

## ENSURING IMPLEMENTATION AND ENFORCEMENT OF COMMUNITY BY-LAWS



Drafting and adopting by-laws is only the first step toward good governance of community lands and natural resources. Facilitators should support communities to ensure that their by-laws are:

- **Respected:** People follow the agreed-upon community rules;
- **Implemented:** Community leaders and members put all the rules into practice; and
- **Enforced fairly:** When community members break the rules, penalties are decided fairly, regardless of the offenders' status in the community.

Facilitators should support each community to create a clear plan designed to ensure that its by-laws are followed by community members, neighbors, investors, and government actors alike. If a community does not create strategies to ensure that its by-laws function in practice, the by-laws may be ignored and forgotten. This is a problem because a lack of effective community rules may result in: disrespect of the rights of women and minority groups; unsustainable management of natural resources; and a failure of the hard-won mechanisms to ensure leaders' accountability, which may lead to a lack of transparency and corruption.

### POTENTIAL REASONS WHY BY-LAWS MAY NOT BE ENFORCED

- Low participation of community members and/or key leaders during the drafting process has led some community members to refuse to acknowledge the rules as legitimate.
- The Land Governance Council lacks the power and legitimacy to enforce rules or require compliance.
- Regional or district authorities do not consider the rules valid, and undermine community enforcement.
- Customary tribunals are not involved in the by-laws drafting process and do not enforce them when they resolve conflicts.
- The by-laws fail to include clear enforcement mechanisms for when a rule is broken.
- The by-laws process has created duplicate or parallel structures for local rules and enforcement, causing confusion about which authority is responsible for implementing and enforcing local rules.
- The facilitation team rewrote the rules into more "legal" or "formal" language, making it seem like the rules have been imposed from the "outside" (and were not created by the community itself).
- Social norms dictate that what happens in a family home is too private for community members to intervene – which makes protecting women's rights more challenging.

Facilitators should actively support communities to take steps throughout the by-laws drafting process and beyond to ensure that their by-laws are implemented and enforced. The following strategies can help in these efforts:

- **Ensure the by-laws are widely known.** At the conclusion of the by-laws adoption ceremony, community members from each “sub-unit” should commit to taking copies of the adopted by-laws home to their “neighborhoods” and discussing the rules with their family members and neighbors. Copies of the by-laws should be kept in many public places around the community, where community members can easily access and consult them. In regions with high illiteracy rates, Community Land Mobilizers and leaders might use local radio to publicize the by-laws.

A community’s by-laws should be kept “alive” in people’s minds. One strategy is to encourage communities to create songs, posters, and other locally appropriate ways to remind people about community rules. Communities might ask local teachers to guide their students to make up songs about the rules, which they can then carry back into their homes and neighborhoods and teach to their families.

- **Involve local government officials throughout the by-laws drafting process.** It is best to get district and regional government officials to sign onto a community’s adopted by-laws and to officially pledge to support their implementation and enforcement at the district or regional level. To this end, facilitators might ask these government officials to check over the laws as part of the “legal check” component of the by-laws drafting process. Communities might also share their by-laws drafts with trusted local and regional officials and explicitly request their support in validating and enforcing them. The support of district and regional government officials is useful for a variety of reasons, including:

**1. Ensuring outsiders’ compliance with the by-laws:**

Communities need to be able to rely on regional government officials to help them enforce the by-laws, especially in situations where rule-breakers are prominent regional elites or prosperous outside investors.

- 2. Creating increased local validity:** If high-level government officials sign onto the by-laws and pledge to uphold them, community members will likely consider them to be more valid and take them more seriously.

**3. Containing corrupt local leaders:** District and regional leaders can help community members enforce their by-laws against corrupt local leaders and/or potentially remove them from power.

**4. Avoiding resistance and sabotage:** If regional leaders are averse to greater community control over local lands and natural resources, the by-laws drafting process may upset them. By bringing them into the process and making them feel valued and included, they may become less resistant and more supportive – especially as they come to understand that they have an important role to play in the enforcement and compliance aspects of local land and natural resource governance.

