



A Review and Analysis of the Policy and Legislative Framework for Urban Agriculture in Zimbabwe

Study By
The Zimbabwe Environmental Law Association And
The Municipal Development Partnership: Eastern And
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Zimbabwe Environmental Law Association (ZELA)

ZELA is a Non Governmental Organization registered as a trust in terms of the laws of Zimbabwe. The organization is the first public interest environmental law organization to be established in Zimbabwe. It was formed in the year 2000 and registered in November 2001 under Deed of Trust No MA 1669/2001.

Since its registration, ZELA has managed projects funded by different organizations, including the Centre for International Environmental Law, Environmental Law Alliance Worldwide, the World Resources Institute, Hivos, The Water Research Fund for Southern Africa (WARFSA) and the Ford Foundation.

Whilst there are many environmental organizations in Zimbabwe, ZELA concentrates on the use of the law in conserving and protecting the environment. It is currently running five main programmes namely:

- Transboundary Natural Resources Management (TBRNM)
- Protecting Africa's Urban Environments
- Land and Communities Programme
- The Litigation Programme and
- The Environmental Law Reform and Education Programme.

More information about ZELA can be found on the website www.zela.org

The Municipal Development Partnership Eastern and Southern Africa [MDP]

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MDPESA is a hands-on capacity building facility that has as its aim enabling effective self-governance at sub national and local level in Sub-Saharan Africa. MDPESA aims to enable and support decentralization, strengthen the capacity of local governments to deliver services and ensure development at local level as a vehicle for improving quality of life of local communities. In this way, MDP strives to build strong partnerships and use its comparative advantage, to turn local governments and related institutions into responsive and accountable institutions for effective development.

MDPESA works in partnership with the Resource Centre on Urban Agriculture and Forestry (RUAF) and the Cities Feeding People Programme at the International Development Research Centre (IDRC) to implement an Urban Agriculture Programme in Eastern and Southern Africa. The programme was created in 2000 after the realization that urban agriculture is a growing, yet under-supported sector in African cities. The programme is thus intended to sensitize local governments to accept UA as an urban land use, to assist local authorities to promote sustainable urban agriculture and incorporate it in their policies and plans.

The concept of UA that MDPESA seeks to promote, is one that is wide in scope and relates itself to sustainable urban development, urban survival strategies, good governance, gender, urban food security, urban land management, urban food supply systems and through multi stakeholder processes. Activities within the Urban Agriculture Programme compliment MDPESA's five thematic components namely; Policy Research & Governance, Direct Support to Municipalities and Associations, Training and Human Resources Development, Decentralized Cooperation and Knowledge Management.

More information about MDPESA's work can be found at www.mdpafrica.org.zw

Executive Summary

This report is a legal audit of the policy and legislative framework for urban agriculture in Zimbabwe, which was undertaken by the Zimbabwe Environmental Law Association [ZELA] and the Municipal Development Partnership Eastern and Southern Africa [MDPESA] from December 2003 to November 2004. The audit was undertaken by ZELA and MDPESA as part of the respective organizations' mandate in relation to urban farming, which has now been popularized as urban agriculture. The main objective of the audit was to identify relevant policies and legislation which impact on the urban agriculture sector as a basis for initiating work leading to review of these policies and legislation so that an enabling legislative framework can be developed. The research report has been developed for the consumption of programme staff working in the field of Urban Agriculture or related disciplines. These include among others, programme staff working in Non Governmental Organizations, municipal officials, both elected and appointed, government employees, researchers, undergraduate and postgraduate students as well as the urban agriculture practitioners themselves.

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The methodology used in undertaking the research can be described as highly participatory and characterized by stakeholder consultations. A number of data collection methods were used such as literature reviews, case analysis, key informant interviews, field visits as well as questionnaires and telephone interviews. A workshop was organized to put forward the initial research findings to the stakeholders and invite their comments. The main output expected from the research was a research report answering the terms of reference. In undertaking the study, the research sought to raise awareness on the need to understand the policies and legislation that impact on Urban Agriculture with a view to creating an environment within which the Urban Agriculture Sector can grow with minimum negative environmental effects.

The research established that indeed there is not one, but many pieces of legislation that impact on urban agriculture in Zimbabwe, both at the national and the municipal level. Legislation however does not refer to urban agriculture per se, but rather to farming and farming activities that take place in urban environments. It is the combination of the multiplicity of legislation and the silence in that legislation on urban agriculture as a practice, coupled with misinterpretation by those that enforce the laws, that has led to confusion on the legal standing of the sector. It is this confusion that actually

prompted ZELA and MDPESA to commission this study.

The research also establishes that in what is seemingly a very prohibitive environment, there are indeed many opportunities that exist in legislation for the practice of urban agriculture, contrary to popular belief that the law prohibits urban agriculture in Zimbabwe. Further, the study establishes that the law recognizes the many negative effects of urban agriculture on the environment. Therefore the law exists to regulate the practice of urban agriculture so that the negative effects can be prevented, and when they occur, prompt relevant action can be taken.

The key finding from this research is that urban agriculture as a concept or practice is not prohibited in Zimbabwe's legal system. Although there are legal provisions, which may be utilized to outlaw, some or all-agricultural activities within any urban set up, the current laws are designed to regulate rather than prohibit.'

The study also establishes the 'misinterpretation' or selective application of the law by local authorities staff and councilors in dealing with urban agriculture as a hindrance to the development of the sector. What has sometimes come clearly from the actions of the authorities is that urban agriculture is illegal, yet the law provides for its regulation.

These findings can therefore be summarized as follows:

1. The policy framework is pro-urban agriculture. However there is no written government policy statement specifically addressing the issue of Urban Agriculture in Zimbabwe. The research therefore recommends that the government of Zimbabwe develops a written policy statement on Urban Agriculture so that actors in the field can be guided accordingly and programmes can be implemented within the framework of the policy
2. The legislative framework for Urban Agriculture exists but in a multitude of national legislation and municipal by-laws. The research recommends that the Government of Zimbabwe promulgates a law to provide clear guidance on Urban Agriculture. The problem with the current scenario is that key stakeholders in the sector interpret the various laws

that impact on Urban agriculture in a piece-meal fashion with the result that interpretations are made to suit particular circumstances and requirements of the interpreter

3. When combined, the policy and legislative frameworks seek to regulate the practice of urban agriculture as opposed to prohibiting it. This study therefore recommends that development partners should provide resources for the development of the Urban Agriculture Sector in Zimbabwe with full knowledge that the practice is legal in the country.
4. When it comes to environmental management, with regards to mitigating the negative environmental impacts of Urban Agriculture, the framework provided by the Environmental Management Act is adequate.

The practice of urban agriculture in Zimbabwe is almost as old as urban development itself. What has however changed over the years is the scale. Originally it was almost a pass-time activity confined to the backyard of one's house to supplement one's vegetable needs. Lately it has however acquired a grander scale with people invading every available open space for agricultural activities, particularly the growing of maize. Urban agriculture has also grown in substance, as people have now diversified from the traditional crops to include new commercial crops like mushroom. It has thus grown in terms of the number of farmers, hectarage under cultivation and the variety of crops. It is this later growth that has given new meaning to urban agriculture and raised it to such a level that it has become a *de facto* urban phenomenon.

Because agriculture is predominantly a rural activity, it was never conceived, in terms of legislation that, it needed to be specifically legislated for in an urban set up. As such there is no legislation that directly deals with the

issue. As indicated earlier there is no legislation that outlaws it either. What the law merely provides for is a legal framework within which it may be outlawed without actually outlawing it. On the other hand, there are also enabling provisions within the laws that may be utilized to make urban agriculture an officially recognized urban land use.

In terms of urban planning laws, a local planning authority has the powers to draw up Master and Local Plans to regulate any development and/or activities within any part of its geographical area. In drawing these documents there is nothing to stop a local planning authority from providing for urban agriculture.

The current legal regime is therefore not averse to the notion of urban agriculture. What it however does is to regulate the activity so that it:

- is co-ordinated and is compatible with urban land uses and activities
- does not constitute a nuisance
- does not pose a health hazard
- does not result in environmental degradation or in any way negatively affects the environment.

The development of urban agriculture in Zimbabwe will therefore mainly depend on the goodwill of those in positions of authority both at central government and local government upon whom it is incumbent to come up with clear policies that promote the activity. If anything has to be done, it is proposed that there be put in place strategies that ensure that these authorities upon whom decisions are vested, embrace the concept of urban agriculture and plan accordingly in ensuring an enabling environment that however emphasizes environmentally friendly farming practices.

Acknowledgments

MDPESA and ZELA wish to acknowledge the funding for this project that was made possible by The Ford Foundation, Office for Southern Africa and The Resource Centre for Urban Agriculture and Forestry, The Netherlands. We are indebted for the inspiration and continued support by the two Directors of ZELA and MDPESA, Mr. Mutuso Dhliwayo and Mr. George Matovu respectively during the time we initiated the study and sought to print it for wider dissemination. Our thanks go to Mr. Silas Chekera whom we worked with in implementing the research.

We received tremendous support, encouragement and comments from our colleagues and partners, especially, Mr. Mangena, Takawira Mubvami, Tumai Murombo, Shamiso Mtisi, George Gapu, Josiah Chinherende and Kinuthia Wamwangi. We thank them.

Makanatsa Makonese
Shingirayi Mushamba

January 2005.

CHAPTER ONE:

Introduction

This research report can be considered a product of a minimalist agenda. Initially, the research set out to simply understand whether Urban Agriculture was legal or illegal in Zimbabwe. Many authorities in the urban agriculture field have alluded to the many challenges that urban agriculture faces throughout the world, including absence, inadequacy and or inconsistency in the policies and legislation regulating the sector, [Mbiba B, 2001; Jacobi P, 2001, MDPESA, 2001]. In the case of Zimbabwe, there appears to be a huge divide between officials who use the law to prohibit the practice of urban agriculture and the residents, who responding to food insecurity, practise it. The contradiction between practice on the ground and the attitude of officials in government, both central and local, prompted the research to be undertaken.

Ideas crystallized that a research should be commissioned on the policy as well as legislative framework for urban agriculture in Zimbabwe as early as 2001. In the many discussions that were held during the meetings of the Zimbabwe Urban Agriculture Stakeholders Forum¹, it was established that members knew very little about the policy and legislative framework of urban agriculture. Some members had even gone on to initiate a project to lobby government to 'legalize urban agriculture'. The general understanding was that the practice was illegal, judging from official responses, especially by local authorities. When eventually the idea of conducting the research was mooted, there was unanimity among the members that this was necessary and urgent.

There is no doubt that research on urban agriculture in Zimbabwe has been very scant, and the subject of policies and legislation has not, to our knowledge, been researched on previously. The first book publication on the subject was done as late as 1996². This is possibly a result of the minute contribution urban agriculture made to national food stocks and urban food security as well as national gross domestic product, prior to 1990 [when the country was experiencing rapid and positive growth in the industrial, mining and manufacturing and rural farming sectors]. There is also a widespread view that agriculture

is 'non-urban', that is, it is not considered as a sector in socio-economic sense as well as an active land use viz a vis other activities such as housing, recreation and industry. For these reasons, urban agriculture did not attract much research until the 1990s.

The researchers were excited at the realization that the study would be among the first to examine the policy and legislative framework for urban agriculture in Zimbabwe and that this would be an immense contribution to popular understanding of the subject. The added incentive to doing the research was the potential that it would, through advocacy work, lead to the development of an enabling policy and legislative environment.

Early in 2003, the Resource Centre on Urban Agriculture and Forestry encouraged MDPESA to undertake the study and also agreed to co-fund the study. MDPESA then made partnership discussions with the Zimbabwe Environmental Law Association, ZELA. The two organizations agreed to use this research as an opportunity to work together productively. From thereon, the research framework was jointly designed and the terms of reference for the study were developed.

Funding that enabled ZELA to jointly implement the research with MDPESA was provided by the Ford Foundation, Office for Southern Africa.

Terms Of Reference

The scope of this study was guided by the terms of reference stated below.

- i) To undertake an analysis of the policies, laws and bylaws that govern urban agriculture in Zimbabwe with particular emphasis on how they promote or hinder urban agriculture and their role in the protection of the urban environment
- ii) To analyze any previous work in the field of urban agriculture and link the findings to the above analysis

¹ The Zimbabwe Urban Agriculture Stakeholder Forum is a loose grouping of stakeholders in Urban Agriculture who meet monthly to discuss developments in the sector and debate on issues. The Forum was established with the support of MDPESA in 2001.

² Urban Agriculture in Zimbabwe, Beacon Mbiba, 1996, Avebury, UK.

- iii) To make practical recommendations for policy and legislative changes that can be used to promote sustainable urban agriculture

In brief, the research sought to explore the legal regime, to analyze what laws there are that govern or impact on urban agriculture, their efficacy, strength and weaknesses and whether they can be improved upon.

The underlying objective was to use the law as a tool towards the development of the urban agriculture sector, whilst at the same time paying close attention to the environment. In other words, how to achieve sustainable development, given the fact that urban agriculture as a phenomenon has developed over the years to such a level that it can no longer be ignored as an economic factor.

Definition of Terms

In every inquiry, it is always imperative to start by defining terms, especially the more salient ones, in this case urban agriculture, which forms the basis of this research.

Urban Agriculture : The term urban agriculture refers to the carrying out of agricultural activities in an urban set up. As Mbiba puts it, it is “*the production of crops and / or livestock on land which is administratively and legally zoned for urban uses*”³¹¹. Luc Mougeot defines Urban agriculture as “the production, processing, marketing and distribution of crops and animals and products from these in an urban environment using resources available in that urban area for the benefit largely of the residents of that area”.

‘It is an industry located within (intraurban) or on the fringe (peri-urban) of a town, a city or a metropolis, which grows food or raises, processes and distributes a diversity of food and non-food products, (re)-using largely human and material resources, products and services found in and around that urban area, and in turn supplying human and material resources, products and services largely to that urban area’.
Luc Mougeot, 2000, pp 10.

Regulatory framework : By regulatory framework is meant the applicable laws and policies that impact directly or indirectly on urban agriculture. The research looked at the Acts of Parliament, the Regulations and By-laws made in terms of these Acts and the common law. These various laws were

explained and distinguished in the course of this study. An endeavour was made from the onset to distinguish law from policy.

Policy : In terms of the Oxford dictionary, policy is defined as, “the course or general plan of action adopted by”, a body or person. (e.g. by a local authority, Government or a Company). It is a framework of guidelines that guides the body in achieving its desired goals.

Law : The law is a set of rules universally and indiscriminately binding upon a particular people, breach of which is punished by the state. What distinguishes the law from any other normative rules is that its breach attracts the wrath of the State.

Regulations : Regulations are statutory instruments made in terms of an enabling Act by the Minister responsible for the administration of that Act. In terms of hierarchy when compared with bylaws, regulations come first because they are national while bylaws relate to specific local authority areas.

Regulations are a subsidiary law that is made in terms of the enabling Act to address a particular issue or issues that can not be dealt with in sufficient detail in terms of the enabling Act. They give further detail, meaning and effect to what is envisaged by the enabling Act. As such they derive their tone, texture, parameters and legitimacy from the enabling Act. Whilst an Act, in full referred to as an Act of Parliament, is directly made, debated and passed by Parliament, hence the term Act of Parliament, Regulations are made by the relevant Ministry to whom that particular Act is delegated for administration. They are made and approved by the relevant Minister.

