The Role of State Institutions in Preventing Violent Conflict in Angola

by

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SUMMARY

The majority of the literature within the study of Political Sciences suggests and tries to paint a picture of how to manage societies and prevent conflict, and in doing so how State structures (institutions) can better manage and mediate social relations in curbing conflict. International Law - and the later establishment of International Human Rights Law (IHRL) - builds on the foundations of Political Sciences by creating a framework for which States must not only adhere to minimum standards of behaviour on how they interact with other States but also and, more importantly - how they treat their citizens.

Despite such a seemingly simple relationship (systems and rules) and the normative standards at the international level for the protection of human rights, this thesis argues that overly-centralised states have a hand in contributing towards the emergence of conflict. The design of the State, through its institutions, is paramount in safeguarding individual rights and in doing so, preventing the occurrence and or resurgence of violence. Furthermore, the thesis contends that while there are both global and regional mechanisms for the protection of human rights which promote values of peace, inclusiveness and democratic governance, States are still the main actors in international politics. As such it is their responsibility to structure institutions which would reflect such values based on their local contexts and realities.

Angola, the case study for this inquiry, confirms that the very nature of its institutions has created conditions under which individual rights and liberties are undermined, enhanced by its overly-centralised State with a strong command culture. Since independence, Angola has experienced a situation of social and political instability through (1) an attempted coup almost immediately after independence, and (2) a civil war which would continue for nearly thirty years. Due to these factors, Angola has never had the opportunity to develop democratic institutions which would work towards safeguarding individual rights while promoting democratic governance.

Such undemocratic trend has been a feature of Angola's post-war political landscape. Paraphrasing Davis (1962) - dissatisfaction breeds dissent, and dissent leads to revolt. In an article entitled '*Watch out Angola – repression only generates more dissent*' Marissa Moorman (2015) argued that the Angolan government has for the better part of a decade since the end of the Civil War mostly 'resorted to force to stay in power'. In such regard, a recurring theme of this inquiry is that dissatisfaction breeds dissent and dissent breeds revolt. This dissatisfaction has then been seen in the form of the denial of rights, high levels of unemployment, corruption, and the centralisation of State power within the executive and the undermining of State institutions such as Parliament and the

judiciary has created high levels of discontent, and though conflict is a natural part of human nature it can nevertheless be controlled, managed and prevented through institutional re-engineering. The reform of Angola's State institutions is thus vital towards preventing a recurrence of violence.

The research for this thesis found that though the end of the civil war resulted in 'peace' and the adoption of a new constitution which specifies a wide range of rights, the overly-centralised State, high levels of corruption and institutional inefficiency has created bottlenecks towards the realisation of individual rights and freedoms. Several issues were identified which led to the civil war, in addition, and within the post-war context such issues are those which have yet to be addressed both socially and within the Constitution.

In addressing such hindrances, the author of the thesis identified that reforming the State and its institutions are vital not only for the prevention of violence but for the establishment of democratic governance. In doing so, the author found that there is an urgent need to decentralise State power by limiting executive power while at the same time further emphasising the role of provinces. Such emphasis is then also based on a more prominent role of the Angolan Parliament which should not only regain its full legislative and oversight functions of government (executive) but should assume a bicameral structure.

The conclusion is that for the achievement of such objectives, the onus not only falls on government but also civil society to begin designing a State which is inclusive and safeguards individual participation within the process of governance.

DEDICATION

To my parents

Etna and Celestino Kapapelo

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LIST OF ABBREVIATIONS

ACDEG – African Charter on Elections, Democracy and Good Governance
ACHPR – African Charter on Human and Peoples' Rights
AHSG – Assembly of Heads of State and Government
ANC – African National Congress
APRM – African Peer Review Mechanism
APSA – African Peace and Security Architecture
ASF – African Standby Force
ANC – African National Congress
AU – African Union
AI – Amnesty International
AUC – African Union Constitutive Act
CASA-CE - Broad Convergence for the Salvation of Angola
The Constitutive Act - Constitutive Act of the African Union
CoM – Council of Ministers
CADS – The Solemn Declaration on a Common African Defense and Security Policy
CC – Constitutional Committee
CCPDC – Carnegie Commission on Preventing Deadly Conflict
CDIH – Commissao Directiva do MPLA
CEWS – Continental Early Warning System
FAA – Forças Armadas de Angola (Angolan Armed Force)
GDP -Gross Domestic Product
HRC – UN Human Rights Council
HRW – Human Rights Watch
ICCPR – International Covenant on Civil and Political Rights
ICESCR – International Covenant on Economic, Social and Cultural Rights
ICISS – International Commission on Intervention and State Sovereignty
IGAD – Inter-Governmental Authority
IHL – International Humanitarian Law
IHRL – International Human Rights Law
MDGs – Millennium Development Goals
MPLA – Movimento Popular Para Independençia de Angola
NP – National Party
OG – Open Government
OHCHR – Office of the United Nations High Commissioner for Human Rights
OAU – Organisation for African Unity

PSC – Peace and Security Council

PNA – Angolan National Police

PW – Panel of the Wise

SIC – Criminal Investigative Services

SINSE - State Security and Intelligence Service

SADC – Southern African Development Community

SDGs – Sustainable Development Goals

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNCAC - United Nations Convention Against Corruption

UNESCO – United Nations Educational Scientific and Cultural Organisation

USA – United States of America

UNITA – Uniao Nacional Para Independençia Total de Angola

WHO – World Health Organisation

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CHAPTER ONE: Introduction and background to the study

1.1 Introduction

The end of the civil war in Angola in 2002 created hope in the hearts and minds of Angolans that the country would enter a new phase of socio-economic and political development. It was a hope based on the idea that the end of the conflict would lead to the 'gradual opening of political space, and allow for increasing democratic plurality and civil liberties' (Schubert 2010:642). Such hopes and dreams were quickly crushed.

The costs of violent conflict are intolerable. Its impacts 'include the direct human costs – death, injury, human rights abuse, forced migration – the destruction of infrastructure, and destruction of social institutions' (Newman 2005:95). Such costs are those paid by the Angolan people during its long and brutal civil war. Today and within the post-civil war context, many Angolans describe the State as a form of outdated monarchy, one in which the extended powers of the President allow him to 'rule through decrees and powerful networks of patronage with little or no accountability to the legislative branch, the judiciary and citizens' (Martins 2017:99).

In trying to deliminate the scope and term of violent conflict, Szayna, O'Mahony, Kavanagh and Frederick (2017:79) caution in interpreting violent conflict simply as a civil war, but rather to acknowledge that though the term is also associated with 'civil', 'ethnic war, and interstate war at high and low intensities' the term is also associated with 'violence that falls short of war, such as militarised disputes, terrorism, and riots or strikes'. Kett and Rowson (2007:404) also noted that while the term may imply the 'dynamic nature of the factors and processes that contribute to violent conflict' there is a lot of discussion about reducing conflict to one cause.

One thing which must be understood is that, although violent conflict can be interpreted into a variety of social conflicts and disputes, Szayna et al. (2017:9) acknowledge 'that there is no single, agreed-upon definition of violent conflict'. As such, the definitional scope of violent conflict used in this thesis includes 'structural' violence, 'direct' physical violence and 'cultural' violence as advocated by Galtung (1969).

Today in post-war Angola repression coupled with exclusion, lack of accountability and impunity of the *Movimento Popular para Libertacao de Angola* (MPLA) regime has led to discontent in Angolan society. In addition, such lack of accountability and impunity is strengthened and made possible by Angola's overly-centralised and repressive State institutional design. Such discontent has been further aggravated by the government's use of violence to quell dissent.

In 2012 Angolan security services kidnapped, tortured and killed two young activists, Antonio Alves Kamulingue and Isaias Cassule – it was later discovered via documents from the Ministry of the Interior which 'detailed in gruesome detail how the two activists were abducted, tortured, and killed by members of Angolan Security and Intelligence Service' (SINSE) (Schubert 2013). The two men's bodies were thrown into the crocodile-infested Bengo river. In November of 2012, Manuel Hilberto de Carvalho was killed by the Angolan Presidential guard for putting up posters seeking information about the disappearance of Kamulingue and Cassule (Amnesty-International 2013).

Moreover, in April 2015 elements of Angolan National Police (PNA)raided a religious sect (light of the world) in Mount Sumi (CMI 2015). The group rejected the influence and policies of the State such as public schooling and State interference into their way of life resulting in the deaths of hundreds of sect group members. Interestingly enough, in the same month as the raid, former Angolan president José Eduardo dos Santos stated on national television that followers of the sect were a threat to 'national security and peace' (Sul 2015:7). He continued in stating that members of the 'defence, security, and internal order would completely dismantle the sect'.

It was after that statement the light of the world sect was raided, and despite requests of an investigation by international organisations such as the United Nations (UN) and civil groups in Angola - the Angolan government to this day has refused to adequately do so, or even allow for an independent investigation to be conducted by a third party. Such discontent is further reinforced by Angola being an unreconciled society, which intensifies the conditions for violent conflict. Investigating ways in which violent conflict can be prevented in Angola, including measures that the regime itself can take, is thus an important endeavour.

Although the 2010 Angolan Constitution (the Constitution) provides for a wide scope of fundamental rights with an increase from 35 in the 1992 Constitution to 59 in the 2010 Constitution, the State itself is overly-centralised. Such centralisation is coupled by how power is organised, which then makes it difficult for citizens to claim their rights as per the Constitution's fundamental principles. Da-Silveira (2014:214) identified the Constitution as merely being 'decorative' in nature, arguing that 'there is a gulf that separates constitutionally protected rights from their actual realisation'. Da-Silveira (2014:215) added that such gulf is quite apparent – and is seen in the ability of the State to violate human rights with impunity. The government still 'persecutes human rights defenders, just as abductions and killings of activists and political adversaries continue to occur'.

The Universal Periodic Review of Angola (2014:8) has observed that, Angolan police and security services continue to 'use excessive force' against citizens. In addition, the review continued in noting

that through 2011 to 2014 members of the security forces – including border, police, rapid intervention police and immigration officials 'routinely committed violence against female migrants in a number of transit facilities where migrants are detained before deportation'.

A report by Amnesty International (2019:3) has added that, a number of the cases of 'arbitrary arrest, detention, and ill-treatment have been against demonstrators, but security forces have also targeted individuals who were not involved in the demonstrations'. Similarly, the Office of the United Nations High Commissioner for Human Rights (2018:5) noted with concern the mass violation of human rights being committed in Angola by its security forces in noting that, members of Angola's security services used 'excessive force and ill-treated over 300,000 nationals from the Democratic Republic of Congo during Operation "Transparency" aimed at forcibly expelling them from Angola'. The note added that, the 'mass deportation of Congolese national resulted in serious human rights violations by security forces on both sides of the border, including six deaths, sexual violence and harassment, bodily frisking and theft of belongs.

A separate Amnesty International (2019:5) report as stated that, between 28 January and 1 March 2019, the security forces arbitrarily arrested 62 people, including activists from the Independence Movement of Cabinda.

In Angola, violence has become systemic and a feature of the political system. Human rights activists are detained arbitrarily and are sometimes kidnapped by security forces. Indeed, while much of the conflict is seen to be structural – often spilling into direct violence from the side of police and State security services towards the population, the potential for the outbreak of more intense violent conflict (civilians against government forces) is strengthened by the many unresolved issues which led to Angola's near thirty-year civil war in the first place. Such factors, coupled with the lack of the MPLA to introduce and promote both a culture of human rights and institutional accountability mechanisms in post-war Angola has created the conditions for a higher intensity of conflict to erupt.

The propensity for violence in Angola seems to be three-fold: (1) Angolan institutions use violence against its citizens (both physical and structural). Such form of violence is evident through direct and physical violence perpetrated by agents of the State, the 'arbitrary detention of people with opinions that contrast with the interests of ruling party members'. The Angolan government continues to 'intimidate, use force and firearms against citizens, make arrests and detentions without observing legal procedures, and engage in torture and cruel and degrading treatment of citizens who protest peacefully and without arms' (Da-Silveira 2014:219). (2) Due to the exclusionary nature of Angolan institutions there is the potential for citizens to use violence against other citizens – a form of violence which may vary in scale but may have the potential to destabilise social cohesion. (3) political power

is overly centralised on the executive and the president while there is no real accountability mechanisms which would control and limit the powers of the president while protecting the rights of persons from the State and its institutions.

As per these dimensions, one may argue that the lack of inclusion, both political and economic has led to unprecedented and high levels of crime in Angola mainly due to a lack of opportunities and access to employment. According to the United States of America (USA) Overseas Advisory Council (OSAC) (OSAC 2019), there is a 'serious risk' of violence due to crime in the country. Such crimes include kidnappings for ransom and violent crimes. Such propensity for violence both seen from Angolan institutions and citizens is a direct result of, and the inability of the MPLA to provide the conditions for which individuals can freely enjoy their human rights.

In this regard, scholars such as Tilly (1997:53) have argued that the lack of the protection of human rights is 'potentially a major source of conflict in Africa, in particular, internal conflict'. Indeed, from such a statement, one can further extrapolate that such 'internal' conflict is not only confined to what governmental security forces can do but also contribute towards the level of insecurity that citizens themselves can carry out against each other due to a failure of the government to provide the adequate conditions for which individuals can pursue and thus access their means for survival.

Pushing this point further Tebaldi and Mohan (2010:1054) established that States with a robust 'control' on corruption, 'effective' government and 'stable political system' could better promote the conditions for 'economic growth, minimise income distribution conflicts, and reduce poverty'. The Angolan government has failed to do this, as this thesis will argue, in their current form, Angolan institutions are neither effective nor the political system able to provide for the needs of its citizens. The results of such social and political instability coupled with corruption, directly impact the 'rule of law' and 'accountability' which further heightens the risk of plunging into conflict.

Political scientists generally concur that 'central to democracy and the democratic process, is a belief and trust in the integrity of the rule of law and State institutions' (Acemoglu and Robinson 2008:42). It is also understood that when such institutions do not work in practice, the democratic process is undermined. Acemoglu and Robinson (2008:45) proposed that in contexts where those in power are not restrained by either the rule of law and the institutions that force their accountability they will 'use their de facto power to determine *de jure* changes and avoid democratic institutions which to them might serve as a hindrance as it regards to power'. In Angola, this has been seen through the creation of parallel institutions within the office of the President (De Oliveira 2015). These institutions operate without any legislative or judicial oversight and many a time ensure that systems of patronage and corruption remain in place and in the hands of the Angolan elite.

Since political elites do not wish to lose power, they tend to hold onto it by using any means possible. This creates dangerous incentives to further deinstitutionalisation, a cycle that would ultimately lead to what Fukuyama (2015:470) described as 'institutional decay'. Mueller (2011:100) concurred that institutional decay creates conditions for the escalation of violence. Additionally, where political elites are less constrained by laws and institutions, they are more likely to use violence to maintain power. The failure of elite controlled institutions to provide for the most basic of needs for the population makes it so that citizens find alternative means of survival. Such survival can come from their involvement in organised crime – which in turn creates the conditions for violence between citizens.

An extreme example of such forms of criminal activities would be those found in Latin America in places like Colombia through the Medellin Cartel (hereafter, the Cartel)[1] in which organised drug lords like Pablo Escobar amassed vast criminal empires. It is important to note that the rise of the Cartel and its activities resulted in a form of internal 'war' – a war between drug dealers and the State which not only led directly to the killings of thousands of civilians but also State officials. The rise of the Cartel can arguably be causally linked to the Colombian government's inability to create the conditions of a socio-economic order in which individuals could adequately benefit from and participate.

It is no surprise that in contexts wrought with corruption, inequality and inept institutions such organised groups may arise to fill in the gaps as was the case in Colombia. Such dangers in Angola can then not be simply set aside. The author argues that Angola's unprecedented high levels of corruption and impunity, coupled with both physical and structural violence creates, not only the conditions for a form of violence against the citizenry but also create conditions conducive for individuals to create organisations such as the Medellin Cartel which would lead to greater societal instability.

Human rights in Angola has been in decline. Such decline have been substantiated by various human rights reports that confirmed that the Angolan government or its agents have and continue to commit arbitrarily and unlawful killings (United States Department of State 2015). Human Rights Watch (2016) (2017), (2018) and (2019:4) in their global human rights reports have reiterated the continued 'decline' of the state of human rights in Angola, and how such decline is directly linked to continued government repression.

[1] The Medellin Cartel was an organised crime syndicate founded by Pablo Escobar in Colombia. The Cartel was a highly organised, violent multinational organisation which spread to the United States and Canada. The Cartel was highly intertwined with Colombian society and politics.

In addition, a Freedom House report (2020) has identified that government authorities continue to systematically repress political dissent, while corruption, due process violations and, and abuses by the security forces remain common. Such repression has been seen more recently when Angolan security services tasked with implementing COVID – 19 restrictions 'killed at least seven people between May and July 2020' (Muchenga 2020:2). In addition, in an interview conducted by Amnesty International, Joa Malavindele, the Executive Director of OMUNGA, an Angolan NGO, stated that, 'the authorities haves used emergency measures to impose arbitrary restrictions on human rights' (Muchenga 2020:2).

The focus of this research is on how Angolan State institutions can be reformed to prevent the recurrence of violence, and how a centralised State can lead to violence. It will attempt to provide empirical research on what features and or weaknesses of Angolan State institutions makes the State more prone to exercise violence against its citizens – or fail to prevent citizens from perpetrating violence against each other, and how well, or not Angolan State institutions protect human rights.

1.2 Problem statement

Violent conflict has dangerous consequences for the protection of human rights and human security. The UN Secretary-General's Plan of Action on Preventing Violent Extremism (UN 2015:10) asserts that although 'nothing can justify violent conflict, we must also acknowledge that it does not arise in a vacuum. Narratives of grievances, actual or perceived injustice, promised empowerment and sweeping change become attractive where human rights are violated, good governance is ignored, and aspirations are crushed'.

The dynamics of exclusion practised by the MPLA regime by denying citizens their constitutional rights, rising levels of corruption and institutional violence and oppression coupled with increased discontent by the populace has the potential to turn to violent conflict. Though there are international obligations in place that call on States to provide for a conducive environment to prevent violent conflict, it would be interesting to investigate and evaluate to what extent Angolan institutions are able to comply and adapt to such challenges.

It is not farfetched to argue that Angola's flawed democratic process and the government's repressive policies feed frustration and discontent as a preventative approach to violent conflict. This thesis will investigate how transforming, strengthening and expanding Angola's institutional structure/s and examine how such institutions (legislature, executive, judiciary and the courts) interacting with one another can prevent violent conflict.

1.3 Research questions

The main research question is:

Which features of the Angolan State institutions make them more prone to exercise violence and fail to prevent violent conflict?

The following research questions will be addressed to provide a complete answer to the main research question:

- What are the theoretical discourses that link violence, prevention and institutional reform?
- What are the international legal frameworks aimed at conflict prevention?
- How, and to what extent has State building in Angola through constitutional change effected politics and power in Angola?
- How well do Angolan State institutions protect human rights?
- Does the Angolan State apparatus create the conditions for potential violence through its institutional structure and framework?

1.4 Hypothesis

The highly centralised nature of the Angolan political system as seen through the centralisation of political power in the Angolan 2010 Angolan Constitution (the Constitution) is one which not only creates an imbalance between the three organs of State but its nature is one which would lead to structural and physical violence. The following hypothesis guides this thesis: a centralised State will lead to violence in Angola.

1.5 Clarification of terms/concepts

This research has five key terms: (1) violence, (2) State institutions, (3) democracy, (4) unreconciled society and (5) corruption. These terms/concepts are frequently mentioned throughout this research, and it is crucial to define them for the reader to understand the scope of the question. Furthermore, the approach to violence prevention is not necessarily a legal one and, as a result, will employ a multidisciplinary lens when dealing with the concept of violence. Although this thesis is presented to the Centre for Human Rights, at the Faculty of Law at the University of Pretoria, it is not written in the field of Law but rather takes a Political Sciences approach while borrowing heavily from other disciplines such as International Relations and Political Sciences just to mention a few - as a result, it

is paramount to define the scope of the key terms so that readers from all backgrounds understand their working definitions for this thesis.

1.5.1 Violence

Scholars such has Szayna et al. (2017:9) and Krause (2016) have noted that the nature of conflicts has changed. Such scholars hold the view that the intensity of conflicts – along with their frequency, 'have evolved and shifted from wars fought directly between States to various forms of internal or interstate violence, including insurgencies, guerrilla wars, terrorism, organised crime and large scale criminal violence, and protests'. It is important to note that this thesis deals with the prevention of violence. The scope of the thesis sees violence not only as that which manifests physically, but also structurally - such violence involves, but is not limited to the scope provided for by Szayna et al. (2017) (see section 1.1).

The term violent conflict as used in this thesis then refers to both 'literal' violence - that which causes 'physical harm' and 'non-physical', and violence of a 'structural' nature that causes harm through the denial of rights and justice. Galtung (1969:170) distinguishes between 'personal' and 'structural' violence: 'personal violence is direct and refers to physical harm, whereas structural violence is indirect and relates to repressive structures that perpetuate social injustice'. In this regard, Galtung (1969:172) defines violence as 'the cause of the difference between the potential and the actual, between what could have been and what is. Violence is that which increases the distance between the potential and actual, and that which impedes the decrease of this distance'.

A further attribution to the definitional scope of violence to be used is provided by Weinstein, Geller, Negussie and Baciu (2017) who add to Galtung's (1969) interpretation of violence in defining structural violence as 'the disabilities, disparities and even deaths that result from systems, institutions or policies that foster economic, social, political, educational and other disparities between groups'. Weinstein, Geller, et al. (2017) continued in discussing the cycle of violence in illustrating how reaction and responses to 'structural violence engender secondary violence at three levels, namely self-destruction, community destruction, and intra- and interstate destruction'.

The definition of violence provided in this section is appropriate for the case of Angola as being both 'physical' and 'structural'. Schubert (2010:665) noted that Angolan citizens are subjected to multiple forms of violence by the government. He continued in noting that (2010), 'even when not subjected to physical violence, threats of violence, and structural, financial, or administrative hurdles being placed in the way of people who speak up'.

This study considers the various forms of violence which exist, political, inter-state and intra-state violence. However, for this study, the form of violence which it will look at is intra-state violence within such scope - both structural violence and physical violence will be used in particular how most often it is the structural violence which leads to physical violence.

1.5.2 State institutions

Buzan (1983:53) defined State institutions as 'the entire machinery of government, including its legislative, administrative and judicial bodies, and the laws, procedures and norms by which they operate'. Indeed although governments differ in the way they function such as the extent of Gross Domestic Product (GDP) they use per year and how much such GDP is used for the public good, what is certain about State institutions is that the nature of such institutions and government are not only as Buzan (1983:55) describes as being an 'object of security, but may also be an object of 'insecurity' towards its citizens. Such definition then links with the form of violence which this study adopts (see section1.1).

As such, formal institutional structures are structured by other formal and informal social relationships. In the case of Angola, as in many other cases, such informal relationships then have a significant impact on 'security' and 'insecurity'. Kabeer and Subrahmanian (1996), noted that while institutions claim to serve 'the common good', they tend to actually 'reproduce unequal relations of power and authority, or to marginalise the concerns of particular groups'. North (1990:215) noted that such differential impacts of State institutions across social groups may not always be readily apparent in noting that:

> In the modern world, we think of life and economy as being ordered by formal laws and property rights. Yet formal rules, even in the most developed economy, make up a small (although significant) part of the sum of constraints that shape choices, a moment's reflection should suggest the use the pervasiveness of informal constraints. In our daily interaction with others, whether within the family, its external social relations or in business activities, the government structure is overwhelmingly defined by codes of conduct, norms of behaviour and conventions - that the informal constraints are important in themselves (and not simply as appendages to formal rules) can be observed from the evidence that the same formal rules and/or constraints imposed on very different societies produce different outcomes.

While this thesis will use the institutional definition provided above by Buzan (1983), it must be understood that for this thesis, State institutions are not taken at face value. Institutions cannot be

simply understood through their formal rules since actual practice tends to diverge from such rules. The Constitution is one such document which while setting forth the structure of the State and its institutions with formal rules – such structure seemingly tends to perpetuate the possibility of violence due to the overly-centralised nature of State power within the executive branch while undermining other organs such as the legislature and judiciary (discussed in detail in Chapters 4 and 5). As Leach, Mearns and Scoones (1997:18) observed, institutional behaviour is dynamic and can be better understood through the 'regularised patterns of behaviour that emerge in effect, from underlying structures, or sets of 'rules in use'.

In this regard, while there are 'formal rules' which may prohibit the use of torture, the use of force by police services 'rules in use' may make it so that such use of arbitrary force is used. As it regards to corruption, while there may be formal rules which prohibit bribery, the 'rules in use' make it a near requirement that bribery is required for accessing and or receiving public services.

For this thesis, institutions are not taken at face value but rather and as Narayan, Schafft, Patel, Koch-Schulte and Rademacher (2000:216) noted, 'institutions can also reproduce existing social power and inequalities by serving only those who fulfil certain requirements, thus perpetuating current social patterns of gender, race, and ethnicity'. In this regard and the context of this thesis, such reproduction of existing social power and inequalities are those which are dangerous and may create conditions for violence. As such, these informal rules, norms, and expectations must be taken into consideration when investigating the roles of State institutions in preventing violent conflict in Angola.

1.5.3 Democracy

Scholars such as Tocqueville (1994) have interpreted democracy to refer to a general equality of status, while Archer (1995) has referred to it as the equality of economic conditions. However, the term democracy according to Waldron (2012:187) is most used in a political sense and it 'conveys an ideal for a political system, one that regulates the formal allocation of political authority'.

Waldron (2012:187) added that, a country is democratic when it meets 'certain features of procedures by which rulers are chosen, laws enacted, and policies implemented'. For the purposes of this thesis democracy is taken at its philosophical and theoretic understandings, as rule by the people and is opposed to an oligarchic, dictatorial, and monarchical characterisations of rule.

The Universal Declaration on Democracy (Inter-Parlianmentary-Council 1997) in its Point 1 affirmed that democracy is a 'universally recognised ideal as well as a goal'. Such goals are those based on 'common values shared by peoples throughout the world community irrespective of cultural, political,

social and economic differences. It is thus a basic right of citizenship to be exercised under conditions of freedom, equality, transparency and responsibility, with due respect to the plurality of views, and in the interest of the polity'. This essentially means that although its credentials cannot be disputed – States must continue to work towards its ideals.

Point 2 states that 'democracy is both an ideal to be pursued and a mode of government to be applied to modalities which reflect a diversity of experiences and cultural particularities without derogating from internationally recognised principles, norms and standards'. This thesis, therefore, follows through with the idea that democracy is not static but rather that each context can adopt a particular model which fits its socio-economic and historical peculiarity as long as it does not derogate from the principle described in Point 1 of the Universal Declaration on Democracy.

Moreover, and of particular importance to this thesis is the acknowledgement by the Universal Declaration on Democracy that, and as per its Point 9 which states that 'democracy is based on the existence of well-structured and well-functioning institutions, as well as on a body of standards and rules and the will of society as a whole, fully conversant with its rights and responsibilities'. Point 11 directly links to Point 9 in establishing that 'democracy is founded on the right of everyone to take part in the management of public affairs. It therefore, requires the existence of representative institutions at all levels and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action'.

1.5.4 Unreconciled society

The definition of unreconciled society for this thesis is derived from the nature of the Angolan State. Its near three-decade civil war and the resulting weak (weak in the sense that it fails to provide basic needs of citizens while denying fundamental rights) and strong (strong in the sense that it has a strong security apparatus and ability to use extreme violence against citizens) institutional framework which arose in its aftermath. As such for this thesis, the definition of De Greiff (2010:26) will be used in which he defines an unreconciled society as one in which 'resentment characterises the relations between citizens and between their institutions. It is one in which people experience anger because their norm-based expectations have been threatened'.

This idea of an unreconciled society is also in line with the idea and concept of violence. The failure of Angolan society to be reconciled with its citizens and its institutions is one which leads to resentment, a form of resentment towards the State which within modern society is seen to be the ultimate guarantor of rights and security. As per De Greiff's (2010:26) definition, 'threatening' or

'defeating' people's expectations from the State as the guarantor of rights and justice not just usually, but 'properly', 'leads to feelings of resentment among victims and others. This anger is more than blind rage or deep frustration, it is ineluctably intertwined with a claim about the validity of the threatened or violated norm, a claim which in turn generates an attribution of responsibility for the threats or the violations, and therefore for the accountability of those who so acted'.

1.5.5 Corruption

For this thesis, the term 'corruption' is understood to constitute a human rights violation, of which such crimes by States and its officials equates to a direct violation of core international human rights law as defined within the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). The approach of corruption as a human rights violation has been strengthened by Peters (2015) where she notes that while organisation such as the United Nations (UN) and African Union (AU) have considered the relationship between corruption and human rights, they have not used the term 'violation' which is a more serious issue but have rather opted to use terms such as the 'negative impacts' of corruption on human rights together with how corruption 'undermines human rights'.

Barkhouse, Hoyland and Limon (2018:2) noted that there is a clear sense of 'timidity' in placing corruption as a human rights violation. He also acknowledged that there is a move to 'strengthen language and to make the case that corruption, specifically grand or political corruption, should be viewed as a human rights violation'. Such a move was seen through former UN Secretary-General Kofi Annan during his statement at the adoption by the General Assembly of the UN Convention Against Corruption (UNCAC) in which he stressed that 'corruption undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organised crime, terrorism and other threats to human security to flourish'. Furthermore, in the 2004 report of the UN Sub-Commission on Human Rights' former Special Rapporteur on corruption, Christy Mbonu argued that 'corruption, whether systematic, endemic or petty violates the enjoyment by citizens of all human rights contained in all the international instruments' (2004:18). Adding to such condemnation in a later report, Mbonu (2005:4) argued that corruption violated 'civil and political rights'.

Corruption as adopted in this thesis then causally links to violent conflict because it not only undermines human rights but contributes towards structural violence in Angola. As discussed above by the Secretary-General, corruption leads to other forms of social instability such as 'organised crime' and the general prevalence of violence within society. In African countries, and in particular, Angola, where established and enduring kleptocratic systems exist, Barkhouse et al. (2018:2) pointed

out that within such systems where kleptocrats 'tightly control the media, the police and the judiciary, individuals will be deprived of their rights to freedom of speech, liberty and family'.

Barkhouse et al. (2018:6) concluded that in their cursory analysis of the 'every' single situation of 'serious human rights violations' on the UN Human Rights Council agenda today, demonstrated that 'each of those situations is the result, in large part, of corruption and related efforts of governing elites to safeguard their privileged positions – so that they can continue to be the principal beneficiaries of accumulated power and wealth'.

Corruption in the thesis then focuses not on petty corruption as a violation of human rights but rather grand and or political corruption which severely undermines and has a grave impact on the enjoyment of human rights. As a result, the term corruption (political corruption) as used in this thesis, is defined as the abuse of public office for private gain (Evans-Webster 2008:807) . Specifically:

> Grand corruption which 'involves the distortion and exploitation of entire systems for the benefits of private interests. Such crime is one which has also been termed 'political corruption'. It is directly related to an individual's official duties and is done under the 'colour of office: i.e., it is conducted under the appearance of authority but involves actions that manifestly exceed such authority. It involves those, who through their abuse of power or influence use State institutions or policies to purloin, embezzle or enrich themselves or their allies, or sustain political power, at the expense of the State's wealth and citizens.

1.6 Context of the problem

1.6.1 Fault lines in the social, institutional and political management of Angola

Violent conflict is not a new feature of the Angolan socio-political landscape. From 1971 to 1975, Angolans opposed colonial rule 'by violent, revolutionary struggle' (Ferreira 2006:10). From 1975 to 2002 a bitter civil war pitted the *Uniao Naciaonal Para Independencia Total de Angola* (UNITA) against its colonial war 'ally' the MPLA. This conflict left more than a million people dead and displaced four million from their homes (Malaquias 2007:103).

The Angolan civil war was a long and bloody conflict, which stripped Angolans of their rights, divided communities and displaced millions. However, the ending of the war also brought with it many other challenges. One of such challenges is the twin culture of violence and corruption that grew unchecked during the civil war, 'for Angola, escaping post-colonial corruption promises to be

just as difficult as escaping post-colonial violence due to a combination of important factors' (Malaquias 2007:15).

After the consolidation of peace in 2002, Angolans placed minimal, if any, restraints on how the MPLA conducted its affairs and managed the country (De Oliveira 2015). The MPLA under the leadership of Jose Eduardo dos Santos (Dos Santos) virtually had a free hand at structuring the Angolan political system how it saw fit, and in the process creating an overall system which cared very little for human rights and the rule of law (Malaquias 2007:47).

Despite its façade of national reconstruction, the political consequences of Angola's early Constitution-making and civil war (as will be elaborated in Chapters 4 and 5) were drastic on both social cohesion and institutional development. Much of the public administration remained incapable of performing basic tasks. More importantly, the 'war affected the institutional design of the State. It incentivised the development of the State in areas of structural importance such as fiscal consolidation, war-fighting, and the maintenance of public order' De Oliveira (2015:20). The strengthening of those institutions neglected several other very important institutions in Angola, such as an independent judiciary and institutions aimed at protecting the rights of citizens from an overly intrusive and centralised State government.

The holding of elections in 2008, 2012 and more recently 2017 did very little to hide the complete domination of the MPLA which further highlighted Angola's democratic 'façade'. As Linz (2000:129) would put it, the 'regime is better conceived as a diminished form of authoritarianism than as the young, partial democracy it claims to be'. Since the end of the civil war, the MPLA has wielded complete control over decision-making institutions in Angola. As a result, it is not farfetched to argue that such near uncontested means in the political arena along with the availability of an unmediated revenue stream of natural resources inherently reduces the need for those in command of the State to develop proper and long term political gains. It then allows for increased autonomy of the State from citizens, in the place of establishing a social contract for State building and nation-building.

State power is extremely well protected by the MPLA leadership and those who benefit from it. It is a power which is also very much concentrated on the MPLA run executive, with the President presiding over all – which further makes the overly centralised State an attractive feature. This is what makes Angola both a strong and weak State - strong in its capacity to coerce by employing the police, the army, and intelligence services and weak in how such powers, through institutions are used (Martins 2017:100).

The near-total control of the Angolan State by the MPLA directly impacts the dynamics of inclusion and exclusion in the country while simultaneously heightening levels of oppression, resulting in more discontent. Such oppression and discontent have been showcased in how the MPLA has used punishment and violence strategically. Over the years, and now more than ever 'physical, physiological, political and economic violence are part of the daily lives of Angolans. Such violence is seen by the action of police and security services – through the harassment and violence against street vendors and people being arrested and beaten by the police, and imprisoned for crimes which have not been proven in court (Luamba 2019).

The arrest of young activist Mario Faustino for protesting against President Dos Santos and drawing 'caricatures' is a chilling account of the lack of due process that security services have used in an attempt to quell dissent. Marques (2015:66) in investigating the case noted that although Faustino had never served in the Angolan Armed Forces (FAA), he was held in a military installation and questioned by intelligence officials – one of which stated, he deserved to be 'dumped at sea to be eaten by sharks, or tossed into a crocodile-infested river'.

However, Angola's long history of institutional repression is not new. In May 1977, an attempted coup by a small faction within the MPLA ruling party attempted to seize power. They failed - the response of the MPLA was 'brutality on an unimaginable scale. Estimates suggest that the bloodbath that began on 27 May claimed the lives of between 12 000 and 80 000 people, mostly, civilians, who were slaughtered in one of the single bloodiest massacres of the 20th century' Pawson (2016:72).

In the run-up to the 1992 Angolan presidential elections thousands of members from the opposition were also systematically targeted and killed, and as Pawson (2016:76) notes once again the 'ruling party was responsible, and it did its utmost to bury evidence and deny culpability'. The famous case of the '15+2 'revolutionaries' is arguably the most notorious in Angola since the end of the civil war in 2002. The case involved a group of youth protesters who were accused of sedition and attempting a coup d'état and later condemned for constituting an association of wrongdoers' (*malfeitores*). They then formed a book club that resulted in them being charged with acts against the security of the State for reading Gene Sharp's *From Authoritarianism to Democracy: a Conceptual Framework for Liberation*.

Studies on Angola have generally highlighted the concentration of power around leaders of the MPLA and the Presidency (Martins 2017:25) showing that it is not afraid to use violence as a form of strategy to keep the populace in line. Such continued use of violence has intensified discontent to unprecedented levels. The MPLA's assumption about a politically quiet population and the certainties of oil-based development are all in different ways under stress.

The sudden drop in oil prices has created a situation whereby the government, at least for now, can no longer easily bribe individuals or boast of building an economy which would ultimately bring people out of poverty. Despite such dangers, the use of violence by security institutions is still commonplace in Angola for upholding public order, 'the extent of violence in Angola has left the population, already accustomed to grave violations of citizenship and human rights frustrated' (Martins 2017:104).

Civil society and the average citizen play a fundamental role in legitimising those in political power. Such legitimacy is supplemented by the interdependence and independence of the three branches of government. However, in Angola, and due to the centralisation of power within the executive branch, such legitimacy of real democracy may be called into question (see section 1.5.3). Within a democratic society, Parliament and civil society serve as bodies which check the power of the executive.

However, and within the Angolan context, the organisation of power as per the Constitution does not allow for such a situation to arise (discussed in detail in Chapters 4 and 5). Such issues together with a lack of oversight institutions and the concentration of power within the executive can arguably be traits of post-independence countries of which their political landscape have been dominated by a single political party such as Angola, South Africa and Zimbabwe amongst others – making this inquiry of institutional reform and danger of centralisation even more crucial.

In addition, it is important to note that the end of Angola's Civil War was the result of a complete and definitive military victory by the MPLA over UNITA. Such victory made it possible that the MPLA could construct a winner's peace – it created the conditions for which it would govern unchallenged by creating the institutional conditions which would make challenging their power almost impossible.

In the years following the peace agreements Bicesses (1991), Luena (2002) and the death of Jonas Savimbi, the Angolan government faced virtually no social pressures. As noted by (De Oliveira 2015:200), 'this autonomy from social pressures reached an extreme in the past few years. This apathy on the part of the masses is withering, and their reawakening will be a major test for the ruling party.'

This test was further enhanced by the 'decision' of Dos Santos to step down as President of Angola in 2018. The decision that was according to several Angolan sources a result of Dos Santos's ill health (News24 2017), but arguably had more sinister reasons, them being: - (1) The recession which Angola was facing due to the collapse of the oil prices which affected the Angolan economy to the

point that those living in poverty were further stretched to breaking point, beginning a process of 'reawakening' as hinted by De Oliveira (2015) which in turn stirred sentiment and fears of 27 May 1977 by the MPLA. (2) The continued corruption under such conditions and the intention to appoint Isabel Dos Santos as the potential individual to take over from Dos Santos, together with mounting internal discontent and (3) the failure of institutions to provide the most basic needs for the society can arguably be said to have prompted Dos Santos to resign.

Although the election of Joao Lourenco (JLO) in August 2018 saw the changing of political power from Dos Santos to a new President, something which was not seen in Angola for over forty years, the transition can arguably be said to have created a 'ripe' moment in Angola for there to be real conversations on democracy and human rights. JLO, a former General in the MPLA armed movement and a party loyalist was chosen by the MPLA to succeed (Engebretsen 2017) Dos Santos.

The fact that JLO is an MPLA party loyalist, there was a sense of 'sameness' within the Angolan population – a sense of 'continuation' of the Dos Santos rule by JLO. However, and surprisingly JLO - at least for now, has proved to be 'his own man'. When he entered office he pledged to fight corruption and claimed that he found the State coffers 'empty' (Eye Witness Ness 2018). In response to JLO's claims – Dos Santos stated in a televised interview which permitted no questions, that he did not leave the State coffers 'empty'. Adding that, 'in September 2017, at the end of my term, I left the National bank of Angola (BNA) with 15 billion US dollars' (Frey 2018: pa3). Interesting to note that Dos Santos's press conference took place immediately after JLO left the country for a State visit to Portugal.

As he moved towards dismantling the hive of 'marimbondos[2]', JLO promptly fired Isabel Dos Santos as head of the Angolan National Oil Company (SONANGOL) and Jose Filomeno dos Santos as head of the Angolan Sovereign Fund. Taken at face value, such acts would be putting into practice and reaffirming his remarks made to the Portuguese media during his first official trip where he stated that when he initiated the fight against corruption in Angola he knew that there were 'marimbondos in the hive'. Commencing such a fight against corruption without addressing the institutional pillars which allow for such corruption may be counter-intuitive and rather that such actions are those which are aimed towards consolidating and safeguarding his political power by removing every vestige of the Dos Santos rule.

What has been remarkable since the 'appointment' of JLO as President, is the seemingly continued pace of the Angolan political system – meaning that what has happened with JLO as President has not

[2] The term Marinbondo comes from the Umbundu language which means a nest of deadly wasps whose bite is very painful. Within the Angolan context the term is used to describe corrupt individuals.

necessarily signalled change within the Angolan political system but rather a transfer of authoritarian powers as seen through the Presidency given to it by the Constitution to another individual who is yet to deploy such powers as he sees fit. Put in other words, although JLO might have the intentions to move Angola towards democratisation – the political system which he has inherited through the powers of the Presidency are authoritarian and not compatible with democratic governance.

As a result, and although there is a new President in office, there are still high levels of discontent with the MPLA due to the current and ongoing economic crisis, a crisis of which the government responded by adopting developmental business models which built agricultural projects based on large scale land acquisitions which then led to the 'disposition of rural communities, which put community livelihoods at risk' HRW (2018:30). Such discontent is further coupled by the continued arbitrary nature of State institutions and the lack of checks and balances that are in place for holding those in office to account. The Angolan State is still overly-centralised, and its structures are those which render the possibility of conflict all to relevant.

The MPLA government thus continued to not only undermine individual rights but also effectively do so with impunity. Political intolerance has also been a factor which has been on the increase. According to a 2018 Amnesty International Report (2018:74), in the city of Monte Belo, in the province of Benguela political intolerance has been maintained and seems to be increasing as there are continued clashes between MPLA and UNITA members. In addition, a Human Rights Watch (HRW 2019:32)) revealed that 'political intolerance was increasingly normalised, due in part, to government indifference to sectarian violence'. The report continued that Monte Belo residents continue to suffer 'persecution, violence, death threats, intimidation and looting on the grounds of suspected allegiance to one or other of the political parties' (MPLA or UNITA).

A report of the African Centre for Strategic Studies (ACSS) (ACSS 2020) stressed that while JLO has made 'headlines' in his fight against corruption which has been seen through tackling high profile cases and patronage systems of the Dos Santos family, 'Angola's authoritarian political system remains largely unchanged'.

1.6.2 High crimes and misdemeanours: institutional corruption in Angola

Corruption not only undermines the capacity of a State to adequately provide for its populations, but arguably also undermines the very nature of democratic governance and legitimacy. According to the 2020 Corruption Perceptions Index by Transparency international (CPI 2020), Angola ranks 142 out of 180 countries with a rank of 27.

The transfer of 500 million dollars from the Angolan Central Bank to a private account in London is one of the most blatant acts of corruption occurring in Angolan in the past three years. The story of the '*caso 500 milhoes*' (DW News 2020) began in 2013 with the appointment of Filomeno dos Santos, the son of former Dos Santos as head of the 5 billion dollars Angolan Wealth Fund.

The transfer of the half a billion dollars was approved by the former Governor of the Angolan Banco Nacional Valter Filipe. He stated that he was following instructions from the President and the head of the Angolan Sovereign Fund Filomeno dos Santos. A Mail and Guardian (2018) article reported that Filomeno dos Santos initially planned to 'steal' 1.5 billion dollars of the Sovereign Wealth Fund, adding that the Swiss bank from which the funds were to be sent initially reported that 'documents had been forged' and that it had not received 'any money relating to this case'.

Another case which highlights the nature and culture of corruption in Angola is that of Isabel dos Santos, daughter of former President Dos Santos. Like her half-brother, she was appointed to a key government position – in her case as head of SONANGOL. In an interview with the British Broadcasting Commission Angolan analyst Alask Orre (2016:1) told the BBC that being head of SONANGOL 'is next to the presidency, the most powerful position in the country'. Similar to the case of her brother – allegations of wrongdoing on the part of Isabel was noted by her successor CEO Carlos Saturino who, according to M'Bida and Maussion (2020) 'filed a complaint of mismanagement' which subsequently led to the opening of an investigation.

A recent judgement by the Provincial Court of Luanda has taken the decision to freeze the accounts of Isabel Dos Santos (Rosa and Gomes 2019). In addition, numerous reports have shown how she has benefitted directly from various companies while her father was president (Dolan 2019). Moreover, the International Consortium of Investigative Journalists have documented acts of grand corruption which implicates not only former Angolan President but Isabel dos Santos, detailing how she defrauded the Angolan State of billions of dollars (ICIJ 2020).

Isabel dos Santos is famously known to have been said that the backbone of her 3.2-billion-dollar wealth was owned in part to her 'selling eggs in the streets on her way to school' in Angola. Which, in turn, prompted Rafael Marques to retort that while she may have sold eggs, 'once upon a time though knowing the origins of her later seed capital does make you wonder who it was that owned the hens' (Marques 2019:3).

Contrary to the story of a business empire built from sweat and blood which one would imagine would require building a billion-dollar enterprise on selling eggs on the streets, Forbes journalists noted that Isabel dos Santos's fortune has 'largely been derived from her political connections, she

would emerge as the beneficiary of lucrative state contracts decreed by her father or receive chunks of companies wanting to invest in Angola' (Forbes 2019).

Isabel Dos Santos's rise to fame was both dramatic and spectacular – the dramatic aspect thereof refers to a comment which is usually referred to as being the ending of the Angolan civil war in which Jonas Savimbi's UNITA was utterly and militarily defeated. The rise of Isabel dos Santos arguably took place within such context and as opposed to the humble rhetoric of selling eggs on the streets of Luanda rather had a much more kleptocratic flare to it.

Such acts of corruption are those that also go against the establishment of the Sustainable Development Goals, in particular Goal 16. Barkhouse et al. (2018:2) established that such forms of corruption work in 'direct tension to, and contradiction with, the call made throughout the 2030 Agenda for Sustainable Development that "no one shall be left behind".'

The above accounts of corruption are but a few acts which have taken place within the Angolan political system for well over four decades since independence. It is important to note that these are not the only such cases – they are worth mentioning because they are those that have been so blatant and have garnered such international attention. An exhaustive report on acts of corruption as it pertains to just the two specific cases mentioned might require another PhD thesis.

The concluding observations by the Human Rights Committee (2019) in response to Angola, highlighted several concerns as they relate to human rights. The HRC specifically identified that 'corruption' is a major institutional factor which directly undermines human rights. The HRC added that, corruption in Angola remains 'widespread, particularly in the public sector, that there are flows of illicit funds'.

Although the appointment of João Lourenço (JLO) as President of Angola replacing dos Santos has been heralded as the cure the issues facing Angola – in particular his fight against corruption which has targeted the former Presidents family. One can argue that this, in many ways, is a smokescreen. JLO has failed to tackle some of the real issues which have enabled such acts of corruption to take place, he has failed to address the State's institutional design as the potential cause – amongst them, and specifically being the overly centralised nature of the Angolan State and the disproportionate power that the Angolan Presidency holds.

In many ways, JLO's 'appointment' seems to have created yet another façade of an upward trajectory towards democratic consolidation in Angola. The problem within the Angolan system is one which is not necessarily due to the person who holds political power – though admittingly that is a huge factor.

But rather, and as this thesis argued in the preceding chapters - is the fact that the Angolan system is one which is built not on values of cooperation and democratic governance, but domination.

Moreover, the 2020 Corruption Perception Index (CPI) has observed that countries that perform poorly on their CPI are more likely to violate human rights and democratic norms. An earlier report by CPI (2018:9) concluded, 'corruption fuels decline in democracy which facilitates further corruption'. As a result, one can then extrapolate that has overall state of democracy declines it then creates the greater potential for government repression and with it the outbreak of violence.
The dangers of corruption, and especially grand corruption have far reaching effects towards the democratisation process. In Angola the high levels of wealth amassed illicitly by the countries elites and in particular by the family of the former president had an interest in securing for themselves all kinds of protections, including using the State as an instrument of repression from those who had diverging ideas and opinions.

1.6.3 Conflict, ethnicity, identity, and State-society relations in Angola

In Angola, social class combined with repression and exclusionary practices, rather than ethnicity, has been a source of societal discontent and potential for conflict. Such tension is compounded by the obscure relationship between the MPLA and the Angolan State. Such a relationship is one which is so deep and multileveled that it reaches every aspect of society to the extent that no one knows where one starts and the other ends. De Oliveira (2015:150) observes that 'State administration is subordinate to the party; both are subordinate to the president's diktat. MPLA structures double and frequently eclipse governmental bodies; no one of consequence in government can do without party membership.'

It is important to note that the above description of threats to the individual come in many lesser forms. States possess an enormous range of legal powers, which they can exercise against their citizens in the name of the common good. Echoing former Brazilian President, Getulio Vargas 'everything for my friends, the law for my enemies' (Dobson 2012:127). The Angolan context through the government's arbitrary arrest of protesters assault on civilians, torture and kidnappings of dissenting voices shows that 'human insecurity can become institutionalised as a result of the instrumentalisation of disorder prompted by political elites'(Bakonyi and Stuvøy 2005:362).

Current troubles in Angola are not of an ethnic nature. The Kimbundo and Ovimbudo peoples of Angola, the two largest ethnic groups in the country, have never been in a conflict where ethnicity was the main driving factor, even though ethnic conflict has been and still is a major source of conflict across the world, and in particular Africa. A major challenge facing Angola is the increase in

discontent which is leading to increased popular mobilisation against oppressive State policies and institutions and not ethnicity (HRW 2014). This study will not explicitly focus on the ethnic nature of conflict in Angola. Brown, Caumartin, Langer and Stewart (2011) observed that ethnic or religious differences in themselves do not necessarily cause violent conflict, as evidenced by peaceful inter-ethnic and religious relations. So taking into account the diversity of the peoples of Angola, this study will not be approached through the lens of ethnic conflict but rather take note of the nature of ethnicity in conflicts.

As Hare (1998:41) argued when describing the nature of the Angolan civil war, 'contrary to most civil wars, the Angolan war seems to have instilled both sides with a stronger sense of being Angolan'. It is important to demonstrate the absence of ethnic conflict in Angola, both during the period of the civil war and now. Despite there being stereotypes, none of such stereotypes highlights the notion of an 'other' or threat to kill based on ethnic lines. As (Bender 2001:94) observes, 'never, during the two and a half decades of civil war, has either side publicly denounced the other regarding ethnicity'.

The protest action as seen across Angola since early 2010 is significant in two ways: (1) As identified by De Oliveira (2015:89), the 'assumption by the MPLA of a political quietist population is no longer the case' and (2) There seems to be a breaking of the cycle of fear among the Angolan population that fearlessly challenges a very repressive State. With the passing of the 2010 Angolan Constitution and subsequent amendments, much has been said about the overly Napoleonic powers of the presidency, fuelling an already seemingly unlimited range of powers. Roque (2013:23) has pointed out that private companies that are controlled by elements of the regime are buying off what is left of the free press, and new media outlets were established to generate a sense of debate while actually serving the propaganda purposes of the MPLA (HRW 2014).

Such elements, corruption, mismanagement and unequal nature of Angolan society have resulted in several social mobilisation actions throughout Angola. The past few years have seen the youth and ex-combatants play a more active role in challenging the State's exclusionary policies. As the Arab Spring grew and forced a change in North Africa, in some cases peaceful and others violent, small groups of youths and ex-combatants in Angola have begun to make their voices heard.

In an 'unprecedented move, an insignificant gathering soon gained a momentum capable of destabilising the security apparatus and unnerving the regime. An anonymous call for a public demonstration on 7 March 2011 resulted in a disproportionate reaction from the government, which organised a 30 000 strong counter-protest at the cost of $20 million' (Roque 2013:47). As protests continued throughout 2011, Angola's security apparatus responded with violence, including mass arrests, summary trials, torture and kidnappings.

It is important to note that in contexts where institutions function according to the rule of law and serve as umpires to different interests and or groups in society, social and conflicting interests are managed more peacefully. However, in situations of 'fragility where there is poor governance and weak political and social systems, grievances, despite and competition for resources are more likely to be violent' (Hiker and Fraser 2009:25).

Within the Angolan context, it is notable that the relationship between human rights and conflict is not new. Such tensions have further culminated with wider notions and establishment of more stable State-society relations, the need to desegregate communities while including them within the wider state-building project. Academics agree that the consequences of destructive and violent conflict on the lives of persons can be unfathomable. Parlevliet (2002:23) observed that 'human rights abuses could be a cause as well as a consequence, or symptom of conflict'. So in many ways, we see that injustices, actual or perceived can be sources of massive conflict if such abuses and grievances are not mitigated and managed appropriately.

1.7 Significance of the study

Today violence has become more complex. Even though there are those such as Pinkner (2011) who argue about the overall decline of violence, a third of the 'world's' population is still currently affected by conflict' (Szayna et al. 2017:18). Szayna et al. (2017:50) have also identified that the two factors which significantly contribute towards the outbreak of conflict are the 'declining capacity of State institutions and the declining economic growth'. In the case of Angola, one can arguably see the decline of economic growth. However, as per the decline of the capacity of the State, the Angolan State fails at providing for general well-being of its citizens. It also has a high capacity for coersion through the use of its internal security structures such as the military and other security services resulting in violence when citizens speak up (see section 1.1).

The significance of this research, in particular as it regards violence and its negative effects towards democratic consolidation is best summarised by Diamond (2016:106) where he reflects that 'we have been going through a democratic recession'. He gives particular emphasis to the tendencies toward undemocratic rule and authoritarian tendencies. Surveys conducted by the Pew Research Centre, Wikes, Simmons, Stokes and Fetterolf (2017:6) revealed that there had been general 'disappointment' with the functioning of democracy and 'systems of political representation'.

The Economist Unit, in its democracy index (2019:5), added that aspects which have also contributed towards the democratic deficit, and those that add towards putting countries at risk had been seen within contexts like Angola where there has been an increase in 'emphasis on elite/expert governance rather than popular participatory democracy', influence of 'unelected, unaccountable institutions, 'decline in civil liberties, including media freedom and freedom of speech' and the 'widening gap between political elites and parties on the one hand and national electorates on the other'.

This research is significant because it aims towards contributing how such deficits in the Angolan political system can be addressed – it is even more crucial because such shortcomings within the political system of countries with already unstable political systems further contribute towards elite consolidation. As the 2019 Democracy Index cautioned, increased 'resentment among electorates at the lack of political representation' which in turn 'alienates' citizens which in turn potentially create conditions conducive to violence (2019:5).

Since the end of the Cold War, scholars have focused significantly on looking at the root causes of conflict. Particularly challenging for scholars has been to design systems which would fit particular contextual realities of States. This study would serve to supplement the existing scholarship by offering another perspective towards violence prevention and reduction – in particular, how institutional reform can be used within an unreconciled society like Angola to prevent violent conflict.

This study is based on the premise that there is no scholarship which examines institutional reform as a mechanism to prevent violent conflict in Angola. It seeks to analyse, if any: the features of Angolan State institutions which make them more prone to exercise violence and fail to prevent violent conflict? And how can such institutions be structured better promote and protect human rights – with the objective of preventing violent conflict? In answering the fundamental question, this study contributes in three areas: (1) it fills gaps in scientific knowledge as it regards to conflict resolution within unreconciled societies while contributing towards a better understanding of African institutions and their institutional challenges, in particular how such institutions can tackle the democratic deficit in post-conflict/independent societies which have been ruled by a singular political party, (2) The thesis makes an empirical contribution within the institutional reform literature on how State institutions can be reformed to prevent violent conflict.

Such contribution provides specifically how institutions like the executive, the judiciary and the legislature can be reformed to create a context for better political inclusion and participation and (3) it makes a theoretical contribution in noting that only an integrated and holistic approach towards the study of institutional reform can truly be beneficial. It emphasises that legal approaches to

institutional reform are not sufficient but rather a multidisciplinary approach to institutional reform is the only way in which such reform can be viable.

1.8 Methodology and approach

While the research aims to provide empirical knowledge to the research question, the methodology and approach of this study were guided by normative political theory which is mainly concerned with 'what ought to be', in other words how the Angolan political system should be, and as a result, State institutions are the focus, together with exploring other values – in this case, values set forth by the international community on good governance, democratic values and equality to name a few and what should be done based on such values to achieve an encompassing scope of human rights and freedoms in Angola.

An important aspect of normative political theory is that it provides a framework of providing knowledge on how things 'ought to work'. This knowledge is important because it leads to continuous theorising on different approaches and how to improve structures and institutions – in the case of the scope of this thesis, the normative political approach has the objective of adding to the conversation on Angolan institutionalism while also prompting scholars to continuously engage in the subject matter, in particular, specifying such conversation within the area of the State's institutional design and how such design directly impacts citizens' enjoyment of human rights.

This study is based on multiple forms of data collection, including; (1) a review of existing literature on Angola (though there is very little literature on violence and democratisation), (2) an analysis of documents, including policy documents, journal articles and other periodicals, (3) contents of the Angolan peace agreements, (4) AU and UN reports, (5) pronouncements by NGOs regarding the subject matter under investigation, (6) newspaper articles and (7) academic books.

Desktop research has been carried out to review the relevant literature concerning violence, conflict and institutional reform, (primary and secondary sources). The literature has been studied with the ultimate goal of identifying how State institutions in Angola can be designed to prevent such conflict. No ethical implications are foreseen, as individuals have not been used as units of analysis, and all sources are in the public domain.

The thesis analyses different theoretical concepts (violence, approaches and theories to and of violence, institutional theory, the theory of political culture and governance) to better understand violence (both at a theoretical level, State level, institutional level and citizen to citizen level) and its prevention. In particular, the theoretical approaches to violence and the State have been looked to

understand how different variants of State theory can help us understand conflict within a particular societal context such as Angola and how others place State institutions as being pivotal to managing societal strife and tensions which may lead to violence.

The multitude of theories used ranges from conflict resolution, human security, social justice, political economy, political philosophy, liberal institutionalism, critical theory, and postcolonial theory; social constructivism is important because it takes into account the complexities of conflict and the importance of using a holistic approach in their resolution – the fact that this thesis is of an interdisciplinary nature further reiterates the importance of using such a wide mix of theories.

In addition, the analysis of these theories is important because they offer an understanding of how important the structure of the State and, in particular, the relationship between its institutions and State-society can influence such forms of relationships. The approaches and theories of violent conflict are important because they show how different perceptions of the State can give us different views on how to understand violence. This is particularly important because of the different contextual and historical conditions which influence such violence.

Lastly, an analysis of the international, regional and sub-regional legal, institutional frameworks to analyse the elements which are aimed at conflict prevention, together with looking at Angola's international commitments towards violence prevention and how it has either succeeded or failed in fulfilling such commitments.

1.8.1 Research approach

This study will adopt a qualitative approach to understand the complex processes within societies that have experienced violent conflict and in doing so to prevent its recurrence, while recognising the importance of locating the research within a particular social, cultural and historical context. A quantitative approach would not suit the epistemological foundations of this research. For example, a quantitative approach which employs a survey method as a data collection method may be useful in trying to find out people's policy preferences. However, due to this research's constructivist base, the study is less interested in people's policy preferences, but rather why such policies are not working and how over time they can be changed. As a result, such data could not be gathered through surveys.

This study is of a multidisciplinary nature. It includes concepts from International Relations, Political Sciences and International Political Economy to understand how the recurrence of violence can be prevented in Angola. Moreover, as the researcher is a Political Scientist, the research employs methods and strategies predominantly found within the social sciences.

The qualitative method allows the research to be richer – meaning that it allows for the exploration of a wider array of dimensions within the social world such as the ways which social processes and institutions function, and how such relationships work together with the significance and meanings that such relationships and institutions have within society. The approach then not only provides results but also describes and investigates relationships among variables in the violence prevention process. The qualitative approach is also useful in understanding how State institutions can prevent violence. Finally, since more than one variable associated with violence prevention will be studied, qualitative research provides for involving multiple variables in the same study and therefore, will be the method most useful to this research.

1.8.2 Research design

The study will adopt a single case study approach in investigating the role of State institutions in preventing violent conflict in Angola. According to Yin (1993:93), the case study approach is the preferred method and is relevant for three reasons; (1) for 'situations when the main research questions are 'how' or 'why' questions, (2) a researcher has little or no control over behavioural events and (3) the focus of the study is contemporary (as opposed to entirely historical) phenomenon'. Since the commencement of writing this thesis Angola has gone through various transitions, the sharp decline in the international oil prices, along with the stepping down of Dos Santos as President of Angola creating the need for the research to adapt to such peculiarities. Angola has had an armed conflict for over forty years, first with the war of liberation (1961 to 1974), and then with the civil war (between 1975 and 2002). Although these conflicts are inter-related, they will not be studied as a whole, but rather they will be referred to while the main focus will be the starting point of Angolan democratisation in 2002 with the end of the civil war.

Furthermore, this case study will be explanatory – such an approach was chosen because of its ability to analyse social phenomena at both a surface and at a deeper level. The importance of the explanatory method is that it allows for explaining complex and multivariate cases. Moreover, and according to Yin and Moore (1987:61) cases which use the explanatory approach can be explained by three rival theories: (1) a knowledge-driven theory, (2) a problem-solving theory, and (3) a social interaction theory. It is particularly important for this thesis because it brings together various theoretical approaches not only to explain social phenomena but also because it works towards creating new norms in the theories under investigation.

As per the advantages of using the case study approach, Yin (1993:46) argues that a major advantage of such an approach is: (1) the data is most often 'conducted within the context of its use' meaning

that it focuses specifically within a particular geographical and temporal context as defined by the researcher – which then allows for greater depth of the research and (2) the approach allows for the flexibility for the researcher to use both qualitative and quantitative approaches – or both within the same study.

Moreover, Yin (1993:29) notes that the information obtained from qualitative case studies helps 'to explore or describe data in a real-life environment, but also helps to explain the complexities of real-life situations which may not be captured through experimental or survey research'. However, Yin (1993:21) cautioned against three limitations of the case study approach: (1) case studies are often accused of a lack of rigour; he cautioned that too often the case study investigator has been sloppy and has allowed equivocal evidence or biased views to influence the direction of the findings and conclusions, (2) it has been argued that case studies provide very little basis for scientific generalisation since they use a small number of subjects, some conducted with only one subject' and (3) case studies are often labelled as being too 'long, difficult to conduct and producing a massive amount of documentation' – the nature of this study may result in such limitation.

1.8.3 Angola as the main case study

Angola is the focus and only case study of this thesis, while examples from other countries are cited. The research studies and investigates whether some of the features of Angola's State institutions make them more prone to exercise violence and fail to prevent violence of others in violation of human rights. This form of violence to be investigated is both 'physical' violence and 'non-physical' violence (see section 1.5.1).

Angola was chosen as a case study for three reasons: (1) the dearth of academic scholarship on Angolan democratisation and institutionalism, (2) Angola is an unreconciled society with a history of violence which spans almost forty years with first, (i) the war of independence, (ii) the civil war and (iii) Angolan institutions have never been studied holistically with the aim of reforming them to safeguard individual rights.

The Angolan case was further chosen because (3) it adds to the scholarship of comparative politics by investigating how politics and institutions in unreconciled societies can better be structured for, (i) the prevention of violence and (ii) preventing the recurrence of violence, while also instituting mechanism to better prevent human rights violations. The research adds to the knowledge of addressing the democratic deficit in post-independence States which have been governed by a single political party, while also addressing how institutions can be structured to create avenues for wider and broader political participation.

According to De Oliveira (2011) Angola is an 'illiberal state' with parallel institutions. Its institutions show features of a democratic State, while on the other hand the parallel institutions which undermine democratic principles and the rule of law contradict such features in practice. Second, due to the nature of the Angolan State, the fact that it remains unreconciled and its parallel institutions – together with the high level of centralisation have the potential of leading to violent conflict.

As a result, one cannot generalise the Angolan State, although one can see similarities in other cases the Angolan case has its own such peculiarities which are fuelled by socio-economic and political history which makes it unique in the world.

1.9 Scope and theoretical approach

1.9.1 Scope

This study seeks to investigate if and how State institutions can prevent violent conflict in Angola. The approach to such violence will be in the context of preventing violent conflict within a country which has yet to reconcile from the main drivers which caused the initial conflict (civil war) coupled with current institutional repression, inequality, endemic corruption, high levels of unemployment and unanswered demands from the youth.

The institutional and conceptual frameworks set up in Angola will be identified and contrasted with its practical outcomes on the ground and analyse its impact in either fostering sustainable 'positive' peace or social conflict. Such an endeavour would promote a better understanding of the politics of repression and exclusion in Angola and the dangers that it might hold for Angola. It is the hope of the author that the research findings will assist in informing policy geared towards institutional reform to prevent violent conflict in Angola.

1.9.2 Theoretical approach

In developing a theoretical framework to analyse violent conflict, in particular how it can be prevented from the perspective of institutional reform, the author will borrow from the World Development Approach to Institutional Conflict and Reform (World Development Report 2011). The World Development Report (2011) theory (hereafter WDR approach) sheds light into violent conflict and how institutions play a role in explaining such conflict. The WDR theory asks whether the general rule of law and government effectiveness, low corruption, and strong protection of human rights correlates with a lower risk of the onset and recurrence of civil war and or violent conflict.

While the author acknowledges that the WDR is an annual publication of the World Bank (WB) the 2011 publication is preferred over all other reports including the 2020 report. While the 2020 World Development Report focuses on global value chains and the importance of trade and development, the 2011 report focuses specifically on conflict, security and development and how State institutions can be used as an important tool for violence prevention.

Moreover, the 2011 report looks across disciplines through a multidisciplinary approach of violence prevention together with drawing experiences from around the world to offer ideas and practical recommendations on how to move beyond conflict and fragility. The 2011 report specifically looks at questions of institutional legitimacy and how such legitimacy is key to stability and the dangers that may arise if and when State institutions do not adequately protect citizen rights, guard against corruption, or provide access to justice.

