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"On the international and internal ratification of treaties according to the constitutional processes of the Republic of Uganda"

1) INTRODUCTION

Ratification is one of the methods through which states express their willingness to be bound by a treaty. The *Vienna Convention on the Law of Treaties* of 1969 (herein after referred to as the Convention) in Article 2(1) (b) provides that ratification means the “international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.”¹ It is used as a means of expressing consent to be bound by a treaty as provided in Article 14 of the Convention when:

- the treaty provides for such consent to be expressed by means of ratification;

¹ Article 2(1)(b) of the Vienna Convention provides that: “ “ratification”, “acceptance”, “approval” and “accession” mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty”

- it is otherwise established that the negotiating States were agreed that ratification should be required;
- The intention of the state to sign the treaty subject to ratification appears from the full powers of its representative or was expressed during the negotiation.²

However the Convention does not establish standard procedure to be followed by states in order for them to accomplish their respective internal ratification processes. Each state follows its established domestic procedure of ratification which is not subject to scrutiny by other states. This paper will examine the domestic legislation governing ratification, the ratification process in Uganda and some of the factors which influence the process.

2) RATIFICATION PROCESS

a) Legal Framework

Ratification of treaties in Uganda is governed by the Constitution of the Republic of Uganda (1995) and the Ratification of Treaties Act Cap 204. Article 123(2) of the Constitution provides that:

“Parliament shall make laws to govern the ratification of treaties, conventions, agreements or other arrangements made under clause (1) of this Article.”

In compliance with this constitutional provision Parliament enacted the Ratification of Treaties Act Cap to govern ratification of treaties. Under Section 2 of the Act, there are two methods of ratification in Uganda. It is the subject matter of the treaty to be ratified which determines the method used. Section 2 of the Act provides that:

“All treaties shall be ratified as follows:

by the Cabinet in case of any treaty other than a treaty referred to in paragraph (b) of this section; or

by Parliament by resolution

² Article 14 of the *Vienna Convention on the Law of Treaties*, 1969.

- where the treaty relates to armistice, neutrality or peace; or
- in the case of a treaty in respect of which the Attorney General has certified in writing that its implementation in Uganda would require an amendment of the Constitution.”

From the above provisions treaties in Uganda are ratified by the Cabinet save for the exceptions given in (b) above. The Act further provides that the Minister of Foreign Affairs in consultation with the Attorney General may make rules to give effect to the Act³ but to date the said rules have not been made. As a result the ratification procedure followed has grown out of usage and is not yet standardized by a Statutory Instrument as envisaged by the Act.

3) RATIFICATION PROCESS

The ratification process may be divided into 6 stages, two of which commence prior to the international adoption or conclusion of a treaty. The foundations of the ratification process are laid prior to the international negotiating process of a treaty. The first two stages outlined below provide the initial forum for the introduction of a proposed treaty to the government departments which would be responsible for its implementation and as such form part of the ratification process.

- 1) Inter-ministerial consultations; Consultations are convened by the Ministry responsible for implementation of a proposed treaty, to analyze the purpose, draft text (if available) and any other salient features of a proposed treaty before the commencement of international negotiations. This is done within the framework of an ad hoc inter-ministerial committee composed of the stakeholders responsible for the proposed treaty’s implementation. At the conclusion of its deliberations the committee may recommend Uganda’s participation in the international negotiating process and signature of a proposed treaty.

³ S.6 of the Act provides: The Minister responsible for foreign affairs may, in consultation with the Attorney General, by statutory instrument make rules to give effect to this Act

- 2) Clearance Certificate; The Ministry responsible for the implementation of a proposed treaty then submits the committee's recommendation to the Attorney General, seeking approval for Uganda's participation in the negotiating process and signature of the proposed treaty. The Attorney General's Chambers consider the legal implications of Uganda's possible membership of the proposed treaty. The Attorney General may issue a "Clearance Certificate" for participation and signature of the treaty.
- 3) International Negotiation: Upon receipt of the "Clearance Certificate" the line Ministry then precedes to participate in the international negotiation process of the Agreement at the conclusion of which the authorized government official signs the agreement on behalf of the Republic of Uganda.
- 4) Inter-ministerial consultations; The inter-ministerial committee meets again to evaluate the benefits and obligations that would arise from Uganda's membership of the treaty and may recommend its ratification.
- 5) Cabinet/Parliament authorization: On receipt of the recommendation of the Inter-Ministerial Committee, the responsible Cabinet Minister in accordance with S.2 (a) of the Act presents a Cabinet Memorandum to Cabinet or tables a motion in Parliament in accordance with S.2 (b) of the Act, seeking authorization to ratify the treaty. After consideration of the motion/cabinet memorandum Parliament/Cabinet may instruct the Minister of Foreign Affairs to ratify the said treaty on behalf of the Republic of Uganda.
- 6) Ratification; Upon receipt of the instruction from Cabinet or Parliament, the Minister of Foreign Affairs proceeds to draft, sign and deposit or exchange the instrument of ratification.

