

STRENGTHENING THE LAND RIGHTS OF WOMEN AND MEMBERS OF MINORITY GROUPS



Throughout the community land protection process, extra efforts to protect the land rights of women and members of minority groups are necessary, for three main reasons:

- **Decisions about land governance are often made only by powerful male community members.** Across a wide variety of cultures, land is frequently described as “men’s business.” As a result, women – and members of minority groups – are rarely invited to take part in community land governance. They may be excluded from positions on land and natural resource governing bodies, and may not be given a chance to speak during community-wide discussions. If they do speak, their opinions on how best to manage community lands may be disregarded.
- **As land becomes scarcer, communities are redefining ideas about “belonging” and inclusion in ways that undermine the land rights of women and members of minority groups.** Population growth, climate change, and agro-industrial development are increasing competition for land. Under these pressures, and as the value of land increases, some customary land systems are shifting from more flexible, negotiated systems to ones that are more rigid and exclusive. As a result, individuals and groups perceived as “weaker” may be pushed off their lands. For example, widows are increasingly being evicted from their marital home after the death of their husbands, while unmarried or divorced daughters may not be granted land by their siblings and parents. Meanwhile, families who in the past granted long-term “loans” of land to “outsider” families (families from somewhere else, but who have lived permanently in the community since relocating there) are increasingly

reclaiming these lands and evicting the outsider families – some of whom have been living on the land for generations.

It is particularly important to ensure that when defining who is and who is not a “community member,” communities do not exclude women who married into the community, members of minority groups, and “outsiders” who were not born into the community but moved there as adults. These groups often have the weakest land rights in the community and may be the first to be evicted or removed if land become scarce.

- **Customary rules for land use, management and inheritance maybe discriminatory against women and members of minority groups.** Extensive review of communities’ first drafts of their by-laws has shown that many communities currently abide by rules that undermine the land rights of women and members of minority groups and directly contravene national law.

HOW CAN THE BY-LAWS DRAFTING PROCESS STRENGTHEN THE LAND RIGHTS OF WOMEN AND MEMBERS OF MINORITY GROUPS?

When well facilitated, the by-laws drafting process can:

- **Provide an opportunity for women and members of minority groups to challenge discriminatory practices and argue for stronger protections for their land rights.** Community members generally report that until the by-laws process, community rules and practices had never been publicly debated. The by-laws drafting process opens up an authentic space for women and members of minority groups to question customary norms and practices that

disadvantage them and to advocate for rules that strengthen their land rights and tenure security.

- **Result in the adoption of by-laws laws that strengthen and protect the land rights of women and members of minority groups.** These provisions appear to help:
 - Create new rules to protect women’s and minority groups’ rights;
 - Strengthen the existing rights of women and members of minority groups;
 - Rejuvenate customary practices that existed in the past to protect women’s and others’ rights but have been eroded or abused; and
 - Align local rules with national and international laws that protect women’s and minority groups’ land rights.
- **Ensure that all livelihoods are protected.** Active involvement by women and minority groups throughout the by-laws drafting process increases the by-laws’ quality and comprehensiveness. If women are not present to describe the natural resources they gather daily (to build their homes, feed their families, care for their children’s health, etc.), the community may not remember to create rules to ensure the

sustainable use of these resources. Likewise, because most work in rural communities is highly gendered or differentiated by livelihood (agriculturalists, pastoralists, fisherfolk etc.), excluding women and minority groups from the by-laws drafting processes may mean that certain land uses, areas, or management strategies are left unprotected.

- **Increase participation by women in local land governance.** Women’s active participation in the by-laws drafting process appears to shift community perceptions that land is “men’s business.” In many cultures, it is considered inappropriate for women to take part in discussions about land. Indeed, at the start of community land protection efforts, facilitators generally report that meetings are attended mostly by men, or that women attend but remain silent. Yet over time (and with significant effort by facilitators), women begin speaking more, and men begin to listen to women’s opinions and contributions. In almost every community, by the end of the land protection process women are included as members of land management bodies and play a more significant role in decision-making. Communities’ by-laws also include provisions mandating that women, youth and minority groups must have representatives elected to local land and natural resources governing bodies.