WDR scholars focus on the idea that strengthening legitimate institutions and governance to provide citizen security, justice, and jobs is crucial to break the cycles of violence (World Development Report 2011). Collier, Fearon, Goldstone, Wallis and other political scientists have used econometric models and identified that countries with low levels of good governance and human rights have a higher tendency towards violence. This theoretical approach fits in with the main research question which asks 'Which features of the Angolan State institutions make them more prone to exercise violence and fail to prevent violent conflict?'. Arguing in the same vein (Duffield 2014) stressed that the focus of new security concerns is not the threat of traditional inter-state wars but the fear of underdevelopment, low governance levels and human rights violations as a source of conflict.

The WDR approach identifies that 'internal causes of conflict arise from political, security and economic dynamics' (World Development Report 2011:6). Where States and their institutions fail to provide for basic security, justice and economic opportunities for its citizens, conflict can escalate, compounded by demands for political reform whereby violent conflict is almost a certainty. Although there has not been a breakout of violent conflict at the level of civil war (in post war Angola) there seems to be the potential for this form of violence in Angola due to the high level of brutality from State security structures (manifesting through physical violence and structural violence) such as the police and the military, high levels of corruption, inequality, unemployment and restrictions in civil rights and liberties (which manifests through structural violence). Moreover, the Angolan case can be taken even further because while institutions fail to provide for the basic needs of the population, such institutions are actively repressing and undermining civil liberties and fundamental freedoms.

Though there are doubts about which institutions are legitimate, it is important to acknowledge that a focus on legitimate institutions does not mean converging on western institutions to adapt to local

African realities. As Hague and Harrop (2007) proposed, the 'reinventing' of such institutions in different contexts does not have to be exact replicas of those within western societies but rather must be adapted to local circumstances.

Proponents of the WDR approach such as Fearon (2006) and Fearon and Walter (2010:109) concur that 'even transfers of organisational forms between countries in the south can be unproductive if not adapted to local conditions - the truth and reconciliation, anti-corruption, and human rights commissions that delivered so marvellously in some countries have not always worked on others'. This is important because this approach does not advocate for a copy-and-paste situation, but rather through understanding a particular context, in this case, Angola.

So the WDR approach would posit that the lack of strong, legitimate institutional and democratic governance structures within African countries, Angola being amongst them, could lead to circumstances of violence by its citizens. As Bayart (2009:61) argues, in 'Africa, as elsewhere, the State is a major manufacturer of inequality. The development that it boastfully claims to promote, and in whose name it attempts to ban political competition and social protest, play a part in this process'.

Using the WDR approach for this study which argues the role of State institutions in preventing violent conflict will significantly contribute towards answering the main question, in particular, how expanding Angola's legislature, along with restructuring the relationship between this new legislature the executive and the judiciary would better serve Angola's current societal reality. It is important to note that in any study which attempts to apply a particular theoretical approach, particularly if such an approach is foreign there is a need to localise norms, as Acharya (2004:245) established, 'to localise something is to invest it with the characteristics of a particular place. [It is] an active construction of foreign ideas by local actors, which result in the former developing significant congruence with local beliefs and practices'. The argument here is then that due to the different needs faced by different regions, together with their challenges and threats to foreign norms (if such are used) must be adapted to respond to local needs.

1.10 Literature review

1.10.1 Introduction

Since the end of the Cold War, there has been a significant amount of scholarship on violent conflict. However, much of this scholarship has been regarding the relationship between natural resources and conflict, the role of ethnicity in conflict and the role of external actors in stopping/preventing conflict. Very little, if any of the literature has adequately dealt with the role of State institutions in preventing

violent conflict while at the same time providing a context for healthy State society relations and inclusive governance.

1.10.2 Exclusion and violent conflict

The *Geneva Declaration on Armed Violence and Development* signed on 7 June 2006. The Declaration recognises that 'effective prevention and reduction of armed violence requires strong political commitment to enhance national and local data collection, develop evidence-based programmes, invest in personnel, and learn from good practice' (Geneva 2006:1). The Declaration is important because it works towards a better understanding of how States can better respond to aspects of violence. It also emphasises the need for locally 'owned' approaches towards violence prevention.

An important aspect of the Declaration is that it identifies that even though hostilities have ceased, it does not necessarily mean that 'armed' violence will end. Such threat of violence is amplified by the fact that within post-conflict situations there usually tends to be high levels of repression, violence (both physical and structural) unemployment and unanswered demands of the youth – this is certainly the case for Angola. The Declaration also pointed out that in countries which have experienced war, there is the possibility of a '20-25 per cent risk of relapsing'. So long as such countries must contend with high youth bulges, soaring rates of unemployment and protracted displacement, the risks of renewed armed conflict remain high'. In countries like Angola where conflict has led to the deaths of hundreds of thousands of people such recurrence is simply unacceptable.

A final point which the Declaration makes is that the ending of war does not necessarily mean the return of safety and security to the people. As things such as elections, though vital do not guarantee 'tangible improvements' (Geneva 2006). The Geneva Declaration concludes that 'many post-conflict theatres presented more direct and indirect threats to civilians than the armed conflicts that preceded them'. It is also important to note that conflict in itself is not necessarily a bad and or destructive thing - but rather may be a positive feature of both social and political change. However, Conflict becomes problematic when 'violence is thrown into the mix'(Eberwein and Chojnacki 2001:19).

The 2030 Agenda for Sustainable Development (SDGs), in particular, Goal 16: to promote just, peaceful, and inclusive societies for sustainable development, provide access to justice to all and build effective, accountable and inclusive institutions at all levels (UNGA 2015) is an important recognition of the drivers of violent conflict. Goal 16 makes the link between violent conflict and the need for inclusive politics by arguing that the promotion 'of peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels' (UNDP 2016:20). A report represented by the Universal Rights

Group together with the Danish Institute for Human Rights entitled Human rights and the SDGs: Pursuing synergies (2017:3) pointed out that as human rights are interdependent and interconnected, the entire 2030 Agenda is 'premised and founded upon universal human rights'. The report added that the commitment of 'leave no one behind' is both an 'SDG imperative and a human rights obligation'.

The SDGs further reiterate that the universal targets under Goal 16 are aimed at reducing violence and ensuring access to justice, reducing organised crime, corruption, developing effective, accountable and transparent institutions at all levels, ensuring inclusive, participatory and representative decision – making, and protecting fundamental freedoms, provide a useful platform for, and commitment to, the global efforts to address the drivers and push factors of violent extremism.

Amartya Sen (1999:5) explores the relationship between freedom, democratic governance and economic progress, by illustrating that 'economic and political freedoms have a mutually reinforcing existence whose benefits could significantly promote social justice and mitigate grievances associated with injustice'. Sen (1999) further identifies that since bad governance does not occur in a vacuum; it is often a culmination of factors, fault lines or even failures in the social, institutional and political management and architecture of a State. As a result the politics of repression and exclusion is such a factor which might lead to conflict (see section 1.6).

Within such a context, those who are excluded, usually belonging to a particular group or class, feel unrepresented and perceive the political institutions and constitutional arrangements as contemptible and lacking in legitimacy. Such exclusion is further heightened when discontent and repression are thrown into the mix. Paupp (2000:481) makes the link between exclusion, repression and violence in that, any prospects for avoiding armed conflict in a country would depend 'upon the type and fairness of its political system'. A society that is adequately represented and strengthened by social and political inclusion could greatly mitigate the danger of social and political violence.

Though the 2012 Angola elections were declared "free and fair" by the European Union (EU) and other international observers, according to Roque (2013:3) they were held with 'irregularities, missed deadlines, unresponsiveness by oversight institutions to the legitimate claims and grievances of the opposition, civil society and the youth, and lack of concern over the rise in repression and control'. More recently, the 2017 Presidential elections which took place and saw the replacement of longstanding Dos Santos as President was similarly mired with issues and irregularities. Once again being, deemed free and fair by international observers such as the AU while opposition parties strongly opposed the results citing illegalities, coercion by the MPLA and vote-rigging – UNITA subsequently going to the courts to no avail.

In linking bad governance and the politics of exclusion as a source of violent conflict in Africa, Jeng (2012) asserts that there is growing consensus that bad governance and the politics of exclusion are major factors in Africa's post-colonial crises. This exclusion and bad governance had certainly been a recurring feature within the Angolan context. Jenkins and Plowden (2006) made the link between bad governance and exclusion by identifying that bad governance is usually the culmination of end products of historically constituted practices of exclusion, which are antithetical to the attainment of peace, social justice and progressive democratic order.

Before Jenkins and Plowden (2006), (Adedeji 1993:243) attempted to make a link between the lack of democratic principles and or values and continued conflict in Africa contending that freedom and human rights through the establishment and strengthening of democracy, is necessary for the advancement of social justice and development. He further argued that 'the conditions for internal strife and conflicts are generally reactions to the pervasive lack of democracy, erosion of human rights, suppression of peoples sovereignty, absence of accountability frameworks and culture, and above all, prevalence of bad governance'.

The UN Charter and the AU Constitutive Act both speak of the need to promote and protect human rights. As identified by Tesha (1999:266), quite often, prescriptions for peace-building and prevention of conflicts are framed around democratic governance. Tesha (1999:266) added that the relationship between such prescriptions by noting that democracy and human rights are indispensable to the procurement of peace in Africa given that 'conflicts may lead to human rights violations and human rights violations may lead to conflict'.

The Arab Spring seems to have validated Tesha's argument. Jenka (2006:129) observes that the three countries mostly affected by the Arab Spring were Tunisia, Egypt and Libya:

> Share a common political culture of oppression and rights abuse, though with varying degrees. Violations of human rights and denial of freedom had been so entrenched that violence or revolt of some sort, and at some stage, was more than probable. It was inevitable. Although Egypt and Tunisia effected regime change without an armed conflict, the Libyan case resulted in warfare.

So there seems to be a general understanding that conflict in Africa is very much contextual, depending on the particular area together with the combination of variables found within such areas may make the condition ripe for violent conflict. As Jeng (2012:96) affirms, though the causes of conflict in Africa are diverse and also interrelated, the 'casual factors occur in the context of an

imposed State system, whose representations, inhabitants, activities and modes of operation are often mediums of contestation and sources of tension'.

1.10.3 Explaining violence in the colonial and postcolonial State

As an attempt to understand and explain the conflict in Africa, Fanon's thesis of colonial violence and counter-violence sheds some light. Fanon's advances the idea that 'the violent nature and character of post-colonial African States and politics may be responsible for the present multiplication and spread of violent conflicts on the continent' (Ake 1996:23). It is generally acknowledged that under the colonial system there was a strong use of legal measures to measures to maintain control – albeit such legal standards can arguably be those which undermined basic group and individual rights, but such use of 'law' was a modality of control which in many ways was inherited by the post-colonial disregard for legality and legitimacy. The main objective of the colonial policy at the time - and arguably the policy of the many postcolonial governments who use similar tactics was, and is to promote the interests of the of those in power at the expense of the people.

This is not surprising; one can argue that the current state of affairs in Angola after independence was a continuation of colonial policies being carried out. Although it is important to acknowledge that with the stepping down of Dos Santos as President after 38 years is a signal which political analysts might see as change within Angola's political and democratic trajectory. However, despite such transfer of power to JLO – power for power's sake is still held by the personality of the President, leaving the base of the State unaltered which would, as a result, allow the same acts to continue. In addition, the MPLA continues to maintain a stronghold over society that uses tactics used by the colonial masters. Today Angolans aren't truly autonomous - the MPLA government has used coercion and violence to maintain order.

According to Akintayo (2018), there is ample evidence that suggests that colonial Africa carried over the violence of the colonial State and politics into post-colonial Africa. So what changed in the politics of the post-colonial African State, was not the nature and character of the colonial State but its composition. Jackson and Rosberg (1986) identified that there is indeed a clear link between coercive and tyrannical forms of politics and political institutions in postcolonial African States.

1.10.4 The relationship between maximalist states and state institutions in promoting/preventing violent conflict

In his book *People, State and Fear* Buzan (1983:58) attempted to not only look at security through its traditional approach to threats which arise and challenge the State but attempted to pioneer through the use of social constructivism, new approaches to understanding security. Buzan asks, '*if the State becomes a major source of threat to its citizens, does it not thereby undermine the prime justification for its existence?*' This question led Buzan to, not only construct a standard understanding of security, but also to look at security from all angles going from micro to macro, which addressed the social aspects of security and how people or societies construct of security threats.

So with the securitisation question, Buzan identified that threats to the individual might arise within two forms of State structures: (1) the minimal State and (2) the maximalist State. As per the minimalist view, the basis of the State rests on the consent of the government and or citizens and as such actions of the State are judged according to the impact on citizens. This approach employs a wide liberal interpretation of the role of the State – and in particular, the relationship between the State and citizens. In such a structure, the State is merely an umpire and, individual rights are protected.

In contrast, to the minimalist State, the maximalist State heavily focuses on maintaining its 'perceived' national security in this regard elites can construct the national security dilemma in any way they wish – they can argue for undermining international human rights law (IHRL) by refusing to accept persons fleeing conflict zones as being done by various countries in Europe or close suspend immigration from specific countries as its being done by the US government under the Trump administration. In this regard, the State is all-encompassing and would do anything to maintain itself. Block (1978) noted that such forms of States are usually controlled by a small elite who in turn, tend to work only in advancing their own interests. This seems to be the case in Angola where the MPLA-party State has become all-encompassing and, as a result, due to the 'decay' of institutions and extreme powers of elites the threat arises from state institutions.

So there seems to be a link between the maximalist conception of the State and Fanon's theory of violence and counter-violence. As Akintayo (2018:37) observes, 'the shift from power to force by a State makes violent dissent and demands the preferred mode of expression for individuals and groups who are denied the right and opportunity to dissent and make their demands in a peaceful manner and who quickly discovered that governments stock or capital of violence is limited'.

1.10.5 Making and remaking State institutions

In an attempt to remake institutions, it must be understood that such a process is one which would not only challenge States' internal sovereignty but also put in question the need to reinvent internal political institutions. In his book titled '*A Theory of Universal Democracy'* Khan (2003:74) argued that no one political tradition has any basis under universal democracy to impose its values on all States. Independent and sovereign States can and should custom-design democracy according to their specific historical, ethnic, religious and political needs. In maximising democratic choices for the peoples of the world, the various strands of democracy present a flexible way of thinking about the democratic process and how such strands can be adopted so as not to fit a particular form. With the turn of the 21st century, the study of institutions and how they relate to society has become ever more important. Social, political and economic institutions have 'become larger, considerably more complex and resourceful, and prima facie more important to collective life' (March and Olsen 2005:17).

Attention to State institutions, and factors which influence their development has been present since the early 1960s. Shepsle (1983) has spoken of the increased importance of the legislature, while Kjellberg (1975) focused on the importance of local governments and Robins (1976) highlighted the role and influence that political elites play within the political system. Skowroneck (1982), on the other hand, looked at the importance of analysing political systems to understand breakdowns of democratic regimes. State institutions, therefore, play a major role not only on how political structures are set up but also, how such structures influence societal and group relations – in turn influencing State-society relations.

First set forth by Huntington (1968), political institutions take time to mature. Several states in the developing world that received independence only in the 1950s and 1960s never had the opportunity to what Huntington describes as 'incubate' their political institutions. Huntington (1968) further argues that political institutions can be measured by the coherence of the organization and its procedures: are the rules consistently applied? Are the procedures rational? Political institutions can also be measured by how autonomous they are from a particular person or non-civilian actors. It then means that African political institutions set up in the early 1950s and 1960 as though needed time to 'incubate' and 'mature' – the question would then fall on whether they were rational institutions, whether they created spaces for the widest possible participation of individuals, and whether they were democratic.

Arguing in the same vein Ezrow and Frantz (2013:125), speak of the need for institutions to 'be "complex", the more people and procedures involved is an indication of a more complex institution'.

Agreeing on the importance of complex institutions, Huntington (1968:23) acknowledged that 'the simplest political system is that which depends on one individual'. However, 'complex' systems are those that foster stability. Furthermore, institutions that are adaptable are long-lasting and stable. Overly-rigid institutions cannot adapt to changes in society.

Regarding the rigidity of such States, one can argue that such rigidity can be found in overly-centralised post-independence States – States which failed to adapt as society evolved and different aspects of such society became more aware of their civil and political rights. Such centralisation is to a large extent linked to States which have had the same political party in power. This factor together with territorial centralisation exacerbated by the centralisation of political power in one branch of government further adds to the rigidity of the State and its institutions which is unable to respond to changes in society and in particular to international values which work towards placing the individual first as opposed to the State.

There seems to be acknowledgement within the literature that State institutions are those which must be not only complex but adaptable. They must be able to adapt not only to deal with societal pressures but also with changing times and changing circumstances. If we look at legislative institutions, one can easily deduce the need and importance for such bodies to be both complex and adaptable to societal needs. In countries undergoing societal pressures such as Angola, where executive institutions answer to no other higher authority, States can head towards societal conflict wherein institutions of the State are oppressive and corrupt.

In highlighting legislative weakness, Fish (2006:11) identified how to measure the strength and institutionalisation of the legislature; such factors are those that deal directly with the relationship between the executive and the legislature such as how powerful the legislature is as opposed to the executive. Important questions are: *Can the legislature remove a sitting president? How is the legislature composed*? *Are they elected or appointed, and to what extent can the executive influence the legislature? Is the legislature's approval necessary in the appointment of ministers or for the declaration of war?*

Herb (2004:373) coined the term 'pocket parliaments' in describing legislative branches in Central Asian countries - 'being incredibly weak because they operate in the pocket of the executive'. In such circumstances, executive institutions rule by decree and have extensive legislative powers rendering legislative institutions near useless. In such 'pocket parliaments', 'the president can dissolve Parliament at any time. The legislature has no oversight over political appointments'. The legislature is also composed of close supporters of the President and or his/her political party. Ezrow and Frantz (2013:222). It is very important because it highlights features of how Angola's executive branch of

government encroaches upon the legislature and the judiciary. Interestingly, political, legislative institutions are also of vital importance within authoritarian States or States which De Oliveira (2011:290) described as 'illiberal States'.

Gandhi and Przeworski (2006:1289) had argued that even though 'legislatures are weak in dictatorial and or authoritarian regimes they are nonetheless very important institutions used by dictators to entice opponents of the regime to cooperate and help maintain stability'. They continue by stating that legislatures can be an arena used by incumbent authoritarian regimes to maintain longevity. Legislatures assist in neutralizing threats from larger groups within society and help 'solicit the co-operation of outsiders'.

Ezrow and Frantz (2013) and Fish (2006) concurred that much of the existing literature on State institutions, in particular, legislative institutions focus on their consequences for democracy. Researchers interested in the consolidation of democracy have examined in-depth, the extent to which various features of legislatures are conducive to strengthening democracy. However, the literature on State institutions is virtually non-existent on how they can play a role in curbing the lure of violent conflict. Such dearth of research though one can assume would be due to the difficulty in measuring - is perhaps more linked to what Goodin (1996:20) observed as a 'wide diversity within and across disciplines in what kinds of rules and relations are constructed as institutions'.

Using the same line of argument, March and Olsen (2015:432) added that the approaches to State institutions differ when it comes to how they understand the 'nature of institutions as the organised setting in which modern political actors most typically act and the processes that translate structures and rules into political acts and the processes that translate human behaviour into structures and rules and establish, sustain, transform, or eliminate institutions'.

The idea is that linking State institutions with violent conflict is the institutional perspective that institutions create elements of order and predictability. Rhodes, Bidman and Rockman (2006) argued that 'institutions then fashion, enable and constrain political actors as they act within a logic of appropriate action. Institutions are carriers of identities and roles, and they are markers of a political character, history, and visions. They provide bonds that tie citizens together despite the many things that divide them'.

Ball and Brzoska (2002:43) view security institutions as the institutions of the State responsible for the 'defence of the State and its citizens'. Such institutions are those which include the 'military, the police service, intelligence services and paramilitary forces'. It is generally understandable that the purpose of the armed forces is for the defence of citizens. However, when their function to defend

civilians turns to coercing and abusing civilians, the legitimacy of the State can then be brought into question.

In her distinction between high- and low-security institutions, Janowitz (1988:143) established that 'high-quality security institutions are characterised by their structure and not by their size and the function that they perform'. Of great importance regarding the nature of security institutions is what Ezrow and Frantz (2013:149) observed as such institutions needing to be accountable to civilians: 'Such institutions protect citizens from abuses of power by security forces while restricting these forces from interfering in the political sphere'.

Regarding the military accountability to civilians, Ottaway (2002:1008) rightly asserted that the 'accountability of the military and the police to civilian authorities is critical to stability'. Such a position brings to light the importance of security institutions answering directly to a civilian structure and how such relates to overall stability. However, it is important to identify the civilian structures. Are we merely stating that such civilians are those individuals made up of the executive branch and, if so, is that enough?

Haggi (2003:69) argued that civilian accountability is reflected in placing civilians in positions of authority within security-related institutions. Second, legislative oversight is seen as an imperative need for overusing the activities of the armed forces meaning that 'the legislature has the power to approve security budgets, implement laws pertaining to security, play a role in security strategy and decisions over troop deployments, and hold inquiries and hearings related to security activities'.

The argument regarding institutional reform and evaluation cannot be discussed without briefly identifying the colonial influence on these institutions and attempts by authors to understand it through the study of State failure. 'Colonialism did very little to build effective political institutions. In Africa, few institutions built during the colonial period were instruments of coercion and domination' Ezrow and Frantz (2013:60). The continued weakness of legislative institutions is a trend which still seems to be a reality within several African countries. In such a context and within post-colonial Africa, Jackson and Rosberg (1986) observed that several African States emerged into patron-client fiefdoms. The State was not seen as an avenue through which to provide a public service and goods, but rather as a foundation of privilege for the small elite.

Such an attempt to remake institutions then also falls into the State-building processes that various States underwent of which some are still undergoing by advancing and expanding on peace-building initiatives. Fukuyama (2004:83) observed that State building simply understood refers to the 'creation or buttressing of institutions of government'. Yet, such an approach implies the old notion of post-

Cold War politics, namely the intervention in the internal affairs of States by the international community. However, within the new policy context, it means that international intervention by organisations such as the UN the AU and the SADC amongst others would play a role in assisting States to negotiate a pathways towards new institutional arrangements.

1.10.6 A human rights approach to the State and its institutions

A human rights approach to the State, its institutions and State theory which explains the various facets of the State are vital because it sets the premise of the State as that of achieving the human rights of persons under its jurisdiction and that the achievement of human rights is the achievement of any process aimed at improving the conditions of such persons.

This understanding of human rights and placing the State and its institutions as its ultimate protector brings together not only the various elements of human rights such as civil and political rights which would allow for persons to have more freedom and with it the achievement of all others. Such freedom allowed them to fully express themselves as citizens in control of their full autonomy. Such an approach would also allow within its broadest sense for greater human, societal and economic development.

In his analysis of a rights-based approach to development, Sagasti (2013) emphasised that in addition to realising specific human rights, such a rights-based approach to development should emphasise, accountability, empowerment, participation and non-discrimination. A rights-based approach to the State and its institutions is then one which would take human rights and their protection as its first objective and *modus operandi*. Sagasti (2013:125) continued in establishing that rights-based approaches are ‘comprehensive in their consideration of the full range of indivisible, interdependent and interrelated rights: civil, cultural, economic, political and social’. It is also important to note that rights-based approaches focus on the development of ‘adequate laws’ and in this case creating institutions and mechanisms of redress.

The adoption of a rights-based approach to development as described by Sagasti (2013) broadens the concept of governance, the same is equally true in the adoption of a rights-based approach to State institutions. As it is State institutions which will then further cement principles of governance and inclusivity.

The Paris Principles, adopted in 1993 (UN 1993) by the UN, specifies that States must establish the needed frameworks to establish independent mechanisms to promote, protect and monitor the implementation of international human rights instruments to which the State is party. The protective

measure of the Paris Principles can be seen by the way in which States are obligated to establish State institutions which would have as their base the protection of human rights while preventing violent conflict.

There is insufficient scholarship which deals with internal initiatives that States can take to not only stop violent conflict but prevent it through the lens of institutional design/redesign. Moreover, there is no scholarship addressing how violent conflict can be prevented in Angola through such institutional initiatives. The author does not advocate that adjusting and or restructuring African institutions across the African continent would resolve all of Africa's violent conflicts, but rather, in the Angolan context - State institutions can play a significant role on preventing violent conflict from breaking out due to its socio-economic and political landscape.

This thesis makes a significant contribution to the literature of violence, specifically on the nature of violence in Angola through the lens of State institutions. This thesis also contributes towards a better understanding of Angolan institutions themselves, how they evolved, and how they function – such analysis is not currently available. The ultimate contribution to the literature is the creation of a framework which draws heavily on normative political theory which uses Angola as a case study by which it proposes an institutional design which would work towards answering the main research question, and sub-research questions (see section 1.3).

1.10 Chapter outline

This study is divided into seven chapters. The first and current chapter introduced the focus of the study, by providing, amongst others, the background to the research problem, the research methodology and a review of the literature.

Chapter two will start by providing a contextual analysis of violence and conflict. It will be done by providing an analysis of violence and the strand of academic research on the issue. The chapter will then set out in detail theoretical approaches to the State and violent conflict. Section one of chapter two will provide the introduction of the chapter and with it the theoretical basis of violence. The chapter will continue by looking at the relationship between violence and power and in particular, how the power relations between institutions and individuals can influence the mode of interaction.

Chapter three will look at the obligations that Angola has at the global, regional and sub-regional level for the prevention of violent conflict. In such an analysis, the chapter will look at both the treaties and soft law pertaining to the prevention of violence. Section one will begin by looking at the obligations that States have under international law to respect, fulfil and respect international law.

Section two will look at the global human rights framework through the UN and the prevention of violent conflict. Section three will provide insight into the AU and SADC and the mechanisms they have in place for the prevention of violent conflict. The Chapter will conclude by looking at whether Angola has complied with its international human rights obligations.

Chapter four will critically analyse Angola's brief history of constitutionalism and how institution making has contributed towards the establishment of a centralist State. Section one will provide the introduction and with it Angola's process from independence and the establishment of the one-party State. The chapter will analyse how the 1975 Constitution was pivotal towards establishing a non-participatory political culture; the 1992 Constitution will analyse how the 1992 Constitution formally ended the one-party State system in Angola while seeking to end the monopoly of power within a single branch, the Constitution will be analysed to see how far Angola has come since the civil war and with it how the various Constitutions in Angola have influenced power and politics.

Chapter five will give a detailed analysis of Angola's State institutions, the executive, the legislature and the judiciary. Through such analysis it will determine whether such institutions in their current form create potential conditions for violence.

Chapter six will propose a new institutional design for Angola. This chapter will look at how governance in Angola can better be devolved – not only through the conduct of local elections but also further to the provincial level through a process of decentralisation. Section two will look at the nature of State institutions such as the executive, judiciary and legislature and how they can be better structured. The Chapter will look at how the executive branch can better be realigned so as to limit its powers. In addition the Chapter will propose a detailed way in which the legislature can be reformed through the creation of a unicameral system. The Chapter will conclude with how the judiciary would be better positioned to administer justice in light of the proposals made in the Chapter.

Chapter seven will provide a conclusion to the thesis.

CHAPTER TWO: The theoretical discourses of violence and State institutions in preventing violent conflict

2.1 Introduction

This chapter looks at the theoretical discourses of violence, the State and its institutions to identify the theoretical links on how State institutions can prevent violent conflict. This chapter begins by looking at the relationship between power and violence and how the two concepts go hand in hand. This analysis should provide a unique relationship between power and violence and how the distribution of power within institutions is vital within the conflict cycle.

The section on political culture provides an understanding on how such culture influences both institutions and participation within the political system. Section on approaches and theories to violent conflict looks at how the international community have tried to find ways in which to understand violent conflict and with such understanding find ways to solve it. This section looks at how aspects of culture, politics and health might explain violence. The section on State theory and violent conflict looks at how violence can be explained through understanding how a State functions. The Chapter ends with an analysis of how State institutions can be used to violate human rights.

In addition the Chapter works towards demonstrating that the application of a purely liberal approach to State building might create conditions for potential conflict as such purely liberal precepts insubordination of other approaches and might not be compatible with particular contexts.

To adequately make a case for the role of State institutions in preventing violent conflict, this chapter sets forth to explain the essential elements of how State institutions can play a pivotal role in conflict prevention. It also emphasises some of the challenges that institutions face within this conflict prevention role.

2.2 Theorising power and violence and consensus

Mills, on the '*The Power Elite*' (1956:46) proposed that 'all politics is a struggle for power' of which the ultimate kind of power is 'violence'. This statement echoed Weber's definition of the State as 'the rule of men over men based on the means of legitimate, that is allegedly legitimate violence' (Weber 1965:17).

Arendt's (1970:43) article *On Violence,* explores specifically the relationship between power and violence. Regarding power, Arendt noted that it grows from 'consensus' and once there is no longer

consensus, violence is usually the result. Arendt continued in observing that 'we know, or should know that every decrease of power is an open invitation to violence – if only because those who hold power and feel it slipping from their hands have always found it difficult to resist the temptation to substitute violence for it'. The approaches of violence by Mills (1956:43) and Weber (1978) provided a context which placed the State as the central actor. Arendt, on the other hand, offered a broader and more inclusive idea of violence in explaining why violence might occur.

Today, as opposed to during the Cold War period when some African States were either preparing for independence or those which had already achieved political independence failed to establish systems in which leaders governed by 'consensus'. An important factor to note in those contexts is that the majority of their citizens had just endured decades of colonial rule and the fact that political independence had been achieved negated the need for liberation leaders who now held political power to rule by 'consensus'. In a way it was a context in which liberation movements saw themselves as having the right to rule – because they took the State by force and conquest from their former masters.

However, the context has very much changed as opposed to those chaotic years after independence, the fact that several African States established themselves in political office and removed safeguards on their power while undermining institutions and eliminating political challenge brings to the front the question of 'consensus' as Arendt (1970) rightly mentioned. The fact that African governments now 'rule' their people in similar fashions to those of their former colonial masters eliminated the initial 'consensus' which they had gained.

The idea of consensus was also brought forward by Wiafe-Amoako and Mzrui (2016:75). Although he does not specify 'consensus' per se, he does link the idea to African governments and institutions in proposing that the question of 'legitimacy', or rather the lack thereof has been one of the underlying causes of conflicts in societies 'and to a greater extent, the entire State'. Waife-Amoako and Mazrui (2016:81) added that, though legitimacy is accorded a 'special place in African societies not much attention is paid to the 'legitimacy of the African Sate, its government and its institutions'. As such, looking at how States can be models of consensus and legitimacy within their institutions and build structures which would accommodate such aspects are vital towards understanding conflict in Africa.

Other authors, such as De Jouvenel (1952) had made the link between violence, the State and its people. De Jouvenel attempted to inquire about the nature of violence and the State by asking 'to him who contemplates the unfolding of the ages, war presents itself as an activity of States which pertain to their essence' meaning that what happens to the identity and or functions of the State if conflicts were to end – would it enter into a kind of identity crisis? Although De Jouvenel (1952) speaks more

of the relationship between States, he does, however, establish that the State can be used as an instrument for considerable violence and one might argue whether such capacity for violence is one which could be turned inwards by the institutions of State and against the citizenry.

2.2.1 Violence

Violence has been an inherent factor in human history. Since the establishment of the nation-State in Europe to the colonial period and its subsequent violent decolonisation, violence was used as before and after the establishment of the nation-State and its institutional structures. Violence was used both as a tool to oppress and to liberate. Violence and its consequences have given rise to an enormous amount of historical, sociological and philosophical literature. As Bessel (2015:23) observed, 'it is a fundamental problem affecting social, political and interpersonal relations.'

Researchers and academics alike have been trying to understand and diagnose violence for decades if not centuries. The World Health Organisation (WHO) made an attempt in viewing violence 'a leading worldwide public health problem' (WHO 2002). Looking at African States and the violence within such States, Ottaway (2004:3) argued that African States 'fail' because of internal political dimensions, and 'their inability to establish institutions to moderate differences.' Using the same internal dimensions of conflict, Harbeson (2000:67) attributed such internal causes of conflict to unfavourable patterns of 'corruption, weak civil society, lack of State responsiveness to legitimate public demands, lack of civil rights, incapable leaders and stifled democracy'.

Although such 'failures' and in particular, the corruption and incapability of leaders can arguably be seen within the so-called advanced democracies, the important point to understand is that within such democracies there are usually strong institutional frameworks based on democratic principles and human rights. Such principles, accompanied by broader avenues of participation serve to a large extent, as buffers against all-out institutional 'anarchy'.

In regards to strong institutional frameworks based on democratic principles and which might aid in preventing violence, North, Wallis and Weingst (2009:129) noted that social orders, either of violence or peace are characterised by the way societies 'craft institutions that support the existence of specific forms of human organisation, the way societies limit or open access to organisations, and through the incentives created by the pattern of organisation'. It is particularly important as it regards to the design of the State because it implies that within activities such as those of Constitution-making, the organisation of aspects such as political organisation, the relationship between institutions and the distribution of power is, essentially influences the handling of violence. North, Wallis and Weingst

(2009) added that the nature and characteristics of such social orders are intimately related to 'how societies limit and control violence'.

The above discussion on violence concludes that violence has been an inherent factor in human relations. Specifically, within States, it is the responsibility of States to ensure that law and order prevail – however, State institutions can at times be the causes of such violence. The (2014) Global Status Report on Violence and Prevention specified that social determinants such as repression, inequality and weak governance systems could contribute towards violence. The existence of such societal determinants has the potential for violence to occur and, States must then prevent such outbreak by reforming their institutions in line with a human rights approach which is both participatory and inclusive.

2.2.2 Violence and power

It is not farfetched to argue that State violence influences social and political institutions and to a large extent, the nature of the violence also undermines the proper functioning of such institutions. Williams (2016:62) took the approach that violence and wars in Africa have 'local roots.' Here, Williams (2016) referred to the 'local' as referring to the relationship between 'individuals and their immediate politico-geographic context.' Important in this analysis of the 'local roots' is not only the kind of violence that the State exercises against its citizenry through its institutions, but also the capacity of such institutions due to their nature to prevent citizens from using violence against each other which can be seen in the levels of crime – which is often a symptom of the incapacity of institutions to address deep societal grievances which are often the result of unreconciled societies.

In his article entitled *'Some Hesitant Observations Concerning Political Violence',* Geyer (2003:43), equated violence to 'dirt'. He observed that dirt, like violence, is a part of life, though 'they seem random and arbitrary they are by-products of ingenuity and results of great ambition. One can observe a strong sense of despair in Geyer's depiction of violence as a permanent and inherent part of human relations. Important to gather from his statement is not an all-out pessimistic approach – meaning that we should live with violence, but rather, since we can diagnose it as an ever-present threat within human relations, we can then better build institutions which would work towards managing and mitigating them to prevent its outbreak.

State institutions – those which are based on human rights and the rule of law with built-in mechanisms for both greater inclusion and participation would significantly aid in mitigating and potentially preventing violence from erupting – such prevention can be seen in two levels: (1) the kind

of violence which is seen from the State and its institutions and (2) the kind of violence perpetrated by citizens and against other citizens.

Despite violence being such a fundamental problem affecting society, it has nevertheless been a recurring factor in human history. What is the problem then? Why has violence been so pronounced in human history? The simple answer would be that as human beings, we are inherently violent, and our passions and differences - differences in beliefs, ideas, ideology - create a melting pots for the potential of violence. This idea of violence as being inherent to human beings has been challenged. In 1986 when a group of academics from around the world examined the relevant global data on violence and formulated a statement on the issue, their findings were that the 'evidence does not show that violence, war and conflict is a part of human nature'. What later became known as the *Seville Statement on Violence (the Seville Statement)* (Adams 1989:117), was adopted by the UN Educational and Scientific Organization (UNESCO) and despite the scientific reach and relevance of the statement, debates and arguments about the inherent nature of individuals as being violent continue to be spread.

In his article entitled *A History of Violence*, Pinkner (2007) emphasised that, unlike centuries ago, acts of cruelty and violence as entertainment are no longer the case, but rather that as human beings we have been getting 'kinder and gentler'. However, this thesis does not have the objective of delving into the biological nature of human beings and their propensity for violence. Instead, this thesis takes violence as a given, in that violence has been an inherent part of human 'history' and that what is essential is not that we should work towards eradicating violence forever, but rather, as individuals, we can better design societal and State institutions which would work towards creating the conditions which would limit and prevent the reoccurrences of violence within societies.

The development of IHRL in the 1940s and the obligation under the UN Charter on banning violence both as a political instrument between and within societies would be in stark contrast of Geyer's (2003) idea of violence, at least its omnipresent nature. What might have been overlooked within the international law literature and in particular its legal instruments, is the permanence of human nature — taking into consideration the *Seville Statement* which focuses on the persistent nature of violence within human history. The *Seville Statement* which argued on the need to properly build into 'institutions and mechanisms which would take into account human interaction within social communities with the objective of minimising, mitigating and preventing violence'.

Indeed, one can extrapolate from *the Seville Statement* that finding mechanisms that take into account aspects of 'human interaction' is important because, within unequal societies in which institutions favour elites as opposed to the entire citizenry, there is the likelihood of conflict. It might not be State

conflict or violence but rather violence through either high levels of criminality or societal instability. In such contexts, it would not only be farfetched to say that institutions have created such contexts but also that they have the responsibility to prevent such actions.

Such link in regards to institutions, violence and the State can then to a certain extent be identified in the works of Engels (1884) in his book 'The *Origin of the Family, Private Property And The State*' where he argued that although the State did not invent war, the State has been associated with violence. Within such relationship, Foucault's works (1977), (1978) and (1980) focused significantly and specifically on the effects and relationship between violence, institutions and the individual within society, and in particular, how the power dynamics within these set of groups and institutions can either work towards affirming and or resisting such effects.

A diverging view on violence can, however, be found between Marx and Engels and Foucault. Wherein Marx and Engels saw the State and its institutions as having a 'monopoly of power and violence' (Engels 1884). Foucault, on the other hand, criticised such a view and saw the State and its institutions not necessarily as instruments of violence, power and the repression of the powerless by elites and or the powerful, but instead proposed that one should rather focus on 'how power is structured' (institutionally) and how it operates within the everyday relations between people and institutions.

In *The History of Sexuality Vol. 1* (1978:71) Foucault argued that even in cases were the State uses violence, 'even in their most constraining, oppressive measures are productive, giving rise to new forms of behaviour rather than simply closing down or censoring certain forms of behaviour.' In many ways, this goes back to the idea of violence as 'inherent' to human nature and how oppressive institutions can largely be reformed by modifying them to the extent in which they would alter not only behaviour but prevent future violence and conflict.

Yet, and at the same time, it must also be noted that the use of violence by the State – of which such forms of violence might also be 'oppressive' in nature might not prevent violence at all, it might prevent a form of violence or rebellion by the people against the State apparatus but, it might rather increase the level of violence between the citizenry. This can be seen in countries like Brazil with high levels of crime where gangs have grown in size and violence, together with their control of places like the Favelas (Stockton 2014). Within such countries, together with the high level of organisation and extremely violent nature is in many ways a result of Brazilian State institutions' failure to address an array of societal issues such as poverty, inequality and discrimination – something which one can argue is leftover and unresolved issues from Brazil's period of dictatorship.

Foucault, unlike other Marxist thinkers such as Adorno (1950), Marx and Engels (Engels 1884) and Althusser (1971) focused less on oppression and violence but instead looked at ways in which resistance to 'power' can play a huge role in preventing violence and oppression. Although Foucault did not provide a framework for such resistance in any of his works, he does, however, tap into the idea that institutions can be used as a mechanisms to prevent oppression and in many ways use this resistance to power and transform it within the 'people power' perspective to ultimately prevent violent conflict.

A building block towards the role of State institutions in preventing violence and conflict is Foucault's idea of power relations. In *Power and Knowledge* (1980:128) Foucault argued that 'Power must be analysed as something which circulates, or as something which only functions in the form of a chain. Power is employed and exercised through a net-like organization. Individuals are the vehicles of power, not its points of application'. Individuals should not only be seen as 'recipients' of power - meaning that they should not only serve the purpose of objects of oppression but rather that they should be the 'place' where power is enacted and ultimately resisted. This idea of individuals being where power rests makes more sense within an institutional framework which is best described as decentralised because it gives individuals a say in, not only the running of the affairs of the State but also empowers them to act autonomously. Such autonomy is not something often seen within overly centralised States where power is rather vertical, and at times stagnant at a particular point.

Foucault not only theorises on the relationship between people and power but also at ways in which individuals and institutions can reconceptualise power as well as the role that individuals play within power relations. Such power relations can further be deconstructed within institutions and how the power dynamics within State institutions can play a considerable role in societal stability since the individual can play a more significant role through more inclusion within such institutions. In his attempt to reconceptualise the role of the individual within such power relations, Foucault (1980:87) paid special attention to whether individuals are simply 'subjected to oppression or whether they actively play a role in the form of their relations with others and with institutions'.

At the same time, this view of power can serve as a double-edged sword in two ways; (1) This view can be applied in association with social movements as opposed to merely being the 'recipients' of State oppression, and (2) people can organise as in Egypt under Nasser and more recently in 2011 and engage with government to reform the State and its institutions. Such an organisation creates the conditions for new kinds of narratives to be brought forward – one mainly of rights. Moreover, this political narrative of rights being pushed forward by these groups and individuals is then not a challenge to State power per se. It is more in line with what Heyns (2006) described as actions which,

instead of attacking the State, endorses it to fulfil its obligations, such claims are that 'the protection of these rights is a primary obligation of the State and holds the State accountable for its actions'.

On the other hand, the 'how' in which people take 'power' into their hands can at the same time be violent – the Arab Spring as seen in Syria is perhaps an extreme version of such side. The danger of engaging with governments in an adversarial manner such as those creates the conditions for greater chaos to emerge. The chaos which violence creates allows for actors to rise who do not necessarily have democratic aspirations, wars of liberations, violent protest actions just to mention a few can serve as the perfect chaotic contexts for which serve as ladders for which political animals can climb to achieve their political aims – of which may not always be democratic.

In *The Politics of Collective Violence,* Tilly (2003) argued in a similar vein as Williams (2016) in that within the social context 'local roots', the emergence of violence depends to a large extent on nature and or type of government and such governments' capacity. In such understanding, democratic regimes which underpin and highlight the importance of open societies and dialogues tend to be more 'peaceful' and less violent as opposed to illiberal and or authoritarian ones because of the nature of the institutions within such States and whether they are either open and or closed.

Closed political systems usually have a higher level of violence. Not necessarily a form of violence where individuals are fighting the State, but rather as according to Reed (2017:102) new 'chains' of power are being created. In the absence of institutions that are open and create the conditions for citizens to engage and participate within society while also having the opportunities to be productive, arguably leads them towards creating systems of violence, as a result, creating new 'chains' of power as Foucault (1980) proposed would then be those such as of organised crime and or criminal syndicates within society which, in turn, leads towards greater violence between and amongst the citizenry.

The main feature is not necessarily considering the strength of State institutions. Instead, the distribution of power within the State and its institutions are essential. Marx, Foucault, and others began by looking at the power dynamics of institutions. An essential reference being given to Marx and Engels (1884), who looked at 'social class and relations' as a factor essential for violence. Such conversations can be taken further to look towards how political institutions and the diffusion of power within such institutions can reroute power which in turn might have an impact on violence and State stability.

The development of IHRL created a new set of limits on the State. These limits not only threatened the relationship between power and violence and between States and its citizens but also 'monitored'

the relationship between States and their citizens. Engels (1884) discussion above argued that although the State did not invent violence, violence is nevertheless associated with it. Due to such association, the State must be based on a paradigm of rights which place the protection of the individual at the centre of such rights because of the potential of the State to use violence against the citizen. Due to such association between violence and the State, governments must then establish mechanisms of accountability – and such mechanisms must be built into State institutions.

One can also extrapolate a human rights dimension from the work of Foucault (1970), (1978) and (1980), where he focuses on the relationship between violence, institutions and the individual within society. An individual's circumstances play a role in how they interact with society. In societies where individuals are sufficiently provided for, where they are included within State institutions and where grievances are low, all contributes towards creating better conditions of life. However, in contexts where individuals are oppressed and left out of the political decision-making process and where their most basic needs are ignored - they may lose faith in individuals and then potentially turn to violence.

In such regard since Foucault focused on how power is structured, one can argue that individuals relate better to society and its institutions when those institutions are inclusive by nature. Perhaps putting forth the dangers of overly centralised States, decentralisation is an important option to consider as to not only creating wider 'chains' of participation but also break old chains of repression. One can further extrapolate from Foucault that, since there is an effect on the nature of the relationship between violence, institutions, and individuals within society establishing institutions which are inclusive and participatory is vital towards preventing violent conflict.

2.2.3 Revolution, violence and their causes

Popular uprisings have become commonplace in recent history. The Arab Spring is a demonstration of how popular uprisings have challenged the authority of the State. But at the same time, the uneven outcomes of popular uprisings and revolutions have had diverging results in different consequences. In Egypt, though it led to the overthrow of Mubarak in 2011, in Syria, it led to a violent and protracted conflict which has, thus far resulted into thousands of deaths while also creating one of the biggest refugee crises since the second world war. In Lebanon, the 'revolution' which has yet to see a conclusion, begs the question whether, once it is finalised, it will lead to a context similar to that of Egypt or Syria.

What is important is then to understand the nature of such popular uprisings, the causes of such revolutions and how they are linked to the State to prevent them. Davis (1962) and Gurr (1968) have

developed the socio-psychological theory of revolution that focuses on individual behaviour as the guiding force behind revolutions. According to Davis (1962), a revolution is more likely to take place within contexts which have experienced long term 'socio-economic development' but, such development is then stifled by a 'sharp economic' decline. This approach is particularly important because as people's economic conditions had improved during times of economic stability, their expectations of the improvement of their economic wellbeing increase – which in turn establishes expectations of how their lives ought to be.

This approach can be applied to States which are mostly driven by one commodity such as oil and which economies have drastically declined due to the international drop in oil prices – the resulting economic decline would then serve as a potential catalyst for a revolution because individuals would be directly impacted. Within a more general analysis, the economic downturn caused by the COVID-19 pandemic directly impacts not only global markets but on the capacity of individuals to earn, with the poor taking the brunt of such economic downturn.

In addition, and as COVID 19 spreads States seem to be implanting legislation which not only undermine human rights but negatively affect the social contract between the State and the citizen. Such erosion of the social contract has been seen in countries like Hungary (Gall 2020) were the governments have used the pretext of the pandemic to implement laws which undermine human rights and further centralise power in the hands of the executive. Such actions though might be blocked in States with robust and open institutions they are nevertheless easier to implement in States with weak institutions were power does not circulate as described by Foucault.

Tiruneh (2014:4) arguing in the same vein that, as it regards to economic decline and violence, there is a gap between the past economic achievements and the reality of economic decline. It is when the 'gap between what people are able to obtain and what they believe they should be able to obtain, grows and turns into a crisis of rising expectations'. Concluding that 'unhappy, unsatisfied, and frustrated individuals then resort to political violence'. However, it is perhaps important to note that economic decline alone is not the main reason for people to turn to violence. Tiruneh (2014:4) continued by proposing that 'deposition, corruption, lack of political freedom, and issues of political participation' are also factors which are in the minds of individuals who turn to violence in an attempt to change the status quo.

Perhaps what can be considered to fit best in explaining is Gurr's (1968) theory of deprivation. As opposed to Davis (1962), which focused on the economic dimension of revolution, the theory of deprivation adds a political twist towards understanding violence. Gurr (1968:1109) argued that when there are high levels of 'deprivation', 'anger' and 'frustration' the result of such variables is usually

violence. This is important because anger and frustration can be derived not only from economic situations but also from political situations, such as the lack of an effective State, high levels of corruption and the failure of the State to provide basic services, amongst others. Most importantly, Gurr (1968) has also included issues of 'legitimacy', and weak institutions as causes for violence.

Another approach which brings together Davis's (1962) theory of revolution and Gurr's (1968) theory of deprivation is Johnson's (1966) theory of equilibrium. Before specifying his approach to equilibrium, Johnson (1966:26) was careful to clarify that 'revolutions must be studied within the context of social systems in which they occur'. This idea of context is particularly important to his theory of equilibrium because Johnson (1966:29) asserted that the balanced and coordinated values of a people within a particular society leads to 'political stability'. It essentially means that social and political stability is more likely to be in place in countries where there are shared norms and values and ideas of governance.

This idea of equilibrium essentially means that there is a trust in government because of the shared values that people have with the political system. Such contexts can mainly be seen within countries like Botswana, Ghana, or South Africa where the government and State are both seen by the people to be legitimate – it is then the shared norms and values which give legitimacy to the government. The equilibrium in this regard is seen in the way in which 'social, economic, and political systems stay in balance and change in equal proportions as well as evolutionary, political stability would be guaranteed' (Tiruneh 2014:6).

In this regard, a revolution would then take place when there is no equilibrium. Curbing a revolution can only be done so if 'political leaders' reform the political system, failure to do this would then lead to a forceful and violent change of the political system. Though, it is worth noting that even though there might not be equilibrium, violence is not always the outcome – this is perhaps because of the nature of the States coercive apparatus, where such apparatus is so strong that the population is merely unable to rise and the result is a form of violence which the State perpetuates against citizens (both physical and structural).

Huntington (1968), on the other hand, uses his modernisation theory to explain revolution, in proposing that 'revolution is an aspect of modernisation'. The argument rests on the idea that economic development, and social development, higher levels of education lead to greater political awareness. One can also add that with the prevalence of the international human rights system and the rights it promotes further enhances these individuals claim on such rights. In addition, Huntington's (1968) modernisation theory, in contexts where State institutions are unable to establish proper

avenues of political participation and representation which fit the parameters as discussed in section 1.5.3 'political violence including revolution, is possible'.

Huntington's (1968) modernisation theory is particularly important because it places institutions as a reason for why violence might break out. Taking into consideration Gurr's (1968) theory of deprivation together with Davis (1962) socio-psychological theory with that of Johnsons's (1966) theory of equilibrium brings together not only the role and potential of State institutions in causing violence but with it – their importance in preventing it.

Taking institutions as they are, together with their organization, Tilly (1978) developed a political conflict model which focused on political variables such as 'power' and its deployments within society. Tilly (1978) added that collective violence and, in particular, revolution, has a strong link with the levels of 'frustration' and 'anger' within society. Moreover, he argues that 'the concentration of power in national States' is a major contributor to violent conflict. This argument then touches on the nature of political power within a State, and in particular, how political power is organised through legal instruments such as Constitutions.

It is important to take note, however, that Tilly's (1978) political conflict model, and in particular, his idea of the concentration of power is extreme where he argues that such concentration would eventually lead to 'multiple' points of sovereignty in which various sovereigns contest for power. This approach is important because it does not only work towards understanding the dangers of overly centralised States but also that, in events where States are overly centralised, together with failure for there to be an 'equilibrium' there is a possibility of conflict. Such conflict is further heightened by aspects such as those discussed in sections 1.1, 1.6, 1.6.1 and 1.6.2.

As a result, one can extrapolate from Tilly's (1978) political conflict model that overly centralised States can lead to violence. Such propensity for violence is even stronger when variables such as 'frustration' and 'anger' are present within society. This idea of centralised States has also been strengthened by Skocpol's (1979) structural theory, where she argues that States are the main reason for revolution and violence. Skocpol's structural approach argues that the 'structural' power position of the State both at the international level and domestically is important when trying to understand violence. Equally important is the internal dynamics of such State, in particular, the State's relationship with its population – in particular the various classes within society.

Such relationships are then vital in understanding revolutions and conflict. Is the State one which prioritises a particular class? Does it discriminate against a particular group within society, how are

economic benefits distributed? These aspects contribute greatly towards violence. In addition, it is such variables which are directly controlled by the State.

2.2.4 Violence and the political settlement framework

The political settlement approach has grown significantly within the peace and security studies field and gives perspectives on how 'power' and its organisation influences the establishment of 'viable' States (Behuria and Gray 2017). A political settlement has been defined as 'an inherited balance of power' (Khan 1995:71). Another, broader definition has been provided by Kelsall (2018:30), in which political settlement is defined as 'an ongoing, conflict-ending or preventing agreement among powerful groups over a set of formal and informal institutions expected to create opportunities for those groups to secure a distribution of benefits that is acceptable to them'. Such definition perhaps fits contexts in which political actors have been in power for decades and have amassed staggering amounts of wealth while also entrenching 'parallel' political institutions which function outside of any form of oversight and or control.

Kelsall (2018:34) assumes from the definition provided that 'people stop fighting or refrain from other forms of serious disorder either when they are forced or when they can see benefit from it'. He continued - 'since benefits do not fall from the sky: their distribution is mediated by political institutions'. This definition of the political settlement approach is important for two reasons: (1) it works towards providing an analysis of why States might use violence against its people, (2) why groups within society might use violence against the State and (3) why average citizens might use violence against other citizens. This definition also works towards stating that power is central within State architectures and the centralisation of such power which might be represented by centralised States may play a role in such violence.

In analysing the balance of power, John and Putzel (2009:4) noted that the 'balance or distribution of power between contending social groups and social classes, on which any State is based, is important'. Khan (2010:23) continued in stating that within such settlements, there is usually 'a common understanding, usually forged between elites, about how power is organised and exercised'. In such a context, such 'understandings' are evident through strategies which work towards undermining the 'legitimacy' of the State through the creation of 'illiberal' institutions which create separate kinds of rules and to the extreme cases of creating 'parallel' institutions.

Lindemann (2008) and Jones (2012:24) noted that the political settlement approach has been instrumental in analysing why some States 'endure' while others 'break down' and why some peace processes result in more inclusive governance architectures and political systems and why others do

not. One can argue that this was the case in South Africa – the negotiations which led up to the establishment of constitutional democracy was a negotiated settlement. The key-word being 'negotiated' because it allowed for various groups to reach an accord which would not only provide safety for a particular group but one which would provide safety for broader society. The political settlement approach has been used to analyse a 'wide range of policy dimensions which lead to State stability and viability' (Levy and Walton 2013).

Khan (2010:20) defined an institutional and political system as one which has 'characteristics that are reproducible over time as a political settlement'. At the highest level, a political settlement is a description of the 'social order that describes how society solves the problem of violence and achieves a minimum level of political stability and economic performance for it to operate as a society'. Khan (2010:20) continued in looking at political settlements as 'an interdependent combination of a structure of power and institutions at the level of a society that is mutually compatible and also sustainable in terms of economic and political viability'. This structure of power is important because it implies that centralising political power within a particular institution might prove to be dangerous.

The political settlement approach is important because it provides a framework from which we can analyse post-conflict States and through it gauge the level of peace and stability that such societies have engineered. The framework can also serve as a guiding light in understanding processes, both negotiated or not that led to the establishment of highly-centralised States. The framework is important in two fundamental ways: Khan (1995), (1) argues that to understand the emergence of institutions, they must be understood within the social context in which they emerge, and (2) the method of the distribution of organisational power can determine the institutions and policies that are likely to persist as well as ones that most likely to be developmental in that context.

The latter is particularly important because it provides a picture of how the distribution of power within a particular political system and through the structuring of such system influences how the system works. From this perspective, one can extrapolate that there are dangers of a concentration of power within overly-centralised States, and depending on the historical and socio-political context such centralisation is one which has the potential to create conflicts.

In this regard, the historical and socio-political context is crucial because many a time they influence the power dynamics of groups within society. Khan (2010:18) argued that 'power matters for institutional analysis because the power of different groups to contest, obstruct and oppose rules that are against their interest affects the enforceability of institutions'.

An important aspect within the definition of a framework is the question of 'viability' – this is both as it regards to 'political viability' and 'economic' viability. Khan (2010:23) argued that 'if a combination of institutions and power is not viable enough to survive, it is not a political settlement'. It is important in the analyses of post-conflict States because they offer a retrospective analysis of peace agreements and peace processes to see whether their continued adherence serves in the long run, to promote what is a 'viable' political settlement.

Furthermore, political settlement pays particular attention to power and how such power circulates within political systems. Although power can be ranked in various dimensions, the political settlement approach also focuses on the 'holding of power' – referring specifically to how long organisations and or individuals 'can hold out in actual or potential conflicts against other organisations or the State' Khan (2010:20). Such holding on to power can further be interpreted within a political-cultural context in the sense that the 'holding' of political power over an extended period by say, a political party or particular individual also tends to have a strong influence on the political system itself – because it may create an inflexible system which tends to be indistinguishable from such individual or political party or State.

The political settlement approach can also be integrated to analyse centralised States while gauging how the distribution of organisational 'power' impacts society and whether such 'power' as is organised is a viable political settlement which has the possibility of preventing conflict and maintain positive peace. The organisational power within centralised States is imperative. The political settlement framework also acknowledges that institutions aren't 'simply just rules for making decisions; they also define the distribution of benefits. In turn, a distribution of benefits helps to sustain the distributions of power'. Such distribution of benefits was particularly important within African post-colonial States in which the distribution of money and other benefits was a way in which loyalty was retained.

An important aspect of the political settlement approach has been identified as the 'power configuration' Kelsall (2018). Such configuration refers to how actors are 'arranged' or 'organised'. Morris (2002) noted that such actors are arranged in a certain 'configuration of power when they agree to the settlement, and 'the institutions that are agreed on also have a bearing on that configuration'. Kelsall (2018:7) continued that in such an arrangement 'power is usually concentrated in the top leadership', as opposed to being spread out. This form of concentration is one which the top leadership usually 'suggest' approaches and actions – of which such suggestions then quickly flow down the chain of command – such chain being formal or informal. While at the extreme level the leader simply 'dictates' terms, often relaying as Kelsall (2018:8) observed 'on ideological methods or distributive politics in which it bestows or withdraws benefits at will'.

2.3 Political culture and violence: forming the civic culture

Pye (1995:965) described political culture as 'the sum of the fundamental values, sentiments, and knowledge that give form and substance to the political process'. The question of the sum of values, sentiments, and knowledge is thus important. Political culture is important because it is the shared view of the relationship between the State and its citizens. Moreover, such culture provides the framework for the 'acceptable' modes of behaviour which govern a particular community. Although one can debate strongly on what is acceptable across different contexts, under the international legal standards of political behaviour it is generally unacceptable that political figures assassinate their rivals out of fear of losing political office, while it is quite acceptable that if an individual loses an election, they surrender such office.

Haggue and Harrop (2007) demonstrated that in most liberal democracies, the 'connection between society and government is especially strong'. In such societies, there is this 'cultural' respect for restraints on power and individual rights. However, the opposite is true within 'illiberal democracies'. A deeper understanding of political culture and how it is formed is essential, to begin with, an analysis of Almond and Verba's (1963) account of what it is that constitutes 'civic culture'[3]. Such an analysis of political culture was as an attempt to understand the conditions under which political culture developed within a democratic State.

Almond and Verba (1963) continued in proposing that a stable democratic system can only truly arise in a State in which its members are politically active, in what they identified as 'civic culture'. Such argument is based on three distinctions of political cultures: (1) 'the parochial', (2) the 'subjective' and (3) the 'participant'.

In the *parochial political culture*, members that make up the State are not entirely aware of the State, in particular, they are unaware of the influence of government and perhaps even the functions of government. Within such a culture, the role of individual participants is not entirely guaranteed.

[3] A political culture characterized by (1) most citizens' acceptance of the authority of the state, but also (2) a general belief in participation in civic duties. The term was systematically deployed in Gabriel Almond and Sidney Verba's influential 1963 book, The Civic Culture, and revived in their The Civic Culture Revisited (1980). Prompted by a concern about a perceived problem of political stability in Western democracies, the civic culture model suggested that a polity in which citizens were informed about political issues, and involved in the political process, could not of itself sustain a stable democratic government. The civic culture is seen as an allegiant political culture in which political participation is mixed with passivity, trust, and deference to authority. Traditionality and commitment to parochial values are seen as balancing involvement and rationality. The Civic Culture provided a five-nation study of citizen values and attitudes viewed as supportive of a democratic political system. In the mainstream of behavioural analysis when it was first published, the book has been somewhat eclipsed by the emphasis on policy analysis, although its influence can be seen in more recent work on social capital. Its concerns about the survival of democracy in Western societies now seem somewhat misplaced. The spread of higher levels of education through the population has encouraged new forms of participation in politics, such as social movements and campaigning interest groups.

Haggue and Harrop (2007:109) observed that 'within liberal democracies, parochial elements can be found in isolated rural communities and in some inner-city areas where first-generation immigrants do not speak the dominant language'. However, within African States, in particular illiberal States, one can argue that, although a large number of individuals in the rural areas have minimal contact with the State, they may nevertheless be unaware of the State and the political process – many other individuals in the cities and who may have an understanding of the workings of the State, may arguably not get involved due to the closeness of the political system.

Subject political culture is more likely to be found within a dictatorship form of 'governments', characterised by citizens not participating within the political process, but rather they see themselves as subjects. An account of this form of political culture could be seen in Uganda under Idi Amin in the 1960s and 70s, and some post-colonial African States immediately after decolonisation.

In the *participant political culture*, citizens have the firm belief that they can substantially contribute toward the political process and that what government does, affect them, such a political culture is more present in States where civil society is vibrant and where there is a wide range of civil liberties and protection of fundamental rights. To a certain extent, one can see such cultures in Botswana, Mauritius and South Africa.

Almond and Verba (1963) took note that, although all three strands of political culture are important, alone they do not offer a clear functioning of democratic culture. They argued that the ideal conditions for democracy would then be in societies in which the three concepts are blended. In such a system, many individuals are active within the political process, but passive individuals provide a form of stability to the culture. Haggue and Harrop (2007:104) have observed that within such a culture that is the mixed, blended cultures which make up the civic culture, tensions within a democracy are resolved 'between popular control and effective government: it allows citizen influence while retaining flexibility for government'.

However, at the same time, Almond and Verba's theory of 'civil culture' received substantial criticism from authors such as Barry (1988:63) who argued that the notion of civic culture was perhaps only suited to 'western industrialised societies, and rather for such theory of political culture to be included it had to look at subcultures, race, ethnicity, elite culture and perhaps even religion'. This is important, especially in African societies which are composed of not only so-called informal institutions but also formal institutions of the State.

2.3.1 Elite political culture and violence

Every country in the world is composed in some way or another of elites - elites within the business world, within society and arguably every other segment of society. Although these elites have a significant amount of power, they are nevertheless still constrained by the 'rules' set forth within a particular society – and even though they may aim to circumvent the system, they do so with the knowledge that, if caught, there would be harsh consequences as prescribed by law. Verba and Almond (1980) have identified that unlike contexts in which there is a strong 'civic culture', elite culture is more pronounced in contexts where parochial or subject culture are more present.

Gitelman (2005) and Heywood (2007) recalled that even though within liberal democracies where various societal groups express mass ideas and opinions about politics, the influence and views of elites have the most influence in political outcomes and decisions. It is though vital to note that within these systems, there still exist the checks and balances which does not allow elites to undermine the political process illegitimately. Moreover, such checks and balances, both actual and perceived create a kind of legitimacy of the State and its institutions – wherein the absence of such creates contexts in which individuals are abused by State institutions or individuals finding such order illegitimate and in extreme cases work towards overthrowing it.

Verba (1987:49) defined elite culture as consisting 'of the beliefs, attitudes, and ideas about politics held by those who are closest to the centres of political power. The values of elites are more explicit, systematic and consequential than those of the population'. This elite culture can be taken further due to the aptitudes of the elites themselves, looking at such elites as described by Cheeseman, Bertrand and Hussaini (2019) as 'gatekeepers'[4] and the State as an instrument engrained within the political socio-psyche of their right to rule.

Within the African continent, such entitlement to not only the institutions of the State but the right to rule can be taken from Idi Amin's reply to Parliament where he quoted King Louis XIV 'I am the State'. Although the case of Uganda under Amin was extreme where the country was a clear dictatorship – Amin's statement tells much about the personalised nature of politics we see in illiberal democratic States but also goes a long way in understanding the mentality of elites and elite political culture, not only within illiberal but also liberal democratic States.

[4] A term used by Frederick Cooper to refer to a form of government in which the leaders of weak states survive via their control of the interface—or 'gate'—between their country and the rest of the world. In practical terms, this refers to the control of border and customs posts and the right to represent the country on the international stage. Control of the gate is particularly important because it allows governments to raise revenue by levying taxes on imports and exports and benefit from the receipt of any foreign aid and loans provided by the international community. The conflation of political and economic opportunities in gatekeeper states means that whoever controls the state also controls the economy, which raises the stakes of political competition and thus increases the risk of political instability and civil conflict.

SchöPflin (1990) identified two ways that elites see themselves as the only ones that are enlightened enough to steer the machinery of the State adequately: (1) Elites have a very particular and singular notion of what is the national interest and how the State should proceed to achieve it, and (2) The way in which elites adhere or not to the rules of the political system. However, Lijphart (1967), (1977), (2002), focused significantly in political stability within divided States and suggested that even in societies which are separated by hostile 'pillars' can achieve 'political stability' as long as the party/ group leaders are willing to compromise with each other at the national level.

2.3.2 Political culture and civil society

Goban-Klas and Sasinka-Klas (1992:231), argued that a significant feature of the illiberal democratic State is the 'lack of civil society, or rather the weakness of civil society within these systems, which creates inaction, and a lack of public debate'. Rueschmeyer, Rueschmeyer, and Wittrock (1998) noted that such States and, in particular, their manipulation and at times confrontation with civil society left a 'bad taste, with the difficulties of starting afresh a major factor in accounting for the relatively low level of social and political participation in the subsequent regimes'.

