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**A Critical Review of Malawi's
Special Crops Act and Agriculture (General Purposes) Act**

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ABSTRACT

This report is a critical review of two of the principal agricultural laws in Malawi, the Special Crops Act and the Agriculture (General Purposes) Act. Both are frequently used to justify interventions by government in agricultural marketing and trade activities. The review is to assess whether this legislation is effective in promoting the goals of the country around agricultural commercialization, and if not, to provide recommendations for revisions to the laws. As a secondary task, the review considers whether either law could be used as an appropriate legal framework for contract farming regulation and oversight.

The review was based on a thorough desk review of the legislation and interviews with over 230 key informants involved in agricultural production, marketing, and trade. The interviews focused on the laws and how their application by government has affected the commercial activities of the informants for better or for worse. The key findings from this review include:

- The text of both pieces of legislation empowers the government to act to regulate activities in the agriculture sector with open-ended clauses. Given this broad latitude for action, the laws provide government with significant justification for arbitrary and quite unpredictable decision-making.
- Application of the legislation confounds market activity, rather than being a benefit to commercial agricultural development. Opaque decision-making means that the private sector cannot locate where decisions are made within government or understand the decision-making process.
- More broadly, there is widespread confusion about both the intent and the actual application of the two pieces of legislation. Most stakeholders are unaware of which law does what.
- With regards to contract farming in Malawi, it is rife with issues related to a poor understanding of the terms of the contracts involved. Generally, enforcement of contracts is inadequate.

Based on the above findings, we propose the following revisions to the laws based on this assessment:

- Include the content of the Special Crops Act in the Agriculture (General Purposes) Act. To have two pieces of legislation which can essentially accomplish the same goals is unnecessary.
- Provide a clear decisionmaking and accountability structure as to when and how government will enforce actions allowed under the law that are condition and context specific.
- Enable government to act more in a facilitative role in agricultural value chains, rather than as a principal actor and implementer.
- Create a legal environment for constraining the exercise of absolute power by government, mandating consultations with stakeholders when making decisions, and providing a framework for public redressing of grievances.
- Government must ensure that both parties to a farming contract understand their legal obligations and the scope of action government has to make certain the terms of a contract are fair and are respected.

More centrally, a revision of these acts may be mandatory based on the Constitution of Malawi (1994), which codifies the rights of the individual to petition against government decisions and obliges the government to foster market liberalization, which these acts currently violate.

Keywords: agricultural legislation; market performance; agricultural market regulation

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We are grateful for the candor, engagement, and professionalism of the key informants that met with us to discuss the strengths and weaknesses of the Special Crops and the Agriculture (General Purposes) Acts and how the laws are applied. Their insights are at the center of the analysis here. Nonetheless, responsibility for all errors and omissions lies with the authors.

This study was conducted as an activity of the New Alliance Policy Acceleration Support-Malawi (NAPAS:Malawi) project. The NAPAS:Malawi project provides technical assistance to the Ministry of Agriculture, Irrigation, and Water Development (MoAIWD) of the government of Malawi in support of the Ministry's efforts in leading many of the high-level policy reforms that the government committed to in 2013 under the G8's New Alliance for Food Security and Nutrition in Malawi.

NAPAS:Malawi is supported financially by USAID/Malawi as an Associate Award under the global Feed the Future Innovation Lab for Food Security Policy (FSP) project. Since 2013, the FSP project has combined multi-disciplinary research on emergent issues facing food systems with policy analysis to provide an enabling environment for improved food security. FSP is implemented through a consortium of three institutions: Michigan State University (MSU), the International Food Policy Research Institute (IFPRI), and the University of Pretoria. NAPAS:Malawi is a project managed by MSU.

The contents of this Discussion Paper are the responsibility of the study authors and do not necessarily reflect the views of USAID or the United States Government.

ACRONYMS

ADMARC	Agricultural Development and Marketing Corporation
AGPA	Agriculture (General Purposes) Act
CFS	Contract Farming Strategy
CFTC	Competition and Fair Trading Commission
CGA	Control of Goods Act
CSO	Civil society organization
IPS	Integrated Production System
MoAIWD	Ministry of Agriculture, Irrigation, and Water Development
NAPAS:Malawi	New Alliance Policy Acceleration Support: Malawi
SCA	Special Crops Act
USAID	United States Agency for International Development

1. INTRODUCTION

Agriculture in Malawi holds special significance, both as a means of household food security and livelihood and as a revenue generating sector. As such, legislation surrounding the agricultural sector in Malawi and establishing the basis for its governance also holds a place of importance. Legislation with potential for such a wide and large impact should be reviewed occasionally to ensure that it has not become outdated, ineffective, or simply unusable.

To this end, the report aims to review important agriculture legislation in Malawi to ensure that the laws do not undermine the confidence of farmers, traders (both domestic and international), and processors of agricultural commodities in Malawi to fully engage and further invest in the agricultural sector.

Sentiments had been expressed by some sectoral actors as to how seemingly arbitrary policy decisions and application of legislative text has restricted agricultural markets and trade, undermining their confidence in how predictably agricultural markets operate in Malawi. This has led to a perception of increased commercial risk in Malawi's agricultural markets and, in consequence, resulted in reduced lending to and investment in the sector, choking off commercial development initiatives that otherwise might have made significant contributions to achieving the agricultural and economic development goals of the country. Several applied policy researchers have similarly questioned whether close government control of Malawi's agricultural markets works at cross-purposes to Malawi achieving its agricultural development ambitions (Ellis and Manda 2012; Edelman 2016; Edelman et al. 2016; Sitko et al. 2017).

This report closely investigates these concerns with the aim of proposing revisions to two central agricultural laws – the Special Crops Act and the Agriculture (General Purposes) Act – in order to create a more conducive environment for commercial agricultural development and increased trade. Special attention is paid to ensuring that the concerns of a wide variety of stakeholders are considered –way from the farmers in the fields to the highest levels of policy makers – and that any proposed revisions are made with an eye towards efficiency and effectiveness.

The structure of the report is as follows. First, the specific motivation for the review is discussed. We then describe the two different methodologies employed by the review. Following that, the results are provided from the first stage of the review – the desk review. Then, the results from the second stage – the key informant interviews – are presented. This is followed by a summary of the conclusions drawn, final recommendations, and proposed steps forward.

2. MOTIVATION

In mid-2017, the Principal Secretary of Agriculture, Irrigation and Water Development requested the NAPAS:Malawi project to support the Ministry of Agriculture, Irrigation, and Water Development (MoAIWD) in reviewing and possibly revising the Special Crops Act (SCA), one of the key laws governing the agricultural sector in Malawi.

The need for such a review was to determine whether in its existing form the SCA still was a valuable tool for assisting the country attain its agricultural development goals. At the time, similar legislation under the purview of the Ministry of Industry, Trade and Tourism, the Control of Goods Act (CGA), was being reviewed, as it had been established under the Country Cooperation Framework to support the New Alliance for Food Security and Nutrition in Malawi, which was signed in late-2013, that a review and some reformulation of the CGA would be one of the reforms needed to improve the enabling environment for private sector investments in agriculture in Malawi. A revised CGA was approved by the Parliament of Malawi in May 2018. In designing the review of the agriculture legislation, it was decided that the review should consider and follow somewhat the approach used in the successful review of the CGA.

Thereafter, NAPAS:Malawi staff met separately with selected directors of departments within MoAIWD and senior staff in the Malawi mission of the United States Agency for International Development (USAID/Malawi), the donor agency financially supporting the NAPAS:Malawi project, to explore priority areas for applied policy research in 2018 under the project. In these meetings, both the MoAIWD directors and the USAID/Malawi staff highlighted the need to revise aspects of two of the central laws governing economic activities in Malawi's agriculture sector, the SCA, as previously signaled by the Principal Secretary, but also the Agriculture (General Purposes) Act (AGPA). It was also decided that the review team should seek the assistance of both a third party legal scholar to conduct an independent review of the legislation and of lawyers from within the Ministry of Justice and Constitutional Affairs to provide legal advice to the review team.

The NAPAS:Malawi workplan also included a critical review of how the draft Contract Farming Strategy (CFS) for Malawi might be most successfully operationalized so that both the interests of the farmers who are contracted and the firms that contract the farmers are equally respected in a transparent and legal manner. It is accepted that government has a central facilitative role to play in overseeing contract farming arrangements across the country for all commodities produced under such arrangements. Given the legal implications of such a role for government, the review of the AGPA, in particular, included assessing the practicality and advisability of legislating elements of the CFS through modification of existing agricultural regulations, such as those created under the AGPA. This is proposed as an alternative to revising the Competition and Fair Trade Act to also handle contract farming arrangements, as had earlier been proposed.¹ This proposal for legislating elements of the CFS is taken under secondary consideration as part of our critical review of the AGPA.

¹ The NAPAS:Malawi workplan originally proposed a critical review of the Competition and Fair Trade Act, as this law had been discussed in the context of operationalizing the Contract Farming Strategy for Malawi. However, in a meeting with the CFTC in January 2018, the Executive Director and her team stated that a process of revision to the Act to build strengthened consumer protections into it was well advanced at the time. Consequently, it was too late to incorporate contract farming-related language into revisions to the Competition and Fair Trade Act. Seeking to insert a new set of revisions to the Act would need to wait until the current effort has been completed.

3. REVIEW METHODOLOGY

Two distinct approaches were taken to review the legislation: a desk review and an extensive set of interviews with key informants. The key informants were selected from groups of actors who are affected by or are involved with the application of the SCA or the AGPA. This approach allowed the research team to first gain a general understanding of the legislation and the motivation for the drafting of these laws before bolstering these findings with the experiences of those involved with enforcing the legislation or whose commercial activities are potentially impacted by the application of the laws.

Supplementing these two steps, two separate consultations with stakeholders were held to initialize and then guide the review. First, meetings were held in the early stages of the assessment with MoAIWD officials on the overall review of the two laws and to discuss how the review might also consider contract farming. We also met at the same time with leadership of the Competition and Fair Trading Commission (CFTC) to discuss options for placing contract farming issues within a legal framework. Second, following the finalization of the inception report for the study, which incorporated many of the results of the desk review, a meeting with a variety of interested stakeholders was conducted.² Participants at this meeting provided valuable feedback to direct and bolster the key informant interviews which followed.

Desk Review – The Contents of the Laws

As a first step in determining whether revisions to the two agricultural laws are warranted, a close critical review was undertaken of their contents, how they have been applied, what the literature has to say regarding the impact of their application on farmers, traders, and processors of agricultural commodities, and the experiences of neighboring countries in legally restricting agricultural markets and trade using legal instruments broadly similar to the SCA and AGPA. Regarding contract farming, the desk review specifically explored the possibility of implementing the legal elements of the CFS through the AGPA. The desk study was also necessary to lay out in more detail the data that would be collected through key

² Twenty-one stakeholders attended this meeting on 14 March 2018 in Lilongwe, four of them female.

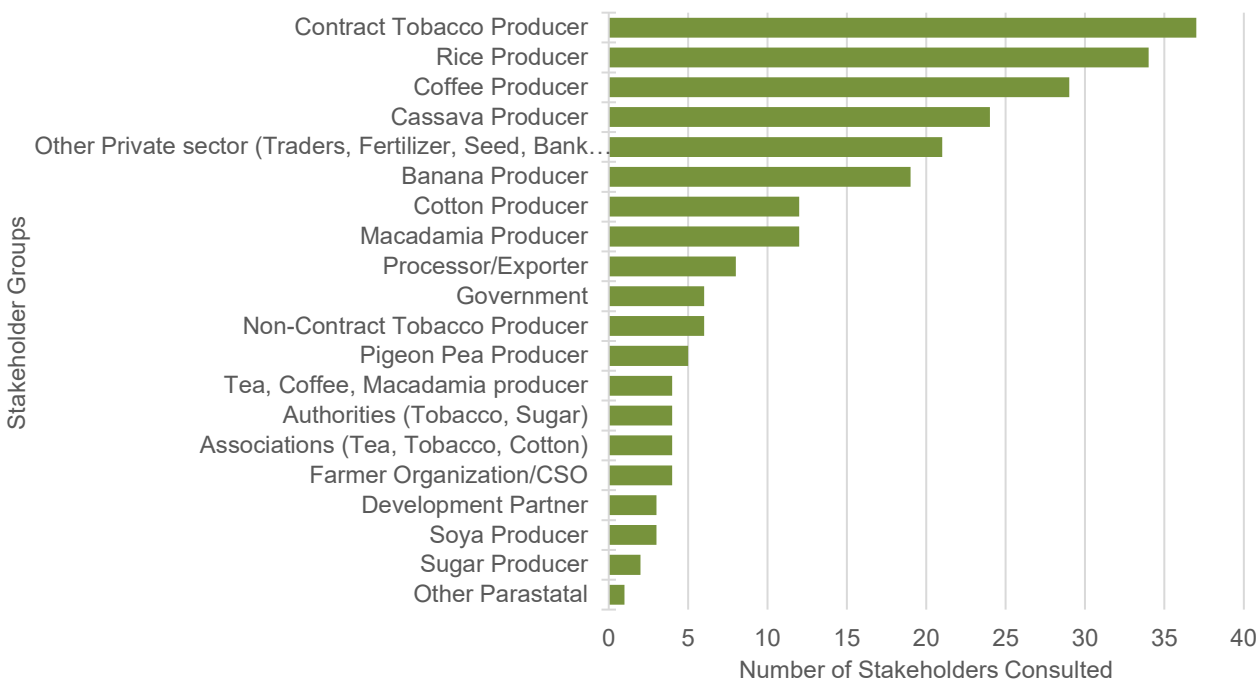
informant interviews in the second step of the review and how that information would be collected. By first undertaking the desk study, we were able to develop a detailed view of the legislation. This understanding informed the construction of the semi-structured questionnaire used in the key informant interviews.

