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ZIMBABWE**

the coalition against corruption



URBAN & PERI-URBAN LAND GOVERNANCE IN ZIMBABWE

Towards a Corruption-free, Transparent and Accountable System

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About Zimbabwe Anti-Corruption Commission

The Zimbabwe Anti-Corruption Commission (ZACC) is an independent commission created to combat corruption and crime. It is established in terms of Chapter 13, Part 1 of the Constitution of Zimbabwe

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URBAN AND PERI-URBAN LAND GOVERNANCE IN ZIMBABWE:
TOWARDS A CORRUPTION-FREE, TRANSPARENT AND ACCOUNTABLE SYSTEM
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Acronyms

CID	Criminal Investigations Department
DPP	Department of Physical Planning
EIA	Environmental Impact Assessment
EMA	Environment Management Authority
HCC	Harare City Council
MDC	Movement for Democratic Change
MLGPWNH	Ministry of Local Government, Public Works and National Housing
MWACSME	Ministry of Women Affairs, Community, Small and Medium Enterprises
PDCs	Provincial Development Coordinators
PEPs	Politically Exposed Persons
PGs	Provincial Governors
RDC	Rural District Council
RTCP Act	Regional, Town and Country Planning Act
TI Z	Transparency International Zimbabwe
UCA	Urban Councils Act
ZACC	Zimbabwe Anti-Corruption Commission
ZANU PF	Zimbabwe African National Union Patriotic Front



It is a sad reality that corruption has permeated all spheres of our society and is prevalent across sectors. Whereas corruption in urban and peri urban settings is just a snippet of corruption in the land sector, the findings from this study forms the basis for further investigations into corruption in the sector and broadly in the country. Notwithstanding the fact that land corruption is not a new phenomenon, its manifestations are everchanging resulting in perpetrators evading the course of justice despite policy, legal and institutional frameworks for both land governance and combatting corruption in Zimbabwe. One would then wonder where we are dropping the ball as a country.

This study comes at an opportune time when Zimbabweans still have vivid memories of several cases of housing demolitions resulting from land corruption in urban and peri urban. More often, the unsuspecting homeowners become victims of corruption yet the people at the heart of corruption remain untouchable. In most incidences, these home seekers face the double tragedy of losing their money paid to corrupt individuals in acquiring the land and properties that they would have built and the investment in the house or property itself. Without addressing the overarching question of the political will to fight corruption in Zimbabwe, the vice will continue in perpetuity, and it will be extremely difficult to achieve safe cities and the broader Sustainable Development Goals when the victims of corruption are the ones who suffer. The unsuspecting public has always been an easier target in

correcting the wrongs. That culture must come to an end. The most unfortunate part is that there is no deliberate effort to identify the root causes of the mushrooming illegal housing settlements in urban and peri urban areas which borders on corruption by either Ministry of Local Government, Public Works and National Housing officials, Ministry of Lands, Agriculture, Water and Rural Resettlement, council officials, local councilors, real estate agents, traditional leaders, political party officials or collusion among part of these stakeholders in land governance.

Based on this study, corruption in urban and peri urban is fueled by weak legislation for land governance, abuse of political power, selective enforcement of the law and weak institutions (both those responsible for land governance and combatting corruption in Zimbabwe). The role of land barons in fueling corruption should not be over emphasised as they leverage on their proximity to power to manipulate systems and avoid legal scrutiny. This then calls for oversight institutions to play their significant role and hold the duty bearers to account.

I am glad that the Zimbabwe Anti-Corruption Commission (ZACC) was part of the study, and the Chairperson of the Commission pledged her commitment to following up on the possible cases of corruption in urban and peri-urban areas. The study, therefore, empowers Transparency International Zimbabwe to follow up on current cases of land corruption brought before anti-corruption

agencies in Zimbabwe. As the country pursues its anti-corruption milestones set out in the National Anti-Corruption Strategy (2020-2024) and the National Development Strategy 1 (NDS 1), special attention should, therefore, be given to corruption in the land sector considering that the study already lays bare the causes, drivers, and implications of corruption in the sector including the institutions involved. What remains is following up on actionable points outlined in the recommendations section by the relevant stakeholders.

I would like to invite state and non-state actors to interact with the study to understand the corruption dynamics in urban and peri urban areas and reflect on the role of devolution in addressing the current challenges whilst fulfilling their side of the bargain.

Tafadzwa Chikumbu

Acting Executive Director



The world over, corruption and anti-corruption measurements are increasingly recognized as essential and pivotal tools for analyzing corruption trends and for monitoring the results of efforts to curb corruption. As such, the Zimbabwe Anti-Corruption Commission in conjunction with Transparency International Zimbabwe commissioned a study to investigate the impact of corruption in Urban and Peri-Urban Land Governance in Zimbabwe. The overall objective of the study is to contribute to the prevention and combating of corruption in the Urban and Peri-Urban areas in Zimbabwe in accordance with existing institutional and legislative frameworks for urban and peri-urban land governance through the implementation of transparency and accountability principles.

It is my sincere hope that with easier access to more comprehensive and more rigorous anti-corruption information, Zimbabwean land management institutions will be able to design more effective policies and normative instruments to address a wide range of drivers of corruption, such as weak land governance systems, inequities in land allocation, as well as loopholes in the land governing legislation, which fuel land-based corruption. Notwithstanding these significant advances, as a nation we continue to face serious challenges when trying to quantify the exact costs and consequences of land-based corruption at national and local levels. First and foremost, corrupt practices in land governance is perpetrated by closely knit syndicates spanning from the private and public sectors, thereby making it very difficult to

identify and account for the culprits. The study unearths a wide range of land-based corrupt practices, and proposes prescriptive measures that, if implemented, our land governance and system will be re-aligned with best practices, and consequently strengthened for the better.

Worse still, limited evidence of the effectiveness of anti-corruption programmes within the land governance realm may translate mistakenly into unfavourable reviews of established anti-corruption agencies and national anti-corruption strategies. Recognizing that there is no single formula or one-size-fits-all mechanism to unravel the complexity of these issues, this study provides guidelines to strengthen the Land Governance and Management System in Zimbabwe. This is in line with Sustainable Development Goal 16 on “promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels”. I would like to express my gratitude to Transparency International Zimbabwe for the technical and financial support that they rendered during the entire study process. Special thanks go to all the participants and institutions who actively participated in the data gathering process.

Hon Justice L Matanda-Moyo

ZACC Chairperson





The rise in cases of urban land corruption involving organised criminal syndicates has created a multiplicity of challenges in urban and peri-urban land governance. The increased demand for urban and peri-urban land across the country has been driven by multiple factors including high rates of urbanisation, increased rural-urban migration, urban population growth and challenges in housing provision in the post-independence era. With an increased demand for land, Zimbabwe has witnessed multiple cases of corruption breeding on weak land governance systems.

The weak land governance systems and corruption which are hallmarks of the combination of gaps in the governing legislation and weak standard land management procedures are multifaceted. On one hand there is illegal and unprocedural acquisition, change of land use and allocation of urban land. On the other, hand as pressure on urban land increases, corresponding competition for peri-urban land has been witnessed, resulting in the annexure of peri-urban state land into urban land without following due procedures as laid down in the governing legislation. This report discusses key findings of a study entitled **‘Urban and Peri-Urban Land Governance in Zimbabwe: Towards a Corruption-free, Transparent and Accountable System’**, that was jointly conducted by Transparency International Zimbabwe (TI Z) the Zimbabwe Anti-Corruption Commission (ZACC). The study was carried out in four of Zimbabwe’s urban local authorities namely Harare, Bulawayo, Mutare, and Gweru.

However, the scale and magnitude of corruption in land governance are highest in Harare as compared to the other cities hence most examples were drawn from the former. The objectives of the study were:

1. To gather opinions and perceptions regarding the system(s) and processes of urban and peri-urban land governance
2. To examine the institutional and legislative frameworks for urban and peri-urban land governance
3. To analyse the emerging patterns, scope, scale and impact of urban and peri-urban land-based corruption

The study deployed a mixed-methods design, comprising of documentary review, a cross-sectional survey (using Google forms software) and qualitative data collection using in-depth interviews. The documentary review focused on principal legislation on land governance (which includes the Regional, Town and Country Planning Act Chapter 29.12, Urban Councils Act Chapter 29.15, Rural District Councils Act Chapter 29.13 and Communal Lands Act Chapter 20.04). The survey targeted residents in urban and peri-urban areas affected by urban sprawl. The sample size was calculated at a 5% margin of error and 95% confidence level. Enumerators were engaged to expedite the data collection process. The key informants for in-depth interviews were drawn from government officials at national and provincial levels, local authorities, academia, civil society, cooperatives and

private land owners and developers. A total of 800 questionnaires were administered across the four selected local authorities and twenty in-depth interviews were held. For qualitative data, the researchers inductively derived themes from data using thematic analysis complemented by the construction of network diagrams. To analyse quantitative data collated, the study utilised co-relational analysis, chi-square and multiple regression analysis.

Major findings

The major findings of the study are as follows:

1. There are multiple land management authorities which creates challenges of accountability and transparency in the land governance value chain. The study revealed that land is issued and allocated from various government ministries and departments.

2. There are various policy and legislative frameworks for land governance in Zimbabwe. This creates confusion in coordinating the proper application of these frameworks to ensure an effective land governance system. For example, the lack of harmony between the Communal Lands Act, Traditional Leaders Act and the Rural District Councils Act leaves a caveat for village heads to allocate communal land and sell peri-urban communal land for urban housing development.

3. There is an ominous relationship between politics and corruption in urban and peri-urban land governance. The abuse of political power is rampant, leading to the accumulation of land by a few political elites. Politicians and politically connected

individuals use land as an economic and political asset. People illegally settle on land and use political affiliation to ensure their continued occupancy. The political complexities involving land governance inhibits efforts in the fight against corruption as politicians and bureaucrats responsible for combating corruption are also entangled in the web of corrupt dealings.

4. There is rampant unprocedural and corrupt acquisition of peri-urban land in violation of the standard procedure that peri-urban land is designated for urban land development after the handing over of such land by the ministry responsible for lands and agriculture to the ministry responsible for local government.

5. The greater part of peri-urban land where urban development takes place has not been incorporated into urban land in violation of the provisions of the legislation on the incorporation of state land into urban land.

6. Officials from the urban local authorities, the Department of Physical Planning (DPP) and State Lands Office were implicated in the production of fraudulent layout plans and surveys and the development of housing units on urban state land without the approval of the Minister responsible for local government.

7. There is limited supervision of housing cooperatives leading to non-compliance of housing cooperatives with the constitutive Act on key issues such as preparation and submission of financial statements. In the same context, some cooperatives ended up re-registering cooperatives as private companies or trusts. Private land developers were also implicated in non-

compliance with tax obligations such as the payment of the intrinsic value of the land.

A major omission is the fact that there is no policy or laid out procedures in the administration of state land in the Ministry of Local Government, Public Works and National Housing's State Land Office.

local authorities and civil society organisations.

7. Local authorities should update valuation rolls to ensure the proper valuation of urban land.

Key recommendations

1. Government should harmonise the activities of various land management institutions and appoint a single land management authority. This may be difficult to implement as there already are land management authorities in place for the urban and rural local authorities. Up-to-date procedures for the administration and management of the land are generally lacking.
2. There should be harmonisation of the land management legislation.
3. The ministry responsible for local government should update and maintain a record of all urban state land.
4. Government should ensure compliance of private land developers, cooperatives and other players with their various tax obligations.
5. The ministry responsible for small and medium enterprises should develop systems for proper and effective monitoring of housing cooperatives.
6. There should be the automation of the engineering, land management and housing divisions for local authorities through joint efforts of the government,



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1. Introduction



Urbanisation represents a major demographic transformation in Africa with the continent projected to have the fastest growing cities in the world over the next forty years. Research and empirical evidence estimate that by 2050, Africa's urban centers will be hosts to over 1.5 billion people which represents 60% of the continent's projected population. Zimbabwe is no exception to these trends. The Census Report of 2012 showed that Zimbabwe's urban population is projected to grow from 4.3 million in 2012 to 6.5 million in 2032. This gives an average annual population growth rate of 2.0% during the projection period.

Local authorities in Zimbabwe play an important role in the delivery of fundamental public services in the context of the aforementioned global development trajectory. The fundamental public services include housing, social amenities, and on-site and offsite infrastructure. Zimbabwe's urban centres have experienced rapid urban sprawl into peri-urban state land and land designated for agriculture. This urban sprawl is not supported by a corresponding growth in fundamental public infrastructure, mentioned above. Rather, this has increased the risk of chronic health challenges such as cholera and typhoid outbreaks. The absence of infrastructure has created settlements that are not serviced or are poorly serviced. The situation has, among other risks, increased the risk of water-borne as well as communicable disease outbreaks.

It is against this background that the current study explores urban and peri-urban land governance in Zimbabwe in terms of the system(s), processes and standard operating procedures. The study arises from massive corruption and unprocedural urban and peri-urban land acquisition. A network involving local authority officials, politically exposed persons (PEPs) and private land developers have been implicated in several corrupt land transactions. In other cases, traditional leaders have been implicated in the scandals allegedly for transacting communal land for personal gain outside the provisions of the governing legislation. In the case of peri-urban land, the provisions relating to the incorporation of state land into urban land have been flouted. The residents, unsuspecting though, have suffered the heaviest loss after purchasing unscrupulously acquired land. Resultantly, residential structures have been erected on land that is either not designated for such, or privately owned but unscrupulously acquired, or wet lands that are protected against residential occupation. The national and local government institutions are thus confronted with the dilemma of either demolishing the new settlements and render people homeless or regularising the settlements while taking legal action on the land developers and their associates. This study explores the land governance value chain with the over-riding imperative of assessing the system(s) and processes and make recommendations for addressing the challenges and weaknesses.

2. Methodology of the study



The study used a mixed methods research design. Data was obtained using three techniques: a documentary review, survey and in-depth interviews. The documentary review focused on key legislation governing the administration and management of urban and peri-urban land. In addition, the Zimbabwe Land Commission Report of 2019 and the Human Settlement Policy were key reference sources. The survey targeted 1000 residents from the four cities (800 respondents were accessed), in particular those who were allocated land in new urban and peri-urban settlements. For the in-depth interviews, twenty respondents (five respondents per city) drawn from national, provincial and local government, civil society, academia, housing cooperatives and private land developers were interviewed.

2.1 Sampling

population growth in the order presented in table 1 below. Resultantly, the cities have suffered the vagaries of chaotic urbanisation characterised by the annexure of peri-urban and urban state land for urban sprawl. This has opened opportunities for land-related corruption.

