

FAO LAND TENURE NOTES

1

Leasing agricultural land



The cover features a central white rectangular area with a thin black border. This area is flanked by two vertical bars: a light green bar on the left and a dark green bar on the right. The text 'FAO LAND TENURE NOTES' is centered in the white area in a dark green, sans-serif font. Below it, the number '1' is displayed in a large, bold, dark green font.

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1

Leasing agricultural land

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ISBN 92-2-105167-4

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Preface

FAO's Land Tenure Notes provide information on land tenure in a format that can be used by grassroots organizations that work with small farmers and others in rural communities. Improving secure access to land by the rural poor is essential in order to reduce poverty and hunger and to promote sustainable rural development. Improving people's knowledge of their rights to land is an important part of making rights real, thereby allowing them to improve their livelihoods.

Fair and secure leasing arrangements that balance the interests of the tenant and the land owner can lead to improvements in access to land for farming, better agricultural production and improved access to food. This guide is intended primarily to support those who work with small farmers by providing information on "good practices" for leasing land, and advice on how this information could be adapted to fit local conditions. In addition, some farmers, whether tenants or land owners, may find this guide useful even without its adaptation.

The information in this guide is based on FAO's Land Tenure Studies Number 2: "Good practice guidelines for agricultural leasing arrangements". This document is available at:

<http://www.fao.org/DOCREP/004/Y2560E/Y2560E00.HTM>

More information on the Land Tenure Studies, and on FAO's work in land tenure, is available at:

http://www.fao.org/sd/LTdirect/ltstudies_en.htm

http://www.fao.org/sd/IN1_en.htm ■

A word to those who work with small farmers and land owners...

This guide focuses on technical factors related to leasing arrangements that can benefit both land owners and tenants. It is aimed at non-governmental organizations (NGOs) and others who work with farmers. Starting on page 4, the guide provides information on leasing which NGOs can share with farmers.

In order to understand how leasing arrangements work, it is necessary to consider a number of contextual factors. At the core of effective leasing arrangements is a relationship between land owners and tenants, which is in some way guaranteed or supported by the state. In an effective relationship, each party has certain rights and obligations to fulfil; the role of the State and of the law is to ensure that these rights and obligations are respected.

In some cases, the relationship between land owners, tenants and the State may not be clear or not directly helpful to establishing fair and secure leasing arrangements. Leasing often takes place in situations where social relationships are unequal. When one party is much more powerful than the other, entering into formal leasing contracts is not an easy thing to do. And should contracting arrangements not be protected under the rule of law, a signed lease is not likely to be mutually beneficial.

However, there are many cases where both the tenant and land owner can benefit from having a clear leasing agreement. This guide aims to help people when there is joint willingness to enter in a “win-win” relationship with regard to land tenure arrangements. The guide supports the preparation of mutually beneficial lease contracts by identifying key features that make such contracts effective for both the owner and the tenants.

Leasing agricultural land

A leasing contract never exists in isolation. It is prepared and enforced within a specific policy, legal and social environment. The key areas below will need to be considered before conducting any training, to ensure that the information shared with tenants and land owners is as relevant as possible.

REGULATORY ENVIRONMENT

- ⦿ Are there legal or customary regulations controlling leases? If so, are the institutional structures strong enough to enforce them, or is there a disparity between policy and practice, even when leasing arrangements are officially sanctioned?
- ⦿ Are there disparities between legislation and customary law that need to be considered?
- ⦿ Are there any existing laws that may affect a lease agreement by supplementing, regulating or altering the terms of the agreement itself (e.g. rent control laws, land registration legislation)?
- ⦿ Are there reliable, fair and accessible mechanisms (state and non-state) for resolving disputes and for providing remedies when promises are broken?
- ⦿ Are there any local conditions which might affect the terms and conditions of leases (for example, environmental conditions or social conditions)?

