

**REPORT OF THE COMMITTEE ON NATIONAL SECURITY AND FOREIGN AFFAIRS ON THE RATIFICATION OF INTERNATIONAL AGREEMENTS, BILL, N.A.B. NO. 34 OF 2016, FOR THE FIFTH SESSION OF THE ELEVENTH NATIONAL ASSEMBLY, APPOINTED ON 24<sup>TH</sup> SEPTEMBER 2015.**

Consisting of:

Bishop Lt Gen R Shikapwasha, MP (Chairperson); Mr E T Chenda, MP; Prof. G Lungwangwa, MP; Mr S Katuka, MP; Mr E J Muchima, MP; Mrs I Mphande, MP; Mr P Kosamu, MP; and Mr S Sianga, MP.

The Honourable Mr Speaker  
National Assembly  
Parliament Buildings  
LUSAKA.

Sir,

Your Committee has the honour to present its Report on the Ratification of International Agreements, Bill, N.A.B. No. 34 of 2016, referred to it by the House on Friday 6<sup>th</sup> May, 2016.

***Functions of the Committee***

2. In addition to any other duties conferred upon it by the Honourable Mr Speaker, or any Order of the House, your Committee may consider any Bills referred to it by the House.

***Meetings of the Committee***

3. Your Committee held four meetings to consider the Ratification of International Agreements, Bill, N.A.B. No. 34 of 2016.

***Procedure adopted by your Committee***

4. Your Committee, in considering the Bill, requested for written submissions from various stakeholders who also appeared before it to make oral submissions.

Objects of the Ratification of International Agreements, Bill, N.A.B. No. 34 of 2016.

5. The objects of the Bill are to provide for:-
- a) the ratification of international agreements and the domestication process; and
  - b) matters connected with, or incidental to the foregoing.

## **Consideration of the Ratification of International Agreements, Bill, N.A.B. No. 34 of 2016**

### **Background**

6. The Ratification of International Agreements Bill, 2016, seeks to provide for the ratification of international agreements and the domestication process and provide for matters connected with or incidental to the foregoing. It is necessary to enact this Bill as a consequential piece of legislation to the *Constitution of Zambia (Amendment) Act No. 2 of 2016*.

### **Salient Features of the Bill and Ramifications**

7. The salient provisions of the Ratification of international Agreements Bill, N.A.B No. 34 of 2016 are set out below.

### **Specific Provisions of the Bill**

#### **Clause: 2 Interpretation**

This clause provides for definitions of key words used in the Bill.

#### **Clause: 3 General Responsibility Over International Agreements**

This clause vests the general responsibility of the ratification of international agreement in the Minister responsible for the subject matter of the international agreements. The clause further states that the Minister, in consultation with the Attorney-General, shall initiate the process of ratification by way of a Cabinet Memorandum to the Cabinet seeking approval in

principle to ratify the international agreement. The clause clarifies what ought to be outlined in the Cabinet Memorandum.

**Clause: 4 Consideration of Proposal for Ratification by Cabinet**

This clause vests the power in Cabinet to consider and approve or disapprove a proposal set out in the Cabinet Memorandum to ratify an international agreement.

**Clause: 5 Motion for Approval of Proposal to Ratify International Agreement in National Assembly**

This clause provides that where Cabinet approves, in principle, a proposal to ratify an international agreement, the Vice-President shall cause to be laid before the National Assembly a motion for approval of the proposal to ratify the international agreement in accordance with Article 63 of the Constitution. The clause also provides that the Minister responsible for foreign affairs shall cause the preparation of the instrument of ratification where the National Assembly approves the motion. The clause also stipulates that in a case where the National Assembly does not approve the ratification, the State shall not ratify that international agreement.

**Clause: 6 Ratification of Amendment to, or Modification of, International Agreements**

This clause provides for the ratification of amendments to, or modification of international agreements after compliance with the procedure set out in clauses 4, 5 and 6 of this Act.

**Clause: 7 Ratification of Protocols to International Agreements**

This clause states that clauses 4 and 5 apply with necessary modifications to the ratification of protocols signed under an international agreements.

**Clause: 8 Deposit of Instruments of Ratification**

This clause vests the power of deposit of instruments of ratification in the Minister responsible for foreign affairs. The clause also provides for the filing at the Registry and submission to the ministry responsible for justice, an original copy of the instrument of ratification.

**Clause: 9 Grant of Full Powers**

This clause provides for the powers of the Minister responsible for foreign affairs to prepare credentials for the grant of full powers to any person, subject to the direction of the President.

**Clause: 10 Suspension of Operation of, Or Withdrawal from, International Agreement**

This clause provides that, in the suspension of operation of, or withdrawal from, international agreement by the State, the procedures set out in sections 3, 4 and 5 shall apply.

**Clause: 11 State Reports**

This clause provides for the submission of State Reports as part of the monitoring mechanism. The clause also vests in the Minister responsible for the subject of international agreement, the responsibility to prepare and submit the State Report within the period specified in the international agreement. Further, the clause provides that a State Report includes any periodic report which the state may be required to submit under an international agreement.

