



Guidelines

for leasing of agricultural land by youth in the western Kenya counties of Kakamega, Siaya, Bungoma, Vihiga, and Kisumu



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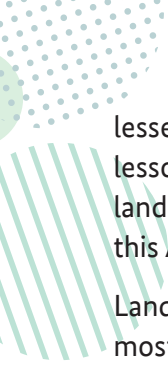


Preamble

Farming has the potential to offer a wide range of income-generating opportunities, especially for the youth. However, limited access to land is one of the major obstacles to youth participation in agricultural production. Land in Western Kenya is acquired mostly through inheritance where land is passed on from parents to the children, often married sons. Overreliance on land inheritance makes it difficult for most youth to participate in farming since they must wait for a very long time before their fathers can give them land. Land leasing is an alternative way of accessing farming land. It is cheaper than buying land and allows a farmer to utilize land whose owner does not plan to utilize it for a specific time. Youth can lease land as individual farmers or in groups. Group leasing promotes economic empowerment as the youth can pull resources and acquire arable land that would not have been acquired if the youth were working individually. Youth farming groups can lease arable leasable private or public land. Requirements for accessing and using the different public lands and mechanisms for leasing out vary from one institution to the next. Under Section 56 (a) of the Land Act, No. 6 of 2012, a landowner has the power to lease his/ her land or part of it to any person for a definite period or for the life of the lessor or of the


“...a landowner has the power to lease his/ her land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite, may be terminated by the lessor or the lessee.”

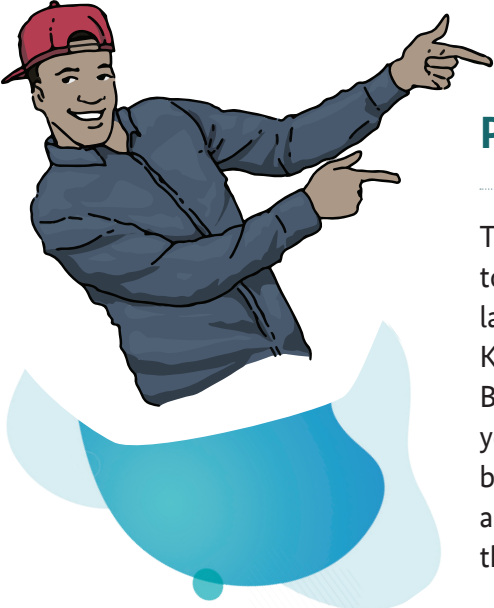
- Section 56 (a) of the Land Act, No. 6 of 2012



lessee or for a period which though indefinite, may be terminated by the lessor or the lessee. The Act under Section 56 (b) also gives power to the landowner to subject the lease to any conditions that may be required by this Act or any other law or that the lessor may impose.

Land leasing has operated in Western Kenya for a long time. However, it has mostly been done informally and has in many cases resulted in conflicts. With formal leasing, security of tenure is guaranteed. Formal leasing provides arrangements that are robust to deal with all eventualities; hence, both the landowner and the tenant can enter into a lease agreement with confidence. Article 69(1) of the Constitution of Kenya, 2010 requires the State to ensure sustainable exploitation, utilization, management, and conservation of the environment and natural resources and ensure the equitable sharing of the accruing benefits. As such, land is one of the natural resources requiring sustainable management. While this is the obligation of the state, counties are also under the obligation to follow suit, being the second level of government. Agriculture is one of the devolved functions under Part 2 of the Fourth Schedule to the Constitution of Kenya, 2010. As a result, counties are under obligation to develop mechanisms, including legislation and policies to guide sustainable use and management of agricultural land.





Purpose of the guidelines

These land lease guidelines are developed to provide a structured way for leasing land for farming by youth in the Western Kenya counties of Kakamega, Siaya, Bungoma, Vihiga, and Kisumu. These youth-focused land lease guidelines lay a basis for anchoring a framework for land access through leasing by the youth in these counties.



