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The legal and policy context, and the politics of urban agriculture in Eldoret

This chapter demonstrates how the interplay of laws and policies at the national and municipal levels have shaped the context within which residents of Eldoret municipality strive to make a living from urban farming. The Chapter begins with a review of the national legislative and policy setting for urban agriculture in Kenya. It then shows how Eldoret Municipal Council (EMC) has interpreted this national framework in designing its by-laws and policies related to urban agriculture. This is followed by an overview of the power relations and politics underpinning the practice of urban agriculture and how these have engendered contradictions in the application of existing laws and policies within Eldoret municipality and frustrated the evolution of a more responsive legal and policy framework for urban farming at the municipal level.

The national legislative context of urban agriculture in Kenya¹

There exists a variety of national legislation relevant for urban agriculture in Kenya.² To start with, the Agriculture Act³ (Section 2) gives the following definition of ‘agricultural land’:

(...) all land which is used for the purpose of agriculture, not being land which, under any law relating to town and country planning, is proposed for use for purposes other than agriculture.

¹ This section is largely based on Foeken (2005), and partly on the Draft National Urban and Peri-Urban Agriculture and Livestock Policy (UPAL).

² In Appendix I of the *Draft National Urban and Peri-Urban Agriculture and Livestock Policy* (Ministry of Agriculture, May 2010), some 20 Kenyan laws with implications for urban agriculture are listed. Here we deal with the most important ones only.

³ Laws of Kenya: The Agriculture Act – Chapter 318, Revised Edition 1986. Nairobi: Government Printer.

This does not completely rule out the possibility of practising agriculture within a town's boundary. Any doubt seems to be taken away by the definition of 'agricultural land' given in Section 2 of the Land Control Act,⁴ namely "land that is not within (...) a municipality or a township". However, in the same section of the same Act, a provision is made to allow for urban agriculture because 'agricultural land' can also be

(...) land in Nairobi Area or in any municipality, township or urban centre that is declared by the Minister, by notice in the Gazette, to be agricultural land for the purposes of this Act.

Related to this, Section 29 of the Physical Planning Act⁵ provides "each local authority" the power:

- (a) to prohibit or control the use and development of land (...) in the interest of proper and orderly development; (...)
- (c) to formulate by-laws to regulate zoning in respect of use and density of development; (...)
- (f) to reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical development plan.

Crucial here is how a local authority defines "proper and orderly development" and whether there is room for agriculture as a form of urban land use in the "physical development plan".

Whereas these Acts offer the local authorities the legal provision for whether to allow urban farming or not, other Acts provide the framework to control the activity. The most important one is the Public Health Act,⁶ dealing with everything causing "any nuisance or other condition liable to be injurious to health". Section 118 of this Act defines nuisances in relation with animal keeping:

- (f) any stable, cow-shed or other building or premises used for keeping of animals (...) which is so constructed, situated or kept as to be offensive or which is injurious to health;
- (g) any animal so kept as to be a nuisance or injurious to health;
- (h) any accumulation or deposit of refuse, offal, manure or other matter whatsoever which is offensive or which is injurious or dangerous to health.

As for the cultivation of crops in town, Section 157 provides the Minister of Public Health, "after consultation with the Minister of Agriculture", with the power to prohibit this "(...) where it is shown (...) that the growing of any crop or the irrigation of any land being within the boundaries of a township or within three miles of such boundaries is unhealthful or insanitary (...)". This article provides also the legal backing for prohibiting irrigation with sewage water.

⁴ Laws of Kenya: The Land Control Act – Chapter 302, Revised Edition 1989. Nairobi: Government Printer.

⁵ Laws of Kenya: The Physical Planning Act – Chapter 286, Revised Edition 1996. Nairobi: Government Printer.

⁶ Laws of Kenya: The Public Health Act – Chapter 242, Revised Edition 1986. Nairobi: Government Printer.

Another section in the Public Health Act that is very important for urban crop cultivation is 168A, which deals with the breeding of mosquitoes and flies:

Every municipal council may (...) make by-laws for preventing and abating conditions permitting or favouring the breeding of mosquitoes and flies and, generally, for the prevention of malaria and other insect-borne diseases.

Although, on first sight, there seems to be no direct link with urban agriculture, this act – which dates from the colonial period – provides the basis for prohibiting maize growing in town on health grounds, as mosquitoes are supposed to breed in the water that assembles in the axils of the plants.

