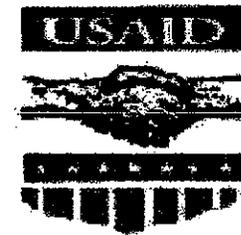


PN.ACN-882
113363



Natural Resource
Management By-Laws



1

TABLE OF CONTENTS

Acronyms and Abbreviations



Acknowledgements

Background and Structure

Part I: Questions and Answers about By-Laws

Part II: General Guidelines for Drafting Process

Part III: Legal Basis for By-Laws

Part IV: Sample By-Laws

Annex A: List of Statutes Consulted

Annex B: References

Annex C: List of Interviewees

Acronyms/Abbreviations

AWF	-	African Wildlife Foundation	LAMP	-	Land Management Program
CBC	-	Community Based Conservation	LEAT	-	Lawyers Environmental Action Team
CBCTC	-	Community Based Conservation Training Centre	MP	-	Member of Parliament
CBNRM	-	Community Based Natural Resource Management	NCAA	-	Ngorongoro Conservation Area Authority
			NEMC	-	National Environmental Management Council
CBO	-	Community Based Organization	NGO	-	Non-Governmental Organization
CORDS	-	Community Research and Development Services	NLUPC	-	National Land Use Planning Commission
DED	-	District Executive Director	NR	-	Natural Resources
DC	-	District Commissioner	NRM	-	Natural Resource Management
DCC	-	District Council Chairperson	PLUM	-	Participatory Land Use Management
DFO	-	District Forestry Officer	PINGOS	-	Pastoralists Indigenous Non-Governmental Organizations
DGO	-	District Game Officer			
DNRO	-	District Natural Resources Officer	PRA	-	Participatory Rural Appraisal
ENRC	-	Environment and Natural Resources Committee	SUA	-	Sokoine University of Agriculture
EPIQ	-	Environmental Policy and Institutional Strengthening, IQC	TANAPA	-	Tanzania National Parks
			USAID	-	United States Agency for International Development
GTZ	-	German Technical Cooperation			
HIAP	-	Handeni Integrated Agro-Forestry Project	VEO	-	Village Executive Officer
IDS	-	Institute of Development Studies	WCA	-	Wildlife Conservation Act
IQC	-	Indefinite Quantity Contract	WD	-	Wildlife Division
IRA	-	Institute of Resources Assessment	WDC	-	Ward Development Committee
IGO	-	International Governmental Organization	WEO	-	Ward Executive Officer
JFM	-	Joint Forest Management			

Acknowledgements

This study team consisted of Rugemeleza Nshala, a lawyer with Lawyers Environmental Action Team (LEAT), Daniel Ngoitiko, a Project Coordinator and Community Facilitator with the Dorobo Fund for Tanzania, and Benjamin Gardner, a community development and natural resources management specialist. Our collaboration was mutually beneficial to our personal understanding of the issues, as well as to a more holistic interpretation of the study. The report could not have been completed without the help of many people and organizations, but it is our work alone and does not necessarily reflect the views of EPIQ/TZ or its partners.

The study was funded by USAID through EPIQ/TZ, and all logistical and other support was provided directly by EPIQ and its partners. First and foremost, we are grateful to Dr. Liz Alden Wily, an independent rural development and forest management specialist,

for permission to draw extensively upon community-based forest management guidelines prepared by her for the forestry sector, including the drafting of village by-laws. Deborah Kahatano and Eva Kiwango were invaluable to our study by helping to co-ordinate meetings and briefing us on relevant issues. Thereafter, Deborah and B.J. Humplick did some wonderful work while transforming our report into its current "user-friendly" state. Eunice Odunga arranged our travel and lodgings, as well as solved any problem that we encountered. We could not have managed this without their assistance.

While in the Arusha region, the African Wildlife Foundation (AWF) provided us with logistical support, including the use of computer facilities and vehicles. Our drivers Amiri and Jacob kept us on schedule and

Acknowledgements cont'd...

allowed us to meet with many people and travel far and wide. Also the entire AWF staff helped us develop ideas for this paper. In particular James Kahurananga, Director of the PORI project at AWF helped us immensely.

Our work would not have been possible if not for the guidance and support of the directors and staff of our organizations, the Dorobo Fund for Tanzania, EPIQ/TZ and Lawyers Environmental Action Team (LEAT). Many of the ideas in this report were generated during discussions with them, especially Dave, Mike, and Thad Peterson, Mark Renzi, and Tundu Lissu.

We want to thank all the interviewees, and especially the community members and district officials who met with us and shared many ideas that were essential to our understanding of this topic.

Finally, we would like to thank the entire EPIQ staff who supported us during this study.

Background and Structure

The study leading to this document was carried out by three consultants, Rugemeleza Nshala, Daniel Ngoitiko, and Benjamin Gardner over a period of six weeks, from January to March 1999. Thereafter, it was transformed into a "user-friendly" state by EPIQ/T's Deborah Kahatano and B.J. Humplick who worked out the layout and design; Nathan Mpangala a free-lance artist who did the sketches and Dr. Y.M. Kihore of the Kiswahili Research Institute of the University of Dar es Salaam who translated the document into Kiswahili.

The study is a collaboration between EPIQ/TZ, LEAT and The Dorobo Fund for Tanzania. The consultants all had considerable experience with the topic, which served as background. The study was requested by the Community-Based Conservation working group of the USAID-funded E/NRM program (SO2) and was executed by EPIQ/Tanzania. The CBC working group consists of the following members: Wildlife Division (WD), Tanzania National Parks (TANAPA), African Wildlife Foundation (AWF), Sokoine University of Agriculture (SUA)/Tuskegee University Partnership, GreenCom, USAID and EPIQ/TZ. The study was funded by USAID, via EPIQ/Tanzania.

This document is divided into three parts:

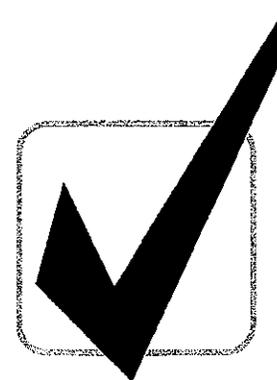
- ♦ The first part is an introduction to the concept of village by-laws and is intended to provide relevant background information and answer common questions.
- ♦ The second part is a practical guide for facilitators on how to work with communities in a participatory fashion to establish natural resource management plans and create village by-laws as a supporting mechanism. It outlines a comprehensive process and is intended to answer specific questions concerning legal procedures, as well as practical advice on many issues, including local institutional capacity building, accountability and particular natural resource concerns at the community level.
- ♦ Part Three provides the legal background of village by-laws and deals with many of the technicalities concerning the role of different authorities, such as the Village and District Councils, as well as the relationship between village by-laws and the national political process.
- ♦ Part Four contains a set of sample by-laws.
- ♦ The list of Annexes at the end of the document provides various lists including that of Statutes consulted, References and People interviewed.

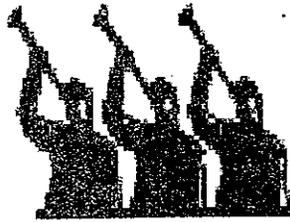


Questions

&

Answers





INTRODUCTION

Community-Based Natural Resource Management (CBNRM), also referred to as Community-Based Conservation (CBC), is a topic of serious interest by the conservation and development communities throughout the world, stimulating several projects, workshops and research efforts. Much of this attention is focused on national policy and legislative reform to enable local participation. Clearly changes must take place in many sectors of policy and legislation to support CBNRM but, it is equally important that local institutions be strengthened or developed, through which legal enforcement mechanisms can be established to enable national policy to reach the grass roots.

One of the recommendations that has come out of various policy initiatives is the need for local systems of environmental governance and authority to be clarified and articulated to all stakeholders and to be enforced with transparency. This paper outlines one possible approach for communities to establish a legal framework

for their active participation as decision-makers concerning land use decisions. The proposed innovation may assist communities to increase their effectiveness in managing their natural resources, and in turn help the country meet its goal of sustainable and profitable natural resource utilization and management.

These Guidelines discuss the use of village by-laws as one mechanism for more effective governance in natural resource management decision making. It is written based on the experiences of several collaborative initiatives between communities and outside institutions that have used village by-laws in such a manner. While many of these efforts recognize the limitations of by-laws, there is hope that a more participatory approach of law making can articulate local rules and regulations, as well as help to raise the awareness of communities concerning their authority to participate in land use and resource decisions.

What are Village By-laws?



Villages in Tanzania have the status of legal entities and the governments they elect (Village Councils) have the power to make minor laws (Village By-laws). A Village By-law is useful not only because it binds the members of a community to certain actions and rules which they themselves have determined as necessary, but because it is also binding upon all persons using the [resource] whether they be members of that village or not, and may be upheld in a court of law."

Village by-laws are drafted by village members to govern local management issues. By-laws have the authority of other laws, but cannot conflict with higher legislation. By-laws have been used in the past to control rural residents and manipulate their behavior to serve the needs of the state, particularly under colonial rule. While these by-laws came as top-down directives, Tanzanian law allows for the process of law making to come from the ground-up. The critical question now, as in the past, is the level of popular participation in the process.

By-laws are a legal mechanism that can be established by communities through Village Councils to articulate desired land use planning and utilization of natural resources at the local level. They provide a legal framework for community-based land-use planning and can provide the community with a legally binding statement of their norms and regulations

By-laws can be used to:



- Clarify management among different groups of local resource users;
- Articulate traditional practices in a formally recognized and documented manner;
- Clarify management roles and responsibilities between local, district, regional and national authorities;
- Help clarify the roles of participants in joint management schemes between communities and government institutions (such as in Joint Forest Management or Wildlife Management Areas);
- Clarify the roles of participants in agreements between communities and the private sector;
- Increase the security of natural resource tenure at the community-level; and
- Increase the transparency of land-use decisions to groups both inside and outside of the community.

While the legal structure of by-laws provides no guarantee that local resource users will have greater authority, it presents one promising option for communities to participate in important land use management decisions and enforce the rules and regulations they have developed. If carried out within a participatory planning process, by-laws can present the community a format to display that they have thought through difficult land-use issues and have created a plan on how they should be managed.

Why By-laws Now?



- A lack of recognized regulatory authority at the community or traditional management level has contributed to the degradation and misallocation of natural resources by many stakeholders.
- There are now several new national policies concerning natural resource management and local governance that address the devolution of decision-making and the

provision of services. They each require input from the community level to make them effective.

- While a unique legal structure allows Tanzanian villages to create by-laws to mandate certain rules and regulations concerning their natural resources, many communities lack the capacity and knowledge to go about creating and enforcing them.
- There is a new emphasis in Tanzania on the participation of civil society in development activities. There are now many organizations that are working with communities at the grass roots level, and are able to provide crucial support for important institutional strengthening and participatory planning activities.

What are the Goals of a Participatory Natural Resources Management Process with By-laws?



- To provide a plan and management statement that reflects the values and interests of a majority of community members, which in turn can help communities effectively coordinate with other decision making bodies;
- To strengthen local capacity for effective and transparent management of natural resources and the financial benefits derived from their use;
- To broaden the natural resource management system by including more stakeholders in decision-making, accruing benefits, and enforcement; and
- To enforce the above goals with by-laws, which give official recognition to the process, and subject all stakeholders (whether from within or outside the community) to abide by the plan.

How do By-laws Fit into Community Based Land-Use Planning?



By-laws should not be seen as separate from the planning process. The drafting of by-laws is part of the planning process. If by-laws are not drafted in such a holistic manner, then they will most likely be ineffective. If, however, the planning process is integrated with raising awareness of local rights and responsibilities, it can give greater authority to the entire process.

We discuss in detail mechanisms for creating by-laws as part of a participatory planning process in the guidelines.

By-laws may be integrated into a community-based planning strategy at several stages. They may be drafted after a community has devised a management plan, or even after having implemented that plan. This may allow them to better understand the strengths and limits a by-law could provide. However, by-laws may also be drafted during the planning initiative to give greater credibility and support to the effort. The legal framework of by-laws may also help to motivate community members who have been involved in previous planning activities that have had poor results.

Are By-laws Necessary for Community Participation in Natural Resource Management Projects?

By-laws are one form of environmental governance and are not the only option or tool for community participation. There may be other mechanisms to ensure local participation in decision making and enforce agreements that may be more effective in a particular circumstance. These include direct negotiations with private or public sector initiatives, such as the many existing contracts between communities and tour operators or projects such as MBO-MIPA which is a joint initiative between communities and the Wildlife Division.

While projects such as these involve communities in decision making, in many cases they are sectoral in nature (focusing on a particular resource, such as wildlife) and do not often deal with a holistic natural resource plan. This can have many repercussions, as most natural resources cannot be sustainably managed in isolation. It may also be unrealistic to expect all such efforts to address topics such as accountability of local institutions and enforcement and monitoring mechanisms, which are ultimately crucial to ensuring long term management. A participatory natural resource management planning process with by-laws attempts to address these issues. It is likely that several strategies or tools will need to be used together to achieve effective, profitable, and sustainable management.

How do These Guidelines Fit With National Policies?

There are several new policies and Acts concerning natural resources (Agricultural Policy of 1997, National Land Act of 1999, The Wildlife Policy of 1998, Tanzania Forestry Policy of 1998, National Environmental Policy of 1997, Mining Act of 1998, etc.) and development strategies (The National Policy on NGOs in Tanzania 2nd Draft of 1998, The Local Government Reform Agenda 1996-2000, Development Vision 2025 for Tanzania, etc.) that are pointing the way toward increased local decision-making. Few of them, however, detail the process for local participation, and there is the possibility that these policies may be implemented without substantive community involvement. By-laws, in the context of holistic natural resource management plans, provide a framework for communities to participate in these schemes.



In December of 1998, the National Land Use Planning Commission (NLUPC), under the Ministry of Lands and Human Settlements and Development, published "Guidelines for Participatory Village Land Use Management in Tanzania." It is a broad-based approach to village level planning with district support, and is an excellent resource for anyone engaging in village level planning activities in Tanzania.

The book clearly displays the importance of these activities and the government's commitment to such an approach. This document can be used in collaboration with those guidelines and provides an in-depth look at one aspect of village land use management.

Where can Village By-laws Work?

