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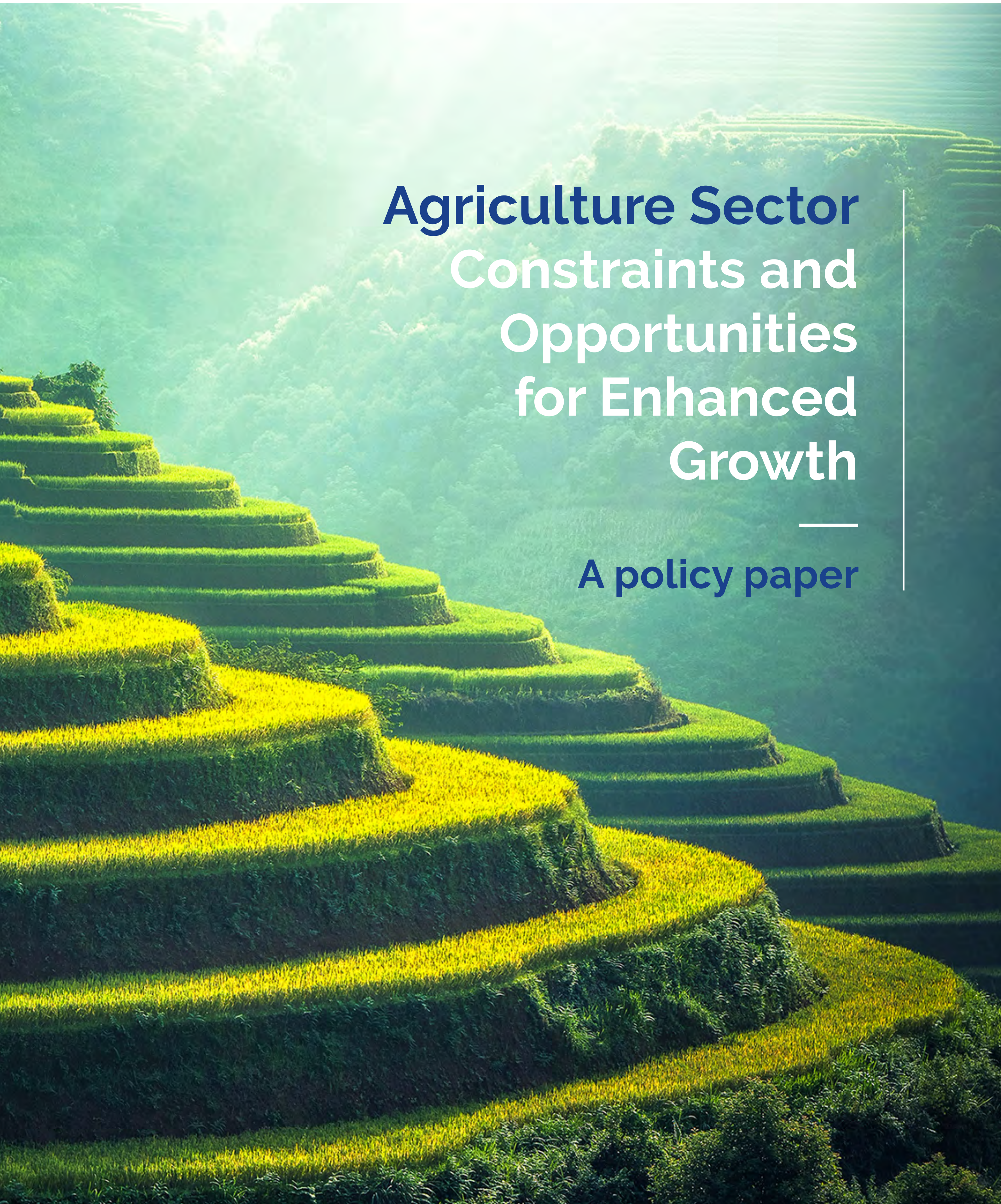

