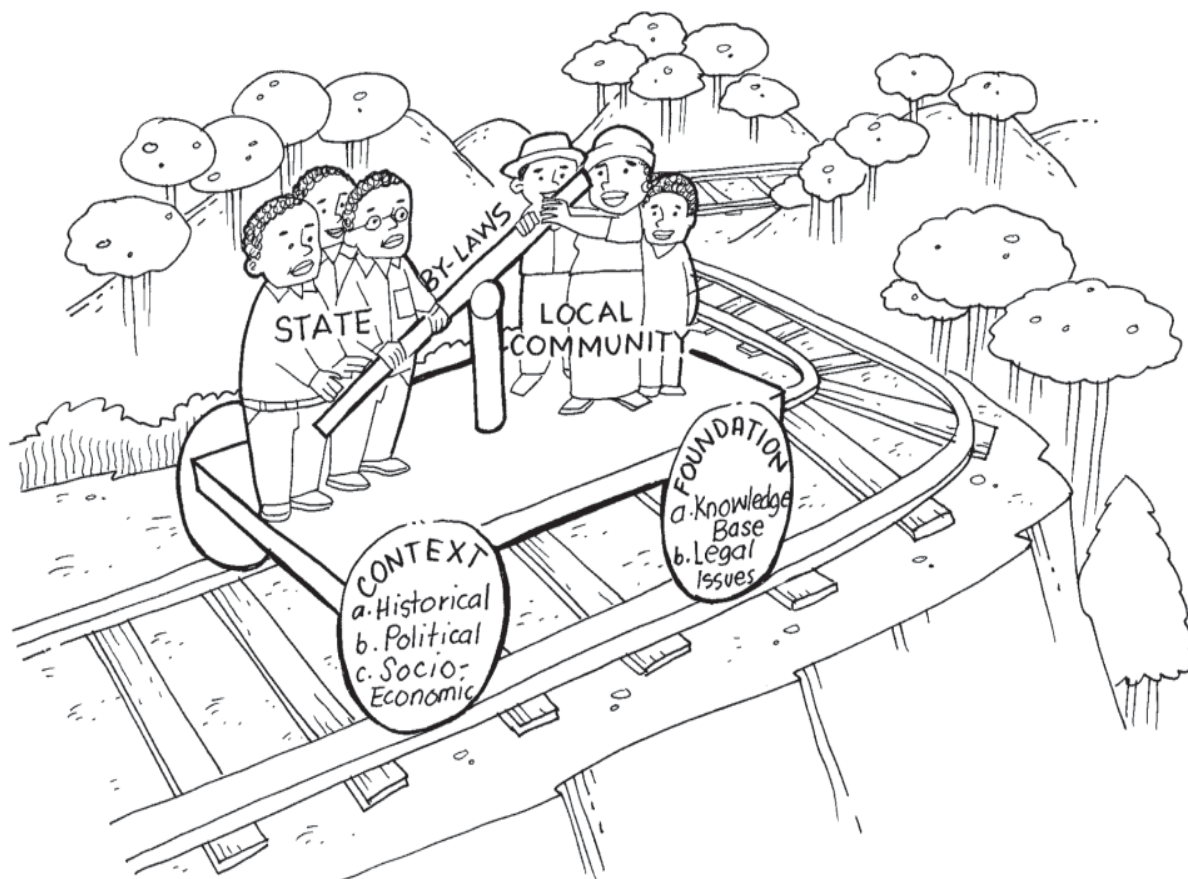


# By-laws for Natural Resource Management: Insights from Africa



**A**frica's rural populations depend heavily on natural resources, which have been continuously deteriorating due to rapid population growth, increasing market pressures, high rates of poverty, and inappropriate natural resource management (NRM) policies of governments. The failure of top-down approaches to the regulation and administration of natural resources has increased attention on the role of decentralized administrative structures, user groups, and customary governance institutions.

#### SOURCE:

Markelova, H. and B. Swallow. 2008. *By-laws and their Critical Role in Natural Resource Management: Insights from African Experience*. Paper presented at the 12th Biennial Conference of the International Association for the Study of Commons (IASC) in Cheltenham, England, July 14-18. Available online at <http://iasc2008.glos.ac.uk/iasc08.html>

Until recently, local users were seen as unfit to be entrusted with decision-making regarding natural resources. Even though this bias still holds true in many parts of Africa, the waves of decentralization that have been sweeping through the continent since post-colonial independence have led to increased attention to the role of decentralized administrative structures and customary governance institutions.