By-laws : By-laws are a form of subsidiary legislation that may be promulgated by any local authority to regulate certain aspects within its jurisdiction. As with Regulations, the power to make By-laws is drawn from the enabling Act, so is their scope and extent.

The Legal System in Zimbabwe

A brief discussion on the legal system in Zimbabwe is essential to enable a better understanding of the subject.

³¹¹ Beacon Mbiba, 1995, Urban Agriculture in Zimbabwe, pp14.

At the apex of the legal system is the Constitution. This is the supreme law of the country. Any other laws within the country must conform to this supreme law. The Constitution among other things establishes the three arms of the Government, the Legislature (Parliament), the Judiciary (The Courts) and the Executive (in common parlance, “the Government, which is the Presidency and Cabinet). It also spells out the fundamental rights of the individual.

Below the Constitution then fall all the other laws, which, as earlier stated must conform to the constitution. Simply put, these laws cannot provide for or say anything that contradicts the Constitution. If they do, then such laws would be declared of no force and effect by the courts at the instance of any affected private citizen.

The common law is a set of rules that, unlike the Acts of Parliament that are written down, is not written down anywhere. These are laws derived from custom and judicial precedent rather than statute. Breach of these laws is punished by the State. Most of these laws, due to Zimbabwe's colonial history were adopted from the Roman Dutch system.

Development of Urban Agriculture in Zimbabwe

As no special notice in the history of urban development in Zimbabwe has been taken of urban agriculture, it is not very easy to determine when exactly this activity started. It can however be said that urban agriculture is as old as the immergence of the country's urban settlements. Urban agriculture was practiced as early as the days of the pioneer settlers, a reference to the first group of white settlers who colonized Zimbabwe and set up their initial settlements at Fort Tuli, Fort Victoria, Fort Charter and Fort Salisbury respectively in the 1890s. These early settlements formed the nucleus upon which urban settlements emerged, notably Fort Salisbury, which later grew to the modern day Harare. Originally rural land, these settlements gradually developed to become urban settlements. Naturally by virtue of them originally being rural settlements, agricultural activities persisted in the face of urbanization. In any event this was inevitable as there was need for food supplies to the early settlers. However, as urbanization took root, agricultural activities gradually gave way to urban developments. By the mid 1950s most urban centers had effectively taken shape. That not withstanding, urban agriculture however remained as a relic from the past, particularly in the then so-called African Townships, a reference to the high

density low cost housing locations that were established to accommodate the African labour force that sustained the urbanization process. This type of agriculture was however mainly restricted to growing vegetables for domestic consumption and then extending to rain fed crops, like maize in summer. In terms of animal husbandry the activities were mainly restricted to poultry projects. What is particularly important to note is that this form of agriculture was confined to one's residential property, what others have called *on-plot* agriculture.

In the low-density areas, to which the whites were confined, urban agriculture mainly took the form of floriculture and to a small extent the growing of fruits. The thrust was however more on aesthetic value than consumption. However in some of the suburbs like Waterfalls and Hatfield which directly evolved from designated farmlands to urban land through the process of urban expansion which saw them being incorporated into Harare, agricultural activities persisted on a larger scale but gradually receded as the plots became smaller and smaller, as they were being subdivided into residential plots. The process is still on going and some of the plots still enjoy agricultural rights as shall further be elaborated in this report.

Many middle aged Zimbabweans who grew in towns and cities will remember the bed of rape or covo (both common vegetables) in the back yard, the chicken run in front of the house, the maize crop in summer or the expense of flower gardens around the houses in the opulent white suburbs.

These activities, it shall however be underlined, were of such a small scale that they were incidental. The legal regime therefore saw no threat in them as would require proscribing. What was deemed necessary was therefore regulation only; to ensure compatibility, avoid health hazards and nuisance.

There was yet another zone that developed later as urban development encroached into rural agricultural land. This was what came to be known as the peri-urban land where agriculture mainly in the form of market gardening was undertaken to feed the urban market. These were areas on the outskirts of urban areas into which urban development was encroaching. Most of these areas lost their agricultural land, originally comprising huge farming land, which became small agricultural units, mainly growing vegetables for the urban market. Most of these areas being on the verge of being incorporated into urban development got to enjoy urban amenities whilst

they retained their agricultural character. Notable examples in the case of Harare would be Hatfield, Waterfalls, Mt Pleasant, Borrowdale, Tynwald and Mabelreign, which were built on farms.

The practice of urban agriculture has however in recent years developed both in magnitude and scope that it has grown into a new phenomenon. It has now become of a larger scale than was originally conceived and has also been diversified. A number of factors have been attributed to this growth.

Toriro^{4[2]}, in a paper on Urban Planning and Agriculture in Harare, Practice and Lessons for the Future⁵, gives a very interesting analysis of this growth. He divides the historical development of urban agriculture into two phases; the pre-independence era and the post independence. He observes that urban agriculture was subdued at least in scale during the pre-independence era because of the colonial laws that limited the number of urban dwellers by specifically restricting domicile to those in employment and their families only.

However with the advent of independence, the gates were opened and there was sudden and marked rural to urban migration mainly in search of employment. But, not everybody met with success and for many, they soon realized that the streets were not at all paved with gold. Coupled with a biting economy that continued to decline, most urban dwellers resorted to urban agriculture to subsidize their subsistence.

The resultant effect was that the traditional form of urban agriculture has taken a new dimension as people diversify into such areas as horticulture, permaculture, floriculture and so forth. In terms of scale, there has been a marked growth both in scale and substance. There has been an unprecedented increase in the number of urban farmers. Further there has also been a marked improvement in some instances from subsistence farming to market gardening. This has obviously resulted in the backyard garden becoming too small to accommodate the increased demand for land by both urban landowners and non-owners. There has thus been a tendency to move *off plot* to bigger pieces of land elsewhere. This has thus resulted in the invasion of nearly every possible open space one can find. Targeted areas are those open spaces that are reserved for future

developments, public open space reservations in terms of town planning schemes and local plans, road and rail reserves, river banks, river catchment areas, water courses and even hills. It is these later agricultural activities that are of a grander scale both qualitatively and quantitatively that have given birth to the new notion of urban agriculture.

So significant is this phenomenon that it has been acknowledged both at home and abroad. At local level, initiative was taken by the Urban Councils Association of Zimbabwe, a not for profit voluntary association representing the interests of all urban local authorities in Zimbabwe, which accepted the importance of urban agriculture as an economic factor and pledged in what is known as the Nyanga Declaration^{6[3]}, to support and promote urban agriculture. The importance of this development is that it marked the official recognition of urban agriculture by local authorities collectively. It ceased to be an activity that concerned particular local authorities individually, but instead became a common phenomenon for which a common approach was sought. This presupposed a concerted effort to a common position for the advancement of the activity. A similar pledge was made at regional level in August 2003, when Southern and East African ministers of local government signed the Harare Declaration pledging their support for urban agriculture and emphasized the need to create an enabling environment for its integration in urban planning and urban economy.

Guide On the Research Report

The report is comprised of seven chapters, the first an introduction, the second, third and fourth being an audit of all the pieces of policies and legislation that impact on urban agriculture in Zimbabwe. The fifth chapter is a detailed analysis of the Environmental Management Act, which was promulgated recently and now forms the basis for regulating urban agriculture as an activity with environmental consequences. Chapter sixth is an analysis of the legal and procedural requirements for accessing resources for Urban Agriculture. The seventh and final chapter highlights some of the salient issues for policy and legislation and recommendations.

METHODOLOGY

^{4[2]} Mr. P.M Toriro is a principal planner in the City of Harare.

⁵ Unpublished paper available from MDPESA

^{6[3]} The declaration was developed by UCAZ Secretariat with the support of MDPESA and was adopted by the participants representing urban local authorities at the 61st Conference of the Urban Councils Association held in Nyanga.

In summary, this research report is based on extensive literature review, wide stakeholder consultations, feedback seminars and fieldwork.

In the beginning, extensive focus group discussions were held within the framework of the Urban Agriculture Stakeholder Forum⁷, in the process identifying the key issues to address. Terms of reference were put together after wide consultations between officers at ZELA and MDPESA and the intended users of this report. The intended users were identified as project officers working for NGOs, government employees involved in urban agriculture in various ministries in Zimbabwe, researchers, municipal officials both appointed and elected, urban agriculture practitioners and students in related disciplines.

In order to test the research framework that was developed, a pilot study of the policy and legislative framework of the City of Harare was commissioned. A practicing lawyer and former Harare City Chief Legal Officer was contracted to lead in the implementation of the pilot project. The pilot proved a very useful strategy in that it informed the broader study on the key issues to focus on the relevant officers in municipal councils that needed to be engaged, the sources of information, in particular the Resource Centre of the Ministry of Local Government, Public Works and National Housing.

The preliminary findings of the pilot research were presented at a preliminary dissemination workshop, which was held at the Cresta Oasis Hotel in Harare on 23 July 2004. During the workshop, the sample of case study cities was discussed and agreed upon. Out of the twenty seven urban councils, a stratified sample of nine urban councils was made. The urban centers selected were Harare, Bulawayo, Chitungwiza, Masvingo, Kadoma, Gwanda, Chinhoyi, Bindura and Marondera. These were selected on the basis of factors including

1. agronomic conditions in the towns, mixing those located in rich agricultural centers and those in dry and poor farming areas such as Matebeleland region
2. size of city, ensuring a good mix between large cities such as Harare and Bulawayo and small urban centers such as Gwanda and medium size cities such as Kadoma and Chinhoyi

Following the conduct of the pilot study in Harare and

the implementation of the preliminary feedback and dissemination workshop based on the pilot research, the broad study was undertaken. Extensive literature review on Zimbabwe's laws and bylaws for each chosen municipality was undertaken. The laws and bylaws studied were from the time that the first written laws in the country were put in place that is in 1896/7 and the bylaws of each urban settlement from the time the urban settlement was proclaimed as such.

In undertaking legislative audit, the researchers reviewed the Constitution of Zimbabwe, Acts of Parliament, Regulations, By-laws, law textbooks.

The researchers also reviewed published and unpublished papers, newspapers and research reports, policy papers, Master and Local plans and Town Planning Schemes. Admittedly, the researchers' understanding of issues was based on knowledge gained in working in the field of urban agriculture and environmental legislation, personal observations and experiences.

Field visits were made to the following cities, Harare, Bulawayo, Gwanda, Chinhoyi, Marondera, Mutare, Kadoma, Kwekwe, Chitungwiza, Ruwa, Masvingo and Bindura. During the visits to each of the towns mentioned, focus group discussions were held with officials of relevant departments in the municipalities. Site visits to urban agriculture projects were also undertaken.

Key informant interviews were undertaken in Harare, Bulawayo and Mutare. Among the colleagues who assisted us in finalizing this report were those that worked closely with the Ministry of Environment and Tourism during the drafting of the Environmental Management Act in 2002.

The research does not claim to be exhaustive as there were drawbacks. First, the time period for implementing the study was limited by financial and time resources. Further, there were no provisions for feedback seminars in the cities to stakeholders for verifying findings and recommendations, except in Harare. However, in spite of these limitations, it is believed the report is a good basis for continued dialogue on policies and legislation that affect the urban agriculture sector, and that recommendations contained herein shall be followed up.

⁷ The Urban Agriculture Stakeholder Forum in Zimbabwe was initiated by MDPESA. The Forum meets regularly to share information and exchange notes on the major developments in the sector.

CHAPTER TWO:

An Audit of Policies

INTRODUCTION

The chapter identifies policies that regulate urban agriculture in Zimbabwe. The approach is to discuss policies first, and then laws, regulations and bylaws, in that order.

The research examined five policy statements, namely the Municipal Enterprise Development Policy, Harare Declaration on Urban Agriculture in Eastern and Southern Africa, the Nyanga Declaration on Urban Agriculture, the Environmental Impact Assessment Policy and the Draft National Environmental Policy.

POLICIES ON URBAN AGRICULTURE

i. The Municipal Enterprise Development Policy

In 1985, the Government of Zimbabwe issued a Directive to all urban councils, through circular No 81. The circular sought to direct urban councils to actively promote cooperatives in their areas of jurisdiction. This was seen as a means by which local authorities would take a more active role in local development. Councils were directed to establish a Department of Cooperatives, whose responsibility was to initiate and plan cooperatives. The councils were made responsible for the successful implementation of all cooperative enterprises in the city or town.

Further, the circular also directed councils to establish Municipal Enterprises, which would be income-generating projects. These were to be run by the councils themselves.

In the Directive on Cooperatives, the Government highlighted the need for agricultural cooperatives “to be established in or near all our urban areas”. The cooperatives, it was directed would be of benefit mostly to women.

Promotion of Agricultural Cooperatives

In promoting agricultural cooperatives in the urban centres, government gave as its first priority making

state land available to registered agricultural cooperatives. The land was to be leased by the Urban State Land Office to the urban councils, which would in turn lease it out, at a rental, to the agricultural cooperatives. The councils were directed to keep a register of all cooperatives.

Further, the councils were directed to provide through the Cooperatives Department, administrative support and supervision on the internal management of the cooperatives and for the department to **'also promote proper farming methods and to stop stream bank cultivation'**.

From the foregoing, it is clear that as early as 1985, the Government of Zimbabwe supported and sought to promote urban agriculture, through cooperative movements. Indeed, as in the case of Harare, many cooperatives were formed and allocated land in Harare, as in other cities. The Government was also very cautious of the need for proper farming methods to protect the environment. Further, the government was also cognisant of the need for proper institutional arrangements for urban agriculture, hence the directive to urban councils to establish a department of cooperatives that would in turn provide support services to, among other enterprises, urban agriculture ones.

Although the idea of a cooperative movement failed and agricultural plots were subdivided into individual plots, the policy had a far-reaching impact on organized urban agriculture in Zimbabwe's cities. Further, although the allocation process could have been in favour of largely pro-government and ruling party supporters and targeted mostly women the benefits accrued to all and sundry through increased urban food security. The allocation of plots to beneficiaries was later hijacked by councillors, who used it for political patronage.

Municipal Enterprises by Urban Councils

In addition to promoting urban and peri urban agricultural cooperatives, Government's other policy was that urban councils should participate in

income generating projects as a means to achieving the stated policy of self reliance by the local authorities.

The type of municipal enterprises and income generating projects that government envisaged were largely in the field of agriculture. The Government expressed concern that state land in urban centres was lying idle and this could be utilised for agricultural purposes, by cooperatives and also directly by urban councils themselves. Through these ways, maximum utilization of state land was envisaged.

Council income generating projects, such as cattle ranching on waste water irrigated pastures, could be undertaken on council's own land or on state land.

Government directed that urban councils consider areas and sectors where new ventures could be started, setting up municipal enterprises in agriculture and commerce and industry, establish systems for marketing, selling outlets, provision of inputs and outputs required by cooperatives.

In order for these policy directives to be implemented by councils, the government went on to provide for the legislation, through the amendment of the Urban Councils Act, Section 4(8) as read with section 4(7)(i). The amendment empowered urban councils to carry out economic ventures.

As a result of this directive, many municipal councils established cattle ranching projects. Examples include the City of Harare, Bulawayo, and Marondera Municipality. Some cities went a step further and set up abattoirs for the slaughter of cattle from their farms. Examples include the City of Gweru. Horticultural enterprises were also set up by some municipalities, selling seedlings, seeds, flowers and other plants to members of the public. Some even went as far as setting up beer brewing companies. Some of the ingredients used for beer brewing were from municipal farms.