Definitions

- **Land leasing:** the process of leasing land which includes agreeing on the terms and conditions of leasing, and which culminates in a written or verbal agreement.
- **Lessor (landowner):** a person, organization, or institution that owns the land and wishes to rent it out to another person, organization, or group.
- **Lessee (tenant):** a person or group or organization that rents land for the purpose of farming.
- **Land lease agreement form:** a document that is executed by the landowner and the tenant to formalize a land lease.
- **Local administrator:** an officer of the county or national government whose office is established by an Act of parliament of the Republic of Kenya, including a chief, an assistant chief, a ward administrator, a community administrator, a village administrator, etc. for the area where the piece of land to be leased is located.
- **Start of the lease:** the date from which the lessor/ landowner gives the right of use of the leased piece of land to the lessee/ tenant/ group.
- **End of the lease:** the date when the lessee/ tenant/ group will return the use of the leased piece of land to the landowner.
- **Lease term:** the period in which the lessee/ tenant/ group has the right to use the leased piece of land (i.e., the period between the start and end of the lease).

- **Rent:** the amount of money that the lessee/ tenant/ group will pay to the landowner for the use of the leased piece of land.
- **Spouse(s):** husband(s) or wife/ wives.
- **Next of kin:** a person's closest living relative, including spouses, children, and adopted family members who are prioritized in interstate succession (i.e., a next of kin receives the person's inheritance if the person dies without a will).
- **Land management practices:** measures aimed at the protection, conservation, sustainable use, and restoration of natural resources (soil, water, and biodiversity) and their ecosystem functions.
- **Original:** (in relation to a land lease agreement) it is the document originally entered.
- **Amendment:** (in relation to a land lease agreement) it is the land lease agreement that has been affected by changes or for which information has been added or subtracted.
- **Witness:** a person who attests to an event and later gives evidence regarding matters under inquiry.
- **Institution:** a religious, educational, professional, public purpose, or social purpose organization (that has arable land for leasing).
- **Group:** a number (of farmers) of people working together towards a common goal.
- **Group leasing:** the process of leasing land collectively as a group (of farmers).

→ Procedure for leasing

STEP 1 Find the piece of land

- a. Having decided that he/ she wants/ they want to lease land for farming, the farmer/ group will look for the piece of land that he/ she/ they desire(s) to lease.
- b. In locating the desired piece of land, the farmer/ group will consider the possibility of the landowner leasing out the piece of land to him/ her/ them, the ease of access to the piece of land, security, and the suitability of the piece of land to support the desired agricultural enterprise.
- c. The farmer/ group can also consult youth groups (youth group land leasing coordinators) and CBOs (CBO land leasing coordinators) in the county that are working in the agri-food sector to get more information on areas where there are lands available for leasing or landowners who are looking to lease out their land for farming.





STEP

2

Due diligence

- a. Having identified the piece of land that he/ she intends to lease and having known the owner, the farmer/ group will undertake due diligence to establish who the rightful owner of the piece of land is, its acreage/ dimensions, and its boundaries.
- b. The farmer/ group will authenticate that the piece of land that the landowner wishes to lease is owned by him/ her by requesting one or more of the following documents:
 - i) Land title deed for a freehold piece of land.
 - ii) Certificate of lease for a leasehold piece of land.
 - iii) Allotment letter for an allotted piece of land.
 - iv) Certificate of official search from the land registrar's office.
 - v) Affidavit to prove that the said landowner is the rightful owner confirmed by a Commissioner of Oaths, an advocate, or any other equivalent authority.
 - vi) Any other document or evidence of possession permitted by a relevant authority and/ or required by Kenyan law.



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- c) The farmer/ group will cross-check the above documents with the landowner's identification documents, such as a national identity card, a valid Kenyan passport, or any other document accepted under Kenyan law.
 - d) In the absence of documents listed under b) above, or where such documents are deemed prohibitively expensive to acquire, proof of land ownership may also be ascertained via affidavit from the landowner's family members, neighbours to the piece of land to be leased, or elders and/ or local leaders of the area where the piece of land to be leased is located since the family members, neighbours, elders, and local leaders have been residents in that area for a long time and, therefore, understand land ownership matters in that area.
 - e) The farmer/ group will ascertain that the piece of land does not have encumbrances and there are no third parties whose rights to the land may supersede or interfere with his/ her/ their right to possess and use the piece of land once the lease is granted by the landowner by consulting the landowner's family members, neighbours to the piece of land, elders and/ or local leaders in the area where the piece of land is located, and previous users of the land if any.
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- a) The farmer/ group will make his/ her/ their intention clear to the landowner that he/ she/ they wish(es) to lease the piece of land for farming, that he/ she/ they wish(es) to enter into a written lease agreement, and that the spouse of the landowner will have to be involved in the process and should be a signatory to the lease agreement.
- b) The farmer/ group will explain to the landowner what crop(s) he/ she/ they wish(es) to grow or the animals that he/ she/ they wish(es) to rear on the piece of land, the duration he/ she/ they wish(es) to use the piece of land, the equipment that he/ she/ they wish(es) to install and the structures that he/ she/ they wish(es) to establish on the piece of land if any, and who will manage the enterprise (e.g., self or workers or specified group representatives).



