



PARLIAMENT OF MALAWI



NATIONAL ASSEMBLY

46TH SESSION

**REPORT OF THE
JOINT PARLIAMENTARY COMMITTEE ON AGRICULTURE AND IRRIGATION
AND PUBLIC ACCOUNTS ON THE INQUIRY INTO THE ALLEGATIONS OF
FRAUD IN THE PROCUREMENT OF MAIZE FROM ZAMBIA BY THE MALAWI
GOVERNMENT THROUGH THE AGRICULTURAL DEVELOPMENT AND
MARKETING CORPORATION LIMITED (ADMARC)**

ADOPTED BY THE COMMITTEE ON 12 FEBRUARY, 2017

REPORT NO. 1

FEBRUARY, 2017

REPORT OF THE JOINT PARLIAMENTARY COMMITTEE ON AGRICULTURE AND IRRIGATION AND PUBLIC ACCOUNTS ON THE INQUIRY INTO THE ALLEGATIONS OF FRAUD IN THE PROCUREMENT OF MAIZE FROM ZAMBIA BY THE MALAŴI GOVERNMENT THROUGH THE AGRICULTURAL DEVELOPMENT AND MARKETING CORPORATION LIMITED (ADMARC)

This is a Report of the Joint Parliamentary Committee on Agriculture and Irrigation and Public Accounts on the inquiry into the allegations of fraud in the procurement of maize from Zambia by the Malaŵi government through ADMARC. The Report is a product of testimonies and submissions from key players and other relevant stakeholders from both Malaŵi and Zambia. These testimonies and submissions were duly analysed by the Joint Committee and its technical team.

Chairman’s Declaration

I, **Dr. Joseph Chidanti-Malunga, MP**, Chairperson of the Joint Parliamentary Committee on Agriculture and Irrigation and Public Accounts, on behalf of the Joint Committee pursuant to Standing Orders 150 (2), 154 (3) and 185 (3) present this report and its recommendations to the House for consideration and adoption.

Hon. Dr. Joseph Chidanti-Malunga, MP
CHAIRPERSON

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Acknowledgements

The Joint Committee on Agriculture and Irrigation and Public Accounts would like to sincerely thank the Speaker of Malaŵi Parliament, Right Honorable Richard Msowoya, MP, for his staunch support towards Parliamentary Committees and in particular, the Joint Committee. This is the case because it is the Right Honourable Speaker who deemed it right and proper to sanction the Committee to inquire into the matters relating to the procurement of maize from Zambia by the Malaŵi Government. In the same vein, the Committee would like to express its gratitude to the Office of the Clerk of Parliament for the logistical and technical support rendered to the Committee during its meetings.

The Committee would also like to thank all the public officials and other relevant stakeholders who appeared before the Committee and provided testimonies and submissions. The Committee's findings and recommendations have benefitted significantly from these testimonies and submissions.

The Committee also wishes to express its gratitude to the Secretariat for providing both procedural and technical advice to the Committee, and for providing support to the technical consultant who assisted the Committee in the analysis of the testimonies and submissions which it received.

The Committee would further wish to express its gratitude to the Ministry of Foreign Affairs and the Malaŵi Embassy in Lusaka for facilitating its travel to Zambia and for the logistical support of its work in Zambia respectively.

Lastly, the Committee would like to express its gratitude to the Civil Society Agriculture Network (CISANET) for partly funding the Committee's trip to Zambia to interact with Zambian officials and stakeholders in that country. In the same vein, the Committee wishes to thank Action Aid Malaŵi for the support rendered to the Committee when it was considering and subsequently adopting this Report.

Committee Membership as at 12 February, 2017

As at 12 February, 2017, the Membership of the Joint Committee on Agriculture and Irrigation and Public Accounts was as follows:-

1. Hon. Dr. Joseph Chidanti-Malunga, MP - *Chairperson*
2. Hon. Kamlepo Kalua, MP - *Vice-Chairperson*
3. Hon. Tarsizio Gowelo, MP - *Member*
4. Hon. Dr. James Munthali, MP - *Member*
5. Hon. Rasheed Pemba Msusa, MP - *Member*
6. Hon. Richard Chimwendo-Banda, MP - *Member*
7. Hon. Alexander Kusamba Dzonzi, MP - *Member*
8. Hon. Frank Mphande, MP - *Member*
9. Hon. Frank Mwenifumbo, MP - *Member*
10. Hon. John Chikalimba, MP - *Member*

Secretariat

- Mr. Fredrick Chigawaneni Kamwani - *Senior Committee Clerk*
Mr. Dennis Gondwe - *Senior Committee Clerk*
Mr. Lhino Gundoh - *Committee Clerk*

Consultant

- Mr. Khumbo Bonzoe Soko - *Soko & Co*

Terms of Reference

The Joint Parliamentary Committee on Agriculture and Irrigation and Public Accounts drew its establishment from Standing Order 154 which states as follows:-

- (1) Where a matter falls within the remit of more than one Committee, the Committees concerned may, with the agreement of the Speaker, consider that matter jointly.
- (2) Where a matter is to be considered jointly under sub-rule (1), any meeting to consider that matter shall be held jointly by the Committees concerned with no more than five members from each of the Committees. At such a meeting, the Chairperson of any of those Committees may take the Chair.
- (3) Any report on the joint consideration of a matter shall be produced jointly by those committees.
- (4) Any of those Committees may establish a sub-committee to consider the matter jointly with a sub-committee of another of those Committees.

Powers of the Joint Committee

As a duly constituted Committee, the Joint Parliamentary Committee on Agriculture and Irrigation and Public Accounts drew its powers from Standing Order 151 which states as follows:-

- (1) The Powers of every Committee shall include:-
 - a. Summoning or subpoenaing any person to attend and give evidence before a Committee at a stated time and place;
 - b. Requiring any person to disclose and produce to the Committee any papers and records in that person's control, possession and custody relevant to the Committee's proceedings;
 - c. Creating subcommittees of its members for specific tasks;
 - d. Delegating to its subcommittees all its powers except the power to report to the Assembly.
- (2) If any person summoned to attend before a Committee or to produce papers and records does not comply with the summons, the Committee may report this fact to the Assembly which may invoke the provisions of the National Assembly (Powers and Privileges) Act.

LIST OF ABBREVIATIONS

ADMARC	Agricultural Development and Marketing Corporation Limited
CIF	Cost Insurance Freight
CISANET	Civil Society Agriculture Network
GTPA	Grain Traders and Processors Association of Malawi
IPC	Internal Procurement Committee
LC	Letter of Credit
MVAC	Malaŵi Vulnerability Assessment Committee
NFRA	National Food Reserve Agency
ODPP	Office of the Director of Public Procurement
PFMA	Public Finance Management Act
PPA	Public Procurement Act
PPR	Public Procurement Regulations
RBM	Reserve Bank of Malaŵi
ST	Secretary to the Treasury
WFP	World Food Programme
ZCF	Zambia Cooperative Federation Limited
ZRA	Zambia Revenue Authority

EXECUTIVE SUMMARY

The Joint Parliamentary Committee on Agriculture and Irrigation and Public Accounts on the inquiry into allegations of fraud in the procurement of maize from Zambia by the Malawi Government through the Agricultural Development and Marketing Corporation Limited (ADMARC) was established by Parliament on 9 January, 2017 under the sanction of the Right Honorable Speaker, Mr. Richard Msowoya, MP. The Committee was mandated to establish facts and circumstances surrounding the procurement of the maize from Zambia and specifically to deliver on the following objectives:-

- a.) to establish whether public procurement laws and procedures were complied with during the procurement of the maize;
- b.) to establish whether any fraudulent activities had taken place in the procurement of the maize; and
- c.) to bring to book all individuals and institutions involved in malpractices or fraudulent activities during the procurement of the maize.

In fulfilment of its mandate, the Committee did, between 17 January, 2017 and 12 February, 2017, receive evidence and submissions from witnesses in both Malaŵi and Zambia. This evidence and submissions were duly analyzed by the Committee, which process led to specific findings and recommendations being made.

The Committee found that the procurement of maize from Zambia by ADMARC was attended by serious malpractices and violations of both the public procurement and public finance management laws. The Committee found that there was no legal basis for ADMARC to adopt the single sourcing procurement method in respect of the maize. The Committee further found that in violation of its obligations under public procurement law, ADMARC did not conduct any due diligence exercise to guide it on the following matters:-

- a.) the determination of the tonnage of maize that had to be imported into Malawi;
- b.) the capacity of Kaloswe Ltd and the Zambia Cooperative Federation Ltd (ZCF) to deliver 100, 000 metric tonnes of maize;
- c.) the reasonableness and fairness of the price at which it contracted to buy the maize from both Kaloswe Ltd and ZCF.

The Committee further found that ADMARC entered into a procurement contract with Kaloswe Ltd on 17 June, 2016 before it had obtained the necessary approval from the Director of Public Procurement, in violation of the public procurement law. The Committee also established that ADMARC engaged in fraudulent activities by

backdating the contract that it signed with ZCF to 17 June, 2016 when in fact the contract was signed after 20 July, 2016. The Committee also found that ADMARC's Internal Procurement Committee falsely recorded the Chairperson of the committee as being present at the meeting when in fact he was in Zambia at the material time.

The Committee also found that there was an unusual and improper involvement of a private citizen, Mrs. Grace Mijiga Mhango, in the procurement of the maize when the transaction had been billed as a government to government arrangement.

The Committee further established that neither Kaloswe Ltd nor ZCF had the requisite capacity to deliver 100, 000 metric tonnes as evidenced by the fact that as of 30 December, 2016 only 4, 512 metric tonnes of maize had been delivered to ADMARC by ZCF.

The Committee further found that in violation of public finance management law, ADMARC entered into a contract worth US 34.5 Million when government had not made provision for the same. Furthermore, ADMARC in further violation of the law and without any government authorization, doubled its financial exposure to US\$ 69 Million when it maintained 2 identical contracts with Kaloswe Ltd and ZCF between 20 July, 2016 and 11 October, 2016.

The Committee further found that Transglobe Export Produce Ltd wrongly and fraudulently involved the Minister of Agriculture, Hon. Dr. George Chaponda, MP to get it business so that it could supply up to 50, 000 metric tonnes to Malawi. The Committee found that in this wrongful endeavor, Hon. Dr. Chaponda was aided by the Zambian Minister of Agriculture who instructed her Permanent Secretary to issue Transglobe with a maize export permit for 50, 000 metric tonnes when Transglobe did not legally qualify for one on account of not being a registered taxpayer in Zambia.

The Committee found that although there had been no draw down on the US\$34.5 Million Letter of Credit that had been made available by the Reserve Bank of Malawi through the PTA Bank to pay for the imported maize, the country would still be required to pay around US\$759, 000 or K0. 55 Billion in fees for the Letter of Credit facility.

