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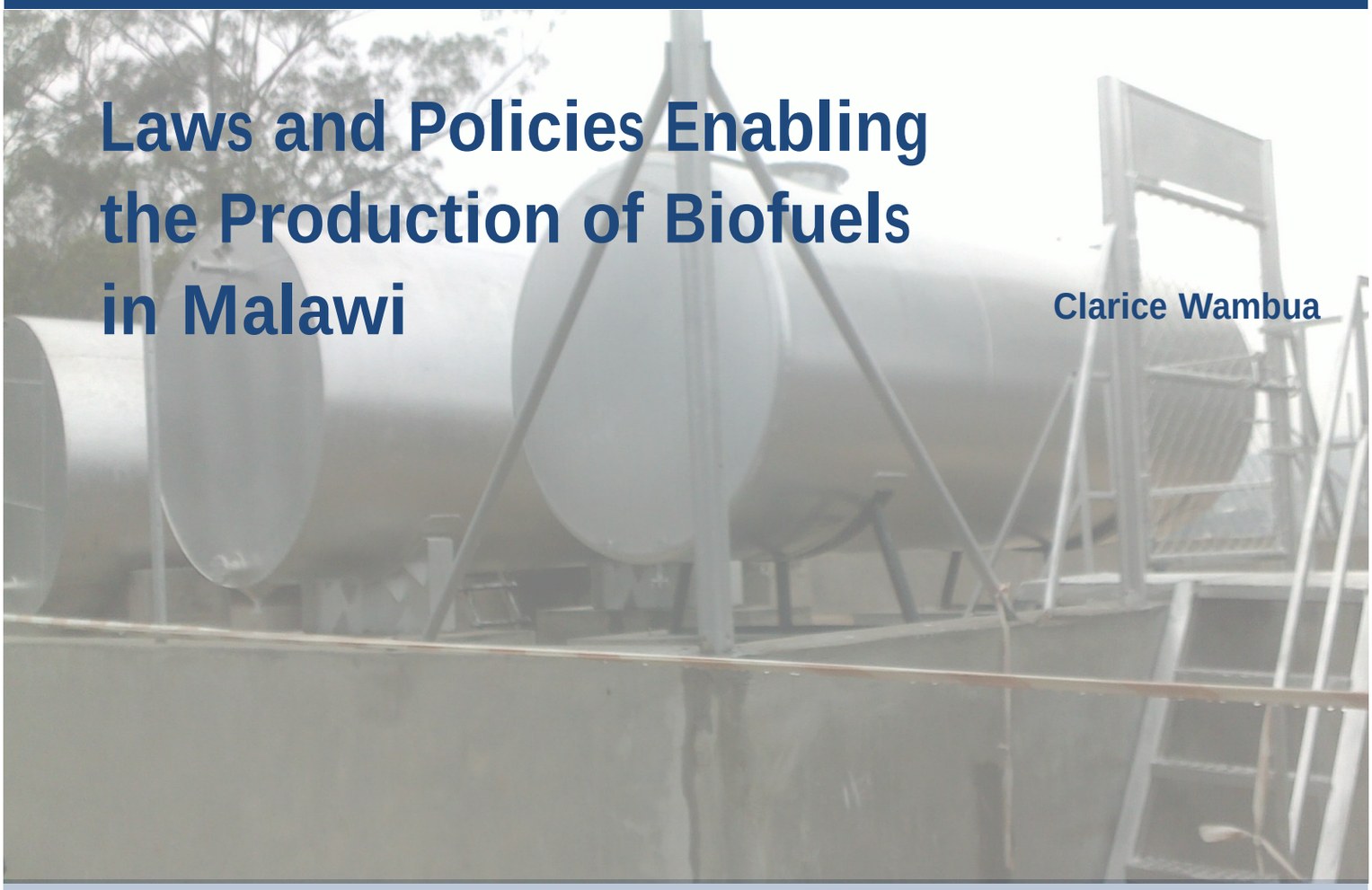

Laws and Policies Enabling the Production of Biofuels in Malawi

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Summary

The 2003 Malawi Energy Policy recognizes the role of renewable energy in the country's development, with bioethanol having been produced in the country since the 1980s and biodiesel having a more recent history of production. The Energy Regulation Act and the Liquid Fuels and Gas Act are among the laws in place to govern the production of biofuels. However, the development of biofuels in Malawi is currently being hampered by the lack of a specific policy on biofuels. Whereas there exist initiatives by the Government and stakeholders to develop a policy and regulatory framework for biofuels development through organisations such as the Biofuels Advisory Council and the Biofuels Association of Malawi, much remains to be done to develop regulations and standards that will promote and regulate the biofuel industry in Malawi. The action to be taken includes the inclusion and harmonization of the views of all relevant stakeholders in the policy-making process, and the replication of pro-poor laws and policies that have worked in other developing countries.