Village By-laws are not a solution but a tool. If a community has identified inadequate natural resource tenure or rights as a problem in achieving their goals for natural resources management, then by-laws may be a good approach as part of an overall CBNRM strategy. By-laws may not be necessary where land use agreements are not in high conflict, and other enforcement mechanisms are used.

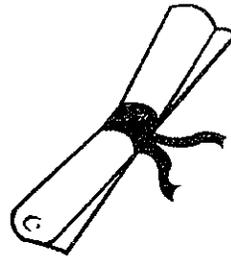
By-laws can be drafted by any Village or District Government. It is important to have addressed land security and boundary demarcation before, or in conjunction with the by-law drafting process. The strengthening of local institutions for enforcement and transparent management is also essential.

What is the Appropriate Size of the Management Unit?

This is an important question when looking at natural resources management. As many management decisions may effect areas outside of individual village boundaries, it may be necessary for villages to coordinate activities. Does this mean you should try to plan with several villages at a time? In many cases, it appears that the most effective approach is to work within village boundaries first, as this is a manageable size and it is where the legal powers extend.

It has been pointed out that the smaller the viable management unit and the smaller the number of users, the better the chance for success. It may be easier to coordinate between villages, once each village has drafted it's own by-laws. It may, however, be advantageous for adjacent villages to consult with each other during the drafting stages.

Is it Necessary to have a Title Deed to Create By-laws?



An important step for many communities in land use decision making has come with the attainment of "official" land title deeds. This has legitimized many communities in the eyes of the Government and other stakeholders. However, village title deeds do not ensure secure land tenure for community members and do little to address natural resource tenure and rights on village land. Many natural resources are regulated by national government legislation, and local rights are often unclear.

One of the elements of by-laws is clarifying the relationship of local resource users and landholders to that of the state. The creation of by-laws can also be useful in addressing local conflicts over natural resources

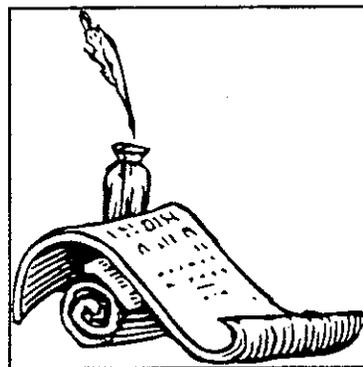
Where village title deeds have been granted, by-laws can be seen as attaching use rules to these title deeds, which empower Local Governments to make land use decisions. This is the central argument for a process that is representative of many local institutions but works hand-in-hand with Local Government.

It is not, however, necessary to have a title deed to draft by-laws. The most important thing is that village boundaries are clear and agreed upon by neighboring villages, and that a village is registered (see section 22 in the Local Government Act No.7 of 1982). It is important that there is a consensus on boundaries, and that any outstanding conflicts are resolved. Several villages have created by-laws without official village title deeds.

Have Village By-laws Been Drafted and Implemented ?

Village by-laws have been drafted in villages throughout Tanzania since the Local Government Act of 1982 was passed. Recent studies have shown that very few village by-laws have actually been passed by District Councils.

This is most likely due to a number of reasons, including a lack of capacity at the village level for participatory law-making, a lack of knowledge of national laws and formatting of by-laws, and a lack of involvement of district officials in the by-law making process.



A recent study by Alicia Magabe (Magabe, 1998) cited the following reasons, among others as inhibiting the formation of village by-laws:

- “inability to prepare baseline information that takes into account traditional land use and practices of the local communities so as to adequately inform the by-law making process;
- inability to draft by-laws that incorporate customary natural resources management controls, due to lack of skilled human resources and working tools;
- absence of a system of follow up on the implementation of the by-laws due to lack of resources (financial, human , physical) and political will;
- Lack of support form the District Council; and lastly
- Badly equipped primary courts and their inability to educate the people on their rights and duties.

The interest in village by-laws for CBNRM appears to be growing rapidly. There are currently several regional efforts supporting village by-laws for CBNRM. These initiatives include the following regions and programs:

- Babati - Land Area Management Program (LAMP)
- Simanjiro - LAMP and Tazama - Dorobo Conservation Project
- Loliondo - Tazama - Dorobo Conservation Project
- Morogoro - Selous Conservation Program
- Songea - Selous Conservation Program
- Tanga - Tanga Coastal Zone Conservation and Development Program
- Handeni - Handeni Integrated Agroforestry Project (HIAP)
- Monduli - Friedkin Conservation Fund
- Kilombero - Sokoine University of Agriculture/Tuskegee University Partnership

These projects are in different stages of development. Some projects are still in the drafting stages, while others have begun implementation. It seems clear that in most cases where village by-laws have been drafted, passed and implemented, there has been some outside organization helping to facilitate the process. We have not carried out a review of these programs to determine the overall effectiveness. We have, however, incorporated general lessons learned from many of these efforts.

Who Should be involved in the Process?



There are many participants who should be involved in the by-law making process. As opposed to past efforts where by-laws were drafted by Central

Government, the emphasis is on participation at the local level. This participation is centered in the community, with village residents as the main actors.

This process must be considered genuine to the concerns of the community members, or it will likely be treated like other externally-imposed interventions or legislation: with distrust, fear, and apathy

Beside the active participation of community members, Village Government and District Government officials play an essential role in the by-law making process. They can provide advice on the process itself, on the District's vision for natural resource management, on higher level legislation and practices, as well as answer specific questions regarding

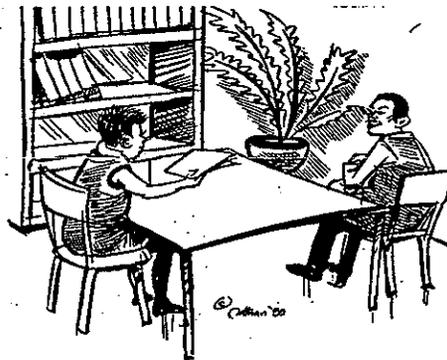


their role in natural resource management in the community. Most of all, District and Village Government participation is important to open the lines of communication between Villagers and Government officials, so that local level policies can be supportive of one another for the benefit of the entire area.

For now, it seems that Non Governmental Organizations (NGOs), Community Based Organizations (CBOs), Universities and International Governmental Organizations (IGOs) can play a crucial role in acting as moderators or facilitators for villagers, Village Governments, District Officials and other stakeholders. As it regards the role of these organizations the NLUPC guidelines say the following:

It should be kept in mind that the regulatory role of the Government can not be taken over by NGOs and CBOs. For instance when it comes to land registration, NGOs and CBOs may play an important role in training and mobilization of those involved, but the registration itself has to be done/approved by governmental staff or staff appointed/licensed by the Government. When it comes to applying [Participatory Land Use Management] PLUM, it may be important to collaborate with the NGOs and CBOs involved in natural resource use in the area concerned, and hence, to utilize their capacity and potential to facilitate the PLUM process."

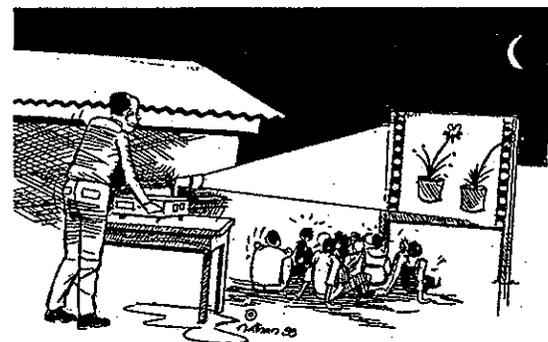
It appears that an autonomous agency such as an NGO, CBO, University or IGO, has an important role to play in ensuring a participatory approach and providing support for critical institutional strengthening at the local level. Ultimately, the community should decide on the appropriate partners.



General Guidelines for Drafting Process



CRITERIA					
STRATEGY	NEED FOR THIS STRATEGY	WHY DOES IT GROW UP THERE?	ARE WE GOING AT IT?	DO WE USE THIS IT?	TOTAL SCORE
Direct Protection	4	1	2	1	8
KOP Implementation	5	4	3	5	17
Conservation Education	4	2	3	5	14
Institutional Development	4	3	2	2	11
Applied Research	4	1	1	1	7
Lobbying/ Policy Development	5	4	3		16



INTRODUCTION

These guidelines were developed with the premise that long-term sustainable management and use of natural resources must involve local people who live with and depend on these resources. Their participation is not to be seen as a transfer of authority from one group to another, rather it is intended to create an environment where local stakeholders can contribute to important land use decisions that will affect them and their families for generations to come. There are many stakeholders involved in natural resource management and policy. However, as Uphoff (1998:5) notes,

"Community-Based Natural Resource Management (CBNRM) starts with communities as a focus and foundation for assessing natural resource uses, potentials, problems, trends and opportunities, and for taking action to deal with adverse practices and dynamics. This is done not



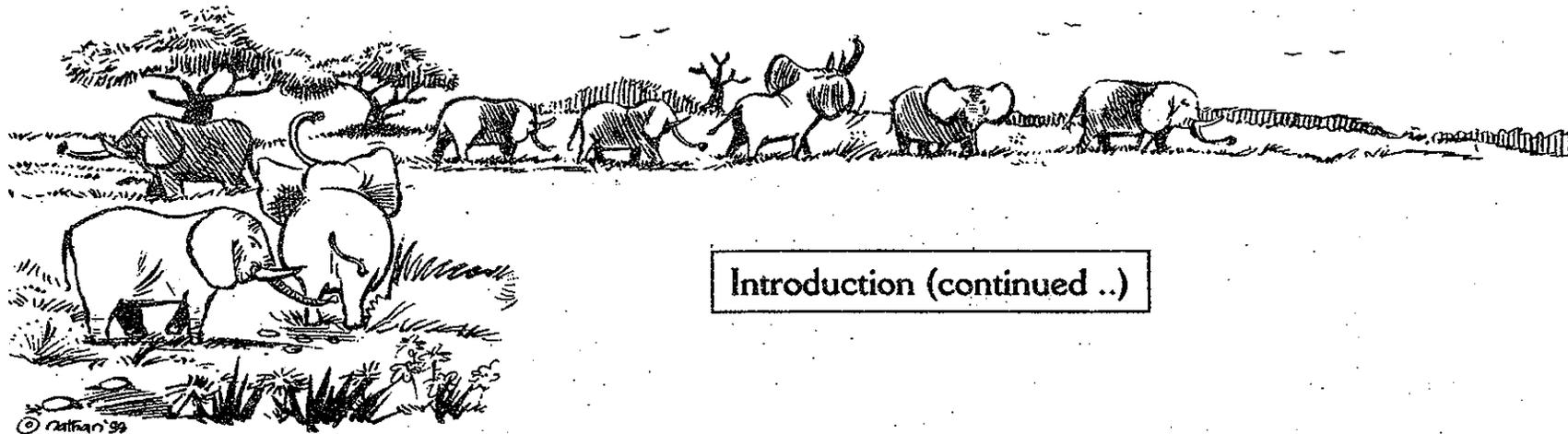
Community members participating in a planning process

in isolation but with cooperation and support from other actors, both from other communities (horizontal linkages) and from higher-level or external entities (vertical linkages). These higher-level actors can be: local or district governments, regional bodies, government agencies, non-governmental organizations (NGOs), universities, or any other institutions

that have an interest in resource conservation and management."

Village planning must be done within the framework of national policies and must have the support and guidance of the District Government. Given that District Governments often lack the resources to enforce environmental/natural resource policy at the community level, it makes sense to adopt a strategy which encourages and facilitates villages, who are the primary stakeholders, to develop and enforce their own natural resource/land management plans. Village-based planning and management means that local people themselves will be developing the plans and will be the primary agents for imple-

(Continued on page 2)



Introduction (continued ..)

(Continued from page 1)
mentation. They must also be able to directly benefit from the use and management of these natural resources (Peterson et al. 1997).

Many central government institutions are eager to see local capacity for natural resource management and planning improved, so that devolution of responsibility does not lead to mismanagement. A process such as this is intended to address these concerns by helping communities navigate through the complex and bureaucratic process

of making land use plans and creating mechanisms for enforcing participatory village by-laws.

The following steps are meant as an outline to making village by-laws and natural resource management plans in a participatory fashion. There is no one way to carry it out and each community and facilitation team will discover new scenarios that require specific innovations. The emphasis should not be on carrying out these functions quickly, but thoroughly. It is very difficult to salvage a planning process after the fact, if it was

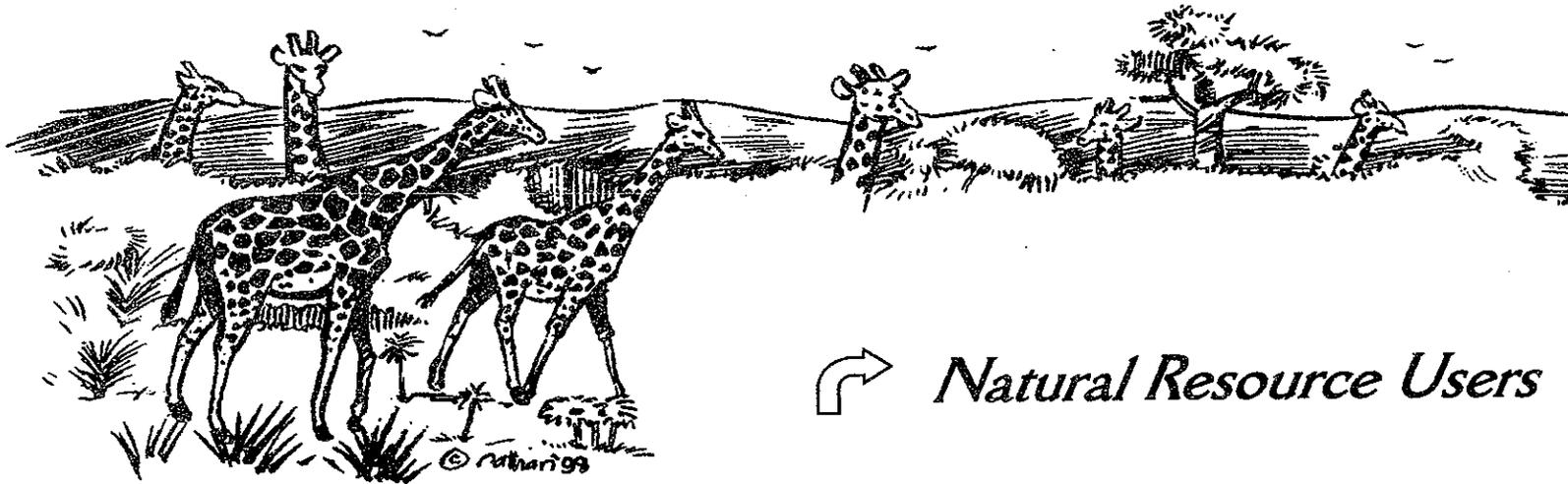
seen as top-down or driven by special interests. However, an inclusive planning process that responds to community concerns should lead to community-wide support, and make implementation more effective. In some situations the process may proceed rapidly, while in others it may take a long time. While development projects are often interested in quick results, this process requires a long-term commitment of more than a few years to be successful.