In practice the above stages may not be followed as systematically as outlined above, some of the procedures may be carried out concurrently but ultimately ratification must be authorized by either the Cabinet or Parliament in compliance with the Ratification of Treaties Act.

4) FACTORS INFLUENCING RATIFICATION

The ratification process is influenced by both domestic and international factors. The domestic factors include the legal framework, social, political and economic conditions necessary for the implementation of a convention. While the international factors refer to the political stance of major international players at the time a convention is negotiated. These factors impact on the decision to ratify or not as well as the pace at which the ratification is concluded.

a) Domestic Factors

The existing legal framework within which a convention is expected to be implemented is perhaps the single most important domestic factor which influences the decision to ratify or not ratify a convention as well as the speed at which ratification may be accomplished. If for example a convention contains provisions that are inconsistent with the fundamental laws of the Republic of Uganda, the first option would be to decide against ratification of such a convention, however if this is found untenable the next option would be to initiate a law amendment process which is both cumbersome and lengthy. For instance one of the reasons why Uganda has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty⁴ is because the death penalty is still provided for in the Penal Code Act. An example of such provision is Section 189 of the Penal Code Act⁵ which provides that the punishment for anyone convicted of murder is death.

The prevailing political and social conditions in Uganda have, in many instances, positively influenced both the decision to ratify and the speed at which the ratification process is concluded. The first 10 years following the take over of

⁴ Article 1 of the Second Optional Protocol to the International Covenant on Civil and Political Rights provides: "No one within the jurisdiction of a State Party to the present Protocol shall be executed."

⁵ Section 189 of the Penal Code Act provides: "Any person convicted of murder shall be sentenced to death."

government by the National Resistance Movement⁶ in 1986 were characterized by political and social reform which included efforts to improve the human rights situation in the country as well as the country's international image. This led to the signature and speedy ratification of a number of international human rights instruments. For example the Convention on the Rights of the Child was adopted in 1989 and by UN General Assembly on 20 November 1989 and in less than one year, on 17 August 1990, Uganda signed and ratified the Convention. This period also witnessed an upsurge in the number of non-governmental organizations (NGOs) which lobbied government to sign and ratify conventions in their field of operation. The trend has continued to date and government receives delegations from both international and local NGOs lobbying for ratification of various treaties.

The economic situation in the country is another domestic factor that can influence the decision to ratify a treaty. Treaties create both rights and obligations. The implementation of obligations by the state requires both financial and human resources. One of the issues considered by Cabinet or Parliament before authorizing ratification is whether or not adequate budgetary provisions have been made by the implementing ministry to undertake commitments that would arise by ratification of an agreement. Lack of adequate budgetary provisions usually leads to postponements or delays in the conclusion of ratification process.

b) International Factors

The international factors influencing ratification of treaties are mainly political in nature and in some instances developing states like Uganda yield to international political pressure. They arise from the international politics against which a convention is adopted. The adoption of some treaties is championed by particular states, usually also donor states with the political clout to influence other countries to sign and ratify the treaties of their interest. The near universal ratification of

⁶ The National Resistance Movement is a political organization led by President Yoweri Museveni overthrew the government of Uganda in 1986 through a guerilla war fought by its military wing the National Resistance Army.

treaties such as the Convention on the Prohibition of Anti-Personnel Mines (Ottawa Convention)⁷ and the International Convention for the Suppression of Terrorist Bombings⁸ could have been achieved partly due to political clout of their major champions.

There is a growing number of international lobbying movements and NGOs on certain thematic issues such the environment, death penalty, cluster munitions, rights of women, etc which independently and in partnership with local organizations lobby for ratification of treaties of their interest. They engage states both at a bilateral level and during events to ratify treaties and also offer technical support for implementation of treaties. Such international Organizations include the International Committee of the Red Cross (ICRC) which is concerned with humanitarian law treaties. These are international actors have a reasonable impact in persuading states, including Uganda to ratify particular treaties.

5) CONCLUSION

The procedure for ratification of treaties is governed by the domestic laws of each state. Likewise there is no international mechanism of ascertaining whether or not a state has complied with its established domestic procedures for ratification. Further more there are no standard domestic legal or regulatory prerequisites for ratification of any agreement. Therefore states' expressions of "willingness to be bound" are accepted without verifying if indeed states have taken measures to translate the ratification into domestic action. In situations where a commitment made internationally is to be implemented domestically, ratification though binding internationally may remain only theoretical, domestically. Therefore it the responsibility of each state to exercise their sovereign choice to ratify treaties when

⁷ As of May 21, 2010 it had 156 States Parties.

⁸As of May 21, 2010 it had 164 States Parties

the international commitment made by ratification can in fact be undertaken domestically.

6) BIBLIOGRAPHY

1. The Vienna Convention on the Law of Treaties, 1969, 1155 UNTS 331.
2. The Constitution of the Republic of Uganda 1995.
3. The Ratification of Treaties Act, Chapter 204, Volume 8, Laws of Uganda.
4. The Penal Code Act, Chapter 120, Volume 6, Laws of Uganda.
5. United Nations Treaty Collection accessed from http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV11&chapter=..., on May 20, 2010.