Obviously, the Public Health Act also deals with “pollution related to health”. For instance, Section 130 provides the Minister with the possibility to prohibit the erection of, for instance, “stables, cattle-kraals (or) pig-sties” and the deposit of “any manure” likely “to entail risk of harmful pollution”. And Section 129 imposes on every local authority the duty to prevent “any pollution dangerous to health of any supply of water”. Pollution of water is also included in the Water Act,⁷ where Section 94 states that

(...) no person (...) shall throw (...) any rubbish, dirt, refuse, effluent, trade waste or other offensive or unwholesome matter or thing into or near to any water resource in such manner as to cause (...) pollution of the water resource.

Thus, both the Public Health Act and the Water Act provide the legal framework for forbidding the use of, for instance, chemicals in urban agriculture.

Perhaps the most important national legislation in relation to urban agriculture is the Local Government Act.⁸ It provides the local authorities with full decision-making power in relation to crop cultivation and livestock keeping within the municipal boundaries. For instance, Section 144 states that

[A]ny land belonging to a local authority (...) may (...) be appropriated for any other purpose for which the local authority is authorized to acquire land.

In other words, by means of urban-agriculture-friendly by-laws, a local authority may invoke this Act to temporarily provide its urban dwellers with land for urban agriculture. More specifically, Section 155 provides that every municipal or town council “shall have power (...) to engage in livestock and agricultural undertakings” and

(...) to require the planting of any specified crops by persons for the support of themselves and their families *in areas which in the opinion of the (...) council are suffering from or likely to suffer from shortages of foodstuffs*. (author’s emphasis)

⁷ Republic of Kenya: Kenya Gazette Supplement No. 107 (Acts No. 9), The Water Act, 2002. Nairobi: Government Printer.

⁸ Laws of Kenya: The Local Government Act – Chapter 265, Revised Edition 1998. Nairobi: Government Printer.

In other words, if willing, the Municipal Council has the legal possibility to engage in or to allow crop cultivation by the (very) poor and in areas where these poor are living. However, growing crops on land that does not belong to the cultivator – which can be quite common – is illegal. Every municipal or town council has, according to Section 154, the power

(...) to prohibit the cultivation by unauthorized persons of any unenclosed and unoccupied land in private ownership and of any government land and land reserve for any public road.

Another provision to forbid, restrict or control crop cultivation is offered in Section 160, stating that “every (...) council shall have power to plant, trim or remove trees, flowers and shrubs in or on any public space”. This may seem a rather harmless act in relation to urban crop cultivation, but not anymore when vegetables are considered as ‘shrubs’, as a mayor of Nairobi once did. The Local Government Act also provides the legal framework for the ban on sewage water for irrigation, because for instance Section 173 states that “any person who (...) makes or causes to be made any opening into any (...) sewer (...) shall be guilty of an offence.” And, like crop cultivation, the local authorities can also “prohibit or control the keeping of animals, birds and bees so that their keeping shall not be a public nuisance or injurious to health” (Section 162).

In sum, according to the national legislation in Kenya, urban agriculture can be forbidden, restricted, allowed, controlled, facilitated or even promoted. Which line is actually followed at the local level depends entirely on the by-laws and ordinances made by the local authorities. The local authority’s power to draw up such a local legal framework is provided by the Local Government Act, while the various other Acts discussed above form the legal handle for the provisions made in these by-laws.

The local context: Legal and policy framework for urban agriculture in Eldoret

Crafted on the basis of “the manoeuvring space allowed by national legislation” (Foeken 2008: 239), the legal and policy framework for urban agriculture in Eldoret is reflective of the confusion inherent within the national framework. It is restrictive and punitive in respect of certain urban agriculture activities, tolerant or permissive to others, but in most part ambivalent. Overall, the legislative framework for livestock keeping is clearer compared to that for crop cultivation.