Table of Contents

Introduction

Reports indicate a growing and unprecedented interest in the production and use of biofuels worldwide (Worldwatch Institute, 2007: xvii). However, African countries have historically often had challenges ensuring that effective regulatory structures are in place to deal with new technologies (Molony and Smith, 2010). In the case of biofuels, the rising interest in this technology in African countries in the absence of effective laws and policies governing the sector is detrimental as policy instruments are recognized as vital to the development of robust biofuel industries (Worldwatch, 2007:279). In turn, policy drives law, and a sound legal and regulatory framework is now well recognized as necessary if the risks of negative impacts of biofuels are to be minimized and the benefits maximized in both the immediate and long term (FAO, 2009; FAO, 2007).

The Policy Framework

The level of production of biofuels in Malawi is relatively high, but is currently not at levels sufficient to meet demand.[1] There are currently only two main bioethanol production companies, producing an average of 18 million litres of bioethanol (GoM, 2003). Biodiesel involves a number of private companies and Non-Governmental Organisations (NGOs), but in light of a more recent history of commercial production, only 18 million jatropha trees have so far been planted (BAM, 2010:3), though more companies are showing increased interest in investing in the sector (GoM, 2010).

As production is hampered by the absence of a specific policy document on biofuels, there have been concerted efforts by stakeholders in the biofuels industry to provide input on the creation of an appropriate biofuels policy, for example by presenting position papers and policy proposals and impact assessment reports on biofuels in Malawi to the government (See for example, BAM, 2010). Key among these stakeholders is the Biofuels Association of Malawi.[2] This is a non-profit organization which aims to promote the establishment of a viable biofuels industry in Malawi (BAM, 2009a:4), and has been instrumental in promoting the development of a business environment conducive to the biofuels industry. Despite membership being open to a wide range of actors in the industry (ibid: 5), the founding members of the association are currently among the most active organisations in the growing of jatropha for the production of biodiesel (BAM, 2009b) and as such, certain stakeholders such as bioethanol producers and poor smallholder farmers are ill-represented in the activities of the organisation.

Following the first biofuels stakeholder workshop held in November 2008 in Malawi, an advisory council known as the Biofuel Advisory Council[3] was created, with members from government and the private sector (BAM, 2009b). BAC consists of representatives from the Ministry of Energy and Mines, the Ministry of Agriculture, the Ministry of Industry, Trade and Private Development and the Ministry of Finance, and a private sector representative (BAC, 2009:3). The goal of the Council is to develop a policy and legal framework for biofuel production in Malawi, and a major challenge is the harmonization of the various existing agricultural and energy policies and strategies to provide a framework for the development of the biofuels industry (ibid:6).

As it currently stands, different government ministries are charged with different responsibilities with a bearing on the development of the biofuels sector. For example, the Ministry of Agriculture and Food Security, the Ministry of Natural Resources, Energy and Environment, the Ministry of

Finance, the Ministry of Industry and Trade and the Ministry of Education, Science and Technology all have differing policies yet perform functions that impact on the biofuels industry. BAC faces a challenging task to harmonise and co-ordinate all the diverse responsibilities of the different ministries to create a coherent biofuel policy and legislative framework. In accomplishing its task, BAC has been working on a position paper on the issues and challenges in the biofuels sector in Malawi, and proposes policies to ensure sustainable production of biofuels in the country (BAC, 2009).

The Legal Framework

Malawi has laws in place to govern the biofuels industry. Among these laws is the Energy Regulation Act which establishes the Malawi Energy Regulatory Authority (MERA).[4] This is Malawi's sole energy regulatory body whose main function is to regulate the activities of the energy industry in Malawi and is the body charged with the function of regulating the biofuels sector.

