

**THE STATE OF THE POLICY AND LEGAL
FRAMEWORK ON CLEAN RENEWABLE ENERGY
PRODUCTION IN ZIMBABWE**

Zimbabwe Environmental Law Association (ZELA)
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Contents

Foreword	v
Acronyms	vi
Introduction	1
1. An analysis of existing laws and policies	2
1.1 <i>The Constitution of Zimbabwe</i>	2
1.2 <i>The National Environmental Policy and Strategies</i>	2
1.3 <i>The Environmental Management Act</i>	3
1.4 <i>The Zimbabwe Energy Regulatory Authority Act</i>	3
1.5 <i>The Electricity Act</i>	4
1.6 <i>The National Climate Change Response Strategy</i>	4
1.7 <i>The National Energy Policy</i>	4
1.8 <i>The Zimbabwe Agenda for Sustainable Socio-Economic Transformation</i>	5
1.9 <i>The 2007 White Paper on Principles for Biofuel Development and Use</i>	5
1.10 <i>The Rural Electrification Fund Act</i>	6
1.11 <i>Statutory Instruments</i>	6
1.11.1 <i>Environmental Management (Atmospheric Pollution Control) Regulations</i>	6
1.11.2 <i>The Environmental and Natural Resources Management Regulations</i>	7
2. The shortcomings of the current legal framework on renewable energy production	7
3. Recommendations	7
3.1 <i>The Green Energy Policy</i>	7
3.2 <i>Policy Implementation</i>	7
3.3 <i>Incentives</i>	8
3.4 <i>Funding</i>	8
4. Conclusion	8
References	8

Foreword

Zimbabwe's quest for social and economic upliftment is undeniable when one considers the challenges the country is facing, particularly in respect of energy shortages, clean water shortages, threats on food security, extreme deindustrialisation and job losses, environmental degradation and many other climate-change-related disasters. Addressing these challenges calls for a deeper reflection on utilising the country's natural and other resources to ensure a sustainable development path to prosperity. A framework of appropriate policies has to be in place to progressively pursue this path.

It is important to note that Zimbabwe has added its voice to the call for sustainable development, as testified by a number of blueprints the government has previously developed. Progressive efforts are also being initiated by civil society and other players pointing to the shortcomings of implementation and monitoring existing laws and regulations in environmental policies.

In this light comes the concept of the 'Green Economy', which has become a global buzzword in the current sustainable development agenda. There is need to intensify the engagement of policy makers and other stakeholders around this seemingly new concept in the local discourse – only a well-prepared and informed citizenry can provide constructive input for the national agenda.

Through this paper, the Friedrich-Ebert-Stiftung (FES) and ZELA (Zimbabwe Environmental Law Association) would like to make a constructive contribution to this discussion, with a focus on green energy production. The authors discuss the legal and policy framework of the green energy sector in Zimbabwe and interrogate the opportunities and shortcomings of the legal and policy framework available. We hope it will foster and intensify a constructive dialogue between stakeholders and policy makers to enhance existing energy policies with a clear focus on sustainability.

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Acronyms

EIA	Environmental Impact Assessment
EMA	Environmental Management Act
GEF	Green Energy Fund
GHG	Greenhouse Gases
NEP	National Environmental Policy
NEPS	National Environmental Policy and Strategies
NGO	Non-Governmental Organisation
WWF	World Wide Fund for Nature
ZERA	Zimbabwe Electricity Regulatory Authority
Zim-Asset	Zimbabwe Agenda for Sustainable Socio-Economic Transformation

The State of the Policy and Legal Framework on Clean, Renewable Energy Production in Zimbabwe

Introduction

Today, there is wide talk about the concept of a 'green economy', largely as a result of the realisation that the current model of economic development based on fossil fuels is unsustainable.¹ The Government of Zimbabwe is in favour of such an economic shift. In 2012, the then Minister of Environment and Natural Resources Management, the Honorable Francis Nhema, set the tone for the nation to embark on a green economy pathway. He noted that, 'in line with world trends, every sector of Zimbabwe's economy must seriously start taking steps towards greening its activities and operations by investing in cleaner technologies, reducing emissions and saving energy'.² Furthermore, in 2012, the Government of Zimbabwe, in partnership with the United Nations, held a one-day symposium. The key theme was 'Green Economy for Sustainable Development and Poverty Reduction'. One of the outcomes was a solid commitment by the Government of Zimbabwe to the concept of the green economy: 'The Government of Zimbabwe believes that building a green economy allows [one] to better realise development objectives and accelerate the achievement of the Millennium Development Goals.'³