Agriculture Sector Constraints and Opportunities for Enhanced Growth

A policy paper

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Executive Summary

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This policy position paper

presents an analysis of key policy hurdles and positions in the Agriculture Sector. These policy hurdles were identified in preceding policy scoping reports that involved in-depth desktop research, including a literature review of documentation from public sources, which informs key statistics in the report. An analysis of existing Agriculture policies was carried out, highlighting priorities and current gaps, as well as an analysis of the commercial landscape, which underscores the sector's opportunities and risks. The results of the scoping/analysis were presented to Chamber members and other key stakeholders for validation and review. The policy positions presented in this paper have been developed as a result of both the research and consultation with AmCham members.

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Agriculture accounts for over 30% of GDP,

65% of export earnings, and 40% of employment. As a result, it spans the range of country's' economy from large commercial enterprises to smallholder subsistence farming.

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The government current policy priorities

are contained in the Agricultural Sector Transformation and Growth Strategy (ASTGS) focuses on developing aggregator functions, driven by farmer-facing SMEs and a revamped input support programme.

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Key policy hurdles in the sector include:

- **Policy uncertainty** due to frequent shifts in priorities by the national government, such as the Agriculture and Food Authority Act 2013 reforms and the reforms to the tea and coffee industries.
- **Political interference** in the sector that affects policy making and implementation,
- **Public finance shortfalls** that limit the provision of services in the sector and delay the implementation of projects.
- **The Intellectual property regime** currently in place is inadequate in dealing with innovations such as digitisation, biotechnology and GMO's. Furthermore, it also limits knowledge and technology transfer to domestic industry players (especially SME's).
- **Lack of capacity within government** the inadequate human resources capacity, in addition to a lack of adequate skilled and trained personnel, that further limits service provision and regulatory reform in the sector.
- **Lack of an adequate public-private consultation** has led to a lack of alignment between legislative, policy and regulatory action and the evolution of the market.
- **Climate change and sustainability** the sector operates within a changing climatic regime and there is lack of cohesion between agricultural policies concerning sustainability issues.

05 Nevertheless, measures can be implemented to address these hurdles:

- Public private dialogues are to ensure a favourable environment for doing business, they provide avenues to address sector specific policy challenges through establishing buy in for reform of legislation / regulatory frameworks, provision of evidence-based policy making and inclusive and participate policy making.

- Engagement and advocacy to push for amendment in regulations and drive adoption of conducive regulatory frameworks in GMOs, Biotechnology, and Intellectual policy, as well as ensure that government recognizes concerns and commits to budgetary allocations to better support the sector.

- Stakeholder education to mitigate risks associated with misguided regulation and to upskill policy makers equipping them with knowledge to facilitate the development of modern policy frameworks within the agriculture sector and further building the capacity of government stakeholders within the sector.

- Cooperation and fostering partnerships with government to co-create frameworks that address business operation challenges and support public private partnerships to address funding gaps in the sector.

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Background

Background

The agriculture sector plays a vital role in the Kenyan economy. The sector contributes 34.1% to Gross Domestic Product (GDP), another 27% of GDP indirectly through linkages with other sectors, and 65% of Kenya's export earnings.

Thus, the growth of the national economy is highly correlated with growth and development in agriculture. The sector directly employs more than 40% of the total population and more than 70% of Kenya's rural population. 75% of Kenyans derive some part of their livelihood from agriculture-related activities.

The sector was one of the first to fully devolve the function of service provision to the county governments, underscoring the importance of the county governments' role in ensuring food security under the Big Four Agenda.

Agriculture in Kenya is largely reliant on rain-fed agriculture, which has been the primary contributor to the sector's uneven growth and has led to the country facing a shortage in food due to extended dry seasons, such as in 2017. Kenya's high rainfall areas constitute about 10% of its arable land and produce 70% of national commercial agricultural output. Farmers in semi-arid regions produce about 20% of the output, while the arid regions account for the remaining 10%. Productivity remains relatively low in all regions due to poor incentives, and underdeveloped supporting infrastructure and institutions, in addition to the issue of productivity,

Kenya's Agricultural Policy revolves around the primary goal of increasing agricultural productivity with a view to achieving national food and nutrition security. There is an emphasis on:

- Irrigation to introduce stability in agricultural output (which is largely reliant on seasonal rains).
- Commercialisation & intensification of production especially among small scale farmers.
- Appropriate and participatory policy formulation; & environmental sustainability.

