



# GUIDELINES FOR RATIFICATION PROCESS OF TREATIES AND CONVENTIONS IN LESOTHO.

## BACKGROUND

- For an international instrument to be legally binding upon it must be ratified or acceded to.
- Ratification in Lesotho is an executive act.
- Lesotho is a legal dualist State.

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- Dualist approach- treaties do not form part of domestic law directly (not self-executing).
- Appropriate national legislation has to be enacted to give the treaty the force of law domestically.
- In Lesotho, the treaty-making power is vested in a governmental body other than the legislature.

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- E.g. Lesotho may begin reporting under the Protocol on the Rights of Older even though not yet domesticated
- For the domestic ratification of a treaty, agreement or a convention, the following guidelines should be followed:

- **1. FACILITATION BY FOREIGN AFFAIRS**

An instruction for ratification-line Ministry and/ Ministry of Foreign Affairs (MOFAIR).

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- MOFAIR in most cases prepares a Cabinet Memorandum-consults with line Ministries
- A memorandum is then circulated among the relevant stakeholders for concurrences
- the Minister of Foreign Affairs seeks Cabinet's approval for Government to ratify the Protocol.

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## ➤ 2. **PREPARATION OF CABINET MEMORANDUM FOR APPROVAL OF TREATY, AGREEMENT OR CONVENTION**

- A Cabinet Memorandum is prepared by the relevant Ministry or MOFAIR.
- It is then submitted to the Cabinet Secretariat

## ➤ **CONTENTS OF THE CABINET MEMORANDUM**

- Decision required of Cabinet on the treaty

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- Explains the contents of the treaty and background information;
- Indicates the benefits to Government;
- Spells out the obligation of government, i.e financial and legal impact;
- Specifies whether there is the need for Government to make any reservations; and
- Must also contains other information relevant to arrive at the decision requested of Cabinet.

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## ➤ 3. **SUBMISSION OF CABINET MEMORANDUM TO CABINET SECRETARIAT**

- Submitted to the Cabinet Secretariat under the signature of a Minister
- The original copies submitted to the Secretary to Cabinet;
- 35 copies of the Cabinet Memorandum submitted to Cabinet Secretariat

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## ➤ 4. **DECISION OF CABINET**

The office of the Government Secretary informs relevant Ministry of the decision of the Cabinet

## ➤ 5. **INSTRUMENT OF RATIFICATION**

- A copy of the cabinet decision is forwarded to MOFAIR for preparation of an Instrument;
- Minister of MOFAIR affixes signature. It is then forwarded to the office of the Attorney General for a seal;



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- MOFAIR deposits the Instrument
- Final stage; depositing of the instrument of ratification
- Depositing the Instrument: Government undertakes to respect the obligations contained in the Protocol.

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## ➤ **The Protocol on the Rights of Elderly Persons**

- The Government has prepared an instrument of ratification
- The Embassy of Lesotho in Addis Ababa is yet to deposit the instrument to the African Union Commission which is the depository body of the Protocol.
- Once the instrument of ratification has been sent there is no turning back

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## ➤ DOMESTICATION

- Lesotho subscribes to the common law view that international law is only part of domestic law where it has been specifically incorporated.
- Lesotho has followed a dualist approach which requires that domesticating a treaty should be by enacted of an Act of parliament for ratified international law treaties to have application in the domestic legal system.
- Lesotho has not yet domesticated the Protocol.

# CONCLUSION

- Lesotho has undertaken the above process in view of ratifying the Protocol on the Rights of Older Persons.
- Ratification of treaties- important step, reverberates commitment that states should have towards international human rights law
- Opportunity to reflect on the measures in place at the domestic level to accord rights enshrined in the treaty
- Honouring the obligations emanating from ratified treaties is key