

**SAFE CITIES LITERATURE REVIEW ON RELEVANT CONSTITUTIONAL AND OTHER
LEGAL PROVISIONS**

Research Report

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1. INTROUCTION

The aim of this mission is to undertake an analysis of the current and past legal provisions with regards to the provision of urban housing and other urban services. Thus the mission aims at coming up with a thesis on the findings as a coherent historical and current narrative. The objective is to carry out a background research on the relevant present and past legal framework that covers the provision of urban services. The mission has a special emphasis on how the legal provisions address sex and gender issues with regards to the provisions of urban services.

Put simply, the mission aims at analyzing the adequacy or inadequacy of the current and past laws on the provision or non-provision of urban services, especially to women and girls, and how women and girls' livelihoods are affected in such context. The priority areas to be addressed are housing services, water provision, sanitation, electricity, roads and environmental management in general. The mission thus takes a look on the current and past constitution(s), national laws and municipal by-laws in the given context.

In addition, the drafting history of the laws in question will be addressed and the objective is to canvass whether or not there is evidence of any thoughts at the drafting stage of the laws on how urban women and girls are positively or negatively affected by such laws. The mission will also address disability as a factor that leads to vulnerability. In fact, women and girls with disabilities suffer

double marginalization and as such, the laws in context are to be analysed in this breadth.¹

By delimitation, the mission focuses on the provision of urban services to communities in Ngezi and Rimuka suburbs under Kadoma City Council, Makokoba and Nketa under Bulawayo City Council and, Mbare and Hatcliffe under Harare City Council.

1. THE HISTORICAL CONSTITUTIONAL TRAJECTORY

Between 1890 and 1980, the present day Zimbabwe, formerly called Rhodesia, Southern Rhodesia, the Republic of Rhodesia and Zimbabwe-Rhodesia, was under the colonial rule of Britain. By then, the colonial state machinery favoured European Settlers politically, socially and economically at the expense of the black majority.² The attainment of independence on 18 April 1980 saw the post-colonial state seeking to redress the historical race, class and gender imbalances.³

The history of local governance in Zimbabwe is therefore traceable back to 1890 with the establishment of the Salisbury Sanitary Board in 1891. The major highlight of political, social and economic system under the colonial rule was

¹ See I Grobbelaar-du Plessis 'The African women with disabilities: The victims of multilayered discrimination' (2007) 22 South Africa Publiekreg/Public Law 405; SA Djoyou Kamga 'The rights of women with disabilities in Africa: Does the Protocol on the Rights of Women in Africa offer any hope' (2011) Barbara Faye Waxman Fiduccia Papers on Women and Girls with Disabilities; R Traustadottir 'Obstacles to equality: The double discrimination of women with disabilities' (July 1990) available at <http://dawn.thot.net/disability.html> (accessed 7 March 2014).

² See B Derman *et al* (2007) 'Intersection of law, human rights and water management in Zimbabwe: Implications for rural livelihoods' page 253.

³ As above at page 253.

racial divide by which the European minority settlers were treated as the first class citizens with Coloureds and Asians occupying the second position and the Black majority relegated to the bottom of the social ladder.

Prior to 1899, the power to govern was in the hands of the British South African Company (BSAC), through the Office of the Administrator. In 1899, the Legislative Council was created through which the BSAC had to pass government measures and the electorate was exclusively White Settlers. The system of local governance was formalized through the adoption of the Municipal Law of 1897, which shall be discussed later.

There was no constitution in place up to 1923 when the present day Zimbabwe was formerly annexed by the United Kingdom:

2.1 The 1923 Constitution

A responsible government was inaugurated in 1923 under the British Crown. The government retained control over any law concerning the Legislative Council, mining revenue and railways within the colony. The office of the Governor was formalized with powers to decide whether or not legislation was unequal in its application. On its part, Britain had powers to intervene if there was to be any racial discriminatory legislation. However, it appears that such provisions were only meant to be paper provisions given the fact that indeed, a number of racial discriminatory laws were enacted in the colony, as shall be indicated later.

Under the Constitution, right to vote was granted to all whites who were British subjects over 21 years, literate and owning property or mining claims. Thus Blacks

were not involved in both the national and local governance of the colony.⁴ What this means is that there was no representation of the concerns of Blacks in both the national and local governance of the day. To further compound the situation, especially of the Black majority, the Constitution did not contain a Declaration of Rights. The Constitution also did not embody any specific provisions addressing women.

The 1923 Constitution was succeeded by the 1961 Constitution. However, between 1953 and 1963, Southern Rhodesia formed part of the Federation of Rhodesia but the Federation fell apart in 1963. As from 1953 to 1958, the government increased the welfare of Blacks, especially those who were employed by the European Settlers, by increasing access to housing in urban areas and access to better health care facilities. However, such benefits were short lived and ended by the adoption of the 1961 Constitution:

2.2 The 1961 Constitution

It altered the 1923 Constitution and vested power in the British Government. A Legislature was created with the power to make laws for peace, order and good governance within Southern Rhodesia. The Legislature was based on the Westminster Parliamentary system with Whites having majority of the seats, while Coloureds and Asians had a handful of political, social and economic concessions. The Black majority had no place in the national and local governance

⁴ See MAB Mutiti 'Rhodesia and Her Four Discriminatory Constitutions' available at <http://www.reference.sabinet.co.za/webx/access/> journal (accessed 2 April 2014).

of the State. White women however had the right to vote and to be voted for in the national and local governance system.

For the first time, the Constitution had a Declaration of Rights to secure the fundamental rights and freedoms of individuals. However, the rights were only a handful of Civil and Political Rights. Socio-economic and cultural rights like rights to education, housing, health, employment, water and sanitation were not provided for. Under the Constitution, the rights guaranteed included the rights to non-discrimination, life, liberty, security of person, enjoyment of property, protection of the law, freedom of conscience, freedom of expression, freedom of assembly and association and the respect for private and family life.⁵ Although such rights were provided for, a number of claw-back clauses⁶ were meant against the enjoyment of the rights by the Black population. As an example, the Constitution had a provision that it would not affect the laws already in force in Southern Rhodesia. Such a provision meant that oppressive laws like the Land Apportionment Act of 1930, the Land Husbandry Act of 1951 and the Native Pass Act of 1936, which all had the combined effect of dispossessing the Blacks of their land and stock, destruction of the Black families and compromised the right to freedom of association, were rendered constitutional.

Furthermore, laws like the Township Management Ordinance of 1894 which prohibited the provision of housing to Blacks in urban areas unless employed by White settlers and the Vagrancy Act which provided for punishment of Blacks

⁵ See Sections 50 to 60.

⁶ Claw-back clauses means provisions that limit the realization of the rights protected.

living in urban areas for a period of three months without employment were constitutional despite the fact that such laws deprived the Blacks of the right to own urban houses and were discriminatory in effect. There were also no specific provisions addressing women and girls, White, Coloured, Asian or Black Women, in the 1961 Constitution. However, as has been indicated above, Black women and girls were in the deep end of the ocean given that the political, economic and social system was structure along racial divide.

From the 1961 Constitution, the 1965 Constitution was adopted:

2.3 The 1965 Constitution

In 1965, the Rhodesia Settler Government of Ian Smith declared independence from Britain under a new constitution. The Constitution replaced the 1961 Constitution. British powers over Southern Rhodesia were removed. For the first time, the Constitution provided for political concessions to the Blacks. Thus the political franchise was made up of a European Roll, an African Higher Roll and an African Lower Roll. Although the right to vote or to be voted for in the national and local governance was extended to Blacks, in reality, it was a hollow right. For one to qualify for both the African Higher and Lower Rolls, they were supposed to be owners of immovable property, employed and receiving high income. For the African Higher Roll, there was an additional requirement of attainment of four years of secondary education. In addition, the African Lower Roll could not elect more than 8 members.

Given the facts that the education system was discriminatory against the Blacks by then and that there were laws in force which deprived Blacks of the right to

own immovable property, especially in urban, the Constitution thus did not bring any benefit to the Blacks with regards to the right to participate in local and national governance. Black women were still ineligible to vote or to be voted for in both the national and local authorities.

In addition, just like the 1965 Constitution, the socio-economic and political set-up was tailored against the Black majority. The Constitution only retained the Civil and Political Rights. There were also no specific provisions catering for women and girls.

From the 1965 Constitution, the 1969 Constitution was adopted:

2.4 The 1969 Constitution

Under the Constitution, Southern Rhodesia was proclaimed a Republic and was named the Republic of Rhodesia. White minority rule was further entrenched. A Bicameral Parliament was introduced with the Senate made up of White members only whilst only 8 seats were reserved for non-Europeans in the House of Assembly. The Constitution provided for the entrenched provisions of the 1969 Electoral Act which created the European Roll, the African Roll and the Common Roll. With regards to municipalities, Blacks were not entitled to vote or to be elected or appointed as members of council or local authorities.

The political right was based on race and Blacks had no representation both in Parliament and in Local Government. Local government was founded on the principles and practices of community development according to race. European and African municipalities were also administered under different ministries. The Minister of Local Government administered the European Area whilst the

Minister of Internal Affairs administered the African Area. Administration of European Area was therefore effective since it was placed under the relevant ministry whilst administration of the African Area was obscured under the Ministry of Internal Affairs.

Although White women were eligible to be elected as members of the Legislature, the Constitution did not contain any specific provisions for women participation. What this meant is that in both the national and local governments, women affairs were inadequately represented. Policies and regulations that were enacted under the new constitutional dispensation were therefore not sensitive to women's rights and concerns.

The Constitution also contained an entrenched Land Tenure Act that divided Southern Rhodesia into European Area, African Area and National Land. European Area was made up of all industrial and urban areas, watered and fertile farms whilst African Area was made up of poor and drought-stricken reserves. What this meant is that the Constitution on its own barred Blacks from urban areas. The Constitution further entrenched the provisions that Blacks had to have permits to live and work in European areas. In a way, this meant that very few Blacks found themselves in urban municipalities.

The Constitution further established a Commission to enforce restrictions on the movement of individuals between European and African Areas. Restrictions were only removed for professional Blacks practicing in European Area.

Just like its predecessors, the Constitution only guaranteed Civil and Political Rights with a number of claw-back clauses which stripped Blacks of the rights

guaranteed. The racial divide system thus continued and no specific provisions catering for women and girls were provided for. However, major change with regards to Black participation in national and local governance, and the end of racial divide in Zimbabwe, came with the Lancaster House Constitution of 1979:

2.5 The Lancaster House Constitution of 1979

The principles underlying the Constitution were national reconciliation and national reconstruction given that it was adopted at the end of the war of liberation. The political franchise was accorded to everyone and that marked the end of the racial divide system in Zimbabwe. For the first time, the Constitution provided for the doctrine of constitutional supremacy.⁷

Chapter 3 contained a justiciable⁸ Declaration of Rights. However, the rights were only Civil and Political Rights including protection of freedom of movement,⁹ freedom of expression,¹⁰ non-discrimination¹¹ and freedom of assembly and association.¹²

⁷ See Section 3 of the Constitution. The doctrine simply means that the Constitution is the supreme law and therefore, any action or conduct has to be consistent with the constitution for it to be binding and enforceable.

⁸ Justiciability of rights entails the individual's right to approach courts of law seeking remedies in the event of violation of the protected rights.

⁹ Section 22.

¹⁰ Section 20.

¹¹ Section 23.

