



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON AGRICULTURE, LANDS AND NATURAL RESOURCES ON THE
TOBACCO BILL, N.A.B. NO. 10 OF 2022**

FOR THE

FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON AGRICULTURE, LANDS AND NATURAL RESOURCES ON THE CONSIDERATION OF THE TOBACCO BILL, N.A.B. NO. 10 OF 2022 FOR THE FIRST SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Mr Kasauta S Michelo, MP, (Chairperson); Mrs Maureen Mabonga, MP, (Vice Chairperson); Mr Mayungo Simushi, MP; Mr Yotam Mtayachalo, MP; Mr Mweemba Malambo, MP; Mr Machila Jamba, MP; Mr Nickson Chilangwa, MP; Mr Ronald K Chitotela, MP; Dr Kabwe T Chewe, MP; and Mr Andrew Tayengwa, MP.

The Honourable Madam Speaker
National Assembly
Parliament Buildings
LUSAKA

Madam

The Committee has the honour to present its Report on the Tobacco Bill, N.A.B No. 10 of 2022, for the First Session of the Thirteenth National Assembly referred to it by the House on Thursday, 7th July, 2022.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are set out in Standing Orders No. 197 (a) and 198 of the National Assembly of Zambia Standing Orders, 2021.

3.0 MEETINGS OF COMMITTEE

The Committee held eight meetings to consider the Tobacco Bill, N.A.B No. 10 of 2022.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to fully appreciate the ramifications of the Bill, the Committee requested written submissions from various stakeholders. The stakeholders were further requested to appear before the Committee to orally brief it on the contents of their written memoranda and to clarify issues that may arise from the presentations. The list of witnesses who appeared before the Committee is at Appendix II of this Report.

5.0 BACKGROUND TO THE BILL

The *Tobacco Act, Chapter 237 of the Laws of Zambia* is the primary legislation regulating tobacco promotion, control and regulation of the production, marketing, packing, import, export and research in Zambia. Further, the *Tobacco Levy Act, Chapter 238 of the Laws of Zambia* regulates issues of tobacco levy in the country. These Acts were enacted in 1967 and had become

archaic to govern the tobacco industry effectively. Therefore, the Government recognised the need to conform the law to the advancements that had been made in the industry with regard to technology and practice, as well as to incorporate the private sector and the marketing of non-auctionable tobacco. Additionally, there was need to align the legal framework with international best practice.

In view of the foregoing, the Government introduced the Tobacco Bill, 2022 (hereinafter referred to as ‘the Bill’). The Bill provided for, among others, the promotion, regulation and monitoring of the production, marketing and packing of tobacco in the Republic and the regulation of the importation of tobacco into the Republic.

6.0 OBJECTS OF THE BILL

The objects of this Bill were to:

- (a) provide for the promotion, regulation and monitoring of the production, marketing and packing of tobacco in the Republic;
- (b) provide for the regulation of the import of tobacco to the Republic;
- (c) continue the existence of the Tobacco Board of Zambia and re-define its functions;
- (d) re-constitute the composition of the Board and revise the Board functions;
- (e) provide for the imposition and collection of a levy on tobacco grown in the Republic;
- (f) repeal and replace the *Tobacco Act, 1967* and the *Tobacco Levy Act, 1967*; and
- (g) provide for matters connected with, or incidental to, the foregoing.

7.0 SALIENT PROVISIONS OF THE BILL

7.1 PART I Preliminary Provisions

Clause 1 – Short title and commencement

This clause sought to provide for the short title and date of commencement of the Bill.

Clause 2 – Interpretation

The clause provided for the definition section, which defined various words and phrases used in the Bill in order to make the law easier to understand.

7.2 PART II Tobacco Board of Zambia

Clause 3 – Continuation of Tobacco Board of Zambia

The clause sought to provide for the continued existence of the Tobacco Board of Zambia which was established under the repealed Act as a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name.

Clause 4 – Functions of Tobacco Board of Zambia

This clause set out the functions of the Tobacco Board of Zambia which, among others, were to promote, protect and maintain the production, sale, preparation for subsequent use and export of tobacco grown in Zambia; carry out tobacco research and ensure quality standards of tobacco as approved by the Zambia Bureau of Standards provide and operate services and other facilities

that may be necessary for the tobacco industry; and advise the Minister on matters relating to tobacco.

Clause 5 – Establishment of Board

This clause provided for the constitution of the Board of the Tobacco Board of Zambia which would consist of nine part-time members. Additionally, the clause sought to empower the Minister to appoint the Chairperson of the Board, from among the members of the Board, and empowered the members to elect the Vice-Chairperson, from among themselves.

Clause 6 – Functions of Board

This clause provided for the functions of the Board including the general function, which was to provide strategic policy direction to the Tobacco Board of Zambia.

Clause 7 – Delegation of functions

This clause provided for the delegation of functions by the Board to the Executive Director. Additionally, the clause empowered the Minister to give to the Board, general or specific directions that were consistent with the provisions of the Act, relating to the performance of its functions.

Clause 8 – Executive Director, Secretary and other staff

This clause empowered the Board to appoint the Executive Director, who would be responsible of the day-to-day administration of the affairs of the Tobacco Board of Zambia and to appoint the Secretary, inspectors and other staff of the Tobacco Board of Zambia that were necessary for the performance of its functions.

7.3 PART III Registration of Growers

Clause 9 – Prohibition of growing tobacco without certificate

The clause prohibited the growing of tobacco without a certificate of registration issued under the Act, and further provided a penalty for a person who contravened the clause.

Clause 10 – Registration of growers

This clause obligated a person who intended to grow tobacco to apply for registration as a grower with the Tobacco Board of Zambia. Additionally, the clause empowered the Minister to prescribe, by statutory instrument, the duration of registration of classes of tobacco and other matters relating to the registration of growers.

Clause 11 – Application by co-operative

This clause required a co-operative that intended to grow tobacco to apply for registration as a grower to the Tobacco Board of Zambia.

Clause 12 – Allotment of registered number to grower

The clause mandated the Executive Director to allot a registered number to each grower for each class of tobacco to be grown by them in each season, and prohibited the transferability of that registered allotted number.

