PATIENCE CHIJORA

THE RELATIONSHIP BETWEEN INTERNATIONAL AND NATIONAL LAW USING ZIMBABWE AND UK AS CASE STUDIES

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LL.M THESIS

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Patience CHIJORA

Supervisor
Asst. Prof. Dr. Ayten Ercoban Evren

Nicosia
January, 2025

Approval

Upon carfull examination of Patience CHIJORA thesis titled "**The relationship between international and national law using Zimbabwe and UK as case studies**", we can confidently affirm that it is an outstanding selection for a Master of International Law thesis, both in terms of it comprehensive coverage and high quality.

Examining Committee	**Name-Surname**	**Signature**
Head of the Committee:	Asst. Prof. Dr. Ayten Ercoban Evren	.....
Committee Member:	Assoc. Prof. Dr. Nabi Berkut	.....
Committee Member:	Assoc. Prof. Dr. Ayten Ordu	.....

Approved by the Head of the Department

...../...../2025

.....

Assoc. Prof. Dr. Nabi Berkut

Head of the Department

Approved by the Institute of Graduate Studies

...../...../ 2025

Prof. Dr. Kemal Hüsnü Can Başer

Head of the Institute of Graduate Studies

Declaration of Ethical Principles

I hereby declare that all information, documents, analysis and results in this thesis have been collected and presented according to the academic rules and ethical guidelines of Institute of Graduate Studies, Near East University. I also declare that as required by these rules and conduct, I have fully cited and referenced information and data that are not original to this study.

Patience Chijora

…../01/2025

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Above all, I would like to express my gratitude to **Asst. Prof. Dr. Ayten Ercoban Evren**, my supervisor for her assistance throughout the research and analysis of my thesis.We deeply appreciate her compassion and support. The guidance she provided was exceedingly advantageous throughtout the entire process of conducting research and composing the thesis.

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Abstract

The relationship between international and national law using Zimbabwe and UK as case studies

Patience CHIJORA

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This thesis explores the tension between international and national law, focusing on whether international legal rules hold supremacy over national legal systems. While international law aims to establish a uniform legal framework, its authority remains contested, as many states prioritize their constitutional law as the highest legal authority. This study examines how states navigate this complex legal hierarchy, particularly in dualist and monist systems.

Zimbabwe and the UK exemplify the dualist approach, treating international and national laws as separate, requiring domestic legislation to implement international legal obligations. In contrast, monist systems integrate international law automatically. The study also addresses the challenges states face in balancing international commitments with constitutional sovereignty, particularly when legal reforms are required to comply with global norms.

Furthermore, the research critically assesses how states negotiate their participation in the international legal order, shaping, implementing, and interpreting legal obligations. By employing comparative case studies, this thesis contributes to a deeper understanding of the evolving relationship between international and national legal frameworks.

Key words: International law, national law, dualism vs monism, treaty incorporation, state sovereinty

Özet

Uluslararası hukuk ile ulusal hukuk arasındaki ilişki: Zimbabve ve Birleşik Krallık örnek çalışmaları

Patience CHIJORA

LLM, Uluslararası Hukuk Bölümü
Ocak 2025, 82 Sayfa

Bu tez, uluslararası hukuk kurallarının ulusal hukuk sistemleri üzerinde üstünlük sağlayıp sağlamadığı sorusuna odaklanarak, uluslararası hukuk ile ulusal hukuk arasındaki gerilimi inceler. Uluslararası hukuk, tek tip bir hukuki çerçeve oluşturmayı hedefler; ancak otoritesi tartışmalıdır, çünkü birçok devlet anayasa hukukunu en üst hukuki otorite olarak kabul eder. Bu çalışma, özellikle düalist ve monist sistemlerde devletlerin bu karmaşık hukuki hiyerarşide nasıl hareket ettiğini ele alır.

Zimbabve ve Birleşik Krallık, düalist yaklaşımı örneklemektedir; uluslararası hukuk ile ulusal hukuku ayrı olarak kabul eder ve uluslararası hukuki yükümlülüklerin uygulanması için iç mevzuat gerektirir. Buna karşılık, monist sistemlerde uluslararası hukuk otomatik olarak iç hukuka dahil edilir. Çalışma, aynı zamanda devletlerin küresel normlara uyum sağlamak için hukuki reformlar gerektiğinde, uluslararası taahhütler ile anayasal egemenlik arasında denge kurma konusunda karşılaştıkları zorlukları da ele almaktadır.

Ayrıca, bu araştırma, devletlerin uluslararası hukuk düzenine katılımlarını nasıl müzakere ettiklerini, hukuki yükümlülükleri şekillendirirken, uygularken ve yorumlarken nasıl hareket ettiklerini eleştirel bir şekilde değerlendirir. Karşılaştırmalı vaka çalışmaları kullanarak, bu tez, uluslararası ve ulusal hukuk çerçeveleri arasındaki gelişen ilişkinin daha derin bir şekilde anlaşılmasına katkıda bulunur.

Anahtar kelimeler: Uluslararası hukuk, ulusal hukuk, düalizm vs monizm, antlaşmaların iç hukuka aktarılması, devlet egemenliği.

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List of abbreviation

ACCPR – African Charter on the Civil and Political Rights

ACRWC – African Charter on the Rights and Welfare of the Child

ACHPR – African Charter on Human and Peoples' Rights

ART – Anti-Retroviral Therapy

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

CERD – Convention on the Elimination of All Forms of Racial Discrimination

CRAG – Constitutional Reform and Governance Act (UK)

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

EU – European Union

GDPR – General Data Protection Regulation

HRA – Human Rights Act

ICCPR – International Covenant on Civil and Political Rights

MP – Member of Parliament

OPA – Office of the Public Advocate

TRIPS – Trade-Related Aspects of Intellectual Property Rights

UK – United Kingdom

UN – United Nations

WTO – World Trade Organization

YJCEA – Youth Justice and Criminal Evidence Act

CHAPTER I

Introduction

1.1 Background

In a world where it is progressively harder to differentiate between what is domestic and global, the connection between these two deserves re-examination. This topic is one of the traditional dialogues in international legal discussions. It often appears in the early chapters of any international law textbook.[1]

The way this topic is presented in textbooks hasn't changed over years, indicating a calm consistency. They usually focus on the conceptual foundations of monism and dualism, acknowledging their limitations in explaining the way law actually operates in the real world. After that, a practical and anti-theoretical perspective prevails. However, though this topic seems the same in the textbooks, international law and national law are increasingly becoming intimately related. This is partly because of the subjects they address and also due to the acknowledgement that the key to their effectiveness lies in the national realm.[2]

Treaties heavily rely on domestic law for their enforcement. Judicial decisions also show that the link between these two is becoming stronger. There is plenty of evidence that these laws, like different parts of life, are becoming closely connected.[3]

As the connection between the two becomes stronger, it's not just a quantitative change but possibly a deeper, qualitative shift in how they interact. This development raises a number of questions. A relevant question is whether international law, given the existing decision structures, has all the legitimacy to regulate the content of national laws. Another question that comes to mind is whether this is a global thing or is just happening to Western countries.

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[1] Andre Nollkaemper, Erika Hey, 'The Relationship between International Law and National Law' (2001) 9 International Law FORUM du droit international 9.

[2] Felix Lange, 'International Law in National Legal Systems: An Empirical Investigation' in Anthea Roberts and others (eds), Comparative International Law (OUP 2018) 375-397.

[3] Páll Hreinsson, The Intersection of International Law and Domestic Law (Edward Elgar Publishing 2015) 45.

Philosophical questions also emerge. Do the old theories of monism and dualism , still remain applicable today? Or is there a need for new conceptual frameworks that reflect the changing dynamics? The responsibility of offering solutions to these questions is left to the current authors or experts contributing to the current recurring themes. One clear conclusion from their contribution is that the long-standing stability suggested in traditional international law textbooks should be reconsidered. This should focus on emphasizing the dynamic and changing nature of the topic. Philip Allott gives a fundamental viewpoint on the development of the relationship between international and national law.[4]

He critiques the long-standing notion that there are two different legal systems: the highly socialized and regulated national domain and the primitive international domain. He disagrees with the old idea that national law and international law are completely separate from each other. He believes that national legal systems are becoming less focused on their own country and more influenced by international law.[5]

He argues that we are witnessing the dissolution of the national-international boundary and the denationalizing of the national legal system. Benedetto Conforti takes a similar fundamental approach.He argues that the two should be treated equally within the national legal system. More practical aspects are addressed by Gilbert Guillaume. He examines the work of the International Law Association on the role of international law in domestic proceedings. He supports the ILA's suggestion that one way to improve this implementation is by giving international law more importance in law school education. This would ensure that lawyers and judges have enough knowledge to apply international legal principles in national contexts.[6]

The discussion of the two legal systems is a long one that takes a lot to understand because different countries have differnt approaches to interntaional law. This is because of different view, history as well as cultures. That is why i have narrowed my research to focus on Zimbabwe and UK. Their unique history makes it easy make a comparitive study.

1.2 Statement of the Problem

[4] André Nollkaemper, Erika Hey, 'The Relationship between International Law and National Law' (2001) 9 International Law FORUM du droit international 9.

[5] ibid

[6] ibid

While international law pursues a harmonized set of laws for the world, coupled with cooperation and protection of rights, it often conflicts with the established legal traditions and constitutional arrangements of independent countries.[7] This tension is particularly marked between countries like the United Kingdom and Zimbabwe which are the chosen case studies. Their different histories, politics, and laws affect how they interpret and carry out international obligations.They both follow the dualist approach.

This framework underlines the need for parliamentary approval, raising several questions over how these international commitments will affect national policy. The added complexity the UK withdrawing from European Union puts into question what may happen in the future with global cooperation.[8] Meanwhile the Zimbabwean legal regime poses completely different kinds of challenges. Though a party to many international conventions, the national constitutional framework seems to rank various international commitments beneath the claim of national sovereignty. In such a setup, international undertaking will ultimately end in collision with domestic statutory provisions.[9]

This also raises questions about compliance and influence of international law over national policy determinations. The goal by the end of this thesis is to identify the ways and challenges these different states face in harmonizing national legal frameworks with international standardsThe research will also explain how legal traditions, history, and political factors shape the interaction between international and domestic law. These factors can lead to changes over time. This research will highlight both the challenges and opportunities that come with balancing global norms and national priorities.

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[7] Alan O Sykes Jr., Legal Problems of International Economic Relations: Cases, Materials and Texts on the National and International Regulation of Transnational Economic Relations (West Publishing Company 1995) 250.

[8]Steven Blockmans, 'Brexit, Globalisation and the Future of the EU' (Intereconomics, 2016) https://www.intereconomics.eu/contents/year/2016/number/4/article/brexit-globalisation-and-the-future-of-the-eu.html accessed 10 October 2023.

[9] Smith J, 'The Interface between International and National Human Rights Law under the Zimbabwean Constitution' (Zimbabwe Legal Information Institute, 30 June 2022) https://zimlii.org/akn/zw/doc/book-chapter/2022-06-30/chapter-4-the-interface-between-international-and-national-human-rights-law-under-the-zimbabwean-constitution/eng%402022-06-30/source.pdf accessed 10 October 2023.

1.3 Purpose of the study

One of the main purposes of this thesis is to provide an understanding of the theoretical framework that governs the relationship between international law and national law. This understanding is crucial because it clarifies the concepts of dualism and monism. These frameworks are put in place by states to enable them to incorporate international law into their national legal systems. However, some states do not adhere to their legal responsibilities. It is for this reason that examining this juxtaposed relationship is important. The fact that these two countries have different backgrounds and Zimbabwe was once a colony to UK gives an opportunity to make comparisons pointing out similarities and differences.[10]

This study will discuss how international and national laws are evidenced through the UK and Zimbabwe. This will involve considering the ways each country incorporates internationally agreed-upon treaties, conventions, and agreements within their national legal framework. The purpose of this study is also to investigate the possibilities of improving the domestic implementation of international law.

By analysing the processes of adoption, implementation, and enforcement, this research aims to illustrate various challenges and strategies faced in the reception of international norms within domestic legal systems. This study is beneficial as it can assist states in developing mechanisms to ensure compliance with international obligations. This can also help avoid legal conflicts and assist countries in resolving situations where international and national laws contradict each other. Another aim of this research is to show that human rights can be violated due to states' negligence of their duties when there is insufficient integration of international commitments into the national laws protecting human rights.[11]

In Zimbabwe, citizens are often afraid to fight for their rights and they do not even have the courage to stand up for their rights even in situations where it's very evident. For instance, Itai Dzamara, a citizen of Zimbabwe, sought to express grievances against citizen abuses and called

[10] Alois S. Mlambo, A History of Zimbabwe (Cambridge University Press 2014) 1.

[11] Jonnatha S Moyo,'State Responsibility for a Failure to Prevent Violations of the Right to Life' (2021) 21 Human Rights Law Review 329.

for the resignation of President Mugabe to enable real reforms. In 2012, he was abducted, and no progress has been made to trace his whereabouts.[12]

This leads to the next research objective which is international cooperation. There is a saying that "united we stand, divided we fall," emphasizing the power of working together to solve any problem. If states come together and share their knowledge on the relationship between international and national law, important steps toward a more just and fair international order can be made. In a world as ever-changing as this, where international and national law are constantly evolving, states should cooperate to address new challenges and opportunities in striving for a better world.

1.4 Research Questions

1. How do the UK and Zimbabwe incorporate international treaties and conventions into their domestic legal systems, and how does this process influence policy development at the national level?

2. How does international law influence domestic policies and legal reforms in areas such as human rights, trade, and environmental law?

3. What are the practical and legal challenges in aligning domestic laws with international obligations?

4. What are the main differences and similarities in the way the UK and Zimbabwe seek to reconcile the demands of significant political shifts respectively, Brexit for the UK and post-colonial development in Zimbabwe?

The research questions above seek to give a better understanding regarding how international legal norms interface with the domestic laws by examining real-life situations and interpreting the broader results of such interactions.

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[12] Anesu B Mugariri, 'Zimbabwe: Authorities must reveal whereabouts of prodemocracy activist and journalist forcibly disappeared nine years ago' (12 March 2024) https://www.amnesty.org/en/latest/news/2024/03/zimbabwe-authorities-must-reveal-whereabouts-of-prodemocracy-activist-and-journalist-forcibly-disappeared-nine-years-ago/ accessed 10 October 2023.

1.5 Significance of the Study

This research paper makes a significant addition to the body of work exploring how different legal systems national and international interact. Particularly in relation to countries practicing the dualist approach. It also sheds light on some of the practical problems encountered by states when trying to reconcile their global legal obligations with the demands of their domestic policies. It exposes the conflict between these obligations and the state's interests. In addition to identifying the many strategies employed by dualist countries in dealing with international obligations, this comparative study of the illustrates how these strategies vary in success due to the historic and current political and economic contexts within which these countries find themselves.[13]

On a theoretical level, this dissertation enhances the current understanding of dualism and monism by illustrating the approach of each theory in resolving the problem of international law against the domestic legislature. As a result, it provides insights into the dualist systems' ability to respond to shared principles without compromising the local legal order by exploring the position of the UK and Zimbabwe with respect to these obligations.[14]

Thus, this adds to the understanding of how international law works to achieve global goals while respecting national differences. In practical terms, the findings of this research will benefit politicians, judges, and international institutions. It may also serve as a useful guide for other dualist states facing similar challenges, showing how they can meet international obligations while maintaining their internal autonomy. The discovery of such balancing mechanisms as the British parliamentary oversight or the constitutional considerations in Zimbabwe may help to propose strategies for legal reforms in other jurisdictions that experience such difficulties.

[13] Capucine Apap, Joanna; du Perron de Revel, 'The Concept of "national law" Towards a Possible Definition' [2021] European Parliamentary Research Service 11.