In the four selected local authorities, respondents to questionnaires were selected using a combination of purposive and random sampling techniques. Purposive sampling was used to select the residential areas for the study with a slant towards areas affected by urban sprawl and other new residents, especially those developed after 2000. Random sampling was applied to ensure that respondents are selected for an accurate representation of the larger populations since each member of the larger population had an equal opportunity for selection.

Province	Local Authority	Estimated Population
Harare	Harare City Council (HCC)	Est. 1 541 824
Bulawayo	Bulawayo City Council	Est. 639 722
Manicaland	Mutare City Council	Est. 2 088 027
Midlands	Gweru City Council	Est. 2 039 688

Table 1: Population in the Target Areas

From the ten provinces and thirty-two urban local authorities in Zimbabwe, four urban councils (cities) were selected from four provinces. The purposive sampling technique was used for selecting the participant cities. The justification for the selection is that the four cities are the largest urban councils in Zimbabwe, with huge populations and the highest

For key informant interviews, the research team used purposive sampling, targeting broad-based engagements with experts in the area of land management in the four local authorities, officials in land and housing departments of councils, the academia and civil society, leadership of housing cooperatives and private land developers.

2.2 Methodological challenges

The major methodological challenge was the administering of questionnaires due to the COVID-19 lockdown restrictions. In addition, key informant respondents from urban local authorities, private developers and cooperatives who were once implicated in illegal land transactions by previous studies such as the Justice Uchena Commission and/or those under investigation by ZACC were not forthcoming for the study. Some of these respondents requested to submit their contributions through a link. Follow up with the respondents did not yield results. To address this gap, the researchers opted for other respondents.

3. Types of land and/or land ownership in Zimbabwe



There are three types of land as established in this study: state land, local authorities land and privately owned land.

3.1 State owned land

State land in Zimbabwe refers to two forms of land:

- (i) all land under Rural District Councils (RDCs)
- (ii) urban state land which is managed under the State Lands Office and is given to a local authority upon application to the minister responsible for local government.

The land under classification (i) includes communal land as defined in the Communal Land Act Chapter 20.04, all A1 and A2 farms acquired under the compulsory land acquisition (fast track land reform), resettlements and other areas without title. State land in RDCs excludes commercial farms with title, national parks, and land under an area committee or small urban communities within an RDC area. Urban state land is governed through the State Lands Office whereas the ministry responsible for land and agriculture is responsible for peri-urban state land, which is predominantly agricultural land. State land is usually occupied in terms of an agreement of lease with the government or RDC acting on behalf of the national government.

3.2 Local authorities land

Local authorities land refers to all land that is owned by an urban local authority. This land is usually given to municipalities and cities

on assuming the status of a municipality. It is upon this land that local authorities may develop and sell land for various purposes. However, within local authorities there is state land as aforementioned.

3.3 Private land

This is land that is held by or under the authority of a title deed by either a private individual or an institution, in which case it is private land under individual title.



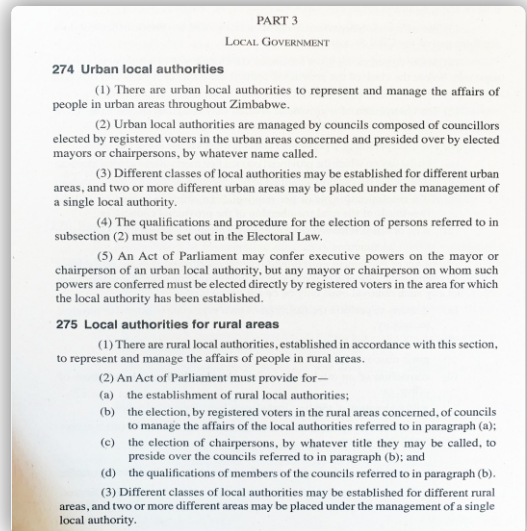


The major users of land for housing in Zimbabwe are central and local government, and private individuals or companies. The absence of a clearly laid out peri-urban land management policy and procedures has been taken advantage of by corrupt officers from the various institutions. Weak institutions tasked with managing land have aggravated the corruption. While urban and peri-urban land acquisition and sub-division are governed by elaborate pieces of legislation, it is the absence of clearly laid out processes and procedures in the allocation and record keeping of land for development that unscrupulous government or local authority officers have taken advantage of, for personal gain.

4.1 Constitution of Zimbabwe Act Amendment Number 20 of 2013

Several sections of the Constitution of Zimbabwe seek to promote democratic local governance in Zimbabwe. These include Section 5, Section 264, Section 274 and Section 301. Section 5 of the Constitution articulates the three tiers of Government with each tier having well-defined powers and functions i.e. the national Government; provincial and metropolitan councils and local authorities. Local authorities are classified as urban councils that represent and manage the affairs of people in urban areas and rural councils that represent and manage the affairs of people in rural areas within the districts into which the provinces are divided. Section 264 sets the principles of devolution to local authorities and the

modalities of how provinces will function under a devolved arrangement.



Of the various constitutional provisions, Section 264 has been one of the much talked about because most provinces are excited about managing their affairs, most importantly how they will utilise available resources (of which land is the primary means of production) within their areas of jurisdiction for the benefit of their communities. Section 274 prescribes how urban local authorities will function and operate in terms of electing representatives through councillors. Councillors in most of the urban local authorities have been at the forefront of corruption, having been fingered in shady land deals and illegal parceling out of open spaces and wetlands (referencing current investigations on land scandals at HCC). Under the current constitutional dispensation, local authorities have the latitude to exercise power and authority in compliance with relevant constitutional provisions.

Section 274 mandates the urban local authorities to oversee the governance of areas within their jurisdiction. The urban local authorities need to, according to Sub-section 1, represent the people within their areas of influence. In essence, they need to advance the aspirations of the people. "Representing" implies acting in compliance with the directives or aspirations of the people. However, most of the elected councillors seem to push their personal agendas in terms of enriching themselves at the expense of the citizens they are supposed to serve.

In 2005, Parliament passed a constitutional amendment that nationalised Zimbabwe's farmland and repealed the right to challenge in courts the government's decision to expropriate land. Additionally, the courts were ordered not to entertain such cases. The former landowners would only challenge the amount payable in terms of compensation on farm improvements. The constitution guarantees property rights under section 71. It advocates for fair compensation for land acquired and outlines reasons for the acquisition of land. Section 72 deals with the use and alienation of agricultural land. This is further highlighted in Chapter 16 of the constitution. This resulted in an upsurge in the invasion of peri-urban land for purposes of settlement development. However, most of the acquired land has not been properly planned per the provisions of the Regional, Town and Country Planning (RTCP) Act and hence is illegal at law.

4.2 Ministry of Lands, Agriculture Climate and Rural Resettlement

The Ministry of Lands, Agriculture, Climate and Rural Resettlement's main role is to acquire, plan, demarcate, equitably

redistribute and manage rural land and infrastructural development to achieve social-economic development and optimize land utilization (The government of Zimbabwe, 2019). To this end, its main functions within the Lands and Resettlement sections include:

1. Land acquisition
2. Valuation and transfer
3. Resettlement
4. Estate management
5. Planning and demarcation, land information and management systems, and finance and administration.

The agriculture section seeks "to promote and sustain a viable agricultural sector and to develop and manage land resources through the provision of appropriate technical, administrative and advisory services" to optimize administration and contribute to equitable and sustainable social and economic development (The government of Zimbabwe, 2019).

The Lands section is relevant to the utilisation of land in the peri-urban areas. The ministry has resettled people in peri-urban areas like Goromonzi, Ruwa and Beatrice. Some of the resettled peri-urban farmers have subdivided their land for residential purposes.

The Ministry is also important in making land available for urban expansion. Land that is acquired for this purpose is usually agricultural. The ministry has been responsible for identifying farms around major urban settlements for possible incorporation into the city or town boundaries, for example, Caledonia to the northeast of Harare. After acquisition, the land is then passed on to the State Lands Office for other uses.

4.3 Ministry of Local Government, Public Works and National Housing

The ministry has the authority to supervise all local authorities as per the provisions of both the Urban Act and Rural Councils Act. The ministry administers key legislation on land governance, which includes the Regional, Town and Country Planning Act; Urban Councils Act; Rural District Councils Act; and also houses the government custodian of planning standards and the State Lands Offices.

4.4 Regional, Town and Country Planning (RTCP) Act (Chapter 29.12)

This is one of the most important pieces of legislation. It provides for the planning of regions, districts and local areas with the object of conserving and improving the physical environment hence place sustainability through time. The Act is administered by the Minister responsible for Local Government. All planning authorities i.e. Urban Councils and Rural District Councils are supposed to develop master and local plans, which shall indicate planned development for areas under their jurisdiction. This is supposed to ensure orderly development with minimal impact on the environment and society when all physical developments on land are in line with approved plans. The Department of Physical Planning is responsible for approving all local and master plans within the country.

Part III of the Act outlines the planning authorities and their roles and duties in implementing approved master and local plans and Part IV outlines the process and procedures for developing a Master Plan. Important to note is the fact that one of the

major objectives of the Master Plan is to formulate the policies of that local authority and its general proposals for the planning area in respect of the coordinated and harmonious development or redevelopment and other uses of land. Parceling out of wetlands in some of the urban and peri-urban areas is against this objective and Part V on development control, which seeks to reign in on unapproved developments. The local authority has the power to ask a developer to either stop illegal development or demolish any illegal structures erected on a piece of land. This has not worked very well because of political interference and corruption by council officials resulting in the mushrooming of illegal structures or buildings on wetlands.

Non-compliance with the orders of the local planning authority within the specified period may result in penalties. In the case of discontinuation of operations, for example, the authority may authorise any employee or agent to enter the premises and with such vehicles and equipment as may be necessary for the purpose and take such steps as may be necessary to ensure compliance with such an order. There have been several cases of demolition of houses constructed illegally in areas like Budiriro based on council orders. Section 27 of the same Act indicates that it is possible to regularise illegal developments. It is possible that politically linked land barons who know this provision have been hoping that this would be the preferred choice of the local authority in Budiriro and Caledonia in Harare. This has happened in Harare South when Southlea Park and Hopley were created.



A bulldozer demolishes one of the illegal structures constructed on private property at Caledonia farm in Harare - Picture credit- Kudakwashe Hunda Source - Sunday Mail 2021

The local planning authority has the powers of acquisition of land within its jurisdiction as long as the land would be needed for the implementation of any proposal, including development, redevelopment or improvement, which would be within an operative master plan or local plan. The authority may acquire the land through purchasing, exchange, donation or other agreement with the owner of the land. The Act is flexible in that it allows for relatively new structures to be erected. This is permissible by the provision that the Minister responsible for Local Government may order the local planning authority to draw a master plan.

Part VI deals with subdivision and it is clear that all subdivisions require permits issued by the council. The subdivision of state land or Communal Land for public, industrial, commercial, residential or similar purposes shall be referred to the Director of Physical Planning. The Director of Physical Planning shall not approve the proposed layout until, in the case of state land, the local authority

concerned has been consulted, and for Communal Land, the Minister responsible for the administration of the Communal Land Act [Chapter 20:04] or the Secretary for his Ministry, has been consulted. This has not been happening. Sometimes the local authority is not consulted, resulting in confusion on the ground when implementation commences, and the land barons and corrupt council officials have taken advantage.

One of the major challenges observed is an increase in the abuse of planning permits and the increasing role of non-planners in the spatial planning field. Land barons are forcing changes of use without following proper procedures. In Caledonia, the District Administrator for Mabvuku-Tafara asked the planning consultants to change the approved subdivision layout without following proper procedures for a section of Caledonia. A land surveyor and not a planner did other sections of Caledonia's layout subdivisions. These have not been approved as per the provisions of the RTCP Act.

4.5 Department of Physical Planning

This is an important department as it oversees the issuing of permits for almost all layout subdivisions in the country. This department also has oversight of the country's local authorities, who must adhere to the provisions of the Regional, Town and Country Planning Act [Chapter 29:12], the Urban Councils Act [Chapter 29:15] or the Rural District Council Act [Chapter 29:13].

The Department of Physical Planning is also involved in facilitating sites for the development of government, state enterprises, as well as parastatal activities

and the detailed planning of housing estates on state land. It also carries out technical evaluation of plans (master plans, local plans and layout plans) originating from local planning authorities to aid the minister in making decisions on the plans, mediating in stakeholder conflicts arising from spatial planning decisions that interfere with other people's land rights.

Furthermore, the department provides technical assistance relating to the planning of preparation structures for the development planning system, which the Provincial Councils and Administration Act [Chapter 29:11] prescribes; manages urban public transport and carries out tacheometric surveys and the pegging of state land.

The department is responsible for layout preparation for rural local authorities that may not have qualified planners on their teams. Established local authorities may still submit their plans to the department for

housing has been described as being very process of subdividing land especially for approvals and permits. However, the cumbersome and time consuming. It can take two to three years for identified land to be subdivided and for layouts to be prepared, approved and then surveyed before prospective owners get land for housing. The land delivery framework in Zimbabwe through the department is characterised by a relatively sophisticated bureaucratic administrative machinery. The process is complex, comprising a series of linear and vertical forward and backward administrative stages that bring into play a large number of institutions, statutes and procedures resulting in institutional bureaucracy and an inefficient delivery process as is shown in figure 1. This study points out that the process of plan preparation, application for planning permit and approval has institutionalised corruption involving employees of the department.

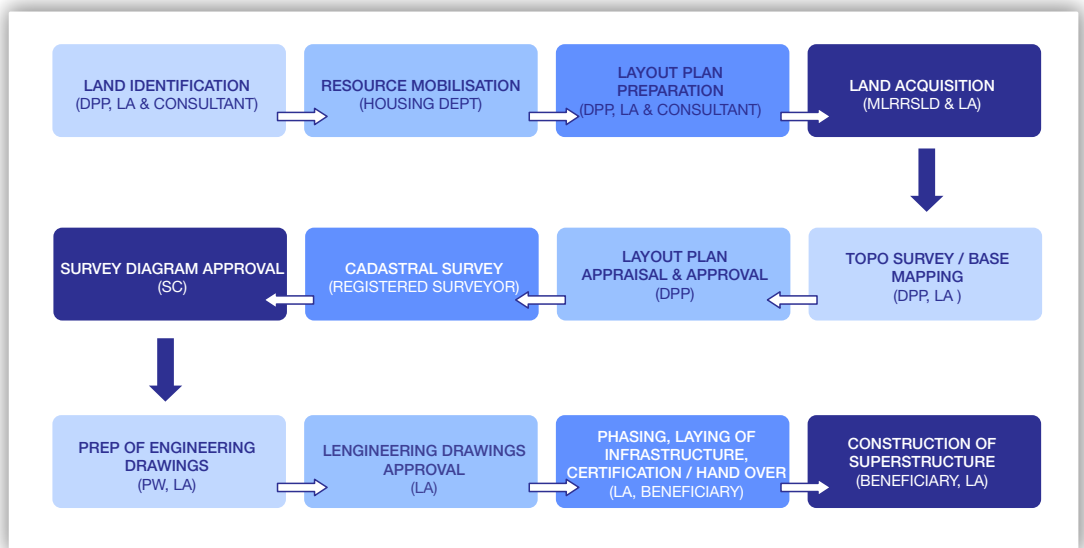


Figure 1: Land Delivery Process for Housing in Zimbabwe

4.6 State Lands Office

The State Lands Office in the Ministry of Local Government, Public Works and National Housing handles all government land. The State Land Office and Provincial Governors allocate state land and Provincial Development Coordinators (PDCs) have a great influence on who gets state land. The land is a highly charged political issue and the effect spilled to local authorities. The preferred mode of allocation of state land has been through housing cooperatives with most of them being politically linked. Political parties have control over land, and party loyalists are the beneficiaries. The land is not allocated according to housing waiting lists. In housing cooperatives like Hatcliffe, Ushelokunze and Stoneridge farm, there are indications of contestation between the City of Harare and the state as the former was delaying to approve layout plans and connect water.