HOW TO USE THESE GUIDELINES



These guidelines are meant to be a practical and useful tool for field-based staff or facilitators who are promoting community-based management. By "facilitator", we mean anybody who is working directly with communities in an effort to help raise awareness and address issues concerning sustainable natural resource management and community development. Facilitators can come from inside or outside the community, from a formal organization such as an NGO, university or government office, or on their own, as concerned citizens. Although this guide is developed for field practitioners, it may also be useful to community members, program coordinators, policy decision-makers, researchers, donors, and students.

The guidelines are adapted from several sources, including many of the projects we spoke with (see Annex), but draw heavily upon work carried out by Dr. Liz Alden Wily, Consultant - Rural Development and Land Tenure Specialist, and the directors and staff of the Tazama-Dorobo Conservation Project. This process has been implemented by the Tazama-Dorobo Conservation Project in two districts (Simanjiro and Loliondo), and similar processes have been implemented by several other initiatives. They can be used most effectively in conjunction with the National Land Use Planning Commission's Guidelines for Participatory Village Land Use Management in Tanzania, which describe a much larger and more comprehensive process.



↪ *Natural Resource Users*

What natural resources are available? How do people value different natural resources? Which resources are utilized, and by whom? Who shares access to the resources in a given locality? Are there conflicts over natural resource use? Are the conflicts among users of the same resources, or different resources? What differences exist among various groups of resource users? What are the roles of women versus men in using and managing natural resources? Do those groups who are responsible for directly managing the resource, also have the authority to make important management and policy decisions?

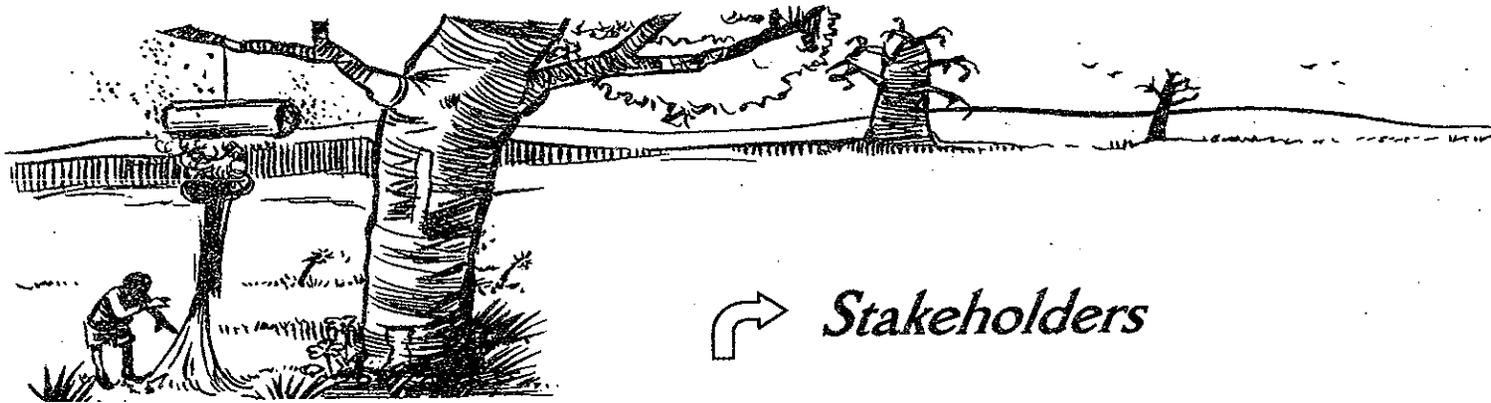


↪ *A village as a legal unit for local management*

In Tanzania, a registered village and its Village Council is a recognized authority for managing local resources and acting on behalf of the Village Assembly or residents. This is important, as it is through the Village Council that by-laws can be drafted and then forwarded to the District Council for approval. It is important to recognize, however, that not all Village Governments are in a posi-

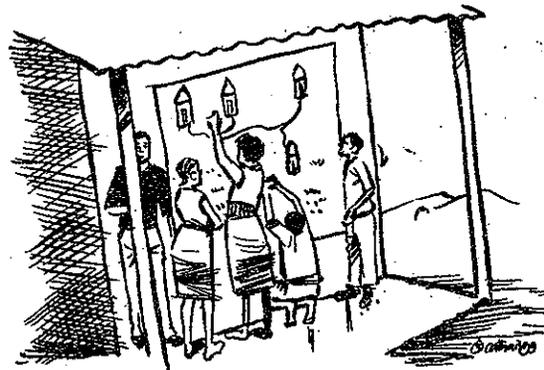


tion to carry out such decisions in a participatory fashion, and in some cases, Village Governments do not represent the interests of the Village Assembly. It is thus important to work closely with Village Governments, while pursuing a participatory approach by including a wide array of groups or stakeholders within a particular village.



↪ *Stakeholders*

Stakeholders are those individuals or groups that have some influence over or special interest in the use, management and planning of a particular activity or area. Obvious stakeholders include local resource users (with particular emphasis on gender, age, and livelihood), Local Governments (i.e. Village, District, Regional), Government Authorities (i.e. Tanzania National Parks (TANAPA), Ngorongoro Conservation Area Authority (NCAA), Wildlife Division), private interests (i.e. Agribusiness, Tourist Hunting and Photographic Tourism), and outside



organizations (i.e. Government Organizations, Non-governmental Organizations, universities, Community Based Organizations). There are many other people and groups that interact with communities, and these are all stakeholders. While not all stakeholders have the same rights over land use decision-making, they each assert some power and influence over decisions, or would be affected by those decisions. Not all stakeholders come in on an equal basis or with equal resources. It is thus important to understand the rights, resources, and goals of each

Making a Village By-Law and Management Plan

A village by-law may be made on almost any subject of concern to village members from health to education to natural resource management. A by-law is a set of rules regarding one of these areas, as well as specific penalties for anyone (from either inside or outside the community) who breaks them. The procedure for enforcement is elaborated as there is the need to specify who is responsible and given the authority to enforce such rules and penalties. Also, it is usual for the community to explain, in a brief preface, why they are making these rules.

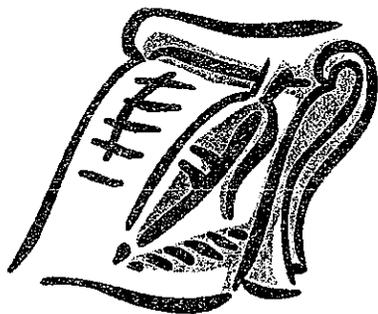
There is no standard form for a by-law and each one may be different depending on the desires of the community. While many authorities are concerned with standardization, by-laws are meant to reflect relevant contextual issues and should not be standardized. Some districts like to see village by-laws drafted in a very formal manner with specific clauses. It is advised to get copies of existing village and district by-laws in the area that you are working. The following page gives an example of the structure of a by-law. Examples of by-laws are included at the end of this publication.

Although it is not required by law, it is useful if the by-law is in both English and Kiswahili. The Kiswahili version is clearly most critical, as that is usually the language that the community is familiar with and will use in drafting the by-laws.

While these guidelines are intended to help you start to initiate a process of drafting by-laws, we cannot tell you what the by-law

will say or even look like. The form of each by-law will depend on the local context, including the natural resources in question, the institutional arrangements for managing natural resources in the area, and each village's particular concerns. Once you engage this process, however, you will find that community members have ample knowledge and ideas to draft rules, penalties and enforcement mechanisms. It is up to the facilitators to create the environment for this to take place.





Example Structure of a Village By-Law

(adapted from Wily 1999)

Title of By-Law:

Made under Section 167 of the Local Government Act No. 7 of 1982.

Definitions:

Define all terms that are related to the village as a management unit that are used in the by-laws, such as the meaning of Village Chairperson, sub-village, villager, the area of the village, etc.

Preliminary Explanation:

This sets out the reason for the by-law and its objectives in a brief introduction. Depending on the situation, this may be at the beginning of the document or stated before individual by-laws.

Clause 1: Subject of the By-Law and its Objectives:

This names and describes the area or areas which the by-law will effect and who owns it (usually the community). There may be several different areas that fall under a particular by-law.

Clause 2: Management Zones:

If appropriate, the community may wish to specify which parts of a designated area will be Protection Areas and which will be Use Areas. They may also limit the activities that may take place in a given area.

Example Structure of a Village By-Law
(adapted from Wily 1999)



Clause 3: Management Systems:

This sets out exactly who in the community will be responsible for managing particular resources. The responsible party may be identified as the Village Council, or more likely, a Committee elected especially for this purpose by the Village Assembly.

The management system that will be followed is set out here: who reports to whom, how often meetings are to be held, how the Committee (or Chairperson) is to be held responsible, what is expected of them, and what will occur if they fail in their agreed duties. The relationship of the Committee with the Village Council will also be set out here.

Clause 4: Protection:

This sets out who exactly is responsible for inspecting a particular area or resource (if appropriate) to ensure that no offenses occur and for reporting offences and catching offenders when damage is done to a resource, or when a use rule is not followed. Sometimes the community will appoint guards. In other cases, the Chairperson of the local vitongoji, a village patrol board, or a sub-village/hamlet youth patrol may be charged with patrol and inspection responsibility.



Example Structure of a Village By-Law
(adapted from Wily 1999)

Clause 5: Use Rules:

This sets out each and every rule or 'law' of access and use of the resource. It may be convenient for the community to divide these into:

- Uses which are totally forbidden (now and in the future)
- Uses which are permitted through the issue of a permit (stating who will issue the permit, in what form,, etc)
- Uses which are permitted through the payment of a fee (setting out the rate of the fees, where the funds will be deposited, etc.)
- Uses which are permitted through an occasional declaration of the Management Authority (see below)
- Uses which are able to be made freely.

Clause 6: General Rules

This will set out other rules that are not strictly use rules; such as restricting burning activities; limiting the use of a resource to persons other than permanent residents for the village; a rule setting out the responsibility of each villager to report damage seen or knowledge that an offense has been committed, etc.

Example Structure of a Village By-Law
(adapted from Wily 1999)



Clause 7: Penalties and Fines:

This will set out in an exact way the penalties for each rule broken. Fines and other punishments will be listed. Fines should be detailed as much as possible. Since the legal limit for a fine is shs. 50,000/=, the by-law must fully explain if and why other fees are being levied. These may be for damages, enforcement costs, etc., but should be explained clearly in the by-law.

Included here will be penalties to be levied when persons or bodies designated as responsible have failed in their duties (for example, a community may want to levy an especially high punishment upon a person who abused his or her position of responsibility, such as a Village Chairperson, members of the Village Council, or a Village Scout)

Clause 8: Enforcement and Administration of Fines and Penalties:

A wise village will put into the by-law exactly how it expects to see fines levied, recorded, receipted, and how the money obtained by fines will be spent and by whom. It will detail who is responsible for enforcement and what are the responsibilities/roles of various groups such as the Natural Resources Committee and Village leaders.

The procedure for imposing fines and penalties should be explained, including if there is a dispute and the case goes to court. In this case, the by-law may clarify that if the case goes to court the accused is still responsible to pay the village fine, as well as any fine levied by the court.



Example Structure of a Village By-Law
(adapted from Wily 1999)

Clause 9: Amendments:

This will set out how changes (additions or alterations) may be made to the by-law. For example, a requirement that a two-thirds majority of the Village Assembly ratify it and send the information to the District Council for signature approval by the District Chairperson. This may include a clause such as 'any part of the by-law may be altered only with the agreement of two-thirds of the membership of the village assembly and only if the spirit of the by-law is not altered by the amendment'

Date of Commencement:

This will indicate the date on which the Village By-Law will come into effect.

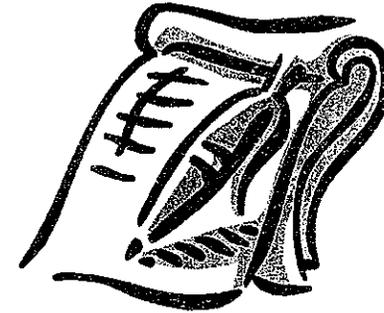
Signatures:

The by-law will end with signatures of the District Executive Director, Council Chairperson and the Village Chairperson

Language:

The by-law should be written in Kiswahili. It may also be useful to have a copy in English if resources allow.

More about Village By-Laws



As stated earlier, a village by-law cannot contradict superior laws and must be in line with other by-laws already drafted and passed. In terms of penalties the following apply:

- Previously no fine for breaking a village by-law could exceed 2,000/=. The Local Government Laws (Miscellaneous Amendments) Act of 1999 has raised this amount to 50,000/= [section 33].
- No person may be imprisoned for breaking a by-law [section 167 (2)].

The same law, however, allows for other penalties for breaking by-laws to include:

- 'Penalties to be affixed to a breach of village by-laws may, apart from a fine include such measures

as may be deemed to be most fitting to be exemplary or deterrent to potential wrongdoers' [section 167 (3)]. This allows for a large cautionary fine or measure':

- Measures 'to ensure the actual redress of the wrong done by the person concerned and to restore balance in the social equilibrium previously disturbed as a result of the offensive act concerned' [section 167 (3)]. This allows for a village to order the offender to pay damages, or to undertake certain labor to repair damage made. The village could also levy a fee for the costs associated with the offenders apprehension and the time spent meeting to discuss the case.

