

**UNIVERSITY OF ESWATINI**  
**FACULTY OF SOCIAL SCIENCES**  
**DEPARTMENT OF LAW**  
**FINAL EXAMINATION PAPER (MAIN)**  
**MAY 2019**

**TITLE OF PAPER : PUBLIC INTERNATIONAL LAW**

**COURSE CODE : L406**

**TIME ALLOWED : THREE (3) HOURS**

**INSTRUCTIONS:**

- (a) ANSWER QUESTION ONE (1) WHICH IS COMPULSORY AND ANY OTHER THREE QUESTIONS.**
- (b) EACH QUESTION CARRIES A TOTAL OF 25 MARKS.**
- (c) THE CONTENT OF YOUR ANSWERS, CLARITY OF EXPRESSION AND LEGIBILITY OF YOUR HANDWRITING ARE ALL EXTREMELY ESSENTIAL.**

**DO NOT OPEN THIS PAPER UNTIL TOLD TO DO SO BY THE INVIGILATOR(S).**

### **QUESTION ONE – COMPULSORY**

The Kingdom of Amazon got its independence in 2002. Three principal ethnic groups, the Rasp Arians, the Arizonians and the Katangese, populate the Kingdom. The ethnic groups have distinct languages, religions and cultures, although they are physically indistinguishable. About 50% of the population comprises Rasp Arians, 20% Arizonians, 10% Katangese and 20% 'mixed' or 'other'. Most Katangese have historically lived in the Upland Plateau, a geographically self-contained district making up approximately 30% of the total area of the country. The Katangese generally think of the Upland Plateau as the centre of their ethnic culture and their most important religious and historic sites are located there.

Over the years since independence, the Katangese in the Upland Plateau have been denied the right to vote for their representatives in the Government of the Kingdom. The Katangese have on several occasions been arrested, detained and subjected to harsh prison conditions for planning peaceful demonstrations. In the last three years, the central government has not included the Upland Plateau in the national budget. The Katangese's attempts to seek redress in the Courts, which are mostly composed of judges who are Rasp Arians, have failed. The Katangese now seek to secede from the Kingdom of Amazon and create a new state. They have been advised that their purported secession would be in violation of the principle of territorial integrity.

Discuss the basis for and validity of the Katangese's secessionist claim.

**(25 MARKS)**

### **QUESTION TWO**

(a) Discuss custom as a source of public international law. **(10 MARKS)**

(b) Define *jus cogens*. **(5 MARKS)**

(c) Mr. Fana Dlamini, a Swati national, was held without trial in Rwanda for several months, in a small cell, together with twenty five other prisoners, both male and female. Ventilation was poor, sanitary and ablution arrangements primitive, food scarce and coarse and he was denied any physical exercise. When Eswatini approached Rwanda to complain about the treatment of Mr. Fana Dlamini, Rwanda responded that as a prisoner Mr. Fana Dlamini was treated in the same way as his fellow Rwandan prisoners.

The Government of Eswatini has approached you, an international law expert, for a legal opinion on this matter. Provide the legal opinion.

**(10 MARKS)**

**(25 MARKS)**

### **QUESTION THREE**

Discuss the criteria for statehood as contained in the Montevideo Convention of 1933, explain whether these requirements still meet the demands of the international community currently and make reference to theoretical underpinnings.

**(25 MARKS)**

### **QUESTION FOUR**

(a) Discuss the traditional principles governing the acquisition and loss of territory and how the courts have used these principles in resolving boundary disputes. **(15 MARKS)**

(b) In 1961, India invaded and annexed Goa, a Portuguese colonial enclave on the Indian subcontinent. In justification of its aggression India argued that Portugal had illegally occupied Goa by means of conquest in the sixteenth century and that India was simply exercising its right of self-defense against the Portuguese aggressor- some four hundred years later. Write an essay on this statement, paying attention to the following issues:

(i) The validity of the Indian annexation; **(5 MARKS)**

(ii) The basis for and validity of India's claim that its actions were in self-defense and therefore justified in terms of public international law. **(5 MARKS)**

**(25 MARKS)**

### **QUESTION FIVE**

(a) Discuss the jurisdiction of the International Court of Justice in contentious proceedings.

**(15 MARKS)**

b) Briefly discuss the following:

(i) Immunity *rationematerie*; **(5 MARKS)**

(ii) Inviolability of the diplomatic mission. **(5 MARKS)**

**(25 MARKS)**

**QUESTION SIX**

Masipile Life Services is a one stop house for insurance, retirement and investment services. Its sole director, a socialite by the name of Frankie Vallie is known for his taste in cars and fashionable clothes and designer man-bags. He is also suspected of having clandestine dealings with the pro-democracy movement in Eswatini. Amongst the things Frankie is suspected to have done was the funding of various political meetings in Johannesburg and Mpumalanga, where members of Eswatini banned political parties either planned or launched the Free Eswatini campaign. As a result, Frankie's privacy has been violated numerous times by state agents who bugged his phones and intercepted his emails. Frankie's wife, Mandisa, who also sits on the advisory board of the company and acts as its financial advisor, is a card carrying member of the banned political party, Vuka ESwatini. Mandisa is known for her commitment to pro-democracy activities, and never misses any protest action or political rally. In the beginning of 2012, Frankie's Masipile Company was placed under Investigation by the Registrar of Insurance for suspected fraud and embezzlement of funds.

In terms of the investigation report, Frankie's company embezzled retirement funds to the tune of R175 000 000, leaving a large number of elderly subscribers moneyless. The state further alleges that the missing money was pumped by Frankie into the movement's activities, which resulted in the bombing of a bridge near Lozitha and the bombing of a government owned hydro-electricity generating facility in the south of Eswatini. The state also alleges that in a raid conducted at Frankie's house, it found records of illicit romantic rendezvous indicating that Frankie had extra-marital relationships with persons of the same sex. Frankie's affinity for amorous relations with persons of the same sex is regarded by the state as unSwati and offends the eSwatini criminal laws.

Upon hearing that the police were looking for them, in relation to the missing funds, Frankie's wife escaped and is now hiding in the United Arab Emirates, where Frankie managed to start a new life assurance company. Frankie is rumored to be in hiding in Hillbrow, Johannesburg. The Government of Eswatini now seeks the return of these two people to Eswatini, in relation to their involvement in the embezzlement of retirement funds. Additional to the financial crimes, Frankie and his wife will also be charged under Eswatini anti-terrorism law, as well as under its sodomy laws.

Advise the Government on the prospects of success in that endeavor.

**(25 MARKS)**

**END OF THE PAPER**