**Clause: 12 Domestication of International Agreement**

This clause seeks to provide for the initiation of domestication of international agreements by the Ministry responsible for the subject matter of international agreement. The clause also outlines the conditions under which an international agreement may be domesticated.

**Clause: 13 Registry of International agreements**

This clause provides for the establishment and maintenance of a Registry of International Agreements at the Ministry responsible for foreign affairs. The clause also provides that the Registry will be the depository of international agreements and State Reports. The clause also provides that the Registry will contain information on international agreements that have been and have not been ratified by the State.

**Clause: 14 Annual Report**

This clause compels the Ministry responsible for foreign affairs, to lay before the National Assembly, annually, a report on international agreements which the State has either ratified, are pending ratification, amendments or modifications to international agreements by the state and international agreements in respect of which a suspension of operation or a termination has been requested by the State, or is in effect.

### **Clause: 15 Regulations**

This clause empowers the Minister, by Statutory Instrument, to make regulations for the better carrying out of the provisions of the Act.

### **Schedule**

The schedule outlines the contents of the instrument of ratification.

### **Concerns raised by stakeholders**

8. All the stakeholders that appeared before your Committee were in full support of the Bill. They, however, expressed concern on the provisions set out below.

#### **i. Clause 2**

The stakeholders were of the view that the words, “**unless the context otherwise requires**” leave the provision ambiguous and open to interpretation since there is no other context required, these words should be deleted.

#### **ii. Clause 7**

This clause provides that the same procedure as applies to international agreements will apply to ratifying protocols “with necessary modifications.” Some stakeholders were of the view that using these words left the procedure ambiguous and recommended that the modified procedure should be set out in full for the avoidance of any uncertainty.

#### **iii. Clause 5(2)**

The stakeholders were of the view that considering the fact that many international agreements had been signed by the Zambian Government, but without subsequent ratification and domestication, a time frame must be specified within which an agreements should be after it was approved by the National Assembly.

#### **iv. Clause 8**

This clause provides for the deposit of instruments of ratification. Some stakeholders contended that since the Attorney General, who is the Government legal advisor was under the Ministry of Justice, it would be the best custodian of the Registry for these instruments. They argued that as a matter of fact, the Ministry of Justice already had a Register of other legal agreements. This should also apply to clause 13. Others, on the other hand, argued that

the Ministry of Foreign Affairs was the right place for the Repository and Registry because it was the one responsible for international relations and was the nation's diplomat.

**v. Clause 9**

This clause provides for the powers of the Minister responsible for foreign affairs to prepare credentials for the grant of full powers to any person, subject to the direction of the President. Some stakeholders argued that this provision should specifically state which powers would be granted in order to forestall abuse. They contended that the magnitude of the instruments was too big to be left to the discretion of the Minister. They, further proposed that this provision should be placed at the very beginning of the Bill considering that the negotiation of international instruments comes before the ratification process.

**vi. Clause 15**

This clause provides that the Minister may make regulations to facilitate the carrying out of the provisions of this Act. The Bill, does not, however, define which Minister this will be. The stakeholders, therefore, recommended that "Minister" be defined.

**vii. General**

Some stakeholders observed that the definition of international agreements excludes bilateral agreements. They contended that whereas it was appreciated that this could be for security reasons, it was still necessary to provide for the procedure to be followed when signing bilateral agreements to avoid abuse of the provision. They further noted that there were no sanctions provided for the breach of procedure. They, therefore, recommend that sanctions should be included in the Bill to ensure adherence to the law.

**Committee's Observations and Recommendations**

9. In supporting of the Bill, your Committee makes observations and recommendations as presented hereunder.

**a) Clause 2**

Your Committee notes that the words, "unless the context otherwise requires" in clause 2, opens the provision the interpretation on account of ambiguity. Since there is no other

context expected, or even required, your Committee recommends that these words should be deleted.

**b) Clause 5**

Your Committee notes that clause 5 (1) provides that the Vice-President shall cause to be laid before the National Assembly, a motion for approval of the proposal to ratify the international agreement in accordance with Article 63 of the Constitution.

Your Committee is of the view that this provision does not afford the National Assembly an opportunity to scrutinise the international agreements through the committee system. This is because the motion by the Vice-President is not normally subjected to this process. The Committee system affords the National Assembly to get views from stakeholders after which a report is compiled for presentation to the House.

Your Committee, therefore, recommends that this clause be amended to read:

“The Vice-President shall submit to the National Assembly, the proposal for the approval of the international agreement for ratification or accession in accordance with Article 63 of the Constitution.”

Your Committee observes further that clause 5 (2) provides for the approval of the international agreements by the National Assembly without requiring a resolution of the House.

Your Committee, therefore, recommends that this provision be amended to read,

“Where the National Assembly, **by resolution** approves a motion to ratify an international agreement, 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 specific in the Schedule.”

Further, your Committee notes that Zambia is party to a lot of international agreements which have not been ratified and/or domesticated because there was no mechanism to ensure that this is done or reasons given for not doing so.