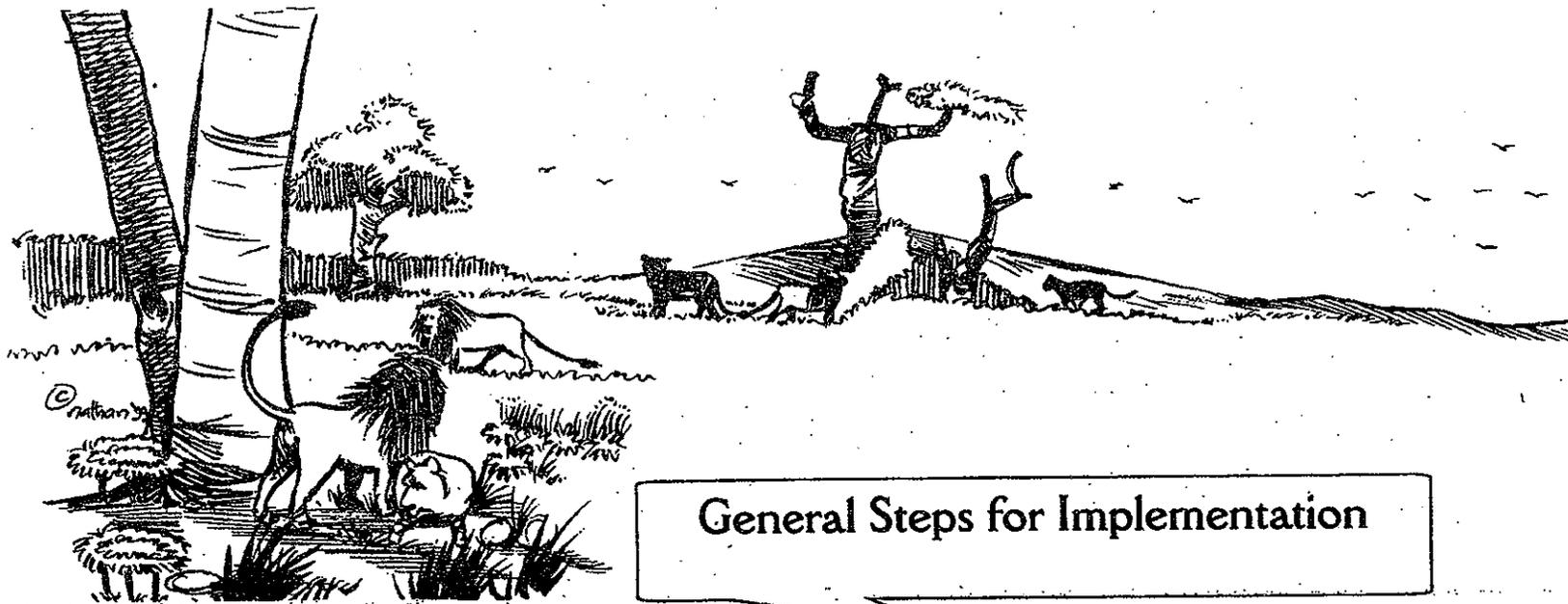
Should By-Laws be inclusive of all natural resources or should they focus on an individual resource?

There are cases for both of these approaches and it will be up to each community and facilitation team to decide which is the best approach for each particular situation. However, as the process of planning and consensus building is time consuming and resource intensive, it makes sense to plan as holistically as possible. Most natural resources are not managed in isolation, and past sectoral management approaches have proven inadequate. With the current move toward vesting more authority with Local Government, there are more and more activities being proposed at the district and village level. In order to avoid ad hoc development efforts, a holistic village plan can help prioritize village goals and provide a context for multiple projects to proceed. If the community has not carried out a planning process, it may be difficult for them to seriously consider the implications of proposed activities. Also, if there are internal or external conflicts over resources, a comprehensive plan will provide a village management statement. Without this, management may be dictated by outside stakeholders.

There is also a case for a focused resource management plan and by-law making process. This is especially the case where it concerns forest management. The argument is that if a community focuses on one resource such as a forest, they may be able to devote more time and energy to implementing it fully.

Different factors will help determine which approach is best for each situation. These include current level of pressure on a given resource, and what resources are in question. Ultimately, the communities will decide what by-laws to draft based on their knowledge, but the facilitation team plays a key role in asking the right questions to help communities see a holistic resource picture.

A community may be able to integrate these two approaches. If they start by making a by-law concerning a particular resource, they can expand the project to include other resources later. They can also draft by-laws concerning the entire natural resource base, and choose the critical few to focus on implementing initially.



General Steps for Implementation

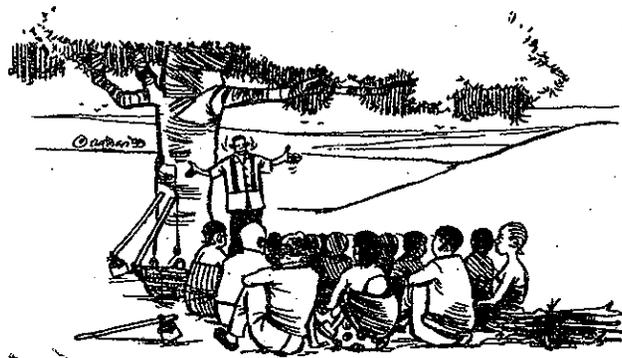
The legal process for making a by-law is relatively simple, as explained in legal section of this document. The actual process of participatory planning and by-law making is much more complex and time consuming. The process is one of planning the use and management of natural resources and creating corresponding by-laws to support community plans. While each process will have its own challenges and successes, we can not stress enough the importance of patience and perseverance. This process takes hard work and commitment and, together with genuine community participation and dialogue, it can help create positive change for many rural Tanzanians.

1

Identify the Team of Facilitators

The organization that is sponsoring the facilitation process must decide who will work in the field with communities to implement the process. The role of the facilitator should not be one of forcing information on people by lecturing to them. It is rather one of providing a framework for active discussion and learning by all participants, including the community members, government officials and the facilitators themselves.

Facilitators should be field-oriented people who are willing to spend considerable time in communities. They should have a background in natural resources management, which is not to say that they must have gone to school to study it. Rather, they should have an overall understanding of how



natural resources are used and managed in the area. They should also have experience in community develop-

ment, especially in working in a participatory fashion. If possible someone with legal experience should also join the team permanently or act as an advisor.

It is essential that facilitators develop a relationship of trust and understanding with communities, which means respecting their way of life and customs. Trust is not easily gained and facilitators should be open about their backgrounds and personal goals for the process. There should be no hidden agendas. Facilitators should be able to interpret different situations and see a more holistic picture than individual stakeholders.

To be successful, facilitators must be committed to the process and gain satisfaction from daily interactions with a variety of stakeholders. The facilitator team should include at least one man and one woman so as to be able to effectively communicate with many groups within the community. It is important to work as a team, as multiple perspectives often lead to better assessments and the camaraderie of a group motivates people and makes the work more enjoyable. The success of the project will depend in part on choosing the right facilitators, so take time to train and select the appropriate individuals.

The team should meet with the appropriate District Authorities to discuss the aims and goals of the process. This primarily involves the District Executive Director (DED), the District Council Chairman, the District Commissioner (DC), and the Member of Parliament (MP). If supported, District personnel with training in natural resources and community development should be actively included in the facilitation team, for example the District Natural Resources Officer, the District Forestry Officer, the District Game Officer, the District Planning Officer, the District Community Development Officer, etc...

It is important to work with the relevant district officials throughout the process, so as to open a dialogue between Village members and district authorities, as well as to provide relevant technical information. The district officials involved in the process will also act as advocates for the plan at the district level and play an essential role in follow-up and enforcement.

A process such as this provides many incentives for district governments who are often overburdened with work. A successful process can reduce district costs of enforcement and

management, build good relations with communities which in turn can help them with surveillance and enforcement of district laws, strengthen the sustainability of local management systems, and attract new sources of revenue to the area.



3 Village level Approval and Commitment to the Process

Village level approval and commitment to the process is critical. There must be a commitment that reflects the views of more than a select few individuals and leaders. Ultimately, decisions will be made that affect all village members and if they are to be successful and fully implemented they must have broad-based support. Specific steps leading to this process include:

The team of facilitators contacts village leaders to present the process. If interest is shown, they should plan a meeting with the Village Government and other prominent village members.

Meet with the Village Council to present the process and get their input, and hopefully support. If positively received this should lead to a meeting of the whole Village Assembly for their input and reactions. If positively accepted by the Village Assembly then at this same meeting suggest that a working committee be appointed (if one does not already exist) that represents all sub-village areas, gender and social stratas. This committee

will act as a representative body to discuss natural resource issues and write the initial drafts of management plans and by-laws.

Make sure that the community understands the reason for the presence of the facilitators, the District Officials, and the need for a representative body from the community.



When presenting the plan to village members it is important to be clear about the process and the roles of different stakeholders. Each organization should explain their goals and desired outcomes to make sure that all parties understand each other and that their goals are compatible.

Go to the sub-village level (with representatives from the area) to present the same information and discuss further. You should also meet with focus groups outside of the Vil-

(Continued on page 20)



(Continued from page 19)

illage Government who play an important role in land use management and local decision making. Such groups include traditional leaders, youth groups and women's groups. The more inclusive you can be, the less suspicion and the more support the process will have.

Many local communities are interested in new ideas concerning natural resources and land use management. They are, however, very careful in receiving these new ideas from outsiders. They have seen ini-

Village level Approval and Commitment to the Process

tiative after initiative fail to meet their goals and often leave them in a worse position. Ideally the organization sponsoring the process should have a relationship with the communities that they hope to work with. Whether they do or not, it is essential to build trust among stakeholders. Building trust takes time and commitment from all stakeholders. Important steps in building trust include:

- ◆ Mutual respect among stakeholders
- ◆ Completion of agreed tasks by all parties
- ◆ Continuous and open communication
- ◆ Clear and realistic expectations about the process and outcomes
- ◆ Willingness to cooperatively seek joint objectives
- ◆ Following through on commitments
- ◆ Being flexible and adapting to new situations
- ◆ Continuity of support and implementation

Any village member is able to propose a by-law, and you may find this type of participation possible. So far, experiences have shown that it is more productive to work with a designated committee that is responsible to come up with the initial draft plans and by-laws. Then this plan should be brought to the wider community through various outreach techniques.

As we have mentioned, this committee should include representatives outside the current political structure and try to include a diversity of perspectives. This not only helps to make the plan more realistic, but also opens the channels of communication between representatives and disparate members of the community. The committee should be named by the community, but should reflect the duties to be carried out. In most cases in Tanzania this committee is called the Environment and Natural Resources Management Committee (ENRM Committee).

The facilitator team will most likely need to help develop the capacity of the ENRM Committee, as well as other groups and institutions in the community. This capacity will likely go beyond the mandate of natural resource planning and include organizational and financial skills. In many cases this Committee becomes responsible for financial decisions concerning revenue derived from natural resource management. Thus, helping to establish accountable systems is essential.

Accountability of local institutions is one of the most important issues to address throughout the process, so that once the by-laws are operational there are mechanisms in place. Part of the process of accountability begins with the creation of a representative committee. No committee can truly represent the interests of the entire community, but experience has shown that a few tactics in formulating the committee can help to achieve broad representation. These are:

(Continued on page 22)

Identify or Create a Local Management Authority

(Continued from page 21)

- Including one representative from each sub-village;
- Asking that the Village Chairman not be a member of the committee, as the committee will have to consult the Village Council, and if they are the same people, there are less checks and balances;
- Increase the representation of women. You may suggest that each committee have at least 25% women. In some cases, women's participation is 50%. This issue will depend on the dynamics of each community;
- Include members of different age groups; and people who utilize different resources.

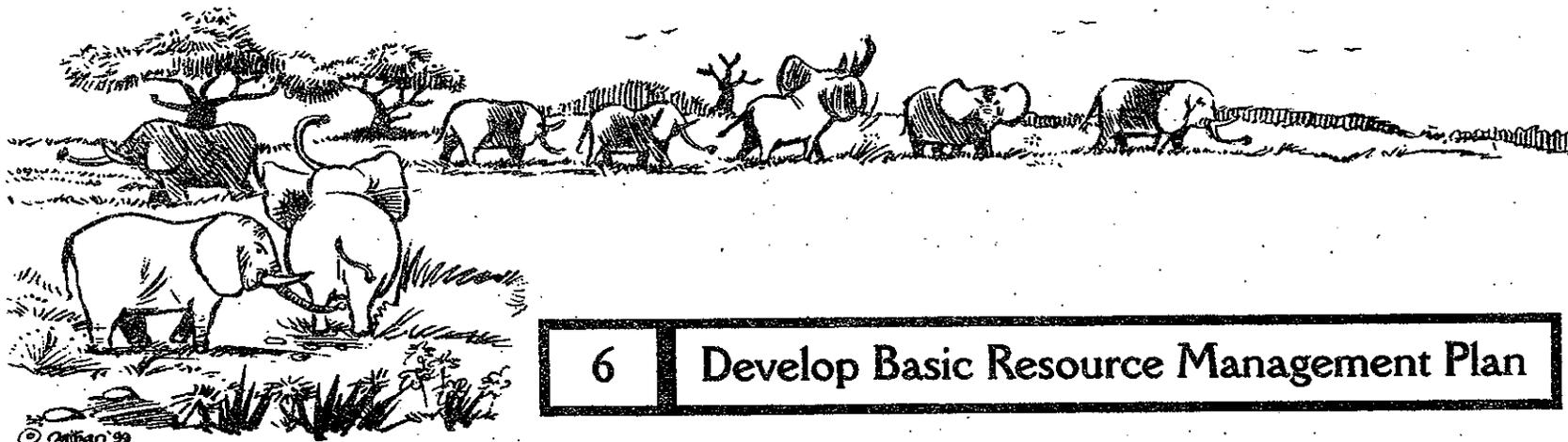
It is common for Village Governments to delegate certain responsibilities to committees such as this one. The legal authority to do so is provided in section 108 (1) & (2) of the Local Government Act No.7 of 1982.

5

Define Specific Management Goals

By-laws should be drafted with specific management goals in mind. It is important for a community to develop management goals before drafting by-laws. This process helps a community clarify its standpoint from that of external stakeholders, including the organization or organizations who may be part of the facilitation team.

