

H.B. 10, 2019.]

INTERNATIONAL TREATIES BILL, 2019

MEMORANDUM

This Bill will establish a uniform procedure for the consideration and approval of international treaties by the Cabinet and Parliament before their ratification by the President, and for their publication after their ratification or, in some cases, before their ratification. One of the main mischiefs sought to be remedied by this Bill is that many international treaties having far-reaching consequences for our domestic law are concluded without the courts or the public having due notice of those treaties by way of their official publication. Even where official publication of the treaty itself is not possible or desirable for any reason, some official notice of the fact of its existence and ratification should be made for the benefit of the public. This Bill seeks to provide a mechanism for the publication or notification of such treaties.

Preamble

The Preamble to the Bill quotes sections 34 and 327 of the Constitution which provides that most international treaties require the approval of Parliament (the exceptions being those international treaties, such as peace treaties, which are made within the President's prerogative powers in the sphere of international relations, those international treaties for which an alternative method of approval has been stipulated by Act of Parliament, those international treaties which Parliament has by resolution declared should not require approval in terms of subsection 111B(1)(a) of the Constitution, and those international treaties amending or subsidiary to any international treaty earlier approved by Parliament that stipulate that the amending or subsidiary treaty comes into operation upon signature thereof without the need of further approval by Parliament or ratification by the President).

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause contains the definitions of terms used in the Bill.

Clause 3

This clause excludes from the scope of the Bill those international treaties for which a different method of publication or domestication is provided for under another Act of Parliament. Examples of such treaties are bilateral Trade Agreements published under the Customs and Excise Act, Double Taxation Agreements published under the Income Tax Act and One-Stop Border Post Agreements published under the One-Stop Border Posts Control Act.

Clause 4

This clause declares the Ministry of Foreign Affairs to be the principal custodian and principal national depositary of all international treaties. It also obliges the Ministry to open and maintain an official archive of all international treaties currently in force, access to which will be afforded to any interested person subject to such conditions, including the payment of any fee for access to the archive or the provision of authenticated copies of any international treaty, as may be prescribed under clause 11.

Clause 5

This clause provides for the appointment and functions of the Public Agreements Advisory Committee (PAAC), whose core function it will be to consider all proposed

international treaties and make appropriate recommendations with respect to their negotiation, drafting and approval by the Cabinet and Parliament. Such a committee already exists but this clause will establish it on a statutory footing.

Clauses 6 and 7

These clauses set out the manner in which PAAC will discharge its core function as described under clause 5. In particular it empowers PAAC to publish important international treaties after their approval by Cabinet but before their approval by Parliament, as a means of ensuring public feedback and informed Parliamentary debate on the published treaty. As a rule, all international treaties approved by Parliament and ratified by the President will need to be published, with exception of international treaties which are made within the President's prerogative powers in the sphere of international relations (these, however, may also be published at the President's sole discretion). Where, however, publication of the treaty itself is not possible or desirable for any reason, official notice of the fact of its existence and ratification, and the place or places where it may be inspected by the public free of charge, will be published in the *Gazette*.

Clause 8

This clause obliges PAAC maintain and keep up to date the Treaties Lists from time to time, and to publish them as occasion requires.

Clause 9

This clause obliges applies the provisions of this Bill to international treaty concluded before the date of commencement of this Bill.

Clause 10

This clause obliges our courts to take judicial notice of certain matters in connection with international treaties published in terms of this Bill. However, the non-publication of an international treaty concluded before the date of commencement of this Bill, or the non-compliance with certain formalities preliminary to approval and ratification of an international treaty, does not thereby invalidate that treaty.

Clause 11

This clause provides for the Minister's regulatory and other powers under this Bill.

Clause 12

This clause saves in force the appointment of the present Public Agreements Advisory Committee.

