to provide land. They want to bring investment into their communities, but do not have a lot of land.

the challenges faced by land owners

- They are often pressured into giving land for public services by their communities.
- Land is sometimes taken without their consent.
- They do not know their legal rights and so cannot ask for fair treatment or make a challenge if they are not happy with what is happening.
- Under customary system, there is an assumption that land is given as a loan, not permanently and that in future it reverts to the original owners.

It will never be possible to satisfy all competing interests, since resources (including land) are always limited. It is possible, though, to avoid unpleasant conflicts, mistrust, or situations where individuals lose everything and become destitute. It is the responsibility of Parliament to set the rules which will be followed when there are competing interests. Where all sides treat each other openly, honestly and with good-will, it should also be possible in most situations to find solutions which all sides can accept as fair. The law gives people and institutions a lot of freedom to make their own agreements as long as all parties agree, and as long as no laws are broken. This pack on compulsory acquisition is intended to give people creative ways of finding solutions to these kinds of problems.

Inside this pack

2. Development, Land and Rights

3. Understanding customary law

4. How can a district acquire land when the owner refuses to sell?

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

6. How can local authorities promote urban development?

7. How can a district help support private leases/rentals?

8. Pressure from development actors and private developers.

9. Checklist for Districts looking for land for public services.

10. Checklist for donors and NGOs looking for land for public services.

11. An example of a Tenancy/Rental agreement.

2. Development, Land and Rights

What does the law say?

People's rights to land are guaranteed by law. If the land is customary land, meaning there is no title to the land. Then the law guarantees the rights which customary practice (or customary law) gives people. Where customary practice meant that an individual household had exclusive use over a piece of land, and could not be evicted by anyone else in the community, the 1995 Constitution and the 1998 Land Act recognise those rights to the land, and this land cannot be treated as 'communally owned'. Where land is managed on behalf of the whole community (e.g. village grazing land), then State law recognises this as private, communal land. The people who manage the land cannot treat this land as their own, and outsiders from the community cannot make claims that the land should be open to anyone. These same laws apply whether the land is in rural areas, or if the areas become designated as a trading or urban centre. Gazzetting land as an urban area does not change ownership rights.

If the law is so clear, why is there a problem?

There are several areas which have created confusion or misunderstanding.

- Most people don't know their rights or the rights of the State.
- Many public officials do not know the correct procedures to follow, and indeed many may not even be aware that there are laws regulating what they can do.
- Many people believe that land in a trading or urban centre ceases to be customary land or to have customary owners.
- People wrongly believe that the rights of the local authorities to make planning regulations gives these authorities ownership over the land.
- Customary law follows principles which have never been written down. Public officials or NGOs may not realise what is meant by someone offering to 'give' their land for a project.

In normal circumstances, no-one can be forced to give up their land rights or be forced to sell land if they wish to keep it. However, if the State needs to use the land 'for the public good", then it can purchase the land it needs from the owner, even if the owner is reluctant to sell it. This applies if the land is for public use, or needed for defence, public safety, public order, public morality or public health. A special Act of Parliament, the Land Acquisition Act, was made in order to lay down the conditions and procedures for doing this.

When can the State take land for 'development'?

Article 26(2) of the Constitution of Uganda says that compulsory acquisition can only be made if the State wants to use the land "for **public use** or in the interest of defence, public safety, public order, public morality or public health". Development only means general public services such as roads, health centres, schools etc.

Private investment is a good thing for the country and for people, but it is not included as 'public use', even if many people will benefit from the private investment. Although some people argued that this kind of 'development' should be helped by allowing the Government to acquire land, Parliament did not agree, and rejected the proposed amendment to the Constitution in 2006.

There is a further difficulty that compulsory acquisition is a very long and difficult process. Most local authorities do not have the resources to follow it through every time they want to develop their areas. Alternatives therefore have to be found where possible, that are based on the mutual agreement of the local authorities and the landowners. If this is possible, the Government can implement its development plans, communities can enjoy the infrastructure and services which they need and people can also be secure that their Government is protecting their rights.

This information pack is an attempt to help achieve this situation.

3. Understanding customary law

Most land in Uganda is owned under 'customary tenure'. The law recognises customary ownership as being equal to ownership with freehold title, and the landowners are entitled to the same compensation, whichever system of ownership they hold their land under.
However, people trying to acquire land for development need to understand that there are differences between titled (or registered) land and customary (or unregistered) land.

a) Customary land usually does not have any formal papers of ownership.

When land is titled, it should be fairly simple to establish the legal ownership, since the owner or owners should have their names on the title, and this can be verified at the Land Registry. (This is true in theory, but in practice, titles are often in the names of persons who have passed away, and the titles have not been updated with the names of those inheriting the land.) However, customary owners usually don't have any papers at all. Even if they bought land with a written sales agreement, signed by an LC official, this is <u>not</u> a formal State document proving ownership. When buying untitled land, the buyer has to check that the person selling the land is really the owner, and exercise what is called 'due diligence'. (This is a legal phrase meaning that you must do your best to check up that everything is being done properly.) This will entail going to the community to check who is considered to have the right to sell the land. The LCs in the village may not be aware of all of the complications of ownership in the history of the land, so it is best to check with both LCs and any customary authority (such as the *Rwot kweri* in Acholi or *Adwong wang tic* in Lango), who often work together to solve land disputes.

b) "Ownership" of customary land may not be vested in one person.