Clause 13 – Prohibition against disclosure of allotment number

The clause prohibited a person from disclosing to another person the number allotted to the grower under clause 12. Further, it provided a penalty for a person who contravened the provisions of this clause.

Clause 14 – Suspension or revocation of registration

This clause sought to permit the Tobacco Board of Zambia to suspend or revoke a certificate of registration in an instance where the holder of the certificate of registration contravened a provision of the Act, or in the public interest, among other things. The clause further mandated the Tobacco Board of Zambia to notify the holder of the certificate of registration of the intention to suspend or revoke the certificate of registration. The clause required a holder of a certificate of registration to surrender it to the Tobacco Board of Zambia where that certificate was revoked.

Clause 15 – Duration of certificate of registration

This clause provided for the period of validity of a certificate of registration and the conditions for its renewal.

Clause 16 – Returns by grower

The clause required a grower to submit a return relating to their tobacco to the Executive Director in a prescribed manner and form.

Clause 17 – Register of growers

This clause mandated the Tobacco Board of Zambia to cause to be kept, by the Secretary at the offices of the Tobacco Board of Zambia, a register of growers. The clause further required the register to be open for inspection by members of the public during office hours, on payment of a fee that was to be determined by the Tobacco Board of Zambia.

7.4 PART IV Licensing Graders, Buyers and Sales Floors

Clause 18 – Prohibition to grade, buy or use premises to sell tobacco without licence

This clause prohibited a person from carrying on business as a grader or buyer, or to use any premises as a sales floor for the sale of tobacco, without a licence issued under the Act. The clause also set out the penalty for a person who contravened these provisions.

Clause 19 – Application to operate as grader, buyer or use premises to sell tobacco

This clause required a person who intended to carry on business as a grader or buyer, or to use any premises as a sales floor for the sale of tobacco, to apply for a licence to the Tobacco Board of Zambia. The clause further set out the procedure for issuing the licence and permitted the Minister to prescribe the licensed sales floor where a buyer may buy tobacco.

Clause 20 – Suspension or revocation of licence

This clause sought to permit the Tobacco Board of Zambia to suspend or revoke a licence issued and set out the conditions upon which the licence may be suspended or revoked. Additionally, the clause mandated the Tobacco Board of Zambia to notify the holder of the licence of its intention to suspend or revoke the licence.

Clause 21 – Period of validity of licence

This clause sought to set out the period of validity of a licence issued by the Tobacco Board of Zambia.

Clause 22 – Renewal of licence

This clause provided for the procedure for renewal of a licence where the licence had expired, and the procedure for the approval or rejection of an application for renewal.

Clause 23 – Exemption to use sales floor without licence

The clause sought to exempt the Tobacco Board of Zambia from the requirement to obtain a licence to use any premises as a sales floor for the sale of tobacco.

7.5 PART V Sale of Tobacco**Clause 24 – Prohibition of buying or selling at an unlicensed sales floor**

This clause prohibited the selling or buying of saleable tobacco on an unlicensed sales floor and set out the penalty for a person who contravened these provisions. The clause further provided for exemptions to these provisions.

Clause 25 – Marking of bales of saleable tobacco

This clause required a grower of saleable tobacco to mark their bales of saleable tobacco in a manner as would be prescribed. The clause further prohibited a grower from delivering for sale to a licensed sales floor, a bale of saleable tobacco which they grew and was marked with a number other than that allotted to them; or which was not grown by them and was marked with their allotted number.

Clause 26 – Holder of sales floor licence to sell tobacco of grower

This clause prohibited a holder of a sales floor licence from selling or permitting the sale of saleable tobacco which was grown in the Republic on the sales floor, unless the tobacco was grown and was delivered by, or on behalf of, a grower. It also set out the penalty for a person who contravened these provisions.

Clause 27 – Delivery in excess of marketing quota

This clause sought to prohibit a grower from delivering or causing to be delivered, saleable tobacco to a licensed sales floor in excess of the marketing quota.

Clause 28 – Import of saleable tobacco for sale in Republic

This clause prohibited a person from importing saleable tobacco that was not grown in the Republic for sale in the Republic and set out the penalty for a person who contravened these provisions. The clause further sought to give the Minister, by statutory instrument, the power to prescribe which tobacco could be imported.

Clause 29 – Duties of holder of licence of sales floor on sale of imported saleable tobacco

This clause required a holder of a sales floor licence or an agent of a holder of a sales floor licence, to publicly announce, before the sale, the name of the country from which the tobacco that was to be sold on that licensed sales floor, was grown.

Clause 30 – Sale of saleable tobacco grown in earlier season

The clause permitted a grower who held a permit issued under section 28 by the Tobacco Board of Zambia to sell saleable tobacco from any selling season, upon clearance by an inspector appointed under the *Plant Pests and Diseases Act, Chapter 233 of the Laws of Zambia*.

Clause 31 – Saleable tobacco to be sold on sales days in the selling season

This clause sought to prohibit a person from selling, or permitting the sale of, saleable tobacco on any licensed sales floor during unauthorised times. The clause also set out the penalty for a person who contravention of these provisions.

Clause 32 – Weighing, selling and commission charges of holder of sales floor licence

This clause permitted the Tobacco Board of Zambia, with the approval of the Minister and on the application of a holder of a sales floor licence, to authorise the holder of a sales floor licence to deduct charges from the purchase price of the tobacco.

Clause 33 – Deductions from purchase price of saleable tobacco

This clause provided that a buyer of saleable tobacco on a licensed sales floor should pay the purchase price of the tobacco to the holder of the sales floor licence on whose sales floor the tobacco was sold.

Clause 34 – Notice to remove tobacco from licensed sales floor

This clause empowered the Tobacco Board of Zambia to give notice, in writing, to a grower of the saleable tobacco to remove the tobacco which remained unsold on a licensed sales floor, after the last day of the selling season.

Clause 35 – Tobacco Board of Zambia to dispose of surplus or unsold tobacco

This clause permitted the Tobacco Board of Zambia to dispose of, destroy, cause to be destroyed, or order the disposal or destruction of the surplus or unsold tobacco at the end of a selling season.

