

Regulation of Agricultural Markets in Malawi

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Agriculture holds special significance in Malawi, because most Malawian households depend primarily on this sector for income and food security. Therefore, legislation surrounding the agricultural sector, and the foundation it lays for the sector's governance, are fundamental to the development prospects of the country. At their best, agricultural laws encourage farmers, traders (both domestic and international), and processors of agricultural commodities to fully engage and further invest in the agricultural sector. At their worst, they undermine confidence to do so.

In this note, we take a critical look at existing legislation pertinent to the agricultural sector and highlight how the unchecked ministerial powers it provides combine with low implementation capacity to create an unconducive investment environment in the agricultural sector in Malawi. We draw extensively on [Comstock et al. \(2019\)](#), which is based on a legal review as well as on over 100 interviews with smallholder farmers, representatives of farmer organizations, commercial farmers, traders, processors, government officials and other stakeholders.

We then turn to the recently proposed Crops Bill and conclude that it does not overcome the core problems of existing legislation and should therefore not be expected to boost investments in the sector. If passed in its current form it would be a missed opportunity to strengthen the agricultural sector in Malawi. We conclude by proposing two broad sets of amendments to improve the bill.

Existing and upcoming legislation

The agricultural sector in Malawi is primarily regulated by two laws – the Special Crops Act of 1963 (SCA) and the Agriculture (General Purposes) Act of 1987 (AGPA). The SCA regulates the production and marketing of crops deemed important to the country's economy: cashew, coffee, cotton, groundnuts, macadamia, tea, tobacco, and tung. The AGPA regulates the production and marketing of all crops not declared as special under the SCA. The SCA and the AGPA are to be replaced by the recently proposed Crops Bill. The Control of Goods Act (CoGA), adopted in 1968 and revised in 2018, regulates imports and exports of goods, including agricultural produce. As such, it does not deal exclusively with the agricultural sector, but it has a profound impact on it. In this note, we refer to the three acts collectively as “existing legislation.” For detailed discussion of their content, see [Comstock et al. \(2019\)](#).

Unchecked ministerial powers

The SCA 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.

The AGPA similarly appropriates broad powers to the Minister, who, 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 in the AGPA 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 regulated under the SCA (i.e., special crops).

These open-ended 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. At the same time, existing legislation does not describe the conditions under which specific ministerial powers should be exercised. This opens the door for legislative texts to be applied – and policy decisions to be made – in an arbitrary manner. Even if policy decisions are consistent, the mere legal possibility of arbitrariness undermines the confidence of farmers, traders, and processors in how predictably agricultural markets operate in Malawi, which in turn restricts production, trade, and investment.

Lack of implementation capacity

The lack of transparency in decision-making is confounded by insufficient capacity to implement policy priorities or to enforce the laws. This sentiment is expressed by stakeholders throughout the agricultural sector. The 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. Combined with an opaque decision-making process, this is a recipe for confusion and volatility.

A good example of how such capacity constraints adversely affect the application of the agricultural laws, and the development that they are meant 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 and financial capacity in general.

Beyond this, the government often seems incapable of actually enforcing the prices they arrived at. In 2020, for example, minimum farmgate prices of maize and soybean were set at K200 and K300 per kg, respectively. Yet the average price for which farmers sold their produce was K150 and K228 per kg, respectively, with 76 percent of maize farmers and 90 percent of soybean farmers selling below the government-mandated price ([Baulch and Ochieng, 2020](#)). The story was similar for maize in 2021, when it sold on average for K98 per kg between April and July, despite the minimum farmgate price being set at K150. Soybean sold well over the minimum farmgate price of K320 per kg, but that was likely due high prices on the international markets combined with a poor harvest in Malawi and abroad rather than to government intervention ([Baulch and Jolex, 2021](#)). In May 2022,

maize sold at the farmgate attracted, on average, K185 per kg, well below the minimum price of K220.

The lack of government capacity and the consequent inability to enforce the law can normalize inconsistent application of rules and regulations, which in turn facilitates preferential treatment that stems from political motivations or corrupt business practices.

The Crops Bill

The Crops Bill, which is being drafted by the Ministry of Agriculture at the time of writing, is intended to replace the Special Crops Act and the Agriculture (General Purposes) Act. If enacted in the form which was released in May 2022, it will establish a Malawi Crops Regulatory Authority, in which some of the powers currently exercised by the Minister of Agriculture, such the licensing of traders, will be vested. “Special” crops will be abolished. Instead, the Authority will regulate trade in “scheduled crops,” which, according to the current proposal, include all food crops that are commonly traded in Malawi, specifically banana, barley, beans, cashew, coconut, coffee, groundnuts, macadamia, maize, pigeon peas, rice, sesame, soybean, sugarcane, sunflower, tea, and wheat. Crucially, the bill gives the Minister of Agriculture the power to amend the list of scheduled crops, to prescribe the minimum price at which they should be traded, and to license markets in which they may be traded.

Although the bill requires the Minister of Agriculture to consult stakeholders (in the case of amendments to the scheduled crops list) and the Minister of Trade (in the case of minimum farmgate prices) before making some policy decisions, there is no definition of who the stakeholders are, and the bill does not require the Minister to take their advice into account. Similarly, the bill requires the Minister to take market realities into account when prescribing minimum farmgate prices but remains mute on how this should be done. It is similarly mute on how a decision to license a market (or not) should be made. In contrast to existing legislation, the bill does provide a framework for appealing decisions made by the Authority, but not those made by the Minister. In its current form, the Crops Bill therefore represents only a marginal improvement over existing legislation in how it ensures the predictability of policy decision-making in the agricultural sector.

When it comes to ensuring that the government's regulatory obligations are commensurate with its capacity, the bill is a step backwards. It gives the newly formed Authority the responsibility to license traders in scheduled crops and to register all grower associations and all contracts between off-takers and farmers. Interviews with farmers show that, even now, many traders operate without a proper license, suggesting that the government does not have the capacity to enforce compliance with existing licensing requirements. Adding more licensing and registration responsibilities will only make matters worse.

Of the two broad problems with existing legislation which stifle the development of the agricultural sector, i.e., unchecked ministerial powers and insufficient capacity to enforce regulations, the Crops Bill thus represents only minimal improvements on the former and large setbacks on the latter.

Way forward

How can the Crops Bill be improved in light of these findings? Two broad sets of amendments would help.

First, the bill should provide a clear decision-making and accountability structure as to when and how government will enforce actions allowed under the law. These conditions and contexts within which action will be taken should be specific and binding to make policy predictable. Additionally, the consultative steps which the Minister is to take before changing policy should be clearly outlined

and binding, and a process to redress grievances from ministerial decisions put in place to provide more accountability and transparency.

Second, the bill should give the government a more facilitative role in agricultural value chains, rather than one of a principal actor and implementer. The necessity of each new regulatory function should be judged by the efficacy with which it achieves the objectives of the bill, and unnecessary functions should be scrapped. Reducing the burden of policy enforcement through establishing mechanisms to encourage and promote compliance would enable the government to focus its limited resources where they are most needed. For example, rather than mandating minimum farmgate prices which it is unable to enforce, the government could rebalance information asymmetries between farmers and traders by disseminating information on prevailing market prices by means of radio and agricultural extension. Similarly, instead of registering contracts between every single producer and their off-taker, the government could disseminate information on contractual rights and put in place a structure for arbitration between parties to agricultural contracts. Institutions and legislative mechanisms are already in place to handle many of these functions. The government should therefore consider whether the new Authority is needed at all.

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