
A Review of National Fertilizer Regulatory Authorities in Malawi

PREPARED BY THE AFRICAN FERTILIZER AND AGRIBUSINESS PARTNERSHIP
(AFAP) FOR THE ALLIANCE FOR A GREEN REVOLUTION IN AFRICA (AGRA)'S
SCALING SEEDS AND TECHNOLOGIES PARTNERSHIPS (SSTP)



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ACRONYMS

ACTESA	Alliance for Commodity Trade in East and Southern Africa
AFAP	African Fertilizer and Agribusiness Partnership
AGRA	Alliance for a Green Revolution in Africa
ADMC	Agricultural Development and Marketing Corporation
AISP	Agricultural Inputs Subsidy Program
ATCC	Agricultural Technology Clearing Committee
CAADP	Comprehensive Africa Agricultural Development Program
COMESA	Common Market for East and Southern Africa
DARS	Department of Agricultural Research Services
ESAF	East and Southern Africa Fertiliser Trade Platform
FAK	Fertilizer Association of Kenya
FAO	Food and Agriculture Organisation
FTA	Fertilizer Trade Association
GDP	Gross Domestic Product
GoM	Government of Malawi
IFA	International Fertiliser Association
IFDC	International Fertilizer Development Centre
IFPRI	the International Food Production Research Institute
MBA	Malawi Boarder Authorities
MBS	Malawi Bureau of Standards
MFRS	Malawi Fertilizer Regulatory Services
MIC	Ministry of Industry and Commerce
MoAFS	Ministry of Agriculture and Food Security
NFS	National Fertilizer Strategy
RBM	Reserve Bank of Malawi
SFFRFM	Smallholder Farmers Fertilizer Revolving Fund
SGS	Societe Generale de Surveillance
SSTP	Scaling Seeds and Technologies Partnerships
TABIRA	Fertilizer Association Burundi
VAT	Value Added Tax

EXECUTIVE SUMMARY

An assessment of the national fertilizer regulatory authorities in Malawi reveals that fertilizer production/importation, distribution, marketing and trade is regulated and controlled by multiple institutions. These institutions are established under different Acts of the laws of Malawi and in carrying out their mandates these institutions draw from their specific Acts, policies and regulations. This often leads to conflicts and/or overlaps and replication making it difficult to reach consensus on certain issues. Furthermore, there is no national fertilizer-specific coordinating institution that guides and coordinates efforts of the various institutions to avoid overlaps and/or replication of efforts. The resulting weak regulatory framework undermines the comprehensive and effective coordination in fertilizer production, marketing and distribution in Malawi. However, there is a draft fertilizer Act waiting to be promulgated by Parliament, and establishment of a regulatory service, the Malawi Fertilizer Regulatory Services (MFRS), is provided for in the Act.

Based on the findings of this report, the following recommendations are made to strengthen the regulation of the fertilizer industry in Malawi:

a) Establishment of a national fertilizer-specific authority - “One-Stop-Shop” Model:

There is need for Malawi to establish a “one-stop shop” to effectively coordinate the efforts of the various institutions that regulate and control fertilizer production/importation and distribution. As noted earlier, the draft Fertilizer Act already provides for the establishment of such a body (MFRS). When established, this semi-autonomous authority should act as a one-stop shop for fertilizer compliance where fertilizer businesses would be able to obtain all information pertaining to fertilizer regulations and legislation and fertilizer suppliers should be able to register, acquire import permits, transit permits and trading licenses. This will greatly reduce the transaction costs for fertilizer suppliers which should translate into lower prices for smallholder farmers

b) Speeding up national consultations on fertilizer policy: To date consultations have been undertaken with stakeholders in the industry and a draft fertilizer policy is

under construction. This fertilizer policy will delineate the governing rules for the industry and inform the draft fertilizer bill which is currently awaiting Parliamentary approval

- c) **Training and gazettement of fertilizer analysts and inspectors:** Like other COMESA member states, Malawi does not have an adequate pool of qualified and gazetted fertilizer analysts and inspectors. To effectively enforce fertilizer rules and regulations, there is need for trained and gazetted fertilizer analysts and inspectors with knowledge and understanding of regulatory requirements and practices. Gazetting of the analysts and inspectors will give them the power to take to court all those who do not comply with the rules and procedures for fertilizer registration and testing.

- d) **Refurbishing and equipping testing laboratories:** Malawi needs support to construct new laboratories. With only one functioning laboratory at the MBS, inspection and enforcement of fertilizer regulations will remain weak. In addition with no functional soil laboratories it is difficult to quantify soil nutrient requirements. Funding is also required to purchase laboratory apparatus, chemicals etc. and replace obsolete equipment to ensure only quality fertilizers reach the farmer

- e) **Creating awareness and linkages with national and regional fertilizer regulatory authorities:** There is need for the government of Malawi and MFTA to conduct campaigns to create awareness and educate agrodealers, farmers and the general public on different fertilizers in the market, benefits and safe use of fertilizers, etc. Priority should also be given to working with other private sector stakeholders in the fertilizer sector, building the capacity of fertilizer regulators and creating linkages with national and regional fertilizer associations. An annual meeting of national fertilizer regulators to share experiences and emerging issues and working with regional fertilizer associations, and private sector forums is also recommended.