Livestock keeping

The latest set of EMC by-laws (approved in 2009 by the Minister of Local Government) makes a wide range of specific provisions relating to livestock-keeping in the town. The General Nuisance by-laws prohibit livestock-keeping where the

animal or poultry involved “is a nuisance to any of the residents in the neighbourhood”.⁹ In any case and except for poultry,¹⁰ a person can only keep livestock in town if and when granted permission by the municipal council and shall do so in adherence to any conditions that may be laid down.¹¹ However, according to the EMC Director of Environment,¹² under no circumstances is livestock keeping within built-up areas allowed. With regard to peri-urban areas, prospective livestock keepers must specify the exact number of animals they intend to keep when applying for a permit; usually the number allowed is determined by the farmer’s plot size. If granted permission, the farmer is further required to confine their animals within their compounds, preferably under zero-grazing.

The General Nuisance by-laws also prohibit the grazing of animals in planned areas¹³ as well as the roaming of animals and birds in town on account that they may “cause obstruction or inconvenience to traffic”.¹⁴ The Parking Spaces and Omnibus Stations by-laws specifically out-law the wandering of livestock within parking spaces and omnibus stations. EMC officers also distaste wandering animals and grazing of animals in town, presumably because they destroy gardens and trees, damage urban infrastructure and defecate in town thereby impeding urban beautification and greening. They are also considered a public health risk. The Chief Public Health Officer¹⁵ pointed out that although no particular disease outbreak has previously been attributed to livestock keeping within Eldoret town, the outbreak of African swine fever disease in 2006 that swept out almost the entire pig population in town was indicative that the health risks of keeping pigs in town are real. The disease is highly infectious and can affect humans.

From time to time the EMC has confiscated roaming animals and meted out penalties to offenders. Because of their scavenging habits, pigs are particularly distasted. They are considered dirty, a big nuisance and a risk to public health and traffic. For this reason EMC has previously decimated pigs by way of shooting and poisoning. For instance, in 2003/4, EMC collaborated with the veterinary department, the provincial administration and the police to kill (by shooting) several marauding pigs in the town.¹⁶ Asked whether they had ever been personally

⁹ The Municipal Council of Eldoret (General Nuisance) by-laws, 2009, (paragraph 7 and 8).

¹⁰ Although the by-laws do not expressly provide that poultry can be raised in town, this can be inferred from the fact that poultry is not mentioned among the livestock for which one requires permission to keep viz: ‘ox, bull, cow, goat, sheep, or pig’.

¹¹ The Municipal Council of Eldoret (General Nuisance) by-laws, 2009, (paragraph 8).

¹² Interviewed on 4 July 2007.

¹³ The Municipal Council of Eldoret (General Nuisance) by-laws, 2009, (paragraph 8).

¹⁴ The Municipal Council of Eldoret (General Nuisance) by-laws, 2009, (paragraph 8).

¹⁵ Interviewed on 26 July 2007.

¹⁶ According to the EMC Director of Environment, this action in which between 20 and 30 pigs were killed, was not meant to decimate all pigs in the town, but rather to scare pig farmers so they could

harassed or witnessed another urban farmer being harassed by EMC officers within five years preceding the survey, 46% (N=200) of the respondents surveyed said they had, with men being more likely than women to say so (74%, N=72 versus 30%, N=128). Of these, 44% of such incidents had involved confiscation of roaming livestock, particularly cows (22%) and pigs (21%), while 45% involved killing of the animals (pigs in all cases). Interviewees in Langas also recounted suspected baiting/poisoning of roaming pigs by EMC officers sometime in 2006/7. Mhubiri, a pig farmer for whom the keeping of pigs constituted an important source of income for him and his household, recalled how he lost eight pigs at the time over a period of three days. He estimated his loss at 60,000 Kenyan shillings (Ksh.),¹⁷ a considerable level of asset depletion for a household within a Ksh. 5,000-10,000 monthly income bracket.

Other relevant by-laws include the Control of Stock by-laws, which stipulate conditions under which stock may be allowed to graze in town, e.g. when such stock are awaiting slaughter, or exhibition in the Eldoret agricultural show-ground, or are impounded by the Council.¹⁸ The by-laws also prohibit the use of “any building or other premises or place within the Municipal Council of Eldoret (...) as cattle shed or pigsty or as other place for keeping sheep, goats or pigs without Council authority”.¹⁹ One wonders what the implication of this is, given that that is what many urban farmers do. Finally, paragraph 7 of the same by-laws stipulates that keeping livestock is prohibited “under any portion of any building or other premises or place used for purposes of human habitation with Municipality planned areas”.

