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**‘SECESSIONIST CRIMINALS’: AN OBSTRUCTION TO THE FULL
REALISATION OF THE RIGHT TO SELF-DETERMINATION**

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DEDICATION

This dissertation is firstly dedicated to my beloved biological parents, the late **MR. D & MRS A MADZIWA** whose good hearts stopped beating, whose beautiful souls were promoted to glory and could not live long enough to see their only son be part of the royal profession. May your souls continue to Rest in Eternal Peace! Till we meet again.

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*‘Unless the Lord builds the house,
those who build it labour in vain.*

*Unless the Lord watches over the city,
the watchman stays awake in vain.’*

Psalm 127:1

(Revised Standard Version)

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LIST OF ACRONYMS

[]	Paragraph
ACHPR	African Charter on Human & Peoples Rights
AfCHPR	African Court on Human & Peoples Rights
AfCmHPR	African Commission on Human & Peoples' Rights
AHRLR	African Human Rights Law Reports
BA	Barotseland Agreement
BNC	Barotse National Council
CCPR	Committee on Civil and Political Rights
FRD	Friendly Relations Declaration
GA	General Assembly
GC	General Comment
GR	General Recommendation
HRC	Human Rights Committee
HRLJ	Human Rights Law Journal
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination

ICESCR	International Covenant for Economic, Social & Cultural Rights
ICJ	International Court of Justice
ILC	International Law Commission
MLF	Mthwakazi Liberation Front
MLO	Matabeleland Liberation Organisation
MRP	Mthwakazi Republic Party
SCC	Spanish Constitutional Court
SCS	Supreme Court of Spain
UN	United Nations
UNDGICP	United Nations Declaration Granting Independence to Colonial Peoples
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
VDPA	Vienna Declaration on Programme & Action

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CHAPTER ONE

1.1 Introduction

A close analysis of some of the countries that have experienced a wave of secessionist movements like Spain, Zambia and Zimbabwe, makes it apparent that there is a criminal penalty visited upon the pioneers of such a movement.¹ Given such developments most leaders of the secessionist groups have been charged with treason,² terrorism³ or rebellion⁴ and arraigned before municipal courts. This highlights the inherent difficulties associated with the full exercise of the right to self-determination beyond the decolonisation context. This study undertakes to investigate the full exercise and impact of municipal criminal laws on the right to external self-determination through secession. This study focuses on the secessionist movements in Spain, Zambia and Zimbabwe; the subsequent trials of the leaders of these movements and how these trials impact on the full exercise of the right to self-determination, as provided for in various international and regional treaties and conventions.

¹ Cameroon's Penal Code provides for the crime of secession in Section 111; Spanish Criminal Code provides for the crime of Rebellion in sections 475-484

² Thomas & Others v the State HB 53/11; 84 Zambian separatists in court for treason 02 November 2013 <https://www.news24.com/Africa/News/84-Zambian-separatists-in-court-for-treason-20131102> (Accessed 01 April 2019)

³ 'Nigerian government files new charges against Biafra Movement's founder' 23 December 2015 <https://allafrica.com/vie/group/main/id/000404845.html> (Accessed 08 March 2019)

⁴ 'Spain opens trial of Catalan separatist leaders over 2017 independence declaration' 13 February 2019 <https://www.japantimes.co.jp/news/2019/02/13/world/crime/spain-opens-trial-catalan-separatist-leaders-2017-independence-declaration/#.XIJ-RqCxxFg> (Accessed 08 March 2019)

1.2 Background of Study

The concept of self-determination has developed from its origins as a political concept to an inalienable and unquestionable right in international law with *erga omnes* character.⁵ However, the exact contents of the right to self-determination and its application remain blurred, imprecise and problematic in light of the municipal laws of the above-mentioned countries. This study is premised on the situations that took place in Spain, Zambia and Zimbabwe and the backgrounds to such situations are discussed below.

1.2.1 Spain

In Spain, from as early as 1898 to date the peoples in its Catalan Province have been agitating for secession in a bid to create an independent country know as Catalonia.⁶ Firstly, such agitation is said to have been a result of a long history of oppression and centralisation from Madrid.⁷ Secondly, the other reason for such agitation was that in 2010, the Spanish Constitutional Court (hereinafter SCC) struck down a law passed by the Catalan Parliament in 2006 which updated the autonomous government's statute from 1979.⁸ In its judgment, the court rejected anything that suggested Catalonia as a 'nation' as opposed to a 'region'.⁹ As an aftermath of this judgment, there were widespread protests and demonstrations.

⁵ Case Concerning East Timor (Portugal v Austria) ICJ 30 June 1995

⁶ The Case of Catalonia: A brief explanation www.circulodeempresarios.org (Accessed 01 April 2019)

⁷ <https://www.independent.co.uk/news/world/europe/catalan-crisis-why-does-catalonia-want-independence-do-people-really-support-it-spain-latest-a8025836html> (Accessed 01 April 2019)

⁸ <https://www.independent.co.uk/news/world/europe/catalan-crisis-why-does-catalonia-want-independence-do-people-really-support-it-spain-latest-a8025836html> (n7 above)

⁹ SCC Judgment No. 31/2010 of June 28 (Unofficial Translation)

In a bid to achieve self-governance, in 2014, an unofficial referendum was held which had an estimated voter turnout of thirty-seven to forty-one percent.¹⁰ In that referendum, about 80% of the voters wanted Catalonia to be an independent State.¹¹ In response to that referendum, the Spanish government proffered some legalistic argument hinging particularly on the indivisibility of Spain pursuant to Article 2 of the Spanish Constitution.¹² Consequently, the referendum was said to be illegal.¹³

As a result of this failed referendum, the agitation for secession by the Catalans increased and in 2017 another referendum was held. However, the Catalan government did not consider it to be a referendum, but referred to it as a ‘popular consultation process’ to determine the public opinion. It was therefore said to be a peaceful move which did not threaten the indivisibility of Spain. Just like its 2014 predecessor, the 2017 referendum was declared to be illegal by the SCC.¹⁴ Consequently, the leaders of the 2017 referendum, as of February 2019, currently undergoing trial in the Supreme Court of Spain (hereinafter SCS) facing charges of rebellion.¹⁵

¹⁰ Bid for independence 1.8 Million people vote in favour of independence for Catalonia

https://elpais.com/elpais/2014/11/10/inenglish/1415577606_989753.html (Accessed 01 April 2019)

¹¹ SCC Judgment (n9 above)

¹² SCC Judgment (n9 above); A G Munoz, Catalan Independence in the Spanish Constitution and Courts, Oxford Report on International Law; Report by the Commission of International Experts, Catalonia’s legitimate Right to decide: Paths to self-determination, p. 22-23; J Vintró, Legality and the Referendum on Independence in Catalonia, Institute of Public Law, University of Barcelona

¹³ AG Munoz; Vintro (n12 above)

¹⁴ ‘Catalonia’s bid for independence explained’ 31 January 2018 <https://www.bbc.com/news/world-europe-29478415> (Accessed 01 April 2019)

¹⁵ <https://allafrica.com/vie/group/main/id/000404845.html> (n3 above)

1.2.2 Zambia

In Zambia, the Lozi's claims for secession have been ongoing for a long time on the basis of the following historical facts: In 1964, the British government, the Lozi leadership and the transitional Zambian government signed the Barotseland Agreement (hereinafter BA)¹⁶ which provided the terms under which Barotseland was to be integrated into Zambia.¹⁷ Some changes were made to the BA after Zambian independence, and Lozi leaders were disconcerted. As a result, the Lozi has been constantly demanding more political self-governance and restoration of the BA since Zambia's independence.¹⁸ In July 1993, about 5000 Lozi's gathered at the residence of the Litunga demanding to challenge the Zambian government in court.¹⁹ The 1964 BA was the basis for such demands.²⁰ The Court ruled in favour of the Zambian government.

Violent clashes between Lozi activists and the security forces took place in January 2011.²¹ Another Barotse National Conference (hereinafter BNC) was held in 2012 and the Lozi people passed their own resolution to the effect that Barotseland was now free to pursue its own self-determination and committed to peacefully disengage with the Zambian government.²² This resolution was contrary to the spirit and letter of the Zambian

¹⁶ 1964 Barotseland Agreement; W Zeller and H Melber, 'United in Separation? Lozi Secessionism in Zambia and Namibia' in L De Vries, P Englebert & M Schomerus (eds) 'Secessionism in African Politics: Aspiration, Grievance, Performance, Disenchantment' (2019) 294

¹⁷ Zeller & Melber (n16 above)294

¹⁸ Zeller & Melber (n16 above) 294

¹⁹ Zeller & Melber (n16 above), 311;

²⁰ Barotse National Conference (1995)

²¹ Zeller & Melber (n16 above) 320

²² https://www.barotseland.info/Freedom_Resolution_2012.htm (Accessed 06 April 2019)

Constitution and that is why sometime in 2016, as a result of these self-determination claims, pioneers of the 'separatist' movement were tried and convicted of treason felony by the Zambian High Court for their responsibility in the execution of the 2012 BNC resolution aimed at restoring the pre-1964 Barotseland status. They were sentenced to ten years imprisonment with hard labour.²³ Upon Appeal, the Zambian Supreme Court in 2018 upheld the conviction and shockingly increased the sentence by five years to make it fifteen years with hard labour.²⁴

1.2.3 Zimbabwe

In Zimbabwe, many secessionist parties such as Mthwakazi Republic Party (hereinafter MRP), Matabeleland Liberation Organisation (hereinafter MLO) and Mthwakazi Liberation Front (hereinafter MLF) were formed in Matabeleland Province. The MRP for example was launched to provide the Mthwakazi people with an alternative to achieving their main goal - liberty and the Mthwakazi nation's restoration without fail.²⁵ Some of the aims of these parties were to particularly preserve and protect the interests and concerns of the people therein against the alleged sustained and unrelenting side-lining and marginalisation of these people by the government of Zimbabwe.²⁶ They were formed with the aim to promote and advocate for the rebirth of the separate self-governing Mthwakazi nation through engaging the Zimbabwean government in dialogue, with the aim of assenting to a referendum where people would vote to determine whether or not

²³ Mombotwa & Others v. The People Appeal No. 152/153/154 2017, J2

²⁴ Mombotwa & Others (n23 above) J2

²⁵ MRP <https://mthwakazirepublicparty.org> (Accessed 01 September 2018)

²⁶ <https://mthwakazirepublicparty.org> (n25 above)

an autonomous Mthwakazi nation should be restored.²⁷ This quest for self-determination of the people of Mthwakazi led to some activists being arrested for treason in 2010.²⁸

These situations present a complex trend insofar as the exercise of the right to external self-determination (secession) is concerned. Concerning secession, its application is problematic as there are only two scenarios in which it has been sustained without contestation. These are in the context of decolonisation of non-independent territories as well as in those territories under alien occupation.²⁹ In countries like Spain, Zambia and Zimbabwe, any attempt to secede is regarded as treason or rebellion.³⁰

1.3 Problem Statement

The legal problem identified is the narrow and flawed interpretation and understanding of the applicability, scope, nature and extent of the right to self-determination outside the context of decolonisation in municipal and international law in light of secessionist movements and claims. In Spain, Zambia and Zimbabwe, any attempt to exercise the right to self-determination through secession is criminalised. This therefore negatively impacts the exercise of the right to self-determination as provided for in, *inter alia*, the United Nations Charter (hereinafter UN Charter),³¹ the International Covenant on Civil and

²⁷ MRP <https://mthwakazirepublicparty.org> (n6 above)

²⁸ Thomas & Others v the State (n2 above)

²⁹ V Toki 'Decolonisation and the right to Self-Determination for the Pacific' in (ed.) *Studies in Law, Politics and Society, Volume 70*, (2016) 181-207

³⁰ Zimbabwe Criminal Law Codification and Reform Act [Chapter 9:23], Section 20; Spanish Code(n1 above), Article 472 and Concordant

³¹ UN Charter, Article 1 & Article 55

Political Rights (hereinafter ICCPR),³² the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR),³³ the African Charter on Human and Peoples' Rights (hereinafter ACHPR)³⁴ and other international, regional and sub-regional treaties to which Spain, Zambia and Zimbabwe are parties to.

