THE ROAD TO INDEPENDENCE

Des Palm

BACKGROUND TO DOCUMENT

This document is written by ordinary people who share a common concern with the reader, unless the reader is very far removed from reality: the current situation in South Africa (RSA). We do not profess to be, neither are we, scholars of politics, politicians, advocates, barristers or professionals in economics, commerce and other institutions. The problem with most of the previously mentioned captains of industry and politics is a rather simple one - they forgot about the ordinary man in the street. Thus, it is time for the ordinary people of RSA, to stand up and say NO MORE. For long enough we had been spectators and had to watch how we, the minorities in RSA, became more irrelevant to decisions which directly impacts us, whilst our say in all matters of importance to our survival, culture, language, economic survival and human rights are being ignored. As taxpayers we are being milked to a slow death to keep on feeding the black hole of corruption, nepotism, greed and generally hopeless governance.

The intention of this document is not to impress with fancy legal jargon or unpronounceable Latin phrases, but rather to emphasise that a claim to our independence is internationally recognized and it your human right !.

Why Independence?

Generally, a group of people would want to be independent and masters of their own fate when they see increasing threats to their well-being and existence as a group, both physical, emotional and psychological. These threats could be subtle, overt or direct and openly. Now, if you are not exposed to the realities of RSA, or a liberal living in your happy bubble of feeling good, or perhaps from abroad, you may very well ask where in RSA such a group of people may exist.

The answer is rather easy - in the Western & Northern Cape and some southern parts of the Eastern Cape. The simplicity of the answer lies embedded in the history of RSA. Upon arrival at the Cape of Storms (Table Bay, Cape Town), the Dutch came across

nomadic Khoi and San tribes. One may read the early day history in any manner you wish but the fact remains that it is documented in very respected journals that no black tribes were present in the Cape anywhere south of the Fish River.

In the early years since the arrival of the Dutch settlers, the populations of the whites, coloured, Khoi and San all developed the Western Cape and can truly lay claim to this area as their land of birth and origin. The Khoi- and San presence is also found throughout RSA and even further North, however any claim for a geographical area outside the Western and Northern Cape will have to contest claims from other ethnic groups, based on early presence and occupation of the territory.

OUR RIGHT TO CLAIM INDEPENDENCE

Our right to claim our independence is ultimately vested in only one fact - THE WILL OF THE PEOPLE. Should the majority of the people of the Western Cape not want independence it is rather simple - we will not get it and carry on living under the oppressive yoke of the ANC, EFF and the DA.

When we say the will of the people, we have to define who that "people" refer to. Let us forthwith just concentrate on the Western Cape.

According to the last official census of 2011 the population looked like this:

POPULATION GROUP	PEOPLE	PERCENTAGE
Coloured	2 840 404	48.78%
Black African	1 912 547	32.85%
White	915 053	15.72%
Indian or Asian	60 761	1.04%
Other	93 969	1.61%

The Whites and Coloureds therefore formed 64.5% of the population which means 3 755 457 people.

If we consider the procedures involved on the road to independence (of which the support of the majority of the people will be required to force a referendum for independence), the term "majority of the people" as well as the fact of who may ask for a referendum is equally vague.

Respected sources like Wikipedia says "An **independence referendum** is a type of referendum in which the citizens of a territory decide whether the territory should become an independent sovereign state".

Wikipedia further says: " A **referendum** is a direct vote in which an entire electorate is asked to either accept or reject a particular proposal".

Therefore, we conclude that the "majority of the people" means the majority of the electorate. This then uses the electoral database as the indicative source to determine the number of people required to constitute the "majority of the people". Although CapeXit is non-political it should be clear why we urge people to register as a voter.

From the IEC database, the number of registered voters in the Western Cape, as on 03 October 2019, are:

FEMALE		MALE
16 595	18-19	12 585
269 443	20-29	209 011
400 461	30-39	338 377
370 574	40-49	336 086
305 048	50-59	258 753
196 467	60-69	152 191
102 474	70-79	70 953
48 230	80+	24 762
1 709 232		1 402

3 111 950

As a majority indicates 50% + 1, it may be accepted that 1 555 975 + 1 people must support independence to be able to force a referendum. We previously indicated that Whites and Coloureds together totals 3

755 457 in number, thus we require only 41% of our people, who must be registered as voters, to already make 50% + 1 for a referendum for independence.

This brings us to the "who may ask for a referendum" part. There is a general misconception that only a registered political party may ask for a referendum.

Let's first turn again to Wikipedia which clearly states: " An independence referendum typically arises first after political success for nationalists of a territory. This could come in the election of politicians or parties with separatist policies, **or from pressure from** nationalist organisations".

Hence the role of **CapeXit** as such an organisation can be defined appropriately.

THE ROAD TO INDEPENDENCE

The principle of Who, Where, Why and How applies.

The **Who** is explained above - 1 555 976 of the registered voters in the Western Cape.