It is perhaps the General Nuisance provisions related to milk and dairies that demonstrate just how stifling a legal framework for urban livestock keeping can get. The following are some of the provisions:

No person other than the company registered by the government for the purpose shall sell milk or fresh cream in the Municipality unless such a person is a licensed purveyor of milk and the milk or cream has emanated from a source approved by the Council or has not been sold by the Council (paragraph 60);

No licensed purveyor of milk shall sell milk for human consumption in the Municipality unless such milk has been pasteurized, and transferred, immediately after pasteurization, to a sterile approved container and therein sealed to the satisfaction of the Council (paragraph 61);

No milk may be pasteurized within the Municipality unless such milk (is) from a source approved by the Council; provided that all milk, other than that emanating from a source approved by the Council, produced in (...) the Municipality for sale or for consumption shall

confine their pigs. He noted that, in any case, the municipal council did not have the capacity to handle pig carcasses were all marauding pigs to be killed. Interviewed, 4 July 2007.

¹⁷ At the time, Ksh. 100 was about 1 Euro or Ksh. 80 was about 1 US\$.

¹⁸ The Municipal Council of Eldoret (Control of Stock) by-laws 2009, paragraph 4-5.

¹⁹ Paragraph 6.

be delivered for inspection and testing to the Municipal dairy within such hours as may be determined by the Council (paragraph 64);

No doubt these are overly stringent measures whose strict enforcement would almost certainly phase out dairy farming by poor small-scale urban farmers in town. That most of these 2009-approved by-laws are a replica of by-laws in Kisumu town that came into effect in the early 1950s before Kenya's independence (see Mireri *et al.* n.d; Ishani 2009) underscores the inertia within EMC to modernize its legal and policy framework in line with new challenges and problems of urban planning and food security in Eldoret. It is important to note that even when a prospective urban farmer satisfies all conditions as may be set out by the municipal council in respect of a livestock enterprise for which he/she applies to undertake, "the Town Clerk may, in his absolute discretion, refuse to issue any permit."²⁰ Under circumstances where senior EMC officers have expressed contempt for and displeasure with urban farming, sometimes calling for tougher penalties against its practitioners, such a provision does not augur well for urban farming in Eldoret.

Crop cultivation

At the time of the fieldwork for this study (2007-2010), not a single written by-law related to urban crop cultivation could be traced in municipal council. Neither the department responsible for enforcement of by-laws nor the other relevant departments of planning, environment and public health had a compilation of relevant by-laws. An EMC Enforcement Officer confessed that he had never seen written by-laws related to urban crop cultivation since he started working in the Enforcement Department in 1996!²¹ However, all EMC officers and councillors we spoke to spoke of *this* or *that* activity being allowed (and the conditions to be fulfilled) or outlawed, often in a matter-of-factly fashion. Moreover, they all seemed to agree on the need to update the by-laws (implying they existed!) to bring them in tandem with the changing times, as had started happening elsewhere. In particular, they pointed at Nakuru Municipal Council's example as worth emulating.²² It is noteworthy that the Nakuru Municipal Council has in recent times instituted measures aimed at legitimating and regulating urban agriculture within its jurisdiction (Foeken 2008).²³ In the case of EMC however, some

²⁰ The Municipal Council of Eldoret (Control of Stock) by-laws 2009, paragraph 11.

²¹ Interviewed in May 2010.

²² Acting Assistant Town Clerk, EMC, interviewed on 26 July 2007; Senior Enforcement Officer, EMC, interviewed on 31 July 2007.

²³ The Nakuru Urban Agriculture by-laws were a direct result of a study on urban agriculture carried out by the University of Nairobi and the African Studies Centre, Leiden, The Netherlands (see Foeken & Owuor 2008).

officials argued instead for a review of the by-laws with a view to imposing stiffer penalties to curb urban farming. As one official explained:

Some by-laws are old and need revision. More punitive penalties should be given to urban farmers. Currently, offenders are fined a very small amount of up to only Ksh. 200, so they always come back to continue with farming activities because they can easily afford the fine.²⁴

By and large, whether an urban agriculture activity was outlawed, controlled, frowned upon, allowed or simply tolerated depended on the type of the activity and its location, and on the perceived environmental, security and public health concerns implied.