In Bulawayo, the council set up cattle and goat and sheep ranching projects. Families residing in the peri urban west part of the town were resettled to make way for the income generating projects. Pastures were irrigated using waste water from the municipal

sewer system. Some of the sheep were kept for the fur, which was sold to small enterprises in town for the manufacture of various artefacts.

The success of the municipal, enterprises as income generating projects is a case of a mixed bag. Some councils still run the projects to date, while others have opted to 'commercialise' them, setting up private companies wholly or partly owned by council. There has generally been a trend by the councils to focus on what they consider core-business. The core-business is to provide social services to residents. From many quarters, councils have been persuaded to hive off the municipal enterprises and leave them to the private sector to run.

ii. **The Harare Declaration On Urban And Peri-Urban Agriculture In Eastern And Southern Africa**

The Ministers responsible for Local Governments from Kenya, Malawi, Swaziland, Tanzania and Zimbabwe, met in Harare on 28 and 29 August, 2003 to discuss on the theme of Urban and Peri-urban Agriculture (UPA) in Eastern and Southern Africa. At the end of the conference they signed a Declaration. In the declaration they, acknowledged, inter alia, that:

- UPA is a widely practiced activity in and around towns and cities within the region on parcels of land with alternative competing uses;
- UPA has generally been practiced informally without appropriate policy, legislative and institutional frameworks;
- UPA plays, and will continue to play, a significant role in promoting food security, employment creation and income generation, health and nutrition and improving the economies of urban areas;
- Some governments in the region have made significant progress in incorporating UPA in their urban development plans, and that others are now beginning to rise to the challenge,

Further, they recognized the existence and increasing practice of UPA and also noted the many challenges that it faces, including:

- Absence, inadequacy and or inconsistency in the policies, legislation and institutional arrangements for regulating the sector
- Limited availability of and access to resources
- Limited research, documentation and information-sharing nationally and regionally
- The need for environmental sustainability

The Ministers also accepted that the foregoing challenges require immediate and prudent reform of policies, legislative and institutional arrangements in order to effectively integrate UPA into our urban economies. They therefore called for the promotion of a shared vision of UPA that takes into account the specific needs and conditions in the region, and accordingly committed themselves to developing policies and appropriate instruments that will create an enabling environment for integrating UPA into our urban economies.

The Harare Declaration on urban and peri-urban agriculture applies not to Zimbabwe alone, but the whole Southern and Eastern Africa region. The declaration can be taken seriously given the fact that the Minister of Local Government in Zimbabwe was key and instrumental in developing it. The issue that can be a subject of future research is how the government of Zimbabwe, like other governments, will implement this declaration and how much resources it will commit to its implementation.

iii. **The Nyanga Declaration on Urban and Peri-urban Agriculture**

This declaration was signed by the delegates to the Urban Councils Association of Zimbabwe's 61st Annual Conference that was held at Montclair Hotel, Nyanga, from 4-7 June 2002. The delegates comprised of the Minister of Local Government, Public Works and National Housing and his Deputy, the Minister of State for Informal Sector, Executive Mayors and Chairpersons, Town Clerks, Chairpersons of Council Committees, Councilors, Heads of Departments, representatives from the Ministry of Local Government, Public Works and National Housing, International, Regional and Local Non Governmental Organizations.

The delegates acknowledged that Urban and Peri-urban Agriculture contribute to urban food security, poverty reduction, local economic development

and sustainable urban development. Therefore, they urged local authorities to; inter alia;

- Promote Urban and Peri-urban Agriculture in their cities,
- Develop appropriate incentives and other policies necessary for its growth,
- Mainstream urban food security within their operations and
- Promote the collection and dissemination of information on Urban and Peri-urban Agriculture activities in their territorial planning areas,

They also called upon the Government to include Urban Agriculture in its programmes to alleviate poverty and economic empowerment, food security, promotion of local economic development and environmental and health improvement. They further called upon Non-Governmental Organizations and Donors to support financially and materially urban and peri-urban agriculture projects for the benefit of the urban poor. They also encouraged the private sector to invest in high value intensive urban and peri-urban agro-industries in order to create employment opportunities and promote local economic development.

In the declaration that was signed at the end of the conference, urban local authorities were urged to recognize the significance of the contribution of Urban and Peri-urban Agriculture to social development approaches, generation of jobs and income, self esteem, environmental improvement and urban food security and to add them to their key development goals.

The delegates affirmed their commitment to improve urban management through the promotion of peri-urban agriculture in our cities so as to enhance urban food security, address urban poverty, and improve urban environmental and health management as well as to protect the urban and peri-urban bio-diversity.

The Nyanga declaration sets out a clear policy framework for urban local authorities in the country to incorporate urban agriculture into their development policies and projects.

A reading of these two declarations points to the

fact that at Ministerial and local authorities level, a clear policy framework exists for undertaking urban agriculture work. The two declarations, made in 2002 and 2003 clearly articulate the recognition of urban agriculture and indicate that there is awareness by authorities on the importance of an enabling framework for the sector to grow.

In relation to urban agriculture and its impact on the environment, the research sought to establish the regulatory framework under which negative impacts of urban agriculture projects can be addressed. The research identified the Environmental Impact Assessment Policy of 1997 and the draft National Environmental Policy, as the most relevant.

iv **The Environmental Impact Assessment [EIA] Policy [1997]**

The purpose of this policy is to ensure that development projects, be they urban agriculture, industrial or other, that are likely to have significant environmental consequences receive both meaningful environmental planning by their proponents and thorough review by government before they are allowed to be implemented.

Volume 4 of the EIA Guidelines deals with agriculture [*both rural, commercial, communal or peri-urban agriculture*]⁸ that includes dry-land, livestock and wildlife ranching, dairy herding, irrigation and drainage as its sub-sectors.

Volume 8 of the EIA Guidelines, deals with urban infrastructure, addresses housing and industry as its sub-sectors. The Guidelines are silent on urban agriculture as a project. Urban agriculture is however inferred in the Checklist A for Major Activities that provides “land use, titling and tenure”. In Checklist B, urban agriculture is implied in “loss of agriculture for peri-urban land.

The projects that require impact assessments are outlined in the sixth schedule. Agriculture and change of land use are not provided for under this schedule. This means neither urban agriculture nor the conversion of land into agricultural purposes is subject to impact assessments. It however provides that if forestland were converted into other use, it

should be subjected to an environmental impact assessment. The implication is that forestland cannot be converted into land use for urban agriculture without an environmental impact assessment having been carried out. The same does not apply to all other land conversions for agricultural purposes.

iv. **The Draft National Environmental Policy**

Under the Draft National Environmental Policy, agriculture in general is dealt with under section 6.3.2. Urban Agriculture is particularly dealt with in Guiding Principle 46, which reads as follows;

“Urban agriculture practised on public land, is a legitimate land use activity that contributes to sustaining the livelihoods of urban inhabitants but needs to be practised in a sustainable manner.” The strategic directions include:

- *To develop and publish guidelines on urban agriculture*
- *To assist local authorities to plan ways to integrate and co-ordinate support for urban agriculture*
- *To establish extension programmes in order to promote sustainable urban agriculture.”*


Therefore, based on the foregoing, it is inferred that government policy is pro-urban agriculture.

When compared, the policy pronouncements by the Government of Zimbabwe with those by the Government of Tanzania, which has been quoted in literature as having the most progressive policy pronouncements on urban agriculture in Africa, one can arrive at the conclusion that the policy statements are progressive. However, they are scattered and sometimes contradictory giving credence to the call for a clear and single policy that specifically and directly deals with the issue of Urban Agriculture.

In Tanzania - the Government clearly states its position on urban agriculture in the Agriculture and Livestock Policy (1997), which states;

Agriculture is not a principal function of towns, but when properly organized UA has the potential to provide employment, income and is a supplementary source of food supply. *“The Policy*

⁸ Own emphasis.



is that the government will continue to regulate the conduct of UA and will ensure that it does not disrupt planned urban development”

This policy statement was followed up in 2000 in the National Human Settlements Development Policy, which states that Government shall

- o Designate Special areas within planning areas whereby people will be granted legal rights to engage themselves in agricultural activities
- o Continue to regulate and research on the

conduct of UA and will ensure that it does not disrupt planned urban development;

- o Review existing laws to facilitate planned UA;
- o Facilitate the construction of appropriate infrastructure to mitigate/ prevent land degradation, water pollution and health and safety hazards in areas where agriculture is permitted.

CHAPTER THREE:

An Audit of National Legislation

There are many pieces of National Legislation, called Acts of Parliament and Regulations that accompany some legislation that constitute the legislative framework for urban agriculture. The most relevant Acts of Parliament on urban agriculture are listed below.

1. The Urban Councils Act: Chapter 29:15
2. The Environmental Management Act: Chapter 20:27
3. The Regional Town and Country Planning Act: Chapter 29:12
4. The Public Health Act: 15:09
5. The Water Act: Chapter 20:22
6. The Bees Act: Chapter 19:02
7. Agricultural Research Act: Chapter 18:05
8. Dairy Act: Chapter 18:08
9. Dairy Produce Marketing and Levy Act: Chapter 18:10
10. Fruit Marketing Act: Chapter 18:13
11. Pig Industry Act: Chapter 18: 15
12. Plant Breeders Rights Act: Chapter 18:16
13. Produce Export Act: Chapter 18:17

Some of the these Acts are examined in detail below, without following their numerical order.

i. Urban Councils Act CAP 29:15

Urban settlements, simply put, towns and cities, are established and regulated mainly through the Urban Councils Act [Chapter 29:15] (“the UCA”) This is the piece of legislation through which a settlement is either designated or classified as an urban area (herein after referred to as “local authorities”). The Act further prescribes how these areas are administered. Because the Act is predominantly concerned with the regulation of urban administration and activities, it does not specifically address the question of urban agriculture, an issue that it leaves to be dealt with through subsidiary laws made under it, as we shall discuss herein. This is the

background against which agriculture was perceived as a non-urban activity. The Act thus specifically provides for urban oriented activities and amenities such as roads, construction of sidewalks,^{9[4]} sewerage and drainage^{10[5]}, water^{11[6]}, parking, omnibuses and other related transport services in its main body^{12[7]}.

The question of urban agriculture is not specifically provided for in the main body of the Act. It is left to be dealt with in terms of Regulations and bylaws made under the Act.

Thus the UCA, it not being primarily concerned with the regulation of non-urban activities left the question of urban agriculture to be dealt with through bylaws and regulations. And In the interest of good governance the Act in Section 235 confers upon the Minister of Local Government, Rural and Urban Development, the power to control or manage a local government area, make regulations to either **prohibit or regulate the cultivation of land**^{13[8]}; **prohibit or regulate the keeping of animals including poultry**^{14[9]}; and the prevention and removal of nuisances in a local government area.^{15[10]}

In essence, this means that the Minister has the power, if he/she sees it fit in the interest of good governance, to control or manage any urban area, through the promulgation of Regulations, by either out-rightly prohibiting or regulating urban agriculture as a concept or any one or more of its constituent activities. It shall be highlighted that this provision does not itself outlaw urban agriculture. It only provides that urban agriculture may be outlawed, where in the Minister's opinion, it impedes on good governance of any urban area or when it is expedient and desirable for its proper

^{9[4]} Part XI of the ACA refers

^{10[5]} Part XII

^{11[6]} Part XIII

^{12[7]} Part XIV

^{13[8]} see Section 235(3)(J)

^{14[9]} Section 235(3)(k)

^{15[10]} Section 235(3)(g)

management and control. Put differently, where urban agriculture does not in any way threaten the fabric of urban development and management, it is inconceivable that the Minister would outlaw it.

This probably explains why there are no Regulations that have yet been made that out law urban agriculture. Further, given the current political inclination towards embracing urban agriculture, it is unlikely that there ever will be such Regulations in the foreseeable future. If anything the Regulations may only seek to regulate urban agriculture.

The Act further delegates the authority to regulate urban agriculture to local authorities. This may be done through the promulgation of By-laws.

Section 227 of the Act, read with clause 81(1) of the Third Schedule, gives a local authority powers to make by-laws to prohibit or regulate, the cultivation on any land of any crop or anything which may constitute or is likely to constitute a hazard or danger to public health or the natural resources of the urban area concerned. Further, in terms of clause 82 (1) of the Third Schedule, a local authority may also make by-laws that prohibit or regulate the keeping of animals, bees, reptiles or birds in its urban area. Therefore by-laws may prohibit or regulate urban agriculture.

Again as already discussed above, the above-cited provisions do not themselves prohibit urban agriculture. They merely provide the enabling framework through which the activity may be prohibited or regulated.

ii. **Regional Town and Country Planning Act: Chapter 29:12**

The planning aspects of any urban set up are dealt with in terms of the Regional Town and Country Planning Act¹⁶ (the RTCPA). This is the piece of legislation that authorizes any local authority to plan, regulate and coordinate all the planning activities and developments within its locality. This

Act authorizes the local planning authority, following certain laid down procedures, to determine what sort of activity would be carried out on what part of land within its jurisdiction.

This is done mainly in two ways. Firstly, through the issuance of development permits which would allow one to undertake a particular development within a particular area and in a particular manner.¹⁷⁽¹¹⁾ Secondly, through what are called Master Plans and Local Plans. These are documents and illustrated maps that are drawn to determine what land use activities can be carried out on what portion of land. The documents determine what activity can be done, where and under what conditions or restrictions.¹⁸⁽¹²⁾

A Master plan is broader in its scope and normally merely lays down broad policy issues. It also normally covers a bigger geographical area. Local plans are then drawn to give detail to the broad policies of the Master plan, normally emphasizing on a smaller geographical area or addressing particular planning issues.

The predecessors to Local Plans were called Town Planning Schemes.

Once a Master Plan or Local Plan is operative, it becomes law. In other words it carries the force of law. Every development within the geographic area covered by the plan has to conform to the relevant plan. If it does not the local planning authority concerned or any concerned citizen may take such steps as are available at law to ensure compliance.

A private citizen may, in terms of the common law of delict¹⁹⁽¹³⁾ under which the laws of nuisance fall or in terms of administrative law, approach the courts against either the person in breach or the local planning authority to enforce compliance. The local planning authority may also take legal action or use the powers conferred upon it to ensure compliance.²⁰⁽¹⁴⁾ The local authority may also in

¹⁶ [Chapter 29:12]

¹⁷⁽¹¹⁾ See Sections 22, 23, 24, 25 and 26 of the RTCPA.

¹⁸⁽¹²⁾ See Part IX of the RTCPA on the preparation and content of Master and Local Plans.

¹⁹⁽¹³⁾ The law of delict is a branch of the law that allows a party who is unlawfully wronged by the actions or inactions of the other to approach the courts for redress.

²⁰⁽¹⁴⁾ Under sections 32 of the RTCPA, the Local Planning Authority may issue an Enforcement order or a Prohibition Order in terms of section 34, in both instances calling upon the owner or occupier of the land concerned to stop any such illegal activities. However a local authority cannot stop urban agriculture by way of an enforcement or prohibition order, as it is not deemed as development in terms of the Act. Only those activities that are deemed to be development may be stopped through the foregoing procedure.

certain instances even remove, demolish or alter any unauthorized development.^{21[15]}

The point that requires emphasis here is that, as shall be illustrated below, it is possible for any urban local authority to, in its planning process provide for urban agriculture as a land use. In so doing it only needs to ensure that such an activity is compatible with the rest of the urban land uses. A delicate balance has to be struck, for if it is not, the local authority may find its planning process being bogged down by public objections. This follows from the fact that, in the process of the drawing of a Master or Local Plan by a planning authority, the public has a right to raise objections and the plan would only become operational once any objections so raised are either withdrawn by the objector or determined by the court or an arbitrator referred to as an investigator in terms of the RTCPA. By this analysis, we concluded that, through a Local Plan, urban agriculture can be integrated into the mainstream of urban development. That way, it would cease to be an ancillary urban activity and actually become an officially recognized urban land use for which an enabling environment is provided.