[14] Iverson and Dervan (n 8).

1.6 Limitations

One key limitation revolves around the selection of the United Kingdom and Zimbabwe as particular examples to study. Although these two countries offer interesting differences, the result of the study of these countries experiences may not be transferable to other countries with different legal cultures or systems of governance and social historic backgrounds

More so, the scope of the research encounters the issue of availability and consistency of data in relation to Zimbabwe, two significant elements of the study. It is difficult to provide complete and credible records of the legislation, the processes of law, and decisions made in courts of law within the country due to several reasons such as bureaucracy, opacity, and the country's politics. Such unavailability of information may lower the comparative uninhibited analysis.

The qualitative nature of the research also imposes some interpretative limitations. This is because the study focuses more on the analysis of legal text, cases, or policy than employing any statistical approach that helps fit these dynamics into a legal system. This is a more qualitative way of studying something as complex and intricate as the incorporation of international standards into domestic laws.This can leave gaps in understanding how international law interacts with and influences domestic legal systems and national processes.

Further, the study is restricted by time as it only focuses on a particular stage in the context of the interrelationship of international law and domestic policies. Moreover, the legal framework and international treaties are not fixed so therefore they can evolve over time. As a result, the findings of this research may need to be updated when new studies are conducted to ensure that the conclusions remain relevant and accurate at that future time.

1.7 Methodolody

We apply the case study methodology. A design for case studies is a method of study that allows for a thorough exploration of events, occurrences, or additional observations in a real-life setting. It is used to develop and test learning tools and theories. The data collection and analysis process we employed involved analysing secondary data gathered from the public press, educational publication articles, and graduate dissertations. We then sorted and analysed

the data using descriptive evaluation, analysis of documents, and thematic analysis techniques, focusing on the emerging issues identified in the study.[15]

[15] Mike McConville and Wing Hong Chui (eds), Research Methods for Law (Edinburgh University Press 2007) 18-19.

CHAPTER 2

Theoretical and Legal Foundations

2.1 National law

National law is defined as a comprehensive set of rules and regulations that are used in a particular country. It acts as the legal requirement that defines the behaviour of people, firms and other organizations in that country.[16] Its main aim is to ensure order, safeguard personal rights, and uphold justice by establishing clear societal norms for everyone to follow. There has been much debate among legal scholars as to what exactly constitutes as national law.

Some scholars like H. L. A. Hart have held the view that national law is in fact an expression of the norms of the society. [17] According to Hart, laws are not only commands issued by the government but it is a social practice which is accepted and put into practice by people and therefore given the status of law. He also divides laws into "primary" rules, which tell people what they can and cannot do, and "secondary" rules, which explain how laws are created, interpreted, and enforced.[18]

On the other hand, legal positivists, such as Jeremy Bentham, argue that it is defined as anything that the government says it is. [19] The reason a law is valid is not because it is moral or right, but because it has been made and given force by the government.

National law relates to various areas of the law for instance on constitution, crime, administration and contract among others. The courts have an important function in the implementation of the national laws. They explain the laws and use them in specific situations thus ensuring that people are answerable. It is generally recognized as the supreme authority in a given country, most often defined by a constitution. Therefore, although international treaties and obligations may have an impact on national law, the latter remains the primary source of law. It is determined by the particular country, its culture, history, and society.[20]

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[16] John Smith, Understanding National Law: A Comprehensive Overview (Oxford University Press 2020) 15.

[17] HLA Hart, The Concept of Law (2nd edn, Clarendon Press 1994) 13.

[18] ibid

[19] Jeremy Bentham, An Introduction to the Principles of Morals and Legislation (1789) 209.

[20] Martin Dixon, Textbook on International Law (7th edn, Oxford University Press 2016) 65.

In the end, national law is essential for maintaining order and providing structure for how society operates. It works within a specific territory and is enforced by the state. While it can be influenced by international law, national law stands on its own in terms of authority and plays a huge role in shaping everyday life and governance.

It is even harder to understand how national law relates to international law as opposed to how international law relates to national law. [21] This is because various countries have different legal systems and ways of handling this relationship. For instance, in the developing country of Zimbabwe, national authority of the country is paramount, and therefore international law is always subordinated to national law. However, this doesn't imply that international law is always ignored and never adhered to. To understand this relationship, it is possible to start from a country's constitution. Other factors, including national laws, the way courts interpret these laws, and the way the government implements them, are also important. These aspects, though significant, are often imprecise or contradictory.[22]

2.2.1 International Law

This is a body of rules and regulations that control how sovereign governments interact and behave with one another, with individuals, as well as international organizations . Many jurists have voiced concerns about whether international law is indeed a law. One perspective holds that international law is only a morally binding code of conduct.[23] On the other hand, the opposing view points out that it is genuine law and should be treated just as domestic laws that applies to specific people[24].

John Austin, a well-known jurist, claims that it is only a sovereign's order that is followed by sanctions in the event that it is broken.[25] To put it another way, what he's simply implying is that laws should only be defined as standards of behaviour that are established by a specific legislative body and upheld by physical force. This definition contains two important elements. The first is law as a command enacted by the sovereign legislative authority. Therefore, any rule which is not enacted by a sovereign or superior cannot be regarded as law. Secondly, he is

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[21] Peter Malanczuk, Akehurst's Modern Introduction to International Law (7th rev edn, Routledge 1997) 65

[22] ibid

[23] HLA Hart, The Concept of Law (3rd edn, Oxford University Press 2012) 207-213.

[24] ibid 157

[25] John Austin, The Province of Jurisprudence Determined (1832) 3.

implying that it must be enforced by the sovereign authority and in cases where laws are violated, there should be sanctions behind it.[26]

Another jurist, Oppenheim, is of the view that it is only a set of guidelines for behaviour inside a community. [27] This definition identifies three prerequisites that must be met for a law to exist. First, a community is needed. Then, there needs to be a body of human conduct inside that activity. Thirdly, for these regulations to be implemented by law making power, the community in question must agree as a whole or have an established law-administering court.

Trade, environmental protection, human rights, diplomacy, and war crimes are among the topics covered by international law. These matters are under the authority of many global organisations including the WTO and the UN. In general, international law seeks to advance international peace and order. Unlike national, international law doesn't have a global police force or a single court to enforce it everywhere. It depends on different countries coming together and entering into a mutual agreement to follow the rules which would have been laid down.[28]

The sources of international law are listed in art. 38 of the ICJ. They include treaties which are formally concluded and ratified agreements between states, customs that nations have accepted over time, and legal principles that most countries recognize.[29] The UN Charter is an instrument that defines global norms. However, it does not directly enforce those laws in the same way that a sovereign state may do domestically.

2.2.2 International Law Attitude towards National Law

International laws do not completely disregard domestic regulations. International courts might look at a country's laws to understand statutes and general principles of law. They also assign specific issues to be resolved by national laws. For example, to establish if a person is a citizen of Zimbabwe or the UK, global statutes generally examine Zimbabwe's or the UK's regulations, assuming these country's regulations are not entirely irrational.[30]

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[26] ibid

[27] Robert Jennings and Arthur Watts (eds), Oppenheim's International Law (9th edn, London 1992) 3.

[28] Peter Malanczuk, Akehurst's Modern Introduction to International Law (7th rev edn, Routledge 1997) 2.

[29] Statute of the International Court of Justice, art 38

[30] Peter Malanczuk, Akehurst's Modern Introduction to International Law (7th rev edn, Routledge 1997) 64.

The universal principle of global statutes is that a nation cannot use a principle in its domestic laws as an excuse of neglecting its obligations. The Free Zones ruling is an example of this where, it was ruled that France cannot rely on its domestic legislation to constrain the extent of its global commitments. This often happens when a treaty requires nations to adopt a specific rule within their domestic laws.[31] Art. 27 of the VCLA also supports this principle.[32]

All that international law mandates, is for nations not to cite their inner legislation and protocols as a defence for not complying with their duties. They must carry out their international responsibilities with sincerity. However, they are free to decide how to carry out these duties within their own legal systems. This is where the theories of monism and dualism come into play. Likewise, they can adjust their internal laws to align with their international commitments.

2.3 Dualism and Monism

These two ideas were first created as opposite views about how international and national law relate to each other. They are still used as basic starting points to look at their connection. Many recent decisions made by national courts have led scholars reviving monism and dualism as possible ways to understand how domestic courts deal with international law. These two ideas offer a simple way to describe how people and systems within national laws view international law.[33] However, while these theories were widely debated in the early 20th century, many scholars now see them as not very helpful because they don't fully explain how international law actually works in practise. A modern example is the scholar Denza, who sees these theories as limited and instead focuses on specific questions about the connection between international and national law.[34]

2.3.1Monism

Monism is a theory in international law which considers both international and national law as one unified body. First off, as far as this is concerned, law is seen as one body, with

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[31] ibid

[32] Vienna Convention on the Law of Treaties 1969, art 27.

[33] Peace and Justice Initiative 'Dualist and Monist Systems' https://www.peaceandjusticeinitiative.org/implementation-resources/dualist-and-monist accessed 17 December 2024

[34] Denza, Eileen, The Relationship between International and National Law (OUP 2016) 45.

international law at the top of the hierarchy. It is considered superior because domestic law often limits people's freedom and suppresses their opinions. In contrast, international law is reliable and its main objective is to protect their rights and enhance them. According to this theory, global norms may be applied without mediation by national law.[35]

They both regulate the same area of activity and their main focus is the same subject matter. Furthermore, if there is a clash between the two, international law takes precedence over national law. For instance, if globally accepted norms are against degrading treatment under any circumstances, the theory expects states to hold this despite any existing national law allowing this. According to Monism, international law can be applied directly into national law. An international treaty directly influences and operates within a country's legal system, once signed.[36]

Hans Carlson was one of the main supporters of this theory. He invented the concept of Grundnorm, a basic rule which he believed was the foundation for all legal systems. However, some scholars criticize this approach because they feel like it's too simplistic and treats the relationship between international and national law as just a simple thing which is not complicated. In reality, people from different countries have different social, economic, cultural backgrounds, and this approach seems to assume that everyone has the same culture. In this scenario, law feels like it's forced on people, not given as a choice to choose what they want or what they don't want, based on their different beliefs as different nations.[37]

2.3.2Dualism

This approach is based upon views that international and domestic norms do not work in the same area because each has its own jurisdiction and purpose. From this view, international law manages relationships between countries, while national law handles internal issues within a country. State actions might be illegal under international law, but still be considered legal requiring domestic courts to support them provided there are provisions in domestic law allowing it.[38]

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[35] Peter Malanczuk, Akehurst's Modern Introduction to International Law (7th rev edn, Routledge 1997) 63.

[36] Ibid.

[37] Martin Dixon, Textbook on International Law (7th edn, OUP 2013) 90.

[38] Ibid 91.

This theory believes there are two separate law systems handling the same problems allowing a country to act without trouble nationally, even if it clearly breaks global norms. For instance , in Jones v. Minister of Interior for the Kingdom of Saudi Arabia, courts allowed the country to avoid punishment for claims of torture, though it is against international law.[39] This shows that if a dualist country subjects suspected arsonists to torture, it might be breaking global norms, but national courts might not deal with such cases because they see these as problems for international courts. This shows the main idea that two separate law systems can exist together, handling the same rights and duties.

The practical effect of dualism is the ability of a country to act wholly within the domestic jurisdiction and in compliance with domestic law, even where such actions would amount to a violation of international law. However, this does not mean the country in question will not be held accountable on the international level for such actions, as they may involve international prosecution. This means that international law is subordinated to domestic law, and vice versa.The rights and obligations enshrined in one system are not transferable to another system per se.[40]

This legal theory accepts the fact that the two systems deal with the same subject matters, but they do so in different ways and may lead to conflicts, respecting the independence of each system unless the other system adopts or changes its rules. This implies that international laws have to be enacted or rather domesticated into the laws of a country in order to be applicable within the country. The effectiveness of international law depends on and is influenced by the rules provided by the legal system of a country. Some of the key issues that arise in this area concern the status of treaties, customs, and general principles of international law in domestic legal systems.[41]

International treaties have to be ratified and transformed into domestic law to be applicable in dualist systems. In dualist systems like the UK, this ‘integration’ process is also called ‘adoption.’ Likewise, in Zimbabwe, there are constitutional provisions, particularly Section 27, which provide for the transformation of international law into domestic law.[42] States are given

[39] Jones v Minister of Interior for the Kingdom of Saudi Arabia [2006] UKHL 26, [2007] 1 AC 270.

[40] Chandra A Kauraeche, 'India and International Law: Formal Dualism, Functional Monism' (2017) 57.

[41] Ibid.

[42] Constitution of Zimbabwe 2013, s 27.

the prerogative of determining how they want to domesticate their international legal obligations and give them the desired legal status.

However, the significance of these theories is debatable, because how countries apply international law differs, and they do not strictly adhere to either theory in its original form. The debate between the two perspectives, while still relevant, overlooks the fact that depicting the relationship between national and international law as a conflict fails to consider the complexity of applying these concepts.[43]

It also exaggerates the distinctions between them. A nation cannot use flaws in its domestic law as a reason to avoid fulfilling its international law responsibilities. This is significant when an agreement mandates a country to apply a specific rule in its national law.[44] Furthermore, the primary aim of art. 27 of the VCLT is to stress that global agreements should be followed sincerely. It eliminates justifications for non-compliance based on unusual legal circumstances within a nation.[45]

This is because treaties are often meant to alter national legal situations. As a result, Article 27 strengthens a key rule in the law of state accountability. While international law is based on the consent of nations, it becomes binding once a state agrees to it through treaties or conventions, and its enforcement often relies on international bodies or cooperation between countries.[46]

2.4 Theories Governing the reception of Interntaional law

The ideas of transformation, incorporation, and harmonization explain how international law fits into domestic law. Incorporation and harmonization suggest that international law can become part of national law without the need for special action from lawmakers. Transformation treats the two as separate systems. In other words, under incorporation and harmonization, international rules become part of the country's legal framework simply because they are international rules. These rules apply within the country unless there is a

[43] Martin Dixon, Textbook on International Law (7th edn, Oxford University Press 2020) 65.

[44] Felix Lange, Helmut Philipp Aust and Heike Krieger (eds), Research Handbook on International Law and Domestic Legal Systems (2024) 123.

[45] Vienna Convention on the Law of Treaties 1969, art 27.

[46] ibid

specific law that contradicts them. Therefore, if there is a relevant international rule, it can be applied by judges without additional steps unless domestic law requires otherwise. The monist approach is closely associated with incorporation or harmonisation, while the dualist approach aligns closely with transformation.[47]

Zimbabwe follows the incorporation or harmonisation. Section 326(1) of their Constitution states that unwritten international law is part of Zimbabwe's law unless it goes against national laws. However Section 327 gives guidelines on the steps of transforming a treaty. So that means they also follow the transfrmation when it comes to treaties.[48] The United Kingdom mostly follows the idea that international law and local law are different systems. It says that international rules only become part of its laws if lawmakers take clear steps to include them which is the transformation method. Even though unwritten international law is accepted as part of UK laws, written international agreements, like treaties need to be officially incorporated.[49]

Transformation says that international rules do not automatically become binding. The country in question has to opt to adopt them, usually by enacting a new law. For example, if a country follows this approach, it could continue practices like not allowing workers' rights protections. This would go on despite international conventions that mandate such protections, until it chooses to officially incorporate those rules. If the country has not included the international rule through new legislation or similar actions, the courts will still follow the country's domestic laws, regardless of what the international rules state.The main difference between the three is that incorporation and harmonisation assume international law is part of the country's law by itself, while transformation says the country has to do something to include it.[50]

2.5 LEGAL POSITIVISM AND NATURAL LAW

Legal positivism is a legal philosophy that regards the law as a system of commands made by human beings such as the governments and having no connections with the morality. According to legal positivism, a law is valid if it is properly enacted by recognized authorities,

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[47] Alarn W Moyo 'The Interface between International and National Human Rights Law under the Zimbabwean Constitution' in University of Zimbabwe Law Journal (2022) 91

[48]Constitution of Zimbabwe, s 326(1); s 327.

