



Global
Soil Week



COMMUNITY-LED LAND-LEASE GUIDELINES

ISUKHA CENTRAL WARD – SHINYALU SUB-COUNTY,
KAKAMEGA COUNTY

Doreen Magotsi | William Onura Akwanyi | Violet Shivutse | Serah Kiragu-Wissler

ACKNOWLEDGEMENT

This booklet narrates how the community of Isukha Central Ward piloted development of Land Lease Guidelines in 2017. This pilot process aimed to increase the security of tenure in land leasing and to ensure mutually beneficial relationships for both parties in a lease agreement. A copy of the guidelines and the Land Lease Agreement Form developed by the community is also included in this booklet.

The community-led process was facilitated through the financial support of the German Ministry for Economic Cooperation (BMZ) and technical support from the Global Soil Forum of Institute for Advanced Sustainability Studies – Potsdam (IASS-Potsdam) and Shibuye Community Health Workers CBO. Special thanks to Violet Shivutse and Doreen Magotsi of Shibuye Community Health Workers CBO and William Onura of Centre for Training and Integrated Research in ASAL Development (CETRAD).

The impetus for enhancing tenure security in land leasing goes back to a multi-stakeholder Lessons Learnt Workshop that took place in Kisumu in February 2016. At this occasion, all participants agreed on priority areas to be tackled in order to enable more sustainable land management in Western Kenya.

Many thanks too to the residents of Isukha Central Ward who took up the land lease guidelines development process with a lot of enthusiasm.

Doreen Magotsi is a Programme Officer with Shibuye Community Health Workers

William Onura Akwanyi is a Research Assistant with Center for Training and Integrated Research in ASAL Development (CETRAD)

Serah Kiragu-Wissler is a Research Associate with Institute for Advanced Sustainability Studies Potsdam (IASS-Potsdam)

Violet Shivutse is the Director of Shibuye Community Health Workers CBO

Frontpage picture shows launch of the CL-LLG at Shiasaba Sub-location
© Serah Kiragu-Wissler

COMMUNITY-LED LAND-LEASE GUIDELINES

**ISUKHA CENTRAL WARD – SHINYALU SUB-COUNTY,
KAKAMEGA COUNTY**

Doreen Magotsi | William Onura Akwanyi | Violet Shivutse | Serah Kiragu-Wissler

TABLE OF CONTENTS

Background: Land leasing for increased
land access and food security.....1

The Guidelines Development Process.....3

Land Lease Guidelines.....8

Land Lease Agreement Form.....16

BACKGROUND:

LAND LEASING FOR INCREASED LAND ACCESS AND FOOD SECURITY



Ward-level Land Lease Guidelines consolidation meeting in Shinyalu © William Onura

For households without sufficient agricultural land or no land at all, particularly in rural areas of western Kenya, leasing farming land is a common strategy to meet household food needs and generate income. Women and youth in particular are more predisposed to restricted land access. According to dominant customary laws on inheritance, land is passed from father to son. Women's main avenue to land access is through relationship with male relatives.

But the potential of agricultural land leasing in contributing to household food security is not sufficiently unlocked due to challenges in leasing relationships. Insecurity of tenure over leased land is common. Conflicts regularly arise in leasing arrangements. Common examples are crop theft, unlawful grazing, disagreements over boundaries, or leasing rates and leasing periods. Such conflicts often result in premature end of leasing agreements most of which are made orally/verbally and without witnesses.



A meeting of Shing'oto Sub-location LLG drafting committee © Alexina Makongo

In recognition of these challenges, the local community from Isukha Central Ward in Shinyalu Sub-County, Kakamega County has pioneered a process of drafting guidelines for farm-land leasing with the aim of reducing insecurity of leasing and facilitating more households to

access farming land. The process was supported by a Kakamega-based grass-root organization – Shibuye Community Health Workers CBO – and the Global Soil Forum of Institute for Advanced Sustainability Studies-Potsdam (IASS-Potsdam), Germany.