## By-laws Defined

In the realm of natural resource governance, by-laws have emerged with three distinct definitions:

**1. By-laws as local laws** emphasize the role of local communities in the management of resources. Local by-laws can particularly be important to NRM, as they connect the decentralized bodies to their constituents at the local level. They can also result from local processes that fill an institutional vacuum created by the absence or weakness of federal or state laws regarding local resource use. Local laws also emerge either from the resource users themselves (often through elected representatives or selected committees) or from the lowest level of empowered local authority in decentralized governance structures (with fiscal and decision-making powers independent of central government), and can be formal (approved by government authorities or project organizers) or informal.

**2. By-laws as organizational rules** can be important determinants of the success of rural organizations or resource user groups. They provide the actual rules that guide the functioning and operations of organizations.

**3. By-laws as secondary laws** may serve as framework laws that create new authorities, with new mandates that must be implemented. They can be implemented and enforced directly by government agencies at various levels or through local community groups acting on behalf of central government agencies as part of the implementation of specific legislation, or by legally constituted entities that have responsibilities consistent with the national law.

### Functions of By-laws

By-laws, whether existing, updated, or newly created, can fulfill several important functions in the communities where they are present.

1. By-laws create space for productive investment, particularly when closely linked with economic profitability.
2. By-laws contribute to the conservation and sustainability of natural resources, as they devolve conservation activities to the local level where these rules are created and implemented.
3. By-laws can help ensure equitable use of resources when there is a balanced representation and active participation of all stakeholders from by-laws formulation to implementation.
4. By-laws play an important function in conflict management and resolution.
5. By-laws may serve as a channel to interact with local and central government officials who may serve as the enforcement agency for locally crafted rules. Such interactions are important as a means of community empowerment.

## Factors Influencing By-laws Processes

By-laws can fulfill several important functions for communities and their natural resources. The effectiveness of these rules and regulations depends on their content, applicability, and acceptance in the communities. Processes associated with by-laws include their formulation and implementation. Several factors affect each process.

### By-laws Formulation

#### Historical Context

The varying historical, political, and socio-economic settings across the African continent have affected the conditions and process of by-law formulation. Differences in ethnicity, religion, and other cultural and ecological conditions further complicate the establishment of uniform regulations. Colonial history and differences between the governing styles of colonial powers have influ-

enced the nature of by-laws formulated. Despite these differences, the customary governance structures have been overshadowed by newly established systems.

After independence, many colonial-style institutions persisted, with continued prejudices against customary systems of governance. In recent decades, most nations have embarked on the path of administrative, political, and fiscal decentralization, which has not, however, been a uniform process across Africa. These processes have taken different shapes across the continent, and, due to the legacy of various colonial powers, have had different impacts in Anglophone and Francophone regions of the continent.



### Bases of By-laws

The issue of the source, or foundation, of by-laws can be divided into two components: the *knowledge base* and the *legal aspects*. The main question for both areas lies along the lines of customary/traditional versus statutory/modern.

The co-existence of two sets of norms, customary and legal, has influenced the development and refinement of by-laws, some that had existed for centuries and others that have been recently established. In some societies, customary institutions were outright pushed aside, while others have been successful in harmonizing customary and statutory laws. Whatever the case may be, practitioners and policymakers are faced with the challenge of comparing and assigning a value to the two sources of rules, or the norms that prescribe the nature of by-laws, when designing or updating rules and regulations for NRM.

- **Knowledge Base.** When considering theoretical foundations for by-laws, especially for conservation and management purposes, it is important to consider the role of *scientific knowledge*. In fact, when it comes to appropriate technology for conservation or certain agricultural practices (such as seed dissemination), there is a need for informed and tested approaches.
- **Legal Issues.** By-laws can be derived from either *customary* or *statutory law*. If the source comes from both the state and traditional institutions, then the outcome depends on the context and the interaction between the traditional and statutory. At times, donors, NGOs, or mandates based on international agreements (such as the Kyoto Protocol) provide bases for by-laws according to program and project rules. There are both limitations and advantages to both types of laws functioning as the sole basis for by-laws.

#### Indigenous Knowledge

For a complex issue such as resource degradation, indigenous knowledge may be limited in its ability to deal with the landscape-wide challenges, especially in the context of climate change. The foundation of by-laws should then be grounded in both local knowledge and scientific facts behind rural development and NRM. A cross-fertilization between scientific and indigenous knowledge could result in higher acceptance and better implementation, since multiple interests are served.

National governments and international agencies perceive customary laws as weak and inefficient, which could render them ineffective unless backed by statutory laws. Many customary institutions



and laws have good accountability structures, enjoy legitimacy and respect, promote cooperative decision-making, and carry behind them the richness of local knowledge and cultural heritage.