However, the question of civil society and fostering participation is fundamental. Authors such as Chazan (1999) argued that perhaps it is not necessarily a question of just a lack and or a weak civil society which still plagues and hampers the development of individual participation in politics but rather the lack and failure to develop a 'civic culture' amongst citizens. Indeed, the problems of corruption, lack of education, poverty, and gross inequality are factors which continue to hinder such development. As evident in most African countries and particularly due to conflict several African governments do not have full control of the territory of their countries or the high levels of violence within society itself, their influence is usually strongly felt in the capital hence its overly centralised nature and the 'political culture remains strongly parochial' (Haggue and Harrop 2007:104).

It is dangerous because such forms of participation, especially within African politics, are still, to a considerable extent, managed through the well-established client-patron relationships or through 'parallel' institutions. It is not farfetched to argue that potential outlets for such frustrations and dilemmas within illiberal States could be violence – a form of violence which could be directed towards the State by citizens, or citizens directing violence towards other citizens. The weakness of civil society and civic education and lack of national dialogue creates contexts which further fuel uncertainty and instability.

Besley and Persson (2010: 26) argued that political violence is the 'hallmark of weakly institutionalised policies'. Perhaps a more concise view of violence is one provided by Hoeffler (2012:347) in which he argued that State weakness could create conditions for violent conflict, further describing that 'political institutions that are unable to manage different groups interests peacefully, to provide adequate guarantees of group protection, or to accommodate groups demands for political participation, can fracture societies'.

It is no surprise that political participation can then many forms; it can take form as a response to oppression and violation of rights and be expressed through violations such as through the rise of social movements advocating for rights, of which at times within an acceptable peaceful paradigm. However, then there is the possibility of such groups being violent and using arms as a way to get the attention of the government.

At the time of independence in Africa, violence was a 'legitimate' mechanism to fight oppression. So, it is not unfathomable to argue that the same tactics can again be used to fight similar forms of oppression. Violent conflict in Africa has thus significantly changed. In 2011, protestors in Tunisia forced the resignation of their President and soon thereafter Egypt's Mubarak was also forced out. Muammar Gadhafi in Libya was the next – his fate taking a bloodier turn. These events which famously became known as the Arab Spring[5] quickly swept across the region and in many ways inspired many, who felt were under the boot heel of dictators, and as a result could not fight back.

Not long after Gadhafi had been killed, protestors in Bahrain and Moscow stormed the streets, eventually leading them to civil unrest in those countries. Many scholars saw this as another wave of democratisation which would sweep not only across the Arab world but eventually Africa. However, despite this seemingly popular trend of autocrat after autocrat falling to the demands of their people flooding the streets and demanding 'democracy'. Pop-Eleches and Robertson (2014:23) noted that with experiences in the Middle East and elsewhere waves of democratisation though they occurred, there also occurred 'reverse waves and backsliding'. Such backsliding can be seen in Syria where protestors went up against a very capable regime with a strongly backed security architecture which could wage a consistent and brutal fight for self-preservation.

Interestingly enough, and arguably - the Arab Spring was meant to be a moment of liberation for countries under the yoke of 'oppression', the old saying violence bequests more violence proved to be

[5]The Arab Spring was a series of pro-democracy uprisings that enveloped several largely Muslim countries, including Tunisia, Morocco, Syria, Libya, Egypt and Bahrain. The events in these nations generally began in the spring of 2011, which led to the name. However, the political and social impact of these popular uprisings remains significant today, years after many of them ended.

the case. In some countries where the Arab Spring occurred – within the post-Spring context, repression has increased. In Egypt this has been seen by reinforcing the coercive nature of State institutions by cracking down on fundamental rights and freedoms. In Libya the country is more splintered and run by various 'governments' and armed groups, creating an even more unstable political atmosphere.

The question is then what are the real assurances or chances that these protest actions which had taken place in the global south, in particular in Africa, of succeeding and transforming themselves into real democratic gains? The anti-government protest action which began in Lebanon on 17 October 2019 may provide an answer. The protests were triggered by the government's plan to raise taxes but quickly expanded country-wide condemning the countries 'sectarian rule'. Perhaps what is important is the specificity of the protestors in which many have in addition to challenging the form of government have also cited the high levels of unemployment, the countries endemic corruption and specifically the failure of Lebanon's State institutions in being able to hold to account politicians. Indeed, the literature on democratic studies is quite vast and points to three particular points/variables which can help influence the democratic transformation of such countries: (i) the social and economic structures, (ii) the quality of the State, and (iii) the nature of the existing political regime.

Combining these three streams of thought - a major idea within the democratisation literature and, in particular, the prospects of democratisation within States of the global south has been put forward by the work of Rostow (1971) where he placed less emphasis on the forces of socio-economic development and State building and more emphasis on 'specific political processes through which democratic institutions are adopted, improved, and maintained'. The importance thereof is because it sought to balance political forces with the 'nature of political struggles can affect the prospects of democratisation'.

This is not to say that individuals should not rise in the form of a 'people power' approach and demand more participation within the political process but rather that, in highly centralised States such as those of Libya, Egypt and others who experienced the Arab Spring, such centralisation is dangerous and can lead to conflict and violence. The discussion above in section 2.2.3 and 2.2.4 (i) is important because it paints a picture of how such centralisation, in combination with elite culture as per the discussion in section 2.3.1 potentially leads to conflict.

Rustow's work (1970) was further taken forward by scholars such as O'Donnell and Schmitter (1986). They proposed that even divisions within elites themselves can be used as potential 'ripe' moments for democratisation, while Grzyma-Busse (2007) argued that the degree of domestic political competition could also prove to be a great determinant of democratisation. Indeed, quite a bit

of literature has cited the importance regarding the levels of openness of the political system and the levels of competition within such a system and how such variables can either be stimulated and or brought about within countries with the ultimate objective of democratisation.

Perhaps the important main thread is that even well-intended protest actions by human rights defenders that wish to change government policy, or at the most extreme wish to change the nature of government, can lead to greater conflict. In other cases, the well-intended act of overthrowing a despotic and or authoritative government by a small group can lead to the establishment of more dangerous regimes – one might argue that this was the case in Libya and Egypt. It happens in situations where the main objective of a conflict can be framed as fighting for 'human rights', but such framing is never really taken forward on how this new group would then work towards establishing such states of affairs.

Political violence in all its forms is dangerous because it can open cycles of conflict which become hard to control and in cases like Syria and the eventual aftermath of the Gadhafi overthrow, hard to manage. So State institutions can play an important role in mitigating these kinds of conflicts before they escalate and before grievances become frustrations and before frustrations transform themselves into boiling points and before such boiling points lead to people storming the streets as is the current case in Lebanon. It is, however, important to note that there is nothing wrong with protest action. It is, in fact, a healthy part of the democratic process.

In a speech shortly before his death, Martin Luther King argued – and in the context of the American Civil Rights Movement in the 1960s that 'the greatness of America was the right to protest for rights'. It meant that rights are not static. Governments, especially those that do not lean towards the liberal democratic spectrum do not always lean towards providing the widest scope of individual rights and as such citizens have the responsibility to stand up and take to the streets and 'demand' that their rights are acknowledged and upheld. However, when dealing with a State that works outside the institutional paradigm and is not afraid to use violence as a deterrent, such action can have unintended consequences.

Yet it is then not surprising that, even though these are factors to consider, there are instances in which violence is the only recourse. As Haggue and Harrop (2007:79) have observed - when orthodox politics leave conflicts unresolved through the ideal institutional avenue, and at times even when it does not, the outcome can be 'political violence – by citizens seeking to change government policy, by one social group against another and by the State against its people'.

So the lack of communication and participation are vital factors that contribute towards this kind of violence. The lack of civic culture and impartial political participation due to the institutional deficiencies has the potential of creating conditions conducive for conflict. As a result, the best way to understand political violence is to understand it through the lens of political analysis of its structures and avenues of participation, as Von Clausewitz (1832) said of war that it 'is a continuation of politics by other means'.

This idea of politics, by other means, is essentially a bundle of needless possibilities. Such possibilities can be positive, and others can create more chaos. During the wars for liberation such 'continuation of politics by other means' could be interpreted as taking place outside the colonial institutional framework because of both its inflexibility, unviability and inability to create the conditions for which individuals were afforded rights. This is not to say that former colonies should have continued to be ruled by foreigners and just give rights to their populations – but rather that the colonial institutional framework was incompatible with the current social, political and economic realities of the time and due to such rigidity people raised in violent defiance of such rule.

2.3.3 Political communication and violence

Haggue and Harrop (2007:120) had observed that there is an intrinsic link between society and politics. Further, they identified that 'society, and with it, politics is created, sustained and modified through communication'. Perhaps one of the most visible instruments within any society and therein its politics is the ability for political office holders to communicate their message – whether such systems are democratic or authoritarian, the ability to communicate a political message to society is vital. As Williams (1962:261) wrote, 'what we call society is not only a network of political and economic arrangements but also a process of learning and communication'.

Communication can take place within states through complex processes, either through the various spaces within society all trying to frame and disseminate a message to focus groups wanting to better understand the wider society – all of them wanting to get their point across to the broader society. Heywood (2007:232) observed that the mass media as the instrument for such communication 'constitutes much more than a channel of communication. They are part of the political process, affecting, and not merely reflecting, the distribution of power in society at large'.

The impact of the mass media on democracy is of utmost importance because it serves not only as a platform in which ideally, members of the population could be provided with a variety of different views but also serves as an avenue through which different segments of society can portray their

views on politics and likewise a platform in which politicians themselves can share policy ideas with their constituencies.

The media is also a vital tool in crafting the 'image' of the State. The media can play a significant role in promoting democracy. Heywood (2007:235) identified that in such regards, the media's role in promoting democratic principles could be seen by 'fostering public debate and political engagement, by acting as a public watchdog to check the abuse of power, by redistributing power and political influence and by providing a mechanism through which democracy can operate'. At the underlying aspects of this contribution, the media can then also play a significant role in not only stimulating a political culture but also perhaps stimulate and develop debates around the importance of State-society relations.

Heywood (2007) has further argued that the mass media, to a certain extent, has replaced the formal representative institutions, 'such as assemblies, parliaments and local councils as areas for dialogue, debate, and deliberation that are the very stuff of democratic politics'. Despite only serving as a political tool, the mass media also serves as a platform for the expression of a more extensive array of societal views than is perhaps possible within representative institutions. It is important because such expression not only helps to bring these views to light but also creates further debate within society which is vital for the building of a vibrant civic culture.

The watchdog function of the mass media is then perhaps one of its most vital aspects as it works towards safeguarding the integrity of a democratic system. Mass (2002:422) noted that the role of the media within this watchdog context is to 'ensure that public accountability takes place, by scrutinising the activities of government and exposing abuse of power'. Heywood (2007:237) added that the role of the media is taken even further, as it serves towards supplementing and sometimes replacing the work of formal institutions. Media professionals such as 'journalists and television presenters are particularly suited to this role because they are "outside" politics and have no interest other than to expose incompetence, corruption or simply muddled thinking whenever and wherever it can be found' (Heywood 2007:237).

South Africa's Constitution is an example in highlighting the role of an independent media (arguably) as a cornerstone that safeguards democracy. The role of the mass media in promoting democracy is by widening the distribution of power and political influence within society. It is important not only because it works towards countering a purely elite narrative to take form but also providing more information and choices for the public to. The improvements in technology and social media have made it so that citizens can access information much more quickly and from virtually anywhere in the world.

Such information has also been used to expose governments of violations of civil liberties and issues within society. The clever social media tactic used by young people in Egypt and Tunisia is an example of how the media in general, together with social media, can be used towards mobilising individuals towards achieving democratic principles. Lastly, the media has the potential to further contribute to the democratic process through new technologies, which if used appropriately, may contribute towards greater participation of citizens within the process. It is important within African contexts as African leaders have often sighted the lack of infrastructure as an impediment towards realising elections.

So, there is indeed a nexus between mass media, governance and political culture, each supports and strengthens the role of the other and is pivotal towards developing democratic institutions that are accountable to the public. Bartle and Griffiths (2001:178) observed that apart from the media's impact on democracy, either for good or bad the media has helped to transform 'political leadership, and with it a reapportionment of government power'. It has been through extending a broader scope on the value systems of political leaders and giving people the option to question those values and to see if they fit within their conceptual frameworks.

The above has been the positive aspects of the mass media and how they work towards empowering society and individuals. However, at the same time, the media can also be used as 'propaganda machines'. History is filled with examples of how governments have used the media not necessarily to promote a vibrant democratic culture but rather for the promotion of a particular idea. Nazi Germany is an example of how the media was used to not only control almost every aspect of German society but also to indoctrinate them into a specific way of thinking. Within post-colonial States, a similar argument can be made in which the lack of civil society and an independent media is used. Such governments build a culture which prioritises the political party in power as the one which must govern – and as many of such political parties where the same since independence, such propaganda tends to maintain a narrative of fear.

Jones (2005) observed that the media has often been controlled directly or indirectly by the government and used as a form of propaganda. In contrast to full-on propaganda the media in illiberal democratic States, though they function within certain restrictions, they are nevertheless allowed to function with a certain degree of leeway. Hellinger (2003:37) observed that within these contexts, the 'press, in particular, is often left substantially alone, offering a forum for elite debate which is perhaps of value even to the rules'. One can then argue that within these contexts, there is a 'tit for tat' kind of relationship in which the media functions, but it is mostly in favour of the rulers.

This form of relationship between the elite, rules and the media can play a significant role in further developing the stronghold of those in power since the media serves as an instrument of 'personal' rule, such rulers use it to paint a picture of how only they can provide either stability and or security. Such form of 'propaganda' is indeed much milder than those seen in Nazi Germany, but they nevertheless achieve elite objectives.

Leaders in illiberal States use the media as their very own personal and or party propaganda machines during 'election' processes, often through subtle control. Russia in the context of its 2000 Presidential elections, is perhaps the best example of how media can be used as a form of disinformation, and of how the media can be used to steal an election by manipulating the narrative.

2.4 Approaches and theories of violent conflict

Frerks, Warner and Weijs (2012:382) noted that in conflict theory there is a 'long-lasting debate about whether there are root causes of conflict and how to identify them to prevent the outburst, escalation or expansion of violence'. At the same time, authors such as Holsti (1996) have been sceptical about whether these 'root causes' of violence can be identified. Others such as Kaldor (1999:31) maintained that 'certain environments are more prone to intra-state collective violence'.

This section will look at some of the theories and approaches through which violent conflict is identified. It will look at three approaches: (1) the cultural school, (2) the economic school, (3) the political school and the public health approach.

2.4.1 Approaches to violent conflict

The *cultural approach* argues that the root causes of violent conflict are 'cultural differences'. Under this perspective, violent conflict takes place due to the perceived grievances produced by cultural differences. This means that the cultural differences between various groups in society such as the conflict between the Hutus and Tutsis in Rwanda (admittingly more complex) or perhaps the centuries-old conflict between the British and the French. A major debate within the cultural school has been the concept of 'ethnicity' and how it has been used within the post-cold war context as the primary reason for conflict. Chapter one noted that although ethnicity is a trigger for conflict, ethnicity alone is not enough to trigger such violence.

The *economic school* argues that intra-state conflict is caused by rebels wanting to gain from the State, using the State, its institutions and its natural resources as their personal wells of wealth. In further unpacking this school, Aggestam (2005) looked at how wars were funded and how they spread

through an analysis of 'resource exploitation and control'. Such analysis then led to further research by authors such as Keen (1994) who looked at the role of non-State actors and the functioning of 'economies of violence' in which wars were fought merely for the enrichment of an elite and or leaders who had no interest in stopping them. Keen (1994) added that 'wars were not 'irrational' but rather they had specific purposes – which were most often the pursuit of economic benefits. Paraphrasing Clausewitz, Keen extolled that wars were not to be seen as 'politics by other means' as observed by Clausewitz but rather as 'economies by other means'.

The greed versus grievance debates then followed – using the same economic base as explaining conflict. Collier (2000:16) argued that apart from income and growth levels - 'conflicts were related to proxies for greed (economies based on primary commodities and large numbers of poorly educated young men) rather than to proxies for grievance' (inequality, lack of political rights) concluding that rebel groups only adopted 'grievance discourses in an attempt to raise their legitimacy'.

In addition, the economic school offers an interesting perspective to an era gone by; it provides a context for how elites and rebels have used the State to profit. Chapter one argued that context is important for understanding trends of conflict. The economic school is important to understand conflict in countries like Angola because it helps explains patterns of corruption and inequality. The discussion in section 1.6.2 (ii) is instructive and links to how the economic school can assist in understanding certain patterns of conflict. In addition, the economic school also serves as the foundation for creating another understanding of the economic school and violence. Such understanding is one in which economic needs are indeed the cause of violence, though perhaps not necessarily at the level of civil war or even accessing the State apparatus.

The economic school in this regard would work towards explaining why citizens engage in violence against other citizens and why citizens engage in and with crime syndicates and why levels of criminality may increase within particular States. The economic school is important because one can extrapolate that when institutions fail to be representative and open, and when they fail to provide the most basic of needs for its people, individuals in many cases have very little alternative but to turn to violence due to economic hardship.

The *political school* argues that the absence of democracy and governance mechanisms to redress societal problems between groups in society is a major cause of violent conflict. Brown (2001:210) observed that a lot of the recent literature on the absence of democracy had focused significantly on 'weak and failing States'. Scholars such as Ballentine (2004) looked at the relationship between how well a State performs its functions and the levels of conflicts. This argument then takes the discussion

towards looking at the failure of post-colonial and post-conflict States to adequately set up structures and mechanisms from inclusively dealing with issues.

Ayoob (1996) described that within the European context State formation in Europe was extremely violent, and such violence was mitigated only by the adoption of political structures which served as buffers and 'arenas' for 'conflict'. At the same time, other scholars such as Paris (2006) focused on the 'democratic peace thesis' in which they sustained the idea that only mature democracies can guarantee peace.

The political school is more holistic. It takes into consideration the deficits that African States have and allows one to build from a democratic and human rights perspective deficiencies which might lead to conflict. Using the political schools' approach, one can highlight that lack of democracy and human rights within a State can lead to conflict. Though the political school might not clearly identify the level of such conflict, cases like that of South Africa, under apartheid, and Egypt serve to show the validity of the political school and how the lack of a human rights dimension has the potential of triggering resistance and then conflict.

The *public health approach to violence* declared 'violence a leading worldwide public health problem' (WHO 2002:6). In doing so, the WHO advised States to develop public health programmes to prevent 'self-inflicted' violence and violence against 'others'. In addition WHO 'urged member States to assess the problem of violence on their territory and to communicate to WHO their information about this problem and their approach to it' (WHO 2002:7).

The public approach to violence culminated in the 2002 World Report *on Violence and Health* (hereafter – the *report*) which emphatically stated that 'violence is a universal challenge'. The report defined violence as 'the intentional use of force or power, threatened or actual, against oneself, another person, or against a group or community, that either result in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation'. This definition is broad and encompassing - it has quite a range of possibilities in identified instances of continued violence even when a war has ended.

Taking into account the report's broad definition of violence, one can argue that a more and direct link to State institutions and of violence can be the failure of State institutions to be representative, inclusive and participatory. Such failure results in, and as per the definition, (i) psychological harm, (ii) deprivation, and (iii) maldevelopment. The combination of the psychological issues combined with deprivation along with a failure to develop – such development from the perspective of a lack of economic development and social isolation due to exclusion from participating within the political

process through institutions can lead individuals to resort to physical violence not only against each other – but also targeting State institutions themselves.

As a result, the public health approach looks at dealing with violence in four distinct ways: (i) defining and monitoring the extent of the problem, (ii) identifying the causes of the problem, (iii) formulating and testing ways of dealing with the problem, and (iv) applying widely the measures found to work. This approach then seems to be quite significant within post-conflict States, those with high levels of inequality, poverty and where the democratic deficit threatens to erode the democratic process altogether and blockages for political participation, this is even more so in unreconciled societies.

The public health approach proposes two avenues for violence prevention which are important to this study: (i) the societal approach works towards reducing violence by focusing on 'cultural, social and economic factors, and how these factors shape different settings and entire communities. Such approaches then focus on legislative and judicial reforms, international treaties which deal with violence prevention, policy changes and, (ii) community-based efforts, which deal with community-wide activities and interventions which look at the various communities what are the causes of violence, these approaches then look at 'public education', 'modifying the physical environment', and 'community policing'.

Theories of conflict can, to a certain extent, assist in explaining trends in conflict. However, much of the theory in many ways, fails to appreciate and provide a broad analytical framework under which conflicts in different parts of the world can be identified, this is even more so in the so-called countries of the third world. In addition, the theoretical approaches to violent conflict discussed above are euro-centric – which in turn fails to capture the particularities of the African context in its full extent.

It is no surprise that the nature of violent conflict has changed since the 1990s. The so-called 'new wars' demonstrates that violence and its causes are intertwined with a broad range of issues such ranging from the denial of human rights, good governance and inclusion/exclusion amongst others, but dealing with such conflicts requires a case by case approach based on contextual and historical analysis to provide an appropriate method and then apply the needed mechanism for their prevention.

2.5 State theory and violent conflict

2.5.1 The liberal theory of the State

The peace of Westphalia can arguably be said to have set the foundations or at the very least, the rules and frameworks for the modern State. Westphalia established the important political precedents necessary for establishing a balance of power in Europe while also progressively setting the foundations at the time for States to limit reasons to wage war on each other. Over the centuries, the State has come to mean many things and has developed and transformed to serve many purposes. Political theorists have thus not only contributed significantly to the nature of the State but also how States and their institutions should be structured to manage societies and how such States relate to the persons under their jurisdiction.

The liberal approach, which is arguably the most widely used theoretical approach to understanding the State, is primarily focused on setting forth plural democratic institutions (Oakeshott 2006). Theorists who focused on the liberal approach tend to see the State has a big brother and as a result focused more on limiting the State's power while increasing individual rights and liberties. Liberals also place a high importance on the participation of civil society groups within the overall political system and their continued and unhindered participation in society.

In addition, the liberal approach to a certain extent echoes Locke's (1689) idea of political participation within the 'State of nature' and how individuals come together to form the State to safeguard their rights and eventual property from the 'dictates' of others. On the other hand, the liberal approach can also be argued to have been influenced to counter the Hobbesian (1651) view of the state of nature. Vom Hau (2017:139) argued that in this instance, States serve as avenues of 'strategic interaction among individuals and groups'. Even when operating under severe structural constraints, these actors are assumed to have agency.

It is ultimately their decisions that shape the institutional make-up of States. Such decisions can range from how the governance structures are to be set up to maximise not only greater liberty but also greater diversity, while ensuring strong checks and balances within institutions which would, in turn, create the spaces and conditions for greater democratisation while simultaneously minimising violence.

As a result and according to this approach, the State and those that manage the instrument of State do not possess arbitrary power, but rather the State should - ideally be a reflection of all societal groups within such society and the influence that these individuals have contributes towards shaping the institutions under which they live in. An essential feature of this approach is also the question of

'consensus' and 'consent' (see section 2.2). Institutions and those who run them require that the consent of its citizenry whom governs them without it leaders are often voted out of office through regular elections.

Botswana, Namibia and South Africa are amongst those that fall within such category with political systems where those who hold political office rely not only on making sure that they go through with promises made during campaigning but also seems to be an understanding that it is the people (electorate) to whom they stake their political survival.

In the USA, the use of Senate and congressional confirmation committees is an interesting example (though at times questionable) through which those nominated by the President to hold high political office (members of cabinet, ambassadors to the UN and others) are legitimised by Congress. Such consent of the people and vice versa, the ability of both institutions to serve their function of checking and balancing power are vital. Moreover, with this approach violence is not something used as a means of gaining compliance with either the need for political reforms and or change in policy direction, but rather it is the consent of the government and the legitimacy of office-bearers that are treasured and must be in balance.

It is, however, important to understand that in advanced democracies although consent is vital one can still argue that politicians would employ all kinds of tactics to maintain their hold on power and or to bury certain political actions which can be seen as questionable. The important feature is, however, and as discussed above, such institutions are not arbitrary.

Hechter (2009) and Fukuyama (2015) have both made arguments of the legitimacy of liberalism by looking at the outputs and procedural determinants of legitimacy. They also made arguments which explained the legitimacy of liberal theory - that being of output and procedural determinants of legitimacy. The former focuses on the ability of States to 'provide public service goods' that in turn then serves as a legitimising factor within the broader citizenry. The latter argues that legitimacy is determined by the 'fairness of the decision-making process of State institutions' and despite the failure of individual policy choices, such policies are not geared towards a particular group of people but instead are applied with the objective of attaining the broadest of success which cross-cuts the various societal cleavages.

In his book titled '*Why People Obey the Law',* Tyler (2006:98) proposed that 'people obey the law if they believe it to be legitimate, and not because they fear punishment.' This was seen in former colonies who waged wars of liberation and in places like the USA during the civil rights movement in the United States where Martin Luther King Jr fought injustice through the denial of segregation laws,

but perhaps more recent under apartheid where discriminatory laws were to a better part ignored by a majority of the population which, in turn saw such laws as unjust and set up resistance structures. Tyler (2006) concluded in suggesting that those in political office and those responsible for law-making - including those that enforce such law as the security services should instead work towards creating institutions (legal systems) which are worthy of respect.

As a result, supporters of the liberal State approach maintain that 'naked coercion or material rewards cannot sustain political rule, at least not in the long run' (Vom Hau 2017:134). This was seen in the two cases cited above and so many others in Africa with brutal regimes such as those of apartheid South Africa and many others buckled under the demands and calls for democratic reforms. Proponents of liberalism have created and continue to perpetuate the idea of liberalism as the natural process of human relations as opposed to another ideology such as communism and or socialism which can be reconstructed and applied with a failure within different contests.

It does not mean that the liberal approach is useless but instead that perhaps it can work best within different contexts and under different conditions. Furthermore, a principle within the liberal approach is the central pillar of consent where we have seen the undermining of such consent in countries like the USA wherein private interests and multinationals have become so entrenched within the political system that government seems to be run by corporations not with interest in political freedoms but instead creating political systems and laws which would allow them to maximise profits – prompting the visual that one sees in futuristic films of entire countries being run by corporations which prioritise utility above individual rights and freedoms.

2.5.2 The neo-Weberian approach

The neo-weberian approach to the State sees the State as an administrative institution with the powers to coerce and claims a monopoly of legitimate force (Weber 1965). The State according to this approach focuses significantly on its ability to 'organise' the machinery of the State in such a way as to deal with society – the State in such a theory focuses mostly on how its structures are organized.

The neo-weberian approach is 'preoccupied with State-society relations and State capacity' (Vom Hau 2017:136). Meaning that, despite the State having to deal with and incorporate society within its organisational process, it nevertheless has a certain level of autonomy from society as it concerns their policy choices. Evans (1995:69) observed that 'the specific configuration of social ties with non-state actors allow State authorities to make autonomous yet well-informed policy choices'. It is of course, mostly seen within stable western European States.

Similar to the liberal approach, legitimacy within the neo-weberian States is seen from the perspective of 'State outputs'. However, within this theory, there also seems to be a nationalist approach to how legitimacy is gained. Though, this nationalist approach can have dangerous features in the sense that certain leaders might use nationalistic calls to achieve political influence. Gellner (1983) argued that similar to the nationalistic legitimising process, the socialisation of citizens is also an essential feature of this theoretical approach.

A drawback of this approach is the 'open-ended' approach towards socialisation, the focus of State structures which are related to creating State-society relations. According to such theory, it can then be applied to any particular context, and it can be used by regimes which create structures of oppression which would in turn work towards creating subordinate State-society relations.

On the other hand, although the neo-weberian approach focuses significantly on creating State structures which interact with a society which are then vital for creating conditions for healthy State-society relations, it does not create a clear framework of such structures. It then leaves significant leeway towards creating further literature on how such an approach can be viewed within the lenses of conflict prevention, particularly how State institutions can be structured to prevent violent conflict while also creating State-societal relations which would aid in creating greater overall good governance (good government).

2.5.3 The class-analytic approach

The class-analytic approach is rooted in Marxist theoretical understandings which were dominant in the 1960s and 1970s. It is important to note that, although many scholars adopting this model such as Acton (1955) and Romer (1986) are not necessarily Marxist theorists, they nevertheless see that the common denominator of the approach is the assumption that the State is underpinned by class conflict and that such conflict is the driver of both economic and political change. The relationship between money and politics is clearly seen in post-conflict societies. In the South African context discussions, of economic transformation have dominated the national landscape and are precipitating discussions of reform and ways of manging class divisions but also the entire means of production and in particular removing the control of such means of production from a small minority.

The conversation on class conflict can take several meanings. Within the so-called developed States, one can argue that class conflict would be more pronounced through economic power, through the levels of wealth within the State and how such wealth is divided, the discussion in section 1.6.2 (i) and (ii) is perhaps important in linking how wealth is divided and this concept of the State. In the context of countries like the USA, such can be more apparent through racial tensions and how the

black and white divide is clear through economic wealth – which in turn contributes to the high levels of crime amongst the black community.

Moore (1966) and Wright (1979) have both argued that if we work towards understanding how the State acts, it is then also necessary to pay attention to how 'social classes' and 'capitalism form'. It is important because it helps us to understand the mechanisms within society that allow for not just economic development but the political processes which have led groups to dominate, either economically and or politically. Within the African context one can look at the rise of political elites through wars of liberations, again, the discussion in section 1.6.1 and 1.6.2 is important in explaining how elites in post-colonial contexts have taken control of the State and in doing so have create intricate webs of corruption while undermining political institutions.

The rise of elites in a number of African countries through liberation movements and their takeover of political institutions together with the failure of African societies to remove them from such positions, one may argue, created a context in which State violence and violence between citizens has become the norm. As a result, corruption and working outside of the liberal institutional mould has been 'normalised' as the way of politics – within such contexts one can also argue that - as opposed to individuals forming a civic culture in African States there was rather a formation of a kind of survivalist political culture which tended to permeate society.

This kind of political culture can be linked to the *state of nature*. Indeed, not the *state of nature* as seen by Locke or Hobbes, (Hobbes 1651), (Locke 1689) but rather one which helps in explaining the 'state of nature' of post-colonial African States. The argument of the author in this regard is that one can theorise a 'state of nature' in Africa as one of domination. This means that domination has been the foundation upon which the African State was built, and as a result the basis under which people must adapt and survive.

Such domination can be seen to have been established through two stages: (i) European colonialism and domination and, (ii) domination by independence political parties and leaders. In the case of European domination power was distributed vertically and individuals based their survival on the whims of the leaders who toppled above them. In addition, colonial institutions were administered in such a way in which their actions were arbitrary as it regarded those under its jurisdiction. Similar to the domination of Europeans, liberation parties to a large extent inherited the structures of the colonial State with many of its administrative systems – and maintained the vertical power dynamics of their former masters while creating intricate patronage, nepotism and kleptocratic systems around the political party and its leaders.

It is important to note that although there are 'institutions' of the State – such institutions serve only the purpose of maintaining such domination. Life in this state of nature is then not necessarily, 'nasty, *brutish and short*' as Hobbes had proposed because of the 'façade' of democracy which has been established – but rather in such *state of nature* is mired by domination and a constant struggle for survival against the indignities of the State through its institutions and the political party which holds political power.

In this regard, such survival strongly influences the formation and development of the political culture of post-colonial African States, together with how their institutions function and provide services. Unlike with Hobbes, where in his *state of nature* there is no government and laws to control the 'impulses' of 'men'. In this case, and though there are, such laws are in place to undermine the rights of individuals and maintain the dominance of the political party through State institutions.

In such a scenario, the violence perpetrated to citizens by the State through the denial of rights and human dignity as discussed in section 1.5.1 forces individuals to act out so as to escape such *state of nature.* While Hobbes saw escaping his *state of nature* through the creation of a State to whom people surrender some of their rights, escape in this *state of nature* is seen through challenging the State which took power in the first place, and through it build institutions which provide a wider avenues of individual participation and rights.

In attempts to move away from the mere idea of the State as both instrumentalism and structuralism, Poulantzas (1968), Milliband (1969) and Burrow (1993) argued that there was a need to re-conceptualise what the State ought to be. Towards this re-conceptualisation was the work within the tradition which established the State as being 'institutionally condensed class relations, the organisational structure (institutions) of the State embody class dynamics and the imperatives of economic accumulation' (Jessop 2001:214). Within this context, the State then had two functions. As Rueschemeyer and Stephens (1992) observed: (1) the capacity to control 'borders, enact law and order, and (2) enforce contracts, collect taxes and supply public goods from their relation to distinct social classes and the legacies of past class struggles.'

Hay (2006) added in providing another side of the State in that despite its capacity to 'control' and 'enforce', the State also constitutes 'an uneven playing field that tends to reinforce existing power relations among classes'. It is an important distinction because it highlights the inability of the State to change. It is such inability to change due to the nature of existing relationships which can be characterised by political elites both inside the political system and those outside the system. For those outside the system, it is the favours and rents which they get from those inside the system – such

as favourable conditions to conduct business, while for those inside the system may be the patronage links which allow them to continue holding political office.

The conceptual approach of the class analytic approach should thus not merely be taken as a mechanism through which individuals can achieve economic self-determination. The class analytic approach recognises a contradiction in how States organise their structures and in particular demonstrates how violent conflict can arise due to the nature of institutions and how leaders use such institutions for their purposes as opposed to for the betterment of society and or citizens. It demonstrates that exploitation, inequality, and lack of citizens' participation within institutions can create conditions for conflict.

A further important note of the class analytic approach is the role of coercion in the way that leaders govern. The class analytic approach, like the liberal and neo-Weberian approach, draws on interesting aspects of how to understand consent and State power and how such power is generated and used. Cunningham (1987) and Jost (1995:53:411) both looked at the class analytic approach and worked on themes of 'false consciousness', particularly at how 'a distorted understanding and experience of power relations can help us in explaining why people and or citizens adhere to certain forms of political rule which is underpinned by oppression and exclusion'. By looking at the argument above of the state of nature' post-colonial African States citizens adherence to undemocratic political rule is in large part due to the dominance and violent nature of the political party and its leaders.

It is this domination, reinforced by a distorted understanding of power relations which is designed within the political system to maintain a stranglehold on political power by elites who would not want democratic values to be consolidated – which then enables such elites to continue plundering. The discussion in section 1.1 and 1.6.2 is demonstrative of how such stranglehold on power has been retained and its results. In further linking this discussion to the argument about the *state of nature* above, the domination and denial of rights by African States has been a constant factor during and since the advent of colonialism and continues to exist in various forms in a number of post-colonial African States. Indeed, and although this argument might have psychological implications, it is an important point on how people might – and for such a long time accept such forms of politics which as stated above is underpinned by 'oppression and exclusion'.

In addition, African political thinkers such as Steve Biko and Franz Fanon who have contributed significantly towards African political thought, have spoken of the need to 'free the mind' or 'decolonise' the mind insinuating that many of the peoples' who were enslaved – in particular, those of African descent remain, mentally colonised. This argument may shed some light on the continued nature of oppression and exclusion in Africa and as such plays an interesting role in understanding the

state of nature in Africa – and why the number of African States continue to design highly centralised and oppressive State structures.

2.5.4 The culturalist approach

The culturalist approach had the same significance during the 1960s and 1970s as the class analytic approach discussed above in section 2.5.3. Scholars of this approach such as Steinmetz (1992) focused a significant amount of time on 'contextually' placing cultural discourses within the paradigm of State theory. Such paradigms have further been influenced by Foucault, Graham, Gordon and Miller (1991) work on government in which the notion between culture and non-cultural objects were rejected. Instead, treated 'the State' as an 'ideological construct' which eventually 'projects coherence onto a diffuse set of institutional arrangements and political practice' (Corrigan and Sayer 1985:218).

Other works on this approach looked at culture as enforcing rules - not just rules within society but also the impact of culture within political institutions. Elias (1982) and Abrams (1977) concurred that what is essential within this context is the 'concern with the constitutive and often casual role of culture in State formation'. At the same time, this approach rejected culture as purely 'ephemeral and a product of State formation'. Almond and Verba (1963) in their work on political culture, noted that the culturalist approach moves beyond purely national cultures which earlier assisted in explaining State formation.

A sub-group within the culturalist approach looked at approaches concerned with the 'cultural and discursive constitution of States and the implications of these processes for the ability to implement policy' (Vom Hau 2017:137). Geertz (1980:19) led the way in pioneering the linkages between culture and institutions, State agencies and even public institutions in arguing that 'public rituals – whether school inaugurations, press conferences, or national holidays – establish the connecting tissue that holds State agencies with radically different interests and tasks together.'

Mitchell (1991) went further by looking at the 'State effect' of everyday institutions and bureaucracies, which then create 'collectively held images of the State and its boundary with society.' Scott (1998:31) argued that such practices such as population census and national surveys make populations 'legible and at the same time shape how the State is perceived in the eyes of ordinary citizens'.

With this approach there are also some scholars such as Gorski (2003) and Adams (2005) that link culture and State-society. Gorski (2003), in particular, looked at how cultural projects establish mechanisms of 'moral control' and 'popular mobilization' which might in turn be appropriated by

States. Adams (2005) also looked at the role of ideology and discourse in shaping citizens mobilization capacities.

There are then various aspects of understanding the State: (1) studying the machinery of State through viewing its organisational structure and the relationship between the various structures (branches or government) and (2) studying the State through a human rights perspective by adopting a human rights approach towards establishing institutions and those institutions which promote and protect human rights. Such aspects are of vital importance because they work considerably not only in incorporating them as a basis of the State almost like an ideology - but also that it can be a great framework under which people are socialised – which in turn significantly works towards shaping more vibrant and harmonious State-society relations, as institutions would then be based on the premise that the rights of individuals, both their promotion and protection is a central pillar of State responsibility (State responsibility will be discussed in Chapter 3).

This approach does not purely focus on the State itself but rather the images that citizens have of the State – the perceptions which can often time also be crucial. In particular 'the image of the State – the distinct public images of what the State is and what it ought to do are likely to engender varying responses towards particular State practice, ranging from compliance to open opposition.' Steinmetz (1999:81) concluded that 'the State can have very different meanings for citizens, even in the context of similar institutional arrangements.'

This idea of image can then be linked to the most basic foundation of the State – State formation. These images, though they are constructed like any other culture, create the idea of the State. In the USA perhaps one of its biggest victories at creating the nation was the idea of being an 'American' - the strong ideas of 'patriotism' and allegiance to the flag and the maintenance of the so-called 'American way of life'. These images were crafted at the very beginning as the process of drafting the American Declaration of Independence and the American Constitution.

In South Africa the same can be true. The end of apartheid created the opportunity for South Africans not only to transition from an era of conflict and discrimination but also the opportunity to build the image of the ideal State, one based on 'equality', 'human rights', 'non-discrimination' and the 'rule of law'. Though these concepts may arguably be pipe dreams - they were, nevertheless, the foundation upon which the South African State would be built and thus create both the institutional frameworks and mechanisms to achieve such image.

Within the South African example, we can see how culture and traditional leadership plays a vital role within the lives of individuals. In particular, the role they play within the institutional framework of

the country. In some countries, it is not farfetched to argue that the State has very little control of certain remote regions and in such places, individuals do not necessarily follow the 'law' but rather follow those set by tradition and custom. Such an approach is then important within conflict prevention because it speaks about standards that have been set for hundreds of years on how Africans within their particular historical and contextual framework dealt with issues surrounding conflict and its resolution.

2.6 Contextualising institutions within a social context

One can take as the basic understanding of institutions as relatively enduring 'collection of rules and organised practices' (March and Olsen 1989:87). These rules can be attributed to how institutions such as the legislature function and how the executive branch of government respects the rules of the game. Institutions are, therefore, social constructs which institutionalise how violence is applied or not, and how power is displayed and/or restricted. At this particular point, it is important to note that sovereign institutions are those most commonly found within the territorial State. In such regard, political scientists have also tended to concentrate political institutions, such as the executive, the legislature and the judiciary because of how power is held within the three branches.

March and Olsen (1984:741) provided an important understanding of political institutions and how they 'should' work'. They theorised how political institutions could be conceptualised and to what degree they have 'independent' and 'endurable' implications', the kinds of political 'phenomena' they impact, and how institutions 'emerge', are 'maintained' and 'change'. Most importantly, such theorising of 'political order' is created by, according to March and Olsen (1984:739) a 'collection of institutions that fit more or less into a coherent system'. However, what is interesting is that this idea of 'coherence' seems to emerge from a context in which the rules of the game are straight forward – as opposed to contexts in which the rules are either quickly bent or simply ignored – and in some cases where parallel institutions coexist with 'formal' institutions.

In such a view, institutions create the possibility for the creation of 'order' or 'disorder'. In cases where such institutions are, as argued by March and Olsen (1984) 'coherent' – such coherence may result in rule-following institutions or in instances of incoherence – result in rule-breaking institutions. Within this theoretical approach 'incoherence' seems to be a process which fits several institutions which despite having clear rules of the game they fail to act coherently in following the 'rules' of the game. Or in other words, the opposite can be true where such institutions are structured in such a way in which by their very design and organisation, they tend to be incompatible with realising individual rights.

In such contexts, the work of Eulau and Karps (1977:239) provided a near realistic approach to the study of institutions and institutionalism. Its objective was to break the formal surface of governmental institutions and seeing beneath the surface and 'describing how politics works'. In this regard, understanding 'how' institutions are constructed and the conditions under which they 'emerge' helps in explaining how such institutions work in society. It is in this regard that political actors act according to the socially constructed ideas which were present when institutions emerged – and it is such ideas which are usually adhered to and solidified.

Weber (1978:40) had argued that institutions 'give order to social relations, and variability in behaviour, and restrict the possibility of a one-sided pursuit of self-interest'. Yet, the failure of such approach is that he failed to capture the two sides of the institutional coin in that institutions can also be vehicles for a form of organised disorder – a process in which institutions serve as avenues through which self-interested individuals can carry out their activities as opposed to limiting individual behaviour.

In linking corruption, economic development with State institutions, Adjei (2017:21) reiterated, within African institutionalism, much emphasis is on power. In particular how those in political office focus mainly on amassing as much wealth as possible. He added that as 'opposed to amassing such wealth, very little attention is given to State institutions that are relevant in building up the economies of African countries and making them sustainable'. Such aspects within institutionalism also add to the question of 'coherence' and 'incoherence'.

A way towards understanding this idea of institutional 'incoherence' and the realistic approach to understanding institutions was best seen through Eulau and Karps (1977:741) where they argued that it is important to describe 'how politics really works'. The 'how' in political works must then be seen through 'illiberal' States as described by De Oliveira (2015) in which certain States have the outward look of liberal institutionalism but in practice the 'how' tells the reality of politics. Such an understanding of politics would then require that there is an understanding of power and violence – and how those two concepts interact within a societal and institutional context.

This section will look at institutionalism and how it can serve as an important explanatory factor in understanding the shape that State institutions take.

2.6.1 Historical institutionalism

Historical institutionalist scholars focus on how institutions have been constructed over time and how such institutions are maintained and then eventually adapted. Sanders (2000:273) observed that the

study of historical institutionalism is not uninterested in individual preferences which are the focus of the rational choice approach but instead the study of 'historical institutionalism is more likely to define human interaction in terms of goals – which have a more public, less self-interested dimension – and in collective action, whether among executive officials, legislatures or social groups'.

So with this particular example, historical institutionalism is more focused on the evolution of institutions, in particular, the long-term evolution of these institutions and their eventual outcome. Historical institutionalism can then also be linked to not only patterns of institutional evolution but also patterns of violence – and in particular, how these institutions have adopted strategies to manage conflict. In the same vein, tracing institutional evolution can also be useful because it would allow for there to be a better understanding on how certain institutions have implemented mechanisms which facilitate violence both from the State and then from within and between citizens and their role within such violence.

As it regards to the formation of institutions, Orren and Skowronek (2004:84) argued that institutions develop more within a context where there are already existing structures and rules that govern them. The central assumption of the historical institutionalism approach is that 'it is more enlightening to study human political interactions in the context of rule structures that are themselves human creations and sequentially, as life is lived, rather than to take a snapshot of those interactions at only one point in time, and in isolation from the rule structures which they occur' (Sanders 2006:56). This is the idea that institutions should not necessarily be seen within the rational choice paradigm, in particular, how self-interested individuals interact with one another within an institution but rather that institutions are very much based on a historical development and how in particular such development has influenced their outcome.

Such an approach can be used to understand both the patterns of violence within post-conflict and unreconciled States (as will be seen in Chapter 4 and 5) while pointing out interventions on how such institutions can be better structured to prevent conflict. In addition, the historical institutional approach to understanding institutions is crucial because it provides a context on how these specific institutions arise. By employing this approach and as per the discussion in sections 1.1, 1.6.1 and 1.6.2 one can see how such elites arise and tend to take over the machinery of the State.

In an attempt to further understand the rise of institutions, Pierson (2000) identified that institutions develop through a process of 'path dependence' a process through which historical pressures influence how institutions develop. For example, the apartheid system in South Africa can be said to be an example of historical pressures that significantly influenced the development of State institutions within post-apartheid South Africa. The fact that both the African National Congress (ANC)

leadership and those of the National Party (NP) came together to negotiate new constitutional arrangements is arguably an example of how such a process was influenced by South Africa's racial, discriminatory and violent history and eventually how much history influenced the development of a new socio-political and institutional political order – to prevent future conflict. Resistance to apartheid was the catalyst – it was the historical pressure which significantly influenced such process.

This focus on ideas links this institutional approach to that of the culturalist approach discussed in section 2.5.4. It is similar in that the focus on ideas allows individuals to develop institutions over time to fit a certain societal mould. Within the apartheid example and despite the crises that was developing in South Africa on the question of democratisation and that of violence, the development of new ideas, i.e. a new 'image' served the purpose of creating frameworks that prevented violent conflict (see 2.5.4).

2.6.2 Approaches to institutionalism

(i) Institutions and predation

By 'predatory State' one might rightly use the example of the lion stalking its prey. Within this context, one would also rightly assume that a predatory State is one which lives to hunt and feed off others, thus further has other connotations of the lion's victims living in fear of constant harm and eventual death. Although this example might be extreme, it is not farfetched to equate this to some forms of predatory States that have existed in recent history.

Evans (1995:45) defies a predatory State as one which 'preys upon its citizens, terrorising them, despoiling their common patrimony, and providing little in ways of services in return.' This definition offers a form of predation in which the State actively works towards undermining the position of its citizens as a way to maintain itself in power. Predatory States have been a constant feature of the global international system since before the end of the Cold War. Within Western European history, one can argue that the absolute rule of monarchs with virtually no constraints on their exercise of power could be said to be an example of a predatory State within a historical institutional framework.

Within the post-World War Two context and then Cold War, predatory States remained a dangerous feature of the global international context. Such predation was evident in South Africa under its brutal and exclusionary apartheid policies and so many others which oppressed and undermined individual rights and liberties. However, although they have been regulated through international agreements, customary international law, and international law (to a certain extent) and, in particular the

development of human rights law, many actions which are seen to be against the minimum standards of IHRL persist – at times covertly by States but sometimes more blatant and in defiance of the core minimal standards of international human rights norms.

The theory of predatory States, therefore flows from its definitional understanding, asking why it is that leaders use such tactics of exclusion and violence. Reno (2015:724) argued that the reason why political actors continue to bolster the structures of predatory States is because of fear of empowering the people if they improve the conditions within the State – such combination of empowerment and improving conditions through making institutions more 'accessible', creating better economic and social returns 'would bring about fundamental shifts in the political system, which in turn might threaten their survival'.

Reno (2015:730) added that 'leaders and elites of the political establishments might see themselves as particularly vulnerable to internal threats such as coups, rebel attacks, and separatist movements. Regarding the development of other political forces, including the group interests of commercial entrepreneurs is fundamental to ensuring the regime's survival'. Predatory States are thus those that not only work towards undermining participation of citizens within the political process but actively work towards stifling dissent, undermining the rule of law while promoting impunity of State officials in their interaction with society.

The way that predatory States function is thus all-encompassing as it relates to the State. Predatory States do not only 'engage in excessive extraction from citizens'. Such States, purposefully undermine the institutions and policies necessary to maintain even a static level of economic development as part of a strategy of survival through maximizing regime autonomy from threatening political groups. Stronger institutions and economic transformations thus are not in the immediate interests of a predatory state autocrat (Evans 1995:203). Evans added that the 'disappropriation of civil society is the sine qua non of political survival.'

Political authority in this instance is then not a random occurrence. The limits on human rights and freedom, the weakness of institutions, and underdevelopment of the capacities of the State while in many cases building a strong State security apparatus to maintain the status quo are tactics used for maintaining the overall regime strategy – which is the maintenance of political power at all cost.

Since the end of formal colonialism in Africa, the postcolonial African State has adopted many features of predation. Some have gone forth to work towards developing political institutions which limited the rise of predatory forms of politics such as in Botswana and South Africa (post-apartheid). The Cold War context did not help matters. Countries like the USA supported proxy wars in Africa

which contributed to the rise and eventual establishment of the predatory State. Regimes like that of Mobutu Sese Seko and others were often maintained by superpowers.

This external influence within the affairs of African States made it so that the underdevelopment of institutions was maintained, often under the eye of the international community. This process has then significantly influenced norm-setting in African institutionalism. Indeed, the consequences of this have been drastic – the UN has observed that in these kinds of States, human development, social and economic indexes have been amongst the worst in the world. Reno (2015:748) noted that 'predatory regime practices include unofficial tolerance of paramilitaries under the control of favoured politicians'. Systematic manipulation of law enforcement to target potential critics and rivals and to protect regime partners, and acceptance of political clients participation in illicit activities and behaviours that undermine the stability and wellbeing of people even beyond the borders of a particular State.

Understanding the theoretical roots of predatory States is essential. A predatory State does not necessarily have to be one signified by extreme violence and exclusion, but slightly milder examples of predation can also be identified. Zimbabwe under Robert Mugabe, Cameroon under Paul Biya and many others are such examples. These are States in which elites covertly and at times overtly undermine State institutions while excluding persons from political participation - while such elites entrench these avenues of exclusion, violence tends to be the only resort left to people to seek redress.

(ii) Predatory States and kleptocracy

Predatory States are linked to high levels of kleptocracy. Acemoglu and Robinson (2006:175) noted that many countries in Africa 'suffer from kleptocratic regimes, where the State is controlled and run for the benefit of an individual, or a small group, who use their power to transfer a large fraction of societies' resources to themselves'. Acemoglu and Robinson (2004) noted that kleptocratic systems survive and formalise the idea of divide and rule. Kleptocratic systems then survive if, 'off the equilibrium path, it can successfully bribe the pivotal group. Consequently, kleptocracy is more likely, (a) when producer groups or their political representatives are more short-sighted because they put less weight on future returns under democracy, (b) when there is more foreign aid to the ruler, which he can use to bribe pivotal groups, (c) when there are more natural resources that can be used to bribe pivotal groups, (d) when average productivity in the economy is low, and (e) when there is less inequality between producer groups.'

In several post-conflict and unreconciled States, the above points, in part, if not all tend to be present. This is even more so in countries abundant with natural resources – in such contexts, those holding

political office could either bribe and or pay-off opponents along with co-opting those that stood in their way. This form of State predation and kleptocracy has a direct link to State institutions because in such, kleptocratic practices are maintained by the 'weakening' of State institutions. The creation of 'parallel' institutions as observed by De Oliveira (2015) has further entrenched and solidified elite hold on political power.

Within more advanced democracies, there is an understanding that leaders follow the rules due to a highly institutionalised process of entrenched rules. Such rules are highlighted and upheld by the Constitution, and the norms and values held such as respect for human rights, consensus, participation, and inclusion – in essence, a system where democratic values and principles serve as the basis for political authority.

Indeed, while there is a high volume of literature on the nature of such political systems. Shepsle and Weingst (1995) and Cox (1997) pointed out that there was less 'consensus' on the nature of 'weakly institutionalised polities' and what determines corruption, rent extraction and bad policies when institutions are weak. The relationship between weak and strong institutions is then important within the context of post-conflict and unreconciled States. One may argue that the weakness of such State institutions during their periods of conflict was perhaps the only time (as opposed to the war of liberation) where leaders on all sides of the conflict asked the people for support, this period would then also allow for the establishment of corrupt networks which would transcend into the post-conflict period.

Such weakness during the chaotic conflict period of these States would allow for State officials to plunder the State's resources. However, it is also such weakness which would allow for the creation of strong institutions in these States within the post-conflict context, institutions based not on a democratic rule but rather on corruption and a kleptocratic system which creates a blockage for the possibility of democratic governance.

The above argument is supported by Acemoglu, Verdier and Robinson (2004). They noted that 'when institutions are strong, citizens demand rights, when institutions are weak, citizens beg for favours' such strength of institutions in post-conflict and unreconciled States are then multifaceted. Their strength is underpinned by a strong military which benefits significantly from the government's corrupt dealings and an institutional framework which carries favours from the political elite. This idea of begging is perhaps linked to the argument in section 2.5.3 in particular about the *state of nature* in Africa – and how citizens adhere to such forms of oppression and exclusion due to the reality of many peoples of Africa, and that is domination – and – such domination can be best understood as being in the form of state of nature.

(iii) Institutions and repression

There seems to be quite a lot of literature which evaluates the relationship between institutions and repression. Khawaja (1993), DeNardo (1985), Lichbach (1995) and Davenport (2007) specifically focused on the institutional side of repression and had argued that the so-called law of coercive responsiveness - or the tendency of States to respond to mobilisation with coercion – applies equally to democracies and non-democracies. Della-Porta (2006) and Davenport (2007:11) further developed such argument in continuing that 'even democracies can be exceedingly repressive towards popular mobilisation'.

Other scholars such as Carey (2006) Conrad and Moore (2010:469) have, on the other hand found that at least some 'features of democracy – particularly the requirement that officials maintain office through popular elections – may constrain the severity of repression.' Indeed the same can be said that, in contexts of illiberal democracies, elections through the ballot box is seen only as a rubber stamp to legitimise an illegitimate political system which, in turn, might lead to further and more violent political mobilisation.

However, it is important to note that within democratic States, the forms of mobilisation are not as violent as those seen within illiberal democratic States. The reason is that institutions within full democracies are more accommodating of such mobilisation. Repression has then resulted in very diverse methods of resistance from people across time and space.

Social movements in Africa have been on the rise since the early 2000s. Aidi (2018) observed that unlike the protests in the early 2000s that ranged from service delivery and protesting the policies being adopted by the global war on terror. People in 'myriad African cities took to the streets demanding change – with no designated leaders, political organisation or political programs, and the demand was simply for a total change' Aidi (2018:4).

The significance of social movements is thus rooted in their ability to bring about potential change – though the tactics are also of vital importance. The frustration of individuals within such myriad of contexts is one which has its been seen – going to the streets without proper plans of action demanding change in a system which is repressive is one which has potential to create the conditions for violence. Schneiberg and Lounsbury (2007:652) argued that 'social movements can often evoke controversy and debate, resulting in new items on the agenda.' In an early analysis, Gamson (1989) argued that movements that use 'violence' or disruptive tactics are more likely to achieve political success than those that were more passive.

Cheneweth and Stephen (2011:170), on the other hand, argued that in its most extreme form, mobilisation could lead to the disintegration of the State institutions. They had then concluded that campaigns of civil resistance against 'dictatorships, against foreign military occupations, or for territorial secession were more likely to succeed when they used disciplined nonviolent action, whereas using violence reduced movement participation and delayed progress'.

An important feature is that in situations where violent conflict toppled regimes, the new regime might then in itself not show features of democracy at all due to the process used. Ekiert and Kubik (2000) argued that post-communist countries with 'rebellious civil societies' emerged as more successful. Cheneweth and Stephen (2011:153) similarly argued that in countries where 'nonviolent tactics were used as a form of mobilisation and thus toppled existing regimes were much more likely to engage as democracies than countries with violent insurgencies'.

Comparing the tactics used to control demonstrating groups in democracies and non-democracies is important. Although there is usually action by the authorities (police) to quell such protests in both democracies and non-democracies. The difference is that, at least within more advanced democratic systems, the use of force is guided by limits imposed on them by institutions and international standards, such as principles of necessity and proportionality. Where in the other instances, such guidelines are less likely to be used. The intention of such protest action within advanced democracies is perhaps less often to do with the States implicit denial of people's human rights as opposed to perhaps less dramatic disagreements on policy issues. Important to note within this process of the use of force is the aftermath of such use of force.

The difference between the use of force between democratic and non-democratic regimes is arguably the redress mechanism within the institutions. Within democratic systems in the aftermath of the use of force, guidelines such as the Minnesota Protocol[6] are used to investigate potential suspicious violations by security services in non-democratic States such instruments are not usually in place or used effectively and the process is less credible and or perhaps even impossible.

The literature on institutions and repression highlights that, when institutions are repressive, there is a response from society in the form of popular mobilisation to counter such repression through social movements. However, perhaps what can also be identified, is another dimension of institutions and repression in the sense that while individual groups in society might mobilise – such mobilisation

[6] The 'Minnesota Protocol aims to protect the right to life and advance justice, accountability and the right to a remedy, by promoting the effective investigation of potentially unlawful death or suspected enforced disappearance' (OHCR 2017).

might not necessarily be to counter repression by 'fighting' for change, due to the level of institutional repression and the failure of individuals to access such institutions. As a result, individuals might then turn violence against other citizens as a way to achieve their socio-political and or economic objectives.

(iv) Political mobilisation and political institutions

Political mobilisation within a State can take two very different turns. The populace can mobilise peacefully to protest specific State action while the government responds using limited coercive means and simply control such protests, and on the other hand, the populace could rise, and the government responds violently and, with disregard for constitutional limits and protection on individual rights and freedoms. Such forms of violence have been seen in Zimbabwe against the ruling parties political opposition and in Mozambique against members of civil society.

However, perhaps a more unexplored variant on the literature of political mobilisation is the extent to which the population do not rise to curb institutional repression, inequality and weak economic situations. There may rather be a third avenue of 'political mobilisation' – which per se is not entirely 'political', but rather a form of actions in which individuals simply refuse to either accept or reject the institutional structure. They adapt to it by creating criminal networks that can be extremely violent, and the citizens are the targets.

Tilly (1978:131) described political mobilisation as the process by which 'passive individuals become active participants in social life by pursuing popular collective action toward a defined set of claims, interests or goals.' Indeed at the same time, such mobilisation can take several forms, ranging from protest action where individuals take to the streets as seen in many actions across South Africa in the area of service delivery and, on the other hand, a more extreme form of protest which can be seen through the revolutions in Egypt and other parts of the Arab world – termed the Arab Spring. Yet, those the described forms of protest actions have been the norm, actions such as holding meetings to protest certain action, or using art in protest of policy or government direction can indeed, be considered within the realm of political protest.

Scholars from various fields of study such as political sciences and sociology have studied mobilisation, contentious politics and social movements as a way to understand not only how they come about, but also how violent conflict can arise from such movements. To many, mobilisation is a process used when all other alternatives are either not possible and or unavailable under a political system. Chenoweth (2015) added that, with such lack of alternatives, the usual avenues which

individuals look for are through political parties, legislative representation, legal representation and the like.

In scenarios like the anti-colonial fight, apartheid South Africa and the Arab Spring among countless others in which mobilisation took place, there were very few, if any, real formal and legal channels for political expression. These limits were coupled by the lack of both economic opportunities and high levels of inequality.

A view on mobilisation was identified by Goodwin (2001) and Ozler (2013:140) in which they concur that 'political mobilization occurs outside of the formal institution and that mobilisation is essentially a substitute for malfunctioning institutions.' It is thus not farfetched. The use of violence by the population through criminal activity might also arguably be included as being 'outside of the formal institutions'. Clemens (1993:771) further argued that 'groups marginalised by existing political institutions have an incentive to develop alternative models of organisation'.

Indeed, and on the contrary, political mobilisation can also take place in institutions which are participatory in nature – take for example the so-called 'yellow jacket' movement which took place in France which was motivated by the high cost of living and the governments' tax reform. In this case, the protest took place within a system of political inclusion and participatory institutions – a system which as its base already safeguarded individuals human rights. The difference between France, Libya and Egypt is that in both Libya and Egypt protest action challenged the very nature of the State and its failure to establish conditions for the promotion of human rights wherein the case of France protests focused not on the nature of the State but rather on government policy which did not affect their human rights and physical security.

Indeed such mobilisation would most likely take place in places where institutions are dysfunctional, as shown by high levels of grievances and few mechanisms for which such grievances can be channelled. South Africa is perhaps a perfect example of how the nature of institutions and extreme repression can significantly influence the forms of mobilisation. South Africa was on the brink of all-out civil war if a negotiated settlement was not reached – but perhaps more important was the necessity to reform institutions to prevent violent conflict.

However, despite the grievance question, a large number of scholars have pointed out that much mobilisation takes place in places where there are high levels of formal legal institutions which would ideally prevent such mobilisation. Advanced democracies such as France, Germany and the USA 'experience exceedingly high levels of mobilisation – often in quite radical and disruptive forms – despite existing multiple, overlapping, and highly functional political, social, and economic

institutions' (Chenoweth 2015:69). It was seen most recently through protest action in France termed as 'the yellow jackets protests'.

With reference to the 'yellow jackets' protest action, a question may then be why many individuals pursue redress outside of institutions when they have many institutional alternatives? Such question has motivated scholars to pursue and focus more specifically on institutional arrangements in attempts to 'understand better why mobilization takes place despite institutions as well as why different institutional arrangements might produce varying levels of mobilisation' (Chenoweth 2015:92).

This scholarship about institutional arrangements is thus important in two ways: (1) it identifies that despite advanced democracies seemingly having strong institutions there is still the potential for conflict which is dependent on how such institutions are structured and (2) the benefit within such advanced democracies is that State institutions would rarely use the might of their armed forces and or security services to quell dissent – such disagreements within such context are not necessarily on the issue of democracy but perhaps more in the area of government policy. In such cases, the main point to make is that the issues of contention are very different and that repression is not the result of such mobilisation.

On the other hand, within developing countries, those in which democratic principles have yet to be fully consolidated and in which illiberal principles are the way to go, the context is entirely different. The armed forces and security services are most often seen as a threat to democratic stability. Moreover, the political system is one in which those that rise against it demand greater inclusion within such political system – the need for institutional reform and rearrangement are even more significant due to the potential violence that might ensue as a result of such mobilisation.

Amenta and Ramsey (2010:18) have provided an overview of how specific arrangements would result in different kinds of mobilisation. A most striking feature and theoretical argument for such arrangements are seen through the Political Opportunity Structure (POS) which argues that mobilisation takes place 'where it can', and that institutional contexts either constrain or create space for popular collective action'.

(v) The effects of political mobilisation on institutions

Within the African context, some authors have argued that the resource curse is a determinant factor for violent conflict, mostly manifested through the outbreak of civil war. A dominant feature of the POS approach is its focus on the institutional perspective and how it argues that both grievances and resources are not enough to explain patterns of mobilisation. In this regard, Simmons (2014) argued

that the ability to mobilise 'is often facilitated or constrained by the political and institutional environment in which grievances occur'.

Jung (1996) stated that 'the openness of the formal institutions, apparent divisions within the elite, elite alignment in government, and the States willingness and ability to use repression' serve as indicators for social mobilisation and conflict. Amenta and Zylan (1991:257) identified that 'the specific structures and policies of the State both help and hinder challenges'.

Indeed, Jung's belief of the 'openness of the formal institutions' as indicators for social mobilisation tends to be more within democracies in which due to the openness and tolerance of such institutions spaces are created for people to mobilise. The dangers of closed and intolerant systems like those within illiberal States are that, due to potential violent reaction from security services, there is always a danger of a protest to turn violent – the danger of such potential violence is also a huge danger for 'revolution'. The Soweto uprising in South Africa in the 1970s is perhaps an example of how seemingly harmless protest action against a repressive State can turn deadly and how the ripple effects of such action can lead to wider action and potential violence.

Indeed, the above argument is not to say that there must be a calculated attempt to provoke a violent reaction from police by protesters – but rather that there is a possibility that a violent response such as that in the South African case has the potential to lead to wide-spread violent conflict in fragile states.

2.7 Conclusion

The purpose of this chapter was to provide an analysis of the concepts of power and violence, and how those concepts related to the functioning of States and its institutions. The starting point was to look at how power and violence has been theorised and understood by various authors, the discussion of the relationship between power and violence found that in trying to understand power and violence there is also always the need to address the issues of consensus and legitimacy and in particular how States deal with establishing such consensus and legitimacy.

The chapter also analysed the relationship between violence and culture. In such analysis, the chapter found that culture not only influences the development of States, but does to a large degree influence the levels of participation of individuals within a political system. In addition, the chapter also found that the type of culture that a State has significantly influences the type of relationship that such leaders will have with their citizens.

A significant analysis made was looking at the various approaches which aim to explain violence (see section 2.4.1). This section provided diverging explanations on explaining why violence might erupt. However, despite the different approaches being diverse, the common thread which linked the theories with the objectives of this theories was that violence was most of the time carried forth by States who were highly centralised with weak institutional mechanisms of accountability and oversight.

The discussion regarding State theory and violent conflict provided an understanding of how a State ought to work, by providing different understandings of the State (see 2.5). The chapter found that though the liberal approach is the most widely 'accepted' State structure – it nevertheless fails to fully understand the peculiarities of post-colonial African States. As such applying the liberal model to the African context leaves very little room to fully understand and study why African States function the way they do.

The discussion on the class-analytic approach provided an important analysis of class conflict and how it links to violence and institutionalism. This section also worked towards developing a starting point in which the African State can be understand and through it provide a starting point in the analysis of the African State and how institutions can be reformed based on such understanding (2.5.3).

The theoretical approaches to violence identified in this chapter will inform the rest of the study in two different ways: (1) it will provide a workable framework which looks at how States develop over time and how the beginning of States essentially inform the kind of policies that they will eventually develop. This supposition was seen in places like South Africa, where the nature of the South African State during the transition from apartheid to democracy set forth a context of upward mobility.

In the case of Angola, the theory will also follow such reasoning. As opposed to South Africa where there was a negotiated settlement, it was not the case in Angola as will be discussed in chapter 4. The political trajectory in Angola took a different direction from that of South Africa and (2) This chapter also worked towards explaining why the Angolan political system has evolved in the manner that it did (see section 2.2, 2.3 2.4, 2.5 and 2.6). In addition to setting forth a framework, the theory also goes towards supplementing the normative political approach that this thesis has adopted (section 1.8).

