

THE CONTENT OF THE BY-LAWS



The process of transforming oral customary norms and practices into written rules may be challenging for communities. Experience has shown that when asked to simply “shout out” existing rules and norms, community members can easily brainstorm an elaborate list. Yet when asked to follow a pre-determined structure or outline for what must be included in a community’s constitution or by-laws (as provided for in some nations’ land laws), communities may feel overwhelmed or intimidated — and remain silent.

To ensure that communities feel empowered and comfortable throughout the by-laws drafting process, facilitators should keep the process very flexible at the beginning, allowing as much space and freedom as possible for communities to capture their unwritten rules and practices in whatever form suits their needs. Facilitators should create an environment in which communities feel free to write their rules in whatever phrasing they feel is best and to organize them in a way that makes the most sense to them.

Most critically, **facilitators must not rewrite a community’s rules into more “formal” or “legal” language**: although it is best if the rules are written in full sentences to ensure clarity, by-laws’ phrasing should remain exactly as the community has chosen. Experience has shown that even when the by-laws drafting process is very participatory, if facilitators rephrase community laws into formal legal language, communities may distance themselves from the final by-laws, feeling that they are “the NGO’s rules,” rather than their own.

However, facilitators may need to take a strong stance on some aspects of the by-laws’ content. The by-laws drafting process tends to go most smoothly when facilitators support communities to organize their rules into categories. Then, once the community has compiled all of their rules for each category, facilitators can help community members critically assess how to improve their rules to suit the current context and help the community ensure its prosperous, equitable future. Namati and partners have learned that it is most efficient to guide communities to organize their rules into three main categories:

- 1. Rules about governance of land and natural resources**
- 2. Rules about use and management of land and natural resources**
- 3. Cultural and social rules (to support community peace and prosperity)**

Second, facilitators should work with the community throughout the second draft to ensure that the community’s by-laws:

- Do not contradict the national constitution and national laws;
- Do not exclude people from being part of their community (facilitators should guide communities to define community members as “all residents living within the community’s boundaries as their primary place of residence”);
- Establish equal rights for all community members, including women, youth and members of minority groups;
- Support sustainable natural resource management;

- Protect existing, historically-based use and access rights of all neighbours and seasonal users;
- Include provisions specifying that particularly important and weighty decisions must be made by the community, rather than by local leaders acting alone; and
- Include provisions for annual review and amendment, to ensure that the rules can change over time as the community develops and grows.

Facilitators must not dictate that these conditions be met; rather, they should skilfully raise questions and foster community dialogue around these issues. It may be helpful to remind the community of the Terms of Engagement, which may have stipulated that the community must commit to principles of equality and sustainable natural resources management. If

the community insists on excluding groups with rights to the land, making rules that contradict the constitution, or giving men stronger rights than women, etc., then these issues should be flagged during the “legal check” of the by-laws between the second and third draft. The community can then address them and make necessary changes before adoption.

Below is a sample by-laws structure, presented as a list of questions that community members should discuss to help make sure that their rules are comprehensive. Facilitators should not provide answers to any of these questions, but rather support the community to arrive at its own answers after discussion and debate. Facilitating organizations should feel free to revise this outline, adding to it and changing it as necessary to suit the local context.



SUGGESTED BY-LAWS OUTLINE

1. RULES ABOUT GOVERNANCE OF LAND AND NATURAL RESOURCES

A. Community definition:

- What are the physical limits of your “community”? (Describe, or attach a map)¹
- Who is included as a member your community?
- Who is not considered to be a member of your community?
- How can a new person become a community member?
- Can a community member lose or give up his/her membership in the community?
- What are the rights and responsibilities of community members?

B. Land ownership/land holding:

- Who can own/hold land in your community?
- How do people get land in your community? (Allocation by leaders? Inheritance? Purchase? Renting?)
- If not acquired by inheritance, what procedures can people follow to own/hold/use land in your community? What procedures should community members follow? What procedures should outsiders follow?
- What can community members do and not do with their land? Do community members have the right to sell land? Lease land? Transfer land to family members or descendants? Use the land as collateral for a loan?
- What can tenants do and not do on the land they are leasing/using?
- What are the land rights of people born elsewhere but who live in the community as their primary place of residence?