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SECTION 1: INTRODUCTION

1.1 BACKGROUND

The economies of eastern and southern Africa are heavily dependent on agriculture. It is estimated that more than 70% of the population in this region is involved in agriculture and the majority of these producers are smallholders farming less than two hectares. Agriculture contributes on average 35% of GDP and employs 65% of the population. Therefore, agriculture is a critical driver of the future economic development of the region. However, while economies in many Africa countries have exhibited healthy growth - real GDP in sub-Saharan Africa grew at an average rate of 5% between 2003 and 2009 - this growth has not emanated from the agriculture sector (Camara and Edeme, 2013).

Despite its importance to the economy, the performance of the agriculture sector is poor. Cereal yields in sub-Saharan Africa are the lowest in the world, having stagnated at around 1 ton/ha for the past 50 years compared to 4 tons/ha in developing countries. The key reasons for the poor performance of the agriculture sector are the continued reliance on traditional agricultural practices in the region and the low adoption of modern productivity enhancing technologies such as mineral fertilizers and quality seeds of superior varieties which severely constrain increased yields in East and Southern Africa.

Farmers in the region use on average 10 kg of fertilizer per hectare, compared to their counterparts in Asia who consume on average 209 kg/ha. The result is severe soil nutrient depletion; the rates of soil nutrient depletion exceed 60 kg/ha (Wanzala and Groot, 2013). This low rate of usage is due to a number of reasons including a thin network of agrodealers; lack of technical knowledge on appropriate fertilizers; lack of access to finance all along the value chain which prohibits the purchases of sufficient quantities to capture economies of scale; and high transport costs due to inadequate ports, rail and road networks. These factors result in high costs, putting fertilizer beyond the reach of most farmers.

The policy environment often exacerbates the situation. Government subsidy programs crowd out commercial demand and introduce uncertainty into the system, which creates disincentives for private companies to invest in distribution networks. Government's lack enforcement capacity to oversee quality control, which increases the risk of adulterated fertilizers, fosters distrust of fertilizer and discourages honest businesspeople from participating in the fertilizer trade. Outdated fertilizer recommendations in many African countries are outdated due to defunct or non-existent research and extension systems.

Similarly, government subsidy programs often do not involve the private sector in planning and distribution. Hence the private sector has no incentive to identify which nutrients farmers need for their crops and soils and provide the appropriate blends. Moreover, government policy in many of these countries discourages blending. Many countries have a list of approved fertilizers. If the private sector wants to introduce a new fertilizer it must undergo efficacy testing, which can take three years thus imposing costs the private sector cannot afford. The list of approved fertilizer products also discourages cross-border trade and the development of regional markets. Countries have very strict specifications for approved fertilizers, and although often there are very minor differences in nutrient content these differences can result in the entry of a new fertilizer product being delayed or even denied.

The outcome of these constraints is that fertilizer markets in eastern and southern Africa have failed to reliably provide the right type of quality fertilizers to small-scale farmers in the rural interior in a timely manner and at an affordable price. If agriculture in the region is to become competitive, the performance of the fertilizer markets in the region needs to be improved.

Clearly no single intervention will address these constraints effectively. Rather, a number of interventions are required and many must be implemented simultaneously. These include: investments in ports, roads and rail infrastructure to reduce transport costs; provision of technical and business training to agro dealers; improving access to finance all along the fertilizer value chain; and development of market information systems. However, an

overarching factor to foster the growth of fertilizer markets is a stable and transparent policy and regulatory environment that is conducive to private sector investment.

This study support SSTP's mission and foster the creation of stable and conducive fertilizer policy and regulatory environment in the region by doing the following:

- 1) Develop a regional policy and regulatory framework that can be used as a guide by countries in East and Southern Africa to embark on a policy reform agenda for the fertilizer sector that will result in higher levels of fertilizer use and concomitant higher levels of agricultural productivity and food security;
- 2) Prepare/revise draft fertilizer legislation for Malawi - which is compatible with open markets and are harmonized with each other;
- 3) Review and critique of Malawi's trade policies that impact fertilizer and recommendations for common trade policies; and
- 4) Establish Malawi's action plans that also detail the requirements for establishing fertilizer regulatory systems in each country.

1.2 OBJECTIVES OF THE ASSESSMENT

This report presents a review of national fertilizer regulatory institutions in Malawi. Specifically the report attempts to do the following;