The administration of land according to custom is often quite different to the State administration of freehold land. With title, the State retains the rights to set the laws governing ownership (e.g. restricting sale to non-citizens), and the rights to limit the use of land (planning permission, zoning, building regulations, etc.), All other rights are held by the person or persons whose names are on the title. In customary law, different people are said to 'own' land:

- the clan may be said to 'own' land, meaning that the land falls under the clan's 'sovereignty' and the clan elders may have the right to solve disputes or vet any land sales.
- the head of the family may be said to 'own' the land, meaning that they are responsible for protecting the land and ensuring that every family member gets rights to use some part of the land. He may also have the power to veto any land sales.
- an individual or household may be said to 'own' land because the land was allocated to them, to use permanently. This will include the right to allocate potions of the land to the next generation.

It may not be easy to understand with whom the local Government should negotiate any sale, but establishing who you are negotiating with and in what role is important. Local Government or other buyers are legally responsible for making sure they talk to the right people.

3. Customary land is governed by customary law.

Customary law is <u>not</u> the same as the law covering freehold land. It is harder for an outsider to understand because it is not always written down. However, this law is legally binding for all transactions involving customary law, and it affects the interpretation and procedures to be followed in the case of sales, gifts and rental agreements. Lawyers are not trained in customary law, and so it may not be easy to get good legal advice about how to proceed with land sales or leases on customary law.

Case Study: The need to understand customary law or "When is a gift not a gift?"

The World Relief Corporation (WRC) wanted to set up a community centre for IDPs in Wobacholi camp, Kitgum District in 2006. The community were very happy to receive the community centre. Mr Otim, a land owner in Wobacholi offered some of his land in the camp for the community centre. He did not have any title to this land, but owned it under customary tenure.

In 2007, the NGO handed the centre over to the district authorities to be used as a school. The district refurbished the centre and added another building on the land. The land was also fenced.

Mr Otim complains that he never gave the land to the district. The WRC project was for IDPs, and so he understood that once the displacement ended, the project would end and he would retake possession of his land. The District showed Mr Otim an agreement between WRC and the District, saying that the centre could be used as a school once the project had finished.

The Legal Position

The agreement between the District and the NGO is not really relevant – the question is whether or not the NGO had any right to make such an agreement with the District. Since there is no written agreement between the NGO and Mr Otim, it is very hard to establish exactly what conditions applied when he offered the land for the project.

Even if there were witnesses to the agreement, this may not help. This is because when people make a verbal agreement, they often do not mention all the conditions which they think will apply – these conditions are just understood, they are taken for granted. Under customary principles, when land is offered as "a gift", it usually reverts back to the landowner after once the recipient no longer needs it. (If you give someone land to live on, when they move away, the land returns to you.) However, in the thinking of the NGO, when there is a 'gift; this means that it is permanent, otherwise you would say you are 'lending the land'.

According to the Land Act, the 'gift' of land to the project by Mr Otim should be governed by customary law. He may be able to prove that the expressions he used when offering the land would normally be interpreted by people in his community as meaning that the land would return to him when the project ended. (Since there may not have been any witnesses, this may be difficult to establish.) Also, since the verbal agreement may have been made in English or through translation, the State may try and prove that the word 'give' means to give permanently. This would be a difficult case to decide. It would also be unclear who has the authority to judge the case. Customary land should be heard by customary authorities, but the District would probably try and get the case heard in the Magistrates Court.

Whoever wins the case, someone must lose – either Mr Otim loses his land, or the District loses all its effort to build a school for the community. There was goodwill on all sides in this case. Mr Otim wanted to help the project, the NGO wanted to help the IDPs and the District wanted to provide a school to the community. No-one wanted to take away anyone else's rights – but the result was conflict.

How could this have been done differently?

The NGO could have made a written agreement with Mr Otim. They could have obtained legal advice before using the land about which laws applied. Once they were told that customary law applied to their agreement, they could have tried to learn more about how land transactions work under customary law in that area. They could have taken the initiative to explain the different alternatives to Mr. Otim to see which he was intending and which he might prefer. They could have offered to buy his land, to rent or lease his land for the duration of the project or they could have made sure what kind of "gift" was being offered.

Mr Otim could have asked for a written agreement with the NGO. He could have made clear that he was offering land to the project and not as a permanent gift to the NGO.