¹² Section 21. Also Section 111B of the Constitution provided that international conventions signed or ratified by Zimbabwe were to be approved by Parliament and only formed part of the national law

Legislative powers were vested in Parliament and the elections for both national and local governance were no longer tailored along racial lines.¹³ All women were granted the opportunity to stand for both national and local government offices. However, Section 23(3) legalized discrimination of women based on customary law. The Section provided that it was not to be construed as discrimination if any law, act or conduct arose from the application of African customary law.¹⁴ The net effect of such a provision was that the discrimination of women and girls on the basis of African customary law was constitutional. As an example, women's right to own immovable property was heavily denigrated by Section 23(3) in that under African customary law, the right to own immovable property is a preservative for men.

In another breadth, the Constitution made provisions for provincial, district or regional governors for the better administration of Zimbabwe.¹⁵ These were new political offices that were created by the Constitution for better local governance although it may be argued that the new office was for the furtherance of dominance by the ruling Black elite by then.

Just like the previous constitutions, the Lancaster House Constitution did not guarantee specific provisions for women and girls with regards to provision of urban services or in any regard. Of concern is also the fact that the Lancaster

upon incorporation by or under an Act of Parliament. In other words, human rights conventions signed or ratified by Zimbabwe were to be domesticated firstly before being applied at the national level.

¹³ See Section 58.

¹⁴ See Section 23(3)(b).

¹⁵ Section 111A.

House Constitution was born out of negotiations between the Black nationalists and the White colonialists but the negotiations, either consciously or unconsciously, did not have women as participants. What this meant is that at the formulation of the Lancaster House Constitution, women's concerns were not represented at all.

2. THE HISTORICAL NATIONAL LAWS TRAJECTORY

The provision of urban services by municipalities can be traced back to the Towns Management Ordinance of 1894 and the 1895 Townships Sanitary Regulation:¹⁶

3.1 The Towns Management Ordinance of 1894

Only the European Settlers could own urban houses under the Ordinance. The Ordinance further endowed local authorities with the power to create and manage housing for Blacks who were engaged in urban formal employment. Thus not all Blacks were entitled to live in urban houses but only a few Black, especially men, who were employed by Whites in urban centres. To a large extent, Black women were not covered with regards to the opportunity to live in urban housing given the fact that men were the ones that were employed to work in urban centres.

¹⁶ Prior to 1894, a Sanitary Board was established in 1890 in Salisbury and was later elevated to a Town Council. See T Yoshikini (2007) 'African urban experiences in colonial Zimbabwe: A social history of Harare before 1925.

3.2 The 1895 Sanitary Regulations

In 1895, the Administrator passed the Townships Sanitary Regulations No. 109 of 1895. The Sanitary Regulations only applied to Salisbury which was established in 1890. Every employer in Salisbury was mandated to provide latrines for servants/workers. The White employers were thus mandated to build the latrines in groups for their Black employees. The Regulations also provided for proper sanitary arrangements and the prevention of overcrowding for Africans sleeping in their employers' premises. It is clear that the duty to provide sanitation was imposed on employers in urban areas.

3.3 The Municipal Act of 1897

This is the Act that comprehensively addressed local authorities and was later consolidated into the Urban Councils Act. It was modeled along the British Municipal Act. The Act established a municipal system that was based on British traditions in terms of finance and functions. It created municipalities throughout the territory and laid the framework with regards to town planning. It converted Salisbury and Bulawayo into municipalities. Municipalities were mandated with the provision of adequate water supplies, sewerage and refuse collection, disposal and treatment, electricity supplies, municipal roads services and health services to urban communities. The main source of revenue for urban councils was levies derived from tariffs or fees for services rendered.

Under the Act, urban settlements were patterned on racial lines in terms of residential areas. Blacks were pushed to poor African Townships with limited water, electricity, health facilities and housing services while the Whites,

Coloureds and Asians occupied better settlements in terms of provision of urban services.

All Blacks and white women were not eligible for election to councils under the Act. White women only became eligible for such appointment as from 1920 through the enactment of the Sex Disqualification Removal Ordinance which will be discussed below. The Municipal Act thus did not embody specific provisions for women participation and inclusion in municipal affairs. Without representation in councils, women's concerns were at most peripheral issues.

3.4 The Municipal Law Amendment Ordinance, 1916

It was enacted to amend the law relating to municipalities. Section 4 provided for additional powers of municipalities to make bye-laws for the regulation and licensing of the carrying of laundries, the prohibition or regulation of the keeping of cows and dairies, the licensing of vehicles owned by persons using roads or streets within municipalities, control and supervision of the housing of native servants by their employers,¹⁷ regulation of sub-division of property as it related to the provision of reasonable and convenient access by municipalities for the purposes of rendering sanitary services¹⁸ and the prevention of buildings and lands from being used in a manner that interfered with the comfort and convenience of neighbours.¹⁹

¹⁷ Section 4(9).

¹⁸ Section 4(10).

¹⁹ Section 4(7).

The Act further made provisions to the effect that Council resolutions to borrow money were to be adopted by the majority of the whole members of the Council.²⁰ Such loans were not to exceed a sum equal to one-sixth of the value of the rateable property²¹ within the municipality. Special levies were also provided to defray expenses in the event of Council carrying out work, improvement or undertaking for the benefit of the urban community.²²

3.5 The Municipal Law, 1897, Amendment Act, 1929

The municipalities' duty with regards to sewerage works was comprehensively addressed by this Act. The Act obliged municipalities to regulate the drainage and sewerage of buildings and premises. Furthermore, the Act compelled the construction and connection, at the owner's expense, of sewerage drains from any building or premises and the removal of sewerage.²³

Municipalities were also obligated to make, construct, alter, keep clean, maintain and extend drains, sewers and sewerage works.²⁴ For the work done with regards to the provision, undertaking, execution, maintaining and extending of sewerage or drainage, Councils were empowered to fix and levy a special rate.

²⁰ Section 5.

²¹ Rateable property was defined in Section 114 to mean all land within municipality, all buildings and improvements except hospitals, lunatics asylums, public worship places, public schools, libraries, cemeteries, among other properties.

²² Section 4.

²³ Section 2.

²⁴ Section 3.

Section 10 of the Act penalised unauthorized interference with sewers, for example the erection of buildings or any structure over sewers, the destruction of sewers or the removal or causing an opening into a sewer.

3.6 The Municipal Amendment Act of 1940

It made provisions for the control of native eating houses within municipalities, construction of private streets and footpaths within municipalities. The Act empowered municipalities to control, regulate, inspect and licence native eating houses for the upkeeping of basic health standards.²⁵ Under the Act, native eating houses were to be kept well ventilated, clean, with good lighting and in good order.²⁶

As to the provision of transport within municipalities, the Act made provisions for separate omnibuses for use by Europeans, for Asiatics or Coloureds and for Natives. It was the duty of municipalities to provide the omnibuses.²⁷

Furthermore, all sanitary lanes vested in the Councils.²⁸ It was also lawful for any Council, with the approval of the Minister of Internal Affairs, to write-off any rates which have been in arrear for a period of 5 years and above.²⁹

²⁵ Section 39.

²⁶ Section 6.

²⁷ Section 70.

²⁸ Section 32.

²⁹ Section 152a.

In 1979, there was witnessed a major shift in local governance in Zimbabwe through the enactment of the Local Government Laws Amendment Act:

3.7 The Local Government Laws Amendment Act of 1979

The Municipal Act was amended to the effect that the President was empowered, in consultation with any local authority concerned, to establish, alter or abolish municipalities, towns or councils.³⁰ Administration, control and management of a local government were vested in the council.³¹ The previously designated African Township Areas were deemed to be local government areas under the control, administration and management of local authorities in which the administration and control of such fell immediately before.³² What this meant is that there was inclusion of Black housing units within councils as from 1979.

Notwithstanding the inclusion of former African Township Area in local government area, the Act provided for the exclusion of low cost development from council area.³³ Thus at the request of council, the President was empowered to exclude the area from council on which there was construction of low cost residential units.³⁴ Although such a provision was meant to uphold housing standards in urban areas, it had an exclusionary effect on the Blacks who could not afford to construct high value houses in urban communities.

³⁰ Section 4.

³¹ Section 5D.

³² Section 5E(b).

³³ Section 160B(1).

³⁴ Section 160B(c).

Furthermore, the Amendment did not embody any special provisions addressing women and girls in the provision of urban housing services. Provision of housing and urban services to the Black population remained largely dependent on employment status.

The following are other laws that impacted on the provision of urban services during the colonial era:

3.8 The Native Urban Locations Ordinance 1906

In 1906, the Native Urban Locations Ordinance was enacted under which urban locations for Blacks working in urban municipalities were organised. The Ordinance defined the locations as special areas under control of local authorities. The Ordinance determined where Blacks slept.³⁵ Blacks were barred from sleeping in European premises. Only Blacks in bona fide employment as domestic workers or servants for the White settlers were permitted to reside on the premises of the employer.³⁶ The Ordinance meant the provision of housing services to Blacks was tied to employment. For the other Blacks, it was a criminal offence to live outside the established Native Urban Locations and to be found residing within the White Settlers Area (called White City) without a special permit.³⁷ In a nutshell, Blacks were prohibited from the 'White City.'

³⁵ Section 3.

³⁶ Section 4.

³⁷ Section 4.

The Ordinance thus aimed to control not only the influx of Blacks into urban areas but also to control the Blacks in urban areas. It meant also that the provision of urban housing to Blacks was tied to employment. Furthermore, the Ordinance was indeed a measure to prevent overcrowding and to ensure adequate service provision within urban areas.³⁸

3.9 The Private Locations Ordinance of 1908

It made provisions for the establishment of locations by White Settlers and natives who were employed by the Europeans were to be tenants.³⁹ With regards to the provision of urban housing, only White Settlers stood to benefit whilst Blacks could at most be tenants. Rents payable were determined under the Native Rents Regulations.

3.10 The Native Labour Regulations Ordinance of 1911

The Ordinance repealed prior laws that governed native employment including the Natives Employment Ordinance of 1899, the Natives Employment Ordinance Amendment Ordinance 1907 and the Labour Contracts Regulation Ordinance 1911. Under the Ordinance, white employers were to provide proper housing (compounds) and feeding to their native employees.⁴⁰ The Ordinance also provided for the appointment of Compound Inspectors to inspect the houses that

³⁸ See AJ Njoh (2007) 'Planning Power: Town Planning and Social Control in Colonial Africa' 160.

³⁹ Section 5

⁴⁰ Section 29(n).

were allocated to native employees.⁴¹ No specific provisions relating to women were incorporated in the Labour Regulations.

In a different angle, women's right to political participation was addressed by the Women's Enfranchisement and Registration of Voters Amendment Ordinance of 1919:

3.11 Women's Enfranchisement and Registration of Voters Amendment Ordinance of 1919

Under the Ordinance, every woman was qualified to be elected as a member and be entitled to be registered as a voter and to vote at elections of members of the Legislative Council.⁴² Every married woman of 21 years, except for those who were under polygamous marriages, was deemed to possess the same occupation and salary qualification as her husband for the purposes of exercising the right to vote and be voted for.⁴³ The law indeed accepted the reality that most women if not all were not employed but at the same time, eligibility to stand for public office depended on one's employment status. Although reference was made to every woman in the Ordinance, it has to be noted that Black woman could not benefit given the fact that they were inferior citizens under the political, economic and social system prevailing by then.

⁴¹ Section 29(v).

⁴² Section 1.

⁴³ Section 2.

The Ordinance further provided for a special list of female voters. The Legislative Council was to have a special list of voters termed 'List of female voters' in every district.⁴⁴ This Ordinance thus embodied specific provisions addressing the right of women to political participation.

