



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON AGRICULTURE, LANDS AND NATURAL RESOURCES

ON THE

FOOD RESERVE BILL, N.A.B. NO. 6 OF 2020

FOR THE

FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

Printed by the National Assembly of Zambia

REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON AGRICULTURE, LANDS AND NATURAL RESOURCES

ON THE

FOOD RESERVE BILL, N.A.B. NO. 6 OF 2020

FOR THE

FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

TABLE OF CONTENTS

Item	Page No
1.0 Membership of the Committee	1
2.0 Functions of the Committee	1
3.0 Meetings of the Committee	1
4.0 Procedure adopted by the Committee	1
5.0 Background	1
6.0 Objects of the Bill	2
7.0 Salient Provisions of the Bill	2
8.0 Summary of Submissions and Concerns by Stakeholders	7
9.0 Committee's Observations and Recommendations	14
10.0 Conclusion	16
 Appendix I: List of Witnesses	 18
Appendix II: List of National Assembly Officials	20

REPORT OF THE COMMITTEE ON AGRICULTURE, LANDS AND NATURAL RESOURCES ON THE CONSIDERATION OF THE FOOD RESERVE BILL N.A.B NO. 6 OF 2020, FOR THE FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 Membership of the Committee

The Committee consisted of Mr M J B Ng’onga, MP, (Chairperson); Mrs C M Mazoka, MP (Vice Chairperson); Mr M Mawere, MP; Mr S K Michelo, MP; Mr P C Mecha, MP; Dr M Imakando, MP; Mr D Mung’andu, MP; Mr B Hamusonde, MP; Mr O S Mutaba, MP; and Mrs R C Fundanga, MP

The composition of the Committee changed following the demise of Mrs R C Fundanga, MP, who was subsequently replaced by Mr J Chishala, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

The Committee has the honour to present its Report on the consideration of the Food Reserve Bill, N.A.B No. 6 of 2020, referred to it by the House on 1st July 2020.

2.0 Functions of the Committee

In addition to any other duties assigned by the Honourable Mr Speaker, or any other order of the House, your Committee is mandated to consider any Bill that may be referred to it by the House.

3.0 Meetings of the Committee

The Committee held eight meetings to consider the Food Reserve Bill N.A.B No. 6 of 2020.

4.0 Procedure adopted by the Committee

In order to gain insight into the ramifications of the Bill, your Committee sought both written and oral submissions from various stakeholders. The list of stakeholders who made submissions before the Committee is at Appendix 1.

5.0 Background

The Food Reserve Act, Chapter 225 of the Laws of Zambia (hereinafter referred to as “the Act”), was enacted in 1995. Section 3 of the Act established the Food Reserve Agency (hereinafter referred to as “the Agency”). Through the Agency, the Ministry of Agriculture was mandated to manage and administer the National Strategic Food Reserve. At the time the Agency was established, it inherited various Government-owned storage facilities and had been providing a market to farmers in rural areas since 1996. Some of the key functions of the Agency included the administration of the National Food Reserve and stabilising food prices through a strategic grain reserve.

Over the years, however, various stakeholders had raised concern regarding the operations of the Agency. Some of the concerns centred around high operating costs, over-dependence on Government funding and unsustainable subsidies. The Agency had also faced challenges in its operations such as receipts from the players in the industry, inaccurate and incomplete information that could be used in the management of national food security. The Agency also had difficulties securing storage sites for national food security.

Since its enactment in 1995, the Act was only amended in 2005 to provide for crop marketing, among others. This gave the Agency the additional role of trading as well as setting the prices of major commodities in the country. However, the amendments of 2005 did not address the inefficiencies of the Agency cited above.

In view of the foregoing, the Government held consultative meetings with various stakeholders which culminated in the formulation of the Food Reserve Bill, 2020 with the objective to, among others, continue the existence of the Food Reserve Agency, redefine its functions and reconstitute its Board.

6.0 Objects of the Food Reserve Bill, N.A.B No. 6 of 2020

The Objects of the Bill are to:

- a) to continue the existence of the Food Reserve Agency and redefine its functions;
- b) reconstitute the Board of the Agency;
- c) continue the existence of the National Strategic Food Reserve;
- d) repeal and replace the Food Reserve Act, Chapter 255 of the Laws of Zambia; and
- e) provide for matters connected with, or incidental to the foregoing.

7.0 Summary of the Salient Provisions of the Bill

The salient provisions of the Food Reserve Bill, N.A.B. No. 6 of 2020 are set out hereunder.

Clause 1: Short Title

This clause provided for the title of the Bill.

Clause 2: Interpretation

This clause defined the key words and phrases used in the Bill in order to make the law easier to understand.

Clause 3: Continuation of Food Reserve Agency

This clause provided for the continuation of the Food Reserve Agency established under the repealed Act as a body corporate, capable of suing and of being sued in its corporate name, and with power to do all acts and things that a body corporate may, by law, do or perform.

