The present situation in the town of Nakuru (population approx. 250,000), where crop cultivation and livestock keeping are quite common, can best be described in terms of tolerance. However, looking closer at the relevant legislation, the local policies and current practice, one discovers that the situation is still rather confusing.

NATIONAL LEGISLATION

National legislation relevant for urban agriculture, and contradictions between the various documents, abound in Kenya. Some acts – such as the Agriculture Act, the Land Control Act and the Physical Planning Act – offer local authorities the legal power to decide whether or not to allow urban farming. Other acts provide the framework to control the activity. Of these, the most important one is the Public Health Act, which deals with everything that causes “any nuisance or other condition liable to be injurious to health”. Section 118 of this Act defines nuisances in relation to animal keeping. Section 157 deals with crop cultivation and irrigation in relation to the public’s health and also provides the legal backing for prohibiting irrigation with sewage water. And both the Public Health Act and the Water Act contain the legal framework to forbid the use of, for instance, chemicals in urban agriculture.

The most important national legislation in relation to urban agriculture is the Local Government Act. It provides the local authorities with full decision-making power in relation to crop cultivation and livestock keeping within the municipal boundaries. For instance, according to Section 144, a local authority may invoke this Act to temporarily provide its urban dwellers with land for urban agriculture. More specifically, Section 155 states that every municipal or town council “shall have power (...) to engage in livestock and agricultural undertakings”. The same article allows for “the planting of any specified crops by persons for the support of themselves and their families in areas which in the opinion of the (...) council are suffering from or likely to suffer from shortages of foodstuffs”. In other words, if willing, the Nakuru Municipal Council has the legal possibility to engage in or to allow crop cultivation for the (very) poor and in areas where these poor are living.

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

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

According to the new Urban Agriculture By-Laws the cultivation of maize and bananas is forbidden

LOCAL BY-LAWS
Throughout the 1990s, farming in Nakuru was officially illegal but was tolerated by the authorities. The main legal control mechanisms were the Public Health By-Laws of the Municipal Council of Nakuru, for instance those of 1994. These by-laws were based on the Public Health Act, which implied that farming is prohibited if it causes a “nuisance”. It could lead, for instance, to fly and mosquito breeding, disposal of dirty water, pollution of wells and foul smells, some of which can cause diseases such as malaria, typhoid, cholera, diarrhoea, etc. Thus, any farming activity that was either considered to be detrimental to public health and/or safety or that other people complained about was dealt with by the municipal authorities, in casu the Public Health Officer. In practice, this concerned mainly livestock that were confiscated because they were a nuisance to neighbours or to the wider community (e.g. they caused traffic accidents). Dumping livestock waste in the street could also be punished, on the basis of By-law 93, which states that “any person who throws (...) in any street (...) or open space (...) any waste (...) or other refuse, liquid or solid likely to cause nuisance (...) shall be guilty of an offence”. However, the fact that by the end of the 1990s, quite a few of the Nakuru urban livestock keepers did dump (some of) their animals’ waste in the street shows that this ‘offence’ was not likely to be punished.

During the past five years, under the influence of developments elsewhere and sustainable urban planning and development. However, urban agriculture is conspicuously absent in this document.

Having missed this chance and lacking any by-laws dealing with urban agriculture, the Municipal Council decided to ‘borrow’ the existing Kampala City Urban Agriculture Ordinance. Section 2 of this Ordinance recognises that “the production of food in the city benefits health in terms of nutrition, and may have other good effects like creating a green environment”. At the same time, however, “urban agriculture can also create health hazards and damage the environment. Therefore, it must be subject to proper planning and management”. What this “proper planning and management” constitutes is outlined in the rest of the guideline and includes such issues as urban agriculture permits, places where farming is not allowed (e.g. road reserves, green belts, parks) and practices that are forbidden (e.g. no “untreated human waste to be used as manure” and only proper use of chemicals).

In 2004, new Environmental Management By-laws were drafted. These by-laws replaced the 1994 Public Health By-laws and include (again) the prohibition of anything that causes a risk to public health or pollutes the environment. What is surprising about these by-laws, as far as urban agriculture is concerned, is that in Part XVI, which deals with “Greening and Beautification”, they simply forbid any form of urban agriculture. For instance, By-law 180 on the cultivation of food crops states that “any person found growing food crops within the Council’s jurisdiction shall be guilty of an offence”.