STEP

4

Negotiate the terms and conditions of the lease and agree on the rent

The farmer/ group will negotiate the basic terms and conditions of the land lease with the landowner before agreeing on the rent and signing the land lease agreement form.



STEP

5

Enter a written agreement

To ensure strict adherence to what has been agreed upon between the farmer/ group and the landowner;

- a) The terms and conditions agreed upon will be recorded in a land lease agreement form (as annexed to these Guidelines),
- b) Both the farmer/ group and the landowner must sign the filled land lease agreement form before their witnesses and a local administrator, and
- c) The land lease agreement form must then be signed by the witnesses and endorsed by the local administrator to provide recognizable evidence in defense against anyone who may want to play mischief or decide to pull out of the agreement.



→ Involving family members and next of kin

Both the lessor/ landowner and the lessee/ tenant/ group will involve their family members or other close relatives, especially their spouse(s) and children and/ or close friends, and where possible, indicate their next of kin and their details, including their relationship with them, their contact details, etc. on the land lease agreement form.





Responsibilities and obligations

Responsibilities and obligations of the lessee (tenant/ group)

- a) The tenant will provide security for his/ her/ their crops and/ or livestock and other establishments and/ or activities on the leased piece of land.
- b) The tenant will look for witnesses of his/ her/ their own choice, inform them of the land lease, and ensure that they are present to witness the signing of the land lease agreement form and sign as witnesses.
- c) The tenant will make sure that the landowner's family members or other close relatives, especially their spouse(s) and children and/ or close friends are informed of his/ her/ their willingness to lease the piece of land.
- d) The tenant will provide their identification documents, such as a national identity card, a valid Kenyan passport, or any other identification document under Kenyan law.
- e) The tenant will confirm the lessor's identity using identification documents such as a national identity card, a valid Kenyan passport, or any other identification document recognized under Kenyan law.
- f) The tenant will ensure that the details of the land and the landowner are properly entered into the land lease agreement form.



- g) The tenant will not interfere with established boundaries nor make permanent alterations to the land without the approval of the lessor.
- h) The tenant shall endeavor to use the leased piece of land in accordance with proper/ best land management practices.
- i) The tenant shall ensure that their family member(s) and other assignee(s) adopt a no-interference policy as long as the agreement is in force.
- j) The tenant shall not sub-lease the leased piece of land to another person without the timely, prior consent of the landowner.

Responsibilities and obligations of the lessor (landowner)

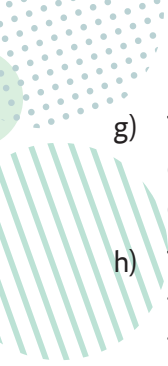
- a) The lessor will ensure that there is no interference with his/ her/ their tenant's crops and/ or livestock and other establishments and/ or activities on the leased piece of land by himself and/ or his/ her family members, friends, livestock, or pets or their staff or other persons within the institution.
- b) The lessor will look for witnesses of his/ her/ their own choice, inform them of the land lease, and ensure that they are present to witness the signing of the land lease agreement form and sign as witnesses.



- c) The lessor will make sure that the tenant's family members or other close relatives, especially their spouse(s) and children and/ or close friends are informed of his/ her willingness to lease the piece of land. For group leasing, the lessor (institution) shall ensure the group's appointed representatives and all members are informed of the institution's willingness to lease the piece of land by asking for the institution's minutes authorizing the leasing of the land.



- d) The lessor will notify the tenant of any parts and/ or developments, including activities on the leased land that should not be disturbed during the period of the lease.
- e) The lessor will provide the tenant with unhindered accessibility to the leased piece of land.
- f) The lessor will provide access to homes and/ or properties/ facilities located within or behind the leased piece of land, such as other parcels of land, common water points, etc.