The District could have confirmed with the NGO that it was the legal owner of the land before signing an agreement to take over the land and building a school. They could have insisted on seeing a sales agreement or agreement of a gift between the NGO and Mr Otim. (Of course, such an agreement might not have prevented the problem, if Mr Otim and the NGO had a different understanding of what was meant by the word 'gift' in the agreement)

4. How can a district acquire land when the owner refuses to sell?

The Land Acquisition Act (1965) was created to say the Government can acquire land which it needs, when an owner does not want to give it or sell it. Sections 2 to 7 describe the exact steps which must be followed by the authority which wants to acquire the land. These are described below. However, this leaflet is only intended to give general information, and the actual Act should always be consulted and followed by anyone actually proposing to carry out compulsory purchase. There are three key stages:

1. Application to the Ministry of Lands, for permission to acquire through compulsion
2. Assessment of compensation claims and sale price
3. Taking possession of the land

1. Application to the Ministry of Lands, for permission to acquire through compulsion

This is the only stage for which the District can take responsibility. The Minister responsible for Lands has to be satisfied that the land is needed by the Government for a public purpose and that no alternative land is available. The District must therefore apply to the Ministry of Lands, Housing and Urban Development whenever it wants to use compulsory purchase to acquire land. The Minister makes a public declaration that the acquisition should go ahead, and then appoints an "assessment officer" who makes sure that a map has been drawn up of the exact land to be acquired.

2. Assessment of compensation claims

The assessment officer is responsible for putting up notices of the Government's intention to acquire the land by compulsory acquisition, in public places near the land and in the Gazette (the Government's own paper), calling on anyone with an interest in the land to apply for compensation. It is important to note compensation is not restricted to one person as 'the owner" of the land, but to anyone who had an interest in the land or some rights to use it. The deadline for making these claims will be set by the assessment officer, but he must give people between two and four weeks.

The assessment officer appointed by the Ministry then investigates all the claims, and must decide how much compensation should be paid in total, and how this money should be divided between all the different people with some interest in the land. (The District Land Board has been given the responsibility for setting compensation rates for crops or other non-permanent structures on land, but not the value of the land itself or any permanent buildings.) The law does not make any provision for a District to be involved in setting compensation rates. People have to appeal to the High Court, if they do not feel the levels of compensation were adequate or if they were not given any compensation but felt that they should have been.

3. Taking possession

The Assessment Officer is responsible for notifying everyone about the decisions reached for compensation. It is the Assessment Officer who formally 'takes possession" of the land, and who is responsible for notifying the Registrar of titles, so that they can issue a freehold title in the name of the Uganda Land Commission. The 1965 Act says that the Assessment Officer can take possession of the land as soon as compensation claims are decided upon, even before they are actually paid, but the 1995 Constitution stipulates that compensation must be prior to possession and must be prompt. It is the Constitution that must be followed.

It is clear that the main problem for a District with this process is that everything depends upon the Ministry in Kampala. If many Districts across the country all have several urgent development plans needing to go through this process, it won't be possible for the Ministry to respond to the needs of the Districts.

It is important that compulsory acquisition is an option for Districts, but it is rarely likely to be the easiest choice for them. It is expensive in terms of time and of money. Where possible, Districts will usually find it easier to negotiate and reach amicable settlement with landowners, to lease land or to buy it.

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.*

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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.

6. How can local authorities promote urban development in municipal areas and in trading centres?

Uganda is one of the least urbanised countries in Africa, but this situation is changing fast. Some trading centres are developing rapidly, and some are becoming classed as 'urban' land, with different procedures for planning and development. This is likely to be particularly noticeable in Northern Uganda in areas where normal development has been prevented for so many years by conflict.

Urban areas need to be planned: it is impossible to allow people to build whatever they want where they want, without making proper provision for infrastructure and for proper development of the area. They also need to be controlled to prevent public health risks such as cholera. Where many people live in a small area, there is a greater need for land for public purposes – for roads, and for schools and health facilities, and perhaps for water infrastructure. The Districts will need to obtain land in order to create and manage these facilities.

This land must be obtained legally, and the correct procedures need to be followed. Although many people believe that "municipal land is owned by Districts", this is simply not true. T**he Government or Districts do not have any automatic rights over urban land (as shown in the case study below)**, unless the District or the State already has a legal claim to the land. The District should first verify with the Lands Registry in Kampala before assuming that it is the legal owner of any land in its area. Otherwise, land needs to be acquired lawfully using the correct procedures in exactly the same way that rural land is obtained. The choices for the District are as follows:

- they can come to an agreement with a landowner to buy land;
- they can come to an agreement with a landowner to lease land;
- they can force the owner to sell through compulsory purchase;
- they can offer the landowner some other District land.

These choices are discussed in this information pack on compulsory acquisition in Pack no. 5..

In many cases, local authorities can support and control development without actually owning land. This is how development has taken place in most industralised countries. They can do this through their right to control how the owners use their land. They can give or withhold planning permission for any particular development – so, they can say how land can be used, even though they cannot decide who uses the land. If a town council zones an area for commercial activity only, then it can simply refuse planning permission for anyone to construct a building which is not for commercial purposes, or which is not a storeyed building, and they can refuse to allow people to use the land for any other purposes. However, if someone had already built a house before the area had planning regulations, the Town Council cannot force the owner to knock it down and replace it with a larger commercial building. If the owner cannot afford to develop their land, the local authority cannot force the owner to sell the land to someone else who can afford to do this. The local authority can give people an incentive to develop their land, through the use of planning permission regulations and other taxes.