Clause 36 – Appointment and functions of sales supervisors

This clause mandated the Board to appoint sales supervisors for the supervision of sales of tobacco on licensed sales floors.

Clause 37 – Saleable tobacco by auction

This clause sought to give the Minister by statutory instrument, the power to prescribe the manner of sale of saleable tobacco by auction.

Clause 38 – Prohibition against manufacture or keeping of saleable tobacco not sold on licensed sales floor

The clause prohibited a person, without the authority of the Minister, from manufacturing saleable tobacco, whether for sale as manufactured tobacco or otherwise; or from keeping saleable tobacco in their possession or control, for the purposes of manufacture and sale whether as manufactured tobacco or in other form. The clause also set out the penalty for a person who contravened these provisions.

7.6 PART VI Prescribed Varieties of Tobacco

Clause 39 – Variety of tobacco to be grown or sold

This clause granted power to the Minister, in consultation with the Tobacco Board of Zambia, to prescribe any specific variety of tobacco which may be grown or sold in the Republic.

Clause 40 – Prohibition against growing or selling tobacco not of prescribed variety

The clause prohibited the growing or selling of Tobacco which was not prescribed and set out the penalty for a person who contravened the provisions of this clause.

7.7 PART VII Inspectorate

Clause 41 – Inspectors

This clause provided for the appointment of inspectors by the Tobacco Board of Zambia to ensure compliance with the provisions of the Act.

Clause 42 – Powers of Inspectors

This clause provided for the powers of inspectors.

Clause 43 – Arrest without warrant

The clause provided for the arrest of a person without a warrant, by a law enforcement officer in an instance where the inspector had reasonable grounds to believe that the person had committed an offence, or was about to commit an offence.

Clause 44 – Seizure of property

This clause sought to mandate a law enforcement officer to seize and detain property which the inspector had reason to believe was used to commit an offence under the Act, until an order of the court was made regarding the disposal of such property.

Clause 45 – Restoration of property

This clause obligated a law enforcement officer to restore a seized article or seized property to a person who was found not guilty; or where the proceedings against that person were withdrawn.

7.8 PART VIII Tobacco Levy

Clause 46 – Leviable tobacco

This clause empowered the Minister, in consultation with the Tobacco Board of Zambia, to prescribe any class of tobacco as leviable tobacco.

Clause 47 – Imposition of levy

This clause provided for the imposition of a levy on all leviable tobacco grown and sold in the Republic, at the rate prescribed by the Minister by Statutory Instrument.

Clause 48 – Payment of levy

This clause sought to provide for a grower to pay a levy imposed under the Act to the Tobacco Board of Zambia on leviable tobacco sold by that grower or on their behalf. The clause also imposed a penalty on a person who contravened these provisions.

Clause 49 – Collection and remittance of levy

The clause empowered the Minister to prescribe regulations regarding, among other things, persons who should be responsible for the provision of data, information and returns on sales of leviable tobacco, and collection and remittance of the levy.

7.9 PART IX Tobacco Levy Fund**Clause 50 – Establishment of Fund**

This clause provided for the establishment of the Tobacco Levy Fund.

Clause 51 – Administration of Fund and accounts

This clause empowered the Minister, on the recommendation of the Tobacco Board of Zambia, to prescribe regulations regarding the administration and management of the Fund, among other things.

Clause 52 – Annual report

This clause made it a requirement for the Tobacco Board of Zambia to submit to the Minister, a report concerning the activities relating to the Fund during the financial year.

7.10 PART X General Provisions**Clause 53 – Appeals**

This clause provided for a person aggrieved with a decision of the Tobacco Board of Zambia to appeal, in writing, to the Minister. Further, the clause allowed a person who was aggrieved with the decision of the Minister to appeal to the High Court.

Clause 54 – Establishment of pool

This clause provided for the establishment of a pool within the Republic by the Tobacco Board of Zambia. This would be a centre where surplus tobacco would be delivered and would be established with the approval of the Minister.

Clause 55 – General offences

This clause sought to provide for general offences.

Clause 56 – General Penalty

This clause provided for the general penalty for a person who committed an offence for which a penalty was not provided.

Clause 57 – Regulations

This clause sought to empower the Minister to make regulations for the better carrying out of the provisions of this Act.

Clause 58 – Repeal of Chapter 237 and Chapter 238 of the Laws of Zambia

This clause sought to provide for the repeal of the *Tobacco Act, 1967* and the *Tobacco Levy Act, 1967* and provided for the savings and transitional arrangements.

8.0 STAKEHOLDER’S SUBMISSIONS AND CONCERNS

While a few stakeholders who appeared before the Committee supported the Tobacco Bill, N.A.B No. 10 of 2022, the majority of the stakeholders did not support the Bill. They stated that the Bill did not reflect a number of the provisions that were agreed upon during the consultative process on the Bill. Further, some stakeholders expressed concern that the validation meeting that should have taken place between the Ministry of Agriculture and various stakeholders in the tobacco industry did not take place. The meeting was meant to agree on a number of provisions which should have appeared in the draft Bill before being submitted to Parliament. Stakeholders submitted to the Committee that a good law was one that was a product of consensus and should never be seen to be dividing the parties concerned. In light of the above, the majority of the stakeholders supported the Bill subject to various amendments as outlined hereunder.

Clause 4 – Functions of the Tobacco Board of Zambia

The majority of stakeholders expressed their concern on the excessive functions of the Tobacco Board of Zambia (TBZ) as provided under clause 4 of the Bill, which entitled it to act as referee and player at the same time. Some stakeholders informed the Committee that while the TBZ was a regulator in the Bill, it was given functions of promoting tobacco production, buying of tobacco (clause 4 (g) of the Bill) and operating of buying floors, among others. Some stakeholders were of the view that if the same institution that registered and monitored buyers and buying floor operators actively participated in the same business, this had potential to create some conflict of interest. Some stakeholders were of the view that the functions of TBZ should only be limited to being a regulator.

Some stakeholders noted that clause 4 (c) of the Bill mandated TBZ to perform the function of research on tobacco to ensure quality standards of tobacco. In light of the above, some stakeholders informed the Committee that this function was a specialised one which could only be efficiently carried out by a specialised committee.