Your Committee, therefore, shares the views of the stakeholders and recommends that the Bill should specify a timeframe within which an international agreement must be ratified once approved by the National Assembly.

**c) Clause 7**

Your Committee observes that clause 7 provides that the same procedure as applies to international agreements will apply to ratifying protocols “**with necessary modifications.**” Your Committee observes that provision leaves the procedure ambiguous and susceptible to abuse.

Your Committee, in this regard recommends that for the avoidance of any uncertainty and possible abuse, the modified procedure should be set out in full.

**d) Clauses 8 and 13**

Your Committee notes that clauses 8 and 13 provide for the deposit of instruments of ratification and the Registry with the Ministry of Foreign Affairs.

Although some stakeholders were of the view that since the Attorney General, who is the Government legal advisor, is under the Ministry of Justice, this Ministry would be the best custodian of the Instruments and Registry for International Agreements, your Committee is of the view that this responsibility should be left with the Ministry of Foreign Affairs and further proposes that copies of the same be sent to the Ministry of Justice and the National Archives.

**e) Clause 9**

Your Committee notes that clause 9 provides for the powers of the Minister responsible for foreign affairs to prepare credentials for the grant of full powers to any person, subject to the direction of the President. Your Committee expresses concern at how matters of this magnitude can be left to the discretion of the Minister.

In this regard, your Committee recommends that in order to forestall abuse, the full powers, which the Minister shall grant to any person, be specified in the Bill. Your Committee further proposes that the provisions of this clause be placed at the very



beginning of the Bill, considering that the negotiation of International Instruments comes before the ratification process.

**f) Clause 15**

Your Committee notes that the definition of International Agreements excludes bilateral agreements. Whereas it is appreciated that this could be for security reasons, your Committee is of the view that it is still necessary to provide for the procedure to be followed when signing bilateral agreements to avoid abuse of the provision. Further your Committee notes that the Bill does not make provision for sanctions for the breach of procedure.

In this respect, your Committee recommends that the procedure for signing bilateral agreements and sanctions for breaching the procedure for signing both the International Agreements and Bilateral Agreements be provided for in the Bill to ensure compliance.

***Conclusion***

10. In conclusion, your Committee wishes to express its gratitude to you, Mr Speaker, for granting it the opportunity to scrutinise the Ratification of International Agreements, Bill, N.A.B. No. 34 of 2016.

Your Committee also wishes to thank the Office of the Clerk of the National Assembly for the support rendered to it throughout its deliberations. It is indebted to all the witnesses who appeared before it for their co-operation in providing the necessary briefs despite the short notice. Your Committee is hopeful that the observations and recommendations contained in this report will enable the House make an informed decision on the Bill.

We have the honour to be, Sir, your Committee mandated to scrutinise the Ratification of International Agreements, Bill, N.A.B. No. 34 of 2016, for the Fifth Session of the Eleventh National Assembly.

Bishop Lt Gen R Shikapwasha, MP  
**(Chairperson)**

Prof. G Lungwangwa, MP

**(Member)**

Mr E T Chenda, MP

**(Member)**

Mr S Sianga, MP

**(Member)**

Mr S Katuka, MP

**(Member)**

Mr E J Muchima, MP

**(Member)**

Mrs I Mphande, MP

**(Member)**

Mr P Kosamu, MP

**(Member)**

May, 2016

## **APPENDIX I**

### **LIST OF OFFICIALS**

#### **National Assembly**

Ms M K Sampa, Deputy Principal Clerk of Committees

Mr F Nabulyato, Committee Clerk (SC)

Ms C Musonda, Committee Clerk (FC)

Mr C Chishimba, Assistant Committee Clerk

Ms L Chirwa, Personal Secretary II

Mr C Bulaya, Committee Assistant

Mr M Chikome, Parliamentary Messenger

## **APPENDIX II**

### **WITNESSES**

#### **Ministry of Justice (Permanent Witness)**

Mr A Nkunika, Chief Parliamentary Counsel

Mr G Muntengwa, Parliamentary Counsel

Mrs M Sitali, Parliamentary Counsel

Mr C Chilonga, Parliamentary Legal Counsel

#### **Transparency International-Zambia**

Mr G Lungu, Executive Director

Mr C Chibamba, Information Officer

#### **Law Association of Zambia**

Ms L Kasonde, President

Mrs F Kateka, Honorary Secretary

#### **Ministry of Commerce Trade and Industry**

Ms M M Pasi, Acting Permanent Secretary

Ms M M Daka, Acting Chief Planner

Mr M Chivumo, Acting Senior Planner

Mr M Nkwenu, Principal Economist

Ms L Bwalya, Director, Foreign Trade

Mr M Kaluba, Director, Directorate of Foreign Investment

#### **Ministry of Foreign Affairs**

Mrs I M M Lemba, Acting Permanent Secretary

Mrs E Lamba, Director, Zambia Mines Centre

Mrs K L Phiri, Acting Chief Planner

Mrs M K Bwalya, Senior Legal Officer