Bulldozer demolishes illegal structures Source - Herald 2021

The case of Caledonia is used to highlight the role of the State Lands Office. The Government of Zimbabwe acquired the

farm in terms of Section 16 B (4) of the Constitution of Zimbabwe and the Title Deed was endorsed on 3 October 2005. The farm measures 2323.805 hectares and was incorporated into the Harare municipal boundary through statutory instrument SI 119/2012. This means that the farm administratively falls under Harare City Council. However, politically, Caledonia falls under Ward 25 of Goromonzi South constituency.

The farm was handed over to Harare City Council in 2007. This meant that the council had taken over the planning of the settlement. However, several housing cooperatives mushroomed at the farm parceling out land without the consent of the city. When the city raised this with the State Lands Office, it was informed that the city was in charge and the State Lands Office could not do anything as it had handed over the land to the council. This resulted in a stalemate that has seen illegal developments continue unabated at the farm. The State Lands Office has not been of much use probably because there is an ingrained interest of political parties in the developments.

4.7 Urban Councils Act (UCA) (Chapter 29.15)

The Urban Councils Act (Chapter 29.15) provides for the establishment of urban local government bodies in Zimbabwe and the vesting of powers and authority upon them. It also includes the composition of councils and their internal systems of governance. Part V of this Act from section 38 deals with the governance of urban areas through the election of councillors and selection of mayor. This is an important section of the act that should be read together with Chapter 14 of the

Constitution. As has already been highlighted above under the section on the Constitution, the democratic principle of election of councillors is used.

The UCA recognizes that urban councils are planning authorities who have the responsibilities of planning and managing land, buildings and civil works and open spaces amongst others as per the provisions of the second schedule of the Act. They also have the responsibility of development control as per the provisions of the RTCP Act. These responsibilities are meant to ensure the orderly development of

the areas under their jurisdiction. However, the Master Plans and Local Plans prepared by urban councils under the RTCP Act are outdated and leave room for manipulation by council officials. Council officials have also been known to prepare illegal subdivisions which have been used to allocate land parallel to the official approved layouts.

Several issues have been observed regarding urban local authorities, especially Harare, and their management systems.

These include:

1. Capture of the land governance system by political parties leading to non-adherence with legal provisions
2. Illegal land allocations by the Department of Urban Planning Services and Harare Municipal Workers Union
3. Rampant corruption in all council departments, especially the Department of Urban Planning Services
4. Fraudulent appointment of Council

senior staff to bolster corruption syndicates.

4.8 Rural District Councils Act (Chapter 29.13)

The Rural District Councils Act bestows development functions to RDCs. This act fulfils the constitutional mandate as outlined in section 275 of the constitution. Rural District Councils are planning authorities for the areas under their jurisdiction in terms of the law i.e. the Regional Town and Country Planning Act and Rural District Councils Act. Section 74 of the RDC Act states the functions of an RDC as to:

- (a) Promote the development of the council area
- (b) Formulate policies, both long-term and short-term, for the council area
- (c) Prepare annual development and other plans for the council area
- (d) Monitor the implementation of development plans and policies within the council area.

Like their urban counterparts, RDCs oversee the allocation of plots for housing and other developments. Section 73 of the Act states that the powers of the RDCs is to control development in the areas under their jurisdiction by ensuring that the conditions of the establishment of any township within the council area and the conditions of title to any land in the council area are properly observed. The RDC has powers:

1. To, without compensation, cause any building willfully erected in contravention of any such condition to be demolished and recover from any person responsible for

such contravention the expenses incurred by the council in connection with such demolition.

2. Prohibit the use of any building or land which contravenes any such condition.

3. Execute any work which under any such condition it is the duty of any person to execute and recover from such person the expenses incurred by the council in executing such work.

It is clear from the above that RDCs has the power to deal with illegal developments. This is done through demolition orders as is the case with urban areas. The provisions of the Act in this regard are meant to ensure orderly development. RDCs can remove illegal developments and most of these take place in peri-urban areas. A case in point is development in Seke Communal Lands where there is the subdivision and conversion to residential use of land reserved for grazing and cultivation. Manyame RDC faces a huge task trying to exercise development control as per the provisions of the Act. However, the Act also states that an RDC can regularise developments if it is in the interest of the public. Section 81 of the Act empowers RDCs to establish cooperatives with the consent of the Minister of Local Government and Public Works. This has largely been construed as housing cooperatives and most RDCs have set up these cooperatives, for example, on the periphery of Chitungwiza under Manyame RDC and in Caledonia, Sally Mugabe Heights under the Goromonzi RDC. These were established to develop housing in peri-urban areas.

RDCs can also compulsorily acquire land

RDCs can also compulsorily acquire land as per the provisions of section 78 of the Act. This section stipulates that land can be acquired with the consent of the minister responsible for Local Government and the purposes for this acquisition can be on health grounds or in the interest of the public. Powerful councillors and RDC officials can abuse the latter provision to corruptly acquire land.

4.9 Communal Land Act (Chapter 20:04)

The Communal Land Act (Chapter 20:04) provides for the classification of land in Zimbabwe as Communal Land and for the alteration of such classification. Section 3 of the statute defines communal lands as "...land which, immediately before the 1st February, 1983, was Tribal Trust Land in terms of the Tribal Land Act 1979 (No.6 of 1979)... subject to any additions thereto or subtractions ... the alterations which can be made to communal lands as that the President, in accordance with this Act, the Forest Act (Chapter 19:05), and the Parks and Wildlife Act (Chapter 20:14)..." The communal lands are vested in the President who may delegate a minister to perform the duty of stewardship of the Act. The main 'appointable' figure is the Minister of Local Government whose duties entail publishing the description of the communal lands, amending the statutory laws concerning these lands, granting the consent of occupancy, through an RDC, authorising any person or class of persons to occupy and use, subject to the Regional, Town and Country Planning Act (Chapter 29:12). In certain circumstances, the Minister, in conjunction with the RDC, may regard customary law relating to the allocation, occupation and use of the communal lands and this may be regarded as a balancing factor on the powers of the

Minister in this regard. In addition, section 10 mentions that the Minister may set aside communal lands for purposes of establishing townships, business centres and industrial areas. The Minister must notify the beneficiaries of the charges and deposits for services rendered in these areas. Moreover, the Minister may delegate to any Rural District Council within whose area the land is situated "...responsibility for collecting any rents, charges, deposits or supplementary charges on behalf of the State". Where people are affected negatively, the Act provides for compensation which may be in the form of occupying alternative land. Parts V and VIII of the Land Acquisition Act (Chapter 20:10) will be applied, mutatis mutandis, in respect of such dispossession or diminution. The affected parties may also be compensated for their loss through payment from the Consolidated Revenue Fund. If a person refuses to be ejected and is not welcome to the compensation, they would be contravening this Act and will be liable to prosecution.

Section 4 of the Act vests all Communal Land in the President, who shall permit it to be occupied and used accordingly. Section 6(1)(b) further empowers the president, in consultation with any Rural District Council established for the area concerned, to declare that any land within Communal Land shall cease to form part of Communal Land. Section 6(3) further provides that whenever any land ceases to form part of Communal Land in terms of a declaration published in terms of subsection (1), such land shall thereupon become state land until it is granted, sold or otherwise disposed of in terms of this Act or any other law. This provision has been abused when land declared as state land

has been procedurally subdivided and parcelled out to home seekers and other land users. Government officials in Gweru were convicted for illegally subdividing and allocating land which had been declared state land. The land did not have any planning permit and officials took advantage of the weak record keeping of state land transfers.

Various purposes for the use and occupation of communal land are listed in section 9 of the Act. Permits may be issued to occupy and use Communal Land for:

- (a) Administrative purposes of the State or a local or like authority
- (b) Religious or educational purposes in the interests of inhabitants of the area concerned
- (c) Hospitals, clinics or other such establishments for the benefit of inhabitants of the area concerned
- (d) Hotels, shops or other business premises
- (e) Any other purpose whatsoever which, in the opinion of the rural district council, is in the interests of inhabitants of the area concerned.

4.9.1 Allocation of Communal Land

(1) No land shall be allocated in terms of the Act except with the approval of the appropriate RDC, which shall be the administrative authority with overall control over the use and allocation of all Communal Land.

(2) The allocation of Communal Land in terms of the Act shall be carried out in

accordance with the Communal Land Act (Chapter 20:04) and in such manner as prescribed.

(3) No Communal Land shall be used in any manner or for any purpose other than that provided for by or in terms of the Communal Land Act (Chapter 20:04) or authorised by or in terms of any other enactment.

(4) No inhabitant shall dispose of any Communal Land used by him, or subdivide such land for any purpose, without the approval of the village head granted subject to this Act and the Communal Land Act (Chapter 20:04).

Land can be set aside for the development of business centres and townships and unscrupulous people can take advantage of this and allocate land to their cronies. Red flags have been raised in the allocation of land at Corner Store Centre in Mutoko, for example. Land has been corruptly allocated for business and residential purposes at the centre. The fourth provision which defines the role of village heads in disposing of communal land has seen the rising stake in the role of village heads in solemnising land subdivisions by communal populations in Seke and Domboshava peri-urban areas. Villagers have been subdividing and selling land for residential developments. The village heads are paid to solemnise and legitimise the transactions.

4.10 Traditional Leaders Act (Chapter 29.17)

The Act provides for the appointment of village heads, headmen and chiefs and the establishment of a Council of Chiefs and village, ward and provincial assemblies and

defines their functions. It also provides for the issue of village registration certificates and settlement permits. The Traditional Leaders Act defines the role of traditional leaders in the management of communal land as per the provisions of the Communal Land Act (Chapter 20:04) and the Rural District Councils Act (Chapter 29:13) and in matters incidental to or connected with the foregoing. Section 26 subsections (1), (2), (3) and (4) provides for the procedures with which communal land is allocated, used and/or disposed of. It states that land is only allocated subject to the approval of the respective Rural District Council as the administrative authority of all communal land under its jurisdiction. While communal land seems designated for allocation and use only in terms of the Communal Land Act and RDC Act, it is important to note that such land can equally be used for other purposes subject to authorisation by other enactments as provided in the Traditional Leaders Act (Chapter 29.17) section (3). The Act outlines some of the chief's duties in his area as:

1. Ensuring that Communal Land is allocated following Part III of the Communal Land Act [Chapter 20:04] and ensure that the requirements of any enactment in force for the use and occupation of communal or resettlement land are observed
2. Preventing any unauthorised settlement or use of any land
3. Notifying the Rural District Council of any intended disposal of a homestead and the permanent departure of any inhabitant from his area, and, acting on the advice of the headman, to approve the settlement of any new settler in his area

4. Liasing with and assisting development committees established in terms of the Rural District Councils Act [Chapter 29:13] in all matters relating to the planning and implementation of local development programmes.

This shows that the legislation is important to issues incidental to parcelling out of land for housing and settlements.

The role of the Headmen is outlined in section 9. Among other things, the headmen is expected to:

1. Oversee, through the ward assembly, the disposal of settlement rights in Communal Land and the admission of new settlers in the area under him

2. Keep an up-to-date register of the villages and village heads under him and keep the chief and the rural district council informed of any changes to the register.

Almost the same functions are assigned to Village Heads under section 12 of the Act. These are:

1. Subject to the Communal Land Act [Chapter 20:04], to consider, following the customs and traditions of his community, requests for settlement by new settlers into the village and, in consultation with the village assembly, make recommendations on the matter to the ward assembly

2. To the extent that such matters are not subject to the general law of Zimbabwe, settle disputes involving customary law and traditions, including matters relating to residential, grazing and agricultural land boundaries and, where necessary, to refer to the headman such matters for settlement

3. To preside over the village assembly

4. To ensure that all land in his area is utilised as per the provisions of any enactment in force for the use and occupation of communal or resettlement land

5. To produce, in consultation with the village assembly, village development plans for his area and to submit them to the ward assembly

6. To preside over the village development committee, co-ordinate its work and submit the resolutions and plans of that committee to the village assembly for consideration and, where appropriate, implementation



A Rural Settlement in Domboshava Source - Herald 2021

In peri-urban areas like Domboshava and Seke, village heads have been resettling households for a fee. Though the Act does not say that they should be paid, it has now become the norm for the village heads to ask for a fee to enter newly resettled households into the village register. Most of the subdivisions attended to in these two peri-urban areas relate to the development of residential houses.

Section 27 deals with the rights of urban dwellers and other persons to occupy Communal Land and states that every person who, in terms of local customs and traditions, is entitled to reside in Communal Land and has maintained a homestead there may continue to do so, notwithstanding that they may reside elsewhere. These rights have been used by some households to hold on to communal land homesteads for speculative purposes when they have other homes in urban areas. Others have sold their homesteads to new settlers.

4.11 Other Acts, Subsidiary Legislation and Institutions

There are other Acts of Parliament, subsidiary laws and institutions which influence land acquisition and its use. These include the Land Acquisition Act, Cooperative Societies Act, ZINWA Act and other pieces of legislation governing housing and town planning.

4.12 Land Acquisition Act

Section 2 of the Land Acquisition Act (Chapter 20:10) articulates that the President may “compulsorily acquire any land where the acquisition is reasonably necessary in the interest of defence ..., town and country planning or the utilisation of that or any other property for a purpose beneficial to the public generally or to any section of the public.” Part II(b) of the Act states that the acquisition will be reasonably necessary for the utilisation of that or any other land for purposes of land reorganisation, forestry, environmental conservation, etc. This section can imply that the land reorganisation might include, in this case, change of land use from rural

lands to urban uses. The state can cede authority of certain pieces of land and any statutory body to allow the incorporation of peri-urban land into a city or town provided that the President or Minister as the acquiring authority can state such an order.