THE GUIDELINES- DEVELOPMENT PROCESS

The process of developing the Land Lease Guidelines, undertaken in 2017, comprised of 6 steps of awareness creation, consultation and negotiation between institutional stakeholders and the local community in Isukha Central Ward.

1 | AWARENESS AND CONSULTATION WITH GOVERNMENTAL INSTITUTIONS

This first step aimed to introduce the idea of Lease Guidelines to institutional stakeholders and to get their input into the design of the process of developing the Guidelines. Local authorities such as area administrators, staff from ministries of Agriculture and Lands as well as representatives from Land Control Board were consulted. The stakeholders welcomed the process as being timely. The Assistant County Commissioner expressed hope that such an initiative could contribute to reducing land lease conflicts.

2 | MOBILIZATION AT COMMUNITY- LEVEL (SUB-LOCATIONS)

Five sub-location level meetings were held in the month of April 2017 and aimed to mobilize participation of the local community in the development of the Lease Guidelines. At minimum, the meetings comprised of area Assistant Chiefs, village elders, members of Land Control Board, youth, women and men representing different community categories (e.g. young farmers; women widows, land lessors, land lessees).

These sub-location level meetings raised various concerns over land leases and nominated respective drafting committees which later drafted Lease Guidelines based on these concerns. The four sub-locations were Virhembe, Shiasaba, Shing'ondo and Mukango. Due to its vastness, Shing'ondo was split into two – Shing'ondo A and Shing'ondo B. The average number of participants per meeting was 30 persons.



Launch of the CL-LLG at Pefa Church, Shinyalu © William Onura

3 | DRAFTING OF LAND LEASE GUIDELINES

Each sub-location land lease guidelines drafting committee comprised of approximately 15 persons and held a maximum of three sessions (3 days). The members deliberated on the content of the Guidelines based on the issues raised at the sub-location level meetings and consulted in between meeting sessions.

Common issues across the drafting committees included: approval by immediate family members (e.g. wife), leasing fees, leasing period, witnesses, boundary marking, authentication of ownership, crops, oversight of enforcing lease agreements.

The output by the sub-location level drafting committees was a list of land leasing issues of concern and how they were to be catered for under agricultural land leasing arrangements.

4 | CONSOLIDATION AND APPROVAL – WARD LAND LEASE GUIDELINES

A ward-level Land Lease Guidelines consolidation meeting was held on 25th April and comprised of 42 participants including nominated Members of the Land Lease Guidelines drafting committees, the Ward Administrator, the two Assistant County Commissioners, the area Chief, Assistant Chiefs, members from the Land Control Board, Kenya Forest Service, village elders, members of *Nyumba Kumi* (village security vigilante team), community opinion leaders, church leaders and retired officers from the public service. The meeting aimed to build consensus on the issues and recommendations formulated by the Land Lease Guidelines drafting committees.

The meeting culminated in the formulation of two outcomes:

- a. Isukha Central Ward Land Lease Guidelines
- b. Isukha Central Ward Lease Agreement Form

5 | LAUNCH OF THE LAND LEASE GUIDELINES

This step endeavoured to launch the community-led Land Lease Guidelines and create awareness of their existence at sub-location level. Two launch meetings were held: one on 25th July 2017 and the other on 29th August 2017. They were attended by all the members of the drafting committees as well as local leaders including church leaders. The sentiments shared by the participants confirmed that the initiative was long overdue and the process was consultative. Below is a sample of the sentiments:

“... the guidelines were not developed by Shibuye (sic) and brought to us, we formulated them ...” (A participant from Mukango Sub-location)

“... we now have a grassroots solution to disputes brought to Land Control Board...” (a participant who is also a member of the Land Control Board which manages agricultural land transactions. According to her, the requirement to involve family members in lease arrangements would contribute to building unity in families and this would be reciprocated even in the cases of sale transactions.