To supplement the desk review, a Malawian legal consultant was hired to conduct his own, independent, review of the legislation – along the lines of the themes we also analyzed – after which he submitted a written report on his findings (M’meta 2018). The results and insights of this independent and more legally focused review have been incorporated into this report.

Fieldwork – Attitudes and Awareness

The second step in the study involved interviews with key informants. These informants included private sector actors whose firms are likely to be affected by the current and any revised laws, public sector officials, stakeholders in civil society organizations, and non-state actors responsible for or affected by the application of the laws. In addition, individual interviews were held with both male and female farmers in several districts. The interviews were done between mid-April and late-July 2018, with most of the farmers being interviewed in June and July 2018. In total, 232 individuals were interviewed for the review, 159 male respondents (69 percent) and 73 females (31 percent) (Annex I). Figure 3.1 shows graphically the cross-section of stakeholders that participated in the review.

Figure 3.1: Cross-section of stakeholders interviewed



Using a semi-structured questionnaire (Annex II), these interviews were aimed at learning how the agricultural legislation under the SCA and AGPA is applied and operates practically. While the interviews were informed by our desk review of the legislation, a clearer understanding was sought of how the legislation in its application affected economic behavior in the agricultural sector specifically, but also more broadly. Among the general themes considered in the interviews were:

- How well is the legislation known by government agencies, at both national and district levels, and by private sector firms?
- What has been the response of the private sector to these Acts and their application?
- Should government play a leading role in the development of specific agricultural crop value chains, for example under the SCA? Or is this better left principally to the private sector?
- What are the opinions of large and small farmers growing special crops on the value of the mechanisms specified in the SCA for improving the returns they realize on their production of those crops?

- What insights can government officials, farmers, or traders provide on the political or economic factors and other conditions that result in the application of the laws?
- What experience have individuals had with contract farming? What is the best role for the government in providing oversight on contracts in agriculture?

The key informants for the interviews were chosen on a purposive basis. We specifically reached out to a wide swath of stakeholders in agriculture in Malawi, doing so based on our knowledge and experience of who might be best placed to answer our questions and inform our review. Interview responses have been kept completely anonymous – no one quotation or sentiment can be attributed an individual respondent. A list of the organizations and respondent groups interviewed, along with a tally of the number of individuals interviewed within these organizations (broken down by gender) can be found in Annex I.

4. THE CONTENT OF THE ACTS

In this section is presented our understanding and impressions of the SCA and the AGPA based on a thorough desk review of the legislative documents available to us. We also provide a summary assessment of the Control of Goods Act (CGA), which, although not an agricultural law, is often used in similar ways to the two laws considered in this report to restrict agricultural and broader market activity and trade.³

The Special Crops Act

The SCA was passed in 1963 with the broad purpose of making “provision for the development and marketing of special crops and for the establishment of Special Crop Authorities”. This law was brought into being in 1963, with the country still under colonial rule, but in the political context of full independence to come in 1964 and at a time when Malawian leaders were seeking to advance citizens’ economic prospects. The review conducted by the legal consultant for this study notes that the Parliamentary debates around the SCA was intense with a tone that epitomized the independence struggle of the nation. The premise of much of this debate was the perception that indigenous Malawians were toiling on their gardens while living in poverty, and yet foreigners were thriving on their sweat (M’meta 2018).

The Special Crop Act gives the Minister of Agriculture wide-ranging powers to intervene in the market whenever “the Minister is satisfied that the development of any crop should be promoted or fostered.” To do this, the Minister must declare the crop to be a “Special Crop” by order published in the Malawi Government Gazette.⁴ The Minister must then establish an Authority for “promoting and fostering the

³ The three Acts can be found online at the following websites:
The Special Crops Act - https://www.malawilii.org/mw/consolidatedlegislation/6501/special_crops_act_pdf_12446.pdf;
The Agriculture (General Purposes) Act – https://malawilii.org/mw/consolidatedlegislation/6505/agriculture_general_purpose_act_pdf_11946.pdf; and
The Control of Goods Act, 1968 – https://malawilii.org/system/files/consolidatedlegislation/1808/control_of_goods_act_pdf_14205.pdf. The 2018 revision of the Control of Goods Act was not yet available online at the time this report was finalized.

⁴ While the text of the legislation refers to the powers of ‘The Minister’ (and we do the same in the paper here), it is generally accepted that, when legislation is drafted, such wording is used to refer to the authority of the Minister’s office and not the Minister as a person. Some key informants believed this was not simply a matter of semantics – that the reference to the

development of a special crop” in whatever areas the Minister deems necessary – from small development areas to the entire country.

Crops authorities are defined by their specific functions and powers. Functions describe the purpose of the Authority and can range from aiding smallholder development, such as through establishing training farms and estate management services, to significant market controls, including controlling sales of the crop, exports/imports, marketing methods, and prices. The Orders under the SCA establishing each Authority enumerate the various actions the Authorities are empowered to carry out in pursuit of their functions. Importantly, each of the Orders creating the various Authorities all contain a final sub-clause under the list of powers of the Authority which grants it broad, indistinct, and open-ended powers to enact whatever actions the Minister or Authority deem necessary for the development of the special crop. This is discussed further later.

Special Crop Authorities are also empowered to pass regulations for the licensing of crops in question. Once a special crop is declared, any individual or firm involved in its production, processing, marketing, and export may also then be subject to various licensing requirements. The conditions of these licenses vary, but mainly control the buying and selling of the crops and inputs for their production. Occasionally, the licenses set technical standards for processing and accounting of special crops. If the Special Crop Authority does not declare any licensing rules, special crops are covered by umbrella licensing regulations passed under the full SCA legislation. These wider licensing regulations state that any person who owns or otherwise controls any land in a special crop area and intends to grow the special crop must have a license. As well, those who intend to buy, barter, or sell a special crop must obtain a license. Both forms of licenses have various conditions regarding the non-transferability and specificity of that license.

The composition of the boards for the Authorities are generally uniform, with between 10 and 20 members, including a chairman, vice-chairman, and government officers as ex-officio members. Most

office implied a consultative process among the advisors positioned in the office. However, given that the text of the legislation is unclear, our interpretation here is based on the simplest reading of the text.

Authorities set specific standards for board member eligibility and tenure. Some of the Authorities also explicitly include on their boards representatives from the Agricultural Development and Marketing Corporation (ADMARC) or other industry actors.

At least nine special crops have been declared at some point – cashew, coffee, cotton, groundnuts, macadamia, tea, tobacco, tung, and flue-cured tobacco. However, it appears from a review of the legislation that the necessary legislative procedures to establish the necessary Authority has not been done for all these crops. Those crops that had an Authority at some point, which know either through our desk review or interviews, were tobacco (in the form of the Kasungu Flue-Cured Tobacco Authority), tea (Smallholder Tea Authority), coffee (National Coffee Authority and Smallholder Coffee Authority), sugar (Smallholder Sugar Authority), and tree nuts (Tree Nut Authority).

More recently, the SCA became ‘deregulated’ during various periods of the Structural Adjustment Programs implemented in Malawi at the urging of the World Bank and IMF. These programs of economic reform were in place during the 1980s and 1990s and focused on liberalizing markets in Malawi and reducing state support for parastatal organizations. To achieve these goals, it was agreed that the government would suspend the operation of the Special Crop Authorities established under the SCA to allow other actors to engage in the production, processing, and marketing of the designated special crops. Importantly, however, the SCA has never been repealed. The act is still enforceable if government would wish to apply it. As such, an important consideration in our review is that the SCA is still law, despite being somewhat overtaken by events and seen by some observers to be largely irrelevant to how specific agricultural commodities are produced, processed, and marketed and traded in Malawi today. In our interviews, however, we found many stakeholders to also view the SCA as being among the tools that government could still employ to advance particular strategies of commercial agricultural development. This point is discussed further later in this report.

In consequence, the Authorities did not survive in the form in which they were established, as they were neither congruent with the market liberalization aims of the Structural Adjustment Programs nor properly

equipped to compete effectively in liberalized markets. Most accumulated large debts, which they could no longer service, but which were guaranteed by government (M'meta 2018). A specific example of this pattern is the history of the Smallholder Coffee Authority. By 1998, the Authority had accumulated debt of around MK 40 million. Growers were being paid just 20 to 30 percent of the final sale price for their coffee, while the Authority retained 70 to 80 of sale revenues to cover overheads. Many farmers found coffee cultivation unprofitable and uprooted their coffee trees. Plans for the privatization of the Smallholder Coffee Authority were set in motion at this time. As a result, the Authority was reorganized into the Mzuzu Coffee Cooperative Union. Similar fates befell the Kasungu Flue-Cured Tobacco Authority, which was absorbed into the Tobacco Control Commission; the Smallholder Tea Authority, which transitioned into the Smallholder Tea Company; and the Smallholder Sugar Authority, which was privatized via a buy-out option to create the Dwangwa Cane Growers Trust and Dwangwa Cane Growers Ltd. Our desk review and interviews provided no insights on what became of the Tree Nut Authority.

The Agriculture (General Purposes) Act

The AGPA was passed in 1987 with the broad purpose to “make miscellaneous provisions for the general regulation of the agriculture industry”. In a historical context, the law was formulated well after independence and during the period of autocratic rule of Malawi by Dr. Banda, the country’s first president. The parliamentary debate around the formulation of the AGPA was considerably less extensive than was the case for the SCA, reflecting the autocracy then in place – Dr. Banda saw a need for the AGPA as a general legislative framework to legally enable Government to control and regulate various activities in the agriculture industry, so the law was passed (M'meta 2018). However, the debate around the law failed to consider that the SCA was already in place nor were the already evident failings of some of the Authorities considered in drafting the AGPA. This failure to revisit the SCA, or at the very least consider the implications of the SCA in the debate around the AGPA, was a missed legislative opportunity for needed institutional reform in the agricultural sector (M'meta 2018).

This legislation was aimed at increasing cash crop production and reducing food crop prices by providing private traders with incentives to become fully engaged in agricultural marketing (Ellis and Manda 2012). When the AGPA was enacted by the Parliament of Malawi, the Government was allowing private competition to ADMARC by creating a licensing framework for private traders – a framework which, over time, became more lax. Under the Act, the Minister of Agriculture is given the authority to create regulations the Minister “considers appropriate, expedient or necessary for the proper regulation of activities in the agriculture industry (clause 3.(1)).” The act specifically states that these regulations cannot apply to tobacco, cotton, or any crop declared under the SCA.

Given the wide scope of the AGPA and the single-party government in place at the time, it is no surprise that the potential powers appropriated to the Minister under the Act are broad. The Minister, among other things, may license the buying, selling, or marketing of crops; decide who is permitted to obtain a license; set the minimum and maximum prices for a crop, and enumerate export procedures. As with the SCA, there is a final clause granting the Minister open-ended authority to do whatever appears “necessary or desirable” for the purposes of regulation. These powers can be enacted over any specific agricultural industry, all agriculture industries, or be applicable only to a specific location or over all of Malawi, excluding the crops specifically excluded under the Act.

The legal framework established by the Act led to the passing of the Agricultural Produce (Marketing) Regulations. Under these regulations, a license is required to profit from or engage in the business of buying any agricultural produce from producers. The specific agricultural produce in question are established in the second schedule to the Regulations, which was last revised in 2008 and is relatively limited.

Only Malawi nationals or businesses majority controlled by citizens of Malawi may apply for licenses. Conditions for such licenses are somewhat tight, limiting the period of the year during which one may purchase produce, and necessitating that only approved weights and measures be used, which are then

subject to inspection. In addition, the export of agricultural commodities is forbidden without a separate license obtained through the CGA (discussed below).

In 2008, the Agricultural Produce (Maize Marketing) Regulations were promulgated under the Act. These designate the Agricultural Development and Marketing Corporation (ADMARC) as the sole buyer and seller of smallholder maize in Malawi and establishes the minimum and maximum prices for maize at which ADMARC will buy and sell. This regulation has not been enforced since at least 2013, but none of the legislative materials obtained for the desk study for this report indicate that this regulation has subsequently been repealed. It is also unclear from the legislation whether this act overturns any existing requirements for licenses to buy or sell maize.

With regards to putting in place regulations to govern contract farming, the Contract Farming Strategy for Malawi seeks, in particular, to put in place regulations that will stipulate the oversight that an independent third party must provide on any contracts between a contractor seeking a specific commodity and a farmer contracted to produce the commodity in order for any such contract to be legally valid. Based on our desk study, the AGPA appears to be sufficiently broad in its scope to permit the formulation of regulations on contract farming under the Act.

The Control of Goods Act

The Control of Goods Act (CGA), which, although not an agricultural law, is often used in similar ways to the SCA and, particularly, the AGPA. As originally passed in 1968, the CGA was designed to regulate the import and export of goods to and from Malawi. The broad purpose of the Act is:

to enable the Minister to provide by regulation for the control of the distribution, disposal, purchase, and sale, and the wholesale and retail prices of any manufactured or unmanufactured commodity or of any animal or poultry specified by the Minister by order or of any class of any such commodity, animal, or poultry, for the control of imports into

and exports from Malawi, and for other purposes incidental and supplementary to the foregoing.

This is not an agricultural law, but is under the purview of the Minister of Trade, Industry and Tourism. The Minister may pass regulations that specifically control imports and exports, or anything deemed necessary or supplemental to imports and exports. This can include controlling prices and costs of different commodities. Licensing is also required for exporting or importing any goods declared under the Act.

For the purposes of this critical review of the legislation, we are mostly concerned with the Control of Goods (Import and Export) (Agriculture) Regulations passed under the auspices of the CGA. These Regulations allow the Minister of Trade, Industry and Tourism, after consulting with the Minister of Agriculture, to make orders controlling the import and export of any agricultural good listed in the prescribed schedule in the Regulations.

