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Summary report

Technical workshop on principles guiding new investments in agriculture:

Screening of prospective investors and investment proposals

Lilongwe, Malawi, 26-27 September 2017

1. Introduction

With the aim to strengthen the Government of Malawi's capacity to screen prospective agricultural investors and investment proposals, the Inter-Agency Working Group (IAWG) of FAO, IFAD, UNCTAD and the World Bank organized a technical workshop in Lilongwe in cooperation with the Malawi Investment and Trade Centre (MITC).

The workshop was the second held in Lilongwe under the theme "Principles guiding new investments in agriculture". The IAWG programme with the same name aims to infuse responsible investment principles and practices into early stage agribusiness operations in a number of African countries and ensure mutually beneficial interaction between these operations, local communities and the economy as a whole. It also aims to generate practical guidance, recommendations and good practices that can be used by different actors to stimulate more and better agricultural investments.

The participants of the inception workshop in Lilongwe in May 2016 requested guidance on screening of prospective investors and investment proposals. Malawi has experienced an increase in both foreign and domestic commercial agricultural investment during recent years. This is positive given the need of investment in rural areas. However, the government has sometimes had difficulties in assessing the social and environmental sustainability and financial viability of prospective investors and investment proposals.

A cost-effective way to avoid negative impacts of investment is to discover possible flaws and weaknesses prior to implementation. To this end, governments can choose to screen prospective investors and investment proposals before approval. Proper investment screening can help to discourage non-viable investments. However, the encouragement of desirable investments can be an equally important function of the process. Investors diverge in the extent to which their business model align with the development goals of the host country. The screening procedure provides an opportunity to consider how the proposed investment fits with national and local development goals as well as the perspective of the governments and the needs of local communities. Different actors — including communities, the government, the investor and specialized third parties — can work together to identify and address flaws and weaknesses of investment plans to ensure that investments are carried out in ways that benefit all persons involved. In many countries, this requires strengthening institutional frameworks and processes for investment screening.

2. Partnerships needed for more effective screening of investment proposals

In her opening speech, Ms Florence Rolle, FAO Representative in Malawi, emphasized that agricultural investment is essential for the achievement of the Sustainable Development Goals (SDGs) in Malawi. Approximately 80 percent of Malawi's population is engaged in agriculture and investment is needed to improve their livelihoods. However, investment must be carried out responsibly to maximize benefits and avoid risks.

The Inter-Agency Working Group is willing to partner with the Malawi Investment and Trade Center (MITC) and other actors in Malawi to strengthen the government's investment screening process. The development of the screening process can also be coordinated with ongoing activities to promote agricultural investment, such as the New Alliance for Food Security and Nutrition and the Green Belt Initiative.

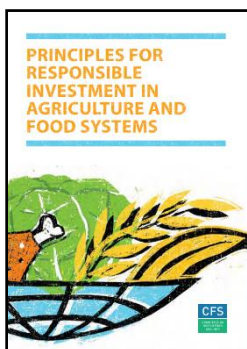
The United Nations encourage the operationalization of the Principles for Responsible Investment and Food Systems endorsed by the Committee on World Food Security (CFS-RAI). These principles can inform a Malawi specific guide on screening of agricultural investment.

In his keynote speech, the Chief Executive Officer for MITC, Mr Clement Kumbemba, reiterated that agricultural investment is crucial for the achievement of the SDGs. Agriculture remains to be the main contributor to GDP in Malawi. At the same time, natural resources depletion and other challenges threaten the sustainability of the sector. The promotion of the CFS-RAI and development of effective screening of investors and investment proposals are therefore important. He welcomed the guidance from the IAWG and also stated that participation from civil society, farmers' organizations, the private sector and all relevant government institutions is needed for an effective screening process.

3. Role of international instruments related to responsible investments in agriculture

FAO presented the concept of *responsible investment* and facilitated a discussion on the intentions, actions and consequences as well as the rights and duties of investors and other actors involved in or affected by investments. A number of voluntary international guidance instruments that promote responsible investment in agriculture have been developed during the last decade. The scope and target audiences of different instruments vary. Nevertheless, they represent an emerging international consensus on what responsible investment in agriculture consists of.