The Committee further found that despite giving their testimony under oath, Dr. Ronald Mangani (the Secretary to the Treasury), Mr. Charles Chuka (the Governor for the Reserve Bank of Malawi), Mr. Henry Mathanga (a Director at Reserve Bank of Malawi) Ms. Madalo Nyambose (Director for Debt and Aid Management in the Ministry of Finance) and Mrs. Erica Maganga (the Principal Secretary in the Ministry of Agriculture) had lied on when they knew about the Kaloswe Ltd-ADMARC contract and on the whereabouts of Dr Chaponda as of 20 January, 2017 in respect of Mrs. Maganga. The

Committee found this to have been a gallant and spirited attempt to mislead the Committee.

At the end of making the aforementioned findings, the Committee concluded that it had delivered on its mandate and had met its objectives. It accordingly made the following recommendations:-

- a) That administrative disciplinary measures be taken against senior managers for ADMARC and that further investigations be conducted against them by the Malaŵi Police Service and the Anti-Corruption Bureau with a view to establishing potential criminal wrongdoing;
- b) That there be a review of the Public Procurement Act to provide for thresholds of pre-procurement approval from the Secretary to the Treasury and the Attorney General for parastatals and state owned companies;
- c) That the State President His Excellency Professor Arthur Peter Mutharika should publicly censure the Minister of Agriculture, Hon. Dr. George Chaponda, MP for his wrongful and illegal involvement in the procurement of the maize from Zambia so as to benefit Transglobe Export Produce Limited and that Malaŵi Police Service and the Anti-Corruption Bureau should investigate Hon. Dr. Chaponda for possible misuse or abuse of public office;
- d) That Malaŵi Police Service and the Anti-Corruption Bureau conduct an investigation of Mr. Tayub and Transglobe for possible corrupt practices;
- e) That there be a review the methodology of the Malaŵi vulnerability assessment committee and that there be greater coordination between the government, donors and grain traders in responding to national food deficits;
- f) That the Board for ADMARC and the Chief Secretary should take steps to ensure that there be high levels of integrity among those employed at the parastatals and in government;
- g) That the Director of Public Prosecutions should seriously consider bringing charges of perjury against officers who had lied under oath when they testified to the Committee;
- h) That the role of unauthorized private citizens in the conduct of public business be totally eliminated;
- i) That Parliament's capacity to provide oversight to the other branches of government be strengthened.

1. CHAPTER 1 - INTRODUCTION

1.1. Background Information

1.1.1. On 9 January, 2017, the Speaker of the National Assembly, the Right Honourable Richard Msowoya, MP, approved the establishment of a Joint Committee on Agriculture and Irrigation and Public Accounts, hereinafter referred to as 'the Committee', to look into matters relating to the procurement of maize from Zambia by the Malaŵi government through the Agricultural Development and Marketing Corporation Limited (ADMARC). This was in line with several allegations of fraud and impropriety in the procurement of the said maize as reported by the media. One of the major functions of the National Assembly is to oversee prudent expenditure of public resources for the betterment of the people of Malaŵi. It was in line with that role that the National Assembly instituted an inquiry of its own to ensure that facts and circumstances surrounding the procurement of the maize from Zambia were properly established.

1.1.2. Aside from establishing the facts and circumstances surrounding the procurement of the maize from Zambia, the Committee had the following specific objectives:-

- a.) to establish whether public procurement laws and procedures were complied with during the procurement of the maize;
- b.) to establish whether any fraudulent activities had taken place in the procurement of the maize
- c.) to bring to book all individuals and institutions involved in malpractices or fraudulent activities during the procurement of the maize.

1.2. Work Methodology

1.2.1. In order to establish the truth about the procurement of the maize from Zambia, the Committee summoned various public officials and some private institutions to give evidence relating to the various roles played in the procurement of the maize. In the execution of its mandate, the Committee received evidence from witnesses in both Malaŵi and Zambia. The Committee heard testimonies from Malaŵian officials between 17 January, 2017 and 12 February, 2017. Consequently, the Committee travelled to Zambia where it heard testimonies from key witnesses from the

1 to 3 February, 2017. A complete list of the witnesses who gave evidence to the Committee in both Malaŵi and Zambia has been appended to this Report.

- 1.2.2. At the end of its evidence gathering exercise, the Committee considered and analyzed the evidence that it had received and came up with its own findings and recommendations which have culminated in this Report to the House.

1.3. Organization of the Report

- 1.3.1. In this Report, **Chapter 1** introduces the Report and gives a background to the mandate of the Committee, its specific objectives as well as the methodology that it followed in executing its mandate. **Chapter 2** contains a summary of the relevant evidence that was received by the Committee. **Chapter 3** details the key findings that were made by the Committee after its analysis of the evidence received. **Chapter 4** contains the recommendations that the Committee makes to various functionaries in Malaŵi as a consequence of the findings made in the preceding Chapter. **Chapter 5** provides the conclusion which gives a summary of the Report.

2. CHAPTER 2 – SUMMARY OF RELEVANT EVIDENCE

2.1. Introduction: El Nino and its effects on Malaŵi

- 2.1.1. On 12 April, 2016, while Malaŵi was still reeling from the consequences of the devastating floods that had wreaked havoc in the preceding rain season, the State President Professor Arthur Peter Mutharika declared a state of national disaster in the country. This declaration followed a vulnerability and food security assessment by the government’s Malaŵi Vulnerability Assessment Committee (MVAC) which indicated a 12% decline in maize production compared to the 2014/2015 growing season. The decline had been caused by drought in some parts of the country induced by a weather phenomenon known as El Nino. MVAC estimated that in tonnage terms, the country would have a 1.07 Million metric tonnes shortage of maize and that up to 6.5 Million people would be food insecure.¹ The presidential declaration of disaster was meant to set in motion the process of resource mobilization both locally and internationally to meet the emerging crisis.
- 2.1.2. The response of the government to the maize shortage was two pronged. Firstly, it planned to stock the strategic grain reserves managed by the National Food Reserve Agency (NFRA), with maize for purposes of free distribution to people who could otherwise not afford to buy the grain.² Additionally, however, government through ADMARC planned to make ‘commercial maize’ available to those who could afford to buy it through the latter’s markets spread throughout the country.³
- 2.1.3. It was in the course of trying to procure the ‘commercial maize’ by ADMARC that the matters subject to the present inquiry arose.

2.2. Procurement of commercial maize by ADMARC

- 2.2.1. Around April, 2016, ADMARC made plans to procure 300, 000 metric tonnes of maize both locally and internationally to stock its markets as part of the government’s response to the food deficit in the country. This

¹ See <http://documents.wfp.org/stellent/groups/Public/documents/ep/WFP283912.pdf> accessed on January 29, 2017.

² Over the course of the year 2016, the NFRA procured around 92, 000 metric tonnes of maize to aid the government’s humanitarian response to the food shortage crisis.

³ The testimony of Dr. Ronald Mangani, the Secretary to the Treasury which was corroborated by that of Hon. Dr. Chaponda.

tonnage was later increased to slightly over 500, 000 metric tonnes as the year 2016 progressed. Out of this tonnage, 106, 588 metric tonnes was sourced locally.

- 2.2.2. According to the testimony that the Committee heard from ADMARC's senior managers,⁴ the search for maize outside the country became necessary because local traders could not supply the remainder of its required tonnage. Accordingly, a trip to Zambia was organized in May, 2016 to search for suppliers of maize. The delegation was led by the Honorable Minister of Agriculture Dr. George Chaponda, MP and comprised the Chief Director in the Ministry of Agriculture Mr. Bright Kumwembe, the Chief Executive Officer of ADMARC Mr. Foster Mulumbe and ADMARC's Director of Administration and Company Secretary the late George Bakuwa. In Zambia, this team was also joined by officials from the Malaŵi Embassy in Lusaka led by Ambassador David Bandawe.
- 2.2.3. The Committee heard that during this visit, the leader of the delegation, Hon. Dr. Chaponda met with his Zambian counterpart to request that a waiver be granted by the Zambian government allowing Malaŵi to export maize from Zambia. This was on account of the fact that at the material time, there was a maize export ban in Zambia. This ban remained in place until 26 October, 2016. The Zambian Minister of Agriculture is reported to have expressed skepticism about the availability of maize in Zambia at that time but assured the delegation that an export waiver would be granted were the delegation to successfully source the maize in Zambia. The Committee was told that after this meeting, Hon. Dr. Chaponda returned to Malaŵi.
- 2.2.4. The delegation subsequently met and engaged with Zambia's Food Reserve Agency which expressed inability to supply the requested tonnage of 300, 000. The delegation further met with Zambia's Grain Traders Association which expressed willingness to supply some 30, 000 metric tonnes at a price of US\$ 395 per metric tonne. According to ADMARC officials, an attempt to negotiate the price downwards led to the collapse of the deal. The delegation then returned to Malaŵi and reported to the government on the unsuccessful nature of their trip.

⁴ Mr. Foster Mulumbe, Chief Executive Officer, Ms. Roka Mauwa, Deputy Chief Executive Officer and Messrs F Kantonga and Kanjere.

- 2.2.5. A second trip to Zambia was undertaken from 16 to 23 June, 2016 after the Chairperson for the Grain Traders and Processors Association of Malaŵi (GTPA), Ms. Grace Mijiga Mhango, had informed ADMARC officers that there were traders in Zambia who could supply it with maize. The ADMARC delegation on the second trip comprised Messrs. Mulumbe, Bakuwa (deceased) and Kantonga. When the delegation got to Zambia they had meetings with interested traders which meetings had been organized by the Grain Traders Association in Zambia. The ADMARC CEO told the Committee that the only traders who showed up at this meeting were Zambia Cooperative Federation Limited (ZCF) and Kaloswe Commuter and Courier Ltd, hereinafter 'Kaloswe Ltd'. On 17 June, 2016 ADMARC signed a contract with Kaloswe Ltd for the supply to ADMARC of 100, 000 metric tonnes of white non GMO maize on a CIF basis at a price of US\$ 345 per metric tonne. Place of delivery was agreed to be ADMARC's Lilongwe depot and delivery was to be within 120 days subject to agreed extension. The supplier was to be paid through a confirmed Letter of Credit (LC) to be established at a bank mutually agreed by the parties.
- 2.2.6. This evidence was slightly at variance with that which the Committee received from Mrs. Mijiga Mhango. Mrs. Mijiga Mhango told the Committee that she was the one who introduced ADMARC to Kaloswe Ltd after she had been informed by a Zambian friend and business associate, Chishimba Mumba, that Kaloswe Ltd had maize that it could supply to Malaŵi. According to her, this conversation took place a few days before 17 June, 2016. She told the Committee that before she invited ADMARC officials over to Zambia, she had been made aware that Kaloswe Ltd would be getting its stock from ZCF and that it (Kaloswe Ltd) had already entered into a contract with ZCF for the supply of 100, 000 metric tonnes of maize. It was only upon being satisfied that Kaloswe Ltd 'had the grain' that she notified ADMARC that there was a prospective supplier of maize in Zambia. Mrs. Mijiga Mhango told the Committee that contractual negotiations between Kaloswe Ltd and ADMARC were undertaken on 17 June, 2016. This was after officials from both ADMARC and Kaloswe Ltd had visited ZCF's offices in order for ADMARC to satisfy itself that Kaloswe Ltd had a reliable source of the maize that it wanted to supply to it. Mrs. Mijiga Mhango told the Committee that a few hours later on the same 17, June, 2016, ADMARC signed its contract with Kaloswe Ltd.