Some stakeholders informed the Committee that the function under clause 4 (g) of the Bill, which allowed TBZ to buy tobacco in consultation with the Minister if it was in the best interest of the tobacco industry to buy that tobacco, had the potential to lead to unregulated over production or side marketing of tobacco. Stakeholders added that the removal of this function eliminated the possibility of surplus production as all contracted growers were given volumes with guaranteed market.

Clause 5 – Establishment of the Board

The Committee was informed that while growers were represented on the Board as established under clause 5 (1) of the Bill, the buyers were not. It was suggested that there was need to have two buyers to sit on the Board as crop production was private sector financed. Some stakeholders were of the view that it was not correct to exclude the financier from policy formulation and that buyers also needed to be represented on the Board.

On the composition of the Board, a number of stakeholders submitted that the Board was a policy making organ, which needed to have expert persons who were knowledgeable in the subject at hand. In view of the above, some stakeholders submitted that in providing for the composition of the Board, the Bill should expressly indicate that such members should be experts that were knowledgeable in tobacco matters.

In terms of clause 5 (e) of the Bill, which distinguished between a small-scale tobacco grower and a large-scale tobacco grower, some stakeholders informed the Committee that such a distinction should not be in the law but by appointment as it showed discrimination.

Further, on clause 5 (e) of the Bill, some stakeholders informed the Committee that the provision was too open ended, suggesting that the representative may be chosen at the Board's discretion. Stakeholders, therefore, proposed that clause 5 (e) should emphasise that the representative should be elected from an entity that promoted governance, in order to promote institutional agenda for the good of all.

Some stakeholders informed the Committee that the express exclusion of non-citizens under clause 5 (5) (a) of the Bill from the Board, might deprive the Board of the important know how and experience in the tobacco industry. In view of this, it was proposed that "not a citizen" should be replaced with "not a resident".

Clause 10 – Registration of growers

The Bill defined "grower" as a person who was registered to grow tobacco for purposes of sale, or a person who was considered to be a grower under Part III; and "tobacco" as unmanufactured tobacco including tobacco stems of a class prescribed by the Minister under clause 39. In view of these definitions, stakeholders contended that clause 9 of the Bill had failed to recognise the fact that there were subsistence farmers who might want to grow tobacco not for sale, but for domestic use. They proposed that there was need for clause 9 to expressly show that it was meant to bind growers that were growing tobacco for purposes of sale. Some stakeholders expressed worry that clause 9 prohibited any person from growing tobacco without a certificate of registration. They submitted that this would negatively affect subsistence farmers who grew tobacco for domestic use, and proposed that there was need for the Bill to expressly indicate that the various provisions in the Bill were meant to apply to commercial farmers and not subsistence farmers in tobacco industry.

Some stakeholders also informed the Committee that the marginal note for clause 10, read "registration of growers." However, the wording under clause 10 read in part "a person who intends to grow tobacco shall apply to the Tobacco Board of Zambia for registration as a grower.....". Some stakeholders contended that the express meaning of clause 10 was that

tobacco could only be grown by a person who had registered as a grower, when in fact not all persons who grew tobacco were defined as growers.

Clause 11 – Application by a cooperative

Some stakeholders were concerned that the provision under clause 11 of the Bill required a cooperative to register as a grower. They stated that registering a cooperative as the grower would present challenges of accountability, submission of returns for the individual farms, and traceability of the grown tobacco, as it would be marketed as coming from one grower yet actually coming from varied individual fields. In light of this, stakeholders submitted that clause 11 should be deleted and registration of cooperatives be provided for under the regulations, which should stipulate how a cooperative and its members should be registered

Clause 15 – Duration of certificate of registration

Some stakeholders informed the Committee that clause 15, which provided for one-year as the duration of the validity of certificate of registration contradicted clause 10 (5) (c) which gave the Minister discretion to prescribe the duration of registration. Stakeholders were of the view that this contradiction affected the certainty of the provision. Further, some stakeholders informed the Committee that the one-year validity of a grower's certificate of registration under clause 15 of the Bill, was too short a period for a grower to effectively manage to put in place all necessary measures, such as building of infrastructure before growing tobacco.

Some stakeholders submitted that a certificate of registration should be valid for three years, and should attract payment of an annual prescribed fee and submission of returns. They further submitted that where a registered grower failed to pay the annual prescribed fee, within the prescribed period, the Board should suspend the certificate.

Clause 16 – Returns by grower

Most of the stakeholders who interacted with the Committee submitted that during the last consultative meeting on the Bill, it was agreed that the specifics under clause 16(2) of the Bill, that is, what the returns should include, should be deleted and instead be provided for under the regulations. Stakeholders were, however, concerned that this had not been effected.

Clause 18 – Licensing graders, buyers and sales floors

Some stakeholders informed the Committee that clause 18 of the Bill, was not clear on the criteria upon which an application for a license, certificate or authorisation may be granted, rejected, suspended, amended, transferred or revoked. Stakeholders submitted that this was against section (4) (2) (b) of the *Business Regulatory Act, No. 3 of 2014*, which required that the criteria for the grant, rejection, suspension, amendment, transfer or revocation of certificates and licenses should be specified. Thus, stakeholders were of the view that the criteria should be clearly set out in the Bill as not doing so left it open to the Board to make uninformed decisions based on discretion. Further, the stakeholders added that if this provision was to come into force after the Bill was enacted, it would be subject to the section 3(3) of the *Business Regulatory Act*, which prevailed over it.

Clause 20 – Suspension or revocation of licence

Most of the stakeholders who appeared before the Committee expressed dissatisfaction with clause 20(2) of the Bill, which provided that the Tobacco Board may suspend or revoke a licence in public interest. Stakeholders stated that it was unclear what was meant by “public interest”. They added that this had the potential to justify decisions not made on genuine reasons affecting the risk that the licensing regime was intended to address. Some stakeholders proposed that the clause must be entirely removed. They added that the Black’s Law dictionary defined public interest as “*Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected*”. Some stakeholders added that public interest did not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question.

