OWN YOUR FUTURE
BESIT JOU TOEKOMS

THE ROAD TO INDEPENDENCE

(PART IV)

SECESSION WITHOUT A REFERENDUM

EXTRACTS

The Constitution of the Republic of South Africa, No 108 of 1996.

Chapter 1: The Republic of South Africa is one, sovereign, democratic state founded on the following values: 1(b) Non-racialism and non-sexism.
1(c) Supremacy of the constitution and the rule of law.

Chapter 2, section 9 (1): Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms.

Chapter 2, section 11: Everyone has inherent dignity and the right to have their dignity respected and protected.

Chapter 2, section 11: Everyone has the right to life.

Chapter 2, section 12(1): Everyone has the right to freedom and security of person, which includes the right - (c) to be free from all forms of violence from either public or private sources;
(d) not to be tortured in any way;
(e) not to be treated or punished in a cruel, inhuman or degrading way.

Chapter 2, section 12(2): Everyone has the right to bodily and psychological integrity, which includes the right - (b) to security in and control over their body.

Chapter 3, section 41(1): All spheres of government and all organs of state within each sphere must - (b) secure the well-being of the people of the Republic.

Chapter 4, section 48: Before members of the National Assembly begin to perform their functions in the Assembly, they must swear or affirm faithfulness to the Republic **and obedience to the Constitution**, in accordance with Schedule 2.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (art. 1),
adopted by General Assembly resolution 217 A (III) of 10 December 1948.

Article 2, which sets out the basic principle of equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids "distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 3, the first cornerstone of the Declaration, proclaims the right to life, liberty and security of person -a right essential to the enjoyment of all other rights.
International Covenants on Human Rights

The International Covenant on Civil and Political Rights protects the right to life (art. 6) and lays down that no one is to be subjected to torture or cruel, inhuman or degrading treatment or punishment (art. 7).

STATUS QUO ON VIOLATION OF HUMAN RIGHTS, FAILURE TO UPHOLD THE CONSTITUTION, FAILURE TO PROTECT ITS CITIZENS AND DISREGARD FOR THE BILL OF RIGHTS.

The South African Government is, inter alia, a signatory to the International Bill on Human Rights, which was ratified in the SA national parliament.

Crime Statistics

SA has the THIRD HIGHEST crime rate in the world with 76.86 crimes per 100 000.
(Source: https://worldpopulationreview.com/country-rankings/crime-rate-by-country).

SA ranks number EIGHT among the most dangerous countries regarding murder rates.
(Source: https://www.statista.com/statistics/262963/ranking-the-20-countries-with-the-most-murders-per-100-000-inhabitants/).

Between 2010 and 2019 there were 2 874 farm attacks in SA, of which 9% took place in the Western Cape province.

Between 2010 and 2019 there were 596 farm murders in SA, of which 11% took place in the Western Cape province.
(Source: https://afriforum.co.za/wp-content/uploads/2021/09/Farm-attacks-and-farm-murders-in-South-Africa-Analysis-of-recorded-incidents-2019.pdf)

Between 2019 and 2022 there were 1 641 farm attacks in SA.
(Source: https://www.sapeople.com/wp-content/uploads/2023/02/Farm-murders-and-attacks-in-SA-for-2022.pdf)

Frequency of farm attacks: 2010 to 2019 - 319 per annum, 0.8 per day.
2019 to 2022 - 547 per annum, 1.5 per day.

A Google search fails to deliver any mention of farm murders as a statistic anywhere else in the world.

Incitement of violence and inequality of rule.

All parliamentarians, including the president of SA, took an oath to uphold the Constitution of SA. (SA Constitution, Chapter 4, section 48).

The SA Constitution, in Chapter 2, section 16, states that (1) Everyone has the right to freedom of expression which, in (2) does not extend to:

(2)(b) incitement of imminent violence; or
(2)(c) advocacy of hate that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

Bring me my machine gun.

Jacob Zuma (African National Congress), an ex-SA president, repeatedly used public platforms to sing the song Umshimi Wami (bring me my machine gun). The SA government allowed the singing of this song as it was labelled as a "struggle song".

The Monash International Affairs Society in Australia reported on this as follows in an article in their PIVOT publication of 12 October 2021:

"Zuma's favourite song is Umshimi wami, a Nguni language anti-apartheid song meaning "Bring me my machine", "machine" being a reference to "machine gun". And that's the spirit in which his supporters reacted. Beginning on July 9, violence erupted in Gauteng and KwaZulu-Natal. The violence took the traditional forms of looting, arson and other vandalism, but also more extreme forms such as gunfire and explosions. As well as the confirmed 342 deaths, the riots involved the looting of 200 malls and 3000 other shops, costing South Africa's economy R 50 billion (USD 3.4 billion) and endangering 150,000 jobs. Furthermore, insurance payouts have amounted to at least R 25 billion (USD 1.7 billion)".