2.2.7. Officials from Kaloswe Ltd, however, testified⁵ to the Committee that they first broached the possibility of supplying maize to Malaŵi between October and November, 2015 after they had made contact with Mrs. Mijiga Mhango. Mrs. Mijiga Mhango had represented to Kaloswe Ltd that her company, AFRISEED, would be interested in exporting maize from Zambia to Malaŵi. Officials of Kaloswe Ltd told the Committee that they told Ms. Mijiga Mhango that the export of maize from Zambia could only be possible after the harvest of the crop from the 2015/2016 season. After the harvest of maize, between March/April 2016, Kaloswe Ltd made another contact with Mrs. Mijiga Mhango to inquire if she would still be interested in procuring maize for export to Malaŵi. According to the evidence from Kaloswe Ltd, Mrs. Mijiga Mhango is said to have told Kaloswe Ltd to prepare for a deal for the supply of up to 100, 000 metric tonnes of maize to Malaŵi. In anticipation of this deal, the Committee heard that Kaloswe Ltd entered into a contract with the ZCF for the supply of 100, 000 metric tonnes of white maize at a price of US\$ 215 per metric tonne. Under this contract, Kaloswe Ltd was going to be responsible for transportation of the maize from diverse ZCF sites in Zambia. The Committee was further told that subsequent to the execution of this contract, Mrs. Mijiga Mhango informed Kaloswe Ltd that the maize would in fact be bought by ADMARC. Kaloswe Ltd confirmed that it subsequently signed a contract with ADMARC on 17 June, 2016 for the supply of 100, 000 metric tonnes of white maize. According to Kaloswe Ltd, out of the US\$ 345 per metric tonne price, US\$ 215 was going to go to ZCF, US\$ 100 was going to go towards transportation, while the remaining US\$ 30 was going to cover logistics as well as the profit markup for Kaloswe Ltd.

2.2.8. The CEO for ADMARC testified before the Committee that at the time when the contract was being signed, they were not aware that Kaloswe Ltd did not have the capacity to supply them with the tonnage of 100, 000. ADMARC also claimed that it was unaware at the time it was signing the contract that Kaloswe Ltd would in fact be sourcing its maize from ZCF. ADMARC's CEO testified before the Committee that they only learnt after they had signed the contract with Kaloswe Ltd that the latter had on 31 May, 2016 signed a contract with ZCF for the supply by ZCF to Kaloswe

⁵ The officials from Kaloswe Ltd who testified before the Committee were Messrs. Isaac Kapambwe (CEO), Mumba Muzeya (Legal Representative), Titus Nyirongo (Financial Controller), Kasonde Mwanga (Director of Logistics).

Ltd of 100, 000 metric tonnes of white maize at a price of US\$ 215 per metric tonne. This testimony was, however, contradicted by officials from Kaloswe Ltd. These officials, whose testimony was corroborated by that of Mrs. Mijiga Mhango, testified to the Committee that on 17 June, 2016 before they signed the contract with ADMARC, they took ADMARC officials to ZCF offices and warehouses to see the maize that they would be supplying them with. It bears noting, however, that this testimony was contradicted by ZCF officials.⁶ ZCF told the Committee that at the time that it was signing its contract with ADMARC, it wasn't aware that Kaloswe Ltd had already signed a contract with ADMARC for the supply of maize. ZCF further expressed ignorance of the fact that Kaloswe Ltd had planned to supply the maize that it would be getting from ZCF to ADMARC.

2.2.9. The Committee was further told by ADMARC that on the same day when it signed a contract with Kaloswe Ltd, (17 June, 2016), its Internal Procurement Committee (IPC) met from 15:30-16:00 Hours to recommend that ADMARC procures from Kaloswe Ltd 100, 000 metric tonnes of maize using the single-sourcing procurement method. The choice of the single - sourcing procurement was justified to the Committee on the basis of the apparent urgency with which the country needed to procure maize. The Committee observed that the minutes of this meeting recorded Mr. Kantonga, ADMARC Director of Operations and Chairperson of the IPC, as being present at the meeting. As previously observed, however, the Committee received evidence that at the material time Mr. Kantonga was in Zambia negotiating and concluding ADMARC's contract with Kaloswe Ltd.

2.2.10. The Committee heard testimony that a letter dated 17 June, 2016 and signed on behalf of the CEO for ADMARC was consequently sent to the Office of the Director of Public Procurement (ODPP) requesting a No-Objection to the procurement. Attached to the letter were minutes of a meeting of ADMARC's IPC as well as a 'full corporate offer' from Kaloswe Ltd for the supply of 100, 000 metric tonnes of white maize to ADMARC. The Committee was told that the Assistant Director at the ODPP who was attending to this request by ADMARC was put under some considerable pressure, through telephone calls, to deal with the request expeditiously.

⁶ The officials who testified before the Committee were Messrs. Chirwa (Director General) and Munthali (Director of Finance) and Mrs. Milimo (Director of Human Resources.)

The No-Objection sought was granted by the ODPP on 18 June, 2016, a day after the contract to which it related had already been signed by ADMARC.

2.2.11. The Committee further heard that on 28 June, 2016, Kaloswe Ltd wrote ADMARC through an email requesting that the contract that it had signed with the latter be amended by making ZCF a beneficiary of the confirmed LC that was to be established for payment of the supplied maize. The amendment was signed by ADMARC consequent to which a new No-Objection request was on 13 July, 2016 sent to the ODPP, seeking its approval for ADMARC to procure 100, 000 metric tonnes of white maize from 'Kaloswe Ltd now assigned to ZCF.'⁷ On the same day that the application was made, the ODPP granted the sought No-Objection for ADMARC to procure the maize from 'Kaloswe Ltd now assigned to ZCF.' The Committee learnt, however, that on the same day ADMARC again wrote the ODPP requesting permission to procure 100, 000 metric tonnes of white maize from ZCF at a price of US\$ 34.5 Million. The ODPP, through 2 separate letters but both of which were dated 14 July, 2016 granted ADMARC a No-Objection in respect of the procurement of the maize from ZCF.

2.2.12. ADMARC told the Committee that the need to enter into a separate contract with ZCF arose out of the challenges that ADMARC was having with the Reserve Bank of Malawi (RBM) to have the confirmed LC benefit ZCF⁸ without a contract having been entered into with ZCF.

2.2.13. The Committee further heard from ADMARC that the contract with ZCF though dated 17 June, 2016 was in fact signed by the parties after 20 July, 2016. In this regard, the Committee received in evidence an email that had been sent by the late Mr. Bakuwa to Mrs. Mijiga Mhango, to which was attached the ZCF-ADMARC contract, asking her to facilitate the signing of the same by ZCF officials. This testimony was, however, contradicted by ZCF officials who gave evidence to the Committee. ZCF officials testified to the Committee that they had entered into a contract with Kaloswe Ltd on 31 May, 2016 for the supply of 100, 000 metric tonnes of white maize at a price of US\$ 215 per metric tonne. ZCF alleged, however, that Kaloswe Ltd

⁷ It was not altogether clear what the status of this particular application from ADMARC and the subsequent approval by ODPP was as in essence ADMARC was still contracting with Kaloswe Ltd.

⁸ This was after the proceeds of the contract between ADMARC and Kaloswe Ltd had been assigned to ZCF by Kaloswe Ltd.

breached the terms of the contract because it failed to pay the full contract price within 7 days of the signing of the contract and a penalty of 1.5% of the contract price for failure to make the advance payment within the 7 days. The Committee was told by ZCF officials that it was only after it had signed its contract with Kaloswe that it discovered that Kaloswe Ltd planned to sell the maize to ADMARC. According to ZCF, it was the realization by ADMARC that Kaloswe Ltd was sourcing its maize from ZCF that led ADMARC to enter into negotiations for them to directly supply the maize to ADMARC. ZCF told the Committee that during these discussions, ZCF had quoted a price of US\$ 411 per metric tonne. ADMARC, however, counteroffered the price of US\$ 345 per metric tonne. This considerably higher price, when compared with the US\$ 215 that had been agreed between ZCF and Kaloswe Ltd, was justified by ZCF on the basis of charges for the transportation of maize from wherever it was in Zambia to Malaŵi. ZCF officials told the Committee that the contract between ZCF and ADMARC was signed on 17 June, 2016 and not after 20 July, 2016 as ADMARC officials had testified to the Committee.

2.2.14. ADMARC testified that despite its coming to the knowledge of Kaloswe Ltd's lack of capacity to satisfactorily perform the contract around June/July 2016, it only terminated Kaloswe's contract on 11 October, 2016. Kaloswe Ltd, however, provided a different account of the events leading to the termination of its contract with ADMARC. Kaloswe Ltd officials testified that when they were signing their contract with ADMARC, their understanding was that the purchase of the maize was going to be financed by a loan from Ecobank. Kaloswe Ltd later learnt, however, that the purchase was going to be financed through a loan facility that the RBM had with the PTA Bank. Kaloswe Ltd further learnt that in the financing arrangement, the RBM would be dealing with the Central Bank of Zambia and that it would be easier, therefore, if the payment was being made to a government agency. It was on this understanding that Kaloswe Ltd secured an amendment to its contract with ADMARC so that the beneficiary of the LC that would be established by the PTA Bank could be ZCF.

2.2.15. Kaloswe Ltd informed the Committee that they had agreed with ZCF that once the LC was established, they would get an advance from ZCF for purposes of facilitating the transportation of the maize from Zambia to Malaŵi. After the LC had been established, however, ZCF refused to give

Kaloswe Ltd the agreed upon advance. Kaloswe Ltd alleged that even after it had made its own logistical arrangements for the transportation of maize from ZCF warehouses to Lilongwe, ZCF refused to release the maize to it. It was on the basis of this refusal that Kaloswe Ltd sued ZCF for breach of contract. The Committee was told that the High Court of Zambia had ruled in favour of Kaloswe Ltd in the matter.

