

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

This guide is produced by LEMU with funds from Norwegian Refugee Council, which has amongst other activities, been providing legal aid services in Uganda since 2002. During this time NRC has dealt with many disputes relating to land acquisition for public works. Because public development in Northern Uganda has lagged behind the rest of the country because of the recent conflict, and because there is now a strong effort by the Government and others to help the region catch up with an intensive programme of construction and development, the issues outlined in this guide are particularly pressing for the area.

1. The challenges of finding land for development
Everyone knows that the development of public land will never be possible to satisfy all competing interests.

2. Development, Land and Rights
What does the law say? • Most people don't know their rights or the law.

3. Understanding customary law
Most land in Uganda is owned under customary law of freehold land. With title, the State retains the land.

4. How can a district acquire land when the owner refuses to sell?
The Land Acquisition Act (1965) was created by the assessment officer appointed by the Ministry.

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, 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 which is owned by other family members. The District needs to remember that in any agreed sale, the consent clause applies to those selling the land (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 authorize 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 certain period (e.g. 50 years) or could say for as long as the District operates a school/health clinic on 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 way to get the land, the State can buy the land anyway – i.e. it 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 1965 sets out 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 authorization 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, if 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 prior 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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6. How can local authorities promote urban development in municipal areas and in trading centres?
Uganda is one of the least urbanised countries in the world. They can give or withhold planning permission for developments.

7. How can a District help support private leases/rentals?
The Government can choose to lease land school as long as it likes – but the school should be able to pay for the land.

8. Pressure from development actors and private developers
Many people want to see development happen and it is likely that the seeds for future disputes are being sown.

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 you are aware of the issues.
• Negotiate for land as a first step. It will be easier to get if you have a good relationship with the landowner.

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 you are aware of the issues.
• 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 much less 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 you are owned by them. Explain that you are not mistaking 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 to anyone 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 who have rights in that land. You are not prepared simply to add more money to anyone claiming some additional rights.



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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.