EXAMPLES OF BY-LAWS THAT PROTECT WOMEN’S RIGHTS

In Uganda, community by-laws affirm women’s rights in three main ways:

1. The communities’ rules affirm that all female community members — including unmarried daughters, wives, and widows — are considered equal members of the community, with the same rights to land and natural resources as male members. The by-laws do this by specifying that only “natives” may be automatically considered Communal Land Association members, but then go on to define “natives” as any person (male or female) born into the community (including ethnic minorities and unmarried daughters), as well as any wife or widow of a man born in the community or any woman who eloped with a man born into the community. In doing so, these provisions widen the definition “native” from only those “born there” to include those who have married into the community.
2. The by-laws list the exact procedure for inheritance of a family’s membership rights in the Communal Land Association, and specify that a man’s wife is the first inheritor. One example of such provisions is as follows: “Deceased Member: a) his wife inherits his membership rights; b) if he has no wife, his children become his heir; and c) if he has no children, the grandchild born to his son or to his daughter who has returned home inherits his membership rights.”
3. The by-laws carefully list all natural resources that women gather from the community’s shared grazing lands, and establish that all community members have the right to continue to collect these resources freely and as needed, thus ensuring that women have permanent and open access to the grazing lands and the natural resources they depend upon for their livelihood.

CHANGING IDEAS ABOUT “STRANGERS” RIGHTS THROUGH THE BY-LAWS DRAFTING PROCESS

In Liberia, most communities have very strong rules about belonging and exclusion. In local terms, a “stranger” is a person not born into the community where he or she is currently living. Traditionally, strangers cannot plant resource-bearing trees such as rubber, orange, and mango (which establish the planter’s ownership claim to the land, under custom) and cannot be considered landowners. Communities justify restricting strangers’ land use rights on the grounds that strangers are either “not here to stay” and therefore have no long-term responsibility to the community, or because strangers “are not known well enough to be trusted.” Yet communities’ conceptions of who is a “stranger” are usually vague, and may be defined on a case-by-case basis, with each community deciding for itself who is a stranger, whether or not he or she could own land, and on what terms.

“Strangers” used the by-laws drafting process to push on this vagueness and argue for stronger rights. For example, in one community when people argued that strangers could not own land, other community members questioned, “What if they are living here for ten years? Fifteen years? Twenty years?” The question then became “Who is a stranger?” In another community, a woman asked, “We who are strangers but who built our houses here, are married here, got children here – are we to be part of the process of making these rules?” The community thought about it and said, “Yes, why not?”

As a result of such discussions, communities made robust changes to their community rules. For example, one community included a rule in their by-laws that, “A stranger who lives in a town for twenty (20) years is considered a citizen. During death his children and wife/family will be consider[ed] citizens, therefore they can own land and property.”

HOW TO FACILITATE THE BY-LAWS DRAFTING PROCESS TO PROMOTE WOMEN’S RIGHTS WITHIN COMMUNITIES?

To help ensure that the by-laws contain protections for women’s land rights, facilitators might pursue some or all of the following strategies:

1. Show – rather than tell – the importance of women’s useful input into land governance and honor the knowledge of both men and women. During all community land protection meetings (both leading up to and during the by-laws drafting process), facilitators should make sure to call on women half the time, and to make sure that the community appreciates when women have made useful contributions. For example, when communities are drawing sketch maps of their natural resources, the women’s groups tend to map more comprehensively than the men’s groups; men usually include only those resources that they have domain over as part of their livelihoods, while women tend to map resources vital to both men’s and women’s livelihoods and all household roles. In reaction, when women present their maps to the larger community group, men often exclaim: “Oh, we forgot about that!” Facilitators can use such moments to highlight how women have extensive knowledge about local natural resources that, because of their separate, gendered work, men may not have.