6 | LAND LEASE GUIDELINES
IMPLEMENTATION AND INTERNAL
MONITORING

The local community of Isukha Central Ward recommended formation of a community land lease committee at sub-location level, to oversee wider popularization and implementation of the Guidelines. This committee will comprise of area Chief, Assistant Chief, a village elder, a youth representative, a women representative, a representative from the Lands Control Board, a technical advisor

from the agricultural office, and a representative from the civil society.

This committee will meet regularly to review implementation of the Lease Guidelines and ensure they meet the needs of the users, including consolidating emerging issues that may necessitate revision of the Guidelines.

The process of developing the land Lease Guidelines is summarised in the diagram below.

Figure 1: Process of developing the community-led land lease guidelines (CL-LLG)





A lease-guidelines consolidation sub-group meeting at Shinyalu market © Joan Shivachi

Copies of Land Lease Guidelines and Land Lease Agreement Form can be obtained from the Assistant Chief's, Chief's or Shibuye Community Health Workers Office.

FOR FURTHER INFORMATION: Please contact Mrs. Violet Shivutse, Shibuye Community Health Workers CBO, P.O. Box 56 Shinyalu 50107 Kenya; Email shibuyechw@yahoo.com; Tel: +254 724233930

LAND-LEASE GUIDELINES

The following are the Land Lease Guidelines as developed by the local community of Isukha Central between March and August 2017.

1. COMMUNITY LAND LEASE COMMITTEE (CLLC)

A committee to oversee land leasing transactions shall be established at the sub-location level. The committee shall be known as community land lease committee (CLLC) and shall comprise of:

- a) The chief who shall be an ex-officio member of the committee
- b) The Assistant Chief who shall be the chairperson of the committee
- c) Representative senior village elder of that sub-location
- d) One youth representative who is involved in farming
- e) One representative of women cutting across all categories of women such as single, married, separated and widowed
- f) A representative from Land Control Board
- g) A technical advisor from the agricultural extension office or county Ministry of Agriculture office

- h) One person representing the Civil Society Organizations (CSOs)

The committee shall hold meetings once every month to discuss matters relating to land leasing in the respective sub-locations. The committee shall also be responsible for resolving conflicts related to land leasing. The committee members can also decide to have a special sitting depending on the case necessitating such a meeting. The committee can invite parties affected by land lease conflicts into their meeting.

2. PROCEDURE FOR LAND LEASING

Leasing land shall follow the following procedure:

- a) Identification of a piece of land to lease by the potential lessee (person having the intention to lease land): The potential lessee shall also identify the owner of that land and involve the family members of the land owner. CLLC or one or more of its members can link potential lessees and to potential lessors.
- b) Authenticate land ownership: The lessee shall, after the land owner showing intention to lease out the piece of land so identified, confirm ownership of land by requesting one or more of the fol-

lowing documents:

- i) Land title deed
- ii) Certificate of Lease
- iii) Allotment Letter
- iv) Legal Affidavit
- v) Certificate of Search from the Land Registrar's office.
- vi) Any other document approved by law or by CLLC

These details shall be verified from identification documents of the land owner. The identification documents shall be either a national ID or a passport. Details about the ownership of the land can also be confirmed from the neighbours, elders and leaders in the area where the land is to be leased. Where there are no documents to confirm land ownership or where they are deemed to be expensive to obtain, the potential lessee and the land owner shall appear before the neighbours, elders or leaders in the area where the land is to be leased to authenticate ownership. This is because these neighbours, elders and leaders are long-term residents in the area and understand land ownership in that area.

- c) Authenticate that the land has no conflicts (free of encumbrances): This will be done through consultations with

the neighbours, elders and leaders in the area where the land is to be leased and/or where possible from CLLC. The potential lessee can request for previous users of that piece of land and interrogate them.

- d) Agree on the size of land to be leased and the boundaries: A clear description shall be made of the piece of land to be leased. A map of the area could be used to determine the boundaries. A sketch map may be drawn clearly marking important land marks on the boundaries such as trees, fence, road and terraces among others.