People who are unable to develop their land in the ways which the local authority have chosen will not be able to use the land in any other ways. They will have an incentive to sell the land, or perhaps some portions of the land (e.g. along the roads) to people who can develop the land. The incentive will be higher, because the value of the land for commercial property will be higher.

However, some people may be unwilling to sell land which they have inherited because they feel that it should rest in their family for future generations. Many families are reluctant to see others in their family sell land, and customary law often gives them the right to veto such sales. In Northern Uganda in particular there are many political sensitivities around selling land to 'investors': people want to see investment and development, but they also value the inheritance of their land for future generations.

By facilitating private lease arrangements, Districts and other local authorities can have a role in helping both people who want land to develop and those who own the land – and they can also achieve their own objectives of seeing development in the way they have planned. A private lease means that the lease is between private individuals. The District is not a party to the lease – it's role would only be in helping the two parties to come to an agreement.

A lease is a long term rental agreement. People who want to develop land commercially do not usually need to own the land they build on – they need to know that they can use the land for many years in security. When they know how long they can have the land, they then calculate their business to see which investments make sense. In most cases, a period of 49 years is enough to justify an investment in a factory or a large building. (Many smaller commercial properties will need even less time to justify an investment.) Many landowners will be happy to sell a lease on part of their land for around 50 years, knowing that their families remain the landowners and that their descendants will one day inherit the land. In exchange for the right to use the land for a certain period (a lease can be for any period that the two people agree) they will receive a sum of money, and probably also an annual 'ground rent' paid for the land. The two sides will have to agree what will happen to any buildings once the lease is over.

- These kind of arrangements can take place between two private citizens without any involvement of the District - but they don't because people don't know what kind of arrangements are possible or how to go about them.
- Land owners fear that once they let someone build on their land they will lose it.
- Developers fear that the landowner can turn round and take away the land on which they have invested a lot of money.

District Government can help bring people together and help them set up legal agreements. It could also help the landowners get titles to their land so that the investors from outside the communities would feel more secure to lease the land. Alternatively, the District can lease the land from the landowner and can then sub-let it out to individual developers.

Measures like these can help promote development in trading centres. Sometimes the local authority is also interested in the revenue it can collect from leases on the land. It is less easy for a District to find another source for this revenue. However, as development takes place, it will earn revenue from planning fees and from increased taxes from traders – and this will be legal.

Case Study : Buying a plot in a trading centre

Mr Okello bought a plot of land with a leasehold title from the District in Namapalonga trading centre. He invested his life savings to build a small shop. One day Mr Achan arrived in his shop and claimed that the shop was on his land. Mr Okello approached a legal aid provider for support, and showed them his receipt from the District when he bought the lease to the land. The legal aid provider investigated his claim, and discovered that the land did not belong to the District, and so they had no right to sell a lease on it. The local authority had assumed that it was theirs, because it was in an 'urban centre'. They wanted to raise revenue and to promote development by selling plots to people who would invest in commercial activities.

The Legal Position

The district failed to show evidence that it ever owned the land, and so the lease ("sale") is void. Mr Achan is the legal owner of the land. Mr Okello has no rights to the land. Mr Okello is entitled to his money back from the District.

However, though Mr Okello doesn't own the land, he does own the shop that is on the land. This problem is hard to resolve, unless Mr Okello and Mr Achan can come to an agreement. For example, Mr Okello could lease the land, and so continue to run his shop, or Mr Achan could agree to buy the shop. In this case, a fair price would reflect the cost of the building only and not the value of the land.

How could things have been done differently?

Mr Okello should have asked to see a title to the land in the name of the District or the Government before buying the land – or the law under which the land was acquired for the district – <u>just as if he had been buying the land from a private individual</u>.

The District should have verified its legal claim to the land before allowing the sub-county to sell the plots. It would then have realised that it did not own the land it wanted to sell or allocate. The District then needed to look again at its goals to see how else it could achieve them. The District wanted to support the urbanisation and development of Namapalonga into a larger commercial centre. It thought that it needed to sell plots itself in order to achieve this. However, it could achieve the same end by the use of planning regulations and through facilitating private leases, as already discussed in this leaflet.

7. How can a District help support private leases/rentals?

The Government can choose to lease land instead of buying it, e.g. to build a school. In the past the Government has also leased out its own land to private people, e.g. for ranching. There can also be a private lease, when one ordinary person agrees to take a long tem rental agreement with another ordinary person, or group of people, where the Government or local authority is not a part of the agreement. These arrangements may be of mutual benefit to the two sides. Although the government is not a party to this kind of lease, the local authority can play a key role in bringing development to its area by helping to make such agreements take place.

What is a lease for?

Most developers do not need to own the land their development is on. They just need to know that they can build and can enjoy the benefits of what they build; safe in the knowledge that no-one can evict them by claiming the land back during the period of time agreed. Both private development (shops, factories) and public development (schools, hospitals) can be built in this way.

What is in a lease agreement?