2.2.16. Kaloswe Ltd further told the Committee that it was only around 11 October, 2016 that it realized that ZCF had gone behind its back and contracted with ADMARC for the supply of the same 100, 000 metric tonnes of maize at US\$ 345 per metric tonne. Officials from Kaloswe Ltd told the Committee that considering that the maize that ZCF would be supplying under the contract would be coming from the eastern province of Zambia which is closer to Malaŵi, the US\$ 345 per metric tonne that ADMARC had agreed to buy the maize from ZCF was way on the higher side. The Committee was informed by Kaloswe Ltd that freight costs from the eastern province of Zambia to Malaŵi was around US\$ 40 per metric tonne.⁹

2.2.17. During its visit to Zambia, the Committee also received testimony from officials¹⁰ from Zambia's Ministry of Agriculture led by the Ministry's Permanent Secretary Mr. Julius Shawa. Mr. Shawa confirmed that Zambia had had an export ban in respect of maize after the 2015/2016 farming season on account of the fact that the Zambian Food Reserve Agency had not managed to buy sufficient stocks of the produce for the country's own strategic reserves. The fear was that if traders were allowed to export the maize without any controls, Zambians would end up with insufficient maize in the country were a deficit to arise in future. The Committee was told that it was on account of this export ban that on 21 October, 2016, Hon. Dr. Chaponda as a special envoy of Malaŵi's State President, had a meeting with the State President of Zambia, His Excellency Edgar C. Lungu, to request him that a special waiver be granted for the export of maize from Zambia to Malaŵi. This request was duly granted by President Lungu. The waiver was granted in respect of 100, 000 metric tonnes only.

2.2.18. Mr. Shawa further testified that a few days after the meeting that Hon. Dr. Chaponda had had with President Lungu, another meeting had been held

⁹ This testimony was partly corroborated by Mr. Tayub of Transglobe.

¹⁰ Messrs. Julius Shawa (Permanent Secretary), Kaunda Kapepekura (Chief of Agricultural Services), Peter Zulu (Trade Affairs In-Charge).

at Zambia's State House to discuss matters relating to the export ban waiver. Mr. Shawa did not attend this meeting.¹¹ After this second meeting, instructions had been given to him through Zambia's Minister of Agriculture to issue an export permit to Transglobe Produce Exports Limited, hereinafter 'Transglobe', to enable it export half of the allowable tonnage of 100, 000 to Malaŵi. The effect of these instructions was that ZCF would only be allowed to export up to 50, 000 metric tonnes of maize. The Ministry of Agriculture duly acted on these instructions and accordingly wrote both ZCF and Transglobe informing them of these new arrangements. The Committee learnt that when Transglobe started moving maize towards Malaŵi, however, its trucks were impounded at the border on the grounds that a company not registered as a taxpayer in Zambia could not export maize. To get around this difficulty, Transglobe wrote the Zambian Ministry of Agriculture informing it that even though it would be transporting the maize to Malaŵi, it would be doing so under ZCF since it was ZCF that was the beneficiary of the LC under which the suppliers of the maize would be paid. To further get around the challenge of not being registered in Zambia, Transglobe used a company called Zdenakie Commodities to transport the maize from Zambia to Malaŵi. Mr. Shawa told the Committee that Transglobe had thus far been given export permits for 1, 500 metric tonnes even though they had managed to export only 570.3 metric tonnes. On the other hand, ZCF had been issued permits to export 11, 790 tonnes but had actually only managed to export 4, 034.36 tonnes.

2.2.19. The Committee was further told by Mr. Shawa that he had called Hon. Dr. Chaponda to enquire about how Transglobe would be paid for the supply of the maize and that he had been told by the Minister that they would be paid under the ZCF contract. Mr. Shawa justified his getting in touch with Hon. Dr. Chaponda on the basis that he did not have the contact details for his counterpart at the Malaŵi Ministry of Agriculture.

2.2.20. During his testimony to the Committee, Hon. Dr. Chaponda told the Committee that he had been approached by Transglobe's Mr. Rashid Tayub who informed him that his company had maize in Zambia which they wanted to export and supply to ADMARC. Mr. Tayub, according to Hon. Dr. Chaponda had complained that ADMARC officials '*weren't helping them.*' Hon. Dr. Chaponda told the Committee that he told Mr. Tayub to

¹¹ Mr. Shawa did not have the full details of who attended this meeting as he was not in attendance himself.

go to the Permanent Secretary in the Zambian Ministry of Agriculture or ZCF as sub-contractors so as to be allowed to export maize to Malaŵi. The Minister justified this approach on account of the 'food crisis' that the country was facing at the material time. He told the Committee that it was clear to him that ZCF was not able to supply the tonnage that it had been contracted for in a timely manner hence his decision to entertain other suppliers who came to him and informed him that they had maize in Zambia.

- 2.2.21. Mr. Tayub, Director for Transglobe also gave evidence to the Committee. He testified that sometime in 2015, as part of his company's effort at gaining a foothold in the Zambian commodities market, Transglobe had started buying maize in Zambia. These efforts had been intensified after April 2016 because of the looming hunger in the country. Mr. Tayub told the Committee after his company had stocked around 20, 000 metric tonnes of maize, it realized that it couldn't export the maize to Malaŵi because of an export ban imposed by the Zambian government. Mr. Tayub told the Committee that he explored all possible avenues to have a waiver of the export ban granted by the Zambian government.
- 2.2.22. Mr. Tayub told the Committee that in late October, 2016 he received a call to attend a meeting at the Zambian Ministry of Agriculture convened by the Ministry's inter-agency committee. According to Mr. Tayub, during the meeting, which was held on 26 October, 2016, he was interviewed by the committee to see if Transglobe could be granted an export permit for maize. The Committee was attended by representatives of diverse agencies of government including the Zambia Revenue Authority (ZRA). After the meeting, the inter-agency committee granted Transglobe an export permit for 50, 000 metric tonnes of maize. Mr. Tayub further testified that he then attempted to get in touch with the Malaŵian Ministry of Agriculture officials to see if he could get clarity on the matter of the export permit. This was so considering that there had been an announcement that the export of the maize from Zambia was going to be a government to government arrangement. Mr. Tayub told the Committee that his attempts at contacting the Principal Secretary in the Ministry were unsuccessful with the result that he directly called the Minister of Agriculture, Hon. Dr. Chaponda to see if he could get the sought clarity. According to Mr. Tayub, the Minister asked for a copy of the export permit to see if it was authentic and he

accordingly proceeded to email the permit to the Minister through the Minister's personal email address. The Minister subsequently told him that he should contact ADMARC as the procuring entity to be advised on the way forward. He accordingly contacted ADMARC and was told that there were no funds available for further contracts as the available funds had already been committed to ZCF.

2.2.23. Mr. Tayub told the Committee that over time, his company realized that it could not use the export permit to export maize from Zambia because it didn't have a taxpayer identification number in Zambia and further because the funding available for maize imports from Zambia had already been utilized by ZCF. In his testimony to the Committee, Mr. Tayub told the Committee that he felt the process of issuing his company with an export permit had been rushed.

2.2.24. Mr. Tayub further testified that his company was approached on several occasions by ZCF to sell their stock to them but Transglobe opted not to do so, hoping that the export ban would be lifted. By December, 2016, however, it became apparent to the company that the ban would not be lifted and in a bid to reduce financial and storage costs, Transglobe agreed to supply its maize to ZCF at a price of US\$ 337 per metric tonne, which price was at a loss to the company. The maize was exported to Malaŵi under the ZCF contract and to date Transglobe has supplied 1, 800 metric tonnes. Mr. Tayub testified that his company is yet to be paid for this supply.

2.2.25. Mr. Tayub denied having attended any meeting at the State House to discuss Transglobe's waiver of the maize export.

2.3. Financing the procurement of the import of maize from Republic of Zambia

2.3.1. The Committee heard evidence that on 8 June, 2016 CEO for ADMARC wrote the Secretary to the Treasury (ST) requesting government to guarantee a loan of US\$ 50 Million that ADMARC wanted to obtain from Ecobank to finance imports of maize into the country. Upon receipt of this letter, the ST on 13 July, 2016 wrote the Governor for RBM requesting comments on ADMARC's financing proposal. The Governor responded to the ST's letter on 17 June, 2016 providing comments on the Ecobank loan proposal. In the same letter, however, the RBM Governor recommended to

the ST that the procurement of maize be financed under a loan facility that the RBM maintained with PTA Bank on account of the facility's comparable competitive terms.¹² On 4 July, 2016 the ST responded to the Governor's letter, accepting the proposal that the imports of maize be financed under the PTA Bank facility.

- 2.3.2. On 12 July, 2016 a meeting attended by officials from RBM, PTA Bank and ADMARC was held to thrash out the details for the financing of the maize imports. On the same day, ADMARC wrote RBM requesting the establishment of a confirmed LC in favour of ZCF as payment for the supply of maize under its contract with ADMARC. The LC was eventually established on 26 July, 2016 after the parties had agreed on its terms and conditions. The Committee heard evidence that to date only a single invoice for US\$ 528, 025.26 has been raised by ZCF in respect of 1530.508 metric tonnes of maize supplied. The invoice was, however, not paid by Standard Chartered (Mauritius) at which Bank the LC had been established, because the documents presented by ZCF were found to be discrepant.¹³

2.4. Performance of Kaloswe Ltd and ZCF under their contracts with ADMARC

- 2.4.1. The Committee heard that ADMARC formed the view, sometime after it had signed its contract with Kaloswe Ltd that the latter did not have the capacity to perform its contract. This was the principal justification provided by ADMARC for its decision to enter into another contract with ZCF.
- 2.4.2. The Committee heard testimony, however, to the effect that even ZCF had struggled to perform satisfactorily. For instance, despite the contract between ZCF and ADMARC having been signed around 20 July, 2016, the

¹² The Ecobank facility charge was 11.76% compared to 8% for the one the RBM had with the PTA Bank.

¹³ The paying Bank noted the following discrepancies: 1.) Tax invoice presented instead of commercial invoice. 2.) Invoice does not stipulate goods description as required under credit clause 45A. 3) Goods Received Note does not comply with LC Clause 46A-2. 4) Road Consignment Note omits to evidence loading of Zambia to ADMARC warehouse as per LC AMD 02. 5) Delivery Note No. 15 evidence quantity metric as 34780 but in good received note as 35140. 6) Insurance document evidence subject to no know (sic) losses before 30.11.2016 which is incorrect. 7) Insurance document not endorsed by the assured. 8) Insurance document does not comply under credit clause 45A 6 and its relative amendment. 9) Insurance document evidence goods sent on 100 trucks where truck sent on 48 trucks (sic) which is inconsistent between documents. 10) Insurance documents dated after shipment date. 11) Carrier not identified in road consignment note 11) Full set of document for GRN number 023506, 023206 not presented.

first consignment of maize only arrived in Malaŵi on 18 November, 2016.¹⁴ The Committee further heard evidence that out of the contracted for 100,000 metric tonnes, by 30 December, 2016 ZCF had only managed to supply to ADMARC around 4,512 Metric tonnes which represents 4.5% of the contractual tonnage.

- 2.4.3. The Committee further observed, during its site visit to ADMARC's Chilambula Depot that the bulk of the maize that had been delivered by ZCF were in unbranded and recycled bags.¹⁵ This appeared to be at odds with contractual obligation on the part of ZCF which required it to bag the maize in *'new and strong woven polypropylene bags with a ZCF logo or identification marks.'* It bears noting, however, that during its testimony to the Committee, ZCF insisted that the maize that it had supplied to ADMARC had in fact been packaged in bags branded with ZCF logos in keeping with contractual obligations.