The **Where** is the geographical area of the current Western Cape province, after which the same principles may be applied for the Northern Cape. It is more sensible to initially work with recognised geographical areas. The parts of the Eastern Cape, bordering on the Western Cape, which also complies, may later have the same claim as the criteria for independence is not subject to final borders.

With reference to the criteria for independence, these are rather clear from various documented sources, namely:

- A defined territory,
- A permanent population,
- A government and
- The capacity to enter into relations with other states or countries.

CapeXit maintains that further to the above requirements the following are a further qualification for independence:

- Must be an established cultural group in the region (Majority of Kaaplanders speak Afrikaans and share a similar culture. The Cape has a different culture to the rest of RSA.)
- History of marginalisation. (BBBEE, deletion of cultural history, burning of statues and buildings. With the current situation in South Africa, proof is pouring in daily.)
- Have an Independent system of government. (This is in the process of being put together. There are various committees active and involved in putting the shadow government together. The process is in an advanced stage.)
- Prove economic stability, without bankrupting the part of the country they are leaving. (Already proven. The Cape can function quite nicely on its own and the rest could as well.)
- Prove there is no other alternative. (With the growing evidence (see 2 above), this is getting easier to prove daily).
- Group, nation and international support. (The international condemnation and support are growing, so is the group and nation support.)

The **Why** is and becomes clearer every day. Whether it is from the ignoring of minority rights, the open plundering of tax payer's money, the public threats to Kill a Boer, kill a Farmer, the hourly waste and

disregard of life in gang and drug turf wars or the president of RSA internationally stating that assets will be taken without compensation. The "Why" can fill hundreds of pages with legitimate reasons to gain independence.

That leaves us with the **How**:

It is necessary to have a look at which laws, both national and international, would allow us to claim independence via a referendum.

SOUTH AFRICAN CONSTITUTION

Article 235 of the RSA constitution states:

"The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework of this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation".

INTERNATIONAL CONVENTIONS & LAWS

Quite often we encounter the "they will never allow it" argument against independence. The most obvious recourse, failing the willingness of the SA government to engage and honour the will of the majority of the people of the Western Cape, is to follow our human rights under international law.

There are two institutions in support of this namely:

- International Covenant on Civil and Political Rights and the
- African Charter on Human and People's Rights.

International Covenant on Civil and Political Rights

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The government of RSA signed and ratified this covenant on January 2015, and it came into force on 12 April 2015.

African Charter on Human and People's Rights

Article 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self- determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.

The RSA government signed this Charter on 16 March 2004 and it was ratified on 17 December 2004.

STRUCTURE OF THE NEW INDEPENDENT STATE

The model of governance will be one of a confederate state. There is often referred to Switzerland as an example. A confederate state will consist of a very small and lean central government component which is made up of representatives of all the parts of the state (in Switzerland called Cantons), and then the government institutions of the smaller state units.

The central state entity could be called The Republic of the Western Cape or any name selected from input by the citizens eligible to vote.

The smaller units of government (similar to the Cantons of Switzerland) would be called Districts. It is rather pointless to change something that worked in the past and therefore we recommend re-instating the system of districts and municipalities. The initiation of the current megacity concept has failed the people and will be made obsolete.

The central government will decide over issues like international trade, international relations, currency, defence and any other function that may be outside the capabilities of the Districts.

Each District will function based on whatever could be done to govern at a level closer to the people. The Districts proposed are:

- Cape Winelands
- Central Karoo
- City of Cape Town
- Garden Route
- Overberg
- West Coast

Equal to the Swiss system of governance the Districts will consist of smaller units called municipalities, said municipalities to be demarcated as they were before the megacity structure was adopted.

Each District will decide on the following:

1. Its own capital city or town.
2. The official languages.
3. Its flag.
4. Its symbol of governance.

The central government will adopt a state flag and its own official languages, as well as an anthem and the currency of trade.

STEPS TO BE FOLLOWED FOR INDEPENDENCE

As mentioned in the opening paragraphs, of utmost important is the will of the people. The first step is to gain the support of the majority of the people (as described elsewhere). There are organisations wanting to close borders, raise new flags and sending demands to the president of RSA to have a referendum. Unfortunately, they are all lacking the documented proof that the majority of the people support independence.

The sequence of steps to be taken may be summarised as follows:

1. Gain the support of the majority of the eligible voters in the new state.
2. Notify the government of RSA of such support and demand a referendum to be held within 3 months.
3. Notify the United Nations of the action taken in 2) above.
4. Should the RSA government fail or delay the request for a referendum, send same request to the United Nations.
5. In the time leading to the referendum mobilize and gain further support from the citizens.
6. After a successful referendum, the current provincial government will stay in power for a further period of 90 days under supervision of a panel of selected supervisors of the shadow government.
7. The interim government will have no powers to pass any legislation or effect changes to current legislation within this transition period.
8. The interim government will call an election within the new state to take place not later than 90 days after the referendum.
9. The election will elect office bearers to both the central government of the new state and to the District governments.
10. The interim government will, under advisement of suitable experts, effect the closing of the borders of the new state immediately after the referendum until such time that the defence capabilities of the new central state can take over this function.
11. On appointment of the new central and District governments, the interim government will disband.