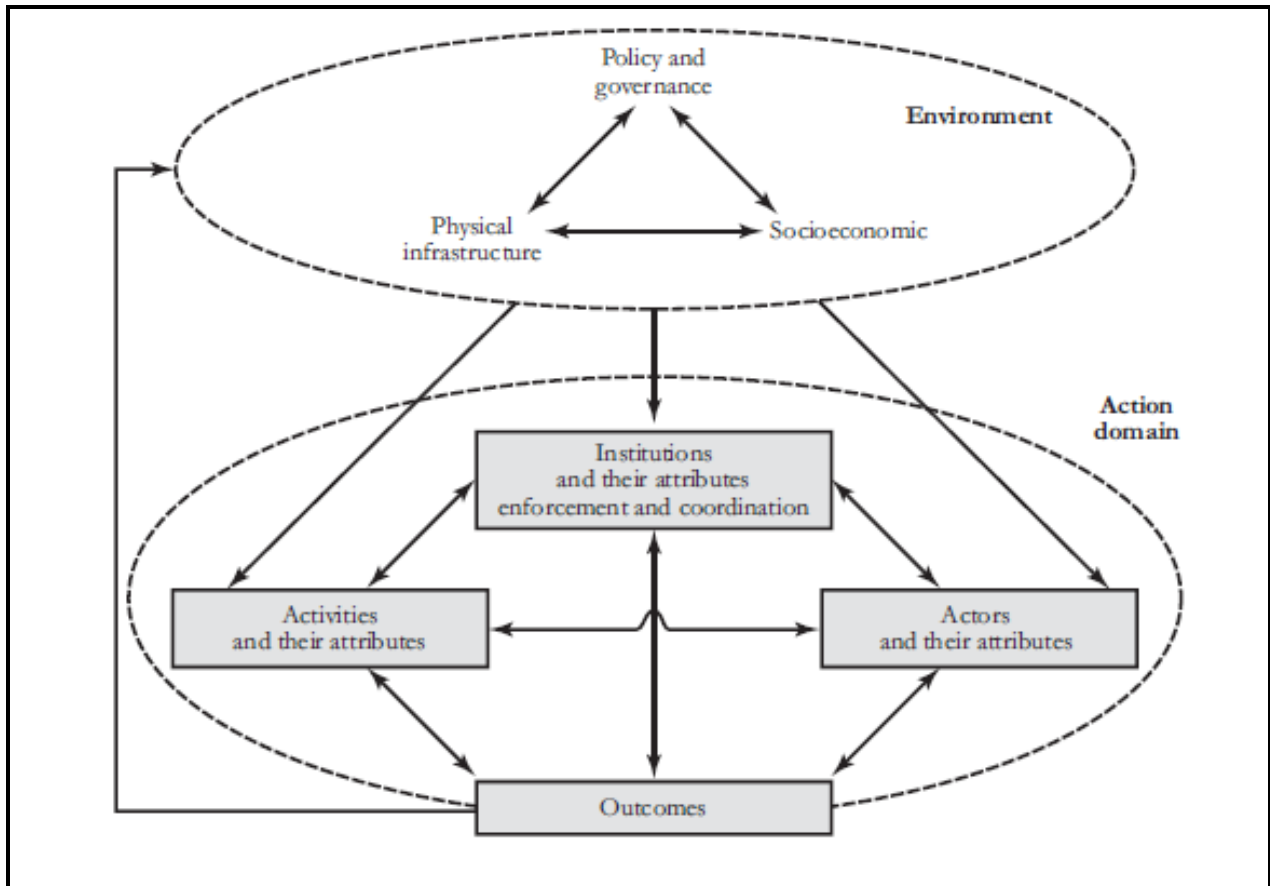
- a) Identify the presence of national fertilizer regulatory authorities in Malawi and their inherent characteristics
- b) Recommend ways of strengthening these institutions for fertilizer regulation in Malawi
- c) Recommend ways of facilitating linkages between these institutions in the fertilizer domain.

1.3 METHODOLOGY

Both primary and secondary data collection techniques were employed. Secondary data was gathered through a literature review on fertilizer policies in Malawi. A number of literatures were consulted including previous work done by IFDC, AFAP, ACTESA, IFA, and FAO in Malawi. In addition to this, national fertilizer policies and regulations were also reviewed. Primary data

collection was done through interviews with key informants within the Malawi fertilizer action domain. In particular the report identifies relevant players in the Malawian fertilizer domain and their attributes which have bearing on the fertilizer policy outcome consequently influencing the environment. Figure 1 indicates the schematic relationships and interaction of the environment and the fertilizer action domain of Malawi.

Figure 1: A conceptual framework for institutional analysis



Adapted from: *Institutional Economics Perspective on African Agricultural Development*, 2009; Kirsten et al

SECTION 2: FERTILIZER LAWS AND REGULATIONS IN THE COMESA REGION

Over 80 percent of COMESA member states have legislations that regulate the production, importation, distribution and use of fertilisers. These are administered through one or more Ministries which include Ministries of Agriculture, Ministries of Environment, Ministries of Health and Treasury. The Ministries of Agriculture have vested interests in the production, importation, marketing, distribution, standards and use of fertilizer. Ministries of Environment are concerned with pollution caused by production plants and disintegration of fertilizers in the soil including soil and water pollution caused by improper usage of fertilisers. Ministries of Health are interested in fertilizer health issues while the Treasury has interest on revenues (fertilizer taxes and duties). Coordination of such activities requires the presence of strong institutions to avoid corruption and rent seeking behaviour among regulatory authorities.

According to a study undertaken by the International Food Production Research Institute (IFPRI, 2012) the countries that have promulgated specific legislations on fertiliser included Burundi, Kenya, Uganda Zambia, and Zimbabwe. Those that have fertiliser policies or strategies (drafts/final) include Ethiopia, Malawi, Kenya, Uganda, and Zimbabwe.

Table 1 indicates COMESA member states which have established national fertilizer specific regulatory authorities, national fertilizer laws and national fertilizer associations. Out of a total of 22 countries, only six (6) have established national fertilizer-specific regulatory authorities; and only five (5) have established national fertilizer associations.