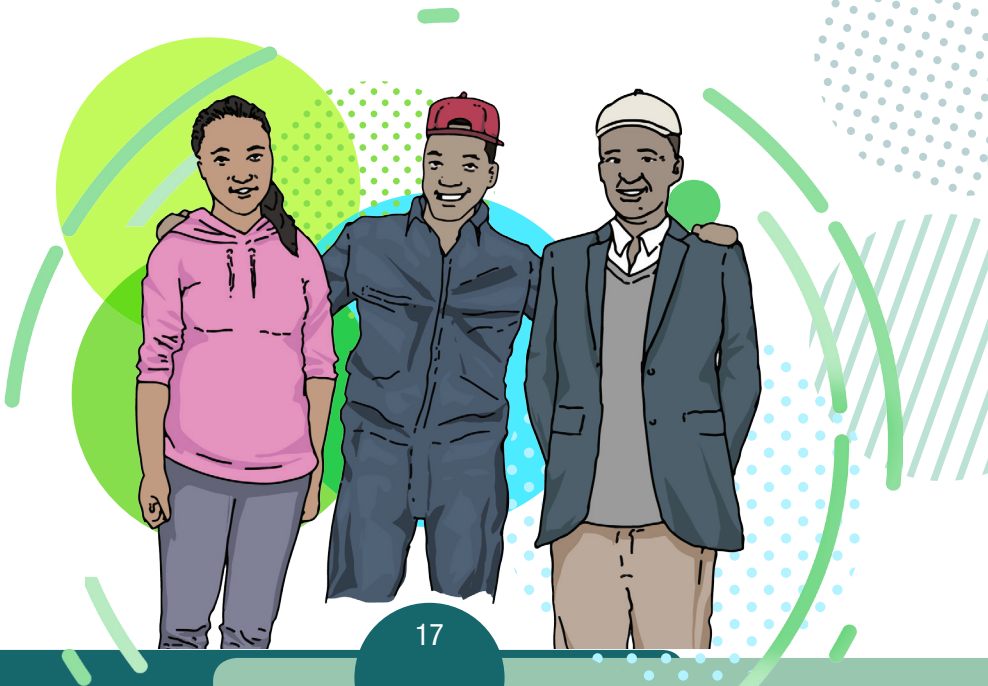
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- g) The lessor will confirm the tenant's identity using identification documents such as a national identity card, a valid Kenyan passport, or any other identification document recognized under Kenyan law.
 - h) The lessor will provide accurate information about himself/ herself/ themselves as well as the status of the land that he/ she/ they wishes to lease out.
 - i) The lessor will confirm the tenant's identification documents, such as a national identity card, a valid Kenyan passport, or any other identification document under Kenyan law.
 - j) The lessor will ensure that the details of the land and the landowner are properly entered into the land lease agreement form.
 - k) The lessor shall ensure that their family member(s) and other assignee(s) adopt a no-interference policy as long as the agreement is in force.