12. The interim government will function in the capacity of its individuals and not under the name of any political party.
13. The new governments of the central state body and the Districts will adopt both the RSA and Western Cape constitutions until such time a revised constitution comes into effect.

It should be clear that independence is subject to, firstly the people wanting it, and secondly the people supporting it by submitting their support to a database.

PART II:

GUIDELINE TO GOVERNANCE STRUCTURES

In the previous pages we indicated that the new state will consist of:

- A central government (CG)
- 6 District governments (DG)
- Municipalities

The primary aim will always be to get the government as close as possible to the people. Governance by the people for the people.

MUNICIPALITIES

This will be the smallest functional component of governance in the Republic of the Western Cape. It is also the closest governance can be brought to the people.

Each town or suburb will essentially form a municipality.

AIM & FUNCTION OF MUNICIPALITIES

The primary and constant aim of the municipality must be to employ people from its own geographical area to fulfil the functions of the municipality in delivering services to the people within its borders.

Should suitably qualified candidates not be found to fill any particular vacancy, the next step will be to, together with the DG, establish centres of learning to equip its people with the necessary skills to be able to apply for relevant job opportunities.

Only after these steps have been exhausted may the municipality extend its search for suitable candidates and then preferably to neighbouring municipalities first.

The above should have, as a secondary result, the removal of the need for the people of the municipality to travel far distances to work, thus relieving the burden on the transport infra-structure over the DG and national state areas.

Functions of a municipality is partly based on the fact that the people of the area will know what is best for them.

In this regard own functions may include the following:

- Police force
- Traffic police
- Municipal police force
- Drug & firearm reaction force
- Transport police force (buses, taxi's & trains)
- Rural defence force (if rural areas exist within its borders)
- Centres of care for the elderly & infirm
- Woman & Child abuse centres
- Night shelters

- General welfare
- Roads & Parks maintenance
- Public nuisance control
- Health & Safety control
- Community courts, including traffic courts
- Rubbish removal (to a central point within the DG area)
- Disaster management, including fire fighting
- Business support to existing and upcoming Small & Medium Enterprises (SME's)
- Building plan approval
- Town planning & spatial development
- Building law enforcement and quality control
- Animal welfare
- Control of water & energy resources and use
- Development of investment opportunities
- Marketing
- Education
- Preservation & development of the culture of its people, including language
- Heritage protection
- Clinics
- Nature conservation
- Drug & alcohol rehabilitation centres
- Prisons for minor offences
- Fiscal oversight

DOING BUSINESS IN THE MUNICIPALITY

Any municipality will have within its confines either established SME's or sometimes larger manufacturing or corporate businesses. The goal of any municipality should be to make itself as safe and attractive as possible for business owners to set up shop in its area, or for corporate companies to open branches or offices.

The safety of the area will be guaranteed by establishing law and order.

Further attractions to business will be favourable tax incentives, rebates for establishing within the area and becoming a provider of job opportunities (see note below), low company tax and even where possible establishing a free trade zone.

NOTE: Companies establishing within the municipal area will be subject to at least 50% of their staffing requirements to be sourced from the people of the area. They will be encouraged to participate in skills training programs to enable the suitable employment base of the area to be enlarged in time.

TRANSPORT IN THE MUNICIPALITY

Depending on where the municipality is situated, transport may include rail and airport facilities. The basic mode of transport is however foreseen as being mini-bus taxis. This industry will be heavy regulated and controlled by the DG, and powers of enforcement will be handed down to the municipal level.

Any railway and airport facilities will remain under the control of the CG, however once again employment to such facilities must be from the municipal area it falls within and with maximum practical effect.

Current public transport structures must be analysed for cost effectiveness and may be kept under the control of the CG.

Railway and bus stations within the municipal area will be the responsibility of the municipal policing institutions to maintain a high level of law and order.

JUDICIARY IN THE MUNICIPALITY

Distinction will be made between minor and more serious offences.

Minor offences will be heard and judged by the community court. The aim is to punish offenders with community service within the municipality. This will alleviate the running costs of labour for services like refuse removal. maintenance etc. Offenders are to be housed within a place of detention with daily release to fulfil his/her community service.

Any person abusing this by attempting to escape the daily work team, will, when apprehended, be transferred to a place of stricter incarceration within the DG. The basis of this principle is that the offender will give back sweat equity to the community he tried to rob, etc.

Major offences will be heard by the DG courts and punishment will fit the crime. Offenders may be employed to work within a far more strictly controlled environment but still working for the benefit of the community where they committed the crime where possible.

Crimes like murder, rape, women & child abuse, attack with intent, etc will be viewed as the most serious of offences. The issue of reinstating a death penalty will have to be decided on unanimously by the CG and the DG's.