Table 1: Presence of national fertilizer-specific regulatory Authorities (including fertilizer Laws) in COMESA member states

Country	National Fertilizer Specific Regulatory Authority	National Fertilizer Specific Law	National Fertilizer Trade Association
Burundi	NO	YES	YES (TABIRA)
Comoros			
Djibouti	NO	NO	NO
DRC	NO	NO	NO
Egypt			
Eritrea			

Ethiopia	YES	YES	NO
Kenya	NO	NO	YES (FAK)
Libya			
Madagascar	NO	NO	NO
Malawi	NO	NO	YES
Mauritius	YES	YES	NO
Mozambique	YES	YES	NO
Seychelles	NO	NO	NO
Swaziland	NO	NO	NO
Rwanda	YES	YES	NO
South Sudan	N O	NO	NO
Sudan	YES	YES	NO
Tanzania	YES (TAFRA)	YES	YES
Uganda	NO	NO	NO
Zambia	NO	NO	YES
Zimbabwe	YES	YES	YES (Informal)

Source: "Towards a framework for harmonization of fertilizer policies and regulations: A national and regional synthesis report", 2014

2.1 FERTILIZER REGULATIONS

Most COMESA member states have some form of fertiliser regulations in place particularly the two elements that pertain to registration of fertiliser operations and inspections. Regulations usually comprise of 6 distinct areas which include:

- (i) Registration of businesses and/or their products ;
 - (ii) Inspection of fertilizer premises, products and records by authorized inspectors(taking samples, noting the legality of the labels, checking bag weights, inspecting records, etc.);
 - (iii) Analysis of samples taken by inspectors;
 - (iv) Financing of the regulatory program through registration and inspection fees;
 - (v) Administration, enforcement, and assessment of penalties by a designated authority;
- and,
- (vi) Publication of findings.

The challenge in fertilizer regulation, however, is that there are some omissions of some of the elements within these regulations rendering them *incomplete*. The most common missing element is that of publications of results of fertiliser analysis, findings of inspections and court verdicts. Secondly, there are no inter-country standard procedures or guidelines for inspecting

premises, sampling, penalization and appointing inspectors. This may compromise transparency. As such the theory of *incomplete contracts, moral hazards, shirking* and *adverse selection* may come into play in most fertilizer markets within the region. Consequently these have a bearing on *coordination* of purported activities by different institutions in the fertilizer market

2.2 FERTILIZER REGULATORY AUTHORITIES

Institutions vested with the authority to administer the regulations vary from country to country. Nonetheless the Ministry of Agriculture plays a central role in fertilizer regulations in COMESA region. Apart from the Ministry of Agriculture (overall regulator), there are also a number of institutions which can undertake the inspections and/or analysis which include Bureaux of Standards and international bodies such as SGS etc. There is therefore, the question of whose inspection or analysis carries recognition – national bureaux or international bodies. Further, the documentation and inspections required of fertilizer trans-shipments within the region varies from country to country. There are also no clear policies or guidelines that ensure that revenue levied on inspections, registration and analysis is channelled back into enforcing the regulations. In some countries it goes to Treasury in others it is put in a pool of revolving funds within the Ministry that administers the regulation. Its use for strengthening the enforcement of the regulation cannot therefore be guaranteed.

2.3 FERTILISER REGULATIONS ENFORCEMENT CAPACITY

Although a large number of COMESA member states have regulations on fertiliser registration and inspection only about 50 per cent of these are carrying out inspections. This is due to inadequate manpower and financial resources to undertake this task. For example, Kenya has about 70 inspectors against 6200 agro-dealers, importers and wholesalers of fertilisers; Uganda has about 50 inspectors against over 1000 agro- dealers and importers; Burundi has about 4 inspectors; Zimbabwe has about 8 and, Egypt has slightly over 60 inspectors despite its large consumption of fertilisers of over 10 million metric tonnes. In addition there is limited

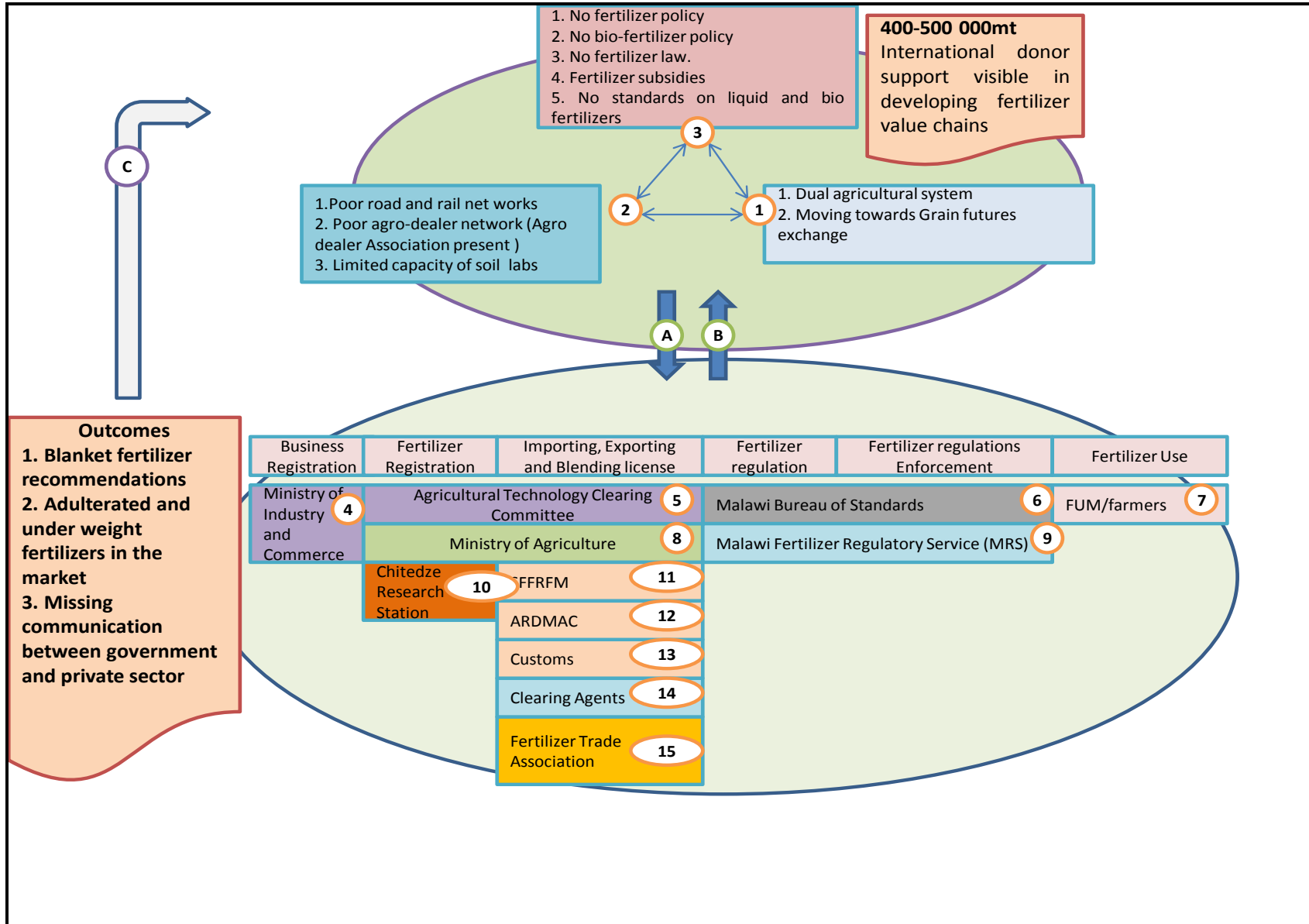
infrastructure to aid the inspection work. In particular most analytical laboratories are in adequately equipped to fully facilitate for analytical work. (COMESA/ACTESA Proposal on fertilizer harmonization, 2014). The following section outlines institutions for fertilizer regulations and legislation in Malawi