Under these Regulations, the Control of Goods (Import and Export) (Agriculture) Order was issued. This requires that permits be obtained before importing or exporting any agricultural goods listed in the import and export schedules of the Order, which are a subset of the items listed in the schedule of agricultural goods listed in the Regulation – 10 classes of agricultural commodities in the import schedule; 15 in the export schedule. The Order has some exemptions, including for goods transiting through Malawi and smaller items meant for domestic consumption. Importantly, the Order states that permits issued under the CGA do not exempt the holder from complying with other written laws controlling the import or export of individual goods.

In 2017, the CGA was subject to a close review as to its continued suitability for regulating traded in Malawi. This effort included drafting a revised Act (MJCA 2017). This draft, which upon further modification, was adopted into law in May 2018, resulted in significant changes to the law. The new version stipulates that the Minister consult with interested stakeholders and entertain applications and comment from any interested parties before arriving at final decisions. These consultations and

applications must be made public through the Malawi Government Gazette, and the applications themselves must be responded to within two weeks. The revised CGA also restricts the reasons for why the Minister may impose any regulations to a list of twelve, and relevant authorities must verify that the thresholds for the reasons have been met. Finally, a review of all decisions regarding agriculture must be undertaken every six months or whenever relevant stakeholders conclude that the conditions under which the decisions were made have materially changed.

Development Challenges Posed by these Laws and their Potential Interactions

We now discuss the development challenges that have emerged around these laws and their potential interactions, both between the three considered and with a few other pertinent laws we have reviewed, based on the text of the documents and our understanding thereof.

There is some confusion in the legislation as to which of these Acts takes priority. Within the SCA, there is a clause that explicitly states that orders made by the Authorities established through the SCA cannot conflict with any other agricultural Acts. This implies supremacy for any legislation that affects the production, distribution and marketing, or sale of any crops governed by an Authority that was passed before the establishment of a particular Authority.

The SCA also contains a clause stating that any tobacco regulations passed under the SCA do not apply to persons growing tobacco under the authority of the Tobacco Act. This clause seems to establish supremacy for the Tobacco Act. However, the Tobacco Act also has a final clause stating that any regulations passed under the SCA take precedence over those passed under the Tobacco Act – creating some confusion as to which Act should be followed in specific situations.

Similar to the CGA, the licensing regulations under the SCA state that holding a license under the Act does not exempt the holder from needing any other license that may apply to the same crop. The fact that both the SCA and CGA have these clauses likely will require that a private trader, to be fully compliant with the laws in place, will need to obtain both a SCA license to buy and sell a crop domestically and a

CGA license to export the crop. Comparing the schedules of crops listed for import and export under the CGA and the crops declared special crops, the current overlapping crops are tobacco, tea, and cotton. All three also have their own separate legislation (Tobacco, Tea, and Cotton Acts, respectively), each of which also require some form of licensing for engaging in production, marketing, or trade in the commodities.⁵

As noted, the AGPA states that it cannot apply to cotton, tobacco, or any SCA crop – removing the possibility of interactions with the Cotton and Tobacco Acts and the SCA. The AGPA does provide the Minister of Agriculture authority to regulate many other agricultural crops. It also permits the Minister to pass regulations controlling the import and export of these agricultural crops. This could create some overlap with CGA if the scheduled crops in both regulations are similar. Up until now, however, the regulations passed under the AGPA have only covered domestic marketing licensing, eliminating any potential overlap in the application of the laws. However, there remains the potential for interaction similar to those seen between the CGA and SCA, where the AGPA covers domestic licensing and the CGA covers imports and exports. Based on the different schedules of goods, the following crops overlap in the two Acts: rice, beans, cassava, and sorghum.

Finally, it is clear that the Authorities established under the SCA are relatively impermanent, a fact which was later confirmed in our field work and by the legal consultant in his independent review of the Acts. This impermanence stems from both the market and the political realities thrust upon them by the Structural Adjustment Programs in the 1980s and 1990s and by the sweeping powers granted to the Minister for abolishing the Authorities. Established by Order, the Authorities can be revoked through similar Ministerial action – the legislative document we reviewed on the SCA contained revocations of Orders that had established three Authorities some years earlier. The powers vested in the Special Crop Authorities to regulate production, marketing, processing, and trade of the commodities should similarly

⁵ The Tobacco Act and the Cotton Act can be found online at the following websites. No link to the Tea Act was found.
Tobacco Act: https://malawilii.org/system/files/consolidatedlegislation/6502/tobacco_act_pdf_16233.pdf
Cotton Act: https://malawilii.org/system/files/consolidatedlegislation/6504/cotton_act_pdf_20267.pdf

be seen as easily subject to revision if circumstances, political priorities, or development priorities change. However, we recognize that it is not easy to initiate and carry through the actions needed to reform the legislative instruments establishing Special Crop Authorities so that those Authorities are abolished or modified to be better suited for realizing Malawi's agricultural development ambitions.

Likely Impact of these Laws

In reading the pertinent legislation, the principal aspect that continually caught our attention was the open-ended clauses in the Acts mentioned earlier. These clauses empower Ministers or Authorities to do “whatever is necessary” to execute their functions – functions which often already are quite broadly defined. Wording such as this opens the door for policy decisions to be made at the discretion of individuals in an arbitrary manner rather than by set rules. Even if this turns out only to be a perception, the perception itself can be damaging. These concerns were mirrored in the report of the legal consultant, who noted that both laws, particularly in their final clauses, grant virtually unchecked power to the Minister of Agriculture and provide for no safeguards or compensation for any individuals adversely affected by actions taken under the laws. The consultant traced concerns about granting the Minister with unchecked power within the scope of the laws back to when the SCA was legislated just before Independence. During early debate around the SCA, fears were expressed that refusals to grant licenses could be misused to engender favoritism and to establish monopolies and create a general air of uncertainty about how fairly the law would be applied. Such uncertainty would undermine any plans to invest in crops involving substantial up-front costs with delayed returns on those investments, such as would be required for tree nuts (M'meta 2018).

The legal consultant observed that both the SCA and the AGPA allow the Minister to act in a manner that contravenes the Constitution of Malawi as updated in 1994 . The Constitution contains provisions for transparency, accountability, and respect for individual rights and freedoms – particularly, it demands that laws provide legal avenues for private citizens to petition the government regarding perceived grievances. In addition, the Constitution obliges the government to adopt and implement policies and legislation

aimed at nurturing a market economy (M'eta 2018). The laws, as currently written, do not provide for channels of redress and, we argue, do not nurture a market economy. This incompatibility between the Acts and the 1994 Constitution calls into question the continuing legal validity of the Acts. The implication is that the two laws would be judged to be unconstitutional if a serious legal challenge as to their constitutionality was brought before the High Court of Malawi. This is particularly because the laws do not safeguard the rights of individuals affected under the laws or allow for compensation for those adversely affected by any unjust application of the laws. This idea is explored further in the final conclusions and recommendations section of this report.

In parallel with these broad challenges, the lack of clarity in terms of which laws take precedence in particular situations, such as in granting licenses to undertake specific activities, is troubling. It was highlighted earlier that some of the legislation provides clear direction regarding which Act take precedence over others in cases where they might overlap or interact. However, confusion still exists between some important legislation. For example, for tobacco, both the SCA and the Tobacco Act claim that the other should take precedence whenever there is conflict. Through our fieldwork we found that the SCA is largely toothless with regards to the modern tobacco sector. The Tobacco Act will likely always take precedence over the SCA in case of conflict as to which of the respective laws should be applied. However, the fact that the legislation as written is unclear is worrying and should be rectified.

Combining these two factors of open-ended authority and a lack of regulatory clarity raises the potential for the arbitrary application of regulations that constrain reasonable activities within agriculture markets. If such regulations are formulated and applied in a manner that raises concerns as to their fitness for the addressing the regulatory issue in question or as to their fairness, a likely consequence of such legal actions will be to undermine the ability of Malawi's producers and traders to exploit the comparative advantage of the country in the production, marketing, and trade of specific agricultural commodities.

Another way to think about this issue is that the legislation we have considered does not aid agricultural market coordination to advance development of the agricultural sector, but instead confounds it.

Developing private sector markets often requires the government to play a role of facilitator between buyers and sellers. Credible commitments are needed on all sides of market interactions, including on the part of the government in its role of providing oversight and regulation on market activities. These commitments fail when the other actors – in this case, sellers and buyers in the private sector, including smallholder farmers – cannot reliably predict or understand the behavior of the government regulators.

However, the commitment mechanisms go both ways, and the government may not feel it can depend on the private sector if they behave in a manner that undermines the reliability of agricultural markets, such as through hoarding or illegal exports (Tschirley and Jayne 2010). But anti-market actions on the part of the private sector in Malawi should also be recognized to be a product of historically-rooted private sector fears of unpredictable policy action on the part of government, such as banning traders from markets when prices rise, which may undermine their businesses. Creating a stable and predictable policy environment, on the other hand, can encourage private sector investment (Ellis and Manda 2012).

This lack of investment created by uncertainty and potentially arbitrary policy action retards market development. Dorward and Kydd (2004) note that past Malawi government policy with regards to markets resulted in thin markets in which commodity supply is not assured, the number of actors is limited, and government actions play an outsized role in how the markets operate. This undermines competition within the markets, to the detriment of both suppliers and consumers, and facilitates opportunistic market behavior by rent-seeking actors – both in the private sector and in the public sector.

Inconsistency and arbitrary decision making also hinders complementary activity, since each actor cannot be sure of the actions of the other, thereby limiting opportunities for cooperative investments. Conditions such as this suggest that the agricultural sector in Malawi has fallen into a low equilibrium trap in which sustained investment in the sector does not occur due to the lack of an initial investment to kick-start increased economic activity. However, the initial investment is not made due to a lack of future assurances on stability in the economic context of the agricultural sector, including in agricultural markets, within which the investment is motivated. This situation is mirrored in the analysis done by

Edelman et al (2016) in which the authors found that large-scale farmers in Malawi mostly act like subsistence farmers when it came to maize production – producing it to meet their own requirements, but not for the market. These farmers cited unpredictable government interventions, along with a lack of profitability, as the biggest disincentives to their increased engagement in commercial maize production.

The 2018 revision to the CGA, if properly implemented, may provide important pathways to resolving some of our concerns (MJCA 2017). First, the revised Act puts some limits on the amount of authority given to the Minister. Rather than the previously open-ended clause regarding the reasons the Minister could intervene in trade in agricultural and other, there is now a prescribed list. While this list is still quite long, it does constrain capricious decision-making under the CGA – an idea which could also be implanted in any revisions to the SCA and AGPA. Secondly, under the revised CGA, the Ministry must demonstrate to stakeholders that the threshold for the imposition on controls of trade has been met before those controls are put in place. This creates an additional layer of accountability on any decision by the Minister to restrict trade in goods into and out of Malawi.

The 2018 revision of the CGA also codifies into law the requirement that the Minister consult with relevant stakeholders before imposing any regulation – and these consultations must be made public. Doing this will better clarify to the private sector the decision-making process around the action and allow for more input on the final decision. Finally, the fact that there are clear and forceful methods for individuals or other interested parties to appeal decisions made by the government, in addition to a mandated review of decisions affecting agricultural products every six months, means that there are much stronger mechanisms in the proposed law to commit the government to engage with the private sector regarding their regulatory decisions and other interventions affecting markets and trade. This enhances the potential for overturning such decisions if shown to be ill-considered. Stronger government commitments to work with the private sector and ensure a stable regulatory environment are also needed in the SCA and AGPA.

Regional Comparisons

To shed further light on our concerns regarding the discretionary nature of the application of Malawi's agricultural legislation and the effects it may have on private sector investment, we examine some comparable regional examples. The experience of Malawi with regard to uncertainty about the actions government will play in controlling the production, marketing, and trade in agricultural commodities is not unique in the region. We briefly describe both positive and negative examples from several countries in southern and eastern Africa of the application of agricultural policy and legislation which impacted private sector investment in agriculture or in agricultural markets in the respective countries. While some of the examples may involve the imposition of export bans, which is more in the domain of the CGA and not the specific legislation under review, we have included such bans among our examples to illustrate the consequences of interventionist agriculture policy writ-large.

Zambia

Since 1996, the government in Zambia has frequently purchased maize at higher than private sector prices, selling it on to consumers at lower, subsidized rates. This is done through the parastatal organization, the Food Reserve Agency. Nominally, these actions are framed as a small-scale farmer subsidy, but the political reality is that they keep urban prices low, benefitting the poor urban constituency, while keeping producer prices high, benefitting large surplus farmers who sell to the Food Reserve Agency. In addition, the National Agricultural Marketing Act of 1989 established the Zambia Co-operative Federation. This Federation was empowered with a monopsony in the markets for controlled crops – mirroring some of the powers afforded the Special Crop Authorities in Malawi under the SCA. This has resulted in restrained liberalization and accountability in the agricultural markets of Zambia. Input and output subsidies in Zambia have also been quite common –recently they made up nearly 50 percent of the total agriculture budget of government. Not only does spending this much of the budget on subsidies create large opportunity costs, it forces the private sector to take a very tentative approach – as the government is essentially distorting the market and dis-incentivizing private sector investment.

Moreover, such subsidies run directly counter to the stated goals of the Food Reserve Agency of reducing urban poverty by keeping food prices higher than needed (Sitko et al. 2017). Despite these subsidies, crop productivity is still low, and poverty remains high (Chapoto et al. 2015). Export bans are also common in Zambia, contributing to increased confusion on the part of agricultural producers, traders, and processors as to how they might best engage in agricultural markets and to overall reduced investment in commercial agricultural enterprises and activities.

Many of these policy decisions appear to be influenced by large farm lobby groups which since before Zambia's independence have consistently sought to keep these agricultural subsidies in place and reduce competition in Zambian agricultural markets. Interestingly, according to Chapoto et al. (2015), it is difficult to trace the precise instruments and process used to make these policy decisions – “it was not possible to determine the actual line of command, ... as some decisions made in the past were extremely convoluted and unclear, making it very hard to determine where an order originates and to hold particular actors and institutions accountable for their actions.”