The system of parole may be kept however the entire process of rehabilitation of prisoners must be reviewed. Repeat offenders of

serious crimes will have no option for early parole. You do the crime you do the time.

TAXES & REVENUE IN THE MUNICIPALITY

It is a known fact that in the previous fiscal year the Western Cape contributed R 424 billion to the national government in taxes. It is calculated that only approximately 24% of that came back to the province, and after the provincial government took its slice, very little worked its way back to communities who contributed. Even if you are unemployed you contribute to the tax base by e.g. buying groceries and paying VAT.

In the proposed governance hierarchy, most of the work will take place in the municipalities. Therefore, it stands to reason that most of the tax contributions should remain within the municipality, without having to wind its way to the central government and hopefully come back as proper service delivery and care of the people in the area.

The CG must, in conjunction with the DG's, establish a fair system of taxation where:

- company tax is reduced to a minimum
- personal tax is reduced to a minimum
- tax incentives are made available to companies
- VAT is maintained on a required fiscal level

The payment of grants will be strictly reviewed and the reward to children to have children will be removed. Grants will only be given to the elderly, infirm and persons who socially qualify for it other than just having babies.

PART III:

THE APPORTIONMENT OF PUBLIC DEBT AND ASSETS DURING STATE SECESSION

In our first part of this document, the reasons for independence were deliberated, as well as the route we must take to achieve it. It also briefly touched on the structures of the new state.

In the second part of this document, we conferred about the structures of municipalities and the factors of business, taxes, judiciary and employment.

In this, the third part of Road to Independence addresses the frequently asked question of what will happen with assets at the point of gaining independence. We often hear that the ANC government will not allow this and that, however the reader must take cognizance of the fact that South Africa exists as an entity within the broader international sphere of countries, and as such it cannot wilfully or intentionally ignore any demand for independence or associated action around and following independence, without alienating many bigger countries at the risk of negatively influencing its own trade relations. Therefore, **CapeXit** is also driving an international campaign for recognition and awareness.

APPORTIONMENT OF PUBLIC DEBT

What follows is the explanation, according to international protocols, how public debt and assets should be apportioned during state secession to achieve a quick, fair, and equitable result for both the seceding state (Western Cape) and the parent state (South Africa). Although we will look at the different options as to the separation of

debt and assets, the per capita approach is the most efficient and equitable.

Presently, there is no customary law concerning the distribution of debt during a state's secession, and the acknowledged manner of asset apportionment during a state's secession is not an established, uniform practice under international law. However international practice has developed some general principles which are codified in the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts.

Because international law is deficient in governing the apportionment of public debt and assets during a state's secession, we will examine the apportionment of public debt and assets in three previous secessions: Belgium's secession from the Netherlands in 1830,' Norway's secession from Sweden in 1905,6 and Slovakia's secession from the Czech and Slovak Federal Republic in 1993. These three secessions most closely resemble the Western Cape's attempt to secede from South Africa. An examination of the apportionment approach for debt and assets utilized in these successful, peaceful secessions aids in the determination of which apportionment approach should be employed when the Western Cape secede from South Africa with full and autonomous independence.

Since the apportionment of public debt and assets is considered one of the toughest and longest negotiation subjects during state secessions, it would be beneficial for a set of rules or guidelines for the apportionment of public debt and assets to be developed to achieve an easy and efficient settlement for all peaceful secessions. Currently in state secessions, both the seceding state and the parent state present different methods for apportioning public debt and assets. This approach produces a prolonged and costly debate concerning how to divide the debt and assets because each party proposes the method of apportionment most beneficial to its

particular interests. Extended bargaining over the apportionment of the public debt and assets could prove costly because cool-headed calculations may not be easily made during heated secession negotiations. A heated debate between the seceding state and the parent state over the apportionment of the public debt and assets could affect both states' international credibility rating.

Additional activities damaged by a prolonged debate include future trade between the two states and the states' participation in financial markets. A quick agreement between the seceding state and the parent state on the apportionment of debt and assets is imperative to a smooth, peaceful, and inexpensive transition to independence. Furthermore, the international capital markets require a quick agreement on the apportionment of debt. Otherwise, the seceding state's economic system would be strained by an increase of seceding transaction costs resulting from the seceding state's uncertain economic situation. Specifically, the interest rates would rise quickly to prevent capital flight, investments would decline, and the stock market would falter. To avoid costs caused by both states arguing over an acceptable method for the apportionment of public debt and assets, an outside party should develop an equitable standard for public debt and asset apportionment.

THE OPTIONS TO APPORTION PUBLIC DEBT AND ASSETS

Currently, there are four different approaches to apportion public debt and assets:

1. The PER CAPITA approach,
2. The GROSS DOMESTIC PRODUCT approach,
3. The HISTORICAL BENEFITS approach,

4. The HISTORICAL TAX SHARES approach.

Each approach is based on a different rationale, and preference for one approach over another depends on the values or objectives of the individual parties. The four approaches are based on different ideologies and can lead to a wide variety of apportionment results. Thus, creating a new approach for public debt and asset apportionment is unnecessary. Determining the most acceptable apportionment approach is favoured over creating a new approach. As Option 1 is the advisable option, we will briefly look at the other three options first to highlight why they are ruled out as viable alternatives.