SECTION 3: MALAWI'S FERTILIZER INSTITUTIONAL FRAME WORK

Like many COMESA member states, Malawi does not have a national fertilizer specific regulatory authority which regulates importation and distribution of fertilizer. A number of government Ministries administer different aspects of fertilizer regulations/ legislation. These include: Ministry of Agriculture which plays the central role of national regulatory authority with responsibility for registration, production, importation, distribution and use of fertilizers (including, inspection, testing of imported fertilizer under the government subsidy); the Ministry of Commerce, Trade and Industry, which has interests in aspects of importation and distribution including setting and enforcing standards, issuance of trade licences; and the Port authorities.

In addition to the Ministry of Agriculture, other statutory bodies also handle different aspects of fertilizer regulation. These quasi-government institutions include; ADMARC, SFFRM, MFRS, MBS and DARS. Furthermore civil society organisations such as Malawi Fertilizer Trade Association (MFTA) play an important role in the regulation of fertilizers. The functions of these institutions are detailed in the following sections.

Figure 2: Malawi's fertilizer institutional framework



3.1 MINISTRY OF AGRICULTURE AND FOOD SECURITY

The Ministry of Agriculture and Food security plays a central role in the regulation of fertilizers in the country. It played a major role in the development of the draft fertilizer law of 2007 with the assistance of IFDC and AGRA. Most recently it is working with IFPRI and other stakeholders to come up with a fertilizer policy which will ultimately influence the contents of the draft fertilizer law. The current draft fertilizer Act aims to protect the consumer and persons selling fertilizer in Malawi by ensuring that all fertilizer sold or offered for sale in Malawi is in compliance with the provisions of the Act and any regulations enacted under the Act. The draft Act empowers the Minister responsible for agriculture to make such regulations as may appear to him to be necessary or expedient for the purpose of giving full effect to the provisions of the Act and without prejudice to the generality of the Act (Government of Malawi, 2003).

3.2 AGRICULTURAL DEVELOPMENT AND MARKETING CORPORATION (ADMARC)

This is a quasi-governmental agency which was established as a statutory corporation under Chapter 67.03 of the Laws of Malawi. This Act and other enabling laws allowed the Agricultural Development and Marketing Corporation (ADMARC) to enjoy monopoly status for the purchase from smallholder farmers of a range of controlled crops. This enabled the Corporation to manage price support systems and subsidise farmers on customary land. ADMARC's main responsibilities included:

- Procure and sell farm inputs such as fertilizers, seeds and pesticides for crops to all smallholder farmers in Malawi.
- Buy produce from both traders and smallholder farmers at good prices and add value, for sale on both export and local markets.
- Ensure easy accessibility of staple food maize in the country through a vast market network
- Provide reliable markets for smallholder produce; and
- Attend to social obligations on behalf of government through the management and administration of the Farm Inputs Subsidy Programme.

The Agricultural Development and Marketing Corporation Act (1971) was repealed in December 2003. Following the repeal, ADMARC was incorporated as a limited liability company, with Government being a major shareholder with up to 99% shares. ADMARC through its vast network of markets buys agricultural produce from both traders and smallholder farmers. It also owns the largest storage facilities in the country of about 300,000 square meters. ADMARC also provides commercial warehousing services in Malawi. These Depots are:- **South** (Charterland, Liwonde, Luchenza, Balaka), **Centre** (Malangalanga, Salima, Lilongwe) and **North** (Mzimba, Mzuzu, Karonga). These depots in turn supply satellite depots which are located in rural areas.