(Source: https://pivot.mias.org.au/2021/10/12/bring-me-my-machine-gun-south-africas-worst-post-apartheid-violence/)

Boiling the frog

According to the memoirs of Dr Mario Oriani-Ambrosini, who died in 2014, Cyril Ramaphosa (African National Congress), current president of SA (2023), commented below to him. Dr Oriani-Ambrosini was a constitutional lawyer who became an MP and also a key adviser to Prince Mangosuthu Buthelezi both during the negotiations and afterwards when the latter was minister of home affairs in the governments of national unity.

"In his brutal honesty, Ramaphosa told me of the ANC's 25-year strategy to deal with the whites: it would be like boiling a frog alive, which is done by raising the temperature very slowly. Being cold-blooded, the frog does not notice the slow temperature increase, but if the temperature is raised suddenly, the frog will jump out of the water. He meant that the black majority would pass laws transferring wealth, land, and economic power from white to black slowly and incrementally until the whites lost all they had gained in South Africa, but without taking too much from them at any given time to cause them to rebel or fight."

(Source: https://www.politicsweb.co.za/opinion/the-anc-and-ramaphosas-1994-plan-for-the-whites)

"Kill the Boer, Kill the Farmer - We have not called for the killing of White people at least for now, I can't guarantee the future".

Julias Malema (Economic Freedom Fighters), the leader of one of the bigger opposition parties in SA, recently sang this song at his party's 10th birthday celebrations. He has sung this song on numerous occasions before. From numerous public platforms, he has been calling for advocating for the killing of White people. This recently got exposure on an Australian television show. (Source: https://www.youtube.com/watch?v=FrA9S8RFC20).

The Whites in SA, vastly being a minority group, both in numbers and political power, took the matter to the SA Equality Court, where it was ruled not to be hate speech.
(Source: https://www.news24.com/news24/politics/political-parties/court-finds-kill-the-boer-lyrics-are-not-hate-speech-afriforum-to-appeal-ruling-20220825).

Despite international calls for comment and intervention, the current president of SA, Ramaphosa, remains silent on what amounts to the threatened genocide of the White people in SA.

The inequality of rule is however clearly noticeable in the demands from the Economic Freedom Fighters to remove the Afrikaans (the third most common language spoken in SA) section of the national anthem. The national anthem is part of the history of the Afrikaans people, who are mostly White and Coloured, therefore the threats to have this removed are nothing short of racist discrimination and the extermination of a part of the culture of targeted minority groups.
(Source: https://www.saffarazzi.com/news/eff-remove-die-stem-national-flag-12-months/)

The imbalance in protecting the cultural rights and heritage of a minority group is also to be found in a ruling by the Supreme Court of Appeal in SA:

"The Supreme Court of Appeal (SCA) has unanimously ruled that any gratuitous public display of the old South African flag constitutes hate speech, unfair discrimination on the basis of race, and harassment in terms of equality legislation."
(Source: https://www.africaninsider.com/news/public-display-old-sa-flag-hate-speech-rules-sca/)

It is understandably perplexing how a piece of cloth can constitute hate speech, yet a song saying kill members of a minority group, or statements asking for the killing (**genocide**) of whites is not ruled as hate speech.

GENOCIDE OF A MINORITY GROUP

Genocide: - "the deliberate and systematic destruction of a racial, political, or cultural group" (Source: Merriam-Webster Dictionary).

Genocide Watch

Genocide Watch is an internationally recognised body with over 90 countries as members.

Their Mission: "Genocide Watch exists to predict, prevent, stop, and punish genocide and other forms of mass murder. We seek to raise awareness and influence public policy concerning potential and actual genocide. Our purpose is to build an international movement to prevent and stop genocide."

Their Vision: "We address genocide as it is defined in the Genocide Convention: “the intentional destruction, in whole or in part, of a national, ethnic, racial, or religious group, as such.” We also address political mass murder, mass rape, and other genocide-like crimes. Genocide Watch is the coordinating organization of The Alliance Against Genocide (AAG), an international coalition of organizations. The AAG aims to educate the general public and policymakers about the causes, processes, and warning signs of genocide; to create the institutions and political will to prevent and stop genocide; and to bring perpetrators of genocide to justice."

This extract from a report on genocide in SA by Genocide Watch:

Genocide Watch considers South Africa to be at Stage 6: Polarization.
Genocide Watch recommends:
• The President should investigate and reform SAPS' counterfeit and documentation raids.
• The South African police must be modernized and thoroughly reformed.
• South Africa should re-authorize cooperative armed mutual protection for farmers.
• President Ramaphosa should denounce the Marxist, racist Economic Freedom Front.
• South Africa must fulfil its constitutional duty of fair compensation for willing land redistribution.