This kind of unpredictable and indecipherable decision-making forces the private sector to seek extra guarantees when making investments, if they decide to invest at all, and makes the case for why a more rules-based market system would be to Zambia's benefit. Private sector-friendly agricultural markets in Zambia can be expected to encourage investments, strengthen market institutions, and better absorb price shocks, all of which would please both traders and poor consumers.

Tanzania

In Tanzania, like in other countries in the region, maize export bans have been periodically implemented to ensure domestic supply and insulate the country from price shocks, at least theoretically. However, Diao and Kennedy (2013) found that, following the imposition of a maize export ban, producers of maize in the country on aggregate realized a greater drop in benefits due to the resultant lower producer prices for maize than the benefits realized by maize consumers in aggregate through lower consumer maize prices. Because of the lowered prices due to the export ban for maize, wage rates also decreased for low-

skilled labor, as did returns to land, while non-agricultural capital and labor saw increased returns under the maize export ban. This not only hurt the rural poor, a large segment of the population, but contributed to increased poverty. Diao and Kennedy add that “export bans not only have the potential to reduce producer prices locally, but also, because the bans are often ad hoc, can cause significant market uncertainty for farmers and the private sector, ultimately making them [maize markets] less responsive in both supply and trade opportunities in the future.”

Export bans in Tanzania also delay adjustments towards a long-run market equilibrium and exacerbate the impact of weather shocks on domestic markets. The enforcement, or the perceived threat of enforcement, of export bans creates market uncertainty, especially in challenging economic times, such as following weather shocks. These uncertainties translate into price uncertainty, which in turn discourages investment that would lead to increased productivity and long-run equilibrium benefits (Baffes, Kshirsagar, and Mitchell 2015).

Kenya

Ethno-political relationships are important drivers of politics and policy in Kenya. Patronage along these lines frequently has meant that agricultural parastatals, such as the National Cereals and Produce Board, often cater to rural elites and surplus-producing farmers – those who can lobby for benefits based on patronage. The resultant distortions to policy or how that policy is implemented has driven up producer prices and led to the implementation of output subsidies, which undermines competition in the market and dis-incentivizes private sector investment in agriculture. Kenya also formed agricultural institutions similar to the SCA Authorities. These were aimed at spurring growth and development of crops such as cotton, tea, and maize in the 1970s and 1980s. However, poor governance of the institutional and market liberalization policies in the 1980s and 1990s doomed these institutions – mirroring the fate of the Special Crops Authorities in Malawi (Poulton and Kanyingi 2014).

Anti-competitive policies have been partly moderated by the fact that Kenya has become a net maize importer, weakening the political power of surplus grain producers. Moreover, small grain mills have

thrived, reducing the political power of large mills in bending policy implementation to their advantage – unlike in Zambia. However, these factors have not eliminated high tariffs and other protections for surplus grain producers in Kenya (Sitko et al. 2017).

The Kenyan government attempted some market-based interventions following the 2008 food price spike, including purchases by the National Cereals and Produce Board and a ban on exports. However, these were not successful in achieving their goals and, in fact, may have hurt consumers overall. In a promising example of policies being modified in response to observed flaws in implementation, these policy initiatives were reduced following pressures from urban populations, with direct consumption subsidies being implemented instead. While such subsidies are not optimal for private sector investment, they have less of an adverse effect on markets than do producer subsidies and result in welfare improvements (Makau Nzuma 2015).

Mozambique and Uganda

We have grouped Mozambique and Uganda together here as they serve as more positive examples for reducing market disincentives by consistent application of agricultural market policy by government. In Mozambique, the private sector has been largely free to set its own prices since 1997. Even during the food price spike, government policy was mostly aimed at improving agricultural productivity and putting in place less restrictive trade measures, rather than full-blown market interventions. The agricultural sector interventions were aimed at improving food storage and reducing transaction costs, rather than at reinforcing patronage networks, although with mixed success. The trade policy measures aimed to reduce tariffs instead of imposing an export ban – measures which could spur private sector investment in trade linkages (Nhate, Massingarella, and Salvucci 2015).

The government in Uganda has been relatively successful in sticking with non-interventionist policy when it comes to agricultural markets and creating positive incentives for investment by private traders. Over the past 15 to 20 years, there have been no examples of export duties on agricultural products, export bans or quotas, or other restrictions on food commodity trade. Partly because of this, Uganda has

been able to serve as a food basket for the region – offering “products and services competitively, reliably, and on a sustainable basis” (Benson, Mugarura, and Wanda 2008).

Regional studies

Looking at studies which made comparisons across the region, examples can be found of the effects of government policy on market incentives. Porteous (2017) compared the short-term effects of export bans in Malawi, Kenya, Tanzania, Zambia, and Ethiopia. He found that there was no significant effect on cross-border price gaps. Instead, export bans seemed either to force traders to enter informal channels of trade, i.e., smuggling and black market transactions, or the bans were imperfectly enforced, allowing some trade to continue arbitrarily. This uncertainty for traders in terms of enforcement and whether they will need to enter the informal sector significantly hinders investment. In addition, Porteous found that export bans increased domestic price volatility, which can lead to destabilized markets and ultimately harms both consumers and investors.

Chapoto and Jayne (2009) conducted a cross-country examination of maize price instability and policy unpredictability in eastern and southern Africa. Based on their findings, they group countries in the region into two categories. The first are characterized by having comprehensive and sustained liberalization policies in place for staple food markets, with government action limited mostly to regulating the playing field. The private sector is relied upon to stabilize maize prices. The second group of countries have only implemented partial liberalization policies, so that government continues to intervene extensively in food markets. Uganda and Mozambique are the two countries found in the first group. Malawi, with many of its neighbors, is in the second group. The researchers find that the discretionary trade policies imposed by countries in the second group impede regional trade and result in significantly more tentative behavior by private maize traders, contributing to price instability.

Finally, a third regional study found that colonial legacies still matter in government policy. Looking across Malawi, Kenya, Zambia, and Mozambique, Sitko et al. (2017) noted that counties which had relatively large populations of colonial settlers in the past often retain today a legacy of those settlers in

large farm lobbies and commercial milling operations. These exert significant influence in lobbying for output market subsidies and trade restrictions, which hinder competition and investment incentives. The authors also found that high levels of such market interventions are associated with market concentration – as price supports most often benefit large surplus farmers. Capricious interventions also lead to high levels of price variability and margins. These actions could theoretically be useful to keep domestic prices down during dramatic international spikes, but the uncertainty and variability they create has negative effects on future growth in the agricultural sector (Sitko et al. 2017).

5. ATTITUDES TOWARDS AND AWARENESS OF THE AGRICULTURAL LAWS

We now turn to the results from the key informant interviews performed during the fieldwork for this report. These interviews were conducted with a wide range of informants from smallholder farmers and individual traders to representatives of private sector firms to high-ranking government officials and focused on a wide range of topics. Of primary concern to our analysis was to understand respondents' views on the legislation of interest – the Special Crops Act (SCA) and the Agriculture (General Purposes) Act (AGPA) – and how those laws relate to government's role in the agricultural sector, together with any issues or challenges arising.

Based on the results of the interviews, we have broadly categorized interview responses into cross-cutting issues that affect many aspects of government's role in the marketing and trade of agricultural commodities; the role of government in the agriculture sector; and the overall impact of the laws. Within each of these topics, we will discuss the results from the interviews and what they could mean for potential changes to the SCA and AGPA.

One important note to make before moving forward with considering the results is that, just like with any other dataset, not all the data collected through these interviews was of the highest quality or offered consistently by all respondents. Our *a priori* expectations were that certain individuals would be unwilling to provide clear or honest answers when presented with tough questions on business and government processes in Malawi. In the interest of fairness, all responses, including those on which we were somewhat uncertain as to their honesty, have been included in the final dataset. However, when stark differences in opinion were expressed between respondents or groups of respondents, the analytical team used their best judgement and expertise to triangulate and assess which opinions were likely the most informed.

Cross-cutting Issues

Given the results of our desk review, we highlighted two major issues with the SCA and AGPA that broadly affect a wide variety of other subsequent problems: government decision-making and capacity. We structured our questionnaire to tease out reactions and beliefs around these two factors. Our results significantly reinforced the expectations we had developed through the earlier desk review.

Both government decision-making and capacity were frequently mentioned as significant barriers to proper market functioning. These barriers were not limited to licensing, markets, finance, or contracts, but were cross-cutting. We first provide a general discussion of each of these issues before moving on to the rest of the results obtained through the key informant interviews.

Decision-making

The decision-making process of the government was mostly viewed by the interviewees as a hindrance to the day-to-day activities of the private sector and the future development of agricultural markets.

Specifically, there were two facets of the process that respondents pointed towards as the biggest barriers – a lack of transparency; and preferential treatment that stemmed from political motivations or corrupt business practices.

Throughout our interviews, and across every group of interviewees, it was common to hear that the decision-making process behind the implementation of the SCA, the AGPA, and, to some extent, the CGA was opaque. Respondent's complained of not understanding the logic behind decisions that were announced and not being able to locate the decision-making point which led to a specific policy outcome that ostensibly was legally grounded in one of the laws. A civil society respondent stated that "You cannot locate the decision-making point. It's not transparent, and it's not logical ". This mirrors the earlier example seen in Zambia from the desk review, where it was reported that individuals were unable to understand the process of decision-making around agricultural input and output subsidies there. It was argued that this ultimately had a negative effect on private sector development in Zambia and on investment in the agricultural sector in general.

As part of this lack of transparency, traders, civil society members, and farmers all complained in our interviews of a lack of consultation by government. It was their belief that the government had not done enough to engage with their respective sectors and, at the very least, to inform them on how these important decisions affecting their businesses and livelihoods were being made. Going forward, any revisions to the SCA or AGPA must stipulate that consultations with stakeholders are a part of the process through which decisions are made by the authorities under the laws. An example of this is seen in the revised CGA, in which stronger mandates for consultation with various stakeholders within the agricultural sector have been inserted in the legislation (MJCA 2017). This was also noted in the report on the review of the SCA and AGPA provided by the legal consultant. He highlighted that an important deficiency in both the SCA and AGPA is that there is no expectation of consultations in the laws as currently in place. Particularly, in the case of the SCA, “The absence of a credible and known framework for consultations undermines the much-needed broad based consensus for the development of such special crops. The SCA entrenches top-down dictation of policies (M’meta 2018).”

Beyond simply not finding the decision-making sufficiently transparent, secondly, several respondents complained of outright preferential treatment and political interference in the application of the AGPA, in particular. These complaints were made in every group of respondents, except for government workers. Several respondents expressed that many decisions were being made with political motivations in mind rather than the overall good of the agricultural sector or according to the essence of the legislation. Given the open-ended nature of the powers created by the legislation, both traders and civil society members believed that this left room for the decision-making process to be personalized and coopted for political needs. Others expressed the opinion that the open-ended nature of the laws and the granting of broad authority to the Minister has been exploited both to achieve political objectives or to grant certain actors in the marketplace preferential treatment in exchange for kickbacks or other personally or politically beneficial inducements, including outright bribery. Several respondents from among the civil society,

trader, and farmer groups noted, in some form or another, instances of preferential application of the laws on the part of the government that involved bribery or other corrupt practices.

The consequence of these twin issues – a lack of transparency in decision making and preferential application of the laws – according to our respondents, is an inconsistent and unpredictable market environment in which to conduct business. According to some traders and members of civil society interviewed, this unpredictability not only actively hinders the ability of the private sector to invest and make long term plans due to their inability to accurately assess the government’s actions going forward, but also passively deters others from entering the agricultural sector. The result is even less investment and thinner markets. These comments reinforced the conclusions we drew from our desk review.

A specific missing factor in how these laws are invoked and applied to regulate activity in markets and trade that was mentioned by respondents from the civil society, farmer, and trader groups is a clearly recognized triggering mechanism in government decision-making. The private sector does not have sufficient guidance from government on what are the specific conditioning factors and the broader rationale it employs in deciding when it will intervene in markets or restrict imports or exports. The maize export bans that government has regularly invoked were often cited in our interviews as an example of this. Many respondents believed that the development of the maize sector in Malawi has been significantly retarded because of the inconsistency in the conditions under which the government decides to ban maize exports. Most respondents believe that the inconsistent application of such restrictions on markets and trade, using the SCA or AGPA as the legal justification for doing so, is a result of political and personal motivations. Given the example of Tanzania provided under the desk review, where export bans have significantly contributed to market and agricultural sector instability, these comments are perhaps not surprising. Whether these views are true or not, the simple fact that the legislation creates the space for these views to take root and to be commonly held by stakeholders is evidence of a need for reforms to the laws.

To provide another example which combines these two issues of decision-making, we also heard at great length about issues relating to the setting and enforcing of minimum commodity prices.⁶ This example came to encapsulate many of the broader problems highlighted throughout the interviews. Many respondents, mostly farmers and traders, believed the process to set the minimum prices for crops was not transparent – they did not understand how the prices were set and most had never heard of a consultation process. One farmer commented that the process must be “... based on evidence and proper estimates and consultation with people on the ground. The smallholder farmer is left out.”

Further, most respondents believed that the process was coopted by political preferences – with larger, more well-connected farmers and traders profiting from the exercise. Given the fundamental importance of prices in the agricultural sector, it is troubling that we consistently heard of such broad confusion about how these minimum prices were determined.

It must be noted, however, that there were dissenting opinions to what we have outlined above.

Particularly, it was common for the members of the various government agencies we interviewed to believe that the decisions being taken by their ministries were transparent. It is troubling that there is such a disconnect between the perceptions of many in the private sector and those in the public sector, but it also leaves space for further investigation of how this disconnect between government and relevant stakeholders has come about in order to remedy it through legislative reforms. We also found that some of the larger private sector traders and farmers did not express significant complaints about government decision-making, whether around the degree of transparency in how decisions are made or concerning political capture of the process. This difference of opinion could reflect their having benefited from the preferential treatment bemoaned by many other respondents – the government may favor larger private

⁶ While the setting of minimum farm-gate prices is not actually legislated under the SCA or the AGPA, the belief that it was conducted under the auspices of these acts was so rampant, we thought it helpful to still include it as an example. As well, the issues surrounding minimum price enforcement are an interesting, specific example regarding agricultural legislation more generally in Malawi.

sector actors and provides them with more information than other traders. Or it might be the case that the larger private sector firms are simply more capable of monitoring the decisions of government.