CURRENT INTERNATIONAL LAW ON DEBT AND ASSET APPORTIONMENT

Sources of international law on state secession are found in treaties, doctrines, and precedents. Nonetheless, international law does not have any set rules concerning the apportionment of debt and assets during state secessions, and international case law does not provide firm guidance on the peaceful apportionment of debt and assets during state secessions.

Although there is no agreement in international law on how to apportion the public debt during state secession, it is generally accepted that the seceding state should pay its fair share of the debt.

However, it is also accepted that unless the seceding state voluntarily assumes its fair share of the debt, the creditors of the parent state do not have any claim against the seceding state to force repayment of the debt. There are no pre-emptory rules or uniform customs in international law that require the seceding state to be responsible for the public debt of the parent state.

The principle of privity of contract holds that contracts are only enforceable between the contracting parties. For example, since the Republic of South Africa (RSA) is the party that entered into contracts with its creditors, RSA bears full legal responsibility for servicing those debts. International law would not transfer automatically to an independent Western Cape (WC) any obligation toward RSA's creditors because the Western Cape would not be directly liable to the creditors of RSA's public debt. If the WC chooses to assume a portion of RSA's public debt, then the RSA's creditors would have a right to collect from the WC. The practice of preventing the parent state from forcing its debt obligations onto the seceding state was originally adopted in situations where the seceding state was a former colony of the parent state." Although there is no uniformly accepted rule of international law which obligates the seceding state to pay a portion of the public debt, there is a tendency within current international law to require the seceding state to assume an equitable share of the public debt.

This tendency is based on the theory that since the seceding state inherits assets financed by the public debt, it is wrong for the seceding state to be exempt from having to assume an equitable share of the public debt. Economic and political realities usually compel the seceding state to voluntarily assume its share of the public debt. For instance, when Ukraine seceded from the former Soviet Union, Ukraine initially refused to pay any part of the Soviet Union's outstanding debt. However, for four months no other country would loan money to Ukraine until it finally agreed to pay its share of the Soviet debt. As a result, a seceding state may desire to voluntarily assume a portion of the public debt to portray itself as a respectable borrower in international financial markets. Although international legal convention currently favours the seceding state having to assume an equitable share of the public debt, there is no consensus on how to determine this equitable share. Presently, determining how to calculate an equitable share of the public debt is subject to

considerable haggling which can harm both the seceding state and the parent state. Consequently, there is a need to establish an optimal approach for apportioning the public debt during state secession.

ASSETS:

The seceding state's right to possess all fixed assets located within its territorial borders is widely acknowledged, though it is not an established uniform criterion. All financial assets related to the seceding state's territory or to the exercise of the state's sovereignty are also under the state's legal authority. There are no rules of international law pertaining to the apportionment of fixed assets which are located outside the seceding state and the parent state's territory, such as embassies and consulates, except that these assets should be divided in an equitable manner. Following these principles, if the WC secedes from the RSA, the WC would take ownership of the RSA's fixed assets situated in the WC and the RSA's financial assets located or linked to the WC's sovereignty without compensating the RSA. The RSA would possess all fixed assets which remain within its borders and all financial assets which are under its control or not directly linked to the WC.

1983 VIENNA Convention on Succession of State in respect of State property, Archives & Debts.

The Vienna Convention on Succession of States in Respect of State Property, Archives and Debts was created to codify the many general principles developed for the apportionment of public debt and assets during state secession. Although the Vienna Convention is not an authoritative source on the law of state secession, it represents the current trend in international law for the apportionment of public debt and assets during state secession.

DEBT:

The Vienna Convention imposes an obligation on the seceding state to assume an equitable portion of the parent state's deb, in the absence of any agreement between the two states concerning the apportionment of debt. The Vienna Convention does not provide guidance on how to determine this equitable proportion. The Vienna Convention also fails to address whether a creditor attempting to recover money owed to it for debts contracted by the parent state would have a legal claim against the seceding state for money owed. The Vienna Convention obligates the seceding state to assume debts related to assets transferred to the seceding state and requires that the debt be divided in equitable proportion to the assets transferred.

FIXED ASSETS:

The Vienna Convention states that all fixed assets located in the seceding state belong to the seceding state, all financial assets pertaining to or located in the territory of the seceding state belong to the seceding state, and all other financial assets pass to the seceding state in an equitable proportion. The Vienna Convention requires that state archives which are normally located in, or are directly related to, the territory of the seceding state belong to the seceding state. Furthermore, either state may have the right to receive copies of the other state's archives which are related to one's own archives, cultural heritage, or territory.