OTHER CONSIDERATIONS

- ⦿ What is the literacy level of the participants? If it is low, what kinds of illustrative material should be prepared to supplement the presentation?
- ⦿ Should the guide, or key points in the guide, be translated into the local language before the training?
- ⦿ Are there model leases available to distribute during the training? If so, how complex or effective are they? ■

Introduction

Land is one of the most important assets of a farmer, providing food for the family while surplus yields can be used to earn extra income. For many farmers, leasing of land is a fact of life. For those with no land or insufficient land for their needs, acquiring land through leasing goes a long way to determining their future security. For land owners, extra income or produce can be acquired by leasing land to others in exchange for cash or a portion of the harvest.

At the core of most of these land-leasing arrangements are three issues shared by tenant and land owner alike: risk, security and trust. The success of the land owner-tenant relationship depends on the level of trust that can be established between them. And a proper agreement can lay the groundwork for such trust – through flexibility for the land owner and security for the tenant. In this way, many potential problems or disputes can be avoided.





What are leases?



When should they be used?



What needs to be done to create a lease?



What information should be included in a lease?



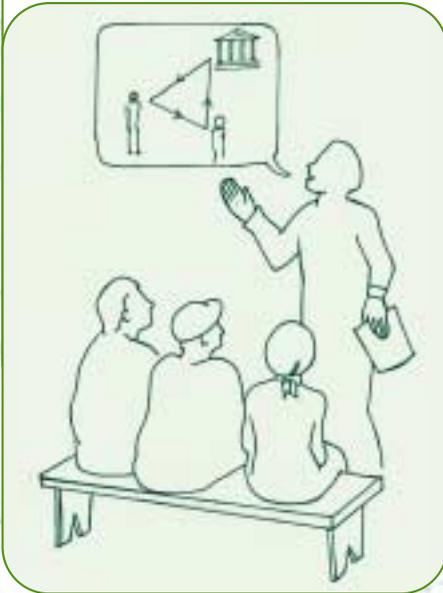
This guide attempts to answer these questions in a simple and straightforward way. It assumes that arrangements can be made that balance the interests of the tenant and the land owner, leading to improved access to farms, better agricultural production and greater food security. ■

Before preparing the lease

When drawing up a lease, three factors play a key role:

- ⦿ The length of the lease term, together with the security provided by the tenancy;
- ⦿ The degree of freedom and control given to the tenant; and
- ⦿ The flexibility and financial implications of this combination of length of the lease, security, freedom and control.

Leases that are strongly regulated and protective of the tenant can be unacceptable to land owners, who may feel that their power and flexibility are being too restricted. At the same time, a lease that is highly informal or under-regulated is not in the best interest of tenants as it may deny them a reasonable level of security. The key is to find a balance that is suitable to both land owners and tenants. ■



The elements of a tenancy agreement

The following elements should be included in a tenancy agreement. Although it may not be necessary for a lease to include all of these elements, it is advisable not to omit too many of them. Otherwise the security of the leasing agreement could be compromised.

- ⊙ Names of the parties
- ⊙ Commencement and duration of the agreement
- ⊙ Description of the property
- ⊙ Rent
- ⊙ Rights to possession and use
- ⊙ Upkeep of the land
- ⊙ Condition of the land on return
- ⊙ Making improvements or changes of use
- ⊙ Arrangements for compensation
- ⊙ Responsibility for paying taxes and other charges
- ⊙ Dispute resolution
- ⊙ Record of the agreement. ■



🕒 Names of the parties

The names of the parties are at the core of the agreement. They provide a level of protection and a basis for building trust for those involved. An agreement between a single tenant and a single land owner is simple.

However, if there is more than one land owner, the question should be asked: Do they own the whole farm jointly (thus allowing the use of a single agreement) or do they each own part (suggesting the need to use separate complementary agreements)?

If there is more than one tenant, the agreement may be to ensure that the tenancy continues in the event that one of the tenants dies. This could be done by having the lease include the names of all members of the family who will work together on the land to be leased. Often the male head of the household is the only person listed on the lease, but should he die, his family members could be deprived of the land that they are farming. ■



🕒 Commencement date and duration of the agreement

The commencement date specifies when the responsibility for the property transfers from the land owner to the tenant. The duration of the agreement will vary of course, and can take different forms. It can be a fixed term (for example, one year) with or without an option to renew; or it can be periodic (for example, monthly or yearly continuing until one of the parties gives the required notice), often subject to a minimum initial term. Some agreements also allow for a “hold-over”. This means that at the end of the lease, the tenant can stay on the land for a specified amount of time.