¹⁴ Per the testimony of Malaŵi Revenue Authority.

¹⁵ Some of the maize was packaged in reused fertilizer bags.

3. CHAPTER 3 – FINDINGS OF THE COMMITTEE

3.1. Establishing the timeline of key and relevant events

3.1.1. After due consideration and analysis of the evidence that it received, the Committee found the following key events to have been established:-

- a.) ADMARC's dealings with Kaloswe Ltd did not commence on 16 June, 2016 as ADMARC officials who testified before the Committee would have had the Committee believe. The Committee found and established that the interaction between Kaloswe Ltd and ADMARC had been arranged by Mrs. Mijiga Mhango before 16 June, 2016. It was the further finding of the Committee that Mrs. Mijiga Mhango herself had made contact with Kaloswe Ltd around October/November 2015. The Committee noted that despite Mrs. Mijiga Mhango's firm denials of Kaloswe Ltd's evidence that she had made contact with Kaloswe Ltd before October/November 2015, her own testimony did support those denials. The Committee observed, for instance, that Mrs. Mijiga Mhango conceded that one Chishimba Mumba was her 'friend' and business associate'. The Committee noted that Chishimba Mumba was the Marketing Manager for Kaloswe Ltd which fact must have been known to Mrs. Mijiga Mhango during their business interaction. The Committee did not, therefore, accept Mrs. Mijiga Mhango's testimony that she only knew of Kaloswe Ltd a few days before 17 June, 2016 after Chishimba Mumba had invited her to Zambia to explore the possibility of Kaloswe Ltd supplying maize to Malaŵi.
- b.) The Committee further did not find it plausible that Kaloswe Ltd could have entered into a contract with ZCF on 31 May, 2016 for the supply of 100, 000 metric tonnes of maize without assurances from ADMARC or its agent(s) (whom it finds Mrs. Mijiga Mhango to have been) that it would be given a contract for the supply of a similar tonnage of maize to ADMARC. The Committee observed that the contract that was entered into between ZCF and Kaloswe Ltd had in the Addendum, the following provision:-

'Zambia Co-Operative Federation will assist the buyer by way of facilitating the process of obtaining all the relevant permits to allow the movement of grain from Zambia.'

- c.) The Committee deliberated on this provision and concluded that it could only be reasonably interpreted to mean that at the time when the ZCF-Kaloswe Ltd contract was being concluded, ZCF was aware that the maize would in fact be exported out of Zambia. The Committee further found it implausible that Kaloswe Ltd could have assumed a liability of US\$ 21.5 Million by entering into its contract with ZCF without a credible back up plan for meeting that liability.
- d.) The Committee found that ADMARC and Mrs. Mijiga Mhango misled the Committee when they told it that their first interaction with Kaloswe Ltd was on or around 16 June, 2016. The Committee concluded that the signing of the contract between Kaloswe Ltd and ADMARC on 17 June, 2016 was a formalization of business dealings that had started in the preceding months through the agency of Mrs. Mijiga Mhango.
- e.) The Committee further concluded and established that when ADMARC was contracting with Kaloswe Ltd on 17 June, 2016, it was aware that the latter would source its maize from ZCF. On this point, the Committee accepted the evidence of both Mrs. Mijiga Mhango and Kaloswe Ltd that before signing the contract between ADMARC and Kaloswe Ltd on 17 June, 2016, ADMARC's officers had visited the offices and warehouse of ZCF so as to satisfy themselves of the capacity of Kaloswe Ltd to supply the maize under the contract. The Committee further noted that Kaloswe Ltd wrote ADMARC on 28 June, 2016 (11 days after the parties had signed their contract) requesting an amendment to the contract so as to make ZCF the beneficiary of the LC. Curiously, ADMARC acceded to this request without any protest even though by its own testimony, it was evidence of lack of capacity on the part of Kaloswe Ltd to deliver on the contract. The Committee further noted the oddity in that despite ADMARC claiming that it knew of Kaloswe Ltd's capacity challenges to perform the contract as early as 28 June, 2016, it only terminated its contract with Kaloswe Ltd on 11 October, 2016. The Committee thus concluded that ADMARC had always been aware that Kaloswe Ltd would be sourcing its maize from ZCF.
- f.) The Committee also found and established that by the time that ADMARC signed its contract with Kaloswe Ltd on 17 June, 2016 it had not received authorization from the ODPP as is required by law. The

required authorization was only obtained on 18 June, 2016. Furthermore, the Committee found and established that by the time that ADMARC was signing its contract with Kaloswe Ltd, government had not made any provision for money with which the maize being procured would be paid for.

- g.) The Committee further found and established that the contract between ZCF and ADMARC was not signed on 17 June, 2016 as represented in the contract itself but after 20 July, 2016. The Committee noted that ADMARC officials conceded this finding when they appeared before the Committee. This finding is further supported by letters to the ODPP from ADMARC seeking authority to enter into the contract with ZCF which letters were dated 13 July, 2016. The Committee thus concluded that ADMARC's contract with ZCF was backdated to 17 June, 2016 after it had been signed.
- h.) The Committee found and established that after it had signed its contract with ZCF after 20 July, 2016, ADMARC still remained in a valid contract with Kaloswe Ltd until 11 October, 2016 when the Kaloswe contract was terminated. The Committee observed that during the time when ADMARC had these 2 contracts simultaneously running, it had a combined financial exposure of US\$ 69 Million. Half of this exposure had not been authorized by the government.
- i.) The Committee further found and established that both Kaloswe Ltd and ZCF did not have the capacity to supply ADMARC with 100, 000 metric tonnes of maize. The Committee noted that by the time that ADMARC was terminating its contract with Kaloswe Ltd on 11 October, 2016 Kaloswe had delivered not even a single grain of maize to ADMARC despite only 6 days of the delivery period having remained under the contract. The Committee further concluded that the fact that Kaloswe Ltd needed an advance from ZCF to execute its contract with ADMARC demonstrates that it never possessed any capacity to deliver 100, 000 metric tonnes under the contract. The Committee further observed that at the end of the delivery period under the LC, ZCF had only delivered to ADMARC 4, 512 metric tonnes of maize which represents 4.5% of the contracted for tonnage. The Committee found this to be sufficient evidence that ZCF never had the capacity to deliver 100, 000 metric tonnes of maize within 120 days.

j.) The Committee further found and established that at the time when ADMARC signed its contracts with both Kaloswe Ltd and ZCF on 17 June, 2016 and after 20 July, 2016 respectively, there remained in place a maize export ban in Zambia. The ban was only lifted on 26 October, 2016 after a meeting between Hon. Dr. Chaponda and President Lungu. The Committee found no evidence of any concerted effort on the part of both ADMARC and the Malaŵi government to have a waiver of the ban granted expeditiously by the Zambian government. The Committee found that as a result of this failure to act with diligence and speed, ZCF was only able to export the first consignment of maize after 26 October, 2016 which consignment was cleared at the Malaŵi border on 18 November, 2016.

3.2. Findings of irregularities in the procurement process and failure to comply with public procurement law

3.2.1. The Committee found that ADMARC seriously flouted procurement procedures as laid out in the Public Procurement Act (PPA) and the Public Procurement Regulations (PPR) in managing the procurement of maize from Zambia. Firstly, ADMARC's decision to go for a single-sourcing method of procurement appears not to have been justified in the circumstances. The Committee noted that although single-sourcing procurement is permitted under the PPA, such procurement, being a departure from principles of open tendering, is limited to the circumstances spelt out in section 30 (10) of the PPA. The Committee considered section 30 (10) (c) of the PPA which provides that a single-sourcing procurement may be proceeded with:-

'when there is an emergency need for the goods, works and services, involving an imminent threat to the physical safety of the population or of damage to property, and engaging in tendering proceedings or other procurement methods would therefore be impractical'.

3.2.2. The Committee found that the maize that ADMARC was to procure from Zambia was for commercial purposes and not for government's humanitarian response. It was established by the Committee that during the time when ADMARC was buying maize locally, funds had been made available to the NFRA to stock up the strategic grain reserves for

distribution to the needy. Over the course of 2016, for instance, up to 92, 000 metric tonnes of maize had been procured by NFRA from the local market to support the government's humanitarian response to the food deficit. The Committee further noted that following the declaration of national disaster by the State President, donors led by the World Food Programme (WFP) had also embarked on a massive humanitarian response targeting millions of food insecure Malawians.¹⁶ Considering, therefore, that the maize that ADMARC was procuring was for resale and not free distribution to starving Malawians, the Committee found that there was no legal basis for ADMARC to adopt a single-sourcing method in procuring maize from Zambia. It is the Committee's finding that procurement of commercial maize by ADMARC could not be said to involve *an imminent threat to the physical safety of the population such as to render the engaging of other tendering proceedings impractical*. The Committee, therefore, found that ADMARC should have invited bids from eligible suppliers to supply the maize.

- 3.2.3. The Committee further found that ADMARC's senior managers executed a contract for the supply of 100, 000 metric tonnes of maize on 17 June, 2016, with Kaloswe Ltd on the same day that they sought an approval from the ODPP for the procurement. The sought approval was only granted on 18 June, 2016 after the contract with Kaloswe Ltd had already been signed. The Committee found that by entering into a procurement contract before the approval from the ODPP had been granted, ADMARC had violated regulation 123 of the PPR. The Committee observed that even if the choice of the single-sourcing procurement method had been justified in the circumstances, which the Committee has found was not, the approval from the ODPP was still required before a contract could be executed with any supplier.

3.3. Findings of violations of public finance management law by ADMARC

- 3.3.1. The Committee established that the financing arrangement for the procurement of the maize was only finalized by the ST and the RBM on 4 July, 2016, by which time ADMARC had already executed a contract with

¹⁶ Between April 2016 and January, 2017 the WFP estimates that it reached 6 Million food insecure people with 'food, cash and...voucher for maize in partnership with the private sector for beneficiaries of cash-based transfers.'
http://documents.wfp.org/stellent/groups/public/documents/ep/wfp271849.pdf?_ga=1.121533505.851479103.1486667173 accessed 9 February, 2017.

Kaloswe Ltd. The Committee accepted evidence that for the year 2016, ADMARC did not have money of its own to finance its stock purchases and that as a result of that it had to borrow heavily on the local market. The Committee noted that almost all of these loan facilities had in fact been guaranteed by the government. The Committee accepted the evidence of the ST that no lender would lend money to ADMARC without the government guaranteeing the loan. The Committee thus concluded that when ADMARC was entering into the contract with Kaloswe Ltd for the supply of the maize when it did not have ready finances to meet its obligations under the contract, it did so relying on an implicit guarantee that the government would come to its rescue if it failed to pay for the maize.