[49] ibid

[50] ibid

regardless of whether it is just or ethical. This means that the authority of law comes from the fact that it is issued by a legitimate body, rather than from any inherent moral values. [51]

This perspective is especially applicable since it is important to analyze the perspective of countries like the UK and Zimbabwe with respect to the international legal order. Legal positivism is biased towards the dualist approach on international law, as it is in favor of a conservative disposition towards the international legal system. This perfectly fits well because the dualist approach suggests that international law and national law are separate, and one cannot directly affect the other without specific actions being taken. A good example which illustrates this is the enactment of the HRA 1998 in UK.[52]

On the other hand even though Zimbabwe also uses the same theoretical approach, they have a different perspective that exposes some of the challenges of sticking closely to this positivist viewpoint. Even if Zimbabwe signs an international agreement, that doesn't mean the agreement has any direct legal effect inside the country unless the government takes clear steps to transform it. There seems to be significant differences between what they internationally agree to do and the situation at hand. Despite the fact that Zimbabwe has signed several international agreements promising to protect human rights, these aren't automatically a part of the country's domestic law hence citizens often have no legal basis to claim these rights in Zimbabwean courts. It's like having a rulebook, but not actually playing by the rules unless you write them down yourself. This makes it difficult for people to seek justice when those international standards aren't being respected, even if Zimbabwe has promised to follow them on the an international stage.[53]

This gap draws attention to one of the central weaknesses of legal positivism which is its excessive focus on sequential and rigid methodologies resulting in the neglect of the central core of international law that is respect for the essential dignity of human beings. It's the stereotypical situation of "the law as written and the law as intended". Concentration on such

[51] Joseph Raz, The Authority of Law, Essays on Law and Morality (Clarendon Press 1979) 35-40.

[52] Lee, H.E. and Lee, S. Positivism in International Law: State Sovereignty, Self-Determination, and Alternative Perspectives (2019) 25

[53] Moyo, A. 'Standing, Access to Justice and the Rule of Law in Zimbabwe' (2020) African Human Rights Law Journal 20(1) 45-67 https://www.ahrlj.up.ac.za/moyo-a accessed 17 December 2024.

rules can, in some cases, make it more difficult to achieve the real purpose of international treaties, particularly those that relate to the respect for individuals' fundamental freedoms.[54]

This is where the natural law theory comes in differently. Natural law is that philosophy which holds that there are some moral rules that are inherent because man is human. So the principles that are given by the natural law theory are discoverable through human reasoning and they are directive principles of right and wrong. However, natural law posits that real laws should always be grounded on what is right or just in moral senses. Still, these laws would make a claim that this is not law, even if from the point of legal positivism it properly fits into the definition of law, if a state enacts a law that is unjust or contrary to those basic tenets[55].

The conflict between these two positions becomes apparent thematically when looking at the case of Zimbabwean human rights problems. Dualism, or Positivism requires a practical legal incorporation of such scopes of international law into domestic law through legislative measures whereas natural law demands that the essential elements of human dignity should be adhered to irrespective of the civil procedure laws of that country.[56] This is where international human rights organizations often criticize Zimbabwe, stating that whereas the country has obligations to respect, protect and fulfill rights, it has no capacity and will to do so as its legal system is very poor.

This critique concerns itself with the difference between promises made in the country and the present situation. In more immediate terms, the reverse is the experience of the UK showing one way of how a nation's legal system can effectively incorporate internationally accepted practices for the direct use of its people minimizing the gap for legal protection of citizens. This one does not dislodge legal positivism in terms of ideology and practice but at the same time assists in the nurturing of a society that talk and defends rights. The UK has filled the gap between international and national norms by embedding international human rights norms into domestic law in order to make it easy for citizens.[57]

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[54] Alessandra Gianelli (ed), Discourses on Methods in International Law: An Anthology (Gaetano Morelli Lectures Series Vol 3, 2020) 41.

[55] Finnis, J. Natural Law and Natural Rights (2nd edn, OUP 2011)18-23

[56] Patrick Corcoran, 'Due Diligence and the Limitations of a Positivist Conception of General Principles of Law' (22 February 2021) https://nyujilp.org/due-diligence-and-the-limitations-of-a-positivist-conception-of-general-principles-of-law/ accessed 26 January 2025.

[57] Kristen Walker, 'legal positivm in law' (2002) 17 international law. LJ 583.

In the end, the relationship between international and national law in both the UK and Zimbabwe shows how these big ideas about law play out in real life. The UK's structured process for adopting international standards highlights the benefits of a careful, methodical approach to legal change. Meanwhile, Zimbabwe's struggles remind us that formal legal processes alone aren't always enough when it comes to making sure that people's rights are protected. It shows that how a country deals with international law isn't just a matter of following the rules but it's also about understanding the bigger picture of justice and rights that those rules are supposed to represent. By looking at both countries, we get a fuller picture of how the balance between international and national law can shape the way people experience their rights.[58]

[58] Alarn W Moyo, 'The Interface between International and National Human Rights Law under the Zimbabwean Constitution' in University of Zimbabwe Law Journal (2022) https://zimlii.org/akn/zw/doc/book-chapter/2022-06-30/chapter-4-the-interface-between-international-and-national-human-rights-law-under-the-zimbabwean-constitution/eng%402022-06-30/source.pdf accessed 17 December 2024.

CHAPTER 3

Historical frameworks and judicial interpretation

3.1.1Cultural and Historical Context in the UK

The UK's legal system and how it deals with international law is shaped by its history as a global empire and its unique traditions. Unlike Zimbabwe, which inherited its legal system through colonization, the UK was actually one of the countries that helped create many international legal frameworks we use today. This history of having colonial power and being a pioneer in legal principles still influences its cautious approach to international norms.

The UK's legal foundation is built on common law, which developed over centuries based on judicial decisions. This system is flexible because it evolves through case law rather than fixed codes, allowing it to adapt to changing times. Key events, such as the Glorious Revolution of 1688 and the Bill of Rights in 1689, were instrumental in forming the foundations of British constitutional law[59]. These events established the idea that Parliament's laws were supreme over the Crown. This belief still guides the UK's treatment of international law today, especially when it comes to issues of sovereignty. As a colonial power, Britain used its legal system to control its colonies, often benefiting settlers and marginalizing the rights of native populations[60]

After World War II, the UK's relationship with international law shifted, particularly as it moved away from empire. As a founding member of the UN, it helped draft key treaties like the UDHR. The country was left in a tight spot after reconciling its colonial past because of the responsibilities or obligations that it was supposed to fulfill with new international human rights standards. A good example of this tension was seen in the 1965 UDI by the white-minority government in Zimbabwe[61]. They faced a lot of criticism because of the racial discrimination that had not ended during that time. After World War II ended many European

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[59]Blackstone W, Commentaries on the Laws of England, Book 1 (1765) 89.

[60] Benton L and Ford L, Rage for Order, The British Empire and the Origins of International Law, 1800–1850 (Harvard University Press 2016) 98.

[61] Lee J M, Colonial Development and Good Government, A Study of the History of British Colonial Policy (Clarendon Press 1967) 112.

countries wanted to work together more closely to prevent another war but the UK was more focused on maintaining its independence. This is why, even after joining the EU in 1973, it stayed out of certain things like the Schengen Area due to the country's cautious approaches toward international relations.[62]

The HRA 1998 has had a profound influence on governance in the UK since its implementation in October 2000. By incorporating the ECHR into British law, it has required courts to consider human rights issues that were previously outside their purview. Since October 2000, when the Act came into force, British courts have been required to consider questions that would never previously have been put before their courts. However, this brought about issues because it clashed with the key part of the British law which is parliamentary sovereignty. Some people felt that letting British courts use the ECHR undermines this idea because it gives outside principles more influence over UK laws. This was one of the reasons why the UK had to reach the decion of leaving the EU. This also raised some debates about whether following European rules is in UKs interest.

3.1.2 Cultural and Historical Context in Zimbabwe

The legal system of Zimbabwe and its relationship with international law is a result of its history of colonialism and the challenge of achieving independence. Prior to British colonization, the country's legal system had been built around customary law, reflecting the traditions and norms of the indigenous people, especially the Shona and Ndebele. It dealt with matters such as marriage, inheritance, and dispute resolution. Its main purpose was simply focused on having a community that is harmonized and also restorative justice. This system, however, was gradually eroded during the colonial period as British authorities introduced Roman Dutch common law infused with elements of English statutory law.[63]

Zimbabwe which was during that time called Southern Rhodesia, officially became a British colony in 1923.This marked the beginning of the formal dual legal system. Roman-Dutch law governed statutory and commercial matters, while customary law had to take a back seat with

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[62]Moran M, Politics and Governance in the UK (2nd edn, Palgrave Macmillan 2015) 223–225..

[63] Saki O and Chiware T, 'The Law in Zimbabwe' (GlobaLex, NYU Law Global) https://www.nyulawglobal.org/globalex/zimbabwe.html accessed 8 January 2025.

respect to issues deemed tribal or personal. This dual system institutionalized racial segregation and economic disparity through laws passed by the colonial government to embed white minority privileges. Land ownership laws were even harsher with the most fertile lands reserved for white settlers by the Land Apportionment Act (1930) while the indigenous majority was forced to remain in overpopulated reserves. The marginalization of indigenous people made socio-economic inequalities worse and reduced the importance of customary law, leading to even more dissatisfaction among the local communities.[64]

In 1965, Ian Smith's white minority government declared their independence from Britain so that they can maintain their white supremacy. They were victorious and they got the UDI. It deepened inequalities and defied international pressure to democratize and uphold human rights. During this time, the government ignored sanctions and criticism from the United Nations, which left many Zimbabweans feeling that international legal institutions were ineffective in supporting their liberation. Discriminatory laws were strengthened, further excluding the majority population from political and legal systems.[65]

Zimbabwe's shifting point in its legal history came with independence in 1980, when the new government started dealing with past colonial injustices. The Lancaster House Agreement formed the foundation of the independence process. It included a constitution appended with many elements from the colonial legal system[66]. One of these elements was the retention of the dualist approach to international law. The principles of equality and non-discrimination were enshrined in this constitution, but people were still asking questions and disagreeing on land provisions reforms. The agreement provided for land redistribution to be under the principle of "willing buyer, willing seller," which curtailed the government's ability to address historical injustices concerning land.

In the early years after freedom the government began working towards a reformation of the legal system which included attempts at harmonizing statutory and customary law. This didn't

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[64] Rhodesia: A British Colony and its Contentious Legacy (Global Database, 6 January 2025) https://globaldatabase.ecpat.org/files/textbooks/Citations/F2K3/HomePages/rhodesia-british-colony.pdf accessed 8 January 2025.

[65] ibid

[66] Joshua C Goredema, 'The Lancaster House Constitution: Its Legacy in Zimbabwe' (1985) 15 African Human Rights Law Journal 145.

help in anyway because challenges caused by the colonial legacy continued. Customary law remained influential in rural areas where traditional leaders played a key role by handling matters at that level. For instance, at that time inheritance was limited to male children, that is, it only goes to male heirs. However this conflicted with international conventions, such as the CEDAW which advocate for gender equality[67].

The Fast-Track Land Reform Program (FTLRP) founded in the early 2000s left behind evidently unwinding tensions between domestic priorities and international obligations. Tired of going through slow motions in the process of land redistribution under the Lancaster House agreement, the government, therefore implemented the FTLRP. Their main goal was take land from white commercial farmers to indigenous Zimbabweans. Although this was framed as a corrective measure for the colonial injustices, the imputations on compulsory acquisition drew criticism for breach of property rights and international law. The USA and international governments argued that the non-compensation of displaced farmers contravened Zimbabwean obligations under treaties such as the International Covenant on Civil and Political Rights (ICCPR). The government, nevertheless, defended the programme as an assertion of sovereignty and as a necessary advance towards decolonization.[68]

Zimbabwe's 2013 Constitution came with changes towards having a harmonized legal system that meets with international standards. It acts as a road map that guides the government on how to apply international law. While this is a positive thing on the country, the country still faces challenges in aligning the two legal systems due to the cultural and historical factors.

3.2 Judicial Interpretation and Application

3.2.1 The Process of Treaty Ratification and Incorporation into UK Law

In the UK, turning an international treaty into something that has legal power within the country is a bit of a process. This reflects the country's dualist legal system. The starting point is that states enter into agreements. The UK Government holds the authority to negotiate, sign, ratify, amend, and withdraw from any international agreements involving the UK. This is carried out

[67] Charles G Goredema, 'CEDAW and Customary Law in Zimbabwe' (2001) 23 Zimbabwe Journal of Human Rights 123

[68] Bradford F Raftopoulos and Trevor Savage, Zimbabwe: Injustice and Political Reconciliation (Weaver Press 2004) 88.

under the government's executive powers. It is also responsible for supplying details about agreements to the Parliament. Treaties don't transform into UK law automatically once signed but instead they are laid before Parliament within the CRGA 2010. Parliament has 21 sitting days to scrutinize and question the treaty while contending possible objections. In those 21 days period, they can look at the treaty, ask questions, and even raise objections. However, MPs and Lords don't get the power to change or block the treaty outright so therefore if no one objects, the government can go ahead and ratify it.[69]

Here is where the dualism of the UK comes in. Just because a treaty is ratified does not mean it can be enforced in the country. New law needs to be passed by Parliament for that to happen. A bill to incorporate the treaty into domestic law is then prepared by the government. This bill has to pass through the usual steps which are debates, possible amendments, and finally, approval. Once passed and becomes an Act of Parliament, then the provisions of the treaty can actually be used in UK courts.[70]

However, this process is limited.One major issues is that Parliament's role is limited when the treaties are being scrutinized. The actual shaping of the treaty does not involve much input from MPs and Lords. The only thing that they can actually do is to only flag concerns or raise objections. A lot of power then is left in the hands of the government, allowing it to push the treaty forward without meaningful debate in Parliament.[71]

Additionally, the time given to the Parliament for scrutnizing treaties is too short in the context of a standard committee investigation. The Act has a narrow reach, it only covers a specific category of treaties. Many international arrangements, such as Memorandums of Understanding, are excluded. These arrangements are not required to be listed or published.[72]

Another problem comes from how treaties work with UK sovereignty. While they protect Parliament's power, they can also slow down the process of making UK law match up with

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[69] House of Commons Library, How Parliament Treat Treaties (Research Briefing CBP-9247, 2020) https://commonslibrary.parliament.uk/research-briefings/cbp-9247/ accessed 2 January 2025.

[70] ibid

[71] ibid

[72] ibid

international agreements. This was clear after Brexit. Before leaving the EU, many EU laws worked directly in the UK, without needing extra laws to put them into practice.[73]

3.2.2Custom and general principles

In the UK, the application of customary international law and general principles of law follows the "doctrine of incorporation". This is a traditional rule which states that these two do not require specific legislative enactment. This was given statutory effect in Barbuit's Case, where it was stated that "the law of nations in its fullest extent is and forms part of the law of England."[74]

Over the years, however, attention has turned towards the doctrine of transformation, being maintained in several judicial decisions. This perspective holds that international law only becomes part of UK law if it is explicitly incorporated through legislation or judicial decisions. Practically, while the United Kingdom has long theoretically supported the incorporation doctrine, its practice is more in line with the transformation approach since most international rules would require domestic approval in order to be applicable.[75]

There are notable exceptions to these principles. For instance, if customary international law conflicts with an Act of Parliament, the Act takes priority. However, courts will often attempt to interpret Acts of Parliament in a way that avoids any clash with customary international law.Additionally, if customary international law contradicts a binding judicial precedent, the precedent will prevail. [76]

3.2.3 The UK’s Dualist Approach and Parliamentary Sovereignty

The interpretation and utilization of international regulations within the context of UK law is largely dependent on its acceptance of the dualist system. International law is not automatically part and parcel of the Domestic Legal order without the involvement of legislation by

[73] House of Commons, Parliamentary Scrutiny of International Agreements in the 21st Century (2020) https://publications.parliament.uk/pa/cm5804/cmselect/cmpubadm/204/report.html accessed 2 January 2025.