Some stakeholders also noted that clause 20 (7) of the Bill provided that a revoked license was to be surrendered to the Board of the Tobacco Board of Zambia subject to conditions that were set by them. Stakeholders submitted that these conditions were not specified, thereby giving a high level of discretion to the Board. Stakeholders were of the view that conditions under which either of the actions could be warranted should be specified.

Part III – Operation of floors by the Tobacco Board of Zambia and Exemption of the Tobacco Board

Most of the stakeholders who interacted with the Committee were concerned that clause 23 (1) of the Bill gave the Tobacco Board of Zambia the mandate to operate floors for the sale of tobacco without a licence, whereas at the same time they were regulators. Stakeholders submitted that this made the Tobacco Board of Zambia both a player and referee. Stakeholders were of the view that as a regulator, the Tobacco Board of Zambia should not operate a floor. This was because this might give the Tobacco Board of Zambia unfair advantage over other sales floor operators whom they should regulate. Some stakeholders informed the Committee that clause 23 (1) would create undue competition and give room for suppression of the private players in the industry whom TBZ licensed and yet were its competitors as well.

Stakeholders further informed the Committee that clause 23 (2) of the Bill mandated the Tobacco Board of Zambia to buy tobacco on floors they operated, which were exempt from licensing. They contended that all tobacco purchases in the country should be done on a licensed floor in order to uphold transparency, accountability, and traceability of the crop, according to international standards, and that the exemption should not be entertained in the law.

Clause 24 – Prohibition of buying or selling at unlicensed sales floor

The Committee was informed that clause 24 (2) (d) of the Bill provided for the Tobacco Board of Zambia to buy and sell tobacco under certain circumstances. However, there was no clarity as to what circumstances warranted such sale and purchase. Most of the stakeholders submitted that this contradicted what was stated in the preamble and clause 4 of the Bill, which provided for regulatory rather than operational functions of the Board. The Committee was informed that as a regulator, the Tobacco Board of Zambia should not purchase or sale Tobacco. They further proposed that clause 24 (2) (d) must be deleted.

Clause 27 – Delivery in excess of marketing quota

Stakeholders informed the Committee that clause 27 of the Bill was mixing up two terms, that is, the production/delivery quota and the marketing quota. Stakeholders submitted that what was being referred to, under this clause, was a production quota which was a business transaction between a grower and a buyer/financier. Stakeholders submitted that the Tobacco Board of Zambia should be informed by the floor operator/financier/sponsor when this occurred and a decision to be made when and if the buyer could not purchase the extra volume. In view of the above, stakeholders submitted that clause 27 of the Bill must be recast.

Clause 32 – Weighing, selling and commission charges of holder of sales floor licence

Some stakeholders informed the Committee that clause 32 (2) (b) (i) was more like introducing price controls, which was contrary to the *Competition and Consumer Protection Act, No. 24 of 2010*, which prohibited price fixing and ambiguity. They suggested that clause 32 (2) (b) should be rewritten or deleted. Stakeholders further raised concern on the methodology that would be used to determine “appropriate charges” under this clause. Some stakeholders submitted that there was need to preserve parties’ freedom of contract and therefore, suggested that clause 32 (2) (b) (i) and (ii) of the Bill should be deleted

Some stakeholders informed the Committee that under clause 32 (3) of the Bill, a holder of a sales floor licence was to grant the grower a rebate of the charges after completion of sales. They were of the view that this should be removed as it was a business practice and not something to be legislated as it infringed on freedom to contract.

Clause 33 – Deductions from purchase price of saleable tobacco

Some stakeholders informed the Committee that the requirement under clause 33 (1) of the Bill that the buyer should pay the purchase price of tobacco to the sales floor license holder increased the costs of doing business and reduced returns of the growers. Stakeholders proposed that this clause should be deleted as it contravened the *Business Regulatory Act, No. 3 of 2014*, whose intent was to reduce the cost of doing business.

Clause 34 – Notice to remove tobacco from licensed sales floor

Some stakeholders informed the Committee that clause 34 (1) was copied from “Auction Tobacco” that is where farmers themselves sell tobacco, which was not applicable in Zambia as the country was a non-auction market. Stakeholders therefore, proposed the logical sequence of events set out hereunder.

- (i) Floor operator/buyer to inform the grower/seller to collect un-bought tobacco, the Tobacco Board of Zambia must be informed.
- (ii) If the grower/seller did not collect within agreed/allowed period, the floor operator/buyer was to notify the Tobacco Board of Zambia and seek approval to dispose.
- (iii) The Tobacco Board of Zambia had to instruct the floor operator/buyer to destroy or dispose of the tobacco without payment of compensation to the grower/owner.

Some stakeholders informed the Committee that under clause 34 (2) of the Bill, failure to remove unsold tobacco within the period specified was an offence, they contended that a forfeiture of the tobacco was a better action in this case. Further, stakeholders submitted that the Tobacco Board of Zambia could also instruct the floor operator/buyer to destroy or dispose of the tobacco without payment of compensation to the grower/owner.

Some stakeholders informed the Committee that under clause 34 (3) of the Bill, the Tobacco Board of Zambia was mandated to confiscate the tobacco and dispose of, or destroy it where a grower of saleable tobacco failed to remove it within the period specified in the notice.

In view of the above, some stakeholders informed the Committee that the Tobacco Board of Zambia should only authorise the floor operator to dispose of the unclaimed tobacco. Stakeholders stated that the disposal of excess tobacco should not be vested in Tobacco Board of Zambia but floor operator upon notifying the Tobacco Board of Zambia.

Clause 35 – Tobacco Board of Zambia to dispose of surplus or unsold tobacco

Some stakeholders were concerned that clause 35 of the Bill, lacked clarity on the difference between surplus and/or unsold tobacco, as the two were not defined in the definition section of the Bill. They proposed that the definitions of surplus tobacco and unsaleable tobacco should be provided in the interpretation clause of the Bill.