3.3.2. The Committee further noted that even though the government had only provisioned for US\$34.5 Million for the procurement of maize from Zambia, ADMARC increased its exposure to US\$ 69 Million when it maintained 2 parallel and identical contracts with Kaloswe Ltd and ZCF between 20 July, 2016 and 11 October, 2016.

3.3.3. The Committee found this conduct to be unprofessional, reckless and a violation of the Public Finance Management Act (PFMA).

3.4. Findings of abysmal failure by ADMARC to conduct a due diligence exercise before contracting with either Kaloswe Ltd or ZCF

3.4.1. The Committee observed that regulation 117 of the PPR obliges public entities who engage in single-sourcing procurement to engage in due diligence to ensure that:-

a.) the provider possesses the qualifications required to perform the procurement contract;

b.) that the quality and technical aspects of the provider's proposal meet the procuring entity's requirements; and

c.) the price to be paid to the provider is reasonable.

3.4.2. The Committee received evidence from the CEO for ADMARC that no proper due diligence was done before either Kaloswe Ltd or ZCF was engaged to supply 100, 000 metric tonnes of maize. The Committee found it rather remarkable that ADMARC could have committed itself to a US\$ 34.5 Million contract without satisfying itself that the suppliers possessed

the capacity to supply the contracted for tonnage of 100, 000. The Committee further found that in its dealings with both Kaloswe Ltd and ZCF, ADMARC did not meet the legal obligation of ensuring that the *'price to be paid to the provider [was] reasonable.'* As already observed, ADMARC knew when it was contracting with Kaloswe Ltd that the latter would get its maize from ZCF. It should have been apparent to ADMARC, therefore, that were it to contract with ZCF directly, it would have obtained a reasonably lower price for the maize. Failure by ADMARC to eliminate the 'middle man' at the earliest available opportunity was a flagrant dereliction of legal duty on the part of ADMARC. The Committee further found it strange that even after the 'middle man' had been eliminated from the transaction, ADMARC still allowed the transaction to proceed at the same price of US\$ 345 per metric tonne. This oddity is exacerbated by the Committee's finding that the maize that ZCF would be supplying under its contract with ADMARC was supposed to come from the eastern province of Zambia, which is closer to Malaŵi. The Committee, therefore, found that ADMARC abysmally failed to ensure that Malaŵians got good value for their money in its transactions with both Kaloswe Ltd and ZCF.

- 3.4.3. In any event, the Committee found that there might have been no need in the first place for ADMARC to venture outside the country in search of maize. The Committee received evidence from the CEO for NFRA that their local and open procurement of maize for humanitarian purposes at the price of K250/kilogram was oversubscribed. This exercise realized 92, 000 metric tonnes of maize and was only suspended due to exhaustion of purchase funds. The Committee further noted with great approval that a significant number of the people who sold their maize to NFRA were smallholder farmers. The Committee also noted that ADMARC was able to source close to 106, 000 metric tonnes of maize locally. The Committee did not receive any evidence that suggested that ADMARC could not have procured more maize locally had it been minded to do so. The Committee thus found and concluded that if ADMARC had conducted a proper due diligence exercise, it probably would have come to the conclusion that there was no need to venture outside the country in search of maize. Alternatively, it probably would have come to the conclusion that there was a need to import a significantly lesser tonnage of maize than it had planned to procure outside the country.

3.5. Findings of improper political influence at high levels of government in the maize procurement

- 3.5.1. The Committee found that Transglobe had been authorized to supply maize to ADMARC under the contract that ZCF had with ADMARC after the intervention of Hon. Dr. Chaponda and his Zambian counterpart. The Committee found that an instruction had been given to the Permanent Secretary in the Zambian Ministry of Agriculture by his Minister [of Agriculture] for Transglobe to be given a permit to export 50, 000 metric tonnes of maize to Malaŵi. According to the testimony of the Permanent Secretary, when he called Hon. Dr. Chaponda about how Transglobe would be paid for the supply of maize, Hon. Dr. Chaponda informed him that Transglobe would be paid under the ZCF contract.
- 3.5.2. When testifying before the Committee, Hon. Dr. Chaponda admitted having interacted with Mr. Rashid Tayub of Transglobe through both emails and in person about the possibility of Transglobe supplying maize to ADMARC. The honorable Minister told the Committee that Mr. Tayub told him that the reason why he had come to him was because ADMARC *'was not helping them'*. Hon. Dr. Chaponda testified that he then told Mr. Tayub to go to the Permanent Secretary in Zambia and ZCF so that they could supply the maize as ZCF's subcontractor.
- 3.5.3. The Committee found that the instructions of both Ministers of Agriculture in Malaŵi and Zambia were acted upon by the Permanent Secretary in Zambia's Ministry of Agriculture who on 26 October, 2016 granted Transglobe a permit to export 50, 000 metric tonnes of maize from Zambia.
- 3.5.4. The Committee duly considered Mr. Tayub's evidence on this point. It noted that Mr. Tayub did not provide any convincing reason as to why only Transglobe had been given an export permit when in his own testimony, there were many other companies that wanted to export their maize to Malaŵi but could not because of the ban. Neither did Mr. Tayub offer any cogent explanation as to why the process of issuing his company with an export had, in his own words, *'been rushed.'* The Committee found it odd that the inter-agency committee in Zambia's Ministry of Agriculture granted the export permit to a company that could not legally export maize from Zambia on account of not being a registered taxpayer in Zambia. The Committee noted that in his evidence, Mr. Tayub had testified that a

member of the ZRA had sat in the inter-agency committee meeting that interviewed him on 26 October, 2016. The Committee did not believe that if the inter-agency committee had been acting professionally and without any political pressure, it could have overlooked the fact that Transglobe was not a registered taxpayer in Zambia and thus ineligible to export maize. The Committee, therefore, concluded that this aspect of Mr. Tayub's testimony had been untruthful. The Committee found that the only reason why Transglobe was granted the export permit, when it legally did not qualify for one, was because immense pressure from politicians had been brought to bear on the Permanent Secretary in the Zambian Ministry of Agriculture. The Committee found that if at all the inter-agency committee had met on 26 October, 2016, it had only done so with a view to formalizing the instruction that the Malawian and Zambian Minister of Agriculture had given to Mr. Shawa.

- 3.5.5. The Committee also considered Mr. Tayub's repeated denials that the export permit of 50, 000 metric tonnes had anything to do with ADMARC. The Committee noted that 2 export permits of 50, 000 tonnage each had been given to ZCF and Transglobe on the same day (26 October, 2016). The Committee noted that the total tonnage of 100, 000 thus reached was the same that ZCF was contractually obliged to deliver to ADMARC. The Committee further wondered why the inter-agency committee, if it had truly and professionally interviewed Mr. Tayub on 26 October, 2016, could have granted his company an export permit for 50, 000 metric tonnes when at the material time, Transglobe only had stocks of up to 20, 000 metric tonnes. The Committee recalled that Mr. Shawa had testified that he had called Hon. Dr. Chaponda who had told him that Transglobe would be paid under the ZCF contract. The Committee, therefore, found that Transglobe, with the help of Ministers of Agriculture in Zambia and Malawi had obtained an export permit for 50, 000 metric tonnes so that the same could be sold to ADMARC under the ZCF contract. The Committee found that if at all any written contract had been signed by ZCF and Transglobe in December, 2016 as alleged by Mr. Tayub, the same had merely been done to formalize the arrangement that had already existed since 26 October, 2016.
- 3.5.6. The Committee observed that the aspect of Hon. Dr. Chaponda's testimony on his involvement with Transglobe contradicted his earlier testimony on

the role of the Ministry of Agriculture in overseeing parastatals such as ADMARC. The Committee recalled that during the earlier part of his testimony, Hon. Dr. Chaponda had told the Committee that the Ministry's role was limited to providing policy guidance to the parastatals and was accordingly not involved in its day to day operations. The Committee, therefore, found it contradictory that the Minister found it appropriate to involve himself in the procurement of maize by ADMARC from Zambia by arranging for Transglobe to be ZCF's subcontractor.

- 3.5.7. The Committee further noted that a subcontract under the contract between ZCF and ADMARC could only have been entered into at the instance of ZCF as the principal supplier. The Committee, therefore, found that neither Ministers of Agriculture in Zambia and Malaŵi had any legal competence to impose Transglobe on ZCF as a subcontractor.
- 3.5.8. The Committee found that Hon. Dr. Chaponda, with the concurrence and participation of his Zambian counterpart, arbitrarily, wrongly and in flagrant violation of the PPA used his powers as Minister of Agriculture to give Transglobe business to supply maize to ADMARC. The Committee further found that this was particularly improper as at no time did Transglobe have any contract with ADMARC. The Committee noted that in his testimony, Hon. Dr. Chaponda had told the Committee that Mr. Tayub had told him that ADMARC '*weren't helping them.*' The Committee interpreted this to mean that Mr. Tayub had made his offer for the sale of maize to ADMARC and that the latter had rejected it. The Committee found that it was grossly inappropriate for the Minister to usurp ADMARC's powers of procurement and allow Transglobe to supply maize to it.
- 3.5.9. The Committee considered and exhaustively deliberated on the submission of Hon. Dr. Chaponda that the Committee and by extension the Malaŵi nation should pardon any irregularities in the procurement of the maize from Zambia due to the fact that '*the house was burning at the material time.*'¹⁷ At the end, the Committee decided to reject this submission as having no sound basis in law. The Committee noted that the laws of Malaŵi, especially the PPA and the PPR have made provision for public

¹⁷ The submission was that the nation was facing a crisis of food shortage and that accordingly the desperate situation called for desperate measures.

procurement during times of national crises. Parliament should be taken to have duly considered these provisions and found them adequate and fit for their purpose. The Committee, therefore, firmly rejected any suggestions that national crises justify a violation of laws and set down procedures. The Committee further noted that the Malaŵi Supreme Court of Appeal in the case of *Sam Mpasu v Republic, MSCA Criminal Appeal No. 1 of 2009 (the Fieldyork Scandal case)* had rejected the argument that a pressing national need was a justification for arbitrarily flouting public procurement procedures.

- 3.5.10. The Committee further considered and exhaustively deliberated on the submissions of Hon. Dr. Chaponda that he had a political obligation to entertain suppliers like Transglobe and ‘*all people who came to his door*’ to complain that ‘*ADMARC wasn’t helping them.*’ The Committee firmly rejected this line of reasoning. The Committee observed that these kinds of tendencies are incubators of corrupt practices. They further deny other deserving Malaŵian businesspersons who have no access to powerful people like the honorable Minister of Agriculture, to legitimately and fairly participate in government business. The Committee found that these kinds of practices are totally unacceptable.
- 3.5.11. The Committee further found that Mr. Tayub of Transglobe had been wrong to approach Hon. Dr. Chaponda so as to secure his involvement in the procurement of maize by ADMARC. The Committee noted that no convincing reason had been provided by Transglobe as to why it did not approach civil servants in the Ministry to seek clarity on its export permit. The Committee concluded that the only reason why Transglobe bypassed civil servants was because it wanted to deal with an official of the requisite influence and ability to deliver on its desired goal of supplying maize to ADMARC. The Committee found that Mr. Tayub’s solicitation of Hon. Dr. Chaponda’s involvement in the procurement proceedings was wrongful and potentially criminal.