INTERNATIONAL TREATIES BILL, 2019

ARRANGEMENT OF SECTIONS

Section

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PRESENTED BY THE MINISTER OF FOREIGN AFFAIRS

BILL

To provide a uniform procedure for the consideration, approval, ratification
and publication of international treaties; and to provide for matters
5 incidental to or connected therewith.

WHEREAS section 34 of the Constitution provides as follows:

*“The State must ensure that all international conventions, treaties and
agreements to which Zimbabwe is a party are incorporated into domestic law.”*

AND WHEREAS section 327 of the Constitution provides as follows:

10 *“(1) In this section—*

*“international organisation” means an organisation whose membership
consists of two or more independent States or in which two or more
independent States are represented;*

15 *“international treaty” means a convention, treaty, protocol or agreement
between one or more foreign States or governments or international
organisations.*

*(2) An international treaty which has been concluded or executed by the
President or under the President’s authority—*

- 20 (a) *does not bind Zimbabwe until it has been approved by Parliament; and*
(b) *does not form part of the law of Zimbabwe unless it has been incorporated
into the law through an Act of Parliament.*

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- (3) *An agreement which is not an international treaty but which—*
- (a) *has been concluded or executed by the President or under the President’s authority with one or more foreign organisations or entities; and*
 - (b) *imposes fiscal obligations on Zimbabwe;*
- does not bind Zimbabwe until it has been approved by Parliament.* 5
- (4) *An Act of Parliament may provide that subsections (2) and (3)—*
- (a) *do not apply to any particular international treaty or agreement or to any class of such treaties or agreements; or*
 - (b) *apply with modifications in relation to any particular international treaty or agreement or to any class of such treaties or agreements.* 10
- (5) *Parliament may by resolution declare that any particular international treaty or class of international treaties does not require approval under subsection (2), but such a resolution does not apply to treaties whose application or operation requires—*
- (a) *the withdrawal or appropriation of funds from the Consolidated Revenue Fund; or* 15
 - (b) *any modification of the law of Zimbabwe.*
- (6) *When interpreting legislation, every court and tribunal must adopt any reasonable interpretation of the legislation that is consistent with any international convention, treaty or agreement which is binding on Zimbabwe, in preference to an alternative interpretation inconsistent with that convention, treaty or agreement.”.* 20

AND WHEREAS it is expedient to legislate a uniform procedure for the consideration and approval of international agreements before their ratification by Parliament, and for their publication after their ratification or, in some case, before their ratification:

NOW, THEREFORE, be it enacted by the President and the Parliament of Zimbabwe as follows:— 25

1 Short title

This Act may be cited as the International Treaties Bill, 2019.

2 Interpretation

In this Act— 30

“concluded”, when used in relation to an international treaty, means that the treaty has been approved by Cabinet and Parliament and ratified or acceded to by the President and the word “conclude” shall be construed accordingly;

“domesticate”, in relation to an international treaty, means to give it the force of law in Zimbabwe, whether in terms of this Act or by altering, or incorporating the treaty into, the domestic law of Zimbabwe; 35

“international treaty” has the meaning given to it by the section 327 of the Constitution;

“Minister” means the Minister responsible for foreign affairs; 40

“Ministry” means the Ministry for which the Minister is responsible;

“negotiating Ministry” means the Ministry responsible for negotiating an international treaty;

“PAAC” means the Public Agreements Advisory Committee appointed in terms of section 5;

5 “partially self-executing”, in relation to an international treaty, means a treaty in respect of which some provisions are self-executing within the domestic law of Zimbabwe and severable from the other provisions of the treaty that require domestication;

“publish”, in relation to an international treaty, means to publish it by statutory instrument in accordance with section 7;

10 “self-executing”, in relation to an international treaty, means requiring no alteration of the domestic law or no additional legislation in order to domesticate it;

“Treaties Lists” means the Treaties List and supplementary lists of all international treaties maintained and kept up to date by PAAC in accordance with section 8.

15 **3 Application of Act**

This Act shall not apply to the publication or domestication of international treaties in respect of which a different method of publication or domestication is provided for under another Act of Parliament.