However because agriculture was historically from a town planning point of view, perceived as a non-urban activity, most local plans are silent on this issue. Toriro^{22[16]} observes that probably the first deliberate plan that provided for urban agriculture in Harare was the Cleveland Local Plan 4 that was drawn in the 1970s, which zoned part of its planning area as “Communal”, wherein cultivation was allowed predominantly for the Mabvuku/Tafara residents. There are also a few Local Schemes that were later drawn that permitted agricultural activities in certain parts of Harare. Most of these areas were however confined to the periphery of the city and were previously, before being incorporated into Harare, rural areas. Maintaining agriculture, as an activity was therefore not a deliberate design to promote the activity in an urban set up but was more of a compromise to accommodate the old use whilst the land was under transition to urban. It is therefore not surprising that most of these areas have now ceased to engage in agricultural activities and have been turned into residential properties.

Some of these Local Schemes have however since been superceded by Local Plans that have completely changed the land uses but they have maintained agriculture as an existing use right. In terms of the law (the RTCPA) where a new local plan comes into use, it does not automatically upon coming into operation, outlaw all the previous land uses. It only regulates the future land uses. The previous land uses can continue on the basis of what are called existing use rights. This is the case with areas like Greendale, Marlborough and Borrowdale in Harare, where it is not uncommon to see pockets of thriving market gardening activities in the middle of the residential suburbs.

In recent years there has also been an inclination towards urban agriculture in the planning process in Harare. Under the section on Environment in objective number 7, the present Harare Master Plan, espouses the need to “*identify and zone land suitable for residential agricultural allotments*”.

The Saturday Retreat Local Plan number 50, therefore, presumably drawing inspiration from the Master Plan, zoned about half of its planning area for agriculture. This is in addition to the more than 10% area that was also zoned residential but with full agricultural rights. The Tynwald Local Development Plan number 24, also has some of its land zoned agricultural for both animal husbandry and crop cultivation.

iii. **The Environmental Management Act, [Chapter 20:27]**

In so far as the Environmental Management Act seeks to set environmental principles, standards and practices, it also impacts on urban agriculture. Its emphasis, as its title suggests, is on the sustainable management of the environment. As far as urban agriculture is concerned, it therefore only regulates the same in its overall thrust of ensuring sustainable development.

In section 4(2) for instance, the Act sets out principles of environmental management that shall apply to all persons and government agencies that significantly impact on the environment.

^{21[15]} See section 35 of the RTCPA.

^{22[16]} Toriro Supra

Noteworthy as far as urban agriculture is concerned is the declaration in paragraph (b) thereof that environmental management must put people and their needs first. One could therefore argue, looking at this principle in the context of the totality of the provisions of the Act that, it encourages urban agriculture for as long as it is sustainable.

The Environmental Management Act is discussed in detail in Chapter Four. The reason for dedicating a chapter to the Environmental Management Act is that it is the principal Act that supercedes all other Acts when it comes to regulation of environmental issues.

iv) The Public Health Act: Chapter 15:09

Part 8 of this Act deals with the regulation of slaughter houses. A slaughter house is defined as “any abattoir, knacker's yard, slaughtering poles or place set apart for slaughtering animals the meat of which is intended for sale” In terms of Section 76, a local authority may license such slaughter houses as it may from time to time consider necessary within its area of jurisdiction. The local authority may also establish and operate its own slaughter houses. The local authority may also request the Minister responsible for health to ban the sale within its area of jurisdiction of any meat which has not been slaughtered in a slaughter house. The local authority is also empowered to inspect any meat slaughtered at a slaughter house that it has licensed. These provisions are mainly concerned with controlling the spread of epidemics that may be caused by the improper handling of meat within the municipal area. At the same time they regulate the establishment and operations of slaughter houses which play an important role in the meat industry in Zimbabwe hence encouraging animal husbandry in the country. Of importance is the fact that local authorities can also establish and operate their own slaughter houses and thereby contributing to the growth of the industry by virtue of their numbers, sizes and access to resources that may be required for establishing the slaughter houses.

v) The Bees Act Chapter 19:02

The Act is there to provide for the control of disease in bees, for the conservation of bees found in the wild and the regulation of bee-keeping. In terms of Section 12, the Minister responsible for

environment may require bee-keepers within a declared disease area to register with the ministry. Through a statutory instrument, the Minister may also prohibit the establishment of any apiaries on any site if the site has become unsuitable for bee-keeping or if bee-keeping is detrimental to the public interest. In terms of this Act therefore any person can keep bees without necessarily seeking authority and the Minister can only come in to regulate the keeping of bees if need arises. This will be in situations where there is an outbreak of diseases in bees or where the keeping of bees is not in the public interest. The Act however has to be read with the Public Health By-laws of different local authorities in the country which regulate and at times outrightly prohibit the keeping of bees within the municipal areas. The issue of bee-keeping within different municipal areas is discussed in detail in Chapter 4

vi) The Forest Act Chapter 19:05

The Act was put in place to control, administer and manage state forests, to provide for the setting aside of state forests and to protect private forests, trees and forest produce, to provide for the preservation of timber resources and compulsory afforestation of private land, to regulate and control trade in forest produce and to regulate and control the burning of vegetation. However all the 37 demarcated Forests on forest land in terms of the Act are situated in rural areas and can therefore not be discussed in terms of urban agriculture. The importance of the Act in terms of urban agriculture will relate to the protection of private forests and the compulsory afforestation of private land which can either be in rural areas or in urban areas. In terms of Section 3 (1) of the Act “The owner of any private land who has placed or intends to place such land under a system of forest management approved by the Forestry Commission may make an application to the Minister for the Declaration of such land or such portion of land as a protected forest and such land shall be protected under this Act” This can encourage urban forestry if the land to be put under a system of forest management is situated in an urban area. Owners of private forests can be assured of the protection of their forests from unsustainable and illegal harvesting of either the timber or the forest produce. Of convenience to the owners of the private forests is the fact that the declaration of their forests as protected forests will

still entitle them “to be vested with and exercise full rights of ownership in regard to such protected private forest” Compulsory afforestation especially in areas where the concerned land is threatened with environmental degradation can also help in urban forestry if such land is located within an urban area.

vii) The Agricultural Research Act- Chapter 18:05

This is an Act to provide for a Council to be known as the Agricultural Research Council. The duties of the council will include

- To keep under review agricultural research in Zimbabwe with particular attention to the adequacy of such research for the needs of Zimbabwe
- To promote all aspects of agricultural research and to ensure maximum coordination between persons or authorities who are undertaking or are about to undertake any form of agricultural research
- With the approval of the Minister responsible for agriculture to undertake agricultural research

This council is a national council and therefore its activities are set to benefit all farmers in the country and promote agricultural production both in urban areas and in rural areas.

viii) The Dairy Act- Chapter 18:08

This Act is important for urban agriculture in that most of the dairy factories in their different forms are located within the urban areas. There are also dairy farms that are located within various peri-urban areas in Zimbabwe. As such local authorities have an important role to play in the administration of the Act. For example in terms of Section 4(d), if dairy premises are located within the area of a local authority, the premises have to comply with the building by-laws of that local authority and in terms of Section 27 a local authority is deemed to be the registering authority for purposes of this Act in respect of a dairy farm which may be situated outside the local authority area but for which milk or cream is supplied to that local authority for consumption as whole milk or cream.

In terms of Section 3, “ No person shall use premises as a creamery, a cheese factory, a dried milk factory, dairy factory or cream depot unless he holds a registration certificate authorizing him to use such premises for such purposes” The certificate is issued by a Chief Dairy Officer who may however refuse the granting of such a certificate if the premises do not comply with Sec 24 (2) of the Regional, Town and Country Planning Act (RCTPA) (which deals with the control of development) or are in contravention of the building by-laws of the local authority within which it is located, or in contravention of any operative regional plan, approved scheme, operative master plan or operative town plan as defined in the RTCPA

Section 37 of the Act also states that “It shall be the duty of every local authority to assist and cooperate with the Secretary of the Ministry responsible for health in carrying out the provisions of this act relating to the safeguarding of health and it shall likewise be the duty of every inspector outside the area of a local authority to cooperate with such local authority in carrying out the provisions of this Act in its area” This clause again clearly sets out the importance of the local authority in the enforcement of this Act and ultimately the development of dairy farming within the municipal area and beyond

ix) Farmers' Licensing and Levy Act - Chapter 18:10

This is an Act to provide for the licensing of farmers and the collection and payment of levies on certain agricultural products as may from time to time be prescribed. In terms of the Act, a farmer is defined as a person who normally derives his sole or principal means of livelihood from agriculture carried on by him in Zimbabwe whatever the area of land on which he carries on agricultural operations. This definition is wide enough to include even small scale urban farmers who carry out the activity on subsistence level as long as the activity is either their sole or principal source of livelihood. The levy is applied to promote the interests of producers of the particular agricultural product or class of agricultural products to which it applies. These interests may include research into the development

and marketing of the particular crop to which the levy applies and therefore can play an important role in the productivity of urban farmers producing the prescribed crop. The books of accounts for the levying authority are audited and subject to ministerial scrutiny to ensure accountability and to ensure that the money is used for the intended purposes.

x) Fertilizers, Farm Feeds and Remedies Act - Chapter 18:12

This is an Act to provide for the regulation, restriction of importation and sale of fertilizers, farm feeds and other remedies that may be used in the agricultural sector. In terms of Section 8 these have to be registered in terms of the Act before they are sold and they should be labeled, branded and packed in the prescribed manner. The purpose is to ensure that farmers and other members of the public can only buy genuine fertilizers, feed and remedies. Without such restrictions, unscrupulous dealers and manufacturers can sell dangerous or infective feeds, fertilizers and remedies to farmers resulting in serious losses, both financial and in terms of crop, animal or human life if the products so sold turn out to be dangerous. People engaged in the sale of fertilizers are also required to give invoices to the purchasers. This is to ensure that if any problems arise related to the sold product, it will be easy to claim compensation or damages from either the seller or the manufacturer of the product. The relevance of this Act is that the urban farmers also extensively use the fertilizers, feeds and remedies that are a subject of its provisions.

xi) Fruit Marketing Act-Chapter 18:13

The Act was put in place to provide for the establishment and use of the Zimbabwean National Mark in relation to the marketing of specified types of fruits grown in Zimbabwe and to provide for the requisite standards and requirements for the export of specified types of fruit grown in Zimbabwe. Growers who intend to use the national mark in respect of the fruits that they grow have to be registered with the Secretary for Agriculture and the Secretary can only grant registration if he/she is satisfied that the grower will be able to maintain the requisite standard for the type of fruit in respect of which he/she seeks to use the national mark. This Act is particularly important for farmers who intend

to export their fruit because no fruit can be exported from the country unless it meets the requisite standards and the fruit container complies with the requisite standard and bears the national mark. Urban farmers engaged in fruit production for the export market can also benefit from the provisions of this legislation. The tight conditions that are attached to the use of the national mark and the export of the fruit will ensure that only quality fruit is exported thereby raising demand and boosting the productivity of the farmers.

xii) Grain Marketing Act- Chapter 18:14

The purpose of the Act is to establish the Grain Marketing Board (GMB) and to regulate and control the prices and marketing of certain agricultural products and their derivatives. In terms of Section 26, the GMB is tasked with the following duties:

- To ensure the orderly marketing of controlled products within any prescribed area
- To buy and sell any controlled product which is delivered to or acquired by it under the provisions of the Act
- To provide storage, handling and processing facilities for controlled products
- To maintain stock of controlled products

The controlled products or their derivatives are declared by the Minister through a Statutory Instrument and in the same instrument, the Minister can also declare the areas within which that product will be controlled. Through a statutory instrument, the Minister can also fix the prices of controlled products and their derivatives for any particular year. It is an offence to sell or buy any controlled product other than through the GMB in terms of this Act or to sell the controlled product and its derivatives at a price other than that set by the Minister in a Statutory Instrument for that particular year. Movement of controlled products without the authority of the GMB is prohibited.

Most farmers and free trade exponents have over the years criticized the Act in that it stifles the production of the controlled products since one can not be assured of getting a fair market price for

the product due to the stringent controls that surround the growing and marketing of the products. Government has however justified the provisions of the Act by arguing that the controlled products are national strategic products whose production and sale need to be closely monitored to ensure national food security. The most famous controlled products in the country are wheat and maize because they form the staple food of the nation. Whilst very few urban farmers grow wheat, almost every urban farmer in the country grows maize either on a commercial or subsistence level. In that regard the provisions of the Act therefore affect urban farmers in a very significant way in that they have to comply with the requirements relating to trade, pricing and movement of maize as a controlled product.

xiii) Pig Industry Act - Chapter 18:15

This is an Act to provide for the establishment of the Pig Industry Board and to define its functions, powers and duties and to provide for the imposition and collection of levies on pigs produced in Zimbabwe as well as the development of the pig industry.

In terms of Section 20 the Pig Industry Board is conferred with the following powers:

- To carry out pig research in Zimbabwe and to establish and operate pig litter testing stations
- To advise the Minister on all matters relating to the production and marketing of pigs

These duties have the effect of developing the pig industry in the country and any farmer, including the urban farmers have a chance to participate in pig production in the country. As the various Public Health by-laws for the different local authorities that we have in the country allow the keeping of pigs in urban areas on certain conditions; this Act can be used to ensure the establishment of a thriving pig industry in the urban areas.

The Act also deals with the operation of bacon factories and the handling of pig carcasses. In terms of Section 36, no person shall operate a bacon factory unless he/she holds a licence to use the premises as a bacon factory. The licence is issued by the Minister and the Minister can also make regulations relating to the inspection of pigs, pig

carcasses, inspection of books, registers and accounts and the inspection of bacon factories, land or other premises where pigs, pig carcasses and pig products are produced, handled, treated, processed, prepared, dressed, cured dealt in or stored. (Section 41 (2))

These provisions are to ensure that public health is protected and that dealing in pigs and pig products is regulated. The establishment of a levy on pigs in terms of Section 26 ensures that the administrative work that is required for the development of the pig industry in the country is paid for. The levy is not imposed on pigs that are slaughtered for household consumption.

xiv) Plant Breeders Rights Act - Chapter 18:16

This is an Act to provide for the registration of plant breeders rights in respect of certain varieties of plants and the protection of the rights of persons who are the holders of such rights. In terms of Section 6, the breeder of a new variety or his assignee may make an application for a Plant Breeders' Right. An applicant for a plant breeders' right is given the authority to sell, reproduce and multiply reproductive material of the plant concerned from the time of publication of the notice of application in the Government gazette and the time the application is granted or denied. Once the application is granted the holder of the right will be entitled to prevent anyone else from selling, reproducing or multiplying reproductive material of the plant concerned or any other plant that is essentially derived from the plant concerned. The plant breeders right is valid for a period of 20 years and it is generally assumed that during that period, the holder would have derived adequate benefit from his/her innovativeness during the time that he/she is exclusively permitted to deal in, sell, reproduce or multiply the plant variety in question.