The Land Acquisition Act largely deals with the acquisition of land for agriculture but also provides for the acquisition of land for other uses like urban development and expansion. It provides for two different procedures for the compulsory acquisition of land: a straightforward acquisition or expropriation preceded by designation. Straightforward acquisition applies to any land, rural or urban, whereas designation applies to rural land only.

Where land is being acquired without being first designated, the acquiring authority publishes, in the Government Gazette, a preliminary notice of intention to acquire the land in question. The preliminary notice must, among other things, specify the purpose for which the land is acquired. The owner of the land thus gazetted has two courses of action open to them: to contest the acquisition or to accept the compulsory acquisition and claim compensation thereafter. Where a person objects to the proposed compulsory acquisition of their land, they must lodge an objection with the acquiring authority within thirty days of the notice appearing in the gazette. The government may, however, the objection notwithstanding, go ahead and acquire the land. However, once an objection has been lodged, Government must apply to the Administrative Court for an order, by the Administrative Court, authorising the intended acquisition, or, where the acquisition has already taken place, confirming such acquisition. Where the

Administrative Court is satisfied with the validity of the objection, it may refuse to authorise the proposed acquisition and order the government to withdraw the preliminary notice. Where the land had already been acquired, the Administrative Court may order that the land be returned to the expropriatee. Unless otherwise withdrawn, a preliminary notice remains in force for one year from the date of publication thereof in the Gazette. For as long as the preliminary notice remains in force, the owner of the land in question may not do the following without the permission of the acquiring authority:

1. Subdivide or apply in terms of section 40 of the Regional, Town and Country Planning Act [Chapter 29:12] for a permit to subdivide such land
2. Construct permanent improvements on that land
3. Dispose of such land.

The provision barring subdivision of land ahead of acquisition is meant to forestall speculative development to push up the value of the land ahead of acquisition. Compulsory acquisition has been used to acquire land in peri-urban areas and use it for political gains ahead of elections. This has been witnessed in Harare South. Other peri-urban areas of Harare like Whitecliff were acquired by organised groups which were politically linked and the land subdivided into residential units.

4.13 Co-operative Societies Act (Chapter 24:05)

The Act provides for the formation, registration, regulation, management, functioning and dissolution of co-operative

societies and these would be in line with co-operative principles and would be reinforcing government policy and self-reliance. No person other than a registered society may operate under the guise of a “co-operative” without the authority of the Registrar who issues a certificate of registration as proof of registration and compliance with this Act (section 122). The Registrar is responsible for the registration of the cooperative societies. Section eleven provides that the Societies which have the objective of promoting the economic interests of their members may be registered as a primary Society, secondary Society, or an apex organisation. During the process of registration, it would be unlawful for any person to be fraudulently registered or included in a society and they would be prosecuted, pay a fine or be imprisoned for a period not exceeding one year.

This piece of legislation has spawned many housing cooperatives in and around major cities. This is because most people saw cooperatives as a way of evading the housing waiting lists. In Harare, it was possible to register a housing cooperative and get allocated a piece of land as long as there were ten or more registered members.



Source - Herald 2021

The provisions of the Co-operative Societies Act (Chapter 24:05) define a co-operative as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through jointly owned, democratically controlled (housing) enterprise who become registered in terms of the Act.

For housing, there are two broad categories of co-operatives in Zimbabwe. These are workplace-based co-operatives and community/neighbourhood-based cooperatives. Housing co-operatives in Zimbabwe have been operating following internationally recognised principles. The past ten years have seen a very rapid increase in the formation of housing cooperatives as a way of accessing land.

The Ministry of Women Affairs, Community, Small and Medium Enterprises (MWACSME) registers housing co-operatives per the provisions of the Co-operative Societies Act. The Act sets out the rules and regulations in terms of the operations of co-operatives. Some requirements have to be satisfied before registration by the Ministry. These include that:

1. The minimum number of members required for registration purposes is ten
2. The organisation should receive pre-registration education on co-operatives
3. The association should have developed by-laws to govern its operations. These should be used to protect the interests of members
4. The associations are also expected to

have developed internal codes of rules and conduct for members.

Once the co-operative has been registered, it becomes a recognised legal entity that can be sued and sue and can enter into contracts with other organisations. Requirements are also to the effect that for people to form a community-based co-operative, they should be in the same income bracket in order to have similar values, standards and housing aspirations. However, in reality, incomes can vary widely for some of the community-based co-operatives. Members should also be on the appropriate local authority's housing waiting list for land to be allocated to them. There is also the provision that one can only be a member of one housing co-operative in the same local authority.

In practice, housing cooperatives have become synonymous with certain individuals who have been receiving contributions but with no accountability to the members. In Caledonia on the outskirts of Harare, several housing cooperatives have subdivided land without any permits. The management committees of these cooperatives have not changed for the past eight years and the chairpersons have been selling land to homeowners as if they own the land. In essence, the land is state land and the co-operators have taken advantage of weak state institutions for the benefit of a few members. In Mutare, Destiny for Africa Network led by Obadiah Musindo has been accused of violating the provisions of the Act by acquiring land under the banner of cooperatives and selling it under portfolios of private companies (Government of Zimbabwe, 2019).

The policy of Parallel Development as enunciated by the Ministry responsible for Local Government in 2006 resulted in housing construction being allowed to run parallel with the development of on site infrastructure. Most housing cooperatives adopted this approach. However, almost 95% of those who opted for this approach are still waiting for onsite services to be provided or the services provided were not up to standard as will be discussed under the section on cooperatives under institutions.

4.14 Deeds Registries Act (Chapter 20:05)

The Deeds Registries Act establishes the deeds office. Broadly, the functions of the Deeds Registry Office involve registration of title in land, registration of mortgage and notarial bonds as well as relevant consents, waivers of preferences and any other documents on such bonds, cancellation of mortgage bonds and transfer of title rights and interest in land.

Specifically, duties of the Registrar are outlined in Section 5 of the Deeds Registries Act as:

1. Register grants or leases of land lawfully issued by the State and register amendments, renewals and cancellations of such leases and releases of any part of the property leased
2. Attest or execute and register deeds of transfer of land and execute and register certificates of title to land
3. Attest or execute and register mortgage bonds
4. Register cessions, including cessions made as security, of registered mortgage

bonds and register cancellations of such cessions if made as security

5. Register cancellations of registered mortgage bonds, part payments of the capital amount due in respect of any such bond other than a bond intended to secure future debts, releases of any part of the property hypothecated thereby, or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond and reductions of cover in respect of any bond intended to secure future debts;

6. Register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds, whether registered or about to be registered

7. Register general plans of stands or lots or of subdivisions of land, open registers of the stands, lots or subdivisions of land shown on such general plans and record in such registers the conditions upon which the stands, lots or subdivisions have been laid out or established.

The office is very important for record keeping regarding all land and property transactions. This is meant to ensure that no fraudulent activities in the property market take place. All transactions of land at council or state level should be captured by the deeds office. There are only two offices in the whole country – in Harare and Bulawayo. Consequently, it is difficult for prospective owners in other parts of the country to follow transactions. This may result in fraud and land barons have taken advantage of this by claiming land which does not belong to them.

4.15 Zimbabwe National Water Authority Act (Chapter 20:25)

The purpose of the Act was to establish a national parastatal for water management and regulate its operations, providing for the appointment and functions of a body of the Authority, its funds, the raising of charges for the provision of water and other services by the Authority and to provide for the imposition and collection of a water levy. The Authority has many functions, provided for by this Act, the Water Act (Chapter 20:24) and other related enactments (section 5). The duties include advising the Ministry on the formulation of national policies and standards on water resources planning, management and development. The authority would also advise the Ministry on water quality and pollution control and environmental protection. The other function of the Authority is to encourage and assist local authorities in the discharge of their functions under the Rural District Councils

Councils Act (Chapter 29:15) concerning the development and management of water resources in areas under their jurisdiction. The Authority is also to provide, at a fee it determines, all forms of assistance (which may be technical, personnel, advisory and training) to the Government, local authorities, and catchment councils in connection with water exploitation, development and distribution of water resources. In addition, the Authority researches on hydrological issues to develop a database of interest to Zimbabwe. Overall, the Authority has the mandate to develop and ensure an adequate and equitable water supply.

ZINWA has failed to develop or provide adequate raw water sources for most settlements in the country resulting in incessant water shortages. Land barons have taken advantage of this by developing peri-urban settlements which do not have water connections.



5. Urban and peri-urban land acquisition politics in Zimbabwe



There have been assertions that farms surrounding cities have been allocated to co-operatives to create new constituencies that are loyal to political parties (in particular the Movement for Democratic Change (MDC) and the Zimbabwe African National Union Patriotic Front (ZANU PF)) in major centres like Harare. For example, the strategies worked well on a pilot project in Harare South where ZANU PF retained the constituency in the past elections. However, ownership through title deeds is deliberately delayed as a way to enforce loyalty. Occupants are threatened with repossession of stands if they are no longer visible in political gatherings. This results in slow development as homeowners delay investing in the construction of their houses in the hope that they will get title to their properties.

Land development proposals for housing are typically presented to the Housing and Social Services Committee after preparation by the planners and professionals which then makes recommendations to the full council. Once endorsed by the full council, a project can proceed. It has been observed that the stipulated land allocation process was not followed as evidenced by the post-2000 invasion of peri-urban farms and the demolition of houses during Operation Murambatsvina in 2005. Political parties capitalized on people invading land without following proper town planning procedures. Most land allocations that were done after 2000 were inspired and driven by politics without following normal procedures of land allocation. In some instances, after invading

council, state or private land, land occupiers negotiated with councillors to be allocated land elsewhere. People were using politics and political structures as a convenient way of accessing land.

5.1 Compliance of land management institutions with land governance legislation



*An illegal settlement on wetlands during the rainy season
Source - Herald 2021*

Generally, the conventional method of land allocation is on a first come first serve basis using the housing waiting list. A housing waiting list is a register of housing land applicants. The list is managed by council or such other entity with the powers and right to allocate land to the public. The allocation of land should thus be based on the waiting list. This has been compromised by corrupt councillors. Councillors believe that they must allocate all parcels of land in their wards. They have given themselves the mandate to allocate land negating their principal duty of policy formulation. This facilitates corruption among councillors. There are media reports

of people being allocated housing stands in the middle of roads and many other unbelievable stories as a result of the corruption. This affects the poor who depend on low-cost housing. Several commissioned investigations into the affairs of Harare City Council concluded that corruption was rampant in all council departments specifically with regards to land deals.

In the past, the councillors' role was restricted to housing policy formulation and land allocation was the executive's role. Councillors involved themselves in land allocation because they perceived land as a highly sought-after commodity which provides gateways for personal enrichment. There are many cases of councillors selling land illegally. Local authorities are hamstrung to satisfy the full extent of housing demand. Subsequently, occupation of land or farms around Harare, for example, Caledonia and Whitecliff, was necessitated by landless people in the name of political motivations.

Land accumulation by the former local government minister, Ignatius Chombo, shows massive corruption (as the minister owns houses and stands in sixteen of the ninety-two local authorities).

Councillors in both urban and rural areas looked up to the minister and were encouraged to join the primitive accumulation bandwagon.

The role played by public sector agencies in the land delivery process needs to be properly conceived. They form part of the state 'control' mechanism for land allocation. There are possible dangers such as corruption that usually arise from privatising and politicising land subdivision. Its titling at local levels needs to remain an administrative matter and free from private, local, and political processes. The issue in question is how best to improve the efficiency of the 'external' and 'internal' administrative processes for land delivery in the country.

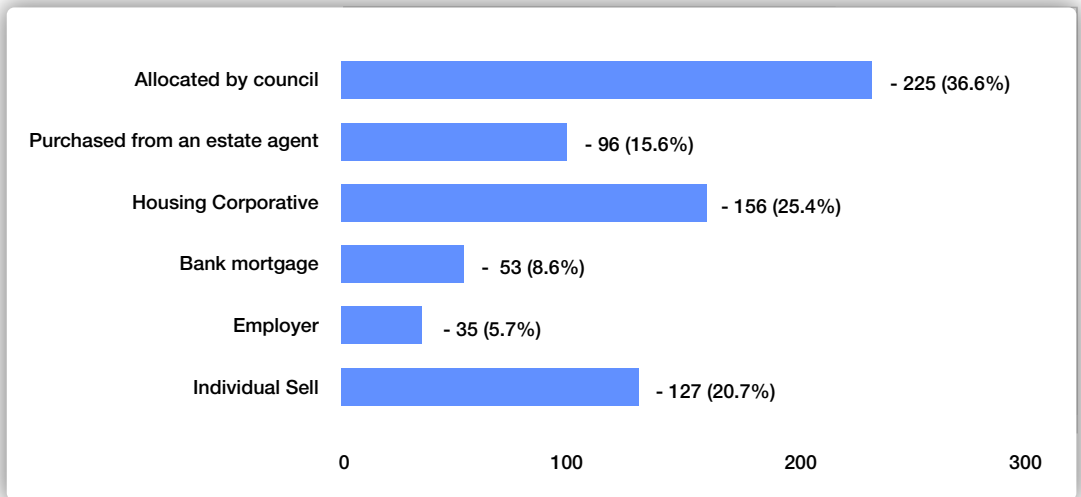


5.2 Residents' views on urban and peri-urban land governance Source of land

From the survey results, 36.6% of the respondents were allocated land by council, 15.6% purchased from estate agents, 25.4% from housing cooperatives, 8.6% from bank mortgage financing purchase of land developed by banks, 5.7% from employer facilitated schemes and 20.7% from an individual seller. This data shows that there are multiple players in the land governance arena and this calls for the proper regulation of land transactions to minimise losses on the public. Figure 2 shows the source of land.

Studies by Chirisa and Makarwi (2019) show that the unsuspecting public has been preyed on by unscrupulous land dealers resulting in the sale and purchase of land wherein conditions violate the law. However, this study noted from the key informant interview that the land management systems prior to 2000 were relatively stable with less public outcry over corruption and the accumulation of land for speculative reasons by PEPs.

Figure 2: Source of Land



5.2 Public access to urban land through the council waiting list

There has been growing concern over the allocation of stands to people who are not registered on the waiting list. The increased allocation to people who are not on the waiting list has raised issues over the utility of the list in the allocation decisions. Over 47.1% of the respondents were not registered on the council waiting list whereas 52.9% were registered as shown in figure 3.