CHAPTER THREE: International legal and institutional frameworks

3.1 Introduction

This chapter looks at the international legal and institutional frameworks in place for the prevention of violent conflict. The main objective of the chapter is to identify to what extent the international community has contributed towards providing States with the tools for which they may use within their own State building experiments to prevent violent conflict.

In identifying such tools, the chapter will look at the obligations that Angola has under international law to prevent violent conflict and in doing so analyse whether Angola's institutions are in line with international human rights standards while complying with its international legal obligations. In measuring Angola's compliance with international human rights law, four levels of State obligations will be looked at: (1) respect, (2) protect, (3), fulfil and (4) redress.

The chapter will then look at the international legal framework as it regards violence and its prevention. It will look at the instruments such as the UDHR, ICCPR and the SDG's and what they say about the role of State institutions in preventing violent conflict. The chapter will then move onto analysing the obligations that Angola has as members of the AU and SADC towards violent prevision, together with looking at the mechanisms in place for compliance with the obligation to prevent violent conflict.

The chapter concludes with looking at the extent to, and whether Angola complies with its international human rights obligations.

3.2 The obligation of Angola under international law to prevent violent conflict

African States have acceded to and ratified several human rights treaties and conventions which make both explicit and implicit reference to the prevention of violent conflict. The founding of the UN – as it states in its Charter 'to save succeeding generations from the scourge of conflict' can arguably be said to have been created for this very purpose. The role of State institutions in preventing violent conflict as elaborated in Chapter two can work towards gearing institutions to prevent such conflict.

Before proceeding to the legal provisions set forth at the global (UN), regional (AU) and sub-regional (SADC) level for the prevention of violent conflict, it is important to establish the obligations that Angola and, generally African States have towards violence prevention. This section will investigate the obligations that States have for the prevention of conflict as members of both the UN, AU and

SADC along with the treaties/resolutions to which they are a party to and which speak on the issue of violence prevention.

As a way to advance State obligations, Shue (1980:52) noted that there are no 'distinctions between rights'. He continued by noting that the useful distinctions are among duties, and there are 'no one-to-one pairings between kinds of duties and kinds of rights'. He further went on to offer a distinction between a duty to avoid depriving, the duty to protect people from deprivation by other people, and the duty to provide for the security of those unable to on their own.

In offering the duties applied to the obligations Shue (1980:173) concluded that 'for all its own simplicity, it goes considerably beyond the usual assumption that for every right there is a single correlative duty', and suggests instead that for every basic right – and many other rights as well – there are three types of duties, all of which must be performed if the basic right is to be fully honoured but not all must be necessarily performed by the same individual or institutions.

3.2.1 Respect

The obligation to respect requires that States refrain from interfering in the 'enjoyment of all fundamental rights, it should respect the right-holders, their freedoms, autonomy, resources, and liberty of action' (Shue 1980:53). Regarding the prevention of violent conflict, States are obliged to ensure that its institutions and policies do not hinder the realisation of such rights while creating the environment for the realisation of fundamental rights. In reference to 'fundamental rights' which include the right to engage freely in political activity, States must create the conditions through their institutional design which would allow such right bearers to realise these rights.

Such respect is then also directly linked to violence. The discussions in section 2.2.3 and 2.6.2 (i) and (ii) are examples of how States can undermine and disrespect the rights of individuals such as denying persons their rights, creating legislation which is contrary to international human rights obligations as will be discussed in section 3.6.2 (i) and (ii) which then has the potential to trigger acts of physical violence from those who are abused. But under such circumstances, the first instance of violence through the denial of rights is triggered by the State through institutional structural violence (see 1.5.1).

In circumstances in which States are overly centralised with a disproportionate distribution of political power which allows the conditions for the State to impose on the fundamental rights of persons the State then has the responsibility to re-evaluate and with it create structures which would allow for greater democratic governance. In the *SERAC v Nigeria* case (African-Commission 1998), the African

Commission on Human and Peoples' Rights (ACHPR) established that the obligation to 'respect' entails that States should 'refrain from interfering in the enjoyment of all fundamental rights'. Regarding institutional reform and violence prevention, Angola has an obligation to establish institutions which must safeguard the rights of its citizens and with it prevent violent conflict.

It is the duty of the State to create State institutions which would work towards promoting greater political inclusion, autonomy while eliminating arbitrary actions which lead to repression, which is then a requirement for the prevention of violent conflict. This duty is then in light of establishing the necessary conditions and mechanisms as described in section 1.5.3.

The State then must take measures to ensure that institutions are structured to represent right bearers and safeguard their rights. Such measures can be achieved through decentralisation which would promote a form of 'people power' by decentralising the political decision-making process and allowing people to decide for themselves – moving towards the idea of 'self-government'. This is further reiterated by Article 25 of the ICCPR (UN 1976) which recognises the right and opportunity of every citizen, without distinction to:

(a) take part in the conduct of public affairs, directly or through freely chosen representatives,
(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors, and
(c) to have access, on general terms of equality, to public service in his country.

In essence, Article 25 recognises the right of every individual to take part in the public life of a State. One can also extrapolate that the legal framework of a State must be receptive and structured in such a way that individuals have the widest scope of possibilities to participate.

An important aspect of Article 25 as per General Comment 25 is the nature of political power within the State. Article 25(a) is broad because it focuses specifically on the three branches of government and how individuals exercise power within such institutions. In this regard, General Comment 25 states that, in addition to Article 25(a), dealing with the broadest concept of power to be exercised by citizens within the three branches of government, 'it also covers all aspects of public administration, and the formulation and implementation of policy'. It then means that a State's legal framework must be designed in such a way that political power is broadly spread throughout the various branches of government – together with ensuring that such power is 'cut' up and in the hands of various societal actors.

Article 25 can better be unpacked to tackle the central question which this thesis endeavours to investigate. Moreover, a key component of Article 25 is its link to democratic governance and it links to the discussion in section 2.2 and 2.2.1 by Arendt where she argues that violence is most likely a result of a breakdown in 'consensus'. Article 25 is key because it reiterates the importance of 'consent' of the people as the basis of democratic governance. It is such consent which can then be interpreted towards a better understanding of how institutions can create the conditions for inclusion and participation. The question of citizen participation within State institutions is then also directly addressed under Article 25, an important aspect of the article as it regards participation and inclusion is one based on equality.

In addition, an important aspect of Article 25(a) is also its emphasis on the importance of direct involvement of citizens in the political process through legislative bodies. Such conversation may then lead to discuss various forms of legislatures (unicameral or bicameral) and which one is more appropriate to provide the widest scope of individual participation. At first glance, and though contextual imperatives are important – bicameralism seems to be a form of legislature which offers the most platforms for citizenry participation (discussion on bicameralism will follow in Chapter 6).

3.2.2 Protect

The duty to protect implies that the State has a duty to protect its citizens from any instances which would lead to the violation of their fundamental rights. In this regard, States have the duty set up policies and clear frameworks and legislations for the effective enforcement of human rights which would work towards protecting individuals and freedoms. The ACHPR in the *SERAC* case concluded that the duty to protect implied that States take 'measures to protect beneficiaries of the protected rights against political, economic and social interference' from State institutions themselves with the inclusion of third parties such as corporations or any other organisations.

One way in which the State can work towards preventing violent conflict is reforming institutions which often encroach upon individual rights and liberties by limiting their rights of participation and at times physically imposing their will through arbitrary violence, coercion and impunity. Reforming institutions would then ensure that appropriate structures are in place which would work towards preventing abuse of right holders.

Moreover, General Comment 13 (2011:12) on the right of the child to freedom from all forms of violence helps to provide a framework of the State's duty to protect persons in general from violence. The General Comment acknowledges that States must identify institutional and systemic issues which might lead to violence being perpetrated against a child. The General Comment notes that 'authorities

at all levels of the State responsible for the protection of children from all forms of violence may, directly and indirectly, cause harm by lacking effective means of implementation of obligations under the convention'.

Indeed, children are seen as vulnerable groups within society, yet the rights set out by the Children's Convention, can also be attributed to every human being. It means that States have the responsibility to ensure that they establish institutions which would prevent any form of violence for all its citizens.

3.2.3 Fulfil

The *SERAC* case before the African Commission took further steps to elaborate on the State's responsibility to ensure. According to the Commission, the obligation to ensure/fulfil, 'is more of a positive expectation on the part of the State to move its machinery towards the actual realisation of rights'. The State must then take steps towards reforming dysfunctional institutions to prevent the violation of human rights both as a result of such dysfunctional institutions or by effects of such institutions in society.

Overly centralised States like Angola where political decisions are highly centralised and left to a few create the conditions in which the ideals of inclusive political participation are undermined. In the same regard, such lack of inclusion within the political process further undermines institutions which in turn makes it so that such institutions fail to create the appropriate measures for the oversight of government which in turn then leads to impunity, corruption and over time, the erosion of democratic principles.

Therefore, the described typology of obligations as discussed above require that States set up institutions which would allow for the promotion of democratic governance as violent conflict would then equate to the failure of the State to fulfil all its obligations under IHRL.

3.2.4 Redress

According to Cheng (1953), reparations are a fundamental principle of law. Domestically, individuals who are victims of human rights violations have the right to seek redress, and the State has an obligation to investigate and provide mechanisms to address such violation – if such a violation is found. The International Law Commission (ILC) (2001) has noted that in international law, the obligation of the State to provide redress arises from a breach 'of a primary obligation causing the injury'.

Under IHRL, the right to 'reparation' (redress) can be understood in two distinct ways: (1) the right to a domestic remedy and, (2) the right to adequate and effective forms of reparation. General Comment 3 on the nature of States' obligations of the Committee against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in its Paragraph 2 established the link between the procedure by which 'reparation' is sought and then understood as being indivisible, and together with the concepts of 'effective remedy' and 'reparation'.

The question of 'effective remedy' is important because it creates the conditions for which victims of a violation can legally assert their rights and as a result, seek redress. Bassiouni (2006) noted that under international law – all human rights treaties and instruments require that States explicitly or implicitly provide remedies for violations. The UN Basic Guidelines and Principles on the Right to a Remedy (UN 2006) further acknowledged and explained that the obligation to respect, and ensure respect for and implement IHRL and International Humanitarian Law (IHL), had given rise to a duty to provide remedies. Such duty to redress then also includes the right to 'equal' and 'effective' access to 'justice' adequate, effective, and prompt reparation for harm suffered, and access to relevant information concerning violations and reparation mechanisms.

In regard to the nature of the reparation, the African Commission in the *SERAC* case noted that the procedural remedy requires States to present effective access to a fair process in which the claims can be accessed. Article 14 of CAT states that 'each State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to and for compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation'. Article 14(2) specified that 'nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law'.

One can extrapolate from Article 14(2) that, for States to give effect to such remedy is that State institutions must be inclusive. Moreover, they must be participatory to give full effect to the rights. The top-down approach of Angolan institutions through its overly centralised nature creates the conditions which further undermine such conditions and the possibility for redress as those in power which are usually the culprits of such violations would then block potential aspects of redress. An example of such blockage can be seen in Angola's incapability to provide redress for victims of human rights violations, or even investigate incidents like the massacre in Mount Sumi which in turn, highlights the closed nature of Angolan institutions (see 1.1).

3.3 International human rights law and state institutions in preventing violent conflict

At the UN level provisions relating to the prevention of violent conflict can be found both in treaties and soft law. While Dugard, Du-Plessis, Maluwa and Tladi (2019) noted that 'soft law' does not have the status of 'law' they nevertheless defined it as comprising of 'imprecise standards, generated by declaration adopted by diplomatic conferences or resolutions of international organisations, that are intended to serve as guidelines to States in their conduct'.

Shelton (2009:69) proposed that to categorise soft law as primary soft law and secondary soft law, in noting that primary soft laws are 'normative texts not adopted in treaty form that are addressed to the international community as a whole or the entire membership of the adopting institution'. Secondary soft law includes: 'recommendations and general comments of international supervisory organs, the jurisprudence of courts and commissions, decisions of special rapporteurs and other ad hoc bodies, and the resolutions of political organs of international organisations applying primary norms' Shelton (2009:4).

The *Universal Declaration of Human Rights* (UDHR) was adopted by the UN on 10 December 1948. Since the end of the Second World War, the UN has been instrumental in the process of 'standard setting, that is, creating treaties and other documents that set out universally recognised human rights' (Josepth and Kyriakakis 2010:1). Article 1 of the UDHR affirms that 'all human beings are born free and equal in dignity and right'.

The UDHR further reaffirmed in the first international conference on human rights in Tehran in May of 1968 (UN-Conference 1968) (hereafter, the final act) and then again in the 'Vienna Declaration and Programme of Action' in 1993 (UNGA 1993). Although the UDHR was not adopted as a legally binding document, Josepth and Kyriakakis (2010:1) noted that the UDHR remains the 'cornerstone expression of global human rights values'. In addition, Sohn (1982:72) argued that despite the UDHR's nonlegal nature, 'it's norms have come to be crystallised as customary international law'.

An important contributor to the field of human rights and whose contribution significantly added to the discourse of 'individual' protection of human rights together with how violence impacts the individual through the denial of rights was Hersh Lauterpacht. Lauterpacht (1945) argued that the adoption of treaties would protect the individual rights of persons. His writing though focused significantly on the relationship between the 'rule of law' and 'accountability', they were nevertheless focused on protecting individuals from violence in particular violence from a State. In his earlier writings, the book titled, '*The Function Of Law In The International Community',* Lauterpacht (1933) stated that 'the well-being of an individual is the ultimate object of law'.

The State as a legal instrument must then be designed in such a way to protect the individual and safeguard his/her rights, particularly as it regards to violence – meaning that States must adopt legislative mechanisms which ensure that rights are protected. The neo-weberian approach is then important as it argues that the State as the capacity to organise institutions in whoever manner (see section 2.5.2). However, it is also important to note, and one can extrapolate from Lauterpacht (1933) that that the political system must be one which where institutions provide for the widest scope of individual rights and freedoms.

The ICCPR was adopted by the General Assembly on 16 December 1966 and entered into force on 23 March 1976 (ICCPR 1976). Article 2(2) of the ICCPR stipulates that, where not already provided for by existing legislative or other measures, 'each State party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws and or other measures as may be necessary to give effect to the rights recognised in the present Covenant'.

The mention of 'within its constitutional process' is important because the ICCPR in this instance seems to imply that States had established Constitutions which are designed to a large extent to fit the criteria of acceptable standards of power-sharing. The article in this regard is quite idealistic and does not take into consideration contexts in which Constitutions were designed in such a way as to 'undermine' individual rights and freedoms.

Within the idealistic wording of Article 2(2), the ICCPR compels governments to take 'administrative, judicial and legislative measures' to protect the rights enshrined in the ICCPR and provide an effective remedy. As per Article 2(2), the ICCPR implies that States then have an obligation to design institutions which would give effect to the rights in UDHR and other human rights instruments to safeguard individual rights and liberties.

The ICCPR is thus particularly important as it relates to violence and its prevention. The Secretary-General's Report on Human Rights in the administration of justice (2013), has noted that violence, death and injury is one of the most important challenges pertaining to the protection of persons deprived of their liberty. Though in the context of persons deprived of their liberty, the importance of preventing violence is still imperative. In the same vein, the importance of violence prevention can also be taken from Article 6 of the ICCPR as it regards the right to life and the responsibility of States to safeguard such right.

In the same vein, Article 7 of the ICCPR then provides the framework from which individuals are to be protected from torture, and other cruel, inhumane and degrading treatment. This then directly links with violence prevention as acts of violence against a person does constitute torture and degrading treatment.

The Human Rights Committee in its interpretation of Article 2(1 and 2) of the ICCPR in General Comment 3 (HRC 1981) have left it to State parties concerned to choose their method of implementation in their territories. Such an agreement then further leaves open the use of State institutions as a mechanism through which the rights of individuals can better be protected and used as a tool to realise the rights within the ICCPR.

General Comment 31 of the ICCPR (HRC 2004:8) in speaking on the nature of obligations reiterated that Article 2 of the ICCPR requires that States 'adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations'. This then opens up the space for social ad institutional engineering in particular as it deals with States creating institutions which are inclusive and prevent social conflict. The General Comment further stipulates that the requirement under Article 2(2) to 'take steps to give effect to the covenant rights is unqualified and of immediate effect. Failure to comply with this obligation cannot be justified by reference to political, social, cultural or economic considerations within the State'.

General Comment 35 of the ICCPR (HRC 2014) in its Article 9 stipulates that the right to personal security obliges State parties to 'take appropriate measures to respond to death threats against another person in the public sphere, and more generally to protect individuals from foreseeable threats to life or bodily harm'. In this regard, the discussion in section 1.1 and 1.6 can be interpreted as a failure of the Angolan State to fulfil its obligation. In addition, one can further extrapolate from this that the failure to comply with such an obligation is directly due to the nature of the Angolan State. The discussions in sections 1.1, 1.6. 1 and 1.6.2 are very telling and seems to be due to the overly centralised nature of the Angolan State and its institutions. As a result Article 9 of the ICCPR further puts an obligation, as stipulated in General Comment 35 for States to respond 'appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders and journalists'. What the General Comment fails to add perhaps is the dimension of structural violence and corruption as constituting a violation of human rights.

Despite the fact that the ICCPR does not expressly provide for State institutions to prevent violent conflict, General Comment 35 has pointed out numerous times the need for States to take 'appropriate measures' that are required for the prevention of conflict and actions which would lead to the violation of the rights within the ICCPR and other international instruments. As the ICCPR then gives

leeway for States to adopt such 'appropriate' measures, one can add State institutions themselves as an 'appropriate measure' which would carry-forth the vision of the ICCPR. Such vision naturally must fit the contextual and socio-historical perspective of a State – but the important thing is then that States can be designed to create better conditions for which the rights of individuals are protected.

In this regard, one can further add that such design cannot be achieved through the lenses of centralisation. Especially the centralisation of political power as seen in a number of Constitutions such as Angola. . But rather, and in order to provide for the widest range of rights of the individual, there is a need for States to broaden the avenues of power by significantly reorganising how and as per the discussion in section 2.2.2 ensure that power 'circulates' as opposed to it being concentrated in one particular organ.

With the conversation regarding the organisation of political power one can take away from the preamble of the ICCPR where it recognises that, in accordance with the UDHR, 'the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social, and cultural rights'. One can then extrapolate that, to achieve such rights, States must create enabling environments for such realisation and such an enabling environment would be moving away from centralisation, which tends to restrict avenues of participation.

The *Carnegie Commission on the Prevention of Deadly Conflicts* (CCPDC) (1997) argued that the ultimate goal of conflict prevention is the creation of 'capable states'. Such capable States are based on the understanding that the need 'to prevent deadly conflict is increasingly urgent'. Such capable States are those that can regulate transnational as well as domestic actors and which are accountable to promote and respond to thriving economies and active civil societies.

The Carnegie Commission also asserts that 'efforts to help avert deadly conflict are not only a matter of humanitarian obligation but also enlightened self-interest' (1997). Taking the lead from the world conference, the CCPDC understood the need for violence prevention as being the ultimate goal in safeguarding human rights. Perhaps what was further significant was the CCPDC's acknowledgement and reiteration that while the international community was vital in setting forth frameworks for violence prevention States were nevertheless the main actor. The creation of capable States is implied in the Vienna Declaration, which states that States have the responsibility to create institutions that would address their own contexts within a human rights framework.

The SDGs is perhaps one of the clearest and well-structured documents endorsed by the international community which places the need for violence prevention, democratic governance and institutional reform as an important pillar for the protection of human rights.

The SDGs reaffirms the responsibility of States to establish conditions for the realisation of human rights in the implementation of the SDGs and in doing so, prevent violent conflict. It is also important to note that as States work towards such realisation - State institutions are not the only key in realising human rights, but are vital towards preventing violent conflict. Restructuring such institutions can positively impact the prevention of violence. Goal 16 of the SDGs, therefore, sets forth clear approaches on the importance of reforming State institutions for the prevention and violence and with it the promotion of human rights.

Goal 16 emphatically reaffirms the responsibility of States to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'. One can extrapolate that Goal 16 reiterated that stronger and more inclusive institutions would serve three main functions: (1) significantly reduce all forms of violence and related death rates everywhere and with it prevent violent conflict – it implies that State institutions can contribute greatly towards violence prevention, (2) would develop effective, inclusive, participatory and representative decision - making at all levels, and (3) would strengthen relevant national institutions, including through international cooperation, for building capacity at all levels and in particular in developing countries to prevent violence and combat terrorism and crime. This last point is important because it again puts the ownership of achieving these objectives on the States, and with it choosing their own blueprint within the specified rules which are in line with international standards.

3.4 The African Union and its efforts to prevent internal violent conflict

3.4.1 The AU's Constitutive Act and the prevention of violent conflict

The Constitutive Act was adopted by the OAU Summit of the Assembly of Heads of State and Government (AHSG) on 11 July 2000 and entered into force on 26 May 2001. The Constitutive Act was a revolutionary step towards safeguarding and creating a continental legal and administrative structure which would have as an objective the protection of persons from the scourge of conflict which the continent had experienced for decades.

The Constitutive Act and its protocol established the PSC an organ which placed emphasis on building a continental security regime capable of preventing, managing, and resolving conflicts in Africa. This was vital because directly after independence a large number of African States

experienced high levels of internal conflict such as civil strife and civil war. Leaders within such States acted with impunity while neglecting the rights and freedoms of its citizens.

The revolutionary aspect of the Constitutive Act is that it gives its member States the authority as per Article 4(h) to 'intervene in a member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity', and 4(j) the right of members States to request intervention from the Union in order to restore peace and security'. Such a strong response to gross human rights violations can arguably be said to have arisen from the lessons from Rwanda in 1994 where both the UN and the OAU failed to act in any measured and or appropriate way to prevent the atrocity.

Kuwali and Viljoen (2017:4) argued that even though Article 4(h) mandates using military force to protect civilians in cases of conflict and grave violations of human rights, 'there is no indication of how that force should be used to protect populations at risk'. They added that while Article 4(h) implies the 'use of military force, there are still legal dilemmas of the military becoming involved in civilian protection and how to protect civilians due to a lack of comprehensive tactical guidance'.

An important aspect of the Constitutive Act which has a direct correlation to this thesis and its focus on violence and its prevention can be found in Article 30 of the Constitutive Act which states that 'governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the union'. Indeed, while such a provision has the objective of ensuring that governments are not changed by force or violent means, one can argue that Article 30 places the rights of the State above those of individuals.

As the Constitutive Act (2002) prohibits unconstitutional changes of government, it could be said that the promises of these laws are to maintain peace and security so that individual rights and freedoms can be better protected. However, there are limitations to this promise of the law. The very nature of the international and regional systems, despite attempting to enforce normative values of peace and security, is to assume that governments in charge of States are always willing to act in the best interest of the people. It is also premised on the assumption that once elected, leaders will continue to execute their mandates in terms of their election promises. It is also to make an assumption that the elections that ushered a particular leader into power was free and fair in the first place.

In addition, there are still some African States that continue to interpret the international norm of sovereignty in an archaic manner. Some of these States continue to interpret sovereignty as an international law principle that bestows upon them absolute power to the exclusion of the international community. They frown at the current interpretation of sovereignty to mean the legal

responsibility of the government of the day to protect the rights and freedoms of the citizens of the State.

One can then argue that the fact that international and regional law on the preservation of peace, security and constitutionality in change of governments tend to negate that the main source of oppression and suppression of freedoms can be the government of the day. As a result, one can also arguably problematize the nature of States and their violent nature, arguing that international and regional law is not only stagnant but to a large degree allows the violence of states to continue.

As a result, and though unconstitutional changes of government are outlawed under international law, Article 4(h) of the Constitutive Act creates the avenue that in circumstances of grave violations of human rights States can intervene so as to prevent such violations. Moreover, one can also argue that since international law places the individual at the center of its protection while other instruments such as the African Charter on Human and Peoples' Rights gives individuals both rights and duties, it is then not farfetched to argue that under certain conditions (massive and grave violations of human rights) and where the international community fails to act such individuals can use force so as to safeguard their rights and restore a state of democratic rights and governance based on human rights and the rule of law.

The *African Charter on Human and Peoples' Rights* (hereafter, the African Charter) was adopted on 27 June 1981 and entered into force on 21 October 1987. The transition from the OAU to the AU and its adoption of the Constitutive Act further reinforced the protection of human rights in Africa with the need to prevent violence as its basis.

State parties to the African Charter have the obligation under its Article 2 to ensure that all individuals enjoy the 'rights and freedoms recognised and guaranteed in the present Charter without distinction'. Article 13 reiterates the right of political participation within the institutions of State in specifying that 'every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives'.

The African Charter on Democracy, Elections, and Governance (ACDEG) was adopted on 30 January 2007, and entered into force on 15 February 2015. The basis for its adoption was the contention that 'conflicts on the continent were caused or exacerbated by many factors, notably, including lack of democratic practices in the management of public affairs, non-observance of human rights, as well as unfair electoral processes' (African Charter on Democracy).

As a signatory to the ACDEG Angola is bound to the spirit of its principles – meaning that it should work towards aligning itself with the ACDEG. The Vienna Declaration on the Law of Treaties (VCLT) in its Article 12(1) stipulates that 'the consent of the State to be bound by a treaty is expressed by the signature of its representative'. Angola's signature, therefore, implies that the State will work towards ratification and implementing its vision as per 44(a) of the ACDEG which states that State parties 'shall initiate measures including legislative, executive and administrative actions to bring State parties national laws and regulations into conformity with the Charter' (UN 1969). Reforming key institutions such as the executive, the judiciary, and legislative branches of government are vital aspects towards, not only promoting human rights and wider political participation but also preventing violent conflict. To date, Angola's institutional framework fails to do so.

An important aspect of the ACDEG is that its contents, and in particular, its authority is derived from the Constitutive Act which commits the Member States of the AU to the principles of 'participatory democracy', creating 'strong institutions' establishing the 'rule of law', respect for 'human rights' and 'good governance'. According to Kioko (2019:32), the ACDEG reflects the 'shared values, standards and norms of the AU and its member States in the area of democracy and together with the Constitutive Act, envisages that States will hold each other accountable to ensure compliance through the application of the sanctions provided for in article 23 of the Constitutive Act'.

Article 2(6) of the objectives of the ACDEG identifies that States must 'nurture, support and consolidate good governance by promoting democratic culture and practices, building and strengthening governance institutions and inculcating political pluralism and tolerance'. The discussion in section 2.3.2 is important as it specifies that building a civic political culture which supports political participation and inclusion is vital towards building and strengthening institutions.

In addition, Article 2(6) is important because it overlaps with SDG Goal 16 – especially as the article speaks of 'nurturing, support and consolidate governance'. As a way towards such consolidation it is then important to take note of the social factors of violence, and in the case of Angola, factors which might lead to violence – and in doing so manage them effectively. The public health approach to violence as discussed in section 2.6 is then vital because it identifies important approaches towards violence prevention, the SDGs through Goal 16 works towards identifying and then joining the lines between the SDG's and factors of violence and approaches for its prevention.

Article 3(3) of the ACDEG is more indicative of the need for States to create conditions which would work towards preventing violent conflict in noting that States must provide conditions and promote a

'system of governance which is representative'. Article 3(7) speaks of States creating the condition for 'effective participation of citizens in democratic and development processes and in governance'.

In speaking directly to the issue of democracy, the rule of law and human rights, Article 8(2) of the ACDEG explicitly states that State parties shall adopt legislative and administrative measures to guarantee the rights of women, ethnic minorities, migrants, people with disabilities, refugees and displaced persons and their marginalised and vulnerable groups' this goes hand in hand with Article 12(2) which speaks of the need for States to 'strengthen political institutions to ensure a culture of democracy' and Article 15(2) which speaks of the need for States to 'ensure that the independence and autonomy of State institutions are guaranteed by the constitutions'. As a legally binding instrument, the ACDEG is vital. African States that have signed and ratified the ACDEG must take necessary measures to realise the rights of the Convention and failure to comply with is then essentially a breech in respect of *pacta sunt servanda* under Article 26 of the VCLT. Article 31 of the Vienna convention further stipulates that States should interpret treaties in 'good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and in light of its object and purpose'.

The African Governance Architecture (AGA) was adopted by African Heads of States and Government (AHSG) in 2011. Inspired by the Constitutive Act, the AGA through its point 6(b) urges that States 'respect democratic principles, human rights, the rule of law and good governance' while 6(d) urges States to respect the 'promotion of the principles of separation of powers'. The AGA is a political and institutional body mandated by the AU to 'define, promote and regulate the body's Pan-African democratic governance agenda' (AGA).

Mickler and Wachira (2019) added that the AGA is in line with the AUs long-term continental development blueprint such as 'Agenda 2063, including the key aspiration of an Africa of good governance, democracy, respect for human rights, justice and the rule of law'. The objective of AGA is best expressed in point 5(d) in which it urges States to 'enhance popular participation and citizen engagement in attainment of democracy, governance and respect for human and peoples' rights' (AGA 2011).

In addition, the AGA has a direct link with SDG goal 16 in the importance of strengthening State institutions in which it argues that States must 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels' (SDGs).

In this regard, treaties like the UN Charter, the Constitutive Act and other international treaties that deal with violence and its prevention it can be extrapolated that State institutions have a primary role in preventing violent conflict.

Agenda 2063 was adopted on 31 January 2015. Agenda 2063 is in line with the values of the Constitutive Act, the ACDEG and the AGA. The seven aspirations of Agenda 2063 are all directly active and serve towards preventing conflict. In particular, Aspiration 3 of 'an Africa of good governance, democracy, respect for human rights, justice and the rule of law' clearly reiterates the spirit and values of the Constitutive Act in which it aspires that by 2063 Africa is to have 'capable institutions and transformative leadership in place at all levels'. One can extrapolate from such aspiration that institutions which are overly centralised and inflexible are not in a condition to adequately provide for good governance and human rights. Aspiration 3 also particularly speaks of the need to do away with acts of corruption and impunity (see sections 1.5.5 and 1.6.2 (i) and (ii)).

The central principle of Aspiration 3 which is directly in line with the violence prevention theme of this thesis as it asserts that 'Africa will be a continent where the institutions are at the service of its people' and that 'citizens actively participate in the social, economic and political development and management'. As Agenda 2063 is both a vision and plan of action, at its very core is the understanding that its aspirations can only be achieved in the absence of conflict and as such State institutions are the vehicle through which its objective can be realised. As Aspiration 3 concludes in stating that 'institutions at all levels of government will be developmental, democratic and accountable'.

It is important to note however, that Agenda 2063 leaves it to States to build upon its vision of a peaceful Africa of good governance and human rights and as such seems to have a very strong normative political approach on how institutions 'ought' to function, while also offering up a huge amount of creativity to States themselves in crafting institutions which would achieve the its vision.

The AU Master Roadmap of Practical Steps to Silence the Guns in Africa (hereafter the Roadmap) was adopted on 31 January 2017 by the AU and served as a 'roadmap' through which Africa would be free of violence and conflict (AU 2015). The objectives of the roadmap was to 'silence' the guns in Africa by 2020.

Though silencing the guns by 2020 is no longer possible by 2020, the roadmap outlines 'realistic, practical, time-bound and implementable' steps towards addressing the causes of conflict as important pillars towards 'silencing the guns'. However, it does not propose an exact framework on how States should take such steps in practice and within their contextual realities. In addition the roadmap seems

to focus significantly in tackling 'physical forms of violence – hence 'silencing the guns' - while failing to capture structural forms of violence.

The discussion in section 1.5.1 in regards to physical and structural violence is important as both forms of violence is preceded by weak and failing institutions, and it is often such institutions which are characterised by high levels of centralisation and rigidity which in turn make it difficult for them to be responsive to the evolving needs of societies.

Cilliers (2018) argued that conflict in Africa will most likely continue and the guns will not be silenced in '2020 or even 2023'. This, however, does not take away from the importance of the silencing the guns as a policy to work towards conflict prevention.

Goal 16 in relation to silencing the guns is vital because it offers a kind of barometer for measuring governance. In the case of Angola, and, in particular, the focus of Goal 16 on peace and security and capable States and the functioning of institutions provides a framework to see whether Angola's current institutional framework is feasible. It also serves as a yardstick to test the viability of highly centralised States and how such centralisation either hinders or allows for good governance practices.

3.4.2 Mechanisms for monitoring compliance with the obligation to prevent violent conflict

The *African Peer Review Mechanism* (APRM) was launched in 2002 and adopted as a functional tool in 2003 by the AU in the framework of the implementation of the New Partnership for African Development (NEPAD). According to the guidelines of the APRM, its primary purpose is to 'foster the adoption of appropriate laws, policies, standards and practices that lead to political stability'.

The APRM is a fundamental tool for evaluating not only a State's compliance with the minimum standards of international law, but also as a barometer for measuring progress made in the area of human rights. Though Angola has acceded to the APRM on 8 July 2004, it has neither been reviewed nor submitted any progress reports.

One can argue that Angola's failure to actively participate in the APRM process may have been due to its recovery from a civil war which ended merely two years after its ascension to the APRM. But a more accurate reality of Angola's failure to comply with the APRM has been what Ayittey (2005) described as State 'dirigisme', a characteristic held by most African States of 'administrative ineptitude, overspending, wasteful practices, extravagance with public funds, many failed political and economic grand initiatives'.

In Angola such 'dirigisme' can perhaps be seen through the discussions in sections 1.6, 1.6.1 and 1.6.2 (i) and (ii). Ayittey (2005:261) continued that such 'dirigisme' is compounded by 'rampant corruption, predatory elites who have long monopolised power, an absence of the rule of law'.

Angola's failure to report as per the APRM guidelines has severe consequences not only to maintaining the integrity of its State institutions but also creates a sort of unalignment with minimal international human rights standards because it fails to provide an accurate assessment of its socio-political condition, which in turn further makes it near impossible for Angolan policy-makers themselves to assess some of the countries pressure points in need of attention and reform.

Essentially the APRM is a mechanism to be used by African States to evaluate best standards and to see what other States have adopted within their jurisdictions and to measure if they comply with the laws and standards of the AU. Within the context of institutions and their prevention of violent conflict, the APRM is a tool for self-reflection and analysing the institutional deficiencies of States in achieving the goals of the AU.

The core guiding principles of the APRM have stressed that the overall 'responsibility of the mechanism is vested with the Committee of participating Heads of State and Government'. Such responsibility is then further reinforced within the APRM's governance and political governance thematic area in which it stresses national Constitutions, reflect the democratic ethos and provide for demonstrably accountable governance, and political representation is promoted, thus providing for all citizens to participate in the political process in a free and fair political environment' (APRM 2019a).

The APRM further reiterates that States must then establish and strengthen 'appropriate electoral administrations and oversight bodies in their respective countries'. The APRM has established that it is vital that States institutions are conducive and 'uphold the separation of powers, including the protection of the independence of the judiciary and an effective Parliament that ensures accountability, efficient and effective public office holders and civil servants fight corruption in the political sphere' (APRM 2019b).

The APRM in drawing aspiration from Agenda 2063 directly imposes on States the obligation of achieving Goal 3 of Agenda 2063 of 'an Africa of good governance, democracy, respect for human rights, justice and the rule of law'. The Agenda further elaborates such institutions are those 'at the service of the people' while 'citizens actively participate in the social, economic and political development management'.

The SDGs (UN 2015b) further reiterated this point in its Goal 16 where States have the obligation of 'promoting peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'. Goal 16(a) centralises the role of institutions in promoting human rights and preventing violent conflict in obliging States to 'strengthen relevant national institutions, including through international cooperation, building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism'. Goal 16(7) puts a further obligation on States to, through their institutions, ensure 'inclusive, participatory and representative decision making at all levels'.

The APRM specifically works towards preventing violence. It creates a platform from which African States can assess and reflect from other African States on how they dealt with conflict and, in particular, the institutional reform mechanisms which worked within their particular context. Indeed, though the APRM is one which allows Africans to take 'ownership', it does not mean that it ignores global solutions.

It is, however, important to note that despite the APRM serving as an important tool – it is not adequately used. Such failure was seen in Kenya way before the election violence which engulfed the country between 27 December 2007 to 28 February 2008. The May 2006 Kenya APRM report highlighted the potential for conflict in Kenya – this was seen as the report noted that 'Kenya is a deeply divided society with a range of latent and manifest internal conflict'.

The *Panel of the Wise* was launched in 2007 and established under Article 11 of the Protocol relating to the Establishment of the PSC of the AU. The Panel encompasses the saying 'African solutions to African problems'. The function of the panel serves not only as a mediating body within the APSA but more broadly as a body with the aim of preventing conflict before they arise. The primary function of the Panel is to support the work of the PSC and that of the AU Commission (AU PSC protocol art 11).

The panel is made up of five members who are elected by the Chairperson of the AU in consultation with the Member States on the basis of regional representation. Such members are 'respected African personalities of high integrity and independence and who have made outstanding contributions to Africa in the areas of peace and security' (Apuli 2018:159). Jegede (2009:411), however, observed that the limit of membership of the panel is 'unhelpful considering the level and spontaneity of conflicts and crises in Africa. One questions the rationale behind such prescription on a continent richly endowed with dignified personalities who can make a difference in addressing conflicts and crisis situations'.

This is important in two facets: (1) the panel can and is to a certain degree free from the political interference which bog down institutions such as the PSC and the CEWS, and (2) the panel brings with it the moral authority of those personalities which it is built around. However, despite the panel having the potential to play a key role in supporting structure for the APSA, in particular expending its role of mediation to engaging more actively with AU member States in structural prevention, it is nevertheless still very much bogged down by political interference and in particular underused by the PSC. This is due to the very nature of States, the ability of leaders to undermine the role of the panel so as not to shed light into the acts of their governments. Some African leaders have requested 'turning off' the CEWS for particular States.

As a mediating body, the panel is imperative and yet might at the same time serve as a double-edged sword. It is well known that the mediation of conflicts, especially protracted conflicts is of vital importance. However, also of vital importance is the calibre of the mediator tasked with such endeavour. Susskind and Babbitt (1992) rightly argued, 'the perception that mediation is synonymous with tough diplomacy leads to, and is reinforced by, the appointment of international mediators on the basis of their political status rather than their competence as mediators'.

Using the same argument, Nathan (2005:14) argued that 'Presidents, Ministers, former heads of States and military officers who are not skilled mediators are frequently appointed as peacemakers in high-intensity conflict in Africa. Some of these dignitaries have a natural aptitude for mediation, and others do not'. This argument then surely linked to the membership of the panel due to the diverse nature of conflicts in Africa, selecting five personalities takes away from the potential of the panel to actually do more. However, one cannot take away from what the Panel has done. The Panel has mediated conflicts in Kenya, Zimbabwe, and Guinea Bissau, and yet again despite such work the potential of the Panel seems only to be deployed to react and not truly fulfilling its mandate in prevention.

However, there seems to be a perception that the Panel only intervenes and mediates in situations where conflict had already taken root and where lives have already been lost. Such a case was evident in Kenya when the results of the general elections were contested resulting in massive post-election violence, which regrettably led to the deaths of over one thousand people and left three hundred people displaced'. Indeed, it is also important to note that the loss of life in Kenya would have certainly been much higher if the AU had not authorised the peace mediation in January 2008 led by the former Secretary-General Kofi Annan.

So, the role of the AU in mediating conflicts is of vital importance. However, the Panel can be more effective by employing a more preventative approach which focuses on assisting countries to build not only towards their structural development but institutions as well as revitalising their institutions.

This could be done by expanding the mandate of the Panel to include working with members States on building institutional designs which are broader and more inclusive which would aid in the long run of preventing both physical and structural violence. As the Panel is composed of former heads of States and eminent personalities, they would be in a key position to also advocate for assisting States in properly leveraging the role of politics within a democratic Constitutional paradigm and how such power can better be organised. Such an approach would not only work towards its preventative capacity but also serve directly into assisting other organs of the APSA such as CEWS, the PSC and ultimately invigorating the ASF.

The purpose of the CEWS is, in essence to provide political leaders at the AU with vital information that would assist them in making decisions regarding peace and security and in particular to 'provide the Union with timely information on emerging conflicts and corresponding policy options' (Apuli 2018:160). Under the OAU mechanism, early warning systems were not necessarily a vital instrument of the structure. However, after the events in 1994 in Rwanda, along with others in Burundi and Somalia, a greater need arose for an organ that would focus on generating vital strategic information about potential hotspots which might become potential conflicts.

Today the CEWS is operational and consists of two parts: the situation room which has its headquarters in Ethiopia and has the objective of monitoring, observing and gathering information on conflicts. The second part is the regional early-warning systems that filter their information to the CEWS in Addis Ababa (GIZ 2015).

With the assistance of the UN situation room and 'external donors, the AU's situation room can provide continent-wide coverage of conflict dynamics twenty-four hours a day, as well as produce a range of reporting mechanisms, including daily news summaries and more substantial updates on emerging issues' (Williams 2016:19). This function of collecting information along with the collaboration with the UN is of vital importance within the framework of preventing violent conflict.

According to Williams (2009), despite the CEWS being the only mechanisms which have the potential to foresee variables which might lead to conflict and give the AU sufficient time for it to act to prevent such conflict, the system is flawed in two fundamental ways: (1) there is no cohesion within the communications and technological architecture between the AU and its sub-regional organisations. It is a significant flaw in the system as it regards the intelligence-gathering potential of the CEWS, incompatibility with technological systems would then make it difficult to integrate systems in time to give clear and concise information about potential factors which cause conflict. This dilemma is compounded by the lack of cohesiveness on how such early-warning factors are

analysed and then shared, (2) impacting on the first, is the lack of a proper network of the AU to collect and interpret information received.

The CEWS relies upon the New York office of the UN to receive information. This reliance is arguably not only dangerous but may result in inaccurate information gathering as the NY office if further away from potential hotspots. The lack of its own networks in this regard leaves to question the quality of information passed on – to the fact that the AU lacks infrastructure from which it can gather and sort through real-time intelligence which would then inform its officers, and more importantly, the PSC brings to doubt the capability of the CEW in actually performing its function.

As Williams observed (2016:390), 'senior and mid-level leadership cannot easily access national and supranational intelligence sources, forcing them to rely mostly on open-source journalism or whatever African leaders choose to share'. This, together with the different levels of democratisation and democratic consolidation on the continent, invokes questions of sovereignty in that 'CEW personnel must overcome widespread anxiety among AU Member States about the potential for spying to occur under the guise of early warning' (Williams 2016:84).

If the CEWS is to be a useful intelligence-gathering tool, African intelligence operatives whose function is to work with and within the various Member States of the AU must be given not only the adequate tools but also access to accomplish their function effectively. As Malan (2008) observed, AU Member States have asked the Chairperson of the African Commission not to report on events affecting their countries, effectively asking the commission to 'turn off the CEWS when situations prove to be uncomfortable and or embarrassing'.

The CEWS is flawed both in practices and perception. The majority of African States are still run by leaders that presided over independence. Moreover, Unlike the EU, its levels of integration, shared policies and, to a considerable extent, integrated security, economic and political infrastructure makes it more likely that a form of CEWS would work more effectively. Within the AU context, the very lack of any of those systems further makes it so that early-warning systems at the AU continental level prove to be ineffective.

Furthermore, it is not farfetched to argue that, to link the proper functioning of CEWS with individual State institutional reform, is vital towards generating a proper continental early-warning system. The unequal levels of democratisation in Africa create conditions for unstable States. Using the Angola case, the author argues that State institutions can play a role in preventing violent conflict along with creating the context for more equal and inclusive governance. Such governance architecture would be achieved by reforming State institutions through the reorganisation of political power and the

relationship between the three branches of government. In addition, such reorganisation is one which would be designed to be more inclusive, which in turn will contribute towards improving the overall governance of the State - one which would then inherently be in a better position to better carry out its obligations as they are set out by international law and both global and regional organisations.

3.5 The Southern African Development Community

The Declaration and Treaty which established the SADC was signed on 17 August 1992, to which Angola is a party and was ratified in September 1993. The treaty is a 'legally binding and all-encompassing framework by which countries of the region shall coordinate, harmonise, and rationalise their policies and strategies for sustainable development in all areas of human endeavour' (Abegunrin 2009:70). The treaty created the SADC and also the principles and objectives of the organisation. The treaty of the SADC is very specific in the sense that conflict prevention is a prerequisite for development.

The Declaration and Treaty further points out specific principles and objectives to which members of the SADC should adhere. Chapter 4, Article 4(a) affirms the 'sovereign equality of all members States', while 4(b) emphasises the need for 'solidarity, peace and security'. Article 4(c) is vital because it establishes 'human rights, democracy and the rule of law' as a vital principle of the SADC and one which member States must adhere to in all its subsequent work and institutional organs.

Article 4(c) might then be looked at as a challenge to 'sovereignty', but rather it emphasises, to member States that 'sovereignty' is conditional on member States' adherence to the minimum standards of human rights set forth at the international level and as prescribed by the UN.

The importance of the SADC as a first responder to insecurity and instability in the region cannot be overestimated. Article 5(b) of the Declaration and Treaty of the SADC sets forth as an objective of the organisation to 'promote common political values, systems and other shared values which are transmitted through institutions which are democratic, legitimate and effective', 5(c) 'consolidate, defend and maintain democracy, peace, security and stability'.

The treaty in its Article 5(2) Subsection (c) further stipulates that, to achieve such objectives member States must 'create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its institutions' and (j) 'develop such other activities as member States may decide in furtherance of the objective of this treaty'.

Article 5(2)(j), if read together with Articles 4(a) and (c) strongly implies that States must work toward the establishment of State institutions which first of all underline human rights as their base and modus operandi - because only through such basis can there be any real development. Such development, that can only be achieved through the absence of violent conflict and State institutions is an important factor towards such achievement.

Article 10(a) of the Declaration and Treaty establishing the SADC established the creation of the SADC Organ on Politics, Defence and Security and Co-operation (SADC Organ). The establishment of the SADC Organ can arguably be said to emphasise the importance of a conflict resolution mechanism within the institutional structures of the SADC.

The Protocol on Politics, Defence and Security Co-operation was adopted on 14 August 2001 and entered into force in March 2004. Article 2(1) of the protocol highlights as its objective to promote 'peace and security in the region'. Such objective is further unpacked in Article 2(a) 'to protect the people and safeguard the development of the region against instability arising from the breakdown of law and order, intra-state conflict, interstate conflict and aggression', 2(b) 'promote political co-operation among State parties and the evolution of common political values and institutions, 2(e) 'prevent, contain and resolve inter and intra-state conflict by peaceful means' and, 2(g) promote the development of democratic institutions and practices within the territories of State parties and encourage the observance of universal human rights as provided by in the Charter and conventions of the Organisation of African Unity and United Nations respectively'.

By looking at the protocol, one can see a high degree of emphasis placed on State institutions to prevent violent conflict. It is particularly evident in Articles 2(a) and 2(e) highlighted above. However, and at the same time, the protocol itself leaves the onus on member States to design these institutions themselves as long as they are done so within a human rights paradigm which inherently places the organisation of State power as an important aspect to elaborate on together with the relationships between State institutions themselves. It is a paradigm which must give prominence to citizen participation while creating the conditions for greater inclusion – all of this must be built into institutions.

3.6 To what extent has Angola complied with its international legal obligations?

In her article entitled, '*Promoting Compliance with Human Rights: The Performance of the United Nations' Universal Periodic Review and Treaty Bodies*' Carraro (2019:1), stressed that 'monitoring States' compliance with international human rights obligations is a highly complex task'. She continued that - although global organisations such as the UN and AU rely on States to check

themselves it is important to note that 'in several cases of human rights breaches the executive branches of States were the prime violators'.

The link to human rights violations and the executive branch is important because it places State institutions at the forefront of such violations, and as a result makes sense to reform them to prevent such violations. What Carraro (2019) aludes to however, is the nature of political power which has been given to such executive institutions through Constitutions and the nature of the relationships between the executive legislature and judicial branches.

Having taken note of the obligations that Angola has for the prevention of violent conflict and establishing and its responsibility to establish institutions which would prevent such conflict, the sections which follow will evaluate whether Angola has complied with its international human rights obligations. In doing so, the sections which follow, section 3.6.1 to 3.6.2.5 will pay particular attention to unpacking Angola's obligation to promote and protect the right to freedom of assembly. The focus on such rights is important to gauging Angola's obligations under IHRL as such rights go to the heart of this thesis.

Heyns (2020) commenting on the nature of public assemblies, stressed that 'the fundamental human right of peaceful assembly enables individuals to express themselves collectively and to participate in shaping their societies'[7]. He reaffirmed that 'together with other rights related to political freedom, it (the right to assembly) also constitutes the very foundation of a system of participatory government based on democracy, human rights [the rule of law] and pluralism, where change is pursued through persuasion rather than force'.

In linking the normative political approach that this thesis has opted to use as per the discussion in section 1.8 which is not only concerned with the 'how' of things, but also with how such things 'ought to be'. Heyns (2020) added in the general remarks that 'critical assemblies can play a critical role allowing participants to advance ideas and aspirational goals in the public domain, and to establish the extent of support for, or opposition to those ideas and goals'. In this regard, the role of ideas are important, not only because they create pathways to think about new ways of structuring institutions and what would actually work towards placing the rights of individuals above the interests of the few.

[7] OHCHR. 2020. Internet: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26133&LangID=E

3.6.1 Theories of compliance and ratification

Downs (1998:322) defines enforcement as the 'overall strategy that a State or multilateral adopts to establish expectations in the minds of the State leaders and bureaucrats about the nature of the negative consequences that will follow non-compliance'. This idea as to why States might comply with human rights obligations is then based on a more realistic paradigm – meaning that states comply because it is in their best interest, or that if they do not they would be seen in a bad light by the international community.

In their study of the '*Impact of The United Nations Human Rights Treaties on The Domestic Level',* Heyns and Viljoen (2001:489) noted that States might ratify treaties 'in response to stronger forms of international pressure'. However, in this regard, States would then tend to comply with international treaties because of what they can gain – the benefits which they would derive from compliance. As Simmons (2009:112) described, these States would then fall under the 'strategic ratifiers'.

The constructivist approach as to why States comply with their obligations under IHRL is, according to Checkel (2001:563) based on 'social learning, socialisation, and social norms'. As opposed to the enforcement approach in which states tend to comply with obligations due to the benefits which might come from such compliance – this approach focuses more on the internal social dynamics within the State itself which might lead to pressure on governments to comply.

In this regard, Checkel (2001:568) proposed that the constructivist approach is focused on domestic politics as a determining factor in compliance in arguing that, 'domestic politics – in particular, institutional and historical contexts - delimit the casual role of persuasion/social learning'. This idea of the national political context is important because it focuses specifically on actions such as major protest action, significant political events which have taken place and tend to force governments to comply with their IHRL obligations.

In this approach to compliance, there are two very striking points which aid in further determining such compliance: (1) social mobilisation and protest action, and (2), social learning. According to Finnemore and Sikkink (1998:889) social learning and mobilisation points to the belief that NGOs and activists within the state make use of the international human rights treaties to influence government to comply. This was also seen in the study conducted by Heyns and Viljoen (2001:488) in which they concluded that international human rights 'treaties have their greatest influence domestically in shaping the understanding of government officials and members of civil society as to what is to be considered basic human rights'.

It is, however, important to note that, this approach is not completely contrary to that of the enforcement approach. Rather, as opposed to purely using 'cost-benefit calculation' the constructivist approach, according to Carraro (2019:4) is 'shaped by the process of norm diffusion that drives societal forces to put pressure on decision-makers to conform to these rules'.

It is such a process of norm diffusion which has lead scholars such as Checkel (2001) to propose that compliance with international obligations has a lot to do with 'social learning' and how a State's history and events all play a part within such social learning which would, in turn influence how such mobilisation takes place to influence government compliance.

This management school approach to compliance proposes that States are committed to the treaties which they enter into – because they spend time in drafting and negotiating them Chayes and Chayes (1995). Chayes and Chayes (1995:138) have also argued that, in this regard, compliance is the 'normal organisational presumption' – taking it as a given and almost automatic that, once States have agreed upon a particular treaty and hence signed and ratified it, the next logical step is then to enforce it within their domestic jurisdictions.

Carraro (2019:7) argues that within this view, it is not only logic which would dictate compliance, but also that States comply with such treaties and its obligations because it is in their 'interests' to do so, and that 'they acknowledge the legal obligation to comply with it'. Non-compliance in this regard would then only be explained by issues such as 'ambiguity' within the treaty itself.

In the same vein, Simmons (2009) argued that by ratifying a treaty, States presumably acknowledge and understand their obligation to respect the provisions contained within them. Simmons's (2009:66) theory of 'commitment' identified three types of ratifiers: (1) the sincere, (2) the false and (3) the strategic ratifiers. The first kind of ratifier can be said to be States who indeed want to respect the rules and obligations of the African Charter and other international instruments, while the second are States which ratify because of international perception and or pressure and third, States which are led to ratify with the support of civil society organisations who push States towards various directions and policy alternatives.

Simmons (2009) added that States are believed to be 'rationally expressive' when they sign and or ratify treaties – meaning that they sign treaties that they intend to comply with. Governments are seen to comply with treaties because they 'genuinely support the content of those treaties'. Article 9 and 24 of the Vienna Convention established that States also have the right to reserve particular sections and or articles which they do not necessarily conform with.

By signing and ratifying treaties States then impose upon themselves a kind of self-imposed sanctions from behaving in a certain way. Clark (2001) exclaimed that by signing and ratifying treaties, States had given the international community 'whips to flagellate themselves with'. As a result, States that ratify human rights treaties agree to the limiting of their 'absolute sovereignty' and as such allow the global (see sections 3.3.2 and 3.3) regional (see section 3.4) and sub-regional (see section 3.5) organisations to hold them accountable when their obligations are not met.

3.6.2 Has Angola complied with its international human rights obligations?

(i) The Law on Crimes against State Security and limits on freedom and speech

Article 1 of the Law on Crimes Against State Security (State Security Law) states that any individual in violation of the Act will be eligible for a prison sentence of '16 to 20 years'. Article 4, which deals with acts of espionage, states in its Article 4(2) that 'any person who tries to obtain secret information of military, diplomatic or economic nature, concerning State security or its international policies, knowingly reveals them to others or facilitates their knowledge' shall be deemed to have committed the crime of espionage and shall be liable to the sentence set out in Paragraph 1 of Article 55 of the Penal Code[8]. Part 3 of the law, which deals with 'crimes against the international security of the State in its Article 16(1) states that 'an attempt on the life, physical integrity or freedom of the Head of State shall be punished with the sentences mentioned in Paragraph 2,4 and 5, of Article 55 of the Penal Code'[9]. Article 16(2) continues that 'should the crime be committed, the sentences mentioned above shall be augmented in terms of Article 93 of the Penal Code'[10].

Article 16 of the same law must then be read together with Article 17 which reads, 17(1) that 'the crimes mentioned in paragraph 1 of the article above, when committed against the President of the National Assembly, members of Parliament, judges or the Attorney-General of the State shall be punished with the same sentences set out in the common penal law and augmented in the general terms of the law'. Article 17(2) further states that 'insults or offences to the honour and consideration due to the leaders mentioned above shall be punished in terms of Article 181 of the Penal Code[11] and augmented in the general terms of the law, and shall always be deemed to have been committed directly and in the presence of the injured party'.

Indeed, although State security is vital to maintain the State, the particular provisions as per the Angolan law are simply too broad and directly go against the Constitution's fundamental freedoms

[8] Article 55(1) of the Angolan Penal code (Governo-de-Angola 2019)
[9] Article 55 of the Angolan Penal code (Governo-de-Angola 2019)
[10] Article 23 of the Angolan Penal Code (Governo-de-Angola 2019)
[11] Article 181 of the Angolan Penal Code (Governo-de-Angola 2019)

while curtailing freedom of speech which is guaranteed by the Constitution. They directly restrict the role of an independent media to serve as a custodian of democracy in Angola. Rafael Marques was a target of the Angolan judiciary where he was charged with 'insulting; and 'offending' the former Attorney-General Joao Maria de Sousa and the former President Dos Santos. Rafael Marques was charged under article 17 of the Angolan State Security Law.

On 9 April 2018, a district court in the province of Malanje arrested and then sentenced three protesters (Afonso Simao, Justino Valente and Antonio Fernando) for a period of five to six months as per the Law on State Security for insulting the President and the sovereign organs of the State. Another case for which an individual was charged under the Law on Crimes and State Security was Jose Marcos Mavungo. Mavungo was arrested and detained in Cabinda for planning a 'peaceful' protests which denounced 'poor governance and human rights abuses in Cabinda' (Diario de Noticias 2018). Mavungo was charged with 'sedition' and eventually tried on 19 March 2015. However, and though there was no evidence of such charge, the provincial court of Cabinda ordered further investigation which led to Mavungo being charged with the crime of 'rebellion' against the State.

A more recent case where an Angolan national was charged with 'insulting' the President occurred on 10 May 2019 in which Samussuku Tshikonde was arrested for insulting the President in a video posted on social media in which he stated that the President 'must cooperate with authorities' (2019 SAPO Angola). Tshikonde was accused by the Procuradora-Geral do Estado (Attorney-General) of 'insulting' President JLO - the accused was subsequently arrested and jailed for 72 hours without charge and access to a lawyer. Ida Sawyer (Sawyer 2019), African director at Human Rights Watch (2019) stated that 'the Angolan police's mistreatment of Samussuku Tshikonde was both unlawful and a signal that the government won't tolerate peaceful dissent'.

The UN Human Rights Committee in its General Comment No. 34 on the right to freedom of expression, stated that 'the mere fact that forms of expressions are considered to be 'insulting' to a public figure is not sufficient to justify the imposition of penalties. The General Comment noted that 'all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition'.

Article 19 of the State Security Law which deals with the act of rebellion, states that, 'any person who by any illegal means commits an act with the aim of, or whether directly or indirectly, changing all or part of the Constitution or the established form of government, shall be sentenced to a prison term of 12 to 16 years'. Essentially it means that the author of this thesis may be breaking the law and as a result be liable to be charged under the Angolan State Security Laws. The Article notes that 'any

person who, for the same purposes, impedes or hinders the free exercise of the functions of the organs of State shall be sentenced to a prison term of 8 to 12 years'.

This Article is far-reaching, and it has been interpreted in the strictest sense – the case of the 15+2 individuals who were charged in accordance with Article 19 of this legislation tried the youth with rebellion for reading a book on democracy (see section 1.6.1). Taking this further, the Article is far more encompassing in the sense that it can go on to undermine core universal human rights standards. Moreover, the Article implies that any form of protest and or speaking out around governmental policy is punishable under the law – further undermining IHRL and with it the rights of individuals.

Article 20 deals with armed revolt, riot and insurrection. Article 20(2) states that any person who incites inhabitants of Angolan territory to Civil War or to rise against the Head of State or against the free exercise of the functions of the organs of the State shall be punished by a prison sentence of 16 to 20 years. One can further see within the drafting of the laws through this article that the focus seems to strongly lean towards protecting the President, while ensuring that the executive maintains a stronghold in controlling societal forces.

Article 23, which deals with lock-out and incitement to strike, states that the closure or stoppage of work by the employers or management, without the prior authorisation of the competent authorities, shall be punishable by a two-year prison sentence. The article continues in establishing in Article 23(1) that the same punishment shall be applicable to any person who incites, promotes or organises the closure or stoppage of the work by the workers'. Article 23(2) states that attempts at this crime shall always be punished. Acts in preparation thereof shall be deemed to be attempts to commit such crime. This essentially means that conducting strikes in Angola such as those for equal pay and or others without authorisation is illegal and punishable as a crime against the State.

Article 24, which deals with instigation to collective disobedience, states that any person who, with the intention of destroying, changing or subverting the constitutionality established rule of law, publicly incites the collective disobedience of laws of order or the non-compliance with duties to the public function, shall be punished with a two-year prison term. Article 25 which deals with an insult to the symbol of the State, states that any person who insults in any other manner or shows disdain or contempt towards the flag, insignia or other symbols of the country, shall be sentenced to a two-year imprisonment. Article 24 and 25 bring to light the obsession that the Angolan State has with control – one would argue that, as a national, the right to disobey repressive laws of the State, is a right which should be safeguarded – such right should also be extended to the burning of a flag in protest of repressive and unconstitutional laws which limit with the aim of undermining the expression of a person.

The State Security does not in any way conform to international standards. The Law also undermines the Angolan Constitution itself. The Law on State Security tears apart the very fabric of the rule of law in Angola as it deals with Article 28 (1) which reads, 'the constitutional principles regarding fundamental rights, freedoms and guarantees are directly applicable to, and binding upon all public and private entities'. The Article continues in its Subsection (2) in stating that 'the State must adopt legislative initiatives and other appropriate measures to ensure the gradual and effective realisation of economic, social and cultural rights, in accordance with the available resources'.

The State Security Law goes against the basic standards of IHRL as discussed in section 3.3. An important barometer to measure such lack of compliance with international human rights standards can be taken from *the Siracusa Principles* (UN 1984) on the limitation and Derogation of the Provisions in the ICCPR, which in its general interpretative principles relating to the justification of limitations on issues of State security, states that 'national security cannot be used as a pretext for imposing vague or arbitrary limitations and may not be invoked when safeguards exist and effective remedies against abuse'.

The Siracusa Principles affirm that 'the systematic violations of human rights undermine true national security and may jeopardise international peace and security. The State responsible for such 'violation shall not invoke national security as a justification for measures aimed at supporting opposition to such violations or at interpreting repressive practices against its population'. It implies that the use of such national security laws by the executive as a way to safeguard acts of 'defiance' from the population is creating the context in Angola for which the people will rise against the State. Such a statement is true in Angola where the more repression takes place, the more it happens that individuals rise. The cases of Rafael Marques, Kalupeketeka and the 15+2, amongst others, show that the more the State attempts to repress – the more it is that individuals fight to counter such repression.

The *Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (Article-19 1995), (hereafter, the Johannesburg Principles) was adopted by a group of experts on 1 October 1995 and had the objective of setting forth the standard which would clarify the legitimate scope of restrictions on freedom of expression on the grounds of protecting national security. It was a continuation of further codifying and underlining human rights within national security policies as reaffirmed in its Article 1(a) that 'everyone has the right to hold opinions without interference', while Article 1(b), stated that 'everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or print, in the form of art, or through any media of his her choice'.

It is important because in its current form, the Angolan law on State Security is not only a form of censorship of the Angolan people disguised by aspects of protecting national security but also a form in which the State directly commits acts of violence against its citizens as seen through the above cases cited in this section 3.6.2. Article 1(d) of the Johannesburg Principles is clear on the need to safeguard human rights and freedoms by stating that 'no restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restrictions are prescribed by law and is necessary for a democratic society to protect a legitimate national security interest. The burden of the restriction rests with the government.

The government of Angola could not provide the actual reason why individuals who were either protesting for rights and freedoms were charged under such laws. The interpretation of State Security within the law is not clearly specified. One can take a view of State security as actions to secure the autonomy of the State and state security. In the Angolan case, as actions which, as opposed to securing the integrity of the state and its citizens, state security is rather interpreted to secure the government – which inherently means that unpopular actions by the government as seen by the populace can be interpreted as a breach of 'state security' which is not only contrary to democratic principles but also contrary to internationally agreed upon standards of human rights.

To large degree, such law has been used to silence critics, journalists and others who are seen to criticise and undermine the government. The use of such repressive laws in Angola has become commonplace, together with the practice of misusing the justice system and State institutions to silence dissent – especially such which targets the organs of the State and those responsible for such organs.

(ii) The Social Communications Pack and limits on press freedom

On 23 January 2017, a 'Social Communication Legislative Package' (*Pacaote Legisaltivo da Communicaçao Social*) was passed (hereafter – the Press Law). This Press Law consisted of five laws [12] and was published in the *Diario da Republica* (National Gazette). The package contained laws which imposed restrictions on the media/press. Law 2.17 established a new regulatory body, the Entidade Reguladora da Communicaçoa Social Angolana, which was given the authority and power to guarantee 'effective editorial responsibility in case of violation of the law or principles' (Article

[12] The five laws are: Lei no 1/17 – Lei da Imprensa (Press Law); Lei no 2/17 – Lei Orgânica da Entitade Reguladora da Comunicação Social (Organic Law of the Social Media Regulatory Entity); Lei no 3/17 – Lei sobre O Exercício da Actividade de Televisão (Law on the Exercise of Activities of Television); Lei no 4/17 – Lei sobre o Exercício da Actividade de Radiodifusão (Law on the Exercise of Broadcasting Activities) and Lei 5/17 – Lei sobre o Estatudo do Jornalista (Law on the Statute of Journalists). See 'Pacote Legislativo da Comunicação Social, Government of Angola, 14 September 2018, http://www.mcs.gov.ao/verlegislacao.aspx?id=1192; 'Díario de República', 23 January 2017, http://www.governo.gov.ao/download.aspx?id=1192&tipo=legislacao. Accessed: September 2019.

3).[13] Such 'editorial' responsibility meant that in the event that the Angolan media published something which the State identified as 'wrong', the *Entidade Reguladora da Communicaçoa Social Angolana* had the authority to either demand that such statements are changed or stop their publication.

Article 7 of the Press Law (1/17) [14] outlines the imposed limitations on the freedom of the press. Article 29 (6) of the Press Law gives the Ministry of Social Communication the discretion to oversee the periodic compliance of the media's editorial status and to sanction those who do not follow such rules.

Article 29(7) further defines such sanctions as 'the suspension of activity or circulation for a period of three to nine months, with the cancellation of the activity of the company, body or circulation of the publication in case of recidivism'. Failure to follow the Press Law would then result in a fine of 100,000 to 500,000 Kwanzas (which is approximately 400 to 1700 US Dollars).