Capacity

A statement we heard repeatedly during our interviews— be it with government workers, traders, or civil society – was that the government’s policies or legislation are good, but that there is not sufficient capacity to implement policy priorities or to enforce the laws. The prevailing sentiment was that this inability to implement policy or to enforce the laws contributes significantly to the confusion seen in efforts to develop the agriculture sector and agricultural markets in Malawi. If the laws are written to state one thing, but the lack of government capacity results in a different outcome, there is little farmers and traders can do to properly predict what actions the government will take. If you combine this with the opaque decision-making process described above, you end up with a recipe for confusion, volatility, and no progress.

Another facet of inadequate capacity which exacerbates this volatility is the breakdown between decision-making and reality. This is not quite the same as the decision-making issues described above, but, rather, was highlighted by several respondents who expressed dismay at government’s inability to collect relevant data from the field needed to inform its decisions. This results in government policies and actions that do not accurately reflect and respond to the actual situation on the ground, leading to ineffective and often misplaced actions. Concerns of this sort could be found among both traders and farmers alike.

A good example of how such capacity constraints adversely affect the application of the agricultural laws and the development that they are to contribute towards is in the enforcement of minimum prices for the purchase of agricultural commodities from farmers. Both farmers and traders expressed dismay at what they perceive as the government’s inability to correctly obtain the information they require to guide the setting of these minimum prices and to then take the actions needed to defend those prices in the market due to a lack of field workers to collect the information and insufficient technical capacity in general.

Beyond this, several respondents believed the government is incapable of actually enforcing the prices they arrived at. This was one of the more prevalent comments we heard regarding any issue – the pervasive lack of capacity at enforcing minimum producer prices. Even respondents from within government expressed dismay at their inability to enforce the minimum prices that they set. This inability creates the recurring situation each season after the harvest where farmers are told their crops are worth one price, but traders come in and offer a significantly lower price. In this situation, government’s lack of capacity has again resulted in a significant amount of confusion on the application of the agricultural laws and government’s adherence to its policies.

Some farmers were more positive about the setting of minimum prices – doing so can theoretically provide a price floor beneficial to farmers. But without enforcement, these price targets are of no value and are confusing. One farmer told us that “setting of minimum prices is good; only that no one follows it, not even government itself.”

What will be important going forward is to accurately assess the real capacity of government in any revisions to the SCA and AGPA. It is not helpful, and more likely harmful, to produce legislation without any possibility of effectively implementing those laws. At best, it is simply a waste of time, and at worst, it contributes to the kind of instability and confusion we have discussed that results in missed opportunities for agricultural growth, stronger agricultural markets, and improved livelihoods for many Malawians.

Government’s Role in the Agriculture Sector

A major focus of this review is the role of government in the agriculture sector in Malawi. We have seen from our desk review of the legislation that government’s role is both somewhat unclear and potentially overburdening at the same time. The desk review of the literature on other countries has also shown that different governments have chosen different paths regarding their role – some to positive and some to negative outcomes.

Respondents in the key informant interviews were directly asked about what their view of the government's overall role should be regarding agriculture. Responses to this question were varied – ranging from some individuals, particularly in civil society, stating that government should be the driving force in the sector and play an outsized role in dictating the road forward – all the way to the idea that government should leave the sector alone and avoid causing any more confusion; a sentiment that was more pervasive in the private sector.

Perhaps more intriguing than the responses to the direct question on the role of government were the responses to questions around the different roles the government could play in the agriculture sector in Malawi. Here we group the responses received into four broad areas: implementation of agricultural legislation and legal compliance; establishing a conducive environment for agricultural marketing and trade through both regulation and public investment; contract oversight in the sector; and ensuring a common broad understanding of how (and why) government can be expected to act so that activities in agricultural markets and in agricultural trade are undertaken in the best interests of Malawi and its people. The answers to these questions paint a nuanced picture of what the government's role might be in Malawi's agricultural sector and in its development.

Implementation of legislation

A basic role for government in the agricultural sector is to enforce existing agricultural legislation. This ranges from the proper execution of the licensing processes laid out in the SCA and AGPA to enforcing compliance with the many stipulations of the laws. When asked about their views on government's performance in executing these responsibilities, respondent's in the study highlighted some important areas where improvement is needed.

Licensing for the sale, importation, or export of agricultural products is a prominent feature of the legislation under review. Hence, respondents were asked several questions about their experience with how the licensing provisions have been implemented. Regarding the process of applying for and receiving a license, respondents consistently reported that long delays are frequent – several marketers and traders

interviewed reported having lost profits due to excessive delays in receiving a license. These delays were most often attributed to the Ministry of Industry and Trade rather than to the Ministry of Agriculture. A specific bottleneck in licensing reported by respondents is that the centralized nature of the licensing process means a high-ranking official must sign each license. Several instances were reported of delays in obtaining the required licenses due to failure to pay bribes or other inducements expected by those handling the licensing – corrupt practices which are obviously quite disturbing.

Delays also affected farmers, particularly larger scale commercial farmers. Several maize and rice farmers interviewed reported that they missed out on selling their crop due to delays or difficulty in receiving necessary licenses or other authorizations. Some fertilizer sellers also reported similar delays in obtaining licenses preventing them from marketing their farm inputs. According to respondents, these delays could last anywhere from seven days to nearly three months. Again, the lack of decentralization in these processes was view as the reason for government’s inability to correctly implement the licensing process. However, other respondents reported having no issues with the licensing process. But, such respondents were few and often were those respondents that we perceived as not being so keen to provide full answers to the questions we posed.

The government also has a responsibility to enforce the licenses once they have been issued. Here too, significant failings were reported with licensing laws only being loosely enforced. Several farmers complained of being compelled to sell to buyers who were not licensed or who were using unlicensed scales due to an absence of licensed and regulated traders locally. Among the traders interviewed, some noted that many of their peers were able to operate without licenses, even when it came to the import and the export of a good requiring a license to trade internationally. One trader reported that forged licenses have been used to evade the laws. However, most traders interviewed felt that enforcement of licensing laws generally was being carried out properly. While enforcement of regulations around licensing in agricultural marketing and trade may be lacking in some areas or for some commodities, this is not consistently the case across all commodities and across Malawi.

Beyond implementing the licensing portions of the legislation, respondents also referenced the government's role in ensuring general compliance with the agricultural legislation. The broad sentiment was that compliance is lacking in several ways. As we hypothesized based on our desk review, several traders and representatives of civil society organizations mentioned that the significant overlap of the various agricultural acts and more general commercial laws has created confusion around the regulation of agricultural commodity marketing and trade. Within the different overlaps, it was easy for traders, in particular, to engage, either accidentally or purposefully, in legally non-compliant commercial behavior. Moreover, one government official observed that many of the penalties for non-compliance under the laws are so low as to undermine proper enforcement of them. The legal consultant for the study raised this point, too, noting that the financial penalties imposed for offenses committed under either law, due to price inflation and currency devaluation over the years, now are trivial, so will no longer be effective as disincentives for potential lawbreakers (M'eta 2018).

More troubling was the number of statements made in our interviews that corruption or favoritism was a common reason for legal non-compliance. Respondents from all the stakeholder groups interviewed noted that agricultural law enforcement, and thus compliance, is often selective. Those with political connections or strong finances can avoid complying with the legislation under review here. This was highlighted in our desk review as a potential issue given the vagueness around the specific authority granted under the laws, and this is an important finding for moving forward in the review and possible redrafting of the laws. One senior government official, while recognizing that the laws were not effectively enforced now, was firmly of the belief that if the government could properly incentivize compliance with and effectively implement the SCA and AGPA in their current forms, they would be important mechanisms for fostering significant growth in the economy over the next two to three years.

A final example of the failings of implementation comes from considering the experiences of the central institutions established under the SCA – the Special Crop Authorities. Our desk review showed that the legislation around establishing the Authorities was incomplete. The key informant interviews showed the

extent to which this is the case. Nearly all respondents across all sectors had little to no interaction with an Authority, and most respondents had not even heard of such Authorities. Given the power these institutions were supposed to hold over the production, processing, marketing, and trade of special crops, it is telling that the Authorities appear now to have no meaningful presence in the agricultural sector. It was noted that this lack of implementation may have been due to the Structural Adjustment Programs of the 1980s and 1990s, which sought to relax government authority over the production, processing, and marketing of crops. However, the fact that much of the legislation around the Authorities remains in place contributes to the pervasive confusion.

Despite this, we did receive one positive note about the authorities. A group of tea farmers mentioned to our team that, when the Smallholder Tea Authority was operating, it was effective at promoting tea production and smallholder participation in tea value chains. However, with changing government priorities within agriculture, the Authority collapsed and, according to the respondent farmers, smallholder participation in the tea sector in Malawi has deteriorated significantly.

Conducive market environment

One of the more consistent themes in our interviews was that the government has a vital role to play in assuring that agricultural markets in Malawi function well. The opinion of nearly all informants was that, outside of some specific markets, such as that for tobacco, the markets for most crops are either deeply flawed or nonfunctional. One civil society respondent stated that “The implementation of the SCA has failed to promote wider participation of the private sector in commodity trade.” Similarly, a high-ranking government official said that “The SCA was deregulated to encourage private sector participation, but the sad thing is that it has not elicited the expected level of private sector participation.” Clearly, there have been some failings in the impact of the legislation on the market environment.

A recurring theme in the interviews was the need for institutionally structured markets. While we recognize that such markets will address some of the important weaknesses currently seen in agricultural markets in Malawi (see, for example, Gondwe and Baulch 2017), it is beyond the scope of this review of

agricultural legislation to identify the components of a legal foundation for such structured markets. Instead, we focused our interviews on discovering how the government has succeeded or failed in creating a legal and policy environment conducive to well-functioning and expanding agricultural markets. We considered this point briefly in the earlier section on decision-making – how decisions are made is certainly an important element in creating a good market environment. However, we go into more detail here.

A common group of responses, especially from traders and civil society representatives, is that the SCA and AGPA should not be used to exclude actors from the market. Rather, these laws should be interpreted and applied in a manner that promotes competition with open access to agricultural markets across Malawi. By their very nature, export bans were commonly seen as a negative example of how the laws have been used. Many traders remarked on the difficulty they faced in conducting their business under the constant threat of an export ban and, in particular, the exclusionary and arbitrary way that such bans appear to be declared and enforced.⁷ Two traders reported having experienced significant commercial losses due to the imposition of an export ban. They, respectively, had purchased 1,000 and 30,000 metric tons of maize in Malawi with the intent to export it, but were unable to do so. Other traders expressed similar difficulties with reliably and profitably completing their planned commercial transactions, if not at the scale of the two frustrated exporters.

Farmers had a more mixed response to export bans. Some acknowledged the aid that such bans gave them in securing food from markets at a lower price than would be the case without the ban in place. However, many were weary of the weak producer prices such bans caused. Regarding the SCA specifically, there was general agreement that it had failed to foster an inclusive market environment. The crops authorities that can be established under the SCA are unlikely to be revived. A senior civil servant summarized this

⁷ We recognize that export bans are not implemented under either the SCA or the AGPA, but such bans are an example of arbitrary decision-making by government adversely affecting agricultural commerce.

perspective by stating that the private sector in Malawi must learn to cope with and engage profitably in a competitive and open market structure, and the government must work harder to create this.

The lack of information available about markets and prices for commodities was another common topic of concern to interviewees. Several traders noted that government could do much better in providing information about market conditions or tools to use for timely and accurate price discovery. With most farmers and traders not having the information they need to engage profitably in the market, weaker markets result. Moreover, government has not been as effective as desired in encouraging participation in markets by farmers and more broadly encouraging farmer collectives to engage in agricultural markets at scale. If the government did a better job of this, several respondents noted, prices in markets would be less volatile as there would be a better balance between supply and demand.

From the farmers' perspective, their main complaint about market information flows was that they were often uncertain about the prices they would obtain for their crops. Without this information, they are unable to make informed cropping or marketing decisions. The broad effect of this uncertainty is reduced market participation by farmers and weaker markets in consequence.

Farmers were joined by several of the interviewees from civil society organizations in complaining that the current market environment is tilted towards large middlemen. The reliance on auction houses and delivery contracts that require a minimum volume has resulted in many farmers being quite peripheral to the market and prone to being exploited by smaller market aggregators. Here, the government must better address its role of fostering a conducive market on both sides of the supply and demand equation.

To play this role, many farmers advocated for the re-invigoration of the Agricultural Development and Marketing Corporation (ADMARC). These farmers were nostalgic for the days of a more active ADMARC and believed that it was the lack of ADMARC participation in agricultural markets that was depriving them of a reliable and remunerative market for their produce. However, we have seen no objective evidence to demonstrate that in recent years ADMARC has effectively provided such a market for the produce of smallholders or that it is more effective or efficient in this regard than are the private

traders of agricultural commodities who aggregate and distribute smallholder crops in Malawi's markets. That said, while ADMARC is unlikely to be an important element in strengthening agricultural markets in Malawi in the future, it is certainly true that the SCA or the AGPA can play a role in bridging the gap that exists between farmers and the markets they seek and enabling farmers to more reliably sell their crops at a profit.

One specific issue regarding the role which government has in facilitating a conducive environment for markets is the access of the agricultural sector to finance. Access to agricultural finance is currently very restricted for most farmers in Malawi, so if government could fulfil this role effectively, it could have potentially wide and deep consequences for agricultural growth and improved welfare. Financial access is an important factor for the growth of any sector, and the access the agricultural sector in Malawi has to financing has been negatively affected by the uncertain regulatory environment in which commercial farming is conducted in Malawi. Traders, representatives of civil society organizations working in the agriculture sector, and managers of banks themselves identified government interference in the agriculture sector as a major reason for the sector's lack of access to financing. Banks see government interference as a major source of financial risk, rather than stability, in agricultural markets, and, thus, this increased risk makes lending to agricultural enterprises in Malawi a difficult proposition for financial institutions, such as banks.