(Source:
https://www.genocidewatch.com/_files/ugd/c67f7d_b8bcca0fdaee42079432de28103d54dc.pdf)

Note: The report erroneously refer to the Economic Freedom Fighters as the Economic Freedom Front.

Genocide Watch notes genocide as happening over ten stages namely:

i. Classification
ii. Symbolization
iii. Discrimination
iv. Dehumanization
v. Organization
vi. Polarization
vii. Preparation
viii. Persecution
ix. Extermination
x. Denial

The report as referred to above, was notably done several years ago. This is evident from the following observations:

1.

The report states:

"South Africa has one of the highest crime rates in the world. Its murder rate of 34 per 100,000 population, tenth in the world, is exceeded only by the narco-states of Central and South America. It has, by far, the highest murder rate in Africa."

The current status quo is SA having the third highest rate at 76.86 !!

2.

The report places SA at Stage 6 on the genocide classification scale.
Extracts from Stage 8 (Persecution) state as follows:

- Victims are identified and separated because of their national, ethnic, racial or religious identity.

- The victim group's most basic human rights are systematically violated through extrajudicial killings, torture and forced displacement.
- Their property is often expropriated.
- They are deliberately deprived of resources such as water or food to slowly destroy the group (see author's Note A following).
- **All of these destructive acts are acts of genocide outlawed by the Genocide Convention. They are acts of genocide because they intentionally destroy part of a group.**
- The perpetrators watch for whether such massacres are opposed by any effective international response. If there is no reaction, they realize they can get away with genocide.
- The perpetrators know that the U.N., regional organizations, and nations with powerful militaries will again be bystanders and permit another genocide.
- At this stage, a Genocide Emergency must be declared.
- Assistance should be provided to the victim group to prepare for its self-defence.

Note A: The SA government is now forcing their racist Broad-Based Black Economic Empowerment onto farmers by forcing them to take on black shareholders before obtaining any water rights. (Source: https://hotair.com/tree-hugging-sister/2023/06/02/south-africa-has-new-equity-based-water-use-regs-n555098).

Extracts from Stage 9 (Extermination) state as follows:

- Extermination begins, and quickly becomes the mass killing legally called "genocide."
- It is "extermination" to the killers because they do not believe their victims to be fully human.
- The goal of total genocide is to kill all the members of the targeted group.
- But most genocides are genocides "in part."
- All educated members of the targeted group might be murdered (Burundi 1972).
- All men and boys of fighting age may be murdered (Srebrenica, Bosnia 1995).
- All women and girls may be raped (Darfur, Myanmar.)
- Destruction of cultural and religious property is employed to annihilate the group's existence from history (Armenia 1915 - 1922, Da'esh/ISIS 2014 - 2018).

CapeXit NPO's contends that an updated report by Genocide Watch will show us at Stage 9, with elements of Stage 10 already becoming clear.

Some indicators from Stage 10 (Denial) are:

- Denial is the final stage that lasts throughout and always follows genocide (see author's Note B following).
- It is among the surest indicators of further genocidal massacres.
- They deny that they committed any crimes, and often blame what happened on the victims.
- During and after the genocide, lawyers, diplomats, and others who oppose forceful action often deny that these crimes meet the definition of genocide.
- They question whether intent to destroy a group can be proven.
- They overlook the deliberate imposition of conditions that destroy part of a group.
- They claim that only courts can determine whether there has been genocide, demanding "proof beyond a reasonable doubt", when prevention only requires action based on compelling evidence.

Note B: In an interview, Ramaphosa told media company Bloomberg on 26 September 2018. "And whoever gave him (Pres Donald Trump) that information was completely wrong. There are no killings of farmers or white farmers in South Africa."
(Source: https://www.thesouthafrican.com/lifestyle/videos/cyril-ramaphosa-farm-murders-un-video/)

FURTHER DISCRIMINATION AGAINST AND EXCLUSION OF WHITE AND COLOURED MINORITY GROUPS

Since 1994 the SA national government have been instituting several policies and laws aiming at addressing the "inequalities" between minority groups and the black population in SA. Whilst the implementation of such policies and laws, if done correctly and fairly, could contribute to the building of a stronger economy, a more versatile workforce and improved living conditions for all, the post-1994 realities of SA showed and are still showing, that Broad-Based Black Economic Empowerment and Affirmative Action did nothing of the kind and indeed only served to enrich a certain segment of the population.

Even so, there are factions within the national government which are advocating for even more drastic measures against minorities in SA, called Rapid Economic Transformation.