The Johannesburg Principles also apply regarding the Social Communications Pack, which the Angolan government has implemented. Principle 5 of the Johannesburg Principles states that 'no one may be subjected to any sort of restraint, disadvantage or sanction because of his or her opinions'. Such a principle is also articulated in Article 19(1) of the ICCPR. Point 6 of the Johannesburg Principles further adds that freedom of expression may be punished only if there is a threat to national security, and only if the government can demonstrate that: (a), the expression is intended to incite imminent violence, (b), it is likely to incite such violence, and (c), there is a direct and immediate connection between the expression and the likelihood of occurrence of such violence.

The Social Communications Pack then goes against human rights standards, as discussed in section 3.3. It further creates a societal context in which any kind of social commentary and or criticism against the government and or the institutions of the State are seen as an attack on the State itself. In this way, the Angolan government through the executive has waged a kind of war against the

[13] Article 3 of Law 16/91 on the Right of Meeting and Manifestations / Assemblies of 199125 also confirms that citizens have the right to "meet and protest peacefully, in public places, open to the public and individuals, irrespective of any authorisation, for purposes not contrary of law, morality, public order, public security and the rights of individual and collective persons." Organisers of peaceful assemblies and meetings in public places only need to notify the Governor of their Province or the Commissioner three working days in advance of the protest (article 6(1)).

[14] Article 7 of the Press Law which deals with the 'limits to the exercise of press freedom' states, (1), the exercise of freedom of the press is limited by the principles, values and norms of the Constitution and the law aimed at, (a), Safeguard objectivity, accuracy and impartiality of information, (b), Protect the right to a good name, honour and reputation, to the image and reserve of the intimacy of private and family life, to the protection of children and youth, the Secret of State, the Secret of Justice, the Professional Secret and other guarantees of those rights, under the terms regulated by law; (c), defense of public interest and democratic order; and (d), Protection of public health and morality. (2), Press freedom does not cover the illicit production of information, and therefore journalists cannot obtain information through illicit or unfair means, (3), it is considered illicit information obtained through fraudulent means is considered illegal or unfair and (4), the disclosure of any type of content via the internet is subject to the limits provided for in the previous numbers, regardless of the origin or location of the server on which the site or page is hosted.

population – using the 'law' as a weapon to pre-empt any kind of dissent. The restrictions which have been identified both on the Law on State Security and the Social Communications Pack do not further the principles of a democratic society, but rather is a form of institutional violence against Angolans.

An important aspect of the Johannesburg Principles is that it argues in its Principle 1.3 that, to establish a restriction 'on freedom of expression or information, if necessary to protect a legitimate national security interest, a government must demonstrate that: (a), the expression of the information poses a serious threat to a legitimate national security threat, (b), the restriction imposed is the least restrictive means possible for protecting that interest, and (c), the restriction is compatible with democratic principles. In this regard, and as per the cases identified above, the Angolan government has not been able to demonstrate such actions – and reasons, nor prove that the implementation of such laws causes an imminent and violent threat. What the Angolan government has proven with such laws, is its continued violation of international standards of human rights and in doing so, failing to live up to its international obligations (see section 3.2).

(iii) the Right to Peaceful Assembly

Article 21 of the ICCPR reiterates and reaffirms the importance of States to respect the right to peaceful assembly. Though Angola has ratified the African Charter as stated above, it has not ratified the protocol allowing the African Court on Human and Peoples' Rights to hear cases of alleged violations of the African Charter. Such failure to ratify the protocol not only endangers the rights as stipulated in Article 11 of the African Charter – but also minimises its effect even though Angola has ratified the African Charter.

Article 11 of the ACHPR states:

> Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular, those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others. In the report of the African Commission on Human and Peoples' Rights (hereafter, the African Commission), Angola failed to address the issue of the right to peaceful assembly.

Moreover, Angola has no detailed national legislation which deals with the management of public assemblies with the exception of the 1991 Law, which is not enough to safeguard such rights. In 2018 a report of the African Commission recommended that Angola 'adopt legislative measures to guarantee freedom of association and ensure the protection of human rights defenders'.

Although the 2010 Angolan Constitution establishes the right of peaceful assembly in its Article 47(1) which states that freedom of assembly and peaceful, unarmed demonstration shall be guaranteed to all citizens, without the need for any authorisation and under the terms of the law, (2) the appropriate authorities must be given advance notification of meetings and demonstrations held in public places, under the terms and for the purposes established in law'.

Though the Constitution provides for the freedom of assembly and association, Angola does not have any legislation which stipulates how such assemblies are managed. *The Guidelines on Freedom of Association and Assembly in Africa* (2017) in its General Principles governing the right to assemble freely with others, states in its Point 1.1 that 'everyone has the right to assemble freely with others. The right to assemble may be exercised in a number of ways, including through demonstrations, protests, meetings, processions, rallies, sit-ins, and funerals, through the use of online platforms, or un any other way people choose'. Point 1.2, speaking of the limitations imposed by the State on the right to assembly, stipulates that such limitation must:

> (1.2.1) be in accordance with limitations on the right to assemble in terms of regional and international human rights standards. This includes the right to life, freedom from discrimination, equality of, and equal protection before, the law, the right to dignity and freedom from torture and other ill treatment, the right to liberty and security of the person, the right to have a cause heard, freedom of movement, freedom of conscience, the right to privacy, the right to receive and disseminate information and to express opinions, the right to free association, and the right to participate freely in public affairs and equal access to public services, as guaranteed by the African Charter on Human and People's Rights', and other relevant international human rights instruments, and, (1.2.2) comply with the principles of legality, be in pursuit of a legitimate interests as defined by regional and international human rights instruments, be a necessary and proportionate measure to achieve that end within a democratic society, and adhere to the rights of freedom from discrimination and equality before the law, (1.2.3) allow participants and organisers of assemblies to exercise the right to assemble with due respect to the rights of others and in compliance with the laws in place which themselves should be in consistent with the regional and international human rights standards.

As it regards the legislative and regulatory framework governing the right to assemble freely with others, the guidelines specify in its Point 2.1 that, the enactment, interpretation, implementation and enforcement of national laws and regulations governing the right to assemble freely with others must:

> (2.1.1), require law enforcement responses that favour the presumption of the exercise of the right to assemble freely with others by all persons involved, or believed to be involved, in the assembly, (2.1.2) be consistent with regional and international human rights standards, (2.1.3) recognise that limitations and restrictions on the right to assemble freely with others must be treated as an exception, and that any limitations or restrictions imposed must be necessary and proportionate, and be, (i) consistent with the principles of legality, necessity, proportionality, freedom from discrimination and equality before the law as set out in 1.2.2 as well as regional and international human rights standards as set out in 1.2.1.

Point 2.1.3.2 stipulates that limitations on such right must be 'decided on a case by case basis, while Point 2.1.3.3 stipulates that competent authority to review such cases must be an 'independent and impartial administrative and judicial authorities, in both law and practice, within a reasonable time' (discussion of the Angolan Judiciary will follow in section 5.4).

It is important to note that Angola does not have any national legislation which regulates the use the use of force by security forces during protests/assemblies. The Constitution as it regards the freedom to meet and demonstrate simply acknowledges in its Article 47(2) that 'the appropriate authorities must be given advance notification of meetings and demonstration held in public places, under the terms and purposes established in law'.

Point 9.1 of the African Guidelines on Freedom, Association and Assembly, recognises the importance of 'spontaneous assemblies' as vital towards democracy. Such spontaneity is clearly against Article 47(2) of the Constitution. Point 9.1 affirms that 'law enforcement agencies must have in place processes and procedures to ensure the facilitation of spontaneous assemblies, including in relation to known or scheduled political or social events, commemorative days, and in anticipation of decisions made by courts, parliaments and other state authorities'. What is vital regarding Point 9.1 is that it emphatically states and makes clear that 'lack of prior notification of an assembly does not render an assembly unlawful and should not form the sole basis of a decision by law enforcement officials to disperse an assembly'.

Moreover, the idea of prior authorisation has also been set forth by the Inter-American Court on Human Rights in its report (2015) entitled, '*Criminalisation of the Work of Human Rights Defenders* that, individuals exercise of 'freedom of assembly' through social protest 'should not be subject to government authorisation or excessive requirements that make it difficult to carry out'. The report notes that States which require prior authorisation for persons to assemble are not in line with 'freedom of assembly'.

The Human Rights Committee, in its 2019 session, specifically reviewed Angola's record as it relates to the right to peaceful assembly. As per the discussion in section 3.3, Angola is a State party to the ICCPR. Article 21, which manages the right to peaceful assembly, provides that:

> The right to peaceful assembly shall be recognised. No restrictions may be placed on the exercise of rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Under the international legal framework on the use of force during assemblies, as per the 1990 *UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials*, the principles stipulate that 'in the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practical, shall restrict such force to the minimum extent necessary.

As a result, and in light of Angola's continued restriction and often violating citizens' rights of assembly, the Committee reiterated its concerns about 'credible reports that excessive force is often used by law enforcement officers, especially during demonstrations, which has resulted in injuries and deaths'. The Committee further stated that such officers who are responsible for such acts are 'rarely' prosecuted. This discussion is further enforced by the discussion in sections 1.1 and 1.6 on the violence of Angolan security services and the lack of accountability that there is in prosecuting such violence against citizens.

Moreover, the only law which manages right of assembly in Angola is the 1991 Law on the Right to Assemble and Demonstrate (1991), which states that, in order for individuals to publicly demonstrate, 'written notification' must be given to the 'local administrator and the police'. In addition, the Law also states that the police can 'restrict' or 'stop' assemblies in public spaces within 100 meters of public, military, detention, or consular buildings. This Law also requires that individuals give a three-day notice in writing for such assembly to be legal – and with the added requirement that such gatherings can only take place after 19h00 on weekdays and 13h00 on Saturdays.

This Law does not conform to international legal standards.

3.6.3 Impunity and excessive use of force by Angolan security forces

The concluding observations of the HRC Committee report (2017) on Angola noted that, while the new Angolan Penal Code criminalises torture, there is a lack of compliance in the adequate implementation of Article 7 of the ICCPR.

The excessive use of forces by both the police and military has been a recurring factor in Angola. The Committee noted that the legal framework which regulates the maintenance of public order such as Angola's 1996 *Regulamento de Disciplina da Policia Naçionál* (National Police Discipline Regulations – hereafter the *Regulamento da Policia*) (Governo-de-Angola 1996) is 'not in line with international standards'.

The Committee added that excessive use of force is often used by police officers, especially during demonstrations 'which has resulted in injuries and deaths and that officers involved in such incidences are rarely prosecuted for such acts'. Such failure to prosecute and at times even address such issues has created a 'climate of impunity'. The use of force by Angolan security forces had been very much linked to the use of torture by the agents of these institutions (discussed in detail in Chapter 5).

Regarding the administration of justice, the HRC Committee noted that, although there have been 'efforts' to decentralise the courts, there is still a 'lack of independence of the judiciary' (HRC 2017) which in turn prevents citizens from accessing justice. Within the scope of civil liberties, the Committee noted that Angola's 2017 Constitutional Court decision to regulate non-governmental organisations was 'unconstitutional'. It further noted that there is pressure in Angola upon those wanting to open NGOs, along with the lack of opportunities in Angola 'for direct interaction with representatives of local civil society organisations in the preparation of the interactive dialogue'. The Committee acknowledged that Angola does not 'apply itself fully to the contribution of non-governmental organisations to the advancement of civil and political rights' (HRC 2017).

Within the vein of civil liberties, the Committee noted that there appears to be a large number of incidents in which excessive force has been used, 'including the use of dogs, intimidation and arbitrary detention against peaceful protestors' of which such is exacerbated by the failure of Angola to investigate, prosecute and convict individuals responsible for such acts'. The discussions in sections 1.1, 1.6 and 1.6.1 can serve as evidence of such failure.

The comments and concluding observations of Angola's Universal Periodic Review (2014) was quite telling. While the concluding observations specify very serious human rights violations, such as 'unlawful killings by security forces', 'impunity by State officials', the report also touches upon and

implies that such human rights violations can be traced to Angola's legal and institutional system, a system that is institutionally structured towards undermining human rights which is exacerbated by a lack of adequate protection mechanisms in place to protect the rights of Angolan citizens.

In this regard, Angola's failure to comply with such international obligations by failing to update and harmonise its national policies is directly linked to conflict and its prevention, in the sense that where there are no clear guidelines. The State finds a loophole to violate the rights of persons such as the right to peaceful assembly – a cornerstone of a democratic State.

3.6.4 Access to justice in Angola

A report by *Instituto Para Cidadania* (an Angolan NGO) entitled 'Access to justice' (2019) stated that access to justice in Angola is limited, such limits are seen particularly in areas of mineral exploration such as in the provinces of 'Moxico', 'Uige' and Kitexi' (Mosaiko 2019). An interesting aspect of the report is that researchers identified that it is not necessarily a failure of the courts – or a failure of the capacity of the court but rather such failure for people to access justice is due to 'superior orders from Luanda'. This essentially means that executive orders dictate the cases that the courts hear and sometimes how such decisions must be interpreted.

In addition, in an evaluation meeting in Luanda in 2019, which looked at access to justice in Angola (Luamba 2019) panellists argued that Angolans have difficulties in accessing justice. Frei Julio Candeeiro added by stating that, 'in reality, a lot of what we live, is the sensation that people cannot count on the institutions of the State at the local level' (Candeeiro 2019).

Such failure and difficulties in the lack of access to justice had spurred not only debate but action by Angolan people. On 25 February 2019, various members of Angolan civil society took to the streets to demand greater access to justice in demanding 'the end of corruption within the judiciary system (DW 2019).

In 2008, the CESCR Committee urged that the Angolan State 'take appropriate measures to ensure that the independence of the judiciary is guaranteed and that this principle is fully implemented and promoted'. Five years later in 2013, in its recommendations to Angola, the HR Committee further reported that there remained a lack of 'independence, as well as corruption of the judiciary, and the insufficient number of judges, lawyers, tribunals and courts, all of which create difficulties regarding access to justice'. In 2019 the concluding observations of Angola's second periodic report acknowledges that access to justice remains a problem in Angola (HRC 2019).

The report continued called on Angola to 'strengthen the independence of the judiciary and effectively combat corruption, to increase the number of trained judges and lawyers, to implement its plan aimed at increasing the number of tribunals and courts to ensure that justice is accessible to all and to ensure that legal assistance is provided in all cases where the interest of justice so requires'.

3.6.5 Angola's election to the UN Human Rights Council

Ahead of the Human Rights Council elections by the General Assembly at the UN in New York in 2017 that saw Angola elected to the Human Rights Council, a report by UN-Watch (2017) analysed the criteria that States needed to fit to be elected to the Council as established under UNGA resolution 60/251. This criteria requires that States elected to the Council, 'uphold the highest standards in the promotion and protection of human rights' and to 'fully cooperate with the Council'.

An interesting aspect was that the report examined (a) each country's record of 'domestic' human rights protection and (b), 'it's UN voting record'. In this regard, the report had three criteria for evaluation; (1) States unqualified for membership as they had poor records and failed to qualify because they did not fit the criteria as set forth by UNGA 60/251, (2) questionable States because they had problematic human rights and or UN voting records, and (3) qualified, which were States which fit the criteria as provided in UNGA 60/251 for membership.

In this particular case and as for the candidates accepted as members of the Council, 7 out of 16 States were unqualified for membership but were voted in. Such States were Angola, Afghanistan, Democratic Republic of Congo, Malaysia, Nigeria, Pakistan, and Qatar. The UN Watch Report stressed that 'Angola should not have been elected to the UN Human Rights Council'. The report further elaborated on the 'serious' violations of human rights which Angola had committed, amongst them and, despite being a party to core international human rights treaties, 'torture, cruel, inhuman or degrading treatment, restrictions on the freedom of assembly, restrictions on free speech, restrictions on the free press, corruption, impunity, unlawful deprivation of life, potentially life-threatening prison conditions, forced evictions without compensation, violence against women and children, child labour, trafficking in persons and forced labour'.

What further questions the sincerity of Angola's obligation – or indifference towards human rights - is its voting pattern within the UN General Assembly in which it has at times failed to speak out for victims of human rights violations in Syria by abstaining in resolutions which supported human

rights[15] (Universal Rights Group 2020). Moreover, such failure to speak out for victims has been observed during its time in the Human Rights Council in its failure to support resolutions via abstention in cases that looked at human rights violations such as the human rights situation in Syria, Burundi, Venezuela, Yemen, Myanmar – all these resolutions being tabled by the human rights council in 2019 (Universal Rights Group 2019). Angola's term on the Council ends in December of 2020.

The discussion in section 3.6.2 (i) and (ii) highlighted issues that Angola still needs to address so as to comply with its human rights obligations. Moreover, what the Human Rights Committee failed to acknowledge is that the issues it identified are directly linked to the nature of the Angolan State which is seen through its institutional design. The fact that Angola signs and ratifies an international human rights instrument, would do very little in ending human rights violations. This is arguably because Angola's Constitution is designed in such a way that it does not allow for real democratic governance to take shape (elaborated in detail in Chapter 5).

Overall, Angola has ratified a number of international treaties which, taken at face value one would see it to be complying with its international obligations. However, despite the ratification of such instruments, the discussions in section 3.6.2 to 3.6.5 highlight that Angola has in practice not followed through with its obligations under IHRL.

3.7 Conclusion

IHRL forms a crucial role in establishing universally recognised standards on how governments should treat their people. To affirm such assertions, this chapter referred to the obligations that States have under international human rights law and as members of the international community of States to respect such international norms and values. As discussed in this chapter, specifically in section 3.2, States have a responsibility to create the conditions for which the enjoyment of their rights can be achieved.

States then have the responsibility to establish institutions which would work towards promoting and protecting human rights. Through the analysis of both the laws and treaties at the universal, regional and sub-national level seen in section 3.4 and 3.5, Angola has committed itself to establish institutions which would both promote human rights while preventing violent conflict. The analysis further established that State institutions could, in fact, play a role in preventing violent conflict.

[15] Since Angola took up its non-permanent membership role in the HRC it has abstained in almost every resolution which dealt with addressing concerns of civil and political rights, and the human rights situation of members states (such countries include, Syria, Afghanistan, China, Cuba Sudan) notably Angola abstained against resolution 17/19 sponsored by south Africa which dealt with human rights, sexual orientation and gender identity. Such trend of avoiding to dealt with human rights issues which in other countries is well documented throughout Angola's tenure in the human rights council.

At the universal level (UN), the various treaties and soft laws indicate the establishment of State institutions for the prevention of violent conflict. IHRL both through primary and secondary law indicate that State institutions play a vital role in the prevention of violent conflict and states must take 'appropriate' steps to ensure that their institutions are geared to such effect.

At the regional (AU) level, different laws were also studied to assess whether States had an obligation to establish institutions for the prevention of violent conflict. The Constitutive Act, and other documents such as the Solemn Declaration and Protocol to the Establishment of the African PSC indicate that States do indeed have an obligation to use and in some cases establish State institutions which would protect human rights and in the same vein prevent violent conflict.

At the sub-regional level, the SADC treaty was analysed. The SADC treaty, in line with the Constitutive Act and that of the UN Charter imposes an obligation on SADC States to work towards establishing State institutions for the prevention of violent conflict and the promotion of human rights. However, and although the SADC treaty is binding on all its members, there isn't an adequate mechanism for Member States to act when there is a potential for conflict within a State.

The laws and provisions studied at both the universal, regional and sub-regional level have all been geared to be inclusive and at their very core adopted a human rights-centric interpretation. A human rights approach to governance and management of State institutions would then aid in the creation of environments in which human rights are better protected. It would then require that States establish institutions which are inclusive to enable as far as possible citizen participation which would ultimately lead towards the principle of self-governance.

CHAPTER FOUR: State building and constitutional change in Angola

4.1 Introduction

This chapter has the objective of analysing the State-building process in Angola. The analysis will be done through tracing Angola's three Constitutions since independence. These Constitutions are the following: (1) the 1975 Constitution which established the one-party State in Angola based on the Soviet Lenin model, (2) the 1992 Constitution which abolished the one-party State – and at least theoretically opened up Angola to multiparty democracy and (3) the 2010 Constitution.

Through an analysis of the three Constitutions the chapter will look at how constitution making in Angola has influenced the countries State building project and how in particular such State building has influenced power and politics in Angola. Such an understanding of power and politics is relevant because it directly responds to the arguments made in Chapter 1 of this thesis.

For clarity and context it is important to note that from 1975 to 1991, and then again from 1994 to 2002 Angola was engaged in a civil war, and to provide context this chapter will also discuss the peace accords which led to the end of these wars. These accords are: (1) *Os Accordos de Bicesse* (hereafter Bicesse) which laid out the transition to multiparty democracy in Angola (2) *O Protocolo de Lusaka de 1994* (hereafter the Lusaka Protocol) and (3) *O Memorando de Luena* (hereafter the MOU) which stipulated the conditions for UNITA's unconditional military surrender after the death of Jonas Savimbi (United Nations 2002). It is important to discuss the Angolan peace process as such process is vital towards understanding Angola's State-building process.

4.2 The end of Portuguese colonialism and Angolan independence

The coup d'état (also known as the Carnation Revolution) in Portugal on 25 April 1974 which led to the overthrow of its authoritarian regime was arguably the first shot fired and resulting in decolonisation process of Angola. Guimaraes (1992:136) noted that up until the Carnation Revolution the anti-colonial war against Portugal by Angolan liberation movements 'had done very little towards gaining independence'.

In the late 1960s and as part of its continued colonial policy the Portuguese had begun a process of industrialisation which to some extent proved to be beneficial to Angolan development. With the intensifying declarations of independence in other Portuguese colonies such as Mozambique and Guinea Bissau resulted in their own wars of independence, and with the political instability within

Portugal itself there seemed to be a ripe moment for which Portugal would finally concede to giving up its colonies.

Despite such ripe moment Gallagher (1983:125) noted that the war of liberation in Angola was stagnant and such stagnation was mainly due to the 'military ineffectiveness of the anti-colonial movements'. Gallagher (1983) added that such stagnation was attributed to several factors one being the level of 'incoherence' between the three liberation movements (the MPLA and UNITA). Such incoherence between the liberation movements was a major cause for stagnation and lack of progress in the fight against the Portuguese which in turn led to the their overall ineffectiveness on the fields of battle.

The implications of the Carnation revolution were immediately felt in Angola. Though there was incoherence between the liberation movements in Angola they nevertheless saw Portugal as their single enemy. However, as the coup in Portugal became an all to certain reality and with the loss of this enemy, the liberation movements turned on each other and disagreed on the direction that an independent Angola should take.

During this process the competition between the MPLA and UNITA began for who would ascend as the leading liberation movement and with it take control of the machinery of State. In addition, and has the liberation movements were turning on one another – the cold war was quickly escalating, and while the MPLA rooted its ideological basis on Marxist ideology, UNITA in an attempt to gain support from the west for its claim on power turned towards 'liberalism'.

The Carnation revolution led to the end of formal colonialism in Angola. And while the revolution in Portugal triggered the decolonisation process there was still a need for the Portuguese to 'appropriately' hand over power to the Angolan people and – and the liberation movements were seen as the vehicle through which the will of the people was to be expressed.

4.3 Background to violence in Angola

On 21 October 1974 the then President of the MPLA – Agostinho Neto met with Portuguese representative Commodore Leonel Cardoso and signed Law 7/74 (1974). This Law provided the framework for a legal ceasefire between Portugal and Angolan liberation movements and with it ending the war of liberation. Article 2 of the cease-fire 'recognised the right of self-determination, with all its consequences, including the acceptance of the independence of the overseas territories'.

The incoherence between the liberation movements was again seen during this process. While UNITA and the FNLA had already met with Cardoso days before to negotiate and sign the ceasefire agreement, the MPLA initially refused to sign the cease-fire and insisted that a 'law which establishes the conditions of the ceasefire and independence must first be signed into effect (Law 7/74) and enacted as legally binding' which in turn made it so that the MPLA was the last liberation movement to sign the cease-fire.

On 22 October 1974 the MPLA through the *Commisao Directiva do MPLA* (CDIH/CC) – the MPLA executive committee sent a communication to all Angolans stating that 'the armed conflict had officially ended' (CDIH/CC 1974). The cease-fire which later became known as the Treguas accords (hereafter Treguas) put an end to all military activities and operations including the clandestine operations between Portugal and the armed liberation movements in Angola. An essential feature of Treguas was the role the MPLA played in creating the conditions with the Portuguese for peace and emphasising that before the ceasefire could be signed, there needed to be a legally binding instrument which would enforce it.

However despite Treguas creating the conditions for peace between Portuguese and the armed movements in Angola there were major issues as it failed to address the internal dynamics of Angola as it regarded the tensions between the liberation movements. Indeed, and though Treguas created the ceasefire, there was no structures which would allow for s clear transition of power from the Portuguese to the Angolan people. Meaning that there was uncertainty on who would govern the country.

Cabuco (2014:45) pointed out that the danger of integration and 'finding a political solution' for the 'internal question was a serious one'. Such seriousness was based on the fact that there was no established structure which in turn created the perfect conditions for uncontrolled chaos. The seriousness of finding a political solution was one which led to various meetings between the MPLA, UNITA and the FNLA. In August 1974 these meetings were held and had the objective of ensuring that the liberation movements could settle all issues before they faced the Portuguese in negotiating for the independence (Cabuco 2014).

Although such negotiations were successful between the FNLA and MPLA, the same was not the case for between UNITA and MPLA. UNITA and MPLA failed to see eye to eye on how governance should take place and with such disagreements already planting the seeds of conflict.

It is important to note that at this stage and with the discord already evident between the liberation movements the MPLA proceeded to Luanda where it further established itself as the official and

'legitimate government' of the country. At this stage - the MPLA solidly established itself in the Angolan capital of Luanda which became its main operational centre. One can argue that the Treguas emboldened the MPLA to position itself in such a way that it could be seen as the heir apparent to the Angolan State leaving UNITA and FNLA out in the cold. Matos and Afonso (2006:175) noted that 'the MPLA's official arrival in Luanda was the result of Treguas in which the MPLA obtained the status to legally organise its political activities in the entirety of the national territory'.

Treguas was shrouded in inconsistencies. However, and though it only served as the cease-fire which would set the framework for the negotiations for the transfer of power, the MPLA took the opportunity and settled itself as the movement which would eventually inherit the State.

Noting the political situation in Angola would be determined by the nature of the relationship between its parties. Former Kenyan President Jomo Kenyatta, on 5 January 1975 extended an invitation to the MPLA, UNITA and FNLA to discuss the framework in which the liberation movements would work towards establishing terms for independence and transfer of power from Portugal. The Mombasa Accords (1974) as it was known were to serve as the platform from which the three movements would work towards finding common ground for negotiating independence with Portugal. More importantly, it was meant to set the common ground which would resolve fundamental disagreements which might hinder the independence process.

Do Nascimento (2019) stated that the main question which affected the various groups in Mombasa was to see how independence would be achieved in practical terms and how the three movements would work together towards such aim and more critical 'how long the transition period would be until elections could be realised to see who would govern the country'.

At Mombasa the MPLA, UNITA and FNLA agreed on the basis under which the Angolan State was to be based. In addition, the liberation movements agreed that when it came the time to negotiate the conditions of independence with the Portuguese they would speak with one voice.

As a basis for their negotiation with the Portuguese and the basis of the Angolan State the liberation movements agreed on four main principles (Mombasa Accords 1974) Principle 1 observed the legitimacy of the revolution along with the exclusion of all other political parties in preparation for independence. It meant that the three liberation movements were the representatives of the Angolan people. They would be the direct links between the people of Angola and the Portuguese as decolonisation was negotiated (2) Principles 2 confirmed the need to establish a transitionary period. The transitionary period meant that after independence it was necessary to set up a which would create the conditions to transfer power to one of the liberation movements through an established

electoral process (3) Principle 3 established and confirmed the national integrity of the State with a particular reference to the enclave of Cabinda as an integral and inalienable part of the Angolan territory and, (4) Principle 4 established that all citizens (born in Angola) would be citizens of the newly independent State.

It was with those fundamental principles that negotiation for the transfer of power would be conducted between the three liberation movements and the Portuguese government.

The *Acordos do Alvor* (the Accords) were signed on 15 January 1975 and served as the legal framework which granted independence to Angola. Article 4 of the accords established that the full independence of Angola would be 11 November 1975 (Alvor 1975). The Accords constituted eleven chapters which would serve as the basis for Angolan independence. Chapter 1 of the Accords dealt with the independence of Angola, Chapter 2, dealt with the transitionary period and, in particular, the high Commissioner which would be part of such process, Chapter 3 dealt with the particularities of the transitional government, Chapter 4 dealt with issues of the national defence commission, Chapter 5 dealt with refuges and regrouped people, Chapter 6 dealt with the general elections for the Angolan constituent assembly, Chapter 7 dealt with issues relating to Angolan nationality, Chapter 8 dealt with issues of the State of finance and the economy. Chapter 9 dealt with cooperation between Angola and Portugal, Chapter 10 dealt with the mixed commissions, and chapter 11 dealt with issues of general dispositions.

What is important and of relevance can be seen in Chapter 11 of the Accords which (i) acknowledged the three liberation movements by Portugal (Article 1) (ii) acknowledging the unitary character of the Angolan State (Article 4) establishing the date of Angolan independence to be 11 November 1975 (Article 4) (iv) until the proclamation of independence of Angola all power shall be exercised by a high commissioner and a transitional government to be inaugurated on 31 January 1975 (Article 5) (v) the acceptance of a ceasefire, already being observed by their armed forces throughout the Angolan territory (Article 6) and (vi) and the transitional government should arrange elections for the constituent assembly within nine months from 31 January 1975.

The Accords were signed by the MPLA, FNLA and UNITA. The signing of these Accords triggered Chapter 2 of the Accords which set forth the transitional period to be observed in established a transitional government which would be composed of a Prime Ministerial Council (PMC) and a High Commissioner of Portugal. The PMC and the Portuguese High Commissioner would then be the government in place which would govern Angola until the electoral law (elections) was finalised. At the time of the Accords, the Portuguese High Commissioner who would monitor the elections was Admiral Rosa Coutinho. An important aspect of the transitional government as per the Accords was

that the government was to work towards organising elections within nine months of its establishment and the 'candidates' of such elections were to be made solely from individuals representing the three liberation movements.

A peculiar aspect as it regarded the structure of the transitional government was that one member from each of the three liberation movements: (1) the MPLA, (2) the FNLA and (3) UNITA would be appointed as Prime Minister on the basis of a rotating system while the Portuguese High Commissioner would be responsible for the armed forces and internal defence. What was also more confusing regarding this form of governance was that each minister from the various liberation groups would then also appoint its own ministers.

The system of governance which arose in the aftermath of the Accords was confusing. In addition, it created several blockages within the governance system, in particular as it regarded the day to day decision-making process. The process was made even more complex by the fact that a new prime minister would govern on a monthly basis. Khadiagla (2005:294) rightly noted that the Accords were forged in the context of a 'chaotic transition between liberation movements that had a history of animosities and a colonial power that was in a hurry to end its rule'.

In addition, an inherent bias was tossed into the already tense environment of chaos and distrust. This bias was seen through Rosa Coutinho who wanted the MPLA to rule Angola after independence. In a documentary about the Angolan war conducted by the British Broadcasting Commission (BBC) Coutinho was quoted in saying that while the Accords served as a much needed framework for negotiating Angolan independence 'the only solution was to recognise the MPLA as the only force capable of directing Angola'. He added that Portugal should have made a separate agreement, meaning that at independence the Portuguese government should have left out the other liberation movements and simply just given all-out power to the MPLA.

In the same BBC documentary (1990), Coutinho (1990) stated that 'I knew very well that elections could not be held on the territory during the time because Angola was still in a kind of turmoil. If elections were held, it would be a fantasy'. He continued and reiterated that Portugal should have made a separate agreement with MPLA and transferred the power to the MPLA on November 11th – the date of independence. What was dangerous in this regard was that Coutinho was the man responsible for essentially directing many of the aspects of Angolan independence – yet it was clear that he had a biased view and opinion on who should be in control.

The discussions in sections 2.2.1 and 2.2.2 are important and applies to the Angolan case in the sense that even before the peace treaty (the Accords) could be finalised there was already a form of

consensus between the MPLA and Rosa Coutinho on who political power would ultimately rest with because it seemed to 'configure' the potential outcomes (see section 2.2.4). There seems to have been an orchestration, a façade with the Alvor Accords which contributed greatly towards the escalation of tensions between the liberation movements which eventually led to war. Such façade was further seen through the collaboration of both Rosa Coutinho and the MPLA in seeking military assistance from Cuba – in a meeting in Havana, Cuba in June 1975.

According to Ellis (1990) this meeting took place between 'General Carlos Fabiao, Colonel Valera Gomez and Rosa Coutinho'. They also met with high ranking members of the Cuban armed forces, the then 'Chief of Staff Senen Cassas Requieio, Julio Cassas Reguierio, Chief of Logistics of the Cuban Army, Rear Admiral of the Cuban Navy Emigio Baez'. This was a military meeting that would essentially place the MPLA in a position of power come 1975.

Ellis (1990) concluded by noting that the meeting which was headed by Rosa Coutinho in Havana with high ranking officials of the Cuban Armed Forces was for the purpose of establishing an understanding between Cuba and the Soviet Union (USSR) on how it would militarily support the MPLA militarily so they would take power on 11 November 1975. Coutinho was laying the foundations for a contested conflict as the objective was to give power to the MPLA on the day of independence as opposed to setting forth the legal and electoral mechanisms which would allow for elections as per the Alvor Accords . One can argue that the idea behind seeking such help was so the other liberation movements would not contest the MPLA's rise to power as they would be backed by both Cuba and the USSR.

During this time one can argue that the intention was not necessarily to establish a peace accord which would work but rather freeze UNITA out of the process itself, buying the MPLA time through the process to gather its military assets in the event that conflict was to break out at the date of independence.

Immediately after the signing of the Accords, there remained tensions amongst the three liberation movements which had the task of governing. McQueen (1998:32) observed that despite the talks in Mombasa which served as the basis for harmonising the process and dealing with all diverging issues, 'conflict between the groups and, in particular, their governing approach was close to impossible'.

This governing approach coupled with other disagreements by the three liberation movements together with Portugal's actions through Rosa Coutinho one could argue - were those which eventually contributed greatly towards the outbreak of the civil war.

The Angolan case is peculiar because as opposed to the Portuguese mediation and 'assistance' in the transition period – their involvement further added to the seeds of the eventual conflict which ensued. In working towards creating a clear definition of the positive outcomes of mediation Beber (2012:401) proposed that mediation should be 'non-coercive intervention by a third party in a dispute between two or more political entities for the stated purpose of effecting a settlement'. The intervention of Portugal in this regard did not fit such criteria. In fact, the Portuguese role was counter-productive and dangerous because of the prevailing bias.

4.4 Roots of Angolan authoritarianism: a brief background

The trajectory of the Angolan State as authoritarian in nature was arguably inevitable due to the diverging ideas of governance that the three main liberation leaders had together with the kind of politics they focused on. The nature and process of the transitional government established under the Accords was both ineffective and dangerous. Birmingham (2015:131) highlighted that the years before independence in Angola 'were filled with factionalism within the liberation movements.' Like the other two liberation movements (UNITA and FNLA) the leaders of these groups controlled the purse and how it was to be used while rewarding loyalists and punishing those who were both perceived as disloyal and those that were actually disloyal. This style of governance continued into independent Angola.

The character traits of the leaders were also important – because it paved a way towards a form of State building based on exclusion. The closed spaces for criticism significantly set the building blocks in Angola for a culture of political exclusion and domination which eventually blocked the path toward the building of a civil society that would in principle push more individuals towards wider political participation while at the same time undermining the delicate and yet very important relationship between State and society.

This section will look at the establishment of the one-party State system in Angola through the adoption of the 1975 Constitution, along with the responses by MPLA-party State against the internal mobilisation at the time which resulted in the establishment of such State system.

4.4.1 The 1975 Constitution

The 1975 Constitution contained 60 articles with the following characteristics: Title 1 – which highlighted the fundamental principles, Title 2 – which highlighted the fundamental rights and duties, Title 3 – which dealt with the organs of State, Title 4 – dealing with the symbols of the popular republic of Angola, and Title 5 – dealing with the final dispositions and transitions. Chapter 1 of the

Constitution dealt with aspects to the President of the Republic, Chapter 2 dealt with the People's Assembly, Chapter 3 with the Revolutionary Council, Chapter 4 the Government, Chapter 5 the courts, and Chapter 6 the organisational administration and administrative bodies.

Article 1 of the Constitution defined Angola as 'sovereign, independent and a democratic State'. This article stated that the objective of the Angolan State was the 'total liberation of the Angolan people from the vestiges of colonialism and domination and domination and aggression of imperialism and the construction of a prosperous and democratic country completely free of any form of exploitation of man by man'. In this regard one can extrapolate that the Constitution seemed to prime Angola as a State in which the citizens would be protected and offered the widest of rights.

However and despite this idea of 'constructing' a State with the widest rights and freedoms for the citizens, the Constitution set forth the structure of the political system as a single party State based on the Marxist-Leninist economic market model which would be constructed under the same ideology. An important aspect of this early form of Constitution-making was not only the adoption of Marxist-Leninist as the ideological centre of the Angolan State but also that it began to mimic the structure of the State as it was in the USSR.

It meant that in mimicking the USSR itself the MPLA was building a society of total control. A society in which the State would stand above the people and proclaim itself all-powerful. Another important aspect of mimicking the USSR was that at that at this early stage Angola was not looking internally at its own history to develop social and culturally appropriate forms of governance. There was also a failure by the MPLA to recall that independence was not achieved alone and yet chose to establish a political model which excluded all others.

Article 2 of the Constitution established the MPLA as the only legally recognised political party in Angola, in stating that 'all sovereignty resides in the Angolan people. The MPLA, its legitimate representative' who would effectively exercise control over the entire territory of Angola. It effectively eliminated all others from actively participating in Angola's political life and governance structure. Such a move by the MPLA in actually taking power for itself is thus an important signal to note as Angolan constitutionalism developed in the years after the establishment of the Constitution.

In discussing term limits within African constitutionalism, Fombad (2010:94) observed that those in charge of the State – political leaders, 'stifled all opposition or competition for power, and plundered the resources of their countries, which they converted to a family heritage'. One can then begin to see that Angolan constitution-making was in its very infancy initially beginning such process and creating

the conditions to not only plunder the State but also effectively undermining civil participation within the political process.

Such undermining of the political process could be seen immediately through the establishment of the 1975 Constitution which effectively positioned the MPLA as the one and only custodian of the Angolan State. The MPLA as Thomashausen (2010:57) observed, effectively took over all 'political, social, cultural and economic activity. All natural resources, land industries, private enterprises, real estate, and other private assets, were nationalised'. Such nationalisation not only made the MPLA an economic powerhouse by having the keys to the resources of the State but also gave it the financial means to defend itself against those that would challenge its authority – in this case, UNITA and the FNLA and the Angolan people themselves.

The observation of the colonial administration system and the establishment of a one-party State is essentially an act which can arguably be said to have been due to five hundred years of brutal colonialism and as such, a by-product of such period. Such administrative system and ultimately the establishment of a legal order which excluded all others was essential and arguably, a form of continuation of the colonial practice in independent Angola.

Such continuation can also be seen by the MPLA through the 1975 Constitution moving towards centralising political power within the office of the President, or in this case, the person that held such title. Lei13/77 (1977) of the 1975 Constitution was adopted and ultimately passed by the Central Committee of the MPLA and was amended so that the power of appointing the Prime Minister and all other Ministers was moved away from the 'legislative Revolutionary Council' (MPLA Central Committee) and was transferred to the President. This consolidation of power in the hands of the President was further reinforced by Lei1/79 (1979) which abolished the office of the Prime Minister which in turn further strengthened the powers of the President.

A more Machiavellian feature of the centralisation process of Presidential powers was the creation of the role of 'State Minister' which was created by Lei 1/86 (1986). Thomashausen (2016:189) observed that as opposed to Government Ministers the creation of a State Minister thoroughly 'strengthened the day to day grip of the President on the country's affairs and relegated the cabinet and its Ministers to a secondary level'.

In this regard and within the Angolan context of the time – the State Minister was an individual who was appointed by the President and someone who would act on the President's behalf - meaning that such individuals had delegated powers given to them by the President and as a result were accountable to the President alone and not the revolutionary council which was meant to be the

legislative body. In addition, there were no mechanisms for checks and balances for the actions of such of state ministers individuals. In other words, this was another form of centralisation of power in the hands of one individual – the President.

The consequences of such a move removed the safeguards and increased the personal autonomy from the political system of government officials. It further removed aspects of accountability from government officials, in this regard the President had complete control over every aspect of government while state ministers acted only to such an extent that the will of the President would allow. Such centralisation is rooted more within Angolan cultural ideas of 'power' and 'leadership'.

Through the 1975 Constitution it is clear that the MPLA's political tradition after independence was based on Marxist-Leninism with a strong emphasis on the 'centralisation' of power. Another aspect of the overly centralised Angolan State immediately after independence which was temporarily secure from internal strife was that the MPLA began to consolidate its power under Agostinho Neto. At this stage and with Portugal's retreat which had left Angola with a tentative economic infrastructure the MPLA was forced to rely on the support of the USSR. As a result Agostinho Neto began to 'centralise and nationalise to match the soviet model while at the same time, East-Germans began to organise Angola's repressive security apparatus' (BBC 1990).

Indeed, the case of Angola and in particular the centralisation of power seems to fit the political settlement framework. In addition, Angola began demonstrating at this early stage of its State-building an overly centralised State and also seemed to have created the organisational structures of power which would lead to political exclusion (see section 2.2.4). The political settlement framework further reiterated that within such context the power configuration – how power is organised, in this case around Neto was one in which the leader merely 'dictates' as opposed to 'deliberate' (see section 2.2.4).

Another aspect of this form of centralisation was the failure to build a political culture which would be conducive to democratic consolidation. It must be noted that and as per the discussion in section 4.4 the liberation movements agreed that the MPLA, FNLA and UNITA would be the seen as representatives of the people. However, the establishment of the 1975 Constitution and in particular the establishment of the one party state is a kind of political settlement which undermined a governance of inclusion (see section 2.2.4).

In addition, section 2.3 which discussed the various variants of political culture spoke specifically of the subjective nature of political culture and how the growth of such culture created not citizens but rather 'subjects'. The Angolan case displays this in an extreme form of the State creating subjects.

The vertical power distribution that the Constitution created also fits in line with the discussion in section 2.5.3 in which it argued that domination was the basis of the post-colonial state and with it creating the basis for the *state of nature* in Africa.

The 1975 Constitution had no mechanisms which would serve to check and limit the power of government officials. Such a constitution was very much in line with the discussion in section in section 2.4.1 regarding the political school approach to violence. Pacheco (2004:7) added that the socialist State which arose in Angola was 'militarised and absolute control centred on the organs of State security'. In addition such centralisation was also seen through the MPLA's 'wide surveillance of the population and the active distortion of political facts from that of the real Angolan society'.

In this regard power was seen both as a means and end. Such early centralisation of power in Angola strongly resonates with the discussion in section 2.5.3 of the culturalist approach to the State in which it argued that centralisation of power in many ways forms the image of the State, and during this early period the image of the Angolan State was forever being etched as one which would eventually work towards instituting a 'subjective form of culture' on its populace as per the discussion in section 2.3 and 2.3.1.

In the periods after the adoption of the 1975 Constitution the MPLA worked creating an image of the State which would be based on complete domination and subjugation of the Angolan people. The MPLA worked in centralising the State and creating the legal mechanisms in which it would achieve it.

The following amendments to the 1975 Constitution worked towards strengthening the power of the MPLA while cementing the Angolan State as an authoritative regime:

(1) *Lei n 71/76, de 11 de Novembro de 1976*: this Law reinforced the role of the MPLA, as opposed to its Central Committee especially as it regards the composition and competence of the Revolutionary Council and Presidential powers. In essence, this Law placed the MPLA above any legal standards. One can argue that it even placed the MPLA above the Constitution in positioning the organisation as the only one which was in a position to govern and as a result manage every single level of Angolan society;

(2) *Lei n 13/77, de 16 de Agosto de 1977*: reinforced Presidential powers while further reducing the role of the Revolutionary Council, emphasising the competence of the President of the Republic to appoint and dismiss the Prime Minister and members of its government. This Law (13/77) cemented any real hopes for democracy in Angola because while Law 13/77 seemingly placed the MPLA above

the law, this Law which further gave powers to the President placed the personality of the President as the main decision-maker within an organisation which had already been placed above reasonable legal standards of democratic governance;

(3) *Lei Constitucional revista de 7 de Fevereiro de 1978*: reinforcing the role of the MPLA-workers party, which transitioned from 'movement' to a 'political party' with the objective of constructing a socialist society. This Law was important because while 71/76 cemented the role of the MPLA, it kept the prominence of the MPLA while now transitioning it as a real and credible political party – one which had already been given immense powers;

(4) *Lei n 1/79, de 21 Janeiro de 1979*: altered the organic structure of the State with the extinction of the office of 'Prime Minister' and 'Vice-Prime Minister' while creating other ministerial posts. Now that the MPLA had been further established within Angolan society, this Law gave the President the authority to unilaterally create additional organs of State or cabinet positions without the approval of any other organ of State such as the Revolutionary Council, which inherently meant he could alter the legal structure of the State unopposed;

(5) *Lei n 1/86, de 1 de Fevereiro de 1986*: which created the new post of Minister of State for the main areas of governmental activity;

(6) *Lei 2/87, de 31 de Janeiro de 1987*: recomposition of the permanent commission of the People's Assembly; and

(7) *Lei n 4/89, de 20 de Maio de 1987*: which reformulated Presidential competencies in the area of judicial nominations, in the sequence of approval of a unified justice system. This essentially meant that the President had vast powers of appointing individuals to serve in the judiciary, which included the direct appointment of judges.

The 1975 Constitution was the first attempt at Angolan Constitution-making which demonstrated at least, and at a first glance the approach that the ruling party would take towards governance and the kind of State that it envisioned. As a result, the 1975 Constitution failed to place the people at the centre while creating conditions for oppression – similar to those suffered by the Angolan people under colonial rule.

The adoption of such laws were essentially amendments to the 1975 Constitution which removed checks and balances on executive power. Such actions are then very much in line with the discussion in section 2.3.1 that the removal of such checks was an attempt to not only undermine citizen

participation but also to create a subservient political culture. Section 2.6.1(i), (ii) and (iii) are also relevant where the executive begins to create the legal power to act as a predatory institution – one backed by capable material assets through its security and military strength.

The adoption of the one-party State system can arguably be said to be the beginning of a downward spiral during this first experiment with constitutionalism in Angola. An important feature of this early phase was the exclusionary basis upon which the Angolan State was built. Article 9 of the Constitution attributed the 'citizen' as part of the society and an integral part of its development. Article 7 of the Constitution stated that the Republic of Angola was based on the 'separation between the State and its institutions'. The amendments, as discussed above would have been unconstitutional under any constitutional law, yet – they were upheld. It is not farfetched to argue that this descent into a form of 'totalitarianism' proved to undermine not only the objectives of the armed struggle but also to undermine those of equality, sovereignty, freedom and self-determination of the individual who initially was the guiding force of the liberation struggle.

Cosme (2004:84) argued that when the 1975 Constitution was still being contemplated, Agostinho Neto tried to unify the society. However such unification was not in the sense of creating a plural democratic State but rather 'Neto opted for an application of the Soviet model characterized by an authoritarian form of governance'. Section 2.5.3 elaborated on how leaders in the aftermath of independence begin the process of removing safeguards which would limit their power - so it is not surprising that with the choice of this model came the temptation of the 'personality cult' and the 'illiberal' manner in which the Angolan State was being structured and the form of governance its leaders were institutionalising.

One can then argue that democracy and human rights in Angola has never truly been a priority. And its institutions – at least from the establishment of the first Constitution premised primarily in centralising power and having a political system which would dictate to the people as opposed to being accountable to them. Given the history of conflict and autocratic traditions in Angola, it is not surprising that civil rights have struggled to survive.

The 1975 Angolan Constitution can be argued to have come about as a way to internationally establish, not necessarily the State of Angola as autonomous within the international community of States, but instead, to establish the MPLA 'above' the State. One can argue that the blurred lines between State and party which has been a feature of Angolan politics decades after independence have been strongly influenced by Angola's first flirtation with constitutionalism through the MPLA's initial State-building process.

It is equally important to note that Angolan constitutionalism had been heavily influenced not only by the Portuguese legal system but also by five hundred years of colonialism. Above, it was argued that Angola's colonial administrative system – at least its authoritative nature had strongly contributed towards the present nature of the Angolan State. Moreover, an important aspect which might further help towards explaining the nature of the highly centralised constitutional order in Angola can be captured by Angola's first attempt to constitute a constitutional order within the pre-independence order.

Thomashausen (2010:52) noted that immediately after independence the colonial administrative system was 'easily observed and reinforced by MPLA'. The absorption of the administrative system as they were, allowed the MPLA to not only claim 'dominion' of the State but to effectively exclude any other movement that would claim the same. In effect, the MPLA virtually named itself the 'gatekeepers' without the proper consultation with other societal groups such as liberation movements who had also fought Portuguese domination.

The establishment of the 'Independence Constitution' of 1975 is interesting because the MPLA unilaterally adopted it without the consultation of other groups (such as other 'liberation movements', women's groups, and former combatants who contributed towards Angolan independence), but once again and through its own initiative and without any participation from other societal groups. Article 60 of the Constitution set forth the mechanism which brought to life the Constitutional Act of 11 November 1975, in stipulating that the Constitution was enacted by a resolution of the Central Committee of the MPLA.

The 1975 Constitution established and consolidated an authoritarian one-party state. Orre (2010:5) noted that whereas the independence of Angola was built on the colonial State and was eventually accepted by the major liberation movements, 'the MPLA's rule was not'. The Marxist-Leninist model adopted by the MPLA went on to establish in '1977 a very authoritarian one-party State. Its monopolistic hold on State power (and soon, enormous mineral resources) was contested from the outset by competing elites'.

Whether or not the MPLA's rule was accepted or not by the majority of the people – the important aspect of the early Constitution-making process is crucial towards understanding the impact of power and politics during that early period and more important, in present-day Angola. Such impacts can be seen in two ways: (1) political participation, and (2) institutional capacity. As it regards to political participation, through the 1975 Constitution the MPLA made it very clear that politics and the holding of political power was something for elites – this also seemed to have translated to Angolans that those who were outside of this elite mould could only get somewhere by serving the elites in power.

As it regarded institutional capacity the fact that power was essentially centred around the President it seemed to have sent a message that the institutions of the State are not there to serve the people but rather as the actions of those at the heads of such institutions had no bearing – meaning that they could do what they pleased because they were accountable only to the President. It created a context in which institutions governed outside of an acceptable framework while at the same time leaving ordinary citizens to fend for themselves.

4.4.2 Responses to authoritarian rule in Angola: Nito Alves

In 27 May 1977 a coup d'état led by former MPLA combatant Nito Alves came close to overthrowing the government of Agostinho Neto. Although the attempt failed, it nevertheless led to the deaths of a number of high ranking members of Neto's cabinet. Indeed, one can argue that although the coup did not necessarily come as a surprise, it was nevertheless in response to the way in which the MPLA had governed since the establishment of the one party State Constitution. An important aspect to note within the governance architecture at the time was the choice of the MPLA to choose a socialist economic model which failed to provide any form of economic benefits to the Angolan people, while at the same time high-ranking members of the MPLA lived in luxury in the villas of the former Portuguese colonial officials.

Birmingham (2006:86) noted that independence brought with it the promise of a better life - life free from the shackles of slavery and humiliation. However, immediately and immediately after independence this was not the case. In Luanda, the expectations that independence would bring with it rich rewards led to constant disappointment through no less than two years of austerity. Suddenly the 'frustrations of those who had gained little from independence, and who were intensely jealous of the cosmopolitan elite which had inherited the colonial trappings of power and the visible symbols of prosperity, exploded in violent despair'.

Even though such violence cannot fully be said to have come simply from the luxuries that those who controlled the machinery of State now had Birmingham (2006:32) adds that it was also due to, 'intense jealousy' and the choice of governance that the MPLA adopted together with the failure of the MPLA to include Angolans in the political process.

The establishment of the 1975 Constitution further undermined the role of the people within the political system - inherently, limiting their contribution towards independence as trivial while putting the party State as the ultimate power. The discussion in section 2.3.1 is relevant in this regard to Angola because it speaks of an elite that not only undermined the role of the individuals within the

political system, but began to create the chains of inequality within the Angolan political system which in turn led to the exclusion of the majority.

While Nito Alves was seen to be a racist who had the 'black' masses from the slums to rise against 'the lighter-skinned' cadres of the MPLA Birmingham (2015:76) provided a contrary suggestion in proposing that Alves 'was more concerned with high-minded ideals than with race-based jealousies'. An important feature to take away from this attempted coup was the fact that immediately after the Portuguese withdrawal, the MPLA quickly became embroiled in the trappings of wealth and power – while the wealthy MPLA members took full advantage of their new status as 'gatekeeper' of the State, moving into the lavish homes of former Portuguese governors and high officers. As this happened, members of the Central Committee partook in the newly found spoils left over by the Portuguese while the Angolan people had difficulty in finding the most basic of needs – such as food and water.

According to Birmingham (2006:47), the Angolan people saw the MPLA as 'incompetent' because it was unable to provide the populace with the most basic conditions for survival. The shortages of food which occurred in the 1970s prompted the MPLA to send armed soldiers into the shanty towns to search out those who hoarded food.

Such actions were indicative of a government which was on the verge of collapse. The lack of basic necessities, marginalisation and overall exclusion of the majority of the people coupled by repression led many in the shanty towns to turn towards violence. The eventual failure of the attempted coup would prove to be a deciding feature within Angolan history which further intensified the level of brutality which the government would use to silence and break down dissent. While Nito Alves and the other leaders of the attempted coup were 'indiscriminately killed' (Saunders 1983:94), others were co-opted and reintegrated into the MPLA machinery.

Birmingham (2006:49) noted that the reprisals which the government subsequently took against anyone who might have been involved in the uprising were so savage that 'Angola was set on a downward path of spiralling violence outstripping the cruelties of the colonial war and the brutalities of the war of intervention'. Indeed the aftermath of the attempted coup cemented in the minds of many Angolans that the MPLA would not tolerate any form of dissent – and that attempts at challenging the status quo would be met with violence and death – further cementing a culture of fear and absolutism (section 2.5.3).

The rise of the people in this regard can be seen to have taken the form as discussed in section 2.6.2 (iii) while the Angolan government's response can be seen to have taken the form as discussed in

section 2.6.2 (i) Institutional predation is relevant at this point because it highlights how the State takes not only decisive but brutal action against its population to quell any form of dissent. An important factor of this early mobilisation in Angola created ripple effects within Angolan society – through mass fear of government action against all those who opposed it. The discussion in section 2.2.3 is also important because it helps to explain how individuals within predatory states may rise in a revolution in defiance of the status quo – as was the case on May 27 1977.

Heywood (2000:83), described the Angolan political context from 1977 as being one of 'fear' where those in power 'ruled with guns as opposed to ideals in determining the path of the future'. The bloody coup attempt of 1977 also led to many changes in Angola, especially in how the MPLA would go on to manage the country. As opposed to the creation of positive imagery of the State – one based on democratic principles and what it stands for, and or what it stood for and in, what George (2012) and Heywood (2008) reasoned as ruling with 'ideals', the MPLA missed a great opportunity to create such positive and inclusive imagery of what Angola ought to be or what it could have been.

During this early period of Constitution-making in Angola, traces of institutional instability could already be seen. The closed nature of Angolan institutions – through the passing of the 1975 Constitution, its failure for it to be a true vehicle through which people could participate created a context of deprivation as per the discussion in section 2.4.1 in relation to the public health approach to understanding violence. The discussions in section 2.2.3 are also important because it helps shed some light on the Angolan case and the actions of those who chose to rise to challenge what had shown itself to be an overly repressive State. Furthermore, one can see that as the 'image' of the State became more synonymous with violence it began the process of building a political culture in the minds of Angolans which would make the rise of a liberal democratic State as discussed in section 2.5.1 difficult to construct.

The attempted coup showed the MPLA that to maintain the society intact they had to increase the country's security apparatus while also making it more brutal. As opposed to dismantling and eventually disbanding institutions and organisations such as the secret police – which is a legacy of Portuguese colonialism built on the Gestapo model. Instead, 'the MPLA used political security forces to repress any independence of thought that might inflame the aspirations of the urban population' (Marcum 1975:69). With such changes the MPLA eventually transformed itself (the MPLA party-State) into what it described as 'the vanguard of the workers' (Saunders 1983:90), an organisation which became so closed off from the wider society that only elites would eventually be privy to its inner workings.

The 1975 Constitution served as the blueprint of Angolan politics and power. It created a political value system which undermined human rights and good governance. The discussion in section 2.6.2 (i) and (ii) further sheds light into what Angola was becoming with the adoption of the 1975 Constitution and while also laying the foundation for an extremely repressive State which operates through exclusionary politics and political violence.

The 'appointment'[16] of Dos Santos as President of Angola occurred in 1979 after the death of Agostinho Neto. It is important to note that Dos Santos was never elected but rather appointed. Lei 71/76 de 11 de Novembro as discussed above solidified the role of the MPLA within Angolan society. Lei 71/76 further 'established that in the event of the death, resignation or permanent impediment of the President of the Republic, the Central Committee will designate among its members who will temporarily hold the position of President of the Republic'.

The consolidation of power within this early period, together with the removal of safeguards from institutions such as the executive – and with the concentration of power in the hands of the executive, one can argue, began a process where non-democratic values were socialised.

4.5 War and peace: a missed opportunity for inclusive political governance

With only a brief interruption in 1974-1975 and 1991/1992, 'Angola was at war for 41 years from 1961 to 2002 (De Oliveira 2015:69). This period of war and the warring parties' attempts at trying to find peace play a crucial role in attempting to understand, not only Angola's State-building process but also the nature of power and politics in Angola – together with understanding how such power and politics is interpreted and understood within post-war Angola.

The section which follows will look at four parts: (1) the ceasefire agreement which led to the dismantling and eventual end of the one-party State, at least constitutionally, (2) the provisions of the 1992 Constitution which established for the first time a multi-party democratic democracy in Angola (3) the Lusaka protocol and (4) the MOU following the military victory of the MPLA over UNITA and its consequences towards establishing plural democratic governance in Angola.

4.5.1 The ceasefire under the Bicesse Accords

The Bicesse Accords were signed in Portugal on 31 May 1991 between the Government of Angola led by the MPLA and UNITA and was mediated by Portugal with the participation of observers from the USA and the USSR (Bicesse 1991). It was agreed that once signed Bicesse would be binding on

[16] Similar to JLO. Dos Santos was appointed to the role of president. See section 1.6.1. on appointment of JLO.

the parties to the conflict and would constitute 'the Peace Accords for Angola'. The signing of Bicesse put an end to sixteen years of conflict and was according to Knudsen, Mundt and Zartman (2000:36) heralded around the world 'as a model for post-cold war peace-making'. Former US Secretary of State James Baker in commenting on Bicesse said 'the peace offered an opportunity to show the world that a multi-party democracy can be built where before there was destruction and mistrust' (Knudsen, Mundt and Zartman 2000:11).

Bicesse had four components: (1) the ceasefire agreement, (2) the fundamental principles for the establishment of peace in Angola, (3) the concepts for resolving the issues still pending between the government of the People's Republic of Angola and UNITA and (4) the Protocol of Estoril which were peace accords initially started in May of 1991. Point one defined the ceasefire to be observed as the 'cessation of hostilities between the government of the People's Republic of Angola and UNITA with a view of attaining peace throughout the national territory. Point 2 stipulated that 'the ceasefire must be definitive throughout the national territory' (United Nations Security Council 1991).

Point 4 stipulated that the overall supervision of the ceasefire will be the responsibility of the government of the People's Republic of Angola and UNITA acting within the framework of the Commissão Conjunta Politico-Militar (CCPM) – (the joint Political-Military Commission). The CCM would be created according to Bicesse pursuant to the Annexe to the document entitled 'fundamental principles for the establishment of peace in Angola'. Point 5 stated that 'the ceasefire includes the cessation of all hostile propaganda between the government of Angola and UNITA at both the domestic and international levels.

The ceasefire was to be complied with within the entirety of the national jurisdiction and the role of the UN under such conditions would only be to monitor the process of the ceasefire. Another important feature and this links to Point 5 of the agreement was that both the USA and the USSR could not in any way supply 'lethal' materials to any of the parties or undermine the peace process. The section which deals with the 'entry into force' of Bicesse stipulated that it is not only the 'parties to the conflict that must adhere to the commitments under the agreement but also the parties which had the authority to verify and monitor the ceasefire'. This meant the USA, the USSR and the UN.

The fundamental principles for the establishment of peace in Angola can arguably be said to be one of the most important aspects of Bicesse. Though it was an attachment to Bicesse it spoke directly to how a form of rights-based governance would be addressed – while specifically mentioning issues of 'human rights'. Point 1 of the principles established that UNITA had to recognise: (i) the Angolan State, and (ii) recognise Dos Santos as its President. This point was important because it would be the

basis under which any negotiation would proceed and also because it served to put aside any lingering doubt that the MPLA was the legitimate government of Angola.

Point 2 was of equal importance because it stated that at the moment the cease-fire entered into force UNITA would have the 'right' to conduct and 'freely participate in political activities in accordance with the revised Constitution (the 1992 Constitution) and the pertinent laws for the creation of a multiparty democracy'. It meant that Angola would officially transition from a one-party State to a multiparty democratic State. Point 3 of the principles stressed that it would be the responsibility of the Angolan government through the MPLA to ensure that the new constitutional law would be representative of the people of Angola – and as a result and that 'discussions with all political forces' would take place to 'survey their opinions'.

Point 4 stipulated that Angolan elections were to be conducted under the 'supervision' of international observers'. Such observers would 'remain in Angola until they certify that the elections were free and fair'.

Point 5 was important because it determined that there should be a respect for 'human rights and basic freedoms, including the right of free association'. This point opened the door to the importance of fundamental rights and freedoms in Angola – it also served as the initiating point of breaking away from the old constitutional order of absolutism – at least in theory.

The concepts for the resolving of issues still pending between the MPLA and UNITA like the fundamental principles establishing peace in Angola was an attachment to Bicesse and would have the objective of settling some of the main issues that would prevent the establishment of peace. The attachment stipulated four important points: (1) Point 1 stipulated that the moment the ceasefire entered into force UNITA would lose its 'rebel' status and would be able to fully participate in the Angolan political system as an official and accredited political party and able to contest elections as per the 1992 Constitution. The point also stipulated that it would be up to both the MPLA and UNITA to agree on a time frame for elections to be held.

The point also stipulated that 'the exact date of said elections will be established through consultation with all political forces in Angola' (2) Point two stipulated that the Angolan government would hold discussions with all 'political forces to survey their opinions concerning the proposed changes in the Constitution'. It was stressed that the Angolan government would 'work with all the parties to draft the laws that will regulate the electoral law'. (3) Point three reiterated and as per the ceasefire agreement that both parties to the conflict shall not 'receive any lethal materials' and that the USA and USSR shall respect such obligation.

(4) Point four was particularly significant because it placed the responsibility of the overall 'supervision of the cease-fire process' on the MPLA and UNITA. They would act within the framework of the CCPM while the verification of the ceasefire would be left to the responsibility of the international community, while the UN would be 'invited to send monitors to support the Angolan parties, at the request of the government of Angola'. The governments that were to send 'monitors' would be chosen by the MPLA and UNITA, who would act within the framework of the CCPM.

The Protocol of Estoril (hereafter Estoril) was an important first step to determine how the parties to the conflict would operationalise Bicesse. The agreement which was also an attachment to Bicesse specified six specific areas of importance which would happen immediately after the ceasefire and how the parties to the conflict would resolve them: (1) they first dealt with elections and how such elections would be conducted, (2) the functioning of the Joint Political-Military Commission (CCPM), (3) the principles which would govern internal security during the period of the entry into force of the cease-fire and the holding of elections, (4) the political rights which would be exercised by UNITA following the ceasefire, (5) the administrative structures of the State, and (6) the formation of a united national armed forces command.

Point 1 under Estoril dealt with the nature of elections and how they would take place. it specified that such elections would be for electing the President of the Republic and members of the National Assembly and emphasised that the elections would be direct and based on a majority system. Point 1 concluded that 'whether or not these elections will be held simultaneously will be decided through the consultations among all Angolan political forces'.

Point 2 reiterated the direct election of the President and members of the National Assembly. This was important because it stipulated that the President could be directly elected by the people – something which would be of vital importance within the 1992 Constitution-making process. Point 3 further reiterated the direct election of members of the National Assembly, like the President, members of the National Assembly would be elected by direct vote through a system of 'proportional representation at the national level'. Point 4 stated that 'elections will be preceded by an official election campaign period, the duration of which will be determined following a process of consultation involving all Angolan Political forces'. A technical opinion was provided by the UN on the question of the desirable duration of the election campaign in Angola. However, such an opinion would not be 'considered binding on the parties'.

Point 8 was particularly important because it stipulated that 'total freedom of expression, association, and access to the media will be guaranteed'.

The Joint Political-Military Commission (CCPM) was arguably a fundamental issue affecting Bicesse, because it had the overall objective of supervising the ceasefire under Bicesse. It also had the duty to see that the 'peace accords' were 'applied', and thereby ensuring that the parties to the conflict were in 'strict' compliance with all the 'political understandings'. The CCPM would also have the authority to make the final decision on possible violations of Bicesse.

Point 2 under the CCPM stated that the CCPM would have the authority necessary to 'approve all rules relating to its functioning, particularly its international regulations'. An important aspect was that within the decision-making process, the CCPM adopted a mechanism of a decision by consensus. Such consensus would be reached after opinions were heard by the observers to Bicesse as discussed in section 4.5.1. Point 2 under the CCPM was clear in stressing that the CCPM did not seek to 'replace the government of the People's Republic of Angola'.