1.4 Research Objectives

The main objective of this study is to explore the prospects of secessionist movements in Spain, Zambia and Zimbabwe against the criminalisation of their efforts in municipal law and its impact of such criminalisation on the exercise of the right to self-determination in international law.

The sub-objectives of this study are:

- (a) To examine the legal nature and content of the right to self-determination, the specifically the right to internal self-determination, its scope and the extent in international law.
- (b) To examine the right to external self-determination through secession focusing much on the behaviour of states towards secession and possible outcomes of these secessionist claims in light of municipal law and the international law principles of *uti possidetis* and territorial integrity.
- (c) To examine the criminalisation of secession in Spain, Zambia and Zimbabwe focusing much on their domestic laws and how such laws impact on the full exercise of the right to self-determination.

³² ICCPR, Article 1

³³ ICESCR, Article 1

³⁴ ACHPR, Article 20

(d) To draw conclusions and make recommendations in light of the findings of this study

1.5 Research Methodology

This study shall undertake a desktop approach. It shall use both the primary and secondary sources of law in advancing its main objective. It will make use of a comparative analysis so as to extract a common thread in state practice and municipal law by specifically focusing on the criminalisation of secession and subsequent trials in Spain, Zambia and Zimbabwe and how such municipal trials affect the exercise of the right to self-determination beyond the decolonisation context.

1.6 Delimitations of Study

This study shall examine the nature and scope of the external concept of post-colonial self-determination in international law. To satisfactorily and adequately address this notion of self-determination, this study shall have due regard to both 'internal' and 'external' self-determination as well as the secessionist theories based on the right to self-determination. This study shall not consider whether or not the various groups of people advocating for self-determination through secession all over the world have a justified cause to do so or not. Rather it will focus on how the use of municipal laws to address secessionist claims somewhat hinders the full realisation of the right to self-determination as provided for in international law.

1.7 Significance of Study

This study will provide a better and proper understanding of the notion of self-determination outside the decolonisation context and how states use internal laws to stifle and obstruct the full realisation of the right to self-determination. By clearly defining and

discussing the scope, nature and extent of the right to self-determination, this study will help guide states as well as peoples in the interpretation and addressing the claims for self-determination without necessarily imposing a criminal sanction. This study may also assist those clamouring for self-determination through secession to have a legal appreciation of the nature, scope, extent and interpretation of the right to self-determination beyond the decolonisation context. It may also put an end to the disorder and violence associated with clamours for self-determination through secession by the various secessionist movements in Africa and beyond as well as put an end to criminal trials associated with secession in municipal law.

1.8 Chapter Synopsis

Chapter one

This is an introductory chapter which comprises the introduction, a brief historical background to the study, the statement of the problem, research objectives, literature review, and research methodology, limitations of the study, significance of the study as well as the synopsis of the chapters.

Chapter two

This chapter examines the legal nature and content of the right to self-determination, the specifically the right to internal self-determination, its scope and the extent in international law.

Chapter three

This chapter examines the right to external self-determination through secession focusing much on the behaviour of states towards secession.

Chapter four

This chapter details the criminalisation of secession in Spain, Zambia and Zimbabwe focusing much on their domestic laws and how such laws impact on the full exercise of the right to self-determination.

Chapter five

This chapter presents the findings and conclusions of the study as well as recommendations.

CHAPTER TWO

2.1 Introduction

The main objective of this chapter is to examine and ascertain the content, scope and nature of the right to internal self-determination in international law. It will further detail the right to self-determination within the colonial context as well as beyond the decolonisation context.

2.2 *The right to self-determination in international law*

Generally, self-determination entails the right of all peoples to freely determine their political status and to freely pursue economic, social and cultural development.³⁵ Self-determination has evolved into an international legal right.³⁶ It is therefore an unquestionable and inalienable right based on a norm of *jus cogens*³⁷ derogation from which

³⁵ UNCERD, General Recommendation No. 2; ACHPR, Article 20; ICCPR, Article 1; ICESCR, Article 1; UNGA Res. 1514 (XV); UNGA Res. 2625 (XXV); Helsinki Final Act; Vienna Declaration and Program of Action; M N Shaw, *International Law, 5th Edition* (2003) 227; I Brownlie, 'The Rights of People in Modern International Law' in J Crawford (Ed) *The Rights of People* (1998) 513; A Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995) 133-136; B Simma, D Khan & G Nolte & A Paulus, *The Charter of the United Nations: A Commentary 3rd edition* (2012) 316

³⁶ R Higgins, 'The United Nations Law-making: The Political Organs' (1970) 64 *American Journal of International Law* 43; 97; Unpublished: J D Zikamabahari *The attainment of self-determination in African States by rebels* Unpublished Doctorate Thesis, North-West University (2014)

³⁷ H Gros-Espiel, *The Right to self-determination, Implementation of the United Nations Resolutions, Study of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities* (1980)

is not tolerable under any circumstances³⁸ and has *erga omnes* character.³⁹ However, ‘a precise definition continues to be elusive’⁴⁰ regardless of the availability of a plethora of literature on the right to self-determination.

2.3 Internal self-determination

The internal aspect of self-determination consists of a people’s right to freely pursue their economic, social and cultural development ideally through participation in the nation’s political decision-making process, representative and democratic governance.⁴¹ The right to internal self-determination is identified as a customary international law tenet, however, there is no right to external self-determination.⁴² This position is augmented not only by the Friendly Relations Declaration (hereinafter FRD) but also the UN Human Rights Committee (hereinafter HRC) in its General Comment (hereinafter GC) on Article 1 of the ICCPR and also state practice and statements.⁴³ Even though the new understanding

³⁸ E Schwelb ‘Some aspects of jus cogens as formulated by the International Law Commission’ (1967) *The American Journal of International Law*, Volume 61, No. 4, 946-975

³⁹ East Timor (n5 above); *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 9 July 2004 [88]; *Case concerning the Barcelona Traction, Light and Power Company, Limited* Judgement, 1970 ICJ Reports 3

⁴⁰ J Gilbert and J Castellino, *Self-Determination, Indigenous Peoples and Minorities* (2003) *Macquarie Law Journal*, Volume 3, 166

⁴¹ K Hernard *Devising an Adequate system for Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination* (2000) 300; *Kosovo* [2010], Separate Opinion of Judge Yusuf [9]; UNGA Res. 1514 (XV); Reference Re Secession Quebec [126]

⁴² M Sterio *Self-Determination and Secession under International Law: The New Framework* (2015) *Cleveland University Law Faculty Articles and Essays* 847

⁴³ ZA Velasco ‘Self-determination and secession: Human Rights based Conflict Resolution’ (2014) *International Community Law Review* 75 83

of self-determination gives the impression that it is in support of internal self-determination, external self-determination is still plausible.⁴⁴

In *Reference Re Secession Québec*, where the Supreme Court of Canada was faced with a mammoth task to determine whether or not Quebec could secede from Canada, the Court stated that the self-determination of a people is habitually accomplished through internal self-determination.⁴⁵ As long as a multi-ethnic State respects the collective and individual rights of their ethnic groups,⁴⁶ such groups should find their protection only within the State.⁴⁷ Government by the approval of the governed does not entail a right to withdraw but a right to participate through electoral processes within the framework of the State.⁴⁸ Articulated in the right to internal self-determination is its continuing and perpetual character and the actual realisation that the right to internal self-determination depicts a precondition for the exercise and enjoyment of other distinct individual rights.⁴⁹

⁴⁴ D Raič *Statehood and the law of self-determination* (2002) 230-233

⁴⁵ Reference Re Secession Quebec (1998) 115 ILR 536 [126], [138]

⁴⁶ D. Mursweik, *The Issue of a Right To Secession-Reconsidered* in C. Tomuschat, *Modern Law of Self-Determination* (1993) 38

⁴⁷ *Katangese Peoples' Congress v Zaire* [6]; O Kimminich, A "Federal" Right of Self-Determination, in Tomuschat, "*Modern Law of Self-Determination*", (1993) 92

⁴⁸ L Brilmayer, 'Secession and Self-determination: A territorial Interpretation,' (1991) 16 *Yale Journal International Law* 185; Cassese (n35 above), 116; Committee for Civil and Political Rights (hereinafter CCPR) GC No 12 [1]

⁴⁹ Gros-Espiel (n37 above); M Jean-Bernard 'Relations between peoples' rights and human rights: semantic and methodological distinctions,' *Human Rights Law Journal*, Vol. 7 (1986), 195198; CCPR GC 12/21 [1]

2.4. Legal nature and scope of the right to self-determination

2.4.1.1 The collective nature of the right

Unlike other rights in international and human rights treaties which are individualistic, the right to self-determination is distinctive as it is a collective right.⁵⁰ In its articulation and formulation, it is portrayed not as a right for every human being but more accurately as ‘a right of all peoples’.⁵¹ The HRC ruled in *Lubicon Lake Band v. Canada* that, insofar as legal standing is concerned in collective rights, an author as an individual cannot claim a violation of Article 1 of the ICCPR since it deals with rights that are conferred upon all peoples.⁵² Thus this collective nature of this right requires that a collective and not individual enforcement of this right.

2.4.2.2 The concept of ‘peoples’

It is widely accepted that the definition of ‘peoples’ is not entirely settled.⁵³ In the *travaux preparatoires* of the ICCPR, the term ‘all peoples’ not only encompass people who are subject to colonialism or alien occupation or subjugation, within the meaning of UNGA Res. 2625 (XXV) but it also include even those people living in independent territories.⁵⁴

⁵⁰ M Nowak *UN Covenant on Civil and Political Rights, CCPR Commentary, 2nd Revised Edition*, (2005) 14

⁵¹ Nowak (n50 above) 14; ICCPR (n32 above); ICESCR (n33 above), UN Charter (n31 above), Articles 1(2) & 55, ACHPR, Article 20

⁵² *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) 1

⁵³ Katangese Peoples’ Congress (n47 above) [3]

⁵⁴ Cassese (n35 above) 94; Y Dinstein ‘Collective Human Rights of Peoples and Minorities’ (1976) *The International and Comparative Law Quarterly* Vol. 25 102, 108; A Kiss ‘The peoples’ right to self-determination’ (1986) *HRLJ* Vol. 7, 165; M Jean-Bernard ‘Relations between peoples’ rights and human

Given the unsettled nature of the definition of the term ‘peoples’, HRC also defined ‘a people’ as a societal unit exhibiting a clear distinct identity and its own characteristics which infers a correlation with a territory⁵⁵ even in circumstances where such a people has been wrongfully ejected from a territory and artificially substituted by another population.