Women participation in national and local government affairs was then consolidated in 1920 by the enactment of the Sex Disqualification Removal Ordinance:

3.12 The Sex Disqualification Removal Ordinance of 1920

The Ordinance empowered women to hold any public or civil office or appointment, subject to the same conditions on which such offices were held by men. With regards to local government affairs, women were therefore eligible to be members of Council or Municipalities. However, reference to women under the Ordinance referred to white women to the exclusion of Black women. The whole political, economic and social system was based on racial divide under which Blacks were inferior citizens.

Be that as it may, racial laws continued to negatively impact on the provisions of urban services to the Black majority as discussed below:

3.13 The Native Affairs Act of 1927

Racial boundaries were created and Blacks prohibited from urban areas without a justifiable cause. The Act also created Native Reserves which were later turned into Tribal Trust Lands under the Tribal Trust Lands Act.

⁴⁴ Section 3.

3.14 Tribal Trust Lands Act of 1927

The Act created the Tribal Trust Lands for the Black majority. Water for Tribal Trust Lands was to be approved by the Board of Trustees for the Tribal Trust Land. Natives could only apply for water rights as a community and through government officials.⁴⁵ The subsequent Native Registration Act of 1935 demanded Blacks to be registered in the Tribal Trust Land to which they were assigned. These laws led to increased disgruntlement among the natives and most of them relocated to urban areas in search of reprieve. The ultimate effect was increased pressure on the urban services that were provided by urban local authorities.

3.15 The 1930 Land Apportionment Act

It was passed by the Southern Rhodesia Parliament and entrenched the discrimination against the Black majority on the grounds of race. The major highlight of this law was that land was alienated from the Blacks in favour of the Europeans. It reserved half of the total land area of the present day Zimbabwe as European Area. Land was apportioned into European Area, Native Reserves, Unassigned Area, Native Purchase Area, Forest Area and Undetermined Area. All urban areas, mining sites and fertile lands were classified as European Area. Blacks were relegated to infertile and tsetse infested rural lands called Reserves/African Area. Adjoining the Reserves were Native Purchase Areas but because of their inferior economic status, the Blacks could not purchase land under the Native Purchase Areas. Thus Blacks could not own houses in urban areas.

⁴⁵ E Hoffman (1964) 'Water rights in Rhodesia' 64.

The net effect of the law was land alienation and the creation of the Reserves in violation of the spirit of communal living and ownerships, and the destruction of Black family ties. It also led to overcrowding of the Reserves and the accelerated depletion of resources within the Reserves. The result was influx of the hopeless Blacks into the urban areas in search of employment from the White settlers. Urban services were thus strained.

With regards to water supply, the European Area had adequate supplies whilst the Black majority was negatively affected in that the Act left them downstream of white settlers with less ability to access water.⁴⁶

3.16 The Industrial Conciliation Act of 1934

In a similar fashion to the Land Apportionment Act and the Tribal Trust Lands Act, the Industrial Conciliation Act barred Blacks from professional jobs. Most of the jobs were found in urban areas and thus the Blacks were barred from urban areas.

3.17 The Vagrancy Act 1935

It penalized Blacks living in urban areas without employment for a period of three months. In a way, the Act had a positive impact with regards to the avoidance of overcrowding in Black urban settlements and ensured adequate service provisions to the Blacks working in urban areas.

⁴⁶ See CH McIlwain (1936) 'Community-Base Water Law' 73.

3.18 The Native Pass Act of 1936

As indicated above, the net effect of the Native Affairs Act, the Tribal Trust Lands Act, the 1930 Land Apportionment Act and the Industrial Conciliation Act was an influx of the hopeless Blacks into the urban areas in search of employment from the White Settlers. Resultantly, urban services were strained. The Act required natives to have a registration book whenever they travelled away from the assigned Tribal Trust Land and to have a Pass in order to travel and live in urban areas. The Act further made it a criminal offence for the Blacks to be found without a Pass whilst in an urban area or outside the Tribal Trust Lands. In effect, the Pass Act regulated the movement of Blacks into urban areas and thus prevented overcrowding of urban native housing. Housing and the leasing of such also depended on one's Pass. In addition, the Act assisted in the avoidance of straining of further urban services like sewerage, health and general sanitation services.

3.19 The 1951 Land Husbandry Act

It enforced private ownership of land and made provisions for the 'improvement' of the economic status of the African Reserves. Blacks were to remain in fixed areas and that led to the depletion of highly valued herds of cattle, reduction of land under cultivation and the force uprooting of families and villages. Discontent among the Blacks resulted in the unprecedented movement to urban townships with spillover effects of inadequate urban housing and high unemployment rates.

3.20 The Land Tenure Act of 1969

The Act introduced a land policy that was based on race. Land was apportioned between Europeans and Africans. Africans were to continue to live under a Tribal System. As highlighted above under the 1969 Constitution, all industrial and urban areas were designated to be European Area. For a few natives who were already working for the White Settlers in urban areas, separate residential areas were retained in the urban municipalities for the Europeans and Blacks. In essence, with regards to ownership of housing, Blacks could not own houses in urban areas given that all urban areas fell under European Area. Ownership of urban houses thus vested in the whites.

Continued land dispossession, increased taxation and dwindling agriculture led to Black migration to urban areas to sell their labour to the Europeans and a strain on service provision in urban areas, especially housing and health services.

The system of land tenure was only abolished in 1979 through the enactment of the Land Tenure (Repeal) Act of 1979 and that is when Blacks, both men and women, were eligible to access service like housing ownership in the former European Area. The removal of restrictions meant an increased rural to urban migration resulting in overcrowding in cities and the strain on urban services. Be that as it may, many if not all Black women continued to be confined in the rural areas and therefore could not access the urban services especially housing.

3.21 The Housing and Building Act of 1979

The Act made provisions for the establishment and control of funds related to housing and the provision of loans through the Ministry of Local Government and

Housing to acquire or let immovable property, construction of buildings and the provision of urban services. A Housing and Guarantee (General) Fund was established and vested in the Minister of Local Government and Housing.⁴⁷ The Minister was empowered to guarantee loans and advance money, upon application, to any person for the purposes of purchasing land and building a dwelling or the leasing of a dwelling.⁴⁸

Other Funds called the Local Government Areas Building Fund and the Provincial Building Fund were also established.⁴⁹ Under such Funds, the Minister was empowered to construct dwellings and to provide essential services.⁵⁰ Section 22 established the Rent Boards and Rent Appeal Boards with power to inspect immovable property, to preside over dispute concerning rents and to prescribe penalties in the event of breach of the law governing lease.

The Act in essence meant the improved provision of urban housing and services to Blacks who were previously disadvantaged. However, the Act did not address women and the need to specifically provide housing or loans for building purposes. In the end, Black men are the once who were set to benefit under the Act as many Black women continued to be confined to the rural areas.

With regards to health and basic sanitation, the Public Health Act of 1924 comprehensively addressed such as indicated below:

⁴⁷ Section 3(1)(a).

⁴⁸ Sections 4(1), 5 & 6.

⁴⁹ Section 4(1)(a) & (b).

⁵⁰ Section 15(1)(a).

3.22 The Public Health Act 1924

In the event of an outbreak of infectious diseases within municipalities, the Act required local authorities to transmit to the chief health officer particulars of all cases pertaining to the outbreak or prevalence of any infectious, communicable or preventative disease.⁵¹ Local authorities were also required, either separately or jointly with another local authority or government, to provide and maintain suitable hospitals or places of isolation for accommodation and treatment of persons suffering from infectious diseases, disinfecting and cleaning stations and provision of vehicles for the conveyance of persons suffering from infectious diseases.⁵² Under Section 25, Councils were also obligated to ensure adequate measures for the prevention of the spread of disease where a person suffering from an infectious disease was found within the area of jurisdiction of the local authority.

With regards to formidable diseases,⁵³ local authorities were under a duty to immediately report to the Chief Health Officer and to take measures for the purposes of dealing with any cases or suspected cases of formidable epidemic diseases. The Act also made provisions for advances of money to local authorities

⁵¹ Section 19.

⁵² Section 22.

⁵³ Formidable epidemic diseases included small-pox, plague, Asiatic cholera and epidemic influenza.

at the discretion of the Minister for the purposes of dealing with an outbreak of infectious or formidable epidemic diseases.⁵⁴

The Act further imposed a duty on local authorities, when required by the Minister, to provide and maintain sufficient supply of water for drinking and domestic purposes.⁵⁵ In addition, local authorities were mandated to take measures to ensure cleanliness and maintenance of their areas of jurisdiction in clean and sanitary conditions always.⁵⁶ Local authorities were further obliged to prevent or remedy injury or danger to health arising from the erection or occupation of unhealthy dwellings or premises, or the erection of dwellings or premises on unhealthy sites, or from overcrowding.⁵⁷

Local authorities were also empowered to enter any building or premises for the purposes of examining the existence of nuisance. Nuisance was defined as to include dirty dwellings or premises, any building or premises situated or constructed as to be dangerous to health, water supplies that were dangerous to health, dwellings overcrowded as to be injurious or dangerous to health and dwellings without proper, sufficient and wholesome supply of water.⁵⁸

Basically, the Act required local authorities to play an active role with regards to health and basic sanitation of their communities. However, the Act did not

⁵⁴ Section 44.

⁵⁵ Section 87(1).

⁵⁶ Section 99.

⁵⁷ Section 100.

⁵⁸ Section 101 (a) to (n).

embody specific provisions on women and girls with regards to public health issues. The only provision that addressed women in the Act was Section 53 which provided that in the event of venereal diseases, examination of any female over 12 years was to be by women medical practitioners if available.

Closely linked to the health issue were the Natives Registration Ordinance of 1901, the Amendment Ordinance 1918 and 1922 Regulations which made provisions for the vaccination of every native employed in urban centres. Vaccination was free and no contract of service was to be concluded with natives without a health certificate. The law thus assisted with regards to the health service to the natives.

3.23 Natives Pass Consolidation Ordinance 1913, Amendment Ordinance 1917

Native foreigners were required to present certificate to the nearest Native Commissioner for annual endorsement.⁵⁹ It was a criminal offence to fail to have a certificate endorsed. Also the Miners' Phthisis Ordinance of 1913 which prohibited the employment in mines of persons suffering from tuberculosis of the lungs and miners' phthisis assisted in the prevention of the spread of disease.

With regards to the provision of water in urban municipalities, reference is made to the Water Ordinance of 1913, 1914 and 1920, and the Water Act of 1927

⁵⁹ Section 5

3.24 The Water Ordinances of 1913, 1914 and 1920⁶⁰

The Ordinances addressed the problems of the rights to water and gave unlimited rights to water for domestic purposes.

3.25 The Water Act 1927

The Act provided for the consolidation and amendment of the law relating to the ownership, control and use of water. Prior to this Act, water issues were governed by Mining Law Amendment Ordinance of 1908 that granted priority right to water to the mining industry, the Union Irrigation Act of 1912 that made provisions for control, apportionment and use of water for irrigation purposes, the Right to Water (Railway) Ordinance of 1910, Water Ordinances of 1913, 1914 and 1920, and the Industry Amendment Ordinance of 1921 and further amendment of 1921. In summary, the laws were based on the common law rights to water. For example, the 1920 Water Ordinance provided that if a farmer had land suited for irrigation and there was a stream that can be economically utilized, he or she can acquire the right to use the whole of the water for irrigation.

However, the laws did not address municipalities and the provision of water. The introduction of the Water Act of 1927 made reference to municipalities and acquisition of rights to water.

