

BILL WATCH 56/2019

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International Treaties Bill

It has always been difficult to find out which international treaties are binding on Zimbabwe. This is partly because the procedures by which Zimbabwe becomes a party to treaties are not transparent, and partly because the government has not published a treaty list – i.e. a list of the treaties [that](#) are binding on this country – for nearly 20 years.

It has also been difficult to find out the terms of agreements the government has concluded with foreign banks and other entities, for example the “mega deals” which – so it is claimed – will flood the country with foreign investment. These agreements are likely to have a greater impact on the economy than international treaties.

In an attempt to alleviate at least the first of these difficulties the government has published an International Treaties Bill, which can be accessed on the Veritas website [\[link\]](#). Before discussing the provisions of the Bill we shall outline the constitutional background against which it has been drafted.

The Constitutional Background to the Bill

Section 327 of the Constitution sets out the procedure to be followed for international treaties to become binding on Zimbabwe – and “international treaties” in this context covers conventions, protocols, charters and other agreements between States and international organisations such as the IMF.

Section 327 may be summarised as follows:

- An international treaty which has been signed by or on behalf of the President does not bind Zimbabwe until it has been approved by Parliament (i.e. by both the Senate and the National Assembly) *[section 327(2)(a)]*. Once that approval has been obtained, the procedure is for the Government to send documents called “instruments of ratification” to the other State that is a party to the treaty or, if the treaty so requires, to a body such as the United Nations. Instruments of ratification are a formal statement that the treaty has become binding on Zimbabwe in international law.
- Even if a treaty has been approved by Parliament and has become binding in international law, it will not affect Zimbabwe’s internal or domestic law until it has been incorporated into the law by an Act of Parliament *[section 327(2)(b)]*.
- An agreement other than a treaty which is entered by the government with a foreign organisation and which imposes “fiscal obligations” on Zimbabwe is not binding until it has been approved by Parliament *[section 327(3)]*. Fiscal obligations are financial obligations, so parliamentary approval is required for any agreement with a foreign bank or foreign trading entity if the agreement requires the government to pay out any money, either immediately or at a future date. Hence loan agreements must be approved by Parliament, and so

too must agreements by which the government guarantees debts of parastatals, because if the parastatals default on their obligations the government will have to pay the creditors in terms of its guarantees.

That is the background against which the International Treaties Bill must be assessed.

The Contents of the Bill

The Bill is a short one of 12 clauses and its provisions are explained in an unusually helpful memorandum. What follows is an outline of the Bill's major provisions:

Scope of the Bill

According to clause 3, the Bill will not affect double-taxation agreements, bilateral trade agreements and other treaties which are negotiated and published under statutes such as the Income Tax Act and the Customs and Excise Act, which contain adequate provisions for publishing and enforcing the agreements and treaties.

Archive of treaties

Under clause 4 the Ministry of Foreign Affairs and International Trade will be the custodian and national depositary of all treaties to which Zimbabwe is currently a party. The treaties will all be available for inspection by interested persons on payment of a fee prescribed in regulations or fixed by the Minister.

Procedure for Ratification of treaties

Under clauses 5 and 6 international treaties that have been negotiated on behalf of the government will have to be sent for examination to PAAC, a four-person committee of civil servants chaired by a representative of the Attorney-General. After examining draft treaties PAAC will recommend whether they should be renegotiated or altered, or approved by "the President in Cabinet" [*i.e. by the Cabinet presided over by the President*]. If PAAC recommends approval, the treaties will be submitted to the Cabinet and, if Cabinet approves them, they will be sent to Parliament for approval. Finally, if Parliament approves the treaties the Ministry that negotiated them will be responsible for sending instruments of ratification to the other party to the treaty or to the appropriate depositary, as the case may be.

Although the Bill does not say so, much the same procedure will presumably be followed when, as sometimes happens, the President himself signs a treaty: the treaty as signed will be examined by PAAC before being submitted to Parliament for approval.

Publication of treaties

Under clause 7 of the Bill, PAAC may recommend that a treaty be published in the *Gazette* for public information before it has been approved by Parliament; it is not clear if the President must accede to such a request or if he has a discretion in the matter. The lack of clarity persists later in the clause where it states that every international treaty that has been approved by Parliament must be published in the *Gazette*, except any treaty that "falls within the scope of the prerogative powers of the President in the sphere of international relations". The

Constitution does not appear to give the President “prerogative powers” in relation to treaties or anything else, so where does he get them? Be that as it may, all treaties have to be approved by Parliament so they must be published at least to the extent of being distributed to parliamentarians, whether or not they are gazetted later.

Domestication of treaties

Under clause 7 of the Bill, when a treaty is published in the *Gazette* after being approved by Parliament, PAAC must publish a notice indicating whether the treaty is self-executing, i.e. that it is enforceable in Zimbabwe without the need for legislation, or whether it needs to be domesticated, i.e. incorporated into the law of Zimbabwe by legislation. If the latter, the Ministry responsible for negotiating the treaty will have to send the treaty to the Attorney-General’s Office for the necessary legislation to be prepared [clause 7(6)].

This is a welcome provision because it will help to ensure that the government gives effect to treaties it has signed. All too often in the past the government has ratified treaties and then, as with the Convention on the Elimination of all Forms of Discrimination Against Women [CEDAW], failed to incorporate their provisions into our law.

Unfortunately however the Bill does not lay down time-limits for treaties to be domesticated. It would be better if Parliament were given power to specify time-limits for the domestication of particular treaties, and were able to hold the Government to them.

Treaties lists

Under clause 8 of the Bill PAAC will be responsible for maintaining treaties lists, and will be able to publish the lists in the *Gazette*.

Conclusion

This is a welcome Bill which, provided it is complied with, should bring clarity and order to the process of negotiating and ratifying international treaties. We have to add those words “provided it is complied with” because, as the Public Accounts Committee of Parliament has discovered, government Ministries have not been punctilious in complying with existing constitutional provisions which require them to bring treaties to Parliament for approval. But let’s be hopeful: with new legislation the government may turn over a new leaf – at least in regard to treaties.

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