Point 3 elaborated on the headquarters of the CCPM in Luanda while stressing that it should structure itself to: (i) guarantee the conditions of peace for the holding of free and fair, multiparty and internationally verifiable elections, (ii) ensure the fulfilment of all political understandings resulting from the Peace Accords relating to the electoral process, (iii) supervise the implementation of the cease-fire agreement within the framework of the Joint Verification and Monitoring Commission (CMVF) and cooperate with the representatives of the UN. Point 4 stipulated that the CCMP would be constituted at the time of the signature of the Cease-Fire Agreement. Point 5 stipulated that the CCPM would comprise representatives from the government of Angola, UNITA, the USA, the USSR and Portugal. Point 8 stipulated that the mandate of the CCPM would end on the date that the elected government takes office.

Point 1 of the Principles related to the issue of internal security during the period between the entry into force of the cease-fire and the holding of elections stated that 'All Angolans shall have the right to conduct and participate in political activities without intimidation, pursuant to the revised Constitution and the pertinent laws for the creation of multiparty democracy, and the provisions of the Peace Accord'. Point 2.1 stated that the Police force would be a neutral body under the responsibility of the Angolan government and shall be the 'object of verification and monitoring by teams of monitors composed of two members designated by UNITA and one expert in police affairs to be designated by and subordinate to the UN command structure'. Point 2.2 elaborated that within the sphere of their 'authority, the monitoring teams shall have as their specific mandate the duty to visit police facilities, examine their activities, and investigate possible violations of political rights committed by the police'. These monitoring groups were further authorised to conduct their activities

freely in the entirety of the national territory. Point 2.3 added that the monitoring groups were to be subordinate to the CCPM, with the added objective of submitting its activity reports to the CCPM.

As per the provisions of the attachment titled 'Concepts for resolving the issues still pending between the government of the People's Republic of Angola and UNITA', UNITA would gain full people' rights while also formally being able to conduct its activities and would have the following rights: (i) freedom of expression, (ii) the right to present, publish and freely debate its political programme, (iii) the right to recruit and enrol members, (iv) the right to hold meetings and demonstrations, (v) the right of access to the government media, (vi) the right to free movement and personal safety of its members, (vii) the right to present candidates in elections.

Point 1 of the administrative structures stipulated that both UNITA and the MPLA are to 'accept the principle of extension of the central administration system' to the areas, and especially those areas of Angola that were beyond the reach of State authority. Point 2 stipulated that both the MPLA and UNITA must recognise such 'extension' and must not be made 'abruptly or endanger the free circulation of persons and goods, the activities of political forces, and the execution of the tasks related to the electoral process'.

In a post-Bicesse interview, Savimbi admitted that 'one of UNITA's greatest errors was to sign the Bicesse Accords in 1991 because UNITA had everything to continue its unstoppable struggle' (Maier 1997). Moreover, Bicesse's failure can also be attributed to 4 fundamental reasons: (1) the idea that UNITA's victory in the electoral polls was inevitable, (2) Bicesse took place within a climate in which both UNITA and MPLA still had the capacity to wage war, (3) the UN peacekeeping mission was limited to simply observing the situation on the ground as opposed to actively working towards establishing the conditions for peace among the warring parties and (4) there was no real mechanism of enforcing Bicesse.

The UN was in a position to not only assist the warring parties in creating the conditions for peace but, instead, it limited itself to peacekeeping as opposed to peace-making. The choice of observers was also detrimental to peace. Both the US and USSR had interests in Angola - both strategic and financial. Although one can argue that the Cold War had come to an end the choice of having both the USSR and the USA as observers arguably created the idea amongst the warring parties that, in the event of complete failure they would be supported by the superpowers.

Angola's first elections took place 18 months after the signing of Bicesse on 29 and 30 September 1992. The outcome of the elections saw the MPLA winning the majority in Parliament making Dos

Santos the clear victor. UNITA through Jonas Savimbi, almost immediately, contested the elections and resumed the armed conflict with the MPLA.

It is important to note that before the elections - Jonas Savimbi had said publicly that he would not accept any result short of victory. Savimbi reiterated this by going on national radio in October of 1992 where he affirmed that 'some men and women are prepared to give their lives for the country to be redeemed'. Jeffery Millington, the senior US official in Angola, had said two days before the elections that 'Savimbi had the elections in the bag' (Hart and Lewis 1994). This was not only damaging but also added fuel to the inevitability of war and the failure of the international community to take real steps towards dealing with many of the issues which led the war in the first place and those which sustained it.

The discussion in section 4.5.1 spoke briefly of some of the issues that both UNITA and the MPLA had to come to terms with together with some of the fundamental principles for establishing peace. Yet, despite establishing some fundamental principles for peace in the Bicese Accords there was a failure to address pressing issues of justice and human rights. One can also argue that the CCPM could not be impartial in guiding both UNITA and the MPLA towards sustainable peace because of the financial power that whoever won the election would have.

The comment by Millington above could arguably be said to be a real possibility of what UNITA was being told by representatives of the USA. The same could be said about the USSR in edging the MPLA on their inevitability of winning the elections. Those acts emboldened both parties in believing that the only way they could lose was if there was some kind of fraud.

The second shortcoming of Bicesse was that both liberation movements still had the capacity to wage war. As Brittain (1999) argued, UNITA failed to disarm to the extent that 'by late October 1994 western military attaches were reporting 'privately' that 'UNITA had 11 000 troops and two armies outside Luanda'. The international community did not invest enough resources to ensure that the peace accords were adequately supported – the timing between the peace accords and the election was not helpful either. The 18-months period certainly did not help in implementing the mechanisms stipulated in the agreement. The role of the UN in monitoring such demobilisation was, therefore, virtually non-existent.

Moreover, Malaquias (2007:100) noted that the UN did not intervene in preventing armed UNITA cadres in civilian clothing from moving into towns across the country. Nor would it investigate widespread reports by frightened local people of large UNITA arms caches hidden in the forests.

Moreover, the 'UN turned a blind eye to reports that UNITA's heavy arms had not been brought into its designated cantonment areas – they were kept in the forest with UNITA's best units'.

Indeed, such failure can be attributed to the fact that Bicesse had no enforcement mechanism. Essentially, Bicesse was a peace accord which was negotiated by the MPLA and UNITA. Although there was 'involvement' by the international community as discussed in section 4.4.1, it can be argued that such presence was in part to satisfy the international community. Bicesse used the language of 'inviting' organisations such as the UN, while also specifying that it was both UNITA and the MPLA who were fully in charge of the CCPM.

Contrary to Nathan's observations in his article, *No ownership no peace* (2006) in which he argued that peace accords must be owned by locals and those who most benefit from such peace. The case of ownership in Angola took a different turn. The fact that in the Angolan case the warring parties took full ownership of the peace process and were left to design its provisions without much if any input from the international community created a situation in which the provisions of the peace accords were not fully complied with. Indeed, though ownership of peace accords are important – what is equally important is that there must be clear boundaries on how parties react to conflict and there must be a mechanism which would enforce the agreements made.

In conclusion authors such as Bekoe (2008) have strongly argued that the failure to steer Angola towards a sustainable transition through its peace process can 'partly' be attributed to the UN and by extension, to the international community. He noted that such failure derived mainly from the 'mismatch between the role of the UN mission in Angola and the realities of the conflict'. Another damaging aspect of the Bicesse was that the warring parties were left to their own devices when it came to designing and implementing the peace process. The discussion in section 4.4.1 was a great opportunity to craft a system of justice for Angola and how both UNITA and MPLA would function within a new State based on human rights. Moreover, and even as Bicesse was being elaborated, one can argue that 'power' was the main consideration as opposed to crafting an agreement which would create stable conditions for peace.

As a Peace Accord, Bicesse failed. However, what Bicesse did was to create the path towards dismantling the one-party State in Angola through the creation of the 1992 Constitution. As Malaquias (2007:126), observed, Bicesse went on to 'nearly completely dismantling the one-party state apparatus'. Bicesse, despite its failure, was significant in establishing a new legal and constitutional order in Angola. In 1991 and before the signature of Bicesse the MPLA officially abandoned the Marxist–Leninist ideology in favour of social democratic principles while at the same time, and for the first time in Angola's history established a multiparty political system.

4.5.2 The 1975 constitutional amendment process

As discussed above, Angola transitioned from authoritarianism to multiparty democracy, at least in theory through Bicesse. The *Lei de Revisao numero 12/91, de 6 de Maio* de 1991 (Constitutional Revision Law) worked towards amending the 1975 Constitution and with it establishing the framework for which Angola would work towards transitioning from a single party to a multiparty democracy. Law 12/1991 worked towards creating the constitutional framework for the transition to multiparty democracy, creating a context for which individual rights and freedoms would be guaranteed and eventually protected. Moreover, Law 12/1991 was only a partial revision of the 1975 law.

Lei 23/92 de 25 de Agosto served as a further amendment to the Constitution which would provide the context for which Angola would have a new legal order, through the establishment of the following principles, (1) Angola was to became a multiparty democracy based on the rule of law, (2) the rights and civil liberties of citizens where extended beyond those in the 1975 Constitution and given more prominence within the 1992 Constitutional Law, (3) economically, Angola abandoned the socialist mode of production and (4) the 1992 Constitution established the principle of the separation of powers of the sovereign organs of State such as the executive, Parliament and the judiciary.

The constitutional revision was further enhanced by the *Lei de revisao constitutional numero 23/92, de 16 de Setembro de 1992* (Constitutional Revision Law 1992). This law altered the organs of State in the following ways, (1) the concept of fundamental rights was further amplified, this was done in the sense that the constitutional amendment effectively abolished the death penalty while also providing greater guarantees for the respect of the individual. It also provided a greater context for the protection of the rights of individuals, (2) what was vital and what came to be a key feature of the Angolan political system within this revision process was the establishment of the semi-presidentialist system of governance, (3) the Constitutional Court was also formed under this revision process, and (4) the revision included local autonomy while also providing a mechanism for provincial decentralisation.

Overall, these amendments created a broader context of the political system (in theory). It began a process in Angola which moved towards an idea of ‘people power’. This was seen through the possibility of decentralisation – which was would provide for local decentralisation, an idea which seemed to be a strong break-away from the one-party idea of governance. Araujo (2018:42) noted that, in essence, the 1992 Constitutional Law was very different from that of 1975. He added that the final text of the 1992 Constitution must not be seen as a new Constitution per se, but rather the ‘continuation of the Constitution-making process which began in 1975’. He added that the

constitutional amendment process was done to undo the amendments which were carried out under the MPLA one-party State as discussed in section 4.4.1.

Although the 1992 Constitution is argued to be a 'continuation' of the 1975 constitution-making process, the 1992 Constitution was effectively a new Constitution – because in its very essence it worked towards recreating the very nature of the Angolan State, while leaving every trace of the ideas elaborated in the 1975 Constitution. Such abandonment could be seen through the addition of the Fundamental Principles within the 1992 constitutional text and the principles of the separation of powers concepts which were non-existent within the 1975 Constitutional Law – which in turn highlighted a clear break from the Constitutional Law of 1975.

4.5.3 The 1992 Constitution and its fundamental principles

Part I, Article 1 of the 1992 Constitution set the nature of the Angolan State as a democratic republic based on 'democracy, a society of peace and social progress'. Article 2, established the Republic as being framed on the basis of the rule of law, the dignity of the individual, pluralism of expression and political organisation which respects and guarantees the basic rights and freedoms of the person, both as individuals and as members of organised groups.

Article 3 vested sovereignty squarely on the people of Angola. Article 3(2) however, demonstrated that it is the Angolan people that shall exercise political power through their chosen representatives. Article 4 stipulated the framework under which political parties should participate within the political process as well as serving as an avenue through which the will of the 'people' is carried out. Article 4(d) established that political parties should contribute to the fundamental freedoms and rights of the individual. While Article 5 expressed the unitary structure of the State and Article 6 established and affirmed the republic as a sovereign entity.

Article 7 established the diversity of the Angolan people and their pursuit of economic, social and cultural solidarity. Article 8 established the Republic as a secular State with separation of powers between church and State. Article 9 established the role of the State in guiding the national economy, while Article 11 promoted the establishment of diverse economic models and systems. Article 12, reaffirmed the ownership of all natural resources as belonging to the State and the responsibility of the State for their development and exploitation.

It is important to recall that the 1975 Constitution abolished any form of political participation by any other entity except for the MPLA which in turn essentially established Angola as a one-party State. The 1992 Constitution, therefore, served as the first time in Angolan history in which the different

segments representing the Angolan people could draft a new document which was not only inclusive but also worked towards creating institutional features which limited the use of power.

A salient feature described under the Principles of the 1992 Constitution was the principle of the separation of powers and how it was vital to the establishment of a political order based on the rule of law. The 1992 Constitution was crafted not necessarily as a simple instrument for governance but was the fruit of negotiation and deliberation by both the MPLA and UNITA, and was a vast improvement from that of 1975. Moreover, the 1992 Constitution worked towards abolishing, at least within the Constitutional Law a sense of authoritarianism which was a feature of the 1975 Constitution while paving the way for a semblance of democratic governance.

Part 3 of the 1992 Constitution in its Article 54(c) established the organs of the State to be separate and interdependent, while Article 54(d) established the need for local autonomy and 54(e) affirmed that there should be administrative decentralisation and devolution without prejudice to the governmental and administrative unity. The 1992 Constitution also created conditions under which inclusive governance would be achieved and with it the potential to create a social and political environment in which institutions had a greater capacity for violence prevention. Despite such ingenuity, it nevertheless lacked a human rights dimension.

Its Fundamental Principles, though it set forth a clear structure of the State, failed to mention the long liberation struggle and ultimately the civil war and the need to adequately address the main issues of reconciliation, shock and trauma, but rather, the process firmly focused on ‘power’ and how such power would be divided amongst a group of people that in many ways hated each other. It focused on short-term stability and failed to take into consideration future stressors and attacks towards constitutional and State stability.

During the South African post-apartheid constitution-making process Tonder (1996:65) stressed that ‘constitutions tend to reflect societal dynamics’. These dynamics are both social and political and have often been influenced by a historical context which determines the nature of such a process. Motala (1995:12) observed that ‘superimposed constitutional formulae, or constitutional arrangements that do not address the causes of discontent are sure to generate their own legitimacy crises’. Despite a number of drawbacks, the novel feature of the 1992 Angolan Constitution in Article 57(1) stipulated that ‘the President of the Republic shall be elected by universal, direct, equal, secret and periodic suffrage by citizens resident in the national territory, as per the law’. Such stipulation set forth the opportunity for the President to be directly elected by the people, which in turn would theoretically make it so that such persons have the true legitimacy of the people.

Furthermore, Article 79 regarding the composition of the National Assembly stipulated that (a) 'each province shall have the right to be represented in the National Assembly by five members, and each province shall for this purpose constitute an electoral college', (b) 'the remaining one hundred and thirty members shall be elected at a national level, and the country for this purpose shall be considered a single electoral college'. Indeed, this speaks more towards the decentralisation and devolution of power. While local governance is important, the 1992 Constitution created the conditions for a form of decentralisation which would further give power and authority to the people of Angola.

By taking into consideration Angolan history, seen through the denial of rights by the government which resulted in the violent uprising of the people as discussed in section 4.4.2 and the centralisation of the State as per the discussion in section 4.4. One may deduce that within such a context it is vital that a political system creates the possibility for greater participation while decentralising the State, both territorially and through the organisation of a more flexible and inclusive political power structure. The ingenuity of Article 79 was that it sought to give the opportunity for governance to be in such a way that it would limit the complete influence of elites within the political process while blocking potential '*State capture*' with having different spheres and levels of influence (Gevisser 2017).

Article 88 stipulated the functions of the National Assembly in Article 88(m) as to 'promote proceedings against the President of the Republic for the crimes of bribery or treason' (n) 'vote on motions of confidence or no confidence in the government'. Article 89 gave the National Assembly 'full and sole legislative powers' (b) 'rights and freedoms and basic guarantees of citizens' (d) 'ways and means of organising and running local government bodies' (f) 'organising, functioning and proceedings of the Constitutional Court' (j) 'judicial organisation and status of judicial and ministry of justice judges'. Article 88 of the 1992 Constitution set forth not only a clear regime for which there would be oversight of government, in particular, the executive and would also have created the conditions for which power, at least in theory, would be given back to the Angolan 'people'.

Although the 1992 Constitution was adopted, the outbreak of the war in its aftermath virtually made it impossible for the Constitutional Law to be fully implemented. The ceasefire which led to the Bicesse Accord paved the way towards the dismantling of the one-party State in Angola and paved the way for the establishment of a multiparty political system through the 1992 Constitution. The first multiparty elections took place on September 29 1992, which resulted in the loss of UNITA – 'claiming electoral fraud and prompting Jonas Savimbi to reignite the war' (Malaquias 2007:63).

4.5.4 The Lusaka Protocol

UNITA's refusal to accept the outcome of the 1992 election results drove Savimbi back into the bush to resume the war. Two years after the breakdown of Bicesse UNITA and the MPLA once again fought themselves into a stalemate, such stalemate and the continued loss of life on both sides prompted the UN representative Maitre Alioune Blondin Beye to 'persuade the warring parties to talk to each other for the first time in months at secret meetings in Zambia' (Knudsen, Mundt and Zartman 2000:7).

The Lusaka Protocol was, in essence, a continuation of Bicesse in principle and worked towards building on the gains from such process. Acting as its chief mediator with the observation of the USA, Portugal, and Russia, the UN representative sought not only to build upon the aspects of Bicesse that worked but also to identify the aspects which failed while working towards ways to deal with them. However, from the very onset of the negotiation process, it seemed as though conditions on the battlefield would once again play a huge role within this new attempt at peace.

Before entering the agreement, both parties still maintained active and ongoing military operations on the ground – and their position on the battlefield played a huge role within the negotiation process. The UN mediation team was aware of this process and the initial meetings in Lusaka would not only work towards dealing with these matters before entering public negotiations but would play a massive role in dealing with some of the issues which led to the failure of the first peace process.

During the initial meeting in Zambia under the supervision of the UN, the UN insisted that 'UNITA withdraw from 60% of the country that it had controlled, and it also insisted that UNITA disarm its civilian supporters' (Knudsen, Mundt and Zartman 2000:9). The point of disarmament was vital in particular, that of the civilian fighters. Moreover, disarmament was important because failure to do so would not only give a particular side an advantage, but it would in some way remove the legitimacy of the process itself.

It is important to note that, before entering into the Lusaka accords UNITA had already found itself in a weakened position – the fact that the MPLA had captured the UNITA stronghold and headquarters in Bailundo forcing them to flee and to establish new headquarters in Andulo dealt a colossal blow to UNITA, not only militarily but also 'morally'. Like the MPLA, UNITA demanded a 'serious role in the central government, autonomy for the central highlands, and the disbanding of the government's riot police' (Knudsen, Mundt and Zartman 2000:7). These demands signalled the first instant of a potential power-sharing agreement and potential talks of finding ways in which to work towards a 'unity government'. While the UN, on the other hand, 'was all too happy to provide peacekeeping

troops to monitor the ceasefire, the disarmament process and the integration of the two armed forces into a national army' (The-economist 1999).

However, one can argue that both UNITA and MPLA still failed to trust one another. As Zartman (2001:274) argued, trust must be strengthened or built during the negotiation process so that each 'party understands the others' motives and underlying interests. Efforts should be made to convince each other of good faith, credibility, and reliability'. It is thus not surprising that there was virtually no trust between the parties and the fact that UNITA was already in a weakened position created a situation in which UNITA believed that the MPLA would not follow through with the peace process. UNITA also believed that any concessions made by the MPLA would not equate to anything of consequence.

Knudsen, Mundt and Zartman (2000:11) observed, 'it was no surprise that the Angolan government was resistant to the new peace talks with UNITA, and was reluctantly coaxed back to the table after heavy pressure from the US and Beye'. For UNITA the 'main reason for cooperating was to avoid the UN-backed international sanctions, with which they had been threatened if the rebels refused to negotiate. For both, it was the chance for a momentary break in the fighting – a chance to rest and rearm – that was the strongest enticement' (Knudsen, Mundt and Zartman 2000:9).

Despite these potential threats to peace, the UN representative took a very different approach from the previous accords (Bicesse). Bicesse created a very short time frame (18 months) for which elections were to be held. In arguing against such strict timeframe, Beye suggested that 'it is far better to be patient and spend time working on a peace settlement that will last, than to rush through something that will collapse immediately' (Spears 1999). Beye also insisted that an important objective was to construct an environment of 'mutual confidence'.

However, this idea of 'mutual confidence' seemed to be one which would require not only the need for a power-sharing paradigm but would, in essence, require that the MPLA agree to such power-sharing principle. The 1992 elections were accepted by the international community as free and fair, such acceptance not only accepted the MPLA government as the legitimate and sovereign government but also portrayed 'UNITA as the rebellious party that was attempting to conduct a coup'.

The Lusaka Protocol was signed on 20 November 1994 under the mediation of the UN and with the USA, Russia, and Portugal as observers to the process. The Lusaka Protocol reaffirmed the principles that were established under Bicesse such as, the acceptance by the government and UNITA of the relevant legal instruments, the military issues I and II, (annexes) in particular, the integration of UNITA forces into one national army and the outstanding issues regarding the police. Of vital

importance was Annexe 6 of the Lusaka Protocol, which dealt with issues of national reconciliation. Initially, and in Bicesse as discussed in section 4.5.1, the principles establishing the accords articulated human rights as underpinning the peace process.

Annexe 6 of the Lusaka Protocol shared the same spirit in taking it forward to include 'national reconciliation' as a key factor towards peace. National reconciliation under the Lusaka Protocol referred explicitly to the need to 'pursue the imperative of national reconciliation, including the role of the mass media, the implementation of administrative decentralisation and deconcentration and the roles of the provincial authorities' (Lusaka Protocol). Annexe 6 was important because it identified the overly centralised role not only of the Angolan political system but also those of the provinces, and identified that a decentralisation process which would ultimately work towards breaking up Angola's overly centralised State was vital towards peace and national reconciliation.

Annexe 6 further implied that national reconciliation would come about not only through the open and free expression of the mass media, but more importantly through the structuring of inclusive political institutions which would, in essence, need to be decentralised. This was important because Annexe 6 did not only specify a vague decentralisation design for Angola but was very specific in arguing that it would be one which would entail that provincial governments must to a certain extent be autonomous from the national government – in particular in the areas of administration, finance, taxation, economy, and foreign trade.

The Lusaka Protocol was however marred by many difficulties. Savimbi refused to attend the signing ceremony and sent a representative which in many ways, again signalled the mistrust and discontent that was still in place – putting in danger the viability and stability of the peace process. Despite such air of mistrust, the government of national unity and national reconciliation was established in April 1997 with 11 UNITA officials sworn in. Despite the signing of the Lusaka Protocol and the establishment of the new government, 'the country remained physically and psychologically divided' (UNSC 1994).

Such division could not be more apparent as UNITA still failed to demilitarise as per the Lusaka Protocol, and kept an active army in place. On the other hand, Savimbi still controlled the diamond fields in the South, and the readiness of his armed forces pushed the international community to issue sanctions on UNITA – such factors and the eventual death of the UN Chief mediator Maitre Beye in a plane crash in 1998 led an already unstable peace to crumble, and by December 1998 UNITA and the MPLA were again back in a state of war.

4.5.5 The Luena Memorandum of Understanding

On 22 February 2002, Jonas Savimbi was killed Savimbi's death posed two dilemmas: (1) UNITA's Vice-President also died days after Savimbi and UNITA had to choose whether to surrender an already losing war or keep fighting and, (2) the MPLA also had to choose whether to push on and eliminate UNITA on the battlefield or to offer them an olive branch to move towards a path of peace.

On 2 March 2002, the government confirmed that it would contact UNITA to prepare the ground for a ceasefire. The road to the Luena Memorandum of Understanding (2002) could have been broader and more inclusive had it not been for UNITA's extremely weakened position. Signed in Luanda on 4 April 2002, the MOU was extremely limited. The position of weakness that UNITA found itself in made it difficult, if not near impossible for them to stand as equals at the negotiation table. Such military defeat significantly boosted the capacity of the MPLA to maintain its tight hold of the political system by intensifying and further centralising its hold on power.

The government chose to deal with the military issues instead of dealing with sensitive political issues which to a large extent had caused the war. The MOU also focused mainly on the integration of UNITA soldiers into the newly formed *Forças Armandas Angolanas*[17] (FAA) and the Poliçia Naçional de Angola[18] (PNA). As opposed to dealing with issues such as reconciliation, building open and inclusive institutions and the promotion and protection of human rights which would be the cornerstone of any society based on democratic governance.

As Rupiya and Njeri (2002:203) observed, in circumstances where 'a peace process is managed by one victorious side, the challenge is how to avoid taking advantage of the situation and securing pre-conflict objectives at the expense of the defeated opponent. Meanwhile, the conclusion of conflicts through peace treaties tends to lead to the re-imposition of the status quo and by default perpetuating the causes of conflict'.

It is thus necessary to note that any peace accord must adopt policies which would not only balance the interests of the two warring parties but also balance them with a vision for future stability. Shawnk and Rohloff (2001) observed that 'contradictions emerging from a peace process that is managed by the victors, studied over 200 years, have shown a preponderance towards adopting policies that have themselves become the root causes of subsequent conflict'. Such policies can be seen through Angola's 2010 Constitutional Law itself which centralises the State both in terms of territory and political power - beyond rational reason (discussion to follow in Chapter 5).

[17] Angolan Armed Forces
[18] Angolan National Police.

De Oliveira (2011:294) added that the way in which the 'civil war ended is key to understanding the power of the MPLA in Angola'. Such power is understood through UNITA being militarily defeated on the battlefield and having virtually no bargaining power during what one can argue as a 'government-imposed' peace process. The way the war ended and the MPLA's conception of power in post-war Angola may also arguably be seen as emboldening the party-State to see power as a take-all – meaning that it sees power as something which one either has or not.

Licklider (1995:274) observed that the ending of overt violence via a 'peace agreement or military victory does not mean the achievement of peace'. In the case of Angola with the end of the civil war – or rather the manner in which it ended created aspects of negative peace, while at the same time removing any impediment which would stop the MPLA from reverting to its authoritarian way as seen in the discussions from 4.3 to 4.3.2. Rothstein (1999:332) continued and built on this by noting that since the ending of violence does not necessarily mean peace, the post-conflict situation provides 'a new set of opportunities that can be grasped or thrown away'. An important feature of such new opportunities is the ability of such States to adequately deal with justice and reconciliation as a centrepiece towards achieving real peace.

As Malaquais (2007:112) wrote, 'Savimbi's death punctuated the rebels' defeat. Headless without their creator, UNITA quickly accepted the government's demand to surrender'. It is important to note that peace is vital – the Angolan people have for more than forty years since independence never known peace. However, it is also equally important to reflect on the kind of peace which the MPLA government offered and how such peace would eventually affect the lives of many Angolans.

Angola within its 'post-conflict' reality has failed to adequately address issues of justice and reconciliation, along with failing to adequately create an environment of just peace. Though the government through the MPLA failed to create and open inclusive systems, the lack of a real opposition through the defeat of UNITA further enabled the MPLA to regroup and tighten its hold on power through extreme centralisation of State power, while continuing to undermine civil rights, liberties and human rights.

4.6 The 2010 Constitution-making process

The 2010 Angolan Constitution is the youngest in the Portuguese speaking world. Gouveia (2011) added that although the Constitution was an important process within the realm of Angolan constitution-making it should have been approved within the 'framework of the results of the 1992 Parliamentary elections'. Such rationale was based on the fact that since the end of the civil war and

until the passing of the 2010 Constitution Angola functioned with the 1992 Constitution as its 'legal' framework.

Despite such observations the Angolan government moved towards creating a new Constitution. Law number 2/09 passed by the Angolan National Assembly effectively created the Constitutional Committee (hereafter CC) which would work towards amending the 1992 Angolan Constitution (Lei no. 2/09). The establishment of the CC through approval of the National Assembly is based on Article 88(a) of the 1992 Constitution which permitted the National Assembly to 'amend the current constitutional law and to approve the Constitution of the Republic of Angola'.

Luacuti (2014) noted that in regards to the creation of the CC Angolan legislators took into consideration the work, progress and initiatives of the 'period between 1992 and 2008' acknowledging that during that period there was a 'lack of political consensus' between the various societal groups – that mainly being between the MPLA and UNITA. In addition, a peculiar feature of the CC was its composition. One may argue that while the 1992 Constitution was essentially brokered under the shadow of war - it nevertheless brought together different ideas and positions (both MPLA and UNITA, Angolan churches and wider civil society actors). This composition of both the MPLA and UNITA in the constitution-making process of 1992 in many ways created a more balanced Constitution. This was not the case in the composition of the CC of 2010.

The 2010 Angolan Constitution was easily passed due to the imbalance of delegates representing the various political parties. There were no civil society organisations adding their voice to the process. Moreover, the fact that the main opposition party UNITA did not take part in the process made it even easier for the MPLA to create an overly centralised State. While the Constitution was easily adopted due to such imbalances – which favoured the MPLA. It was such imbalance in part which ensured that the MPLA could so easily dictate the outcome of the process.

What was vital in the constitution-making process at this time was the role of the President and in particular the power that the executive would have under the new Constitutional Law. Having in mind that the MPLA won a complete victory over UNITA it could, and did frame executive power within the new Constitution similar to that of the 1975 Constitution and as such was in a position to once again 'dictate' rather than to 'deliberate'. Orre (2010:12) noted that in this process, Dos Santos was at the centre - and his 'personal power' greatly influenced the 2010 constitution-making process.

The 2010 Constitution gave Do Santos – or rather in more general terms the holder of the presidential office as Orre (2010:11) described 'supreme power'. Orre (2010:12) added that in the case of Dos Santos was the 'the spider' in the web of the MPLA and he and his children controlled large fortunes'.

The CC was regulated under Article 79 No. 1 of the *Regimento Interno da Assembleia Nacional* (National Assembly Internal Regulation) and was constituted by 45 members of Parliament. These individuals were divided into two branches: (1) active members of the commission and (2) substitutes.

Active members included thirty-five delegates from the MPLA, six delegates from UNITA, two delegates from PRS, one delegate from FNLA and one delegate from *Nova Democracia.* Substitute members included nine delegates from the MPLA, three delegates from UNITA, one delegate from PRS, one delegate from FNLA and one delegate from *Nova Democraçia*

The choice of composition of the CC was made by a vote in the plenary session of the National Assembly where it was decided that decisions within the CC would be made by consensus and in the absence of a consensus 'by an absolute majority by its members' (Luacuti 2014:32). What is quite astonishing in the makeup of the CC was the complete lack of proportionality of representation which created the conditions for the MPLA to dictate the constitution-making process.

The CC was assessed by a technical commission which served to oversee its work and ensure that it followed the rules of the 1992 Constitutional Law and the National Assembly's Internal Regiment. This technical commission was constituted by 19 members who were appointed by the various political parties which comprised of 12 delegates from the MPLA, three delegates from UNITA, one delegate from the FNLA, delegates from the PRS and one delegate from *Nova Democraçia*.

The 2010 Constitution after its elaboration resulted in the establishment of a republican form of government. By its very nature republicanism is not only a rejection of monarchy but the strong belief that a form of government should be formed in which matters of government and the political process are a 'public matter' and not a something which is conducted in private and or through the whims of a few, as a monarchy would imply. The distinction between 'republicanism' and 'monarchy' is important in particular as the latter concept deals with the question of power and how power circulates. The final draft of the 2010 constitutional text though in many ways seemed to fit the republican paradigm the level through which power was concentrated in the executive blurred the lines between republicanism and monarchy.

Because of such blurred lines the 2010 constitution-making process can arguably be said to be unique – because it was conducted under the guise of implementing a democratic process which adopted a republican form of government based on the rule of law and the separation of powers which would then put people and the defence of their rights at the centre. Yet, it is important to note that the idea of participation is one of the most basic tenets of the democratic process and the Constitution is ideally

the vehicle through which such democratic principles would be transferred and put into practice. The Angolan 2010 Constitution fails to do this as will be discussed in the sections which follow.

In the USA and at the close of the Constitutional Convention of 1787 when leaving Independence Hall Benjamin Franklin was asked: 'Well, doctor, what have we got – a republic or a monarchy?'. Franklin responded in saying – 'a republic, if you can hold it' (Mchenry 1832). This is striking because, and although one can argue that the Constitution of the USA provides some of the widest scopes of civil rights and liberties, the main thing is whether those in political office can – in essence ensure that such principles are adhered to by keeping to the spirit of the Constitution. In addition, what is key in the Constitution of the USA is that political power has been decentralised, and in a way, cut up – ensuring that no single organ hold enormous power.

The discussion which follows will unpack the nature of Angola's 2010 Constitution and shed some light on whether the Constitution-makers have created the conditions under which the Angolan people live under a republican form of government or a form of antiquated modern-day monarchy. It will also look at how the organisation of political power in the Constitution has affected democratic principles.

4.6.1 The 2010 Constitution and its fundamental principles

On 22 January 2010, the MPLA majority held National Assembly voted and passed the Constitution. Articles 1 to 21 under title I set forth the basic and salient principles of the Constitution. Article 1 set the nature of the State, which is to be a 'Republic', while Article 2 set the principle of the 'Republic' as a 'democratic State based on the rule of law'. Article 3 spoke of the 'Republican' nature of 'sovereignty' and how such sovereignty is vested in the people of Angola. Article 3(2) stated that 'the State shall exercise its sovereignty over all Angolan territory'.

Article 4 stipulated that political power is to be exercised through elected officials and State organs as stipulated under the Constitutional Law. Article 5 stipulated that Angola's territory is inviolable and its integrity will be maintained. Article 6 established the constitutional supremacy of the Constitution and the Republican State as being based on the 'rule of law'. Article 7 established the relevance of African customs as exercised through traditional institutions as long as it is in line with the Constitutional Law.

Article 8 established the organisation of the Republic as being 'unitary in nature' as opposed to any other model such as federalism. Article 9 established Angolan nationality in terms of *ius sanguinis* meaning that Angolan nationality is based on the nationality of the parents and not the country in

which one was born. While Article 10 established the secular nature of the State, and Article 11 established Angola's commitment to international security and international peace, Article 12 set forth that the Republican State shall engage within its international relations peacefully. Article 12, acknowledged international law and its importance and adherence within the national legal system. Article 14 established Angola's acknowledgement of the right to property and the right to engage in economic activity.

Article 15 acknowledged the State's ownership of land, but also established that such land may also be transferable along with a person's right to own land. Article 16 established the Republic's ownership of all natural resources. Article 17 established the recognisable role of all political parties and their engagement within the national political sphere. Article 18 set forth definitions for national symbols. Article 19 set out the Republic's official language as it should be communicated within the national organs of State. Article 20 established the diplomatic capital of the Republic. Article 21 established the fundamental tasks of the State.

Title II of the Fundamental Rights and Duties which may also be read as the 'Bill of Rights' speaks in its Article 28(1) of the 'legal force' of the Constitution in stating that, 'the Constitutional principles regarding fundamental rights, freedoms and guarantees are directly applicable to, and binding upon, all public and private entities'. A peculiar aspect of Article 28 (1) is that while it established that the Constitution is the legal force to which all organs of State are accountable to the organisation of power as seen through the Constitution, it seems to also create a contradiction when it comes to practically upholding Article 28(1) of the Constitution (a more detailed discussion on this issue can be seen in section 5.5 and 5.5.1.

Regarding fundamental rights, Alexandrino (2010) noted that such rights as seen through the Constitution are in part attributed to the constitution-making process of 1992. What is also seen in the Constitution as it relates to fundamental rights is the premise that the Constitution places on human dignity as per the preamble and Articles 30 to 32. Miranda (2010) added that the adherence to 'human dignity', and the human dignity of the person as stated in the Constitution takes precedence over the 'popular will', the 'person over the State and fundamental rights over the organisation of political power'. This then means – and one can extrapolate that under circumstances where the centralisation of power threatens the fundamental rights of the individual, it becomes necessary to change how such power is organised and structured.

The Constitution also provides for a very clear role of the judiciary through its articulation of Article 26(3) which states that 'in any consideration by the Angolan courts of disputes concerning fundamental rights, the international instruments as referred to in the previous point (Article 26(2) –

above) shall be applied, even if not invoked by the parties concerned'. It is common understanding and practice that the separation of powers is vital within a constitutional democratic State; Barber (2018:241) established this point very clearly in the book entitled, '*The Principles of Constitutionalism*' affirming that the separation of powers is vital. In a recent report by OHCHR (2018:31) entitled '*Human Rights and Constitution-Making*' it was put that, although when drafting a Constitution attention should be paid to constitutional traditions and local specificities, such a Constitution, including its 'Bill of Rights should in all cases meet the basic requirements which stem from widely accepted principles of Constitutional and International Law'.

Also of vital importance within the Constitutional Law is the connection between the rights to liberty of the person and social rights as articulated in Articles 26 and 27 of the Constitution. The importance of such rights is that the State must in every way provide an environment which individuals experience the most freedom in line with the principles and ideas of human dignity while also creating the social, political and economic conditions for which such rights and liberties can fully be enjoyed.

Freedom from violence is part of such conditions. This is especially important because the Constitution clearly specifies that the State must 'ensure' the conditions for the realisation of rights, this can then further be interpreted in the way that, in the event that the organisation of power within the Constitution is incompatible with such objectives – an organisation which places the individual in danger of experiencing violence from the State and its institutions, redress must then be found.

4.6.2 The general characteristics of the 2010 Constitution

The Constitution is still in its infancy. However, and at the same time such Constitution has very particular features which are important to understand. By reading the constitutional text and looking at its non-formal aspects, the Constitution tends to be rigid in nature. Such rigidity is based on the idea that, although it specifies and creates a State which is supposedly based on the rule of law, the organisation of power within the Constitution is centralised mainly within one organ of the State – the executive.

It then implies that, although there was an attempt by the constitutional drafters to stress the importance of 'law' it is not necessary 'rule of law' but 'rule by law' meaning that, since power is centralised at the top – almost like a pyramid, those at the top are not subject to the law due to the power they have but rather rule 'by' law (such law often not conforming to internationally acceptable standards). This is perhaps a very monarchical interpretation in which the law does not affect those who hold power but is rather used as an instrument for all those below the pyramid – a feature which can be seen in highly centralised States.

Although Article 2 of the Constitution speaks of a democratic State based on rights and the rule of law, the Constitution seems to adopt and take from the 1975 Constitution – that being the centralisation of executive power in the hands of the President. It focuses specifically on the idea of centralising power as it was done under the one-party, while at the same time effectively creating very little space for political participation.

Moreover, and although one can rightfully say it is a constitution-making process which first began with a one-party State Constitution and then transitioned to a 'multiparty-democratic' Constitution, there seems to have been a few steps taken back with the final text of the Constitution because in comparison to that of 1992 – the latter seems to have created less rigidity within the Constitutional Law in the way that rights and freedoms were concerned. The 1992 Constitution was also one with less centralised political power – and more flexibility towards political participation.

At a more symbolic level, however, the Constitution speaks about individual and collective rights as seen through its Articles 30 through to 75. The wording also provides an atmosphere of which the Constitution as the supreme law of the land is to be respected. Article 26 which specified the scope of fundamental rights goes very deep in creating a context in which all human rights are safeguarded and further giving such rights within the Angolan context greater importance in articulating that 'the fundamental rights established in this Constitution shall not exclude others contained in the laws and applicable rules of international law' (Article 26(1).

Such strong reiteration of rights protection was further reinforced by Article 26(2) in which it recognises that 'constitutional and legal precepts relating to fundamental rights must be interpreted and incorporated in accordance with the Universal Declaration of Human Rights, the African Charter on Human and People's Rights and international treaties ratified by Angola'.

The Constitution is based on a form of representative democracy in which individuals choose their representatives through periodic elections. The reference to democratic representation is important because it clearly specifies that the chosen form of democracy is 'democratic representation', a process in which individuals choose their elected leaders – this then further implies that officials are to be elected directly during the election processes which in turn then enhances accountability and the overall accountability mechanisms.

Article 201 to 213 established the Angolan State as a unitary State. However, although Article 8, 201 and 213 speaks of a process of decentralisation in Angola which would ideally lead to advancing Angola's democratic project, such has never been implemented and in many ways such a failure is not

in line with the ideals of 'democratic representation' and safeguarding individual rights. Of particular importance is the form of government that Angola has opted to use as per the Constitution. The Presidential model used in Angola is arguably one which also stems from the Constitution of 1975. One can argue that it was chosen specifically as a way to safeguard executive power. It is, however, important to acknowledge that the world does indeed have a number of Presidential systems – of which many are stable. However, the nature of presidentialism in Angola seems to stifle and overshadow the entire political system.

Regarding the nature of Angolan presidentialism, Alexandrino (2013) noted that the system of government as per the Angolan Constitution is very 'specific' to Angola, he added that it is an 'atypical' system marked by a Presidential system based on the 'personalisation of power'. Such personalisation of power permeates to all other aspects of the State while also undermining constitutional authority and to a large degree creating a greater space for rights violations – and as a result, pave the way for social instability and conflict.

4.6.3 Angola's constitutional identity

The discussion in section 4.5.2 touched on the premise of the individual as vital within the 2010 Constitutional and, in particular, the importance of human dignity. What can be extrapolated from the Constitutional Law is the emphasis placed on the individual – in particular placing individual rights above the State which means that safeguarding individual rights and freedoms is the main function of the State. Such emphasis is reinforced in Article 2(1) of the Constitution in which it states, 'Angola shall be a democratic State based on the rule of law and the sovereignty of the people, the primacy of the Constitution and the law, the separation of powers and the interdependence of functions, national unity, pluralism of political expression and organisation, and representative and participatory democracy'.

Article 2 sets forth a conversation about the identity of the State and the principles that it seeks to safeguard. In noting the contents of Article 2(1), Araujo and Nunes (2014) observed that Angola's constitutional identity is a result of not only the principles articulated in Article 2(1), but also of Angola's 'historical constitutional dimensions'. Such historical dimensions are Angola's colonial past which was marked by foreign domination and the denial of rights, its choice of adopting a one-party state which one can argue was a continuation of a colonial policy of denying individual rights right until the civil war which resulted in rights violations on a massive scale.

As a result of such historical dimensions, one can argue that Article 2(1) was a way in which such history could be redressed. It was the acknowledgement that Angola's history - especially seen

through the denial of rights and widespread rights violations must, and should not be repeated – and the Constitutional Law was to be an avenue through which wrongs from such past could be redressed.

In light of the constitutional text and taking note of Angola's turbulent and violent history and as per the interpretation of Articles 1, 2, 8 and 236 one can surmise that the main principles at the basis of the Constitutional Law are: (i) the principle of the rule of law and (ii) the democratic principle.

The principle of the rule of law under the Constitution is a fundamental one. Alexandrino (2013) noted that such principle is a 'historical cultural' one which is clearly defined within the constitutional text. Furthermore, such historical cultural context was due to Angola's civil war and the need to safeguard individual rights. One can further argue that the importance of premising the rule of law as fundamental within the constitutional text was to serve as a break from the reality of previous constitutional realities in Angola – such as that of 1975.

In the light of such historical and cultural understandings, the principle of the rule of law is important because it serves as a new reality in Angolan politics. It was also a way in which the State was to be subordinate to the law – a form of submission which at its very core can be argued to have been for the importance of safeguarding 'human dignity' (Article 1).

The importance of the rule of law and the State being submissive to constitutional authority is also further entrenched within the Constitution in its Article 236, in which it states that, in the event of any amendment and or alteration to the Constitutional Law, the State must safeguard the principles of human dignity. This is important because it goes directly to safeguarding human rights and creating a constitutional legal order and design of the State which would prevent violence – this is even more important as the Constitutional Law as according to Alexandrino (2013) was a result of Angola's 'historical-cultural context'.

The respect for and the protection of fundamental rights are articulated in Article 2(2), Article 21(b) Article 56 and 236. The independence of the courts is highlighted and safeguarded in Articles 176 and 236 (i). Article 2, 105(3) and 236 (j) speaks of the need to limit State power through the separation of powers. Again, this is not only important because of Angolan history but also as an important legal matter – the Constitution goes this far to not only prevent the abuse of power but also to safeguard individual rights and freedoms to prevent the State and its institutions from committing acts of violence against them.

The principle of the rule of law is important theoretically, and if it is balanced within a legal framework where power is not unbalanced. In the Angolan system and the 'personalisation' of power

in the hands of the President, the rule of law does not seem to render the State submissive to the law. By its very nature, the three organs of the State (executive, legislative and judiciary) – together with civil society actors and the average citizen, are responsible for ensuring that the Constitution is adhered to. However, though the Constitution provides a wide scope of rights, the organisation of political power undermines such intention because power is vertical - it flows down from the executive down to the judiciary.

The democratic nature of the Angolan State is expressed in a number of articles within the constitutional text (Articles 1, 2, 3, 17, 54, 147, 149 154, 213, 236). These democratic principles establish the legitimacy of the State because they centre power around legal precepts – precepts which are ideally in place to safeguard the individual against an over-intrusive State. Another important aspect of the democratic principle as per the Constitution is that it works towards creating a governance system for the State as a whole such as: (1) how political power is to be organised and arranged, along with (2) how such power is eventually exercised – the organisation of power and how it is exercised is important because it affects exactly how it can be curtailed, limited and eventually controlled. In addition, the democratic principle also speaks of the form of political representation model which Angola has opted to use (representative) and how in reality the Constitution is not in fact 'representative' in nature.

In this regard, one can argue that, in order for the Constitution to fully be aligned with the democratic principle it espouses, there must be conformity with the form of representation as defined within the Constitutional Law and its relationship with the people. It means that there must be real and broader forms of representation within the system which can be seen through the horizontal organisation of power, and citizens must exercise their role fully in electing individuals to the various State organs which would then, in turn, fulfil the 'representative' nature of the State.

4.6.4 The **limitations of fundamental rights** in the **2010** Constitution

A number of national constitutions have limitations clauses which explicitly limit the rights they provide. Ahmed and Bulmer (2014:3) have noted that, 'a limitation clause is a constitutional provision which enables constitutionally protected rights to be partially limited, to a specified extent and for a certain democratically justifiable purpose'.

For example while freedom of expression may be limited so as to protect the rights of others or in circumstances so as not to incite hate and violence. Ahmed and Bulmer (2014:3) add that, while rights can be limited so as to safeguard the rights of others, the challenge is then to 'design a constitutional provision that enables rights to be prudently limited to the extent necessary to protect the public good

and the rights of others without undermining essential human rights or liberties that provide the foundation for a free society'.

While limitations of rights may be important so as to safeguard the rights of others while balancing such rights competing interests, they are not, according to Ahmed and Bulmer (2014:5) 'a response to emergency situations. Derogations from rights are temporary additional limits, or suspensions of rights, imposed during a state of emergency'.

Section 2 of the Angolan Constitution sets out the conditions under which rights can be limited. Article 56(1) states that, the State shall recognise as inviolable then fundamental rights and freedoms enshrined in the Constitution and shall create the political, economic, social order and cultural conditions and conditions of peace and stability that guarantee their effective realisation and protection, under the terms of the Constitution and the law. Article 56(2) continues in noting that it shall be the duty of all public authorities to respect and guarantee the free exercise of fundamental rights and freedoms and the fulfilment of constitutional and legal duties.

Article 57(1) continues in stating that, the law may only restrict rights, freedoms and guarantees in cases expressly prescribed by the Constitution and these restrictions must be limited to what is necessary, proportional and reasonable in a free and democratic society in order to safeguard other constitutionally protected rights and interests. Article 57(2) adds that, laws restricting rights, freedoms and guarantees must be of a general and abstract nature and may not have a retroactive effect nor reduce the extent of scope of the essential content of constitutional precepts.

Article 58(1) states that, the exercise of rights, freedoms and guarantees and of citizens may only be limited or suspended in the event of a state of war, siege or emergency, under the terms of the constitution and the law. Article 58(2) states that, a state of war, siege or emergency may only be declared in part or all of national territory in cases of actual or imminent aggression by foreign forces, serious threat to, or distribute of, the constitutional democratic order, or public disaster.

Article 58(3) continues in establishing that, the decision to opt for a state of war, siege or emergence, in addition to its declaration and implementation must always be limited to the necessary and appropriate actions required to maintain public order and protect general interests, observing the principle of proportionality and being limited, particularly with regard to extent and duration and the means employed, to that which is strictly necessary to promptly restore constitutional normality.

Article 58(5) adds that, under no circumstances may the declaration of a state of war, siege or emergency may effect:

(a) the application of constitutional rules concerning the responsibilities and functioning of the bodies that exercise sovereign power;
(b) the rights and immunities of the members of bodies that exercise sovereign power;
(c) the right to life, personal integrity and personal identity;
(d) civil capacity and citizenship;
(e) the non-retroactive nature of criminal law;
(f) freedom of conscious and religion

Article 26(1) of the Constitution states that the fundamental rights established in the constitution shall not exclude other contained in the laws and applicable rules of international law.

Article 26(2) continues in starting that, constitutional and legal precepts relating to fundamental rights must be interpreted and incorporated in accordance with the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and international treaties on the subject ratified by the Republic of Angola.

In this regard though certain limitations are acceptable under international law, it is clear that such limitations must be both proportional and reasonable and within the scope acceptable within a free and democratic society. The discussion in section 3.6.2 is important because Angola seems to go beyond what is reasonable in limiting the rights of individuals.

4.7 The structuring of political and local power in the Constitution

Under Title IV of the Constitution which sets forth the organisation of State power, Article 105 stipulates the sovereign bodies of such power as: (1) the President of the Republic, (2) the National Assembly and (3) the courts. Chapter 2, section 3, Article 119 stipulates the responsibilities of the President, in particular the powers for appointing members of the judiciary and other organs of State (discussed in detail in Chapter 5) which seem to be incompatible with the nature of a democratic State which is based on the separation of powers and the rule of law.

An additional feature of the 2010 Angolan Constitution is the fact that Angola is a Presidential system which has abolished the direct election of the President, as opposed to the 1992 Constitution which still had such provision. This process was deliberate to further strengthen the power of the President and that of the executive. The constitution-making process which elaborated the Constitution in its Article 109 states that the President is the head of the party list of the political party with most votes during the Parliamentary elections - meaning that elections are no longer held to elect the President.

After the vote which led to the passing of the 2010 Constitution, Fernando Macedo (2010) an Angolan political analyst observed that although the ruling party stated that the new Constitution would 'increase democracy', the abolishing of the Presidential ballot and 'concentrating all the power on the President will do exactly the opposite'. The President within the Constitution is given more constitutional powers than in the previous 1992 Constitution. It is seen in the establishment of the President as both head of State and head of government and commander-in-chief of the Angolan armed forces.

The President's extensive powers of appointment allowed the executive and Presidential power to permeate through Angola's entire institutional framework leaving little if any room for challenging the legal and social ways. As Orre (2010:9) noted, the President can 'appoint and exonerate all key positions in the State apparatus – including the judiciary'. What is more troubling and sheds light into the nature of Presidential and political power in Angola is the 'authority' that the President has in 'emitting laws by decree'. And although such laws can be overturned by Parliament in theory, the President can also 'veto the Parliament's Law' Orre (2010:15).

Marques (2018a) further stressed that Angola's constitutional system 'transfers too much power to the executive, that is, the President and his government'. It creates the context in which JLO could rule with the same tactics as that of Dos Santos due to Angola's constitutional powers which gives all power to the executive through its President. The Constitution, although it seemingly provides for extensive individual rights, it provides very little that is new and which would directly work towards curbing the near 'absolute' power that the executive has in Angola. The MPLA – party-State, as seen through the 1975 Constitution is still very dominant and has a grip on Angolan society and even more so the political system.

Moreover, the constitutional text is essentially a winners Constitution, although demonstrating important features of fundamental rights and freedoms it nevertheless fails to be reflective – in practice of a democratic State. The discussion in section 2.3.1 is important in this regard because it demonstrates a Constitution designed to fit the particular power ambitions of an established elite who would want to maintain their hold on power. The concentration of power within the organ of the executive with very little checks on such power is indicative of a document which fails to live up to real democratic values.

In this regard, the configuration of the power framework is equally important. The discussion in section 2.2.3 and 2.2.4 established that there is a tendency within post-conflict States to concentrate power on the 'leader' through institutional arrangements. These arrangements are those which can be

detrimental towards real political and democratic consolidation – Angola within the 2010 constitution-making process managed to do this effortlessly through former President Dos Santos. However, the danger of such configuration was that it had established an overly centralised State and an even more powerful Presidency.

The discussion in section 2.5.2 is also instructive as it shows how the power dynamics within institutions themselves can lead to institutional instability. In Angola the Constitution has done this effectively by removing points of equilibrium through which such institutions can be balanced, dependent and more importantly, inter-dependent on one another. But what is striking and as discussed in section 2.5.2., is the fact that through the organisation of power in the Constitution, there seems to have been a removal of the element of 'consent' through both the concertation of power within the executive and the President while removing necessary safeguards.

Orre (2013:3) was careful in pointing out that Angola cannot simply be taken as another African State with highly 'personalised politics' which centred around the person of the President, but rather stressed that, although the MPLA was a tool of Dos Santos, and with the election of Joao Lourenco – a similar 'tool'. Dos Santos was also the 'political expression of the elite which formed and grouped under the MPLA both before and after independence'. Such a relationship further influenced such power.

Although Dos Santos has seemingly exited the 'spiders' web of the MPLA's political power, JLO has inherited such power and can also - and just as Dos Santos did, govern Angola using the power structures which were set up by his predecessor. In Angola, although a change of leadership was important, what is even more important and crucial is a change of the political system itself which would work towards diffusing both the formal and informal power structures (informal power structures range from the parallel state and other entrenched systems of patronage) which continue to make the executive an overly centralised and dangerous institution for democracy.

4.7.1 A powerful and dominating executive

The Constitution in its article 120 strongly centralises power in the executive and in particular the president as 'holder of executive power' as per article 120. Otero (2010:12) noted that in order to understand the organisation of political power in Angola one must look at the applicable constitutional principles. He distinguished between (1) organisational principles and the function of political power, and (2) the principles which relate to the holders of political power.

As per the first category, the Constitution as per Article 2 clearly establishes the separation of powers as a fundamental principle, as it regards the second group, which relates to the principle of responsibility (Article 127, 129 and 140), the principle of internal organisation as per Article 120(e), the principle of continuity as per Article 128(n), Article 179 and Article 241. Yet, there seems to be an incompatibility between the organisational power principle and the principle which relates to the holder of executive power. That is regarding issues of accountability and how officeholders exercise their power (the discussion in Chapter 5 will provide more detail on this aspect).

Otero (2010:17) added that by distinguishing between the two organisational principles above, one can see the 'constitutional structures of the Republic of Angola'. As it regards to the actual structuring of political power as per the Constitution, Miranda (2010:21) argued that the centrality of the Angolan President within the political system and the constitutional system 'has been widely recognised by both doctrine and constitutional jurisprudence'. However, despite such doctrine Alexandrino (2013:27) cautioned that, although there is continued talk of 'an Angolan government', in fact, 'there is no government' - based on the fact that there does not exist a 'government, nor as a sovereign organ, nor as a superior organ of public administration'. In such a perspective, the fact that the President is the holder of executive power diverges from the constitutional principles of what constitutes a government.

4.7.2 Parliament and its oversight function

The organic law which approves the rules of the National Assembly establishes the following articles as it regards to the government and executive oversight:

Article 260(1) which deals with the scope of oversight states that, the scope of oversight of the national assembly focuses essentially, on the activity of the executive, of the central, local and public administration and all the entities that use public financial patrimonial resources. Article 260(2) continues in stating that, the courts, the attorney-general, the ombudsman are also subject to oversight by the national assembly, but only with regard to the management of public financial and patrimonial resources.

Article 261(2) adds that questions, hearings interpellations and requests for documents and parliamentary requests to the organs of central, local and autonomous government bodies must be addressed to the ministers of state, ministers, equivalent holders or representatives of the executive with knowledge of the holder of executive power. Article 269(1) continues in stating that the national assembly may ask questions during a parliamentary debate on matters of sectoral policy to the ministers of state and provincial governors, upon request from any parliamentary group.

Article 270(1) states that members of the national assembly may ask any questions to minsters of state, ministers and provincial governors through the president of the a parliamentary group, in terms of the law. Article 270(2) adds that, interpellations must be given prior notice to the respondent, so as to respond within five to fifteen days, to be fixed by the president of the national assembly, in accordance to the complexity of the matter. Article 268 adds that, for the purpose of these rules, the parliamentary hearings are meetings held by parliamentary committees to hear members of the executive, employees or experts of any areas, to clarify issues of interest to the parliamentary work.

The Angolan Constitutional Court's decision in case 319/2013 rendered the above mentioned provisions of the national assembly's organic law unconstitutional which in turn effectively overturned the role of Parliament as an oversight body of the executive. The decision read that: 'to have powers to call on members of the executive would be the same as having the power to call on the President who is the head of government – and that is unacceptable' (Angolan Constitutional Court 2013).

It must however be noted that the 2010 decision by the Constitutional Court was only a formalisation of what had already been the case in Angola since 2010. In 2010 the then president of the National Assembly, Antonio Paulo Kassoma through despatch N: 02177/03GPAN/2010 had temporarily suspended the performance of any action to control and supervise the activities of the executive by parliament[19]. The discussion in section 4.6 stated that the Constitution was approved in 2010. The actions to suspend 'temporarily' the national assembly's role of oversight almost immediately after the passing of the Constitution is very telling of a government that is in complete disregard of democratic and constitutional limits.

In addition, the 2013 Angolan Constitutional Court (2013) failed to take into consideration the questions of democratic legitimacy and the rule of law in the Angolan system of government as discussed in section 4.6.1, 4.6.2 and 4.6.3. Failure to consider such issues are those which pose four fundamental questions: (1) Are Angolan institutions truly representative of democratic values? (2) Are the leaders truly representative of the people? (3) Is the current constitutional and institutional system able to promote and protect human rights? and (4) How can those within the political system be held accountable for their actions?

In addition, the Constitutional Court failed to adequately interpret the Constitution as it related to the nature of democracy and how the law and, in particular, the separation of powers ought to work

[19] http://www.parlamento.ao/#http://www.parlamento.ao/glue/AN_Navigation_home.jsp?

within a democratic system – such failure was even more egregious as it failed to take into consideration the dependent and inter-dependent relationship between Parliament and the executive. The discussion in section 3.6 is import because it identified that in several cases of human rights violations the executive was the primary violator.

The 2013 Constitutional Court (2013) decision undermines not only the spirit of the Constitution but also puts at risk the integrity of democratic governance – which in turn undermines the salient features of the document such as the rule of law and the fundamental principles. The decision also failed to bear in mind the inter-dependent nature of the Constitution – meaning that the Constitution was meant to function in an open society in which citizens played a role in the governance of the State through cooperation and collaboration.

However, the Constitutional Court adopted a strict interpretation of the separation of powers which implies and then breaks away from the idea of a democratic system based on State organs working complimentarily to promote the common good. Such façade of oversight along with the lack of other independent bodies outside the Ministry of the Interior – such as a national and preferably hybrid human rights institution to provide oversight continues to enable human rights violations to continue. For example, while Angola was ratifying the CAT convention and its Optional Protocol, in New York on September 24, 2013, Da Silveira (2014:214) noted that 'the police were torturing Angolan citizens for exercising their right to assembly and peaceful demonstration that is protected by the Constitution of the Republic of Angola'.

The Angolan National Assembly (as will be discussed in Chapter 5) as it is currently structured is incapable of providing oversight. The Constitutional Court's decision to remove limits on executive power seems to be visages of an autocratic principle which has been at the very beginning of constitution-making in Angola. The discussion in Sections 4.4 to 4.4.2 highlights that in Angola an autocratic hold of political power through the executive has been entrenched and has permeated not only through State institutions but seems to be a part of a value system in Angola in which political power is used as a tool of dominance.

4.8 Angolan constitutionalism and its effects on the legal framework and State-society relations in Angola

4.8.1 Politics and violence in Angola

The impact of 'violent conflict and fragility on a country's society, political governance is devastating and encompassing' (Haider 2011:12). section 4.4 gave a brief analysis of how such violence has in the

past affected Angola - Such effects and impacts are visible through the killing of civilians, destroyed public infrastructure, the breakdown of the public sector through sub-standard and at times non-existent public service delivery and widespread human rights violations.

In addition, and despite the surface and visible aspects of violent conflict its effects can also according to Pouligny (2010) be intangible such as 'a lack of confidence and distrust in government, weak social cohesion and the destruction of norms, values, pervasive sense of fear, disempowerment and insecurity, and pessimism about the future'. The discussion in section 4.7.2 is a great example of how lack of confidence, destruction of values and the disempowerment of people can take place and through it undermine State-society relations.

Despite the decolonisation process which swept through Africa in the 1950s and 70s 'several crucial issues remain unresolved making the process of political development, modernisation, and economic growth difficult and slow' (Segell and Vajpeyi 2014:84). Angola is no exception to the deficiencies which were left by colonialism. Moreover, Angola's seemingly immediate transition from a war of liberation to internal armed conflict (civil war) had severely underdeveloped not only the establishment of plural and impartial institutions but to a considerable extent has hampered the development of State-society relations which are based on democratic values and human rights.

The discussions in section 4.3, 4.4.1 painted a picture of a country which was to a large extent unable to build together a singular and agreed upon social and political system which would have as an objective to safeguard the rights of its people. Such inability to agree was further discussed in section 4.4.2 where the tensions of a people can to a boiling point.

The 2010 Constitution was in essence meant to be a new start. It was meant to address the fractured State-society relations caused by decades of civil war and conflict which was apparent during Angola's early State building process as discussed in section 4.4, 4.4.1, 4.4.2, and 4.5.2 by building a State which would place the rights of individuals as the basis of the State, while safeguarding the separation of powers principle, the rule of law principles and checks and balances.

However, in light of the discussion in section 4.7.1 and 4.7.2 the 2010 Constitution does not provide the context in which for which healthy and vibrant state society relations can arise. In addition, the discussion in section 1.1, 1.6, 1.6.1 and 1.6.2 is also indicative of the unhealthy nature of Angola's State-society relations because it shows a State which uses its institutions as an instrument of violence – a State which to a large degree continues to perpetuate a kind of violence discussed in section 4.4.2.

In addition, a further breaking of State society relations is the States inability to provide for its population. The discussion in section 1.6.2 (i) and (ii) is particularly important as it links with the discussion in section 1.5.5 where it argues that corruption and the effects that it has both in society and a population is a human rights violation. The high levels of corruption in Angola further fractures the trust between those that govern people and those that are governed.

The discussion in section 2.5.3 is then important in understanding State-society relations in Angola. Such understanding is based on the fact that the way Angolan institutions function seem more primed towards dominating as opposed to serving the needs of a people. The proposed *state of nature*, existing in post-colonial States as discussed in section 2.5.3 being that of domination seems to be the case in Angola.

In the same vein Roque (2017:5) has argued that Angolan'peacetime politics continue to mirror the priorities of wartime regime survival, further entrenching the existing fault lines while creating other grievances'. In addition, such ideas of wartime survival and survivalist idea has been seen by Roque (2017) as the government wanting to establish a 'durable political order in which the MPLA would remain unchallenged'.. Messiant (2007) adds that the MPLA wanted to create 'an authoritarian hegemonic dispensation adapted to multiparty electoral politics'.

Scholarly researches have highlighted that there seems to be an absence in the balance as it regards to 'nation and State building institution and massive expenditures on arms acquisition which contributed to political instability and conflict' (Besley and Persson 2010:28). The relationship between politics and society is not a novel area of research and has always been a critical point of understanding in the study and analysis of political sciences.

In Angola its centralised nature and focus on power and control inhibits the building of open forms of governance system. The discussion in section 4.4.1, 4.7.1 and 4.7. 2 is evident of such obsession with control – such control then does not allow for the any real system of governance to arise, the discussion in section 2.5.1 is relevant where it argues that liberal States are characterised by open systems of governance with the widest scope of public participation.

Moreover, and in light of such State centralisation and power in Angola, it is worth noting that 'the study of governance, politics, and development has largely been dominated by liberal approaches which envisaged the development of free-market democracies of the Western world' (Nasong'O 2018). Though such a model does have its limitations in understanding the trajectory of post-colonial and post conflict African States such as Angola it does however, have important take-aways which can apply to Angola – especially in explaining State-society relations.

Liberal theories make the assumption that African States would follow the same lines of political development as their counterparts in Europe. Of such theories the most prominent are those of modernisation theory which looks at understanding issues of political order and the trajectory that public policy would follow within African States. For reasons of diving deeper in understanding State society relations in Angola the focus will be more on approaches to political order, in particular the relationship between States and their society and the mechanisms within such society which create a sense of shared values towards the political structure and how such values are influenced not only by the public policy approaches that States choose, but how such institutions are built and work towards building policy which impacts individuals.

Scholars such as Huntington (1968) and Fukuyama (2008) have rightly argued that modernisation theory took a backseat and there was a shift from an optimistic approach to political trajectories towards a more 'pessimistic view' which equated to 'political decay'. In Africa – and by extension, Angola this manifested in what Huntington (1968) argued to be 'conflict and chaos' – the belief that the modernisation process which liberalism extolled did not necessarily contribute to democracy and stability, and as such build positive and stable political cultures but rather it 'engendered political instability' (Nasong'O 2018).

Indeed, and in the case of Angola the way in which institutions have been built over time (section 4.4.1, 3.6.2 (i) and (ii) and 4.7) has influenced State-society relations. Modernisation theory is important because in the case of Angola it helps to identify certain 'crisis' which if properly identified may be useful in understanding and fixing State Society relations in Angola.

Rothchild and Curry (1978) proposed that 'democracy is not necessarily a natural and or direct end product of modernisation, that modernisation States face six major crises which if not dealt with threaten regime collapse and political decay.' Rothchild and Curry (1978:114) further identified the crises as:

> 1. The crisis of identity, embodied in the challenge of crafting a common sense of nationality among ethnically, linguistically, and religiously disparate peoples.
> 2. The crisis of legitimacy, encapsulated in the challenge of creating a broad-based national consensus on the legitimate exercise of political authority.
> 3. The crisis of participation, symbolised by the difficulty in creating an effective government presence throughout the national territory.