The ICJ in its numerous decisions⁵⁶ has reiterated that the right to self-determination embraces all peoples within those territories which have not yet realised self-governance and independence, thus making reference to the entire population and not to its constituent linguistic, cultural or ethnic minorities.⁵⁷

In addressing the concept of the beneficiaries of the right to self-determination i.e. ‘peoples’, UNESCO International Meeting of Experts on further study on the concept of the rights of peoples came up with a list of objective disjunctive qualities and attributes

rights: Semantic and methodological distinctions’ *HRLJ*, Vol. 7 (1986) 203; In Re Secession Quebec [124]; UNGA Res. 2625 (XXV) [1]

⁵⁵ A Critescu *The Right to Self-determination- Historical and Current Developments on the basis of the United Nations Instruments Study of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, (1980) 276

⁵⁶ Advisory Opinion *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* [52-53]; *Case Concerning East Timor* (n5 above) [29]; Advisory Opinion, *Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 9 July 2004, [88]; UNGA, *Question of Western Sahara.*, 13 December 1978, A/RES/33/31, Advisory Opinion, 1975 ICJ 1 [56], [162]

⁵⁷ Cassese (n35 above) 94; Kosovo, *Statement by the Permanent Representative of the Republic of Azerbaijan to the United Nations, Oral Proceedings*, 3 December 2009 [36]; ICCPR, *Third Periodic Reports of States Parties due in 1991, Addendum, Report Submitted by Sri Lanka*, 17 July 1944, CCRP/C/70/Add.6, (1944); MA Yussuf & A Sarjoon, ‘Ethnicity, Ethnic Minority and Self-Determination: An Examination of Conceptual Linkage’ (2016) Vol. 6, No. 2 *Research on Humanities and Social Sciences* 149; R Higgins *Problems & Processes* (1994)

that should be observable for a collective group of people to be considered as ‘peoples’.⁵⁸ The African Commission on Human and Peoples’ Rights (hereinafter AfCmHPR) in the *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council & Others v. Kenya*, (hereinafter *Endorois*) also adopted the same list as that of the *International meeting of experts*. These attributes are: a common historical tradition, cultural homogeneity, racial or ethnic identity, linguistic unity, religious and ideological affinities, territorial connection and a common economic life.⁵⁹ Also included are other bonds, identities and affinities that such people collectively enjoy or suffer from the deprivation of such rights.⁶⁰

Conclusively, once a particular group of people qualifies as ‘a people’ then they can collectively claim the right to self-determination, in collaboration with other factors, of course.

2.4.2.3 The permanent character of the right

Contrary to theories propounded by other international law academics that the right to self-determination may be employed and implemented only once (by a referendum or realisation of self-governance), others argue that the right to self-determination is rather an on-going, continuing and perpetual right.⁶¹ This perpetual disposition in the design and expression of the right to self-determination is not expended upon the realisation of self-

⁵⁸ UNESCO (1989) *International Meeting of Experts on further study on the concept of the rights of peoples* [23];

⁵⁹ *International Meeting of Experts (n58 above)* [22]; Brownlie (n35 above) 5

⁶⁰ *Endorois case* 2009 AHRLR 75 (ACHPR 2009) [151]; *International Meeting of Experts (n58 above)* [23]; [22] *Gunme et. al v Cameroon* 2009 AHRLR 9 (ACHPR 2009) [171]

⁶¹ Gros-Espiel (n37 above)8

governance but somewhat must be employed, affirmed and perhaps improved or redefined in a recurrent and persistent process.⁶² Quintessentially, this denotes that the right to self-determination has permanent and long-lasting force.⁶³ There is therefore need for States to ensure the continuous realisation and free exercise of the right to self-determination in light of the object and purpose of the UN Charter and all international and human rights treaties that provide for the right to self-determination.

2.4.2.4 Enforcement of the right

Article 1(3) of the UN Charter mandates states parties to further the fulfilment and attainment of this right and to respect it.⁶⁴ This mandate is not only incumbent upon colonial authorities but rather to all State parties. This obligation does not only relate to the peoples of such States but it extends to peoples who are struggling to achieve self-governance and independence.⁶⁵ However, Article 1(3) of the UN Charter does not prescribe the manner of enforcement of this right by peoples whose right has been infringed.⁶⁶ Under the ICCPR, Article 2(1) places an obligation upon States not only to respect all the rights enshrined in the Covenant but also to ensure that the rights enshrined in the Covenant are guaranteed to all individuals within their jurisdictions without any differential treatment.⁶⁷ Given the *jus cogens* nature of the right to self-determination and its *erga omnes* character, it is imperative to note that the obligation to facilitate and respect

⁶² Jean-Bernard (n54 above) 195

⁶³ Gros-Espiel (n37 above) [47]

⁶⁴ UN Charter, (n31 above), Article 1(3)

⁶⁵ A Cassese 'The self-determination of peoples' in L Henkin (ed) 'The International Bill of Rights - The Covenant on Civil and Political Rights' (1981) 112

⁶⁶ Nowak (n50 above) 16

⁶⁷ ICCPR (n32 above), Article 2(1)

this right is owed to the international community as a whole and States cannot derogate from such obligation.

2.5 Self-determination within the colonial context

Within the colonial context, there is no objection as to the nature and scope of application. Notwithstanding that the decolonisation process ended ages ago, there is need to observe that the term colony transcends its classic definition and extends to any forms of foreign, alien or racist subjugation, domination or exploitation as envisaged in the UNDGCIP and the FRD.⁶⁸ A prominent example to which this right has been recognised beyond the classic definition of a ‘colony’ was in South Africa where the oppressed and dominated black majority had to fight for their self-determination and put an end to the apartheid regime.⁶⁹ Additionally, another vivid and current example is the right of the peoples of the Saharawi Arab Democratic Republic whom, regardless of recognition by almost all states, have not been granted self-determination from the Kingdom of Morocco and the UN has not recognised it as an independent state.⁷⁰

⁶⁸ The reservations and responses of states with regards to the right to self-determination as it is enshrined in the ICCPR & ICESCR

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec (accessed 28 March 2019).

⁶⁹ UNGA Res 48/94 (n39 above); Human Rights, Historical Images of Apartheid in South Africa, <http://www.un.org/av/photo/subjects/apartheid.htm> (accessed 28 March 2019)

⁷⁰ Report of the Fact-Finding Mission to the Saharawi Arab Democratic Republic (2012) [26]

2.6 Self-determination beyond the colonial context

The application of self-determination beyond the decolonisation context has been subject to debate in international law. Generally, self-determination beyond the colonial context is normally accepted within the context of internal self-determination.

India stated in its reservation to Article 1 of the ICCPR and the ICESCR that the right to self-determination as prescribed in these instruments is only applicable to peoples under foreign domination.⁷¹ In the same vein, Bangladesh also declared that the right to self-determination of peoples only applies in the verifiable context of colonial rule, administration, foreign domination, occupation and similar situations.⁷²

However, reacting to the pronouncements made by India and Bangladesh, France objected stating that the reservations in question appended conditions not provided for by the UN Charter.⁷³ In any event any endeavour to restrict the scope of the right to self-determination or ascribe conditions not provided for in the relevant instruments would undermine the idea of self-determination itself and would genuinely debilitate its universally acceptable character.⁷⁴ In this regard, any restrictions on the exercise of the right to self-determination which may be imposed by States parties would be unnecessary

⁷¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec (n67 above)

⁷² https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec (n67 above)

⁷³ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec (n67 above)

⁷⁴ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec (n67 above)

and largely undermines the object and purpose of the right as well as all legal instruments providing for the same.

It is essential to note that though self-determination is largely associated with the context of decolonisation, state practice affirms that this right is also available beyond decolonisation.⁷⁵ The HRC, GC No. 12 on Article 1 ICCPR requires states to submit reports on various measures taken by states in the facilitation of the full exercise of the right.⁷⁶ This requirement is indicative of the applicability of self-determination beyond the decolonisation.⁷⁷

Thus, notwithstanding disagreements amongst academics as to the legal applicability of the right to self-determination beyond decolonisation, such disagreements may be cured by looking at various international instruments such as the ICCPR, ICESCR, and the FRD among others which affirmed the applicability of self-determination beyond decolonisation.

2.7 Conclusion

From the foregoing, it can be noted that the right to self-determination relates to the ability of a people to freely choose their political status and pursue economic, social and cultural development. This right is based on a norm of *jus cogens* and has *erga omnes* character and

⁷⁵ R McCoruodale and K Hausler 'Caucuses in the Caucasus: The Application of the Right to Self-Determination' in Green and Waters (eds) *Conflict in the Caucasus: Implications for International Legal Order* (2010) 29

⁷⁶ HRC, GC No. 12, [6]

⁷⁷ J Park 'Integration of Peoples and Minorities: An Approach to the Conceptual Problem of Peoples and Minorities with reference to Self-determination under International Law (2006) *International Journal on Minority and Group Rights* 69 73

there is consensus that internal self-determination applies at all times. Chapter 3 will detail that though self-determination is normally expected to be fulfilled through internal self-determination, there are extreme circumstances which warrants the application of external self-determination.

CHAPTER THREE

3.1 Introduction

This chapter examines the right to external self-determination through secession focusing much on the behaviour of states towards secession and possible outcomes of these secessionist claims in light of municipal law and the international law principles of *uti possidetis* and territorial integrity.

3.2 External self-determination (Secession) in International Law

The external aspect of self-determination (secession) recognises the disintegration of a State in an effort to form an independent State.⁷⁸ This right places an obligation upon other States to promote and expedite the peoples' desires and hopes for self-governance. The right to external self-determination applies unquestionably to peoples who are under oppression or colonial domination as well as those who are subjected to wanton and flagrant violation of their human rights.⁷⁹

In *Gunme et. al v. Cameroon*, where the Southern Cameroons were seeking to secede from Cameroon, the AfCmHPR stated that the right to self-determination as provided for in the ACHPR cannot be invoked in the absence of gross human rights violations and suggested

⁷⁸ S Sargent & G Melling 'The Exercise of External Self-Determination by Indigenous Groups: The Republic of Lakotah and the Inherent Sovereignty of American Indigenous Peoples (2012)

⁷⁹ Aaland Islands Report (n56 above); Katanga (n47 above) [6]; FRD [5(7)]; I Cismas 'Secession in Theory and Practice: The Case of Kosovo and Beyond' (2010) *Goettingen Journal of International Law* 545; R Bereketeab Self-Determination and Secession: The Post-Colonial State (2015) 9; B Knoll 'Fuzzy Statehood: An International Legal Perspective on Kosovo's Declaration of Independence' (2009) *Review of Central and East European Law* 361 387; T D Grant 'Regulating the Creation of States from Decolonisation to Secession' (2009) *Journal of International Law and International Relations* 11 29

that all grievances had to be resolved through a comprehensive national dialogue.⁸⁰ Nonetheless, international law has not established or accepted a wide-ranging right of peoples to unilaterally declare its withdrawal from a state in light of the principle of territorial integrity.⁸¹ Outside the decolonisation context, self-determination is regarded as not giving rise to external self-determination through secession by component parts of an independent state.⁸² In this regard, it is apparent that international law does not provide for the right to secession;⁸³ nor does it prohibit the same.