Vision 2030 (Kenya's development blueprint) identifies agriculture as a key sector in achieving the envisaged annual economic growth rate.

This shall be enacted through the transformation of smallholder agriculture from a subsistence to an innovative, commercially oriented and modern agricultural sector.

In 2017 President Kenyatta announced the Big Four Agenda (B4A), which includes the achievement of 100% food and nutrition security as the primary goal.

The Big 4 agenda prioritises:

FOOD SECURITY	UNIVERSAL HEALTH	AFFORDABLE HOUSING	MANUFACTURING SECTOR

Under Vision 2030, the MTP III, the Agricultural Sector Transformation and Growth Strategy (ASTGS) 2019-2029 outlines the government strategy to achieve the nutrition pillar of the B4A.

It is anchored on 4 pillars:

Increase small scale farmer, pastoralist and fisher folk income.

Increase agricultural output and value addition.

Support enabling policies aimed at improving skills, capacity & data provision.

Improve household food resilience.

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Sector Policy Hurdles

Sector Policy Hurdles

4.1 Policy Uncertainty

The sector has experienced two significant policy shifts since 2013 under the current administration. The Agriculture and Food Authority Act 2013 reformed the sector in line with the new constitution and consolidated a number of agricultural regulatory regimes. The ASTGS, and reforms to the tea and coffee industries (announced in January 2020), seek to undo some of the restructuring and consolidation of the sector which had taken place previously. With a change of administration expected in 2022, policy changes are likely which would cause further disruption to the sector.

4.1.1 Impact on the Sector

The lack of stability in the policy environment creates a number of hurdles to the growth of the sector as a whole and acts as an impediment to investment.

- **Limit sector growth** – Government investments in the sector shift in line with the policy shifts, thus sustained investment in various projects and initiatives is not maintained.
- **Regulatory uncertainty** – The sector is subjected to an uncertain regulatory and legislative environment as the shifting policy focus also requires various regulatory changes.

4.1.2 Impact on Investment Landscape

Lack of a stable policy environment has a negative impact on the investment landscape, reducing investor confidence. With frequent policy, legislative and regulatory changes, investors are uncertain as to how the policy environment will impact their operations, hence may hesitate to commit to medium or longterm investments.

4.1.3 Policy Position

The frequent shifts in policy focus create significant legal and regulatory uncertainty and inertia in the sector. This in turn deters private sector investment, particularly FDI. Kenya's agriculture sector has significant growth potential for both increased investment and trade with the United States. A stable policy environment would allow investors to commit to the Kenyan market in the knowledge that their business models would not be undermined by an unforeseen policy shift. This would open up new markets for Kenyan agricultural goods and incentivise investment throughout Kenya's agricultural value chain.

4.1.4 Policy Recommendations

It is critical that the Kenya government develop an overarching agriculture sector policy to encompass reforms in various industries such as tea and coffee (these exist in other sectors such as the ICT policy 2019), that puts in place long term objectives and outcomes from the sector based on Vision 2030 (Kenya's development framework). This policy should be created in collaboration with the private sector, particularly the elements of the policy that pertain to:

- Increasing agricultural trade.
- Attracting investment into the agricultural value chain.
- The utilisation of GMO and biotechnology.
- The Intellectual Policy framework within the agriculture sector.