4. The crisis of distribution, hinged on the quest for balancing public demands for goods and services with the government's responsibility and capacity to provide public goods.
5. The crisis of integration, embodied by the onerous task of nurturing harmonious relationships among a societies multiple groups and interests vying for access to and control of political processes.
6. The crisis of national survival that is the challenge of maintaining the territorial integrity of the country as constituted at independence.

Political order theorists such as Fukuyama (1992), (2004), (2015) Huntington (1968), (1991) have argued that such crises could be curtailed by political institutionalisation which would ultimately work towards creating conditions for more stable and ordered States. Nasongo'O (2018) argued in the same vein in supporting the 'creation of strong governmental structures capable of maintaining political order and stability and such institutionalisation had to be the top priority of African leaders'. It would perhaps be important to caution that the act of creating such strong institutions does not necessarily mean creating rigid institutions as is the case of Angola, but rather institutions which are accountable and in line with the discussion in section 1.5.3.

The State-society paradigm in Angola is virtually non-existent. There was never a process of constructing an 'image' of the State which took into account the peculiarities and the differences which existed within Angola. One can go as far as arguing that institutions in Angola have never genuinely taken into consideration the delicate balance and nature of State-society and the nexus of such relationship within the overall governance of the State.

The relationship between violence and politics in Angola has been conflictual to say the least. From youth activists charged with rebellion and sedition under Angola's state laws to journalists being silenced and jailed as discussed in section 1.6.1 and 3.6.2 (i) and (ii). Angola has had a long history managing and in more extreme cases banning public expressions. In 2015 as the family members of the 15+2 youths accused with sedition planned a march in Luanda, the Governor of Luanda, while allowing such family members to go to the streets to protest quickly backtracked[20].

The Governor stated that as the protest would move past the Supreme Court and the Attorney General's office 'the relevant authorities may prevent the holding of meetings or protests one hundred meters from sovereign bodies, military camps, prisons or headquarters of political parties'[21] (See

[20] 2015. Quem sao os ativistas presos des 20 de Junho e as acusadas que nao estao detidas. Internet: https://www.esquerda.net/dossier/quem-sao-os-ativistas-presos-desde-20-de-junho-e-acusadas-que-nao-estao-detidas/39200
[21] Canada: Immigration and Refugee Board of Canada, Angola: Treatment of protestors and activists advocating the release of Luaty Beirao, including during involvement in marches in 2015 and 2016; treatment of members and supporters of group REVOS (2015 – October 201, 19 October 2016.

discussion in section 3.6.2 (i)). In addition an although Article 47 of the 2010 Constitution together with IHRL allow for the right to protest Angolan security laws clearly undermine such right as discussed in section 3.6.2 (i).

Interestingly enough, the planned protest action coincided with former President Dos Santos's birthday. Rafael Marques called it a birthday celebration in 'dictatorial style'. It saw heavily armed presidential guard unit in the streets of Luanda in celebration of Dos Santos's 73rd birthday. Shockingly, the presidential unit was in full battle fatigues, carrying heavy weaponry such as RPGs, fully automatic Kalashnikovs and backpacks with mortar shells and grenades.

Looking at such a context very naively, one could say that such a strong military presence was simply to protect the president. However, the reality was far more sinister. The protest action proposed by the mothers and family members of the youth imprisoned for sedition was seen by the government as not only an act of dissent, but an open challenge to the authoritarian nature of the Angolan state. Marques (2015b) asked in reference to such action whether the 'militarisation of the president's birthday bash meant that the regime was fearful?' He further probed by asking whether it was afraid of the 'women who dared to organise a protest on the president's birthday?' Or whether it was just afraid of the people.

The questions are strongly rooted in the nature of the Angolan State as discussed in section 4.4 to section 4.4.2. Such actions of the government display the kind of relationship that the State has with its people - the people are not only subjects of the violations of their rights – but due to the hierarchical and centralised nature of the State the people seem only to be recipients of coercive and brute violence. The imagery of a highly dangerous military unit such as the presidential guard displaying full combat gear, while draped in war paintings, was designed to instil fear in the people, a fear that invokes memories of a much well known massacre conducted by the Angolan government in 1977 as discussed in section 4.4.2.

In July of 2015 Angola's security apparatus once again highlighted the relationship between the State and people. On their way to a political demonstration activists Adao Bunga, Adolfo Campos, Agostinho Epalanga and Laudinda Gouveia were detained by the PNA. Initially, the activists were taken to a police station after which they were removed and then placed in an unmarked vehicle and driven around for several hours. According to interviews conducted by Maka Angola, the activists stated that 'during the journey we were shouting in protest inside the vehicle. We stopped in front of the gate of the Viana prison, awaiting instructions' Marques (2015c). Such occurrences in Angola are well known and still continue to serve to highlight the nature of the State, which seeks to control its people through fear and violence.

Another act of opposition against the overly centralised Angolan State was the so called 'operation thunderclap[22]'. Thunderclap was an armed attack on a prison in north-eastern Angola and resulted in the 'deaths of at least five people'. The attack was organised by a man calling himself 'Commander Thunderclap' who has also said that his actions and those of his comrades was the first shot of what is to be a war of liberation of the Lundas.[23]

This scenario must be put into context. North Lunda, similar that of Cabinda is an oil-rich province in Angola and as Marques (2019) noted, local communities, including those in the province of Lunda have 'long displayed discontent with Angola's central government'. Centralisation is also combined with high levels of corruption as discussed in section 1.6.2 (i) and (ii) where and, according to Marques (2019) 'politicians, generals and foreign interests carved out immense fortunes over decades, the lot of local people has not improved since colonial times'.

The centralised nature of the Angolan State and immense corruption has left a majority of the Angolan people in dire socio-economic conditions leaving little alternative than to turn to violence as a way to escape oppression. It is important to note that the Lunda province is not the only part of Angola that shows discontent towards the Angolan government because of its centralised nature (section 4.7, 4.7.1 and 4.7.2), grand corruption (section 1.6.2 (i) and (ii)), inequality and repression(section 1.1, 1.6, 1.6.1 and 3.6.2 (i) and (ii)). The province of Cabinda has waged a 'war of independence' against Angola since the independence of Angola in 1975. The Angolan government's refusal to reorganise political power and decentralise the State seems to be causing more and more acts of rebellion and defiance.

Regarding the upheaval in the Lundas, and speaking on the condition of anonymity to Maka Angola (2019), an Angolan FAA General confirmed that the government knew of the discontent of the people. He added that the Angolan government had seen a 'sharp' increase in those calling for 'armed

[22] Operation Thunderclap was orchestrated by a man calling himself "Commander Thunderclap" who says it is the opening salvo in a liberation war for the independence of the Lundas. The diamond-rich region comprises twin provinces – North Lunda (Norte) and South Lunda (Sul), largely inhabited by descendants of the Tchokwe nation. It is no stranger to separatism. Local communities have long displayed discontent with Angola's central government. While politicians, generals and foreign interests have carved out immense fortunes over decades, the lot of local people has not improved since colonial times, leading to simmering resentment and a growing appetite for self-rule (Marques 2019).

[23] The Tchokwe live in a large area that extends from the northeastern border of Angola to the south of the country. The Tchokwe emigrated south from central Africa to the area south of the present day Lundas in the 17th century. In the 19th century, after years of fighting, the Tchokwe managed to expand their Lunda territory to the north and the south. As their population increased, the Tchokwe gradually expanded into present day Congo and Zambia (Canada: Immigration and Refugee Board of Canada, *Angola: The Tchokwe ethnic group including dialect, location and political involvement and alliance*, 1 April 1999, AGO31744.E).

uprising in the Lundas over the past ten years. Also that there was a similar level of discontent along the main frontiers (All-Africa 2019).

The discussion in sections 2.2.2 and 2.2.3 is relevant here because it has a direct cause and effect. The Angolan government's acts of violence and repression have the potential, one may argue, to cause people rise up in revolution. In this particular case – the response is not only being framed within the context of violence in the streets per se but rather that framing such violence within the context of 'wars of liberation' and or 'independence' tends to set the premise for a highly dangerous and violent form of conflict.

Today the relationship between politics violence and power is to a certain extent still similar to that discussed in section 4.4 and 4.4.2 – but this time outright authoritarianism is disguised with illiberal democracy. Such form of illiberal democracy was established through a process of State capture which began with the establishment of the 1975 Constitution. Section 4.5.3 described State capture in South Africa. However and in the case of Angola such capturing of the State is also included in the definition provided for by Gevisser (2019). Lugon-Moulin (2010) and February (2019:5) says that 'state capture can be further refined by distinguishing between types of institutions subject to capture (legislature, executive, judiciary, regulatory agencies and public works ministries) and the types of actors actively seeking to capture (large private firms, political leaders, high ranking officials, interest groups)'.

Angola seems to fall under the description provided by Lugon-Moulin (2019). The discussions in sections 1.1 and 1.6.2 (i) and (ii), 4.7, 4.7.1 and 4.7.2 are also examples of how every branch of government has been effectively captured by political actors and public firms. An important aspect of state capture in Angola has been that this arose through force – the Angolan State was captured through the creation of a subjective political culture as discussed in section 2.3.1 and 2.3.2 which inherently undermined the citizenry of the Angolan people.

So while in the case of South Africa state capture was in some ways attempted covertly, in the Angolan case state capture is more blatant where acts, as described in section 1.6.2 (i) ad (ii) were done overtly and with very little complaints from the citizenry whose voice are easily silenced by the State's capacity to use force if it senses it is being questioned or threatened. The discussion in sections 1.1, 3.6.2 (i), (ii), (iii) and 3.6.3 are examples of how the Angolan government has monopolised power by removing political issues from the hands of the citizenry while using both physical and structural violence to quell dissent wherever and however it sees it.

Using modernisation theory as discussed above Angola seems to be going through two particualr crisis: (1) the crisis of legitimacy and (2) the crisis of integration. However, it must be noted that such crises are attributed mainly due to the centralised nature of the Angolan State. Today the majority of Angolans continue to live outside the dimensions of the State. In addition, the lack of connection between those that govern and those that are governed is very much present. Furthermore, many Angolans see the institutions of the State not as organs which work towards the betterment of the general public put instead focus on enriching the already wealthy elites.

4.8.2 The legal framework as enabling subjective political culture

The 2010 Constitution is arguably a great example which perpetuates the idea of the subjective culture in Angola. Essentially, Angola's current institutional framework then perpetuates a similar kind of relationship with citizens as those under colonial rule in how power is directed. One would argue the vertical direction of such power influences how citizens see the State and how they interact with it.

It is a process which Hague and Harrop (2007: 112) identified as 'interesting' in the sense that such a climate requires a kind of 'theatre' from those in power or a form of balancing act which they must use to undermine the establishment of a vibrant and conducive civil society. As elected leaders, they can hardly embrace the anti-democratic strategies associated with authoritarian regimes. Yet, neither can they 'embrace the full western package of liberal democracy, with the emphasis on limited government, powerful institutions and individual rights'.

The overly centralised Angolan State has created a framework for itself which in order for it to function is dependent on very strong bonds of 'loyalty' one based on the vertical structure of political power. Although the democratic process is guaranteed in the Constitution, the organs of State and the vertical distribution of power makes it so that as opposed to the State developing a kind of participant political culture with individuals working within the institutional framework a de facto 'loyalty' mechanism seems to be the case.

Such centralisation of power has been noted by those within the Angolan political system itself in which an advisor to the President of the Republic of Angola, Fernando Pacheco (Pacheco 2019) stated that 'the Angolan State needs to be reformed' prompting the question on how such reforms must be undertaken. He added that the State must be reformed in areas of 'size, quality and decentralisation of political power'. Pacheco concluded in reaffirming that the State was 'extremely centralised with no modern mechanisms for self-evaluation' (Pacheco 2019).

The centralised nature of the Angolan political system due to its structure inherently forces it to adopt a form of 'personalisation' of the political system. This process further influences the form of political culture which develops. O'Donnell (1994:63) argued that such 'tendencies are widespread and beyond the west, whether it is called culture, tradition, or historically structured learning, the plebiscitary and caudillismo tendencies toward delegating democracy are detectable in most Latin American and African societies'.

It is within these forms of illiberal democratic State where personal allegiance to powerful individuals and those in power are vital for survival, 'loyalty to the national leader is presented as an outgrowth of the natural loyalty of the tribe to its leader' (Hague and Harrop 2007:82). The Angolan process is more complex in the sense that since the President has overwhelming power which in turn leaves out any other mechanisms for accountability those at the top of government administration would act in such a way as to gain the favour of the President – this might even mean going against legal principles because there would be a potential reward at the end.

Chabol and Daloz (1999) observed that in Africa most people conceive 'democracy' in terms of personalised politics not in institutionalisation where institutions develop conducive liberal States. Heywood (2000:74) argued that those elected in this form of the political system quickly establish themselves as 'fathers'of the nation, putting on them great responsibility and elevating them towards high levels. In Angola Dos Santos was extolled as 'the architect of Peace' (Dos Santos 2014:5).

Today JLO as the new President has been heralded as the 'ruthless exonerator[24]'. Although this is in the context of JLO's firing and dismissing members of the armed forces and other members of government and State institutions (Vines 2018) – it nevertheless sets a precedent that the President can do anything – this is much more clear because the President is not constrained by institutional limits and aspects of due process. Even more so, this is happening in a context in which the President has almost 'imperial' powers, and as a result, sends a message to all those who might oppose him.

Kamrava (2000:71) identified that in the developing world 'the forging of new political culture is an essential part of the process of nation-building. More specifically, political legitimisation greatly depends on the strength and weakness of cultural values which support political institutions'. It is important because not only does a political culture set forth permissible boundaries on how to engage within the political landscape but also it creates a direct relationship between the governed and those that govern. However the study of political culture has mainly been one which focuses on such culture within liberal States of the west and even when the shift was made to the political culture within

[24] A term by Angolan citizens to describe JLO in the early weeks and months of his government were he fired a number of government officials, ranging from ministers, governors and high ranking members of the armed forces.

illiberal States, the trend has mainly been one which identifies the authoritarian nature of elite culture and henceforth the capture of the State by such elite.

In this regard the 2010 Angolan Constitution fails to steer away from the creation of a political culture which is not focused purely on the President – and the powers of the President. The Constitution, although it gives the outwards look of a liberal document which provides with it the broadest set of rights for the individual, it nevertheless creates a limit in its operation. It creates a form of 'drawback clause' because the way in which power is organised as discussed in section 4.7, 4.7.1 and 4.7.2 gives the impression that such rights can be taken away on the whim of those exercising executive authority.

The South African constitution-making process was interesting and can be contrasted to that of Angola. The transition to democracy from apartheid and the negotiated Constitution understood that executive power was a danger within its context, and the organisation of political power would greatly influence the kind of democracy which would ultimately arise. As a result, it created a Constitution which not only limited executive power but created institutions which would actively make it impossible for the executive to have such a free hand at doing whatever it wanted through excessive presidential powers and lack of oversight of executive action.

The discussion in section 3.2 is important in this regard because States have a responsibility to respect, protect, fulfil and provide redress for human rights violations. These principles can be translated into how States craft their institutions – the South African case is important because looking at the history of apartheid, its negotiated 1996 Constitution was essentiallydesigned to respect the 'fundamental' rights of individuals. The protection measure could be interpreted as to ensure that such 'fundamental' rights protected in the way that the kinds of political structures which led to their violation, are abolished. Fulfil, and even though fundamental rights in South Africa have yet to be fully fulfilled, can be extrapolated to mean that individuals 'fundamental' rights are actively engaged through the widest scope of participation within the political governance architecture and redress to mean that States must actively work towards creating the conditions for greater participation.

One can argue that in the Angolan case, the above was not achieved. The Constitution seemed to have failed to take into consideration the importance of active participation and that providing rights within the constitutional text is not enough if political structures undermine them as per the elaborated power structure within the Constitution. Such an approach in Angola is one which concentrates power to such an extent that it stifles the rise of a political culture in which the State can achieve the principles discussed in section 2.3.2.

Kavanaugh (1972:120) identified that the State has an essential role in internalising 'state-approved' norms and values and such orientations are necessary to support new institutions and new forms of political activity. Moreover, 'political culture helps define political roles, expectations, and objectives, giving contextual coherence to the political system and its relationships with the general population'. Indeed, although the role of the State is vital in assisting in the internalisation of such norms and values, it does not mean that those values and norms would be positive in nature.

In Angola the Constitution has created institutions that are democratic at face value but, in reality, they functioned with an authoritarian blueprint. This has been done through the creation of a culture of fear - which limits the rise of democratic political culture and in extreme cases makes even thinking of dissent, dangerous. Such human rights unalignment has been noted by the Human Rights Council Working Group on the Universal Periodic Review (2014) which noted that, in respect to the question of torture in the Constitution in which there was a lack of 'legislation giving effect to human rights that was recognised in the Constitution and in ratified treaties'. The UPR (2014:7) review continued in noting that while article 36 of the Constitution which prohibits torture and ill treatment, 'such prohibition was yet to be enacted in national law. In addition, provisions in national law which could encourage ill-treatment and torture were yet to be repealed'.

The process of co-option is one which has also been a feature within Angolan society and between communities – such co-option has been seen through the use of security forces using individuals within communities to act as 'spies' and report acts of dissent and or situations in which individuals demonstrate different political opinions which are not of the mainstream political dialogue. Similarly, like in Cuba under the Castros there is a culture of fear and political muzzling which has to a large extent betrayed the ideals of the revolution.

4.9 Angolan constitutionalism, power and politics

The 1975 Constitution was an instrument designed for total power (section 4.4.2). At its very base it was never meant to be one for the people or a vehicle through which people could achieve individual rights and freedoms, but rather it was one which would serve for the domination of the MPLA over Angolans (see section 2.5.3). In many ways this idea of dominance and subjugation influenced Angolan political culture in present-day Angola.

The 1992 Constitution served as the transitionary period in which it would at least, and ideally move Angola away from the one-party State model. The discussion in section 4.5.3 gave a brief overview of the nature of the 1992 Constitution – and how through its articles and principles began the process of cutting up power which in turn dismantled the one-party State. An important aspect of this

constitution-making process was that unlike that of 1975, the 1992 constitution process was a negotiated process which included both the MPL, UNITA and other Angolan societal groups such as churches and civil society.

The discussion in section 4.4.4 and 4.4.5 gave a brief analysis of both peace treaties that ended the Civil War. However, one can also argue that the MOU as per the discussion in section 4.4.5 was perhaps one of the greatest power coups in modern history. The MOU was a result of the killing of Jonas Savimbi in the battlefield which then led to the end of the civil war – the 'coup' in that instance was that UNITA at this period was defeated both, militarily and if one dare say, morally. Under such circumstances the MPLA was in a position to impose whichever kind of peace it wished, it held a form of power which would allow it to mould Angolan society and politics whichever way it wished, and it did.

The discussion in section 4.6 gave an analysis of the 2010 Constitution making-process. Although a number of political analysts such as Luacuti (2014) argued that the 2010 constitution-making process was a continuation of the constitution-making process of 1992. Thomashausen (2010:17) added that, the 2010 Constitution concluded 'one of the most drawn out and complex constitution making battles in our modern times'. Despite such drawn out process one can argue that, and in light of how political power is organized in the constitutional text that the MPLA drafted a constitution of power – similar to that of 1975 and placed power as its premise and how such power was to be used.

The discussion in section 4.7 is indicative of such power structure and how the method that Angolan constitutional drafters chose to structure power was still indicative of a preference to undermine individual and fundamental rights while focusing more in individual political rights. Borrowing from international relations 'balance of power theory' one can argue that, and within the Angolan context the configuration of power as seen through the Constitution was a way in which the MPLA could secure and ensure its survival by preventing any other group and or individual from gaining power.

Constitutionalism in Angola at its very core seems to have been one in which groups have used it to achieve power and control. The discussion in section 2.2.4 regarding the political settlement framework is important because it helps to shed light on how the MPLA used its advantage not only immediately after independence to establish a one party State, but also how the MPLA's objective since independence has been the establishment of creating a political system which dominates the political system as opposed to one in which political power is shared.

4.9.1 The Constitution as a locus of corruption

The failure of the Constitution to provide any real mechanisms for oversight – both of executive power and other organs of State – together with public officials is a travesty which has not only taken away funds from various programs such as education, healthcare and infrastructure just to mention a few but has had a direct impact on people's lives. Whether a country has the ability to care for its sick impacts directly on whether such individuals live or die. Whether a State can educate and train its people in various fields such as education, agriculture, and the sciences has an equal impact on people.

Angola has a great variety of natural resources. However, the levels of corruption and inequality continue to plague the country and its governance architecture since the end of the civil war in 2002. Bassett, Landau and Glandorf (2020:3) have noted that, 'economic inequality is rife in Angola' and 'despite being one of the globe's top 15 oil-exporting nations, almost 50% of Angola's population lives on less than 2 dollars per day'. In addition, The 2020 Human Development Index (2020:7) ranks Angola 148 out of 186. Moreover, Tvedten, Lazaro, Jul-Larsen and Agostinho (2018:35) have noted that poverty is widespread, and 'gross inequality is a chronic feature of the country's social characteristics and visual appearance'. Both political and economic corruption have been rife.

Section 1.5.5 has proposed that there has been a certain level of timidity in placing corruption as a violation of human rights. This thesis is not timid and also advocates that acts of grand corruption are a violation of human rights. In Angola government corruption can arguably be said to be one of the worst forms of violence that the government has made towards its people. Such corruption is arguably a form of violence because the syphoning of billions of dollars by Angolan politicians – through the parallel institutions and plain robbery has created a societal context in which Angolans are unable to provide for the most basic of necessities allowing them to dignified lives.

The discussion in section 2.2.3 is then relevant when looking at grand corruption in Angola and how the constitution fails to provide the necessary mechanisms to stop it. Using the Gurr's (1968) theory of deprivation as discussed in section 2.2.3 corruption creates a form of 'deprivation' within the population of a country which in turn turns to 'anger' and 'frustration the results of such variables usually being violence. Moreover, and as per the discussion in section 2.2.4 Johnsons theory of equilibrium can be used in Angola – while the theory argues that equilibrium in society would work towards curbing conflict, there is no equilibrium in the Angolan context. As a result creating the perfect conditions for conflict.

The discussion in section 3.3 is also important as it argues that States have a duty to prevent deprivation. Within the economic and corruption context the Angolan government through acts of corruption is actively ensuring that individuals are deprived. The African Centre for Strategic Studies (ACSS 2020) has noted that 'Angola's corruption problem is rooted in state capture'. The ACSS stressed that the 'looting of the public purse has become part and parcel of how the government machinery functions'. A report by the African Centre for Strategic Studies found that the state capture of key Angolan institutions is a 'systematic characteristic of the unreformed, neo-one-party state reconfigured in the 1990s into a dominant party state'(ACSS 2020:5).

Onishi (2017) stated that 'unlike many other African nations emerging from war, Angola had more than enough money to rebuild on its own terms'. However, high levels of government corruption – most of it directed by high government officials had made it impossible for the Angolan State to function properly. Such corruption has affected vital areas of State functioning such as failure to provide water and sanitation facilities, adequate healthcare services, and education amongst others.

The appointment of Filomeno Dos Santos as the head of the Angolan sovereign fund as discussed in section 1.6.2 resulted in the loss of half a billion dollars of public funds. It serves to highlight this idea of the 'transparency of looting' as seen in Angola (Marques 2018b). Such corruption is exacerbated due to the high levels of inequality in Angola. Kolstad, Wiig, and Chivunda (2017:3) noted that the high levels of inequality between households and between regions presents challenges for 'poverty reduction and may undermine democratisation and increase the level of social conflict'.

The *Instituto Nacional de Estatisticas* (2014) (National Institute of Statistics) observed that although Angola is an oil-rich country, there are significantly high levels of poverty. The official poverty records stood at '36.6 per cent' there being '18,7 per cent' in urban areas and 58.3 per cent' at the rural areas. Tvedten, Lazaro, Jul-Larson and Agostinho (2018:14) added that such 'figures are too low and conceal considerable variations between and within different provinces and urban and rural social formations'.

In a study of the levels of inequality and corruption in Angola, Kolstad, Wiig, and Chivunda (2017:2) conducted a study of 316 economic students at the Catholic University of Angola and noted that 98 per cent of the students agreed with the statement that 'inequality is a large problem in Angola'. The African Development Bank in its analysis of Angola noted that Angola's economic outlook is linked to addressing imbalances while 'fostering governance, sustainable and inclusive growth' (ADB 2018).

Tvedten, Lazaro, Jul-Larson and Agostinho (2018:33) concluded that while the city offers opportunities for the few, people in the shanty towns are effectively 'trapped in poverty through

limited income opportunities and material deficiencies, disempowerment in relation to institutions of the State and society, and vulnerability to adverse shocks' which can range to social and violent conflict.

The failure of the Angolan Constitution to create avenues through which accountability measures are in place – while also allowing the nature of such power to be so absolute creates these avenues of abuse.

4.9.2 The Constitution and its effects on power in Angola

The effects of constitutionalism on power in Angola have resulted in a society in which power is the only real commodity which matters – not human rights nor the rule of law. The greatest example of such a statement is the organization of power seen in the Constitution (sections 4.7, 4.7.1 and 4.7.2).

The way political power is organized in Angola through a concentration of power in the executive is dangerous. It creates a context in which political culture is based not on representation and political plurality and participation but on a top down command structure mostly seen through parochial and subjective political culture (see section 2.3.1). The current political culture does not allow for the development of a real participatory culture to develop which would aid in the development of a civic culture which is important within a democratic State.

Political power in Angola has been honed to the extent of it being a sharp instrument which is used arbitrarily. Such instrument is then one which significantly undermines social stability and with it perpetuates the idea of liberation movements perpetuating a kind of political system similar to those under colonialism and at times being even more brutal. The discussions in sections 1.1, 1.6 and 1.6.1 are direct examples of the dangers of unchecked power in Angola. Such dangers have shown that the population are at the mercy of. A government which is both unafraid to demonstrate such power but also one which does so with extreme violence.

Such power allowed has allowed for the public looting of Angola's monetary resources. In addition, such power is one which allowed for the complete of the Angolan State. The vast powers held by the president of the republic given to him by the Constitution is perhaps best described in the words attributed to have been said by king Louis XIV in which he was quoted to have said, 'L'etat c'est moi' – which translates to 'I am the State'. Though historians argue whether it was in fact Louis XIV who uttered such words, one can place the Angolan reality in the same category and how the holder of executive power can in many ways say 'I am the State' due to the power that they have through the Constitution.

4.9.3 The Constitution and its effects on politics in Angola

Andrew Heywood (2007:86) defines politics as 'an activity through which we preserve and amend the general rules under which we live in'. Using this definition, one can argue that politics is simply a process of changing laws and regulations, in this way politics does not have to be a process in which governments respect human rights, the rule of law or even safeguard individuals. Using this definition politics is simply an activity.

In this regard the 2010 Constitution, one would argue created a form of a political system in which the rule of law and the idea of living in a democratic State is not important – but rather and as a result of the current nature of constitutionalism, and in particular, the concentration of power the political process tends to become cutthroat which makes it impossible for positive international accepted human rights standards be developed.

Yet despite such concentration of power, the Constitution was heralded by the MPLA controlled National Assembly as a 'day of victory and happiness' Fernando da Piedade Dias dos Santos (2010:pa4). Bornito de Sousa (2019:pa3), Chairman of the CC commented that the Constitution was a 'reflection of equality, of good sense, and the true representation of the electorate,' on the other side of the political spectrum UNITA members such as Raul Danda (2012) stated that the Constitution was 'a complete fraud'. He added that his party was wearing black 'because it's like going to the graveyard to bury democracy'. UNITA's Parliamentary leader, at the time, Alda Juliana Paulo Sachiambo added to the criticism in stating that the Constitution gave excessive executive power.

In such a context citizens are removed as variables within the political process and as such politics becomes simply a form of survival and competition between who has it, who wants it and how long they can hold on to it - and as a result those that have it, in particular, the individual that holds the executive power can then create a system which would ensure that they hold onto it by whichever means necessary.

Indeed, this is a grim picture of politics in Angola. Yet, the Constitution through the nature of the State makes it so. As power is concentrated politics becomes simply a power struggle between individuals who further exploit the State as much as possible while leaving out the average citizen. The problem with such a context is that those who are left out of the political system tend to eventually rebel, as was seen through the Arab Spring and countless other contexts. The failure of the State through its institutions to be inclusive, and the failure of the State to respond to the wider populace creates a context in which the structural violence imposed on them would then lead to physical violence from the population who fight towards changing the unjust and repressive system.

Such repressive system is one which perpetuates in Angola. One cannot say what they think without hearing that knock on the door or being dragged away for expressing political opinions which are contrary to those in power. It is a political system in which individuals are unable to fully express and bring to light the full measure of their intellectual capabilities to either engage in economic activity due to blockages in the system or without paying some kind of bribe.

4.10 Constitutional change and its effect on governance, power and politics in Angola

4.10.1 Constitutional change and governance

(i) Regulatory governance

In recent years, good governance has been seen as an important factor that States can employ to not only regulate and normalise State institutions but also as a strategy for which politicians can use to better structure State-society relations. Marcolino Moco (2017), a former Prime Minister of Angola observed that the level of centralisation which the Angolan State has adopted through the organisation of power in the Constitution makes the 'institutions of State work from a single central command'. It is important because it is a structure which affects power within the governance architecture of the State and which permeates throughout society. In the same vein, recent scholars of institutional governance have also focused significantly on the significance of 'institutional design and culture for effective and legitimate regulation' (Lobel 2015:238).

Such level of centralisation as discussed in section 4.7 creates stagnation in the functioning of the State itself. The overly centralised Angolan State creates blockages in governance because – such blockages further make it so that services are not properly and adequately provided for the people, it is also a form of centralisation which promotes corruption within provincial governance architectures while further promoting a culture of clientelism and as it is famously known in Angolan, the culture of *Gazzoza*[25].

The logic with new governance approaches is to counter the age-old command structures that Angola institutionalised within its governance architecture. The Angolan reality is one in which the relationship between State, society and private institutions had been characterised not by mutual understanding, but rather with tension and at times distrust. Abel Chivukuku (TPA 2016), former President of the Angolan political party CASA-CE noted such tension in observing that what is

[25] A term used in Angola for corruption. '*Gazzoza*' is therefore, the act of bribing an official – through the offering of *Gazzoza* which means, 'cooldrink'.

troublesome is the 'inadequate structure of government' and the 'failure in placing the individual at the centre of policymaking' which inherently creates the conditions for such tension.

The lack of openness within such a system perpetuates the maintenance of a closed system of governance in which the commanding nature of the State and institutions does not create the spaces for active participation. Creating a more flexible system through new governance structures is vital. Levi-Faur (2005:18) observed that new governance structures within such contexts then 'offers a vision of law and policy that draws on the comparative strengths of both private and public stakeholders and highlights the multiple ways in which the various actors in society contribute to the acts of ordering social fields'. The 2010 Constitution, in its current form, creates a severe bottleneck in Angola's governance architecture because it perpetuates not only an overly centralised State but that such centralisation is trickled down to governing.

The Angolan reality then requires looking not only on how to make sure that governance structures are more flexible, but also how better governance through a more adequate and flexible institutional design based on the rule of law can promote legitimate, effective, and active participation and how such new system can promote better state-society relations.

In his book, *The Renew Deal: The Fall of Regulation and The Rise of Governance*, Lobel (2004) described governance models of regulation as consisting of four approaches: (1) Increased participation, (2) Decentralisation, (3) Integration of policy domains, and (4) Collaborative governance and institutional reform.

Lobel's (2004:376) approach to governance provides a foundational basis under which Angola can strive towards moving towards more open and flexible governance architectures. Although this shift of governance undoubtedly requires laws for them to be achieved, UNITA's Vice President Danda (2018a) observed a phenomenon in Angola that 'it is not necessarily the absence of laws, but rather, following such laws' along with how the supreme law of the State is organised. This can be taken to mean that there is an important need for the Constitution to be amended. Such amendments are those which require that the organisation of power principle be restructured to prevent violent conflict and allow the fundamental principles to be more in line with the rule of law principle – of which both principles seem to be undermining to the structuring of political power.

The above principles thus provide a shift towards a form of governance that does not only focus on changing the Angolan constitutional legal framework but also towards creating the conditions for which there is a relationship between the State, society, private and public institutions and most importantly how these three variables then all contribute in building a progressive governance system.

(ii) Increased participation and transparency

An essential aspect of the participatory approach is that a shift towards new models of governance 'increase participation of non-state actors because it challenges the conventional assumptions that the regulatory policymaking powers of administrative agencies are based on their superior knowledge, information, and expertise' (Lobel 2004:379). This aspect of participation is, therefore, not necessarily merely through the act of voting, but also leveraging other forms of knowledge within the governance architecture of the State.

It then serves a critical perspective within the Angolan case. Dos Santos had for the better part of three decades been described as 'father of the nation' inherently implying that he alone had the authority, knowledge, information and expertise to govern and as subjects, the people's only real function was to follow. Such participation, therefore, requires what Vice-President of UNITA Danda (2018) noted as required from the new Angolan President Joao Lourenco as needing to open 'dialogue with the population'. However, such participation must not only be in the area of allowing people to discuss politics more openly, but there must be an open discussion of the nature of power within Angolan constitutionalism while at the same time also creating a political system which would inherently be more open and less rigid.

Such forms of participation in Angola would then inherently be the active expansion of democratic and citizen domains which would lead towards the eventual reconstructing and reconstituting notions of the citizenry in Angola. The Angolan reality, both its social, political and economic dimensions have been shaped by 'exclusionary' forms of politics and processes. Saward and Isin (2013:68) observed that it is common when discussing citizenship 'to ask about its extent, who is included and who is excluded'. Such an idea of exclusion then speaks directly to the Constitution, which tends to be exclusionary in nature in the way in which political power is organised.

Looking at the participation of citizens and how such participation helps shape the form of political society which initially emerges, Isin and Turner (2002:103) observed that citizens 'are made, not born and how they are made, what casts are used to mould them in obvious and non-obvious ways, ought not to be overlooked'. In essence, what this means is that governance, in many ways, shapes citizenry behaviour. Looking at the Angolan reality, and how the citizenry has been 'moulded' one can argue that such moulding has been based on depriving the citizenry of their rights through the creation of an overall governance structure which has rather opted for governing the people, not with the people. Paraphrasing Abraham Lincoln, a government should be formed 'of the people, by the people and for the people' as opposed to, a government for the people, denying them their role to play in the governance of the State and its institutions which might then lead to abuses.

Participation must not only be looked at from the point of 'participation' for participation sake but rather that there is a form of active participation. This idea of active participation can be said to mean by way of actively decentralising the Angolan State through autonomous arrangements which would be constitutionally mandated and structured. No form of participation can be achieved without first establishing a governance structure which functions within an inclusive legal and constitutional framework along with providing, promoting and protecting the full human rights of persons.

Such active participation is then actively linked as described above to the overall governance structure, but perhaps what is also important is, and especially within the case of Angola - the creation of policies which aim to involve citizens while promoting civic engagement and in the long run produce better policies. However, we have also seen instances where the State has continued to deny a basic tenet of citizenry, which is the participation of such citizens within politics and choice of policy. The violence which followed the Arab Spring can be directly viewed from the vantage point of inflexible institutions which have either denied fundamental human rights to their people and oppressed them together with stifling forms of redress.

The deliberative form of democracy is an avenue which seeks to highlight the importance of not only citizenry participation but also, the importance of 'deliberation' as the avenue through which participation can take place. Christiano (1997:245) observed that citizens are found mainly in forums, reiterating that citizens come together in and compose various forums to discuss ideas to become informed and 'make decisions which reflect more than the narrow self-interest of non-deliberative preferences'.

Also, since citizens create all forms of associations, they are in a better position to engage and discuss. It works towards creating the necessary spaces where various opinions can be heard and discussed, Angola failed towards this achievement, the clamping down of people in the exercise of their free speech and right to assembly has led to the shrinking of such spaces, and in more extreme forms their vanishing.

(iii) Integration of policy domains

Public policy affects every individual living within a particular jurisdiction. One can ask how such policies and laws are made, and the direct and or indirect impact which they might have on the individual. The Angolan policy spectrum – starting from the nature of the Constitution and its centralised feature is vital in understanding institutional repression, and in particular, asking the question 'what role do people play in making such rules and laws?'.

Decentralisation is vital for better policy integration in Angola. It can work in two fundamental ways: (1) decentralisation at both the local and provincial level would allow for local constituencies to better adapt laws which work better for their local peculiarities which in turn, would ease the tension between the overall and near-absolute power of the centralised State which within its policy-making process can be understood as imposing. (2) issues and agenda-setting can be better established first at the local level and then at the provincial level as opposed to simply being delegated by an overall central authority which makes laws for an entire territory which in the case of Angola has not been fully explored.

Lobel (2004:407) observed that the decentralisation process is best identified as stimulating a movement 'downward, and outward, transferring responsibilities to provincial and localities'. Public policy is inherently to make people's lives better, it is the relationship between the media, public service, and NGOs inherently have a say – yet, what public policy-making in Angola seems to forget is the 'impact' or rather, how it is that such policies then impact the everyday individual. Under the current structure of governance that Angola has, public policymaking re-establishes what Bayart (1989), Bayart (2009) and Reno (2001) observed as African States' 'appropriation of colonial institutions by local institutions' – and a variant of such appropriation is the use of repressive policies.

It is therefore vital to understand that policy matters. It regulates every aspect of society. How the government treat people, how the economy can better be structured. Public policy shapes both public and private spheres of life and, with such influence, it is then not surprising that integrating policy is essentially vital for social stability and cohesion. Angola has seen such a relationship between public policy and social reality, or rather, how within the Angolan context, in particular, the policies which have been put forth are incompatible with the realities of Angola. Such incompatibility with public policy was seen through a public policy which undermines human rights (as will be discussed in Chapter 5).

Such realities have been seen through the actions of citizens in trying to speak out, reverse and change such policies. It is important to know that whereas in places like Libya, Egypt and other places which were swept by the Arab Spring, the public policy decisions of their leaders led to violence, the Angolan response has been different, but this is not to say that violence in the Angolan reality is inconceivable, but simply that such violence and or social conflict can be delayed.

As we all live within communities and societies, we inherently live under a set of institutions that establish the terms of living within such societies and communities. Yet, equally important is the 'why' and the 'how'. Why is it that institutions function the way they do and whether they function against citizen interest and wellbeing, we can then ask 'how' such institutions can be changed.

Essentially, public policy in many ways is a double-edged sword, it can either transform State institutions into instruments of the political elite, as is arguably the case of Angola, or instead transform the State through its institutions. The integration of public policy with the overall restructuring of the governance architecture can serve its real purpose of functioning as an impartial arbiter amongst the various societal actors.

The literature on the integration of public domains is important for Angola. Lobel's (2004) argument above focused on a process in which decentralisation would work towards 'cutting up power', this process of cutting up power is directly linked to the Constitution – and the need to within the Constitution, reconfigure political power, and with it begins the process of decentralising the State.

Such policy integration in Angola would allow for the citizenry to be involved in the political process. Reno and Bayerts's discussion on how the post-colonial State appropriated the colonial State is important. Indeed, this was the case in Angola. However, decentralisation and then integrating policy domains would also work towards tackling societal issues – because it creates a sense of 'ownership'. Members of various communities get the opportunity to not only propose ideas on the peculiarities of their circumstances but also their centres of power are closer to home.

(iv) Collaborative governance

Hagman and Peclard (2011:773) stressed that a part of the literature on the State in Africa still assumes that 'there is a neat differentiation between the realm of the State and the realm of society'. Such differentiation can be seen within the Angolan context as well where the State and society seem to be two diverging ideas on how both parts should work (the society on the one hand comprised of the people who want the State to function for the benefit of the entire society and the 'State' – with those in charge of the State, who seem to work only for their self-interest).

Another vital factor which plays within the institutional and governance architecture of the Angolan State is the overall institutional design of the State and more important as identified by Cutolo and Geschiere (2008), is the 'balance of power between the 'centre' of the State and its 'peripheries'. This imbalance between the centre and the peripheries is dangerous because it leaves those outside the centres of power with little to no way of contributing towards the overall governance of the State. These people see themselves as being on the fringes of society who benefit nothing from the State. It is this unbalance, one would argue which is very similar to those found within one-party States that inherently sees the citizenry as mere tools and the State and its institutions as mere instruments. Hagman and Peclard (2011) identified the overly-centralised Angolan State as dangerous since such 'centralisation is combined with authoritarianism'.

Collaborative governance ideally forms a relationship which would exist under political conditions in which there is inclusive participation of citizens within society, but even more so, it is the forms of collaboration which take place within and between the different levels of government, both being horizontal and vertical relationships. Innes and Booher (1999:416), and Newman (2004) see collaborative governance as representing 'a different style of democratic engagement with citizens, one that can rejuvenate trust in government by enhancing public participation and deliberation'.

Ansell (2013:547) noted that collaborative governance can further play a huge role in 'reconstructing democracy along collaborative lines' such evidence shows that 'collaborative governance can be an effective strategy to address the challenges for democracy imposed by contemporary society' (Ansell 2013:547). The idea is that by building more significant relationships between the various stakeholders in Angolan society with government, such collaboration has the potential to create positive societal outcomes while increasing the capacity of the various communities to work together with States and their institutions for better cohesion.

For the past few years, State-society relations in Angola has taken in many ways a form of 'adversarial' interaction. Within the collaborative governance framework, such form of 'adversarial' interaction is seen mostly within a democratic system which is portrayed within plural democratic system representative by 'majoritarian' politics and institutions which rely on a functioning legal system and strong oversight mechanisms. However, the Angolan system does not necessarily represent the latter form, but rather the State seems to be in conflict with society due to, one would argue the inflexibility of political institutions under which society ultimate lives.

On the other hand, moving away from the 'adversarial' form of interaction, collaborative governance by way of expanding State institutions together with creating more decentralised and autonomous territorial structures would also focus on enhancing the State's 'managerial' features as a way to enhance democratic reconstruction and institutional balance in Angola. Ansell (2013:549) observed that 'managerialism then refers to an emphasis on the primacy of experts and expertise in decision-making, to the attempt to differentiate policy-making from the administration, and to the goal of keeping agencies free from political influence and corruption'. This is particularly important in Angola, more so in light of the discussion in section 1.6.2 and how in Angola, there is a need to cut up power and decision-making processes away from the executive.

The objective of both the 'adversarial' and 'managerial' approach in Angola through such collaborative governance would then work towards 'depoliticising' institutions and agencies of the State. It is through this form of collaborative governance that brings about 'consensus' and the ability

for 'compromise' within the various levels of State governance. Such an approach is contrary to the current nature of politics in Angola, which contributes towards the creation of conflict.

One can also argue that the most important facet of collaborative governance is the role that it would play within the ability of Angolan State institutions to amicably resolve conflict in society. Wondelleck, Manring and Crowfoot (1996:252) observed that one view of collaborative governance 'sees it as an extension of alternative dispute resolution' (ADR). However, whereas ADR is seen more as focusing according to what Fisher and Ury (1991) observed as getting a 'yes' to move forward, Freeman and Langbein (2000) stated that collaborative governance is somewhat more inclusive because it does not only focus on engaging with the conflicting parties, but instead goes further in engaging others who are not part of the conflict.

Weber, Lovitch and Gaffeney (2005:680) have gone further in observing that collaborative governance while transforming the nature of conflict and inherently creating the conditions for more inclusive societies and ultimately inclusive state-society relations. It also serves as a form of 'democratic problem solving' which reconstructs managerialism by engaging the broader public in the policy-making process. In connecting collaborative governance with the overall State government their relationship with citizens, in particular. Bryson, Lokkesmore and Cunninham (2002:571) stated that such 'democratic problem solving' then works towards and through collaboration the ability of individuals to better see and understand 'complex' public problems in doing so, 'highlighting the need to bring governments, citizens, and stakeholders together to engage in creative problem-solving'.

Within the Angolan context, this is particularly important towards building a participatory political culture based on inclusion while breaking up the patterns of fear and subversion, which has been a part of Angolan history. In the same vein collaborative governance is then also according to Leach, Pelkey and Sabatier (2002) a 'partnership', which can be formed between State institutions and other public institutions along with private institutions and or corporations. Huxham and Vangen (2000:348), have seen such partnership as playing a significant role in 'expanding public engagement in policy-making'.

A more relevant strand of collaborative governance and in particular much relevant to the subject matter of this thesis, is what Dorf and Sabel (1998:268) and Sabel and Zeitlin (2008), have described as 'democratic experimentalism' and 'empowered participatory governance'. It is to expand not only spaces of public participation in Angola but going further within the governance architectures of the State itself and as Fung, Wright and Abers (2003:214), Fung (2004) 'envisions a direct and expanded role for citizen's deliberation in administration and policymaking. Also, what sets them apart from other discussions is their attention to 'accountability'.

Such direct and expanded role within the Angolan context can be seen through the creation of more points of citizen participation within the political system. The Angolan Constitution creates the conditions for decentralisation which would, in turn create these avenues for collaboration and participation – both at the local and provincial level. Collaborative governance in Angola may play a crucial role in better bringing together the various segments of society to better integrate those parts of society with the State.

Most important questions in society are linked to State institutions and the role that such institutions play within society. Knight (1992:103) used a critical approach to understanding institutions and institutionalism in arguing that 'institutional change allows us to determine whether our existing institutions further those goals by which they are usually justified'. In Angola, the question which can be asked through the discussions in section 4.7 and 4.7.1 is whether the Constitution through its organisation of power is in line with democratic principles while also creating the environment for the widest participation of the individual while promoting democratic governance based on the rule of law and separation of powers. In such a way, by understanding how institutions have evolved, they then, in fact, provide us with the ability to understanding their evolution and then eventually how to reform them.

Angola is a peculiar case because at face value the constitutional framework seems to create a justification for why its institutions were created – that being the establishment of a democratic State based on the rule of law and democratic principles, but rather if one looks closer at the constitutional design and in particular how power is organised and centralised, one can see that, in reality the structures for which such principles would flourish are not able to be realised. Collaborative governance is then a small piece through which Angolan institutions can better be reformed to adjust to the needs of society, and an instrument which can be used and add to the toolkit of institutions to better provide for and create ideal conditions for open societies.

4.11 Conclusion

The Chapter above established that after the end of colonialism in Angola, there had been various attempts to establish a viable State. This first flirtation with State-building was attempted through the violent usurping of political power by the MPLA which in turn established a strong and violent authoritarian State with the adoption of a Marxist-Leninist constitution and the abolishing of all other forms of political organisations in the country.

The strengthening of executive power in the hands of the president and, in particular, removing constitutional safeguards as discussed in section 4.5.2 was indicative of a constitution-making process which would have ripple effects within the nature of Angolan political power for decades to come. The subsequent civil war which was in large part due to the nature of the authoritarian Angolan State led to a negotiated settlement – as seen through the establishment of the 1992 Constitution. This Constitution paved the way towards dismantling Angola's one-party authoritarian regime.

The 1992 Constitution established a framework for multi-party elections, the establishment of fundamental rights (though limited) while also establishing the principle of the separation of powers between the three branches of government – a significant achievement from the Constitution of 1975. All these additions were, at least in theory, all to be based through the rule of law which was thought to be safeguarded by the separation of powers.

The Constitution was essentially a continuation of the constitution-making process of 1992. However, as opposed to creating a greater context for the protection of rights, the Constitution, very much like that of 1975 centralised power in the hands of the executive through the President. Furthermore, it created a context in which oversight of the executive and the President was removed – such an approach is one which significantly influenced power and politics in Angola.

As a result of Angola's constitution-making process stemming from 1975 to 2010, political power is one which as opposed to being horizontal in nature with various checks on executive power, power is rather vertical. The powers of the President and those of the auxiliary bodies are dangerous as it creates a system in which the President controls every aspect of the State, through the appointments of all senior officials within the State apparatus to the appointment of provincial governors and deputy governors (discussed in Chapter 5).

Such powers then also affect society negatively. The President's wide and broad powers affect society negatively in the form that – the holder of presidential and executive power can enact laws which undermine human rights and as a result create the conditions for institutions to commit violence against citizens – a form of violence that can be both 'physical' and 'structural'.

Politically, the constitutional process, and, in particular, the Constitution creates the conditions in which organs of State such as the National Assembly and the judiciary are subservient to executive power. It undermines the democratic principle of the State and creates conditions in which individuals are subjects of State violence.

As this chapter concludes and with the analysis of the constitution-making process seen in Angola with particular focus on the most recent, the Constitution, paraphrasing Benjamin Franklin's response on whether the drafters of the US Constitution provided the American people with a monarchy or a republic. One can safely ask in the Angolan context what form of government the 2010 Angolan constitutional drafters have provided – and the answer would be that of a monarchial form of government.

CHAPTER FIVE: The Angolan State apparatus and violence

5.1 Introduction

This chapter has three objectives: (1) the chapter will provide an analysis of Angola's executive branch. This analysis will be conducted through looking at the nature of the executive by looking at the structure of the executive and how it works in practice. As part of such analysis the super-presidentialist model of governance that the executive uses will also be analysed and such model influences violence (2) the chapter will also analyse the nature of the legislative branch and how it is overshadowed by an extremely heavy executive and (3) the chapter will analyse the Angolan courts and how they function in light of an extremely heavy executive and weak parliament.

The discussions in sections 4.4, 4.4.1, 4.4.2 and 4.7 are particularly important in this discussion of Angola's State institutions. While the discussion in section 4.5.5 seemed to have created a context for which Angola would work towards building democratic institutions – an idea strengthened by the establishment of the 2010 Constitution as discussed in section 4.6, 4.6.1 and 4.6.2, which in the end was not the case. The super-presidentialist model adopted in Angola together with the overly centralised State undermined any real democratic gains.

The discussion in section 4.7 is particularly important because the Constitution was to serve as a catalyst for real democratic gains. The discussion in section 4.7 seen through the structuring of political power has created a context in which the Angolan political system – at least through the wielding of power seems to be similar to the power structure which was established through the Constitution of 1975 as discussed in sections 4.4, 4.4.1 and 4.4.2.

This chapter will then provide an analysis of Angola's three branches of government in light of the discussions in sections 4.4, 4.5, 4.6, 4.7, 4.8, 4.9 and 4.10.

5.1.1 Forms of executives

The executive branch systems can be divided into three parts: (1) the Presidential system which can be found in countries like the USA, (2) the Parliamentary system, or also known as the cabinet system can be found in the United Kingdom and other 'commonwealth' countries and (3) the so-called hybrid systems which at times combine the features of a Presidential system and the Parliamentary system such as in France.

What is important within the executive branches of any government is the level of responsibility that they have in carrying out duties and responsibilities, approving laws and setting forth the national agenda amongst others. Macridis (1986:26) identified the executive as the command structure of the government. They 'issue commands in the form of laws, executive orders, rules, and regulations. They have the power to send the army abroad, use force at home, to tax, and to spend money'.

The powers that executives hold in general are not only excessive but in many ways and as seen throughout so many contexts can pose a severe threat to individual rights and liberties. The discussion in section 4.7 highlights the extent to which the Angolan Constitution has structured political power around the executive. The discussion in section 3.6.2 (i) and (ii) highlighted how an overly strong executive could get away with establishing 'unconstitutional' legislation to safeguard the interests of a system or certain individuals. It is therefore important that to promote and protect human rights there must not only be strong mechanisms of accountability but also rules which undermine the 'commanding' nature of the executive. 'Liberty' as Hobbes (1651) wrote, 'is power cut up in pieces'.

Fix-Fierro and Salazar-Ugarte (2012:649) in speaking of Presidential systems observed that it is a form of government 'in a Republican State and an alternative to monarchy'. In this sense, a Presidential system depending on the perspective from which one looks at is one in which the individual is both the head of State and head of government. Fix-Fierro and Salazar-Ugarte (2012) added that whenever there is a separation between those two roles, the foundation is set for 'either a Constitutional monarchy or a Parliamentary government'.

The basis of presidentialism is then based on the denial of 'monarchy' and premised on a strong separation of powers with extensive and elaborate checks and balances. As discussed in section 4.6 such separation of powers within the Angolan Presidential model is virtually non-existent (see section 4.7 and 4.7.2). Theoretically, Montesquieu (1748) argued that in terms of historical evolution, 'presidentialism takes on a republican dimension, as opposed to a monarchy, while within a republican order, it takes on democratic dimensions as opposed to aristocracy'. In many ways, and as per the dimensions Montesquieu provided, Angola seems to have adopted a form of aristocratic dimension.

The focus here is on the republican nature of presidentialism as provided within the Angolan Constitution as its preferred model of governance and its potential use within the Angolan context. Kelsen (2002:236) observed that even though the concept of presidentialism possesses elements of the 'monocratic (monarchy form of government) tradition' this definition of presidentialism is based on 'a broad concept of democracy rather than on an idea of autocratic rule'.

In characterising the nature of presidentialism within a State and under the principles of democratic norms, Weber (1978) argued that presidentialism as a 'republican and democratic alternative implies the conceptual exclusion of other systems of government in which one person plays the role of Head of State and Head of Government at the same time regimes such as sultanates, military dictatorships are not'. This would then also include Presidential systems as seen Yemen, Egypt, Algeria whose Presidential characteristics are based on either hereditary lines and or monarchical lines.

The Angolan Constitution of 1992 as discussed in section 4.5.3 had to a vast extent set forth a framework for the direct and popular election of the President. If we take into consideration the Presidential form of government, it has been established that its basis of republican democratic principles would work towards undermining the rise of tyrannical forms of government in which one individual has unprecedented and near unlimited powers such as the case of Angola.

The motivation towards presidentialism is also based on the premise that the separation of powers is an essential feature of such a system. The discussions in Chapter 4 highlights that the separation of powers within Angolan constitutionalism is non-existent. Unlike Parliamentary systems, it is Parliament which makes the laws, controls the budget cycle and can call for the dismissal of the Prime Minister. In hybrid systems like South Africa, the same is true. Within these systems, the Constitution is supreme.

The authors proposal of a presidential system in Angolan is the fact that in many countries with Parliamentary systems it is the political party which most often dominates the electoral process. Such domination as discussed in section 2.5.3 is not only dangerous but contrary to democratic principles as it is the political party which that supports the leadership, such form of support may be seen in contexts like South Africa under Jacob Zuma where the strength of the party and its influence in Parliament ensured that a vote of no confidence could not be passed.

This does not mean that presidentialism does not have its pitfalls. Fix-Fierro and Salazar-Ugarte (2012:654) noted that although presidentialism can easily lead to 'authoritarian deviations, it can also easily respond to democratic expectations'. Indeed, this form of 'authoritarian deviations' can be seen to a large extent in Angola. However, the problem within the Angolan presidential system is that power was designed in such a way that authoritarianism would be inevitable.

As Weber (1922) explained, presidentialism confers a certain kind of 'legal-rational legitimacy', along with a kind of 'legitimacy which finds itself within popular elections'. It means that an Angolan Presidential system where the president is directly elected by the people would work towards creating

wider avenue for democratic consolidation. It would also work towards the dismantling the party-state concept which has dominated Angolan politics and which is evident in so many post-conflict African States and in doing so breaking up, or at the very least upset the patronage systems as discussed in section 2.6.2 (ii).

Though Sartori (1970), (1984:94) has taken due note that not every source of legal-rational legitimacy and not every kind of 'elections are democratic per se presidentialism as a system is however more generally linked to a democratic perspective'. Bobbio (1999) argued that 'in comparison with traditional charismatic sources of legitimacy, the sources of Presidential legitimacy is personal'. In conclusion, Kelsen (2002:217) noted that in contrast with autocratic alternatives, 'presidential legitimacy flows bottom-up as an expression of citizens political autonomy'. Such bottom-up flow of power is important because, and at least within the Angolan political system and as discussed in section 4.7 political power flows from the top.

Presidential systems and their legitimacy are those which are perhaps best seen with rules and regulations which restrain the use of executive power. These rules must be based within State institutions and the ability of these institutions to act independently and to regulate the system when one branch over-reaches. Fix-Fierro and Salazar-Ugarte (2012:650) have observed that it is these rules which provide the 'necessary, regular and periodic replacement of the head of the executive power through popular vote'.

Like electing members of the legislature, electing the President is also of vital importance, if not more. The role of the President as the primary individual responsible for executing the laws of a country and in many regards providing direction is vital. Skach (2005:32) argued that the Presidential seat 'unlike the legislative seat, is worth much more in the overall political game'. It has certainly been the case in Angola, and Africa in general. However, and within these contexts Presidential power has been allowed to function with very limited control.

The relationship between regulated presidential systems and constitutional democracies are also very important. Weber (1978) argued that 'a directly elected President could preserve the unity of constitutional democracy. He suggested that the electoral dynamics set in place through a popular election would act as a dam to divisive interests forcing parties to co-operate'.

The literature on Presidential elections, therefore, provides two systems for directly electing the President: (1) the absolute majority system with two or more rounds of voting as in the French system and (2) the plurality system in which the candidate with the highest percentage of votes wins.

As briefly discussed above, the absolute majority according to Skach (2005:41) requires that a second round of elections takes place and if results are not favourable, or there is not a clear winner in the first round of the elections, a third round of elections might then also be necessary. Sartori (1984:87) observed that different political contexts have advocated for the absolute majority approach as a tool for encouraging 'a majoritarian norm in the political system, and to moderate party system polarization'.

The importance of the absolute majority system and in particular, the two-round approach is based on the idea that the first round serves in many ways as a primary, in which the members of a particular political party and or different political parties try to distinguish between themselves. The importance of this process is in the idea that since it is a kind of 'election' within the party first – it provides a greater platform from which to delineate political ideas along with providing the electorate with an idea of the individual as opposed to an all-encompassing political party.

This process is important because it provides the conditions for potential candidates to highlight in detail not only the 'image' of the State as discussed in section 2.5.4, but more importantly how such objectives can be identified. Within the Angolan context this is also important towards the contribution of building a participatory political culture because it creates a social atmosphere of choice from which the citizenry can make informed choices.

Unlike the majority system, the plural system relies solely on the absolute majority/percentage gained in the first round of the electoral process. The importance of this system has been widely used in Africa particularly because of the divided politics as seen through ethnic politics.

Horowitz (1991:28) noted that 'a special type of plurality system known as concurrent plurality, in which candidates must win a plurality at the national level while simultaneously winning a specified percentage in each of several different regions of the country'. Angola can arguably be divided between 'north' and 'south', the north being strong MPLA supported while the south being strongly UNITA supported. The adoption of such concurrent approach to the election of the President would create a process in which the candidate for President would need to draw support not only from traditional avenues of power and or from a particular region but would force them to be a so-called 'President of the people' which in turn would incentivise a process of governing for the 'people' by seeking the support and with it the legitimacy of the majority of the population which stretch across various national cleavages.

In the Angolan legal system, the role of the cabinet is subservient to the whims of the President. In most systems and although the President is responsible for the appointment of members of his/her

cabinet, such cabinet may be held accountable for their actions by the legislative branch. Within the Angolan system however, and as will be discussed in section 5.2 below, such oversight is non-existent.

5.2 The nature of the Angolan executive

The political executive is the core of government which consists of 'political leaders who form the top slice of the administration: Presidents and Ministers, Prime Ministers and cabinets' (Hague and Harrop 2007:329). An important feature of executives is that it sets the priorities, makes decisions, and resolves conflicts amongst other functions. It is important because in most executives the President is in control of the armed forces and other internal security organs of the State. Moreover, it is through executive orders that actions can be taken which may not only undermine individual safety, security and rights, but also through action and policy choose a course that endangers the functioning of the State itself.

Article 105 of the 2010 Constitution established that (1) the President of the Republic, the National Assembly, and the courts shall be sovereign bodies (2) the formation, composition, powers, and functioning of the sovereign bodies shall as defined in the Constitution, and (3) the sovereign bodies must respect the separation and interdependence of the functions in the Constitution. Article 106 states that the President of the Republic and members of the National Assembly shall be elected by universal, direct, secret and periodic suffrage, under the terms of the Constitutional Law (Constitution of Angola).

In 2016 the MPLA's political Bureau announced that Dos Santos would step down and presented its Minister of Defence and Vice President JLO as the MPLA's candidate for President. Indeed, in this process there was very little if any public consultation within the broader MPLA structures of JLO as President. Article 111 of the Constitution sets forth a minimal framework in which citizens civil and political rights can be realised, the Article stipulates that (1) nominations for President of the Republic shall be proposed by the political parties or coalitions of political parties, (2) the Article stipulates that the 'nominations referred to in the previous point may include citizens not affiliated to a competing political party or coalition' (Parlamento 2010).

Although Article 111(2) moves away to include a higher number of the citizenry. In the Angolan context, however, only 'political parties can make such nominations' (Parlamento 2010). Freedom House (2018) observed that in Angola 'the creation of political parties is fraught with obstacles and attempts to co-option, factors that severely hinder public confidence in new parties'. Which in turn further restricts average citizens from actively taking part in politics outside the MPLA and UNITA

framework – UNITA essentially being a lame-duck party with no real credentials as an opposition party.

It creates dangers to not only maintain the status quo, at least within the political characteristics of the party, and eventually the State but also demoralises individuals from actively taking part in shaping the political processes of their countries. Thomashausen (2016:186) observed that the nomination of such individuals by political parties for the office of President under such a framework is achieved through 'the ranking of a candidate on the list of candidates for the parliamentary election'. Such a process has been described as an 'obligatory dual vote'. Thomashausen (2016:185) noted that the list-ranking determination for the appointment of the President and Deputy President presupposes a proportional electoral system based on a national list and takes the democratic deficit inherent to proportional list systems to the extreme'.

Another danger of this system is that the voting in of a President is done without any legislative oversight or confirmation. The lack of such oversight is further seen in the powers and privileges of the President. An interesting feature of the executive branch is the close range and totality of its powers (the office of President). As the head of the executive, the Angolan President has the authority appoint his or her Vice - President and also the authority to appoint the various governors and deputy-governors of the eighteen provinces that make up Angola.

In addition to such vast powers, the President also possesses legislative powers. Thomashausen (2010), (2016:188) observed that such legislative powers of the President go back to 'a particular legislative tradition in Portuguese Constitutional Law which is continued by providing for a distinction between the exclusive and non-exclusive legislative competencies of the National Assembly'.

Article 164 of the Constitution which speaks of the exclusive power to legislate further gives the President authority to do so, because it not only enables him to legislate but instead the President and members of the government (cabinet) can legislate through Presidential decrees. Article 126 provides the framework for which the President has the authority to pass provisional Presidential legislative decrees as per Article 126 (3 a an b) on any 'matter which is reserved exclusively and absolutely for the National Assembly legislation' (2010 Angolan Constitution).

The Constitution has not only created a situation where the Angolan executive through its President displays near-imperial powers, but such power has virtually no oversight in the Constitutional Law. Moreira (2010:1) a foremost constitutional scholar of Lusophone constitutionalism and member of the

European Parliament in commenting about the nature of the executive of the Angolan Constitution, in particular, its Presidential system, described it as a form of 'hyper-presidentialism'.

Commenting on the relationship between the executive and Parliament and the president's role of appointing individuals Roque (2011:4) observed that an important aspect within the Constitution was that since the President has such vast powers of appointment, he can then only be removed from office by 'Parliament, but only with the approval of the Supreme Court, whose judges are appointed by the President'. In a Parliamentary system where the MPLA had won 82% of the votes it would then be almost impossible to have an adequate system in which the powers and or whims of the president can adequately and legally be challenged.

Moreover, the power structure as approved by the Constitution has unfortunately been legitimised and adopted as the law of the land. The executive through the President has been given carte blanche to appoint allies in all key positions and institutions within the Angolan State structure, which then effectively gives the President near 'unlimited' power to impose his will on the machinery of State with no checks and balances on such power with the added power of passing any law by decree.

The disproportionate level of Presidential power in Angola can be directly linked not only to the incapacity State institutions but also to the high level of violence in a country. State institutions in which the head of State has enormous powers of intervention have often resulted in situations in which such individual work outside the scope of demarcated limits (democratic limits, separation of powers, etc.) Russia is an example of how Presidential powers and limited checks on Presidential authority can undermine institutional legitimacy and democratic principles. Kimmage (2009:50) argued that the powers of the Russian Presidency held by Vladimir Putin has aided in developing an elaborate and mostly 'effective toolbox of repressive and manipulative measures for maintaining domestic control, a conceptual vocabulary for faking democracy, and a series of strategies for wielding international influence'.

In many ways such 'repressive measures' have been allowed because of the scope of Presidential powers that the Russian Presidency possesses, coupled by weak institutions to limit such power effectively. Like Angola, the executive branch of the Russian government strongly dominates all other branches, from the judiciary to the Parliament – not allowing its power and those within it to be questioned through any form of oversight provisions.

Although the Angolan political system allows for general Presidential elections (electing the President through a party system) and presents itself to be a representative form of government with 'representative' institutions – such representation is limited. Such representatives form part of a very

small elite within Angola, allowed to flourish due to the overly centralised and closed nature of the Angolan State which does not have adequate provisions to allow citizens to actively participate in such a system.

In relating Angola to Russia, Kimmage (2009:51) argued that in Russia the core characteristics of 'Russian authoritarians are selectively capitalist kleptocracy, the dominance of informal influence groups, decorative democracy, and illiberal ideology. Together, these elements form an effective mechanism for maintaining elite control over a disempowered populace'. The discussion in section 2.6.2 (i) and (ii) is instructive in this case as a representation of Angola and how political elites have maintained such a stranglehold of political power both through managing to establish a constitutional legal law regime which undermines democratic governance as discussed in section 4.7 while also maintaining strong kleptocratic networks.