C. The Land Governance Council: (See the chapter on *Creating Land Governance Councils*.)

- What will be the role and responsibilities of your community’s Land Governance Council?
- What groups will have representatives on the Land Governance Council? *[It is strongly advised that the community rules require that women, youth, and members of minority groups be included as members of the Council].*
- What are the qualities/criteria required for election to the Land Governance Council? What kinds of behaviors should prevent someone from being elected to be on the Council?
- How will the Land Governance Council be elected? What will the process be?
- How long/how many terms can an individual serve on the Land Governance Council?
- What are the criteria and process for removing a Council member for bad behavior?
- Are there particular roles within the Land Governance Council, like chairperson or treasurer, or will all members play an equal part?
- How often will the Land Governance Council meet? Where will it meet?

1. This section may need to be amended after a community’s boundaries have been fully harmonized and MOUs have been signed with neighbors.

- How can the Council enforce the community's by-laws? What mechanisms can it use for enforcement, such as warnings, fines, etc.?
- How will the Land Governance Council relate to/interact with community leaders or community committees that are already in existence?
- How will the Land Governance Council relate to district and county officials? Will these officials be asked to help enforce the by-laws and harmonized boundaries?
- Is the Land Governance Council required to report back to the whole community every so often about the decisions it has made, the fees and fines collected, and how lands and natural resources are being managed in the community? How often must it call the community together to make these reports?
- Should there be a separate "watchdog" group whose role it is to monitor the Land Governance Council and make sure that it is following and enforcing the by-laws fairly? Who should be on the "watchdog" group? What procedures should the group follow if it finds that the Land Governance Council is acting badly?
- How can community members bring a complaint against leaders or the Land Governance Council if they are not happy with how a leader or the Land Governance Council is acting or with the Council's decisions? Who should they make complaints to? How will a complaint be investigated and decided upon?

D. Community decision-making processes:

- What land and natural resource decisions are so important that the Council must convene a large community meeting to decide together by consensus or vote? (Major decisions)
- What land and natural resource decisions can leaders/the Land Governance Council make by themselves on behalf of the community? (Minor decisions)
- How will the Land Governance Council make decisions? What decisions can be made by a vote? What decisions must be made by consensus? (100% agreement)
- What decisions can be left to specific groups (women's groups, youth groups, hunters) to make?

E. Interactions with Investors

- How will the community as a whole make decisions about allowing companies or investors to use community lands? What percentage of community residents must agree? *[It is strongly suggested to include rules like: "At least ___% of community members must participate in decisions to lease or sell community land (over ___ hectares)."]*
- What must the Land Governance Council do if approached by investors or elites seeking to rent or buy community land? *[It is strongly suggested to include rules like: "Any contracts or MOUs signed only by elders/leaders without the full participation and agreement of at least 70% of the community shall be invalid."]*
- Who will represent the community when meeting with companies and investors?
- Is the community willing to lease or sell part of its land?
 - If yes, what land can be shared, and what land should not be shared?
 - If leasing the land, how long of a lease would be allowed? (5 years? 10 years? 25 years?)
 - What types of companies are welcome, and what types are not welcome?
 - What kinds of benefits and rental payment would the community ask for?

- What process can the community follow if the Land Governance Council or certain elders/leaders agree to lease or sell a large amount of land without community participation and approval?
- If individual families own land privately within the community, can they sell or lease land to investors without consulting the community?

F. Women's and minority groups' rights:

- What rights do community women (daughters, single women, women who marry into the community, widows) have to land and natural resources? What additional rights should they have?
- What rights do members of minority groups in the community have to land and natural resources? What additional rights should they have?
- What are the procedures for protecting the rights of women and members of minority groups?

G. Land conflict resolution:

- How will your community handle boundary conflicts with neighbors? Who will help resolve these conflicts? Are there any specific processes that must be followed?
- How should your community handle land conflicts between households/families? Who should help resolve these conflicts?
- Who has the responsibility to ensure that the boundaries agreed with neighbors are being respected?

H. Keeping important documents safe:

- Where and how will the community keep important documents safe, such as a community map or a title or land registration certificate?
- Who can access these documents? What process will they need to follow to access the documents? What are they allowed to do with the documents?

I. Financial management of funds raised from lands and natural resource use and governance:

- How will community money (generated from fees, fines, rent or gifts) be collected and stored? How will it be managed? Who will manage it?
- How should the Land Governance Council report to the community on the money raised from fees, fines or rent?
- What should community money be used for (Community development projects, building schools, roads, pumps, distributed equally among households, etc.)?
- Who will decide what community money is used for? How will the community participate in decisions about how to spend community money?