In spite of increased dependence on the notion of external self-determination through secession by several groups of peoples, its meaning and applicability is ‘problematic’.⁸⁴ The insertion of the right to self-determination in the UN Charter was an extraordinarily positive development as it established a framework for the development of this right in future through customary international law. Through the UN Declaration on Granting Independence to Colonial Peoples (hereinafter UNDGCIP) of 1960, the right to self-

⁸⁰ *Gunme et. al v Cameroon* [199] , [203]

⁸¹ UNCERD (n35 above) [6]; United Nations Declaration on the Rights of Indigenous Persons, Article 46(1), Reference Re Secession Quebec (n41 above) [582]; R Higgins *International Law and the Avoidance, Containment and Resolution of Disputes: General Course on Public International Law* (1993) 170; TM Franck *The power of legitimacy among Nations* (1990) 153

⁸² Crawford (n35 above) 114; P Thornberry, ‘Self-determination, Minorities, Human Rights: A Review of International Instruments,’ 38 *International and Comparative Law* (1989) 867

⁸³ UNCERD, (n35 above) [6]; CJ Borgen ‘The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia’ (2009) *Chicago Journal of International Law* 18

⁸⁴ A Hehr ‘Independence, intervention and Great Power Patronage: Kosovo, Georgia and the Contemporary Self-determination Penumbra’ (2009) *Amsterdam Law Forum* 88

determination was underlined particularly in the decolonisation context.⁸⁵ The incorporation of the right to self-determination in the ICCPR and the ICESCR was an affirmation that the right even applies beyond decolonisation.⁸⁶ With the adoption of the 1970 FRD, the scope of the right to self-determination was further extended not only to apply to the context of decolonisation but also in cases of racist regimes, alien domination or exploitation.⁸⁷

3.3 International Community & Secessionist Movements

3.3.1 Lack of state practice & *opinio juris* establishing the right to secede

In order to exist as a customary international law principle, a right to secession must be established through repetitious and uniform state practice.⁸⁸ The requirements of a norm under Customary International Law (hereinafter CIL) are state practice and *opinio juris*.⁸⁹ A right to self-determination through secession must be recognized through repetitious

⁸⁵ B Cop and D Eymirlioglu, 'The right of self-determination in International law towards the 40th Anniversary of the adoption of the ICCPR and the ICESCR (2005) 118

⁸⁶ S Oeter 'Self-Determination' in Simma et al (eds) 'The Charter of the United Nations: A Commentary' (2012) 322

⁸⁷ A Whelan 'Self-determination and Decolonisation: Foundations for the future' (1992), *Irish Studies in International Affairs*, Vol. 3 No. 4, 25

⁸⁸ MO Hudson, *Working Paper, Article 24 of the Statute of the International Law Commission*, 2 Yearbook, ILC 24 (1950), UN Doc. A/CN.4/16; North Sea Continental Shelf, I.C.J. Reports 2012, p. 99, at p. 122, [55]; Continental Shelf Judgment, I.C.J. Reports 1985, pp. 29-30, [27]; Nicaragua Case [55]; Germany v Italy [55-56]

⁸⁹ JL Kunz 'The nature of Customary International Law' *The American Journal of International Law* Vol. 47, No. 4 (Oct., 1953) 662-669

and uniform practice.⁹⁰ Within a short period of time, a new rule of CIL can be established as long as there is extensive and uniform state practice.⁹¹

3.3.2 Assessment of state behaviour towards secession

3.3.2.1 Katanga

The mineral-rich province of Katanga seceded barely two weeks after the independence of Congo.⁹² The international community responded negatively to this move by Katanga.⁹³ All secessionist activities were declared to be in contravention of the Congolese Constitution and United Nations Security Council (hereinafter UNSC) decisions.⁹⁴ The AfCmHPR upheld the territorial integrity of Congo and held that the desire for independence of the Katanga was unmeritorious under the ACHPR.⁹⁵

3.3.2.2 Chechnya

A sovereign republic which constituted a federation known as Soviet Union was formed in 1923.⁹⁶ However, it witnessed secessionist struggles in Nagorno-Karabakh, Abkhazia,

⁹⁰ Hudson (n87 above) 29

⁹¹ *Asylum Case (Colombia v. Peru)*, International Court of Justice (ICJ), 20 November 1950

⁹² Cultural and Environmental Education, Professional Development Service for Teachers: *History – The secession of Katanga 1960-65 case study: Exploring causation with students* (2010) 5

⁹³ LS Eastwood, Jr., 'Secession: State Practice and International Law After the Dissolution of the Soviet Union and Yugoslavia', 3 *Duke Journal of Comparative and International Law* (1993) 303

⁹⁴ UNSC Resolution 169 (1961)

⁹⁵ Katangese Peoples' Congress (n47 above)[6]

⁹⁶ GW Lapidus 'Contested Sovereignty: The Tragedy of Chechnya' (1998) *International Security*, Vol. 23, No. 1, 5

Transdniester, South Ossetia and Chechnya.⁹⁷ After the disintegration of the Soviet Union, the question was whether Chechnya was to be automatically considered as part of the Russian Federation as Moscow insisted or whether its membership in the Federation required its formal and express consent.⁹⁸ Russia then resorted to the use of military force after all avenues for a peaceful resolution of the conflict had been exhausted.⁹⁹ Chechnya then became increasingly outspoken in its agitation for secession.¹⁰⁰ Human rights violations were perpetrated by the Russian government but regardless of such flagrant human rights violations in Chechnya, state indivisibility has been upheld.¹⁰¹

3.3.2.3 South Sudan

In July 2011, South Sudan formally declared independence after the majority of its eligible voters decided in favour of independence.¹⁰² Secession of South Sudan has been recognised in international law specifically because the parent state has consented to the secession of the South Sudanese from its territory by necessitating the holding of an independence

⁹⁷ Hearing before the Commission on Security and Cooperation in Europe 106th Congress, 1st Session, *Russia's Military Assault on Secessionist Chechnya & US Policy regarding Russia's Actions in Chechnya* (1995) 3; Lapidus (n98 above) 5-6

⁹⁸ Commission on Security and Cooperation in Europe 106th Congress, 1st Session, *Russia's Military Assault on Secessionist Chechnya & US Policy regarding Russia's Actions in Chechnya* (1995) 3; Lapidus (n95 above) 7

⁹⁹ Lapidus (n95 above) 8

¹⁰⁰ Lapidus (n95 above) 8

¹⁰¹ F Mett, *The Concept of the Right to Self-Determination of Peoples* (2004) 150;

¹⁰² K Atinafu 'Ethio-Eritrean Post-secession Hostility: Lessons for Sudan and South Sudan' *International Journal of Political Science and Development*, Vol. 2(11) 316; Unpublished: C Knox 'The Secession of South Sudan: A Case Study in African Sovereignty and International Recognition' Unpublished Honours Thesis, St. John's University (2012) 2

referendum.¹⁰³ Usually the government of the parent state would have acknowledged that co-existence with the group claiming secession would have been impossible. The only recourse available would be to allow the secession of that group from the parent state.

Thus, a clear look at state practice in favour of ethnic groups seeking secession has not been visible. Consequently, the behaviour of states cannot reveal the existence of the right to self-determination through secession. Remedial secession has not been acknowledged in instances where it has been proven that rights of ethnic groups were flagrantly violated,¹⁰⁴ for example, in Chechnya. It is thus apparent that state practice has been hostile to secession including remedial secession.¹⁰⁵

3.4 Secession vis-a-viz territorial integrity and uti possidetis

International law generally does not provide for a right to secession, neither does it prohibit secession.¹⁰⁶ However, there are generally recognised international law principles of territorial integrity and *uti possidetis* which have a bearing on secession.¹⁰⁷ Given the lack of agreement among scholars as well as the reservations made by states in light of the right to self-determination,¹⁰⁸ clearly reveals the attitude of other states towards this right, particularly, their view that it only applies in the circumstances referred to above.

¹⁰³ Knox (n101 above) 2

¹⁰⁴ H Krueger, *Implications of Kosovo, Abkhazia and South Ossetia for International Law the Conduct of the Community of States in Current Secession Conflicts*, 3

¹⁰⁵ UNSC Resolution 1808 (2008); C Tomuschat, *'Morden Law of Self-Determination'* (1993) 27; Simma (n35 above)36

¹⁰⁶ Section 2.3.1

¹⁰⁷ I Brownlie *Principles of Public International Law* (2003) 555

¹⁰⁸ Section 2.6

Consequently, this justifies the criminalisation of any action aimed at achieving self-determination through secession in other jurisdictions.

3.4.1 Territorial Integrity

Territorial integrity is synonymous to ‘territorial inviolability’ or ‘territorial indivisibility’.¹⁰⁹ This principle is recognised in various international and regional instruments including the UN Charter and Resolutions, ACHPR *inter alia* other instruments.¹¹⁰ To underline the importance of this principle most states have incorporated this principle in their domestic constitutions as will be highlighted in Chapter 4. It guarantees the continuous existence of the states within the already defined borders and regards the unilateral alteration of such borders through secession as a violation of international law.¹¹¹ Thus, the principle of territorial integrity is indeed a legal obstacle to secession.

3.4.2 Uti possidetis

This principle is closely linked to the principle of territorial integrity and is therefore another legal obstacle to secession in international law. In the same vein, the *uti possidetis* principle was created in a bid to prevent territorial disputes by fixing existing lines into internationally acknowledged borders.¹¹² *Uti possidetis* is today a customary international

¹⁰⁹ L Oppenheim *International Law* in H Lauterpacht (ed) *Disputes, War and Neutrality 7th Ed.* (1952) 154

¹¹⁰ Article 2(4) UN Charter; UNGA Res. 3314 (XXIX); UNGA Res 2625

¹¹¹ C Marxsen Territorial Integrity in International Law – Its Concept and Implications for Crimea, *Heidelberg Journal of International Law* 75 (2015) 10; Article 4(b) of the Constitutive Act of the African Union

¹¹² MN Shaw, *The Heritage of States: The Principle of Uti Possidetis Juris Today* (1997)

<https://academic.oup.com/bybil/article-abstract/67/1/75/281947> (accessed 10 April 2019)

law tenet which can be invoked to determine the boundaries of recently established independent States and also in other cases decolonisation.

Through this principle, the newly independent States felt bound to adopt as their boundaries, usually administrative but sometimes international in character. Thus, contributing to the consolidation of the norm.¹¹³

3.4.2.1 The Arbitral Award in the Maritime Boundary between Guinea-Bissau and Senegal Arbitration and Case [Guinea-Bissau v Senegal],¹¹⁴

The tribunal in this case noted that *uti possidetis* has its origins in Latin America and noted that the Latin American *uti possidetis* only refers to intracolonial territorial divisions whilst the African principle would apply to territorial divisions set up both by a colonial authority within its territory and also by different colonial powers.¹¹⁵ In this regard, *uti possidetis* in Africa appears as a norm that determines the boundaries between decolonised states on the basis of territorial administrative or international divisions established during colonial rule.¹¹⁶ The tribunal underscored the importance of observing this principle in a bid to avoid inaugurating anarchy in international life.