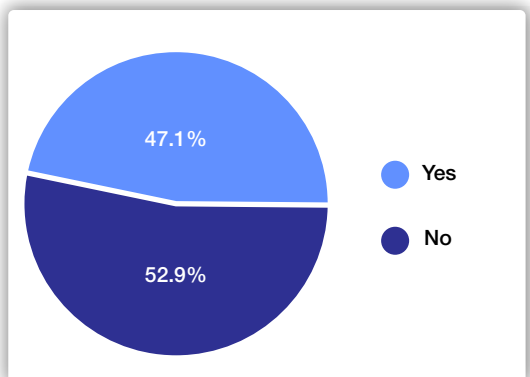


Figure 3: Registration on the council waiting list

The study noted that the increased reluctance to register on the list was partly motivated by the growing opportunities to access urban land without registration but through corrupt officials. Of the 52.9% who are registered on the council waiting list, 20.8% have been on the list for one to five years, 40.2% for five to ten years and 39% for over ten years. Studies attribute the registration of people on the waiting list for a longer period to several factors which include non-consideration of the list by council officials in allocating stands and hence the allocation of stands to people who are not registered on the list, subdued capacity of council to develop land and allocate stands among other factors.

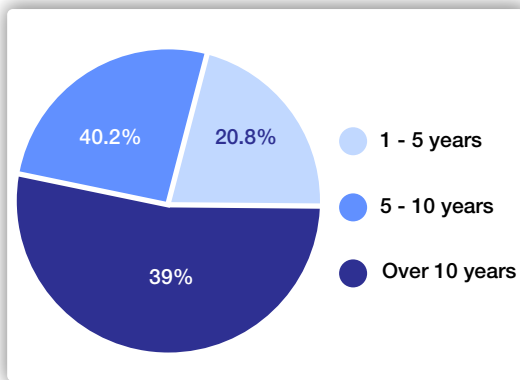


Figure 4: Years spent on waiting list (renewals)

Other findings of the survey are that 55.2% of the respondents who were registered on the waiting list indicated that council was not using the waiting list in allocating stands. The reasons cited for failure to follow the waiting list are corruption and the grabbing of stands by politicians.

5.4 Public awareness of the procedures of acquiring urban and peri-urban land

The study revealed that 34.4% of the survey respondents were not aware of the actual

procedures involved in the purchase of urban land. This implies that they are not privy to the baseline information to ensure that they are not swindled of their money. The lack of baseline knowledge increases the risk of exposure to fraudulent land dealers. As shall be explained in the study, there has been a proliferation of bogus land dealers who develop land without the necessary documentation. Council officials, cooperatives and private dealers have been implicated in selling disputed land. This includes cases where urban state land is sold without the approval of the minister. Figure 5 below shows the level of public awareness of the procedures of acquiring urban land.

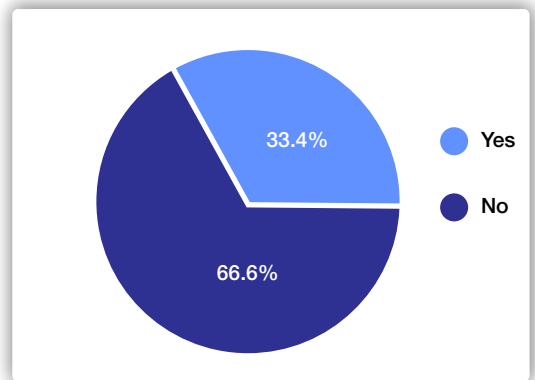


Figure 5: Public awareness of the procedures of acquiring land

In a related study, Chigudhu (2021) submits that the increase in the case of fraudulent land transactions requires massive investment in civic education to reduce the risk of loss to fraudsters. Most of the illegal transactions involve sub-division of state land, sale of communal land by village heads and sale of peri-urban land that has not been handed over to the MLGPWNH by the mister responsible of lands.

5.5 Public knowledge of the legislation of acquiring urban and peri-urban land

The survey results show a gap in the public knowledge on legislation and standard operating procedures on land acquisition. 20.2% of the survey respondents did not know the land acquisition legislation and 51% showed moderate knowledge (refer to figure 6 below). This exposes the public to the risk of purchasing land without the knowledge of the status of the land. A study by Chiweshe (2020) showed that major issues on land acquisition related to the ownership of the land in question. There has been a proliferation of private land developers selling land that they do not own or without the relevant authority to have the selling rights. As a result, many peri-urban land transactions involved the violation of several statutes. This explains the ongoing demolitions of houses and attempts by the government to legalise some of the structures. Residents have also been slacking in terms of due diligence leading to purchasing contested land. In addition, some residents were duped in situations where fraudulent copies of deeds were produced.

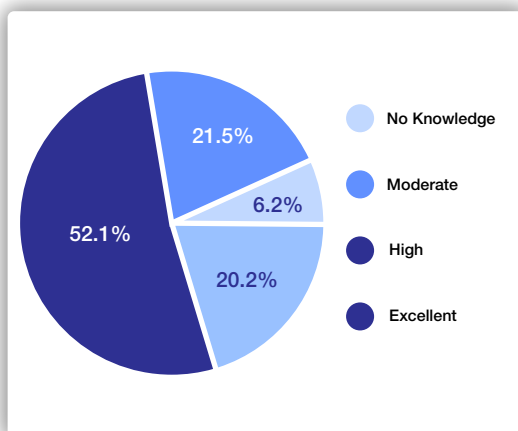
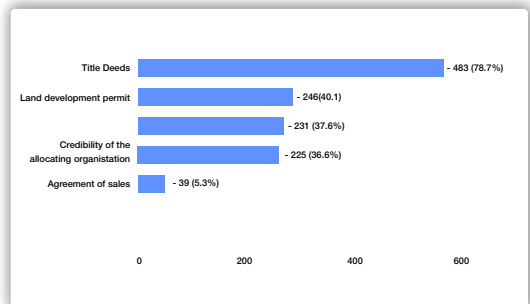


Figure 6: Public knowledge on land acquisition legislation

5.6 Due diligence considerations/ documentation when acquiring land

Among the respondents with knowledge of land governance process, there are due diligence tools they consider before buying land (refer to figure 7 below). The majority of the buyers indicated that they consider title deeds. However, most of the peri-urban land was allocated under the A1 and A2 model and hence do not have title. In such cases, the buyers considered the availability of development permits and agreement of sale. This is equally risky since the number of private land developers obtaining land development permits fraudulently has increased.

Figure 7: Due diligence on land acquisition



Heavy rains expose Harare illegal settlers
- source www.newzimbabwe.com

6. Procedure of Urban and peri-urban land acquisition



One of the areas that the study found to be an avenue of urban and peri-urban land corruption relates to the violation of the procedure for land acquisition. Two fundamental issues/questions emerge from this study:

1. What is the procedure for acquiring both urban and peri-urban land?
2. What is the nature of the violation of the procedures of acquiring urban and peri-urban land?

All peri-urban land as aforementioned is either state land or private land (where there is title). The RDC within which the peri-urban land is situated (that is land outside urban council boundaries) has jurisdiction over such land. The role of the Ministry of Lands, Climate, Agriculture and Rural Resettlement is to acquire agricultural land, some of which for redistribution under the land reform programme. Peri-urban land is predominantly agricultural land either acquired under the land reform programme from 2000 or communal land as governed under the Communal Land Act. Some of the land so acquired had been identified by adjacent urban local authorities for urban development. The MLGPWNH is responsible for requesting such land from the ministry responsible for lands for urban development. It is only when the minister responsible for agriculture has handed over such land to the MLGPWNH in writing that urban development can commence.

The ministry responsible for local government can hand over such land for

urban development to the local authority, private developers, cooperatives, individuals or PPPs between the MLGPWNH and private players. This study, however, has noted that some of the peri-urban land where urban development is taking place was not handed over to the MLGPWNH by the ministry responsible for lands (refer to Justice Uchena Commission report). Further, it was also noted that the MLGPWNH did not follow the procedures of incorporation as provided for in the Regional, Town and Country Planning Act (sections 13, 40, 43), Urban Councils Act (sections 6 (2) (c), 10) and RDC Act (section 10). One of the hazy areas has been the alleged role of former Provincial Governors (now Ministers of State for Provincial Affairs and Devolution) in the allocation of urban land. The role of Provincial Governors (PGs) in the allocation of urban state land and peri-urban land for urban development appears to have brought confusion in land management. Part of the confusion related to PGs influencing the allocation of land to private land developers with limited capacity to develop the land, abuse of land for commonage, violating provisions relating to the incorporation of state land into urban land, etc.

It is important to note that the Government of Zimbabwe's National Housing Delivery Programme 2004-2008's housing target of 1 250 000 by 2008 appeared to have put pressure on land allocating authorities resulting in the violation of procedures in an attempt to achieve the target. Some of the objectives of the programme were to acquire 310 406.6 hectares of peri-urban

land to achieve the planned target and to reform the current housing delivery system to increase the number of players. This equally presented an opportunity to private land developers and cooperatives, estate agents and individuals to corruptly acquire and dispose of land in the guise of complementing the government's efforts towards the national housing delivery programme. As a result, a lot of these players are implicated in the violation of standard procedures for the acquisition and disposal of land. Cases in point are the development of private land without the due authority of the owners and the unprocedural change of land use.

Whereas previously PGs were marginally involved in the allocation of urban land, the government awarded them significant powers in the allocation of land for urban development through various memorandums. For example, on 20 January 2004, a memorandum, reference: Lan 30/2/1 entitled 'Acquisition of Land for Housing Development Purposes' was sent to Provincial Administrators. The memorandum was meant to expedite the identification of peri-urban agriculture land (farms) for urban development. Another memorandum from the MLGPWNH dated 31 May 2006 and addressed to PAs and Provincial Public Works officers entitled 'Acquisition and Administration of Peri-Urban Land Acquired under the Land Reform Programme' also bolstered the powers of PGs in the allocation of urban land. In particular, item 3.0 of the memo stated that, 'Whilst the Ministry upholds the policy of decentralisation, Local Authorities should be strongly advised that the Governor's office has a supervisory role over the administration of Urban State land and the prerogative to decide on the use of

a particular piece of land for the interest of the general public'. The effect of this memo was to strengthen the position of PGs in the allocation of peri-urban land. However, the PGs ended up using those powers to allocate state land to private players and cooperatives without engaging local authorities. This resulted in the development of new peri-urban settlements without the development of requisite on-site and off-site infrastructure. Cases in point are the development of Hertfordshire and Woodlands suburbs in Gweru. Whereas the development of these suburbs did not involve the proper acquisition of land, they were also developed without an environmental impact assessment (EIA) and a certificate from the Environment Management Authority (EMA). Woodlands suburb is located close to a dumpsite and the drainage system is very poor. The two suburbs are yet to be incorporated.

The Justice Uchena Commission Report established that the MLGPWNH has a responsibility to value all the farms handed over to it and recover the monetary value from the local authorities, developers and cooperatives in the form of intrinsic value. However, the MLGPW has not been able to value all the farms utilised for urban development. Accordingly, planning, allocations, development and occupation have taken place without valuation for most farms. The Justice Uchena Commission's computation of the total value of the farms, according to the MLGPW, is US\$3 004 368.931. However, the Government has recovered less than 10% of the intrinsic value of the land and is owed almost US\$3 billion by beneficiaries of urban state land. To be exact, the total full prejudice to the state stands at US\$2 977 072, 819.

In relation to the acquisition and allocation of urban land, there are two types of urban land which are local authority land and urban state land. The MLGPWNH is the custodian of urban state land and local authority land. For local authority land, council should have a layout plan approved by the Department of Physical Planning (DPL). However, one of the areas of corruption has been the unprocedural change of use and development of land without a layout plan. In the same context, after the development of the land, council is expected to use the waiting list to allocate stands. Several cases in which councils did not use the waiting list in allocating stands are under investigation.

7. Incorporation of state land into urban land



The incorporation of peri-urban land into urban land is provided for in three pieces of legislation: the Regional, Town and Country Planning Act (sections 13, 40, 43), Urban Councils Act (sections 6 (2) (c), 10) and RDC Act (section 10). Section 10 of the RDC Act Chapter 29:13 contains provisions on the incorporation of state land (land under a RDC) into urban land and states that:

Notwithstanding anything contained in the Urban Councils Act [Chapter 29:15], the establishment of a council for a district in which there are one or more areas under the jurisdiction of a local authority shall have the effect of incorporating those areas within the council area and of vesting in the council the administration, control or management of any local government area within that district, unless the proclamation establishing the council expressly provides the contrary.

Incorporation involves the formal integration/absorption of peri-urban state land into urban land. Usually, the master plan of urban areas extends beyond their boundaries in anticipation of urban growth. There is an anticipated growth of the urban area into peri-urban state land or privately held land, which usually are farming areas. However, most public infrastructure in urban areas is obsolete owing to ageing or is insufficient to cater for rapidly growing populations. Resultantly, any development should consider the existing capacities of urban infrastructure. There is empirical evidence that there has not been a positive correlation between the growth of urban

settlements and expansion of key infrastructure such as sewer and water systems, mass urban transport systems and other key infrastructure. This means that there is need for engagement between councils and land developers over any intended development and the existing and projected capacities for expansion. Such a mismatch between infrastructure and population explains the surge in cases of cholera and typhoid outbreaks, congestion of public transport systems and illegal water and electricity connections in the urban areas

This study establishes that the majority of peri-urban housing developments by private land developers, cooperatives and/or adjacent RDCs were not properly and/or duly incorporated into the urban area in terms of the law. Such cases include Caledonia farm in Harare that is estimated to have over 23000 housing units; Hertfordshire and Woodlands suburbs in Gweru; and Mthunzini and Mbundane in Bulawayo. The peri-urban settlements have huge populations and very weak public infrastructure and drainage systems. The settlement planning is haphazard posing a high health risk. The study establishes a common practice where private developers and cooperatives would collect money but deliberately failed to invest in developing and upgrading infrastructure. The adjacent city councils are, therefore, unwilling to have the new settlements into their new jurisdictions despite that some are already using their services and facilities such as water and sewer. Some of the settlements are illegally

connected to city infrastructure such as water and sewer but are not on the billing list. This is rampant in Chitungwiza and the adjacent Seke areas.

Box 1: Domboshava peri-urban areas

A study by Injgwani (2019) shows that the peri-urban communal area of Domboshava is situated 20 km northeast of Harare in Ward 4 of Goromonzi District, Mashonaland East Province, Zimbabwe. This area is emerging as a development node for surrounding communal areas and farms in Goromonzi District owing to its proximity to Harare. Domboshava is rapidly accumulating an urban population from Harare, as well as people from other places across the country, as a result of incessant land transactions between residents of local tribal descent and migrants. Tribal members hold historically sanctioned communal land rights under the system of customary land tenure, whereas migrants do not have legitimate lineage land rights in the communal area because they migrated from elsewhere to live in this communal area. As more migrants settle in Domboshava, diverse, unique and complex experiences are generated in this peri-urban zone.