Even so, what exactly is a 'green economy'? One definition is 'an economy that results in improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities'.⁴ One of the ways of contributing to this concept is through the production of clean renewable energy, also known as green energy, to create an adequate energy supply, green jobs and a pollution-free environment. Examples of renewable energy include hydropower, biogas, solar, wind and biofuels.

One of Zimbabwe's most critical challenges is its acute shortage of energy.⁵ This is manifest in regular load-shedding – the direct result of internal generation shortfalls. This ongoing situation makes the transition to renewable energy even more daunting.

Laws and policies will play a critical role in the drive towards building a national green economy. If enforceable, they should help Zimbabwe's bid to gradually transit to a green economy that will protect livelihoods, improve water, energy and food security, promote the sustainable use of natural resources and spur innovation, job creation and economic development. In this case, the policy area in question is the energy sector.

The objective of this chapter is to analyse the national legal and policy framework as it pertains to the production of clean renewable and/or green energy. It reviews the extent to which

1 The Green Economy was one of the resolutions in the 'Future We Want Outcome Document' from the Rio+20 Summit adopted by the UN General Assembly on 27 July 2012.

2 *The Herald*, 6 June 2012, 'Green economy now a must'.

3 United Nations (2012) Day Symposium.

4 United Nations Environmental Programme (2014) 'Using Indicators for Green Economy Policymaking'.

5 Government of Zimbabwe (2012) National Energy Policy.

the current legal and policy framework either promotes or undermines its production and so contributes towards the solid realisation of a green economy.

1. An analysis of existing laws and policies

Zimbabwe has a number of environmental and energy related laws and policies as well as an economic development blueprint that has direct and indirect implications on production of renewable energy. These include the Constitution of Zimbabwe, the Environmental Management Act, the National Environmental Policy and Strategies of 2009, the National Energy Policy of 2012, the Zimbabwe Agenda for Sustainable Socio-Economic Transformation, the Rural Electrification Fund Act, the Zimbabwe Energy Regulatory Authority, the Electricity Act and numerous Statutory Instruments. In addition, there are a number of draft policies that will have a direct bearing on green energy production. These include the Biofuels Policy, the Climate Change Policy and the Renewable Energy Policy.

1.1 The Constitution of Zimbabwe

The Constitution of Zimbabwe is the supreme law of the country and it overrides any law, practices and conduct that are inconsistent with it. Section 73 makes provisions for environmental rights. It states that every person has the right to:

- an environment that is not harmful to their health and wellbeing; and
- to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting social and economic development.

This has implications on the means of production of renewable energy in Zimbabwe.

Currently, the major source of energy for economic development in Zimbabwe is fossil fuels. However, not only are they of limited supply but they also cause environmental pollution and degradation, thereby undermining sustainable development and affecting the health and well-being of current and future generations.⁶

The Constitution requires the state to take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of these rights.⁷ This mandate should also be read in light of the constitutional provision that mandates the state to take cognisance of those international laws to which Zimbabwe is accountable.⁸ Some of the steps that the government can take are to encourage the generation and production of renewable energy that does not cause environmental pollution and degradation. There are numerous ways in which this can be achieved, and, moreover, in a manner that will foster an enabling environment for green energy production, subsidies and incentives.

1.2 The National Environmental Policy and Strategies

The vision behind the National Environmental Policy and Strategies (NEPS)⁹ – to alleviate poverty and improve the quality of the life of the people of Zimbabwe and to avoid irreversible environmental damage – has implications for renewable energy. Clean renewable energy does

⁶ See Richard Bridle and Lucy Kitson (2014) *The Impact of Fossil-Fuel Subsidies on Renewable Electricity Generation*.

⁷ The Constitution of Zimbabwe, Section 73(2).