- A lease says how long the developer can use the land for. This may be just a few years or it may be for a very long period (e.g. 49 or 99 years). It could also include a condition that the lease will automatically be extended for as long as the developer is using the land in the agreed way. This would be important for public services, e.g. a school, so that the Government knows that it can keep running the school as long as it likes – but the landowners would know that the Government can't then sell the land for anything else.
- A lease also gives the conditions for the use of the land. The lease may allow a person to do whatever he or she wants with the land, or it may set conditions, e.g. the land can only be used for agriculture, or for building shops or for having a school. If the school closes, whoever is renting cannot use the land for anything else, without permission from the landowner. The lease will also say whether or not the person renting the land can sub-let the land (i.e. can rent it out to someone else).
- A lease says how much rent should be paid. Usually the rent is quite low, because only land is being rented – the development itself belongs to the person who develops the land, not the landowner. It is possible to include a condition that the rent can be changed during the lease period, e.g. an annual increase according to inflation, or according to some other standard. If a community is happy to have a school on their communal land, they may charge only a symbolic rent, such as 1,000/- a year.
- A lease should also say how any future disagreements between the renter and landowner will be solved.

What is the advantage of a lease for the renter?

Buying land is expensive, and you have to pay for it all at once. If you don't really

need to own the land, but just want to be sure you can use the land for as long as you need, then it can be much cheaper to lease the land. When you buy, you have to find all of the money at the beginning – or you have to borrow the money by getting a mortgage. This is expensive – you have to pay interest every year on the loan. It is hard for a business to have too many debts or to tie up all of its capital in land. By leasing the land, it can make payments every year, so that the rent can be paid from the profits from the development.

It can also be cheaper because the landowners know that their descendants will one day be able to claim the land back, so they won't need as much compensation to give you land that perhaps today they are not using.

A lease can be more flexible than buying land. You can have a lease agreement where the renter can stop renting the land whenever he or she wants. if you buy land you would have to sell the land again when you don't need it anymore. That means you have to find a buyer, pay various costs, worry about how much the buyer will pay you – and you might have to wait for a while before you find the buyer.

What is the advantage of a lease for the landowner?

In customary law, even the unborn generations have claims over family land. As a result, many people hesitate to sell land, because they fear their descendants will be left landless. However, they may not be using their land very productively at the time, because they don't have the capital to develop it – especially for making commercial developments if the land is in a new trading centre.

By leasing land, they can enjoy income from the land (rent), and they can help support development in their area – and still be sure that the land will belong to their family in the future.

Don't you risk losing the land if someone occupies it for a long time?

Some people fear that if another person is on their land for twelve years, then the land belongs to them. This is not true. If you have a rental agreement even for one hundred years, at the end of the agreement, the renter has to return the land to the landowner. The landowner remains the legal owner of the land for the whole period, and they can leave it to their children in a will, even though the land is being used by someone else who is paying rent.

If a lease is such a good idea, why are they not more common?

This is a good question. Rental agreements are very common even in rural land, but they rarely run for more than one or two seasons at a time. People who use land for agricultural purposes do not usually need more than one season for their investment, and the agricultural systems in Uganda have always involved a fallow period, so no-one would want to keep cultivating land for many years. On the other hand landowners often fear that if someone is cultivating their land for several years, they will claim that it now belongs to them. In a system where agreements are not written down, it is hard to prove what agreement was actually made.

In urban areas and trading centres, there are many people who rent houses and shops for many years, though they usually

only rent up to three months at a time. This is because they are not able to commit themselves to staying on the premises for longer than that and the landlord cannot promise that they will be able to stay for so long either – certainly not at the same rental price.

If someone wants to invest a lot of money in a bigger development, though, they need more certainty that they can keep using what they build for many years. Leases are therefore more important for these situations. Leases are still not common, though and there are several reasons for this:

- most people don't know about the option of leasing – neither landowners or developers
- most landowners don't know of people who are interested in taking a lease on their land
- people wanting to lease land don't know where to find it
- people still fear that the renter will keep their land, especially because they have no papers to prove they are the landowners
- renters fear taking a lease on land which does not have title, because they cannot be sure who the real owner of the land is, and whether or not they will find themselves in the middle of a land dispute
- renters fear being evicted and losing their development
- people are hesitant about trusting things they don't understand. They fear having to go to Court to get their land back, because it is expensive.

Many of these obstacles can be overcome, which will lead to both landowners and developers having benefit. However, we must stress that <u>we are not suggesting that a lease is always the best option</u>. It will not suit everyone in every circumstance – we are only giving information about it as one more possibility that people can consider.

What can a local authority do to help promote this kind of land market?

a) Information

The first thing a local authority – or any other stakeholder can do – is to inform people about the possibilities. Local authorities can help people who need each other to meet up. They can keep registers of people willing to lease out land, for interested developers to look at. People need to understand that the local authority is not trying to take the land or to decide for them who should get the land, only to help bring together people who will make their own agreements.

b) Getting people papers to their land.