The GROSS DOMESTIC PRODUCT approach:

Under the gross domestic product approach, the seceding state's percentage of the value of all goods and services produced by the parent state's economy is used to determine the seceding state's share of the public debt. The gross domestic product approach is based on the theory that the amount of debt assumed by the seceding state should be directly related to the seceding state's

income. Therefore, the seceding state's share of the debt is based on the seceding state's ability to pay the debt. Accounting for the ability to pay ensures that the seceding state will not receive an unmanageable debt burden. While the gross domestic product approach protects a seceding state from being forced to assume an unrealistic debt by basing the apportionment of debt on the seceding state's ability to pay, this approach ignores how much revenue has already been contributed toward paying off the debt.

The HISTORICAL BENEFITS approach:

The historical benefits approach apportions the public debt by allocating debt shares based on past benefits received. The seceding state's share of the parent state's debt is based on the net benefits received by the seceding state while a part of the parent state. The more the seceding state benefits, the greater its share of the public debt. The reasoning behind this approach is that the seceding state should pay for the benefits it received for being a part of the parent state. The proportion of debt apportioned to the seceding state corresponds to the amount of national money spent in the seceding state. The net benefit received by the seceding state is determined from all past national spending to the seceding state and from all past national withdrawals from the seceding state. The excess of national expenditures over national revenues for the seceding state is the net benefit received from the parent state. Under the historical benefits approach, the RSA's public debt is divided according to the WC's share of net fiscal benefits.

The methodology for calculating the apportionment of debt under the historical benefits approach is flawed. Equating the excess of national expenditures over national revenues for the seceding state with the seceding state's net benefit might not prove to be an accurate representation of the benefits received by the seceding state while a part of the parent state. This method leaves out a few costs and benefits necessary for calculating the net benefit of the

seceding state. Some items which benefit the entire parent state are only analysed for their benefit to the seceding state. Another factor not accounted for is the migration of people from the seceding state to the parent state and vice-versa. For instance, many individuals could have received benefits through national spending in one state, then moved to another state while the original state upon secession would assume the burden of those national expenditures even though these individuals are no longer a part of its citizenry. Migration may frustrate any attempt to divide the debt according to benefits received. It is difficult, if not impossible, to accurately calculate the seceding state's net benefit by adjusting the provincial economic account statistics on national spending and revenues to allow for regulatory policies such as agriculture price stabilization programs, import quotas, auto parts, and energy policy. The historical benefits approach favours seceding states which benefitted from regulatory policies and hurts seceding states which have received fiscal benefits. Seceding states must repay fiscal benefits but not benefits gained through regulatory policies. Another problem with the historical benefits approach is determining what period of analysis should be used for calculating the apportionment of the public debt. If there are times when an absence of statistics prevents a proper determination of the net benefit received by the seceding state for being a part of the parent state, then this method of debt apportionment should not be employed.

The HISTORICAL TAX SHARES approach

The historical tax shares approach, also referred to as the Bèlanger-Campeau approach, determines the seceding state's share of the public debt in proportion to assets transferred to the seceding state. This approach bases debt apportionment on how much the seceding state benefitted from the accumulation of the parent state's public debt. This benefit is defined as the difference between past provisions of national government goods, services, and transfers to

the seceding state and the seceding state's past contributions to national tax revenues. The rationale for the historical tax shares approach is that the seceding state "must assume full responsibility for obligations of the national government to its own citizens, and the seceding state's debt cannot be calculated independently of the asset side of the balance sheet. Hence, this method utilizes a balance-sheet approach by matching national assets with liabilities. All national assets are evaluated, and each asset is allocated to a portion of the debt incurred. As a result, a link is formed between the assets and debt, requiring the payment of the debt to be the same percentage as the amount of the assets received. The seceding state should assume a Rand of debt for every Rand of assets that the seceding state takes. If the amount of assets apportioned to the seceding state is greater or less than the amount of debt apportioned to the seceding state, the amount of debt actually assumed by the seceding state is raised or lowered to equalize the seceding state's share of the public debt and assets.

The historical tax shares approach is criticized for compensating for a surplus or deficit in the seceding state's share of assets by adjusting the seceding state's share of the parent state's debt. A seceding state with an asset deficiency would receive an immediate benefit through a reduction of its share of the parent state's debt, but a seceding state with a surplus of assets which might not be liquidated for years would still be obligated to assume its full share of the debt immediately. Another argument against calculating debt apportionment of the seceding state based on the seceding state's share of assets is that the parent state's national government did not incur the public debt simply to purchase assets but grew from successive years of deficit spending. The approach of distinguishing between the debt incurred to finance the acquisition of assets and the debt incurred to finance current expenditures is rejected as unnecessary because the data on which the decision to issue debt formally rests treat all expenditures as current expenditures. Also,

the division of debt on future tax liabilities is problematic because this approach utilizes past tax liabilities for determining debt apportionment. Since past tax liabilities can be markedly different from future tax liabilities, the calculations can be skewed. The justification for applying a special calculation for the division of pension liabilities is rejected in favour of apportioning pension liability in exactly the same way as all other liabilities. The historical tax shares approach of apportioning pension liabilities by dividing unfunded liability of superannuation accounts according to the residence of the national employees is questionable because usually there is no correlation between the employees' place of residence and the beneficiaries of the employees.