Clause 35 – Appointment and functions of sales supervisors

Some stakeholders informed the Committee that clause 36 (2) (c) of the Bill gave the sales supervisor power to suspend or prohibit the sale of tobacco if the provisions of the Act were not complied with. Stakeholders submitted that the problem with this was that the sales supervisor determined the period of such suspension and there was no recourse to challenge the sales supervisor's decision. Further, the right to be heard was not observed. Stakeholders informed the Committee that under clause 53, a person aggrieved by a decision of the Tobacco Board of Zambia had an option to challenge such a decision. However, the Bill was silent on challenging the decision of a supervisor, and it was uncertain if the decision of the supervisor could be construed to be that of the Tobacco Board of Zambia.

In light of the above, stakeholders proposed that clause 32 (2) (c) of the Bill should prescribe a period for suspension or at the very least, the maximum period that could not be exceeded, and also include a provision for challenging the decision of the sales supervisor.

Clause 39 – Variety of tobacco to be grown or sold

Some stakeholders informed the Committee that clause 39 (1) of the Bill provided that subject to the *Plant and Variety and Seeds Act, Chapter 236 of the Laws of Zambia*, the Minister may, in consultation with the Tobacco Board of Zambia, prescribe any specific variety of tobacco, which may be grown or sold in the Republic. However, clause 39 (2) introduced discretion in the law.

In light of the above, some stakeholders submitted that tobacco grown in the country was mostly for the export market, which needed strict and specific requirements regarding varieties and chemical composition.

Some stakeholders were concerned that clause 39 (2) of the Bill left the door open for possible tainting of the Zambian crop on the international market. They submitted that issues of varieties should be driven by industry and market requirements and therefore, proposed that clause 39 (2) of the Bill should be deleted.

Clause 40 – Prohibition against growing or selling tobacco not of prescribed variety

Some stakeholders informed the Committee that the provisions under clause 40 of the Bill, were already taken care of by the Seed Control and Certification Institute (SCCI), which was provided for under the *Plant Variety and Seeds Act, Chapter 236 of the Laws of Zambia*. Stakeholders were of the view that this clause must be deleted from the Bill.

Clause 41 – Inspectorate

Some stakeholders informed the Committee that the role of a tobacco inspector under Part VII of the Bill was that of an agronomist, which primarily focused on compliance with tobacco seedlings, tobacco barns, tobacco sheds, and field inspections to check compliance on agreed agricultural practices, that is, prescribed seed varieties and field hygiene among others. Some stakeholders informed the Committee that there were specialised institutions that currently provided oversight duties as experts in these fields for the industry and recognised under the Tobacco Act. These were the:

1. Seed Control and Certification Institute – for seed;
2. Phytosanitary Department - inspection and treatment from harmful pests and plant diseases;
3. *Factories Act*- buildings and structures
4. Zambia Police and courts of law- warrants of arrest were the preserve of police and courts of law; and
5. Anti-Corruption Commission –issues of corruption.

In view of the above, some stakeholders were of the view that the entire Part VII, which provided for the Inspectorate and Powers of Inspectors should be deleted and recast as was discussed and agreed in the last consultative meeting on the Bill. Further, it was submitted that there was need for Part VII of the Bill to reflect the job of the tobacco inspector, which was typically that the inspector was an agronomist and should work to enforce the objects of the Tobacco Board of Zambia.

Clause 43 – Arrest without warrant

The Committee was informed that under clause 43 of the Bill, the law provided that a law enforcement officer had discretion to arrest a person without a warrant, where the inspector had reasonable grounds to believe that the person had committed an offence under the Act; or was about to commit an offence under the Act; and there was no other way to prevent the commission of the offence. In light of the above, some stakeholders expressed concern on the meaning of ‘enforcement officer’ as it was not defined under the Act. Further, some stakeholders were of the view that an inspector, whose qualifications and level of training was not known, could not be allowed to act on mere suspicion and was not well placed to undertake the functions under clause 43 and, therefore, it must be deleted from the Bill.

Clause 47 – Imposition of levy

Some stakeholders informed the Committee that clause 47 of the Bill provided that subject to the provisions of the Act, a levy would be imposed on all leviable tobacco grown and sold in Zambia, at the rate prescribed by the Minister, by statutory instrument.

In view of the above, some stakeholders informed the Committee that the imposition of this levy, should be done in consultation with the tobacco industry as the key object of the Fund was to develop the industry, particularly benefiting the growers. This was akin to the situation prevailing under the Forestry Department where projects benefitting the public were financed by payments made in respect of fees paid. Further, the Committee was informed that the rate of the levy should be as a result of a detailed cost analysis.

Punitive measures for growers in the Bill

The Committee was informed that there were a number of punitive measures in the Bill targeted at the growers as compared to other players, which also included the TBZ, which seemingly had no provisions that provided for punitive measures against it. The Committee was also informed that the Bill also did not have punitive measures for the inspectors as much as it had provided for the growers. For example, the penalty for growers contravening payment of the levy under clause 48 (2) of the Bill, seemed to be more severe than the penalty for levy collectors who contravened remittance of levies under clause 49 (3). Stakeholders contended that the above scenario suggested that the proposed law seemed to be relatively more punitive against growers. Some stakeholders also expressed concern that there were too many punitive and not enough regulatory measures against the growers, for matters that could be rectified. This had the potential to knock out a number of growers from the industry. Stakeholders submitted that this could potentially influence participation of growers in tobacco production and it was suggested that the many punitive measures in the Bill needed to be reviewed.

Clause 51 – Administration of Fund and accounts

The Committee was informed that clause 51 (1) (a) gave powers to the Minister to consult only the Tobacco Board of Zambia on the management and usage of tobacco levy fund and exempted other key stakeholders such as growers and buyers. The Committee was further informed that the key object of the fund was to develop the tobacco industry, particularly benefiting the growers in the areas where the tobacco was grown. Stakeholders proposed that in order not to limit consultation to the Tobacco Board of Zambia alone, there should be a proviso in the Bill for consultation of key stakeholders who had vested interests in the tobacco industry.

Clause 53 – Appeals

Some stakeholders informed the Committee that clause 53 did not give a timeframe under which a Minister could review a complaint. Some stakeholders informed the Committee that there was need for this to be specified in the Bill.

