



STATUS OF RATIFICATION OF INTERNATIONAL AND REGIONAL TREATIES

PREPARED BY:

RESEARCH:

Sharon Williams (PMRC Research Fellow) with the support of **Mrs. Bernadette Deka-Zulu** (Executive Director)

EDITORIAL TEAM:

Chiti Jacob Nkunde (Communication Specialist) **Layout and Design**
Melody M. Simukali (Head Communications and Grants) **Editorial**

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ABBREVIATIONS

AU	African Union
COMESA	Common Market for East and Southern Africa
SADC	Southern African Dvelopment Community
UN	United Nations
WTO	World Trade Organisation





1.0 INTRODUCTION

This briefing document seeks to **outline the regional, continental and international treaties to which Zambia is a State party and where possible, the status of ratification of these treaties**. It looks at the implications of being a State party and the attendant obligations. It also touches on some of the inherent challenges in ensuring that reporting obligations are met, while upholding the duty to respect, protect and fulfil the rights contained in each instrument.

Zambia is an active member of several multilateral and regional organisations, notably the United Nations (UN), the World Trade Organisation (WTO), African Union (AU), the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC). Membership to these international and regional bodies entails certain obligations and Zambia, like many other countries in the world, is a State party to international instruments that she has ratified.



WORLD TRADE
ORGANIZATION



2.0 TREATY PROFILE AND STATUS

Below is a summary of some of the key international treaties and conventions to which Zambia is a State Party. They are clustered into continental, sub-regional and international categories.

2.1 Continental Instruments

Treaty/Protocol/Convention	Status	Date
Protocol on Combatting Illicit Drugs	Ratified	30/10/1998
Protocol on Politics, Defence and Security Cooperation	Signed	14/08/2001
Protocol on the Control of Firearms, Ammunition and Other Related Materials in SADC	Ratified	16/01/2001
SADC Protocol Against Corruption	Ratified	08/07/2003
Protocol on Extradition	Ratified	20/08/2004
SADC Protocol on Mutual Legal Assistance in Criminal Matters		
African Charter on the Rights and Welfare of the Child	Ratified	2/12/2008
African Charter on Human and Peoples' Rights (1981/1986)	Ratified	10/1/1984
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [Maputo Protocol]	Ratified	25/2006
African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (1998/2004)	Signed	9/6/1998
Protocol on the Statute of the African Court of Justice and Human Rights (2008)	Signed	3/8/2005
Protocol Relating to the Establishment of the Peace and Security Council of the African Union	Ratified	04/07/2003
African Convention on Preventing and Combatting Corruption	Ratified	30/3/2007
Africa Youth Charter	Ratified	16/9/2009
Constitutive Act of the African Union (2000/2001)	Ratified	21/2/2001
OAU Convention on the Prevention and Combatting of Terrorism (1999/2002)	Signed	3/8/2005
Protocol on the Amendments to the Constitutive Act of the African Union	Signed	3/8/2005

African Charter on Democracy, Elections and Governance (2007/2012)	Ratified	31/5/2011
AU Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Declaration)	Ratified	14/10/2011
General Convention on the Privileges and Immunities of the OAU	Ratified	12/2/2016
African Convention on the Conservation of Nature and Natural Resources	Ratified	29/3/1972
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa	Ratified	30/7/73
Protocol to the Treaty Establishing the African Economic Community Relating to the Pan African Parliament	Ratified	21/11/2003
Convention of the African Energy Commission	Ratified	23/6/2006
African Regional Intellectual Property Organisation (ARIPO) Swakopmund Protocol on the Protection of Traditional Knowledge and Expression of Folklore	Ratified	2011

2.2 Sub-Regional Treaties

Treaty/Protocol/Convention	Status	Date
SADC Protocol on Combatting Illicit Drug Trafficking	Ratified	
SADC Protocol against Corruption	Ratified	
SADC Protocol on Gender and Development	Ratified	
Treaty Establishing the Common Market for Eastern and Southern Africa	Ratified	
Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children (International Conference on the Great Lakes Region)	Ratified	

2.3 International Treaties

Treaty/Protocol/Convention	Status	Date
International Covenant on Civil and Political Rights (ICCPR)*	Ratified	10/4/1984
International Covenant on Economic, Social and Political Rights (ICESCR)*	Ratified	10/4/1984
Convention on the Rights of the Child (CRC)*	Ratified	16/01/2001
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*	Ratified	08/07/2003
The Second Optional Protocol to the International Covenant on Civil and Political Rights on the Abolition of the Death Penalty		
Optional Protocol on the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict	Signed	29/9/2008
Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*	Ratified	1985
Convention on the Rights of Persons with Disabilities (CRPD)*	Signed	29/9/2008
Optional Protocol to the Convention on the Rights of Persons with Disabilities	Ratified	1/2/2010
UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*	Adopted	
UN Rules for the Protection of Juveniles Deprived of their Liberty*	Adopted	
UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)	Adopted	
Framework Convention on Tobacco Control	Ratified	
Convention relating to the Status of Refugees*	Ratified	24/9/1969
Universal Declaration of Human Rights (UDHR)	Ratified	21/2/2001
Convention on the Protection of Migrant Workers	-	3/8/2005
UN Convention Against Corruption (CAC)*		3/8/2005
UN Convention Against Transnational Organised Crime*	Ratified	
UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT)*	Ratified	7/10/1998
Optional Protocol to CAT	Signed	