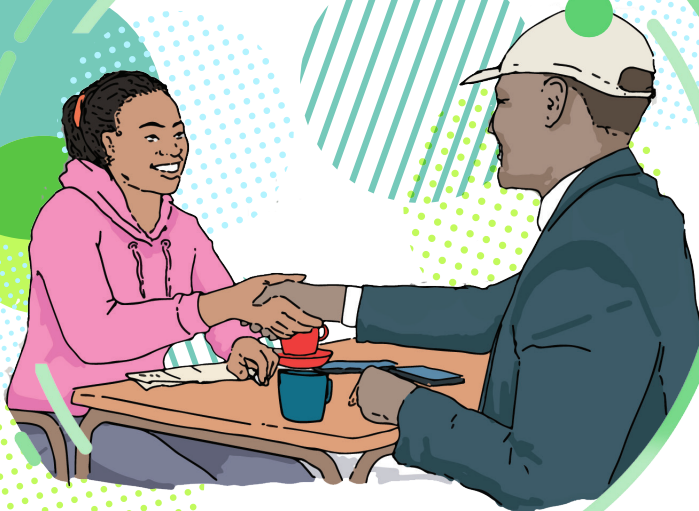
Collective responsibility

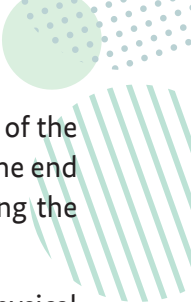

- a) Both the tenant and the landowner will adhere to the terms and conditions of the land lease as outlined in the land lease agreement form.
- b) Both the tenant and the landowner will ensure that the land lease agreement is filled in correctly and duly signed by both parties and their witnesses, including their spouse(s) before their witnesses and a local administrator for the area where the piece of land is located.
- c) Both the tenant and the landowner will agree on the dimensions of the piece of land to be leased by noting its acreage and boundaries; and by clearly describing the piece of land using important landmarks such as trees, fences, roads, terraces, buildings, streams, rocks, and graves, and/ or Geographical Positioning System (GPS) coordinates, where possible; and/ or by drawing a sketch map or by providing a map of the area where the leased piece of land is located if available.

- d) Both the tenant and the landowner will agree on the rights to possession and use, and the degree of freedom and control over the leased piece of land by each party, including:
- i) The intended use of the piece of the land, including the kind of crops to be grown and/ or the kinds of livestock to be kept if any.
 - ii) Arrangements for inspection of the leased piece of land by the landowner if needed with prior arrangements and agreement.
 - iii) Opportunities for the tenant to use other crops, assets, or infrastructure on the leased piece of land, including any perennial crops such as fruit trees and fodder; latrines; and water points among others.
 - iv) Obligations for protecting the leased piece of land by fencing and improving its fertility through sustainable land management (SLM) practices such as liming, terracing, manuring, and planting agroforestry trees.



- v) Responsibilities for maintaining infrastructure such as access roads, fences, terraces, latrines, and water points; and assets such as trees and fodder on the leased piece of land.
 - vi) Responsibilities for paying any fees or taxes related to the land, if applicable.
 - vii) Possibilities of the landowner and/ or his/ her family members, friends, staff, visitors, and his/ her/ their other appointed persons accessing and using perennial crops; infrastructures such as latrines and water points; assets such as trees and fodder; and cultural objects such as burials sites, graves, circumcision sites, and shrines.
- e) Both the tenant and the landowner will agree on the lease term.



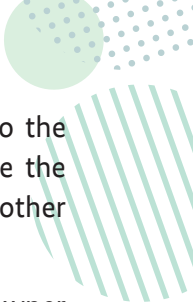

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- f) Both the tenant and the landowner will agree on the flexibility of the lease, including possibilities and requirements for renewal at the end of the lease and review of the lease at a future date specifying the date of such a review.
 - g) Both the tenant and the landowner will note down the physical conditions of the land at the start of the lease and agree on the expected conditions of the land at the end of the lease, including whether to retain installed structures such as fences, water structures, and terraces if they were installed during the period of the lease and/ or planted agroforestry trees if they were planted during the period of the lease.
 - h) Both the tenant and the landowner will agree on the rent to be offered for the lease and state whether this rent will be in the form of money, a share of crop harvest, or a share of other products from the farm such as uprooted stumps for wood fuel or rocks/ stones dug out from the piece of land, labour offered by the tenant to the landowner, or any other items or support as may be agreed between the tenant and the landowner.
 - i) Both the tenant and the landowner will agree on how the rent will be calculated, terms/ mode of payment, and consequences to the tenant for not honoring the payment within the agreed terms.
 - j) Both the tenant and the landowner will agree on the responsibilities of each party as pertain to crops and/ or activities on the leased piece of land, including care of the crops and/ or activities.

Conflict management

Both the tenant and the landowner will have to understand the risks involved and how to manage them to prevent conflicts. In this regard, they will:

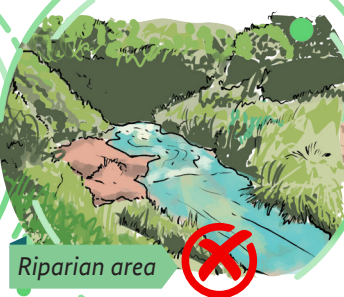
- a) Involve their family members.
- b) Agree and state their dispute resolution mechanisms.
- c) Identify and involve their witnesses who are of sound mind and age.