In addition to the establishment of MERA, Malawi has formulated and enacted legislation that directly caters for the production and use of biofuels through the Liquid Fuels and Gas (Production and Supply) Act. The Act defines liquid fuels and gas as including those 'refined from plant organic materials…'. The Act makes provision for the production, blending, extraction, conversion, importing, transforming, transporting, storing, and distributing of these fuels. Its main objectives are to ensure that biofuels supply in Malawi is adequate, reliable, efficient and economical for the country and the consumers. The Act also aims to create favourable conditions for new participants and investors, in order to expand the industry.[5]

The Liquid Fuels and Gas Act prohibits the production of ethanol fuel and biodiesel without a production licence, which is obtained from MERA.[6] Under the Act, conditions to be fulfilled by the licensee include obtaining an environmental impact study/filing an environmental management plan so as to ensure production risks to the environment are kept at a minimum.[7] Once granted, a licence may be valid for one to five years, and will be suspended by MERA in the case of violations of provisions of the Act concerning the protection of occupational safety, health and welfare, public safety, public health and the environment. The licence is revocable where the holder fails to remedy the violations, or repeats them.[8]

Bearing in mind that the production of biofuels carries wide-ranging risks, to among others food security, labour rights and gender equity (See Oxfam 2008; Clancy, 2008), licensing conditions and conditions for the suspension and revocation of licenses geared towards ensuring environmental protection alone are insufficient in creating an effective enabling environment for the production of biofuels. In this regard, a national biofuels policy that embraces wide-ranging sustainability principles which can in turn be translated into law (and specifically licensing conditions and conditions for revocation of licenses), is necessary in Malawi to minimize the wide-ranging risks of biofuel production.

Another way of minimizing risks of production is through the enactment of laws that ensure stringent quality control standards (Worldwatch, 2007 :152). According to the Liquid Fuels and Gas Act, MERA in co-operation with relevant agencies (in this case the Malawi Bureau of Standards) is charged with the function of developing and establishing national production standards in line with prevailing international standards, technical specifications and

codes of practice.[9] The agency may also adopt standards, specifications and codes of practice as established by organizations recognized by the international liquid fuels and gas industry in matters of quality, industry safety and environmental protection. These must however be adapted taking into account the socio-economic realities of Malawi's liquid fuels and gas market and the technical conditions.[10]

Whereas this provision has been put into action in the case of bioethanol, there are currently no set standards or specifications for the production of biodiesel. Though MERA officials have witnessed a growing number of applications for licences for biodiesel production in the recent past,[11] the current lack of set standards is slowing down the process with regards to the development of the industry.[12] Aside from slowing down the licensing process for biodiesel and the development of the biodiesels industry as a whole, the lack of fuel quality standards for biodiesel means that poor quality batches of fuel can easily enter the market. These fuels are likely to pose a safety risk as well as have poor performance. The resulting negative experience may damage consumer confidence in biofuels in Malawi, as happened in Australia, destroying gains made by the biofuels industry so far (Worldwatch, 2007:152).

With regards to blending quotas, Malawi's Liquid Fuels and Gas Act provides that the Minister of Energy has the responsibility of making the necessary regulations to ensure that there is at all times a continuous, secure, adequate supply of liquid fuels and gas. In fulfilling this responsibility, the Minister has put into place under the 2009 Liquid Fuels and Gas (Production and Supply) Regulations, blending regulations which stipulate that all fuels should be blended with a minimum level of organic oxygenates of not less than 10%. Previously, blending bioethanol with petrol had been optional, with a desired maximum limit for ethanol-petrol blend of 20:80 (GoM, 2003). This regulation applies to petrol only and there is currently no mandatory blending requirement for diesel. Blending requirements for biodiesel are therefore also necessary to develop the sector.

Conclusions and Recommendations

This report concludes that although there is an enabling environment for biofuel production in Malawi as evinced by the regulations governing production, these constitute an ineffective environment to govern the biofuels industry given the dearth of laws to regulate all aspects of production and the lack of a national biofuels policy. Initiatives such as BAM's and BAC's though laudable, are yet to include and harmonise the views of all stakeholders in the biofuels industry. On this basis, the report recommends that:

- The Malawi government take the lead in working with the stakeholders in the policy process to harmonize the work of the different government ministries with regards to biofuels, as well as implementing stakeholder proposals on a sustainable production policy. This can be through a national organization such as that set up by the Government of Mali, the National Biofuels Development Agency, which co-ordinates all the biofuels issues in Mali.