UN Convention on the Elimination of All Forms of Racial Discrimination (CERD)	Ratified	4/4/1972
Protocol to Prevent, Suppress and Prevent Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime (2000) (Palermo Protocol)*	Ratified	24/4/2005
UN Convention Against the Worst Forms of Child Labour 182 (1999)*	Ratified	2/12/1964
Declaration of Commitment on HIV/AIDS	Signed	
UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)*UNGASS 2015	Signed	2015
UN Principles for Older Persons	-	
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	-	
Hague Convention on Inter Country Adoptions*	Acceded	August 2014
UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances	Ratified	28/5/1993
UN Security Council Resolution 1325 on Women, Peace and Security	Adopted	31/10/2000
Trade Related Intellectual Property Rights (TRIPS) Agreement	Ratified	10/08/2009

*denotes provisions have been domesticated into legislation





International Law

3.0 STATUS OF INTERNATIONAL LAW IN THE ZAMBIAN LEGAL SYSTEM

The Constitution of Zambia (Amendment) Act No.2 of 2016 provides that the laws of Zambia consist of:

- a) The Constitution
- b) Laws enacted by Parliament
- c) Statutory Instruments
- d) Zambian customary law which is consistent with the Constitution
- e) The laws and statutes which apply or extend to Zambia as prescribed.¹

The Constitution makes no mention of the status of international law in the Zambian legal system. Zambia belongs to the dualist tradition which views international law and domestic law as two separate legal systems. Domestication of international law by way of an Act of Parliament is the only means by which international law can be applied. Therefore, once a treaty is ratified, it has to undergo a separate process to make it justiciable under Zambian law.

3.1 Ratification Process

The Ratification of International Agreements Act² provides for the process of ratification. In order to appreciate the process it is desirable to look at the contents of the Act.

¹Article 7

²No.34 of 2016, An Act to provide for ratification of international agreements and the domestication process

3.1.1 Salient Features of the Act

Section 2 **Interpretation**

Section 3 **General Responsibility over International Agreements. Under this section, there are several considerations to take into account, vis:**

- a) The objective of the international agreement;
- b) Whether existing legislation adequately addresses the objective of the international agreement;
- c) The impact of implementing any measure specified in the international agreement;
- d) Whether there are any legislative measures that may be required to give effect to the international agreement.³

After due consideration of the foregoing, **where the Minister deems it fit to do so, the process to ratify is initiated in consultation with the Attorney General of the Republic. This is done by way of Cabinet Memorandum seeking approval in principle to ratify a treaty.**

Section 4 **Consideration of Proposal for Ratification:** Cabinet is vested with the authority to consider, approve or disapprove a proposal to ratify.

Section 5 **Approval of Proposal for Ratification:** Where approval is granted, the proposal is submitted to the National Assembly as provided by the Constitution, which sets out the functions of the National Assembly, one of which is to **approve international agreements and treaties before these are acceded to or ratified.**⁴

Section 6 **Ratification of Amendments:** Amendments to treaties are subject to the steps set out in this Act, which are essentially the same as when the initial ratification is being considered.

Section 7 **Ratification of Protocols:** These are modifications to the principal treaty and are also made subject to the steps above.⁵

³s.3(2)

⁴Article 63 (2) (e)

⁵Sections 4 and 5

- Section 8 **Deposit of Instruments:** In Zambia, the Ministry of Foreign Affairs is responsible for depositing instruments of ratification at the Registry of International Agreements. **Copies of the same are filed at the Ministry of Justice.**
- Section 9 **Grant of full powers:** At the direction of the President, the **Minister of Foreign Affairs may grant credentials to any person to be the States' representative in negotiating, adopting and authenticating text of a treaty.** This person has power to bind the State under a treaty.
- Section 10 Suspension of operation of, or withdrawal from, an international agreement. This Act governs the steps to be taken by the State should it wish to withdraw from a treaty.
- Section 11 **State Party Reporting:** This provides that the Ministry responsible for the subject matter of a treaty prepares the State party report in collaboration with the Ministry of Justice.
- Section 12 **Domestication:** The Ministry of Justice is responsible for domestication procedures after the Ministry responsible for the subject matter initiates the process as provided in the Act.
- Section 13 **Registry of International Agreements:** This Act establishes a Registry of International Agreements
- Section 14 **Annual Report:** The Ministry of Foreign Affairs is required to lay before the National Assembly an annual report on:
- a) International agreements ratified.
 - b) International agreements pending ratification.
 - c) Amendments or modifications that have been effected to international agreements.
 - d) International agreements in respect of which suspension has been requested.
- Section 15 **Regulations:** The Minister of Foreign Affairs may issue regulations by statutory instrument for the performance of this Act.