⁸ *Ibid.*, Section 326.

⁹ Government of Zimbabwe, Ministry of Environment and Natural Resources (2009).

not, for example, lead to the emission of greenhouse gases (GHG) that are contributing to negative climate change. Renewable energy also prevents irreversible environmental damage and maintains essential environmental processes, thus contributing to sustainable development and the wellbeing of the population. NEPS objectives and key policy principles have clear synergies with renewable energy and the green economy. These include optimising the use of resources and energy whilst minimising waste production and pollution, its main goal being to fulfill the nation's right to a clean and healthy environment.

Guiding Principle 42 of the NEPS provides that 'The people of Zimbabwe have a right to safe and affordable energy produced at minimum environmental cost.' Furthermore, NEP Strategic Directions call for the Government of Zimbabwe, in collaboration with stakeholders, to:

- Promote economic policies that encourage an efficient use of energy and discourage the over-exploitation of non-renewable energy sources
- Promote, through the introduction of appropriate incentives, investment in and use of renewable sources of energy
- Encourage greater extraction and use of methane as a cleaner source of energy.

1.3 The Environmental Management Act

The Environmental Management Act (EMA) is another piece of legislation that has direct and indirect implications on renewable energy. Its objectives include the provision of sustainable management of natural resources, protecting the environment and preventing pollution and environmental degradation.¹⁰

Provisions under environmental rights and the principles of environmental management also have positive implications for turning to renewable energy. These include the right to a clean environment that is not harmful to health and the protection of the environment for the benefit of present and future generations through the prevention of pollution and environmental degradation.¹¹ The principles also call for development that is socially, environmentally and economically sustainable.¹²

The EMA mandates the undertaking of an Environmental Impact Assessment (EIA) before certain projects implemented.¹³ Energy projects are among such projects and include renewable/green energy projects such as the development of hydropower plants.

1.4. The Zimbabwe Energy Regulatory Authority Act

The Zimbabwe Energy Regulatory Authority¹⁴ (ZERA) Act likewise has implications for renewable energy. Prior to ZERA, the energy sector was regulated by two bodies, as dictated by the Electricity Act¹⁵ and the Petroleum Act.¹⁶ These were the Electricity Regulatory Commission and the Petroleum Regulatory Commission – ZERA has consolidated the functions and oversight of both, to include renewable and non-renewable sources of energy.

ZERA defines renewable energy as 'energy generated from natural resources such as sunlight, wind, rain, tides, geothermal heat, plants and biomass which are naturally replenished, and in particular includes any renewable fossil fuel'.¹⁷

¹⁰ Environmental Management Act (Chapter 20:27), Section 4.

¹¹ Ibid., Section 4(1)(a) and (c).

¹² Ibid., Section 4(2)(e).

¹³ Ibid., Sections 97-108.

¹⁴ ZERA (Note 11: Chapter 13:23).

¹⁵ Electricity Act (Note 12).

¹⁶ Chapter 13:22.

¹⁷ ZERA (Note 11: Section 2).

As a regulatory body, its functions include:¹⁸

- Regulating the procurement, production, transportation, transmission, distribution, importation and exportation of energy derived from any energy source.
- Promoting, identifying and encouraging the use and development of sources of renewable energy
- Ensuring the maximisation of access for all consumers to affordable and environmentally sustainable energy.
- Assessing, promoting and advising the Minister of Energy and licensees on the environmental impact of energy projects prior licensing.

1.5 The Electricity Act

The Electricity Act¹⁹ also has implications for renewable energy. It allows for the participation of independent power producers in the energy sector, some of whom are focusing on the production of renewable energy.

1.6 The National Climate Change Response Strategy

Zimbabwe already has a National Climate Change Response Strategy²⁰ and is in the process of developing a National Climate Change Policy. The vision is to create a climate change-resilient nation and the mission to ensure sustainable development and a climate-proof economy. Renewable energy production can contribute immensely to realising both these goals. The energy sector is at the epicentre of climate change discussions in Zimbabwe, as it is responsible for the lion's share of the country's total GHG emissions.²¹ In terms of strategies to address GHG emissions by the energy sector, the National Climate Change Response Strategy calls for the following:²²

- Developing a Renewable Energy and Energy Efficiency Policy with time-defined targets for a renewable energy mix and carbon intensities for the energy sector
- Promoting the use of energy-saving technologies
- Encouraging the use of biofuels in vehicles and for household domestic use
- Developing wind technologies for power-generation in areas where it is feasible
- Introducing renewable energy programmes in tertiary level education in order to develop a skilled workforce.