One of the most prominent sets of instruments are the Principles for Responsible Investment in Agriculture and Food Systems of the Committee on World Food Security (CFS-RAI). The CFS-RAI were developed through multi-stakeholder intensive negotiations between representatives of member countries, the private sector, civil society and other actors and thereby have a high degree of global ownership and legitimacy.



The CFS-RAI emphasize that inclusive partnerships and dialogue is critical to ensure that investments are responsible. The principles concern "all types of investment in agricultural value chains and food systems" including "foreign and domestic, public and private, small, medium and large scale investments." The roles and responsibilities of a wide range of actors involved in or affected by investment in agriculture and food systems are also spelled out.

The OECD and FAO have also jointly developed the OECD-FAO Guidance for Responsible Agricultural Supply Chains to help companies observe existing standards (including the CFS-RAI). The Guidance can be used by companies undertaking due diligence along agricultural supply chains and help to ensure that their operations avoid adverse impacts and contribute to sustainable development.

4. International experiences of screening prospective investors and investment proposals

UNCTAD and the World Bank presented good practices and set the stage for deliberations on screening of prospective investors and investment proposals. The two organizations are currently preparing Knowledge into Action Notes on different thematic issues on agricultural investment that are based on extensive research. These are intended to provide crisp and informative information for practitioners on the ground. Two of the notes concern the screening of prospective investors and investment proposals.

Individual investment projects vary greatly in the extent to which they generate benefits or impose risks. A significant proportion of agricultural investment projects fail to meet expected social, environmental and financial returns, often for reasons that could and should have been foreseen at the outset. Effective screening and selection of prospective investors and investment proposals is therefore a critical dimension of a sound investment policy framework.

The key issues to consider in the screening process include: alignment with national development goals; assessment financial, social and environmental sustainability; track record and credibility of the investor; linkages with the local economy; and the relationship with local communities.

Many governments have a limited capacity to screen prospective investors and investment applications. Third-party specialized agencies may carry out particular aspects of the screening process. The correct institutional set-up for screening many vary from country to country, but it is recommended that the central government retains oversight. The screening process must also be transparent and dissemination of appropriate information is critical.

The screening process can be divided into three stages: concept screening which focuses on competency and credibility of the investor and alignment of the investment proposal with national development priorities; business plan screening which assesses the business plan in terms of financial, environmental and social sustainability; and compliance screening which examines legal, financial, land and environmental compliance.

5. Investors' perspectives on screening

Both domestic and international investors participated in the workshop. One investor stated that MITC can help investors to access secure tenure and other necessities such as infrastructure. MITC can also play an important role in making sure that investors behave responsibly. International investors should be sensitized about the values and traditions of Malawi as well as its laws and regulations. Both international and domestic investors may also need support in building mutually beneficial relationships with communities. Provision of services during implementation of investments were also mentioned as a possible function of MITC. Moreover, monitoring and evaluation of fulfilment of sustainability requirements were seen as important.

One investor also gave a perspective on how commercial investments can create value for both the country in which they take place and for involved farming communities. He explained that his company had set-up a rice outgrower scheme to empower subsistence

farmers, improve productivity, and contribute to export and foreign exchange earnings for Malawi. Farmers involved in the scheme are organized into a cooperative that has shares in the company. The cooperative is assisted with providing extension services and capacity development to its members to increase productivity, add value, and improve livelihoods. The importance of genuine partnerships between investors and farmers were seen as necessary for the success of this operation.

During the discussions, participants gave examples of farmers becoming dependent on investors and locked in to certain production models. The ways in which tenure conflicts are resolved was also subject to discussion.

6. The current investment screening process in Malawi

The MITC explained how screening of investment is currently conducted in Malawi. The screening process is comprised of the following stages:

- 1) Pre-screening and processing of investor application.
- 2) Investment Appraisal.
- 3) Approval/pending approval/rejection.
- 4) Identification of the requirements for facilitation and aftercare services of approved applications.
- 5) Management of immigration issues when applicable.
- 6) Management of tax issues.
- 7) Management of land tenure issues when applicable.
- 8) Decisions of immigration, tax and land tenure issues by specialists that revert to the MITC management for their consideration.