4 Principal national depositary and archive of international treaties

20 (1) The Ministry shall be the principal custodian and principal national depositary of all international treaties.

(2) The Ministry shall open and maintain an official archive of all international treaties currently in force, access to which shall be afforded to any interested person subject to such conditions, including the payment of any fee for access to the archive or
25 the provision of authenticated copies of any international treaty, as may be prescribed under section 11.

5 Appointment and functions of PAAC

(1) The Minister shall establish a committee, called the Public Agreements Advisory Committee, consisting of—

30 (a) a person nominated by the Attorney-General after consultation with the Minister responsible for Justice, who shall be the chairperson of PAAC; and

(b) a senior official in the Ministry appointed by the Minister, who shall be the secretary of PAAC; and

35 (c) a senior official in the Ministry responsible for finance nominated by the Minister responsible for finance; and

(d) a person nominated by the Office of the President and Cabinet.

(2) Without derogation of its other functions PAAC shall be able—

(a) to scrutinise all international treaties in accordance with section 6(3); and

40 (b) where appropriate to, recommend the approval or scrutiny of bilateral or multilateral agreements other than international treaties; and

(c) to recommend or decline to recommend approval of any international treaty in accordance with section 6(3)(c) or (d); and

(d) to maintain and keep up to date the Treaties Lists in terms of section 8;

and

- (e) to perform such other functions in connection with international treaties as the Minister may direct.

6 International treaties to be concluded under President's authority

(1) Except as otherwise provided by the Constitution or by or under an Act of Parliament, every international treaty shall be concluded or executed by or under the authority of the President. 5

(2) As soon as practicable after the negotiation of any international treaty, the head of the Ministry responsible for negotiating it (hereinafter referred to as the "negotiating Ministry") shall submit or cause to be submitted a draft thereof to PAAC, together with such additional information in writing relating to the treaty that PAAC may reasonably require. 10

(3) Upon receipt of a draft international treaty PAAC may —

- (a) recommend to the negotiating Ministry that the treaty be renegotiated; or 15
- (b) recommend to the negotiating Ministry that the treaty be submitted to the Attorney-General's Office for redrafting; or
- (c) recommend to the Minister and to the negotiating Ministry that the treaty be approved, without alteration or with such minor alterations as it shall specify, by the President in Cabinet; or 20
- (d) recommend to the Minister and to the negotiating Ministry that the treaty not be approved by the President in Cabinet, giving its reasons why.

(4) If a recommendation of PAAC referred to in —

- (a) subsection (3)(a) or (b) is adopted, the negotiating Ministry shall comply with subsection (2) as soon as practicable after the treaty has been renegotiated or redrafted, as the case may be; 25
- (b) subsection (3)(c) is adopted, the negotiating Ministry shall, as soon as practicable thereafter, take all the necessary steps —
- (i) to secure the approval of the treaty by Cabinet; and
- (ii) if the treaty is approved in terms of subparagraph (i), to secure its approval by Parliament in accordance with the Constitution; and 30
- (iii) if the treaty is approved in terms of subparagraph (ii), to secure the ratification of or accession to the treaty by the President.

7 Publication and date of operation of international treaties

(1) As soon as practicable after the approval by Cabinet of any international treaty, but before its approval by Parliament, PAAC may, through the Minister, recommend to the President the publication by statutory instrument of the treaty for public information if, in its opinion, the importance of the treaty merits such a course: 35

Provided that such publication shall be accompanied by a notice in the *Gazette* in the name of the chairperson of PAAC specifying that the treaty is yet to be approved by Parliament and that it is published for public information only. 40

(2) Where an international treaty is published in terms of subsection (1), copies of the statutory instrument embodying the treaty shall, if it has been approved by Cabinet, be laid before Parliament for the purposes of securing the approval of the treaty. 45

(3) Subject to subsections (4) and (8), every international treaty which has been approved by Cabinet and Parliament and ratified or acceded to by the President shall be published by the President by statutory instrument.