9.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

While noting the submissions by stakeholders, the Committee supports the Bill, subject to amendments. The Committee, therefore, strongly urges the Government to seriously consider the recommendations of the Committee as set out hereunder.

- i. The Committee observes that majority of the stakeholders who appeared before it, did not support the Bill in its current form, as they observed that the Bill does not conclusively include a number of concerns from various stakeholders, that were agreed upon during the consultative process. Some stakeholders also lamented the fact that the validation meeting which should have been conducted before the Bill was submitted to Parliament was not held.

In view of the above, the Committee recommends that the Government should consider issues raised by stakeholders.

- ii. The Committee observes that from the oral submissions received from the Tobacco Board of Zambia and from the Ministry of Agriculture through the Permanent Secretary, this Bill is meant to regulate or apply to the farmers that grow tobacco meant for export. The Committee further observes that the wording under clause 9 (1) of the Bill reads that: “a person shall not grow tobacco without a certificate of registration issued under this Act”. The Committee also observes that this provision has not provided any exceptions at all.

In light of the above, the Committee urges the Government to expressly provide that the provision in clause 9 (1) is only meant to apply to those farmers growing tobacco for the purpose of export and not for local subsistence farmers who grow tobacco for local use.

- iii. The Committee observes that while growers are represented on the Board, the buyers are not. The Committee in agreeing with the stakeholders’ submission on this issue recommends that there is need to include two private persons with interest in the tobacco industry to sit on the Board.
- iv. The Committee observes that one of the functions of the TBZ under clause 4 (c) of the Bill is to carry out tobacco research and ensure quality standards of tobacco as approved by the Zambia Bureau of Standards.

The Committee recommends that this function should be carried out by a specialised committee, in consultation with other already existing research institutes in Zambia, and not the Board.

- v. The Committee observes that there is an express exclusion of non-citizens under clause 5 (5) (a) of the Bill to be part of the Board. The Committee notes that this may deprive the Board of important know how.

The Committee recommends that the phrase “not a citizen” should be replaced with “not a resident”.

- vi. The Committee observes that the marginal note for clause 10, reads “registration of growers”. However, the wording in clause 10 reads in part “a person who intends to grow tobacco shall apply to the Tobacco Board of Zambia for registration as a grower”. The Committee notes that the express meaning of clause 10 in its current form is that tobacco

can only be grown by a person who has registered as a grower, when in fact not all persons who grow tobacco are defined as growers.

In view of the above, the Committee recommends that there is need to harmonise the marginal note and clause 10 to indicate that this only applied to growers and not any person.

- vii. The Committee notes that clause 11 of the Bill requires a cooperative to register as a grower. The Committee agrees with stakeholders that registering a cooperative as a grower will present challenges of accountability, submission of returns for the individual farms, and traceability of the grown tobacco as it will be marketed as coming from one grower yet actually coming from varied individual fields.

In light of the above, the Committee recommends that clause 11 should be deleted and taken to the regulations, so that the rules and regulations shall stipulate how a cooperative and its members shall be registered.

- viii. The Committee observes that clause 15 of the Bill, which provides for one-year as the duration of certificate of registration contradicts clause 10 (5) (c) of the Bill, which gives the Minister the discretion to prescribe the duration of registration. The Committee is of the view that this contradiction will affect the certainty of the provision and, therefore, recommends that the two provisions should be harmonised.

- ix. The Committee observes that the one-year validity of a grower's certificate of registration under clause 15 of the Bill, is too short a period for a grower to effectively manage to put in place all necessary measures that a grower requires to put in place before growing tobacco, such as building of infrastructure. In view of the above, the Committee recommends that a certificate of registration should be valid for three years, but that it should attract payment of an annual subscribed fee and submission of returns.

- x. The Committee observes from the submissions of most of the stakeholders that during the last consultative meeting concerning the Bill, it was agreed that the detail specifications under clause 16 (2) of the Bill, that is, what the returns should include, was agreed that they will be taken out of the law and be included in the regulations. The Committee recommends that this is complied with as it was agreed upon.

- xi. The Committee observes that under clause 18 of the Bill, there is no clarity on the criterion on how an application for a license, certificate or authorisation may be granted, rejected, suspended, amended, transferred or revoked. The Committee note that this is against section (4) (2) (b) of the Business Regulatory Act (No. 3 of 2014) which states that with regards to business regulation in relation to certificates, licenses and certificates, the criteria for the grant, rejection, suspension, amendment, transfer or revocation should be specified. In view of the above, the Committee recommends for clause 18 of the Bill to be recast.

- xii. The Committee observes that under clause 20 (7) of the Bill, a revoked license is to be surrendered to the Board subject to conditions that are set by them. In light of the above, the Committee is of the view that conditions under which either of the actions could be

warranted needs to be specified, and therefore recommends that clause 20 (7) is recast to take care of the above concern.

- xiii. The Committee observes that under clause 33 (1) of the Bill, the requirement that the buyer should pay the purchase price of Tobacco to the sales floor license holder increases the costs of doing business and reduced returns of the growers.

In view of the above, the Committee recommends that this clause should be deleted as it contravenes the Business Regulatory Act No 3 of 2014 whose intent is to reduce the cost of doing business.

- xiv. The Committee observes that clause 36 (2) (c) of the Bill gives the sales supervisor power to suspend or prohibit the sale of tobacco if the provisions of the Act were not complied with. The Committee notes however, that the Bill is silent on challenging the decision of a supervisor and it is uncertain if the decision of the supervisor could be construed to be that of the Tobacco Board of Zambia.

In view of the above, the Committee recommends for that there was need to ensure that clause 32 (2) (c) of the Bill prescribed a period for suspension or at the very least, the maximum period that could not be exceeded and that further a provision should be provided for challenging the decision of the sales supervisor.

- xv. The Committee observes that clause 39 (1) of the Bill provides that subject to the Plant and Variety and Seeds Act, the Minister may, in consultation with the Tobacco Board of Zambia, prescribe any specific variety of tobacco which may be grown or sold in the Republic. However, clause 39 (2) introduces discretion in the law. The Committee notes that tobacco grown in the country is mostly for the export market and therefore needs strict and specific requirements regarding varieties and chemical composition. The Committee notes that clause 39 (2) of the Bill left the door open for possible tainting of the Zambian crop on the international market.