It is important for the tenant to try to match the duration of the lease with the desired results. This could be in relation to the type of crops that will be grown. For example, the cycle for some vegetables is only several months, whereas for others (such as coconut trees) the cycle can be 50 years.

Both the land owner and tenant may want to consider matching the duration of the lease to any family requirements that may exist. For example, a land owner may wish to lease the land only until the next generation is old enough to farm it. ■



🕒 Description of the property

It is important that the property to be leased is clearly described. The description should include how the area of the land is determined, whether by physical features marking boundaries or by surveys or plans. For a small parcel of land to be leased on a less than annual basis (for seasonal grazing, for example), a simple sketch may be sufficient. For a longer time and for larger parcels, a plan and a written description are preferable. These documents will explain what is, and is not, included in the agreement, and they can also form the basis of further agreements. ■



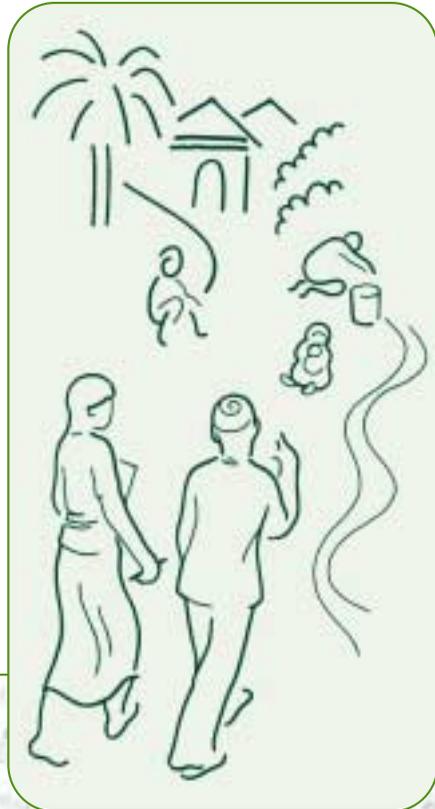
🎯 Rent

The tenant normally pays rent or some other consideration, such as a share of the crop. It is critical for the protection of both land owner and tenant that the rent is specified and is certain. Even if the actual amount of the rent may not be known at the start of the agreement, the lease should clearly specify how the rent will be calculated and when payment is due. It may also be necessary to reserve the right to review the rent at one or more points in the future, especially in longer-term leases. In these cases, the rental level could change because of inflation or currency fluctuations. Or the value of the agricultural products could change. Periodic reviews will therefore protect the land owner's financial interest in the property as well as the tenant's ability to pay. ■