3.3 SMALLHOLDER FARMERS FERTILIZER REVOLVING FUND (SFFRFM)

Like ADMARC it is a quasi-governmental agency which is involved in the importation, distribution, wholesaling and retailing of fertilizer, seed, farm implements, agrochemicals and an exporter of agricultural commodities. SFFRFM also offers warehousing space and weighbridge services at a fee in three regional main depots of Kanengo (centre), Chirimba (south) and Luwinga (North) which respectively supply satellite depots within each respective region. SFFRFM has been and remains a key player for the Malawi Government (GoM) in its various food security initiatives such as Starter Pack, Targeted Input Subsidy Programme (TIP); Agricultural Productivity Investment Programme (APIP) and the Farm Inputs Subsidy Programme (FISP).

3.4 MINISTRY OF INDUSTRY AND COMMERCE

Import and export licences are issued by the Ministry of Industry and Trade although in certain specified cases, the licensing authority is delegated to other organisations to ensure a speedy response to applicants' needs. There are no laws and regulations that limit the registration of fertilizer import businesses. In addition, the import license is free and usually takes about 7 days to issue. The license is valid for 6 months and can be renewed

3.5 MALAWI FERTILIZER REGULATORY SERVICES (MFRS)

Malawi has draft Fertilizer Regulations which have provisions for the establishment of MFRS. According to the draft fertilizer regulations, no fertilizer or fertilizer supplement shall be used in Malawi unless it has been sampled, tested, analyzed, and evaluated and recommended for use. The regulations recommend the creation of an independent body, the Malawi Fertilizer Regulatory Service (MFRS) to be responsible for the administration and enforcement of the provisions of the Act and regulations. In addition, the regulations require the creation of the Malawi Fertilizer Advisory Committee to play an advisory role to the MFRS and to make recommendations on all technical matters pertaining to these regulations including, but not limited to the inspection and enforcement program and additional or revised regulations required to accomplish the objectives of the Act. These regulations provide provisions for inspection, sampling and analysis which have to be conducted by qualified inspectors.

The draft fertilizer Act also makes provision for the establishment of a Malawi Fertilizer Regulatory Board (MFRB) which shall be headed by a Director who will be covered by public service regulations. The Board shall appoint public service inspectors and analyst who will carry out function such as; inspection of premises for fertilizer storage, and registrations and the labelling of fertilizer among other responsibilities.

According to the new draft fertilizer Act, a person intending to sell or import fertilizer for their own use shall do so under and in accordance with the terms and conditions of a certificate of registration as shall be prescribed by regulations under the fertilizer Act. Furthermore, fertilizer dealers have to apply for registration with the Malawi Fertilizer Regulatory Service (MFRS). Every certificate of registration shall, unless suspended or cancelled, be valid for a maximum period of three (3) years from the date of issue, and the certificate of registration shall be renewed upon submission of a new application and payment of the required registration fee. The registration fee is to be determined by the Minister and to cover a three (3)-year period for the certificate of registration.

Rules and regulations for exportation including fertilizer are as stipulated under the new fertilizer regulations. The fertilizer regulations state that if a fertilizer producer in Malawi exports part or all of its products, that portion exported shall not be subject to inspection fees. If a fertilizer importer in Malawi exports part or all of its products, that portion exported shall not be subject to inspection fees. There are no export quotas or taxes, fees and levies on fertilizer exports. The enforcement of this regulation falls under the arm of Malawi Fertilizer Regulatory Service (MFRS)

However given that the Act still remains a draft the MFRS remains a dream. MFRS will only come into effect once the legislative processes have been completed. This underscores the need for accelerating the processes

3.6 FERTILIZER TRADE ASSOCIATION

The Fertilizer Trade Association of Malawi was formed in 2007 as a response to the Government of Malawi's need for public private partnership in its Agricultural Inputs Subsidy Programme (AISP). Currently the Association has 15 Members made up of suppliers, manufacturers and importers namely; Agora, Rab Processors, Omnia, Mulli brothers, NASFAM, Export Trading Group, MFC, Farmers World, Agricultural Resources Ltd, Agricultural Trading Company, Simama General Dealers, Transglobe Produce Exports, Oprichem, Nyiombo Investments and Sea land Investments. Since its inception the Association has ardently participated in AISP, regularly giving advice and updating the GoM on the status and supply of fertilizers in the domestic market. The Association achieves this through data collection from its members and other stakeholders in the agricultural industry. It is self-regulatory with a strict Constitution and Code of Conduct.

3.7 MALAWI BUREAU OF STANDARDS

The Malawi Bureau of Standards (MBS) is currently responsible for quality assurance in the market. The MBS carries out pre-inspections and sample testing at the border for quality control. This latter function is mandated despite pre-import analyses performed by importing

companies. MBS provides inspectors who must have access to business premises to assess quantities of product held, take samples of the product for analysis (in their laboratory) and verification (which involves sending of a letter to distributor of declared nutrient levels, and deciding whether specifications are within the acceptable regulated limits of variation.

The draft Act states that the inspection fees shall be paid to the MFRS for every tonne of fertilizer distributed in Malawi at a rate to be determined by the Minister, but the inspection fee/tonne shall not exceed 0.5% of the average retail price of a tonne of urea. Every person who distributes fertilizer in Malawi shall submit on forms provided by the MFRS a quarterly statement for the reporting period setting forth the number of tonnes of fertilizer distributed during this period. The report shall be due on or before twenty (20) days following the close of the filing period and upon filing of the statement shall pay the inspection fee at the rate of 0.5% as stated above. If the tonnage report is not filed and the payment of inspection fees are not made within twenty (20) days after the due date, a collection fee amounting to ten percent (10%) of the amount due shall be assessed against the distributor and added to the amount due.