4.2 Political Interference

The politics of agriculture in Kenya is quite complex. As the largest sector in the economy, there are a number of vested interests, stakeholders and voting blocs that need to be taken into consideration by politicians and policymakers when devising and implementing policy for the sector. This is particularly true around the issue of Kenya's staple crop, maize, which is dominated by the politics of the Rift Valley region, where a significant portion of the country's annual maize crop is produced. Other crops that suffer from near constant political interference are sugar, coffee, and tea (the latter two are significant export crops), due to the large number of farmers and thus political constituency.

As much of the policy making and service provision in agriculture has been devolved under the 2010 constitution, the problem of political interference has been compounded and the sector has seen several instances where contradictory policy making has occurred due to divergent political interests.

4.2.1 Impact on the Sector

Political interference has a number of impacts on the sector:

- **Policy uncertainty** - political interference is a key driver of the policy uncertainty that is also a key hurdle within the sector. Frequent or sudden policy shifts are often driven by political rather than policy or economic considerations.

- **Vested interests** - Political interference enables vested interests in the sector to seek policy interventions that prioritise their own welfare. Thus, farmer or commercial interests may seek policy interventions that limit imports of certain goods to protect their dominance of domestic markets. Labour unions may seek laws and policies that are weighted heavily in favour of labour, making the costs of labour expensive in comparison to other markets and a disincentive to investment.

- **County vs national government:** Political and policy priorities with respect to the agriculture sector often differ between the two levels of government. This can result in:
  - Dissonance in policy where county and national policy seek different goals in relation to the same issue.
  - Policy that is not mutually reinforcing. This occurs where a policy priority at one level of government is not mirrored at another resulting in uneven and ineffective implementation.

4.2.2 Impact on Investment Landscape

- **Deterring investment and trade** - For investors the political interference in the sector can be a significant disincentive to investment in the sector. The significant policy uncertainty created creates regulatory instability. Furthermore, the frequent use of policy in a protectionist manner (especially trade restrictions) to appease domestic political interests creates a hostile environment not only for imported goods but also for investors interested in the sector. Furthermore, the dynamic evolution of political interest makes political and vested interests difficult to navigate.

- **Increasing complexity** - The lack of alignment between the national and county governments creates a highly complex regulatory and policy environment which is difficult for investors to navigate.

4.2.3 Policy Position

The political interference in the sector creates a dynamic and complex regulatory and policy environment, which deters investors from engaging with opportunities in the sector. Furthermore, the use of trade restrictions and price controls to address the interest of various stakeholders within the sector makes it difficult to expand the agricultural trading relationship with Kenya.

4.2.4 Policy Recommendations

To address these challenges, it is key that the country's political leadership and policy makers be educated and engaged on the impacts of politically motivated policy interventions on the investment profile of the agricultural sector, agricultural trade opportunities and the growth of the sector in general.

We recommend a collaborative effort between the Ministry of Trade Industrialisation and Enterprise Development and the Agricultural Transformation office within the Ministry of Agriculture to engage key stakeholders in the sector including: the leadership of the Ministry of Agriculture, the Council of Governors, unions, and representative sector groups with the goal of educating them on the impediments to agricultural FDI and trade expansion and build consensus for:

- A national agricultural trade policy.
- A common set of investor friendly policies & regulations across the value chain of the agricultural industry for both the county & national government.
- A consultation mechanism that would engage trade stakeholders prior to the implementation of trade restrictions or price controls.

4.3 Public Finance Shortfalls

In its 2018 Medium Term Economic Framework, the Ministry of Agriculture outlined the budgets required to implement the Big Four Agenda. However, the allocations assigned to the sector by the National Treasury are less than half of those requested by the Ministry.

Recurrent requirement vs allocation:

YEAR	REQUIREMENT	ALLOCATION
2019/20	KSh.109.5 billion	KSh.40.6 billion
2020/21	KSh.124 billion	KSh.42.7 billion
2021/22	KSh.115.3 billion	KSh.45 billion

Given the resource constraints, the sector has prioritised implementation of the Big Four initiatives within the allocations assigned to it, however this still leaves a large number of projects and initiatives that cannot be implemented leaving an uneven policy implementation landscape. Furthermore, delays in the release of funds from the Treasury continues to adversely affect the smooth implementation of programmes.