If developed and implemented, these strategies can help towards the development of renewable energy.

1.7 The National Energy Policy

The National Energy Policy (NEP)²³ has direct and indirect implications on renewable energy production. It seeks to promote the optimal supply and utilisation of energy for socio-economic development in a safe, sustainable and environmentally friendly manner. Renewable energy meets these criteria. The NEP further calls for the development of the use of other renewable sources of energy to complement conventional sources of energy.²⁴

¹⁸ *Ibid.*, Section 4.

¹⁹ Electricity Act (Note 12).

²⁰ Government of Zimbabwe, Ministry of Environment and Natural Resources (2013) 'Zimbabwe National Climate Change Response Strategy: First Draft'.

²¹ According to the National Climate Change Response Strategy 2013, the energy sector contributes about 60.7% of the country's total GHG emissions. See www.ies.ac.zw/downloads/draft%20strategy.pdf.

²² *Ibid.*

²³ Ministry of Energy and Power Development: National Energy Policy (2012). Available at www.zera.co.zw/images/pdfs/Energy_Policy.pdf.

²⁴ *Ibid.*, Objective 6.2.

Its main objective is 'to create and promote conducive environment for energy sector players to be able to identify and develop opportunities for energy supply that promote sustainable development'.²⁵ Renewable energy production is one such way of so doing.

1.8 The Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim-Asset)

The Zimbabwe Agenda for Sustainable Socio–Economic Transformation (Zim-Asset)²⁶ is a policy document that is pertinent to renewable energy production. It is widely thought that, if it is fully implemented, Zim-Asset can provide a solid platform for Zimbabwe's transition to a green economy.²⁷

Zim-Asset is anchored on four clusters, namely, food security and nutrition; social services and poverty eradication; infrastructure and utility; and value addition.

An analysis of these clusters shows that their success or realisation is largely dependent on the energy supply. For example, power is a critical player in value addition and beneficiation. Given that Zim-Asset envisages creating an empowered society and growing the economy and providing an enabling environment for sustainable economic empowerment and social transformation, it is highly unlikely that these can be achieved without the help of renewable energy.

In addition to inferences to the role of the energy sector in general, and renewable energy in particular, in the achievement of its objectives, Zim-Asset also makes direct reference to the role of renewable energy. One such example relates to the production of ethanol, a biofuel. It calls for the full operationalisation of the Chisumbanje–Middle Sabi sugarcane project in order to boost sugarcane production and hence the amount of available ethanol:²⁸ 'in the energy sector, the Plan will in addition prioritise the attainment of optimal generation of power, the production and use of biofuels as enablers for economic productivity and growth'.²⁹ Biofuels are a renewable source of power. Furthermore, it calls for the completion of hydroprojects of all sizes, such as those at Batoka and Gairezi,³⁰ while also calling for a conscious development of solar and wind energy initiatives.³¹ These provisions show that Zim-Asset is alive to the need for renewable energy production to power economic growth in line with the green economy concept.

1.9 The 2007 White Paper on Principles for Biofuel Development and Use

While there has been considerable talk about biofuels as a renewable form of energy, as they can produce biodiesel, the problem is that there is no comprehensive policy on biofuels production. This is despite the government having made significant practical efforts to promote biodiesel production.³² What does exist is the 2007 White Paper on Principles for Biofuels Development and Use. It was presented to Cabinet by the Minister of Energy and Power Development on the 18 December 2007 and indicates the government's intentions on the production, distribution and marketing of biofuels in Zimbabwe.

²⁵ Ibid., Objective 7.1.

²⁶ This is the new economic blueprint, which was adopted by (ZANU-PF) to guide economic recovery, stabilisation and growth for the period 2013–2018. See www.dpcorp.co.zw/assets/zim-asset.pdf.