Clause 4: Seal of Agency

This clause provided for the seal of the Agency which shall be kept by the Secretary. The clause further provided for the affixing of the seal, which shall be authenticated by the Chairperson or Vice-Chairperson and in the absence of the Chairperson and Vice-Chairperson, the Secretary or any other person authorised by the Board.

Clause 5: Functions of Agency

This clause set out the functions of the Agency which included marketing, importing, exporting or selling a designated agricultural commodity, collecting information related to the marketing of a designated agricultural commodity and advising the Minister on matters relating to the National Strategic Food Reserve.

Clause 6: Board of Agency

This clause provided for the composition of the Board of the Agency consisting of part-time members who were to be appointed by the Minister.

Clause 7: Functions of the Board

This clause set out the functions of the Board of the Agency which were to perform the functions of the Agency and provide strategic direction to the Agency.

Clause 8: Delegation of Functions of the Board

This clause empowered the Board to delegate any of its functions to the Executive Director. The clause further empowered the Minister to give the Board directions which were consistent with the Act relating to the performance of its functions and the Board was mandated to give effect to those directions.

Clause 9: Tenure of Office of Members and Vacancy

This clause provided for the tenure of office and vacancy of a member of the Board. This clause provided, among other things, that a member shall hold office for a period of three years but shall not consecutively hold office for more than two terms.

Clause 10: Proceedings of Board

This clause empowered the Board to regulate its own procedure. The clause provided, among other things, for the quorum of the Board and how decisions of the Board were to be made.

Clause 11: Committees

This clause empowered the Board to constitute committees whenever it was considered necessary and also to delegate to such committees such functions as may be appropriate.

Clause 12: Allowances

This clause provided for the payment of allowances to members of the Board.

Clause 13: Disclosure of Interest

This clause made it mandatory for a person to disclose interest if that person was present at a meeting of the Board or a committee of the Board at which any matter was the subject of consideration, and in which matter that person or that person's relative or associate was directly or indirectly interested in a private capacity.

Clause 14: Prohibition of Publication or Disclosure of Information to Unauthorised Person

This clause prohibited the publication of information to an unauthorised person without the consent of the Board and provides a penalty for contravening the prohibition.

Clause 15: Executive Director

This clause provided for the appointment of an Executive Director who shall be the Chief Executive Officer of the Agency and responsible for the day-to-day administration of the Agency.

Clause 16: Secretary and other Staff

This clause provided for the appointment of a Secretary and other staff of the Agency, necessary for the performance of the functions of the Board.

Clause 17: Emoluments and Conditions of Service of Executive Director, Secretary and other Staff

This clause mandated the Emoluments Commission, on the recommendation of the Board, to determine the emoluments of the Executive Director, Secretary and other staff of the Agency. The clause further mandated the Board to determine the conditions of service, other than emoluments, of the Executive Director, Secretary and other staff of the Agency.

Clause 18: Immunity of Member, Committee and Employee

This clause provided for the immunity of a member, a member of a committee or a member of staff of the Agency in respect of an act, or thing done or omitted to be done in good faith in the exercise or performance of a power or function conferred by or under the Act.

Clause 19: Continuation of National Strategic Food Reserve

This clause provided for the continuation of the existence of the National Strategic Food Reserve established under the repealed Act as if continued under this Act. The clause further set out its purpose which included, among others, to maintain the type and quantity of a designated agricultural commodity as determined by the Agency, ensure a reliable supply of a designated agricultural commodity for the country and meet local shortfalls in the supply of a designated agricultural commodity.

Clause 20: Role of Minister in National Strategic Food Reserve

This clause set out the role of the Minister in the National Strategic Food Reserve. The clause gave the Minister the authority to approve the quantity and type of a designated agricultural commodity to be maintained in, sold, traded or issued from the National Strategic Food Reserve and cause the preparation of the National Food Balance Sheet, among other things.

Furthermore, the clause empowered the Minister to appoint inspectors to collect data for the purposes of national food security and to inspect and verify stock levels of the designated agricultural commodities.

Clause 21: Designation of Agricultural Commodity

This clause mandated the minister to, at least sixty days before the planting season, designate an agricultural commodity that the Minister considered essential for the food security of the country.

Clause 22: Purchase and Importation of Designated Agricultural Commodity

This clause empowered the Agency to purchase from the domestic market or import a designated agricultural commodity for the purposes of the National Strategic Food Reserve. The clause further mandated the Agency to take certain steps in purchasing a designated agricultural commodity from the domestic market such as establishing or determining prices and creating a market for a designated agricultural commodity.

Clause 23: Power to Inspect Records

This clause required a trader or processor, subject to the Agricultural Credits Act, 2010, to declare to the Agency whether or not a designated agricultural commodity had previously been pledged as security or registered as a charge under that Act, prior to selling the designated agricultural commodity to the Agency.

Clause 24: Sale of Designated Agricultural Commodity

The clause gave the Agency authority to sell a designated agricultural commodity from the National Strategic Food Reserve, export any excess designated agricultural commodities and enter into partnerships for such sale or exportation by the Agency.