As a starting point, the Act provided that all water was vested in the Governor.⁶¹ It established Water Courts with jurisdiction to hear and determine applications for

⁶⁰ See B Derman (n 2 above)

⁶¹ Section 5.

use of water, determine disputes in connection with the use, diversion and appropriation of water.⁶² It provided for two types of water namely public water⁶³ and private water.⁶⁴

Section 7 provided for the right to use water for domestic and drinking purposes. On its part, Section 22 made provisions for the acquisition of rights to public water by local authorities. Whenever a local authority desired to appropriate water of a public stream for the purposes of serving the community under its jurisdiction, the local authority was obliged to make an application to the Water Registrar. After receipt of such an application, the Water Registrar referred to the Water Court which had powers to determine the quantity of water to be appropriated to the local authority.

On own initiative, the Governor had powers to sink boreholes and wells in both urban and rural areas.⁶⁵ Also the Governor had power to exercise general supervision over all public streams in Southern Rhodesia, to protect the source of supply of any public stream and to cause the channels of streams to be cleansed or otherwise improved and to prevent pollution or other unlawful acts which

⁶² The Water Courts were appointed by the Governor in terms of Section 24.

⁶³ According to Section 3 of the Act, public water was defined as all water flowing or found in or above the bed of a public stream, whether visible or not, including swamps or marshes forming the source of such a stream, or found upon its course.

⁶⁴ According to Section 3 of the Act, Private water was defined as all water other than water of a public stream, which rises naturally on any land or which falls or naturally drains to any land and remains on such land without joining a public stream.

⁶⁵ Section 107(3).

diminished the quality of water from public streams, among other powers.⁶⁶ Section 113 of the Act criminalized the wasting and pollution of water of a public stream. Such offences were punished by a fine or imprisonment for up to six months.⁶⁷

The Water Amendment Act of 1947 provided for primary water users for example gardens and riparian users. It also provided that springs and streams fell outside public water management since they were classified as private water under the Amendment Act. In 1976, the Water Act that was enacted more or less followed the provisions of this Act.

With regards to the protection of urban women and girls from violence, the Criminal Law Amendment Ordinance of 1900 is made reference to:

3.26 The Criminal Law Amendment Ordinance 1900

The Act made provisions for the protection of women and girls and the suppression of brothels. The Act punished the inducement of girls under the age of twelve to resort to prostitution.⁶⁸ Also the operation of brothels, procurement of females for prostitution and detention of women in a brothel were all criminalized and punished.⁶⁹ Of particular importance to the current mission is that the Ordinance directly applied to Municipalities, Corporate Town or any area subject to the provisions of the Town Management Ordinance of 1894. In a way,

⁶⁶ Section 108(b).

⁶⁷ Section 113(3).

⁶⁸ Section 3.

⁶⁹ Sections 4 & 12.

urban women and girls were afforded protection from sexual violence. However, it appears that White women were the once who were protected under the Ordinance because of the system of racial divide by then.

3.27 Immorality and Indecency Suppression Ordinance of 1916

The Ordinance made it a criminal offence for white girls or women to incite or solicit any native to have illicit sexual intercourse with her. The Ordinance also made it criminal for natives to induce white women or girls to commit acts of indecency. As read together with the Criminal Amendment Ordinance of 1900, the Ordinance provided for the removal of non-indigenous natives from the territory after a conviction of rape. The law thus afforded security to urban white women and girls.

For native women who fell into relationships with white men, the Natives Affairs Amendment Act 1931 is made reference to:

3.28 The Natives Affairs Amendment Act of 1931

The Act provided that every native woman who gave birth to a child whose father was a European was supposed to notify the Native Commissioner of the district within three months of birth.⁷⁰ It was also the duty of owner of the premises or the headman of the area under which such birth occurred to notify the Native Commissioner where the native mother could not. This was necessary for the upkeep of the child born. The Act hence provided some form of security to the native women.

⁷⁰ Section 6.

4. HISTORICAL BY-LAWS

4.1 Harare City

Having been established in 1890 and declared a Municipality in 1897, the first relevant by-laws to the present research for the city of Salisbury (the present day Harare) were the Sanitary By-Laws of 1903 as discussed below:

4.1.1 Sanitary by-laws of 1903

The by-laws made provisions for proper sanitary arrangements and the prevention of overcrowding for Africans/Blacks who slept in their employer's premises. Under the bye-laws, only employees of the White Settlers were allowed to live and sleep in the city. Cheap latrines were invented for the Black employees. One latrine would be shared by a group of the employees. However, no specific numbers were provided to how many employees would share one latrine. There were no special provisions for Black women employees, though they were very minimal at that time.

For the employers who did not want their employees to sleep at their premises, the By-Laws provided that Natives were to sleep out of the Town in the evening for fear of typhoid fever. In line with the basic sanitation, the Human Excretion By-Laws of 1910 provided that human excretion was not to be used as fertilizer within the municipality.

With regards to the provision of water, the Salisbury (Water) By-Laws of 1913 addressed water supplies within the municipality:

4.1.2 Salisbury (Water) By-Laws of 1913

They mandated the Salisbury Municipality to provide adequate, clean and wholesome water to the owners or occupiers of the urban houses. Owners or occupiers of the urban houses were mandated to conserve water. For the provision of water, the Municipality was entitled to charge the owners or occupiers of the houses. Even though no specific figures were provided for, it is submitted that the water charges by the Municipality were very minimal. In 1960, the By-Laws were amended and addressed the provision of adequate, clean and wholesome water in public buildings and premises and recreational facilities for example show grounds. In public buildings, 200 gallons of water were provided for a maximum number of 100 persons per day. Water closets were also provided for with at least one water closet for each of the sexes.

4.1.3 African Townships (Water Restriction) By-Laws of 1966

The By-Laws prohibited the use of water for irrigation or gardening in the African Townships. Penalties were set for wasting of water supplied by the Council.

4.1.4 Harare (Water) (Amendment) By-Laws of 1989 [SI 124 of 1989]

The By-Laws were enacted specifically to provide for payment of cash deposit or a guarantee by consumers for the connection of their property to the water supply mains (pipes).

4.1.5 Municipal By-Laws of 1932

The By-Laws made provision for garbage removal and disposal by the Council. Under Section III, Council was obligated to remove rubbish or waste and to

recover the costs from owners or occupiers of the property within its area of jurisdiction. Section XIII made provisions for sanitary lanes and such were not supposed to be used for any other purpose. Section X prohibited the disfiguring or damaging of streets.

With regards to provision of housing and building, the Native Urban Areas By-Laws of 1953 and the Building By-Laws of 1933 are worth mentioning:

4.1.6 The Natives Urban Areas By-Laws

They made provisions for ownership of Housing by Natives who could afford to buy houses. However, the Natives could only own houses in the Natives Urban Areas and not in the 'White City.' The Natives Marriages Act of 1948 also permitted married and affording Natives to own houses in the Native Urban Areas. As for Native women, they were incapacitated to own houses by then.

4.1.7 Building By-Laws

The By-Laws as amended in 1950 provided for the standards of buildings both for the 'White City' and the Native Urban Areas. Each building was supposed to be well ventilated, sufficient light and was to be provided with water closets.

With regards to general health matters, the Public Health By-Laws of 1962 extensively addressed the issue of public health:

4.1.8 Public Health By-Laws of 1962

They were amended in 1966, 1967, 1973 and 1975. They obliged the Municipality to take adequate measures for the prevention and control of communicable and

infectious diseases. Council was also obligated to ensure supply of adequate, clean, safe and wholesome water not injurious to human health. Furthermore, Council was mandated to provide efficient and reliable waste collection and treatment measures and the prevention of unauthorized dumping areas.

Vegetation within the Municipality was to be conserved. In line with the Public Health By-Laws, the Prohibition of Smoking in Theatres and Cinemas By-Laws of 1977 also assisted in banning smoking in public premises.

4.1.9 Salisbury Food Stall By-Laws of 1938

Together with the Salisbury Hawkers' and Street Vendors' (Amendment) By-Laws of 1953 and the Salisbury Street Food Vendors' (Amendment) By-Laws of 1953, they prohibited the selling or exposing the sale of food or drinks for human consumption without a license.⁷¹ The license demanded all utensils and articles to be thoroughly cleansed prior to use. Food and drink were to be sound and wholesome and innocuous to health.⁷² Food was also not to be sold anywhere within the municipality but only on designated areas. No food was to be sold on pavements or street walks. The By-Laws were later consolidated into the Food Hygiene By-Laws of 1975 that made provisions for inspection of food outlets by Council Health Inspectors for the enforcement of standards of hygiene. Also the Food Hygiene (African Townships) By-Laws of 1977 made provisions for safe and wholesome food for sale.

⁷¹ Section 1.

⁷² Section 11.

4.1.10 Cycling in the Public Gardens By-Laws of 1936

They prohibited cycling within public gardens within the city

4.1.11 The Salisbury Municipal Traffic Regulations By-Laws of 1937

They made provisions for taxis within the municipality and fixed taxi tariffs. The taxi tariffs were to be reasonable and affordable. To cater for the different races, First and Second Class taxis were provided for. In the same angle, the African Townships (Omnibus) By-Laws of 1977 made provisions for omnibus services within African Townships.

4.1.12 Salisbury Municipal Traffic By-Laws of 1949

The By-Laws prohibited people from parking motor vehicles on cycle tracks. People were also prohibited from using cycle tracks.

4.1.13 Roads and Road Traffic By-Laws of 1967

The By-Laws prohibited the obstruction of vehicles within the municipality. The bye-laws stated that no person was to willfully cause any obstruction on any road or street. They also made provisions for the licensing of motor vehicles kept or used within the municipality.

4.1.14 Fire By-Laws of 1968

The By-Laws were amended in 1970, 1975 and 1978. In essence, they prohibited fires within the municipality.

4.1.15 Noise By-Laws of 1973

They were amended in 1985. They prohibited noise in the city unless in designated industrial areas.

4.1.16 Obstruction of Sidewalks By-Laws of 1974

Prohibited the obstruction of sidewalks through any means and penalized such obstruction through payment of fine to Council.

4.2 Bulawayo City

4.2.1 Electrical By-Laws of 1900

The supply authority of electricity under the by-laws was the Bulawayo municipality. The by-laws prohibited persons from selling or supplying of electric energy other than the municipality. The By-Laws made provision for fixing and maintenance of electricity supply mains at the consumer's expense.⁷³ Town Engineers were tasked to inspect premises so as to identify electric faults, if any.⁷⁴ In the event of disconnection by the municipality, the by-laws criminalized the reconnection or attempted reconnections by consumers without normalizing their accounts.⁷⁵

⁷³ Section 7.

⁷⁴ Section 10.

⁷⁵ Section 15.

The by-laws further imposed an obligation on the municipality to ensure adequate street and road lighting.⁷⁶

4.2.2 Motor Vehicles By-Laws of 1925

The by-laws prohibited the driving of motor vehicles within the municipality at a speed exceeding 25 miles per hour. Long vehicles and horse-drawn carts were also prohibited within the municipality.

4.2.3 The Licensing of Vehicles By-Laws of 1941

The by-laws provided for the application and payment of motor vehicle licenses to the Office of Inspector of Vehicles or to the Town Council. Part II of the by-laws prohibited rough driving within the municipality, obstruction of motor vehicles and overloading of vehicles.

4.2.4 Bulawayo Building, Roads and Streets By-Laws of 1939

The By-Laws comprehensively addressed the standard of buildings, roads and streets. Minor amendments were later made by the Bulawayo Building, Roads and Streets (Amendment) By-Laws of 1950. Under the by-laws, all public buildings were to be well ventilated and provided with constant supply of water. In terms of water supply, the by-laws provided for the provision of 200 gallons of water per every 100 persons.⁷⁷

⁷⁶ Section 109.