[74] Akehurst, Akehurst's Modern Introduction to International Law (7th edn, Routledge 2013) 69.

[75] ibid

[76] Ibid 70

Parliament or court recognition. This expression, which is in fact known as constitutional orthodoxy, focuses on Parliamentary sovereignty.[77]

In the case of R(SG) v Secretary of State for Work and Pensions [2015], it was argued that international human rights obligations, like those under the CEDAW, should bind the UK's executive. Lord Kerr's opinion was that upon signing those treaties, the government ought to legalize their implementation inside the country in the first place. He suggested that international treaties aimed at protecting individuals from state interference should be directly enforceable in domestic law, even if they were not incorporated through legislation.[78]

This was however not the position of the majority in the Supreme Court. They explained that an international treaty is not self-executing in UK jurisdictions. Firstly Parliament must legislate to give the treaty effect. This approach is consonant with the constitutional principle of parliamentary sovereignty, addressing Parliament and not the courts as the final arbiter on the way international obligations affect domestic law. Lord Kerr's view, while noteworthy, was dismissed as being against the constitutional framework. The case highlights how UK courts generally separate international law from domestic enforcement unless Parliament explicitly includes it.[79]

The case of Miller v Secretary of State for Exiting the European Union further demonstrated this doctrine[80]. The issue was whether or not government can start the Brexit process without going through parliament. After the UK voted to exit EU in the 2016 referendum, the government planned to trigger Article 50 of the EU's rules using its royal powers. However, Gina Miller and others argued that this would change UK law and citizens' rights, so it should be up to Parliament as well. The High Court and the Supreme Court confirmed this decision, ruling that Parliament had to approve the decision. After this, Parliament passed a law (the European Union (Notification of Withdrawal) Act 2017), and the government was able to officially start the Brexit process on March 29, 2017.[81]

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[77] Roger Masterman, 'Reasserting/Reappraising Dualism' (UK Constitutional Law Blog, 7 December 2021)

[78] Lord Mance, 'International Law in the UK Supreme Court' (King's College, London, 13 February 2017) https://supremecourt.uk/uploads/speech_170213_1d3b2802ba.pdf accessed 2 January 2025.

[79] ibid

[80] R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5.

[81] ibid

The Court acknowledged that, "at the international level the general rule is that the authority to create or terminate treaties is exercisable without legislative authority and that the exercise of that power is not reviewable by the courts".[82] However, they explained that this idea is predicated on the dualist theory, which holds that domestic and international law function in separate domains. Two related principles are necessary for the prerogative power to create treaties. Firstly, international law governs treaties between sovereign states, which are not subject to domestic laws. Secondly treaties are not a component of UK law and do not make any legal rights or responsibilities under domestic law, even if they are binding on the UK under international law.[83]

3.2.4 Judicial Engagement with International Law

One of the many important features of the UK's legal system is that even if it is not incorporated automatically into the UK law, international law will influence the manner in which decisions are made within the courts. Lord Mance, for example, pointed out that the Supreme Court often tries to make sure domestic law lines up with international law whenever possible. Dualism doesn't mean that cases that deal with international law issues cant be presented before UK courts. In fact, in previous couple of decades, courts have been dealing with international law more and more. Part of this is because of the ECHR, which became part of UK law in 2000. The growing number of international law treaties in areas such as environmental law, human rights, and other parts has made this approach even more relevant.[84]

Lord Dyson illustrated the principle of aligning domestic laws with international standards in the case of Assange v The Swedish Prosecution Authority [2012].[85]This case was about the founder of WikiLeaks, Julian Assange who was charged with sexual offenses in Sweden. In order to escape being extradited to Sweden, he sought asylum in the Ecuadorian Embassy in London. In 2014, he complained to the UN Working Group on Arbitrary Detention which ruled that his confinement in the Embassy constituted a deprivation of liberty and they ruled in his favour.[86]

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[82] ibid

[83] Lord Mance, 'International Law in the UK Supreme Court' (King's College, London, 13 February 2017) https://supremecourt.uk/uploads/speech_170213_1d3b2802ba.pdf accessed 2 January 2025.

[84] ibid

[85] Assange v Swedish Prosecution Authority [2012] UKSC 22.

[86] Assange v Swedish Prosecution Authority [2011] EWHC 2849 (Admin)

He insisted that if he was to be extradited to Sweden, he would be punished for his crimes and sent to the United States. However, UK courts ruled that the accusations made against him were extraditable offenses and they upheld the warrant issued by Sweden's Prosecution Authority. They found that he failed to demonstrate a genuine risk of inhumane treatment in Sweden which would breach Article 3 of the ECHR. The courts gave a conclusion that he is the one who imposed himself to whatever deprivation of liberty he was facing. This case shows that UK courts believe domestic law should follow international human rights standards. Even though Assange argued that his rights under international law were at risk, the courts stuck to their approach of following UK legal processes, while still considering international rules[87].

When it comes to how international law influences decisions made by the executive or courts, the answer isn't straightforward. There are three main points to consider. Firstly, domestic decision-makers are not obliged to consider international obligations when making decisions. This was made clear in cases like Ex p Brind v SoS [1991] 1 AC 696 and R (Hurst) v Commissioner of Police [2007] UKHL 13. Judges suggested that the situation might be different when it comes to fundamental human rights obligations, but this idea has not been widely accepted. Secondly, domestic policy-makers are allowed to consider international obligations, and they have done so more often in recent years. In 2015, the Ministerial Code was changed. The old version said ministers had a duty to follow international law and uphold justice. The new version only says they must follow the law and protect public life. An attempt judicially to review this change was rejected by the High Court, but the Court of Appeal gave permission to renew the challenge before it. Lastly, if a policy-maker chooses to consider an international obligation, they must be careful to identify it correctly. If they don't, their decision might be successfully challenged. This has been happening more frequently as more cases come up.[88]

3.2.5 Judicial Limits and Non-Justiciability in International Matters

While the UK judiciary appears to be more aware and pays more attention to international law lately, it has not shaken off the non-justiciability doctrine, especially in cases involving politics, foreign policy, and security. Non-justiciability is essentially a principle that seeks to limit the

[87] ibid

[88] Lord Mance , 'International Law in the UK Supreme Court' (King's College, London, 13 February 2017) https://supremecourt.uk/uploads/speech_170213_1d3b2802ba.pdf accessed 2 January 2025..

scope of judicial activism and in particular, assigns some functions to the state or Parliament and not the courts. If a case is "non-justiciable," then the court cannot hear it. It usually arises either when a court does not have power to hear the case under the Constitution or it is imprudent to exercise judicial power. The court should not give just advice, the person bringing the case must have a valid reason to sue, the parties involved must be real and not pretending, and the issue must be ready for the court to decide. Also, the case shouldn't be irrelevant or related to political matters that the courts can't handle. Typically, these issues are all up to the discretion of the court which is adjudicating the issue.[89]

A case which serves as an example of this is the case of Rahmatullah v Ministry of Defence [2017] . A Pakistani national, was captured by British forces in Iraq and subsequently transferred to US custody. He was detained at Bagram Airbase in Afghanistan for over ten years without charge. The claimant alleged that he was subjected to severe mistreatment during his detention. He sought to bring claims against the UK government for its role in his detention and treatment. The UK Supreme Court decided not to address the case, stating it was a matter for the government to handle.They refused to address the issue claiming that it is not the business of the court to deal with matters, which are inherently military and diplomatic, and that it is the duty of the executive to handle them.[90]

In Noor Khan v Secretary of State for Foreign and Commonwealth Affairs [2014], Noor Khan challenged the decision of the UK government in a US drone strike that targeted his father in Pakistan and killed him. He claimed that the UK was in some way involved in the intelligence aspect of the matter as well as providing support for the strike and that this violated his father's right to life. However, the Court of Appeal dismissed his case.They held that the UK courts were not competent to inquire into the actions of foreign states and particularly where issues of national security or military operations were concerned.They also noted that foreign states are immune from suits in other states under the act of state doctrine and state immunity.[91] Therefore, the court held that the case could not be investigated because it was deemed to involve issues of national security and foreign policy.[92]

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[89] ibid

[90] Rahmatullah (No 2) v Ministry of Defence [2017] UKSC 1.

[91] Peter Malanczuk, A Modern Introduction to International Law (7th edn, Routledge 1997) 122.

[92] Noor Khan v Secretary of State for Foreign and Commonwealth Affairs [2014] EWCA Civ 24.

In the Belhaj v Straw case, Abdel Hakim Belhaj, a Libyan opposition figure, and his wife sued the UK government. They brought a claim for declarations of illegality and damages about their alleged unlawful rendition to Libya in 2004. The Respondents to the claims were several British government officials and agencies. The appellants claimed they were detained and mistreated in China, Malaysia, Thailand, Libya, and aboard a US-registered aircraft, allegedly by agents of those states. Specifically, Mr. Belhaj claimed that British intelligence agents visited him while he was detained in Libya. Additionally, they argued that the respondents were involved in negotiating, arranging, facilitating, aiding, and abetting their unlawful rendition to Libya. All of these events were said to have occurred outside the United Kingdom.[93]

At first, the High Court ruled that the doctrine of state immunity did not prevent the appellants' claims. However, it found that the claims were non-justiciable because of the act of state doctrine. This was on the basis that the claims called into question the activities of foreign states without reference to any judicial or manageable standards by which such acts could be judged. This occurred in circumstances where there was evidence that such an inquiry would be damaging to national security interests.[94]

Both the Appellants and the Respondents appealed to the Court of Appeal. The Court of Appeal overruled the High Court's decision. They said that neither state immunity nor the act of state doctrine should stop the appellants from taking action against British officials. The act of state doctrine, didn't apply because the case involved serious human rights violations which shouldn't be protected by the doctrine. So, the case was allowed to continue. The Court of Appeal showed that things like state immunity and the act of state doctrine shouldn't protect human rights abuses, especially when British officials are involved. This was an outstanding case because it showed the separation of powers doctrine.[95]

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[93] Belhaj v Straw [2017] EWCA Civ 4.

[94] ibid

[95] Andrea Coomber, 'Supreme Court Ruling on Torture and Rendition Claims' (JUSTICE, 2024) https://justice.org.uk/supreme-court-torture-rendition-belhaj/ accessed 7 January 2025

3.3.Judicial Interpretation and Application in Zimbabwe

3.3.1Treaty Ratification and Incorporation into Zimbabwean Law

The procedures for the ratification and domestication of treaties in Zimbabwe are outlined in Section 327 of the Constitution and further elaborated in the International Treaties Bill. It all starts with the government negotiating and signing treaties. An international treaty which has been signed by or on behalf of the President does not bind Zimbabwe until it has been approved by Parliament. Members from both the House of Assembly and the Senate take a look at the treaty and discuss how it might impact Zimbabwean laws and policies. During this period, Parliament can point out any issues and also ask questions about the treaty.[96]

Once it has been approved, the government needs to send formal documents, called "instruments of ratification," to the other party involved in the treaty or to an organization like the UN if the treaty requires it. A formal declaration that the treaty is now legally obligatory on Zimbabwe is provided by the instruments of ratification. Even if a treaty has been approved by Parliament and has become binding in international law, it will not affect the country's internal or domestic law until it has been incorporated into the law by an Act of Parliament.[97]

In Zimbabwe after Parliament has approved a treaty the government has to introduce a bill in Parliament to give the treaty effect.This bill is then debated, scrutinized, and amended by Parliament.After being passed, it is signed by the President to become an act. It is only after this that the treaty can be said to have legal force in Zimbabwe and the provisions of the treaty can be enforced by the domestic courts.[98]

3.3.2Custom and general principles

Another way in which international law is applied in Zimbabwe is through customary international. Section 326(1) states that customary international law is part of the law of Zimbabwe unless contrary to the Constitution or a law enacted by Parliament.[99] Therefore,

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[96]Veritas, 'Bill-Watch 56/2019 - International Treaties Bill' (30 October 2019) https://www.veritaszim.net/node/3766 accessed 7 January 2025..

[97] ibid

[98] ibid

[99] Constitution of Zimbabwe (2013) s 326(1).

certain international rules, like the prohibition of torture or the right to a fair trial, would automatically find favor in Zimbabwe without requiring any statute giving such rights.[100] Moreso, for general principles of public international law to be enforceable they do not need to be codified into domestic law. These laws are binding on Zimbabwe as long as there is no domestic statute or constitutional provision that is opposing. In applying principles of customary international law, courts and other decision-making forums are required to make interpretations which are consistent with the Constitution or municipal legislation, but if this is not feasible, domestic law will always prevail.[101]

So, while the country is committed to following international law, national laws take precedence in an event where there is a conflict. This shows dualist nature that they follow. Therefore, while courts will usually try to follow international norms, they'll fall back on local law when needed to make sure the legal system works properly within the country's framework.[102]

3.3.3 Zimbabwe 's Dualist Approach and Parliamentary Sovereignty

Applying international law in the past has been difficult for Zimbabwe because there was confusion about the legal status and use of international norms under the 1979 Independence Constitution. However, this issue seems to have been mostly settled with the 2013 Constitution of Zimbabwe . It includes clear provisions about the role of international law in the country's legal system. The integration foundation is established within sections 46, 326, and 327 of the Constitution. These provisions give courts the mandate to interpret international law determining constitutional rights and obligations, thereby further committing Zimbabwe to the attainment of global standards. The interpretation and application of international law within Zimbabwe's legal framework are shaped by its dualist approach.[103]

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[100] Admark Moyo, ZimLII, 'The Interface between International and National Human Rights Law under the Zimbabwean Constitution' (30 June 2022) https://zimlii.org/akn/zw/doc/book-chapter/2022-06-30/chapter-4-the-interface-between-international-and-national-human-rights-law-under-the-zimbabwean-constitution/eng%402022-06-30/source.pdf accessed 7 January 2025, 109.

[101] Ibid 110.

[102] Ibid.

[103] ibid 99.

The case of Thomas Etheredge v The Minister of State for National Security Responsible for Lands, Land Reform and Resettlement and Another (2009)illustrates the operation of the dualist system within Zimbabwe. After the country got their freedom they started redistributing land to black farmers.This was their way of dealing with the injustices which were happening during the colonial period. The claimant challenged the government's decision of taking his farm. He contended that this was a violation of the African Charter on Human and Peoples Rights.[104]

The country had only signed the ACHPR but was not part of the law yet. However, the court ruled that while Zimbabwe is a party to this treaty, it does not become part of the law within Zimbabwe unless a parliamentary enactment incorporates it into domestic law. In the end he did not get his farm back. The ruling was based on Section 327 of the Constitution, which clearly establishes that an international agreement has legal force within Zimbabwe only when Parliament has adopted it.[105]

According to section 327 of the Constitution, Treaties may only be domesticated in Zimbabwe through ratification or approval by Parliament. However before transforming a treaty into domestic law, courts can still use statutes in a way that accords with Zimbabwe's obligations. Therefore, international agreements can inform the decisions of the courts and judicial reasoning without domestication. As a result, treaties can be made to affect the interpretation of laws and ensure that the legal order matches up with its international obligations even without domestication.[106]

3.3.4 The Role of International Law in Zimbabwe's Legal Framework and Judicial Decisions

In Zimbabwe, international law has increasingly influenced the legal system, despite the fact that they follow the dualist method. Section 46 of the constitution stipulates that rights should be interpreted and applied within the Bill of Rights framework .According to this section, courts are required to make sure that rights are fully achieved, promote democratic values,

[104] Etheredge v Minister of State for National Security Responsible for Lands, Land Reform and Resettlement and Another [2009]ZWHHC16(3February2009) https://zimlii.org/akn/zw/judgment/zwhhc/2009/16/eng@2009-02-03 accessed 16 December 2024.