Clause 25: Receipt of Designated Agricultural Commodity and Non-Designated Agricultural Commodity

This clause permitted the Agency to receive as a donation a designated agricultural commodity or any commodity not designated under the Act as part of the National Strategic Reserve, and to sell any such donation.

Clause 26: Standard of Designated Agricultural Commodity

This clause mandated the Agency to use the standards approved by the Zambia Bureau of Standards for a designated agricultural commodity and to consult the Zambia Metrology Agency in approving the weights and measuring equipment used in the purchase of a designated agricultural commodity.

Clause 27: Offence and Penalty for Misrepresenting Grade

This clause prohibited a person from knowingly selling to the Agency a grade of a designated agricultural commodity contrary to the standards approved by the Zambia Bureau of Standards and provided a sanction for a person who did so.

Clause 28: Funds of Agency

This clause made provision for the funds of the Agency which may consist of monies that may be appropriated to the Agency by Parliament, monies paid to the Agency by way of fees, grants or donations, or monies that may vest in, or accrue to the Agency among others. The clause further set out the purposes of the funds and permitted the Board to invest in monies that the Agency did not immediately require for the performance of the Agency's functions.

Clause 29: Financial Year

This clause provided for the financial year of the Agency which was a period of twelve months ending on 31st December of each year.

Clause 30: Accounts

This clause mandated the Agency to keep proper books of account and other records relating to its accounts. The clause mandated the Auditor-General or an auditor appointed by the Auditor-General to audit the accounts of the Agency annually.

Clause 31: Annual Report

This clause mandated the Board to submit to the Minister a report concerning the Agency's activities during the financial year, not later than ninety days after the end of the financial year. The clause further mandated the Minister, not later than seven days after the first sitting of the National Assembly next after receipt of the report, to lay the report before the National Assembly.

Clause 32: Declaration of National Food Emergency and Vesting of Agency Functions

This clause empowered the President to declare a national food emergency and set out the circumstances when the President could make such a declaration.

Clause 33: Restricted Area

This clause empowered the Minister to designate a storage facility used for the storage of a designated agricultural commodity as a restricted area. The clause further prohibited unlawful entry in the restricted area and provided a sanction for a person who did so.

Clause 34: Compounding of Certain Offences by Executive Director

This clause sought to empower the Executive Director, subject to the written consent of the Director of Public Prosecutions and on admission of guilt by a person who committed an offence under the Act, to impose a fine not exceeding fifty per cent of the maximum amount that person would have been liable to pay on conviction. Furthermore, a person having made that payment shall not be prosecuted in relation to the same offence.

Clause 35: Offence by Principal Officers of Bodies Corporate and Unincorporate Bodies

This clause provided for the manner in which offences committed by principal officers of bodies corporate and unincorporate bodies will be dealt with and provided a sanction for such principal officers.

Clause 36: Regulations

The clause empowered the Minister to make regulations for the better carrying out of the provisions of the Act, once enacted.

Clause 37: Act to Bind Republic

The clause provided that the Republic shall be bound by the provisions of the Act, once enacted.

Clause 38: Repeal of Chapter 225 of the Laws of Zambia

The clause repealed the Food Reserve Act, 1995 (Chapter 255 of the Laws of Zambia).

Schedule

The Schedule set out the savings and transitional provisions applicable to the Agency.

8.0 Summary of Submissions and Concerns by Stakeholders

8.1 General Concerns

Most of the stakeholders who appeared before the Committee were in support of the Bill, contending that it was a progressive Bill which sought to repeal and replace *the Food Reserve Act, Chapter 225 of the Laws of Zambia* in order to strengthen the operations of the Food Reserve Agency and enable it to operate sustainably with reduced dependence on Government funding.

Stakeholders further welcomed the inclusion of the Ministry of Fisheries and Livestock among the Board members as it would cater for the interests of the fisheries and livestock industry, while the inclusion of representatives of millers and grain traders would equally cater for their interests as they were major stakeholders in the consumption of the national food reserve.

Other stakeholders, were however, opposed to the Bill in its current form, stating that the extended FRA functions as espoused in the Bill would increase Government and private sector conflicts over matters such as pricing of commodities, export and import permits and bans, which had characterised the commodity market in Zambia. They contended that by acquiring the role of being an active market player in commodities, the agency would stifle private sector participation. They contended that it would be anomalous for the FRA to be a regulator as well as a competitor.

8.2 Specific Concerns and Recommendations

The specific concerns of stakeholders are set out below.

i. Clause 5 (2) (c)

The stakeholders were of the view that this provision had the potential to crowd out private sector investment in storage facilities. They contended that there was little economic return for investment for FRA to establish more storage facilities, as this would only increase its operational costs, adding further burden to the national Treasury and thereby negating the very objective that the Bill was intended to achieve.

In this regard, the stakeholders recommended that this function be left to the private sector that had the capacity to build storage facilities, which could be leased to the FRA. Therefore, rather than venture into providing new facilities directly, the Government should incentivise the private sector to build storage facilities in areas where they were lacking. In this vein, the Agency should focus on rehabilitating its current storage facilities which had a capacity of over 1 million metric tonnes by ensuring it met the required warehousing standards.

