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Legal process of signing and ratification: The Zambian case

What does Accession mean?

- "Accession" is the act whereby a State accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.
- (Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969)

LEGAL REQUIREMENTS FOR ZAMBIA

- The Ratification of International Agreements Act, 2016 is an Act which provides for the ratification of international agreements and the domestication process; and provides for matters connected with, or incidental to, the forgoing.
- Section 3 of that Act provides that: *“Where the question of ratification of an international agreement arises, the Minister responsible for the subject matter of the international agreement shall, subject to subsection (2), consider whether it is in the best interests of the State to ratify the international agreement.”*

General responsibility over international agreements

- The Minister shall, in determining whether it is in the best interests of the State to ratify an international agreement, consider –
- (a) the object of the international agreement;
- (b) whether existing legislation adequately addresses the object of the international agreement;
- (c) the impact of implementing any measure specified in the international agreement; and
- (d) any legislative measures that may be required to give effect to the international agreement.

- Where, in the opinion of the Minister, it is in the best interest of the State to ratify an international agreement, the Minister shall, in consultation with the Attorney General, initiate the process of ratification by way of a Cabinet Memorandum to the Cabinet seeking approval in principle of a proposal to ratify the international agreement.
- The Cabinet Memorandum shall outline –
 - (a) the objectives and subject matter of the international agreement;
 - (b) any constitutional implications including
 - (i) consistency of the international agreement with the Constitution; and
 - (ii) legislation that may need to be amended or enacted;

- (c) the national interests which may be affected by the ratification of the international agreement;
- (d) obligations imposed on the State by the international agreement;
- (e) requirements for implementation of the international agreement;
- (f) policy considerations;
- (g) financial implications;
- (h) ministerial responsibility;
- (i) the date of signature of the international agreement by the State;
- (j) the date of entry into force of the international agreement;

- (k) the number of States that are party to the international agreement;
- (l) where the international agreement sought to be ratified permits reservations, any recommendations on reservations, and declarations which have been made by the State or other States; and
- (m) the proposed text of any reservations that should be entered when ratifying the international agreement in order to safeguard the interests of the State.

Consideration of the proposal for ratification by Cabinet and Approval of proposal for ratification by National Assembly

- Section 4 of the Act provides that: *“Cabinet shall consider and approve or disapprove a proposal set out in a Cabinet Memorandum to ratify an international agreement.”*
- Section 5. (1) Where Cabinet approves, in principle, a proposal to ratify an international agreement, with or without any reservations, the Vice-President shall submit the proposal to the National Assembly for approval in accordance with Article 63 of the Constitution.
- (2) Where the National Assembly, by resolution, approves a proposal for ratification, with or without any reservations, the Minister responsible for foreign affairs shall cause the preparation of the instrument of ratification which shall include the matters specified in the Schedule. (3) The instrument of ratification referred to in subsection (2) shall, where a reservation is intended, include such reservation, and the reservation shall also be signed by the person signing the instrument of ratification

- (3) The instrument of ratification referred to in subsection (2) shall, where a reservation is intended, include such reservation, and the reservation shall also be signed by the person signing the instrument of ratification.
- (4) Where the National Assembly does not approve the ratification of an international agreement, the State shall not ratify the international agreement.

What is a reservation?

- **“Reservation”** means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

.Object of reservations

- A reservation purports to exclude or modify the legal effect of certain provisions of a treaty or of the treaty as a whole with respect to certain specific aspects in their application to the State or to the international organization which formulates the reservation.

Ratification of, amendment to, or modification of international agreements.

Ratification of Protocols to international agreements

- According to section 6 where an international agreement ratified is subsequently amended or modified, the amendment or modification shall be ratified only after compliance with the procedure set out in sections three, four and five (cited earlier).
- Section 7 of the Act provides that: “Sections four and five shall apply, with the necessary modifications, to the ratification of protocols signed under an international agreement.”

Deposit of instruments for ratification

- 8. (1) An instrument of ratification shall be deposited by the Minister responsible for foreign affairs at the depository, and in the manner designated by the international agreement or negotiating States.
- (2) An original copy of the instrument of ratification shall be filed at the Registry and a copy shall be submitted to the Ministry responsible for justice.

State Reports

- Section 11 of the Act provides that:
- (1) Where an international agreement provides for the submission of State reports as part of the monitoring mechanism, the Ministry responsible for the subject matter of the international agreement shall prepare and submit the State report within the period specified in the international agreement.
- (2) For purposes of this section, a State report includes any periodic report which the State may be required to submit under an international agreement.

Domestication of International Agreement (Section 12)

- (1) Where the National Assembly has approved the ratification of an international agreement, the Ministry responsible for the subject matter of the international agreement shall, where necessary, initiate the domestication process.
- (2) An international agreement may be domesticated by—
 - (a) an Act that sets out the international agreement in a schedule;
 - (b) setting out salient provisions of the international agreement, in the substantive part of an Act, that will require specific interventions or measures to be undertaken, and annexing the international agreement to the Act;
 - (c) rephrasing the terms of the international agreement in an Act and annexing the agreement to the Act;
 - (d) adopting, in an Act, the terms of the international agreement in its entirety; or
 - (e) the use of any other enforceable means, where applicable.

Registry of International Agreements (Section 13)

- There shall be established and maintained a Registry of International Agreements at the Ministry responsible for foreign affairs which shall—
 - (a) be the depository of international agreements to which the State is party;
 - (b) contain information on international agreements that have been, and have not been, ratified by the State; and
 - (c) be the depository of State reports made in accordance with the State reporting obligations under an international agreement.

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- THANK YOU