

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 term 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 we are not suggesting that a lease is always the best option. 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.