During the by-laws drafting process itself, facilitators should ensure that time is given for women to speak about land and natural resource matters they are knowledgeable about. Women’s active involvement in the by-laws drafting process can help to show the importance of listening to women. Once women begin speaking up, it often becomes clear that women’s participation helps to increase the by-laws’ comprehensiveness. Because the women’s comments most often relate to those natural resources considered “the domain of women” (including resources like mushrooms, honey, and water), their comments may not threaten traditional gender roles, allowing men to listen more openly to their contributions and accept women’s recommendations without feeling as though men’s interests or powers are threatened.

2. Hold women-only meetings or regional “women’s conferences” to discuss advocacy points before the community begins discussing the 2nd draft by-laws. Women may not feel comfortable speaking on land issues in front of the entire community. To ensure women’s active participation, it may be necessary for facilitators to convene special all-women meetings in preparation for community-wide by-laws meetings. Such all-women meetings can help support women to feel confident to voice their opinions, articulate their interests, and make critical contributions to by-laws drafting discussions efforts. Facilitating organizations may either host such meetings in every community, or invite

a few women from each community that they are supporting to a district-wide or regional meeting.

At these meetings, facilitators should teach or re-teach women their rights, as enshrined in the national constitution and all land- and natural resource-related laws. Then, the women should be supported to brainstorm a list of “key advocacy points” that they will work together to argue for as a group. Finally, women participants should be given the “homework” of returning to the areas where they live and teaching all the women they interact with about what they learned during the meeting and the agreed advocacy points. Women can also be encouraged to “bring a friend” with them to the next by-laws meeting; such tactics can greatly increase the number of women who attend the by-laws drafting meetings.

3. Hold meetings about women’s rights for the whole community. It is critical that facilitators do not teach only women about their land rights: it is necessary to create a 360-degree safety net, in which men, leaders, youth and elders all take responsibility for protecting women’s rights.

If facilitators only convene women and teach them about their rights, these women may face significant resistance from men and male leaders when they advocate for stronger protections for their rights.

Men often resist ideas of women’s empowerment because they think that when women gain rights, men must surrender their own power. Interventions designed to strengthen women’s land tenure security must directly address these fears and illustrate to men that the opposite is true: strengthening women’s rights will not reduce men’s power, but rather allow them to continue to exercise it, in such a way as to bring prosperity and stability to their communities.

To ensure that communities fully address questions related to women’s rights in the by-laws, **facilitators should convene a special meeting during discussions of the 2nd Draft of the by-laws specifically on the topic of women’s rights to land and natural resources.** Facilitators should ensure that leaders, men, women, elders and youth attend this meeting. (See the box below for details on *how to facilitate this meeting.*)

CASE STUDY: WOMEN’S CONFERENCES IN UGANDA

In Uganda, despite employing various strategies to increase women’s participation, both women’s attendance at meetings and women’s verbal participation during meetings remained low for the first half of the project. To address this challenge, the Land and Equity Movement of Uganda (LEMU) decided to hold a series of regional “women’s conferences” that brought together a few women from each of the communities LEMU was working with.

At the conferences, LEMU worked to help women understand how women’s participation in the by-laws drafting process was critical and how, if they were not involved in the discussions, they might lose some of their use and access rights to communal grazing areas. LEMU also took the opportunity to again educate women about their land rights under Uganda’s Land Act (1998). The conferences evolved into fruitful discussions, during which the women began to articulate their needs and interests and to craft strategies to ensure that their voices were heard during the by-laws drafting discussions. At the end of the conferences, LEMU assigned the women the task of holding similar meetings for the rest of the women in their community to pass on all of the information they had learned. LEMU also asked the participants to work with other women in their community to document what natural resources they use within the grazing lands and discuss among themselves (before the larger, full community meetings) how they would like these resources to be managed and protected.