[105] ibid

[106] Constitution of Zimbabwe (2013) s 327

consider international law, and prepare for the broader goals of the Constitution . This ensures national laws remains consistent with international law especially in cases that involve fundamental rights like equality, dignity, and the protection of life.[107]

In Makoni v Commissioner for Prisons and Another (2016), claimant argued that the sentance of life imprisonment without parole was inhuman.[108] He said that this was cruel because it deprived prisoners the chance to start a new life .[109]

In this case, the Constitutional Court of Zimbabwe was asked to interpret the meaning and scope of the constitutional protection against inhuman or degrading treatment. It used international human rights instruments such as the Mandela Rules, which refers to guidelines on treatment to prisoners for dignified and humane treatment. Though these rules are not laws, they are taken as persuasive authorities in most parts of international human rights law, especially in relation to prison conditions. Mandela Rules furthered court interpretation regarding the global consent on human dignity and humane treatment of prisoners. The court relied on them regarding principle issues, like giving opportunities for rehabilitation and reintegration of inmates into society. Those laws clearly state the right to parole and consider prisoners' dignity.[110]

Absence of parole option for prisoners could indirectly amount to violating those provisions. By referencing these international guidelines, the court was able to broaden its interpretation of constitutional protections, ensuring that they aligned more closely with universally accepted human rights standards. The court's decision in this case reflected its proactive engagement with international human rights norms to strengthen its interpretation of domestic law.[111]

An important feature of section 46 is the interdependence and indivisibility principle of rights. This idea says that basic rights should not be seen as separate, but as connected, because fully

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[107] İbid s 46

[108] Makoni v Commissioner for Prisons and Another [2016] ZWCC 8 (13 July 2016).

[109] Admark Moyo, ZimLII, 'The Interface between International and National Human Rights Law under the Zimbabwean Constitution' (30 June 2022) https://zimlii.org/akn/zw/doc/book-chapter/2022-06-30/chapter-4-the-interface-between-international-and-national-human-rights-law-under-the-zimbabwean-constitution/eng%402022-06-30/source.pdf accessed 16 December 2024, 105-106.

[110] ibid

[111] ibid

protecting one often requires making sure other related rights are also protected at the same time. It also ensures that rights are not regarded as an exhaustive list but as interdependent elements that work together to guarantee human dignity and freedom. A typical example would be cases adjudicated involving fundamental rights such as equality or dignity, where the courts are always looking towards instruments like the ICCPR and the ACHPR. Such provision thus helps judges to bridge the gap between domestic laws in conjunction with a constitutional interpretation of the rights in a manner consistent with international obligations.

3.3.5 Consistent Interpretation and its Practical Application

This principle plays a key role in ensuring that Zimbabwean courts interpret local laws in line with the country's international obligations.This means that courts are required to interpret laws in a manner that is in line with international standards thereby promoting the legal system with emerging global obligations.Under this principle, judges have a duty to consider international.[112]

This is shown in Mapingure v. Minister of Health and Others (2014). The claimant in this case was a victim of rape. It was so unfortunate that she got pregnant by this. She tried to terminate the baby so that she wont have to suffer but did not get urgent help from the healthcare. This was because of the negligence and delays from both the nurses and the police. She argued that this failure violated her constitutional rights, including her rights to health, dignity, and protection from inhuman and degrading treatment. She had not planned to have this child and did not even have the necessary needs to take care of it.[113]

The courts used the Convention on the Elimination of All Forms of Discrimination Against Women and African Charter on Human and Peoples' Right. During that time these two were not directly enforceable in Zimbabwe because they had not be domesticated.However they found them as important tools for interpreting the case. They held both the healthcare sector and the police were responsible but unfortunately they could not compensate her. There was no explicit legal duty upon the state to provide compensation for the resulting pregnancy. Even

[112] Ibid p102

[113] Mildred Mapingure v Minister of Home Affairs and Others [2014] SC 22/14 (Supreme Court of Zimbabwe, 25 March 2014).

though she did not win the case, atleast the courts tried to help her by looking at these international treaties.[114]

This principle goes far beyond just gender-based violence, extending into other fields, such as environmental rights and labour protections. For example, in Minister of Mines v Zimbabwe Environmental Lawyers Association 2013 where the court examined its provisions in consonance with obligations under international environmental law applicable to Zimbabwe.[115] The court mentioned that there should be a balance between economic needs and environmental conservation. They then drew some principles from international agreements.

Consistent interpretation is an important tool in covering the gap between the two legal systems in Zimbabwe .Constitution plays a crucial role in ensuring that international law is respected and implemented by the courts .However, for this to succeed, the judiciary must be willing to adopt global legal principles, alongside the existence of clear legislation and the state's dedication to upholding its international commitments.

3.4 Judicial Interpretation and the margin of appreciation in the UK

This doctrine known is used by the ECHR to evaluate cases where rights need to be balanced with considerations of the public interest. This principle, often referred to as the margin of state discretion, is mostly applied in international human rights. It aids the Court in determining whether a state, bound by the ECHR, can be held liable for limiting specific freedoms.[116]

When applying the convention's articles, the doctrine enables courts to overcome practical differences in national legal systems. The European Convention's function as a human rights oversight framework is further supported by this doctrine. The judges must consider the substantive and procedural distinctions between the domestic laws of the contracting parties when exercising that authority. Concepts from the margin of appreciation theory are somewhat similar to the subsidiarity principle, which belongs to a different area of law, unrelated to the

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[114] ibid

[115] Minister of Mines v Zimbabwe Environmental Lawyers Association (2013) ZWSC 1.

[116] Eleni Frantziou, 'The Margin of Appreciation Doctrine in European Human Rights Law' (UCL Public Policy, October 2014) https://www.ucl.ac.uk/public-policy/sites/public_policy/files/migrated-files/European_human_rights_law.pdf accessed 10 October 2023.

scope of this discussion. The margin of appreciation helps resolve potential conflicts by finding a compromise between the interests of the state and the rights of individuals.[117]

Its crucial to know that this does not grant general exemptions from the application of rights. In fact, it recognizes the fact that every state has its own social-cultural contexts, and local authorities are usually better positioned to appreciate these contexts. However, while states are allowed this flexibility, they must still observe the obligations defined in the ECHR.[118]

UK courts adopt this principle into practice very commonly by interpreting rights protected under the ECHR and importing them into national law via the HRA 1998. This allows judges to weigh international human rights obligations against the specific political, social, and cultural factors. In this way too, courts claim their prerogative to blend international standards with the diverse needs and values of the nation. It is important to understand that this principle works independently of the UK's relationship with the European Union because the ECHR is a standalone framework under the Council of Europe.

This principle was invoked in Handyside v. United Kingdom (1976). The claimant acquired British rights to a book entitled The Little Red School Book, which is meant to educate teens on issues of sex, including masturbation, homosexuality, abortion, and pornography. The UK officials regarded the publication as indecent. Handyside was convicted under the OPA 1959 for holding and distributing indecent material for profit. He argued that the British authorities violated his freedom of expression by banning his book.[119]

The Court held that given the objectives of the Act to protect minors and the precise and selective manner in which it has been implemented, the limitations placed on free speech were reasonable. This was within a state’s margin of appreciation to decide what is necessary in a democracy.The European Court of Human Rights ruled that the confiscation of the book did not infringe art. 10 of the ECHR on the freedom of expression as the law allows. The Court

[117] ibid

[118] ibid

[119] Handyside v United Kingdom (1976) 1 EHRR 737 (European Court of Human Rights) https://globalfreedomofexpression.columbia.edu/cases/handyside-v-uk/ accessed 16 December 2024.

applied the doctrine of margin of appreciation, which gives certain discretion to states in restricting some rights, such as freedom of expression, especially in relation to public morals.[120]

It is an important principle in relation to sensitive issues of national security, counter-terrorism, and public safety, which require balancing individual rights against those of the wider society. While ECHR standards guide the courts, they are free to depend on the government in the matter of assessing the necessity of measures to deal with threats to public order or national security.

In the case A v Secretary of State for the Home Department (2004), the courts had to weigh the reasonable counter-terrorism measures by the state against the rights of liberty and the freedom from arbitrary detention granted by Article 5 of the ECHR. The court used of the doctrine, since national security decisions are very difficult. However, the court emphasized that the measures must be reasonable. They cannot be conducted above basic human standards.[121]

The margin of appreciation harmonizes domestic and international law, by easing the tensions likely to rise between the two. The ECHR accepted standards for human rights, but these standards may need to be interpreted in light of each country's unique legal, political, and cultural context. Courts, therefore, rely on this doctrine to interpret the provisions which are given the Convention . In this way, UK courts can act as a bridge, aligning the country's national laws with international human rights standards.[122]

3.5 Judicial Interpretation and the Margin of Appreciation in Zimbabwe

In Zimbabwe, the judiciary hasn't directly applied the principle as it was developed by the ECHR. Their legal system and approach to human rights comes from a different context. Even though this is the case, courts seem to take a similar path by balancing international human rights obligations with the country's socio-economic and cultural realities. All within the dualist legal framework set out in the Constitution.

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[120] ibid

[121] A v Secretary of State for the Home Department [2004] UKHL 56, [2005] 2 AC 68.

[122] Paul Craig, 'Theory, "Pure Theory" and Values in Public Law' (2005) 25 Oxford Journal of Legal Studies 137, 140.

An example which shows this is the case of Mike Campbell (Pvt) Ltd and Others v. Republic of Zimbabwe (2008). The case came about because of disagreements over how the government's land redistribution policies were not lining up with its international environmental obligations. The applicants argued that this was violating principles of sustainable development specifically Principle 4 of the Rio Declaration on Environment and Development (1992). Their argument was based on the fact that the policies which were put in place harmed environmental conservation and sustainable land use, which are central to international environmental law.[123]The also argued that this practice was somewhat discriminatory because they had their land due to the land redistribution practices.

The court acknowledged that of course Zimbabwe had obligations under international treaties and the fact that they also help in bringing sustainable developments. However, they also emphasized that there was need to consider the country's domestic socio-political realities, especially the historical injustices related to land ownership during the colonial era.[124]The courts gave a conclusion that while international environmental principles were persuasive, they could not override the country's urgent need to address land redistribution and historical inequities. This judgment reflects a thoughtful approach which is similar to the margin of appreciation.

Another case which illustrates this similar approach is Chavunduka v. Minister of Home Affairs.[125]This case was about journalists who were arrested and charged with publishing biased information which was labelled as being likely to cause people to be scared, cause alarm and also discouraging under part 50 of the Law and Order (Maintenance) Act. Under the section, this offense carries a maximum term of seven year in jail.[126] The journalists argued that their arrest violated their right to freedom of expression as guaranteed by the Constitution.

The Supreme Court of Zimbabwe ruled that the section was unconstitutional and that it didn't give a clear definition of what can be constituted as false news.They said that it was too vague and that it violated citizens' right to freedom of expression.They held that the section was unconstitutional and that the law did not define what could be considered as fake news.The

[123] Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe [2008] SADC 1.

[124] Grasian Mkodzongi, Land and Agrarian Transformation in Zimbabwe (Anthem Press 2020) 102.

[125] Chavunduka v Minister of Home Affairs (2000) ZLR 1 (SC).

[126] Law and Order (Maintenance) Act [Chapter 11:10], s 50(2)(a).

Court stated that when it comes to freedom of expression, even if it has biased or false news, it must be protected in peace.

Finally, they ruled in favour of the journalists, indicating that the restrictions that had been put in place were not reasonable ones that could be justified in a democracy. Such decisions are the Court's attempts to apply the international human rights to the local context, while at the same time emphasizing the freedom of speech and the role of the state in maintaining peace. On the other hand, this case demonstrates the difficulties that journalists face in Zimbabwe and especially the problems they encounter when they try to voice their opinions.

CHAPTER 4

The Interaction of International and National Legal Systems

4.1 Influence of International Law on Domestic Policy in UK

4.1.1 Human rights

One of the most direct influences of international law was by the enactment of the HRA 1998. This was a huge game changer because when it was introduced into their legal system, it brought together with it the ECHR making it enforceable in UK courts. This made it easier for citizens because they could now go to courts to defend their rights without needing to look up extra laws or adding additional laws for reference if they feel like their rights have been violated. Consequently, the UK is one of the countries that has a legal system that is more accessible and responsive. This shift has led to increased discussions about rights and freedoms, both in the courts and among the general public. Judges are now more aware of the importance of protecting individual rights and often reference international standards when making decisions. This also means that national human rights laws must be read in such a way which complies with ECHR.[127]

R v. A (No. 2) [2001] is a good example in this regard, especially with regard to right to a fair trial as defined in Art 6 of the ECHR.[128] It involved a defendant who was accused of rape. He claimed he and the complainant had consented to the act beforehand. He applied under Section 41 of the YJCEA 1999 to adduce evidence and question the complainant about the prior sexual activity between them over the preceding three weeks. During the appeal, the defendant maintained that section 3 of the HRA 1998 required the court to interpret Section 41 in a manner consistent with the protections in Article 6 of the ECHR.

The court was asked to determine if excluding evidence about the complainant's sexual history would breach the defendant's right to a fair trial. The Court rejected the appeal saying that the sections in question, if needed, should be interpreted in line with the requirements of the HRA. It emphasized the need to safeguard the complainant from intrusive or humiliating questioning. Evidence about the complainant's past sexual history could be allowed only if that evidence

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[127] House of Lords Library, 'Human Rights Act 1998: Does it need replacing?' (2020) https://lordslibrary.parliament.uk/human-rights-act-1998-does-it-need-replacing/ accessed 26 December 2024.

[128] R v A (No 2) [2001] UKHL 25; [2002] 1 AC 45.

and the questions it raised were so important to the issue of consent that leaving it out might make the trial unfair. Based on this view, the House didn't need to address the certified question about whether it aligned with Art.6.[129]

Another international treaty which shows this influence is the CERD .Now as a country that has history of colonizing other countries, this has had a great impact on the law because it promotes fairness while discouraging discrimination. This also contributed to the preparation and enactment of the Equality Act 2010 by having the principles prescribing states to abolish all forms of racial discrimination. The legislation has brought together much of the fragmented legislation on anti-discrimination. It makes legal protections against discrimination even stronger and fits within the dimensions that CERD brings for the promotion of fairness and inclusion. For instance, this Act introduced the positive action concept which allows employers and service providers to adopt proportionate measures aimed at addressing disadvantages faced by people from underrepresented groups.[130]

International anti-discrimination principles can also be reflected in the Macpherson Report (1999), in which he investigated the murder of Stephen Lawrence, a Black British teenager, on grounds of racism. The report was about how public institutions are supposed to handle racism. He mentioned a key principle that all complaints under any form of racism must be reported and investigated. It didn't mean that every complaint was automatically about racism, just that it should be properly recorded and looked into. This idea led to modifications on the law, resulting in the, the Race Relations (Amendment) Act 2000, which required public services to adopt anti-discrimination measures across all areas.[131]

4.1.2 Trade

International law also plays a part in influencing the trade policies and regulations of the UK, particularly because it is a part of the WTO and the different bilateral and multilateral trade agreements that it has signed. The international trade laws create a regulatory framework within which countries trade while stipulating how internal policies should conform to globally agreed

[129] ibid

[130] Equality Act 2010, s.158.