In view of the above, the Committee recommends that issues of varieties should be driven by industry and market requirements and therefore clause 39 (2) of the Bill should be deleted.

- xvi. The Committee observes that the role of a tobacco inspector under Part VII of the Bill is that of an agronomist primarily focused on compliance on tobacco seedlings, tobacco barns, tobacco sheds, and field inspections to check compliance on agreed agricultural practices, that is, prescribed seed varieties and field hygiene among others. The Committee notes that there are specialised institutions that currently provide oversight duties as experts in these fields for the industry and recognised under the Tobacco Act as under listed.

1. Seed Control and Certification Institute – for seed.
2. Phytosanitary department - inspection and treatment from harmful pests and plant diseases.
3. Building and structures – Factories Act.

4. Warrants of arrest, preserve of police and courts of law.
5. Corruption, preserve of the Anti-Corruption.

The Committee recommends that the entire Part VII, which provides for the inspectorate and powers of inspectors should be deleted and recast to reflect the job of the tobacco inspector, which is typically that the inspector is an agronomist and should work to enforce the objectives of the Tobacco Board of Zambia.

- xvii. The Committee observes that clause 43 of the Bill, provides that a law enforcement officer has discretion to arrest a person without a warrant, where the inspector has reasonable grounds to believe that the person has committed an offence under this Act; was about to commit an offence under this Act, and there is no other way to prevent the commission of the offence. In light of the above, the Committee recommends that the meaning of 'enforcement officer' must be defined in the Bill to avoid confusion.
- xviii. The Committee notes that clause 47 of the Bill provides that subject to the provisions of this Act, a levy shall be imposed on all leviable tobacco grown and sold in the Republic, at the rate prescribed by the Minister, by statutory instrument. In view of the above, the Committee recommends that the imposition of this levy, should be done in consultation with the Tobacco industry.
- xix. The Committee observes that there are a number of punitive measures in the Bill targeted at the growers as compared to other players which also includes the TBZ and the inspectors among others. In view of the above, as way of an example, the Committee notes that the penalty for growers contravening payment of the levy under clause 48 (2) of the Bill, seemed to be more severe than the penalty for levy collectors who contravened remittance of levies under clause 49 (3). In view of the above, the Committee recommends that instead of only providing for punitive measures, the Bill should also reflect regulatory measures in some instances.

12.0 CONCLUSION

The *Tobacco Act, Chapter 237 of the Laws of Zambia* is the primary legislation on issues of Tobacco in Zambia. Further, the *Tobacco Levy Act, Chapter 238 of the Laws of Zambia* regulates issues of tobacco levy in the country. The Acts were enacted in 1967 rendering the legal framework governing the tobacco industry in the country archaic. Therefore, the Government has recognised the need to conform the law to the advancements that have been made in the industry with regard to technology and practice.

The enactment of the Tobacco Bill will ensure that the law is updated to reflect the advancements in technology and best practice. It will also consider the private sector and the marketing of tobacco that is not available for auction. In addition, the law will align the legal framework with international best practice.

The Committee wishes to pay tribute to all the stakeholders who appeared before it and tendered both oral and written submissions. The Committee also wishes to express gratitude to

Honourable Minister of Agriculture for interacting with it. The Committee further wishes to express its gratitude to the Hon Madam Speaker and the Office of the Clerk of the National Assembly for the guidance and services rendered to it during its deliberations.

We have the honour to be, Madam, the Committee on Agriculture, Lands and Natural Resources mandated to consider the Tobacco Bill, N.A.B. No. 10 of 2022 for the First Session of the Thirteenth National Assembly.



Mr Michelo S Kasauta, MP
CHAIRPERSON

July, 2022
LUSAKA

APPENDIX I – List of National Assembly Officials

Mr Francis Nabulyato, Principal Clerk of Committees (SC)
Mrs Doreen N C Mukwanka, Deputy Principal Clerk of Committees (FC)
Mrs Angela M Banda, Senior Committee Clerk (SC)
Mr Alvin Himululi, Committee Clerk
Mrs Ruth N Mwiinga, Typist
Mr Morgan Chikome, Committee Assistant
Mr Daniel Lupiya, Committee Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II – List of Stakeholders

MINISTRY OF JUSTICE

Mr Ian Silwamba, Parliamentary Legal Counsel

MINISTRY OF AGRICULTURE

Mr Green Mbozi, Permanent Secretary

Mr Ivor Mukuka, Director at Zambia Agriculture Research Institute

Mr Malumo Nawa, Assistant Director

Mr Paul Mumba, Assistant Director Policy and Planning

MINISTRY OF COMMERCE, TRADE AND INDUSTRY

Mrs Chawe Chuulu, Permanent Secretary

Mr Edwin Zimba, Director Planning

Mr Sunday Chikoti, Director

Mr Derrick Sikombe, Chief Economist

Mr Mike Chivumo, Principal Planner

Ms Ester Chiwanza, Economist

TOBACCO BOARD OF ZAMBIA

Mr James Kasongo, Chief Executive Officer

Mr Tyndale Kasongole, Chief Operations Officer

ALLIANCE ONE TOBACCO

Mr Reginald Chigumira, Sales Executive

UNIVERSITY OF ZAMBIA SCHOOL OF AGRICULTURAL SCIENCES

Mr Benson H Chishala, Dean

Mr Chewe Nkonde, Head Agriculture

Mr Paul Kachapulula, Head Plant Science

Mr Chiza Kumwenda, Head Food Science

GROWERS

Mr Patrick Danckwerts, Farmer

Mr Chishimba Chilufya, Farmer

Mr Lloyd Hanankuni, Farmer

Mr Blessings Banda, Farmer

TOBACCO ASSOCIATION OF ZAMBIA

Mr Albert Van Wyk, General Manager

Mr Phonto Mumbi, Corporate Affairs Manager

JAPAN TOBACCO INTERNATIONAL

Mr Hazele Hilary, Corporate Affairs Manager

Mrs Shebbah Chigali, Corporate Affairs Manager

Mr Litiya Matakala, Corporate Affairs Director