Communities should realize that most, if not all, external organizations that fund or facilitate such a process have their own goals and objectives. This is a reality of development interventions. Communities should not reject such assistance outright because of this. They should, however, be aware of the various goals of the different organizations and make sure that their own goals are compatible or at least achievable within the context of the project. In turn, external organizations should not hide the fact that they have a goal or desired outcome. They should be clear and up-front about this, so as to define the areas of overlap and collaboration.



6

Develop Basic Resource Management Plan

This plan should be carried out through a series of meetings, formal and informal, of the ENRM Committee, district officers, and the facilitator team. This is where the team begins to address land use practices and concerns. Several participatory techniques are discussed later in this section that can be used to help facilitate information gathering. The planning process should not be one where facilitators or District Officials tell ENRM Committee members what to say. Rather they should help ask questions that address land use issues. The process should start with what people know and are familiar.

The general components of a village resource management plan include the following steps:

- Define the membership and spatial boundaries of the community
- Commit to initiate the process (supported by many individuals and groups)
- Delegate certain responsibilities to a representative and accountable body
- Define goals of the process
- Gather information
- Revise goals based on new information
- Select strategies and create plan
- Get broad support for the plan
- Implement plan
- Evaluate the process
- Take action upon the evaluation (adapt to new situations or stop certain activities)

???

Basic Questions During the Information Gathering Phase:

⇒ Resource Inventory and Land Use Practices

- ◆ Is the system of land use extensive or intensive? Is village land large or small?
- ◆ What are the primary forms of land use? Pastoralist? Agriculture? Agro-pastoral? Hunting? Gathering? Collection of Forest Products? Fishing? Aquaculture?
- ◆ Is land use primarily on private or communal property?
- ◆ What are the specific natural resource options and practices in each community?
 - agricultural development (small and large scale)
 - livestock grazing
 - wildlife utilization (tourism - hunting and non-consumptive, subsistence)
 - forest and wood products (home use - fire wood, medicine, housing, fencing, charcoal; commercial use - charcoal, timber, firewood, etc.)
 - mining resources
 - fisheries
 - watersheds and water sources
 - honey and beeswax production
 - Sacred sites, burial grounds and places of religious significance
- ◆ Define the strategic resources in the community. These could be for environmental, social, spiritual or economic benefits (or a combination of these).

???

Basic Questions During the Information Gathering Phase:

⇒ Resource Analyses

- ◆ What are local perceptions of land and natural resources? What do those concepts mean to community members?
- ◆ What are the main natural resources in the community?
- ◆ How are they used? By whom are they used?
- ◆ What is the seasonal variation in resource use patterns?
- ◆ What natural resources are not currently utilized by the community?
- ◆ Is their potential for their utilization?

- ◆ What are the boundaries of the village and the areas of certain resource activities?
- ◆ What is the external/internal demand for specific resources?
- ◆ What are the current pressures, problems, or conflicts with these various uses?
 - agriculture vs. livestock?
 - livestock vs. wildlife?
 - agriculture vs. wildlife?
 - wood products use and extraction - is it a problem?
 - population growth and immigration - increased pressures? is it a problem?

???

Basic Questions During the Information Gathering Phase:

⇒ Zoning Considerations

Start by looking at resources that are considered critical to everyone, such as water sources.

- What are the water sources and are they in any danger because of improper use?

Now discuss other topics such as:

- Agriculture and livestock (these should be considered together in cases where conflicts may arise)
- Wildlife and livestock
- Tourism
- Forest uses
- Permanent settlement zone, areas for public services such as clinics, schools, areas for business, etc.

⇒ Community Access and Ownership

- What is the definition of the community? Who is a community member? Who decides?
- Who has access to the resource? Does the community have the right to limit access?
- How is the land ownership distributed?
- Are there any current land disputes or conflicts?
- What are the current problems in regards to natural resource management?
- Does the community have any ability to influence these problems? If not, why not?

???

Basic Questions During the Information Gathering Phase:

⇒ General regulations controlling Use, Implementation and Enforcement

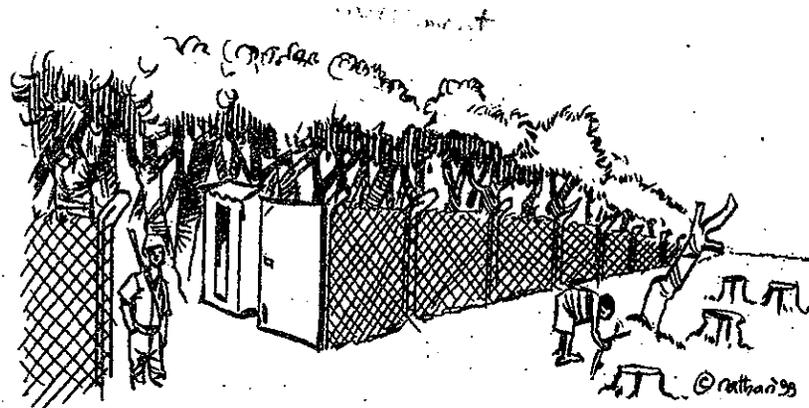
Detail why certain uses should be controlled, and how this will happen. As the plan begins to unfold, implementation and enforcement should be addressed and incorporated into the plan.

Some questions to ask include:

- What are the current penalties and fines for certain practices that are considered undesirable by the community? Are they enforceable? Practical? Reasonable?
- What resources (financial, physical, human) exist for monitoring and enforcement?
- Who will be responsible for enforcement?
- Are there particular people who will be given more responsibility?
- If so, how will they be chosen?
- How can they benefit if they do a good job?
- If they do not fulfill their responsibilities can they

be penalized?

- If there are any direct benefits to the village that come out of the plan e.g. fines levied against those who break by-laws, how will these be divided?
- Will fines be shared among district authorities?
- What kind of structures can be put in place to fight against corruption?



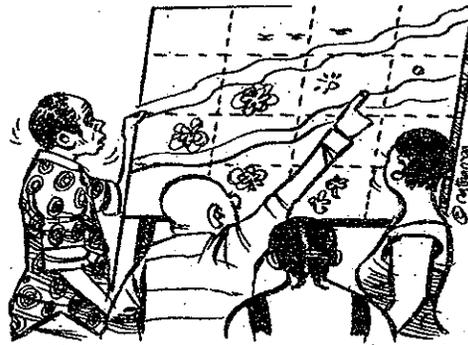
Participatory Rural Assessment (PRA) Tools

The use of Participatory Rural Assessment (PRA) tools is very effective for facilitating such a planning process. Remember that different tools are not an end in themselves, but a means for facilitators to stimulate discussion and debate. These methods should be used with the ENRM Committee, but may also be useful in sub-village or focus group meetings. For a more thorough review of appropriate tools, refer to the National Land Use Planning Commission Guidelines for Participatory Village Land Use Management in Tanzania. These activities can provide the basis for debate and discussion leading to important information for the creation of a plan and By-laws. Some of the most useful tools for facilitators are:



Participatory Community Mapping (Sketch and Transect maps)

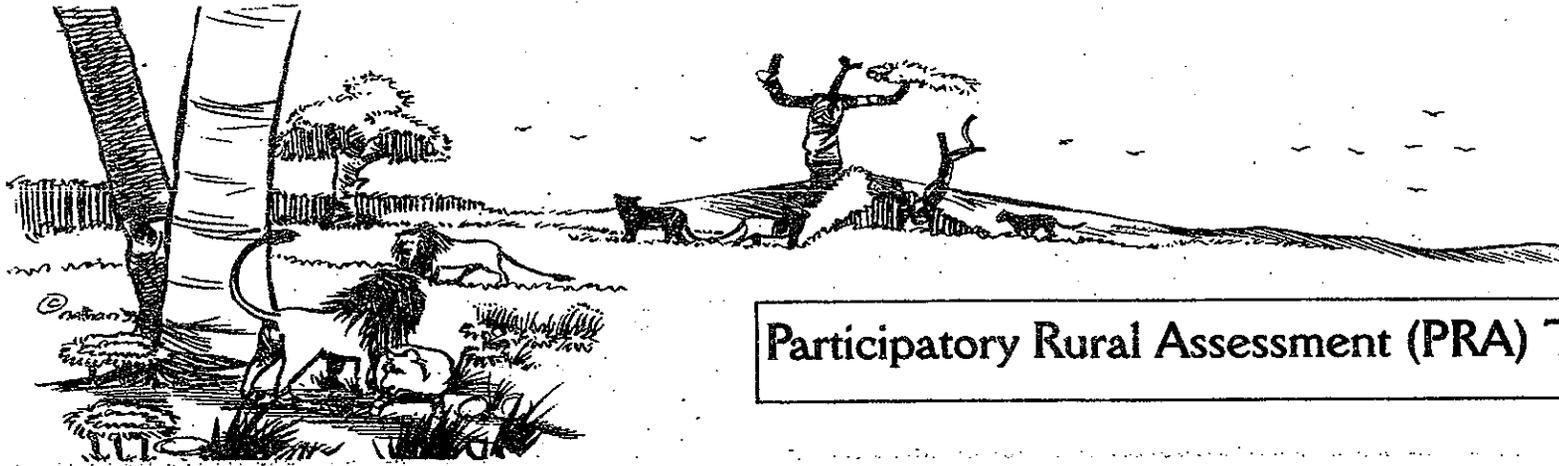
In this activity (**sketch maps**) you ask a group of community members to draw their village, including as much detail as possible regarding natural resources. This can be done on large pieces of paper, on chalk boards, or even in the sand. You may break the group into smaller groups to make several maps. These small groups may consist of women only, elders only, etc., or be mixed. Maps should try and show where



Community members participating in resource mapping

resources are found, village and sub-village boundaries, and other important distinguishing features. It is okay if the maps are not "accurate" according to certain members, as the function of the map is not to be definitive, but to generate discussion concerning village land issues.

Transect maps are similar to sketch maps, except they give more detail and are carried out by walking through the village land or the specific areas in question.



Participatory Rural Assessment (PRA) Tools



Institutional Diagrams

In this activity you ask the committee, or whichever group you are with, to name the groups or institutions that exist in or interact with the community. These can include formal groups like government, schools, dispensaries, etc., but should also include informal groups, like traditional authorities, family networks, etc. Outside groups who only have occasional contact with the community should also be included. Try and draw the diagram so that you can make connections between institutions and place them in an appropriate position to reflect their re-

lationship to the community. This diagram should be used to explore the institutional resources of a community and to try and figure out how the ENRM Committee should interact with various local institutions.

The importance of institutional issues cannot be stressed enough. The success or failure of such an effort may hinge on the appropriate institutional analysis and framework. Each project must carefully consider the current institutional structure for managing resources. What is the local political authority? Traditional authority? Do they interact? How? What is the appropriate management unit? Small versus Big? What are the appropriate socio-geographic units to undertake management? District? Multi-village? Village? Sub-village? Household? Traditional management groups?



Rank Problems and Opportunities

Eventually, after much discussion, the community should rank problems and opportunities. This can help communities to understand the costs and benefits of adopting certain strategies for implementation.

CRITERIA					
STRATEGY	NEED FOR STRATEGY	WHY GROUPS SHOULD DO IT	ARE WE GOOD AT IT	DO WE LIKE DOING IT	TOTAL SCORE
Direct Protection	4	1	2	1	8
ICOP Implementation	5	4	3	5	17
Conservation Education	4	2	3	5	14
Institutional Development	4	3	2	2	11
Applied Research	4	1	1	1	7
Lobbying Policy Development	5	4	3		16



Begin to Draft By-Laws

Once the basic issues are outlined, the ENRM Committee should address specific resource topics and come up with a plan and by-law for each.

The group should select one resource issue at a time to focus on. The facilitator team should begin to ask specific questions leading to the formation of a draft by-law. Use the format as a guideline, but questions should include:

- What areas does the resource exist or the activity take place?

- How is the resource to be used?
- Who has access?
- What are the restrictions? (always remind community members that they will be bound by the by-laws, so that they must be realistic and enforceable)
- What are the appropriate fines?
- What is the enforcement mechanism? (Village Council? ENRM Committee? Any village member?)
- etc...

The by-laws should be compiled and typed in accordance with the law by the facilitator team. Plans are generally written in Kiswahili and copies of each draft should be made for each committee member. This allows many groups in the community to have access to the document.

Many natural resources provide direct benefits to local people and communities. These benefits can be environmental, social, spiritual, economic, etc., or any combination of these values. In many cases revenue generation is a critical component to long term sustainable management of natural resources. In such circumstances it is important to devise a strategy on how to manage funds generated by natural resource use. Revenues may be generated by issuing permits, levying fines, offering services and entering into joint agreements with private sector initiatives such as tourism, to name a few.

The ENRM Committee should draft a financial management strategy to be discussed and modified by the community at large. This is an important activity, as once the by-laws are working there is the need for transparent systems of financial decision making. This is often a challenging process, but it is integral for a successful process. There are many approaches to establishing accountable financial systems and we cannot recommend any in particular. In some communities revenues from natural resources are deposited into a general village bank account. In other communities, funds are divided into different accounts such as a general development account, an educational account for community scholarships, an account for the activi-

ties of the natural resource committee and ongoing management costs, and an emergency fund which accrues interest when not in use.

It may be necessary to train village members, such as the Village Finance and Planning Committee, ENRM Committee, as well as village leaders in transparent financial management. This may include book-keeping, accounting, evaluation and financial planning.



Training of village members

8

Arrange Meetings for Villagers to Share Experiences

If the facilitation team is working in more than one community, it is valuable for different communities to be able to meet together and share their experiences. This can help to give new ideas to community members, encourage collaboration between villages and give people a sense that they are part of something bigger. This step can occur at different stages during the process.