⁷⁷ Section 5(2)(iii).

For houses, the By-Laws obliged the Council to make adequate provision of houses and land for housing. However, housing services were for the benefit of the European community. Only a few Native men were allowed to own houses in the Native Urban Areas and provided that they could financially afford to purchase the houses from Council. However, the bulk of the Natives could not afford to purchase the houses and remained tenants.

The By-Laws further provided for the standards of houses especially that houses were only to be constructed after approval of housing plans, to be well ventilated and have inflammable roofing.⁷⁸

With regards to water provision, every house was supposed to have one closet of water for every 15 persons.⁷⁹

The municipality was obliged to ensure that all hospitals, schools and asylums were provided with automatic hose reels for fire extinguishing purposes, and constant and adequate supply of portable water.⁸⁰ Roads and streets were to be well maintained in good order.

As for public buildings, the by-laws provided that there were to be water and urinal closets for both sexes. With regards to water provision. The by-laws

⁷⁸ Section 60.

⁷⁹ Section 144(1).

⁸⁰ Section 5(1).

provided for one water closet for 200 people, with a minimum of one for each sex.⁸¹

4.2.5 Public Health By-Laws of 1949

The bye-laws comprehensively addressed the issue of sanitation within the municipality, housing and water supplies. As a starting point, they prohibited nuisance within the city of Bulawayo. Nuisance was defined as including dirty houses, the occupation of premises without proper, sufficient and wholesome supply of water or places where there was collection of water which may serve as breeding places for mosquitoes.⁸² Where there was evidence for existence of nuisance, the council was empowered to issue a notice for the abatement of the nuisance on the person in occupation of such premises or the owner thereof. The abatement notice specified the work which was to be executed by the occupier or owner for the purposes of abating or preventing the recurrence of the nuisance.⁸³

Whenever public buildings were proved not to be fit for human habitation, or to be in a state of dilapidation or defective construction as to cause or spread of infectious diseases or to be injurious to health, council was empowered to give notice for the execution of work to prevent or remedy the situation.⁸⁴ The council

⁸¹ Section 144.

⁸² Section 7.

⁸³ Section 8.

⁸⁴ Section 9.

was also empowered to order demolition of such buildings in the interests of health.⁸⁵

The keeping of swine, sheep, cattle or goats was prohibited within the municipality.⁸⁶ The keeping of pigeons within the municipality in such a manner as to cause nuisance was also prohibited.⁸⁷

Section 16 provided for sanitary conveniences and removal of refuse. Owners of buildings or premises used as dwellings were tasked to provide proper and sufficient water closets and urinals. One closet of water was to be provided for 8 persons. Latrines within public buildings or premises were to be reasonably convenient, with a minimum of one latrine for each sex.⁸⁸ Sanitary entrances were also to be clearly screened for example, men and women. Given the fact that the by-laws were enacted during the colonial era where racial divide was embraced, section 24 of the bye-laws prohibited Europeans from using the same sanitary convenience as Asiatics, Natives or Coloured people.

The municipality was further tasked to ensure proper drainage. Another obligation for the municipality was the provision of properly maintained recreation and sports grounds.⁸⁹ Under the by-laws, refuse was to be collected by the council on a daily basis. However, council was given the discretion to consider

⁸⁵ Section 10.

⁸⁶ Section 14.

⁸⁷ Section 14(5).

⁸⁸ Section 19.

⁸⁹ Section 19(iii).

whether or not daily refuse collection and disposal was feasible but a minimum of bi-weekly removal, collection and disposal of refuse was provided for.⁹⁰

The by-laws prohibited the establishment of refuse dumps within 100 yards from any street, any dwelling or any building for human habitation.⁹¹ Council was also to take adequate measures for the prevention of breeding of flies.⁹²

With regards to housing and housing standards, the by-laws provided that every room was to be provided with unobstructed light, proper ventilation and not to be overcrowded.⁹³ Overcrowding was defined to be a situation where the sleeping accommodation of any dwelling was insufficient so as to allow persons of opposite sex over the age of 10 years, not being husband and wife, to sleep in the same room.⁹⁴

Every dwelling was supposed to have a bathroom, each suitably placed in a separate compartment and readily accessible to all occupants.⁹⁵ However, the by-laws did not address sex implications with regards to the provision of baths.

With regards to water supply, council was tasked to ensure that in every dwelling, proper, sufficient and wholesome water supply was to be made available,

⁹⁰ Section 35.

⁹¹ Section 35(1).

⁹² Section 35(2).

⁹³ Part IV of the bye-laws.

⁹⁴ Section 45.

⁹⁵ Section 47.

adequate and readily accessible at all the times. Water supplies for domestic purposes were also to be prevented from pollution.⁹⁶

4.2.6 Bulawayo Street Food Vendors By-Laws of 1963

The by-laws prohibited street trading in food without payment of fees to council and written authority granted to occupy a trading stand.⁹⁷ All stands for food trading were to be always kept clean and well ventilated. Cooking utensils were to be well cleaned. The by-laws further provided for the inspection of food stands by the Council Health Inspector for the enforcement of health standards within food stands.⁹⁸

4.3 Kadoma City

4.3.1 Health and Sanitation By-Laws of 1932

They prohibited the excavation, sinking or digging of wells/boreholes without a written permission from Council. The application for the written permission from Council was supposed to indicate the property upon which the well/borehole was to be sunk and the use of the water drawn. If the water was intended for domestic purposes, Council was empowered to certify.

⁹⁶ Section 62.

⁹⁷ Section 3.

⁹⁸ Section 18.

4.3.2 The Gatooma Municipal Electricity Supply Regulations By-Laws of 1932

Under the by-laws, electricity was to be supplied upon a written contract with Council.⁹⁹ Only Council was empowered to supply electricity and re-sale of electricity was prohibited.¹⁰⁰ Council reserved the right to disconnect electric energy especially where there was non-payment for services rendered.¹⁰¹ Consumers were prohibited from increasing the number of lamps or using larger heating appliances than those that were originally installed by Council.¹⁰²

4.3.3 Dog Licensing By-Laws of 1928

The by-laws regulated the keeping and registration of dogs within the municipality. Owners of dogs were to pay a yearly license and to ensure that the dogs were vaccinated for health reasons.

4.3.4 Street By-Laws of 1945

They prohibited the planting of trees or fence within the municipality as to pose a danger to traffic. Council was empowered to direct the owner or occupier of the property on which there were dangerous trees or fence to cut down the trees or lower or alter the fence. Failure to abide by such a Council notice was criminalized.

⁹⁹ Section 8.

¹⁰⁰ Section 9.

¹⁰¹ Section 10.

¹⁰² Section 27.

4.3.5 Noxious Weeds By-Laws of 1963

The Bye-Laws prohibited the growing or existence of noxious weeds within the municipality. Noxious weeds were defined as any vegetation dangerous or injurious to animal and human good.

4.3.6 Taxicab and Public Vehicle By-Laws of 1953

As read with the Traffic By-Laws of 1953, the By-Laws regulated the operation of taxis within the municipality and made provisions relating to the operation of public transport within the municipality. They also established designated parking and drop-off points within the municipality.

4.3.7 Speed Limit Resolution of 1972

It set the maximum speed within the municipality to 25 miles per hour.

4.3.8 Vehicle Licence and other fees By-Laws of 1973

They mandated the licensing of vehicles used or parked within the municipality.

4.3.9 Noise and Nuisance By-Laws of 1971

The By-Laws prohibited noise and nuisance within the municipality. Nuisance was defined to include illegal dump sites, dwellings unfit for human habitation, soiling of pavements and the collection of water so as to become breeding area of mosquitoes.

4.3.10 Protection of Lands By-Laws of 1971

The By-Laws penalized land degradation and land pollution.

4.3.11 Well and Borehole By-Laws of 1976

The By-Laws mandated owners or occupiers of premises to obtain authorization from Council before drilling boreholes or sinking wells within the municipality.

4.3.12 Restriction in Use of Roads By-Laws of 1976

The By-Laws prohibited obstruction of roads and use of roads by animal-drawn modes of transport.

5. THE CURRENT LEGAL FRAMEWORK

5.1 The 2013 Constitution

The adoption of the (new) Constitution signified the dawn of a new era with regard to the protection, promotion and fulfilment of fundamental rights and freedoms in Zimbabwe.¹⁰³ The Constitution contains some improvements in relation to the realization of fundamental rights and freedoms. In the context of women and girls, the Constitution provides a historic bridge between the past of extreme marginalization and exclusion, and a future founded on equality of both genders. It is therefore a transitional constitution and one which establishes a new order in Zimbabwe, an order in which all persons regardless of gender and sex are equal in all aspects of life.

As a starting point, unlike the previous Lancaster House Constitution which only guaranteed civil and political rights, the Constitution further embodies socio-

¹⁰³ The new Constitution was adopted through a referendum held in April 2013. It received presidential assent on 22 May 2013. The Constitution as a whole document came into force on 22 August 2013. Section 2 provides for constitutional supremacy.

economic and cultural rights, collective rights and universal equality measures as justiciable rights.¹⁰⁴

Of particular importance to the mission are the following provisions:

5.1.1 Founding Values and Principles

The founding values and principles underlying the Constitution include respect for fundamental human rights and freedoms, recognition of equality of all human beings, gender equality, good governance and the recognition of the rights of persons with disabilities, women and children.¹⁰⁵ Given the fact the founding values and principles are non-derogable pronouncements which must be applied by courts of law when resolving legal disputes, the Constitution is really commendable to this extent the provisions on gender equality and the recognition of the rights of women. It can be submitted that there is at least recognition of the equal worth of all human beings regardless of gender and sex. Thus the Constitution embraces gender informed inclusion from the start.

With regards to tiers of government, urban councils are provided for and tasked to represent and manage the affairs of people in urban areas.¹⁰⁶ Read together with the provision on good governance, it can be discerned that urban councils

¹⁰⁴ See R Kayess & P French 'Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 *Human Rights Law Review* 1 5 for the modern day conceptualization of the generation of human rights.

¹⁰⁵ Section 3(1)(c), (f), (g), (h) and (i) of the Constitution.

¹⁰⁶ Section 5.

are tasked to govern the affairs of urban communities whilst paying due attention to the tenets of good governance.

5.1.2 National Objectives

Furthermore, under the general rubric of national objectives, the Constitution provides that all institutions and agencies of government must adopt laws and policies that lead to establishment, enhancement and promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives.¹⁰⁷ The Constitution further provides for gender balance, the promotion of full participation by women in all spheres of Zimbabwean society, the need to take practical measures to rectify gender discrimination and imbalances resulting from past practices and policies,¹⁰⁸ self-reliance,¹⁰⁹ best interests of the child principle,¹¹⁰ food security,¹¹¹ the need to take measures to enable every person to have access to shelter within the limits of the resources available to the State,¹¹² the need to take practical measures to ensure provision of basic, accessible and adequate health services,¹¹³ the promotion of good

¹⁰⁷ Section 8.

¹⁰⁸ Section 17.

¹⁰⁹ Section 13(1)(a).

¹¹⁰ Section 19(1).

¹¹¹ Section 15.

¹¹² Section 28. According to the case of *Social and Economic Rights Action Centre (SERAC) v Nigeria* (2001) AHRLR 60 (ACHPR), the African Commission on Human and Peoples' Rights ruled that the right to shelter obliges governments not to destroy the housing of citizens.

¹¹³ Section 29.

governance through policies and legislation aimed at developing efficiency, competence, accountability, transparency, personal integrity and financial probity,¹¹⁴ the need for inclusion and accessibility by persons with disabilities to buildings and amenities available to the public¹¹⁵ as part of the national objectives.