Plant breeding in Zimbabwe is however currently the preserve of big companies or research institutions and where these are located within the precincts of urban areas, they develop urban agriculture in that regard. Very few if any small individual urban farmers are however involved in plant breeding and to them this will be just another piece of legislation with very little relevance to their lived realities.

xv) Produce Export Act- Chapter 18:17

This is an Act to provide for the grading of agricultural produce and any such processed produce that is to be exported from Zimbabwe for the purposes of sale. The Act also deals with the prohibition and regulation of the export of such produce. In terms of Section 2, the President can declare any product to be produce for the purposes of this Act. The produce can not be exported unless it has been inspected, graded and branded in terms of this Act. If the produce is graded in a grade lower than that acceptable for the purposes of this Act, then it can not be exported. Like the Fruit Marketing Act, this Act ensures that all produce that is exported from Zimbabwe is of an acceptable standard that will help in increasing demand in the importing country and thereby increase local production. This also helps in establishing the country's name on the international market as a producer of quality agricultural products. Urban farmers who produce the required crops can therefore make a living and contribute to the national economy through the export of their produce in terms of the Act.

REGULATIONS

I. Fruit and Vegetable (Urban Areas) General Regulations, Statutory Instrument 459/1915.

This is one of the oldest regulations that impacts on urban agriculture. Promulgated in 1912 as the Fruit and Vegetables (Urban Areas) Ordinance, these Regulations merely provide for the licensing of any person who carries on the business of market gardening or the raising of vegetables or fruits for sale to the public. The regulations emphasize on good hygienic conditions as a prerequisite to licensing.

In this chapter, an attempt has been made to highlight the key statutes that impact on the urban agriculture sector. In the chapters that follow, a detailed analysis of how some of these policies and statutes actually impact on the sector is provided for.

CHAPTER FOUR:

The Environmental Management Act

An Analysis of the Environmental Management Act (EMA) Chapter 20:27

INTRODUCTION

The Environmental Management Act: Chapter 20:27 was enacted to among other things provide for the sustainable management of natural resources, protection of the environment and to prevent pollution and environmental degradation. It is the main act in the country dealing with environmental issues although it is a framework legislation that needs to be boosted with the aid of regulations to deal specifically and in detail with the various issues that are contained in the Act. Urban agriculture by its nature is an environmental based activity that has the potential to cause pollution and environmental degradation if not properly managed. Practiced effectively and in a coordinated manner, it has the potential to contribute towards the sustainable management of natural resources as well as to the food security of urban poor households. This chapter therefore looks at the effect that EMA has on the practice of urban agriculture in Zimbabwe.

THE COORDINATING ROLE OF EMA

Section 3 of EMA states that:

- (1); Except where it is expressly provided to the contrary, this Act shall be construed as being in addition to and not in substitution for any other law which is not in conflict or inconsistent with this Act.
- (2); if any other law is in conflict or inconsistent with this Act, this Act shall prevail.

EMA therefore has a coordinating role over all other pieces of legislation that deal with the environment. In the same vein, it has a coordinating role over all other laws that deal with urban agriculture as an environmental issue. This research has clearly shown that there are various laws that deal with urban agriculture in the country, be they Acts of Parliament, Regulations or By-laws made by local authorities to govern urban agriculture and related issues. These include the Urban Councils Act, Chapter 29:15, The Regional, Town and Country Planning Act, Chapter 29:12 and various municipal by-laws that include the Harare (Protection of Land) By-Laws, the Harare (Trees and Plants) By-Laws

and the Harare (Noise) By - Laws. These legal instruments can only govern urban agriculture as an environmental issue if their provisions are in line and not in conflict with EMA. Some critics have argued that EMA cannot be regarded as the main act dealing with urban agriculture in the country because it does not provide a framework under which the activity can be practiced, for example, access to land for urban agriculture. Their view has been that the Regional, Town, and Country Planning Act (RTCPA) could be best described as the main act dealing with urban agriculture in the country because through master plans, local plans and development permits, it can ensure that urban farmers access land for urban agriculture. While this may be true, the important point to note is that the RTCPA can only make provisions for land for urban agriculture in line with the dictates of EMA just like any other Act dealing with the environment and related issues in the country. EMA therefore remains the main act dealing with urban agriculture as an environmental issue.

URBAN AGRICULTURE AS AN ECONOMIC AND DEVELOPMENT ISSUE

Urban agriculture definitely plays a pivotal role in the social and economic transformation of urban households particularly those that face resource constraints. It should therefore be promoted as a means of livelihood for urban dwellers as well as an economic activity that generates employment and income. In line with this, Sec 4 (1) (c) (ii) of EMA states that: "Every person shall have a right to protect the environment for the benefit of present and future generations and to participate in the implementation of the promulgation of reasonable legislative and policy and other measures that secure ecologically sustainable management and use of natural resources while promoting justifiable economic and social development" Efforts should therefore be made to ensure that urban agriculture is practiced in a sustainable manner and promotes justifiable economic and social development. Urban farmers and other stakeholders in the field are also entitled to participate in the formulation of laws and policy measures that impact on the activity

PRINCIPLES OF ENVIRONMENTAL MANAGEMENT

EMA sets out various principles of environmental management and the following are relevant to urban agricultural activities:

- Environmental management must place people and their needs at the forefront of its concern
- Development must be socially, environmentally and economically sustainable
- Any person who causes pollution or environmental degradation shall meet the cost of remedying such pollution or environmental degradation and any resultant adverse health effects as well as the cost of preventing, controlling or minimizing further pollution, environmental damage or adverse health effects (Polluter Pays Principle)
- Sensitive, vulnerable and highly dynamic or stressed ecosystems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

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The significance of these principles for the development of urban agriculture in the country can not be over-emphasized. Firstly while there is need to protect the environment, authorities are urged to place the needs of the people at the fore. Urban agriculture has been touted as one of the biggest contributors to pollution and environmental degradation, loss of bio-diversity and loss of the aesthetic value of the urban areas. Whilst all these concerns are genuine, the first principle urges that these concerns should be balanced with the needs of the people and therefore urban agriculture should be allowed to develop in a sustainable, coordinated and well organized manner. In essence, it should be socially, environmentally and economically sustainable.

The polluter pays principle is also aptly summed up and authorities can use this principle to ensure that any urban agriculture practitioners who cause pollution can bear the full consequences of their actions. Lastly urban farmers have been accused of altering ecologically sensitive areas like wetlands and hilltops thereby causing serious environmental degradation. As indicated above, a principle is there in EMA to ensure that such areas are properly managed and therefore do not fall prey to unsustainable urban agricultural activities. It is left to the

authorities, be they local or central government to ensure that mechanisms are put in place for the regulation of the cultivation of ecologically sensitive areas. Once the regulations are in place, it is equally important to ensure they are implemented so that they effectively assist in the protection of the ecologically sensitive areas and the environment in general.

INSTITUTIONAL SET UP UNDER EMA

The Act provides for the setting up of various institutions for the management of the environment. These include the Environmental Management Board, the Environmental Management Agency, the Standards and Enforcement Committee and the National Environment Council. All the institutions have a role to play in urban agricultural activities though with varying degrees. The Environmental Management Agency in particular is vested with important powers that impact on urban agriculture. It is required to assist and participate in any matter pertaining to the management of the environment and some of these responsibilities include:

- *To regulate and monitor the control of invasive alien species.*
It is possible that urban farmers like any other farmers, can experiment with all sorts of crops and plants and in the process they may bring into the areas where they are practicing urban agriculture some of the specified invasive alien species. The Agency is therefore required to ensure that this is minimized or controlled altogether
- *To regulate and monitor the management and utilization of ecologically fragile areas*
As previously indicated, urban farmers sometimes cultivate on ecologically sensitive areas and this institution is conferred with powers to ensure that those areas are properly managed and protected.
- *To make model by laws to establish measures for the management of the environment within the jurisdiction of local authorities*
Local authorities are ultimately responsible for the activities of urban farmers when they carry out their urban agricultural activities. They are responsible for identifying and allocating land for urban agriculture. They also attach any conditions that they deem necessary to the allocation of the land for urban agriculture

and are responsible for ensuring that the activity is carried out in a sustainable manner and does not cause pollution or environmental degradation. So in partnership with the local authorities, the Agency can ensure that all issues of concern regarding urban agricultural practices are captured in the model by-laws for local authorities.

In terms of Section 36 (c) the Director-general, inspectors and other officers of the Agency are also responsible for ensuring that the following situations, actions and circumstances are avoided, minimized, managed or regulated: the disturbance of ecosystems and the loss of biological diversity, pollution and degradation of land, air and water as well as the disturbance of landscapes and sites that constitute the nation's cultural heritage. Urban agriculture can contribute to the occurrence of all of the above in a very significant way, particularly the disturbance of ecosystems, loss of biological diversity and the pollution and degradation of land, water and air if it's not practiced in a sustainable manner. The Act therefore places a huge responsibility on the Agency and its staff for the management of the activity. The inspectors and officers are permitted to enter any premises, land etc and examine any activity which they reasonably consider to be detrimental to the environment and natural resources. Urban agricultural activities can therefore be targeted in the process.

The Standards and Enforcement Committee which is a committee of the Board is set up in terms of Sec 55 of EMA and plays a pivotal role particularly in setting quality standards for water for agricultural purposes as well as for fisheries and wildlife. Urban agricultural activities can equally benefit from the setting up of these standards where the agriculture, fisheries or wildlife activities are carried out within the confines of urban areas. The same committee is also tasked with the regulation and setting of standards for the use and handling of pesticides (Sec 74). Urban farmers use and handle pesticides as they carry out their farming and it is important that they handle the chemicals properly, that the chemicals they use are properly labeled and that they do not import, buy or sell any prohibited pesticides. This is important for the control of pollution especially water pollution and for the protection of human, animal and plant life. Sec 57 of EMA clearly states that water pollution is an offence and therefore urban farmers have to ensure that they do not cause water pollution through the improper use of pesticides, fertilizers and other chemicals so as to avoid the harsh fines and prison terms that accompany the

commission of the offence. The Minister of Environment is also empowered in terms of Section 114 (3) (k) to make an order to an owner or occupier of premises ordering the limiting of the use of agricultural pesticides.

THE ENVIRONMENTAL PLANS

These include the National Environmental Plan, Local Authority Environmental Action Plans and Environmental Management Plans. The National Plan is particularly important for urban agriculture in that it shall be taken into account in the preparation and implementation of regional and master plans in terms of the Regional, Town and Country Planning Act (Section 92 (3) (a)). These are the same plans that are used by local authorities to set aside land for urban agricultural purposes.


ENVIRONMENTAL IMPACT ASSESSMENTS

Although agriculture per se is not listed in the Act as a project that requires an environmental impact assessment before its implementation, drainage and irrigation are two such projects. Drainage is explained to mean drainage of wetlands or wildlife habitats. So where urban agricultural activities are likely to result in the drainage of wetlands or wildlife habitats or where irrigation is going to be employed in carrying out the farming activities, they will be subject to environmental impact assessments before implementation.

PROTECTION OF WETLANDS

This is specifically covered by Section 113 of the Act. As indicated earlier, urban farmers have been accused of draining and altering wetlands in their farming activities thereby causing serious environmental degradation, alteration of the wetlands as well as water pollution. The Act however clearly states that the minister can declare any wetland to be an ecologically sensitive area and impose limitations on development in and around that area. Reclamation and drainage of any wetlands as well as the introduction of any exotic animal or plant species in a wetland without the express authority of the Director-General of the Agency is prohibited. Contravention of these provisions is an offence with a stipulated penalty of two years imprisonment or a fine not exceeding level eight. With adequate environmental law information dissemination and enforcement of the law, wetlands can be adequately protected from urban agricultural activities

REGULATIONS



In terms of Section 140, the Minister is empowered to make regulations dealing with various issues and some of the issues so covered relate to urban agricultural activities. The Minister can make regulations for the conservation and protection of wetlands, and of the bed, banks or course of any river or stream and any source of water. The Minister can also make regulations prohibiting or restricting the cultivation of any land, the banks of public streams or land adjacent to artificially conserved water. All these activities have been associated to a very great extent with urban farmers because of the general lack of land for agricultural activities in the urban areas. It is therefore important for the sustainable practice of urban agriculture that the Minister can make regulations to deal with these issues.

On animal husbandry, the Minister can make regulations for the destocking and limitation of the number of livestock or domestic animals to be kept on any land. This is important in urban areas where the spaces available for such activities are limited in size. If the numbers of animals to be kept are not limited or controlled, this can

lead to health problems and create a nuisance to neighbours and other urban dwellers.

CONCLUSION

Urban agriculture is emerging as an important contributor to the food security of resource poor urban households. It is also a source of income for many urban dwellers. It is therefore important that new laws that are coming into operation such as the Environmental Management Act have got provisions that can be used to regulate the activity and ensure that it is carried out in a sustainable manner. While EMA, does not refer to urban agriculture per se, it is important to note that this is a framework legislation that can not cover all environmental issues in detail but only lays the framework within which the issues can be handled. The regulations to be made by the Minister and the By-laws to be made by the local authorities can therefore play an important role in ensuring that the various urban agricultural issues that are covered by the act are given flesh and are implementable.

CHAPTER FIVE:

An Audit of Municipal By-Laws

The by-law regime in Zimbabwe borrows heavily from national legislation because the by-laws that the different local authorities may promulgate have to comply with the provisions of national legislation dealing with similar issues. Local authorities usually put by-laws in place to deal with national issues that may require modification or detail in order for them to be applicable at a local level. The different by-laws that we have in the country relating to agriculture borrow from national legislation relating to bee keeping, public health, building requirements, water and the environment amongst other things. Below is a discussion of some of the by-laws that local authorities have put in place that impact on urban agriculture. The study does not look at all the urban local authorities in the country nor does it deal with all the relevant by-laws for the selected local authorities. A sample has been picked to demonstrate the by-law regime related to urban agriculture in the country.

The relevant By-laws, some of which are discussed herein do not prohibit urban agriculture as an activity. If anything they merely seek to regulate those agricultural activities that may not be compatible with other urban land uses or may pose a danger to public health, constitute a nuisance or result in environmental degradation. Further, they seek to regulate the issue of tenure on urban agricultural activities that are carried out on public land as opposed to private land. The main thrust however being on regulating as opposed to prohibition.

Most of these By-laws, it has been observed were promulgated in the 1970s, a period that to an extent coincided with an epoch of massive industrialization in Zimbabwe (and in Harare in particular, as the capital city and hub of industry) following the unilateral declaration of independence by the then Rhodesian government from British control in 1965. This decision saw Rhodesia being ostracized by many Western countries. Severe economic sanctions were also imposed. The country was therefore forced to become self-sufficient. Whether there is a direct link between this development and the nature of the By-law regime that was promulgated that impacts on urban agriculture is debatable. One suggestion is that, the industrialization process that necessarily required intensified labour triggered a rural to urban migration. Attendant to this influx may have been

an increase in incidents of urban agriculture such that it was felt that the time had come for a regulatory framework to be put in place. Urban agriculture already having taken root, nothing short of regulation could be done about it.

What is however clear is that a By-law regime that only sought to regulate urban agriculture as opposed to prohibiting it was developed. In the following sections, an audit and analysis of municipal bylaws for the case study urban centers is made. The cases are presented in alphabetical order of the names of the urban centers.