It is not realistic to bring all community members together, so each process will have to de-

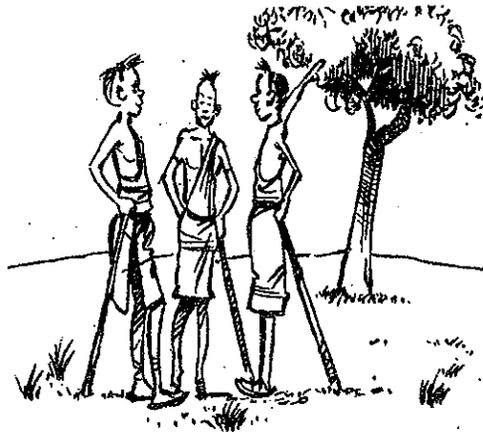


cide on the best training approach. In one project, the approach was to bring four individuals from each of the six different villages together. From each village they chose the Village Chairman, a village ENRM Committee member, a prominent woman, and a traditional leader. These people met together for three days, and the workshop made everyone excited about the process. In another project they chose to train community members who were not involved in village leadership.

This process involves a lot of time spent meeting and discussing the plan with people throughout the village. While Village Assembly meetings play an important role in village wide decision making, there are many constraints to these meetings. Experience has shown that meetings at the sub-village level, or even the individual homestead level, may be more effective in reaching out to the community and seeking their input. As many groups as possible should be included in outreach activities as you can never know what someone has to offer unless you try and speak with them. Try and meet with groups that do not usually attend village meetings, such as children, disabled people, elderly people and young women.

The facilitator team should go to all of the sub-villages with the repre-

sentative of that area from the ENRM Committee. They should discuss the draft plan and all comments should be carefully recorded as revisions and then brought up at the next ENRM Committee meeting for discus-



sion and approval. If at all possible the team should write a letter to inform the sub-village chairperson ahead of time so that he or she can

prepare his/her residents for the meeting. The team should spend time in the sub-village after the meeting to meet with smaller groups and individuals in a more informal setting. In this way they are using multiple methods to get as many views as possible from the community.

Outreach to sub-villages will often bring up issues important to that particular area or group of residents. Women's, elder's, youth, and specific resource user groups are important resources in understanding the various perspectives in a community. Traditional leaders play an important role in many communities and can provide invaluable information on current systems of natural resource management. In many cases formal groups or organizations may not exist to represent these various perspectives. This does not mean that these institutions do

(Continued on page 35)

Take Draft of Plan to Wider Community

(Continued from page 34)

not exist. It is the role of the facilitators to understand the community make-up and seek out these perspectives, whether represented by formal or informal institutions.

This process of outreach is clearly time intensive and an organization must be willing to support its staff to spend considerable amounts of time in the field. This is, however, the most important activity as it forms the basis of information exchange and leads to adaptation by the participants.

Timing of outreach activities is also very important. Seasonal variations including weather conditions, availability of food in the community and labor intensive activities may make certain times preferable for outreach.

10 ENRM Committee and Facilitators Revise Plan

After the plan has been reviewed by all of the sub-villages, the ENRM Committee together with District Officials and the facilitator team revise the plan based on the feedback of the village members.

11 Consult a Legal Advisor

Before the complete draft is submitted to the District Council the facilitator team should revise the draft with a legal advisor, such as a District Council Solicitor or District Magistrate to assure that the by-laws do not conflict with various parent acts. The facilitator team can help in attaining a private or public interest lawyer if no district lawyer is available.

12 Present Plan to the Village Assembly

When the sub-villages and Village Council are satisfied with the draft plan, a Village Assembly meeting is arranged. There should be good notice for the meeting and the facilitation team may have to arrive a few days early to prepare and advertise the meeting. At the Village Assembly meeting the plan should be debated and revised accordingly.

13 Final Editing Process

After the final comments are given at the Village Assembly meeting, the ENRM Committee, the Village Council and the facilitator team meet together to make the final editing changes and to make sure that the wording represents the desires of the Village Assembly and has not been changed or misinterpreted.

14 Consult the Ward Development Committee

Although not mandated by law, it is common to consult the Ward Development Committee (WDC), as they are responsible for helping to coordinate development activities between villages. The WDC includes leaders of all villages within each ward (usually three villages per ward). The plan should be reviewed and approved by the WDC which includes the Ward Councilors and the Ward Executive Officer. They can provide guidance on how the plan may conflict with other village development activities and may suggest specific changes. It is important to consult the WDC as the District Council will want to know if the WDC supports the plan and by-laws.

15

By-Laws Approved by Village Council & Village and Assembly

When all of the above steps are covered the Village Assembly and the Village Council meet one last time to approve and ratify the plan. The minutes of both the Village Assembly meeting and the Village Council meetings should be submitted along with the final plan to the District Council.

"The process of making a village by-law is participatory. A by-law which has been made with improper consultation with the full community is not legal. In the same way that central Government cannot make a law without Parliament passing the law, a Village Government (Village Council) cannot pass a Village by-law without the support of the Village Assembly" (Wily 1999).

16

Village Council Submits the Proposed By-Laws to District Council

A village by-law must be approved by the District Council at a Council meeting, with Councilors from different Wards of the District and the heads of District departments. Both the Council Chairman and the District Executive Director (DED) need to sign the by-laws once they are approved by the District Council. See legal section if a by-law is not passed or not considered by the District Council.

After approval, copies should be sent to the Village Council, the District Council, the District Magistrate and the Ward Executive Officer (WEO) who is in charge of the primary courts for the Ward. They should receive copies, as they will be expected to uphold the by-law should a case relating to its content arise. It is also common for the by-laws to be posted at both the District Office and the Village Office.

The by-laws can be typed on regular paper, or if resources allow could be published in a small booklet. For some people, this type of presentation may give more legitimacy to the document.

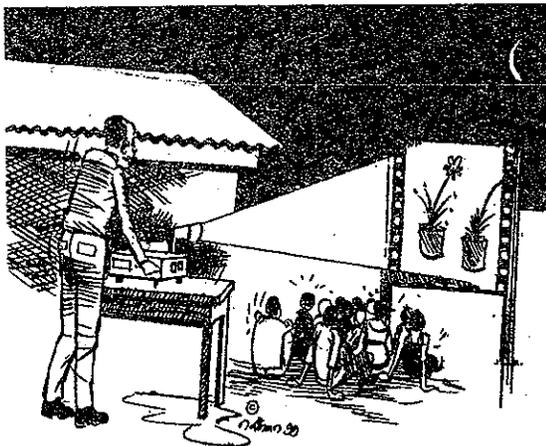
Once the Village receives the approved by-law they should meet with the Ward Development Committee to explain the by-laws to other communities and to begin discussing implementation. The Village Council should call a general assembly and/or sub-village meetings to announce the official use of the by-laws and discuss plans for implementation.

The facilitator team will need to follow up to help set up the necessary structures and procedures for implementation and begin to refine and modify as necessary. This is a critical component and as much time as possible spread out over as long a time as possible should be budgeted. It appears from current experiences that at least three years of intensive support, followed by three more years of less intense support is necessary to strengthen local management institutions.

Training for ENRM Committee members, local leaders and other community members is important in sustaining follow-up activities and interest. Training activities should be planned based on discussions with the village and should address relevant issues and topics that have been encountered. This training may take place in the communities, using the available human resources together with the facilitator team. There may also be opportunities for individuals to attend official training courses designed for community level natural resource management. One such program that exists is the Community Based Conservation Training Center run by the Ministry of Natural Resources and Tourism and the Wildlife Division in Namtumbo/Songea. This Center offers 10 day courses for Village Wildlife or Natural Resource Committee leaders and 42 day courses for Village Game Scouts.

The ENR Committee should continue to act as an intermediary between the community members and the Village Government, to ensure that all people are aware of the by-laws and to bring any questions or concerns to the appropriate people.

More...



Other follow-up activities to consider include:

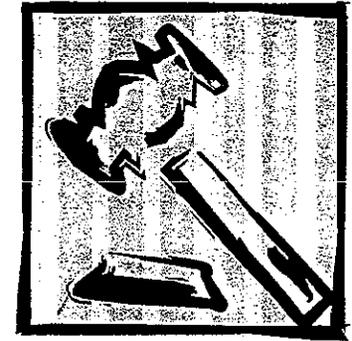
- Visit other communities that are also involved in this process to exchange ideas and get motivated.
- Work with the District NRM Committee. Ideally members from each Village ENRM Committee should sit on the District ENRM Committee to ensure better coordination in the District.
- Make sure transparent and accountable systems of natural resource and financial management are in place. The first three years are most crucial for follow-up and enforcement. If the process is supported, this should lead to stronger support for the process and stronger local institutions. If enforcement is weak, this may weaken the potential for future implementation.
- Make sure systems of monitoring and evaluation are implemented and that the process can be changed to adapt to new concerns and conditions.

Many local communities are interested in new ideas concerning natural resources and land use management. They are, however, very careful in receiving these new ideas from outsiders. They have seen initiative after initiative fail to meet their goals and often leave them in a worse position. Ideally, the organization sponsoring the process should have a relationship with the communities that they hope to work

with. Whether they do or not, it is essential to build trust among stakeholders. Building trust takes time and commitment from all stakeholders. Some of the important steps in building trust include:

- Knowledge of and respect for local resource use systems
- Mutual respect among stakeholders
- Completion of agreed tasks by all parties

- Continuous and open communication
- Clear and realistic expectations about the process and outcomes
- Willingness to cooperatively seek joint objectives
- Following through on commitments
- Being flexible and adapting to new situations
- Continuity of support and implementation



The Legal Basis for By-Laws



Introduction



In a democratic society there are three arms of the state: the executive, the parliament, and the judiciary. The executive arm of the state deals with the general management of the country and law enforcement, while the Parliament passes laws which the judiciary applies in dispensing justice to the citizens of that country. In addition, these three arms of the state do jealously safeguard their roles and strive to see that no organ usurps or takes away the powers of any one of them. The first concept described above is called

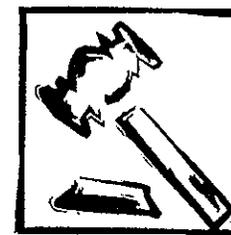
separation of powers while the second one is called the *principle of checks and balances*. If these two essential principles are interfered with then the country in question ceases to be democratic and could degenerate into an autocratic, authoritarian, or a dictatorship state.

The law making process is the function of the Parliament and that is why its members are sometimes referred to as *lawmakers*. The Parliament's law making powers are unlimited except in

countries with a Bill of Rights where the Parliament cannot pass laws that infringe upon peoples' rights, nor laws that violate the basic constitutional structure. The Parliament in most cases passes laws of general character and leaves the details to be worked out by a specified authority in each piece of legislation. When the Parliament allows a specified authority to make specific guidelines or rules as to how a particular law is going to be implemented, this leads us to another branch of laws that have been termed subsidiary/delegated legislation, or by-laws.



By-Laws in general



Definition:

By-laws can be defined as all those laws that have been passed by an authorized authority on behalf of the Parliament, which received the power to do so by a specific mandate from an Act of Parliament. To put it simply, by-laws are expected to provide specific details that the Parent Act could not provide. This means, by-laws are supposed to lead to the smooth implementation of the Parent Act.

For a By-law to be Legal the Following are Important:

- It must emanate from a parent or main Act of Parliament, which specifically gives power to a specified Authority, public officer, organ or body to make them, on behalf of the Parliament.
- It must be published in the official Government Gazette, except for those made by village councils, so as to make members of the public aware of its existence.
- It must not conflict with the objectives or any provision of the main Act or other Acts of Parliament and the Constitution.

If a by-law does not meet any of the above three requirements then it is not legal and courts of law will not give it effect.



Sources of By-Laws in Tanzania



There are four sources of by-laws in Tanzania and these are:

- (1) The Chief Justice and Ministers are empowered by various Acts of Parliament to make subsidiary legislation in terms of orders, rules, and regulations to cater for various circumstances and situations. These by-laws may apply to a selected area, district, region, or the whole country as the case might be;
- (2) The Minister responsible for local government under section 147 of

Act No.7 of 1982 is empowered to make rules for villages, and District Councils;

- (3) District Councils, under Section 148 of the Local Government Act No.7 of 1982 and section 7 and 13 of the Local Government Finances Act (No.9 of 1982), have powers to make by-laws on a wide range of issues in their respective districts. These powers, however, are only exercisable subject to the consent of the Minister responsible for local government; and

- (4) Village Councils under sections 163 have been given powers to make by-laws for the better functioning and administration of their respective villages and the resources found therein. This power is exercisable subject to the approval of the District Council.

These sources of by-laws could, therefore, be utilized to regulate many sectors of life in Tanzania, one of which is natural resources management and environmental protection.

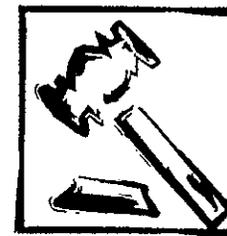


Management of Natural Resources through By-Laws

The management of natural resources and environmental protection in Tanzania is dealt with in approximately 100 pieces of national and subsidiary legislation. These pieces of legislation do not have a comprehensive outlook for which holistic integrated management of natural resources and environmental protection can be pursued. They are fragmented and sectoral in nature. Basic and intrinsic concepts of environmental protection are lacking in almost all these pieces of legislation, and the concept of community participation in management of natural resources and environmental protection is addressed by very few of them.

4

Advantages of Village B-Laws



Advantages of village by-laws made by the village governments include the following:

- (1) Village by-laws empower the villagers to be the key decision-makers of how the resources in their respective areas should be utilized - - in conformity with national laws;
- (2) Village by-laws empower the village government to be able to levy taxes or require fees on various services, products, and resources available in the village;
- (3) Village by-laws enable villagers to regulate immigration to the village by outsiders who are eager to come and utilize the resources available in the village;
- (4) Village by-laws help to identify and protect a village's common property which would have otherwise been susceptible to alienation by the central government and granted to other people or foreign investors without assigning the relevant reasons to the village government;
- (5) Village by-laws can help to codify the traditions and customs of

(Continued on page 5)



Advantages of Village By-Laws

(Continued from page 4)

- the respective communities to become part of the laws governing natural resources management in the said village and the country at large; and
- (6) Village by-laws emanating from customs and traditions of the communities, if not in conflict with national laws and constitution, are easier to enforce and adhere to because they form part of the community's way of life and are understandable by almost every person in the village.

Powers of District Councils to make By-Laws



The Local Government Act (District Authorities) Act No.7 of 1982 allows local communities, in the form of village and district councils, to make and pass by-laws on the use and management of natural resources and environmental protection. In this Act one finds that there are two levels of law making: the District Councils and the Village Councils.