In an article on 1 December 2022, it was mentioned that the Institute of Race Relations (IRR) announced the launch of its Index of Race Law. According to this index, the national government of SA passed 116 race-based laws post-1994. At that stage, 132 racial acts of parliament were in operation.
(Source: https://www.politicsweb.co.za/documents/116-race-laws-passed-by-anc-since-1994--irr).

On 12 April 2023, South African President Cyril Ramaphosa signed into law the Employment Equity Amendment Bill of 2020, which sets out "equity targets" to accelerate racial equality in the business sector. This Bill is targeting the three most vulnerable minority groups in SA, which will all suffer jobs losses estimated at Whites - 404 608 jobs.
Indians - 116 934 jobs.
Coloureds - 71 518 jobs.

This is the latest in racial discrimination against minority groups.

The above is deemed to satisfy the facts that a condition of genocide against Whites, and White farmers in particular, as well as discrimination against the political and humanitarian rights of ethnic minorities, in particular Whites and Coloureds, exist.

REQUIREMENTS FOR SECESSION UNDER INTERNATIONAL LAW

To comply with international requirements for secession, the geographic area wishing to secede must have:

- A defined territory,
- A permanent population,

- A government
- The capacity to enter into relations with other states or countries.
- A shared and common language.
- A shared cultural and historical background.
- The support of 50% + 1 of the people in the territory.

The Western Cape of SA fulfils the above criteria.

Secession must also be the wish of the people within the geographic area, said wish to be portrayed as the support from 50% + 1 of the registered voters in the area wishing to secede.

The Western Cape had 3 111 950 registered voters in the last municipal elections, therefore support by way of a mandate must be received from 1 555 975 + 1 = 1 555 976.

The will of the people is to be tested with a peaceful referendum according to international guidelines.

CapeXit NPO has, to date, received 838 101 mandates for a referendum for secession.

A PEACEFUL REFERENDUM - POSSIBLE OR NOT?

In light of the fast-escalating crime rates, including farm murders, as well as the racial discrimination against minorities, all indications are that the atrocities will not afford the people of the territory to exercise their political and humanitarian rights via a peaceful referendum.

Another aspect bearing testimony to the unavailability of adequate time is the changes being made to the SA constitution e.g. Expropriation Without Compensation.

CapeXit NPO, therefore, holds that the 838 101 mandates received in favour of a referendum for secession(independence) are a large enough indication of support and that, in the interests of the survival of the minorities in the Western Cape, a Unilateral Declaration of Independence be made.

UNILATERAL DECLARATION OF INDEPENDENCE

A **unilateral declaration of independence** (**UDI**) or "unilateral secession" is a formal process leading to the establishment of a new state by a sub-national entity which declares itself independent and sovereign without a formal agreement with the state from which it is seceding

The **International Court of Justice**, in a 2010 advisory opinion, declared that unilateral declarations of independence were not illegal under international law.

(Source: https://en.wikipedia.org/wiki/Unilateral_declaration_of_independence)

THE INTERNATIONAL COURT OF JUSTICE

The **International Court of Justice** (**ICJ**), also called the **World Court**, is one of the six principal organs of the United Nations (UN). It settles disputes between states by international law and

gives advisory opinions on international legal issues. The ICJ is the only international court that adjudicates general disputes between countries, with its rulings and opinions serving as primary sources of international law (subject to Article 59 of the Statute of the International Court of Justice).

The issue of jurisdiction is considered in the three types of ICJ cases: contentious issues, incidental jurisdiction, and **advisory opinions**.

(Source: https://en.wikipedia.org/wiki/International_Court_of_Justice)

ADVISORY OPINIONS

An advisory opinion is a function of the court open only to specified United Nations bodies and agencies. The UN Charter grants the General Assembly or the Security Council the power to request the court to issue an advisory opinion on any legal question. Organs of the UN other than the General Assembly or the Security Council require the General Assembly's authorization to request an advisory opinion of the ICJ. These organs of the UN only request an advisory opinion regarding the matters that fall within the scope of their activities. On receiving a request, the court decides which states and organizations might provide useful information and gives them an opportunity to present written or oral statements. Advisory opinions were intended as a means by which UN agencies could seek the court's help in deciding complex legal issues that might fall under their respective mandates.

In principle, the court's advisory opinions are only consultative but they are influential and widely respected. Certain instruments or regulations can provide in advance that the advisory opinion shall be specifically binding on particular agencies or states, but inherently they are non-binding under the Statute of the court. This non-binding character does not mean that advisory opinions are without legal effect, because the legal reasoning embodied in them reflects the court's authoritative views on important issues of international law. In arriving at them, the court follows essentially the same rules and procedures that govern its binding judgments delivered in contentious cases submitted to it by sovereign states.

An advisory opinion derives its status and authority from the fact that it is the official pronouncement of the principal judicial organ of the United Nations.