[131] BBC News 'Stephen Lawrence: Who was he and what happened to him?' (9 November 2023) https://www.bbc.co.uk/newsround/43793772 accessed 16 December 2024.

principles with regard to tariffs, subsidies, and trading practices. For the UK, such principles need to be internalized in its trade relationships to create a stable and predictable environment.

A typical example of this relationship is Brexit, which has influenced UK trade policies. The majority of the UK trade policies were earlier regulated by the trade agreements and customs union rules of the European Union. After leaving the EU, they had to discuss new trade treaties with countries outside the EU while complying with the WTO. The negotiations were based on international trade law, which served as the legal framework for policy obligations under principles like the Most Favoured Nation and prohibitions against unfair trade practices.[132]

After exiting from the EU, the UK has signed trade agreements with countries like Japan, Australia, and Canada. These agreements have resulted in modifications and alterations in local legislation, particularly in the areas of customs and tariffs. The legal framework relating to the implementation of tariff quotas and free trade agreements is contained in the Trade Act 2021. This is needed as it ensures that law regulating customs in a particular country does not go beyond the provisions of international trade law. At the same time, it has trade remedy provisions which allow the UK to conduct investigations and take action against dumping and subsidies.[133]

International trade law helps the country with issues in trade disputes. The Trade Remedies Authority set up by the Trade Act 2021 delves into issues of unfair trade practice to ensure the compliance of the UK with the World Trade Organization rules. This makes the UK's position much stronger while dealing on trade-related issues. Internationalized trade practices do not only cover goods. They further extent to creating rules concerning the environment and labor rights. The fact that contemporary trade deals include a clause for nations to put in place mechanisms for promoting sustainable development goals has made the UK amend its policy as well. This shows how international trade law is becoming comprehensive in terms of having social and environmental issues integrated into the trade aspect.

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[132] Springford J Harrison, 'How Did Brexit Affect UK Trade?' (2023) Taylor & Francis Online https://www.tandfonline.com/doi/full/10.1080/21582041.2023.2192043 accessed 16 December 2024.

[133] Trade Act 2021, ss 1-5.

4.1.3 Environmental law

The United Kingdom happens to be one of the most thriving members within the international community on the issues regarding the implementation of international environmental law. It is party to over 40 major treaties concerning the environment. They cover a range of topics including climate change, the disposal of hazardous wastes, and the conservation of ecosystems and species.[134]

Not only do these treaties have influence on the UKs national environmental law, but they also help other countries dealing with issues in that sector. For example, the London Convention (1972) and the London Protocol (1996) has enforced strict measures on waste dumping in the sea, thus protecting the marine environment.[135]

International covenants have also influenced the UK's policies on climate change for instance the Paris Agreement. In order to achieve its goal, the UK passed the Climate Change Act in 2008 which is the first legislation of its kind that sets emission targets legally. The initial goal was to decrease the emission of greenhouse gases by 80%. However, in 2019 this target was enhanced to achieve net-zero emissions by 2050.[136]

In the same manner, the UK's strategies for protecting nature and biodiversity are in consonance with its statements in the international arena. Being one of the parties to the CBD, they put into place the Environment Act 2021 where every new development is supposed to add at least 10% more biodiversity to the area. The impact of international environmental law isn't just limited to laws; it also shows up in court cases. In R (Friends of the Earth) v Secretary of State for Transport (2020), the courts relied on the principles of the Paris Agreement as well as other international conventions to comment on the domestic policies.[137] Although the judgment did not hold the UK government to the provisions of the Paris Agreement, it was

[134] UK Environmental Law Association, International Environmental Law After Brexit: Implications for the UK (UKELA2017) https://www.ukela.org/common/Uploaded%20files/brexit%20docs/international%20env%20law%202017.pdf accessed 26 December 2024.

[135] ibid

[136] ibid

[137] R (Friends of the Earth) v Secretary of State for Transport [2020] EWCA Civ 213.

evident from the decision that the government's policies have to be consistent with the nation's commitments on climate change.

4.2 Influence of International Law on Domestic Policy in Zimbabwe

4.2.1 Human Rights and Constitutional Law

Zimbabwe is a part to many human rights treaties such as the UDHR and ACHPR. These play a huge role in shaping as well as influencing the country's human rights policies. The constitution of Zimbabwe includes important rights like freedom of expression, and access to justice among others which are outlined in the Declaration of Rights. This declaration helps ensure that Zimbabwe's laws match its international human rights commitments.

Section 46 of the constitution which i explained in detail above earlier tells judges to consider international law when they are interpreting the Declaration of Rights.[138]This actually shows that the Zimbabwean courts use global human rights standards to protect their citizen's rights. For example, Section 61 guarantees freedom of expression and this is similar to Art. 9 of the ACHPR and Art. 19 of the UDHR. There are so many instances and cases where the courts have used these articles to make decisions in cases about media freedom, political expression as well as public interest issues. By referring to international laws, judges strengthen the protection of these rights, even when local laws are unclear or when facing political issues.

A notable example in which international law was influential is the Rattigan v. Chief Immigration Officer & Others (1995) case.[139] This case was about women who were facing discrimination at the immigration offices because they were married to foreigners. The court used some principles found the ICCPR even though it wasn't part of Zimbabwe's laws at that time, to interpret the constitutional rights to equality and non-discrimination found in Section 56.1. Article 2(1) of the ICCPR requires state members to respect and to ensure all individuals within its territory and subject to its jurisdiction enjoys the rights recognized in the present Covenant, without distinction of any form. This case showed how judges can connect local laws with international human rights standards.

The protection of vulnerable groups, such as women and children, is another area where international human rights law has had a significant impact on domestic policies. Zimbabwe

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[138] Constitution of Zimbabwe Amendment (No. 20) Act, 2013, s 46.

[139] Rattigan v Chief Immigration Officer & Others [1995] 2 SA 182 (ZS).

has ratified international treaties like the CEDAW and the Convention on the Rights of the Child to use them when dealing with the rights of women and children. These conventions have had a positive impact especially in protecting the rights of women. Community leaders have really worked towards advocating people's rights by raising awareness campaigns and they have significantly impacted the lives of the communities. Many women now feel more confident to report domestic violence cases to the police, which goes a long way.[140]

4.2.2 Trade

International law does not only influence human rights in Zimbabwe, it goes beyond, that shaping the country's trade and economic policies. The country is part of organizations like the WTO and regional groups like SADC which provides general rules that define how to engage in business with other nations, thereby making trade more reliable and fair. On the other hand, adherence to these standards also involves them making adjustments to domestic laws and policies in conformity with global standards.

The Agreement on TRIPS at the WTO imposes obligations on Zimbabwe to protect its copyrights and trademarks like any other country. This encourages new inventions and attracts even more foreign direct investment as foreign businesses have an assurance that their intellectual property will be protected. For example, when a foreign entity wishes to invest in Zimbabwe, it can count on the fact that its products or inventions will obtain a degree of protection equivalent to that afforded by the laws of other countries complying with TRIPS.[141]

Another achievement regarding global agreements is the General Agreement on Tariffs and Trade (GATT).It also aim to create a free trading environment through the lowering of duties and elimination of restrictive trade practices. It involves lowering trade barriers and demonstrating an intention to enforce just and open trade policy.Not only will this enhance

[140] Committee on the Elimination of Discrimination Against Women 'Concluding Observations on the Sixth Periodic Report of Zimbabwe' (13 February 2020) https://www.ungeneva.org/en/news-media/meeting-summary/2020/02/committee-elimination-discrimination-against-women-urges accessed 26 December 2024.

[141] Munemo, Ropafadzo Blessing The Impact of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) on the Right to Health and the Right to Development: A Study of the Implementation of TRIPS in Zimbabwe (2021) https://researchspace.ukzn.ac.za/handle/10413/20509 accessed 8 January 2025.

better trade relationships, but it will also ensure Zimbabwe meets the international trading rules, thus giving it a better reputation as a reliable trading partner.[142]

At regional levels, the SADC Protocol on Trade helps in shaping and defining Zimbabwe's trade policies. This is a mutual agreement that seeks to eliminate trade restrictions among the SADC member states, thus facilitating export trade in particular. There has to be simplification of customs procedures and a reduction in exports tariffs of crucial commodities to ease trade within the region. Zimbabwe standards and regulations will be harmonized with those of other SADC states, putting Zimbabwean goods on the competitive platform to the regional market in turn boosting local businesses and contributing to the economy[143]

Zimbabwe's agricultural policy is governed by the WTO Agreement on Agriculture, which lays down the rules for domestic support as well as market access. This agreement requires Zimbabwe to limit certain types of subsidies that could create unfair competition with other countries. This opens up opportunities for farmers to sell their goods in international markets. However the government has to support local farmer who may be struggling to cope financially while maintaining their global duties of fair trading. This can sometimes be a challenge for the government to keep up.[144]

4.2.3 Envronmental law

International environmental laws have a great influence on the environmental policies of Zimbabwe. They guide the country in addressing urgent ecological issues while promoting economic growth in a way which is sustainable. It is a member to the Paris Agreement on Climate Change and the CBD . These agreements provide national strategies that ensure sustainability, mitigation of impacts due to climate change, and biodiversity conservation. Adopting these international frameworks shows that the country is willing to fight major global challenges including deforestation, wildlife conservation, and pollution control.[145]

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[142] ibid

[143] ibid

[144] Mutambara et al., 'Regional Trade Agreements and Agricultural Trade' (2022) Journal of Agricultural Economics 21.

[145] UNFCCC, 'Zimbabwe: National Policy' https://unfccc.int/resource/ccsites/zimbab/legislat/policy.htm accessed 27 January 2025.

The Paris Agreement is one of the most significant global treaties aimed at limiting global warming to below 2°C. As a party to this treaty, Zimbabwe is committed to reducing gas emissions within its territory and is also required to use cleaner sources of energy. This commitment is reflected in the country's National Climate Policy and its Nationally Determined Contributions, which specify particular strategies for climate change mitigation. Some of these include promoting renewable energy projects, enhancing forest cover through tree-planting activities, and using energy-efficient methods. For instance, the government has initiated solar energy projects in line with global efforts to reduce dependence on fossil fuels. However, these initiatives require significant financial and technical resources, which are difficult for a country facing an economic crisis.[146]

The Constitution of Zimbabwe, states that every individual has the right to an environment that is conducive to their health and well-being. The aim of such provision is to protect the environment from both the current and future generations. It further requires that appropriate legal and other actions be taken to prevent pollution and environmental degradation, promote conservation, and ensure sustainable and responsible use of natural resources.[147]

4.3 Challenges in Harmonization

In legal terms, harmonization is bringing domestic law in line with international obligations so that different legal systems may be consistent, coherent, and equally compliant. Therefore, it will help to bridge the gap between international standards and national laws. It enables countries to work more easily together and assist in reducing litigation.[148]

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[146]Hon. N.M Ndhlovu, Zimbabwe Revised Nationally Determined Contribution (2021) https://unfccc.int/sites/default/files/NDC/2022-06/Zimbabwe%20Revised%20Nationally%20Determined%20Contribution%202021%20Final.pdf accessed 6 December 2024, 12.

[147] Charimuka H Mugare, Jodarn Hrunei, ZimLII 'Unpacking the Environmental Rights Clause in the Zimbabwean Constitution' (30 June 2020) https://zimlii.org/akn/zw/doc/book-chapter/2020-06-30/chapter-12-unpacking-the-environmental-rights-clause-in-the-zimbabwean-constitution/eng%402020-06-30/source.pdf accessed 8 January 2025, p347.

[148] LexisNexis, 'Harmonisation' https://www.lexisnexis.co.uk/legal/glossary/harmonisation accessed 17 December 2024.

Yet, harmonization does not mean that all divergences of national legal systems would be eliminated in practice. It aims to conciliate them only in situations where they diverge so that the domestic law operates in harmony with the international commitments. This is particularly important in areas of human rights, trade, and environmental law, which increasingly obliges the states to align their domestic laws with globally accepted standards. These therefore often require much domestic implementation of international global standards. Domestic laws must recognize the international norms and also create mechanisms for enforcing them at the national jurisdiction level. In this regard, harmonization shows how challenging it is for countries like the UK and Zimbabwe, which have a dualist system. In these systems, the domestic legal framework faces its own difficulties in incorporating international law and applying it without delay or inconsistency.

4.3.1 Parliamentary sovereignty

Conflict between parliamentary sovereignty and international obligations is among the challenges being faced by the UK in terms of harmonization. The tension is quite apparent in relation to the ECHR .UK signed the treaty and incorporated it through the HRA 1998, but Parliament retains authority over application.

The case of United Kingdom v. Hirst (No. 2) (2005) serves as a good example of this. [149] The claimant, was convicted of manslaughter and could not to use his voting privilege because of clause 3 of the Representation of the People Act 1983.This forbids sentenced prisoners from voting while they are housed in a correctional facility. In 2001, he brought the issue before the courts, but the dispute was rejected . Later, the ECtHR ruled in his favor, declaring that the universal ban on inmate voting breached Art 3 of Protocol number 1 of the ECHR. This article guarantees the entitlement to fair elections. Unfortunately, even after this ruling, the UK government was reluctant to amend the legislation. Parliament, as this case demonstrates, retains the supreme authority to dismiss or ignore international judgments when they conflict with national policies. This has caused a tension, both legally and politically.[150]

[149] United Kingdom v Hirst (No. 2) [2005] UKHL 69.

[150] ibid

A similar issue came up in the case of Al-Skeini and Others v. United Kingdom (2011).[151]This case concerned six nationals of Iraq who died during British military operations in Basrah, Iraq between May and November 2003. Those deaths were subsequent events to British forces assuming responsibility for security in that region following the downfall of the regime led by Saddam Hussein. The relatives of the deceased alleged that the UK breached article 2 of the ECHR, which protects the right to life and that there were no or insufficient investigations into these deaths.

The ECHR raised a variety of issues. Initially, they determined that during this time, the UK had jurisdiction over the deceased since British forces were acting as the governing authority in South East Iraq. As a result, the UK was responsible for these deaths under Article 1 of the ECHR. On procedural duty under Article 2, the UK was found not to have carried out effective independent investigations into these deaths. This ruling faced criticism due to claims that it extended the UK's international obligations beyond what Parliament had originally intended. This case illustrates the endless trouble of bringing domestic law into line with international human rights principles, particularly in the sensitive area of military operations.[152]

These cases illustrate the challenges that disrupt harmonizing international obligations with domestic priorities. While international agreements like the ECHR and the Paris Agreement serve as benchmarks, however, their implementation totally depends upon the political will and sometimes balancing the competing interests.

4.3.2 Dualist problems

The dualist approach also brings about harmonization challenges. Treaties are usually not implemented immediately because they must be transformed into domestic law through legislation. This may take several years for laying down the necessary legislative framework even after ratification process. The UK signed the ICCPR in 1966, a treaty aimed at protecting a wide range of civil and political rights. The problem here was that the provisions of the ICCPR did not automatically become enforceable in UK law since an international treaty must be brought via Parliament to domestic legislation. This, therefore, meant that there was a delay

[151] Al-Skeini and Others v United Kingdom [2011] ECHR 1091.