- e) Understand the risks involved and how to manage them: The lessee and the lessor are advised to put in place measures that will help reduce all possible risks in engaging in land lease transaction. This will help minimize conflicts. For this reason, the following shall be done:

- i) The lessee shall ensure that lessor's family has some land left for their own use in order to prevent encroachment into the leased farm by the lessor and/or his/her family;
- ii) The parties shall put in place dispute resolution mechanisms;
- iii) They shall agree on implications for premature termination of the lease

and for refusal to vacate from the leased piece of land at the end of the lease period;

iv) They shall identify and agree on witnesses; and

v) They shall agree on obligations to any breaches and arrangements for compensation.

f) Agree on rights to possession and use and the degree of freedom and control by both the lessor and lessee: The lessor and the lessee shall agree in writing on the rights of the lessee on using the land after leasing. When defining these rights, the following shall be clearly stated in writing:

i) The intended use including the names and kinds of crops to be grown, number of bricks to be made and amount of gold to be extracted among others.

ii) Modalities for inspection of the leased piece of land by the lessor.

iii) Possibility of the lessee using other assets that are available on that piece of land such as fruit trees, line plantings of fodder, pit latrines, water wells and protected springs among others.

iv) Possibility of protecting and improving the fertility of the leased piece of land through practices such as fencing, application of manure, lime; terracing and agroforestry.

v) Possibility of the lessee to maintain infrastructure and assets on that piece of land for instance maintenance of access roads, terraces and fence(s) and pruning of trees.

vi) Possibility of the lessor accessing and using assets and important features including graves, perennial crops such as fruit trees and line plantings of fodder, pit latrines, water wells and public facilities such as protected springs.

g) Ensure provision is made for public utilities such as roads: The potential lessee and potential lessor shall ensure that there is adequate road access to the land that he/she intends to lease and to other pieces of land, homesteads and facilities that are found behind the piece of land intended for lease or utilities such as water wells and protected public springs within the piece of land.

h) Agree on the timeframe for the lease: The lessor and the lessee shall agree on when the responsibility for the piece of land to be leased will be transferred from the land owner to the tenant. The two parties shall also agree on the duration of the lease, whether the lease will be for a fixed term, the possibility and requirements for renewal and the implication on the lessee when he/she hands back the land at the end of the lease period. The duration of the lease shall be matched with the intended use

such as the type of crop to be grown or other factors such as leasing until the children of the land owner are old enough to farm on that piece of land.

- i) Address the condition of land on return to the lessor at the end of the lease period: The physical condition of the land shall be described in writing before the lease is granted. This will form a basis for determining the required condition of the land when it is returned to the lessor at the end of the lease period. Land can be returned in a number of conditions such as similar, good and better among others.
- j) Agree on the security or rent to be offered for the lease: The lessor and the lessee shall agree on a specified rent to be given for the lease. For instance, share of the crop, share of bricks, share of mineral (gold) and amount of money among others. Other issues that shall be considered include how the rent will be calculated, mode of payment and consequences for not honouring rent and the agreed terms.
- k) Identify and agree on witnesses: The lessor and the lessee shall identify and agree on witnesses who are of sound mind and age as required by law.
- l) Agree on the flexibility of altering the lease agreement and financial implications: The lessor and the lessee shall agree on whether or not to review the

lease at one or more points in future. They shall agree on an opportunity for change or expansion of use on leased land. Things that can be reviewed include use of the leased piece of land, degree of freedom and control by both the lessor and lessee, boundaries of the leased piece of land, rent, duration of the lease, mode of payment and witnesses among others.

- m) Involve CLLC: CLLC needs to be involved from the beginning or at one or more steps discussed above. The purpose of involving the committee will be to formally register the lease. The lessor and the lessee shall fill in and sign the lease agreement form in triplicate in the presence of their witnesses and the Assistant Chief and/or Village Elder.
- n) Register the lease with CLLC: The Assistant Chief shall endorse the duly filled and signed form by recording it in his register.