Advisory opinions have often been controversial because the questions asked are controversial or the case was pursued as an indirect way of bringing what is a contentious case before the court

(Source:
https://en.wikipedia.org/wiki/Advisory_opinion_on_Kosovo%27s_declaration_of_independence)

AN ATTEMPT BY THE HOST STATE, SERBIA, TO DECLARE THE KOSOVO DECLARATION OF INDEPENDENCE AN ILLEGAL ACT

On 26 March 2008, the Government of Serbia announced its plan to call on the International Court of Justice to rule on the declaration of Kosovo's secession. Serbia sought to have the court's opinion on whether the declaration was in breach of international law. Also, an initiative seeking international support was undertaken at the United Nations General Assembly when it gathered again in New York in September 2008.

Belgrade will seek to have the court's opinion on whether the declaration which it treats as illegal, was in breach of international law.

On 30 September 2008, in a trial vote, the Serbian initiative was backed by 120 member states.

In the real vote, the United Nations General Assembly adopted this proposal as Resolution 63/3 on 8 October 2008 with 77 votes in favour, 6 votes against and 74 abstentions.

It must be noted here that this was only a decision by the United Nations General Assembly and not that of the International Court of Justice.

Notably, 77 of the countries in attendance voted in favour of the initiative A/63/L.2 of Serbia. They were: Algeria, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Belarus, Bolivia, Botswana, Brazil, Brunei, Cambodia, Chile, China, Costa Rica, Cuba, Cyprus, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, East Timor, Egypt, El Salvador, Equatorial Guinea, Eritrea, Fiji, Greece, Guatemala, Guinea, Guyana, Honduras, Iceland, India, Indonesia, Iran, Jamaica, Kazakhstan, Kenya, Kyrgyzstan, Lesotho, Liechtenstein, Madagascar, Mauritius, Mexico, Montenegro, Myanmar, Namibia, Nicaragua, Niger, Nigeria, North Korea, Norway, Panama, Papua New Guinea, Paraguay, Philippines, Republic of the Congo, Romania, Russia, Saint Vincent and the Grenadines, Serbia, Singapore, Slovakia, Solomon Islands, **South Africa**, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Syria, Tanzania, Uruguay, Uzbekistan, Vietnam, Zambia and Zimbabwe.

Comment: South Africa in the post-1994 democracy voted against the right of Kosovo to have made a unilateral declaration of independence.

The 6 countries that opposed the initiative (i.e. were in favour of Kosovo) were: Albania, the Federated States of Micronesia, the Marshall Islands, Nauru, Palau and the United States.

The 74 countries that abstained from voting were: Afghanistan, Andorra, Armenia, Australia, Austria, Bahamas, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bulgaria, Burkina Faso, Cameroon, Canada, Colombia, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ghana, Grenada, Haiti, Hungary, Ireland, Israel, Italy, Japan, Jordan, Latvia, Lebanon, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Moldova, Monaco, Mongolia, Morocco, Nepal, the Netherlands, New Zealand, Oman, Pakistan, Peru, Poland, Portugal, Qatar, Saint Lucia, Samoa, San Marino, Saudi Arabia, Senegal, Sierra Leone, Slovenia, South Korea, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Uganda, Ukraine, United Arab Emirates, United Kingdom, Vanuatu, and Yemen.

Officially the following countries were absent: Bosnia and Herzegovina, Burundi, Cape Verde, Chad, Côte d'Ivoire, Ecuador, Ethiopia, Gabon, Gambia, Iraq, Kiribati, Kuwait, Laos, Libya, Malawi, Maldives, Mali, Mauritania, Mozambique, Rwanda, Saint Kitts and Nevis, Seychelles, Tonga, Tunisia, Turkey, Turkmenistan, Tuvalu and Venezuela.

LEGAL ARGUMENTS AGAINST THE KOSOVO DECLARATION OF INDEPENDENCE

Public Hearing of the "Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo".

The legal arguments against the unilateral declaration of independence provided by the various states focus on the protection of the territorial integrity of the Federal Republic of Yugoslavia in

various significant international documents, including in the UN Charter and UN Security Council Resolution 1244.

Reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and Annex 2.

The arguments presented are not in general arguments against the moral right of Kosovo Albanians to self-determination but focus on the legality or otherwise of the unilateral action of the Provisional Institutions of Self-Government. As UNSCR 1244 vested all authority in Kosovo in the Special Representative of the Secretary-General, the argument is that the Provisional Institutions had no power to declare independence.

LEGAL ARGUMENTS IN SUPPORT OF THE KOSOVO DECLARATION OF INDEPENDENCE

The arguments presented in support of the unilateral Declaration of Independence cover five main aspects.

The first is the presumption in international law that civil and human rights, including those of minorities, should be protected, to demonstrate that these rights were abused by the then-governing Milošević administration.