The local authority can help give landowners proof of ownership of their land which developers from outside their communities understand and trust. This will help developers have the confidence to develop on customary land, knowing they have an agreement with the real and recognised owners. It will help the landowners, because they will have less fear that anyone can grab their land by leasing it. People can be given Certificates of Customary Ownership (CCO) or freehold title deeds to their customary land. In order to do this, the District or sub-county must establish Area Land Committees and provide for their funding. *(For more details, contact your district land office and legal aid providers.)* In many places, the

land which would be easiest to lease would be communal land, rather than individual or family (household) land. In some parts of the country, such as in Northern Uganda, clans still hold communal land, e.g. for grazing or for hunting. In order to help people get a CCO or a title to their land, they will need to establish and register themselves as a "communal land association" (CLA) first. This is not a complicated or expensive process, but they will need help from the District to do this.

c) Helping people with the process.

Many people fear to write contracts that will last for so many years, because they fear to make a mistake, or fear that there will be consequences they hadn't thought about. They may also fear to go to a lawyer, because they can't afford it, or don't know where to find one, or can't speak English, or for any other reason. The local authority can provide people with standard forms for lease agreements (*such as the one in this pack)*. If people use a standard form, they won't worry that they have forgotten to write down something important or that they are being cheated. They will know that everyone uses the same form and that the Courts of law will respect their contracts. Local authorities may sometimes be able to offer more individual legal advice, but this will be limited. By at least providing information packs and standard forms for people, they will have made a big contribution.

Will leaseholds really work?

We know that many people took out leases from the Government on State land for development purposes and many make significant investments in land. People continue to obtain leases from Town Councils in order to build and invest. Since a private lease is just as secure as a lease with the Government, there is every reason to believe that some people will be interested, once there is trust in the system.

Private leases will not answer all of the problems and challenges of the Districts and other local authorities. However, where they want to support private development, or where they want to help a development agency to acquire land for public services, helping to arrange private leases is one more option which local authorities can offer.

8. Pressure from development actors and private developers

Many people want to see development happen in Uganda. Communities want to see their areas developed with infrastructure and services, and Government wants to see all parts of the country develop economically and socially. Other people too have an interest in development. Donors and NGOs want to see their projects bring different kinds of development to the people they are trying to help. Private investors want to see their own developments succeed, because this is the reason why they take the risks of investment and also because they want to bring jobs and income to the areas where they invest.

The people who are pushing for development sometimes put pressure on a community to make land available for the development which they want to bring 'for the community', or they may put pressure on local Government to make land available for their investment or project. Understandably, they may feel they want to take their investment elsewhere if land is not available. Unfortunately, as the case study below shows, they may understand a great deal about the provision of education or health services, or the economic returns of running a business, but they are not usually experts in land law. The law is not there to stop development, but only to ensure that when people want to bring development, they respect the rights of all concerned. Donors and NGOs, and other investors, need to understand the law relating to land and how this relates to their programmes.

Respecting land law often means that it takes time to find land, because it is necessary to ensure that everyone who has rights to the land is in agreement with the project, whether by selling the land to the District, by renting it for the project or simply giving it freely as a gift. NGOs and donors can easily become frustrated by delays, because their funding may be tied to a particular financial year or to other deadlines. Other staff may be kept waiting, e.g. to start training health workers or supplying medicines, while negotiations for the land on which to build a clinic takes place. It is not surprising that in these circumstances they can pressurise Districts, communities and those with land rights to release land for development or emergency projects. Private developers may have made substantial investments already, and need their projects to bring in income quickly, e.g. to repay loans.

When land is provided in a hurry, and when agreements are reached by people who do not understand the principles of land law, it is possible that individuals' and families' rights can be violated, and it is likely that the seeds for future disputes are being laid. This is not the intention of donors, private developers or NGOs. They often feel that understanding the land issues is not their responsibility, because they are dealing with the District to get land, and so it is the District which is responsible for understanding land law. However, this can easily lead to unfair pressure. It has been seen very often that Districts often do not have staff who are trained in land law, and certainly not in the customary land law which governs most land in Uganda. As a result, they have sometimes acquired land for development without following the law and without respecting everyone's rights.

NGOs, donors and private developers who need land for projects therefore have a responsibility to make sure that they understand what the law says about land rights, so that they know that their projects bring development, and not conflict to communities, and bring benefits, and not destitution to community members. They should always find out in advance how long it is likely to take to acquire land legally, and to make sure that this time is built in to any project from the beginning. A lawyer will always be able to help explain the land rights which are written into State law and in particular the rights which are held by people who own land under freehold title. Remember, though, that most land in Uganda is not held under title, but under customary tenure, and that the customary laws of each community are legally binding for everyone who enters into dealings on such land. It is therefore important to find someone who can explain how customary land rights work.

NGOs and donors may feel that since they are giving services, such as clean water, to 'a community', they can drill a well anywhere on 'the community's land' without stopping to consider that most land is owned by families and not by communities. The landowners may be very happy to make the land available for everyone's benefit – but they also have a right to be asked, and even to refuse. Even when the project is an emergency, people's rights need to be respected. Fortunately, in Uganda most landowners have been very understanding of emergency situations, and have been very willing to help make land available for emergency response on a temporary basis, while the emergency lasts. As long as proper consultations are followed, and the proper acknowledgement of the landowners' rights are made, they should have few fears that their permanent rights to the land will be violated by humanitarian agencies trying to offer help to communities facing crises.