The Government of Malawi has instituted a One Stop Service Centre (OSSC) as a place where investors can acquire relevant permits and licenses for their businesses in an efficient manner. The screening process is also coordinated with relevant ministries and agencies depending on the nature and sector of the investment proposals. Many of the components of Malawi's current screening process correspond with international good practices. However, it was stated that it is not always implemented in an ideal manner. The development of a more comprehensive guide can help to reduce subjectivity and ensure more predictable assessments. Some investors are also omitting MITC as it is currently not mandatory for investors to seek MITC's approval.

7. Key issues on investment screening raised by workshop participants

Participants engaged in lively discussions about investment screening in Malawi. Below are some of the key issues raised during the discussions:

- The concept and business plan of investors applying for approval must be financially, environmentally and socially sustainable.
- The capacity of MITC must be further developed to ensure effective screening.
- MITC's mandate should be clearly specified and it should be mandatory for investment proposals above a certain size to be screened by the MITC.
- There is a need to strengthen coordination amongst the key institutions to ensure that the One Stop Service Centre operates expeditiously.

- The benefits for investors of using MITC's One Stop Service Centre, including applying for all the needed permits at one place and obtaining necessary information, must be communicated.
- Some participants recommended that the Ministry of Industry, Trade and Tourism should take the lead and allocate sufficient resources to MITC for appraising investment applications.
- There was concern among some participants that land is too easy to acquire for prospective investors. Many actors, including local district commissions and traditional authorities are currently involved in discussions on land acquisition and land planning.
- The option of enforcing ceilings on the size of land that an investor can acquire, as envisaged in the Land Act, was brought up as a topic for further discussion in Malawi.
- The requirements on Environmental and Social Impact Assessments should be better defined and enforced.
- The rules and procedures for genuine, inclusive and gender-balanced consultation with community members and other stakeholders affected by a (prospective) investment must be clearly specified and enforced.
- Existing or potential conflicts over tenure rights should be identified and resolved during the consultation process prior to approval of investment proposals.
- Some participants suggested that local government institutions should be involved in the screening process.
- Crosscutting issues such as gender, youth, food security and legitimate tenure rights should be better integrated in to the screening process.
- MITC is both promoting and screening investments. There is a need to ensure that this does not create conflicts of interest.
- Monitoring and evaluation mechanisms once investments are improved should be strengthened.
- The following legal documents should be considered when further developing the screening process: the Land Act; the Labour Act; the Employment Act; the MITC Bill; the Investment and Export Promotion Act; the National Environmental policy; and, the Environmental Management Act.

8. Initiation of the drafting of a Malawi investment screening guide

During the second day of the workshop, civil servants from MITC and other relevant government entities initiated the drafting of a Malawi specific investment screening guide. The following issues were discussed: pre-screening tools; screening systems and processes; screening content; and organizational mandate.

Key emerging issues regarding process, mandate and criteria were identified. Process issues include capacity development in the areas of: investment promotion functions; One Stop Service Center operations; certification; post-approval support; and appropriate involvement of local councils and other decentralized authorities.

Mandate issues include: MITC's authority as a destination for prospective investors, whereas it is currently not mandatory to go through MITC; potential conflicts of interest between investment promotion and screening; strengthening of MITC's mandate; and, more clearly specified definitions of roles and responsibilities of all key stakeholders.

Regarding the criteria for investment screening, key issues for further discussion include: clarity on registration of land rights; domestic versus foreign investors; and, whether to categorize agribusiness investors in different sub-categories (farming, processing, manufacturing, and trading) and use slightly different screening procedures for each.

9. The way forward

The participants agreed that the following issues related to process, pre-screening tools and screening content will be subject to further elaboration by the government and appropriate partners.

Process

Consider the implementation of a system of provisional approval. The issuance of the final certificate would be contingent on fulfilment of conditions specified in the provisional approval (e.g. conduct of community consultations, ESIA).

Determine how the process interacts with the implications of the Land Act. Consider separating investment promotion and facilitation function from investment screening due to potential conflicts of interest.

Pre-screening tools

Develop brochures and online material on: priority areas for investment; investor screening procedures; legal and regulatory requirements; specific investment opportunities.

Make already existing information material more accessible for investors.

Develop a summary of the new Land Act and land acquisition process.

Screening content

Refine guiding questions so as to be specific to the Malawian context and national development priorities.

The workshop was closed by representatives of MITC and the IAWG. Participants agreed on the importance of continuous cooperation for strengthening Malawi's screening process and the capacity of MITC to attract more and better agricultural investment that contributes to sustainable development.