The second is the stress given in the appendices of documents such as UNSCR 1244 to a political process to determine final status, to demonstrate that such a process had been successfully concluded with the Kosovo Status Process.

The third is that the references to the territorial integrity of Serbia are only in the preambular language and not in the operational language. The document is therefore silent as to what form the final status of Kosovo takes.

The fourth is that the principle of territorial integrity constrains only other states, not domestic actors.

The fifth is that the right of self-determination, which the ICJ found to be jus cogens in the East Timor case, is a right of all peoples, not only of those in a colonial context.

Another key argument is one of consistency – in the last legitimate Yugoslav Constitution, Kosovo had the same legal right to self-determination that was the basis for independence of five of the six Yugoslav Republics: Croatia, Slovenia, Montenegro, Macedonia and Bosnia and Herzegovina.

Namely, in a series of constitutional amendments between 1963 and 1974, Yugoslavia had elevated the two autonomous regions, Kosovo and Vojvodina, to essentially the same legal status as the republics, with their administration, assembly and judiciary, and equal participation in all the Federal bodies of Yugoslavia. Crucially, they held the same power of veto in the Federal Parliament and were equally responsible for implementing, enforcing and amending the Yugoslav Constitution, as well as the ratification of agreements and the formulation of Yugoslav foreign policy. In the 1980s, the Milošević administration disbanded the institutions of Kosovo and unilaterally changed the constitution to strip the autonomous regions of these powers. This argument was invoked by Croatia in the ICJ process.

IMPLICATIONS FOR INTERNATIONAL LAW

The Declaration of Independence triggered an international debate over whether the case has set a precedent that could apply to other separatist movements or is a special case. The recognition of Kosovo's independence by 97 out of 193 UN states, according to many sources, has given fresh impetus to other separatist movements. Months afterwards, Russia recognised Abkhazia and South

Ossetia citing Kosovo's independence, which it did not recognise, as a precedent. It ultimately also led to increased tensions in Bosnia-Herzegovina, where Republika Srpska vetoed the Kosovo recognition on the ground that it would then secede to make up for the loss to Serbia.

The advisory opinion by the court was seen to have set a possible precedent that could have far-reaching implications for separatist movements around the world, and even for Serbia's EU membership talks. It was also read as being likely to lead to more countries recognising Kosovo's independence.

The ICJ itself limited the scope of its decision by stating that it "*is not required by the question it has been asked to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, a fortiori, on whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it*".

AN ADVISORY OPINION ON THE UNILATERAL INDEPENDENCE OF KOSOVO.

Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo was a request in 2008 for an advisory opinion referred to the International Court of Justice by the United Nations General Assembly regarding the 2008 Kosovo Declaration of Independence. The territory of Kosovo is the subject of a dispute between Serbia and the Republic of Kosovo established by the declaration. This was the first case regarding a unilateral declaration of independence to be brought before the court.

The court delivered its advisory opinion on 22 July 2010; by a vote of 10 to 4, it declared that "the adoption of the declaration of independence of 17 February 2008 **did not violate general international law** because international law contains no 'prohibition on declarations of independence', nor did the adoption of the declaration of independence violate UN Security Council Resolution 1244, since this did not describe Kosovo's final status, nor had the Security Council reserved for itself the decision on final status. Reactions to the decision were mixed, with most countries which already recognised Kosovo hailing the decision and saying it was "unique" and does not set a precedent.

Whether the declaration was, an official act of the Provisional Institutions of Self-Government was unclear; in the end, the Court determined it was issued by **"representatives of the people of Kosovo"** acting outside the normal Provisional Institutions of Self-Government.

(Source: https://web.archive.org/web/20110607042447/http://www.b92.net/eng/news/politics-article.php?yyyy=2008&mm=03&dd=26&nav_id=48824)

COURT'S VERDICT ON THE DECLARATION OF INDEPENDENCE BY KOSOVO

On 22 July 2010, the court ruled that the Declaration of Independence **was not in violation of international law**. The President of the ICJ Justice Hisashi Owada said that international law contains no "prohibition on declarations of independence." The court also said while the declaration may not have been illegal, the issue of recognition was a political one.

The question put to the Court concerned the legality of a declaration of independence made by the Provisional Institutions of Self-Government, institutions whose powers were limited to those conferred under the framework of a United Nations Security Council Resolution. None of the participants in the proceedings had argued that those institutions had not made the declaration. Nonetheless, the Court determined that the declaration of independence **was not issued** by the Assem-

bly of Kosovo or otherwise by Provisional Institutions of Self-Government or any other official body. Once this crucial determination was made, the question the Court had to answer no longer concerned any action of the Provisional Institutions of Self-Government, as the Court had determined that those institutions had not made the declaration of independence.