Many contradictions can be found among the pieces of legislation, policies

The same applies to livestock keeping: “any person who rears or keeps any animal within the jurisdiction of the Council shall be guilty of an offence” (By-law 176). The latter was reinforced by the recently approved (in January 2005) Control of Stock By-laws of 2004: By-law 4 states that “no person shall keep or graze any stock or horse within the
boundaries of the Municipal Council of Nakuru unless he is in possession of a permit”. This permit, however, is issued only for stock held for slaughter at the Council’s slaughterhouse, stock to be offered for the Nakuru Agricultural Show, or stock that has been “lawfully impounded” (By-law 5). In other words, it is not possible to obtain a permit for livestock kept in the way many Nakurians currently do. Even so, By-law 6 prohibits the construction of any stable or shed or other type of building for keeping livestock, while By-law 7 provides that “no stock shall be kept (...) in or under any portion of any building (...) used for the purposes of human habitation”, so keeping chickens in a room in the house, as some people do, is illegal.

Surprisingly, however, the recently drafted Urban Agriculture By-laws of 2006 do legalise the activity (which in itself is a big step forward). These by-laws are based on the Kampala example in the sense that farming in town is recognised as an important activity for many urban dwellers and that it is in principle permitted. At the same time, the municipality attempts to regulate the sector, for instance by introducing permits that are required by anyone who wants “to practise urban agriculture within the jurisdiction of the Council” (Section 9). Based on our survey data, that would imply some 35,000 permits, which seems like more than could realistically be dealt with in a town the size of Nakuru. It is also rather surprising that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26), provided that chemical inputs for crop cultivation are allowed (Section 26). This seems impossible to control, and the use of chemicals is detrimental in any case because of the risk it poses to the nearby Lake Nakuru (a world-famous national park) with its very fragile ecosystem. Finally, “growing vegetables” (Section 33) is “an offence”, implying that the large majority of the Nakuru crop cultivators (maize growers) violate the law.

Both the Environment Management By-laws and the Urban Agriculture By-Laws fall under the responsibility of the Council’s Department of Environment. In the former by-laws, urban agriculture is illegal, in the latter it is legal. But legal or not, farming in town is not questioned by the Ministry of Agriculture. Nakuru Municipality is just one of the extension divisions of Nakuru District, although assistance is mainly restricted to people who keep cattle (Foeken 2006).

LOCAL POLICIES AND PRACTICE

Before any of these by-laws came into existence and thus urban agriculture was simply illegal, various farming developments were already taking place. Farming has been an omnipresent phenomenon in Nakuru for a long time, and even NGOs officially recognised by the Council have been actively involved in urban farming for some years. One of these NGOs was the Agriculture and Rural Development Programme (ARDP) – under the Catholic Diocese of Nakuru – which provided small-scale farmers with indirect support (training) or direct support (e.g. loans for buying animals, materials for building a water tank for irrigation or a zero-grazing unit for dairy cattle). Although the programme took place mainly in the rural areas, several urban and peri-urban farmers in Nakuru Municipality were also among the participants. In general, the programme was quite successful. As for the (peri-)urban farmers in Nakuru, a comparison of this group with a group of “neighbours” (i.e. farmers not participating in ARDP) showed that the income from selling animals (mainly cattle) and animal products (mainly milk) was much higher among the ARDP farmers (Foeken 2006).

Another NGO is the Ecumenical Church Loan Fund (ECLOF-Kenya), which supports the building of sustainable communities by providing fair credit services for human development in both rural and urban areas. One of its main objectives is “to increase accessibility to credit by the economically active and marginalised micro/small business and farming people of Kenya”. The Nakuru branch was set up in 2001 and three years later it was already serving about 600 members (clients), most of whom were small-scale traders. A small proportion of the members were farmers, who benefited from ECLOF’s financial assistance for expanding or improving their farming activities. Most of these farmers were engaged in dairy farming (zero-grazing) and poultry keeping in the rural areas, however, some of the farmers could be classified as urban farmers, i.e. living and farming within the municipal boundary of Nakuru town. Due to the requirement that the activity must be income generating, all these urban farmers were involved in livestock keeping: three in dairy farming (zero-grazing), one in pig raising and one in poultry keeping. To be eligible, the potential member must be engaged in an income-generating activity (business or farming) and at the same time belong to a registered group. This is usually a group of friends or neighbours with a common interest. Members of a group who are well known to each other are therefore able to co-guarantee one another when applying for a loan. While ECLOF-Kenya encourages already existing groups, the majority of their members came together after learning about ECLOF’s activities. That applies also to the four cases that are described in Foeken (2006). All four are low-income households (including one female-headed household) and they all managed to substantially raise their income by using the loan for expanding their commercial (urban) livestock undertaking. One of the loans was used to improve and expand a pig farming business, an activity usually considered to be one of the least desirable in an urban setting from an environmental point of view.