The PER CAPITA approach:

As mentioned previously, the Per Capita approach is the most acceptable alternative according to international law. This provides both the seceding state, as well as the parent state, with a fair and constructive guideline to the apportionment of assets and debt. Under the per capita approach, the public debt is divided on a per capita basis, meaning that the percentage of the debt to be paid by the seceding state is in direct proportion to the seceding state's population. Since the WC's population is 10.6% of the RSA's population, the WC would be obligated (only if they accept as mentioned elsewhere) to pay 10.6% of the RSA's debt. The reasoning behind the per capita approach is that each person should assume an equal share of the public debt. The RSA's public debt was accumulated by all South Africans, and the funds were spent by the RSA government to benefit the entire country. Therefore, if the WC decides to secede from the RSA, then the WC should take its fair share of the RSA's debt in equal proportion. The rationale supporting the per capita approach and the simplicity of the calculations required are the major benefits of this approach. The RSA's public

debt is divided by the total population of the RSA, then multiplied by the WC's population to determine the WC's share of the public debt. So, based on the above, and confirming that the RSA's debt at the time of writing this document is at R 2.814 trillion, the WC will assume 10.6% of this debt, which comes to R 281 billion. If one considers the fact that the WC's GDP for 2016 was R 424 billion, then this debt burden should be a considered option. Of course, the fiscal part of accepting debt will be favourable negotiations with the debtors not to burden the WC with unsustainable repayments.
Possible discounting of debt in favour of beneficial trade agreements with the new state may also be a possibility.
As an interesting note, the debt clock of the RSA may be viewed at this link:

https://www.nationaldebtclocks.org/debtclock/southafrica

This apportionment of debt at 10.6% is also in line with the proportion of the population, with the WC having 6.2 million people out of the RSA's population of 58 million, thus coming to 10.68% of the population.
This calculation is based on the simple concept of equity. The per capita approach is straight-forward and easily understood, and thus the average citizen is likely to accept this basis for apportioning the public debt.

APPORTIONMENT OF ASSETS

Two of the same approaches that could be employed in the apportionment of debt may also be utilized in the apportionment of assets between the seceding state and the parent state. They are the historical tax shares approach, which apportions assets through historical shares of national tax revenues, and the per capita approach of dividing assets based on the proportional population

size of each state. The international concept of territorial sovereignty which involves state possession of public assets physically located within its territory may also be employed for the apportionment of assets. The gross domestic product approach and the historical benefits approach are not used for asset apportionment; instead both approaches rely on the per capita approach for asset apportionment. The gross domestic product approach is not appropriate for asset apportionment because it would penalize poorer seceding states by apportioning an insufficient amount of assets to function as an independent state. The historical benefits approach is rejected for asset apportionment because seceding states that had net contributions to the national government would not receive any assets under this approach. Determining a fair apportionment of public assets and the liabilities associated with these assets requires the appraisal of all public assets and liabilities. Depending upon which approach is used for valuing public assets, the determination of each asset's value can vary widely. The historical tax shares approach combines the valuation of assets with the apportionment of assets by netting various assets and liabilities against each other. Under the per capita approach, the appraisal of the current value of all public assets and liabilities is completed before the apportionment of assets is commenced. Under the location approach of territorial sovereignty, no valuation of assets occurs because assets are divided based on their physical location. Along with the determination of the material worth of some assets, the diversity of public assets also complicates the establishment of a fair and equitable standard for the valuation and distribution of assets. There are two major types of public assets: financial assets and fixed assets. There are also some assets which require special treatment such as nationally owned companies. The apportionment and valuation of each type of asset is analysed separately.

FINANCIAL ASSETS:

Financial assets are movables which include gold and foreign currency; receivables, especially from taxes owed; loans, held by national lending agencies; and liquid holdings, such as cash, transportation equipment, works of art, artefacts, books, and furniture. The valuation of financial assets is easily determined through the resale value of these marketable assets. As a result, under the per capita approach, apportioning most financial assets before or after liquidation is not problematic.
However, loans present a problem for the per capita approach because they are affixed to specific corporations or residents. The location approach apportions assets based on their physical location, thus, loans could be apportioned by the location of the corporation or the person receiving the loan. Under the location approach, if assets are physically located outside both the seceding state and the parent state, these assets are apportioned to the state which subsidizes these assets. Originally, for the apportionment of assets, the historical tax shares approach allowed the seceding state to acquire all the financial assets which the seceding state found attractive, but due to the subjectiveness implicit in this method of apportionment, a modified version was established. Under the modified historical tax shares approach, financial assets are apportioned according to the seceding state's average historical tax contribution.