Minister's Response

The Minister of Agriculture explained that there was a misunderstanding as to the role of the Food Reserve Agency by the players in the market. He explained that the Food Reserve Agency was not a regulator, as it did not regulate any players in the market on any aspect on agricultural marketing. Further, the role of the FRA on the market was for the sole purpose of ensuring national food security. Being a statutory body, FRA was part of the Government.

With regard to Clause 5 (2) of the Bill, the Minister stated that these were the functions being currently undertaken by the Agency as enshrined in Clause 4 (1) of the *Food Reserve Act Cap 255 of 1995 of the Laws of Zambia* as amended in 2005. Further, in the current Act, the proposed amendment was a clause that supplemented the other functions of the Agency. He added that it was important to note that the functions of FRA as set out in the Bill were what was contained in the current Act and were for the purpose of managing the national food security.

ii. Clause 5 (2) (d)

Stakeholders contended that while the proposal to collect market information in itself was welcome, and in fact long overdue, as it would help enhance transparency in crop marketing, this function should not be the preserve of the FRA. They noted that assigning such functions to FRA would give the Agency undue competitive advantage since the Agency was also one of the key players in the market. The stakeholders further contended that this had the potential to compromise the credibility of the market information system and in turn, distort the market leading to reduced private sector investment.

In this regard, stakeholders argued that the *Agricultural Statistics Act No. 13 of 1994*, already provided for the collection, compilation and publication of agricultural statistics. Further, the Zambia Agricultural Information System (ZAIS) was established to perform some of the functions related to collection and dissemination of market information. Given the proprietary and sensitive nature of agricultural marketing information, as it related to stock levels and location, the functions to collect such information should be assigned to an independent organisation capable of collecting information from the FRA and the private sector for the benefit of all market players. The key issue, therefore, was to ensure that ZAIS was hosted by an independent organisation with no vested interest in agricultural marketing and trade.

iii. Clause 6 (1) (d)

Stakeholders contended that the criteria for appointing persons in clause 6(1) (d) were vague and could thus be open to abuse as it created room for appointing persons not qualified to sit on the Board, which could create negative public perception about the competence of the Board.

In this regard, stakeholders recommended that for the sake of transparency and instilling public trust in the Board, the Act should specify the criteria for the appointment of such persons. Further, stakeholders proposed for the inclusion of a representative from the Agricultural Commodities Exchange as part of the Board.

Minister's Response

The Minister noted the concern of the stakeholders and undertook to seek counsel from the Ministry of Justice with a view to amend the provision.

He however, stated that this clause gave the Minister more allowance to fill a vacuum identified in the Board with individuals who may have experience in matters related to this Act.

iv. Clause 8 (3)

Stakeholders contended that the Minister giving direction to the Board was inconsistent with good corporate governance. In this regard, the stakeholders contended that if this clause

remained, then they suggested that the directions by the Minister to the Board be issued in writing.

Minister's Response

The Minister noted the concern. However, he stated that these directions were to be consistent with the Act as anything done outside the Act would attract a penalty.

v. Clause 11 (2)

Stakeholders contended that basic requirements should be stipulated for anyone to be appointed as a committee member outside the Board. They noted that if non-members of the Board were to be appointed as committee members, then the basic requirements should be spelt out on who should qualify for appointment.

Minister's Response

The Minister stated that the composition of the committees would depend on the matters to be handled. Therefore, the inclusion of the qualifications of these members in the Bill may not be exhaustive to cater for all matters that may arise. He also noted that similar provisions were included in existing pieces of legislation such as the *Nurses and Midwives Act, No.10 of 2019*.

vi. Clause 16 (1)

Stakeholders were of the view that for the effective and efficient performance of the Agency, the Board should only appoint the Executive Director and the Secretary of the Agency and not the other ordinary members of staff. The other staff of the Agency should be appointed through interviews organised by the Agency. The basic qualifications of the Executive Director, the Secretary and the other staff should be stipulated by law for transparency.

Minister's Response

The Minister noted the concerns; however, he stated that such were standard provisions even in other pieces of legislation. Further, the appointment of staff by the Board ensured that staff were screened by the Board. This provision did not preclude the normal recruitment processes from being undertaken.

He contended that according to good corporate governance practices in the world, the Board appointed staff and the Executive Director was delegated this function by the Board. This was in order to prevent the Executive Director from becoming too powerful and offered staff recourse to the Board for final decision when aggrieved.

vii. Clause 18

The stakeholders noted with concern that the Bill conferred immunity on members of the Board, a committee or a member of staff of the Agency. They contended that this was not acceptable as it would shield mischief from the employees who would want to hide under the provisions of the Act.

They therefore, recommended that this provision be removed from the Bill as it was not curing any mischief.