¹¹³ G Nesi 'Uti possidetis juris e delimitazioni marittime' (1991) 74 *Rivista di diritto internazionale privato e processuale* (Italy) 534–70.

¹¹⁴ *Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal)* [1991] ICJ Rep 53.

¹¹⁵ Nesi (n112 above)

¹¹⁶ 1964 OAU Cairo Resolution AHG/Res.16[I]

3.4.2.2 The Badinter Commission (for the Former Yugoslavia)¹¹⁷

This Commission took a stand in favour of the maintenance of the administrative borders that divided one federated Republic from the other until dissolution took place. As per its Opinion No. 3 of 1992, those administrative frontiers would become internationally recognised boundaries because of *uti possidetis iuris*, unless the parties agreed otherwise.¹¹⁸ It is therefore clear that there was need for consensus to alter the existing administrative boundaries. In the absence of such boundaries they were to be maintained as they are.

3.4.2.3 Frontier Dispute (Burkina Faso/Republic of Mali)

In this case the ICJ stated that, 'at first sight' *uti possidetis presents an* outright conflicts with the right of people to self-determination.¹¹⁹ However, the court further observed that the maintenance of the status quo in Africa, is often observed as the wisest strategy to save what has been accomplished by the general population who fought for their autonomy, and to avoid a disruption which would have deprived the continent of the gains achieved by much sacrifice. This clearly shows that in Africa borders should remain as they are and the continuous fragmentation of states should be avoided at all costs. Therefore, given strong adherence to the principle of *uti possidetis* by states the exercise of the right to external self-determination through secession becomes inconceivable.

From the foregoing discussion, it is apparent that since Africa has at some point experienced colonisation, both territorial integrity and *uti possidetis* applies. All those other

¹¹⁷ Conference on Yugoslavia Arbitral Commission *Opinion No 3* (11 January 1992) (1992) *EJIL* 184 31 ILM 1499

¹¹⁸ Conference on Yugoslavia Arbitral Commission (n116 above)

¹¹⁹ *Frontier Dispute (Burkina Faso/Republic of Mali)* [1986] ICJ Rep 554, [25]

countries which did not experience colonisation, the applicable principle will be territorial integrity.

3.5 Conclusion

In light of the preceding discussion and observations made under this Chapter, the following factors have come to the fore: firstly that there is insufficient state practice and *opinio juris* to clearly establish a customary rule of secession in international law. Secondly, some of the successful claims for secession have been as a result of agreement between the parent state and the seceding entity like what happened in Sudan. Thirdly, that in light of the available international law, specifically the principles of *uti possidetis* and territorial integrity, and the claims for secession only become a figment of imagination in the minds of the separatists as they threaten these internationally recognised principles.

CHAPTER FOUR

4.1 Introduction

The main objective of this chapter is to discuss the responses to secessionist claims by Spain, Zambia and Zimbabwe. In discussing such responses, focus is on the criminalisation and arrest, prosecution and sentencing of leaders of secessionist movements. This chapter discusses the impact of the criminalisation of secessionist activities on the full enjoyment and realisation of the right to self-determination as prescribed in various international and regional human rights treaties and instruments.

4.2 Secession under municipal law

By their nature, claims for self-determination through secession come with high risks of failure. In municipal law, once you exercise the right to self-determination through secession attracts the label a 'secessionist criminal'.¹²⁰ The label attracts criminal charges of treason, rebellion or secession. In this regard, it is apparent that states generally frown upon secessionist movements as they are capable of destabilising the country, region and world at large by causing chaos and pandemonium. Clearly any attempt to secede are deterred by the fact that any dissent will be harshly visited upon by the criminal penalties of that particular state. It is submitted that in light of municipal law, the prospects of success for secessionist movements are limited and can only be succeed in limited circumstances.

Given the criminal penalties visited upon those who tries to secede, it is apparent that the criminalisation of secession genuinely impacts the full exercise of the right to self-determination as prescribed in the UN Charter and various UNGA resolutions. In this

¹²⁰ Section 1.1; 1.3 & 1.4

respect, it is apparent that states are now abusing and misusing their domestic criminal laws to stifle dissent and silence those who criticise governmental actions and advocates for their own self-governance.

‘Secessionist criminals’ if convicted are given long imprisonment terms which ultimately represses any future secessionist claims.¹²¹ The right is given by one hand and consequently taken by the other hand. Most states ‘pride’ themselves as the main protectors of human rights. However, the criminalisation of secession is incompatible with the principles of a democratic society specifically the rule of law. Given the powers that governments wield, especially, the prosecution of so called secessionist criminals and the subsequent administration of shocking and long prison sentences¹²² is incompatible with the rule of law that most states claim to stand for.

The emerging trend amongst international law actors, particularly states has made many people resort to self-censorship. There has been fear amongst most secessionist movements due to lack of certainty as to how the state will implement and enforce some domestic criminal statutes in the guise of protecting their territorial integrity. States have therefore either misused or abused criminal laws as a way to stifle dissent and secessionist claims.

4.4 Spain

4.4.1 Criminalisation of secession in Spain

Notwithstanding Spain’s legal obligations to ensure the realisation and enjoyment of the right to self-determination, any attempt to exercise external self-determination is frustrated

¹²¹ Mombotwa & Others v The People (n23 above) J2

¹²² Section 1.2.2 - *Zambian ‘separatists’ sentences increased by five years on appeal to the Supreme Court*

by Spain's municipal law specifically Section 2 of the Spanish Constitution and Articles 472-484 of the Spanish Criminal Code.

4.4.1.1 Section 2 of the Spanish Constitution

Section 2 of the Spanish constitution reads:

‘The Constitution is founded on the indissoluble unity of the Spanish nation, the common and indivisible homeland of all Spaniards, and recognises and guarantees the right to autonomy of its constituent nationalities and regions.’

Thus, it speaks of the indivisibility of Spain and focuses much on the territorial integrity of Spain.¹²³ Essentially, this provision establishes the territorial integrity of Spain, and somehow prohibits secession.

4.4.1.2 Articles 472-484 of the Spanish Criminal Code

Articles 472-484 of the Criminal Code provides for the crime of rebellion.¹²⁴

Article 472 (1) and (5) provides as follows:

‘A conviction for the offence of rebellion shall be handed down to those who violently and publicly rise up for any of the following purposes:

- 1. To fully or partially repeal, suspend or amend the Constitution¹²⁵*

...

¹²³ Spanish Constitution, Section 2; SCC Judgment (n9 above) [8]

¹²⁴ Spanish Code, (n1 above), Article 472

¹²⁵ Spanish Code, (n1 above), Article 472(1)

5. *To declare independence of any part of the national territory*¹²⁶

It is apparent from the reading of this provision that any attempt to secede from Spain is a felony against the Constitution.

4.4.1.3 *Causa especial 20907/2017*¹²⁷

As an aftermath of the failed 2017 Catalan Referendum, the Spanish government charged the separatist leaders with the crime of rebellion in terms of the Spanish Criminal Code¹²⁸ *inter alia* other charges. This case is popularly known as the 2019 Catalan referendum trial.¹²⁹ The basis of the charges were that firstly; the effect of holding the referendum had an effect of declaring independence from Spain in violation of Article 472(5) of the Spanish Criminal Code. Secondly, the referendum itself was illegal as it did not meet the requirements under Section 92(2) of the Spanish Constitution¹³⁰ which endows the central government with the power to call for a referendum. Furthermore, the SCC in its 2008

¹²⁶ Spanish Code, (n1 above), Article 472 (5)

¹²⁷ *Causa especial 20907/2017 (translated Special Cause 20907/2017)*

<http://www.poderjudicial.es/cgpj/es/Causa-especial-20907-2017/> (Accessed 19 February 2019) This is the 2019 Catalan referendum Trial that started in February 2019 in the Spanish Supreme Court in which the leaders of the 2017 Referendum were charged with rebellion in contravention of Article 472(1) & 472(5) of the Spanish Criminal Code.

¹²⁸ Catalan separatist leaders moved to Madrid for trial on rebellion charges

<https://www.reuters.com/article/us-spain-politics-catalonia/catalan-separatist-leaders-moved-to-madrid-for-trial-on-rebellion-charges-idUSKCN1PQ4TO> (Accessed 05 May 2019)

¹²⁹ <https://english.vilaweb.cat/noticies/catalan-referendum-trial-set-to-end-on-june-11/> (Accessed 24 May 2019)

¹³⁰ Spanish Constitution, Section 92 (2), *'The referendum shall be called by the King on the President of the Government's proposal after previous authorization by the Congress'*

decision excluded the likelihood of any popular inquiry regarding the identity and unity of Spain unless all Spanish citizens were collectively involved.¹³¹

4.4.1.4 Analysis of the legal Arguments by the Spanish Government

In an effort to substantiate the rebellion charges against the separatist leaders who are currently in trial, the Spanish government argued that the 2017 referendum clearly violated Section 2 of the Spanish Constitution which speaks to the Spanish indissolubility.¹³²

Secondly, the Spanish government argued that the 2017 referendum contravenes the established referendum procedures prescribed under Section 92 of the Spanish Constitution as it did not collectively involve the whole population of Spain in line with the observations made by the SCC in 2008.

In this regard, the Spanish government's legal arguments affect the full exercise of the Catalans' right to self-determination. Such legal arguments do not take into account the legitimate claim that the Catalans may have. Thus, it becomes unnecessary and undesirable to label such conduct as rebellion where there are legitimate concerns and a valid legal basis. Rather a comprehensive national dialogue is needed to address such concerns than criminalising secession.

¹³¹ Vintro (n12 above); JCC 103/2008; *Catalonia: Spain's Constitutional Court Declares Catalan Referendum Law Void*, Independent, Oct. 17, 2017, <http://www.independent.co.uk/news/world/europe/catalonia-catalan-independence-referendum-spain-constitutional-court-void-a8004941.html>. (Accessed 01April 2019)

¹³² Section 4.2.2.1 above

4.5 Zambia

4.5.1 Criminalisation of secession in Zambia

In Zambia, any secessionist conduct and claims goes against Article 4(3) of the Zambian Constitution and also amounts to treason felony within the meaning of Sections 43-45 of the Zambian Penal Code.

4.5.1.1 Article 4(3) of the Zambian Constitution

Article 4(3) of the Zambian Constitution reads,

‘The Republic is a unitary, indivisible, multi-ethnic, multi-racial, multi-religious, multi-cultural and multi-party democratic State.’

This provision re-affirms the principle of territorial integrity and makes it clear that any action aimed at dividing the nation of Zambia will be contrary to the constitutional values and principles and thus a clear violation of the Constitution. Additionally, it acknowledges Zambia as a diverse democratic nation with various ethnic, religious, cultural and party groups. In other words, the claims by the Lozi to restore the Barotseland will be unconstitutional as Barotseland has been regarded as a Western Province of Zambia since 1964. Consequently, the import of Article 4(3) is intended to prohibit any claims for secession.