District Councils have powers to make by-laws concerning a wide range of issues. This power is conferred to them by section 118 (d) when it states:

“In addition to the functions and duties conferred or imposed on local government authorities under section 111, it shall be the function of every District Council, in relation to its area of jurisdiction-.... (d) To make by-laws applicable throughout its area of jurisdiction, and to consider and approve by-laws made by village councils within its area of jurisdiction.”

(Continued on page 6)



Powers of District Councils to make By-Laws



(Continued from page 5)

The same powers are also conferred by section 148 (1), which states:

“Every District Council may, subject to this Act and to any other relevant written law, and subject to the consent of the Minister, make by-laws designed—

- (a) to promote and secure the good rule and orderly government of its area;
- (b) to foster and maintain the health, safety and well-being of the inhabitants of its area of jurisdiction; and
- (c) for carrying into effect and for the purposes of any of the functions conferred by or under this Act or any other written law.”

From the foregoing, we can safely say that District Councils have significant powers to make by-laws. One only

needs to read section 118 (2) of the Act which gives about 30 different functions, including human development, environmental protection, collection of taxes, housing, natural resources utilization, security, education, business regulation, and construction of roads, to appreciate these wide powers.

For natural resources by-laws at the district level the District Council's powers seem unlimited, with two exceptions. The said by-laws may not be in conflict with any provision of Act No.7 of 1982, or any other written law, and they must have the consent of the minister. Otherwise District Councils have powers to make by-laws giving effect to any Act of Parliament in their jurisdiction.



Powers of Village Councils to make By-Laws



There are basically three levels of executive administration in the country. These are central government, town/district governments, and village governments. Each level has powers of making laws delegated to it by the Parliament. As stated above, the laws made by any of these levels of government are subsidiary legislation. Our main focus in this paper is on the village council's powers to make by-laws.

Guided by the circumstances that led to the formation of villages in Tanzania the following appear to be some of the reasons the government decided to vest village councils' with powers to make by-laws:

- The political basis for the village council's powers to make by-laws emanates from the fact that villages in Tanzania

have their own governments and areas to which their jurisdiction extends. Thus of all executive governing bodies in Tanzania the village government is best placed to pass rules that are specific to that village and which take to heart the interests of the villagers in that area;

- Apart from the political justification, there is a legal one. Village councils in Tanzania are corporate bodies capable of suing and being sued. Furthermore, village councils are charged with many responsibilities ranging from security to human development, to natural resources management. These tasks cannot be achieved if the said body charged with them is not empowered to pass regulations that mandate their achievement; and

- Village councils, which were the main implementers of the party and government directives on Ujamaa and Self-reliance, could not do so unless clothed with the powers to order the villagers to comply with the government directives at the village level.

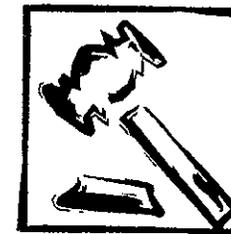
These reasons, among others, led the Parliament, through Act No.7 of 1982, to give the village government powers to make or pass by-laws. The section in point is section 163, and it states:

“Subject to section 164, and to the provisions of any regulations, directions and delegations made by the

(Continued on page 8)



Powers of Village Councils to make By-Laws



(Continued from page 7)

Minister pursuant to section 110, a village council may make by-laws for carrying out into effect or for the purposes of any of the functions conferred by this Act."(emphasis supplied)

The Minister took a long time (until 1995) to effect this provision through Government Notice No.451 (G.N 451) called Taratibu za Uendeshaji wa Serikali za Kijiji (sic). In G.N 451 of 1995 the Minister provided the general guidelines of running the village governments including the procedure and format that these governments are supposed to follow in making by-laws. Act No. 7 of 1982 and G.N 451 of 1995 clearly state that the village by-laws are supposed to be approved by the District Council to become by-laws. In short, the Minister responsible for local government has no role in the passage of village by-laws.

One of the areas for which the village governments have powers to make by-laws is on conservation and management of natural resources. According to section 142 of Act No.7 of 1982, local governments have been given wide powers to make by-laws to manage and conserve the natural resources in their respective areas. This power is of utmost importance in this era where community management of natural resources is seen as an essential component in ensuring sound natural resources management.

It has been observed that Tanzania's system of village government is unique because, if properly adhered to, it enables the villagers to be principal players in the development and governance of their village and the country in general.



Procedures for Enacting By-Laws



The procedure that the village government is supposed to follow in enacting a village by-law is provided by section 164 of the Act No.7 of 1982. The said section provides, and we quote in full:

Section 164:

(1) Where a village council proposes to make by-laws it shall convene a meeting of the village assembly and cause the proposals to be considered, and it shall then, at a meeting of its own; consider the proposed by-laws and pass them with or without amendments, account being taken of the view taken by the inhabitants of the village of the proposals at the meeting of the village assembly; and shall then submit the

by-laws, together with the minutes of the meeting of the village assembly which considered the proposals, to the District Council in whose area of jurisdiction the village is situated for its approval of them."

From the above provision the law provides steps that are necessary in the passage of the village by-law, which are:

- (a) the village council meets and comes up with the idea of promulgating the village by law;
- (b) the village assembly is convened to receive and discuss the proposal of the village council on the need of passing the village by-law on a certain issue or resource(s);
- (c) the village council meets to pass a by-

law being guided by the views of the village assembly that deliberated its original proposal on the need of passing it; and

- (d) the village council submits the by-law to the District Council together with the minutes of the village assembly so as to let the district council be in a position to approve or disapprove the proposed by-law.

The above procedure is mandatory and the villages are supposed to adhere to it. Otherwise, the by-law might not be approved by the District Council or might be challenged in a court of law for not being made in accordance with the procedure provided for by the law.



What if the District Council does not act on a By-Law?

When the village council passes a by-law but the district decides not to approve it or to just sit on it, the village council can petition the High Court to order the District Councils' decision to be wrong or order it to exercise its powers of approving or disapproving the by-law. In addition the village council can petition the High Court to obtain a declaration that a by-law it has passed does not violate the Main Act or any other principal legislation as may be claimed by the District Council. These same remedies are available against the Minister responsible for local government while exercising his/her powers in approving district by-laws.

The Role of the District Council in the Creation of Village By-laws



The District Council is vested with powers of approving or disapproving village by-laws. Village by-laws can only be legal with the sanction of the District Council. The District council, therefore, is an important player in the making of village by-laws. The District Council is also able to give guidance to the village council as to how the village by-laws should be written and formatted. The official roles of the District Council in making village by-laws are:

- (1) To educate the village councils on the procedure supposed to be followed in passing village by-laws, as provided by section 164 of the Act No.7 of 1982 and G.N 451 of 1995;
- (2) To provide drafting assistance in the form of training or providing experts who will work with village governments to draft village by-laws;
- (3) To review village by-laws so as to make sure that they are not in conflict with the main Act or any other Act from which the by-laws emanate;
- (4) To approve village by-laws;
- (5) To help the village council to publish and cause to be known by the public of the existence of said by-laws; and
- (6) To help the village government to enforce the by-laws.



Challenging the Village By-Law



When a by-law has been passed it has to be observed by every person in the country whose conduct it intends to regulate. This is because the rule of law mandates that enacted laws need to be respected lest the society degenerates into dictatorship or anarchy.

But, when a by-law that is passed by the minister, District Council or the village council is in conflict with a principal piece of legislation or any other Act of Parliament, then an affected individual can challenge it in the High Court of Tanzania. The High Court has got powers under the law through prerogative orders to declare the said by-law to be in conflict with the main or principal legislation if it finds it to be so. In addition, if the said by-law violates the constitutional rights of a person then it can also be challenged under the Basic Rights and Duties Enforcement Act No.33 of 1994 and Article 30 (3) and (5) of the Constitution of the United Republic of Tanzania of 1977. If it so finds, then it can declare it unconstitutional and can strike it out of the statute books of the country. Until one of these is

done, the by-laws in question have to be observed so as to abide with the principle of the rule of law.

A by-law that is in conflict with a main Act or other principal legislation, could administratively be brought in line using the procedure provided for by the Ministry of Regional Administration and Local Government. The situations envisaged by the Ministry are the following:

- (a) "Where the Minister finds that the bye-law is in conflict with the Constitution or any other legal enactment he shall, on the advice of the Attorney General, return the law to the local council for annulment or modification;
- (b) Where the District Council finds that a lower level bye-law is in conflict with the Constitution or any other legal enactment the Council shall return the local law to the lower level local council for annulment or modification; and
- (c) The Regional Commissioner may call-in any bye-law for legal inspection and if possible report to the Attorney General.

(Continued on page 12)

Sample By-Laws

VILLAGE GOVERNMENT

1982

NO. 7 of 1982

As under Sections 120 (1) and 163.

By-Laws for Forest and Environment of Lengijape Village (1996)

Name: These by-laws are by-laws concerning the protection of natural resources and the environment in the village of Lengijape.

StartingDate: These by-laws will come into effect starting 2nd July, 1996

Interpretation: In these by-laws:

"Area of the Village" means all of the land under the jurisdiction of Lengijape Village as defined in the Title Deed.

"Natural forest of the village" means all the natural forest within the village area.

"Village Government" means the elected Village Council and where applicable, the body of the Village Assembly.

"Chairman" means the Chairman of the Lengijape Village Council.

"Executive Officer" means the Village Executive Officer of Lengijape Village.

"Sub-Village" means a sub-part of the Village of Lengijape as recognized by the District Council Authority of Simanjiro District.

"Sub-Village Chairman" means any person who has been designated a chairman of a sub-village of Lengijape Village.

"Committee of Natural Resources and Environment" means a committee established by the Village Council and approved by the Village Assembly of Lengijape in order to deal with all aspects of natural resources an environment within Lengijape Village.

"Villager" means any person registered as a member of the Lengijape Village Council.

"Village" means Lengijape Village.

SECTION A: THE BY-LAWS

By-Law Number 1: Zones

I. Areas of Special Protection

- a. All areas within 100 meters of all water sources.
- b. Lengijape Mountain.
- c. The forest from Orkiloriti to Perperes.
- d. Any area which is so designated by the Village Government.

Restrictions:

- a. It is forbidden for any person to burn, cultivate or to kill any tree by pulling out, burning or cutting.
- b. Resident Village members may extract tree and forest products for domestic uses, such as fuel wood, medicines, hoe handles, sticks, etc.

II. Permanent Settlement Zone

Explanation of

the area: The area in the middle of the village called Madukani.

III. Agriculture Zone

Explanation of

The area: The borders of the area are: Imotorok, Ngosuk, Embarbal, Orkerr, Indahat, Alaiperra.

Restrictions: It is forbidden for any person to bring livestock into a cultivated area.

IV. Livestock/Wildlife Zone - Dry Season Grazing

Explanation of Area:

The borders are: Indahat, Embaka, Otilali, Laimurunya, Ingarkashi, Ormoti, Iltepes, Engorika, Alarihi.

Restrictions:

- a. It is forbidden for any person to refuse to move their livestock to the Wet Season Grazing area at any time that the village decides.
- b. It is forbidden for any person to cultivate a farm greater than ten acres.

V. Wet Season Livestock/Wildlife Zone

Explanation of Area:

The borders are: Embusel, Koret, Endonyo was, Isiron, Esambu, Kirasi, Alaiperra na Mbolio Naarrok.

Restrictions: It is forbidden for any person to live permanently or farm in this area.

By-Law Number 2: Forest Use

- A. Resident Village members can extract and use forest products freely for domestic use except for:
 1. areas of special protection if the restrictions don't allow it

2. the following forest products uses need a permit:

- building poles
- burning of charcoal when clearing farms not exceeding 10 acres.

B. It is forbidden for any person to extract from the forest, building poles for commercial purposes or for export outside the village.

C. Charcoal burning for commercial purpose is forbidden in all of Lengijape Village land area.

D. It is forbidden for any person to cut a tree for scent products, handles, sticks, medicine, or any other commercial purpose, without first obtaining a permit.

E. Permits will be granted by the Natural Resource and Environment Committee. These permits must carry a stamp of the village government, must state where harvesting is permitted, over what time period and the number of trees and species that will be extracted. After completion of the permitted activity, the permit-holder will return the permit to the Committee.

F. It is forbidden for permits to be given to anyone who is not a village member.

By-Law Number 3: Opening or Expansion of Farms

It is forbidden to open or expand cultivation without the written consent of the village council, acting upon the

advice of the Natural Resources and Environment Committee.

By-Law Number 4: Agricultural Land Sales

It is forbidden by any person to buy or sell any portion of land including agricultural land without the written consent of the Village Council, acting on the advice of the Natural Resources and Environment Committee.

By-Law Number 5: Building

It is forbidden for any person to build in the village area without the written consent of the village council.

By-Law Number 6: Immigration

It is forbidden for any person to settle within the village area without the written consent of the village council.

By-Law Number 7: Water Use

It is forbidden for any person to bathe or wash clothing in any natural water sources or any cattle drinking troughs.

By-Law Number 8: Honey Gathering

It is forbidden for any person to gather honey without a permit and instructions from the village government. This permit must carry a stamp of the village government, must state where harvesting is permitted and over what time period. After the time period is up the permit holder will return the permit to the village government.

By-Law Number 9: Mineral Extraction

It is forbidden for any person to peg out, dig, or carry out exploratory surveys of any part of the village area for the purpose of mineral or gemstone extraction without the written consent of the village council, acting on the advice of the Natural Resources and Environment Committee.

By-Law Number 10: Hunting and Tourism

In consultation with the relevant government authorities, Lengijape village will endeavor to monitor all hunting activity undertaken within any part of their village area, to ensure that hunting is carried out in accordance with the provisions of the Wildlife Conservation Act of 1974, and will be particularly vigilant in regard to practices such as lion and leopard baiting which most directly affect the welfare of villagers.

It is forbidden for any hunter to locate a camp within the village area without formal consent from the village council acting under the guidance of the Natural Resources and Environment Committee.

Where consent is granted, the hunter will locate the camp in a site agreed by the village council.

The Village Council may charge a fee for the establishment of a camp site.

Before a hunter commences to hunt he must present his license to the village council, showing what he has been permitted to hunt.