Minister's Response

The Minister noted the concern. However, he stated that immunity was conferred on the members of staff and board in carrying out the functions prescribed in the Act. This did not shield the members of staff from prosecution if found wanting. He also noted that this was a standard clause in other pieces of legislation such as the *National Health Insurance Act, No. 2 of 2018* and *Zambia Medicines and Medical Supplies Agency Act, No. 9 of 2019*. The Minister further agreed to seek guidance from the Ministry of Justice over the provision.

viii. Clause 19 (2) (e)

Stakeholders contended that the issue of checking manipulation of price and monopolistic tendencies was the mandate of the Ministry of Commerce, Trade and Industry through the Competition and Consumer Protection Commission (CCPC). Therefore, correction of problems should be done in consultation with the Competition and Consumer Protection Commission under the Ministry of Commerce, Trade and Industry. The *Competition and Consumer Protection Act, No. 24 of 2010 of the Laws of Zambia* should apply to subsection (2) (e).

Stakeholders, therefore, recommended the removal of Clause 19 (4) to allow for *the Competition and Consumer Protection Act, No. 24 of 2010* to apply on issues of pricing. Preferably, there should be a reference to the *Competition and Consumer Protection Act, No. 24 of 2010* instead of the Agency taking over the powers of the Competition and Consumer Protection Commission.

Minister's Response

The Minister responded that the Clause referred to had been a subject of discussion with the Competition and Consumer Protection Commission (CCPC) with regard to the application of clause 19(2) (e). The Ministry recognised that monopolistic and uncompetitive practices had supply implications. In order to resolve the supply constraints, the FRA would have to intervene through various actions such as directing subsidies to selected millers or value chain actors. Therefore, the inclusion of the intervention from the *Competition and Consumer Protection Act, No. 24 of 2010* would be seen as influencing competition and thus needed to be excluded.

The Minister pointed out that the exclusion provided in clause 19(2) (e) was qualified by Clause 19(4) that it should be in line with the *Competition and Consumer Protection Act, No. 24 of 2010*.

The Minister stated that the current Act of 1995 in clause 5(1) also had this provision.

ix. Clause 19 (3)

The stakeholders contended that the principle behind the amendment was reasonable. However, it was very important to also specify in the revised Act the commodities and corresponding volumes that would contribute to the strategic reserve. Without such specifications, FRA, could distort the market through excessive purchases and storage of commodities, which the Agency would eventually offload at a low price leading to price destabilisation.

Stakeholders, in this regard, recommended that to ensure that the mandate as set out in the proposed amendment was met, there was a need to provide guidelines on the process of identifying the commodities and determining volumes. These guidelines, especially with regard

to volumes, should be reviewed periodically. This would ensure that there was consistency in the market and prevent price destabilisation. They noted that based on the definition in the amendment that the strategic reserve should cover lean periods and lead times to mobilise resources, the strategic reserve for maize, for example, should not exceed 300,000 metric tonnes based on the current population and the experiences the country had had since the inception of the FRA. They contended that this would provide a minimum short-term level of cover as required under the terms of the Act, but could be supplemented with a cash reserve to fund imports for longer-term cover.

x. Clause 20 (1)

Stakeholders contended that although collecting crop market information was a welcome move as it would enhance market transparency and accuracy of stock tracking and availability, assigning such functions to FRA would give the Agency undue competitive advantage since the Agency was one of the key players in the market. They noted that this had potential to compromise the credibility of the market information system and in turn, distort the market leading to reduced private sector investment.

In this regard, the stakeholders recommended that these functions should be left to the Zambia Statistics Agency (ZamStat) as provided for under *the Agricultural Statistics Act No. 13 of 1994* for the collection, compilation and publication of agricultural statistics. This could be done in collaboration with ZAIS.

Minister's Response

The Minister responded that Clause 20 of the Act was in response to the challenges faced in the monitoring of national food security by the Ministry of Agriculture, whereby the stakeholders did not submit accurate information during the stocks monitoring committee meetings.

He stated that Clause 20 had been crafted in such a way as not to give the Food Reserve Agency power to inspect but to vest such power in the Minister of Agriculture due to the perceived role of FRA in the market. The Minister would have powers to appoint inspectors outside FRA. He also noted that FRA was a government entity and all its operations in the markets were intended to promote the social goal of food security.

The Minister further noted that *the Agricultural Statistics Act* was repealed by the enactment of the *Statistics Act, No.13 of 2018*, which legislation did not give powers of inspection to ZAMSTAT but provided penalties for inaccurate data. Such data could only be deemed as inaccurate after inspection.

xi. Clause 21

Stakeholders noted that the Minister would announce designated commodities which the FRA would venture in for marketing to safeguard national food security sixty days before farmers planted. This would force farmers to limit the area planted for commodities where the FRA would have a leading role because of unpredictable marketing policies unless this was tied to an announcement of a pre-planting price.

The stakeholders further contended that FRA was known for not paying farmers on time. This provision would therefore, jeopardise the chances of expanding production because the farmers once again would be left to face unpredictable market conditions. Stakeholders recommended that the Bill should therefore, include a provision to compel the FRA to be announcing a pre-planting price to create an incentive for growers.