3. CONDITIONS

- a) Age limit: There will be no age limit for the lessor, lessee and witnesses. However, they must be above 18 years of age and of sound mind.
- b) Land-use: The community categorized land use as follows:

- i. Agricultural use shall depend on the kinds of crops; annual and perennial. Annual crops that are commonly grown in the area include maize, beans, vegetables, cassava, sweet potatoes, arrow roots, ground nuts and soy beans while perennial crops commonly grown in the area include napier grass, tea, sugar cane, bananas and fruits.
- ii. Special use may include mineral extraction (gold mining), tree planting, brick-making, rock extraction and harvesting and business space. They are special in that they may degrade or improve soil with or without the intervention of the lessee. Some special land uses such as mineral extraction demand participation of and approval by stakeholder including relevant authorities and the community as provided under section 58 of Environmental Management and Coordination Act (EMCA) 1999.

Land adjacent to rivers (riparian zone) shall not be leased except for the purposes of planting indigenous tree species that it used for catchment management.

- c) Lease duration: This shall depend on the intended use of the land being leased. The community proposes that, a single lease agreement shall not be more than five (5) years. However, if it the lease has to go beyond five (5) years, then it has to be renewed again for another have an option more than

five (5) years. All leases irrespective of the duration shall have an option for renewal. Mudete Tea Factory through the management of its tea buying centers guidelines for tea whereby the duration for leasing tea is 3 (three) years and/or multiples of 3 (three) years. Based on land uses described above, the community is of the idea that land can be leased as follows:

- i) 1 year lease: All annual crops such as maize, beans, vegetables, cassava, sweet potatoes, arrow roots, ground nuts and soy beans.
- ii) 2 year lease: All the above and napier grass.
- iii) 3 year lease: All the above and already planted tea and already planted sugar cane.
- iv) Special lease: Gold mining, tree planting, brick-making, rock extraction and harvesting and business space. The period shall be determined by a number of factors such as when the mineral will be depleted, achievement of the agreed number of bricks and maturity of the trees among others.

Any land use that leads to environmental degradation or that is listed under the second schedule of EMCA, 1999 shall be subjected to an environmental assessment for approval by National Environmental Man-

agement Authority (NEMA) as required under section 58 of EMCA, 1999. The lessee shall rehabilitate land in accordance with terms agreed upon with the lessor and in accordance with the recommendations of the environmental assessment.

d) Lease rent: The rates for leasing land will be based on the type of land and intended use among other factors such as relationship between the lessee and the lessor. The community proposes the following rates:

i) Not exceeding Kshs. 8000.00 per acre per year for use of private land for crops that are commonly grown in the area.

ii) Rates for leasing tea will go in accordance with the KTDA framework.

iii) Rates for special leases will be agreed upon based on but not limited to the following factors:

- Number of bricks
- Amount of gold
- Duration of business
- Volume of rocks
- Acreage
- Time

The community proposes that the rates for murram extraction shall be determined by the engineer's measurements and shall not be less than Kshs. 5,000.00 per tonne. The rate for tree planting shall not be less than Kshs. 8,000.00 per acre per year.

iv) Rates for public and community lands shall be in accordance with the rates established by the authorities such as Kenya Forest Service (KFS) and community organizations such as Muileshi Community Forest Association (CFA) which manage those lands. Public participation and consultation will be key in determining these rates.

e) Witnesses: A witness will not be restricted based on maximum age or gender. However, a witness shall be a person above 18 years of age, of sound mind and of good health. Both family members (close and distant relatives) and non-family members may serve as witnesses. The community proposes two or more of the following to be used as witnesses:

i) A spouse or spouses where the lessor and/or lessee is married and the spouse is still alive.

ii) One or more of mature children (above 18yrs) of the lessor and/or lessee if the lessor and/or lessee is married and has children. Arrangements will be made to inform children born of different mothers or fathers and children who are residing outside the family.

iii) Siblings to the lessor and/or lessee especially where succession of land has not taken place.