SECTION B. PENALTIES

1. Any person shown to have broken these by-laws will be fined 10,000/=. If that person is a charcoal burner he will be fined 5,000/= for every sack of charcoal and for every tree felled he will be fined 10,000/=.
2. Where applicable, any tools or equipment used during the offense or any goods relating to the offense (charcoal, poles, etc.) will be confiscated.
3. Any person who refuses or is unable to pay the fine within the time period given or who refused to give the goods or equipment relating to the offense, or any person who breaks a by-law for a second time will be taken to court.
4. Where a person undertakes any form of mineral extractive activity or settles in the village without the formal consent of the village council, he or she will be fined 10,000/= and be expelled from the village.
5. Where a person refuses to move livestock as required from dry season areas, he will be subject to a fine of one bull cow.
6. Anyone who has increased cultivation in an area or opened a new area for cultivation without the consent of the village council will be fined 10,000/= and the area in question will be taken away from him/her without recompense.
7. Anyone who has bought or sold land in the village without the consent of the village council will be fined

10,000/= and the land will be taken away unless the village council decides to return the land to the family of the seller.

8. Any hunter or hunting company failing to comply with the relevant by-law will be unwelcome in the village area and a request asking that his hunting permit be revoked will be sent to the appropriate government authority.
9. That/those person(s) designated as responsible for ensuring implementation of any of the above by-laws in any part of the village, and who fail to fulfill this responsibility, will be fined 5,000/= in respect of each incident of failure brought to the attention of the Natural Resources and Environment Committee and the village council.

SECTION C: GENERAL PROVISIONS

1. Acting on the advice of the Committee of Natural Resources and Environment, and as relevant, the approval of a full Village Assembly, the village council may add to, amend or refine any of the above by-laws in order to increase the effectiveness, or to strengthen the principles they embody. Where it is determined by the community that a by-law should be revoked in its entirety or the intention of the by-law changed in a significant way, then the village council must secure the approval of the District Council.
2. The Village Council is responsible for making decisions, issuing permits, levying fines, and all other tasks related to these by-laws. However, the Village Council may delegate all or some of these functions to the Committee of Natural Resources and Environment, or as appropriate, to the Village Executive Officer, or to any other individual or body deemed appropriate. In all cases, that person(s) or committee will be accountable to the village council, which will in turn be accountable to the Village Assembly.
3. Membership of the Committee of Natural Resources and Environment must be approved by the Village Assembly and changes may be made pending approval of the Village Assembly.

4. Permits may be subject to a fee as determined by the Committee of Natural Resources and Environment. All fees will be deposited in a Natural Resources Management Account, the use of which will be determined by the Committee.
5. All confiscated materials, tools or fines levied will become the property of the village and divided as follows:
 - 50 per cent of all fines and material items will become the property of the community as a whole;
 - 25 per cent will be awarded to the person designated responsible for the by-law implementation and management in that sub-village;
 - 25 per cent will be awarded to the villager/s who have been responsible for the apprehension of the offender/s.
6. All fines levied and goods confiscated must be properly receipted.
7. Any member of Lengijape village has the authority to apprehend any person breaking any by-law stated herein and to bring that person/s before the village council or the committee of Natural Resources and Environment.
8. Every member of the village is required to report any breach of by-laws to the Sub-Village Chairman, the Village Chairman or the Village Executive Officer.

9. It is the responsibility of all the Sub-Village Chairmen to organize frequent patrols in order to protect his sub-village area and enforce these by-laws.

These by-laws will be applicable within the entire area under the authority of the village government of Lengijape as defined in the Title Deed Number AR/KIJ/471.

THE OFFICIAL STAMP OF THE SIMANJIRO DISTRICT COUNCIL HEREBY SHOWS THAT THESE BY-LAWS WERE PASSED AT THE MEETING OF THE DISTRICT COUNCIL ON:

DATE _____ AND CONFIRMED BY:

E.K.A. MREMA
EXECUTIVE DIRECTOR
SIMANJIRO DISTRICT

S.M. KURIAGA
CHAIRMAN
SIMANJIRO DISTRICT
COUNCIL

List of Statutes Consulted

1. The Local Government (District Authorities) Act
No.7 of 1982
2. The Local Government Finances Act No. 9 of 1984
3. The Local Governments Laws (Miscellaneous
Amendments) Act 1999
4. The Wildlife Conservation Act No.12 of 1974
5. Forest Ordinance Cap. 389
6. The Interpretation of Laws and General Clauses
Act No 30 of 1972 Cap 1
7. Judicature and Application of Laws Ordinance of
1961
8. Basic Rights and Duties Enforcement Act No. 33 of
1994

Mapitio mengine

1. Taratibu za Uendeshaji wa Serikali za Kijiji G.N 451
OF 1995

REFERENCES

Agrawal, A. 1997. *Community in Conservation: Beyond Enchantment and Disenchantment*. Paper prepared for the Conservation and Development Forum, University of Florida, Gainesville.

Burch, B. 1988. The Uses of Social Sciences in the Training of Professional Social Foresters, *Journal of World Forest Resource Management*, 3, #2:73-109.

Fimbo, G.M. 1992. *Essays in Land Law Tanzania*. Dar es Salaam.

Leach, M., R. Mearns and I. Scoones. 1997. Environmental Entitlements: A Framework for Understanding the Institutional Dynamics of Environmental Change. *IDS Discussion Paper* 359.

LEAT. 1998. *Socio-Legal Analysis of Community-Based Conservation in Tanzania: Policy, Legal, Institutional and Programmatic Issues, Considerations and Options*. EPIQ/TZ.

Lindsay, J. 1998. *Designing Legal Space: Law as an Enabling Tool in Community-Based Management*. Plenary Presentation. International Workshop on Community-Based Natural Resource Management, Washington, D.C.

Lutema, M.L. 1996. *A Report of the Village-District By-Laws of Singida Rural District on Natural Resources Use and Management*. NEMC, Dar es Salaam.

Margoluis, R. and N. Salfsky. 1998. *Measures of Success: Designing, Managing, and Monitoring Conservation and Development Projects*. Island Press, Washington, D. C.

Magabe, A.B. 1998. *By-Laws on Natural Resources Management - Tanzania Forestry Action Plan, North Pare Project Funded by German Technical Cooperation - GTZ*. Mwanga District Council and National Environment Management Council (NEMC), Dar es Salaam.

References cont'd...

Ministry of Regional Administration and Local Government. 1998. Policy Paper on Local Government Reform, Dar es Salaam.

National Land Use Planning Commission, Ministry of Lands and Human Settlements Development. 1998. Guidelines for Participatory Village Land Use Management in Tanzania, first edition. The United Republic of Tanzania.

Peterson, T., Peterson, D. and M. Peterson. 1997. Guidelines for Facilitating Village Based Planning and Management of Land Resources. Dorobo Fund for Tanzania, Arusha.

Peterson, T., Peterson, M., and D. Peterson. 1995. Village Based Management of the Charcoal Resource in Simanjiro District: Methods and Experiences from Namalulu and Landenai Villages. ORGUT Consulting AB/LAMP Simanjiro.

Shivji, I.G. and W. B. Kapinga. 1998. Maasai Rights in Ngorongoro, Tanzania. International Institute for International Development and HakiArdhi Land Rights Research and Resources Institute.

Shivji, I.G. 1998. Not Yet Democracy: Reforming Land Tenure in Tanzania. International Institute for International Development and HakiArdhi Land Rights Research and Resources Institute.

Uphoff, N. 1998. Community-Based Natural Resource Management: Connecting Micro and Macro Processes, and People with Their Environments. Plenary Presentation. International Workshop on Community-Based Natural Resource Management, Washington, D.C.

Wade, H.W.R. 1988. The Administrative Law, 850, Sixth edition. Oxford University Press.

Wily, L.A. 1995. The Emergence of Joint Forest Management in Tanzania - Villager and Government: The Case of Mgori Forest, Singida Region. The Regional Forestry Programme, Orgut Consulting AB (SIDA).

References cont'd...

Wily, L.A. 1995. A Legal Framework for Community-Based Natural Forest Management. ORGUT Consulting AB. ASK RUGEMELEZA ABOUT THIS.

Wily, L.A. 1995. A New Approach to Natural Forest Management - Villagers as Forest Managers: The Story of Duru-Haitemba Forest. Regional Forestry Programme and Babati District Council.

Wily, L.A. 1998. A Summary of Guidelines to Mobilize and Support Community-Based Forest Management. Prepared for 23 SADC Foresters attending a course on collaborative forest management run by the faculty of Forestry, Sokoine University, with NORAD assistance, Olmotonyi, Arusha.

Wily, L.A. 1999. Making A Village By-Law. Forest Resources Management Project.

For personal communication citations please see list of interviewees.

LIST OF INTERVIEWEES

- 1 Mr. John Salehe, Project Manager, UNDP/GEF East African Cross Border Biodiversity Project
- 2 Prof. Issa G. Shivji, Faculty of Law, University of Dar es Salaam
- 3 Dr. Ringo W. Tenga, Faculty of Law, University of Dar es Salaam
- 4 Mr. Ibrahim Juma, Faculty of Law, University of Dar es Salaam
- 5 Dr. Sosovele, Institute of Resources Assessment (IRA), University of Dar es Salaam
- 6 Dr. Jambiya, Institute of Resources Assessment (IRA), University of Dar es Salaam
- 7 Dr. Shechambo, Institute of Resources Assessment (IRA), University of Dar es Salaam
- 8 Prof. Suleiman Ngware, Institute of Development Studies (IDS), University of Dar es Salaam
- 9 Mr. Peter Toima, Director, Inyuat e-Maa, Arusha
- 10 Mr. Edwin ole Kerea, Pastoralists Indigenous Non-Governmental Organizations (PINGOs), Arusha
- 11 Mr. Edward Porokwa, Legal Officer Pastoralists Indigenous Non- Governmental Organizations (PINGOs), Arusha
- 12 Mr. David Peterson, Director, Dorobo Fund for Tanzania, Arusha
- 13 Mr. Thad Peterson, Director, Dorobo Fund for Tanzania, Arusha
- 14 Mr. Michael Peterson, Director, Dorobo Fund for Tanzania, Arusha
- 15 Mr. Tundu Antiphas Lissu, Staff Attorney, Lawyers Environmental Action Team (LEAT), Dar es Salaam
- 16 Ms. Alicia Magabe, Legal Officer, National Environmental Management Council (NEMC), Dar es Salaam
- 17 Mr. Clive Jones, Coordinator, Friedkin Conservation Fund, Arusha
- 18 Mr. Ole Sitayo Emmanuel, Community Liaison Officer, Friedkin Conservation Fund
- 19 Mr. Madehele, Wildlife Division, Dar es Salaam

(Continued on page 2)

List of Interviewees cont'd...

(Continued from page 1)

- 20 Dr. Ludwig Ziege, Selous Conservation Programme, Wildlife Division, GTZ
- 21 Mr. Rudolf Hahn, Selous Conservation Programme, Wildlife Division, GTZ
- 22 Mrs. Rehema Tibanyenda, Principal Game Officer, Co-ordinator Community Based Conservation, Wildlife Division, Dar es Salaam
- 23 Mr. Ngowi, District Natural Resources Officer (DNRO), Ngorongoro District
- 24 Mr. Rwiza, District Forest Officer (DFO), Babati District
- 25 Mr. Tom ole Sikar, Programme Coordinator, Netherlands Development Organization (SNV)--Cultural Tourism Programme
- 26 Mr. Paulo Bura, Community Development Officer, Community Research and Development Services (CORDS), Arusha
- 27 Mr. John ole Kuluo, Community Development Officer, Community Research and Development Services (CORDS), Arusha
- 28 Mr. Ernin O'Clary, Irish Aid, Dar es Salaam
- 29 Mr. G.J. Williams, District Executive Director (DED), Simanjiro District
- 30 Mr. Francis Chuwa, District Forest Officer, Simanjiro District
- 31 Mr. Makunzi, District Community Development Officer, Simanjiro District
- 32 Mr. Mang'atinda, Rural Development Adviser, Land Management Program.(LAMP), Simanjiro District
- 33 Mr. Roger Anderson, District Adviser for LAMP, Simanjiro District
- 34 Mr. Robert Backstrom, Associate Land Expert for LAMP, Simanjiro District
- 35 Dr. James Kahurananga, PORI Project Director, African Wildlife Foundation (AWF), Arusha
- 36 Mr. Raphael Ole Mako, Project Officer, Community Conservation, AWF, Arusha
- 37 Ms. Josephine Simon Kishapwe, Intern, Community Conservation, AWF, Arusha

(Continued on page 3)

List of Interviewees cont'd...

- 38 Mr. Ulrich Mwinyechi, Economist, AWF, Arusha
- 39 Mr. William ole Moringe, Village Chairman Kitwai A&B, Simanjiro District
- 40 Mr. Paulo Michael, Village Executive Officer Loonderkes Village, Simanjiro District
- 41 Mr. Oromboi, Village Chairman, Namalulu, Simanjiro District
- 42 Mr. Lengai Edward, Zonal Coordinator for Inyuat-e-Maa, Arusha
- 43 Mr. Lobulu Sakita, Zonal Coordinator for Inyuat-e-Maa, Arusha
- 44 Dr. Patrick Bergin, Director, AWF, Arusha
- 45 Mr. Hashim Sariko, Legal Advisor, Wildlife Division, Dar es Salaam
- 46 Mr. Francis Ndunguru, Head of Department of Development and Management, Wildlife Division, Dar es Salaam
- 47 Dr. Rolf D. Baldus, Community Wildlife Management Advisor, Wildlife Division, GTZ, Dar es Salaam
- 48 Mr. Robert R. Makaramba, Faculty of Law, University of Dar es Salaam
- 49 Mr. Paul van Enckevort, Senior Technical Advisor, Participatory Land Use Management Project, National Land Use Planning Commission, Dar es Salaam
- 50 Mr. Jason Kami, Project Coordinator, Participatory Land Use Management Project, National Land Use Planning Commission, Dar es Salaam
- 51 Mr. Hassan Kalombo, Advisor, Coral Reef and Fisheries Management, Tanaga Coastal Zone Conservation and Development Program
- 52 Dr. E.K. Batamuzi, faculty of Veterinary Medicine, SUA
- 53 Community members of Naberera, Lengijape, Kitwai A & B, and Loonderkes