- **Involve the individuals who arbitrate land conflicts.**

Experience has shown that it is necessary to involve the individuals (often male elders) who resolve land conflicts within the community. When the formal justice system is inaccessible, customary courts hear and decide the vast majority of land conflicts. Failing to involve these individuals may mean that community by-laws (particularly those concerning women’s and minority groups’ rights) are not taken into consideration during mediation and resolution of local land conflicts. Involving customary court officials throughout the by-laws drafting process and valuing their input will increase their support for the rules and help ensure that they use the new rules when making decisions during local land conflicts. Their active involvement may also make the by-laws stronger, as they may have important insights into the kinds of conflicts that are common in the community, and may suggest rules to proactively address these challenges.

- **Give copies to local courts and magistrates and invite them to be part of the process.**

Communities should proactively share their adopted by-laws with local courts and magistrates, to prepare them in advance for when local land conflicts are brought to the district or regional court system. If local courts take communities’ by-laws into consideration when deciding the outcomes of cases, the by-laws will become more valid and legitimate in the eyes of community members and outsiders alike. Conversely, if the by-laws are only upheld within the community, outsiders may feel that they can ignore the rules and simply challenge any fees or fines in court. To avoid this, facilitators and community leaders should actively involve local justices and magistrates in their by-laws drafting process, seek their review of community rules (to ensure compliance with the national constitution), and ask them to endorse the final adopted draft. Communities might even invite local judges and officials to officiate their by-laws adopting ceremony.

- **Create a list of practical next steps to make the by-laws “real.”** After the by-laws adoption ceremony, facilitators can support communities to draft a list of “next steps” necessary to ensure that the by-laws are implemented immediately. Volunteers may then be recruited to take responsibility for carrying out the agreed implementation activities. For example, community members might make and post signs advising what is allowed within their forests and grazing lands, including fines that will be charged if the rules are broken. Similarly, if a community is struggling with outsiders illegally collecting community natural resources (such as small-scale mining, pit sawing, charcoal production, etc.) community members could use local materials to build fences around common areas that only allow one point of entry (which can be easily monitored by community members).
- **Make a plan for managing collected fees and fines.** Experience has shown that communities most actively enforce the by-laws that bring in funds. This is a positive outcome, but there is a risk that the funds may be abused: in some communities, community members have reported not knowing what their leaders have done with the fees and fines they have collected. To ensure that funds are used well, facilitators should support Community Land Mobilizers to call a large community meeting, at which community members collectively brainstorm and decide upon a priority list of community projects that will be funded by the money collected from by-laws enforcement. For example, fees and fines collected could go toward building a community meeting house or repairing a road. Community members can use this clear list of projects to hold their leaders accountable for proper use of the fees and fines collected. If possible/accessible, facilitators

can help the community open a bank account where the money raised from fees and fines can be kept until the full amount necessary for the first agreed project has been amassed (see the chapter on *Financial Management*).

- **Create “watchdog” groups to ensure enforcement.** Facilitators may support communities to set up groups or committees of community members that are responsible for monitoring whether community leaders and the Land Governance Council are following the by-laws, enforcing them fairly, making decisions in the community’s best interests, and using any collected fees and fines in a transparent manner.
- **Hold annual by-laws amendment meetings.** Without regular review and amendment, writing down customary rules may “freeze” them; rules should change and adapt as the community grows and prospers. Facilitators should support Community Land Mobilizers and leaders to arrange an annual meeting, at which the community can review its by-laws and make any necessary changes or modifications. During these meetings, the community might consider: Does it need to change, remove or add rules to best serve the community’s interests? What rules are followed and enforced well? What rules are not well followed and enforced? What needs to change to ensure that all rules are observed and enforced? Facilitators can offer to return annually to support the review and amendment process, making themselves available for questions and guidance. In between annual by-laws review meetings, facilitators can also make themselves available to answer questions from leaders and Community Land Mobilizers.



## NOTES