[152] ibid

of more than thirty years during which citizens could not invoke the rights contained in the ICCPR directly in domestic courts.[153]

A similar delay happened with the Kyoto Protocol, an international treaty on climate change . Basically, through the Protocol, the UK promised to reduce greenhouse gas emissions by a specific percentage over specific years as part of global efforts to fight the global warming phenomenon. Nonetheless, they did not have the necessary domestic laws to fulfill these targets. It was not until 2008, more than a decade later, that the UK passed the Climate Change Act. This piece of legislation is designed solely for carbon emission reduction and put the country on target to meet its Kyoto obligations. This delay in enacting the law caused a gap between the promise made by the United Kingdom on the international level and the subsequent concrete measures for achieving that goal. The UK could not legally hold itself accountable to carbon reductions during that interim period, despite having signed the Kyoto Protocol.[154]

An example of this is R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Rees-Mogg (1994)[155]. This case was originally brought by Lord Rees-Mogg to contest the right of the government to ratify the Maastricht Treaty, an act which enabled the foundation of European integration-without further approval of Parliament. The core issue in this case was the impact of the treaty on UK sovereignty. It also highlighted broader concerns about how international agreements, such as trade frameworks like GATT, are integrated into domestic law. The court vindicated the ability of government to negotiate and make international agreements under the royal prerogative so long as those agreements did not purport to amend domestic law.

This case illustrated the difficulties in integrating international trade rules into the rather incoherent domestic legal framework of the UK. For example, GATT, which was intended to promote free trade and reduce barriers around the world, required the UK to modify its internal trade policies to such an extent as to be compatible with international norms[156]. However, such

[153]Jonathan Verschuuren, Research Handbook on international law Adaptation Law (Edward Elgar Publishing 2022)5.

[154] Kyoto Protocol UN Doc FCCC/CP/1997/7/Add.1.

[155] R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Rees-Mogg [1994] QB 552.

[156] General Agreement on Tariffs and Trade (GATT) (1947) 55 UNTS 194.

changes could not apply simply by reason of being in accordance with the dualist system. Rather, it had to be translated into domestic legislation.

Although this ultimately established the power of the United Kingdom to make and implement trade deals, the canvas of the case also depicted the incidences in enforcing international agreements with the desired promptness. The court's considered acknowledgment of such challenges has heavily showed the tension between the timely compliance of international commitments and the right to parliamentary sovereignty. Therefore this gap between signing an international agreement or treaty and complete domestic implementation, undermines the effectiveness of trade policy and, on a broader scale, the credibility of the UK in fulfilling global obligations.[157]

These examples show how the dualist system can create significant barriers to aligning international treaties with domestic law. Whether it's human rights, environmental protection, or trade, the need for domestic legislation to implement international agreements often leads to delays, leaving gaps that can prevent countries from meeting their international obligations. Courts play an important role in addressing these gaps, but the dualist approach still presents ongoing challenges for harmonizing international and national law.[158]

4.3.3 Incorporating Customary International Law

Customary international law is unwritten legal practices accepted as binding by states, based on consistent practices and a sense of legal obligation. According to Malcolm Shaw, customary international law arises from "a general and consistent practice of states followed by them from a sense of legal obligation.[159] In the United Kingdom, however, customary international law does not automatically enter into the domestic legal order unless expressly recognized by the courts or by Parliament. As a result, there is confusion about which international customs are binding and how exactly they apply in domestic law contexts A notable example is R (on the application of Abbasi) v Secretary of State for Foreign and Commonwealth Affairs (2002), where the courts had to consider whether international law could be invoked to challenge the

[157] Matthew Lister, 'international and national law' (2014) p17 Critical Review of International Social and Political Philosophy 618

[158]M alcolm N Shaw, International Law (6th edn, Cambridge University Press 2017) 54.

[159] Malcolm N Shaw, International Law (6th edn, Cambridge University Press 2017) 45.

government's actions regarding the detention of a UK citizen, Feroz Abbasi, in Guantanamo Bay[160].

Abbasi's family sought judicial review, arguing that his detention violated customary international human rights norms, including protections against arbitrary detention under customary international law. The UK courts acknowledged the principles of international law but emphasized that, under the dualist system, such norms could not override domestic law unless explicitly incorporated. The Court of Appeal expressed sympathy for Abbasi's situation and criticized the lack of due process in Guantanamo Bay but ultimately ruled that the government's foreign policy decisions were non-justiciable. This meant that the courts could not compel the government to act based on customary international law without clear legislative backing.[161]

The above case demonstrates the limitations of relying on customary international law in the UK's dualist system. Although the rules of custom greatly affect the making of reality in the international arena, they are vague and rather interpretational. Their enforcement in the UK remains uncertain without express recognition through legislation or judicial precedent. This creates a legal gap, as courts may struggle to apply evolving international standards that lack formal domestic incorporation. As a result, the UK's approach to customary international law reveals a cautious balance between respecting international obligations and preserving parliamentary sovereignty, often leaving significant areas of international law underutilized in domestic contexts.[162]

4.3.4 Brexit Impacts

Brexit, again, poses significant harmonization challenges to the UK. Most of the laws operating in the UK before leaving the EU were automatically linked to EU laws, with courts adopting

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[160] R (on the application of Abbasi) v Secretary of State for Foreign and Commonwealth Affairs [2002] EWCA Civ 1598.

[161] Roger Masterman, 'Reasserting/Reappraising Dualism' (2021) UK Constitutional Law Blog https://ukconstitutionallaw.org/2021/12/07/roger-masterman-reasserting-reappraising-dualism/ accessed 27 January 2025.

[162] Lord Mance, 'International Law in the UK Supreme Court' (King's College, London, 13 February 2017) https://supremecourt.uk/uploads/speech_170213_1d3b2802ba.pdf accessed 27 January 2025.

EU rules and standards as part of their domestic framework. Thus, a large amount of the international obligations were met by the UK with its policies and norms driven by the EU. However, after Brexit, most of these commitments do not automatically apply anymore. The reason being that the UK has now freed itself from EU legislation. Now comes a question of what to do with international agreements governed previously under EU jurisdiction. This creates problems in areas like data protection and environmental standardization and also affects worker's rights because now the UK has to develop its own legislative framework to meet those obligations[163].

Now suppose, for example, the UK has to do new trade agreements which are very complicated and consume time in negotiating. The government must also make sure that new deals are reflected through domestic laws. There needs to be separate legislation in the UK now for laws relating to data protection, environment, and labor which were previously within the EU regulatory framework. Consider a UK cheese exporter company selling gourmet cheeses to Europe. Being part of the continent, the streaming regulations of EU were sufficient for compliance with EU laws in exporting. Now, due to Brexit, the very same company faces numerous other challenges, as the UK is negotiating with many countries and all may have certain conditions that might differ from one another. For example, if a trade deal is established between the UK and the United States, it might have food safety standards very much different from those of Europe. Therefore the firm would need to acquire licenses to produce according to both those standards. Time and costs would be higher, and they certainly may be competitive disadvantages for the company in both markets[164].

4.3.5 Emerging Global Challenges (Technology, Cybersecurity, and Trade)

The rapid growth of technology has created new challenges for the UK when it comes to balancing domestic law with international agreements, especially in areas like cybersecurity, data privacy, and global trade. These areas move so quickly that laws can struggle to keep up.

[163] Brexit: Challenges for the UK (2020). International Affairs Journal, 12(3), 45.

[164] P Johnson, Trade Policy in the Post-Brexit UK (Routledge 2020) 139.

New developments in technology have made it difficult for legal systems to keep pace with data protection and cybersecurity[165].

A perfect case in that context is the GDPR, which was instituted by the EU to create a uniform law to safeguard personal data. The UK as subjected to the GDPR rules as it was part of EU law before Brexit. However, it will have to establish new rules once it leaves the EU to maintain the steady inflow of personal data between the UK and EU. The UK succeed in its quest for the European Commission's adequacy decision, meaning it would still transfer data without extra protections. However, this was linked to the substantive measurement of the data protection laws of the UK with the data protection laws contained in GDPR. If the UK changes its data laws too far from the standards in GDPR, it might lose this status, which could cause problems for businesses that rely on smooth data exchanges across borders[166].

This issue isn't just about following existing laws. In areas like cybersecurity, threats evolve so fast that international treaties struggle to stay relevant. Issues like cyberattacks, data breaches, and online espionage are global problems, and the solutions need to be international too. But international discussions can be slow, and this creates a legal gap where national laws, including the UK's, struggle to address new challenges. For example, the Budapest Convention on Cybercrime is a framework of various nations to harmonize themselves into a cooperative development but does not address new or emerging problems, such as ransomware and state-sponsored hacking. Henceforth, the United Kingdom has to amend laws such as Data Protection Act 2018 or Computer Misuse Act 1990 to tackle current issues all with a view towards remaining compliant with international standards[167].

Trade is another area where technology creates problems. With the rise of e-commerce and digital services, trade agreements now have to deal with things like intellectual property and data flows. After Brexit, for example, the UK signed the UK-Japan Comprehensive Economic Partnership Agreement (CEPA), which included provisions on digital trade to help keep the UK competitive in the global, tech-driven economy. While this was a step forward, it also

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[165] Williams, S., & Davies, T. (2021). Cybersecurity, Data Protection, and International Law: The UK Experience. Cambridge University Press, 67.

[166] Thomson, J. (2020). Post-Brexit Data Protection and the EU's Adequacy Decision. Oxford University Press, 23.

[167] McDonald, L., & Green, R. (2022). Global Cybercrime and National Law: Legal Challenges Post-Brexit. Routledge, 89

highlighted how hard it is to create trade deals that are flexible enough to deal with future technological advancements while still being strict enough to meet international standards

4.4 Challenges of harmonizing international law in Zimbabwe

4.4.1 Dualist problems and political resistance

Zimbabwe follows the dualist system, similar to the UK. While this approach respects national sovereignty, it creates challenges in aligning international law with local laws. It sometimes takes a long time before international legal requirements are assimilated into the domestic legal systems.For instance, Zimbabwe signed the CRC in 1990 but it took time for its provisions to be impemented. It was not until the 2013 that Section 81 of the Constitution which embraces the CRC was added.

A case which highlights this problem is Mudzuru & Another v. Minister of Justice, Legal & Parliamentary Affairs & Others (2015)[168]. This case involved two applicants challenging Section 22(1) of the Marriage Act, which allowed young girls who are 16 or belowe to get married. They argued that this provision violated international standards under the CRC and also ACRWC. These treaties had both been ratified by Zimbabwe a decade earlier. However, they were not directly enforceable in domestic courts because they had not been integrated into domestic law through parliamentary action. The Constitutional Court stepped in to address this gap, relying on Zimbabwe's 2013 Constitution, which incorporates children's rights more comprehensively. The court had to use Constitution's interpretive clauses, such as Section 46, to align domestic legal standards with the international obligations found in the CRC and ACRWC.

The case of Zimbabwean Lawyers for Human Rights v. Zimbabwe (2004), demonstrated how political resistance can affect the enforcement of international human rights treaties under the dualist system[169]. This was about illegal detention of political activists, where the plaintiffs argued that Zimbabwe had violated their freedoms of assembly and association. Art. 21 and art. 22 of the ICCPR, and Article 10 and art. 11 of the ACHPR guarantee these rights. Article

[168] Mudzuru & Another v Minister of Justice, Legal & Parliamentary Affairs & Others [2015] ZWCC 1.

21 of the ICCPR protects the right to peaceful assembly. It also states that there are conditions for restricting that right, which must be imposed by law in a democratic way for reasons society. Article 22 guarantees the right to freedom of association with others which includes the forming and joining of trade unions but allows restrictions only if they are lawful and necessary for reasons similar to those in Article 21.[170]

On the other hand, Article 10 of the ACHPR ensures the right to freedom of association so long they comply with the law. Article 11 of the ACHPR confirms the right to assemble freely with others, subject to restrictions prescribed by law and necessary in a democratic society to protect national security, public safety, the rights of others, or public health. They invoked these provisions to show how Zimbabwe's act was contrary to international obligations for the upkeep of these fundamental rights. However, despite these international commitments, the absence of corresponding domestic laws or an effective mechanism for enforcing these treaties meant that the activists' rights were not adequately protected. This case highlights a recurring issue in Zimbabwe's legal system. Though the country has ratified international treaties that guarantee basic rights failure to incorporate them into domestic law makes these rights essentially unenforceable in the courts.[171]

In the realm of customary international law, which does not require parliamentary approval and can, in theory, be applied directly by the courts, Zimbabwe faces a different set of challenges. The case of Rattigan v. Chief Immigration Officer (1995) shows how international customary law could be used to interpret domestic law decisions but fails within the confines of the dualist system.[172] The Supreme Court addressed a situation where Zimbabwean women married to foreign nationals were being denied residence permits for their spouses. In this case the court had to resort to the principles of the customary international law with emphasis on the principles of equality and non- discrimination. The court also emphasized on need to ensure that the laws of Zimbabwe are in conformity with the international human rights laws especially the CEDAW.[173]

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[170] Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe v. Zimbabwe

[171] ibid

[172] Rattigan v Chief Immigration Officer [1995] (Supreme Court of Zimbabwe).

[173] ibid

However, the court was not able to just change Zimbabwe's existing laws to be in line with the international laws due to the fact that the local laws had not been updated to suit the new standards. This means that the court could only apply the principles of customary international law as aids in the interpretation of the Zimbabwean statutes and not to strike down the discriminatory provisions. This reveals how restrictive the dualistic framework is since the state may choose not to give effect to rules of customary international law if they are incompatible with the domestic legal system.

4.4.2 Economic Challenges

It's challenging for Zimbabwe to fulfil its obligations due to economic hardships particularly in demanding sectors such as healthcare and education. The country is obligated by agreements like the International Covenant on Economic, Social and Cultural Rights to ensure citizens have access, to quality healthcare and education. Citizens are supposed to have a decent standard of living. However the country is dealing with inflation, rising unemployment, and poverty making it difficult to honour these commitments.[174]

In the case of Chimakure v. Minister of Home Affairs (2009), the court looked at the dire conditions in Zimbabwe's prisons.[175] The applicants argued that the conditions were not only against Zimbabwe's constitution but also against the United Nations Standard Minimum Rules for the Treatment of Prisoners. They pointed out that the prisoners did not get enough food, health, or sanitary facilities to meet the basic standard of Article 11 of the ICESCR. The poor quality of prison food in Zimbabwe's jails has led to health issues among inmates, including cases of some diseases caused by nutritional deficiencies. This is also caused by lack of enough budget to give or even restructure the cnditions of jails.

Prison conditions in Zimbabwe are so atrocious that you would almost never find nice words to describe them. The conditions are extremely intolerable. Reports indicate that convicts spend as long as 14 hours of a complete day locked within their cells, starting from 4 p.m. until 7 a.m.

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[174] Xinhua News Agency, 'Zimbabwe forecasts strong economic rebound in 2025 amid.' (28 November 2024) https://english.news.cn/20241129/e21d441c4d3c4df0a16053555088ded7/c.html accessed 27 January 2025

[175] Chimakure v Minister of Home Affairs [2009] ZWCC 1.

Hence, those with any stomach issues and no access to washrooms have to relieve themselves inside their cells.[176]

Despite recognition of the country's financial struggles, the court still held that the government was supposed to just use whatever resources available to improve conditions in prisons and fulfill its international obligations. The ruling called on the government to make small, gradual improvements even though the country is facing economic challenges. This means that, even if progress is slow, efforts must still be made. The case also shed light on a serious inhuman issues happening. Zimbabwe's prisons lacked basic medical supplies and enough healthcare workers, leading to prisoners getting sick from preventable diseases and, in some cases, dying because they couldn't get the care they needed.[177]

4.4.3 The Clash Between Cultural Customs and International Law

Cultura customs law is another another area that creates problems. Not every one can afford lawyers or going to court so to solve this issue traditional leaders such as chiefs are put in place to deal with cases related to culture. This includes family matters and land ownership and marriage. However these practises often clashes with international law.This is most clearly visible in early child marriages, which continue to be practiced in a few rural communities. Zimbabwe has ratified international treaties such as the CRC and CEDAW it chooses to ignore its obligations in these cases.[178]

For example, Article 21 of the CRC specifically emphasizes the importance of protecting children from early marriages, stating that children should have the right to education and personal development. Early marriages, however, are still common in certain communities, where cultural beliefs hold that girls should marry young.[179]

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[176] Al Jazeera, 'Fit for pigs: Conditions in overcrowded Zimbabwe prisons choke inmates' Al Jazeera (Doha, 4 August 2023) https://www.aljazeera.com/features/2023/8/4/fit-for-pigs-conditions-in-overcrowded-zimbabwe-prisons-choke-inmates accessed 1 January 2025.