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- d) Agree and write down the consequences or penalty to the tenant for misuse of the leased land, refusal to vacate the leased piece of land at the end of the lease, or any other breach of contract by the tenant.
 - e) Agree and write down the consequences to the landowner for premature termination of the lease, encroachment into the leased piece of land without the tenant's permission, use of the tenant's crops or other items or animals on the leased piece of land without the tenant's permission, or any other breach of contract by the landowner.
 - f) Agree and write down their responsibilities as pertain to the leased piece of land during the lease term and consequences for breach of contract by either party.
 - g) Agree in writing on the compensation or penalty to either party in case of breach of contract.
 - h) Agree in writing that the tenant shall not sub-lease the leased piece of land nor harbour undesirable persons on the leased piece of land.
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Land restricted from leasing

- a) The landowner and tenant shall not enter into an agricultural lease agreement for community and government land, cultural sites, road reserves, land belonging to other people or institutions, or land that is meant for preservation under the Land Act, 2012; Land Registration Act, 2012; Community Land Act, 2016; or any other law in Kenya such as riparian areas (areas situated on the riverbanks and streams).
- b) A farmer/ group shall not sublease a piece of land that he/ she/ they has/ have leased from another person.







Conditions for land leasing



- a) **Age limit:** In Kenya, the Contracts in Restraint of Trade Act (Cap. 24), permits only adults of sound mind to enter into agreements. As such, one is considered to be an adult upon attaining the age of majority (18 years). To that effect:
 - i) The landowners and tenants shall enter land lease agreements with counterparts of adult age.
 - ii) In cases where under-age orphans or custodians of family land wish to lease out the land, the local administrator shall confirm that they have a genuine need for leasing out the piece of land and that they have an adult representative of sound mind and health who may be their family member, their neighbour, or a close family friend of their own choice who can stand in as a guardian.
 - iii) Identification information and address of the adult representative stated in ii) shall be noted and attached to the land lease agreement form.
- b) **Witnesses:** The signing of the land lease agreement form must be witnessed by at least two (2) independent people. To that effect:
 - i) The landowner and the tenant shall each choose adult witnesses of sound mind.
 - ii) A witness will not be restricted to religion, gender, clan, race, language, etc.

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- iii) Witnesses must present their original identification documents before signing as witnesses on the lease agreement form.
 - iv) In general, spouse(s), one or more of the adult children irrespective of whether the children were born within the marriage or outside or even before the marriage, one or both parents, a guardian, one or more of the adult siblings, a friend or a confidant, any other family member, a neighbour to the leased piece of land, a village elder or other local administrator other than the endorsing administrator, and any other people of the choice of the landowner or tenant can serve as their witnesses.
- c) **Next of kin:** The tenant and lessor shall each choose a next of kin for the leased piece of land and all transaction related to it. In this regard:
- i) The landowner and the tenant shall each choose a next of kin who shall be their identified successor in case of demise or inability to execute legal obligations.
 - ii) A next of kin will not be restricted by religion, gender, clan, race, language, etc.
 - iii) The next of kin of the tenant will take over all the rights, obligations, and liabilities of the tenant as stated in the land lease agreement form in case of the demise or inability to execute legal obligations of the tenant.
 - iv) The next of kin of the landowner will take over all the rights, obligations, and liabilities of the landowner as stated in the land lease agreement form in case of the demise or inability to execute legal obligations of the landowner.
 - v) In general, spouse(s), one or more of the adult children irrespective of whether the children were born within the marriage or outside or even before the marriage, one or both
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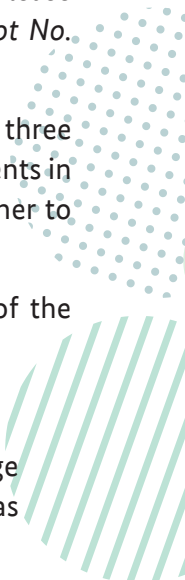
parents, a guardian, one or more of the adult siblings, a friend or a confidant, any other family member, a neighbour to the leased piece of land, a village elder or other local administrator other than the endorsing administrator, and any other people of the choice of the landowner or lessee and of good moral standing can be their next of kin.

- d) **Lease term:** The lease term shall begin and end on the dates agreed upon by the landowner and tenant and stated clearly in the land lease agreement form.
- e) **Rent:** The rent shall be the amount agreed upon by the landowner and tenant and stated clearly in the land lease agreement form.
 - i) The rent can be determined by the fertility and productivity of the piece of land to be leased; the intended use of the piece of land to be leased; the current market rates of the specific area where the piece of land to be leased is located; inflation rates; location of the piece of land to be leased, especially where infrastructural challenges are taken into consideration; available amenities such as storage structures, or other factors such as the relationship between the landowner and lessee.