It was noted that the growing of tall crops (those that can rise to more than one metre, e.g. maize) in the built-up areas is prohibited supposedly because they create bushes which can provide hide-outs for thugs. To underline this concern, EMC's Senior Enforcement Officer explained that incidents of insecurity reach their peak during the months of August, September and October, when the maize has gained its maximum height.²⁵ On account of this security risk, EMC in the past resorted to slashing down maize crops in open spaces in town as a deterrent measure against its cultivation, but such cases are said to be rare nowadays.²⁶ Of the 91 incidents of farmer harassment referred to above, a negligible proportion (3%) involved crop cultivation with only one incident of maize slashing suffered/witnessed within 5 years preceding the survey.

On the other hand, short crops like beans and vegetables, while not prohibited, would not be openly encouraged as some officials remained apprehensive that permitting farming of any kind, no matter its merits, would in the end spur all manner of farming activities with negative consequences for urban planning and beauty. In any case, cultivation of short crops was not allowed along the river banks, because this would expose soils to erosion and cause siltation and water pollution. Roadside farming in town was also disallowed on account that the crops are exposed to pollution associated with vehicular exhaust fumes, which contaminate the crops causing health problems for humans. *Sukuma wiki* planted on road reserves was singled out as posing a health risk to consumers.

Unlike in built-up areas, farming in peri-urban areas was permissible subject to certain conditions. The prospective peri-urban farmer is required to apply to the municipal council for a permit to cultivate and he/she is supposed to show evidence of ownership of the plot they intend to cultivate. Where the farmer wishes to cultivate a plot belonging to someone else, an agreement with the

²⁴ Chief Public Health Officer, EMC, interviewed on 26 July 2007.

²⁵ Senior Enforcement Officer, interviewed on 31 July 2007.

²⁶ Extension Officer, Pioneer Location, interviewed on 22 August 2007. The extension officer is in charge of a farmers' information desk in Langas settlement, which is located within Pioneer administrative location.

owner is required. In both cases, the plot should not be less than one acre in size and a permit can only be granted if the applicant's neighbours do not object to his/her intention to farm.

Although there was no trace of written by-laws governing urban crop cultivation, such accounts by EMC officers imply that by-laws may have actually existed but were probably dropped at some (yet unknown) point. Our interviews suggested that the beginning of official tolerance of urban agriculture and/or leniency towards offending urban farmers in Eldoret could be traced back to the period of national economic restructuring of the 1980s and 1990s through SAPs that wrecked livelihoods of many urban residents, not only in Eldoret but nationally. The EMC Senior Enforcement Officer alluded to this when he lamented the challenges of enforcing by-laws related to urban agriculture in the town:

Sometimes people who have been arrested by Council officers for doing illegal farming and subsequently arraigned in court have ended up receiving very lenient sentences or fines. We have experienced such problems with people farming in the Council's open spaces within West Indies estate. Many people who farm there are former Council employees, retrenched civil servants, workers rendered redundant by the closure of such factories as Rivatex, and so on. When such people are arrested and taken to court for farming in town illegally, they usually plead for leniency from the magistrate citing their circumstances. Many times the magistrate would pass lenient sentences such as one or two hours of community service. In the circumstances, the council officers see it as a waste of time to arrest such people.²⁷

Clearly, it is doubtful that such punitive measures as slashing of crops would be taken without some form of legal backing. Nor would people be arraigned in court let alone have judgment passed against them without a legal basis. Another officer at EMC noted thus:

The restrictions on maize cultivation used to focus more on farming on railway land. Council officers used to even slash crops. But it appears that by-laws that allowed them to do that no longer exist. I do not see that in the latest by-laws.²⁸

Were it to turn out that the by-laws and guidelines referred to by EMC officers were actually non-existent at the start of the fieldwork for this study, then one could characterize the continued references to and 'enforcement' of restrictions and exceptions as a hangover of long-entrenched anti-urban agriculture traditions, possibly carried over from colonial days and reinforced by the whims and attitudes of individual officers. What is more, the latest set of EMC by-laws (approved by the Minister of Local Government in 2009) contains not a single by-law that touches on crop cultivation, betraying a lack of clear official policy on urban crop cultivation in Eldoret. Given EMC's own rationale for previous restrictions on urban crop cultivation and what is already known in the literature about the activity's potential environmental and public health risks (see Chapter

²⁷ Senior Enforcement Officer, EMC. Interviewed on 31 July 2007.