4.3.1 Impact on the Sector

- **Uneven policy landscape** - the difference between the funds requested and those allocated means that the Ministry of Agriculture cannot implement all the projects and initiatives outlined in the Agricultural Sector Transformation and Growth Strategy (ASTGS). Meaning that there is a significant difference between the stated policy plans and those actually being implemented, creating an uneven policy landscape that is difficult to assess and navigate.

- **De-prioritisation** - the lack of budgetary investment signals to investors and private sector at large that the sector is not a priority to the government.

4.3.2 Impact on Investment Landscape

- **Confusion** - the difference between stated policy priorities and those actually allocated funding and the lack of transparency on those decisions creates a confusing and uncertain landscape that deters investment.

- **Negative signalling** - The seeming de-prioritisation of the sector sends a signal to investors that they should focus on other sectors.

4.3.3 Policy Position

The public finance shortfalls in the agriculture sector create an impression that the sector is not a priority for the government and impacts policy implementation. There is an opportunity to explore and implement public private partnerships aimed at bridging those gaps by attracting private investment and engagement on key policy initiatives aimed at driving investment into the sector.

4.3.4 Policy Recommendations

In order to bridge public finance shortfalls, we recommend increased private sector involvement in public sector financing. This can be carried out by private sector engagement with various arms of the national government such as The National Treasury, Ministry of Agriculture, National Assembly and Senate Agriculture Committee legislators to understand areas of intervention and develop public private partnerships. This engagement will be supported by the Country Agri-business Partnership Framework (CAP-F) launched in September 2020 by the Ministry of Agriculture.

The CAP-F is a Comprehensive Africa Agriculture Development Programme (CAADP) country engagement and partnership tool developed to support the formation of partnerships between agribusinesses, non-state actors, development partners, governments and farmers with the intent of unlocking private sector investment in National Agricultural Investment Plans (NAIP) and prioritised value chains. The CAP Framework concept was developed jointly by the African Union (AU), the New Partnership for Africa's Development (NEPAD Agency) and Grow Africa. The Ministry of Agriculture has established a CAP-F secretariat to oversee the implementation of the tool.

4.4 The Intellectual Property Regime

Intellectual property rights are playing an increasingly critical role in modern agriculture. Unlike the agricultural sciences of the past, which came out of publicly funded labs, new biotechnologies are protected by patents and other intellectual property rights (IPRs). In this context, IPRs play a key role in enabling companies to attract investors and generate the returns necessary to recoup development costs and invest in further R&D.

In the Kenyan context, the lack of a fully formed agricultural IP framework, especially in Biotechnology related fields is a significant hinderance to investment.

Additionally, innovations in agricultural technology are being developed across the sector by both small scale and large-scale players. However, it has been noted that small scale farmers are often not able to patent their innovations and obtain IP licensing, as they may lack resources to do so. This in turn limits their growth as they are unable to protect their innovations. As a result, it has been noted that some of these innovations are transferred to bigger players in the industry, who tend to thrive because they have the information and financial capacity to meet licensing requirements.

4.4.1 Impact on the Sector

The lack of an appropriate agricultural IP framework prevents the growth in use of technology (both ICT based, and biotech based) in the sector. Which, in turn prevents Kenyan farmers and agribusiness from taking advantage of new technologies to improve productivity, quality and efficiency. Furthermore, licensing costs limit the growth of small scale farmers as they are not able to protect/ patent their innovations, losing out to larger players within the industry.

4.4.2 Impact on Investment Landscape

Prevention of investment: the lack of appropriate IP protections prevents investors from investing in the deployment of new technologies in Kenya as they are unsure that their innovations will be safe from unlicensed duplication and use.

4.4.3 Policy Position

These technologies are being deployed in markets around the world with whom Kenya competes. If there continues to be delay in developing the appropriate IP frameworks that would foster the deployment of new technologies in the sector Kenya risks being left behind. Furthermore, Kenya is a hub for technological innovation and agricultural research and development, thus an agricultural IP regime would not only protect investors but would protect and foster Kenyan innovators and inventions in the sector.