²⁷ See Friedrich-Ebert-Stiftung (2014) Report on the workshop on the Green Economy held at the Jameson Hotel.

²⁸ Zim-Asset, Note 36: Section 3.12(ix).

²⁹ Ibid., 3.15.

³⁰ Ibid., 3.15(v).

³¹ Ibid., 3.15(vi).

³² A Jatropha biodiesel plant was built with the support of the Reserve Bank of Zimbabwe in Mount Hampden after being commissioned in 2008. However, the plant faces many challenges in terms of its viability challenges. See S. Mtisi and G. Makore (2010) *Community participation in biofuels crop production in Zimbabwe: A focus on the policy and practical aspects*. Available at http://www.globalbioenergy.org/uploads/media/1002_ZELA_-_Community_participation_in_biofuels_crop_production_in_Zimbabwe.pdf.

The paper states that the government intends to pursue biofuels development by i) growing *Jatropha curcas* and processing the seed into biodiesel to blend with fossil diesel and ii) expanding sugarcane production for ethanol production blending with petrol. Despite the fact that it was presented in 2007 and that Zim-Asset posited biofuels as a renewable source of energy to power economic development, no serious steps to develop a biofuels policy have been taken. It is only now that the World Wide Fund for Nature (WWF) – an international non-governmental organisation – is leading efforts to develop a National Biofuels Policy for the nation.³³

Nonetheless, Government has attempted to promote renewable energy. The Petroleum (Mandatory Blending of Anhydrous Ethanol with Unleaded Petrol) Regulations of 2013 are a good example, for they require that all unleaded petrol imported into Zimbabwe be blended with ethanol. The regulations state that 'No procurement licensee or wholesale licensee shall sell unleaded petrol, unless the unleaded petrol has been blended with a minimum of five per centum [5%] locally produced anhydrous ethanol, being ethanol blend Grade E5, which is produced by a licensed ethanol blender.'³⁴

1.10 *The Rural Electrification Fund Act*

One progressive piece of legislation on renewable energy production is the Rural Electrification Fund Act.³⁵ The fund calls for the establishment of end-use infrastructure to promote and support the rural electrification project. This includes the construction of isolated mini hydro-electricity, solar and wind generators for centres off the national grid.³⁶ Furthermore, it calls for the collection, diversion, or storage of water for use to generate electricity.³⁷

Through this fund, the Rural Electrification Agency is now working with a number of stakeholders implementing a number of biogas projects in order to strengthen the adoption of renewable energy technologies. A number of pilot biogas digesters have been constructed and more are being created.³⁸

1.11 *Statutory Instruments*

There are a number of Statutory Instruments directly related to renewable energy. These include the following:

1.11.1 *Environmental Management (Atmospheric Pollution Control) Regulations*³⁹

These regulations provide a framework for the control and prevention of atmospheric pollution by air polluting appliances through setting emission limits or standards. Some of the activities that require emission standards include:

- Burning waste at a landfill
- Burning tires
- Burning bitumen
- Burning metallic wire coated with any material
- Burning oil in the open air
- Operating incinerators
- Any activity that causes the emission of a pollutant into the atmosphere.

33 The National Biofuels Policy has four pillars: Environmental, Social and Institutional, Economic and Agricultural.

34 *Ibid.*, Section 4(1).

35 Chapter 13:20.

36 *Ibid.*, Section 2(a)(i).

37 *Ibid.*, Section 2(a)(iii).

38 See T. C. Muzamwe (2014) *Exploring Zimbabwe's Green Economy Potential: The Energy Sector*.

39 Statutory Instrument 72 of 2009.

1.11.2 The Environmental and Natural Resources Management (Prohibition and Control of Ozone-Depleting Substances and Ozone-Depleting-Substance-Dependent Equipment) Regulations.⁴⁰

These regulations have two main objectives. The first is to control and prohibit the use of substances that have the potential to destroy the ozone layer, while the second is to provide a framework for phasing out ozone-depleting substances and ozone-depleting-substance-dependent equipment. Ozone-depleting substances are defined as any chemical substance that destroys the ozone layer and is controlled under the Montreal Protocol.⁴¹ Both the Environmental and Natural Resources Management Regulations and Environmental Management Regulations are listed under the terms of the Environmental Management Act.