4.5.1.2 Section 43-45 of the Zambian Penal Code

Sections 43-45 of the Zambian Penal Code generally provide for the crime of treason as well as the acts that constitute treason. Section 43(1) (c) of the Zambian Penal Code provides as follows:

‘A person is guilty of treason and shall be liable to suffer death who- ‘...prepares or endeavours to procure by force the setting up of an independent state in any part of Zambia or the secession of any part of Zambia from the Republic...’¹³³

This essentially means that since Zambia regards Barotseland as its Western Province, any attempts to establish an independent state of Barotseland will constitute treason under Section 43(1) (c). In this regard, this provision implicitly recognises the exercise of the right to self-determination only within the territorial boundaries of the Republic of Zambia. Therefore, any action aimed at defying this provision will be treated as criminal and thus a clear disregard to the principle of territorial integrity.

4.5.1.3 The People vs. Mombotwa & Others

Sometime in 2016, as a result of these self-determination claims, the Zambian High Court tried and convicted leaders of the ‘separatist movement’ with treason felony for their role in the execution 2012 BNC resolution intended to restore Barotseland to its pre-1964 status. They were sentenced to ten years imprisonment with hard labour.¹³⁴ In 2018, upon Appeal, the Zambian Supreme Court upheld the conviction and shockingly increased the sentence by five years to make it fifteen years with hard labour.¹³⁵ This poses a serious challenge to the exercise of the right to self-determination through secession as governments wield excessive powers in the guise of protecting their territorial integrity and maintaining peace and stability within their regions.

¹³³ Section 43(1) (c), Zambian Penal Code

¹³⁴ Mombotwa & Others (n14 above) J2

¹³⁵ Mombotwa & Others (n14 above) J2

4.6 Zimbabwe

4.6.1 Criminalisation of secession in Zimbabwe

Notwithstanding its legal obligations under international law, the state of Zimbabwe has certain municipal laws that impact the full realisation of the right to external self-determination. This makes it difficult, if not impossible, to exercise the external type of the right to self-determination as prescribed in the ICCPR and the ICESCR. In this respect, the domestic laws that negatively impact the full exercise self-determination through secession include Section 1 and section 264 of the Zimbabwean Constitution¹³⁶ and Sections 20 and 22 of the Criminal Law Code.¹³⁷

4.6.1.2. Section 1 Constitution of Zimbabwe

The Republic of Zimbabwe is portrayed as a unitary, democratic and sovereign State pursuant to section 1 of the Constitution of Zimbabwe. This phrase's keyword is 'unitary' which has the same meaning as 'indivisible', 'inseparable' and 'conjoined'.¹³⁸ This means that the Republic of Zimbabwe is inseparable and its boundaries cannot be redrawn. Section 2 states that any conduct, custom or practice that is *ultra vires* the Constitution will be void to the point of its discrepancy.¹³⁹ In this regard, any conduct aimed at altering the existing Zimbabwean boundaries will be a clear violation of section 1 of the Constitution and therefore invalid in light of section 2 of the Constitution. Essentially, self-determination claims by the Mthwakazi people can be seen as a clear violation of section 1 of the Constitution establishing Zimbabwe as a unitary state. As such, this is the first

¹³⁶ Constitution of Zimbabwe Amendment Act No. 20 (Act) 2013, Section 1

¹³⁷ Criminal Law Code (n12 above) Section 20 & 22

¹³⁸ <https://www.thesaurus.com/browse/unitary> (Accessed 10 April 2019)

¹³⁹ Zimbabwean Constitution (n135 above), section 2

legal obstacle that affects the Ndebeles' full exercise of the right to self-determination in Zimbabwe.

4.6.1.3 Section 264 of the Constitution of Zimbabwe

In terms of section 264 of the Zimbabwean Constitution, whenever appropriate, governmental powers and responsibilities, must be devolved to provincial and metropolitan councils and authorities which are competent to carry out those responsibilities efficiently and effectively.¹⁴⁰ Devolution somehow seeks to address the concerns that the Mthwakazi people has by giving powers of local governance to the people and enhance their participation in the exercise of the powers of the state and in making decisions that affects them;¹⁴¹ allowing communities to manage their own affairs;¹⁴² and also ensuring the equitable sharing of resources.¹⁴³

Given the objective of devolution as listed under section 264(2) (a),¹⁴⁴ it is apparent that the whole idea of devolution seeks to ensure the enjoyment by all peoples of Zimbabwe of the right to internal self-determination by ensuring collective participation of all people in making decisions that affect them. Additionally, devolution also seeks to preserve and foster the peace, national unity and indivisibility of Zimbabwe.¹⁴⁵ In this regard any action that threatens the indivisibility of Zimbabwe is definitely a violation of the founding

¹⁴⁰ Zimbabwean Constitution (n135 above) section 264

¹⁴¹ Zimbabwean Constitution (n135 above) section 264 (2)(a)

¹⁴² Zimbabwean Constitution (n135 above) section 264(2)(d)

¹⁴³ Zimbabwean Constitution (n135 above) section 264(2) (e)

¹⁴⁴ Section 264(2) (a) '*...to give powers of local governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them*'

¹⁴⁵ Zimbabwean Constitution (n135 above) Section 264 (2)(c)

principles of the Constitution of Zimbabwe specifically the supremacy of the Constitution.¹⁴⁶ Thus, since the 2013 Constitution ushered in the idea of devolution, secessionist claims cannot stand. There is need to firstly advocate for devolution and if it fails, then secession comes to the fore.

4.6.1.4 Section 20 and 22 of the Criminal Law (Codification and Reform) Act

Under the provisions of Sections 20 and 22 of the Criminal Law Code, any act performed with the intention of usurping, inciting, instigating or organising a group to overthrow a government shall be treated as subversion of a constitutional government or alternatively as treason.¹⁴⁷

In particular, Section 20 (1) (b) provides as follows:

“Any person who is a citizen of or ordinarily resident in Zimbabwe and who incites, conspires with or assists any other person to do any act whether inside or outside Zimbabwe with the intention of overthrowing the Government”

Additionally, section 22 (2) (a) (i) states as follows:

“Any person who, whether inside or outside Zimbabwe organises or sets up, advocates or suggests the setting up of, any group or body with a view to that group or body overthrowing or attempting to overthrow the Government by unconstitutional means; or...”¹⁴⁸

¹⁴⁶ Zimbabwean Constitution (n135 above) Section 3(1)

¹⁴⁷Section 20 & 22 of the Criminal Law (Codification and Reform) Act

¹⁴⁸ Section 22(2)(a)(i) of the Criminal Law Codification and Reform Act

This implies that any group organised with the intention of seceding will be committing an act of treason or subversion of a constitutional government. Given the objectives of the secessionist parties in the Matabeleland Province, their conduct falls within the definition of either treason or subversion as the creation of a new state within the territorial borders of Zimbabwe has a treasonous effect. It is apparent in this regard that a penal sanction is being visited upon those who exhibit secessionist tendencies.

4.6.1.5 Thomas and others v The State¹⁴⁹

On 1 March 2011, the accused persons conducted a meeting in which they were alleged to have been conniving on ways to influence people to rise and demonstrate against the government which would result in the creation of a separate state of the Republic of Mthwakazi.¹⁵⁰ The accused persons were jointly accused of distributing fliers which amongst others had the following messages;

“Vukani njengabantu base Ethiopia, Sudan, Egypt le Tunisia” (which literally translated to mean ‘Rise up like people of Ethiopia, Sudan, Egypt and Tunisia, they are people like us and have blood as well’)

All the accused persons were found in possession of the MLF fliers and calendars and also there were some minutes of the meeting in which they agreed to distribute the calendars and the fliers.¹⁵¹ The basis of the treason charges were that they were inciting

¹⁴⁹ *This case is a bail application which was made to the high court and the researcher unfortunately could not locate the proceedings of the court of first instance. There is no further documents or information in relation to this case to the knowledge and belief of the researcher.*

¹⁵⁰ Request for Remand Form 242- The State v Thomas and Others; Thomas and Ors v The State (n2 above) 2

¹⁵¹ Thomas and others v the State (n2 above) 2

and mobilising people to revolt thus threatening the overthrow of a constitutionally elected government in violation of Section 20 and 22 of the Criminal Law Codification and Reform Act.¹⁵² Thus, it is in light of this that there is a criminal sanction that is visited upon those who exhibit secessionist tendencies with the territory of Zimbabwe.

4.7 Policy considerations for criminalising secession

It can be argued that one of the main reason why secession is criminalised that the exercise of secession is an outright violation of the principle of territorial integrity envisaged in Article 2(4) of the UN Charter. In this regard, States argue that they have the right to the indivisibility of their territories. From this standpoint, every act that seeks to undermine state indivisibility is criminalised by states.

Secondly, it can be argued that most states believe that secessionist behaviour should be kept in check and that the only available option is to criminalise such movements, otherwise the order of the day anarchy will be, disorder and pandemonium.

Thirdly, all secessionist movements threaten any state's the political leadership and thus, if left unrestrained, they will definitely affect the state's internal stability. Generally speaking, such acts are considered as treasonous and rebellious.

Fourthly, most governments are just afraid of dissent and are unable to handle the secessionist movements' pressure. They believe repressing them and throwing the ringleaders behind bars would make that such movements die a natural death.

¹⁵² Section 20 & 22 of the Criminal Law Codification and Reform Act

4.8 Conclusion

In conclusion, states like Spain, Zimbabwe and Zambia have used their criminal laws as a means of suppressing any peaceful claims for self-determination. Such criminal law statutes provides for crimes like rebellion and treason. The justification for that criminalisation is considered as being based on state's territorial integrity commonly referred to in Constitutions as the 'indivisibility clause'. However, the full exercise of the right to self-determination is negatively affected by these repressions as the sentences imposed on convicts are essentially deterrent.

CHAPTER FIVE

This research analysed how States have now used their domestic criminal laws as a means of suppressing, repressing and stifling dissent in view of the wave of secessionist movements in Africa and beyond. It analysed how the use of criminal laws on secessionist movements is an obstacle to the exercise of the right to self-determination as prescribed in Article 1(2) of the UN Charter, Common Article 1 to the ICCPR and the ICESCR, Article 20 of the ACHPR inter alia other General Comments, Resolutions, Recommendations on the right to self-determination. It focused on how states rely on the general principle of international law such as territorial integrity and *uti possidetis* as justifications for repressing dissent and relying on their criminal laws to prosecute for secessionist behaviour and conduct that violates these principles.

Chapter 1 mainly focused on introducing the legal problem and the background that led to the need to write this legal research. Chapter 2 outlined the right to self-determination as prescribed by international law specifically the right to internal self-determination, its scope and extent in international law. Chapter 3 discussed the right to external self-determination through secession focusing much on the behaviour of states towards secession and possible outcomes of these secessionist claims in light of municipal law and the international law principles of *uti possidetis* and territorial integrity. Chapter 4 discussed the criminalisation of secession in Spain, Zambia and Zimbabwe focusing much on their domestic laws and how such laws impact on the full exercise of the right to self-determination.