- iv) A neighbour or neighbours to the land to be leased.
- v) Village elder
- f) Signing of the lease: The lease will be signed by both the lessor and the lessee and witnessed by at least two persons. The parties to the lease will retain a copy for themselves while a third copy will be deposited/registered at the Assistant Chief's office.
- g) Termination of lease: Termination of lease may occur:
 - i) When the lesser damages the crops/property of the lessee. This shall warrant compensation.
 - ii) When the lessor fails to pay the amount agreed with the lessor and/or at the agreed time. This shall warrant penalty.
 - iii) When at the time of inspection, the lessee finds out that the lessor has degraded the land to a point that is beyond the threshold established in the lease agreement. This shall demand that the lessee pays fine for degrading the land.
 - iv) When the tenant does not meet the conditions set out in the agreement. This shall warrant penalty.



Process consultation meeting with governmental institutions in Isukha Central Ward

© William Onura

LAND LEASE AGREEMENT FORM

ISUKHA CENTRAL WARD

This Land Lease Form was developed in 2017 by the local community of Isukha Central Ward with support from Shibuye Community Health Workers CBO and aims to facility good relations in land leasing.

1. Date of Agreement: (DDMMYY) _____

2. Parties to agreement

Lessor (Owner) Particulars		Lessee (renter) Particulars	
Name(s)		Name(s)	
ID. No.(s)		ID. No.(s)	
Postal Address		Postal Address	
Tel. No.(s)		Tel. No.(s)	

3. Land area being leased

The piece of land measures _____ (insert dimensions in meters) and its boundaries are

(describe the piece of land here using visible and permanent land marks)

4. Terms of Lease

Lease fees in Kenya Shillings	
Conditions of payment (describe the conditions of payment e.g. Initial payment, balance payment)	
Period of lease	
Purpose of use by Lessee	

LAND LEASE AGREEMENT FORM - ISUKHA CENTRAL WARD

More copies of this form can be obtained at the nearest Assistant Chief's, Chief's or Shibuye CBO Office in Shinyalu Market Centre

Freedom of use by Lessee <i>(state the degree of freedom and control by the lessee)</i>	
Freedom by the Lessor <i>(state the degree of freedom and control by the lessor)</i>	
The lessee shall use the piece of land for the specified period and shall return the piece of land back to the lessor in the following conditions	

- This agreement shall remain binding between the lessor and the lessee and any amendments shall mean a new agreement.
- Any breach of this contract shall warrant a fine of Kshs. _____ to the offended.
- All conflicts arising from this lease engagement shall be communicated to: _____

Signed by:

Lessee	Lessor
Signature :	Signature :
Thumb Print:	Thumb Print:
Name:	Name:
ID. No.:	ID. No.:
Tel. No.	Tel. No.
Date:	Date:

LAND LEASE AGREEMENT FORM - ISUKHA CENTRAL WARD

More copies of this form can be obtained at the nearest Assistant Chief's, Chief's or Shibuye CBO Office in Shinyalu Market Centre

In the presence of Witnesses:

Lessee Witness(es)		Lessor Witness(es)	
1 st Witness	2 nd Witness	1 st Witness	2 nd Witness
Signature :	Signature :	Signature :	Signature :
Thumb Print:	Thumb Print:	Thumb Print:	Thumb Print:
Name:	Name:	Name:	Name:
ID. No.:	ID. No.:	ID. No.:	ID. No.:
Tel. No.	Tel. No.	Tel. No.	Tel. No.
Designation:	Designation:	Designation:	Designation:
Date:	Date:	Date:	Date:

In the presence of:

Chief/Assistant Chief/Village Elder

Signature: _____ Stamp/seal and date: _____

Name: _____

Designation: _____

LAND LEASE AGREEMENT FORM - ISUKHA CENTRAL WARD

More copies of this form can be obtained at the nearest Assistant Chief's, Chief's or Shibuye CBO Office in Shinyalu Market Centre



CL-LLG Booklet final editing by Shibuye Staff at Shibuye CBO Offices © Serah Kiragu-Wissler

Contact/Imprint

Violet Shivutse, Director
Shibuye Community Health Workers CBO
on Tel: 0724 233930
Email: shibuyechw@yahoo.com