The women’s conferences proved to be a turning point in women’s participation in the community land protection activities in Uganda. Once women began to feel that their input in the process was valued and important, they began to attend the wider community meetings in much larger numbers, with women occasionally outnumbering men. LEMU also observed that these efforts increased women’s confidence to speak and argue (successfully) against the inclusion of by-laws that would discriminate against them.

PROTECTING WOMEN’S RIGHTS

Experience has shown that many communities’ 1st Draft by-laws include rules that discriminate against women or do not adequately protect women’s rights. To ensure that communities address these issues, facilitators should convene a special meeting specifically on the topic of women’s rights to land and natural resources. Facilitators should ensure that leaders, men, women, elders and youth attend this meeting; if facilitators only convene women and teach them about their rights, these women may face significant resistance from men and male leaders when they advocate for stronger protections for their rights.

Women’s land rights meetings can be structured as follows:

1. Support the community to identify all rules included in the 1st Draft of the by-laws that address women’s rights to land and natural resources. Ask the community to “shout out” any other community rules, norms and practices concerning women’s rights.
2. Present the sections of the national constitution and all national laws that protect women’s rights.
3. Break the meeting into two groups: one for women and one for men. In the groups, facilitators should lead a discussion addressing the following questions:
 - How did women and men interact in the past?
 - Have gender relations have gotten worse or better over time? Why? What has changed?
 - What knowledge about community natural resources do women have that men may not have, as a result of gendered work divisions?
 - What are the economic and social benefits of women’s land rights? When women have strong land rights, what goes well?
 - When women have weak land rights, what goes badly?
 - Why do people turn away when they see women suffering injustice? What might they do instead?
 - What changes can be made to the rules to protect and defend women’s rights, yet also align with custom/community tradition?
 - What structures and systems should the community create to help ensure women’s rights are protected after the by-laws are adopted?
 - How can the community ensure that women take part in land and natural resources governance over the long term?

During these break-out groups, facilitators should also ensure that the following topics are addressed:

WOMEN’S GROUPS

- How to ensure that women are able to attend by-laws drafting meetings in large numbers?
- What strategies can women use to make sure that their rights and interests are protected in the by-laws?
- What are five main rights protections that women want to make sure end up in the by-laws?

MEN’S GROUPS

- What steps can men and male leaders take to help protect women’s rights?
- Are there some types of land or natural resource use or management that only men should do, and why?
- Discuss any concerns about creating stronger protections for women’s rights regarding land and natural resource.

4. Bring the groups back together and facilitate a discussion about the community’s 1st Draft rules concerning women’s land and natural resource rights. Support the community to discuss (or begin to discuss – it may take several meetings to agree) how each rule could be changed to ensure justice and equality.
5. Once the community has agreed to how each rule should be changed, support the community to create structures and systems that ensure women’s rights are protected. (For example, the community could decide to create a “watchdog group” whose role it is to find out when a widow might be kicked off her lands, and intervene with her in-laws to make sure she is allowed to stay.)

For more information on how to support communities to protect women’s land rights, see the chapter on *Ensuring Participation of Women and Minority Groups*.

4. Engage leaders and customary authorities to champion women's rights. It is particularly important to engage men and leaders in efforts to protect women's land rights because male leaders are most often the mediators of land conflicts and therefore the local protectors of women's land rights. In rural areas where it is difficult to access to the formal justice system, rather than criticizing and replacing custom – and customary leaders – facilitators should emphasize customary leaders' role as protectors of women's (and other vulnerable groups') land rights. During the by-laws discussions, facilitators might raise questions that address customary leaders' responsibility to safeguard women's rights, and might ask the leaders to lead meetings that address questions of women's rights.

When leaders themselves take responsibility for brainstorming and creating new by-laws that protect women's rights, they often feel a greater sense of "ownership" over the changes, and may become champions and advocates for the implementation and enforcement of these new by-laws. Such efforts may lead to authentic improvements in the protection and enforcement of women's land rights at the local level. Positively, experience has shown that customary leaders are very open to learning more about national laws and shifting communities' practices to align with the laws, including those that protect women's land rights.