In finding this, the Court referred to the fact that the declaration did not follow the legislative procedure; and was not properly published. The Court held that the words *Assembly of Kosovo* in the English and French variants were due to an incorrect translation and were not present in the original Albanian text, thus the authors, who named themselves **"representatives of the people of Kosovo" were not bound by the Constitutional Framework** created by the UNMIK which reserved the international affairs of Kosovo solely to the competency of the UN representative.

The judgment also stated that the Court did not "feel that it is necessary" to address "whether or not Kosovo has achieved statehood" or "whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence."

DECLARATION OF INDEPENDENCE

A **declaration of independence**, **declaration of statehood** or **proclamation of independence** is an assertion by a **polity** in a defined territory that it is independent and constitutes a state. Such places are usually declared from part or all of the territory of another state or failed state, or are breakaway territories from within the larger state. In 2010, the UN's International Court of Justice ruled in an advisory opinion in Kosovo that "International law contains no prohibition on declarations of independence", though the state from which the territory wishes to secede may regard the declaration as rebellion, which may lead to a war of independence or a constitutional settlement to resolve the crisis.

(Source: https://en.wikipedia.org/wiki/Declaration_of_independence)

WHAT IS A POLITY

A **polity** is a term for an identifiable political entity, **defined as a group of people** with a collective identity, who are organized by some form of institutionalized social relations and have a capacity to mobilize resources. A polity can be any other group of people organized for governance (such as a corporate board), the government of a country, or a country subdivision.

In geopolitics, a polity can be manifested in different forms such as a state, an empire, an international organization, a political organization and **other identifiable, resource-manipulating organizational structures. A polity like a state does not need to be a sovereign unit.**

CapeXit NPO thus complies with the description of a polity and it lays to rest the presumption by some political parties that only a political party may engage in the strive for secession.

(Source: https://en.wikipedia.org/wiki/Polity)

> **(Geopolitics** is the study of the effects of Earth's geography on politics and international relations. While geopolitics usually refers to countries and relations between them, it may also focus on two other kinds of states: *de facto* independent states with limited international recognition and relations)

A polity can also be defined either as a faction within a larger (usually state) entity or at different times as the entity itself.

Polities do not necessarily need to be governments. A corporation, for instance, is capable of marshalling resources, and has a governance structure, legal rights and exclusive jurisdiction over internal decision-making. An ethnic community within a country or coast-to-coast entity may be a polity if they have sufficient organization and cohesive interests that can be furthered by such organization.

WHAT IS REMEDIAL SECESSION?

The principle of "Remedial Secession" is the modern manifestation of the principle of self-determination of a people, which entitles people who are indigenous to a certain territory to secede from any state when there is a proven record of discrimination, widespread human rights violations or threat of ethnic cleansing (genocide).

THE ARGUMENTS IN FAVOUR OF REMEDIAL SECESSION

Remedial secession began to be seriously discussed in the 1990s, as an increase in ethnic conflicts made academic commentators consider that there was a need to provide those who face an extreme denial of internal self-determination with the ability to exercise right external self-determination. It is well accepted by international lawyers and academics that unilateral secession is a legally neutral act; it is neither expressly accepted nor prohibited by international law, hence why the doctrine of remedial secession has been able to develop. In the *Aaland Islands* case, it was held that 'the separation of a minority from the state can only be considered an altogether exceptional solution, a last resort where a state lack either the will or the power to enact and apply just and effective guarantees'. The lack of specificity in this statement has led scholars to interpret it to apply not only in colonial situations but also in those of other extreme denials of internal self-determination.

This has only been furthered by other ambiguous pieces of international legislation, such as the Helsinki Final Act, which states, 'all people always have the right, in full freedom, when and as they wish, to determine their internal and external political status', but that this should be exercised about the territorial integrity of states. Scholars have therefore argued that where a state fails to provide, a 'government representing the whole people belonging to a territory without distinction as to race, creed or colour', as required under international law, it cannot invoke the principle of territorial integrity to limit peoples' right to self-determination. This therefore suggests, that where a territorial group within a state is denied meaningful access to self-determination, it can assert a right to self-determination externally, through secession from that state. This has been enhanced by recent legal judgements, particularly in the 1990s, as courts paid increasing attention to the developing concept in their judgements, most notably in the *Quebec* case. Significantly, the Court held that 'when a people is blocked from the meaningful exercise of its right to self-determination internally, it is entitled, as a last resort, to exercise it by secession'. This was also upheld in Judge Yusuf's dissenting opinion in the *Kosovo* case, in which he considered that 'under such exceptional circumstances, the right of peoples to self-determination may support a claim to separate statehood'. Accordingly, there can be considered to be strong international legal opinion believing that the right to secession based upon the right to self-determination is applicable beyond cases of colonial rule, in circumstances considered to amount to being 'exceptional'.