7.1 An assessment of the suitability of new (2000 to date) settlements for human habitation

There is a lot of evidence showing that a greater number of the new urban settlements established after 2000 lack the key on site infrastructure. The Justice Uchena Commission report established that many people who bought land for residential purposes from land barons were

cheated, finding that there were no roads, water or sewers and were on wetlands, servitudes, sites earmarked for schools, clinics and recreation or other places where housing was not allowed.

Housing development has occurred on unplanned areas such as wetlands, under power lines, on top of sewer lines, sites designated for institutional or commercial use (schools and clinics), and recreational centres and for other public uses. The Justice Uchena Commission established with serious concern that most new residential estates on urban state land throughout the country have no services such as roads, water reticulation, sewer reticulation and amenities, yet these settlements are already occupied. The Commission further established that in some cases where development is taking place, it is being done without approved engineering designs for roads, water and sewer reticulation.

The provisions of the Regional Town and Country Planning Act for the orderly planning and development of land have been completely disregarded. This is a result of the gross incompetence of the Director of Physical Planning appointed by the Act to oversee the implementation of this Act. Such is tantamount to complicity by the Director in the illegal development that ensued from the disregard.



The study establishes eight forms of corruption on urban land management and these will be discussed in order of prevalence. These are:

- i. Unprocedural acquisition of peri-urban state and private land.
- ii. Violation of standard procedures of allocating land by council officials .
- iii. Unprocedural and corrupt change of land use.
- iv. Allocation of land to people who are not on the waiting list.
- v. Corrupt acquisition of title deeds on state land.
- vi. Sub-division and allocation of stands on state land by beneficiaries of the land reform programme.
- vii. Failure to deliver stands after collecting money from the unsuspecting public.
- viii. Double/multiple allocation of stands.

8.1 Unprocedural acquisition of peri-urban state and private land

The study establishes violation of the procedures for the acquisition of peri-urban state and private land leading to contestations over the legality of the settlements established on such land. This report outlined the procedures relating to the acquisition of peri-urban and urban state land. The violation involved several

corrupt and malpractice tendencies. In the first instance, as noted in the Seke areas, private land developers would approach Traditional Leaders (village heads in particular) to acquire communal land for the development of housing units. It is instructive to note that village heads do not have the authority to transact communal land for personal gain. However, there appears to be an inherent weakness in the legislation governing communal land particularly in relation to the role and authority of Traditional Leaders over communal land.

Sections 5(1)(g) and 12(1)(g) of the Traditional Leaders Act Chapter 29.17 read with part 3 of the Communal Land Act chapter 20.04 give Traditional Leaders a margin of authority over the allocation of communal land. It is important though to note that the cited sections do not give Traditional Leaders authority to sell communal land. Nonetheless, Traditional Leaders have, in addition to the provisions of the legislation, allocated communal land (alternatively referred to as traditional land) based on the tradition. Traditional Leaders, therefore, use a combination of statutory provisions and traditional authority in transacting communal land. Nevertheless, their activities over communal land are subject to control by the RDC as the planning authority. For feasibility reasons, RDCs have not been able to constantly monitor the allocation of traditional land by Traditional Leaders leading to corruption by the latter. The peri-urban state land corruption in the above regard involved private land developers who are urban

magnates conniving with Traditional Leaders and usually supported by politicians to convert communal land into urban housing units.

The other paradigm involved the selling of private land with title by private land developers or its occupation by cooperatives without purchasing the land from the owner. In this case, private developers and/or cooperatives would identify land with or without knowledge that it is privately held with title.

SERVICE OF THE PROVISIONAL ORDER

The applicant / applicant's legal practitioners and or employees be and are hereby permitted to serve copies of this provisional order on the respondents or their legal practitioners /employees."

The Historical background to this matter is that the first respondent (Caledonia Enterprises (Pvt) Limited), is a duly registered company in accordance with the laws of Zimbabwe and it is the registered owner of a certain piece of land situate in the district of Goromonzi called Lot 1 of Caledonia measuring 297,4369 ha held under Deed of Transfer 8541/96. Up until 14 August 2013 the company enjoyed quiet and undisturbed peaceful possession of the said property. On 14 August 2013 an unwelcome and strange company called Divine Homes (Pvt) Ltd, being headed by one Washington Jengayenga invaded the said piece of land and despoiled the first respondent, thereby disturbing the prevailing peace at the land.

The first respondent reacted swiftly and made an urgent chamber application for a spoliation order against Divine Homes (Pvt) Ltd and Washington Jengayenga in case No. HC 7021/13. Mtshiya J. and on 30 August 2013 granted the first respondent a final order in the following terms:-

"WHEREUPON, after reading documents filed of record and hearing Counsel

IT IS ORDERED THAT:

1. Applicant (hereinafter referred to as 1st respondent) its employees, agents and invitees be and are hereby restored forthwith to free and undisturbed peaceful possession and control of a certain piece of land situate in the district of Goromonzi called Lot 1 of Caledonia measuring 297,4369 ha registered in the name of Caledonia Enterprises (Pvt) Ltd under Deed Of Transfer 8541/96 (hereinafter called "the property")
2. The respondents and all other persons claiming occupation of the property through them and / or who are not representatives, employees, agents and invitees of the Applicant, be and are hereby ordered to vacate the property forthwith upon the grant of this order and pursuant thereto such persons shall attend forthwith to the removal of all movable

Source - <https://zimlil.org/zwjudgment/files/harare-high-court/2015/511/2015-zwhhc-511.pdf>

They would proceed to parcel that land to buyers. The challenge emerges where the owner (holding title) would order the developers to stop the developments or get an eviction order from the courts. A private developer whose claim of the land lacks legal basis would have prejudiced the buyers. This is the case with Caledonia farm which Mr Paddy Zhanda claims to hold title over, and Hertfordshire and Woodlands suburbs in Gweru with a raging legal battle between Mr Hove (claiming to be the owner) and a private developer (River Valley properties).

8.2 Violation of standard procedures of allocating land by council officials

The study revealed that officials of councils (both elected and appointed) were involved in illicit land deals. This corruption spans a number of activities. The most common of practices established by the study was that of urban land developed without proper layout plans and topographic surveys. Council officials would approve development proposals when proper topographic surveying has not been done or has been done by unqualified surveyors. It emerged that cooperatives and private developers would prefer cheaper surveyors to cut on costs and hence would hire unqualified or underqualified surveyors to do the surveys. This means that council has not supervised the process to ensure the quality of the surveys is above board. Ideally, council is supposed to conduct a physical check through actual visits to the proposed area and ensure that the area is suitable for a proposed use. However, these were rarely conducted leading to settlements on wetlands and other undesignated areas.



Settlement on wetland Source - www.newzimbabwe.com

In the second scenario, the DPP employees were accused of doing the layout plans for private developers and cooperatives. This presents a classic case of conflict of interest where a supervising body's supervisory function is compromised. The DPP is in terms of the law supposed to approve layout plans of councils. In another classic case of corruption, the DPP would approve layout plans on land that has not been handed for urban development in line with the procedures stated earlier in this report. In the same vein, council would proceed to approve building plans on land that has either not been handed for urban development or it is being contested or where council officials have not conducted a visit to ascertain the suitability of the land for a housing project.

The third scenario is the disregard of the waiting list by council officials in the allocation of urban land (see results of the survey also). According to the Ministry of National Housing and Social Amenities, there are approximately 1.2 million people on the government's national housing waiting list, although the exact figure is not known because most local authorities do not collect the necessary data (Chiweshe, 2020). Cases are abound in which councils would allocate stands to applicants who are not registered on the waiting list making the waiting list redundant. A recent example is the suspension of the former mayor of Harare, Jacob Mafume, for corruptly allocating stands without following the list (refer to box below).

Box 2: Circumstances around the suspension of former mayor Jacob Mafume

According to the suspension letter for Mafume, allegations are that he approached Harare council officials namely Mr Nhekairo, Dzehonye and Mrs Tendai Koke to allocate unserviced residential stands to Rotina Mafume and Ruvimbo Mafume in Westlea Township on layout plan TRF/WR/12/17 Westlea on March 2020 without following the council allocation procedure.

Apart from that, Mafume is also facing allegations of approaching the same officials to allocate residential stands to individuals only identified as Choruma, Muchengwa and Mupindu in Greengrove on layout plan number TPF/ER/07/19/1 without following council allocation procedures.

Source: The Herald 29 January 2021

The violation of procedures also led to double allocations. It appears there is breakdown of standard procedure to the extent that every council official would want to be involved in land allocation for corrupt benefits. The case of the suspended deputy mayor of Harare City Council, Mukunguma, is evidence of this (refer to box 3).

Box 3: Circumstances around the suspension of Harare City Council deputy mayor

Mukunguma has a litany of allegations cited in his suspension letter including that in March 2017 he instructed the director of Corporate Services and Housing to allocate stands to Blue Star Housing Pay Scheme from layout plan TRF/WR/06/17 which had been allocated to Probation Infill paying housing scheme, disregarding legal processes outlined in the Urban Council's

Act (Chapter 29:15) and council allocation processes.

He also stands accused of facilitating the illegal allocation of land to a company identified as Hardspec Investments Private Limited through an offer letter valid for two days until September 2019 without following procedure.

After the offer had lapsed for over five months, it is alleged that in his capacity as chairman of the finance committee that authorises land sales, he further authorised and facilitated the unprocedural payment of \$5 million on January 7, 2020, \$20 million and \$1,9 million which were made on February 18, 2020, from Hardspec Investment.

Mukunguma is said to have also unprocedurally authorised and facilitated the sale of 7 000 square metres of council land, an open space along Glen Eagles Road next to Eaglesvale to a local company called Continental Wire Products without following council allocation procedure.

Source: Herald 29 January 2021

8.3 Unprocedural and corrupt change of land use

The study revealed rampant violation of change of land use. Change of use on urban land (both local authority and urban state land) is obtained by way of application to the minister responsible for local government by the local authority concerned. The minister will either approve or disapprove the application depending on the merit of the case.

The study revealed rampant violation of change of land use. Change of use on

urban land (both local authority and urban state land) is obtained by way of application to the minister responsible for local government by the local authority concerned. The minister will either approve or disapprove the application depending on the merit of the case.

The study established that open spaces and institutional land was converted into residential spaces without an approved change of use as required in the legislation. Residential properties were erected on land designated for other purposes. This challenge was prevalent in all the studied local authorities. In Gweru, for instance, open spaces in Mkoba and Kopje areas were converted into housing. In Harare, a number of employees including the Director of Housing are on suspension following the scandal involving the illegal change of use and selling of residential stands with the Budiriro case being the most prominent (see box 4).

Box 4: Land corruption and violation of change of land use

Harare City Council ... suspended Human Resources Director and Former Housing Director Matthew Marara and 13 other employees to allow investigations into corruption allegations that could have prejudiced council of US\$1, 1 million in shoddy land deals in Kuwadzana.

Allegations are that they illegally sold 152 stands in Kuwadzana in a deal fraught with irregularities in the approval of plans and production of layout plans prejudicing council of US\$1 141 779 in the process.

The suspended officials allegedly identified open spaces in Kuwadzana 3, 4, 5 and 6.

There was no application for change of land use. The group then created fictitious payment schemes and fraudulent layout plans.

Plans were presented as if they had been approved by the council and were used to facilitate water connections and the creation of accounts in the municipal finance system.

Source: <https://www.zbcnews.co.zw>

Extract 1: Generation and use of fraudulent layout plans in Strathaven and Kuwadzana



8.4 Corrupt acquisition of title deeds on state land

The study revealed that the officials from the deeds office are involved in land scandals through various illicit activities and tampering with deeds. Corruption at the deeds office ranges from production of copies of fake deeds, giving copies of deeds to third parties for corrupt land

transactions and the fraudulent production of deeds on state land among others. This has led to unfavorable situations whereby loss has been experienced regarding properties in the form of fraudulent transfers. The current legal framework is susceptible to high levels of fraudulent activities due to the ability of people to reproduce deeds in the form of copies. This is due to prevalent high levels of corruption. Corruption and the ensuing level of insecurity emanating from fraudulent activity at the deeds office defeat the real purpose of registering property in the first place.

The rationale behind the system of land registration is to provide an efficient system of registration that is intended to give security of title to land and rights in land that is not easily accessible to someone else. The result is that the security of title is now compromised due to fraudulent activities at the deeds office. Title deeds can be tampered with, altered, and properties sold. There is no security of title anymore. In the same vein, land boundaries are changed at the Surveyor General and people have lost land in the process.

The study established that officials at the deeds office were implicated in facilitating the production of deeds on peri-urban state land especially land acquired for agricultural purposes under the A1 and A2 models. This was meant to facilitate the sub-division of land for housing and commercial purposes with the holders of the fake deeds disguised as the legitimate owners of the land. In a similar modus operandi, the officials at the deeds offices would give deeds of former white farmers whose land was expropriated under the compulsory land acquisition programme. This would be

supported by a fraudulent agreement of sale to legitimise the said corrupt transaction.

In a similar case, employees of the city councils under study would connive with officials at the Deeds Office to produce deeds on urban state land. This will be in violation of the procedure for the acquisition of urban state land where a local authority is supposed to apply to the MLGPWNH. As an example, the investigation of the land scandals at Harare City Council revealed that officials at HCC and the Deeds Office have been implicated in a suspected intricate web that has been illegally grabbing land measuring 27 000 hectares in Grange Township.

The HCC officials led by Harare mayor, Herbert Gomba, are facing allegations of using a fake title deed to corruptly gain control of a piece of land at Grange Township. The title deed Number 706/2015 used to claim ownership of the land belonged to Adam Mtisi Emam Trust.

The production of the deed was done to gain control and ownership of the land without following the procedure of which the title deed used belonged to another land in the same area. The Deeds Office represented by Absolom Magwere in a letter dated September 17, 2018 notified the Director of Works that the same land in question was already occupied.

In a related case, the study established that urban properties are also under threat from the deeds office's fraudulent transfer and forging of copies. A report from the Criminal Investigations Department (CID) Commercial Crimes Division shows that such cases were rife in Harare's medium and low density suburbs and some suspects had since been arrested and sent to court. The division handled over seventy-seven cases between January and December 2020. All the cases occurred in Harare save for one which was referred from Kariba. In 2020, over 100 home-seekers lost millions of dollars in botched sales of immovable property after officers from the Deeds Registry and the Registrar General's Office allegedly supplied title deeds and national identity cards of property owners to criminals. The study established that the officers corruptly assisted criminals to obtain title deeds and identity documents of the real owners so they could swindle home-seekers.