5. During the "legal check" of the by-laws, ensure that the by-laws create roles for women in community land governance. To ensure that women's rights are protected over the long term, women must sit on their community's Land Governance Council. And women must be empowered to have an authentic voice in decision-making about community lands and natural resources. Often, national laws mandate that a certain number of seats on a local governance body are held by women. During discussions of the Land Governance Council's composition, facilitators should make sure that women (and youth, members of minority groups, etc.) are given positions on the Council. If the community fails to include by-laws that ensure women's participation in community land governance, the "legal check" of the by-laws can point to this as a change that the community may need to make to align with national law.

The lawyer, judge, government official or advocate undertaking the "legal check" of a community's by-laws should also check that all of women's substantive legal rights – as set out in national laws – are not violated by the community's by-laws. If the by-laws fail to fully protect women's legal rights, the legal check can suggest ways that the community can amend its by-laws to align with the national constitution and relevant laws.

HOW TO FACILITATE THE BY-LAWS DRAFTING PROCESS TO PROTECT MEMBERS OF MINORITY GROUPS IN THEIR BY-LAWS?

Community definitions of inclusion and exclusion are often rooted in the idea of "first founders" or the extended families that settled the land generations ago. By excluding members of minority groups or people who were born elsewhere from local land governance, communities are depriving them of their basic rights. Yet including "outsiders" in local decisions about land may seem to go against community norms and entrenched power dynamics. Safety and community longevity are also likely concerns – will outsiders move into the community, take control of decision-making, and eventually cause the "original" community members to lose their lands and livelihoods? This is especially a concern when wealthy "outsiders" move in. Should national investors who make their business on the land be considered community members? How to set standards of who is included and who is excluded?

To address such concerns, facilitators must carefully guide community members to set definitions of inclusion and exclusion that respect the rights of all permanent residents of the community. For example, facilitators should support community discussions of why ethnic minorities who have been living in the community for generations are not considered community "members," despite being born into the community, just as their grandparents were. Facilitators should lead the community to consider anyone born into the community, regardless of tribe, ethnicity, clan, caste or class to be a community member, with all accompanying rights, responsibilities and privileges.

It may also be possible to gently guide communities to define community membership as "someone who has been living the community for more than 10 years, and has made the community his or her primary place of residence." Similarly, facilitators might suggest that members of minority groups who have lived in the community for more than 10 years may be elected to the Land Governance Council and other positions of public office.

Facilitators can point to international human rights standards to guide communities to arrive at such decisions. Facilitators may also want to hold special meetings for outsiders and ethnic/tribal minority members to help them to articulate their positions and rally around advocacy points they wish to include in the by-laws. These individuals could put on skits or do small theatrical skits to help the rest of the community understand what it feels like to be excluded, despite living for a long time in the community.

HOW TO SUPPORT LONG-TERM IMPLEMENTATION OF WOMEN'S AND MINORITY GROUPS' LAND RIGHTS?

Experience has shown that efforts to protect the rights of women and minority groups must not end when the community adopts its by-laws and elects a Land Governance Council. To ensure respect for by-laws that protect their rights, women and members of minority groups must actively flex their rights, fulfill their responsibilities, and continue to attend and participate in meetings concerning management of community lands and natural resources.

To ensure that the by-laws protecting women and minority groups' rights are enforced, facilitators might also consider:

- Providing legal education for local magistrates, police, district and regional land administrators, as well as any other local bodies that might play a role in enforcing and protecting women's land tenure security, and ask them to help the community enforce its by-laws;
- Training and working with customary justice institutions to ensure that community by-laws and national laws that protect the rights of women and minority groups are enforced (for example, when mediating family land disputes); and
- Supporting communities to create "watchdog groups" to be alert for instances of potential land dispossession from women and vulnerable groups and take action to prevent discrimination before it happens.

NOTES