It was highlighted that this is even more true for specific crops deemed 'special' – especially maize, even though it is not a special crop as defined by the SCA. If the government believes a crop is somehow 'strategic' and merits special regulatory oversight, banks are afraid to provide financing for the production of such crops. Their being seen as special in the eyes of government means increased interference in the marketing and trade in such crops, more instability in the market for such crops, and a greater risk that any farmer borrowing money from the bank to produce such a crop will not obtain a sufficient return to repay their loan. Any revisions to the SCA should ensure that this relationship runs in the opposite direction for any special crops, such as maize. That is, being "special" should mean that

market conditions for such crops are less volatile and that the financial returns to their production are reasonably better assured than for other crops.

Even when individuals or business can access finance, the nearly unanimous response from all groups of respondents was that the lending terms imposed by the banks and other financial institutions are prohibitively expensive. Banks do not know agricultural markets well, and what they do see is a poorly organized agricultural market system with little stability. In view of the perceived high risk in such markets, banks consequently have high demands in terms of collateral and interest rates. These demands put commercial financing out of reach for all but the largest and most wealthy actors in the sector – exacerbating challenges relating to market access. A number of respondents were of the view that lack of access to finance was the greatest bottleneck hindering the expansion of the commercial farming sector in Malawi. They placed a significant amount of blame for this being the case on the volatile agricultural market environment the government has created through its uncertain and often detrimental application of agricultural laws and policies in the agricultural markets of the country.

Conducive contractual environment

Through the key informant interviews, the review team was asked to investigate stakeholder knowledge and perspectives on the draft Contract Farming Strategy (CFS) for Malawi and contract farming in the country in general. The responses highlighted for us that government has an important role to play in creating a legal and commercial context in which contract farming can be done in a manner that is beneficial to both parties to the contract.

We first asked respondents to describe their general experience with agricultural production contracts. Nearly all of them said they had had negative experiences. The most common complaint heard from those who contracted the farmers and were on the purchasing side of a contract was that side-selling of the inputs provided to the contracted farmers or the outputs produced by them was rampant.⁸

⁸ Side selling in an agricultural contract, as we are using the term here, is when a farmer sells the agreed upon commodity that is to be produced under the contract to a party that is not a part of the original contract, thus breaking the terms of the

In interviews with farmers who had been party to a contract, many did not deny that side selling was a problem, while denying that they did it themselves. However, they emphasized that side-selling took place due to the contracts overwhelmingly favoring the buyers. Farmers, along with some marketers, civil servants, and representatives of civil society organizations, explained that the reason they feel that the contracts are largely tilted towards the interests of the traders and firms that contract them is that agricultural contracts in Malawi often do not specify a price at which the product will be purchased by the contractor after harvest. It was reported that typical patterns are that the contractor either will wait until low prices are seen in local markets before coming to collect the contracted product at that low price; will not come to collect the product if the local market price is too high; or will simply demand a lower price than the local market price. A related complaint of farmers stems from buyers discounting the value of the produce supplied to the buyer on quality grounds, asserting that it is somehow sub-standard. Farmers have no way to obtain independent arbitration on these sorts of contractual disputes. Particularly if the contractor never collects the commodity produced under the contract, several farmers highlighted that this leaves them with difficult access to a good market in which to sell the commodity.

Either way, whether the problems arise on the side of the contractors or that of the farmers, there was a consensus that the needed laws were not in place to protect the respective interests of either party engaged in such contracts. As coffee farmer stated:

The problem comes in when the other party hides some things from you, so that, when something happens, they cite the law and we fail. In the same vein, ... another buyer will come and says, "I will buy from you at this price, the others are stealing from you." So that makes us question the contract. But that in itself is bad, because the vendor might choose not to come, and we'll suffer. But the contract is good so long as it is clear and the farmer has a backup and knows what to do when things go wrong.

contract. It could also occur if the farmer sells inputs received from the other party to the contract as part of the contract rather than using those inputs for producing the agreed upon agricultural commodities as the inputs were intended to be used.

As this quote alludes to, contracts are rarely practically enforceable due to a lack of government or judicial interest or due to insufficient capacity to enforce them. Many respondents wanted contract farming to work in Malawi, as does the coffee farmer quoted above – especially because contracts can stabilize market access for farmers and provide steady price information. But most respondents felt that systems and infrastructure to support fair contract farming across the agricultural sector was not yet in place. These sentiments reinforce the stated goals of the CFS and bolster the case for its implementation. The Strategy aims to create a suitable environment for contractual arrangements in agricultural production by providing transparency and reducing compliance costs (GoM 2016). These objectives are in line with the sentiments we heard from the respondents.

There are some contract farming systems operational in Malawi – most notably the Integrated Production System (IPS) in the tobacco sector. Literature on this system (Shaba et al. 2017) and our interviews with traders show that it provides structure to the market and some benefits to farmers. The benefits stated in the contracts include a guaranteed buyer, supply of inputs, and, most notably, a minimum guaranteed sale price for the tobacco leaf produced. It was these benefits that were touted in some of our interviews with traders and civil society representatives.

However, tobacco farmers interviewed found the IPS still to be lacking. A tobacco farmer interviewed stated:

I am a tobacco farmer on a contract with [redacted]. They give us inputs to produce tobacco for them to buy. Sometimes this contract does not go well. For example, in the 2017/18 season, things did not go according to the contract. [Redacted] gave us 12 bags of fertilizer plus chemicals. But, on top of the 12 bags, they add other things, like baskets and other things, all of which is deducted [from the gross sale amount] when they are buying the tobacco. Their loan, when we compare to other organizations, it is high. With that reason, we are not making any profit. We are working like their tenants. We use more of our resources than we benefit from this contract, because they only give us a few

resources, while we must find our own labor and food. And when we go to the market, the prices they give us are not even good.

More broadly, a principal complaint was that a guaranteed minimum price was not necessarily applied to all the production of the farmer. A quota system effectively is in place under IPS with buyers often leaving the farmers holding any supply in excess of the contracted amount of leaf with no market at which to sell it. Another complaint was that the inputs supplied in the contract would be sold to them at an effective price much higher than the going market price – further hurting their opinion of the IPS contract system.

We asked respondents what they view should be the proper role of government in any contract farming arrangement? The most common responses pointed to two distinct roles for the government – educating farmers and enforcement.

The need to educate farmers on their responsibilities and obligations when entering into a production contract was judged important by all types of respondents, including farmers themselves. Awareness of how farming contracts work is not common. But greater understanding is needed for sustained, mutually beneficial contract farming systems to be put in place in Malawi. The Contract Farming Strategy seeks to ensure on a legal basis that all clauses in contracts must be clear and agreeable to both parties. However, the Strategy does not provide any guidance as to how this will happen (GoM 2016). Government might educate farmers about contracts through its agricultural extension services or through other outreach mechanisms.

Regarding enforcement, the common theme here was that the government must step in to enforce a contract in case of non-performance by either party and penalize the party responsible in the event of any breach of contract. However, there was little consensus among respondents on how this should be done – whether by the judiciary, local agricultural officials, or another party or agency. However, at the very least, it was clear that most respondents felt that the government should take up the role of creating an environment conducive to contract adherence by strictly and fairly enforcing their terms. These responses

again mirror the spirit of the CFS, which places a high priority on establishing enforcement and monitoring mechanisms and lends more support to prioritizing the implementation of the CFS across the country (GoM 2016).

However, we should note that some of the marketers interviewed believed that the government should play no role in legislating contracts. They viewed contracts as being established between two parties who respectively are motivated to establish a contractual relationship – particularly one that is renewed annually to the benefit to the respective interests of both parties in future cropping seasons. Close oversight by the government would unnecessarily interfere in the relationship between them. While this may be true, and mirrors some of the sentiments in the section on conducive market environments in which many respondents felt that direct government action potentially causes more harm than benefits, these respondents never directly addressed how enforcement of contracts in the absence of government oversight should be handled. We believe such respondents, at the very least, would agree that the judiciary has a role to play in contract enforcement and arbitrating compensation for the harmed party in case of any breach of contract.

Regarding enforcement, one of the specific aspects of the CFS about which we asked the respondents was whether they believed that the idea proposed in the Strategy of having the Competition and Fair Trading Commission (CFTC) oversee contract enforcement was a sound idea. This ended up being one of the more divisive questions asked in the interviews. Of the 26 informants who responded to the questions on the CFTC, answers were split evenly. There was no clear pattern as to which subset of respondents were likely to respond in which way. Those who supported the CFTC acting as the enforcement body for farming contracts did so because the commission was already in place, meaning there was no need to create yet another government body. Moreover, the Commission had a mandate to be fair and balanced. Those against the proposal for the CFTC being involved in farming contract oversight cited two primary concerns. The first regarded the commission's capacity to carry out such a large endeavor, given the

potential for significant expansion in contract farming across Malawi. The second concern was with the Commission's lack of expertise in agriculture.

The concerns of those against the CFTC proposal already are addressed somewhat in the CFS. The Strategy acknowledges the potential capacity constraints of the CFTC and proposes several consultative relationships – particularly with MoAIWD and civil society – for help with contract monitoring. As well, in areas where the CFTC may be lacking expertise, the CFS proposes that they be empowered to reach out for guidance to any relevant authorities with appropriate expertise (GoM 2016).

How to legally structure oversight on agricultural production contracts also was covered by the legal consultant in his review (M'meta 2018). The legal expert offered a useful approach to conceptualize how contracts might be regulated: ex-ante versus ex-post approaches. The ex-ante approach is prescriptive and is forward looking, seeking to prevent specific harmful conduct seen to be against the spirit and intentions of the contract arrangement. In contrast, the ex-post approach is more reactive and only comes into play if harm is seen to have occurred under an arrangement governed by contract. The review notes that the CFTC currently operates in an ex-post manner in fulfilling its duties, only becoming involved in a situation when a determination has been made that uncompetitive behavior occurred. (This is also the conceptual approach to contract oversight suggested in the CFS.) The legal consultant suggests that, given the vast nature of the agriculture sector, an ex-post approach would best serve the regulation of agricultural contracts in Malawi and that the AGPA could be amended to provide the legal basis for putting in place such a regulatory approach for these contracts. In contrast, the expert believed trying to adopt an ex-ante approach to regulating contract farming arrangements of all sorts across the many commodities and farming systems of Malawi would be a difficult exercise given the diversity involved and the differing scales at which these arrangements might operate. In sum, this preference for an ex-post approach to contract farming oversight opens the door for the possibility of using the CFTC, both from a legal and conceptual point of view (M'meta 2018).

Knowledge dissemination

The first questions posed to the interview respondents were simple ones aimed at establishing a baseline of their general knowledge of the legislation under review. Basically, these questions asked if the respondents knew about the SCA and the AGPA, as well as the CGA, and, if so, what was their general understanding of these laws. The responses to these questions pointed to another role for government to fill – that of educating people about the basics of these laws and their purpose.

Awareness of the SCA was quite low, especially considering our sample was purposefully comprised of agriculture sector stakeholders. Most of the individuals who indicated they had heard of the SCA either did not know of its details or were incorrect in their beliefs about the content of the legislation. A common response from the private sector was that they did not know the exact details, but that it dealt with imports and exports – which is partially true. But upon further inquiry, it appeared they often confused the SCA with the CGA. Among farmers and civil society representatives, if the respondent believed they knew of the SCA and the crops it protected, they often listed crops and activities not regulated under the SCA, but instead regulated under the AGPA or the CGA. Those who demonstrated a reasonably good understanding of the SCA and its scope were mostly in government or working for civil society organizations in the agricultural sector.

The same issues of lack of knowledge of the law also existed for the AGPA. Individuals either did not know about, or incorrectly identified the purpose of the legislation and how it is used. However, when prompted on the fact that the AGPA imposed licensing restrictions on many crops, most respondents were familiar with this aspect of the legislation, but simply did not know of its origination. Awareness of the CGA was better. Many of the respondents had experience with the CGA, especially when it concerned imports and exports, particularly regarding the previously discussed maize export bans.

These issues of deficient basic understanding of the laws point to the need for a considered effort on the part of the government to inform people regarding the legislation around agriculture – a proposal echoed in some of our interviews. Those respondents who had adequate knowledge of the laws often accepted

that it was uncommon for people, especially farmers, to know the contents of the law. However, they generally felt that the government needed to do a better job in informing people of why the laws were in place and how they are used. This points to a relatively low-cost intervention on the part of the government, one that could potentially utilize existing agricultural extension channels. Improving knowledge of these basic agriculture laws could address some of the confusion seen in agricultural markets and empower farmers and traders with knowledge of their legal obligations and rights.

As part of our discussion on general awareness of the laws, we asked those reasonably familiar with the Acts what they saw as the rationale behind them and if they agreed with this rationale. Here, there was significant consensus. Most respondents believed that the laws represented robust measures granted to the government to protect certain agricultural commodities that were believed to be important to the economy – either for profit or for food security. The agreement on the validity of the laws is a positive perspective – government is expected to provide economic protection in the interests of all Malawians, and the laws were formulated to do so. However, there also was considerable agreement that the laws have been poorly implemented due in large degree to a lack of clarity as to their purpose and scope and a lack of inclusiveness and consultation in making any decisions under the laws. These perspectives mirror the broad, cross-cutting issues discussed previously and highlight how pervasive are problems linked to the design of the laws or to their application.

Potential Paths Forward

In designing the interview questionnaire, we thought it would be valuable to include some closing questions aimed at eliciting the respondent's views on what they would change about either the legislation considered or the government's role in the agricultural sector. The answers to these questions ranged from the broadest roles of government to small details about changes to the SCA and AGPA.