9. You are a district looking for land for public services – your checklist of what you should do.

- Don't ignore the problems Make sure that land issues are considered fully before undertaking any activity or programme.
- Make sure that your staff know the law relating to land.
- Seek information, support and advice. You can get this from the District Land Office, from legal aid providers or private lawyers.
- If a development facility is temporary, consider leasing the land from those with land rights.
- Make sure you include the costs of the land in the budget for any development purpose. This will usually only add a very small fraction to the overall cost of the development. Most donors should accept that the cost of the land on which to build a school is just as valid an expense item as the cost of cement.
- If no-one wants to sell you the land you have identified, see if you can use a different piece of land instead.
- If you are looking for a willing seller of a large piece of land, speak to the clan leaders and elders. They may be able to assist in finding a seller, or they may be able to provide communal land. You may still have to pay, but this could be cheaper, simpler and less confrontational than trying to acquire a lot of land from several individual landowners through compulsory purchase.
- Remember that respecting land rights is the law.
- Negotiate for land as a first step. It will be easier if you can come to a mutual arrangement. Some landowners may be willing to give you the land you need in exchange for some other land, if the District has land elsewhere.
- If developers or NGOs want District land, check that you really are the legal owner before you give away or sell any land. Don't be afraid to explain to them the challenges you face. NGOs and donors should be willing to contribute to the cost of purchasing other land if this is necessary.
- Remember that customary land is private land, but one person does not always have all the rights to the land. Compensation for compulsory purchase does not only go to a single owner, but to anyone with an interest in the land. The same principle should be applied if you are buying land from willing sellers. Find out all the people who have rights in that land. (You may need help from someone who understands how customary rights are shared and managed.) The compensation should then be divided between all the people. You will have to negotiate this process. You will need to be clear that you are negotiating to see how the value of the land is being shared out and you are not prepared simply to add more money to anyone claiming some additional rights.
- If you are buying land which a family is living on or using, remember that the sale of land is not valid if the wife (or husband) does not sign her (or his) consent to the sale.

10. You are an NGO or a donor looking for land for public services – your checklist of what you should do

- Don't ignore the problems. Make sure that land issues are considered fully before undertaking any activity or programme.
- Make sure that your staff know the law relating to land.
- Seek information, support and advice. You can get this from the District Land Office, from legal aid providers or private lawyers.
- If a development facility is temporary, consider leasing the land from those with land rights.
- Make sure you include the costs of the land in the budget for any development purpose. This will usually only add a very small fraction to the overall cost of the development. Most donors should accept that the cost of the land to build a school is just as valid an expense item as the cost of cement.
- If no-one wants to sell you the land you have identified, see if you can use a different piece of land instead.
- If you are looking for a willing seller of a large piece of land, speak to the clan leaders and elders. They may be able to assist in finding a seller, or they may be able to provide communal land. You may still have to pay, but this could be cheaper, simpler and less confrontational than trying to acquire a lot of land from several individual landowners through compulsory purchase.
- If people are reluctant to sell their land, try and rent the land on a long term lease instead. This will be less politically sensitive and you may get clan and family agreement more easily. There are many countries (including in Europe) where many long term developments take place on land held on lease.
- People may be more willing to rent out land on a long term lease if they are helped to get a title or CCO on the land. If the land is communal land, then you may be able to help them register as a Communal Land Association (CLA) first.
- Remember that respecting land rights is the law.
- Appreciate the challenges faced by local government and communities. They may not have land to give you, or the budget and money to buy land for you or project. Do not pressure them into giving away land that is not theirs to give.
- Do not accept any land given by anyone (individuals, communities or the District) without checking the status of the land. Ask to see proof that the land is owned by them. Explain that you are not mistrusting them, but that people do make genuine mistakes about who has the right to give or sell land.
- Remember that customary land is private land, but one person does not always have all the rights to the land. Compensation for compulsory purchase does not only go to a single owner, but to anyone with an interest in the land. The same principle should be applied if you are buying land from willing seller. Find out all the people who have rights in that land. (You may need help from someone who understands how customary rights are shared and managed.) The compensation should then be divided between all the people. You will have to negotiate this process. You will need to be clear that you are negotiating to see how the value of the land is being shared out and you are not prepared simply to add more money to anyone claiming some additional rights.

- If you are buying land which a family is living on or using, remember that the sale of land is not valid if the wife (or husband) does not sign her (or his) consent to the sale.

- If you are given land by the District, then check before starting work on the land. Place notices around the land stating that it was given by the District and requesting anyone with claims to the land to contact you.

- Make budgetary provision for purchasing or renting land. This is unlikely to add much to the cost of the development. Land could be purchased and then transferred to the District Land Board. Rights would then reside with the government forever. Or land could be leased, e.g. for as long as the public service being constructed was in operation. This would allow the Government to manage the facility as long as it wanted, but would reassure a community that the Government could not simply change the use of the land.

- To prevent future disputes, ensure that everything is written down. Make sure that everyone means the same things by the words. In most cases, the contract should be in the local language. If there is an English version, it should stipulate that the version in local language is binding. Make sure that any conditions are discussed and included in the contract, e.g. how long the agreement is for, what happens afterwards, etc. Give people plenty of time to read and discuss these agreements before signing them.