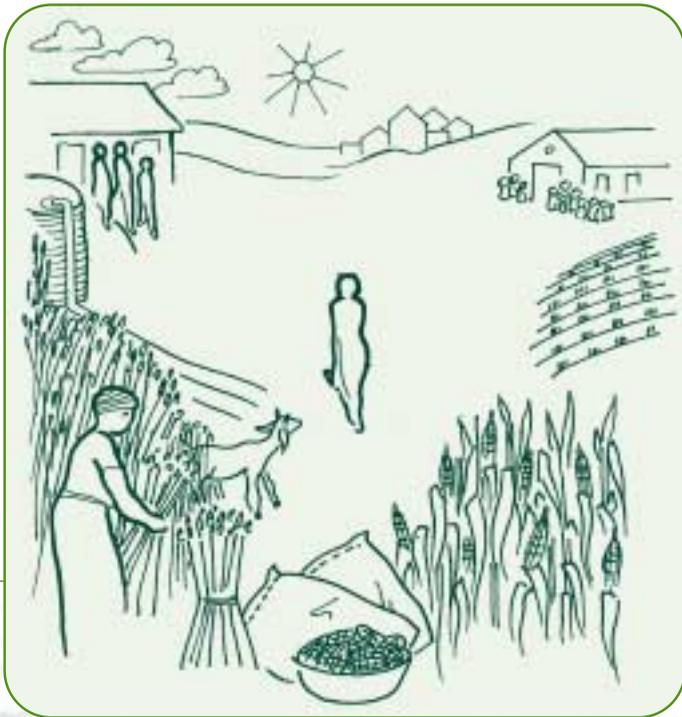
🕒 Rights to possession and use

The degree to which a tenant is given the right to possess and use the land is one of the key defining elements of a tenancy. The greatest degree is a “full tenancy” where the tenant has full and exclusive possession of the land. This means that the land owner will have to make appointments to have access to the land, for example, for periodic inspections of the property. If the lease is an annual one, these inspections could take place at the same time as the lease is being prepared or renewed. Or, the land owner may need to have access to the land to fulfil specific maintenance or repair obligations. Good practice would also be for the tenant to have freedom of choice as to which crops to grow, within appropriate limits, although this may be difficult with short-term agreements. ■



◎ Upkeep of the land

Good practice includes a full description of the maintenance and repair obligations of both the land owner and tenant. The details will depend upon the length and the terms of the lease. For example, longer-term leases tend to give greater obligation to the tenant. This type of agreement should be included even if only a small parcel of land is to be leased. Even on small parcels of land, drainage channels and boundaries can still require attention. ■



◎ Condition of the land on return

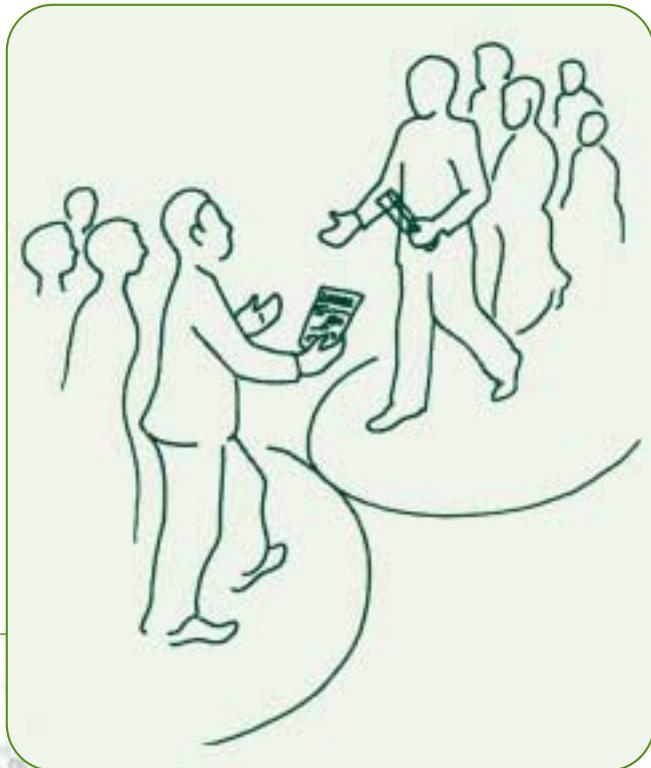
All leases should address the required condition of the land when it is returned by the tenant to the land owner. The lease may include an agreement by the tenant to return the land in a condition similar to that which it was in at the start of the lease, regardless of the division of maintenance responsibilities described under the heading “Upkeep of land”. Alternatively, there may be an agreement by the tenant to return the land in “good condition”, rather than in a “similar condition”. An agreement to return the land in good condition may first require the tenant to put the land into good condition.

In the case of a larger parcel of land or a longer-term agreement, it is important to prepare a full statement of the physical condition of the property at the time that it was leased. ■



◎ Making improvements or changes of use

It is good practice to make sure that the tenant does not make any alterations or changes of use without the explicit consent of the land owner. Possible exceptions to such a general agreement should be specified, for example, to create livestock-proof boundaries around a parcel of land. ■



◎ Arrangements for compensation

Often the tenant may need to make improvements or alterations to the land to make it suitable for use. In some cases, these improvements result in costs that cannot be recovered at the end of the lease. At the same time, they add value to the land. In these cases, the tenant should be able to claim compensation for this increase in value.