1. MUNICIPALITY OF BINDURA

i) *Bindura (Food Premises) By-laws RGN 1201/1975*

The By-laws deal with the licensing of food premises and the conditions under which they should be kept. Of importance to this particular research is the regulation of butchers' shops. Part 11 states that a butcher's shop should be kept clean and the owner and employees who handle meat within the premises should be medically examined by a registered medical practitioner and certified to be free from any communicable diseases. Whilst in setting up these requirements, the mischief is more inclined towards prevention of disease outbreaks, it is important to note that butchers can operate shops after following these requirements and in the process, urban agriculture and in particular animal husbandry is enhanced and encouraged.

ii) *Bindura (Well and Borehole) By-laws RGN 251/1974*

Section 4 of the by-laws prohibit the sinking, construction or extension of any well or borehole upon any land within the municipal area without the written consent of the municipality. While the sinking of boreholes or the construction of wells in urban areas may be necessary for irrigation purposes in order for urban agriculture to thrive, again it is necessary that sinking of boreholes and the construction of wells be regulated so as to avoid environmental problems including the alteration of the water table to unacceptable levels. Well and

borehole water is cheaper compared to portable water supplied by municipalities and therefore can be used more viably by urban farmers in irrigating their crops and supplying drinking water to their animals. The sinking of wells and boreholes therefore helps in increasing output by the urban farmers. Wells may however pose a health hazard if they are not constructed to specification and are not properly protected so as to prevent water contamination hence the need to regulate their sinking or construction.

2. CITY OF BULAWAYO

i) *Bulawayo (Public Health) By-laws RGN 803/1966*

Whilst the regulations are primarily concerned with public health and the prevention and control of epidemics within the municipal area, they also touch significantly on urban agriculture and its implications on public health. Of particular interest is the emphasis that is placed on the keeping of animals and the various measures that are put in place to ensure that the keeping of animals in the municipal area does not pose a health hazard to the population. The practice of keeping animals is not prohibited by the regulations but is regulated so as to protect the health of the public and there are various sections in the regulations that deal with the keeping of animals and related issues as elaborated below

- Sec 27 prohibits the exposure, keeping or storage of any raw, salted, sun dried or green or untanned hides without the written permission of the council. While urban farmers, particularly those who keep animals may find a lucrative trade in the leather industry, it is only proper that they do so in a manner that does not pose a public health hazard
- Sec 32 states that “no person shall store or use manure or stable litter for gardening purposes unless such manure or stable litter is incapable of encouraging the breeding of flies or of causing a nuisance” The flies can spread epidemics/diseases and it is proper that the use of such manure and litter, though permissible should not bring about that problem. Members of the public should also be protected from the smells and

other nuisances that might arise if the litter and manure is used in an unacceptable condition

- In terms of Sections 41 and 43 of the Regulations, the keeping of animals and poultry within the municipal area can only be done with council approval and after the people who keep the poultry have complied with council regulations relating to land sizes, the construction requirements for the structure in which the poultry or animals are to be kept and public health requirements which should satisfy the council's chief medical officer or the chief hygiene officer.
- Section 43 is concerned with the protection of public water sources and states that “No person shall keep or permit to be kept any animal on any premises in such a place or in such a manner as to pollute or be likely to pollute any water supply used or likely to be used by humans for drinking or domestic purposes. The pollution of a water source has well known effects on public health and these effects range from diarrhea to typhoid and dysentery.
- Whilst the keeping of bees in the municipal area is allowed, people who want to venture into bee keeping have to meet the following requirements in terms of Sec 44 of the By-Laws: The land size on which the bees are to be kept should not be less than one hectare in extent, the bee keeper should get council approval before engaging in bee keeping, there should not be more than four hives on any premises except where council approval is granted, the hive should be surrounded by an enclosure of not less than six feet in height and should be inaccessible to children, cats, dogs, bovine and swine and that no bees and equine and bovine can be kept on the same premises. The purpose of having all these restrictions in place is to protect humans and animals from bees and their sting, that being dangerous and often fatal to both humans and animals.
- The regulations are also concerned with public convenience and therefore emphasize that in carrying out all these

activities, farmers should not cause a nuisance to anybody. The Bulawayo Public Health By-laws have an overriding effect over all other by-laws for the local authority. Section 46 states that “If the provisions of any other By-laws are in conflict or inconsistent with the provisions of these By-laws, the provisions of these by-laws shall prevail” thereby signifying their importance in the running of the city. It is therefore critical that the local authority has these By-laws that permit but regulate urban agriculture and animal husbandry in particular within its area of jurisdiction.

ii) Bulawayo (Protection of Lands and Natural Resources) By-laws RGN 676/1975

- The By-laws are consistent with the Bulawayo (Public Health) By-laws in that they permit the keeping of livestock and bees on municipal land but only with the written approval of council. In terms of Section 6 and 7, even after getting permission to keep the animals on municipal land, such persons are not allowed to move the animals on hoofs on roads or municipal land without council approval nor are they allowed to let their animals stray away. The mischief is clearly to avoid a nuisance that may be caused by the livestock dung in the public roads or other municipal land and the inconvenience that the animals may cause if they are to criss-cross the roads together with human beings and motor vehicles. Coupled with that is the danger that the animals might pause to members of the public through attacks or collisions with motor vehicles.
- Section 10 of the by-laws deal with cultivation of council land and states that “No person shall cultivate any municipal land or plant, sow, tend, or reap any plant, shrub, bush, flower, vegetable, fruit or crop on any municipal land without the prior written approval of council”. In granting approval council has to be satisfied that the cultivation will in no way detract from the value of the land or affect its suitability for future use or will not affect the natural resources of the area and that the applicant will be able to manage the land in accordance with approved farming practices” These provisions are important in that they give council powers to give out land that it

does not require for immediate purposes to aspiring urban farmers so that they can carry out their farming activities. The provisions are equally critical in that they place an importance on environmental protection and sound farming practices. On environmental protection, the regulations also prohibit cultivation within 30 metres of the verge of any spring, vlei, sponge, marsh, swamp, reed bed, naturally defined banks of a public stream, or high flood level of any body or artificially conserved water source (Section 13). The rationale here is to protect these ecologically sensitive areas from human alteration, pollution, erosion and siltation.

- In terms of Section 18 of the By-laws, public amenity areas like parks are protected and can not be cultivated.

Where a person cultivates any council land illegally or without following council requirements, the council is empowered to destroy the crops without paying any compensation to the concerned person.

3. MUNICIPALITY OF CHITUNGWIZA

i) Chitungwiza (Animals) By-laws S. I 245/1993

The animals that are covered by these By-laws exclude domestic pets. Section 3 (1) of the By-laws prohibit the keeping of any animals or bees in any dwellings meant for human beings for hygienic, safety as well as public convenience considerations. Section 3 (2) however goes on to permit the keeping of animals within the municipal area provided they are housed in a stable, byre, cowshed, pen, pigsty, battery, fowl run, chicken run or other structure or enclosed site suitable for the housing of animals. Bees can only be kept in a bee-hive. Sections 4, 5 and 6 give the specifications of the land on which different kinds of animals may be kept. Horses, asses and mules can not be kept on any stand that is less than one hectare in extend and they can only be kept at the ratio of 2/hectare. Sheep, goats and pigs are to be kept only on land that is more than 1 hectare in extend and at a ratio of 10/hectare. Bees are also to be kept on land that is one hectare or more in extend and no bee-hives may be placed less than 30 metres from the boundary of any piece of land/stand.

In terms of these by-laws, the keeping of cows without express written council authority is

prohibited. Council can refuse an application to keep cattle if the land on which the cattle are to be kept is less than 2 hectares in extent or if the cattle will exceed 1/hectare. An interesting observation is that only cattle need council approval in order for them to be kept whilst the other animals can be kept without necessarily obtaining council approval as long as conditions relating to land size and land-animal ratio are met. However council will still require to be informed about the numbers of such animals kept on any land within the municipal area. If council considers that the keeping of animals within its area of jurisdiction is contrary to its requirements, then, it may order the person concerned to stop the practice. Also considering the generally small land size within the Chitungwiza Municipality, it is unlikely that many people would be able to keep animals as described above within the council area. The land that is available is mostly for high density residential purposes. In essence, keeping of animals within the municipal area is practically impossible because of these legal requirements.

Section 13 of the By-laws compel the owner of any animal that is suffering from any contagious or infectious disease to prevent it from being at large and to take all necessary measures to prevent the spread of the disease. Animals that are found at large can be seized and detained by any authorized person and those animals that are not claimed within 7 days can be sold or destroyed. The mischief is clearly to prevent the spread of animal diseases and to ensure that animals do not pose a danger or become a nuisance to members of the public.

ii) Chitungwiza (Food Hygiene) By laws S.I 83/1981

The by-laws are concerned with hygiene and cleanliness in the handling of food. Section 4 and 5 state that storage, preparation, manufacturing, sale and deposit of food must be done in a place that does not expose the food to risk of contamination and the premises on which the above activities are carried out must be kept in a state of cleanliness and food handlers should be clean at all the time that they are handling food. Most of the food that is handled in these premises is obtained from agriculture and therefore if the handling, manufacture or sale of the food is affected, it also affects agricultural production including urban agriculture hence the need to ensure compliance with these by-laws.

iii) Chitungwiza (Meat) By-laws S.I 87/1981

Section 4 states that “No person shall in a butcher's shop, food premises or vehicle within council area supply any butcher's meat unless such meat has been inspected by a meat inspector and graded and marked as being fit for human consumption and free from any disease” and Section 4 states that fresh butcher's meat can not be sold to the public unless the livestock from which it was obtained has been slaughtered at a slaughter house. No person is allowed to slaughter any animal within the council area except in a slaughter house. Again the considerations are hygienic but the importance for urban agriculture is that failure to abide by these requirements will affect the supply of animals for slaughter and consequently affect animal husbandry in urban areas and even outside the municipal area if the animals for slaughter are obtained from outside.

iv) Chitungwiza (Public Health) By-laws S.I 88/1981

Section 11 of the By-laws prohibits the use or storage of manure which is not mature or so well rotted as to be incapable of breeding or attracting flies whilst in terms of Section 16 the burning of any stable litter, manure, trade waste or garden or other refuse in such a manner as to be offensive or be an annoyance to the inhabitants or occupiers of the neighbourhood is prohibited. The products that are dealt with in the 2 sections are derived from agriculture and therefore by seeking to deal with how they should be handled, council recognizes the process from which they are derived i.e. agriculture and seeks to ensure that the products do not pose a health hazard or a nuisance to urban dwellers.

In terms of Section 19, the owner of any animal that dies within the municipal area is compelled to ensure that the carcass is removed and disposed of in such a manner as to prevent any nuisance or danger to the health of the public or annoyance to any person in the neighbourhood.

Section 21 sets the conditions under which poultry may be kept within the council area. Poultry can only be kept in a poultry house that is constructed of impervious material and enclosed with wire netting or other suitable material. The poultry house is to be constructed at least 5 metres from the boundaries of a plot/stand and 1,5 metres from any dwelling used for human habitation. A poultry run should be kept clean and no person shall keep any poultry which by reason of continued crowing,

clucking, cackling quacking gaggling gobbling or like noise causes or is likely to cause a nuisance. Section 22 specifically deals with pigeons and states that these should not be a nuisance. All these sections clearly show that the keeping of poultry within the municipal area of Chitungwiza is permissible but any person who engages in the business should follow the council requirements so as to avoid disease outbreak, nuisance or inconvenience to the neighbourhood or other members of the public.

Section 23 allows the keeping of bees within the municipal area but only with the written consent of the local authority. Bees can not be kept on any land that is less than one hectare in extent and not more than 4 hives can be kept on any piece of land except with the written authority of the council. The hives are to be surrounded by an enclosure of not less than 1, 8 meters in height and they should be inaccessible to children, cats, dogs, cattle or pigs. No horses, donkeys or mules are to be kept on any premises where bees are kept and the bees should not be a nuisance. The by-laws seek to balance the interests of urban farmers who might engage in bee keeping with safety and health considerations for human beings as well as other animals that maybe kept within the council area.

Section 23 of the by-laws prohibits the keeping of any bovine (cows), caprine, ovine or porcine (pig) animal on any premises or stand except with the written permission of the medical officer of health. This apparently is in contradiction with the Chitungwiza (Animal) by laws which allow people to keep any animals except cattle without necessarily seeking council approval. There is no clause in either of the by-laws indicating that one or the other has an overriding effect thereby leaving affected people in a difficult position.

v) ***Chitungwiza (Use and Occupation of Residential Buildings and Land) By-laws S.I 341/1980***

Section 14 (3) (b) of the by-laws allows the keeping of compost manure, liquid manure or other organic matter intended for use on the premises. This is particularly important where inhabitants tend small gardens for domestic consumption purposes and where resources for the procurement of fertilizers are not readily available.

Section 16 deals with the need to keep premises within the council area tidy and states that "no person shall allow the premises of which he is owner or tenant to become overgrown with grass, weeds, undergrowth, plants or shrubs whether introduced or occurring naturally so as to create a public nuisance, danger to public health or fire hazard" Concern has always been raised about urban farmers who after harvesting their crop, never make an attempt to make sure that the land they work on is kept tidy. This particular provision in the case of Chitungwiza municipality can be used to ensure that urban farmers keep their pieces of land on which they practice urban agriculture tidy and not unnecessarily overgrown.

vi) ***Chitungwiza (Well and Borehole) By-laws S.I 333/1990***

Like the Bindura (Well and Borehole) by laws, emphasis is on seeking council authority so that the sinking of boreholes and the construction of wells is regulated and controlled in order to avoid serious alteration of the water table and control danger and health hazard to the public that may be caused by improperly constructed wells and boreholes. The resultant dangers may include people and animals being trapped by the wells if they are not properly protected and the contamination of water may lead to disease outbreaks.

4. CITY OF GWERU

i) ***Gweru (Well and Borehole) By-laws***

The mischief and provisions are similar to those provided above under Bindura and Chitungwiza

ii) ***Gweru (Livestock Routes) By-laws RGN 109/1977***

Section 3 sets out the routes on which livestock may be driven within the council area. This is important so as to avoid a haphazard movement of animals within the council area with the result that they may cause a nuisance or danger to members of the public.

iii) ***Gweru (Public Health) By-laws***

The by-laws are extensive and deal in detail with public health issues that may affect urban agriculture. Having been adopted from Public Health (General) by-laws, most of the provisions

are similar to those of other local authorities and in particular those of Chitungwiza and Bulawayo that have already been dealt with elsewhere in this report. The regulations compel people dealing in or handling food to do so hygienically and no person suffering from a contagious or communicable disease is allowed to handle food.

In terms of section 25, the keeping, exposure or storage of any green, raw, salted, sun dried or untanned hides without council approval is prohibited for the obvious reason that if not properly handled, such hides can cause the spread of diseases through such vectors as flies. Section 38 permits the keeping of cattle, goats, sheep or pigs within the municipal area provided written permission has been obtained from the chief health officer or the chief health inspector. Compared with the other local authorities that have been looked at, the by-laws specify that no person can keep more than 20 head of poultry on any premises except with the written permission of the medical officer or the chief health inspector. The poultry run is to be erected at least 2 metres from any dwelling or sanitary convenience and the poultry run should not be a nuisance. There is a specific provision to the effect that manure should be removed from the poultry run every day and this is to ensure that it does not create a nuisance. Interestingly the by-laws also prohibit the keeping of roosters within the municipal area probably because of the noise they make when they crow thereby causing a nuisance to other residents.