A third (Danish-sponsored) NGO called SENVINET (Strategic Environmental Network) has been working in Nakuru since the mid-1990s on an environmental-awareness programme, focusing on school children and actively promoting organic farming at schools. It is assisted by extension officers of the Ministry of Agriculture. The impact has not (yet) been studied, but given the fact that in 2000 all secondary schools appeared to use chemicals in their crop-cultivating activities (see Foeken 2006), one may wonder how successful the programme has been.
More recently, in December 2004, an initiative called “Local Participatory Research and Development on Urban Agriculture and Livestock Keeping in Nakuru” was launched. This programme is an initiative of Urban Harvest, an international research body sponsored by CGIAR, an NGO: the Kenya Green Town Partnership Association, the University of Nairobi (Department of Soil Sciences) and also the Municipal Council of Nakuru. The major aims of the programme are to further develop the Urban Agriculture and Livestock Keeping Research and Development Centre already established next to the Nakuru dump and to help Nakuru’s urban farmers and livestock keepers to improve their livelihoods and contribute to urban food security. In a meeting in December 2004, a common understanding was reached among all stakeholders – government officials included – in that they “strongly felt that there was a need for the proposed initiative in Nakuru (...) and expressed their commitment to the project if it came to fruition.” It is as yet too early to be able to assess the impact of this programme.

There is a growing awareness among local authorities that farming in town is very important

In addition, high-ranking representatives of the Municipal Council recently spoke quite positively about farming in Nakuru town. In November 2002, a workshop was held at which the results of the various studies in the context of the Nakuru Urban Agriculture Research Project (NUAP; see Foeken 2006) were presented to and discussed by various stakeholders, including Municipal Council officers (and also the Senior Programme Officer and Urban Agriculture Programme Coordinator from the Municipal Development Partnership [MDP], Harare). Initially, the then Director of Environment was firmly against any form of farming in town, but he had somewhat changed his mind by the end of the workshop. The then Director of the Department of Housing called the workshop “an eye-opener”, stressing that “we need to revise our housing policy”, i.e. new municipal houses should have a compound so that the inhabitants can at least produce part of their own food. During a consultative meeting with various local stakeholders in May 2005, the representative of the Department of Environment said that they were now actively promoting urban farming in Nakuru, at least as long as the activity is carried out in an environment-friendly way. Finally, the new Urban Agriculture By-Laws 2006 can also be regarded as a direct result of the 2002 workshop.

CONCLUSIONS

In summary, many contradictions can be found among the pieces of legislation, policies and practices of various levels of decision-making. Comparable situations exist in Tanzania (see Foeken et al. 2004 and Foeken 2005), Harare (Zimbabwe) and to a lesser extent in Pretoria and Cape Town (South Africa) (see Martin et al. 2000). Such contradictions create a dilemma for local authorities. For a long time, a laissez-faire ‘policy’ prevailed, in which urban agriculture was tolerated (but certainly not necessarily welcomed), mainly because of the scale of the phenomenon and the incapability of the authorities to enforce the law. Meanwhile, local policy making has gradually shifted. Recognising the importance of the activity for the livelihood of many townspeople, awareness has grown that it is better to try to control and where possible to promote the activity - especially for the poor - than to restrict or even forbid it. The peculiar thing is, however, that the various new sets of by-laws in Nakuru still contradict each other. Nevertheless, a positive development is that the latest by-laws on urban agriculture imply an official recognition of the sector. Despite this ambiguity, the next step should be to integrate urban farming into urban planning. In that respect, Nakuru is ahead of many cities and towns in sub-Saharan Africa, where farming is not (yet) accepted as an urban type of land use and where ‘laissez-faire’ is still the rule (see Urban Agriculture Magazine No. 4, July 2001).

References