[177] ibid

[178] T Chigwata, 'The Role of Traditional Leaders in Zimbabwe: Are They Still Relevant?' (2016) 20 Law, Democracy and Development 69.

[179] United Nations, Convention on the Rights of the Child (1989) https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child accessed 2 January 2025.

There are so many disheartening cases of children who are forced to leave school and get married to old men. There is a case about a small underage girl who died when she was giving birthat an indegenous church in Zimbabwe. This case shocked everyone in the country.. According to reports, this girl had been forced to dropout of school and marry an old man at the age of 13. After her death, she was buried by the church in privacy approximately a few hours after being pronounced dead. The parents were silenced by the church. Ther were even reports that they were planning to give the man a nine year old girl who was the younger sister of the deceased as a replacement. [180]The police just gave a statement that they were looking into the matter did not arrest anyone. The ZGC said it was also searching more about the issue.

In this case of Chidimu v. The State (2009), a woman was convicted of murder after killing her husband, claiming that she had been subjected to long-term physical abuse.[181] This was a result of the culturally entrenched norms around male authority and female submission. This case illustrates how traditional customary practices regarding marriage and gender roles often conflict with international human rights standards. This lady was constantly abused by her husband and everybody could see it. She even went to report the husband for abuse but no actions were taken all in the name of cultural practises that females are supposed to submit to their husbands. [182]

In Chidimu, the court interpreted in a way that reflected a broader cultural tendency that views male domination as acceptable. It is unfair how the lady was arrested for murder in trying to protect herself but the death of Memory Machaya was ignored and a paedophile was left free. Despite the Domestic Violence Act, which was intended to protect women from abuse, the case illustrated how deeply ingrained cultural attitudes, often upheld by customary law, prevent full protection for women. In this particular case, the court was reluctant to fully engage with international human rights frameworks that prioritize women's autonomy and equality. Although the court acknowledged the woman's history of abuse, the overall lack of serious repercussions for marital violence within the context of Zimbabwe's customary norms stood out as a problem. I'm not justifying the lady's actions no but if help had been sent in time non of this could have happened. This case is a clear example that Zimbabwe doesn't respect its

[180] Hillary V Cheukai, 'Ensure Justice for Zimbabwe's Child Brides' (6 August 2021) https://www.hrw.org/news/2021/08/06/ensure-justice-zimbabwes-child-brides accessed 2 January 2025.

[181] Chidimu v. The State [2009] ZWSC 1.

[182] ibid

international obligations under treaties like CEDAW which aims to eliminate discrimination against women.

The Domestic Violence Act of 2007 has been put into place to address domestic violence against women and children as well as bringing Zimbabwe's laws to international human rights standards. Even though there have been some improvements in the law, enforcing these laws is still a big challenge. Part of this is traditional beliefs about gender roles which prevents women from reporting abuse or asking for help. Another reason is the fear of being judged by the community.

For example, although the Domestic Violence Act offers legal protection, many women fear backlash from their families or communities if they try to take legal action, as it goes against traditional expectations[183].

The case is the same even in human rights standards like land ownership. In many rural areas, land is given to male heirs after the death of their father. In cases where the father didn't have any sons then the land is passed to relatives leaving the wife and kids empty handed because women have limited access or control over land.

The case of Magaya v Magaya is another example which shows this. Here a woman sought to inherit her late father's estate under Zimbabwean law. It was so unfortunate that the father didn't leave a will before deceasing which even made the case worse.[184] The court ruled against her stating that under customary law inheritance was reserved only for male heirs. While the Zimbabwean Constitution, particularly Section 80, guarantees equal rights for women, including the right to inherit property, the implementation of these rights is often blocked by traditional customs. The Constitution provides a framework to address gender inequality, but in practice, cultural attitudes towards women and girls can make it difficult to ensure these rights are respected.

4.4.4 Judicial Weaknesses

In Zimbabwe, the intersection of customary law and international law creates challenges, especially in rural areas where traditional practices are still very much in place. Customary law,

[183] Kahari, M. Customary Law and Gender Equality in Africa: The Case of Zimbabwe (2020) 55.

[184] Magaya v Magaya [2012] ZWHHC 67.

which has deep roots in the local culture, governs many aspects of everyday life, including family matters, land ownership, and inheritance. However, traditional practices conflict with international human rights standards, especially with regard to gender equality and individual rights. This is most clearly visible in early child marriages, which continue to be practiced in a few rural communities. Zimbabwe has ratified international treaties such as the CRC and CEDAW it chooses to ignore its obligations in these cases.

As the only law enforcement organization, the Zimbabwe Republic Police has had to deal with allegations of human rights violations. This shows that they are having a difficult time striking a balance between meeting international law obligations and maintaining public order, national security, and human rights. According to human rights organizations, the ZRP has abandoned its constitutional duties, commitments, and responsibilities. Some of the worst abuses of human rights and the rule of law that occur in Zimbabwe nowadays are the fault of police officers. [185]

A report which was in done July 2024 showed that there were 198 human rights violations that affected 3,727 victims with cases of assault and unlawful detention. The Zimbabwe Peace Project highlighted that 41.1% of these violations were attributed to perpetrators affiliated with the ruling party, ZANU-PF. 24. 56% of the violations were committed by the ZRP .The international community has continued to cast a critical eye on the government of Zimbabwe and its security forces. Amnesty International together with Human Rights Watch has asked for the government to cease the harassment of citizens. They demanded that those who have allegedly tortured and ill-treated detainees be brought to justice. This has also called on the SADC to take a stand against these violations. [186]

Everyone also agrees that radical changes and a shift in focus are required to bring Zimbabwe's police forces into compliance with international human rights norms and the country's constitution. Not only does this situation make it difficult for citizens to seek justice, but it's also hard for them to exercise their rights. The legal system is used to silence criticism rather than protect freedoms even when international standards are in place, the reality on the ground can be very different.

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[185] Tichaona Chaunga, 'Monthly Monitoring Report - July 2024' (ReliefWeb, 10 August 2024) https://reliefweb.int/report/zimbabwe/monthly-monitoring-report-july-2024 accessed 1 January 2025.

[186] ibid

4.4.5 Institutional Weaknesses

Another key issue is the lack of proper training for judges and legal professionals in international law and human rights standards. While Zimbabwe has signed international agreements, like the African Charter on Human and Peoples' Rights, these treaties are often not implemented properly within the country's legal system. Judges and lawyers may not understand the full depth of international law and its application to cases involving human rights. While these treaties are intended to govern domestic law, they are often ignored in courts. Such a gap between what the law actually states and what happens in practice makes it even more difficult for human rights to be protected in Zimbabwe.[187]

Lack of resources also holds back the legal system. The Zimbabwean courts are underfunded and do not have the requisite infrastructure to adequately handle the cases. This results in extremely long and tedious legal proceedings, with a backlog of a significant number of cases. People have to wait for years for justice to be served and in many cases, victims do not get their cases resolved. These delays not only cause suffering for victims but also allow those who are responsible for human rights abuses to avoid facing any consequences. In short, justice comes late and makes wrongdoers feel that they are above the law.[188]

There is also a lack of specialized training for law enforcement officers and judicial personnel. Police officers, prosecutors, and other legal professionals may not be well-equipped to handle cases involving human rights violations. Without adequate training on human rights law, they may not know the value of such cases or how to carry out investigations. This makes it very difficult for one to build strong cases against wrongdoers involved in the human rights violations.

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[187] International Commission of Jurists, 'Zimbabwe: High Court judges Orientation Workshop' (ICJ, 2023) https://www.icj.org/zimbabwe-high-court-judges-orientation-workshop/ accessed 1 January 2025.

[188] ibid

CHAPTER 5

5.1 Conclusion

The focus of this thesis has been on international and national laws with particular reference to Zimbabwe and the United Kingdom. Although both countries have different histories, politics, and economies, both employ the dualist approach.This helps safeguard their national sovereignty while enabling them to participate in global legal systems. Courts in both countries often rely on international treaties even if they have not been entirely adopted. However, there are quite a few differences. Zimbabwe shows that it is struggling especially when it comes to keeping the human rights of citizens. The main cause of many of the challenges that they are facing sterms from financial issues and the weak system. This makes it hard for the country to keep up and fulfill their obligations.On the other hand UK has a well defined and well developed legal framework.They have a history of participating in the creation of many laws that govern the world today. Another aspect is that both countries also have a common problem which is the delay in legislative approval processes. This slows down the effectiveness of international law especially when local laws need heavy amendments. Both countries have shown a great willingness to adopt international laws and these have played a great role in shaping their legal systems. They have shown this in different ways and methods. For example the Uk has been entering into agreements with different countries so that they can keep their legal system intact post Brexit. Zimbabwe has been focusing on the stability and development in its region by being a part to organisations such as the SADC. These countries also reflect the strength of international law not just as a local remedy but as a tool that address global problems such as human rights, environment, and also trade. They demonstrate how it can be effectively employed to deal with problems in this sector. This highlights global engagements on how dualist systems can maintain their independent control over international law. Using these two countries shows that the problem of aligning these two frameworks is not just a problem faced by African countries only but developed countries are also facing similar challenges. This calls for the two theories of monism and dualism to be revised and add on to the contributions that they already make. They seem to be mostly focused on the theoretical side more than they deal with real world examples . Due to globalization that keeps happening and international laws which keep on evolving, this calls for an urgent examination in the two theories. However this research was more focused on the dualist side more than monism. This thesis encourages continuing discussion on how dualist systems might be improved in order to meet future challenges and yield better results for international law.

5.2 Recommendations

All through this conversation, it is apparent that these two countries try their best to ensure that the national priorities flow with global obligations. There are, however, many areas where the two could improve.They should create a clearer and quicker method of incorporating treaties. This could be done by creating deadline which they can give the government to domesticate treaties. Signing the treaty in the first place means that its important so why delay making it part of the law. This could be handled by a specialized parliamentary committee. On the other hand, Post-Brexit, the Uk should clearly define processes for domesticating treaties and mechanisms for accountability and standards adherence to international norms.

Judges in Zimbabwe could be provided with even greater powers concerning international rules on human rights, environmental protection, and other global issues of the daily life of the people. Not only would this make national laws more up-to-date, but it would ensure that most of them are in line with international conventions that numerous states follow.In the UK, while the parliament is sovereign in making laws, judges play a decisive role in interpreting those laws. They would then have the option of more easily applying international treaties to assist in their judgments, particularly in relation to human rights, trade, or environmental matters. Therefore, while ensuring the autonomy of their parliaments, these decisions will be fair, equal to and above global standards, and will promote confidence in the legal system.

The legal systems of both countries can benefit from greater reliance on international law when dealing with court cases. Furthermore, public and legislative knowledge regarding international law is very vital for both countries because it will contribute to a better-informed decision-making process that encompasses both legislative and judicial spheres. I strongly suggest that lawmakers, judicial officers, and the public should be educated about the relevance of international law and more about it.

This can be done by holding workshops, seminars, as well as collaborative efforts from international organizations. Zimbabwe should take time to fully implement international human rights standards into its domestic legislation. They could do this by revisiting and revising national laws by acting in accordance with their obligations. They have different international treaties to guide them, so it should not be a problem. The government should be more engaged with society and see what can be done to help people because law is not just a theoretical thing but also practical. They should work on that. Another aspect realized is the

issue of political differences, and citizens are the ones who mostly suffer from this. The officials should put aside their political differences and work together in a harmonized way to make sure that the rights of people are fully recognized and protected.

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- Trade Act 2021, ss 1-5.
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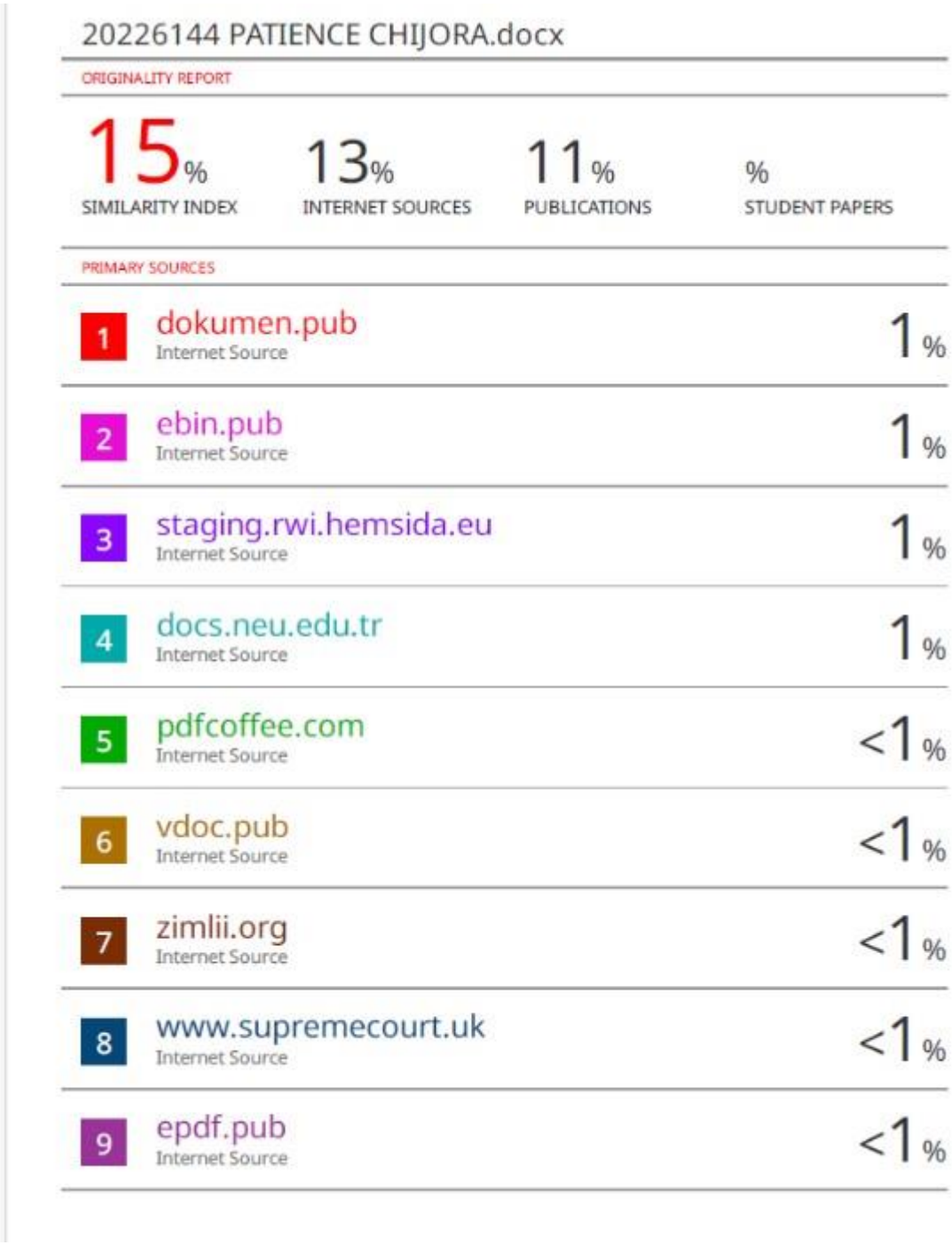
APPENDIX

Appendix A-similarity report



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