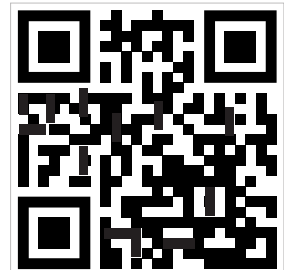
- ii) The decision on the final rent and mode of payment (lumpsum or installments, monetary or kind, cash or M-Pesa or bank, etc.) will rest with the landowner and the lessee.
- f) **Signing of the land lease agreement form:** Both the landowner and the tenant and their respective witnesses shall sign the land lease agreement form in the presence of a local administrator for the area where the piece of land being leased is located. The landowner and the lessee can take pictures of the signing exercise as additional proof of the transaction. These pictures may not be admissible as evidence in a court of law but could assist in out-of-court resolution of conflicts and act as a deterrent to mischief.
- g) **Custody of the land lease agreement form:** The land lease agreement form shall be filled in and signed in triplicate.
 - i) The local administrator shall endorse all three (triplicates) of the duly filled and signed land lease agreement form on all their pages.



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- ii) The endorsing administrator shall hold custody of one of the three originally signed and endorsed land lease agreement forms in the office file as an official document and give one to the landowner and the other to the lessee for their custody.
 - h) **Review of the lease:** Any review of the lease shall be agreed upon between the landowner and the lessee and shall be communicated to the office of the local administrator who endorsed the original land lease agreement form. In this regard:
 - i) Such a review shall require filling in a new land lease agreement form in which case it shall again be filled in and signed in triplicate.
 - ii) The local administrator shall again endorse all the three (triplicates) of the duly filled and signed land lease agreement form on all their pages and write the words “Amendment to the land lease agreement entered between (*name of the lessee*) and (*name of the landowner*) on (*date of original land lease agreement*) for the piece of land (*indicate the leased plot No. and/ or description*)”.
 - iii) The endorsing administrator shall again keep one of the three originally endorsed land lease agreement form amendments in the office file and give one to the landowner and the other to the lessee.
 - iv) A review of the lease shall occur due to one or more of the following:
 1. Changes in witnesses and next of kin.
 2. Change of use of the leased piece of land i.e., change of crop, animals, or activity, or any other thing as agreed in the original land lease agreement form.
 3. Changes in the lease term.
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4. Alteration in the boundaries of the leased piece of land, including any expansion or reduction on the area of the leased piece of land.
5. Changes in the rent or security and mode/ terms of payment of the rent.
6. Changes in the degree of freedom and control by both the landowner and the lessee.
7. Any other amendment to what was written in the original signed lease agreement form.

To access a land lease agreement form, and guidance on how to utilize and fill it out, please refer to the attached QR code.





Breach of the land lease agreement

- a) The following are considered breach of the land lease agreement:
 - i) It is discovered that the lessee is growing illegal/ prohibited crops such as marijuana or is keeping wild animals on the leased piece of land.
 - ii) The lessee fails to pay rent as agreed.
 - iii) The lessee damages the leased piece of land or structures/ other properties thereat or another action beyond the threshold established in the lease agreement.
 - iv) The landowner destroys the crops or interferes with the activities of the lessee on the leased piece of land or fails to prevent his/ her family, friends, or livestock from destroying the crops and/ or properties or interfering with the activities of the lessee on the leased piece of land.
 - v) Failure by either the landowner or lessee to observe and adhere to any one or more of the conditions set out in the lease agreement.
- b) For whatever reason that either the landowner or lessee breaches the contract:
 - i) The aggrieved party shall report the matter to the office of the local administrator who endorsed the original land lease agreement form.
 - ii) The local administrator shall resolve the dispute pursuant to the Alternative Dispute Resolution Bill, 2021.





Termination of the lease agreement

- a) A land lease agreement will be terminated at the end of the lease as agreed between the landowner and the lessee in the land lease agreement form.
- b) In case the landowner and the lessee mutually agree to end the lease agreement earlier than agreed in the lease agreement form, they must involve the office of the local administrator who endorsed the original land lease agreement form.



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