2. RULES ABOUT USE AND MANAGEMENT OF LAND AND NATURAL RESOURCES

A. Food resources:

- How does your community ensure that there is enough food grown that people do not go hungry? How will you make sure there is enough food in the future?
- How does your community manage food crops like corn, cassava, rice, and other foods?
- How does your community manage food resources gathered from community lands, like wild fruits or honey?
- How will your community regulate hunting to make sure there are always animals to hunt?
- How will your community regulate fishing to make sure there are always fish to eat?
- How will your community manage these resources so that they stay abundant and available for future generations?
- If neighbors have traditionally harvested food resources from within the community's lands, how will the community honor your neighbors' existing harvest rights?
- How will these rules be enforced? By whom?

B. Water:

- How does your community manage water – including springs, ponds, and rivers?
- What can community members do and not do near water sources?
- How does your community keep its waters clean and abundant?
- How does your community manage water in times of scarcity or drought?
- If neighbors have traditionally used the community's water source(s), how will the community honor your neighbors' existing use rights?
- How will these rules be enforced? By whom?

C. Community forests and grazing lands:

- How does your community manage forests and trees? Who can use these resources, and for what purposes?
- How does your community manage the production of charcoal?
- How does your community make sure that the forest stays healthy and is conserved for future generations?
- How does your community manage communal grazing lands?
- How does your community make sure that grazing lands stay healthy and are available for future generations?
- Are there other common areas that the community manages? What are the rules for those areas?
- If neighbors have traditionally used your community's forests, grazing lands, or access routes through the community, how will your community honor your neighbors' existing use and access rights?
- How will these rules be enforced? By whom?

D. Harvesting and gathering other resources:

- How does your community manage resources for building materials like thatch, poles, mud/bricks and sand?
- How does your community manage resources gathered for fuel?
- How does your community manage medicinal plants or remedies?
- What other resources are gathered or harvested from community lands or forests? What rules apply to these resources?
- How does your community ensure that these resources stay abundant and available for future generations?
- If neighbors have traditionally used any of these other resources from within the community's lands, how will the community honor your neighbors' existing use rights?
- How will these rules be enforced? By whom?

E. Sacred Areas, Cultural Areas, Protected Areas, and Restricted Areas:

- How does your community protect or preserve ceremonial or sacred sites? What rules protect these areas?
- How does your community manage areas important for community culture or history? What rules protect these areas?
- How does your community manage graveyards or burial sites? What rules protect these areas?
- How does your community protect areas that are important for wildlife or the environment?
- How are these rules enforced? By whom?

F. Commercial use of community resources:

- How does your community manage mining, both large-scale (by investors) and small-scale (by community members or locals)?
- How does your community manage logging timber for sale, both large-scale (by investors) and small-scale (by community members or locals)?
- How does your community manage cash crops like rubber, palm, cocoa, and cotton?
- What procedures must outsiders (locals or investors) follow if they want to use community lands and natural resources? Who should they meet with? What will be your community's process for deciding whether or not to grant their requests?
- Does your community charge outsiders fees for their use of community resources?
- If your community agrees to share land with an investor, what will the community ask for in return? (Monthly rent? A share of the profits? What else?) (See the chapter on *Preparing Communities for Negotiations with Investors*.)

G. Zoning (attach a clear map of the community zoning plan):

- Are there certain areas in the community where community members live? If the community's population grows, are there areas where families should or should not build their homes?
- Are there certain areas in the community where community members cultivate their farms? If the community's population grows, are there areas where families should or should not make new farms?
- Are there certain areas in the community where community members graze their animals? If the community's population grows, are there areas where families should or should not graze their animals?

- Are there areas in the community that should be set aside only for forests? Or only for grazing? Or only for hunting and gathering?
- Are there specific places where the community would want to build a new road, school, or clinic?
- If community members want to engage in livelihood activities like small-scale mining, small-scale timber production, etc., are there places they should or should not do these activities?
- If an investor arrives asking for land and offers to pay rent and you agree, where will your community tell them to locate their business?

3. SOCIAL & CULTURAL RULES

- How is knowledge preserved and shared across generations in your community?
- How should men and women treat each other in your community?
- How are people with disabilities or illness respected in your community?
- How are people of minority groups, or people not born in the community, respected in your community?
- How do youth treat elders in your community? How do elders treat youth?
- How does your community manage relationships between community members to ensure that there is respect, peace, harmony, love and unity?
- How does your community govern its relationships with people from neighboring communities?
- How does your community keep your community areas clean and well organized?
- How does your community address stealing or violence?
- How does your community address rape/adultery/husbands beating wives/parents beating children?
- If there are social/cultural complaints or conflicts, what is the process to resolve them?
- How will your community pass down to future generations cultural practices like dancing, singing, making art, and playing music?
- How will your community pass down to future generations special traditional knowledge, like which plants to use for healing?