²⁸ Attached to Committees Office, EMC. Interviewed in May 2010.

2), EMC's decision to omit urban crop cultivation from its legislative framework and in effect leaving it to proceed in an unplanned and unregulated manner is both surprising and injudicious. In any case, and as Table 5.1 indicates, urban farmers themselves shared, to a great extent, most of the environmental and health concerns of unregulated urban farming. The majority among both female and, to a slightly greater extent in most instances, male respondents agreed with some of the reasons on which restrictions on urban farming in Eldoret and elsewhere have been predicated. The only exception was the rejection by both men and women – to more or less the same extent – of the notion that urban farming is not compatible with the urban environment. And although just under one half of both men and women respondents appreciated the livestock-human disease transmission risks, a significant proportion of those who did not were simply unsure about the risk (and did not reject it outright). In this case, as with most other risks, women were overrepresented among the latter group. Thus, compared to men, women seemed to have relatively limited knowledge of the environmental and health risks of unregulated urban farming.

Table 5.1 Urban farmers' perceptions of environmental impact of urban agriculture, by gender (%)

Reason for restricting urban agriculture	Men (N=72)			Women (N=128)		
	Agree	Disagree	Unsure	Agree	Disagree	Unsure
Tall crops like maize pose a security risk	61	26	8	64	27	11
Crop cultivation using polluted water is harmful to health	69	21	10	66	11	23
Some crops provide breeding ground for mosquitoes	58	31	11	53	38	9
Farming along river banks causes siltation	68	13	19	57	15	28
Roadside farming exposes crops to contamination by exhaust fumes	58	24	18	52	16	31
Roaming livestock may cause traffic problems and accidents	90	7	3	84	8	8
Livestock waste makes the town untidy	75	21	4	71	22	7
Livestock destroy gardens and trees retarding beautification of town	76	17	7	73	16	11
Livestock causes disease transmission between animals and humans	49	24	28	47	29	24
UA is not compatible with the urban environment	29	58	14	24	60	16

Politics and the practice of urban agriculture

Notwithstanding legal and official restrictions and repression, urban agriculture is omnipresent across Eldoret's municipal space, both in the peri-urban and built-up areas. As elsewhere in sub-Saharan Africa (see Mlozi 1997; Mbiba 1995; Simatele & Binns 2008; Mudimu 1996), the prevalence of urban agriculture in Eldoret partly relates to urban farmers' conscious defiance of the legal and official restrictions on urban farming. The vast majority of farmers in Eldoret have gone ahead to cultivate crops and rear livestock without first seeking permission from the Council or adhering to stipulated regulations. For instance, only three urban farmers had sought permission to undertake farming in town out of the 133 who were aware that they needed to do so. A higher proportion of male respondents (79%, N=72) than female respondents (59%, N=128) were aware of municipal council regulations.

Because of a lack of enough grazing space as well as a lack of financial capital to afford (adequate) feed supplements from the market, many urban livestock keepers resorted to free range animal grazing/feeding. Roaming animals and birds are a common sight in Eldoret. Cows are usually grazed in open fields and along road reserves. It is common to find sheep, goats and pigs roaming in estates and between buildings and on garbage heaps and dumpsites scavenging for food unattended. Farming along river banks and by the roadside is also common and despite security concerns over maize cultivation related to its height, maize is one of the two most common crops cultivated in Eldoret (see Chapter 6).

Asked whether the legislative and policy framework for urban agriculture had affected their urban agriculture practices, a large majority (84%, N=133) of the respondents who were aware of the regulations (and/or the consequences borne by some offending farmers previously) said they had not. The remaining 16% of the respondents whose urban agriculture activities were affected, responded to the restrictions and EMC's harassment in various ways. They either changed their farming practices to conform to the regulations, scaled down on activities that were subject of repression, or continued with the activities albeit with anxiety and fear.²⁹ The in-depth interviews also revealed that some farmers devised ways around the regulations. Because of the general negative attitude towards roaming pigs epitomized by previous poisoning and shooting of the animals, some poor pig farmers were sometimes forced to confine their animals during the day and to release them only when it was safe to do so. Mhubiri referred to above was one such farmer. Since he could not afford the cost of feeds, Mhubiri re-

²⁹ Eight farmers had resorted to confining their animals within their compounds (with one turning to zero-grazing), four stopped keeping the animals altogether, one reduced the number of animals they kept, and five said they continued with the same activities fearfully.

leased his pigs every morning at around 5.00 am to scavenge for food and returned them around 8.00 am to confine them on his compound for the rest of the day. For his case, however, this strategy did not fully protect him from the authority's wrath as he eventually lost his eight pigs to suspected poisoning by EMC.