Minister's Response

The Minister responded that the Government had liberalised the agriculture sector in order to promote participation of the private sector in agricultural value chains. Therefore, a pre-planting price in the statutory instrument would be perceived as price fixing. Further, even if it was insisted that the pre-planting price was an FRA price, it would discourage the private sector from offering better prices. Currently, regardless of the FRA price, the private sector players had been able to offer higher prices. This would stop as the private sector would also use the pre-planting price set out in the statutory instrument.

xii. Clause 22 (1)

Stakeholders were concerned that there would be an overstatement of import costs by would-be suppliers if the Agency was allowed to be involved in exports. Stakeholders reasoned that suppliers to Government and its agencies had a tendency to put a mark-up on their pricing as a way of cushioning for the delay in payment or, in some cases, just to take advantage of the Government.

In this regard, the stakeholders recommended that this function should be left to private sector players who were well placed to manage imports and related costs.

xiii. Clause 22 (2)

Stakeholders contended that this provision went against the fundamental principles of a free market as it meant that the FRA could designate an area as a no-go zone for the private sector, which was a typical case of a monopoly with direct market distortions. The stakeholders reasoned that this provision was giving undue advantage to the FRA which was already at an advantage as it would enter the market with government funding from the tax payers.

In this regard, stakeholders proposed that FRA should, as always, purchase commodities from outlying areas, and particularly from the beneficiaries of the Farmer Input Support Programme (FISP), where even a barter system could be employed.

Stakeholders therefore, recommended that the functions of the FRA should be restricted to managing and administering the national strategic food reserves. In performing its core functions, the FRA should not stifle private sector participation in the marketplace, as this would shrink market service provision to smallholder farmers, among others. Rather, the FRA should focus on providing market services to smallholder farmers located in remote parts of the country where private sector presence was limited or non-existent. This way, the operations of the FRA and private sector players would be complementary rather than undermine each other.

Further, stakeholders contended that since FRA was one of the biggest market players, Clause 22 should include a section to the effect that FRA may purchase commodities through the exchange

in order to utilise the commodities market opportunities provided by ZAMACE which was linked to the Johannesburg Stock Exchange/South Africa Futures Exchange (JSE/SAFEX).

xiv. Clause 24 (1)

Stakeholders were concerned that there were no set criteria of what would trigger and determine the declaration of a ‘local food shortfall’. Stakeholders reasoned that while food emergency was derived from a declaration of an emergency/disaster by the President, the criteria to determine ‘local shortfall in the supply of the commodity’ was neither defined nor was the trigger point stated.

In this vein, they recommended that in order to avoid political abuse of the clause and distortion of the market conditions, the criteria and trigger to determine the local shortfall needed to be defined in the Bill.

Stakeholders were further concerned that the Bill in subsection (1) (c) proposed that the FRA could enter into partnership for the purpose of functions stated under 24 (a) and (b) as follows;

- (a) sell a designated agricultural commodity from the National Strategic Food Reserve to;
 - i. meet a local shortfall in the supply of the commodity; or
 - ii. meet a food emergency caused by drought, flood, or other natural disasters.
- (b) export any excess designated agriculture commodity.

Stakeholders were of the view that such partnerships could distort the business environment for other players. They therefore, proposed that this be changed to “collaboration” instead of ‘partnership’.

Minister’s Response

In addressing this concern, the Minister made reference to the tripartite partnership that was entered into by the Government, Famers’ Union and the Grain Traders’ and Millers Associations to address a deficit in the maize stocks where the farmers were requested to grow early maturing irrigation fed maize. He, therefore, contended that there was nothing sinister about this provision.

xv. Clause 28 (2)

Stakeholders contended that the reference to ‘Minister’ in Clause 28 (2) should clearly be stated as the *‘minister responsible for finance’*. This was a contingent liability and so any external borrowing or grants that usually came with conditions that could result in financial obligations, should have the approval of the minister responsible for finance. This was consistent with the provisions of the *Public Finance Management Act No. 1 of 2018* and *Loans and Guarantees (Authorisation) Act, Chapter 366 of the Laws of Zambia*.

In addition, the stakeholders noted that as the Government was delegating its functions to the Agency, the funds to be utilised by the Agency should only be appropriated by Parliament based on the need and an approved budget.

In this vein, the Agency should not keep funds beyond its requirements and authorisation by Parliament.

xvi. Clause 33 (1)

The Minister may, by statutory instrument, designate a storage facility used for the storage of a designated agricultural commodity as a restricted area.

The stakeholders were of the view that designating a storage facility as a restricted area in line with the expanded mandate of the Agency would not sit well with the other market players as it would be seen as an unfair competition practice.

Minister's Response

The Minister responded that Clause 33 referred to Food Reserve Agency storage facilities only. Designation of food reserve storage facilities would not in any way be uncompetitive. Currently, the FRA storage sites were at risk of theft, sabotage and trespassing. Given that the maize stored there was for national food security, it was imperative that it was protected from theft, sabotage and tampering because food security was national security.

This clause was also expected to protect communities near the storage facilities from the risk of poisoning during fumigation of the storage sites. The private sector was not expected to operate from FRA storage sites except with permission. This clause would not include satellite depot storage sites which were usually community owned.

xvii. Clause 34

Stakeholders contended that this provision was transferring the functions of the judiciary to a parastatal body which was not designed to perform such functions. They, therefore, recommended that these functions should be left to the judiciary.