5.1 Summary of findings of the study

The author was able to come to the following conclusions and observations after a discussion of how States used criminal laws to repress, suppress and stifle dissent:

Though international law does not simultaneously provide for the right to secession, it does not prohibit the same. In the criminalisation of secession states seek to protect their indivisibility by upholding principles of territorial integrity and *uti possidetis*. That allowing secessionist movement to go unpunished would be to inaugurate anarchy, pandemonium and disorder in international law. That all secessionist movements threaten any State's political leadership of any State and will therefore definitely affect internal stability of the State if left unrestrained. That secession criminalisation has a major impact on the exercise of the right to self-determination. That the criminalisation of secession is incompatible with the principles of a democratic society as claimed by many states. Some states misused or abused criminal laws as a way to silence those who tried to criticise governmental actions and advocate for their own self-governance.

5.2 Recommendations

In light of the observations made in this study, the writer makes the following recommendations:

The governments of Spain, Zambia and Zimbabwe should attempt to address and resolve secessionist claims in their respective territories, especially through a comprehensive national dialogue, without unreasonably resorting to prosecution.

Governments of Spain, Zambia and Zimbabwe should endeavour to engage in a reconciliation process and address the historical injustices and marginalisation claims by secessionist movements in their respective countries.

The release of arrested secessionist agitators could go a long way and allow all citizens of the respective countries to peacefully determine the future of their respective secessionist agitators.

In the prosecution of separatists, governments of Spain, Zambia and Zimbabwe should endeavour to ensure adherence to international standards on fair trials.

Spain, Zambia and Zimbabwe should ensure equitable distribution of natural resources to all peoples as well as protect, promote and fulfil all the human rights as provided for in all international, regional, sub-regional instruments to which they are parties to. Additionally, these states should endeavour to ensure the enjoyment of human rights enshrined in the bill of rights within their domestic jurisdictions and allow freedom of expression to flourish without fear of subsequent arrest, trial and sentencing.

Having observed the municipal implication of secessionist movements, it would be prudent to establish an international court of appeal to determine whether or not municipal courts in adjudicating on secessionist claims are not abusing their prosecuting powers. Additionally, given the harsher penalties imposed on leaders of secessionist movements by domestic courts this tribunal will act as a court of appeal for such cases and all procedural issues at regional and international tribunals will be applicable.

BIBLIOGRAPHY

TEXTBOOKS

1. Bereketeab, R (2015): *Self-Determination and Secession: The Post-Colonial State* - Routledge
2. Brownlie, I (2003): *Principles of Public International Law*- Oxford University Press
3. Cassese, A (1995): *Self-Determination of Peoples: A Legal Reappraisal*- Cambridge University Press
4. Cop B and Eymirlioglu D (2005): *'The right of self-determination in International law towards the 40th Anniversary of the adoption of the ICCPR and the ICESCR –Perceptions*
5. Franck TM (1990): *The power of legitimacy among Nations*- Oxford University Press
6. Hernard, K (2000): *Devising an Adequate system for Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination* 300
7. Higgins, R (1993): *International Law and the Avoidance, Containment and Resolution of Disputes: General Course on Public International Law*- Nijhoff Publishers
8. Higgins, R (1994): *Problems & Processes: International Law and How we use it*- Clarendon Press
9. Mett F, (2004): *The Concept of the Right to Self-Determination of Peoples* – Oxford University Press
10. Nowak, M (2005): *UN Covenant on Civil and Political Rights, CCPR Commentary, 2nd Revised Edition* - N.P Engel Publishers
11. Raič, D (2002): *Statehood and the Law of Self-determination* – Martinus Nijhoff Publishers
12. Shaw, MN (2003): *International Law, 5th Edition* – Cambridge University Press
13. Simma B, Khan D & Nolte G & Paulus, A (2012): *The Charter of the United Nations: A Commentary (3rd edition)* - Oxford University Press

BOOK CHAPTERS

14. Brownlie, I *'The Rights of People in Modern International Law'* in J Crawford (Ed) *'The Rights of People'* (1998): Clarendon Press
15. Cassese, A *'The self-determination of peoples'* in L Henkin (ed) *'The International Bill of Rights - The Covenant on Civil and Political Rights'* (1981): Columbia University Press
16. Kimminich, O *'A "Federal" Right of Self-Determination'* in C Tomuschat, *'Modern Law of Self-Determination'*, (1993): Martinus Nijhoff Publishers
17. McCoruodale, R & Hausler, K *'Caucuses in the Caucasus: The Application of the Right to Self-Determination'* in Green and Waters (eds) *Conflict in the Caucasus: Implications for International Legal Order* (2010): Palgrave Macmillan
18. Mursweik, D *'The Issue of a Right To Secession-Reconsidered'* in C Tomuschat, *'Modern Law of Self-Determination'* (1993): Martinus Nijhoff Publishers
19. Oeter, S *'Self-Determination'* in Simma et al (eds) *'The Charter of the United Nations: A Commentary'* (2012) 322
20. Oppenheim L *'International Law'* in H Lauterpacht (ed) *'Disputes, War and Neutrality 7th Ed.'* (1952): Longmans
21. Toki, V *'Decolonisation and the right to Self-Determination for the Pacific'* in (ed.) *Studies in Law, Politics and Society, Volume 70*, (2016): Emerald Group Publishing Limited
22. Zeller, W and Melber H, *'United in Separation? Lozi Secessionism in Zambia and Namibia'* in De Vries L, Englebert P & Schomerus M (eds) *'Secessionism in African Politics: Aspiration, Grievance, Performance, Disenchantment'* (2019): Palgrave Macmillan

JOURNAL ARTICLES

23. Atinafu K *'Ethio-Eritrean Post-secession Hostility: Lessons for Sudan and South Sudan'* *International Journal of Political Science and Development, Vol. 2(11)* 316

24. Borgen, CJ 'The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-Determination in the Cases of Kosovo and South Ossetia' (2009) *Chicago Journal of International Law* 1 8
25. Brilmayer, L 'Secession and Self-determination: A territorial Interpretation,' (1991) 16 *Yale Journal International Law* 185
26. Cismas, I 'Secession in Theory and Practice: The Case of Kosovo and Beyond' (2010) *Goettingen Journal of International Law* 545
27. Dinstein, Y 'Collective Human Rights of Peoples and Minorities' (1976) *The International and Comparative Law Quarterly* Vol. 25 102
28. Eastwood, Jr. LS 'Secession: State Practice and International Law After the Dissolution of the Soviet Union and Yugoslavia', (1993) 3 *Duke Journal of Comparative and International Law* 303
29. Gilbert, J and Castellino, J 'Self-Determination, Indigenous Peoples and Minorities' (2003) *Macquarie Law Journal, Volume 3*, 166
30. Grant, TD 'Regulating the Creation of States from Decolonisation to Secession' (2009) *Journal of International Law and International Relations* 11 29
31. Heihr, A 'Independence, intervention and Great Power Patronage: Kosovo, Georgia and the Contemporary Self-determination Penumbra' (2009) *Amsterdam Law Forum* 88
32. Higgins, R 'The United Nations Law-making: The Political Organs' (1970) 64 *American Journal of International Law* 43
33. Jean-Bernard, M 'Relations between peoples' rights and human rights: semantic and methodological distinctions,' *Human Rights Law Journal, Vol. 7* (1986) 195
34. Kiss, A 'The peoples' right to self-determination' (1986) *Human Rights Law Journal Vol. 7*, 165

35. Knoll, B 'Fuzzy Statehood: An International Legal Perspective on Kosovo's Declaration of Independence' (2009) *Review of Central and East European Law* 361 387
36. Krueger, H 'Implications of Kosovo, Abkhazia and South Ossetia for International Law the Conduct of the Community of States in Current Secession Conflicts'(2009) *Caucasian Review of International Affairs*
37. Kunz, JL 'The nature of Customary International Law' *The American Journal of International Law* Vol. 47, No. 4 (Oct., 1953) 662-669
38. Lapidus GW 'Contested Sovereignty: The Tragedy of Chechnya' (1998) *International Security, Vol. 23, No. 1, 5*
39. Marxsen, C 'Territorial Integrity in International Law – Its Concept and Implications for Crimea' (2015) *Heidelberg Journal of International Law* 75
40. Nesi, G 'Uti possidetis juris e delimitazioni marittime' (1991) 74 *Rivista di diritto internazionale privato e processuale (Italy)* 534–70.
41. Park, J 'Integration of Peoples and Minorities: An Approach to the Conceptual Problem of Peoples and Minorities with reference to Self-determination under International Law' (2006) *International Journal on Minority and Group Rights* 69 73
42. Schwelb, E 'Some aspects of jus cogens as formulated by the International Law Commission' (1967) *The American Journal of International Law, Vol. 61, No. 4, 946-975*
43. Sterio, M Self-Determination and Secession under International Law: The New Framework (2015) *Cleveland University Law Faculty Articles and Essays* 847
44. Thornberry P 'Self-determination, Minorities, Human Rights: A Review of International Instruments,' 38 *International and Comparative Law* (1989) 867
45. Velasco, ZA 'Self-determination and secession: Human Rights based Conflict Resolution' (2014) *International Community Law Review* 75 83

46. Vidmar, J 'Remedial Secession in International Law: Theory and (Lack of) Practice'(2010) *St Antony's International Review*,6
47. Vintró, J 'Legality and the Referendum on Independence in Catalonia,' *Institute of Public Law, University of Barcelona*
48. Whelan A 'Self-determination and Decolonisation: Foundations for the future' (1992), *Irish Studies in International Affairs*, Vol. 3 No. 4, 25
49. Yussuf, MA & Sarjoon, A 'Ethnicity, Ethnic Minority and Self-Determination: An Examination of Conceptual Linkage' (2016) Vol. 6, No. 2 *Research on Humanities and Social Sciences* 149

WORKING PAPERS, REPORTS, PRESENTATIONS & EXPERT OPINIONS

50. Critescu A. (1981),(*Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*), The Right to Self-determination- Historical and Current Developments on the basis of the United Nations Instruments Study of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, New York 1980, E/CN.4Sub.2/405/Rev.1, UN Sales No. E.80.XIV.3
51. Cultural and Environmental Education, Professional Development Service for Teachers: *History – The secession of Katanga 1960-65 case study: Exploring causation with students* , PDST (2010)
52. Gros-Espiel H, The Right to Self-determination, Implementation of United Nations Resolutions, Study of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, New York 1980, E/CN.4Sub.2/405/Rev.1, UN Sales No. E.79.XIV.5

53. Hearing before the Commission on Security and Cooperation in Europe 106th Congress, 1st Session, *Russia's Military Assault on Secessionist Chechnya & US Policy regarding Russia's Actions in Chechnya* (1995) 3
54. Hudson, MO *Working Paper, Article 24 of the Statute of the International Law Commission*, 2 Yearbook, ILC 24 (1950), UN Doc. A/CN.4/16
55. ICCPR, *Third Periodic Reports of States Parties due in 1991, Addendum, Report Submitted by Sri Lanka*, 17 July 1994, CCRP/C/70/Add.6, (1994).
56. International Commission of Jurist, *Report to the International Commission of jurists entrusted by the Council of the League of Nations with the task of giving an Advisory Opinion upon the Legal Aspects of the Aaland Islands Question*, 1 League of Nations O.J Spec. Supp. 3, 5635 (1920)
57. *International Meeting of Experts on Rights of People* UN Doc SHS-89/CONF. 602/7
58. Kosovo, *Statement by the Permanent Representative of the Republic of Azerbaijan to the United Nations, Oral Proceedings*, 3 December 2009
59. Report of the Fact-Finding Mission to the Saharawi Arab Democratic Republic (2012)
60. The Aaland Islands Questions, *Report Presented to the Council of the League of Nations by the Commission of Rapporteurs*, League of Nations Doc. B. 721/68/106
61. Report by the Commission of International Experts, Catalonia's legitimate Right to decide: Paths to self-determination, p. 22-23

INTERNATIONAL TREATIES, CONVENTIONS & CHARTERS

62. African Charter on Human and Peoples' Rights, adopted in Nairobi 27 June 1981, entered into force 21 October 1986.

63. Constitutive Act of the African Union adopted by the Thirty-Sixth (36th) Ordinary Session of the Assembly of Heads of State and Government 11 July, 2000 - Lome, Togo
64. Organization for Security and Co-operation in Europe (OSCE), *Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki*, 1 August 1975, available at: <https://www.refworld.org/docid/3dde4f9b4.html> [accessed 6 March 2019]
65. UN General Assembly, *International Covenant on Civil and Political Rights*, (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.
66. UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195,
67. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, (ICESCR), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.
68. United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.
69. United Nations, *Statute of the International Court of Justice*, 18 April 1946
70. United Nations, *Vienna Convention on the Law of Treaties*, (VCLT), 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.