Many urban farmers consciously defy by-laws and restrictions related to urban farming or devise ways to circumvent them, because urban agriculture is too important to their livelihoods given their economic circumstances and because "other people are also farming in town", including senior municipal officers and government officials. The two reasons were given, respectively, by 47% and 37% of the 133 respondents who understood that urban farming in built-up areas was outlawed and that prospective farmers in peri-urban areas required clearance from the Council. Women tended to take the risk because of the perceived importance of urban agriculture to them while men mentioned the second reason often than women (see Table 5.2). Other farmers also carried on with farming activities despite EMC restrictions either because of perceived laxity on the part of the municipal authorities in enforcing its restrictions or they just wanted to utilize readily available agricultural space.

Table 5.2 Reasons for continued farming despite knowledge of restrictions

	% male (N=57)	% female (N=76)
Too important to abandon	40	53
Other people are also farming	44	32
Laxity in enforcement of restrictions	9	9
To utilize readily available space	11	7

The Town Clerk and Mayor were identified among senior municipal council officers and civic leaders who were themselves cultivating crops and keeping livestock in the town. Senior government officials included the District Commissioner and Officer Commanding Police Division. The upshot of this is that the municipal council lacked the moral authority and the muscle to enforce its own by-laws. As Mlozi (2003) has noted in a different East-African context, "[T]he fact that there are many senior government and ruling party officials among the livestock keepers who break the by-laws with impunity, is probably the best assurance for most other livestock keepers that they will not be punished for breaking the law." Indeed, in some cases, as in Mwanza (Flynn 2001), the participation of powerful individuals in urban agriculture could provide the necessary leverage for promoting urban agriculture and thrusting it up the policy agenda.

Photo 5.1 Roaming sheep sheltering within Langas market centre



Photo 5.2 Livestock grazing in open spaces within Langas



Urban farmers' disobedience of EMC and the latter's ambivalence in enforcing by-laws are augmented by the agricultural history of the town and a farming culture of its population. In addition to its recognition of the value of urban agriculture to peri-urban landowners, the municipal council also tolerates farming because it appreciates the challenges involved in changing land tenure regimes and converting farmlands into urban land-use, more so where this implies a cultural re-orientation. In peri-urban areas in particular, not only has farming historically predominated and constituted an integral way of life for residents there, but most of those areas have only recently been incorporated into the municipality following outward expansion of municipal boundaries (see Chapter 3). One government officer put it this way:

Some farms found within Eldoret Municipality are ancestral land which found themselves included in the municipality as the municipality boundaries expanded. It therefore takes time for their owners to adjust to the fact that they are now located within the municipality and are therefore subjected to municipal by-laws. It is difficult to convince owners of such plots that they should not grow crops or keep animals on their plots if they have been doing it all their life.³⁰

Moreover, Eldoret municipality is an area of multiple cultures defined mostly in terms of the population's ethnic diversity. Although the Kalenjin ethnic community is considered autochthonous to Eldoret and dominates municipal politics, the town has over the years acquired a multi-ethnic character. Not only do the different ethnic communities have varied preferences and needs in urban agriculture, they also perceive themselves as occupying different positions in the political power game. These facts have in the past fuelled ethnic tension even in the context of urban farming. For instance, the keeping of cattle is considered a way of life among the Kalenjin community. As such its practice by Kalenjins in town is tolerated, if not outright justified and supported by Kalenjin officials and civic leaders who dominate the council. Thus enforcement of by-laws relating to cattle keeping in town and especially in areas represented by Kalenjins is reportedly more lax.³¹ In contrast, pig farming, which is dominated by Kikuyus, is distasteful and vehemently opposed by the municipal authorities, which, as has been indicated above, has in the past organized to decimate them.