It appeared from the study that most people duped are those who pay the fake owner directly. However, only a lawyer is allowed to arrange the transfer of property, and lawyers have to maintain trust accounts, audited each year, so they can be trusted to be the only person who has both the deeds and the payment. Criminals use genuine title deeds, or have access to the



Source - www.businesstimes.co.zw

real deeds and forge copies, but these bear the correct information. They also use identity cards of the property owners, taking advantage of the picture distortions that come with age. Since most people obtain national identity cards while still teenagers, as the decades pass their appearance changes. That creates room for fraudsters to claim the identities of the property owners in their criminal transactions. Some criminals obtain identity cards bearing their photograph but showing particulars of the property owners as a way of duping unsuspecting and desperate home-seekers. Some lawyers and estate agents have also been sucked into the scandal. The involvement of officers from the RG's department is clear in that identity documents used are obtained from their offices. Even the forged ones that bear the faces of criminals are also products of the RG's office. Title deeds used to convince property buyers are also obtained from the Deeds Registry, confirming that some officers are conniving with criminals.

8.5 Sub-division and allocation of stands on state land by beneficiaries of the land reform programme

The study established that beneficiaries of the A1 and A2 models located in the peri-urban areas were subdividing the land for housing. This is rampant in all the case study cities. This is in violation of the procedures for peri-urban land acquisition for urban development purposes. The procedures are that the farms should be acquired from the ministry responsible for agriculture by the MLGPWNH. However, this was not the case as the new farmers allocated the land proceeded to develop the land and allocate stands. It is equally important to note that such farms do not

have title hence rendering the transaction fraudulent. This means the allocated houses may not get title on the land given the underlying contestations.

The study noted that employees of the DPP and adjacent urban councils were involved in the scandals as they proceeded to approve layout plans and housing plans on the said land knowing that the land has not been handed over for urban development in terms of the laws. Such schemes have been thriving on an unsuspecting public who are desperate for urban land. The prospective buyers are duped into believing that the land has title which the owner is duly in possession of.

8.6. Failure to deliver stands after collecting money from an unsuspecting public

The study established that some private land developers and cooperatives collected money from potential land buyers but did not deliver the stands. The most affected are employees who get their salary through the Salaries Services Bureau (SSB) who are mostly government employees. The land developers would advertise various stands in government institutions such as schools, hospitals and offices of other government departments and agencies such as parastatals. In some instances, they would use union leadership to get access to employees. The deductions will be effected upon signing an agreement of sale. Usually, more stands were sold than the available land or money will be collected even in a scenario where there is no land for the development of stands.

Efforts to recover contributions by the

contributors usually faced hurdles as the land developer will be facing litigation from several other contributors and private persons. As a result, many unsuspecting civil servants lost their money to unscrupulous land developers.

The case is also rampant in cooperatives. The founding members of the cooperatives are listed in terms of the Act. However, two scenarios happened in the course of the existence of the cooperatives. The first one is that some of the members failed to sustain the contributions and were removed and replaced without following due process. Along the way, they would want to come back and claim their stands. In the second instance, the founders of the cooperatives converted the cooperative into a trust or re-registered the cooperative as a trust or a private company. This gave the leaders of cooperatives extensive powers over the affairs of the cooperative (now registered as a trust or private company). Some members would, therefore, be removed and replaced with new members in contravention of the enabling Act. It was also established that most cooperatives were not electing leadership in terms of the Act or the leadership will simply refuse to vacate their positions. A look at the names of the cooperatives shows that many of them bear names of liberation war icons, for example, Teurairopa, Tembwe and Vatemala Vatonga in Harare. This was meant to invoke the political party's protection where the cooperative is contravening proper procedures. These problems increased the chance of double and multiple allocations of stands.

9. Major players in urban and peri-urban land corruption



A multiplicity of players is involved in illegal urban and peri-urban land transactions. These include land developers and the so-called 'land barons'; housing cooperative leaders; property developers and politically exposed persons; officials from councils; MLGPWNH, in particular, the DPP; and the deeds and registry office. The Justice Uchena Commission Report showed that these various categories illegally sold \$3 billion worth of urban and peri-urban state land since 2005 and pocketed most of the cash. The commission recommended that at least 431 cases of suspected corruption in the sale of State land be investigated and prosecutions instigated. These various players acted as syndicates or individually to illegally transact urban and peri-urban land. This section presents a brief on the modus operandi deployed in land dealings.

9.1 Housing cooperatives

Housing cooperatives were implicated in illegal urban and peri-urban land invasions. The cooperatives would move to occupy land and allocate to members without following due procedures. In certain cases, the land occupied had not been surveyed and did not have layout plans or was designated for other purposes, for example, institutional land. Some leaders of the housing cooperatives ended up registering the cooperatives as trusts or private companies and rarely were elections held to choose new leadership. The leaders ended up co-opting new members outside the provisions of the legislation and in the process prejudicing the founding members of the cooperatives

of the stands. The challenge of double and multiple allocations was also rampant in the housing cooperatives.

9.2 Private land developers

The study established that private land developers are implicated in land corruption through various illicit dealings which include violation of proper land acquisition procedures wherein they corruptly acquire either peri-urban or urban state land without following procedures. Such corrupt acquisition of land includes negotiating with Traditional Leaders and acquiring communal land for urban housing development in violation of the Communal Lands Act and the RDC Act. In addition to this, the Justice Uchena Commission revealed that the private land developers are also implicated in developing housing projects and selling stands on urban state land without the approval of the minister responsible for local government. In this case, housing stands are allocated without proper land surveying, layout plan and the development of the necessary on-site and off-site infrastructure. In the commission of these illegalities, land developers were/are acting in cahoots with council officials and the DPP.

In a related study, Marongwe et al (2011) state that: "...Special Investigations Committee's report of the City of Harare Land Sales, Leases and Exchanges has exposed allegations relating to the gross manipulation of the operation of urban land markets." The report refers to cases relating to land swaps between the City of Harare

and some political elites, unprocedural sale of public land that violated section 152 of the Urban Councils Act, unprocedural change of reservation of land, unprocedural disposal of council houses and the non-adherence to council policy on the allocation of stands. Chiweshe (2020) added that a special report by the HCC narrates a case where Council provided a swap deal on land with prominent businessman and politician, Phillip Chiyangwa, without proper authorisation. The case shows the involvement of political elites in accumulating land for speculative purposes at below market prices.

Box 5: Land swap deals at HCC

Council (Item 8 Finance Committee meeting dated 12th December 2007) resolved for a land swap of Stand 389 Derbyshire measuring 17,6 ha (from Kilima Investments) with City of Harare's Stand 19345 GunHill measuring 10,23 ha but on implementation Chiyangwa's company (Kilima Investments) was given 17.6 hectares contrary to the resolution of Council. Officials did not follow the resolution (26 June, 2008) that had rescinded the decision on the Kilima's land swap deal but took it upon themselves in collaboration with P. Chiyangwa (Director of Kilima) to allocate alternative land to Chiyangwa's Kilima Investments with neither authority from Council nor a report of their decision to Council. Source: Chiweshe (2020)

9.3 Ministry of Local Government, Public Works and National Housing

The study revealed that the MLGPWNH allowed the development of urban housing units on farms that have not been handed

over by the ministry responsible for lands and agriculture. The weakness of the MLGPWNH in monitoring peri-urban housing development provided space for illegal land sales by private land developers and some unscrupulous cooperatives acting in connivance with Traditional Leaders and politicians. In addition to this, the Justice Uchena Commission noted that the MLGPWNH has a responsibility to value all the farms handed over to it and recover the monetary value from the local authorities, developers and cooperatives in the form of intrinsic value. However, the MLGPWNH has not been able to carry out valuation of all the farms utilised for urban development. Accordingly, planning, allocations, development and occupation have taken place without valuation for most farms.



Source - Shutterstock Images

In addition to the above, the study established that the state lands department in the MLGPWNH failed in its mandate of maintaining a proper record of and managing urban state land. This resulted in the wanton invasion of state land by cooperatives and private players. However, there is evidence that the minister responsible for local government would also approve the application for use of urban state land by a local authority with a hidden intention of purchasing that land. The corruption syndicate would thus involve the minister working in cahoots with council officials (see box below).

Box 6: corruption on urban state land by the former minister responsible for local government

...the Minister acquired vast tracts of land within Greater Harare and registered them in companies associated with him. It remains disturbing to note that the Minister (Dr Chombo) would identify pieces of land in the City, influence Council Officials to apply to him (Chombo) for Change of land use, and then sit over the same applications and approve the changes. He would then write to Council officials asking to buy the same stands and obviously get them. Land reserved for recreational activities would end up having Title Deeds in his company's name. A case in point is Stand 61 Hellensvale Harare, measuring almost 20 hectares. According to the Advice of Payment, the Minister paid US\$2 300 for this stand, obviously an understated value.

Source: Chiweshe (2020)

The study further reveals that officials of the DPP in the MLGPWNH approved layout plans on state land wherein the proper

procedures for the application of incorporating state land into urban land had not been done. The study revealed that in other scenarios, the officials of DPP would do the layout plans for cooperatives and private land developers. This short-circuited the role of the DPP to monitor spatial planning in land development. It is important to note that some private land developers had become financially powerful and politically connected to the extent that they ended up capturing government departments and officials. A typical example is where officials in government departments would be agents of collecting payment for land sales on behalf of private land developers.

9.4 Council officials

Council officials were implicated in various forms of illegal land dealings ranging from converting state land for housing without the approval of the MLGPWNH. There is evidence of the involvement of council employees in originating fake layout plans and illegal sub-division of land before they fraudulently connected water to sell the stands to the unsuspecting public. In Kuwadzana 3, 4, 5 and 6, council employees allegedly identified open spaces without application for change of land use, then created fictitious pay schemes and fraudulent layout plans. The plans were presented as if they had been approved by the council and were used to facilitate water connections and account creation in the municipal finance system. In a related case as is before the judiciary, the human resources director at HCC, Mathew Marara, is facing charges on corruption allegations involving the illegal sale of 150 stands in Kuwadzana, with irregularities in the approval of plans and production of

fraudulent layout plans prejudicing council of an estimated US\$1 141 779. The extracts below show scenarios of illegality on land management by council officials at HCC.

Extract 1: Generation and use of fraudulent layout plans in Strathaven and Kuwadzana

The allegations as contained in letter of Suspension (attached as **Annexure 0.2**) were used as basis for the Agenda.

1. You instructed Messrs S. Mupedza Land Surveyor to undertake survey in respect of stands no. 11119-11648, Mufakose Tship of lot 2 of Subdivision B, of Subdivision A of Willowvale, Salisbury District **without verifying ownership of same.**

Extract 3: Illegal land sales by council officials: Strathaven Township

Between the year 2018 and 2019 Mathew Marara H.M. No. 981755, Aaron Tayerera H.M.No.854654, Charles Sigauke H.M.No. and Tutsirai Kanojerera H.M.No.308919 working in collusion, connived to sell a vacant land space in Strathaven which was demarcated to create 52 stands depicted under layout plans TPF/WR/82/17 with 25 residential stands range 1089-1109 & 1123-1126 and SD/WR/12/16 with 27 residential stands range 1061- 1088.Both layout references TPF/WR/82/17 and SD/WR/12/16 are fraudulent and duplicate other layout plans for Kuwadzana and Vainona respectively. Plan TPF/WR/82/17 used for stand range 21877-21909 in Kuwadzana 4 while Layout Plan No.SD/WR/12/16 is a layout plan for stand 446 of stand 439 Vainona Township, Salisbury District. Allocation letters were created by Aaron Tayerera and signed by Matthew Marara backdated to 2017. Tutsirayi Kanojerera and Charles Sigauke would sign backdated agreements of sale at a time when the signing authority had been shifted to the Director of Housing and

Community Services. One of the 52 stands, number 1069 was sold through Seeff Zimbabwe Real Estate to Aaron Gomo for US\$22 000,00 (twenty two thousand United States dollars). Investigations are still in progress .

In another modus operandi, council employees are also implicated in running cooperative schemes through proxies where they identify and occupy open spaces. This presents a classic case of conflict of interest as the council is expected to monitor cooperatives and ensure that the development of housing complies with the provisions of the Urban Councils Act and council by-laws.

Other cases of corruption in land management by council officials include the

allocation of stands to beneficiaries that are not on the council waiting list. In the same context an investigation into the cases of Aaron Tayerera and Matthew Marara cited on the report on the illegal sale of land by council officials, it is revealed that council officials could sell stands on land that is not surveyed (see extract below).

Extract 4: Report on the illegal sale of land by council officials

3.0 Allocation Letters
Matthew Marara and Aaron Tayerera

52(fifty-two) allocation letters were crafted and backdated to 2017 by Aaron Tayerera and signed by Matthew Marara. The stands were sold between 2018 and 2019 well after Marara’s tenure at the Department of Housing and community services.

The 52 stands were not surveyed and neither were they valued to establish the accurate stand measurement and land price.

To cover up for their misdeeds, beneficiaries were given random intrinsic values between rts7000 and rts 14000 which do not represent the correct values of the stands in question to facilitate opening of sundry accounts and stand files.

9.4 The deeds and registry officials

The study reveals that the current system in the deeds registry is facing challenges. One of them is the registration gap, which is the time lag that occurs between the settlement of sale and registration of title documents. This gives room for priority disputes and fraud. Bvekwa (2017) submits that in the absence of a caveat on the title deeds which acts as a constructive notice and a bar against alienation of the property, activities such as double sale scenarios increase as the purchaser at this point will just have personal rights in the immovable property which flows from the agreement of sale, for it should be noted that rights in an immovable property only become real upon registration. The current system has also seen an escalation in fraudulent activities relating to documents at the Deeds Office as the prevalence of

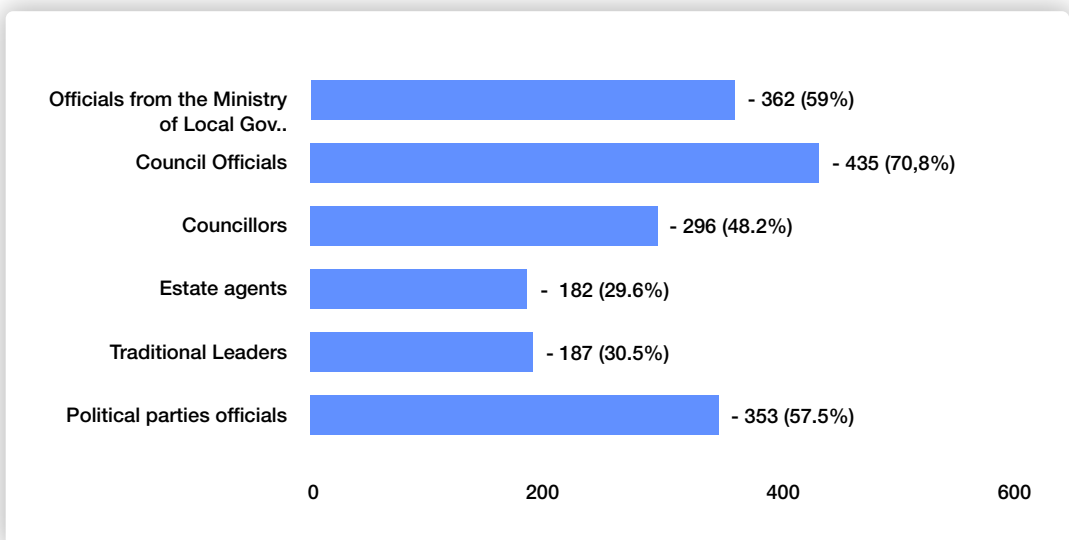
fraudsters selling immovable properties based on fake or forged documents is rife. This situation has emerged due to the lack of checks and balances in the Deeds Office. In other words, there must be a verification system to check the identity of the people who wish to transact in the Deeds Office. In the case of Chirimuta v Action Property Sales Private Limited, a fraudster impersonated the identity of certain true owners of immovable property and sold it to the plaintiff who lost her money and only got to discover the fraud when the payment of capital gains tax was due.