DOMESTIC LEGISLATION

SPAIN

71. Spanish Constitution
72. Spanish Penal Code

ZAMBIA

73. Constitution of the Republic of Zambia
74. Zambian Criminal Code

ZIMBABWE

75. Constitution of Zimbabwe, Amendment No. 20 (Act) 2013

76. Criminal Law (Codification and Reform) Act [Chapter 9:23]

CASE LAW & ADVISORY OPINIONS

INTERNATIONAL, REGIONAL CASES, COMMUNICATIONS & AD HOC

TRIBUNAL JUDGMENTS

African Commission on Human & Peoples Rights

77. *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council & Others v. Kenya*, 2009 AHRLR 75 (ACHPR 2009)

78. *Gunme et. al v Cameroon* 2009 AHRLR 9 (ACHPR 2009)

United Nations Human Rights Committee

79. *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) 1

International Court of Justice

80. *Arbitral Award of 31 July 1989 (Guinea-Bissau v Senegal)* [1991] ICJ Rep 53.

81. *Asylum Case (Colombia v. Peru)*, International Court of Justice (ICJ), 20 November 1950

82. *Case concerning the Barcelona Traction, Light and Power Company, Limited* Judgement, 1970 ICJ Reports 3

83. *Case Concerning East Timor (Portugal v Austria)* ICJ 30 June 1995

84. *Jurisdictional Immunities of the State, Germany v Italy*, Judgment, ICGJ 434 (ICJ 2012), 3rd February 2012

85. *North Sea Continental Shelf Cases* (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands) I.C.J. Reports 1969, p.3
86. *Territorial and Maritime Dispute, Nicaragua v Colombia*, Judgment, ICJ GL No 124, ICGJ 436 (ICJ 2012), 19th November 2012

Advisory Opinions of the International Court of Justice

87. Advisory Opinion, *Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 9 July 2004
88. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, International Court of Justice (ICJ), 8 July 1996
89. Advisory Opinion, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*
90. *Western Sahara*, Advisory Opinion, ICJ GL No 61, [1975] ICJ Rep 12, ICGJ 214 (ICJ 1975), 16th October 1975, International Court of Justice [ICJ]

Permanent Court of International Justice

91. *France v Turkey*, (Lotus Case) Judgment, (1927) PCIJ Series A no 10, ICGJ 248 (PCIJ 1927), 7th September 1927

DOMESTIC CASE LAW

Canada

92. Reference Re Secession Quebec (1998) 115 ILR 536

Spain

93. *Causa especial 20907/2017 (translated Special Cause 20907/2017)*
<http://www.poderjudicial.es/cgpj/es/Causa-especial-20907-2017/> (Accessed 19 February 2019)

94. Constitutional Court Judgment No. 31/2010 of June 28 (Unofficial Translation)

95. Constitutional Court Judgment JCC 103/2008

Zambia

96. *Mombotwa, Likanda & Inambao v. The People* Appeal No. 152/153/154 2017,

Zimbabwe

97. *Thomas & Others v the State* HB 53/11

**GENERAL COMMENTS, RESOLUTIONS, RECOMMENDATIONS &
DECLARATIONS**

Declarations

98. *United Nation General Assembly Declaration on the Granting of Independence to Colonial Territories and Peoples* G.A. Res. 1514 (XV). December 14, 1960. GAOR 15th Sess., Supp. 16, 66

99. *UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, (Friendly Relations Declaration) 24 October 1970, A/RES/2625(XXV).*

100. *UN General Assembly, United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295,*

101. *UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.*

General Comments

102. *UN Human Rights Committee (HRC), CCPR General Comment No. 12: Article 1 (Right to Self-determination), The Right to Self-determination of Peoples, 13 March 1984.*

General Recommendations

103. Committee on the Elimination of Racial Discrimination, General Recommendation 21, The right to self-determination (Forty-eighth session, 1996), U.N. Doc. A/51/18, annex VIII at 125 (1996), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI\GEN\1\Rev.6 at 209 (2003).

Resolutions

104. Organization of African Union Cairo Resolution of 1964 (OAU 'Border Disputes among African States' AHG/Res.16[I] [17–21 July 1964
105. *United Nations General Assembly, (UNGA) Question of Western Sahara., 13 December 1978, A/RES/33/31,*
106. *Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX)*
107. *United Nations General Assembly (UNGA) Resolution, Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights, A/RES/48/94*
108. UN Security Council, (UNSC) *Resolution 169 (1961) [The Congo Question], 24 November 1961, S/RES/169 (1961)*
109. United Nations Security Council (UNSC) *Resolution 1808 (2008) [on settlement of the Georgian-Abkhaz conflict and extension of the mandate of the UN Observer Mission in Georgia (UNOMIG)]S/RES/1808 (2008)*

THESES & DISSERTATIONS

110. Unpublished: C Knox *'The Secession of South Sudan: A Case Study in African Sovereignty and International Recognition'* Unpublished Honours Thesis, St. John's University (2012)
111. Unpublished: J D Zikamabahari *'The attainment of self-determination in African States by rebels'* Unpublished Doctorate Thesis, North-West University (2014)

WEBSITES

112. 84 Zambian separatists in court for treason 02 November 2013
<https://www.news24.com/Africa/News/84-Zambian-separatists-in-court-for-treason-20131102> (Accessed 01 April 2019)
113. 'Catalonia's bid for independence explained' 31 January 2018
<https://www.bbc.com/news/world-europe-29478415>(Accessed 01 April 2019)
114. *Catalonia: Spain's Constitutional Court Declares Catalan Referendum Law Void*, Independent, Oct. 17, 2017, <http://www.independent.co.uk/news/world/europe/catalonia-catalan-independence-referendum-spain-constitutional-court-void-a8004941.html>. (Accessed 01 April 2019)
115. Catalan separatist leaders moved to Madrid for trial on rebellion charges <https://www.reuters.com/article/us-spain-politics-catalonia/catalan-separatist-leaders-moved-to-madrid-for-trial-on-rebellion-charges-idUSKCN1PQ4TO> (Accessed 05 May 2019)
116. Freedom House, *Countries at the Crossroads 2011 - Eritrea*, 10 November 2011, <https://www.refworld.org/docid/4ecba64ec.html> [Accessed 9 April 2019]

117. Human Rights, Historical Images of Apartheid in South Africa,
<http://www.un.org/av/photo/subjects/apartheid.htm> (accessed 28 March 2019)
118. Munoz A G, *Catalan Independence in the Spanish Constitution and Courts, Oxford Report on International Law*
<https://blog.oup.com/2017/11/catalan-independence-spanish-constitution-courts/> (Accessed 01 April 2019)
119. 'Nigerian government files new charges against Biafra Movement's founder' 23 December 2015
<https://allafrica.com/vie/group/main/id/000404845.html>
(Accessed 08 March 2019)
120. 'Spain opens trial of Catalan separatist leaders over 2017 independence declaration' 13 February 2019
<https://www.japantimes.co.jp/news/2019/02/13/world/crime/spain-opens-trial-catalan-separatist-leaders-2017-independence-declaration/#.XIJ-RqCxXFg>
(Accessed 08 March 2019)
121. The reservations and responses of states with regards to the right to self-determination as it is enshrined in the ICCPR & ICESCR
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec (Accessed 28 March 2019)
122. https://www.barotseland.info/Freedom_Resolution_2012.htm (Accessed 06 April 2019)
123. <https://mthwakazirepublicparty.org> (Accessed 01 September 2018)
124. <https://www.independent.co.uk/news/world/europe/catalan-crisis-why-does-catalonia-want-independence-do-people-really-support-it-spain-latest-a8025836html>
(Accessed 01 April 2019)
125. <https://english.vilaweb.cat/noticies/catalan-referendum-trial-set-to-end-on-june-11/> (Accessed 24 May 2019)

126. https://www.barotseland.info/Freedom_Resolution_2012.htm (Accessed 06 April 2019)
127. 'Ndebele nationalists launch new Zimbabwe Party' 30 December 2010
<https://www.voazimbabwe.com/a/ndebele-nationalists-launch-new-zimbabwe-party-112669609/1458975.html> (Accessed on 01 September 2018)
128. 'Siwela leads new secessionist group' 10 January 2013
<https://www.newsday.co.zw/2013/01/siwela-leads-new-secessionist-group/>
(Accessed on 01 September 2018)
129. Sargent S & Melling G 'The Exercise of External Self-Determination by Indigenous Groups: The Republic of Lakotah and the Inherent Sovereignty of American Indigenous Peoples' (2012)
<http://eprints.lincoln.ac.uk/19663/3/19663.pdf> (Accessed 10 April 2019)
130. Shaw, MN 'The Heritage of States: The Principle of *Uti Possidetis* Juris Today' (1997) <https://academic.oup.com/bybil/article-abstract/67/1/75/281947> (accessed 10 April 2019)
131. Sotiriou, SA, *The Irreversibility of History: The Conflicts in South Ossetia and Abkhazia* (2017)
<https://www.tandfonline.com/doi/citedby/10.1080/10758216.2017.1406310?scroll=top&needAccess=true> (Accessed on 25 April 2019)

NATIONAL AGREEMENTS & CONFERENCES

132. 1964 Barotseland Agreement <https://bnfa.info/wp-content/uploads/2013/11/The-Barotseland-Agreement-1964.pdf> (Accessed 15 March 2019)
133. Barotse National Conference (1995)

134. *Conference on Yugoslavia Arbitration Commission: Opinions on Questions Arising from the Dissolution of Yugoslavia.* (1992)
135. *Conference on Yugoslavia Arbitral Commission Opinion No 3 (11 January 1992) EJIL 184 31 ILM 1499*