Of course, the opposite is also true: the alterations made may have damaged the land and reduced its value. In this case, the land owner would want to claim compensation.

Therefore, it is good practice to negotiate and include in the lease the requirement for the land owner's explicit consent to improvements and alterations. The lease should also specify the conditions under which compensation is to be paid and the way in which the value of the compensation is to be calculated. ■



◎ Responsibility for paying taxes and other charges

In longer-term agreements, especially when the tenant is given exclusive possession, the land owner may need to assign responsibility for paying various charges connected with the property. These charges might include local taxes and levies (such as a water charge), a proportion of the maintenance cost of shared resources (such as service roads and drainage) and insurance to cover fire, theft and other damage.

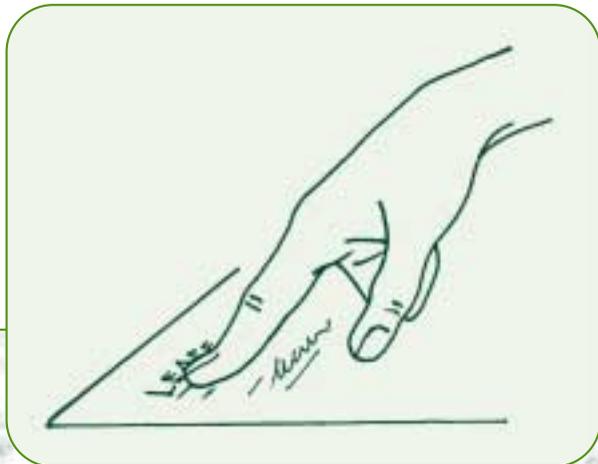
Again, the type and extent of these responsibilities and obligations should be specified in the lease and will depend on the character of the land being leased and the length of the agreement. ■



🕒 Dispute resolution

The lease should also have a provision for resolving any disputes that may arise. This provision should cover general disputes between the parties (for example, disputes over the interpretation of particular wording in the lease), as well as specific disputes relating to issues such as rent reviews, maintenance obligations and requests to undertake improvements.

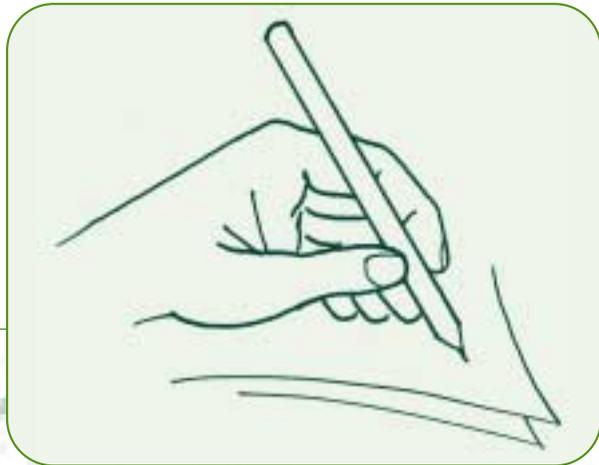
Of course, the lease itself should attempt to anticipate where disputes are likely to occur, so that they can be avoided altogether. For example, if the harvest is to be divided between the tenant and land owner, the lease should specify that the tenant must inform the land owner when the crop will be harvested, thus allowing both parties to see the crop yield. ■