Other than recognising that self-determination has an *erga omnes* character, as stated earlier there have been no actual ICJ judgements to provide definitive guidelines on self-determination in contexts outside of colonialism. Therefore the definition of what is meant by 'exceptional' circumstances is still unclear. In the case of *Loizidou v Turkey,* it was held that the right to self-determination through secession would be available where 'human rights are consistently and flagrantly violated or if they are without representation at all or are massively under representative in an undemocratic and discriminatory way'. This was also followed in Judge Yusuf's opinion in which he cited the requirement of ethnic or racial persecution, denial of access to autonomous government and the exhaustion of all other possible remedies. Currently, 64 states have recognised Kosovo as an independent state. In recognition, it appears states have taken into account this criterion for remedial secession in their justification, most notably both the US and UK referred to human rights abuses and the exhaustion of negotiations with Serbia.

IS THERE A NEED FOR A REFERENDUM TO BE ABLE TO SECEDE?

As indicated in the numerous references above, where conditions of racial discrimination, genocide, abuse of power, etc exist, the part of the people wishing to secede, may do so without the need for a referendum to legalise such a breakaway.

The following response from Vanessa Jiménez refers to a "popular consultation process". CapeXit NPO has embarked on exactly a process like this, since 2018, and has now reached a conclusive stage where over 838 000 members, who are part of the definition of a people, have given their mandate in support of secession. This fulfils the requirement of a "consultation process" and therefore CapeXit NPO can act as a polity in acquiring a unilateral declaration of independence.

REMARKS BY VANESSA J. JIMÉNEZ*

The panelist was asked to address six questions in particular. The following is a summary of those responses.

I. DOES THERE NEED TO BE AN INDEPENDENCE REFERENDUM TO GET A NEW INDEPENDENT STATE?

While international law does not prohibit the breakup of a state, it also does not expressly permit it. What further follows is that there is no law that says independence can only come on the heels of a referendum. However, having some mechanism to evidence the will of the people—whether it is a referendum or popular consultation process—can go a long way toward convincing the international community of the legitimacy of a people's claims and to showing that the emerging new state government has the capacity to govern the territory.

State practice suggests that independence and statehood do not necessarily require a referendum. In the case of the former Socialist Federal Republic of Yugoslavia (SRFY) and former Czechoslovakia, the breakups of these states were classified as dissolutions. This meant that the original predecessor state disappeared and was not replaced by a ''continuing state'' which would have assumed all duties and obligations of the former. No sovereign existed to object or consent to the independence of the constituent republics. As such, referenda were not needed in these republics.[1]

Bangladesh is another case of a new independent state emerging without a referendum. Some would argue that the international community—in spite of a unilateral declaration of independence (UDI) issued in 1971—accepted the independence because the Awami League formed a government with the capacity to govern its people and territory, there was a long history of grave human rights abuses, a clear and persistent denial of self-determination, and an absence of a government representing the whole people belonging to the territory. Bangladesh was perhaps, an example of what many would refer to as ''remedial secession.''[2]

PEACEFUL SECESSIONS POST 1900

1901	Australia from UK
1902	Cuba from USA
1905	Norway from Sweden
1917	Finland from Russia
1934	South Africa from UK
1944	Iceland from Denmark
1946-1980	About 62 colonies of European countries
1946	Philippines from USA
1949	Taiwan from mainland China
1961	Syria from United Arab Republic
1965	Singapore from Malaysia
1986	Marshall Islands and Micronesia from USA
1989	Eastern Bloc nations from Warsaw Pact
1991	Slovenia, Macedonia from Yugoslavia
1991	The republics of the USSR
1993	Czechoslovakia split into Czechia and Slovakia
1994	Palau (a Pacific island) from USA

2006	Montenegro from Yugoslavia
2019	UK from EU

Other secessions in and around Southern Africa:

1910	South Africa from UK
1961	South Africa from UK
1964	Zambia from UK
1965	Rhodesia from UK
1966	Botswana from UK
1966	Lesotho from UK
1968	Swaziland from UK
1976	Mozambique from Portugal
1990	Namibia from South Africa

CONCLUSION

CapeXit NPO will, as a non-political civic organisation, commence discussions with knowledgeable experts about the declaration of independence as we feel that several precedents exist which adequately prove the possibility and viability of gaining independence without a referendum.

CapeXit NPO will continue with the accumulating of mandates for a referendum, suffice it to say that we deem the 838 000 plus mandates already received as a convincing consultation process in support of the declaration of independence.

CapeXit will continue to engage with role players in the Western Cape and internationally to ensure that the processes leading up to, and post-independence, are inclusive of all people who live within the Western Cape, regardless of race, religion, language and/or political affiliations.

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