Minister's Response

The Minister noted the concern and undertook to seek guidance of the Ministry of Justice with the view to amend the Clause.

9.0 Committee's Observations and Recommendations

While supporting the Bill, the Committee shares some of the concerns that were raised by stakeholders and highlights its observations and recommendations on the specific provisions below.

i. Clause 5

The Committee observes that Clause 5 (2) expanded the functions of the Agency to include:

- (a) Marketing and trading in designated agricultural commodities; and
- (b) Purchasing, importing, selling, trading or exporting any agricultural commodity.

While noting that this provision also appeared in the *Food Reserve Amendment Act, No. 20 of 2005*, these provisions mean that the FRA could participate in profit-seeking activities, which was a commercial function and a departure from the original mandate of managing and administering the country's strategic food reserves, which was a social function.

In this regard, the Committee recommends that the FRA should maintain the social function for which it was originally formed as stipulated in the *Food Reserve Act, Chapter 255 of the Laws of Zambia*, which in Part II, Section 4 (4) states “Except for such actions as may be necessary to administer the national food reserve, the Agency shall not purchase, import, sell, or trade in any agricultural commodity.”

ii. Clause 6 (1) (d)

The Committee is concerned that Clause 6 (1) (d) which mandates the Minister to appoint two persons with proven knowledge and experience in matters relevant to this Act to sit on the Board, does not provide the criteria for appointing such persons or the qualifications they should possess.

In this regard, the Committee strongly recommends that for the sake of transparency and instilling public confidence in the Board, the Act should specify the criteria or the qualifications that such appointees should possess. The Committee further recommends that such members should include a member from the capital markets as a member of the Board.

iii. Clause 11 (2)

The Committee observes with concern that this provision does not specify the basic requirements for anyone to be appointed as a committee member outside the Board.

In this regard, the Committee recommends that if non-members of the Board are to be appointed as committee members, then the basic qualifications for appointment should be clearly spelt out in the Bill.

iv. Clause 16 (1)

The Committee notes that the Bill proposes for the Board to appoint the Executive Director, the Secretary and other members of staff of the Agency. The Committee is of the view that for the effective and efficient performance of the Agency, the Board should only appoint the Executive Director and the Secretary of the Agency and not the other ordinary members of staff.

The Committee therefore, recommends that other staff of the Agency should be appointed through interviews organised by the Agency and that the basic qualifications of the Executive Director, the Secretary and the other staff should be stipulated by law for transparency.

v. Clause 18

The Committee notes with concern that the Bill confers immunity on members of the Board, a committee or a member of staff of the Agency. The Committee observes that this is not acceptable as it could shield mischief from the employees who would want to hide under the provisions of the Act.

In this regard, the Committee strongly recommends that this provision be removed from the Bill as it is not curing any mischief.

vi. Clause 19 (3)

The Committee notes with concern that this provision does not specify the commodities and corresponding volumes that would contribute to the strategic reserve. The Committee observes that without such specifications, FRA could distort the market through excessive purchases and storage of commodities, which the Agency would eventually offload at a low price, leading to price destabilisation.

In this regard, the Committee recommends that guidelines on identifying the commodities and determining volumes should be expressly provided for in the Bill. These guidelines, especially with regard to volumes, should be reviewed periodically to ensure consistency in the market and prevent price destabilisation.

vii. Clause 24(1) (a) (i)

The Committee observes that the Bill does not include any set criteria of what would trigger and determine the declaration of a ‘local food shortfall’. The Committee notes that while a food emergency is derived from a declaration of an emergency/disaster by the Head of State, the criteria to determine ‘local shortfall in the supply of the commodity’ is neither defined nor the trigger point stated in the Bill.

In this vein, the Committee recommends that in order to avoid political abuse of the clause and distortion of the market conditions, the criteria and trigger for declaration of a local shortfall need to be defined in the Bill.

viii. Clause 28 (2)

The Committee notes that the ‘Minister’ referred to in Clause 28 (2) is not clearly defined. In this regard, the Committee recommends that this reference to ‘Minister’ should clearly be stated as the ‘*minister responsible for finance*’. This was a contingent liability and so any external borrowing or grants that usually came with conditions that could result in financial obligations, should have the approval of the minister responsible for finance. This was consistent with the provisions of the *Public Finance Management Act No. 1 of 2018* and *Loans and Guarantees (Authorisation) Act, Chapter 366 of the Laws of Zambia*.

In addition, the Committee recommends that since Government is delegating its functions to the Agency, the funds to be utilised by the Agency should only be appropriated by Parliament based on the need and an approved budget. The Agency should not keep funds beyond its requirements and authorisation by Parliament.

ix. Clause 34

The Committee notes with concern that this provision is transferring the functions of the judiciary to a parastatal body which is not designated to perform such functions.

In light of this, the Committee recommends that these functions should be left to the judiciary.