Although national objectives are normally not justiciable¹¹⁶ under the human rights discourse, it can be submitted that they are justiciable under the Constitution. The Constitution employs peremptory language in the outline of the national objectives.¹¹⁷ The national objectives are a framework for oversight in Parliament. They create obligations on the part of government and offer a platform for the scrutiny of government performance.

In addition, the national objectives assist in the formulation and implementation of policies, be it at a local or national level. The Constitution therefore positively impacts the livelihoods of women and girls in urban areas by specifically making provisions for the need to address gender imbalances resulting from past laws, practices and policies, among other things.

¹¹⁴ Section 9.

¹¹⁵ Section 22.

¹¹⁶ Justiciability refers to the right of citizens to seek remedies from the courts of law once there is breach of the provisions.

¹¹⁷ As an example, Section 28 provides that the State must take reasonable legislative and other measures, within the limits of the resources available, to enable every person to have access to adequate shelter.

5.1.3 Specific rights in context

Chapter 4 of the Constitution is the Declaration of Rights and provides for horizontal and vertical application with regards to the duty to respect, protect, promote and fulfill the rights and freedoms provided for.¹¹⁸

Section 51 provides for the right to human dignity in both private and public life. Closely linked to the provision on human dignity are the rights to freedom from all forms of violence,¹¹⁹ right to privacy,¹²⁰ the right to access to information in the interests of public accountability¹²¹ and the right to freedom from inhuman and degrading treatment.¹²² The cumulative effect of such provisions in the present context is that urban councils are under a constitutional mandate to ensure full and effective participation of urban communities in the council affairs by availing requisite information on policies and by-laws, not to expose urban communities to any form of violence and not to treat the communities in inhuman or degrading manner, for example demolition of houses without the provision of alternative accommodation.

Section 74 further buttress this position by prohibiting arbitrary evictions or demolitions of homes without a court order made after the consideration of all

¹¹⁸ According to I Currae and J de Waal 'The Bill of Rights Handbook' (2005), horizontal application of human rights means that private actors have a duty to respect, promote, protect and fulfill rights whilst vertical application imposes the same obligations on the State.

¹¹⁹ Section 52(a).

¹²⁰ Section 57.

¹²¹ Section 62(1).

¹²² Section 53.

relevant circumstances. As compared to the past constitutional provisions, the Constitution recorded a positive improvement by requiring judicial oversight before evictions or demolitions of homes can be carried out. Urban councils therefore have to act within the tenets of the Constitution when making decisions on demolitions. In the same breadth, the Constitution provides for the right to administrative justice.¹²³ The right to administrative justice means that people have a legal entitlement to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and procedurally and substantively fair. The right to administrative justice in the present context is complemented by Section 265 which mandates provincial and local governments to ensure good governance by being effective, transparent, accountable and institutionally coherent.

It can be submitted that in the context of conduct by urban councils, any policies or measures taken have to be lawful and fair by standard. Therefore, failure by the urban councils to act in accordance with the tenets of administrative justice is rendered unconstitutional in the circumstances.

Furthermore, the non-discrimination clause in the Constitution specifically includes sex, gender and disability as prohibited grounds of discrimination.¹²⁴ Thus women and men have the right to equal treatment, including equal opportunities.¹²⁵ The section also provides for affirmative action¹²⁶ and this

¹²³ Section 68.

¹²⁴ Section 56(3).

¹²⁵ Section 56(2).

indeed represents a paradigm shift for both substantive and formal equality.¹²⁷ In the Zimbabwean context, affirmative action programmes in favour of women and girls are one of the measures ideal to address past injustices. By way of example, African women could not own or lease houses in urban areas during the colonial era. Such past injustice can as well be addressed by affirmative action programmes in favour of women at council level with regards to allocation of urban houses.

Similarly, section 71 on property rights makes provision for ownership, lease, transfer, use or hypothecation of all forms of property by any person in Zimbabwe.¹²⁸ Despite the fact that the provision is subject to claw back clauses,¹²⁹ women are entitled to same proprietary rights as men. Past laws, policies and practices which stripped African women of the right to own houses are therefore rendered unconstitutional in the circumstances.

With regards to environmental management, the Constitution guarantees the right to an environment that is not harmful to health or well being of individuals.¹³⁰ The Constitution further mandates the protection of the

¹²⁶ Section 56(6).

¹²⁷ Formal equality simply means the treatment of all human beings as equals while substantive equality entails that in some cases, human beings have to be treated unequally so as to achieve equality. Affirmative action is one of the common examples of substantive equality.

¹²⁸ Section 71(2).

¹²⁹ Section 71(3).

¹³⁰ Section 73. The right to a safe and accessible environment is a universal equality measure or fourth generation rights which the Constitution guarantees.

environment through prevention of pollution and ecological degradation, and the promotion of conservation.¹³¹ By way of an example, the Constitution mandates the implementation of environmental health issues and implementation of environmental health related laws and policies. In a way urban councils are therefore constitutionally mandated to ensure effective management of the environment in the interests of health, sanitation and the general well being of urban communities.

Access to access to health care services is also provided for.¹³² Read together with the provisions on the right to safe, clean and potable water,¹³³ there is at least guarantee to access to water and sanitation for urban communities. This is a remarkable improvement as compared to previous constitutional provisions which did not guarantee the rights to access to health care services, water and shelter.

More importantly though to this mission is the dedicated provision on the rights of women. For the first time in the constitutional history of Zimbabwe, the Constitution now provides for full an equal dignity of women and invalidates all laws, customs, traditions and practices that infringe on the rights of women.¹³⁴ This is a paradigm shift and a remarkable improvement with regards to the need to address sex and gender informed and affected exclusion arising from the

¹³¹ Section 73(1)(b).

¹³² Section 76(1).

¹³³ Section 77(a).

¹³⁴ Section 80.

historical set up in Zimbabwe. The constitution also establishes the Zimbabwe Gender Commission¹³⁵ which is primarily tasked with monitoring issues concerning gender equality supplements this constitutional paradigm shift.

Urban local authorities are now constitutionally mandated to represent and manage the affairs of people in urban areas.¹³⁶ The urban councils, together with the provincial and metropolitan councils,¹³⁷ are constitutionally mandated to ensure development and to embrace effective administration in their areas of jurisdiction.¹³⁸ Section 264 provides for devolution of governmental powers and responsibilities. Under devolution, governmental powers and responsibilities can be transferred to or devolved to provincial, metropolitan and local councils.¹³⁹ Devolution therefore leads to autonomy of the councils.

On their part, employees of provincial and local authorities are mandated not to act in a partisan manner, not to further interests of any political party, not to cause prejudice to the interests of any political party and not to violate fundamental rights and freedoms enunciate in the Constitution.¹⁴⁰

As has been indicated above, the 2013 Constitution scored a lot of success with regards to addressing gender inequalities. To this extent, the Constitution cannot

¹³⁵ Section 245.

¹³⁶ Section 274.

¹³⁷ Sections 268 & 269.

¹³⁸ Section 276(2)(a).

¹³⁹ Section 264.

¹⁴⁰ Section 266.

be described as a law that is founded on continuities of inequalities but is rather a representative of a new paradigm in Zimbabwe.

Be that as it may, it can be submitted that the major weakness of the Constitution is that it makes the realization of socio-economic rights including the rights to shelter and health contingent upon resources that are available to the state. The Constitution does not underscore that the state has a duty to ensure the progressive realization of such rights.¹⁴¹ This is therefore a weakness that needs to be addressed. Experience in Zimbabwe has shown that the state always hides behind lack of resources for its failure to implement its constitutional obligations. Equally, local authorities find an easy escape route in the event that they fail to provide housing, water, basic sanitation and other urban services.

5.2 National Laws

5.2.1 The Urban Councils Act [Chapter 29:15]

Having been enacted in 1995, this is the major Act that specifically makes provision for Urban Councils and confers powers and imposes duties upon the Councils. The Act applies to every city or city council, municipality or town councils.

Councils are statutorily mandated with the provision and maintenance of water supplies,¹⁴² the collection, conveyance, treatment and disposal of sewerage or

¹⁴¹ Progressive realization of human rights means that the State is under an obligation to take concrete and targeted measures that are aimed at continuously improving the realization of the rights by its subjects

¹⁴² Section 183.

storm water,¹⁴³ the rendering of any service in connection with the sanitation of premises,¹⁴⁴ financing of water-borne sanitation and sanitary fitting at the request of owners of premises,¹⁴⁵ owning and supply of public electricity supply,¹⁴⁶ street lighting,¹⁴⁷ roads and bridges, hospitals and clinics, ambulances, maternity and child welfare services, housing issues and the making of by-laws, among other functions.¹⁴⁸ For the services provided by Councils, owners of the land in urban areas are charged.¹⁴⁹

The Act further makes provision for Standing Committees, the mandatory one being the Health and the Housing Committee,¹⁵⁰ and the Environmental Management Committee.¹⁵¹ Special committees are also provided for with regards to Council operations.¹⁵²

The Act however is gender neutral and is not in tandem with the provisions of the Constitution to this extent. Women participation in council issues is not

¹⁴³ Section 168.

¹⁴⁴ Section 177(1).

¹⁴⁵ Section 178.

¹⁴⁶ Section 216.

¹⁴⁷ Section 217.

¹⁴⁸ For detailed provisions on powers of Councils, see Second Schedule of the Act.

¹⁴⁹ Section 218.

¹⁵⁰ Section 96(3). The Committee is responsible for health and housing matters relating to the Council.

¹⁵¹ Section 96(3). The Committee is responsible for environmental matters relating to the Council.

¹⁵² Section 100.

specifically provided for. Thus there is no special mention of gender in the composition of Councils.¹⁵³ In the same token, the composition of Standing Committees does not give reference to the need for women involvement in such crucial committees.

The Act further provides that Councils can only apply for loans with the approval of the Minister of Local Government. Councils can therefore only access loans with the Minister's blessings.

As for service provision by Councils, the Act does not provide for any mechanisms to ensure implementation of the Act.

5.2.2 The Housing Standards Control Act [Chapter 29:08]

The Act provides for the repair, demolition or closure of buildings of an unsatisfactory standards, the abatement of overcrowding of dwellings, the control of harmful use or occupation of premises and the establishment of Housing Courts¹⁵⁴ which are tasked to resolve housing disputes.

Local authorities may make an application to the Housing Court for the repair, demolition or closure of buildings of an unsatisfactory standard. In judging the unsatisfactory nature of buildings in question, water supplies, stability, personal washing facilities, drainage and latrines, freedom from damp, termite or other

¹⁵³ Section 39 only empowers the Minister of Local Government, Public Works and National Housing to determine the number of Councilors who compose a Council, being not less than 6 in number.

¹⁵⁴ According to section 4 of the Act, every Magistrates Court shall be a Housing Court for every authority area within the area of its jurisdiction.

insect infestation and disposal of waste, are considered, among other considerations.¹⁵⁵

Be that as it may, the Act is silent on the alternatives available to occupants of the dwellings that are demolished or closed due to unsatisfactory standards. This is a weakness that needs to be addressed. To this extent, the Act is not in tandem with the Constitution which provides that persons can only be evicted or have their homes demolished following a court order made after the consideration of all relevant circumstances.¹⁵⁶ Surely, the availability of alternative accommodation is a relevant circumstance to be considered before abatement

Furthermore, the specific needs of persons with disabilities are not given reference to in the judgment of the standards of buildings. What this means is that a number of dwellings may pass the standard test when in fact they will be unsuitable to persons with disabilities.