2. The shortcomings of the current legal framework on renewable energy production

Although Zimbabwe has a legal and policy framework that can be used to promote clean renewable energy, the provisions are mainly implied or inferred. In other words, they are especially specific to renewable energy but are implied through interpretation. This is the case with the Constitution, the Environmental Management Act, the NEPS, among others. The failure to make specific reference to renewable energy may be one of the reasons for the national and industrial reluctance or the slow pace of shifting away from fossil fuels.

In those instances where there is a specific call for renewable energy, it is in terms of policy rather than law. Examples include Zim-Asset, the NEP, the NEPS and the Zimbabwe National Climate Change Response Strategy. Laws are important in as much as they are statements of intent for activities in a given sector, but unless policies are supported by the enactment of laws, they lack all force. Unlike government policy, legal provisions are binding, and violations or failure to abide by them is actionable in a court of law. In terms of Zimbabwe and renewable energy, it is interesting to note that government policies make specific reference to renewable energy but laws within the EMA and the Electricity Act do not. Hence, these progressive policies on renewable energy must be backed by law. (The only legal body that can be seen to call for renewable or green energy production is ZERA. Even so, ZERA is not an implementer but a regulator.)

As mentioned earlier, Zimbabwe has no specific policy or law on renewable energy. The lack of a stand-alone and coherent policy on green energy production has resulted in the scattering of regulatory and policy frameworks. Furthermore, the current legal and policy framework on renewable energy lacks adequate economic instruments to promote or incentivise its use by industry and the general populace. There is also inadequate mainstreaming of the green economy concept in Zimbabwe's legal and policy framework.

3. Recommendations

A number of solid steps must be taken if Zimbabwe is to fully harness the benefits of clean renewable energy for fuelling the green economy.

3.1 The Green Energy Policy

The starting point is the development of a stand-alone policy on clean renewable energy. Efforts are already underway to develop a renewable energy policy and a consultant has been contracted to develop the policy.⁴² The statement of intent should clearly outline the principles,

⁴⁰ Statutory Instrument 7 of 2011.

⁴¹ Montreal Protocol, Section 2. Available at ozone.unep.org/en/handbook-montreal-protocol-substances-deplete-ozone-layer/5.

⁴² See www.energy.gov.zw/index.php/site-administrator.

objectives and strategies for promoting the production of renewable energy and should be followed by the drawing-up of context-specific laws that will support the implementation of the renewable energy policy. To deal more effectively with clean renewable energy related issues, it may be necessary to follow this up with specific policies and laws pertaining to the various sources of clean renewable energy, such as wind, biofuels, bio gas, solar and ethanol.

3.2 Policy Implementation

Once the various laws and policies related to clean renewable energy have been developed, they need to be fully implemented. Although the existing laws and policies are inadequate, they are a solid foundation as regards developing the production of renewable energy. Were they already fully implemented, renewable energy production – which is vital in the green economy concept, – could have been fairly advanced in Zimbabwe. While the development of specific laws and policies governing clean renewable energy will be a welcome development, their success is wholly dependent of the speed and depth of implementation.

3.3 Incentives

There is need for incentives to promote the uptake of renewable energy by business and the general populace. Investment into the use of renewable energy production is very low and is perceived to be very costly.

3.4 Funding

There is need for the creation and establishment of a Green Energy Fund (GEF) to assist companies with adopting green energy technologies. Some companies and individuals wishing to do so lack the financial resources. Having a GEF will ease this burden.

4. Conclusion

The green economy concept is relatively new in and to Zimbabwe, but there are efforts to move towards it. Here, green energy or renewable energy production is a key ingredient. The current legal and policy framework, despite having provisions that can be used to promote renewable energy production, is weak. Accordingly, a sector-specific renewable energy policy must be developed, followed by the drafting-related laws. Even so, this is a means to an end and not an end in itself – both will need to be vigorously implemented if the green economy concept, which is anchored on renewable energy, is to be achieved.

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The State of the Policy & Legal Framework on Clean, Renewable Energy Production in Zimbabwe

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