- Purchase of land does not have to be in monetary form. A landowner may agree to take compensation for the land in other forms – e.g. free education for their children at the school, a training opportunity, assistance with some other project for the community, etc.

11. An example of a Tenancy/Rental Agreement.

THIS AGREEMENT is made this ..... day of ..... 200.... **BETWEEN**

THE LANDLORD		AND THE TENANT	
Name		Name	
Village		Village	
Parish		Parish	
Sub - County		Sub - County	
District		District	

The landlords (are people with rights to the land, i.e. head of family and family members)

The tenant refers to the person or the people wanting to use the land for an agreed period of time.

The Landlords are renting to the people who have signed below the land held under customary tenure situated at:

Village/Zone	
Parish/Ward	
Subcounty/Town	
Country/Division	
District	
Approximate area of land measuring in ..... metres in length by and ..... metres in width). **(also see map attached)**	
Names of heads of families and their wivws who are in the adjacent land.	(1) ..... (2) ..... (3) ..... (4) ..... (5) .....

IT IS AGREED as follows:
The Parties shall enter into a rental agreement where by the Landlord shall rent to the Tenant the above described land:

For a term of :		*(Days / Months / Years)*
With effect from :		*(Date agreement begins)*
At a rent of :		*(Uganda Shillings)*
Rent to be paid :		*(Weekly / Monthly / Yearly)*
Date rent is payable :		*(Upon signing / X day of each term)*
Expiry date :		*(Date agreement ends)*
For the purpose of :		*(What will the land be used for - e.g. Farming, building a home, etc)*

Rent will be payable as follows:

Rental installments	Amount	Date of payment	Signature of landlords
1st installment			
2nd installment			
3rd installment			
4th installment			

1. THE TENANT AGREES:

a. To pay the rent at all times in the manner agreed.
b. To use the property only for the purpose for which it was leased.
c. To permit the Landlord or people who he sends to enter the Land at reasonable times to examine the condition of the land.
d. Not to sublet any of the land without the written consent of the Landlord in advance
e. To behave at all times as a good neighbour, and not to allow anyone to do something which would be a nuisance to those living around the land.
f. To return the land with no squatters when this agreement ends
g. Not to do anything to the land that will permanently degrade or reduce the value of the land. E.g. use the land for burial, or cut down big trees.

2. THE LANDLORD AGREES:

a. That the Tenant shall enjoy the Land until the end of the agreement without any interruption from the Landlord or people he sends.
b. If at any time during the agreement the Landlord wishes to sell the Land, he shall give priority to the tenant.
c. To provide the Tenant with reasonable notice before any inspection of the Land.

3. TERMINATION OF AGREEMENT

a. The agreement shall end at the expiry of the Tenancy.
b. Any breach (doing anything that is not allowed) of part or the whole of this agreement shall entitle the aggrieved party to terminate the agreement.
c. At the end of the tenancy, if the landlord wants to rent the land again and the tenant had obeyed the terms of the agreement, the tenancy agreement will be extended on the same terms or new terms.

4. DISPUTE RESOLUTION

If the parties have any dispute pertaining to the Land, the matter should be directed to the customary authorities of both parties as agreed. If there is no agreement the matter should be taken to the state court for land, currently the LC's executive committee of the area where the rented land is

This agreement is made on the .....day of .....(month) of 200.....

Signed by the LANDLORD			**Signed by the TENANT**		
People with rights to the land rented (LANDLORD)	Name	Signature	TENANT	Name	Signature
Landlord			Tenant		
Landlord			Tenant		
Landlord			Tenant		
Landlord			Tenant		
Landlord, etc.			Tenant		
Date			Date		

The following holders of customary rights consent to this agreement (e.g. wife/wives, elders)

Name	**Signature**	**Date**	**Relationship**
1st wife to landlord			
2nd wife to landlord			
1st wife to tenant			
2nd wife to tenant			
Clan leader verifying that the people with rights to land being rented have agreed.			
Two eldest children to the landlord, if any			

WITNESS FOR LANDLORD			**WITNESS FOR TENANT**		
Head of clan of Landlord	Names	Signature	NAME	Head of clan of Tenent	
Rwot Kweri of Area (or Adwong wang tic)		Signature	Sign	Rwot Kweri of Area (or Adwong wang tic)	
LC1 of the area		Signature	Date	LC1 for the tenant	
Name of heads of family and their wives adjacent to land		Signature	NAME	Head of clan of Tenant	
Name of heads of family and their wives adjacent to land		Signature	Sign	Rwot Kweri of Area (or Adwong wang tic)	

Draw map of the land being rented and include the following: north, south, east and west arrow signs; the length and width in meters of the "stick" used in measurement; any features on land of a permanent nature such as trees, rivers. Map should then be signed at the back landlord, tenants, LC, wives, clan leaders. 5 copies of the map should be made and one each given to landlord, tenant, LC1, clan and 1 registered with the sub county chief (recorder) for records.

Annex I:

Sketch Map of Land