Beginning at the broadest level, there was marked disagreement among the respondents as to whether government should be taking a leading role in agriculture or should mainly focus on empowering the private sector to take the lead in the development of the sector. There was not a strong pattern for how

these responses broke down between groups, but the general theme was for civil society, government workers, and farmers to be in favor of a leading role for government, and traders to be in favor of more private sector-led development. Those advocating for a continuing central role for government tended to highlight the outsize role the government already plays in Malawian markets relative to the underdeveloped private sector. The thinking here is that the government must continue to play a leading role simply because the private sector is not sufficiently well developed to do so. Those in favor of private sector-led development, on the other hand, believe that government should focus on empowering large farmers, as they are the ones who should be leading the development of the agricultural sector, and treating agriculture like a business rather than a method of food security, since treating it as a food security sector removes incentives for commercial farming and surplus production.

Regarding potential paths for reviewing and reforming the legislation at hand, there were many insightful comments that could apply equally to the SCA and the AGPA. At a broad level, we directly asked each respondent what they thought of the open-ended powers granted to the Minister of Agriculture by both pieces of legislation. Somewhat surprisingly, the responses to this question were mixed. Especially traders and farmers found the powers to be perfectly appropriate, but only if they were exercised with appropriate restraint. On the other hand, members of civil society organizations tended to have a dimmer view of the powers granted to the Minister and any associated assumptions as to their prudent use of that authority with the necessary restraint required, both now and in the past. This leads into a second common note that, whatever reforms to the legislation may emerge, there needs to be mandated transparency, predictability, and consistency to any decisions taken under the revised laws. That is to say, the legislation itself must set in place strong guidelines for decision-making to avoid volatile interventionism and to build long term confidence in agricultural markets in Malawi.

Another suggestion made for building confidence in agricultural markets is that the laws should require that any agricultural policy decision-making processes be consultative. This is in line with earlier comments presented in this review and with the 2018 revisions to the CGA. Comments on the need for

mandatory consultations were commonly made by farmers, traders, and civil society members. Given the important roles that several ministries often must play in implementing the agricultural legislation under review, several respondents called for defined roles for the respective ministries concerned. A challenge noted in this regard, particularly among traders and representatives of civil society organizations, was that ministries often struggle to communicate with one another. If the cross-sectoral functions of the laws are not coordinated, implementation will suffer, leading to deadlock and inefficiencies. Any reforms to these laws must take steps to address this and ensure that the structure of the revised CGA and its application is considered in designing how a revised SCA and a revised AGPA will be applied.

Finally, a specific inefficiency highlighted was that of licensing procedures. Many of the traders and farmers interviewed bemoaned the inefficient processes they must engage in to obtain a license. Their suggestions for addressing this problem ranged from creating a complete ‘one-stop shop’ for acquiring agriculture licenses to complete decentralization of license issuance by empowering district or lower local authorities to do so.

Regarding regulatory empowerment, several respondents stated that any revised legislation should do more to empower regulatory bodies to avoid unnecessary interventions by ministries. The logic behind these comments is that the government should play more of a role as a facilitator rather than a direct implementor. Such a division of duties could provide a framework for other reforms, including for increased consultations and better-defined roles. This comment also reflects some of the literature discussed in the desk review. The examples from Mozambique and Uganda and from two of the regional studies showed that noninterventionist – facilitative – policies have resulted in more predictable markets and more stable price patterns for agricultural commodities. Both characteristics generally are not present in Malawian markets.

The regulatory bodies, according to some comments from traders, should be encouraged to use incentives rather than punishments. The respondents who mentioned this felt that the current framework focuses too much on punishments for breaking the law, rather than incentives for following it. Interestingly, at the

same time other respondents felt that the government should make the penalties for breaking the agricultural laws harsher. Comments like this were more commonly made by government and civil society respondents. As noted earlier, due to significant devaluation of the Malawi kwacha since the laws were passed, the fines noted in the Acts, such as for contravening licensing laws, for example, are absurdly low compared to when the laws were first passed and will provide no deterrent to disregarding any licensing regulations.

We also heard other comments which applied specifically to either the SCA or the AGPA. Several traders suggested that a revised AGPA enable the Minister to incentivize financial institutions to finance the agriculture sector. We believe such a mandate could fall under the broad purview of the AGPA, if properly designed with appropriate constraints, and could function as an incentive scheme that rewards banks for supporting farmers and traders.

Regarding revisions to the SCA, most respondents felt it appropriate that the Minister have the power to select special crops for general development, but also expressed concern that the powers need to be clear and regulated – mirroring much of the discussion above. Within these powers, an idea suggested by respondents from all groups was that the SCA could be used to create the structured markets necessary for agriculture to succeed in Malawi. This could be done by re-empowering the various special crops authorities to provide institutional marketing structures, price guidelines, and general awareness of market conditions to the farmers. If you were to extrapolate this into the future, as some respondents did, this could in turn be used to promote the development of crop-specific value chains that would contribute to the transformation of the agriculture sector as a whole.

Finally, the open-ended nature of our interviews meant that some comments provided by informants did not fall neatly into the scope of the legislation reviewed. Two important such comments that were offered by several farmers and traders were that government should take steps to improve farmer education and to promote farmer cooperatives. Improved education would allow farmers to better understand markets, contracts, and agricultural practices, while promoting cooperatives could help smallholders access

currently inaccessible markets and enter into them from a position of greater market strength. Those informants who made these comments also would commonly mention the idea of government investing more in infrastructure to encourage greater market connectivity. And finally, in line with the idea of improving farmer education, there were many in civil society organizations who recommended that government improve its methods of policy dissemination.

6. CONCLUSIONS AND RECOMMENDATIONS

Based on the results of the desk study, the information collected through the key informant interviews, and the analysis presented above, several conclusions emerge regarding the legislation under review. We discuss two here.

The first and foremost of these is that the two agricultural laws in their current form and the way the government applies them do not strengthen agricultural markets and foster improved market coordination in Malawi. Indeed, most informants believed the laws in their current form actively confound the efficient operation of these markets.

The way the government currently approaches agricultural markets in Malawi, particularly through the SCA and the AGPA, is exclusionary rather than inclusive. The open-ended discretionary powers granted to the government by the legislation and the opaque and wanting manner in which the laws are implemented leave too much space for market failures of all kinds. Not only do these practices keep market information, particularly on prices, from those who need it most, but actively discourage market entry by farmers and traders and constrain their engagement with the financial services sector. This has led to pervasively thin markets. Such markets are particularly vulnerable to abuse and favoritism that results in a break down in the coordination of the respective commitments between buyers and sellers in the marketplace. Such coordination is vital to agricultural sector development. Rather than the arbitrary application of the two laws, government should instead be focused on being a facilitator between buyers and sellers. Government agents should provide structure and support to agricultural markets, provide clear and accurate information, and facilitate coordination between sellers and buyers across the entire sector.

To move towards this goal, revisions are necessary to the both the SCA and the AGPA. These changes need to focus on improving consistency in implementation and decision-making. One important aspect of this is to provide clear and absolute triggering mechanisms for government action. The currently capricious nature of many vital government functions has depressed the agriculture sectors in several ways, including through farmers failing to access markets and banks hesitating to lend to the agriculture

sector. Triggering mechanisms will provide stability and clarity as to the way government intends to act in the sector, helping ensure that the commitments made by the private sector are not undermined. This need for clarity extends to improved understanding by stakeholders of government's general mandate within the agriculture sector, particularly as outlined in the two laws. There is still much confusion in both the private and public sectors regarding the legislation reviewed here and the limits to government's mandate to broadly act in support of agricultural development. Any revisions to the legislation should include mechanisms to better enable citizens to understand government's policy and strategies around agriculture.

Any potential revisions to the laws must also realistically consider the implementation capacity of the government, both technically and institutionally. Current capacity deficits and failures in implementation have only exacerbated confusion in the private sector as to how government might intervene in agricultural markets. The following quotation from a coffee farmer, sums up the problem well:

At the moment we don't know what government is doing. They told us to grow coffee, and we are grateful because we get extension services. But, they sort of abandoned us midway, and we have nowhere to take our coffee. That's why buyers take advantage of us.

To live within these capacity constraints, revisions to the laws must call for more consultative decision-making processes. This will help place some of the burden to ensure sufficient capacity is in place on the private sector and civil society and have the added benefit of further opening the decision-making to scrutiny and better understanding. It will also keep the SCA and AGPA in line with the recent revisions to the CGA which placed an emphasis on consultation and knowledge sharing. In addition, the revisions should ensure that the government increasingly plays a more facilitative role, rather than that of the principal implementer of any interventions and programs. This attitude of stakeholders was a common thread throughout our interviews for the review. Reorienting government's engagement in agriculture in this way would be a natural revision to make given the need to be realistic about constrained government

capacity. Knowledge dissemination will be vital here as well – playing a facilitative role necessitates that all parties have access to and understanding of any applicable legislation.

The second major point is that we believe it is currently unnecessary and overly complicated to retain both the SCA and AGPA. Given the breadth of scope of the AGPA, it would make sense to subsume the SCA within the AGPA. This combination could take the form of regulations passed under the auspices of the AGPA or a re-working of the goals of the SCA into a strategy document with reference to the AGPA. In either scenario, the conclusions and recommendations arrived at in this review for both pieces of legislation remain valid. We simply believe it would provide more clarity and less clutter to combine the two acts in some manner.

Regarding the Contract Farming Strategy, the results from our review show broad support for the current version of the document and the need for such an action plan. Contract farming is in a poor state in Malawi due mainly to a lack of understanding and ineffective enforcement of contracts. These are two roles the government can fill through the strategy. The CFS and its implementation should be used to help educate farmers (and, to some extent, traders) regarding the nature of contracts and their roles and obligations when they are parties to them. More importantly, there is a dire need for real contract enforcement. The main complaint we heard from both traders and farmers was a lack of respect for the contract and the lack of consequences when contracts are broken. The government must address this. The CFS, if implemented correctly, can accomplish this. To this end, we believe that the Competition and Fair Trading Commission could be a viable option for this enforcement role. While there was some skepticism on the capacity of the institution, there are almost no other institutions which currently have any capacity to play the enforcement role. Using the CFTC would avoid the need for creating a new institution. The CFTC does need to be further empowered and expanded for this role, as has been laid out in the CFS, but, as we saw in particularly in the legal expert's review, this role should focus on *ex post* enforcement rather than *ex ante*.

Finally, from a legal perspective, as discussed, the current state of the two laws may be in violation of Malawi's 1994 Constitution, which ensures the right of the individual to petition against government decisions and assigns to government the duty of nurturing a market economy. The former of these two concerns motivated in large part the recent revisions to the CGA. As such, the revised CGA (2018) provides a useful model and an important precedent for revision of the SCA and the AGPA to align them with the provisions for transparency, accountability, and respect for individual rights and freedoms of the 1994 Constitution and with current visions for the economic development of Malawi. Language like that inserted into the revised CGA could be used in any revised SCA or AGPA to address issues around safeguarding the interests and rights of individuals and making government, through the Minister of Agriculture, accountable for any unjust applications of the agricultural laws in question.

Recommendations

We present several specific recommendations for modifying both the SCA and the AGPA so that they are more conducive to agricultural development in Malawi. We have broken down our comments into revisions that cover each individually and then those that cover both documents.

Recommendations for the Special Crops Act

- The SCA should be repealed and reconstituted in a reduced form under the AGPA. It is unnecessary as a stand-alone Act. Having two pieces of legacy legislation creates added complexity.
 - Bring the remaining applicable content of the SCA into the revision and formulation of a broader AGPA.
 - Doing so would preserve the 'spirit' of the SCA, but would streamline its application.
- In revising the legislation, consideration should be paid to mandating private sector-led development of special crop value chains with government providing assurances on financing or other value chain development needs.

Recommendations for the Agriculture (General Purposes) Act

- The AGPA should be used to enforce the Contract Farming Strategy. As stated in the CFS document, strong enforcement mechanisms need to be created to provide a strong basis for expanding contract farming in Malawi. Equally important is the provision of appropriate means and pathways for disseminating knowledge about contracts in farming and the rights and responsibilities of parties to such contracts.
 - Based on our review, this enforcement could be done by the Competition and Fair Trading Commission mostly in an *ex post* fashion – focusing on enforcement after a breach of contract has occurred rather than seeking to proactively preventing such violations. The basis for such an approach is in the interest of efficiency and flexibility and the idea that the credible threat of contract enforcement will be a preventative measure in its own right. The proposal in the CFS of having the CFTC pre-approve contracts would provide a limited but valuable point of *ex ante* enforcement to improve contract enforcement overall.
 - A second small, but important, point is that the AGPA would need to be revised to remove any language exempting ‘Special Crops’ from enforcement under the AGPA. Without this change in the content of the law, arguments could be made against the legality of enforcement of contracts for special crops.
- Under the AGPA, new regulations should be created to encourage financial sector involvement in agriculture. Given the powers granted to the government by the AGPA (even after incorporating other proposed revisions), facilitation of financial service provision would be within the power of the government.
 - As with other revisions, this regulation should be aimed at facilitating investment and the provision of loans by existing financial institutions rather than government picking the investment that are made or providing financing directly. A possible route for government

involvement in this area would be to provide interest rate incentives to banks for loans into agriculture.

Recommendations for both the Special Crops Act and the Agriculture (General Purposes) Act

- The Acts must be revised in a manner that provides a clear decision-making and accountability structure. The revisions should include explicit triggering mechanisms so as to provide understanding as to when and why government decisions are made.
 - Any policy decisions which can be made under the legislation, such as granting of licenses or setting of prices, must be done in a systematic manner by a set formula or process that is explained clearly and openly to the public.
- While the government should maintain a leading role in agriculture, the revised legislation must mandate that the government should adopt a vision for itself of playing a role of facilitation rather than one of implementation. Such a model of action will provide a greater range of methods to surmount the capacity constraints of the government and increasingly avoid the common pattern now seen of policy pronouncements on market regulations and interventions not being followed by needed action on the part of government to carry out the decree.
 - An example of this would be to mandate outreach by the government to ensure that all parties affected by a specific enforcement action under the law understand why the action was taken and are aware of their rights in challenging the legality or appropriateness of any action that adversely affects their interests.
 - In addition, the government should create a more enabling environment by decentralizing the licensing process. The legislation around permitting and licenses should be revised so as to enable the government to empower a broader range of licensing authorities. This will help the private sector access licensing and remove a capacity burden from the government.