4.4.4 Policy Recommendations

It is key to educate and work with the public sector to foster understanding of biotechnology, agri-tech and appropriate IP regimes that would foster their development and implementation. The Kenya Industrial Property Institute (KIPI) is mandated to promote inventive and innovative activities and to facilitate technology transfer through the regulation and protection of industrial property in Kenya. KIPI also promotes inventiveness and innovation through its IP public awareness initiatives and a range of training courses which it runs in collaboration with various institutions of higher learning. A collaborative relationship between the private sector and KIPI could be used to:

- Educate stakeholders on key agri-tech and biotech IP related issues.
- Co-create proposals/recommendation for reform of agricultural sector IP that can be forwarded to the Ministry of Industrialisation, Trade, and Enterprise Development and Agriculture Ministries for consideration.

4.5 Lack of Capacity Within Government

Public agricultural services in Kenya date back to the early 1900. The government through the Ministry of Agriculture provided the bulk of extension services to both small scale farmers and commercial producers. After the implementation of structural adjustment programs (SAPs) in the 1980s, the Kenyan government came under considerable pressure to scale down its dominant role in the national economy. As a result, Kenya's agricultural services budget together with staff numbers has fallen significantly. The traditional public system was perceived as outdated, top-down, paternalistic, uniform (one-size fits-all), inflexible, subject to bureaucratic inefficiencies and therefore unable to cope with the dynamic demands of modern agriculture. As a result, the sector faces issues of inadequate human resource capacity. Furthermore, as the sector modernized, there were significant gaps in the provision of training to public employees. Limited investment and coordination by local research institutions like KARI and institutions of higher learning is also a concern.

4.5.1 Impact on the Sector

- **Impacts on productivity and costs** - The lack of capacity to provide services to actors across the sector has significant impacts across the board. Farmers (both individual and commercial) unable to access support services either have to pay for private sector services or rely entirely on their own knowledge making farming in Kenya both more expensive and sub-optimal.

- **Delayed innovation** - the lack of scientific/research capacity means that there is a lack of understanding by policymakers and regulators of agricultural technology and biotechnology. This lack of understanding creates policy and regulatory inertia in relation to new technologies and innovation in the sector.

4.5.2 Impact on Investment Landscape

- The increased costs of production impacts make Kenya a less attractive market particularly for investors interested in agricultural production.

- The lack of scientific and technological capacity delays the introduction of regulatory regimes that would enable investors to deploy new technologies in the sector due to the lack of a regulatory framework.

4.5.3 Policy Position

A lack of capacity within the government has substantial impacts on the sector as it limits growth, increases the cost of production and delays the introduction and development of new innovations in the sector. Hence, there is need for a robust capacity building framework within the sector to upskill public sector players. This framework should be operationalized in partnership with private sector actors who have access to new technologies and innovations which will in turn increase efficiency and effectiveness of service provision supported by corresponding regulatory frameworks.

4.5.4 Policy Recommendations

Capacity constraints within government can be reduced through collaboration with private sector expertise to upskill government officers. Private sector actors have significant expertise in a number of areas including areas such as biotechnology, GMOs, Agri-tech, value chain logistics, and international commodities trading, storage and marketing.

Collaboration between private sector actors and key policy makers/regulators to design and offer capacity building trainings can support bridging the capacity gap, facilitate development of modern regulatory frameworks and ensure enhanced support for stakeholders.

4.6 Lack of an Adequate Public-Private Consultation

There is a need for engagement and coordination between industry and government to ensure that legislation, policy and regulation take industry and investor issues under consideration.

The lack of a consistent public-private engagement and coordination mechanism presents gaps in the policy making process such as misalignment of policies or development of unresponsive regulation.