Members of the Kikuyu community – as is Mhubiri already referred to above – put premium on pig keeping as an important economic enterprise and therefore viewed the harassment of pig farmers and indeed of other livestock keepers in areas dominated by non-Kalenjins as political injustice bordering on economic sabotage. As such, some Kikuyu politicians not only protest to the authorities, they also connive with residents in affected areas to frustrate the enforcement of by-laws. A Kikuyu councillor noted thus:

³⁰ District Animal Production Officer, Uasin Gishu District. Interviewed on 28 August 2007.

³¹ Councillor, Kapsuswa/Kidiwa ward, interviewed on 15 August 2007.

In my ward Council *askaris*³² are always arresting farmers and confiscating animals found grazing in open fields and along the road reserves (...) But the Council *askaris* never arrest grazers and confiscate animals in areas like Kimumu and Racecourse. When I raised this issue one day in a Council meeting, I was told openly that keeping animals is part of Kalenjin culture and as such they should be left to continue keeping animals in town. Why should they favour certain communities only? I think we should forget all about enforcing this law since it is only my people who are being harassed because they are non-Kalenjins (...) Because of this favouritism, I also try to help pig farmers in my ward. There are many pigs in my ward and the owners are my supporters (...) Whenever the Council hatches a plan to impound or kill roaming pigs, I leak the information to the pig keepers. I tell them to confine their pigs.³³

Such actions by councillors show how politicisation of urban farming plays out in the policy and legislative arena to frustrate the enforcement of existing by-laws and the evolution of a better regulatory framework for urban agriculture. Indeed, political interference by councillors was identified as the major obstacle faced by the municipal council in enforcing by-laws.³⁴ The more so during election years when political pressure is brought to bear on enforcement officers to relax the rules as councillors fear to antagonize those who farm in town for fear of losing out on their votes. Thus, whenever the enforcement officers impound roaming animals, the owners seek (and often secure) the intervention of councillors, in most instances following the animals to be released without any fine. Sometimes the councillors go as far as giving ultimatums in council meetings to enforcement officers demanding that they desist from harassing urban residents. Similar dynamics have also been reported in Harare (Mbiba 1995).

The politics of urban agriculture has also been defined by unequal power relations and competing (sometimes contradicting) interests between EMC and other actors operating within the municipality. For instance, some actors are involved in promotional activities for urban agriculture in contravention of EMC official position. An officer at the municipal council was categorical that "(I)f there are any organizations offering agricultural extension services for farmers within the built-up area, then such organizations are violating the existing by-laws."³⁵ Yet, this is exactly what the government's Ministry of Agriculture and Livestock Development was (and is) doing.

The ministry operated an elaborate extension services programme in Uasin Gishu district, including Edoret town, the district's headquarters.³⁶ It had established information desks in various areas of the municipality where farmers could access agricultural extension services on scheduled days (at least twice every

³² Security officers.

³³ Councilor, Kapsuswa/Kidiwa ward, interviewed on 15 August 2007.

³⁴ Senior Enforcement Officer, EMC, interviewed on 31 July 2007.

³⁵ Director of Environment, EMC, interviewed on 4 July 2007.

³⁶ Agribusiness Development Officer, Ministry of Agriculture and Livestock Development, Uasin Gishu District. Interviewed on 3 July 2007.

month). One such information desk was located within Langas settlement and another at the Kapsaret Divisional Office within the town's CBD. The ministry's extension officers provided technical advice and information to farmers – and occasionally provide them with inputs free of charge for demonstration – without distinguishing between urban and rural farmers. One officer clarified that her department offered assistance to “whoever engages in any kind of farming” in the district including those in the municipality regardless of the location of their farming activities.³⁷ In justifying why they offer services to urban livestock keepers, another officer noted thus: “whenever urban farmers seek our services when their animals are sick, we respond promptly because the health of the animal is paramount.”³⁸ She also pointed out that the veterinary department was involved in the training of pig farmers on a broad range of issues covering the entire chain of production (rearing, feeding and marketing).

Whereas such activities clearly undermine the municipal council's resolve on controlling urban agriculture, it nonetheless seems helpless in dealing with such state actors whose legal mandate and jurisdiction seem to supersede its own. Moreover, the council has time and again had to rely on some of these state actors such as the veterinary department to implement some of its own by-laws.

³⁷ Divisional Crops Officer, Kapsaret Division. Interviewed on 14 August 2007.

³⁸ District Beekeeping/Marketing Officer, Uasin Gishu District. 23 July 2007.