With regards to overcrowded dwellings, the Act provides for applications for abatement orders by local authorities.¹⁵⁷ A dwelling is deemed to be overcrowded if the number of persons sleeping in the dwelling is such that any two of such persons:

- (i) being persons ten years or more of age of opposite sex; and*
- (ii) not being persons living together as husband and wife;*

¹⁵⁵ Section 23.

¹⁵⁶ Section 74 of the Constitution.

¹⁵⁷ Section 36.

*must sleep in the same room;*¹⁵⁸

The Act further provides that where the latrines in dwellings are not linked to a water-borne sewerage system, one latrine should not be shared by more than 8 people.¹⁵⁹ However, just like demolitions or closure of dwellings discussed above, the Act does not make provisions as to what will happen to the occupants affected by abatement orders. To worsen the situation, the Act provides that no abatement order shall be invalid and no person shall be excused from compliance by reason that alternative accommodation is not available. Local authorities are also not liable to provide occupants affected by abatement orders with alternative accommodation.¹⁶⁰

As for water supplies, the Act provides that in every dwelling, there shall be adequate supply of potable water, not less than one water point for 12 occupants.¹⁶¹ Furthermore, the Act does not embody any specific provisions addressing women and girls.

5.2.3 The Regional, Town and Country Planning Act [Chapter 29:12]

The Act provides for the planning of regions, districts and local areas with the aim of conserving or improving the physical environment, promoting health, safety, order, amenity, convenience or general welfare and the protection of urban and rural amenities.

¹⁵⁸ Section 43.

¹⁵⁹ Paragraph 2 of the First Schedule.

¹⁶⁰ Section 86.

¹⁶¹ Paragraph 3 of the First Schedule.

The Act however does not place clear obligations on local authorities or the State at large with regards to the promotion of health, safety and general welfare of both urban and rural communities. It simply provides for Regional Planning Council tasked with ensuring co-ordinated development of regions.¹⁶² Development has been defined to include renewal, maintenance or improvement of any existing public utility or the carrying out of building operations in connection with the use of any land.¹⁶³ However, there is no specific mention of women's participation in the execution of duties by the Regional Planning Councils.

With regards to roads, local authorities are empowered to make applications to the Administrative Court for an order vesting ownership in the authorities of land comprising any road.¹⁶⁴ However, local authorities in Zimbabwe have failed to maintain roads in good state.

5.2.4 The Provincial Councils and Administration Act [Chapter 29:11]

The Act makes provision for Provincial Councils with the primary function being to ensure development of provinces (of which urban councils are part of), the renewal and evaluation of the implementation of development plans and policies in the province.¹⁶⁵ Of interest is the constitutional position that all women

¹⁶² Section 3-5.

¹⁶³ Section 22.

¹⁶⁴ Sections 55 & 56.

¹⁶⁵ Section 13.

members of the National Assembly from the province concerned¹⁶⁶ constitute members of the concerned Provincial Council.¹⁶⁷ At least, women participation in Provincial Councils is guaranteed to an extent. However, there is an urgent need to align the Act with the Constitution-a reading of the Act shows that women participation in Provincial Councils is not provided for. Nonetheless, Section 2 of the Constitution is the guiding provision (supremacy of the Constitution).

With reference to access to housing in urban areas, succession laws are also of importance:

5.2.5 Succession Laws

The Administration of Estates Act [Chapter 6:01], the Deceased Persons Family Maintenance Act [Chapter 6:03] and the Deceased Estates Succession Act [Chapter 6:02] are relevant especially where access to housing is concerned. The Administration of Estates Act provides for the consolidation and amendment of law relating to administration of deceased estates. Thus the Act makes provisions for the administration of estates under testate succession¹⁶⁸ and intestate succession.¹⁶⁹ On its part, the Deceased Persons Family Maintenance Act makes provisions for the maintenance out of the estate of a deceased person for members of his/her family. Of particular importance to the research is Section 3A of the Deceased Estates Succession Act which provides that the surviving spouse

¹⁶⁶ According to section 124(1)(b) of the Constitution, 6 women from each province.

¹⁶⁷ Section 268.

¹⁶⁸ Testate succession means succession or inheritance in terms of a Will.

¹⁶⁹ Intestate succession means inheritance where there is no Will.

of a person who dies wholly or partly intestate¹⁷⁰ is entitled to the house or other domestic premises in which the spouse live immediately before the deceased's death, and household goods and effects.

The following are the Acts that deal with general health issues, security and well being of individuals:

5.2.6 The Public Health Act [Chapter 15:09]

Sections 7 and 10 of the Act mandate local authorities to appoint medical officers of health and health inspectors. Local authorities are further tasked to maintain cleanliness and prevent nuisances in their area of jurisdiction,¹⁷¹ to prevent or remedy danger to health arising from unsuitable dwellings,¹⁷² to furnish water supplies and to maintain existing water supplies in good order.¹⁷³ The Act further makes provision for the demolition of dwellings unfit for human habitation.¹⁷⁴

The sale of unwholesome, diseased or contaminated food or drinks is prohibited.¹⁷⁵ Just like its predecessor, the Act mandates local authorities to take

¹⁷⁰ Without a Will.

¹⁷¹ Section 83.

¹⁷² Section 84.

¹⁷³ Section 64.

¹⁷⁴ Section 92.

¹⁷⁵ Section 69.

measures for the control, prevention and suppression of infectious diseases and formidable epidemic diseases.¹⁷⁶

5.2.7 Civil Protection Act [Chapter 10:06]

The Act provides for the establishment of the office of the Director of Civil Protection, the National Civil Protection Committee¹⁷⁷ and a National Civil Protection Fund,¹⁷⁸ for the purposes of civil protection in Zimbabwe.¹⁷⁹ The National Civil Protection Committee advises and assists in the planning and implementation of measures for the maintenance and effective operation of civil protection.

5.2.8 The Social Welfare Act [Chapter 17:06]

This Act provides for the granting of social welfare assistance to destitutes or indigent persons¹⁸⁰ and their dependents. Under the Act, indigent persons include the old-aged, orphans and the ‘physically and mentally handicapped.’ Indigent persons are eligible to receive social welfare assistance from the Department of Social Welfare.¹⁸¹ The Act however does not embody implementation measures.

¹⁷⁶ Section 22.

¹⁷⁷ Section 4.

¹⁷⁸ Section 29.

¹⁷⁹ Under the Act, civil protection means any service provided or measure taken for the purposes of preparing for, guarding against or dealing with any actual or potential disaster.

¹⁸⁰ According to Section 2, a destitute or indigent person has been defined as any person who lacks means of subsistence.

¹⁸¹ Section 6 of the Social Welfare Act. Social welfare under the Act include cash, food, clothes and pauper burials.

5.2.9 The Disabled Persons Act [Chapter 17:01]

The Act deals exclusively with the concept of disability in Zimbabwe. However, the Act is not a human rights document in that it does not confer any rights to persons with disabilities or impose any obligations on the State. The Act thus does not address the provision of urban services to persons with disabilities. Furthermore, the Act does not embody any special provisions for women with disabilities who are doubly marginalised firstly as women and secondly as persons with disabilities.

The Act establishes the National Disability Board¹⁸² which is empowered to issue and serve adjustment orders to ensure access by all persons with disabilities to public buildings and services. The Act states that where the National Disability Board considers that any premises to which members of the public are ordinarily admitted or any premises in which services or amenities are ordinarily provided to members of the public are inaccessible to PWDs, it may serve an adjustment order requiring the owner of the premises or the provider of the service to undertake action at his/her own expense to secure reasonable access by persons with disabilities.¹⁸³ Although the Act embodies accessibility provisions, it can be submitted that many urban services are not accessible to persons with disabilities.

¹⁸² Section 4 of the Disabled Persons Act.

¹⁸³ Sec 7 of the DPA.

5.2.10 The Criminal Law (Codification and Reform) Act [Chapter 9:23]

It enumerates the various criminal offences in Zimbabwe. Together with the Domestic Violence Act [Chapter 5:06], domestic violence is criminalized. Domestic violence has been defined as including any unlawful act, omission or behavior which results in death or the direct infliction of physical, sexual or emotional abuse; harassment or intimidation.¹⁸⁴

With regards to general environment issues, the following Acts are to be noted:

5.2.11 The Environmental Management Act [20:27]

The Act provides for the protection of the environment, prevention of pollution and environmental degradation, and the Establishment of the Environmental Management Agency. The Act has to be construed as an addition to and not a substitute for any other law that is not consistent to its provisions.¹⁸⁵

Of paramount importance is that the Act provides for environmental rights including the right to a clean environment that is not harmful to health,¹⁸⁶ the right to prevention of pollution and environmental degradation and an ecologically sustainable management and use of natural resources. Environment management has to place people and their needs at the forefront¹⁸⁷ and effective

¹⁸⁴ Section 3.

¹⁸⁵ Section 3.

¹⁸⁶ Section 4(a).

¹⁸⁷ Section 4(2)(b).

participation by all.¹⁸⁸ In this angle, right to participation in environmental issues is guaranteed.

The Act establishes the National Environment Council (the Council),¹⁸⁹ the Environmental Management Agency (the Agency)¹⁹⁰ and the Environmental Management Board (the Board).¹⁹¹ Of interest are the functions of the Agency which include the formulation of standards on water, air and waste management, among other things.¹⁹² The Agency therefore formulates standards to ensure a clean, safe and healthy environment. In this respect, the Act is in tandem with the Constitution which provides for the right to an environment that is not harmful to health or well-being.

Furthermore, the Act criminalises water pollution and discharge of wastes in any manner as to cause pollution to the environment or ill health to any person.¹⁹³ Local authorities are mandated to have environmental action plans for the areas under their jurisdiction.¹⁹⁴

¹⁸⁸ Section 4(2)(c).

¹⁸⁹ Section 7. The Council is tasked to advise on policy formulation and to promote co-operation among public departments, local authorities and other organizations engage in environmental protection programmes.

¹⁹⁰ Section 9. The Agency is primarily tasked to formulate quality standards for air, water and noise, among other things.

¹⁹¹ Section 11. The Board controls the operations of the Agency.

¹⁹² Section 10(1)(a).

¹⁹³ Section 57 & 70.

¹⁹⁴ Section 95.

Furthermore, the Act does not embody provisions specifically addressing the need for women participation in environmental issues.

The following laws address the issue of transportation and roads:

5.2.12 The Urban Areas (Omnibus Services) Act [Chapter 29:14]

The Act makes provision for the establishment and operation of omnibus services within urban areas or between 2 or more urban areas. Where there is no omnibus provided or where there is inadequate provision, the Minister of Transport and Infrastructural Development may enter into an agreement with any person for the establishment and operation of an omnibus service. If the omnibus is to operate entirely within the jurisdiction of an Urban Council, the Council concerned has to approve such operation of omnibus.¹⁹⁵

5.2.13 The Municipal Traffic Laws Enforcement Act [Chapter 29:10]

Urban Councils are empowered to pass by-laws for the prevention of obstruction by means of a vehicle on any road or any other public place. Councils failing to implement the Act resulting in disorder and dangerous driving especially in high density suburbs, obstruction of emergency vehicles thereby affecting women who are the worst affected in emergency situation as compared to men.

¹⁹⁵ Section 3.