For instance, GMOs and Biotechnology offer significant potential to improve the yields and quality of Kenyan agricultural produce. However, much of that expertise and understanding of these issues and international best practice resides in the private sector. Government is in the process (or will soon have to) of developing policies and regulations in these areas and will require Private sector input.

4.6.1 Impact on the Sector

- **Limits partnership opportunities** - The lack of public – private engagement and coordination limits the potential for partnerships between public and private sectors. Specifically, in the agriculture sector, it impacts the opportunities for private sector players to introduce new technologies and innovations and creates regulatory risk that deters investment.

- **Challenges in addressing policy and operation issues** - Engagement and coordination between public and private sector provides avenues to address policy challenges and foster a more favourable environment for doing business. A lack thereof has negative impacts of the sector as there would a be a lack of trust between government and private sector players, and reforms would not be sustained.

4.6.2 Impact on Investment Landscape

Public-Private engagement and coordination is an opportunity for private sector to press a government to improve its own performance, record reform, create a more transparent business climate and enable sector competitiveness. With impending new regulations in the sector, the lack of engagement and coordination between private and public sector is bound to **discourage potential investors** as it presents an unfriendly business environment. Furthermore, this may frustrate current investors who may opt to **leave the market,** as their concerns are not being addressed.

4.6.3 Policy Position

Private-Public collaboration is key to creating an environment that develops regulatory frameworks that meets the goals of the private sector (predicable, cost-effective business environment) as well as public sector priorities (economic growth, job creation and general welfare). Beyond, policy creation, regular structured engagement between the private and public sectors can be used to address issues before they become disputes.

4.6.4 Policy Recommendations

It is critical that an engagement and collaborative working group be established with private sector representatives and the Ministry of Agriculture, that meets on a regular basis (e.g., quarterly) to discuss issues pertinent to both the government and the private sector and investors. The structure and scope of the working group should be set out in an MoU that will also function as the terms of reference for the working group. Considering the importance of Agriculture to the Kenyan economy, the Terms of Reference of the working group should include the ability to invite representatives of other ministries and government agencies to join on an ad-hoc or permanent basis.

05

Resolution Recommendations

The policy hurdles within the agriculture sector can be addressed through the following measures:

- **Public- private dialogue (PPDs)** - Engagement between public and private sector are key to ensure a favourable environment for doing business. Consistent dialogue with various arms of government presents an opportunity to address sector specific priority issues relating to policy, business and operations affecting private sector companies. Benefits from PPDs can be wide ranging and include buy-in for reform; evidence-based policy making; inclusive and participatory policy-making, easier policy implementation and increased trust and understanding between the public and private sector. In this regard, the recommended working group would provide a valuable mechanism in which to embed long term effective dialogue and collaboration.

- **Lobbying and advocacy to drive adoption of conducive regulatory frameworks in key agriculture subsectors** - Industry lobbies and associations will be key actors in the push for amendments of proposed legislation, policy and regulation specifically;

  • GMOs • Biotechnology • Intellectual policy

  This advocacy will be required to take place with regulators, policy makers and parliamentarians who shape and pass legislation, policy and regulation. Private sector industry expert taskforces can formulate proposed amendments of legislation under the specific areas, and lobby key government ministries, agencies and legislators in collaboration with other industry associations and its members to push for a conducive regulatory framework.

- **Stakeholder education** - To mitigate risks associated with misguided policy or regulation it is key to improve the capacity of understanding of stakeholders in the public and civil society spaces who have an impact over policy making. Private sector stakeholders have significant expertise in a number of agricultural areas and can collaborate with key policy makers and regulators to design and offer capacity building to facilitate the development of modern policy and regulatory frameworks.

- **Cooperation and fostering partnerships with government** - Developing partnerships with government and government agencies will present opportunities to co-create frameworks that address business operation challenges. The Country Agri-business Partnership Framework secretariat within the ministry of agriculture offers an opportunity to do so. Private sector should engage with the Ministry as part of the secretariat and participate in co-designing initiatives throughout the agricultural value chain aimed at attracting FDI.

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