🕒 Record of the agreement

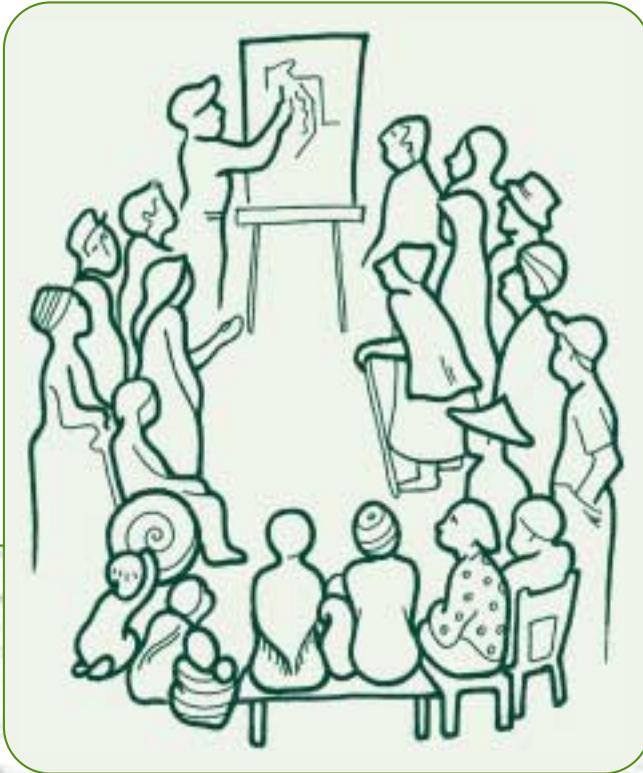
Contracts to lease a parcel of land are often verbal. However, for many leases it is good practice to make sure that they are recorded in writing. In some countries, all agricultural tenancies have to be in writing, and even have to be in a particular style or format, or under a legal seal. In some cases, tenants choose to have their leases registered.

Legal provisions vary between jurisdictions, and land owners and tenants should understand what kinds of provisions exist where they are. They should use those provisions to assure maximum flexibility, protection and security. ■



A final word

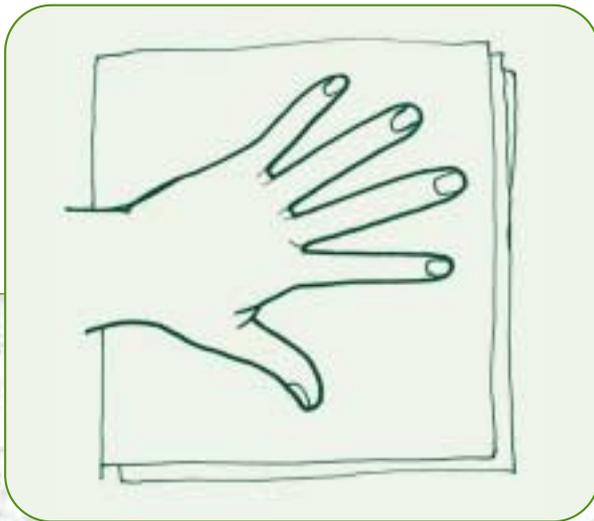
Model leases are available in a number of countries. They are sometimes drafted by the government as officially recognized forms of agreement. In other cases, they are drafted by associations of land owners or tenants. Model leases are also often available from lawyers and others involved in drafting lease agreements. Using the essential elements of a lease outlined in these guidelines, the simplest form of contract may be one or two pages. For more complex agreements, the lease may be several pages.



✎ Leasing agricultural land

The land owner and tenant should each have a copy of the lease agreement. It is an important document and should be kept safely. In addition, over time the land owner and tenant may agree to make modifications to the lease. These should be properly documented, and all parties should have a copy of them.

Making the process “transparent” can help to avoid possible disputes in the future. The ways that transparency takes place can vary – it could be, for example, a witness being present, the witness actually signing the agreement, or the agreement being signed before a notary. ■



This guide on *Leasing agricultural land* is designed to provide information on leasing arrangements in a format that can be used by grassroots organizations that work with small farmers and others in rural communities. Fair and secure leasing arrangements that balance the interests of the tenant and the land owner can lead to improvements in access to land for farming, better agricultural production and improved access to food.

At the core of most land-leasing arrangements are three issues shared by tenant and land owner alike: risk, security and trust. The success of the land owner-tenant relationship depends on the level of trust that can be established between them. A proper agreement can lay the groundwork for such trust, through flexibility for the land owner and security for the tenant. In this way, many potential problems or disputes can be avoided. The guide provides information for tenants and land owners who are interested in benefiting from having a clear leasing agreement. It supports the preparation of mutually beneficial lease contracts by identifying key features that make such contracts effective for both the owner and the tenant.

ISBN 02-5-105167-4 ISSN 1612-3163



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