3.6. Findings on limitations of the MVAC assessments as a basis for sound government policy and decisions and the apparent failure of ADMARC and government to synchronize its plans for procurement of commercial maize with the donor led humanitarian response

3.6.1. The Committee received evidence about the vital work that the MVAC does in providing government and Malaŵi's development partners with assessments on the state of food security in the country. The Committee found that these assessments are important in informing the response of government and development partners to national food crises. The Committee found, however, that there are serious limits on the guidance that MVAC assessments provide to the nation. It was observed by the Committee, for instance, that the methodology used by MVAC in coming up with its assessments does not make provision for maize being hoarded/kept by commercial traders and other Malaŵians. The Committee observed that this omission may sometimes have the effect of skewing both the assessment being provided as well as the response of the government and development partners.

3.6.2. The Committee also observed that by January, 2017 the WFP response to the El Nino induced food deficit in Malaŵi would have reached close to 6 Million people *with 'food, cash and...voucher for maize in partnership with the private sector for beneficiaries of cash-based transfers.'*¹⁸ The Committee noted that the figure of 6 Million that would have been reached by WFP by the end of January, 2017 represents almost 90% of those who were projected to be food insecure by MVAC in early 2016. The Committee further noted that ADMARC was struggling to sell the 106, 000 metric tonnes that it had bought and further that there was a lot of maize in the local markets. The Committee concluded that this evidence suggested that the government and ADMARC had failed to coordinate their plans to procure 'commercial maize' with the donor led response to the food deficit. The result had been that they had erroneously planned to procure more commercial maize than was required.

¹⁸

http://documents.wfp.org/stellent/groups/public/documents/ep/wfp271849.pdf?_ga=1.121533505.851479103.1486667173 accessed 9 February, 2017.

3.7. Findings on the financial exposure to the country of the procurement of maize from Zambia

- 3.7.1. The Committee noted that the procurement of maize from Zambia had been financed through a confirmed LC in favour of ZCF. An LC is a facility in international trade that allows a foreign supplier to be paid for goods supplied to a buyer in another country by presenting documents previously agreed upon to a bank in the country of the supplier. Where the LC is said to be confirmed and irrevocable as the one in this instance was, the paying bank will be obliged to pay the supplier once he presents documents that fully comply with the terms previously agreed upon by the parties. The Committee noted that one of the defining elements of an LC is its independence from the underlying contract. This means that the validity and terms of an LC are not dependent on the underlying contract of sale, in this case the contract for sale of maize between ADMARC and ZCF. The Committee observed that under the LC, the supplier could be paid for any tonnage actually delivered to ADMARC. In this regard, the Committee found that the LC did not have a term requiring a minimum threshold of delivery of 10,000 metric tonnes before payment could be demanded as had been agreed by the parties in the contract of sale.
- 3.7.2. The Committee found that as of 30 December, 2016, ZCF, with the help of Transglobe, had delivered to ADMARC around 4,512 metric tonnes of maize at a total cost of US\$ 1, 556, 640. The Committee further found that on 14 December, 2016 ZCF raised an invoice for US\$ 528, 025.26 for 1530.508 metric tonnes which invoice was not honored by the paying bank because the documents supplied by ZCF to the bank did not fully comply with the terms of the LC. The Committee found, therefore, that there had been no draw down of the US\$ 34.5 Million LC that had been made available for the benefit of ZCF. The Committee further found that the LC expired on 30 January, 2017 such that unless extended, no presentation of an invoice with the supporting documentation by the supplier would be honored by the paying bank.
- 3.7.3. The Committee resolved to highlight, however, that this did not mean that the LC facility had been without a cost to RBM and Malaŵi. The Committee found that fees for arranging the facility was around US\$ 759, 000¹⁹ or

¹⁹ The terms of the letter of credit provided for a 1.0% facility fee for the available amount (US\$ 345,000.) It also attracted establishment fees at 0.60% per quarter or part thereof payable on the establishment of each

around K0.55 Billion. The Committee noted with profound regret that this is the amount of money that will be paid by ADMARC/RBM under the PTA Bank facility for an LC that at the end of the day was not used by Malawi.

3.7.4. The Committee, however, stresses that there remains a need for ADMARC and government to expeditiously find means of paying for the maize that was actually supplied by ZCF. The Committee noted that defaulting on this obligation would be damaging to the country's international credit rating and standing.

3.8. Findings on unusual and improper involvement of private individuals in the procurement of maize

3.8.1. The Committee noted with grave concern that despite having no formal appointment in either government or ADMARC, Mrs. Mijiga Mhango, the Chairperson for the GTPA, was unusually pivotal in the procurement of maize from Zambia by ADMARC. The Committee found, for instance, that it was Mrs. Mijiga Mhango who introduced ADMARC to Kaloswe Ltd. Mrs. Mijiga Mhango, was also the one who chaired the meeting between ADMARC, ZCF and Kaloswe Ltd at ZCF offices in Zambia on 17 June, 2016. Mrs. Mijiga Mhango was present when ADMARC and Kaloswe Ltd negotiated their contract and was further the one who facilitated the signing of the contract between ADMARC and ZCF after 20 July, 2016.²⁰ According to her own testimony, Mrs. Mijiga Mhango was further involved in handling logistics for the contracts between Kaloswe Ltd and ZCF and ADMARC through her company called AFRISEED. Mrs. Mijiga Mhango had testified to the Committee that her role in the maize procurement was merely 'voluntary' and that she had travelled to Zambia at her own expense. The Committee found, however, that she had handled the logistics for the contracts between Kaloswe Ltd/ZCF and ADMARC through her company AFRISEED.

3.8.2. The Committee found the intimate involvement of Mrs. Mijiga Mhango in the procurement proceedings by ADMARC to have been unusual, improper and suspicious. The Committee found that ADMARC being a

letter of credit. Letter of credit in this case was established on 26 July, 2016 and lasted up to 30 January, 2017. That's slightly over 6 months which would attract establishment fees of US\$ 414, 000.)

²⁰ The Committee received in evidence an email dated 20 July, 2016 which had been addressed to her

state-owned company, should have placed reliance on officials at the Malaŵi Embassy in Lusaka instead of Mrs. Grace Mhango. The Committee further found that Mrs. Grace Mhango misled the Committee when she testified that her role in the maize procurement had merely been voluntary. The Committee found that her involvement in the transaction had been motivated by a desire to earn profits through her companies, one of which is AFRISEED.

3.9. Findings of attempts by public officials to mislead the Committee through untruthful testimony

- 3.9.1. The Committee observed that confidence in public institutions will only be strengthened if those who occupy those institutions are people of unimpeachable personal integrity, probity and competence. In this regard, the Committee observed that the manner in which certain public officials conducted themselves during the procurement of the maize from Zambia and during their interaction with the Committee during this inquiry fell way below the requisite standards of integrity and competence.
- 3.9.2. The Committee found, for instance, that senior managers for ADMARC and ZCF backdated the contract that they signed with each other to 17 June, 2016 when it was actually signed after 20 July, 2016. Furthermore, minutes of ADMARC's IPC meeting held on 17 June, 2016 falsely recorded Mr. Kantonga, ADMARC's Director of Operations and Chairperson of the IPC as being present at the meeting. The truth was that Mr. Kantonga was in Zambia at the material time. The Committee found this conduct to have been grossly improper and misleading.
- 3.9.3. The Committee further observed that some public officials who appeared before the Committee were not entirely honest with the Committee despite giving their testimony under oath. For instance, during their testimony before the Committee, officials from the RBM (Governor Chuka and Mr. Henry Mathanga) told the Committee that they only became aware of the contract between Kaloswe Ltd and ADMARC after the media started covering the matters surrounding the transaction. Dr. Ronald Mangani, the ST, testified that he first became aware of the contract between Kaloswe Ltd and ADMARC on 5 January, 2017 after the Board for ADMARC had been briefed on the deal. The Committee, however, received in evidence an email sent by Ms. Madalo Nyambose, Director of Debt and Aid Management in

the Ministry of Finance, sent to Louis Loti on 12 July, 2016. The email, which had been copied to Dr. Mangani, Mr. Mulumbe and the late Mr. Bakuwa and had the heading 'KALOSWE CONTRACT ADDENDUM' read as follows:-

'Dear Louis,

Please find attached the addendum to the Kaloswe-ADMARC Agreement. Please print and submit to RBM to the attention of Mr. Mathanga as a matter of urgency. We already discussed the details.

Kind regards,

Madalo.'

- 3.9.4. The Committee observed that the email had been sent on the same day that officials from RBM, ADMARC and PTA Bank had met to discuss the terms of the financing arrangement for the procurement of maize from Zambia. The Committee thus found that contrary to their assertions before the Committee, Dr. Mangani, Mr. Chuka, Ms. Nyambose and Mr. Mathanga, were aware of the ADMARC-Kaloswe Ltd contract as early as 12 July, 2016. The Committee thus concluded that the aforementioned officials had lied under oath on this aspect of their testimony and had thereby meant to mislead the Committee.
- 3.9.5. Similarly, the Committee found that Mrs. Erica Maganga, the Principal Secretary in the Ministry of Agriculture had lied to the Committee, while still under oath, when she testified that she did not know of the whereabouts of Hon. Dr. Chaponda at of the date of the testimony, 20 January, 2017. The Committee observed that Mrs. Maganga only divulged details of the Minister's trip to Germany after being repeatedly pressed by the Committee.
- 3.9.6. The Committee found the conduct of Dr. Mangani, Mr. Chuka, Mr. Mathanga, Ms. Nyambose and Mrs. Maganga to have been grossly improper and deserving of a stern rebuke.

4. CHAPTER 4 - RECOMMENDATIONS BY THE COMMITTEE

4.1. Recommendation for administrative disciplinary measures and further investigation with a view to establishing potential criminal wrongdoing

4.1.1. The Committee found the failure of ADMARC senior management to comply with public procurement law and the PFMA to be deserving of strong administrative disciplinary measures by the Board for ADMARC. The Committee further observed that there was a need for law enforcement agencies to investigate whether the aforementioned failures had simply been actuated by incompetence on the part of ADMARC's senior management or by a desire to illicitly benefit from the transaction. The Committee, therefore, recommends as follows:-

- a.) The Board of ADMARC should initiate disciplinary proceedings against its senior managers who were involved in the transactions to procure maize from Zambia for their violation of public procurement law and the PFMA;
- b.) Malaŵi's law enforcement agencies, to wit, the Malaŵi Police Service and the Anti-Corruption Bureau should immediately launch an investigation into whether the manner in which the procurement of maize from Zambia was managed had merely been actuated by incompetence on the part of ADMARC's senior managers or by a desire for illicit gain.