FIXED ASSETS:

Fixed assets are immovables which include nationally owned buildings, airports, shipping ports and the surrounding land, small-craft harbours, bridges, highways, railways, national parks, and specialized equipment. Estimating fixed assets is problematic, and there is no consensus on how to value these assets. Fixed assets could be evaluated based on current market values, replacement costs, or historical costs. An acceptable method for determining the value of fixed assets is necessary. For valuation purposes, it is

desirable to evaluate fixed assets in groups distinguished by their expected economic return. Income producing assets should be appraised in the same manner as marketable financial assets, which entails establishing the current market value or the resale value of the assets. These assets include airports, housing, commercial buildings, some bridges, agricultural property, and museums and other nationally owned buildings. The market value of assets, such as highways and some bridges, that have quantifiable expenses, but unquantifiable economic benefits cannot be properly estimated. Since these assets generate an economic benefit but carry financial obligations, they should be *given a market value of zero*. Likewise, assets which do not provide an economic benefit but require little or no maintenance, for example, some historical sites, monuments, bridges, recreational canals, and marine facilities, *should be valued at zero*. After valuing the fixed assets, the location approach apportions these assets to the state in which these assets are situated. It is difficult, if not impossible, for fixed assets located in one state to be controlled by the other state. It is unlikely that the apportionment of fixed assets based on the assets' location would equal the share calculated under the per capita approach. Thus, some balance must be achieved to establish an equitable apportionment of all assets combined. For instance, if there is a verifiable disparity between the fixed assets apportioned to the two states, the amount of that disparity may be corrected by altering the apportionment of financial assets until the disparity in fixed assets apportioned is counterbalanced by the apportionment of financial assets. The historical tax shares approach also apportions fixed assets based on the assets' location. This approach estimates the value of fixed assets and determines each state's share of assets according to the property tax payments made by the national government, or to national grants received in lieu of taxes. Fixed assets are valued on the basis of replacement costs, but this approach makes rough modifications to the acquired data derived for different purposes. This approach

neglects some assets not represented in this "grants-in-lieu calculation," for example, bridges, highways, airport runways, monuments, small craft harbours, dams, national parks, and specialized equipment.

NATIONALLY OWNED COMPANIES:

Nationally owned companies could be treated like fixed assets or financial assets because they hold both movable and immovable assets. Whether the company should be treated as a fixed asset or a financial asset for the purpose of asset apportionment will depend on the particular company. The location approach is employed for the apportionment of national companies treated as fixed assets. All companies whose assets are located completely within one state belong to that state. Some companies owning assets in both the seceding state and the parent state are treated as fixed assets, and apportioned according to the location approach, while other companies are viewed as financial assets and apportioned by the per capita or historical tax shares approach. Other companies such as, but not only, SAA, National Railway and The SA Post Office which have common infrastructural services, and hence cannot be fragmented, are apportioned as financial assets. The apportionment of each of these company's assets is determined by the distribution of the ownership shares of each company to achieve equality among assets without harming the production of the company. These shares in the capital of each company can be distributed on a per capita basis or in proportion to the value of the assets situated in each state. Originally, the historical tax shares approach allowed the seceding state to choose whichever companies the seceding state found attractive, but due to the subjectiveness implicit in this method of apportionment a modified version was established. Under the modified historical tax shares approach, nationally owned companies

are apportioned according to the seceding state's average historical tax contribution.

CONCLUSION

International law does not require the seceding state to assume any portion of the parent state's public debt.' On the other hand, ever since Belgium seceded from the Netherlands, it has been accepted that the public debt should be divided between the seceding state and the parent state in an equitable proportion.' A standard approach for public debt apportionment during state secessions should be adopted. The per capita basis should be the standard approach used for equally apportioning the debt between a seceding state and the parent state. The per capita approach uses a very manageable type of calculation based on easily retrievable and objective figures. Verification of this approach's utility is provided by Slovakia's secession from the Czech and Slovak Federal Republic, where the per capita approach was employed to apportion the debt between Slovakia and the Czech Republic. Territorial sovereignty which is an accepted principle of customary international law allows for the location of public assets to dictate the apportionment of these assets. Thus, the standard utilization of the location approach for the apportionment of fixed assets or financial assets linked to a specific area is substantiated by current, customary international law. All financial assets not tied to a specific area should be equally apportioned between the seceding state and the parent state. The per capita approach should be the standard approach employed for apportioning these financial assets. As with debt apportionment, the per capita approach provides the most equitable and simplest means for apportioning financial assets. The utilization of the per capita approach and the location approach as the standard methods of asset apportionment has been legitimized by Slovakia's secession from the Czech and Slovak Federal Republic, where financial assets

and fixed assets were apportioned by the per capita approach and the location approach respectively.

As a result of the implementation of the per capita approach and the location approach as the standard approaches for the equitable apportionment of public debt and assets during state secession, the quick resolution of these difficult apportionment issues would expedite a smoother and more amiable secession.