Unlike the other local authorities, Gweru outrightly prohibits the keeping of bees within the local authority area thereby dealing a blow on enterprising urban farmers who might otherwise consider bee-keeping as a farming activity.

The same by-laws prohibit the keeping of horses, donkeys or mules within the council area unless permission in writing has been granted by the council and the stables in which these animals are to be kept have been built in line with council specifications. These specifications include that the stables should have air space of not less than 17m³, floor space of not less than 5, 5m² and the overall land on which the stables are built should be 10000 (ten thousand) m² or more in extent.

- i) Gweru (Noise) by-laws RGN 1046/1974*
Although the By-laws are mostly concerned with

minimizing noise within the council area, urban agriculture particularly animal husbandry is affected in that the keeping of any animals which by reason of continued or repeated crowing, screeching, barking or whining or of other noisy habits causes annoyance or disturbance to the public or any section of the public is prohibited.

5. CITY OF KADOMA

- i) Kadoma (Abattoir, Meat and Game Meat) By-laws RGN 1235/1970*

The By-laws prohibit the slaughtering of animals intended for consumption or processing in any place other than an abattoir. The meat before being offered for sale should also be examined and certified to be free from disease and fit for human consumption whilst people who handle meat should be clean in clothing and in person. Dead or diseased animals are not to be slaughtered in an abattoir. Whilst promoting animal husbandry within the municipal area, the by-laws seek to ensure that the activity is carried out in an orderly, clean and hygienic manner that does not compromise public health.

- ii) Kadoma (Protection of Lands) by-laws RGN 759/1971*

Section 4 states that “No person shall cultivate any land or plant, sow, tend or reap any plant, shrub, bush, flower, vegetable, fruit or other crop without the consent of the council” The council may grant authority for the cultivation of land if it is satisfied that such cultivation will not detract from the value of the land or its suitability for future development and that the applicant is capable of managing the land in accordance with sound farming practices. Like in the case of other local authorities that have been dealt with, it is important that council be able to allocate land that is not immediately required by council to urban farmers so that they can cultivate their crops. In addition the by-laws take cognizance of the importance of environmental protection by ensuring that in the process of cultivation, the farmer should be able to practice sound farming practices.

- iii) Kadoma (Public Health) By-laws S.I 208/1984*

The by-laws prohibit the use of manure or stable litter for gardening purposes unless it is incapable of causing the breeding of flies or of causing a

nuisance (sec 38) . The keeping of animals without the written authority of the medical officer of health is prohibited whilst the breeding of dogs, cats or other domestic animals on any residential premises is specifically prohibited (Sec 50) The keeping of animals should not cause water pollution and an owner of an animal within the municipal area should not allow such animal to be at large. The by-laws clearly permit the keeping of animals within the local authority area but with conditions that ensure that the keeping of such animals does not create a health hazard, a nuisance or cause inconvenience to members of the public. No horses, donkeys or mules are to be kept on any stand except with the written permission of council and the stable has air space of not less than 17m³, floor space of 5,5 m² and the stand is 4000m² in extend.

Unlike the Gweru (Public Health) By-laws these allow for a smaller space on which donkeys, mules and horses may be kept thereby giving more people an opportunity to keep these animals. Poultry runs can also be built at least 1, 5 metres from any part of a building and this is less than the 2 metres required in the case of Gweru thereby allowing residents with smaller plots an opportunity to carry out poultry rearing. It is particularly important for conditions relating to poultry keeping to be flexible in the country because many households find it easier and necessary to keep poultry within their small yards for both domestic consumption as well as for raising a small income. Conditions relating to the keeping of bees in Kadoma are similar to those of Chitungwiza which have been discussed above. An owner of a dead animal is required to remove it within 24 hours and ensure that it is buried or disposed of in such a manner as not to cause a nuisance. If the owner can not properly dispose of the animal, he/she can ask the medical officer or the chief health inspector to dispose of the animal. The owner of any animal infected by an incurable diseases is required to take immediate measures to ensure that the animal is destroyed. This will help in controlling the spread of the diseases.

iv) Kadoma (Noise) By-laws RGN 624/1971

Interestingly these by-laws do not make any specific reference to noise emanating from animals although such noise can still be interpreted to constitute a nuisance which should be avoided

6. MUNICIPALITY OF MARONDERA

i) Marondera (Abattoir, Meat and Game Meat) By-laws RGN 297/1971

These are entirely similar to the Kadoma (Abattoir, Meat and Game Meat) By-laws discussed above.

ii) Marondera (Dam Park) By-laws RGN 166/1965

Section 3 states that “no person shall fish in the waters of the dams within the municipal area unless he is the holder of a current and valid permit issued by the council”. Residents after getting the necessary permits can therefore fish within the municipal waters and obtain fish for both domestic consumption and for sale to augment their incomes.

iii) Marondera (Movement of Stock) By-laws RGN 624/1976

The by-laws prohibit the movement of cattle on hoof within the municipal area except when the cattle are being driven for the purpose of delivery to any point including the abattoir sale pens or railway loading pens and the cattle so driven should follow stipulated routes and should not exceed 100 in number.

iv) Marondera (People's Markets) By-laws S.I 166/2000

In terms of Section 4, the council may set aside land or premises for the purposes of people's markets and may divide such land or premises into separate stands or stalls as the case may be. People who want to operate a people's market are required to apply for a permit from a designated officer and upon commencement of operations are required to keep the premises clean and to sell only sound and wholesome goods. The council can determine the types of goods to be sold in the people's markets and can prohibit the sale of certain goods. Using these regulations the council can encourage the sale of urban agricultural produce within the municipal area and ensure that urban farmers get an income through selling their produce at the people's markets. The practice can also help in the advancement of urban agricultural activities within the municipal area in that there will be ready markets for the produce.

7. CITY OF MASVINGO

i) *Masvingo (Game Meat) By-laws RGN 1233/1970*

Unlike the case of Marondera and Kadoma (Abattoir, Meat and Game Meat) By-laws, these bylaws deal specifically and exclusively with game meat. In terms of Section 4 no game meat is to be sold to any member of the public, in the municipal area unless supplied by a game rancher registered with the council. The game meat can not be sold in its raw or cooked state within the municipal area unless it has been inspected and marked by an authorized person. The mischief here is the protection of public health and the protection of unsuspecting members of the public from unscrupulous people who may end up selling game meat which is not fit for human consumption.

8. HARARE

i) *Harare (Protection of Lands) By-laws, RGN 104/1973*

Section 4(1) prohibits the cultivation of council land without Council approval. Such approval may only be given if it is shown that the cultivation does not inter alia, detract from the value of the land or its suitability for future development and when it is established that the applicant is capable of engaging in sound farming practices. The By-laws forbid all cultivation on municipal land that is done without prior council approval. It sanctions the destruction of crops cultivated on council land without council approval.

ii) *Harare (Noise) By-laws, RGN 1195/1975*

Section 4(g) prohibits the keeping of animals that may cause annoyance, disturbance or inconvenience to the neighbours. It is important to highlight that the prohibition is on animal husbandry only to the extent that it may cause a nuisance, health hazard or inconvenience. Where these are not an issue, residents can keep animals within the municipal area provided they meet the requirements and the requisite council approval is obtained.

iii) *Harare (Trees and Plants) By-laws, Statutory Instrument 141/1987*

In terms of Section 4(1), no person may plant any tree in a public place without the written permission

of the Director of Works in the City of Harare. In granting the permission, the Director of Works may impose such conditions as he/she deems fit. In the process of planting of trees, an authorized person from the council may supervise such planting or any excavations that may take place and are necessary for the planting of the trees. After the trees have been planted, they have to be protected by way of fire-guards, protected from unauthorized felling or pruning or any other damage that may be effected on a tree. These By-laws are important for urban agriculture in that they encourage urban forestry which may play an important role in urban areas as a source of income for urban dwellers. The trees can also act as a means of protecting the environment and also adding beauty to the municipal landscape.

iv) *Harare (Control of Vegetation and Waste Material) By-laws S.I 704/1982*

Section 4(1) places the duty on the occupier or owner of any land to ensure that the vegetation on the property under his control is kept in a neat, clean and tidy condition and that the property is cleared of any waste material or unwholesome or offensive matter or thing. These provisions can be used by the local authority to ensure that urban farmers keep their plots in a tidy condition during the dry season when they are not tending the plots. This will help in dealing with the blame that has been levelled against urban farmers that they leave their plots in an unsightly condition once they have harvested their crops. Such conditions can also pose a danger to the public in that they can be mugged in the bushy areas or that the stocks if not cleared and properly disposed of can be a fire hazard. The plots if not cleared can also be unsightly and be offensive to members of the public.

v) *Harare (Fishing in Municipal Waters) By laws S.I 163/1987*

Fish farming is indeed a form of agriculture. There are regulations such as these that allow fishing in municipal areas as long as the required conditions are complied with. In terms of Section 3, the Director of Works in the City of Harare may grant permission to a person or an association to fish in dams within the municipal area other than Henry Hallam Dam and Greystone Park Dam. Although the people that may get permission to carry out fishing activities are not necessarily involved in fish rearing, the provision can be used to ensure that urban dwellers can access fish within the municipal

waters for subsistence as well as commercial reasons. This is true particularly for cooperatives, which can carry out the activity on a larger scale.

vi) Harare (Food Hygiene) By-laws RGN 166/1975

The by-laws are in essence similar to the Food Hygiene By-laws of other local authorities that have been discussed earlier in this study. The selling, preparation, manufacturing, storage or exposure of food on any premises whose condition, situation or construction is such as to expose such food to the risk of contamination is prohibited. Since most of the food is derived from agriculture, any activity that affects the demand for the sale of food will also impact on the production of the food including that grown in urban areas.

vii) Harare (Hawkers and Street Vendors) By-laws RGN 953/1978

In terms of Section 4(1) of the by-laws, hawking either by principal or agent can only be carried out in terms of a valid hawkers' licence. Food hawking can only be carried out in fixed premises and the premises should satisfy the medical officer as providing adequate facilities for the preparation and storage of food so as to avoid food contamination. Again the source of the food which is agriculture including urban agriculture can only be protected if the hawkers comply with these requirements so as to ensure the continuation of food hawking and in the process encourage urban agriculture. The hawkers and their employees also have to be controlled to ensure that the food is kept free from contamination and that litter that results from the hawking is properly managed and properly disposed of. In terms of section 12 "any person carrying on the business of a hawker or street vendor as principal, agent or servant shall remove any flowers, litter, paper or receptacle which in the exercise of his duty has fallen on any public place"


The major problem that the City of Harare has however faced as far as these By-laws are concerned has been the issue of enforcement. Because of the said unprecedented increase both qualitatively and quantitatively in the practice of urban agriculture, there has been an increase in illegal urban agricultural practices, particularly cultivation in prohibited areas. There are two types of prohibited

areas. Firstly those that are ecologically sensitive like vleis and riverbanks, cultivation of which would result in environmental degradation and secondly, cultivation on municipal land without authority, which is simply a question of tenure. It shall be highlighted from experience that the City has tended to emphasize enforcement in respect of the breach of the former and has in many instances turned a blind eye on the later.

However, its special branch of the Municipal police (The Environmental Unit) that is tasked with the enforcement of By-laws that seek to protect the environment has been overwhelmed. Where it has succeeded it has met with hostility both from the members of the public who mainly advance self-serving arguments at the expense of the environment or worse still policy makers in the form of politicians who seek political mileage through misplaced displays of public sympathy, brazen as to the environmental ramifications of the issues at hand. Public perception whether out of ignorance or lack of resources has thus been the major handicap.

It is however noteworthy that Municipal police have no arresting powers. What they therefore do is to apprehend any suspect and hand them over to the Zimbabwe Republic Police, who in terms of the law have the powers to arrest and charge any culprit. However due to the proliferation of crime in general within the country and in Harare in particular, the ZRP is also overwhelmed and has been forced to relegate the infringements on Municipal By-laws to the periphery, especially in the face of more 'serious' offences. Enforcement of By-laws has thus receded over the years.

One important observation is that the City of Harare's approach to these illegal activities has been to discourage them from the onset. Public awareness programmes are put in place to discourage people from cultivating on prohibited pieces of land. For instance, many sign posts advertising the prohibition of cultivation on certain pieces of land especially stream banks are, if not vandalized, scattered throughout the city. Where persons in spite of these exhortations have proceeded with the illegal cultivations, the city has in certain instances been forced to resort to such unpopular measures as the slashing down of the



crop. In so doing the city has relied on the Harare (Protection of Land) By-laws, which authorize it to take remedial action to remove any illegal activities although the practice has been unpopular with residents.

- **An important point to note is that generally the relevant bylaws for all**

the local authorities are couched in a negative language that first deals with prohibition of the activities unless certain conditions are met. This probably explains the perception that has been created that urban agriculture is illegal in Zimbabwe.

CHAPTER SIX:

Legal and Procedural Provisions for the Utilization of Resources for Urban Agriculture

This chapter is dedicated to a discussion of the main resource components of urban agriculture and how the law applies to them.

A starting point to the discussion on the implications of the law on resources for urban agriculture is to look at the various facets of the practice that one would consider if he or she wanted to engage in urban agriculture or improve urban agriculture. One would also look at the required procedures to be followed in order to get the requirements for practising urban agriculture.

In a workshop that was held in Dar es Salaam in 2001, on the requirements for starting urban agriculture, the following were identified;

- Land - in terms of availability and accessibility,
- Water - rainwater, surface water and underground water, waste water use and reuse
- Inputs - both organic and inorganic - such as manure, fertilizers and chemicals
- Extension services - in order to improve skills and techniques,
- Infrastructure - such as irrigation, roads, market stalls, sheds and storage.

The same workshop, also discussed activities that one engages in when starting urban agriculture production. Among others, the following were identified;

- Accessing land - purchase, hire, seek permission from owner
- Harnessing water - harvesting rain water, storing surface water, drilling wells or boreholes to access underground water, utilising waste water
- Planting crops - trees and plants
- Rearing animals and birds
- The keeping of bees and fish
- Disposing off waste - such as waste water, vegetative matter,
- Addressing potential conflicts - with neighbours or local authority

This list of resources and activities as shown above has been used to draw themes to discuss in this chapter so that the research is useful in answering the questions that most stakeholders have. There was wide quest for knowledge on the legal aspects of urban agriculture among the many stakeholders that were met and spoken with during the research. The most frequently asked questions include the following;

- i. Is urban agriculture permitted in law?
- ii. How does one lawfully get allocated land for urban agriculture?
- iii. Exactly how many chickens does the law allow me to keep in my backyard?
- iv. Are we allowed to use wastewater from our houses to irrigate crops?
- v. Can we dig a well so that we can water our vegetables?
- vi. Whose responsibility is it to clear the vegetative stocks after harvesting on public land, the city council?
- vii. Does the law allow me to plant fruit trees in open spaces?

So, in structuring this chapter, the authors sought to respond to these questions. However, there is no claim to be exhaustive in the responses. Rather, what are provided are mere indications of sections of the law that are relevant for certain issues linked to urban agricultural resources.