10.0 Conclusion

The Committee notes that since its enactment in 1995, the *Food Reserve Act, Chapter 225 of the Laws of Zambia*, which established the Food Reserve Agency, was only amended in 2005 to

provide for crop marketing, among others things. However, the amendments of 2005 did not address the inefficiencies of the Agency. This necessitated the formulation of the Food Reserve Bill, NAB No. 6 of 2020 with the objective to, among others, continue the existence of the Food Reserve Agency, redefine its functions and reconstitute its Board.

While supporting the Bill, the Committee urges the Government to take note of the various concerns that were raised by stakeholders and the Committee's recommendations which need to be addressed to ensure that, once the legislation is passed, it will promote the strengthening of the operations of the Food Reserve Agency and enable it to operate sustainably.

The Committee wishes to express its gratitude to the Minister of Agriculture and all the stakeholders who appeared before it and tendered both oral and written submissions. The Committee wishes to thank you Mr Speaker, and the Clerk of the National Assembly for the guidance and support services rendered to it throughout its deliberations.

We have the Honour to be, Sir, the Committee on Agriculture, Lands and Natural Resources, tasked to scrutinise the Food Reserve Bill N.A.B No. 6 of 2020 for the Fourth Session of the Twelfth National Assembly,

Mr M J B Ng'onga, MP;
(Chairperson)

Mrs C M Mazoka, MP;
(Vice-Chairperson)

Mr P C Mecha, MP;
(Member)

Mr S K Michelo, MP;
(Member)

Mr B Hamusonde, MP;
(Member)

Dr M Imakando, MP;
(Member)

Mr D Mung'andu, MP;
(Member)

Mr J Chishala, MP;
(Member)

Mr M Mawere, MP; and
(Member)

Mr O S Mutaba, MP.
(Member)

Appendix I: List of Witnesses

Ministry of Justice

Ms B Chibbonta, Deputy Chief Parliamentary Counsel

Ms N Nchito, Parliamentary Counsel

Consumer Unity and Trust Society

Ms C Mukumba, Director

Mr I Zulu, Programme Officer

PELUM Zambia

Mr M Wamunyima, Coordinator

Mr W Miga, Project Officer

Ministry of Agriculture

Mr S Zyambo, Permanent Secretary

Mrs K M Katyamba, Director – Agribusiness and Marketing

Mr M Chulu, Senior Agricultural Economist

Mr T Nyirenda, Senior Budget Analyst

Ms P Mlewa, Director – Planning

Food Reserve Agency

Mr C Kafwabulula, Executive Director

Ms M M Nalubamba, Assistant Legal Counsel

Mr A Chewe, Assistant Legal Counsel

Millers Association of Zambia

Mr A P Chintala, Chairman

Mr G Luseki, Assistant Officer

Grain Traders Association of Zambia

Mr C Simwinga, Chief Executive Officer

Mr Y Mkandawire, Programme Manager

Sangondola Enterprise

Mr M Mbunji, Director

Indaba Agricultural Policy Research Institute

Mr B M Zulu, Outreach Director

Mr B Mulenga, Research Fellow

Mr C Hachikona, Librarian/Web Manager

Zambia Cooperative Federation

Mr J Chirwa, Director General

Mr G M Munyoro, Manager Cooperative Development

Mr D Sokoni, Director Projects

National Union for Small Scale Farmers of Zambia

Mr E K Lolozi, Executive Director

UNZA School of Agricultural Sciences

Dr B H Chishala, Dean

Dr C Nkonde, Lecturer/Researcher

Dr B Chimai, Lecturer/Researcher

Southern Africa Cross Border Traders Association

Mr J Makambwe, Secretary General

Mr D Sakala, Programme Officer

Ministry of Commerce, Trade and Industry

Mr M Mulenga, Permanent Secretary

Mr S Mungalaba, Director Cooperatives

Mr N Ngwira, Director Domestic Trade and Commerce

Mr M Chivumo, Senior Economist and Parliamentary Liaison Officer

Ministry of Fisheries and Livestock

Mr C Mwaanga, Director

Mr G M Simalumba, Acting Director

Mr K Mwambilwa, Chief Livestock Research Officer

Mr K Gondwe, Planning and Policy Analyst

Ministry of Finance

Mr M Chikuba, Permanent Secretary

Mr A Imwiko, Assistant Director

Mr C Kapambwe, Senior Economist

Food and Agriculture Organisation

Mr G Okech, FAO Country Representative

Mr G Chomba, FAO Assistant Representative

Lusaka Stock Exchange

Mr J Mwale, Head Commodities

Mr H Inkeni, Legal Officer

Zambia National Farmers Union

Mr J Zimba, President

Mrs E Chembe, Executive Director

Ministry of Agriculture

Hon M J Katambo, Minister

Appendix II: List of National Assembly Officials

Ms C Musonda, Principal Clerk of Committees
Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)
Mr S Chiwota, Senior Committee Clerk (SC)
Mrs M K Siwo, Committee Clerk
Mr C Chishimba, Committee Clerk
Mrs R N Mwiinga, Typist
Mrs M Kilembe, Personal Secretary II
Mr M Kantumoya, Parliamentary Messenger