5 (4) Any international treaty which falls within the scope of the prerogative powers of the President in the sphere of international relations, may be published by the President by statutory instrument at his or her sole discretion.

(5) Publication of an international treaty in terms of subsection (3) shall be accompanied by a general notice in the *Gazette* in the name of the chairperson of PAAC specifying that—

- 10 (a) the treaty is—
- (i) wholly or partially self-executing and accordingly domesticated with effect from the date referred to in paragraph (b); or
 - (ii) requires to be domesticated by altering, or incorporating the treaty into, the domestic law of Zimbabwe;
- 15 (b) the treaty comes into force, wholly or partially—
- (i) on the date of publication of the statutory instrument embodying the treaty; or
 - (ii) on the date specified in the general notice; or
 - (iii) on the date fixed in the treaty; or
 - 20 (iv) on a future date not fixed in the treaty upon the fulfilment of certain conditions or formalities stipulated in the treaty;
- whichever is appropriate to the treaty in question.

(6) Where an international treaty that is published in terms of subsection (3) requires to be domesticated, the negotiating Ministry shall submit the treaty to the
25 Attorney-General's Office for the necessary draft legislation to be prepared and take all other steps necessary to secure its approval by Cabinet and Parliament.

(7) Where an international treaty that is published in terms of subsection (3) requires to be domesticated, it shall not be necessary in any legislation domesticating it to enact the terms of the treaty itself if reference is made in the legislation to the
30 statutory instrument embodying the treaty.

(8) If by reason of its size or other good reason it is not, in the opinion of PAAC, desirable to publish an international treaty as a statutory instrument, it shall not be necessary to do so, but in that case the general notice referred to in subsection (5) shall specify an office or offices in Zimbabwe where such treaty may be inspected
35 free of charge for an indefinite or specified period of time.

8 Treaties Lists

(1) PAAC shall maintain and keep up to date the Treaties Lists from time to time.

(2) PAAC may, on its own initiative, or shall, on the instructions of the Minister,
40 publish the Treaties Lists by notice in the *Gazette*.

9 International treaties concluded before this Act

(1) Section 7(3), (4), (5), (6) and (7) applies to every international treaty that was concluded before the date of commencement of this Act.

(2) Every Ministry or department of Government that is the custodian or depositary of an treaty referred to in subsection (1) shall, upon a request in writing to that effect by the Chairperson of PAAC, make available to PAAC an authenticated copy of the treaty for the purposes of subsection (1).

10 Effect of publication or non-publication of international treaties and non-compliance with certain pre-ratification formalities 5

(1) A statutory instrument embodying an international treaty, together with the *Gazette* general notice under cover of which it was published in terms of section 7(5), may be produced in any court as evidence of—

- (a) the fact that Zimbabwe is a party to the treaty; and 10
- (b) the date when the treaty came into force; and
- (c) the terms of the treaty; and
- (d) whether or not any of its provisions form part of the domestic law of Zimbabwe.

(2) Where, in terms of section 7(8), an treaty was not published as a statutory instrument, the *Gazette* general notice published in terms of section 7(5) which relates to that treaty may be produced in any court as evidence of the matters referred to in subsection (1)(a), (b) and (d). 15

(3) The validity under the law of Zimbabwe or at international law of any international treaty referred to in section 9 shall not be questioned solely on the basis that it has not been published in terms of this Act. 20

(4) The failure by PAAC to comply with any of the formalities preliminary to approval and ratification of an international treaty referred to in section 6(2), (3) and (4) shall not invalidate such treaty.

11 Minister's regulatory and other powers 25

The Minister may make such regulations and give such directions as he or she may deem necessary or convenient for the carrying out of the objects and purposes of this Act.

12 Savings

The Public Agreements Advisory Committee that was established before the date of commencement of this Act shall continue to function as if appointed in terms of section 4. 30