Noteworthy is that the Urban Councils Act, in the Second Schedule, provides powers to urban councils to deal with many issues in relation to urban agriculture. These are powers to deal with, among other things;

- o Open spaces
- o Trees
- o Conservation of natural resources
- o Cultivation and farming
- o Grazing
- o Clearing of land
- o Stock pens and dip tanks

- o Slaughterhouses
- o Markets and agricultural produce
- o Sale of products
- o Effluent or refuse removal and treatment
- o Control of pests

i. LAND

Mubvami, Mushamba and van Veenhuizen 2003²³, argue that land is an important resource for urban agriculture, as production requires some space irrespective of whether the farming system is soil based or not. As such, land is a resource of particular concern to urban farmers. The challenges with land are basically two, its availability and accessibility. These issues are discussed below.

Availability of Land for Urban Agriculture

Availability of land refers to the existence of land that can be utilised for urban agriculture in the short, medium or long term. In reading Part IV of the Regional Town and Country Planning Act, it provides that land can be set aside in a Master Plan and subsequently in a local plan for purposes of practising urban agriculture. The premise of the Act is that during the study of a planning area, and the public consultation processes, the public can input into the planning process and where urban agriculture is desired as a land-use, the public can so demand from the local planning authority during the preparation of plans. The responsibility to zone land for urban agriculture is given to local planning authorities, based on need expressed by stakeholders.

Accessibility of Land for Urban Agriculture

This refers to the opportunity for actual use of available land by needy households or groups, taking into account administrative procedures and conflict resolution mechanisms. In order to adequately discuss accessibility, we have to categorize land for urban agriculture.

On plot urban Agriculture

On-plot urban agriculture is less contentious, and owners and lessees are allowed to practice urban agriculture in a manner that does not inconvenience neighbours in terms of noise, nuisance or health hazard.

Private Land not owned by Urban Farmer

The law provides for ownership of land in terms of title deeds [See Deeds Registry Act]. Any land that is owned privately is not available to other users unless by agreement through a formal or informal lease. The law permits the owner or occupier to practice urban agriculture in a manner prescribed as discussed under various statutes and to take responsibility for managing the waste. See discussion under 'water' and "duties of occupiers in relation to vegetative waste" below.

Public Land

Public land could be municipal or state land. Where municipal land is concerned, municipal bylaws dictate that application be made to the Director of Works, who shall authorize use of that land for urban agriculture in writing, and impose any conditions as he/she deems fit. Similarly, planting of trees on public municipal land is prohibited unless with written consent of the Director of Works, who, through the designated officer, shall determine the suitable trees to grow. See section on 'Planting Trees on Municipal Public Land' below.

ii. WATER

Apart from land, water is one of the most important resources in urban agriculture, whether one is practising crop production or animal husbandry. Water for urban agriculture is regulated in terms of the Water Act and Water Permits Regulations, 2001

Section 3 of the Act, provides that all water is vested in the President. In section 4 the Act stipulates that: no person shall be entitled to ownership of any water in Zimbabwe. *No water shall be stored, abstracted, apportioned, controlled, diverted, used or in any way dealt with except in accordance with this Act. Further, a permit issued in terms of this Act shall confer upon its holder a right to the use of water in accordance with the permit.*

Section 32 provides that any person may abstract water for primary purposes: - *provided that this subsection shall not be construed as conferring on any person a right, which he would not otherwise possess, to enter or occupy any land for the purpose of abstracting water. Primary purposes in relation to the use of water, means the reasonable use of water- for basic domestic human needs in or*

²³ Takawira Mubvami, Shingirayi Mushamba, Rene van Veenhuizen; Availability, Access and Usability of Land for Urban Agriculture, Urban Agriculture Magazine Number 11, December 2003.

about the area of residential premises; or for the support of animal life, other than fish in fish farms or animals or poultry in feedlots; for the making of bricks for the private use of the owner, lessee or occupier of the land concerned; or for dip tanks.

The import of the paragraph above is that a person is allowed to abstract water for urban agriculture if the produce is for his household consumption only. The law does not permit one to extract water for urban agriculture for purposes of market provision without obtaining a permit.

The Act also stipulates that any person who intends to construct water storage works capable of storing more than five thousand cubic metres of water on a public stream for the storage of water for primary purposes shall in writing notify the catchment council and every other owner, lessee or occupier of riparian land which is contiguous to the proposed water storage work.

The Water Act also provides, in section 60 for the conferring of powers of *catchment councils* on urban councils by the Minister (of Water) after consultation with the Minister responsible for local government and the urban council concerned, and also after considering the financial resources available to that council. This provision is in the interest of managing water resources sustainably.

The City of Harare is a member of the Manyame and Mazowe Catchment Councils. The catchment councils are conferred with regulatory powers. For example, they issue water permits and may limit the quantity of water, which may be abstracted for primary purposes by any person or class of persons within an area from any source of water. Further, they may also specify the maximum number of livestock an individual owner is entitled to water under the category of 'primary purpose'.

Authority to sink boreholes for purposes other than primary purposes

For any uses of water other than primary purpose, one has to apply for the written authority of the catchment council to sink, alter or deepen a well or borehole. Section 63 of the Act regulates the sinking, deepening or altering of boreholes and wells in ground water shortage areas. No person shall, in a water shortage area, commence to sink, deepen or alter a borehole or well for any purpose

otherwise than in accordance with a permit issued by the catchment council.

Pollution of Water

The pollution of water from urban agriculture or other activities is also dealt with by the Water Act. The Act states that any person who discharges or disposes of any organic or inorganic matter, including water containing such matter, into a public stream or into any other surface water or ground water, whether directly or through drainage or seepage, so as to cause pollution of the public stream, other surface water or ground water, shall be guilty of an offence, whether or not he acted intentionally and whether he was negligent or not. Section 57 of the Environmental Management Act similarly deals with the need to protect water from pollution, regardless of the source of the pollution.

iii. PLANTING TREES AND PLANTS IN PUBLIC AND MUNICIPAL LAND

The planting of trees and plants in public and municipal land in Harare is regulated under Harare Trees and Plants Bylaws of 1987. The bylaws provide that *a person shall not, without the written consent of the Director of Works, plant any tree in or upon any public open space, public street, road, and footpath of the council. Further, any tree or plant planted so as to contravene this bylaw shall become the property of the council.*

Where the Director of Works has authorized the planting of trees on public municipal land, an authorized official of the council shall supervise all excavations necessary for such planting and determine the species of trees which may be planted.

The same bylaw prohibits members of the public from pruning of trees planted on municipal public land. Such pruning shall be done only by a person approved by the Director of Works.

iv. VEGETATIVE WASTE

Urban agriculture, especially maize production on open spaces, is detested by many for the unsightly maize stocks that are left unattended from the time of harvest in April and May until the land is prepared for the next season in October and November. The current legislative framework for Harare provides for how these vegetative wastes can be managed under the Harare (Control of

vegetation and Waste Material) Bylaws. An occupier of land means a person in actual lawful occupation of the land, and who has the right to exercise general control over the land, and includes, in the case of unoccupied land, the owner of such land.

The bylaw provides that *the occupier of any land shall take all reasonable steps to keep such land free of any uncultivated vegetation, rubbish, waste material or unwholesome or offensive matter or thing which constitutes a danger or is unsightly in the area or locality. Further, the occupier of land shall take all reasonable steps to keep such land free of any crop, vegetation, and rubbish or waste material, which is such that it may give rise to circumstances in which a danger to public safety or security may arise. The occupier is also required to take all reasonable precautions to prevent any combustible or inflammable matter or thing on such land or in any building or structure on such land from becoming a fire hazard.*

The proper management of the vegetative waste in keeping with these by-laws, can provide a useful resource for urban agriculture in the form of compost manure.

v. USE OF SEWAGE SLUDGE AND WASTE WATER

With the increasing cost of water in Harare and other local authorities, and the recurrent water rationing, most urban farmers are compelled to use polluted water from streams for irrigation of their crops. Others have even contemplated using wastewater from their houses or from blocked sewer mains for irrigation purposes. The use of sewage sludge and waste water for irrigation of crops or watering of animals is regulated under the Public Health (Effluent) Regulations 1972.

The regulations provide that no person may discharge any effluent liquid on to; or use any effluent liquid for the irrigation of; any land without having applied for and received the approval of the appropriate health authority. Where any effluent liquid from sewage-treatment works or oxidation ponds, which are the property of a council, is to be used for irrigation of land, the council shall comply with the standards of purity prescribed.

Further, the regulations prohibit the use of any effluent liquid for irrigation of any land on which salad crops, vegetable crops, berry fruits or any crops intended for human consumption in an uncooked state, are growing.


Section 7 of the regulations provides that no person may use, for irrigation of any land within 200 metres of an occupied dwelling or 50 metres of any public road by sprinklers, any effluent liquid unless such liquid complies with the minimum standards prescribed in the Schedule for use in relation to public amenities.

In relation to the use of sewage sludge, the regulations are strict. No person is allowed, without having first applied for and received approval, to use any digested sludge for agricultural purposes or any raw or undigested sludge for any composting process. Where authority is to be granted for use of digested sewage sludge for agricultural purposes, no approval shall be granted without at least a fifty per centum reduction in volatile matter in the digestion process. The use of raw sewage or undigested sludge for agricultural purposes is prohibited.

PROVISION OF URBAN AGRICULTURE FACILITIES BY LOCAL AUTHORITIES:

Second Schedule of the Urban Councils Act.

- o Urban Councils are conferred with powers to provide, inside or outside the council area, show grounds and other facilities. Agricultural shows are held annually in most urban centers in Zimbabwe.
- o Councils have power to cultivate and farm land owned by the municipality or town which is not required for other purposes
- o Councils have power to permit grazing of stock on land under the control of the council.
- o Power to provide stock pens and dip tanks inside or outside the council area and to operate them
- o To provide, inside or outside the council area, and to operate public slaughter houses, cold storage chambers and depots for the inspection of game and carcasses
- o In relation to markets and agricultural produce, councils have the power to provide



inside or outside the council area, and operate facilities for the inspection, grading, storage and treatment of agricultural produce and to undertake any service for improving the marketing of such produce. Agricultural produce is defined broadly to include; fresh fruit and vegetables, eggs, cheese, butter or any dairy produce; honey, home-made preserves or chutney; flowers, seeds, seedlings, bulbs, plants, cuttings or trees; the flesh or offal of any animals or poultry or any fish intended for human consumption.

- o Power to take measures to control or exterminate insects, pests and vermin

This schedule confers wide ranging powers on local authorities to deal with the provision of facilities and infrastructure for the development of the urban agricultural sector. The implementation of such provisions will therefore go a long way in ensuring that urban farmers are fully supported and have access to all the amenities that play a pivotal role in the success of the sector.

CHAPTER SEVEN:

Conclusions and Recommendations

On a closer analysis of the policies and legislation reviewed from Chapter Two, Three, Four and five, the following points stick out:

- o Urban agriculture as a practice is not prohibited.
- o Urban agriculture is however prohibited where it is not in the interest of sound town planning, environmental management and public health and convenience.
- o The emphasis is on regulating the activity so that it is carried out in accordance with sound town planning practices, and in the interest of public health, convenience and sound environmental management.
- o The by-laws in place further seek to control and regulate the tenure of occupants of public municipal land. Occupation of municipal land has to be sanctioned.

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The current policy and regulatory framework for urban agriculture is conducive for the sector in that:

- o It is not averse to the concept in that the same is not outrightly prohibited. It is only regulated.
- o Further, it provides a legal framework (through the drawing of master and local plans, in terms of the planning laws) through which urban agriculture can become an urban land use.
- o The regulatory provisions that are in place are reasonably necessary in so far as they seek to strike a delicate balance between otherwise conflicting activities, in an endeavor to accommodate agricultural activities within an urban set up.

The question is one of policy implementation rather than law. In other words what is mostly required is the goodwill of the planning authorities rather than a change of policy and legal regime.

Recommendation for the Government of Zimbabwe

The Harare Declaration by Local Government Ministers

on Urban and Peri-urban Agriculture in Eastern and Southern Africa is a firm base for the policy framework on urban agriculture in Zimbabwe. However there is no official written policy statement made by the Government of Zimbabwe that it has accepted urban agriculture and seeks to integrate it into urban development.

1. For the reason cited above, it is recommended that the Government of Zimbabwe should, in an active rather than passive voice, articulate its acceptance of urban agriculture, which compliments the poverty reduction and land reform programmes and economic growth policies. The creation of a clear and written policy is necessary in order to avoid inconsistencies and to create certainty on the status of urban agriculture in the country.

Recommendation for Policy Makers at National Level

2. There are many pieces of legislation that deal with the issue of urban agriculture. Urban agriculture is however not specifically mentioned in the various pieces of legislation but can only be inferred through interpretation. Even with the promulgation of the Environmental Management Act, which overrides most of the pieces of legislation relating to the environment, it only provides a framework within which the urban agriculture theme can be dealt with. We thus recommend that the Minister of Environment and Tourism, under whose jurisdiction the Environmental Management Act falls, should make regulations dealing specifically with urban agriculture in terms of section 141 [g, h, i and m]. This is necessary in order to avoid misinterpretations and inferences that have been made to the effect that urban agriculture is illegal in the country yet the laws and by-laws regime point to regulation rather than prohibition of the activity.
3. The statutes dealing with urban agriculture though permissive of the practice, are not crafted in a fashion that gives confidence to

urban farmers that the practice is legal. It is therefore recommended that in the long run, it is important to review all legislation dealing with urban agriculture so that the legislation is more user friendly and enabling.

Recommendation for Policy Makers at Municipal Level

4. Policy Makers at Municipal Level should engage in review of all regulations and bylaws that impact on urban agriculture, in view of the recent policy changes as well as increased tolerance of urban agriculture, drawing from the powers conferred on them by the Second and Third Schedules of the Urban Councils Act. The reviews should clearly accept urban agriculture as an economic and social activity and use terms that can be easily identified with this sector for purposes of clarity.
5. The legislative framework for urban agriculture through the many statutes adequately provides powers to local authorities to regulate issues related to urban agriculture. However the multiplicity of statutes relating to urban agriculture does not assist to provide a clear regulatory framework. This reinforces the earlier recommendation for the Minister of Environment and Tourism to make specific regulations to guide this sector.
6. The legislative framework through the many statutes reviewed enables Local authorities to participate actively in the UA sector. However, these local authorities have not fully exploited the opportunities provided for them. It is thus recommended that apart from regulating the sector, urban councils should exploit the full potential of the urban agriculture sector and to utilize the resources that they have in abundance such as wastewater and land for the

benefit of their residents.

7. Further, the local authorities are encouraged to create adequate and relevant bylaws as well as adequately plan for urban agriculture through Master, Local and Subject plans.

Recommendation for Technocrats

8. Technocrats at both national and municipal level should interpret the law dealing with urban agriculture in a more friendly way, permissive of urban agriculture, but with regulating effect in those situations where it is a threat to the environment, human health and sound town planning.

Recommendations for Funding Partners

9. Donors should work with the assurance and full knowledge that urban agriculture is not an illegal activity, and that contrary to popular belief, the Government of Zimbabwe seeks to promote an enabling policy and legislative framework for the growth of the sector.
10. Further, funding partners should also consider provision of small grants to the Government of Zimbabwe and municipalities to enable them to review legislation and bylaws through multi-stakeholder processes so that it becomes more enabling.

Recommendation for NGOs and the Private Sector

11. Given the lack of capacity, both human and financial, at municipal level to review all the bylaws dealing with urban agriculture through multi-stakeholder approaches, it is recommended that NGOs and the private sector assist the Government of Zimbabwe and municipalities with technical and financial support.

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50. The Municipal Enterprise Development Policy
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54. The Cleveland Local Plan Number 4
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