- Any revisions must be aimed at creating a legal environment for constraining the government's absolute power, mandating consultations with stakeholders when making decisions, and providing a framework for public redressing of grievances.
 - These would be done along the same lines as was done under the recent revision to the CGA.
 - Not only would revisions along these lines help bring more consistency to these important pieces of legislation, potentially helping with understanding and communication between the ministries concerned, but they would also ensure that the SCA and AGPA are brought into line with the 1994 Constitution of Malawi.

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ANNEX I – LIST OF RESPONDENTS FOR KEY INFORMANT INTERVIEWS

Affiliation	Respondents		
	Total	Male	Female
Agricultural Development and Marketing Corporation (ADMARC)	1	1	0
AGORA Ltd	2	2	0
AHL Commodities Exchange (AHCX)	2	2	0
African Institute of Corporate Citizenship (AICC)	1	1	0
Africa Fertiliser	1	1	0
Agriculture Resources Limited	1	1	0
AgrocomTrade	1	1	0
Alliance One Contract Farmer	1	1	0
Banana farmers	18	4	14
Blue Zone, ex-Satemwa	1	1	0
Bua Rice Cooperative	7	5	2
Bua Water User Association	3	2	1
Bulamutu Estate	1	1	0
CAPS (Malawi) Ltd	1	1	0
Civil Society Agriculture Network (CISANET)	1	1	0
CP (Central Poultry) Feeds	1	1	0
Central Poultry (2000) Ltd.	1	1	0
Chamemba Farmers Club	1	1	0
Chankhwali Farmers Club	1	1	0
Chaseka Farmers Club	1	1	0
Chawera Estate	1	1	0
Chigomezgo Farmers Club	2	2	0
Chigwere (Nkhata Bay) Farmers Club	1	1	0
Chindikani Estate	1	1	0
Chinguluwe Extension Planning Area (EPA)	1	1	0
Chipilikiti Farmers Club	1	1	0
Chisuwe Estate	1	1	0
Clinton Development Initiative	1	1	0
Coffee Farmers Club	10	9	1
Conforzi Plantations Ltd	1	1	0
Cotton farmers	9	5	4
Cotton Farmers Association (COFA)	1	1	0
DWK Macpherson Estate	1	1	0
Donor Committee on Agriculture and Food Security (DCAFS)	1	1	0
Dambule Farmers Club	1	1	0
Dwangwa Cane Growers Trust	2	2	0
Dziwelamakolo Rice Club	2	2	0
Export Trading Group (ETG), Ltd.	1	1	0
Eden Farm	1	1	0
Farmers World Ltd.	1	1	0
Fumbani II Estate	1	1	0
Grain Traders Association of Malawi	1	1	0
Illovo Sugar (Malawi), Ltd.	1	1	0
Jakwati Rice Farmers' Club	2	1	1
KAZ Properties	1	1	0
Kakuyu Investments	1	1	0
Kapangamawe Farmers' Club	2	2	0

Affiliation	Respondents		
	Total	Male	Female
Kaponga Farmers' Club	1	1	0
Kasungu Agricultural Development Division (KADD)	7	7	0
Kavalo Rice Farmers' Club	1	1	0
Kawalazi Estate	1	1	0
Kilombero Rice Farmers' Club	1	1	0
Kulima Gold/Rab Processors	1	1	0
Lijinga Macadamia Farmers' Club	7	3	4
Lingadzi Estate	1	1	0
Malawi Confederation of Chambers of Commerce and Industry (MCCCI)	1	1	0
Macadamia Farmers' Club	4	3	1
Magombo Estate	1	1	0
Majiga Farmers' Club	3	2	1
Malawi Cotton Company	1	1	0
Mbabvi Estate	1	1	0
Mbawemi Estate	1	1	0
Ministry of Agriculture, Irrigation and Water Development (MoAIWD)	2	2	0
Ministry of Industry, Tourism and Trade (MoITT)	1	1	0
Ministry of Local Government and Rural Development (MoLGRD)	1	1	0
Mount Meru Millers (Malawi) Ltd.	1	1	0
Mtalimanja Holdings Ltd	1	1	0
Mtalimanja Holdings Ltd Rice Scheme	15	8	7
Mulanje pigeonpea farmers	4	1	3
Mzuzu Coffee Cooperative Union – Salawe Zone	18	10	8
National Smallholder Farmers' Association of Malawi (NASFAM)	2	0	2
NBS Bank, Ltd.	1	1	0
Namawe Rice Farmers' Club	1	1	0
Non-contract tobacco farmers	5	5	0
Nyiombo Investment	1	1	0
Optichem 2000 Ltd	1	1	0
Paramount Holdings Ltd. / Sungold Food	1	1	0
Peacock Enterprises	1	1	0
Pindulani Farmers' Club	1	0	1
Rural Market Development Trust (RUMARK)	1	1	0
Smallholder Farmers Fertilizer Revolving Fund of Malawi (SFFRFM)	1	1	0
Sable Farming Company Ltd	1	1	0
Salima Agricultural Development Division (SLADD)	1	1	0
Sisilo Farmers' Club	4	1	3
Sukambizi Tea Association	1	1	0
Tobacco Association of Malawi (TAMA)	2	2	0
Tobacco Control Commission (TCC)	3	2	1
Taukaso Farmers' Club	1	0	1
Tea Association of Malawi	1	1	0
Thula Cassava Farmers' Club	1	1	0
Tilimbike Cassava Farmers' Club	15	4	11
Tithokoze Rice Farmers' Club	1	1	0
Tiwonyepo Cassava Farmers' Club	8	2	6
Transcom Sharaf, Ltd.	1	0	1
Weghiyu Estate	1	1	0
World Bank – Malawi office	2	2	0
Worldwide Wholesalers	1	1	0
Zachi Estate	1	1	0
Total	232	159	73

ANNEX II – KEY INFORMANT INTERVIEW QUESTIONNAIRE

Key Informant Interview (KII) Discussion Guide – NAPAS Legislation Assessment

FULL LIST OF QUESTIONS – These will not be asked of all respondents.

Respondent name(s):

Respondent organization(s):

Position(s) in organization(s):

Contact details:

Respondent(s) gender:

Date of interview:

Module 1: General Knowledge

We are going to ask you some brief questions about your general knowledge regarding agricultural institutions and legislation in Malawi.

1a. Are you aware of the **Ministry for Agriculture**?

1b. If yes, what **actions** are you aware the national ministry carries out and what **actors** do you know of who work within/for the ministry?

1c. Have you heard of the **Special Crops Act**?

1d. If yes, what is your general understanding of the contents of the act?

1e. Have you heard of the **Agriculture (General Purposes) Act**?

1f. If yes, what is your general understanding of the contents of the act?

1g. Have you heard of the **Control of Goods Act**?

1h. If yes, what is your general understanding of the contents of the act?

1i. Are you aware of the **recent updates** being made to the Control of Goods Act?

1j. Are you aware of any **licensing documents**, required by the above legislation, for the buying, selling, or production of agricultural goods? Do you have any licenses? (IF YES, ASK MODULE 5)

1k. Are you aware of any **pricing requirements** enforced by the above legislation?

1l. Are you aware of any **marketing requirements** enforced by the above legislation?

1m. Do you or your organization engage in **contractual farming relationships**? (IF YES, ASK MODULE 6)

Module 2: Specific Impressions and Knowledge

We are now going to ask you some questions about your overall specific impressions and knowledge regarding the agricultural legislation we just discussed.

2a. What is your **overall impression** regarding the implementation of the **Special Crops Act**?

2b. Do you know of any Special Crop **Authorities**?

2c. If yes, what **actions** are you aware that they carry out and how have you interacted with them?

2d. How **broadly** has the act been applied? Do you think it applies too broadly or too narrowly?

2e. Do you believe it is **beneficial to agriculture** in Malawi?

2f. Does it seem to you that the government has **sufficient capacity** to implement the act? This includes finances and human capital.

2g. Your overall impression regarding implementation of the **Agriculture (General Purposes) Act**?

2h. How **broadly** has the act been applied? Do you think it applies too broadly or too narrowly?

2i. Do you believe it is **beneficial to agriculture** in Malawi?

2j. Do you know of the **Maize Marketing regulations** under the General Purposes act?

2k. If yes, what do you believe they entail and how have you interacted with them?

2l. Does it seem to you that the government has **sufficient capacity** to implement the act? This includes finances and human capital.

2m. What is your overall impression regarding the implementation of the **Control of Goods Act**?

2n. How **broadly** has the act been applied? Do you think it applies too broadly or too narrowly?

2o. Do you believe it is **beneficial to agriculture** in Malawi?

2p. Does it seem to you that the government has **sufficient capacity** to implement that act? This includes finances and human capital.

2q. How do you think the **upcoming changes** to the Control of Goods Act are going to affect the aspects of the legislation we have discussed? Will it improve its implementation? Effectiveness?

2r. What is your understanding of the **decision-making process** established under these laws?

2s. Who in your organization is involved in **forming decisions** under these acts and how does this process unfold?

2t. Who do you interact with who is involved in the decision-making process and do they **inform you** of how the process unfolds?

Module 3: General Perceptions

We are now going to ask you some questions about your general perceptions regarding the agricultural legislation we just discussed.

3a. Regarding the acts above, what is your overall perception of **compliance** with these laws?

3b. Do you believe that **public sector** officials broadly comply with their duties under the laws?

3c. Do you believe that the **private sector** acts in good faith as a **compliant partner** in observing the laws?

3d. How specifically do you believe the letter of the law has been applied? **Loosely or rigorously?**

3e. Have you observed instances of **preferential treatment** or failure to punish non-compliance?

3f. Do you believe the **decision-making process** behind the enforcement, interpretation, or implementation of these acts is **transparent**?

3g. Are you provided with the **appropriate amount of information** with which to understand how decisions were taken and how they will affect you?

3h. Do you believe decisions are taken in a **fair and honest** way in line with your understanding of the legislation?

3i. Is it your belief that decisions are potentially influenced by **political incentives**? Can you elaborate on these beliefs?

3j. What is your perception of the **overall impact** these laws have had?

3k. What impact do you believe they have had on **markets** for agricultural products?

3l. Based on your interactions, do you believe the laws play a role in **private sector decision-making**?

3m. What impact do you believe the legislation has had on the **efficiency or effectiveness** of public sector operations?

3n. Are the laws a factor in how you or other firms assess **potential investment opportunities**?

3o. Have the laws affected your decision-making in **approving loans**? How?

3p. If you have denied any loans because of the influence of any of this legislation, could you **estimate how much** has been denied in total?

3q. How significant a risk to **realizing business objectives** are actions by government agencies?

3r. Do you believe any of the discussed legislation, or their subsequent regulations, have had an impact on your **cropping or other farming decisions**?

3s. Are there any **other concerns or positive aspects** of these laws which you would like to share?

Module 4: Regulatory Environment and Potential Changes

Finally, we are going to ask you some questions about how you view the currently regulatory environment and potential changes.

4a. Do you believe the government should play a **leading role in the development** of specific agricultural crops or value chains?

4b. Are such laws **practical and suitable** of advancing agricultural development?

4c. What do you think legislation such as the **Special Crops Act** should be used for?

4e. What do you see as the **proper role of government** for promoting human and economic development?

4f. What is your opinion on the **amount of authority given to the minister** of agriculture in the above legislation?

4g. What, if any, **changes** would you make to any of the current legislation?

4h. Do you believe **anything would change** if any of the above legislation were repealed and/or restructured?

4i. If yes, do you think this would be **an appropriate path** for the country to take?

4j. If no, what **entrenched factors** do you see that leads you to believe this?

ONLY ASK MODULE TO THOSE WHO INDICATED THEY HAD RECEIVED LICENSES

Module 5: Licensing

Since you indicated you received/process license(s) under one of these pieces of legislation, we would like to ask you some brief, specific questions about the process of receiving those licenses.

5a. **Which license(s)** did you receive/grant?

5b. For each of these licenses, **how long did the process**, from start to finish, take to receive the license?

5c. **How much** did each of these licenses cost in terms of:

- Money explicitly for license:
- Travel expenses:
- Lost revenue or wages:
- Time spent (filing/preparing forms, travel)

5d. On a scale of 1 to 5 (1 being very dissatisfied and 5 being very satisfied) how would you rate the **experience of obtaining/granting the licenses**?

ONLY ASK MODULE TO THOSE WHO INDICATED THEY ENGAGE IN CONTRACTS

Module 6: Contracting

The Competition and Fair Trading Commission (CFTC) has asked us to review the status of contract farming in Malawi and potential paths forward. Since you/your organization are involved in contracts, we would now like to ask you some questions about contract farming.

- 6a. What has been your or your organization's **experience with contract farming**?

- 6b. Do you believe contracts are **well enforced and honored**? What impact have they had on your **decision-making**?

- 6c. Are you aware of the **Contract Farming Strategy**, and what is your understanding of it?

6d. If yes, what **impact** do you believe it will have on your organization going forward?

- 6e. Do you believe there should be **penalties for breaking contracts**? And if so, how should these be adjudged and what should be their severity?

- 6f. What do you see as **the proper role of government** in the enforcement of contracts?

6g. Has Malawi been **disadvantaged** by not having explicit government regulation of contracts?
How or how not?

- 6h. What is your opinion regarding the **CFTC administering** potential legislation on contract farming even if it is under the Agriculture (General Purposes) Act?

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