5.2.14 The Road Act [Chapter 13:18]

Under the Act, Councils are responsible for the planning, design, construction, maintenance, upgrading and management of urban roads within their areas of jurisdiction.¹⁹⁶

With regards to the supply of electricity, the Electricity Act is the major law as discussed below:

5.2.15 Electricity Act [Chapter 13:19]

It provides for the establishment of the Zimbabwe Electricity Regulatory Commission (the Commission) and the repeal of the Electricity Act [Chapter 13:05]. Under the Act, the Commission's functions include to ensure maximum access to electricity services in Zimbabwe, to ensure an adequate supply of electricity to consumers, to ensure that prices charged for electricity are fair in light of the need for electricity supply and to ensure safety, security, reliability and quality service in the production and delivery of electricity to consumers.¹⁹⁷

The prices or tariffs for the supply of electricity are approved by the Minister of Energy.¹⁹⁸ Consumer protection standards for example customer complaints handling standards and procedures for disconnecting non-paying customers are provided for.¹⁹⁹ Electricity abstraction and diversion attract criminal sanctions

¹⁹⁶ Section 5(2). An urban road is defined as a road within an urban Council area.

¹⁹⁷ Section 4 of the Act.

¹⁹⁸ Section 53.

¹⁹⁹ Section 57.

under Section 60A of the Act. Illegal reconnections, the damaging of lamps or other electric apparatus provided for the convenience or safety of the public are criminal offences attracting a minimum of one year imprisonment and a maximum of five years imprisonment.²⁰⁰ It has to be noted that municipalities are no longer tasked to supply electric energy to consumers. The duty to supply electricity lies with the Zimbabwe Electricity Regulatory Commission, through the Zimbabwe Electricity Supply Authority and the Zimbabwe Electricity Transmission and Distribution Company.

On its part, the Water Act addresses the supply of water;

5.2.16 The Water Act [Chapter 20:24]

Under the Act, all water vests in the President. The Zimbabwe National Water Authority established under the Zimbabwe National Water Authority Act of 1998 is responsible for water supply, be it to municipalities or other authorities. The Act confers functions on the Minister of Natural Resources Management which include to ensure the availability of water to all citizens and to take measures to prevent and control water pollution.²⁰¹ The Act further provides that water management has to take into account the protection, conservation and sustenance of the environment.²⁰²

²⁰⁰ Section 60A.

²⁰¹ Section 6(b).

²⁰² Section 67.

N.B It is also important to note that across the divide, the Legal Age of Majority Act of 1982 made important inroads with regards to women emancipation in Zimbabwe. The Act defines a major as any person of or above the age of 18 years. Previously, women were not capacitated to own property for example, whilst unassisted by men. The Act therefore capacitated women to a large extent with regards to legal capacity.

6. CURRENT BY-LAWS

6.1 Harare City

The following By-Laws address basic sanitation and environment conservation in general:

6.1.1 Anti-Litter By-Laws of 1986 [SI 158/1986]

The By-Laws aims to ensure a clean environment in the city and provides for penalties in the event of throwing litter in undesignated dump sites.

6.1.2 Control of Vegetation and Waste Material By-Laws of 1982 [SI 704/1982]

The By-Laws prohibit unauthorized cutting down of trees, unauthorized urban farming and unauthorized dumping of waste material within the city. The Council is tasked with the removal and dumping of waste materials for a fee from owners or occupiers of property or premises in the city.

6.1.3 Waste Management By-Laws of 1979 [SI 477/1979] as amended in 1981 and 1987

Council is mandated to ensure full and effective refuse or waste removal, treatment and disposal.

6.1.4 Public Swimming Bath By-Laws of 1986 [SI 184/186]

Public swimming pools have to be constantly monitored and provided with fresh water bi-weekly for the avoidance of possible water diseases. Users of the public swimming bath have to pay a fee for the use of the services.

6.1.5 Dog Licensing and Control By-Laws of 1993 [SI 79/1993]

Under the By-Laws, every owner of a dog is required to register and pay a fee for the dogs. The owner is also required to ensure periodical vaccination of the dogs for the prevention of diseases like rabbies. For sanitary reasons, dogs have to be kept in fence or durawall.

It has to be noted that the Public Health By-Laws discussed above equally apply at the present moment.

With regards to roads and transport services within the municipality, the following By-Laws are given reference to:

6.1.6 Long Distance Omnibus Station By-Laws of 1984 [SI 360/1984]

The By-Laws regulate the provision of omnibus services within the municipality. Private transport operators with the municipality have to enter into a contract with Council for transport operations within the area of jurisdiction of the Council.

6.1.7 Taxi-Cab (Amendment) By-Laws of 1997

They regulate the operation of taxis within the municipality

6.1.8 Parking By-Laws of 1983 [SI 358/1983]

The By-Laws were amended in 1985 and 1993. They make provision for the establishment of parking areas within the municipality and payment of parking fees to the Council. The By-Laws further prohibit parking of motor vehicles at undesignated parking areas and also prohibits the free movement of vehicle within the municipality.

6.1.9 Roads By-Laws of 1997

The Council is tasked to construct, maintain or repair roads within its area of jurisdiction.

With regards to water supply, access to housing, sewerage services and waste management, the following By-Laws are to be noted:

6.1.10 Water Regulation By-Laws of 1913 and Amendment By-Laws of 1998

The By-Laws mandate the Council to provide adequate, affordable, clean and safe water within the municipality. Council is also empowered to disconnect the water supplies in the event of failure to pay by the consumers. However, no specific quantities of water per household are provided for under the By-Laws.

6.1.11 Well and Borehole By-Laws of 1998 [SI 319/1998]

The By-Laws require a permit from Council for one to sink a borehole or a well within the Municipality. However, the water from the wells or boreholes has to be certified by Council if it is intended for domestic purposes.

6.1.12 Waterworks and Drains By-Laws of 1998

Only the Council is empowered to engage in waterworks. The Council has to ensure proper drainage within the municipality. The By-Laws prohibit the blockage of drains within the municipality.

6.1.13 Incorporated and Local Government Areas By-Laws of 1981 [SI 328/1981]

The By-Laws repealed the law which designated housing into Native Areas and European Areas. Under the By-Laws, former Native Urban Areas were incorporated into and deemed to be part of the Local Government Area. At the present moment, there is no longer classification of urban areas according to race. The By-Laws are complemented by the **Occupation of Council Property (Adoption) By-Laws of 1986 [SI 149/1986]**. These By-Laws address the occupation of Council property and the payment of rentals to Council by the tenants.

6.1.14 Incorporated and Local Government Areas (Rent) By-Laws of 1981 [SI 557/1981]

The By-Laws regulates rentals within the Municipality and also prohibits overcrowding in residential areas. Reference is made to the Housing Standards Control Act [Chapter 29:08] for the definition of overcrowding. Simply put, a

dwelling is deemed to be overcrowded if the number of persons sleeping in the dwelling is such that any two of such persons:

(i) being persons ten years or more of age of opposite sex; and

(ii) not being persons living together as husband and wife;

must sleep in the same room;²⁰³

6.1.15 Incorporated and Local Government Areas (Sewerage) By-Laws of 1981 [SI 558/1981]

Under the By-Laws, Council is tasked with the removal, disposal and treatment of sewerage within the municipality. The Council is empowered to charge a levy to be paid by owners or occupiers of the premises for the services rendered per each month.

6.1.16 Incorporated and Local Government Areas (Waste-Management) By-Laws of 1981 [SI 559/1981]

The By-Laws prohibits the dumping of waste materials on undesignated dumping sites. They further prohibit the establishment of dumping sites within 100 metres from dwellings or streets.

6.1.17 Incorporated and Local Government Areas (Water Charges) By-Laws of 1982 [SI 740/1982] amended in 2000.

Council has an obligation to provide adequate, clean and wholesome water within the municipality and has an entitlement to receive reasonable water charges from the owners or occupiers of the premises supplied with water.

²⁰³ Section 43.

In general, pollution within the municipality is prohibited under the Pollution By-Laws of 1996.

6.2 Bulawayo City

6.2.1 Bulawayo (Sewerage, Drainage and Water) By-Laws of 1980 [SI 390 Of 1980]

The City of Bulawayo shoulders the obligation to ensure adequate supply of water, good drainage system and the removal, disposal and treatment of sewer. The Council can recover the costs for the provision of such services from the owners or occupiers of the premises within the municipality.

6.2.2 Bulawayo (Buildings, Roads and Streets) Amendment By-Laws of 1981 [SI 64 of 1981]

The Road network system has to be kept or maintained in a good state. Streets have to be provided with adequate lighting and public buildings have to be maintained in a good state so as not to pose a danger to the public.

6.2.3 Bulawayo (Roads and Traffic) (Amendment) By-Laws of 1989 [SI141 of 1989]

The By-Laws repealed the Bulawayo (Roads and Traffic) Amendment Bye-Laws of 1983. Together with the Bulawayo (Roads and Traffic) By-Laws of 2001 and the Bulawayo (Roads and Traffic) (Amendment) By-Laws of 2010, the By-Laws mandates the Council to maintain roads in good condition. Obstruction of vehicles within the municipality is also prohibited under the By-Laws.

6.2.4 Atmospheric Pollution Premises (Gas Control Areas and Specified Processes) Amendment By-Laws of 1981 [SI 166 of 1981]

Atmospheric pollution within the municipality is outlawed. Industries which emit gases are supposed to be situated down-wind of residential areas.

6.2.5 Emergency Powers (Family Planning Services) Amendment By-Laws of 1981 [SI 831 of 1981]

Under the By-Laws, Council has to put measures in place to ensure that no-one is denied emergency family planning services. The By-Laws are complemented by the Maternity Assistants (Training) Bye-Laws Of 1980 [SI 641 of 1980]. Under these By-Laws, Council has to embark on training of Maternity Assistants Personnel.

6.2.6 Bulawayo (Abattoir) (Amendment) By-Laws of 1999

They prohibit the operation of Abattoirs within residential areas. Council Health Inspectors are thus tasked to inspect and certify Abattoirs within the municipality.

6.2.7 Urban Councils (Model) (Use and Occupation of Land and Buildings) Adoption of 1995

Hazardous use or occupation of premises and land is prohibited under the By-Laws.

6.3 Kadoma City

6.3.1 Public Health By-Laws

The Bye-Laws mandate the Council to take measures to control and prevent infectious and formidable communicable diseases. They also place an obligation on the Council to provided safe, clean and wholesome water.

6.3.2 Water By-Laws

City of Kadoma is under an obligation to provide adequate and safe water under the Bye Laws. Water supplies also have to be reliable.

6.3.3 Protection of Lands By-Laws

They penalize land degradation especially through sand poaching and the use of land so as to pose danger to human beings and animals within the municipality.

6.3.4 Occupation By-Laws

They provide for the right to occupation of land, dwellings or access to public premises without discrimination.

7. OBSERVATIONS AND CONCLUSION

The report offers an analysis of the current and past legal provisions relating to the provision of urban services by urban municipalities. The urban services under spotlight are housing, water, sanitation, electricity, roads and environmental management in general. Underlying the mission was a need to look at legal provisions that negatively or positively affect urban communities, with special attention to women's and girls' livelihoods.

The report thus covered the historical and current trajectory of the laws in context. With regards to by-laws that address the provision of urban services, the

report addressed both the historical and current by-laws for the cities of Kadoma, Bulawayo and Harare.

Under the historical trajectory, it was indicated that most if not all the laws were racially biased in favour of the European Settlers. Racial discrimination only ended in 1979. On their part, the historical constitutions, including the Lancaster House Constitution of 1979, did not embody socio-economic and cultural rights. The turning point came with the adoption of the 2013 Constitution which embodies a paradigm shift by guaranteeing the rights to shelter, water and access to health care, only to mention but a few.

For the legal provisions, the bulk of the laws directly impose obligations on local authorities to provide adequate and reliable services. However, the bulk of the laws in essence are silent with regards to gender and sex implications, both in their text and spirit. Disability has also been indicated to be a concept not adequately addressed by the legal provisions in question.

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