However, the capacity for enforcement of quality standards within Malawi is generally weak. There is only one testing laboratory which is allocated in MBS headquarters situated in Blantyre. Although MBS has qualified inspectors and analysts that are stationed on every border-post to avoid entry of unwanted products in the country, they are few and are unable to conduct retail quality spot checks for fertilizers. Not surprisingly, therefore, little or no post-import sampling and analysis of fertilizer is carried out in Malawi. In the new proposed regulatory framework, the Malawi Fertilizer Regulatory Service (MFRS) will be responsible for the administration and enforcement of the provisions of the Act and regulations enacted under the Act.

3.8 MALAWI REVENUE AUTHORITIES

The revenue authority is mandated by Malawian law to collect all taxes. Although fertilizer remains exempt from VAT and there is no duty on fertilizer imports, the authorities still charge 30% profit taxes to all businesses operating in the countries, including fertilizers.

3.9 AGRICULTURAL TECHNOLOGY CLEARING COMMITTEE

The Agricultural Technology Clearing Committee is mandated to pass agricultural technologies which have been tested in Malawi's condition, are demand-driven and have scientifically proven viability to increase productivity. The committee is chaired by the Ministry of Agriculture's Department of Agricultural Research Service and its members are drawn largely from the public sector. There is a need to include both private and end users of technology in the committee.

3.10 CLEARING AGENTS

They clear all fertilizer imports and exports and work closely with the Malawi Bureau of Standards and Revenue Authorities in the collection of fertilizer samples at the ports of entry for conformity tests.

3.11 FARMERS' UNION OF MALAWI (FUM)

The Farmers' Union of Malawi (FUM) is working on the agricultural policy and advocacy, developing agribusiness, agricultural transformation and agricultural marketing. Limited access to agricultural finance remains an obstacle in smallholder farmers' access to fertilizers. Therefore, FUM is advocating for more targeted fertilizer subsidies, that is, *only targeting progressive farmers with the rest catered for under social safety nets*. In addition the institution is moving towards establishing a grain futures exchange- a move that will see farmers accessing mainstream markets and financial markets.

SECTION 4: FACTORS AFFECTING FERTILIZER LEGISLATION IN MALAWI

4.1 NATIONAL FERTILIZER STRATEGY

GoM issued a written policy on fertilizer that is embedded in the National Fertilizer Strategy (NFS).

The purpose of the National Fertilizer Strategy is to address key issues affecting the adoption and utilization of fertilizer technologies through short, medium, and long-term actions for developing private sector-led fertilizer markets, with a view to improve agricultural productivity

and profitability, especially among smallholder farmers. The strategy also identifies priority actions that are likely to accelerate farmers' access to affordable fertilizer and incentivize its use. Considering that Malawi is a net importer of fertilizer, the strategy also serves as an input into the development of a Regional Fertilizer Action Plan to accelerate access to fertilizer and other complementary inputs to millions of poor farmers (MoAFS). The Fertilizer Strategy identified the following strategic issues affecting fertilizer markets in Malawi as: (i) the availability of fertilizer in terms of timeliness of importation and distribution, addressing also the issue of the country's installed capacity to produce blended fertilizer, potentially using available natural resource deposits; (2) the high cost of fertilizer due to poor transportation infrastructure, equipment and rural feeder roads. (3) fertilizer accessibility with respect to distance to markets and price (both of which are closely related to transport issues) and farmers' purchasing power to buy fertilizer, (4) fertilizer utilization related to the proper type of fertilizer according to specific crops and soil/environmental conditions and (5) new research and extension and the establishment and enforcement of a legal framework.

4.2 FERTILIZER SPECIFIC POLICY

Malawi does not have a specific fertilizer policy to govern the fertilizer industry. However, the MOAFS is working with IFPRI to develop a fertilizer policy for the country.

4.3 LACK OF FERTILIZER LAW

Malawi does not have a fertilizer law. Nonetheless the country has a draft act which was crafted by the MOAFS with assistance from AGRA and IFDC in 2007. However, the act fell short of a fertilizer policy to inform it. It is to this end that the MOAFS in collaboration with IFPRI and other stakeholders are in the advanced stages of developing the country's fertilizer policy.

4.4 PROLIFERATION OF NATIONAL INSTITUTIONS REGULATING FERTILIZER

There are overlaps and duplication in the responsibilities of agencies involved in the regulation of the fertilizer industry leading to confusion and bureaucratic gridlock. For instance, issues of registration are handled by the Ministry of Trade and Industry, while the Department of

Agricultural Research Services (DARS) handles regulatory services on quality control and the Malawi Bureau of Standards (MBS) handles the setting of standards, labelling and repacking. Consequently there is confusion in the enforcement of rules and regulations pertaining to the fertilizer industry. There is a need to create a single body that will coordinate or better yet be responsible for the work of these various regulatory bodies.

4.5 LIMITED CAPACITY TO ENFORCE REGULATIONS

The capacity to enforce fertilizer regulation for improved fertilizer quality along the supply chain is weak. Currently, the Malawi Bureau of Standards (MBS) is responsible for carrying out inspections and sample testing at the border for quality control. This latter function is mandated despite pre-import analyses performed by importing companies. MBS provides inspectors who must have access to business premises to assess quantities of product held, take samples of the product for analysis (in their laboratory) and verification (which involves sending of a letter to distributor of declared nutrient levels, and deciding whether specifications are within the acceptable regulated limits of variation). However, the number of inspectors is inadequate and their technical capacity for conducting their duties is inadequate.