3.2 Domestication Process

It is worth noting that international conventions are not self-executing under the Zambian Constitution. **This means that in order for any international treaty to take effect in Zambia's legal framework, a separate process of domestication must take place through enactment of law in Parliament.** The Constitutions of some countries, such as Namibia and South Africa, contain clauses that stipulate that international treaties entered into by those countries automatically become part of domestic legislation. Others, like Zambia, dictate a separate process of domestication by way of an Act of Parliament being enacted to give effect to the treaty, in whole or in part. The Ratification of International Agreements Act provides for the domestication process aforementioned.⁶ For instance, most recently the Gender Equity and Equality Act No. 22 of 2015 effectively domesticated the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in its entirety.

In other instances, only partial domestication is required, where key clauses from a treaty are incorporated into domestic legislation.

3.3 State Party Reporting

Treaties entered into by the State party oblige it to render periodic reports to the relevant treaty body and provide guidelines for how to prepare national periodic reports. **The periodic reports contain information on the legislative, administrative and other measures taken by the State party to implement its obligations under the treaty.** The reports also note key trends and identify challenges and/or obstacles to the full realisation of the aspirations of a convention. Generally, initial reports are due one or two years after a country ratifies a treaty (the treaty dictates the reporting cycle); thereafter periodic reports on implementation are due every four or five years. This is reflected in the Ratification of International Agreements Act.⁷

Special procedures such as **committees of independent experts, special rapporteurs and working groups clustered by theme, monitor implementation and require Governments that have ratified conventions to submit regular reports on the status of implementation in their countries.** Under international law, a State party is under obligation to respect, protect and promote the provisions of international treaties and conventions hence the special procedures aforementioned to ensure that this is done uniformly.

⁶Section 12

⁷Section 11

3.4 Legislative Interventions Facilitating Domestication

By and large, the treaties that **Zambia has ratified have been translated into legislation, policies and programmes, thus bringing the benefit of international standards into the domestic legal framework.** This also has the effect of easing implementation and monitoring. Some of the pieces of legislation on the Statute Book that have been informed by international and regional treaties to which Zambia is a State party include, but are not limited to, the following:

- i) Gender Equity and Equality Act No.22 of 2015
- ii) Refugees Act No.1 of 2017
- iii) Persons with Disabilities Act No.6 of 2012
- iv) Anti-Gender Based Violence Act No.1 of 2011
- v) Anti-Human Trafficking Act No.11 of 2008
- vi) Narcotic Drugs and Psychotropic Substances Act
- vii) Forfeiture of Proceeds of Crime Act No.19 of 2017
- viii) Protection of Traditional Knowledge Act No. 16 of 2016

3.5 Gaps and Shortcomings

It has been a common trend for most nations, especially African nations, to merely sign treaties but not move towards accession and/or ratification. Some instances of this trend have also been observed in Zambia. There are a number of reasons for this state of affairs for several countries and the following are generally the main reasons;

- a) Limited capacity in the institutions charged with compliance. Inadequate institutional capacity to apply, implement and enforce many of the protocols, conventions and treaties have been cited as a major shortcomings for several nations. **These include lack of experienced human resource, limited financial resources and technical expertise.**
- b) There are lapses between signature and accession/ratification such that there is no follow up if the parties go to sleep.
- c) Fragmented responsibility and poor record keeping is another factor. In the Zambian case, the Ministry of Foreign Affairs and Ministry of Justice are involved in the process but there is need for more information sharing across other ministries as well as developing a firm calendar to trigger State party reporting on time. **The Registry of International Agreements should also be easily accessible especially electronically to ease retrieval of information which is lengthy and tedious.** It would also make monitoring easier, especially by civil society organisations monitoring implementation.

- d) There are delays in Zambia in the submission of periodic reports to committees of experts under each treaty with the result that concluding observations are not addressed on time.
- e) The law that makes compliance obligatory needs to be enforced. International treaties are not self-executing under Zambian law but the Ratification of International Agreements Act provides guidance for enforcement.
- f) Public awareness is low. We observe that in most African countries, majority of the people usually have limited knowledge about the standing of their respective countries at international law nor do they know how they are impacted.

4.0 CONCLUSION

From the account rendered above on Zambia's standing at international law, it can be appreciated that a lot has been done to comply on a range of subjects. Many of the key international treaties and conventions to which Zambia is a State party have been beneficial in terms of making successive Governments accountable to its citizens. The various special treaty monitoring bodies ensure compliance and have sent teams to conduct assessments in-country. This is a participatory process involving State institutions, the UN and related agencies working in the country to support implementation, as well non-governmental organisations and civil society organisations. This speaks of an enabling environment and political will. **It remains important to ensure that Zambia is up to date with its reporting obligations** so that concluding observations are addressed on time and the benefits of ratifications flow to the respective targets. In this regard, Parliamentary oversight should be strengthened and enforced.

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Unlocking Zambia's Potential

Correspondence on this Analysis can be sent to:
info@pmrczambia.net

Policy Monitoring and Research Centre (PMRC)
Ministry of National Development Complex, Corner of John Mbita and Nationalist Roads, Ridgeway,
Private Bag KL 10
Tel: +260 211 269 717 | +260 979 015 660

www.pmrczambia.com