- The needs of the poor are prioritized in the law and policy-making process. This is through the participation of poor smallholder farmers and other vulnerable groups in the policy-making process as well as concerted focus on the replication of pro-poor laws and policies that have worked in other countries. For example, consideration of the working in Malawi of the Brazilian government's 'social

fuel seal' which offers incentives to companies that buy their feedstock from poor farmers by offering them tax breaks (Clancy, 2008: 425), as agriculture provides employment for over three quarters of Malawi's population consisting mainly of smallholder farmers[13].

- There be set up in Malawi an independent Policy Working Group (PWG) such as that initiated by the PISCES programme in Kenya, Sri Lanka and Tanzania to develop a consultative and participatory policy methodology, to discuss policy issues and guide policy statements on biofuels. This will help ensure that all interested groups and individuals are involved in the process of developing the biofuels industry.

Endnotes

1 For example, the 2003 Energy Policy notes that the 20:80 maximum limit set for ethanol-petrol blending could not be met due to ethanol underproduction (GoM, 2003:80).

2 Hereinafter referred to as BAM.

3 Hereinafter referred to as BAC.

4 Section 3

5 See Section 4 and 5

6 See Section 9

7 See Section 10

8 See Section 23

9 See Section 32

10 ibid

11 Interview with MERA, June 2010.

12 Interview with MERA, June 2010.

13 See http://www.undp.org.mw (accessed on 09.05.2011)

Bibliography

1. Biofuels Advisory Council (BAC) (2009) *Malawi Biofuel Draft Position Paper*, BAC, Lilongwe.
2. Biofuels Association of Malawi (BAM) (2009a) *Biofuels Association of Malawi Constitution (draft)*, BAM, Lilongwe.
3. Biofuels Association of Malawi (BAM) (2009b) *Minutes of the First Meeting of the Jatropha Biofuel Association of Malawi*, dated February 18th, 2009.
4. Biofuels Association of Malawi (BAM) (2010) *Macro Economic Impact Assessment of Jatropha Biofuel Production and Policy Measures Needed in Malawi: A First Discussion*, BAM, Lilongwe.
5. Clancy, J. (2008) Are Biofuels Pro-Poor? : Assessing the Evidence, *The European Journal of Development Research*, Vol.20 (3): 416-431.
6. Food and Agriculture Organization (FAO) (2007) *Recent Trends in the Law and Policy of Bioenergy Production, Promotion and Use*, FAO, Rome.
7. Food and Agriculture Organization (FAO) (2009) *Case Studies on Bioenergy Policy and Law: Options for Sustainability*, FAO, Rome.
8. GoM (Government of Malawi) (2004) *Energy Laws*, Republic of Malawi, Government Printer, Lilongwe.
9. GoM (Government of Malawi) (2003) *National Energy Policy,* Department of Energy Affairs, Lilongwe.
10. GoM (Government of Malawi) (2009) *2009 Malawi Millennium Development Goals Report*, Ministry of Development Planning and Co-operation, Lilongwe.
11. GoM (Government of Malawi) (2009a) *2009 Economic Report*, Ministry of Development Planning and Co-operation, Lilongwe.
12. GoM (Government of Malawi) (2010) *Minister of Finance Budget Speech for the Financial Year 2010/2011*. Available at http://www.finance.gov.mw/budgetS2010.pdf. (Accessed on 18th June 2010).
13. MERA (Malawi Energy Regulatory Authority) (2009) *Malawi Energy Regulatory Authority Strategy on Biofuels*, Paper Presented by Chimwemwe Dunkalo on 19th November 2009 at Malawi Biofuels Stakeholders Workshop.
14. Molony, T. and Smith J. (2010) Biofuels, Food Security and Africa, *Journal of African Affairs,* vol 109 (436): 489-498.
15. Oxfam (2008), *Another Inconvenient Truth: How Biofuel Policies are Deepening Poverty and Accelerating Climate Change*, Oxfam Briefing Paper, Oxfam International.
16. Worldwatch Institute (2007) *Biofuels for Transport: Global Potential and Implications for Sustainable Energy and Agriculture*, Earthscan, London.

PISCES

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Policy Working Group (PWG)

The Policy Working Group (PWG) of PISCES is an expert working group whose objective is to develop a consultative and participatory policy methodology to discuss the policy issues and guide policy statements on bioenergy. The group aims to achieve this by bringing together policy makers, stakeholders and experts to develop a combined methodology on participatory policy dialogue and apply the same in developing bioenergy policy with a focus on Kenya and Sri Lanka.

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