The documents that are mainly the target are the Special Powers of Attorney which are generated to give a fake mandate to sell the property in question. This has resulted in many cases being brought before the courts with parties seeking cancellation of title deeds that would have been fraudulently obtained.

The case of Mafukidze v Mafukidze which involved a forged power of attorney for the purposes of selling an immovable property serves as a good example. The court held that a forged power of attorney can lead to the transfer of an immovable property being declared void.

Officials at the deeds registry and the Registrar General have been implicated in releasing deeds to third parties for the corrupt sale of properties, facilitating the acquisition of deeds on state land, producing national identification documents of property owners and giving them to third parties to facilitate the corrupt sale of property without the consent and knowledge of the actual property owners. Below is the depiction of the perceptions of residents on the key players in urban and peri-urban land corruption

Figure 8: Residents perception of the major players in urban and peri-urban land corruption



10. Challenges in the fight against corruption



The study established several challenges in the fight against corruption as discussed below.

10.1 A multiplicity of players and the absence of a single land governance authority

The study established, as aforementioned, that there is a multiplicity of players in the land governance arena. The players include ministries responsible for local government, lands, cooperatives, deeds registration, private land developers and trusts. This makes coordination of these various players and the monitoring of compliance with legislation and by-laws relatively challenging. This is exacerbated by the absence of a single land management authority with the overall responsibility for the land management value chain. All the various players were developing and allocating land but without a common focal point of accountability. For purposes of example, cooperatives are under the Ministry of Small and Medium Enterprises and are not accountable to the MLGPWNH.

The thrust of integrating land management is gaining momentum because of the challenges mentioned above. A related study of Somaliland and Puntland by Legal Action Worldwide (2015, 11) explained the challenges of a scattered land management institutional framework as follows:

The administration of land in Somaliland suffers from confusion and overlap regarding which ministry has control over different aspects of land governance. This

includes, but is not limited to, which government ministry is responsible for the Land Dispute Tribunals. In general, the absence of a Ministry of Land both contributes to and results from the gaps and weaknesses in the legal framework.

The case of Amhara Regional State in Ethiopia can provide an example of efforts towards integrated land governance. A study by Wily (2003) showed that although the Federal Rural Land Law (1997) made no mention of land management issues beyond the (important) directive that regional states should provide for communal use land areas to be demarcated, Amhara expanded its remit in a highly purposive manner to include a wide range of land use management functions. The policy and strategy were laid out in one law and a special authority was created in another to deliver integrated administration and management responsibilities (Amhara Laws No. 46 & 47 of 2000). District and village level councils in Tigray are also enjoined in laws to carry out both administration and especially environmental protection management.

10.2 Weak oversight structures on cooperatives

There is poor oversight of cooperatives. As aforementioned, cooperatives are under the Ministry of Small and Medium Enterprises and hence not accountable to the MLGPWNH. Some cooperatives ended up registering as trusts or private companies, for example, River Valley Properties Pvt Ltd emerged from Mahlaba

Housing Cooperatives. This means changing registration and governance from the Cooperatives Act to the Companies Act. The study established that the ministry responsible for cooperatives did not properly supervise cooperatives in tandem with the requirement of the enabling legislation. Such supervision would entail that a cooperative conducts elections in terms of the constitutive law. However, some cooperatives were no longer holding these elections with leadership assuming total control and eventually registering the cooperatives as either private companies or trusts. In the same context, the initial intention of the housing cooperative model was that the cooperative develops houses for members and allocated completed houses. Nevertheless, because of weak oversight, the cooperatives ended up selling stands as opposed to allocating houses.

10.3 Capture of government officials by 'wealthy' private land developers

The study established that private land developers generated huge incomes from illegal land sales and hence could bribe council officials and other law enforcement and investigation agencies. In the same context, they ended up capturing government officials and in other cases entire government departments and or offices to facilitate the speedy processing and transaction of land acquisition and sale of stands. This also helped in legitimising illegal activities as in certain scenarios, the payments for stands on land developed and owned by private players ended up being done in government offices.

10.4 The cover of politics

The study established an intricate

relationship between illegal land transactions and politics. In the majority of instances, the illegal transaction of land is protected by high-profile politics. Most of the private land dealers are either political activists or are in the structures of political parties. In the same context, the study revealed that political parties were also at the centre of illegal land transactions giving party members stands as a tool of vote buying. Ncube, Mutondoro and Manase (2017) submit that rapid urbanisation as well as the country's housing crisis has driven up demand for urban land, making it a lucrative economic and political asset that is also susceptible to corruption.

The increase in demand for land and desperation for housing has led to the emergence of politically connected and corrupt individuals, infamously known as 'land barons'. These politically powerful individuals are subverting laid down regulations and procedures to acquire land. The study revealed that people have illegally settled on land and use political affiliation to ensure their continued occupancy. The political complexities involved in land corruption make it difficult to combat the problem as politicians and bureaucrats with the responsibility to fight corruption are also entangled in the web of corrupt land dealings which makes it difficult to end the problem. The public media, for example, is awash with many cases including when Energy Mutodi, a singer cum land developer and a member of ZANU PF, defrauded civil servants in Mutare on the promise of developing stands and collecting monthly payments from the people. In 2018, he was appointed as a deputy minister. His case was forgotten, and the people lost their savings forever.

In a related study focusing on Harare, Chitungwiza and the surrounding peri-urban areas, Chiweshe (2020) established that urban land has become a tool for political patronage used by political parties to ensure the reproduction of political power, amidst a growing population of urban dwellers. Urbanisation, city planning and land use policies in the study cities are largely dictated by politics instead of the more natural and technical issues. The Harare case study brings to fore evidence establishment of pockets of suburbs for political purposes in defiance of the principle of responsible and sustainable city planning. The result of this has been the mushrooming of informal and uncoordinated informal settlements, a rise in urban poverty and unemployment as well as poor social service delivery.

Box 7: Role of politicians in illegal land sales

The Movement for Democratic Change in 2010 carried out an audit on the conduct of their elected councillors in Chitungwiza after serious allegations of corruption. In its report, the committee noted that: '...It was reported that there were 26 commercial stands at Chitungwiza Town Centre. Only six of the stands were sold through the proper procedure. The other 20 were allegedly sold clandestinely by former mayor Marange and the Town Clerk. Our findings are that our own councillors are generally corrupt and are heavily involved in underhand land allocation deals, receiving of bribes...' These allegations point to a situation of rampant abuse of power where councillors are using their positions to amass property and solicit bribes for land. Observations on the ground in Chitungwiza indicate the mushrooming of residential

stands in protected wetlands which is environmentally wrong.

Source: Chiweshe (2020)

10.5 Scattered legislation and an overambitious national housing policy

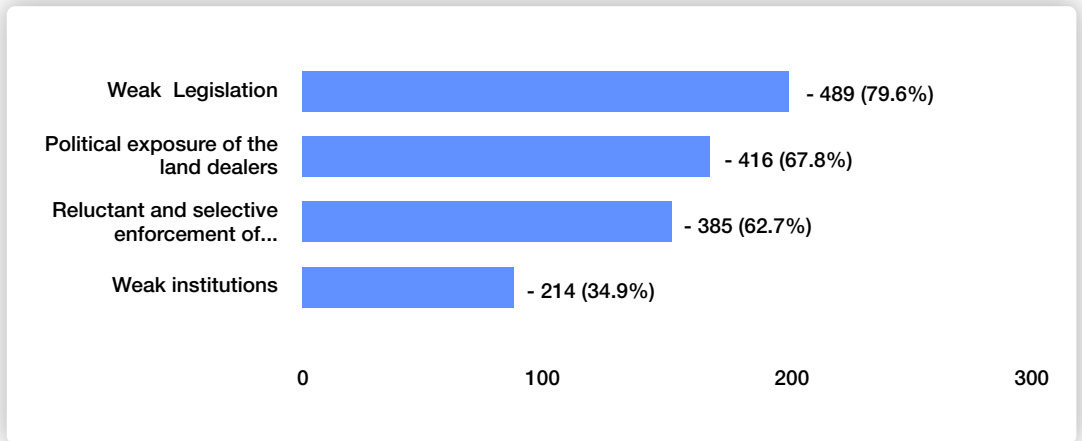
The study established that as much as there are multiple land management institutions, there is a plethora of legislation on land governance. This creates confusion in coordinating the proper application of that wide legislation to ensure an effective land governance system. There is a need to harmonise the legislation to ensure that land governance is not scattered across several laws. In the same context, the national housing policy appears to focus more on output and less on the process. This is worsened by the policy's thrust on parallel development where housing construction happens simultaneously with the development of public infrastructure on the land. Usually, houses were developed ahead of the services leading to the habitation on land that lacks required services. The policy is thus an ambitious programme focused on output with little regard of process.

10.6 Accountability issues and too much discretionary power

The study established that there appears to be too much discretionary power among public officials on land allocation without a viable framework for accountability. For instance, former Provincial Governors (now Ministers of State for Provincial Affairs and Devolution) allocated huge tracts of peri-urban land for housing development. Offer letters for land are given by a number of officials who include District Administrators (now District Coordinators), Provincial

Administrators (now Provincial Coordinators), Provincial Governors, officials from the State Land Office, etc. This creates confusion leading to double and multiple allocations. Figure 9 below presents the views of the residents on the major challenges in the fight against land corruption. Figure 9 below presents the views of the residents on the major challenges in the fight against land corruption.

Figure 9: Residents' views on the major challenges in the fight against land corruption



11. Conclusion and Recommendations to combat corruption



The findings of the study give rise to six major conclusions.

1. There is a multiplicity of land management authorities in Zimbabwe creating challenges of transparency and accountability in the land governance value chain. This is exacerbated by extensive discretionary power without viable supporting measures of accountability among key public officers. As a result, land is issued and allocated by different officials in different ministries culminating in double and multiple allocations among a host of other challenges.

2. The legislative framework on land governance is wide and requires harmonisation for better coordination of the fragmented institutional framework. A case in point is the seeming conflict between the Traditional Leaders Act, RDC Act and Communal Lands Act over the allocation of communal land. This, when viewed against tradition, seemingly gives authority to village heads to allocate communal land. This caveat creates the reigning confusion in which village heads were illegally selling land to private developers and cooperatives in the peri-urban vicinity.

3. Key players in illegal land transactions used the shield of politics to illegally and unprocedurally acquire land, develop and sell stands. Politics thus created 'untouchables' who would, for instance, develop on state land without due process or illegally sub-divide peri-urban agriculture land allocated under A1 and A2 land reform models for private gain.

4. There is a relative paucity of knowledge among citizens on the key documents and processes to ensure that the land developer has duly satisfied all the necessary processes and procedures to develop and sell stands on a given land. For example, people would buy stands on land which is being contested at the courts (for example, Hertfordshire and Woodlands in Gweru) or where the land developer does not have title or in the case of peri-urban agriculture land where the same land has not been handed over to the MLGPWNH for urban development.

5. Private land developers made huge profits from the illegal sale of land and hence became very 'wealthy'. They used their 'wealth' to capture government officials or departments including the law enforcement and judiciary apparatus of the state. This allowed them to evade justice and continue in the illegal land transactions.

6. Employees of council and the DPP were implicated in facilitating the production of fraudulent surveys and layout plans sometimes in cahoots with private land developers or cooperatives. They would proceed to illegally connect water and create accounts for such stands that would be sold to an unsuspecting public usually disregarding the council housing waiting list. Given the provisions of the Regional Town and Country Act that the DPP administers, the DPP, and especially the Director of Physical Planning, was complicit in facilitating the illegal and fraudulent land development.



Government

1. Appoint a single land management authority to deal with the confusion emanating from the wide institutional framework for land management.
2. Harmonise the various land management legislation to establish designated focal points of accountability in the land governance system.
3. Review the parallel development policy to ensure that construction of houses and occupation only happens after the development of on-site and off-site infrastructure and services.
4. Maintain an updated record of all urban state land and ensure measures are taken against all who have illegally acquired such land.
5. Ensure the implementation of the investigation of urban and peri-urban state land by the Justice Uchena Commission of Inquiry and facilitate for further in-depth study to determine the legality of its occupation and, where necessary, take corrective action to ensure that development and/or occupation of such is duly complying with the law.
6. Ensure compliance of private land developers, cooperatives and other players with their various tax obligations and the payment of intrinsic value on land.
7. Produce and regularly update a procedure manual for the development of land. It should show clear steps from land

identification, ownership verification, application for development and issuance of a development permit, subdivision proposal and so on. The procedure should be such that if one stage is not fulfilled, the next cannot be started. Considering the seriousness of this, the skipping of stages should be defined as an offence at law. Layout plans should only be approved where there is a clear framework for the provision of on-site and off-site services.

8. Properly and effectively monitor housing cooperatives to ensure compliance with the Cooperative Societies Act and other legislation on issues such as preparing and submitting audited financial statements. The responsible ministry should impose punitive measures for non-compliance, for example, deregistration.

9. Build capacity for the automation of the Deeds Registry Office, use of securitised paper for title deeds, and use of biometric security features when signing power of attorney.

Local authorities

1. Investment in the automation of the engineering, land management and housing divisions of council to reduce the risk of the production of fraudulent layout plans and survey reports.

2. Update valuation rolls to ensure the proper valuation of urban land in line with the prevailing market dynamics.

3. Ensure that the development of on-site and off-site infrastructure and services happens ahead of the construction and occupation of houses.

4. Councils should publish their waiting lists and ensure that any allocation of land is duly compliant with the legislation and by-laws.

5. Councils should publish a record of all cooperatives and private land developers in council area and their compliance with legislation and standard land transaction requirements, procedures and processes.

Civil society organisations and citizens

1. Build a movement on urban and peri-urban land management to enhance public awareness of land governance legislation and institutional frameworks.



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