4.2. Recommendation for review of the Public Procurement Act to provide for thresholds of pre-procurement approval from the Secretary to the Treasury and the Attorney General for parastatals and state owned companies.

4.2.1. The Committee recommends that the Public Procurement Act be reviewed to provide for the pre-procurement approval by the Secretary to the Treasury and the Attorney General of procurements by parastatals and state owned companies beyond certain thresholds.²¹ The Committee found it unsatisfactory that no such legal requirement currently exists. The result of this gap is that parastatals and state owned companies can enter into procurement contracts worth billions of Kwachas without the approval, let alone knowledge, of the Secretary to the Treasury and the legal opinion of

²¹ Such an arrangement (prior approval of Ministry of Finance) in the public procurement procedures that had obtained before the enactment of the Public Procurement Act.

the Attorney General. The Committee found it to be imperative that the Secretary to the Treasury should always be kept in the loop regarding financial commitments that parastatals make as they have the potential to expose the Malaŵian taxpayer to colossal financial liabilities.

4.3. Recommendation for the need for the State President to censure the Minister of Agriculture Hon. Dr. George Chaponda, MP and for law enforcement agencies to investigate potential misuse or abuse of public office

4.3.1. The Committee recommends that the State President, His Excellency Professor Arthur Peter Mutharika, should publicly censure the Minister of Agriculture and Irrigation, Hon. Dr. George Chaponda, MP, for arbitrarily and wrongly using his influence to arrange for Transglobe to supply maize to ADMARC in violation of the country's public procurement laws. This censure will affirm the government's commitment to the rule of law and its zero tolerance for corruption.

4.3.2. The Committee further recommends that law enforcement agencies namely the Malaŵi Police Service and the Anti-Corruption Bureau investigate the conduct of the honorable Minister with a view to finding out if his conduct did not amount to a misuse or abuse of public office.

4.4. Recommendation for the investigation of Mr. Tayub and Transglobe for possible corrupt practices

4.4.1. The Committee recommends that Malaŵi's law enforcement agencies, to wit, the Malaŵi Police Service and the Anti-Corruption Bureau investigate Mr. Tayub and Transglobe for potentially having corruptly solicited the involvement of the Minister of Agriculture, Hon. Dr. George Chaponda in the procurement of maize by ADMARC from Zambia.

4.5. Recommendation on the need to review the methodology of MVAC and the response of the government to the MVAC assessments

4.5.1. The Committee recommends that there be a review by the government and other relevant stakeholders of the methodology currently used by MVAC in coming up with its national food security assessments. The review should aim at significantly reducing the margin of error of such assessments so that the resultant data is credible and reliable.

4.5.2. The Committee further recommends that there be greater coordination between the government, Malaŵi's development partners and grain traders in responding to national crises such as food deficits.

4.6. Recommendation on the need for high levels of integrity and competence by those who exercise powers of state and for stewards of public funds

4.6.1. The Committee recommends that the Board for ADMARC and the Chief Secretary for Government continue to insist on high levels of integrity from those working for ADMARC and Government.

4.6.2. The Committee further recommends that the Director of Public Prosecutions considers bringing charges of perjury against those witnesses who lied under oath when they appeared before the Committee.

4.7. Recommendation on the elimination of the role of unauthorized private citizens in the conduct of public business

4.7.1. The Committee recommends that the role of private individuals, such as Mrs. Mijiga Mhango, in future government business and contracts be totally eliminated. The Committee noted that the involvement of such individuals in government business gives them influence over public affairs without the requisite accountability. The Committee further noted that such practices violate the constitutional principles of transparency and accountability.

4.8. Recommendation on strengthening Parliament's capacity to provide oversight to the other branches of government

4.8.1. The Committee observed that a lot of irregularities and failures in the other branches of government could be remedied if Parliament played its oversight role more robustly. In this regard, the Committee noted that this was the first time in the recent history of the House that an investigation of this nature had been conducted by a parliamentary committee. The Committee thus recommends that the capacity of Parliament be strengthened to enable it conduct its oversight role to the other branches of government in a more robust fashion.

5. CHAPTER 5 – CONCLUSION

- 5.1. The Committee observed that the public procurement law has the singular cardinal objective of ensuring that public funds are protected from abuse and that Malaŵians get good value for their money. The Committee further observed that the law does not depart from this objective even when public procurement is required to meet a national crisis. The Committee found that in respect of the procurement of maize from the Republic of Zambia, the aforementioned objective was not met with the result that Malaŵians did not get good value for their money. Firstly, there was no legal basis for the adoption of a single-sourcing procurement method in respect of the purchase of maize from Zambia. ADMARC should have invited bids for the supply of the maize. ADMARC should further have demonstrated prudence before it entered into contracts with Kaloswe Ltd and ZCF by conducting a thorough due diligence exercise. This would have ensured that ADMARC satisfied itself of the capacity of both Kaloswe Ltd and ZCF to deliver on the contracts and of the fairness of the price that it paid for the maize. ADMARC having signed contracts for the export of maize from Zambia when it knew that there was an export ban in that country should have done more, with the support of the government of Malaŵi, to ensure that the ban was expeditiously lifted so that the maize could start arriving in Malaŵi.
- 5.2. When it set out to fulfil its mandate, the Committee had three specific objectives namely:-
- a.) to establish whether public procurement laws and procedures were complied with during the procurement of the maize;
 - b.) to establish whether any fraudulent activities had taken place in the procurement of the maize;
 - c.) to bring to book all individuals and institutions involved in malpractices or fraudulent activities during the procurement of the maize.
- 5.3. The Committee observed that at the end of the exercise that the House had entrusted to it, it had delivered on the objectives of the inquiry. The Committee established that there had been a flagrant violation of public procurement laws and procedures during the procurement of the maize from Zambia. The Committee further found the following matters to be *prima facie* evidence of fraudulent activities during the procurement of the maize:-

- a.) minutes of ADMARC's IPC meeting which falsely recorded Mr. Kantonga, the Chairman of the IPC as having been present;
 - b.) the unusual influence that Mrs. Mijiga Mhango, a private citizen, had on the procurement proceedings;
 - c.) the backdating of the ZCF - ADMARC Contract;
 - d.) the interference by Hon. Dr. George Chponda and his Zambian counterpart in granting Transglobe a maize export permit and in allowing Transglobe to supply maize to ADMARC when Transglobe did not have any contract with ADMARC.
 - e.) The repeated lies told by witnesses in both Malawi and Zambia in a gallant and spirited bid to mislead the Committee.
- 5.4.** The Committee observed that by establishing the roles that were played by diverse players in the procurement of maize from Zambia, the Committee had begun the process of holding these individuals and institutions accountable. The Committee observed, however, that there remained further roles for other law enforcement agencies to play in ensuring that these individuals and institutions finally answer for their wrongful deeds.
- 5.5.** It is in the nature of all states to face crises from time to time. The ability of a state to meet those crises without breaking the law, however, is the true measure of the maturity of a polity. The food deficit that the country faced in 2016, regardless of its true measure, was no excuse for a refusal to scrupulously comply with the public procurement as well as the public finance management law. These laws, inconveniencing though they might often be to our public functionaries, are the only sure bulwark against the abuse and misuse of public resources. They must accordingly guide our conduct at all times.
- 5.6.** It has been said that those who fail to learn from history are doomed to repeat its pernicious mistakes. The Committee recommends this Report and its lessons to the House and the nation at large in the hope that we will all thereby highly resolve to become a better version of ourselves.

APPENDIX

THE COMMITTEE RECEIVED EVIDENCE FROM THE FOLLOWING PEOPLE IN MALAWI:--

Tuesday, 17th January, 2017:-

Human Rights Consultative Committee (HRCC)

- Mr. Billy Mayaya
- Mr. Matanda
- Mr. Robert Mkwezalamba
- Rev. Fr. McDonald Sembereka
- Mr. Benedicto Kondowe

Wednesday, 18th January, 2017:-

Office of the Director of Public Procurement (ODPP);

- Mr. Paul Taulo

ADMARC

- Mr. Foster Mulumbe
- Ms. Magret Roka Mauwa
- Mr. F. Kantonga
- Mr. Kanjere

Thursday, 19th January, 2017:-

Ministry of Finance

- Ms. Madalo Nyambose
- Mr. Chancy Simwaka

Malawi Revenue Authority (MRA).

- Mr. T G Malata
- Mr. F Valeta
- Mr. S. Kapoloma

Friday, 20th January, 2017:-

Ministry of Agriculture, Irrigation and Water Development

- Mrs. Erica Maganga
- Mr. Bright Kumwembe

Monday, 23rd January, 2017:-

Consumer Association of Malaŵi (CAMA)

- Mr. J. Kapito
- Mr. Y.Nthenda
- Mr. Kawaye

Office of the Director of Public Procurement (ODPP)

- Mr. Paul Taulo
- Mr. Jeke
- Mr. Chirwa

Tuesday, 24th January, 2017:-

FDH Bank

- Mr. Mawerenga

Auction Holding Limited Commodities Exchange

- Mr. Davies Manyenje
- Mr. Isaac Songea
- Mr. Thandizo Shaba
- Mr. Wise Chauluka

Wednesday, 25th January, 2017:-

National Food Reserve Agency

- Mr. Nasinuku D. Saukira

Thursday, 26th January, 2017:-

Ministry of Finance

- Dr. Ronald Mangani
- Ms. Nyambose
- Mr. Chancy Simwaka

Reserve Bank of Malaŵi

- Mr. Charles Chuka
- Mr. Mathanga
- Ms. Danga

Friday, 27th January, 2017:-

ADMARC

- Mr. Foster Mulumbe

Wednesday, 8th February, 2017:-

Minister of Agriculture, Irrigation and Water Development

- Hon Dr. George Chaponda, MP

Friday, 10th February, 2017:-

Grain Traders and Processors Association

- Ms. Grace Mijiga Mhango

THE JOINT COMMITTEE MET THE FOLLOWING ZAMBIAN AN OFFICIALS ON THESE DATES:-

Wednesday, 1st February, 2017:-

Malaŵi Embassy in Zambia

- Mr. Warren Gunda
- Mrs. Ellen Solomoni
- Mr. Daught Banda

Zambia Cooperative Federation

- Mr. Chirwa
- Mr. Munthali
- Mrs. Milimo

Thursday, 2nd February, 2017:-

Kaloswe Commuter and Courier Limited Company

- Mr. Isaac Kapambwe
- Mr. Mumba Muzeya
- Mr. Titus Nyirongo
- Mr. Kasonde Mwanga

Friday, 3rd February, 2017.

Zambia Ministry of Agriculture

- Mr. Julius Shawa
- Mr. Kaunda Kapepekura
- Mr. Peter Zulu

Zambian Leader of Opposition

- Hon. Dr. Savior Chishimba