Customary rules for natural resource use and governance are often linked to customary tenure rights, making them more effective and accepted. Statutory law, on the other hand, carries the backing of the government, which may contribute to the effectiveness of regulations based thereon. Since it is not sensitive to the situation on the ground, by-laws that are based on statutory provisions may lead to elite capture and even worsen natural resource conditions as power is transferred into the “wrong” hands.

Potential contradictions between by-laws and state laws deserve special consideration. Therefore, it appears that a combination of customary and statutory laws may become the best option for the legal basis for by-laws.

### Dangers of Elite Capture

It has been shown that customary institutions are not always equitable, especially to the poorest and women, and in some cases become the mechanisms for elite capture, as in the case of Zimbabwe, Uganda, and Ethiopia. In many African nations, traditional norms and institutions have eroded due to demographic change, various government policies, and penetration of the global economy to the local level.

In Tanzania, only the vestiges of traditional institutions remain because of the socialist movement and the subsequent centralization of power that encouraged the breakdown of tribal identity. Even with the introduction of multi-party democracy, decentralization efforts contributed to the breakdown of traditional resource management systems as power was formalized in village governments.

Some evidence of statutory laws leading to elite capture has been found in the case of CAMPFIRE in Zimbabwe, where the Rural District Councils have used the program to generate revenue and use it to their political purposes, disregarding the original conservation and welfare-enhancing objectives of the program.

By-laws formulation and enactment are inherently political processes, since any regulation that deals with natural resources has to account for the multiplicity of interests from different parties with a stake in the resource. Unequal power may arise between the state and the communities and within the communities themselves. Failure to consider power relations may result in elite capture in the formulation and implementation of by-laws, as well as in inequitable distribution of benefits.



## Implementation of By-laws

Closely connected to the process of by-laws formulation are the issues of implementation and the monitoring of how they are complied with, observed, and enforced.

- Externally imposed rules that do not take into account local conditions may be perceived as unfair by local resource users, thus lowering any willingness to abide by them.
- People may not comply with internally created rules because of established relationships of hierarchy and norms of mutual support in communities.
- Compliance with by-laws is higher when regulations are relevant to local conditions and are drafted in consultation with local communities.
- By-laws are meaningless unless there is some enforcement. In West Africa, communities tend to bypass formal institutions or disregard by-laws ratified by local governments during the formulation of group rules governing national resources. However, several case studies across India and Nepal have shown that statutory law may contribute to the effectiveness of local regulations by serving as a mechanism for enforcement and compliance. There can be a role for state and local enforcement.
- Because of the norms of reciprocity, internal enforcement may be less effective in monitoring compliance and imposing sanctions.

## Conclusion

By-laws are at the core of many governance structures that frame the access, use, and conflict resolution around vital resources across Africa. The necessity for creating and supporting local by-laws becomes vital when considering their linkages to larger trends in the area of sustainable and equitable NRM and poverty reduction in general, and climate change mitigation in particular. To make these rules truly pro-poor, participatory approaches to the formulation and enactment of all three types of by-laws should be explored.

## Suggested Readings

- Agrawal, A. and C. Gibson. 1999. *Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation*. *World Development* 27 (4): 629-649.
- Alinon, K. and A. Kalinganire. 2008. *Effectiveness of By-laws in the Management of Natural Resources: The West African Experience*. Working Paper No. 92. CGIAR Systemwide Program on Collective Action and Property Rights for Poverty Reduction (CAPRI). International Food Policy Research Institute: Washington, D.C.
- German, L., W. Mazengia, W. Tirwomwe, S. Ayele, J. Tanui, S. Nyangas, L. Begashaw, H. Taye, Z. Admassu, M. Tsegaye, F. Alinyo, A. Mekonnen, K. Aberra, A. Chemangeni, W. Cheptegei, T. Tolera, Z. Jotte and K. Bedane. 2008. *Enabling Equitable Collective Action and Policy Change for Poverty Reduction and Improved Natural Resource Management in the Eastern African Highlands*. Working Paper No. 86. CGIAR Systemwide Program on Collective Action and Property Rights for Poverty Reduction (CAPRI). International Food Policy Research Institute: Washington, D.C.

Mandondo, A. 2001. *Allocation of Government Authority and Responsibility of Tiered Governance Regimes: The Case of the Chivi Rural District Council Landuse Planning and Conservation Bylaws*. *African Studies Quarterly* 5 (3): [available online].

Mwebaza, R. 1999. *How to Integrate Statutory and Customary Tenure? The Uganda Case*. Paper presented at the DfID Workshop on Land Rights and Sustainable Development in Sub-Saharan Africa, Berkshire, UK, 16th-19th February.

Sourcebook on **Resources, Rights, and Cooperation**, produced by the CGIAR Program on Collective Action and Property Rights (CAPRI)