4.6 INADEQUATE FACILITIES AND HUMAN RESOURCES FOR TESTING AND ANALYSIS OF FERTILIZERS

There is only one testing laboratory which is located in MBS headquarters situated in Blantyre. Although MBS has qualified analysts that are stationed on every border-post to avoid entry of unwanted products in the country, they are few in number and are unable to conduct retail-level quality spot checks for fertilizers. Consequently, little or no post-import sampling and analysis of fertilizer is carried out in Malawi. There is need to strengthen the laboratory testing capacities which includes making laboratories accessible to users, equipping them with the staff and supplies to meet international standards for fertilizer testing, and maintaining a system for tracing adulterated products back to the source.

SECTION 5: CONCLUSIONS AND RECOMMENDATIONS

An assessment of the national fertilizer regulatory authorities in Malawi reveals that fertilizer production/importation, distribution, marketing and trade is regulated and controlled by multiple institutions. These institutions are established under different Acts of the laws of Malawi and in carrying out their mandates these institutions draw from their specific Acts, policies and regulations. This often leads to conflicts and/or overlaps and replication making it difficult to reach consensus on certain issues. Furthermore, there is no national fertilizer-specific coordinating institution that guides and coordinates efforts of the various institutions to avoid overlaps and/or replication of efforts. The resulting weak regulatory framework undermines the comprehensive and effective coordination in fertilizer production, marketing and distribution in Malawi. However, there is a draft fertilizer Act waiting to be promulgated by Parliament, and establishment of a regulatory service, the Malawi Fertilizer Regulatory Services (MFRS), is provided for in the Act.

Based on the findings of this report, the following recommendations are made to strengthen the regulation of the fertilizer industry in Malawi:

a) Establishment of a national fertilizer-specific authority - “One-Stop-Shop” Model:

There is need for Malawi to establish a “one-stop shop” to effectively coordinate the efforts of the various institutions that regulate and control fertilizer production/importation and distribution. As noted earlier, the draft Fertilizer Act already provides for the establishment of such a body (MFRS). When established, this semi-autonomous authority should act as a one-stop shop for fertilizer compliance where fertilizer businesses would be able to obtain all information pertaining to fertilizer regulations and legislation and fertilizer suppliers should be able to register, acquire import permits, transit permits and trading licenses. This will greatly reduce the transaction costs for fertilizer suppliers which should translate into lower prices for smallholder farmers

- b) Speeding up national consultations on fertilizer policy:** To date consultations have been undertaken with stakeholders in the industry and a draft fertilizer policy is under construction. This fertilizer policy will delineate the governing rules for the industry and inform the draft fertilizer bill which is currently awaiting Parliamentary approval
- c) Training and gazettement of fertilizer analysts and inspectors:** Like other COMESA member states, Malawi does not have an adequate pool of qualified and gazetted fertilizer analysts and inspectors. To effectively enforce fertilizer rules and regulations, there is need for trained and gazetted fertilizer analysts and inspectors with knowledge and understanding of regulatory requirements and practices. Gazetting of the analysts and inspectors will give them the power to take to court all those who do not comply with the rules and procedures for fertilizer registration and testing.
- d) Refurbishing and equipping testing laboratories:** Malawi needs support to construct new laboratories. With only one functioning laboratory at the MBS, inspection and enforcement of fertilizer regulations will remain weak. In addition with no functional soil laboratories it is difficult to quantify soil nutrient requirements. Funding is also required to purchase laboratory apparatus, chemicals etc. and replace obsolete equipment to ensure only quality fertilizers reach the farmer
- e) Creating awareness and linkages with national and regional fertilizer regulatory authorities:** There is need for the government of Malawi and MFTA to conduct campaigns to create awareness and educate agrodealers, farmers and the general public on different fertilizers in the market, benefits and safe use of fertilizers, etc. Priority should also be given to working with other private sector stakeholders in the fertilizer sector, building the capacity of fertilizer regulators and creating linkages with national and regional fertilizer associations. An annual meeting of national fertilizer regulators to share experiences and emerging issues and working with regional fertilizer associations, and private sector forums is also recommended.

6.0 REFERENCES

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2. Wanzala, M. and Groot, R., 2013, Fertilizer Market Development in Sub-Saharan Africa. Paper presented to the International Fertiliser Society at a Conference in Windsor, UK, on 24th May 2013
3. Kirsten, J.F., Dorward, A.R., Poulton, C., and Vink, N., 2009, Institutional Economics Perspectives on African Agricultural Development, International Food Policy Research Institute

7.0 ANNEXURES

7.1 ANNEXURE 1: LIST OF INTERVIEWED KEY INFORMANTS

Table 2: List of interviewed key informants

Name	Institution	Date
Mrs. Erica Maganga	Ministry of Agriculture	15-07-2016
Mr. Chris Chiunda	Ministry of Industry, Trade and Tourism	15-07-2016
Mr. Chiwaula	Malawi Bureau of Standards	15-07-2016
	Malawi Revenue Authority	15-07-2016
Mr. Prince Kapondamgaga	Farmers Union of Malawi	15-07-2016
Dr Wilkson Makumba	Chitedze Research Station	15-07-2016
Mr. Patrick Milanzi	SFFRFM	15-07-2016
MARIA WINNUBST	EU delegation	16-07-2016
Christ Chibwana Robert Navin	USAID	16-07-2016
Paresh and Aruna	Export Trading Group ETG	16-07-2016
Dr Arthur Mabiso	IFPRI	16-07-2016
Dimmy Giannakis	Farmers World/MFC/Fertilizer Association	16-07-2016
Alex Shemu and Mkochi	Agricultural Resources Limited ARL-(formerly Nosk Hydro)	16-07-2016