Angola, in many ways, strongly resembles and goes beyond the 'illiberal' State as identified by De Oliveira (2015) while also possessing a strong and dangerous 'super-presidential' system that tends to overshadow the political system. It is important to note that although Angola is unique in the sense that it has seemingly managed to craft a Constitution which blatantly undermines democratic principles – the 'super- presidential' system is only the cherry on a big cake. In other African countries such as Zimbabwe under Robert Mugabe which could also be seen as a 'super-presidential' system with his near four decades in power resulting in high levels of repression and even higher levels of corruption which eventually resulted in a so-called 'friendly coup' in which the army effectively removed him from power.

In Uganda, Mutyaba (2018) also noted that the scope of Presidential powers exercised by Yoweri Museveni had created a climate of social turmoil. He continued that 'fundamental to Museveni's personalisation of power has been the role of military conflict, both local and regional'. Locally Museveni has the support of the armed forces, coupled with weak institutional frameworks of checks and balances that allow him to maintain strong control over society and dissent. Museveni's strong disdain for dissent had been seen more often by the arrest and re-arrest of musician Bobby Wine who regularly criticises governmental policy. At the regional level, which in turn can be argued to also allow him a free hand to rule with an iron fist has been the so-called war on terror in which Uganda has had the support of States such as the USA, which in turn closes off channels for direct international criticism of Uganda's internal political situation.

Such political situation and the dangers of Uganda's 'all-powerful' Presidency and weak institutional framework to curb such excesses had resulted in societal repression. The 2011 'walk-to work' protest that challenged and rejected the rising costs of fuel and food brought to light in Uganda a deeper

institutional debate such as untangling the electoral commission which, according to Mutyaba (2018) was 'answerable to Museveni'. As the protests rose and people took to the streets, draconian laws were implemented by a Parliament which answered to the executive. Furthermore, an attempt to curb such protests was the expansion of the scope of police authority. Mutyaba (2018) noted that the police partnered with criminal gangs to curb what 'public disorder' as the police mandate expanded to include 'the pursuit of regime critics'.

In this process of curbing 'disorder' was the fact that State institutions such as Parliament, the electoral commission, the judiciary, military and the police where all 'in service of the executive, and all voices of dissent had been effectively silenced'. In Angola this was particularly seen in the discussion in section 3.6.2 (i) and (ii) and section 4.8.1. In such regard a highly centralised State together with almost absolute presidential powers is then directly linked to the level of social tensions, this is even more so when such powers give space for such individuals to use them arbitrarily without proper checks in such powers. The discussion in section 3.3 is particularly relevant – more so in the context of Angola, as section 3.3, 3.4 an 3.5 sets up the international human rights framework which Angola has committed itself to respect. However, the discussions in section 3.6, (i) and (ii) has highlighted how the Angolan executive has created a framework which makes it impossible for Angola to comply with its international responsibilities and how it uses its power as discussed in section 4.7 to compel other institutions such as parliament and judiciary to also undermine individual rights and liberties.

The examples of Russia and Uganda offered above are examples of the effect of an unchecked executive on a country's socio-political system. In Angola, the degree of presidentialism and total control that the President has on the executive – and in particular the free reign that such office-holders have has dangerous consequences towards cementing democratic principles. Such power is usually wielded through intimidation and force. Executive power and control over society have the potential to destabilise the State because it does not allow for any voice except that of the President and the executive on how the State is to be governed. The discussion in section 4.9 is also instructive in this regard because it informs that an executive with these features does not allow for any real constructive debates on governance – which in turn only fuels the potential for dissent which in certain cases paves the path towards political instability confrontation, and at worst, revolution as discussed in section 2.2.3.

5.2.1 The structure of the Angolan executive

Article 108 of the 2010 Constitution states that executive power rests directly with the President of the Republic who is assisted by his auxiliaries. These auxiliaries are: (1) the Vice-President, (2)

Ministers, (3) the Council of the Republic, and (4) the National Security Council. It is these 'auxiliaries' that make up the Angolan executive branch. It is however important to note that the term 'auxiliaries' in the Angolan political system are not per se 'independent' individuals but rather these organs and the individuals who occupy such positions are an extension of the President themselves – creating the context in which their actions are indirectly those of the President.

As per the discussion in section 4.4.1 the term 'auxiliary' is very similar to that of 'State Minister'. Such was taken from the 1975 Constitution – and they owe loyalty not necessarily to Parliament or the Angolan people but the President. Such a structure is dangerous because this means that like the President, and as per the discussion in section 4.7.2, these individuals cannot be held accountable for their actions by Parliament or any other organ of State except the President.

In the case of the President, the 1992 Angolan Constitution set a clear framework for which the President was elected directly by the people (section 4.5.1 and 4.5.3). However, the 2010 Constitution removed such provision mandating that the President will now be the head of the political party or a coalition of a political party which holds the majority in parliament. Such a model that was borrowed from the South African model fails to take into consideration the highly contested nature of Angolan politics which has in the past led to violence as discussed in section 4.3 and 4.4.2 but rather only works towards enhancing the strength of the executive over the other organs of State.

Article 108 of the 2010 Constitution established the President as the head of State and government who exercises executive power. Moreover, as the holder of executive power the President is also Commander-in-Chief of the armed forces (Article 119). The President is also entrusted by the Constitution to engage in international relations on behalf of the Angolan people, negotiate and sign international treaties (Article 122), convene meetings of the cabinet defining the political orientation of the country (Article 120a), defining the national security policies (123a), and enacting National Assembly laws (124).

As per the 2010 Constitution the President can also call for referendums, appointing individuals within the various political organs such as the executive, the judiciary, the armed forces, the national police, provincial governors and their deputies, the civil service and the parastatal organisations. Under Angola's Constitutional Law (Article 134), members of the cabinet are sovereign 'auxiliary' bodies serving the President of the Republic. As auxiliary bodies and as per Article 137, in exercising the powers delegated to them by the President of the Republic, Ministers of State and Ministers, shall issue executive decrees and dispatches'. This essentially means that such decrees cannot be questioned in any way, and as a result such individuals act directly as proxies of the President.

Furthermore the President and those of the auxiliary bodies as per Article 127 (h) are not responsible - politically for their actions, both in principle and before Parliament (section 4.7.2).

In this way, the President, as per Article 126 has legislative initiative – one which is outside of the scope of the National Assembly to approve and or deliberate on. As per the nature of Angola's auxiliary organs, individuals that the President appoints as holders of auxiliary power also have the authority to legislate through decrees without Parliamentary oversight in the form of 'delegated legislative decrees' authorised through the 'legislative Presidential decrees' as per Article 125(2) of the Constitution.

In this way, the Angolan Constitution provides very few constitutional mechanisms offering executive control while also failing to establish clear legal mechanisms to limit executive power. Moreover, and as per Article 129 the Angolan President cannot be controlled or limited by Parliament as it regards his actions both in the political space and legislative space – neither does Article 129 provide an avenue through which the President could be removed by Parliament alone through a vote of no confidence.

As per Article 117 to 126 the President appoints and has an immense amount of power over the following sovereign bodies and political offices:

a. Appointing the Vice-President, from amongst the individuals on the respective election lists, and discharging him/ her from office,
b. Calling general and local elections,
c. Addressing the National Assembly,
d. In conjunction with the Constitutional Court, promoting the prior and ongoing review of the constitutionality of legislation and international treaties, as well as unconstitutional omissions,
e. Appointing and discharging office ministers, deputy ministers, and other senior civil servants,
f. Appointing judges of the Constitutional Court, Supreme Court, the Court of Auditors, the Supreme Military Court, on the recommendation of the high council of the judicial branch,
g. Appointing and discharging from office the Attorney-General and his/her deputies, the military prosecutors of the Supreme Military Court, on the recommendation of the supreme judicial council of the public prosecutor's office,
h. Appointing and discharging from office the governor and the deputy governors of the bank of Angola,
i. Appointing and discharging provincial governors and deputy governors,
j. Declaring a state of war and making peace, in consultation with the National Assembly
k. Pardoning offences or commuting sentences,

l. Declaring a state of siege or a state of emergency, in consultation with the National Assembly,
m. Enacting and ordering the publication of the Constitution, constitutional revision laws and laws of the National Assembly,
n. Presiding over the Council of the Republic,
o. Appointing members of the Supreme Judicial Council, the Council of the Republic and the National Security Council.

This degree of presidentialism in Angola can also be seen via what is mostly identified as the 'privatisation of the State' which in turn creates an easier context for State capture. In this regard, this is seen to the extent in which through the degree of presidentialism the private good has been appropriated to the public domain such appropriation is possible due to the nature of the political system. Furthermore, it is this power, both executive and Presidential which allows acts of blatant violation of legal standards and with it undermine State institutions.

The Council of Ministers (CoM) is an organ within the executive. As per Article 134(2) of the Constitution, the President presides over the CoM - it is however important to note that the CoM is still an 'auxiliary' organ of the State.

Article 135 of the Constitution states that the CoM shall be the 'collegiate body consulted by the head of State' and is composed of the following individuals:

a. The Vice-President
b. The President of the National Assembly
c. The President of the Constitutional Court
d. The Attorney-General of the Republic
e. The former Presidents of the Republic that have not been removed from office
f. The leaders of political parties and coalitions of political parties represented in the National Assembly
g. Ten citizens appointed by the President for a period corresponding to his/her term of office.

One can argue that the importance of the CoM in the executive and within Angolan society generally has been mostly underestimated. These individuals are appointed by the President as advisors – they also have an extreme amount of power as it regards policy direction and implementation. Like members of Parliament, Article 135(3) of the 2010 Constitution establishes that all members of the CoM shall enjoy the same immunities as members of the National Assembly.

Furthermore, as the CoM are direct advisors to the President – it gives this body the potential to serve as a sort of mini-Parliament which decides the laws of the land. The fact that the President's cabinet – through his auxiliary bodies have the authority to legislate through Presidential decrees means that the CoM also have that potential – while in doing so undermining further the democratic process in which such individuals essentially become Parliament and legislative with such effect.

The 2010 Constitution has within it the principle of the separation of powers between the executive branch, the legislative branch and the judicial branch. Article 6(1) of the Constitution proclaims itself as the 'supreme law of Angola' while Article 6 (3) states that all laws must conform to the Constitutional Law.

However, despite these clear sets of principles there seems to be clear divergences between the theory of the Constitution and the establishment of democratic principles. In other words and although the 2010 Constitution provides such separation within the branches of government in practice such separation does not exist. Such a lack of separation of powers then has significant effects on the carrying out of justice and in particular - the rule of law. The Bertelsmann-Transformation-Index (2006:51) noted that the Angolan 'justice system is highly dependent on and suffers from political pressure. De facto a separation of powers does not exist'.

In a later edition of the Bartelsmann-Transformation Index (BTI 2016:61) it was reiterated that the lack of progress made in Angola as referring to the separation of powers in noting that although legally and 'theoretically' power is formally separated within the Constitution 'there is a predominance of the executive over the legislative and the judiciary which was consolidated in the Constitutional reform'. The Index continued that – it is not only the executive that is overly centralised and placed within a hierarchical position but 'it is, in fact, the President and his close advisors who regularly overrule Parliamentary and Ministerial decisions by Presidential decree'.

Angolan civil rights advocates have described the top-down structure of the Angolan executive constructed by the Constitution as 'Napoleonic' (Marques 2018c). The current arrangement not only gives the President near-unlimited powers of appointment of members of the armed forces, judiciary, provincial governors but such power is carried forth without oversight from parliament.

History has shown us through the apartheid State and countless other examples that an executive that is highly centralised and has almost unlimited powers is dangerous for social stability and cohesion. Many believed that, and anticipated that due to South Africa's apartheid system and with its centralised executive could have led to protracted conflict among racial lines. Schrire (1996:61) took note that few 'have noted the irony that it was only possible for the National Party (NP) to abdicate

from power through a policy of stealth because of the status and dominant influence of the executive with its enormous powers and lack of public accountability'.

Section 4.6.2 provided some of the most basic characteristics and principles of the 2010 Constitution. The section also highlighted the importance of such fundamental principles as they specify human rights as necessary towards achieving the democratic vision of a State based on the rule of law. It is, however, important to note that although the 2010 Constitution highlights the separation of powers and establishment of democratic principles as discussed in section 4.7 there is an interesting façade, the governance system as seen through the 2010 Constitution does not seem to emanate from Angola's fundamental principles as per the discussion in section 4.6.1, but rather it is a system which emanated from the relationship between Angola's three branches (executive, judiciary, legislative) of which the executive dominates.

In this regard, the separation of powers is further undermined – such undermining of power to other organs of State further stimulates and strengthens the super-presidentialist model in Angola – it renders the democratic principle as a fundamental principle near irrelevant. In addition, it further renders the 2010 Constitution incompatible with democratic principles due to the ordering of political power. Amundsen (2011:3) noted that despite there being a Parliament which in theory is meant to absorb some of the executive powers, creating an interdependent system, the system rather creates a 'strong concentration of power in the President of the Republic'.

The discussion above as it regarded the structure of the CoM is extremely important because as identified, the CoM is in a strong position to overrule Parliament and, as a result – render impotent the role of Parliament in the political system. As it regards the separation of powers, it has been discussed in section 4.6 that the 2010 Constitution does indeed provide for it. However, the discussion in Section 4.7 also highlighted that the organisation of State power creates conflict with such principles while the discussion in section 4.7.2 makes the principle of the separation of powers impossible.

5.2.2 Super-presidentialism as the dominant institutional feature

Miranda described the powers of the President as given by the 2010 Constitution as equating it to the authoritarian nature of the 1933 Portuguese Constitution under the Salazar regime. Angolan writer and activist Jose Eduardo Agualusa (2010) further elaborated in saying that presidential powers within the 2010 Constitution are not balanced and that such imbalance is dangerous due to the weak checks and balances provided by the same Constitution.

The disjuncture between the theory of the Constitution and its actual practice through democratic consolidation has been undermined in Angola. The super-presidential system in Angola can further be highlighted by the centralisation of control within the office of the President. Such super-presidentialism can be best understood by understanding the Angolan political system and how it works in practice and through its parallel institutions that further amplify its powers.

The discussions in section 2.5.2 are paramount to Angola's process of institutional weakening through what De Oliveira (2015) termed as the creation of parallel institutions. In the case of Angola one can see such a process has the MPLA continue undermining the legal process through the creation of quasi institutions that are State-like in their organisation but not part of the State itself.

Although within the post-civil war context the government sought to reform the State, such reforms were adhered to not necessarily for the better promotion of rights but rather as a form of public relations scheme to show the international community that Angola through its institutions was working towards being more 'inclusive'. In this regard, (Roque 2011:6) noted that the Angolan State 'displays several aspects of failure and resilience' and reforms in Angola 'are more a reflection of the need to adapt to change as a means to maintain control of the State – and to control the rate at which any change occurs – then the genuine opening of the political space to ideas of good governance, let alone popular accountability'.

Such façade of inclusion was seen through the well-oiled MPLA system of co-option and control. Sogge (2011) noted that the MPLA has gone to great lengths to co-opt individuals within society, ranging from citizens, business, and those seen to oppose the party-state. Sogge (2011:84) continued that MPLA statecraft through this executive includes 'control over the media and flow of ideas'. Such flow was seen through the sanctioning of media outlets, the silencing and threatening of journalists – most notably Rafael Marques. Such ideas of control have often been followed through with 'brute coercion' (Sogge 2011:87).

When co-optation does not work, the MPLA government uses 'physical' means to attain compliance. Such means have been seen through the disappearance of activists who criticise the State, 'secret police infiltration and strong-arm action' (Sogge 2011:88). Moreover, such tactics are, at times, used indiscriminately and are aimed at those who do not comply. The arbitrary nature of such tactics is that such individuals are unable to find refuge through the courts or other 'legal' mechanisms that serve the function of protecting citizens.

The threat of police officers and army personnel in threatening to feed activists to 'crocodiles' has been a tool of coercion which has been deployed by the MPLA to silence critics – and in other instances, to bring those who resist into their fold.

The Angolan Presidency is the most powerful institution in Angola. It is subordinate to no other body and or institution in Angola. It is a political structure which, to a large extent, resembles that of Angola in the 1970s where the leaders 'dictates' as opposed to 'deliberate' to gain consensus. Under dos Santos the Presidency went on to create, in the words of (Roque 2011:4),'a functioning dual structure of government (shadow and informal), which has ensured that no collective action could threaten his rule'. Such shadow government functions in the following ways:

1. Formulating international policy independently of established government and the foreign ministry given the importance of the country's external image and that of its President. To a certain extent, SONANGOL (the State oil company) is the vehicle used to control the international image of Angola, investing internationally in the strategic areas of telecommunications, gas, and petroleum as well as the banking sector, and exercising control over institutions and people through intelligence;
2. Exert control over money supply, through its shadow financing mechanism that operates outside the budgetary process, accounting and the ministries;
3. Providing its own security. The Presidential guard consists of 7000 Cuanhama and Gambo tribesman. These tribes are from the South of Angola and have no political power in Luanda and are no threat in terms of constituency assembly.

The creation of such institutions are not only detrimental to the political and governance process but also created various groups in society which can act with impunity and disregard to the rule of law – to say the least, it is a system that, in spite of the already centralised nature of the Angolan political system goes even further in consolidating and centralising power. SONANGOL - Angola's oil company is, to a large extent, at the head of this very intricate web of corruption and power – which is overseen by the President.

Indeed, although Dos Santos has left the political space (at least for now), the structures that he established are still very much relevant and at the disposal of the new President. This does not necessarily mean that the new President will follow the same trend, but rather that the 'super-presidentialist model which was established under the Dos Santos government is still very much in place, and as such there is a need to first reconfigure the webs of power through institutional reform which would ultimately work towards destabilising these parallel institutions.

The 'super-presidentialist' model also affects the way in which individuals express political opinions. Fonseca (2017) has noted that 'most of the common Angolan citizens avoid a political stance, either due to fear or lack of information'. One can argue that such fear is a direct result, not only of the nature of Presidential powers in Angola but also the fact that the other institutions of State under the super-presidential model cannot protect individuals that find themselves in 'legal' trouble due to questioning or holding a political view which is not in line with that of the executive or that of the President.

These ideas of speaking out politically have had a long and violent history in Angolan history – stating with the actions which led to the coup in 1977 as discussed in section 4.4.2 together with the imprisonment of activists as briefly touched upon in section 1.1, 1.6, 3.6.2 (i) and (ii). So it stands to reason that the super-presidentialist approach together with the structure of the executive is dangerous because and as per the discussion in section 4.9 negatively affects how power and politics is understood in Angola.

The super-presidentialism model is also entrenched within the executive controlled security apparatus itself. The intricate webs created by such institutions go deep within Angolan security institutions. Security institutions aimed towards providing security for citizens are most often a tool of the executive. (Vumby 2014:374) noted that the 'Intelligence Services, the Security House, and the Civil House detain all the powers transferred from Parliament and the Courthouses and the Commission for the National Elections'. It essentially means that all State security agencies can be used without any oversight from either the Ministry of Justice or Parliament itself.

It is important to note that these institutions are all personally controlled by the President. They have been known to turn their gaze inwards, searching for any signs of dissent and disquiet amongst the population. An over-reaction of such institutions was seen through the persecution of the 15+2 'activists'. The discussion in section 1.1 and 1.6.1 and 3.6.2 (i) and (ii) highlighted how the State through the executive charged these individuals with 'rebellion' against the State for reading books on democracy. In such regard, Vumby (2014:372) added that 'the Secret Services are known for having a huge net of informers, consultants and undercover spies in the formal organs to detect and neutralise all activities considered contrary to the Presidents interests'.

It is not surprising that the super-presidential model was further strengthened by the 2013 Constitutional Court decision as discussed in section 4.7.2 which removed Parliamentary oversight of the executive and with it undermining the democratic principles enshrined in the 2010 Constitution. Fombad (2005:309) noted that oversight as a constitutional principle – and its importance as a

democratic principle is in place for the 'avoidance of government tyranny through the abuse of power by rulers pursuing their own interests at the expense of the life, liberty, and property of the governed'. The Angolan case highlights that it is not a matter of striving to prevent a tyrannical kind of government from rising but rather – how a tyrannical form of government has been allowed to be established, a sort of a how-to manual.

The 2010 Constitution as discussed in section 4.6 creates a context in which civil and fundamental rights are protected. However, the reality on how these rights are protected are very much contingent on the nature of the Angolan State. The establishment of parallel institutions which contribute to impunity and the violation of rights, the nature of Angola's executive branch, and the degree of presidentialism which is blatantly seen through the super-presidential model. All these factors contribute towards a context of rights violations.

The approval of restrictive laws in Angola are also directly supported and sometimes promulgated by the executive branch – which in turn strengthens Angola's super-presidentialism model which is in place and with it strengthening the forms of structural violence that Angolan citizens face on a daily basis as discussed in section 1.5. It is important to note that a number of such laws are passed through Presidential decree. The discussion in section 5.2.1 is instructive on how such laws are at times not passed through Parliament but through the CoM who exercise presidential powers as auxiliary organs of State.

5.2.3 The instruments of the Angolan super-presidentialist model

One of the main instruments which the MPLA party State used to maintain its power in addition to the physical instruments such as the security services is its ability to instil a 'culture of fear that checks public expressions of dissent' (Schubert 2010:669). Such 'culture' of fear is a legacy of the one-party State which used the police to intimidate citizens and is something which has been carried forth from the one-party State to post-war Angola.

Article 30 of the Constitution protects the fundamental rights of individuals which include life, liberty, and security of the person. Article 36 deals with the 'right to physical freedom and personal security' and stipulates amongst others that 'no one may be deprived of their freedom, except in cases prescribed by the Constitution and the law'. The high levels of extra-judicial killings in Angola has contributed towards the mobilising of people in demanding institutional reforms (see section 3.6.3).

Marques (2017:38) in the period between 2016 and 2017 documented 50 cases in which agents from the *Serviços de Investigaçao Criminal* (SIC) had unlawfully executed citizens. In an interview

conducted by Schubert (2010) he noted that a respondent in his study in commenting about police brutality stated that 'it is the police that kill people, simulate assaults, and let people disappear. The interview concluded with the interviewee who chose to be anonymous in saying that 'the two weapons of the government are the police and the media'.

Moreover, in 6 November 2017 Zito Goncalves and Juliano Chitumba were executed by SIC agents. In addition, it was reported on 30 September 2017 that Domingos Gaspar was shot dead by SIC agents for allegedly being a criminal. According to witnesses Gaspar 'begged, saying they'd never been criminals. The SIC men checked their target lists, but one of them shot straight away and hit him in the chest' (Marques 2017:71). Such actions by security services are not only illegal but show the level of brutality and complete lack of due process by the security forces that to a large extent act in such a way due to the lack of accountability mechanisms. One can also argue that the problem is not only necessarily of State security individuals acting with impunity but rather of a culture of impunity and disregard within the security services itself.

The killing of Domingos Gaspar is a stark reality of the Angolan socio-political context – though the status of Gaspar as 'criminal' was not fully confirmed – and even if it was, it did not warrant an execution. There is a trend by Angolan security services in which the use of extreme and deadly force has been normalised, especially when such extreme force is used against opponents of the government. Such use of force is emphasised by the heads of Angolan security services. In the case of 28-year-old Mario Faustino who was detained as a member of the 15+2 book club gave an interview from his jail cell and alleged that 'he was subjected to torture at a military installation, carried out in person by a brigadier in the FAA'. Faustino continued that 'another brigadier and a police commissioner made a chilling statement: that Mario Faustino deserved to be dumped at sea to be eaten by sharks, or tossed into a crocodile-infested river'. (Marques 2015d).

Although the Constitution provides a broad level of human rights 'protection', the normative significance of human rights, the structure of the State seems to be blocking the realisation of such rights. This is dangerous for a country like Angola that has such a violent and turbulent history. The current nature of the institutions, if not altered, could maintain the status quo along with creating the conditions in which institutions are unable to react to human rights violations along with inhibiting their protection through such institutions.

As an 'autonomous' organisation the PNA falls under the Ministry of Interior and its general command is responsible for oversight. The façade of this oversight is created in the Constitution itself, as discussed in section 5.2.1 in that Ministers of State are, in fact, 'auxiliary' organs within the

executive. This means that their actions and functions are directly tied to the President – which means that that the minster only answers to the president.

Such façade of oversight along with the lack of an independent body outside the ministry of the interior such as Parliament or for example an independent and hybrid national human rights commission which would provide such oversight is something which continues to enable human rights violations to be heard of but unchecked and addressed. In 2019 Jeremias Benedito a former 15+2 book club member was accused by the State for 'rebellion' under Angola's State Security Law. This further highlights that, although Dos Santos has left office the authoritarian State is still very much in place, the police continue to undermine individual rights and liberties of those who speak out against the government. In an article by DW news in response to the arrest of Jeremias Benedito, the paper noted that 'life for Angolans continues to be difficult – and as a result, discontent continues to rise' (Global Voices 2019:3).

In the same vein a HRW (2020:27) noted that the Angolan police continue to be used to 'intimidate and arbitrarily arrest activists for planning protests'. The report continued in stating that in September of 2019 Angolan police arrested 23 people in Luena City during a peaceful protests against the administration of the governor of Moxico province. The report noted further incidences such as the July 2019 arrest of seven people who were 'peacefully' protesting against the lack of services in the province of Benguela. Another account of the use of force by the police while undermining Angolans fundamental rights was the use of 'dogs' and 'teargas' in August 2019 to disperse protestors who gathered in front of Parliament to peacefully protest – and demand that government ensures that local elections take place in every city in Angola.

Article 206(1) of the Constitution stipulates 'the objective of national defence shall be to guarantee the defence of national sovereignty and independence, territorial integrity and constitutional powers and, through these, law and order, ensuring the freedom of external or internal threat and the development of missions in the public interest, under the terms of the Constitution and the law'.

The Constitution is thus vague on the overall functioning of the armed forces. Furthermore it is not clear under what conditions the armed forces may be deployed within the national territory and the various organs and levels of decision-making under the Constitution that would stipulate their use internally. Angolan history has not only seen the extreme and violent use of the armed forces within the national territory and against civilians but rather the psychological effect that their role on society caused and left (see section 4.3, 4.4.2). The Constitution is thus very much silent on setting up a framework of State-society relations that must exist between the armed forces and society in general.

In addition, the lack of independence seen within Angolan State organs then further weaken and enhance the potential and disproportionate use of the armed forces.

Article 207(1) of the Constitution states that:

> The Angolan armed forces shall be the permanent, regular and non-partisan national military institution entrusted with the military defence of the country, organised on hierarchical basis and owning discipline and obedience to the appropriate sovereign bodies under the supreme authority of the President of the Republic of Angola and Commander-in-Chief, under the terms of the Constitution and the law, and international conventions to which Angola may be a party.

It is not difficult to see the conflict - the Constitution endows the President with the powers of appointing every member of the high courts, Supreme Court, and Military Court. It is thus not farfetched to argue that the military and their use can be followed through without following the proper procedures due to both the perceived questions of impartiality and actual impartiality. The need to make these distinctions, and especially in post-conflict countries like Angola is crucial.

Themner (2017:76) had noted that during civil wars military leaders often order their forces to 'abuse or kill both external and internal opponents, as well as civilians'. By using such tactics those in the highest levels of military command may then believe that the use of such tactics is an acceptable and legitimate method to 'physically' abuse political opponents. Such reality had indeed been the case in Angola, the excess and influence of the armed forces resulted in human rights violations – such violations are further left unchecked and mostly unanswered due to the lack of accountability mechanisms to hold high ranking officials to account. Such is thus not surprising as Themner (2017:68) observed, 'it is not uncommon that human rights abuses continue after the cessation of hostilities'.

The impunity and lack of control of the Angolan armed forces have extended years after the war and not only within the high ranks of the service but also spreading within the general forces (see section 3.6.3). In 2010 Paizinho Ngongolo a diamond miner in Kahamba was captured by a FAA patrol and were he was shot and killed. In an interview conducted by Rafael Marques (2017), friends and witnesses stated that the soldiers had threatened Ngongolo previously and said they would kill him the following day for being 'stubborn.' Moreover when 'the soldier was taking him another soldier ran towards him to try and stop him but was too late'. Between 2010 and 2015 dozens of such cases have been recorded (Marques 2015d:42).

Segell and Vajpeyi (2014:46) have asked the question, what is the role of the military, and what should its shape and size be in relation to other societal priorities such as health and education?. The 2010 Constitution clearly states that the military is for national defence but is very much vague on the kinds of the defence. Is such defence to be used against foreign aggression, defence against internal dissidents who might be civilians? The Constitution fails to state such function adequately. Within a post-conflict State like Angola especially as per the discussion in section 4.4.2, such distinctions are vital to make clear.

The Angolan Constitution fails to do this and the executive branch uses such loopholes as instruments of oppression.

5.2.4 The executive and its limiting of political participation

Fish (2005:117) and Rose (1999) observed that political participation is not only the act of voting and or taking part in societal debates as they relate to the political process, but instead 'political participation is the act of citizens seeking towards influencing both the composition and policies of government.' As a result citizens work towards such objective in different ways and through different tactics but all of this is undertaken within a framework of law which both citizens and politicians abide – at least within an open society, that is the idea.

In an analysis of political participation in the USA, Milbrath and Goel (1977:81) divided American politics according to three population groups. They are classified: (1) a small group of 'gladiators' who are around 5-7 per cent of the population, and who fight the political battles, these are the activists and social movement leaders advocate for a cause and or have an idea of the political direction a particular country should take, (2) a large group of 'spectators' which consists about sixty per cent of the population who are observers of the political landscape but rarely participate and or engage beyond the voting process and (3) an 'apathetic' group which is about one-third of the population who are unengaged in politics.

By making an analysis with modern political participation in liberal democracies and even illiberal democratic States, one can understand the analogy which has been made as the gladiators are those small groups within society who are usually the highly educated and well off that have the means to engage in political discourse and thus challenge the status quo.

In the fight for Angolan independence, the leaders of liberation groups where highly educated people, this can be said for both the leadership of MPLA through its leaders Agostinho Neto and then Dos

Santos, and in UNITA through Jonas Savimbi. Within the post-civil war Angolan context a similar trend of gladiators is on the rise. This can be seen again through highly educated individuals such as Rafael Marques and Luaty Beirao amongst others who publicly contest the hold that the government has on the State while speaking out on human rights violations and State corruption.

Interestingly enough, these small groups of the elite can arguably also be translated towards having to be in place in the third world. In liberation struggles in Africa and the fight against apartheid in South Africa the majority if not all the liberation leaders were highly educated individuals, from Angola's Agostinho Neto to South Africa's Nelson Mandela and Zimbabwe's Robert Mugabe. So, this idea of a group of gladiators then transcends political culture but rather diverse depending on the context. In present-day Angola gladiators can be seen as arising mainly from youth groups at university level who have displayed high levels of organisation on one part through protest action and on the side less formal organisation – both groups protesting against the current nature of the State, with the highest demand being that of reforming the State. At the same time, this is the group in Angola which the MPLA government has worked tirelessly to either co-opt or coerce into compliance with the status quo.

It is the same with the spectators. They make up society; they either vote in elections or different contexts, they are the majority being oppressed and follows the status quo with very little involvement and perhaps, at times, give limited support to the gladiators depending on the cause and context. Finally, the apathetic who stay away from the dangers of involvement in politics. It must then be understood that in most liberal democracies, the three groups of people do indeed exist, just as we have identified above the levels which make up the civic culture, the stark difference between liberal democratic States and say, authoritarian and illiberal States is that those in power in the latter forms actively work towards undermining and limiting the participation of individuals in politics.

The idea is then to control the forms of participation which would threaten the longevity of those in power. The important aspect is then not necessarily to limit any form of expression at all, but instead, participation is directed towards promoting those in power as discussed in section 5.2.1. Angola's executive has done this through attempted acts of co-option. The extreme of this can be seen in North Korea, and although one would argue that no State can fully control a society such as 'totalitarian' States sought to do. However, the level of social engineering in North Korea works towards controlling society in such a way that it paints the leadership as saviours. As Hague and Harrop (2007:137) argued even leaders in non-democratic regimes 'allow for free spaces in areas which do not directly threaten the central regime itself'.

Such limitations on the rights of individuals had been craftily done by Angola's executive in which it aggressively created legislation which hinders individuals from speaking out. The discussion in section 3.6.2.1 (i), (ii) and (iii) is a clear example of how Angola both undermines the rights of its citizens by setting forth mechanisms which limit their rights while blatantly ignoring its international human rights obligations.

In Angola, and in particular due to the institutional imbalances that exist one can identify it as the relationship structure which exists between those that are so-called 'big men' – in this case those who hold executive power and those that linger beneath them. Furthermore, the President falls into this power structure of 'big man' while government officials, Ministers, community leaders and citizens are those underneath such structure. The discussion in section 1.1, 1.6, 1,6.1 and 1.6.2 is important here because it highlights a vertical relationship between elites and 'others' while the discussion in section 3.6.2 (i) and (ii) creates frameworks through which citizens are limited not only from speaking out but from exercising their rights.

The discussion in section 5.2.1 above highlighted the level of powers that the President possess. Such 'monarchic' powers are further strengthened and enhanced by the material instruments that give such power real and material gains (see section 5.2.3). The discussion in section 3.6.2 (i) and (ii) reiterates this point which uses the veneer of 'law' as legitimising the status quo, as former Brazilian President Getulio Vargas once said, 'for my friends, anything. For my enemies, the law'. The quote expresses as Diamond and Morlino (2005:11) noted an attitude of 'typical' dictatorship, the 'discretionary, and often exactingly severe use of the law against the political enemy or the vulnerable could be an efficient means of oppression'. Such improper use of the law and at times the downright promulgation of illegal aspects was identified in a report by the Inter-American Commission in which it stated, a way in which 'criminal law is used improperly is by subjecting the defender to lengthy legal proceedings, contrary to the guarantees of due process, to suppress or mitigate his or her advocacy and defence of human rights' (IACHR 2015). the Angolan executive has done this flawlessly as per the discussion in section 3.6.2 (i), (ii) and (iii), 4.7, 4.7.1 and 4.7.2.

The Angolan government further strengthens the argument for unilateral governance, a form which places a very vertical direction for power. It places the head of the executive above organs of the State and above the citizenry and in many ways places the President and those within the executive apart from the citizenry and as a result placing them in a position to act outside the bounds of citizenship and the law.

One can argue that within a system where the executive is overly centralised democratic norms can still flourish. It may flourish because there would be a vibrant civil where individuals exercise a

positive and active 'civic' culture, as discussed in section 2.3. Moreover, within such a system, there would also be other branches of government such as the judiciary and the legislature which would work towards countering executive unilateralism. Yet, in the Angolan case this is simply not so – the 'law' in Angola is geared towards undermining the Constitutions fundamental principles, in this way the executive can dictate policy without any real discussion.

The discussion in section 1.5 laid out the forms of violence which this thesis has adopted stated that structural violence – which is violence faced by the individual through State institutions and policies does constitute violence. Such structural violence was seen through policies and laws maintained by the Angolan government, which serves the purpose of curtailing individual rights and liberties.

The discussion above in section 5.2.3 read together with the discussion in sections 5.2, 5.2.1 and 5.2.2 highlights the structural nature of violence in Angola which is pushed by the executive to maintain power while undermining the civil liberties of Angolans. One can argue that structural violence can potentially then lead to physical violence – which may be seen through the way citizens challenge the State through violent means. Though all-out 'physical' violence – seen through armed groups in the streets is not yet the case in Angola – with the exception of Cabinda in which armed groups are militarily challenging the Angolan State, there has nevertheless been physical violence being used in mainland Angola as per the discussion in section 5.3.1.

The discussion in sections 1,1, 1.6, 1.6,1 and 5.2.2 and 5.2.3 serves to highlight how the Angolan State through its institutions have used violence against citizens as a form of quashing potential dissent and anything which is perceived to threaten the MPLA-party State.

5.3 The legislative branch

Parliament is one of the three branches of government. In Angola, and as per the Constitution such branches are divided into legislative power, executive power and judicial power. Parliament is particularly important and a key institution of the State because it serves as the forum through which the Angolan people - through their elected representatives can freely and openly debate issues which are within the realm of the national interest (in theory).

As per the Constitution, the Angolan Parliament is unicameral - it consists of 223 members (Deputados) and as per Article 161 exercises legislative power. Parliament has the power to change and amend the Constitution, along with altering all the laws which elaborated upon in Angola such laws include the budget, international treaties – approving executive orders, elaborating on acts of war and state of emergencies.

Article 162 gives Parliament the authority to exercise oversight over the Angolan government (executive) in all its acts; this is particularly important as it regards to the financial liquidity of the State as Parliament has the authority to approve all spending that the executive wishes to endeavour on – in addition, Article 163 specifically states that Parliament has the authority to serve as the oversight body of 'other bodies'. It means that within the appointing process of members of the judiciary, along with other 'sovereign bodies as discussed in section 5.2. Parliament is the institution which should do oversight in addition to approving nominations made by the President to the various organs of the State.

In the areas of legislation Article 164 states that Parliament has 'exclusive power to legislate' and Article 165, gives Parliament 'relative legislative authority'. Within the scope of exclusive authority, Parliament has the authority to legislate in the areas of fundamental rights (Article 164,b), the restrictions and limitations on the rights, freedoms and guarantees of citizens (Article 164,c), the election and status of office-holders of bodies that exercise sovereign power, local government officeholders and the officeholder in any other constitutional bodies, under the terms of the Constitution and the law (Article 164, d), the definition of crimes, penalties and security measures, as well as the basic elements of criminal procedures (Article 164, e).

In this regard, Parliament with its legislative authority has the sole authority to veto laws such as those discussed in section 3.6.2 (i) and (ii) as they directly impact fundamental rights as ascribed by the Constitution. Regarding the Angolan Parliament's relative authority to legislate it means that Parliament has authority to legislate and be involved in the overall structure of Angola's public service such then means, managing and appointment of those within the public service. Such authority is important because it means that the President cannot just unilaterally appoint individuals to State public institutions as SONANGOL and the Angolan Sovereign Fund as discussed in section 1.6.2.

The Angolan Constitution also gives Parliament authority to legislate as it regards to the basic elements of the scope and rules governing the public administration, including guarantees for users of the public administration, the status of public administration staff and the civil liability of the public administration (Article 165,a), the basic elements of the status of public companies, institutions and association (Article 165,b), the general system of public finance (165, e), the basic elements of the financial and banking systems (Article 165, f), the general system of governing the media, (Article 165,h), the general system of military service, (Article 165,s), the general system for punishing infractions and administrative offences, together with the applicable proceedings, (Article 165, t) The Constitution also states that, the National Assembly shall be partially responsible for defining the

general legislative system for all matters not included in the previous point, unless these are reserved under the Constitution for the President of the Republic, (Article 165, 2).

Indeed, Parliament under the Constitution has – at least theoretically, a vast amount of powers, which would create the conditions for democratic governance. However, as discussed in section 4.6 and 4.7 Parliament in many regards has been stripped of these powers due to the organisation of political power and the removal of executive oversight by Parliament. Amundsen (2011:3) observed that the Angolan National Assembly, at least as per the Constitution and current organisation of power is a chamber with the appearance of a legislative chamber without any real authority – he added that it is 'a political organ, subordinate and under the control of the executive'.

5.3.1 The foundations of the Angolan Parliament

The foundations of the Angolan Parliament can be traced back to the 1975 Constitution through what was termed the 'People's Assembly'. However, and as discussed in section 4.4.1 the 1975 Constitution was by its very nature an authoritarian Constitution which favoured a centralised State while undermining the rights and liberties of its citizens. The People's Assembly similar to the National Assembly under the 1975 Constitution was also a chamber subordinate to the executive and with the passing of legislation which strengthened the powers of the President as per the discussion in section 4.4.1 and 4.5.2 the People's Assembly had no legislative and or political power. Amundsen, Abreu and Hoygaard (2005:2) stated that such 'passivity' of the 'Peoples Assembly' was due to the fact that it 'operated in a single-party system and was subject to the dominance of the single ruling communist party – the MPLA, which placed itself above all State institutions'.

The political role of the People's Assembly was one for show. It was an institution relevant only in name and not in substance and was completely 'overshadowed' by the MPLA party State. The People's Assembly was also subordinate to the MPLA Congress, its Central Committee and the Political Bureau and above all, the President of the Republic. Such subordination was intentional because as the MPLA worked towards consolidating and strengthening Presidential power, it also worked towards placing the MPLA party above the 1975 Constitution itself as discussed in section 4.5.2 through the adoption of Lei n 71/76.

It must further be noted that during the period of 1975 to 1980, it was the MPLA Congress that 'approved the fundamental documents of the country, namely the laws and resolutions regulating to the exercise of political power and the organisation of society itself, from a single party perspective' and not the People's Assembly. (Angolan Parliament website). The Angolan Parliament as seen

today, was then established by the Constitutional Law of 1992 which opened up Angola to multiparty democracy.

Bicesse as discussed in section 4.5.1 were important in instituting a small measure of relevance to the Angolan Parliament because it gave a pause to the civil war which allowed for a number of reforms, while also formally transitioning Angola from a centrally communist State to one which, at least on paper transitioned the country towards democratic principles. Furthermore, the opening up of multiparty elections and the 1992 Constitution further gave the opportunity for the creation of new laws on 'associations, the press, and political parties, and lead to the establishment of several new organisations, independent newspapers, radio stations and political parties' (Amundsen, Abreu and Hoygaard 2005:2).

With the 1992 Constitution, the People's Assembly was replaced with the National Assembly. During this period the National Assembly created the provision for which political parties could now play a role within the legislative process of Angola. It is important to note that during this period, Angola was still in a state of war and there were several restrictions for elected members to duly take up their positions. Since 1992 the National Assembly consisted of 220 members who were elected through two constituencies: (1) 130 members elected by the national electoral circle and (2) 90 members elected by the provincial circle (5 per province) and for a term of five years (Angolan Parliament).

In 1992 the first meeting of the National Assembly was held, where the elected delegates approved the 1992 Constitution. The National Assembly at this stage was composed of the following political parties: 129 members from the MPLA, 70 members from UNITA, 6 members from the PRS and 5 members from the FNLA. Although the 1992 Constitution provided for the election of 223 members, 130 of which were to be elected by the national electoral circuit, 90 to be elected by the provincial electoral circuit and 3 by the circuit representing Angolan communities abroad (1992 Constitution). The election of the 3 representatives was not realised.

Between the period of 2008 to 2012 the second legislative cycle took place in Angola. During this second cycle 2020 delegates were represented in the National Assembly: (1) 130 members were represented at the national electoral circuit and (2) 90 from the provincial electoral circuit. During this legislative cycle the MPLA held 191 of the total seats in the National Assembly.

Between 2012 and 2017 the third legislative cycle took place with the MPLA holding 175 of the total seats. The fourth legislative process took place between in 2017 and will end in 2022. The MPLA holds 150 seats.

Since the first legislative cycle, there has been a steady decrease in the number of MPLA deputies at the National Assembly. However, the MPLA still holds two-thirds majority of Parliament the only other time when it did not hold such a majority was during the 1992 legislative cycle. The subsequent legislative cycles have allowed the MPLA to change the Constitution without any opposition while also enacting laws which have been restrictive and undermined the rights of citizens.

5.3.2 The Parliamentary internal regulation process

Article 141(1) of the internal Parliament regulation process defines the kind of system the Angolan Parliament would take. In addition, it stipulates that the National Assembly shall be the Parliament of the Republic of Angola (2) the National Assembly shall be a single house representing all the Angolans, which shall express the sovereign will of the people and exercise the legislative power of the State. Article 143(2) stipulated the system under which individuals are elected, stating that 'members shall be elected according to the system of proportional representation for a five-year term of office, under the terms of the law'.

If one thinks of Parliament and in particular, its authority to legislate one would imagine that at least in layman's terms, two of the most critical functions of Parliament are: (1) make laws, and (2) serve as a counterbalance to executive authority. Article 160 of the 2010 Constitution stipulates the competencies of Parliament. Article 160 (a) deals with legislation 'on the internal organisation' (b) 'electing its President, Vice-President and Chairperson on the basis of an absolute majority of all members present, (c) 'forming the standing committee and special, ad hoc and Parliamentary Inquiry Committees,' (d) 'any other powers attributed to it by organisational law and other Parliamentary legislation'.

Article 161 stipulates the political and legislative competencies of the Parliament. Article 161 (a) states that Parliament shall be responsible for 'approving the amendments to the Constitution, under the terms of this Constitution' (b) 'approving allows on all matters, except those reserved by the Constitution for the President of the Republic' (c) 'granting the President of the Republic authority to legislate and considering authorised Presidential decrees for the purpose of determining whether they should be amended or cease to remain in force, under the terms of the law'.

Article 261 stipulates the Procedural Rules of Parliament (*Regimento*). Its Article 261(1) stipulates that Parliament has oversight powers (a) 'in the approval of the State budget and evaluation of the balance sheets and quarterly reports on its execution' (b) 'in the appraisal and approval of the general State of accounts, with prior opinions of Court Auditors' (c) 'questions, inquiries, hearings and Parliamentary inquiries'. Article 261(2) 'questions, hearings, requests for documents and

Parliamentary requests to the organs of central administration, direct, indirect and autonomous administrative organs of the State shall be addressed to the Ministers of State, Ministers, title holders or representatives of the executive, with the knowledge of the holder of executive power'.

Article 260 stipulates that 'the oversight of the National Assembly focuses essentially on the activity of the executive, the central, local, direct, and indirect administrative authority over all entities that use financial resources and public assets'. Article 269 further stipulates that 'the National Assembly may, during a debate speak to Ministers of State, Governors of Provinces at the request of any Parliamentary group'. Article 270 further stipulates that requests for explanations may be made to Ministers of State, Ministers and Provincial Governors by any member of Parliament through the President of the Parliamentary group, under the terms of the law.

Article 270 of the 'Regimento' further stipulates that such debate 'begins with the intervention of President of the Parliamentary group or a member of the Parliamentary group'. Case number 319 of 2013 as discussed in section 4.7.2 decided by the Constitutional Court went on to declare all the above articles functions of the National Assembly as unconstitutional and as such not compatible with the law. As stated above Article 261 clearly sets forth the role of the National Assembly as serving its most basic function which is to 'exercise its controlling and oversight functions', the right to ask questions to the officeholders of the various organs of the State along with putting forth interpellations to any organ of State along with conducting hearing and inquiries has been declared unconstitutional.

Article 260 is vital since it deals with oversight over monetary aspects and how the various organs of State manage such funds. This is particularly important in Angola; the level of chronic corruption that Angola faces is one which if there is no mechanism to control how public funds are spent, there is no way of knowing if programmes are effectively being funded and or underfunded. Articles 260, 290 and 271 are very specific in scope and speak directly about the functions of the National Assembly in questioning Ministers of the State and governors; this is an essential feature of government.

Despite the Angolan Parliament enjoying independence through the separation of powers in the Angolan Constitution, this thesis thus far has provided a context under which the body has virtually no independence (section 4.7). Furthermore the 2013 Angolan Constitutional Court decision which limits the role of parliament to provide oversight of the executive (see section 4.7.2) effectively renders the Angolan Parliament as a subordinate organ. A Freedom House (2020:4) report observed that the Angolan national assembly 'has little power, and most legislation originates in the executive'.

Such subordination undermines the existence of the rule of law, both as it has been espoused in the Constitutional Law but also in reality. The discussion in section 4.6.2 argued that the 2010 Constitution is premised on the principles of 'democratic' governance and the 'rule of law'. The fact that the President is head of State and head of executive power as per Article 108 of the Constitution together with the personality of the President and the executive enjoying the legal right to State sovereignty as per Article 105 of the Constitution creates not only a violation of the 'democratic principle but there appears to be a real Constitutional crisis.

Such configuration greatly endangers the rule of law. The discussion in section 5.2 is an indication of a legislature which is so stifled and undermined by the executive authority that it has allowed legislation which is clearly undemocratic to be used as a weapon to stifle public opinion and curb dissent. Section 4.10 is important in this discussion because it offers a proposed avenue through which policy initiated in the legislature can actually function for the betterment of society – however and as reiterated and argued throughout Chapter 4, the 2010 Constitution is of a rigid nature that does not allow for such kind of initiative to happen.

Bongyu (2008) had noted that in African political systems and in particular systems such as Angola, Presidential systems and in particular the executive of such systems are generally attributed with a high degree of importance while Parliament is merely there to approve executive decisions. Such level of importance placed on the Angolan executive further influences a culture of executive domination – which by its very nature bolsters the nature of the Angolan super-presidentialism phenomena.

The discussion in section 4.7.2 is important in this regard because it is a further process in which the executive affirms its importance over the legislature – Article 105 of the Constitution stipulates that it is the President, the National Assembly and the courts that shall be sovereign bodies. Yet in practice, this is not the case, the removal of oversight as a function of the National Assembly further weakens a body which within the Angolan system is already toothless – in essence rendering it useless.

In countries such as the USA the President needs the consent of Congress (National Assembly) to declare a state of war. This is vital because it takes war-making powers away from the hands of a single individual. Though within the US system the President still has the authority to order troops in rapid deployment operations such as special forces and or operation units, the issuing a state of war is still something Congress must approve – one can argue that negating such law would be tantamount to Presidential powers equating to that of a king in which he wages war according to his mood and temperament.

In this regard, the Angolan legislature is further weakened because when it comes to issues of war and the implementing of a states of emergency, according to Article 117 the Constitution merely states that the President must 'consult' with Parliament as opposed to Parliament giving consent for the State to be engaged in such an endeavour. In regards to the President's war-making power and, in particular, as it deals with internal security, Article 120(e) states that the President directs 'the states civil and military departments and services and all activities under its administration, superintending indirect administration and overseeing autonomous administration'. Removing the role of the National Assembly as its deals with laws and regulations which manage the civilian apparatus leads to endangering the health of a constitutional democracy based on the rule of law as discussed in section 5.2.3 along with further enhancing the 'super-presidential' nature of the current Angolan State.

A further weakness within the National Assembly is the authority that that President has under the Constitution in Article 12(k) of 'directing and guiding the work of the Vice-President, Ministers of State, Ministers and Provincial Governors'. Such undermining of Parliament is because the President directly appoints all these individuals cutting out Parliament and as a result and within the realm of public policy and accountability as discussed in section 5.2. In addition, these individuals directly answer to the President and not the Angolan people through their duly elected representatives. Such weakness of the National Assembly enhances the level of impunity that the government can use when dealing with issues of State security.

In addition Article 123(a) states that the President is responsible for 'defining national security policies and directing their execution'. The discussion in sections 3.6.2 (i) and 5.2.2 is relevant here – such relevance stems from the fact that as per the State Security Laws national security is seemingly derived as not necessarily ensuring 'State' survival or dealing with external elements which might threaten the 'State' but rather that national security seems to be interpreted as ensuring government survival and within the context of Angola that means curtailing the individual rights of citizens who air their discontent verbally or take to the streets in peaceful protest to demand their rights.

The discussion in section 3.6.2 (i) as it regards the law on State security is indicative of the dangers of the National Assembly not having the authority and ability to involve itself on matters that deal with national security. Furthermore, the failure of the National Assembly to not have standing committees on matters with deal directly with issues of national security, or appropriations to counter matters such as those discussed in sections 1.1, 1.6.1 and 1.6.2 further entrenches the culture of impunity in the country.

5.3.3 Does parliament in its current form matter?

Within the Angolan political context asking the question of whether the Angolan Parliament really matters and in light of the discussion in section 5.2.2 seems to be somewhat self-explanatory. The way in which the Constitution organises political power (see section 4.7) seems to show even at face value that despite its theoretical presuppositions the principles of the Constitution are not respected. Within the legal aspects itself, the way in which power is distributed highlights a disregard for both the separation of powers and even more so, a disregard for international recognised human rights and freedoms.

The Angolan legislature has been seen by many Angolans as an institution which serves only to bow down to the whims of the executive and its President due to its subordinate nature. The discussions above in section 5.3.2 highlights the reality that as a body which should serve as a strong counter-balance to executive power is limited in doing just that. Another important weakness to take note of is the fact that the President of the Republic is also the head of the party – within another political system this would not necessarily be a huge impediment towards realising democratic principles, but in Angola and as seen in the discussion in section 5.3.1 the MPLA party has dominated every single legislative process – by always having the numbers to change laws, or the Constitution unilaterally, which remains the case.

In addition, this also means that as head of the party MPLA members will continue to support the president not only because of the president being head of the party but also because under the Angolan legal system power is at such a vertical level that the party itself has very little control over the president – unlike in South Africa were the political party can ‘recall’ the president if they are not satisfied with his actions.

Despite such unbalanced power structures it is important to note that Parliament does matter. Parliament is an important institution within any political system. However, and yet again in the Angolan context, and in its current form Parliament does not in any way serve the ends of justice, nor does it work towards aiding in the consolidation of democracy. As a result, and without reform, the Angolan Parliament contribute much towards citizens experiencing violence. The discussion of violence as stated in section 1.5 clearly states that violence is not merely ‘physical’ in nature, but also acts of institutions which undermine the citizen by depriving them of their rights constitutes a form of violence.

The Angolan State, in its current form promotes such violence. Its inherent weakness and the fact that the legislature legislates in the name of the executive to bring to light what is at times

'unconstitutional' laws such as those discussed in sections 3.6.2 (i) and (ii) play a hand in promulgating violence to the individual because such laws hinder individuals in exercising their fundamental freedoms and human rights. Such contractions on rights equate to repression.

The CoM through the President have such extensive powers as discussed in section 5.2.1 who effectively exercise both 'executive and legislative functions. Laws are usually drafted by the President and the Council and submitted to the National Assembly for what is essentially rubber-stamping' (Freedom-House 2014). Rubber-stamp Parliaments are visages of a violent and brutal past, they represent systems of arbitrary governance in which the late-night knock on the door by members of security services conjure images of government critics being and journalists being dragged off to prison, tortured and disappeared.

In this regard, the Angolan Parliament matters only as an institution to safeguard the rule of the executive and not the rule of law. It is also important to note that whether it is a Dos Santos government, a Lourenco government or even a Kapapelo government, the current nature and structure of the executive – and its powers and as provided by the organisation of power within the Constitution together with the weak and ineffective Parliament creates structures for which human rights cannot be safeguarded and violence is close at hand. It must also be added that even in a context in which a national human rights institution is established – the nature of power and the overly centralised State would not offer any real change unless a new State design enacted (see chapter 6).

5.4 The judicial branch

Article 174 of the Constitution established the General Principals of the judiciary along with matters of which it has jurisdiction. Article 174(1) specified that 'the courts shall be sovereign bodies with the power to administer justice in the name of the people'. In this regard, the courts are sovereign bodies which exercise autonomy over the other three branches of government. As per the Constitution the superior courts in Angola are: (1) the Constitutional Court (Article 81), (2) the Supreme Military Court (Article 182), and 3) the Court of Auditors.

As per the Constitution, the judiciary has the primary objective of 'arbitrating' and 'adjudicating' disputes between the various actors in society – they being public officials and private individuals. At its very essence, the role of the judiciary is to prevent conflicts from escalating and to find judicial solutions for such conflicts.

Shapiro (1981:10) noted that the basic social logic of courts and judges is rooted in the triad for conflict resolution, 'whenever two come into a conflict that they cannot themselves solve they call

upon a third for assistance'. Regarding the discussion in section 3.6.2 (i) and (ii) as it regarded laws such as State security and Press law – the courts have an obligation to analyse such laws to gauge their constitutionality. The Angolan courts have failed to do this. Indeed, the ability of the courts to then act upon this simple logic of conflict prevention would then require both neutrality and impartiality within the political system. This can only happen in Angola if Parliament is structured in a way to fulfil its democratic function.

Despite the judiciary playing a role in resolving specific conflicts within society, Ríos-Figueroa (2015:196) noted that judicial institutions along with the other branches of government 'partake in creating a moderate or balanced system of rule'. This balance of the system is what Montesquieu (1748), described as 'the liberty of the Constitution' in arguing that judges should be 'the mouthpiece of the law. Mere passive beings incapable of moderating either its force or rigour or political actors that deliberate, communicate their thoughts, argue and change their minds'.

In countries like Angola as identified and discussed in sections 3.6.2 (i) and (ii), 4.4, 4.5, 4.6 and 5.2.2 the government's arbitrariness is permitted by a non-functional principle of the separation of powers between the executive and the legislature. According to Montesquieu (1748) 'judges should play a minimum role, and the judiciary should be so weak as to become a null power. However in monarchies, where the executive and the legislative powers are concentrated in the king, a permanent judicial organ and deliberative judges are necessary for checking and preserving the balance of government'.

The critical aspect of the judiciary is then that it has a vital role in promoting Constitutional governance in instances of strong executive dominance/control. Recent scholars have worked towards theorising the role that the judiciary through its courts can play in bringing about political stability. Barro (1997) studied how the judiciary can play a vital part in the protection of human rights, while Bloom and Ostrom (2008) and Frye (2004) looked at how the judiciary contribute towards corruption control. These are variables which when coupled with repression can lead to violent conflict. Such variables have been seen in Angola – both through the arbitrary use of force by security services as discussed in sections 1.1, 1.6, 1.6.1, 3.6.3 and 5.2.3 together with the use of the law itself as an instrument of such repression as discussed in section 3.6.2 (i) and (ii). Despite such dangers the judiciary however, still has an important role to play in preventing conflict.

International organisations and NGOs have actively promoted the creation of courts and the promotion of the rule of law as a basic principle of society. The Gacaca tribunals in Rwanda (a system of community justice in Rwanda which was implemented after the Rwandan Genocide) were an

important aspect of the role of the judiciary through courts – the judicial function in looking at ways to not only punish offenders but creating the framework to prevent further conflict.

Gibson, Gregory and Baird (1998) and Baird (2001:349) have noted that legal institutions around the world 'have become increasingly powerful'. Tate (1992) and Vallinder (1995) referred to this as the 'judicialisation of politics' while at the same time wisely recognising the 'politicisation of judiciaries'. An essential feature of this power has been made apparent by the role of the judiciary within various jurisdictions. Such judicialisation of power is crucial because it refers to moving political disputes from the political and or social area which can at times imply violence and or the use of physical force to the political arena of courts and legal institutions. The judiciary is therefore playing a significant role in dealing with political and socially divisive issues.

The memorable role of the judiciary in calling the 2017 Kenyan Presidential elections (Supreme Court of Kenya 2017) as 'null' and ordering a second election is an essential feature of such judicialisation and how the courts can serve as a social protective measure while also mitigating political issues which might quickly turn to violent conflict.

Article 175 of the Constitution stipulates that 'in the exercise of their jurisdictional functions the courts shall be independent and impartial and subject only to the Constitution'. However, the impartiality of the judiciary is often questionable, the 2010 Constitution is structured in such a way that the President appoints the judges of the Supreme Court as discussed in section 5.2.1, and though such appointments are passed through the judiciary committee as stipulated in the Constitution, the President appoints the persons within the judiciary committee.

In regards to the High Council of the Judicial Branch (HCJB) Article 184(2) of the Constitution stipulates that the HCJB shall be presided over by the President of the Supreme Court and shall be composed of the following: (a) three jurists appointed by the President of the Republic, at least one of which must be a judge, (b) five jurists appointed by the National Assembly and (c) ten judges elected by judges from amongst their peers.

An essential aspect of the HCJB is that as per Article 119(g) of the Constitution relating to the responsibilities of the Head of State stipulates that the President of the Republic is responsible for 'appointing the presiding judge of the Supreme Court, the deputy presiding judge and the other judges of the said court on the recommendation of the Supreme judicial Council. Subsection (u) further stipulates that the President is also responsible for 'appointing members of the Supreme Judicial Council. One can then identify a skewed approach of the composition of the HCJB which emphasises

the long reach of the executive which inherently gives rise to questions of impartiality of those elected to the highest court of the land.

The 2017 Angolan Presidential elections though ruled free and fair by international observers and in particular, the AU, was not seen in the same light by Angolans. There were strong criticisms against the National Election Commission (CNE) of Angola, along with other political parties. In response to such election irregularities, delegates from both UNITA and CASA-CE filed joint complaints to the Constitutional Court that were rejected. Freedom House (2018) observed that despite such attempt to find recourse through the courts the nature of Angola's political institutions are those which are strongly based on corruption and in this particular case such 'corruption and political pressure from the MPLA contributes to the judiciaries general inefficiencies'.

The Angolan judiciary has also been questioned in recent years over its lack of due process and 'acting on behalf of the MPLA'. The courts in 2017 tried Rafael Marques a well-known journalist and human rights activists for 'accusing public prosecutor Joao Maria de Sousa of corruption' as discussed in section 3.6.2 (i) and 5.2.3. This is not the first time that the judiciary was used as a mechanism to silence individuals. In 2015 Rafael Marques was also convicted by the courts on the charge of 'defamation' in a book which highlighted the actions of Angolan military generals within the mining industry and the human rights violations which proceeded.

The examples above are relevant because they show that the judiciary can play an important role in legitimising decisions, even if such decisions are wrong and unconstitutional. In theory and within a properly functioning judicial system, the judiciary should respect the Constitution, while enforcing enforce the laws passed by the National Assembly – which should in principle be within the scope of the Constitution. As noted above in section 5.3 and 5.3.2, the Angolan National Assembly is not representative of the people, nor does it comply with its constitutional responsibility of a democratic State.

The Angolan judiciary, in many ways, perpetuates the current structure of the Angolan political system. It entrenches the 'illiberal' nature of the Angolan State by enforcing its laws which in turn serves as a rubber stamp for justice in which the MPLA uses the institution as a way to stifle dissent.

5.4.1 The Constitutional Court: A tool of the executive

Article 180(1) stipulates that the Constitutional Court shall, in general, be responsible for the administration of justice in legal and Constitutional matters, under the terms of the Constitutional law. section 2 of the Constitution further stipulates that the Constitutional Court shall: (a) assess the

Constitutionality of any rules and other acts of the State, (b) provide a prior review of the Constitutionality of the laws of Parliament, (c) exercise jurisdiction in other legal and Constitutional, electoral and party political matters, under the terms of the Constitution and the law and (d) assessing appeals against the Constitutionality of the decisions of the various courts that have applied rules of which their Constitutionality was questioned during the relevant proceedings.

However, the Constitutional Court has failed in all the above endeavours. It has consistently failed to uphold the spirit and democratic nature of the Constitution in failing to render judgments in at least in three cases. The first was the 15+2 case in which as per Article 180 (1) (d) it failed to overturn the unconstitutionality of the courts in prosecuting the young men accused of 'rebellion', mostly because such case was one by the arms of the executive and with it further cementing the judiciary as an extension of the executive branch. But the biggest failure by the courts was its interpretation of the Constitution and its subsequent decision to remove the role of Parliament in providing executive oversight as discussed in section 4.7.2, which in turn undermined democratic principles, the rule of law and separation of powers within the Angolan State system and third, was, although never argued in court, the failure to propose a constitutional review of the Angolan Constitution as it regarded the nature of the political organisation.

As a result reforming the Constitutional Court to deal with matters of constitutionality independently and impartially without any interference, pressure and or influence from any other branch of government is vital. Such restructuring would then also require that the Constitutional Court have full powers of legislative review. Such restructuring would work towards promoting a more stable societal structure. The jurisdiction of the Constitutional Court within this context must have full jurisdiction and authority on deciding the constitutionality of any act by the executive, Presidential decrees and Parliament legislation through its powers of Constitutional review and with it order such institutions to either cease the promulgation of the institution or represent it in another form which respects the Constitution.

5.4.2 The judiciary and violence in Angola

Alexandrino (2015:14) noted that the true value of fundamental rights could be translated into one word: 'effectiveness' or rather as he puts it, 'the realisation and effective protection of the basic interests of the person, at the level of the existing power structures'. In this regard, such effectiveness must be articulated within the fundamental principles of the Constitution – and as such the courts which serve as the main guarantors of making sure that such fundamental rights are protected.

The protection of such fundamental rights requires a legal system that is, according to Alexandrino (2015), capable of guaranteeing individuals fundamental rights. Once again, the question of political structuring and ordering is important to ensure that the judiciary is able to fulfil its role in the protection of human rights.

Article 174(2) of the Constitution gives competency to the courts for the protection of individuals fundamental rights. Article 177(1) continues that the courts shall guarantee and ensure the observance of the Constitution, the laws and any other legislative provisions in force, protection of the rights and legitimate interests of citizens and institutions shall decide on the legality of administrative acts.

In this regard, one can see that the courts are the ultimate guardians of the legal order in Angola. However, such guardianship is truly undermined by the nature of political power in Angola as per the discussion in section 4.7. Moreover, the courts are as a result rendered impotent – which in turn, one would argue seems to render the Constitution simply as a text to be used not to safeguard fundamental rights but rather as a tool of oppression due to the lacks of the necessary checks and balances on political power.

The idea of applicability means that the fundamental rights that are safeguarded in the Constitution are adequately and effectively applied. Such rights are those inscribed in Chapter 2 Article 30 to 75 of the Constitution. Alexandrino (2015) noted that such applicability legally binds the State and in particular the legislative and the executive. Article 27 of the Constitution deals with the rules governing rights, freedoms and guarantees. Article 28 which deals with the legal force, in its Article 28(1) states that the Constitutional principles regarding fundamental rights, freedoms and guarantees are directly applicable to, and binding upon, all public and private entities'.

Angola's State institutions are thus bound by the legal decisions of the courts – this is vital because if the courts are not independent or if there is an imbalance of power within the branches of government as discussed in section 4.7and 4.7.2 the courts are, in many ways, unable to act as it is constitutionally mandated and as a result unable to protect the fundamental rights of citizens.

However, as the judicial system through the courts, its mandate should be in theory to ensure that the fundamental rights in the Constitution are adequately protected and guaranteed. The discussion in 3.6.2.1 (i) and (ii) are laws which in many ways go against the fundamental rights of citizens. They are also laws which go against the general principles of and spirit of the Constitution. In this regard, the courts should have, as guarantors of individual fundamental rights not allowed such law to be implemented.

The Angolan Constitution is very clear on the importance of taking into consideration international law when making decisions. In such regard, De Andrade (2009) rightly noted that in legal systems like those of Angola in which the Constitution gives the courts authority to provide 'oversight and control' of the constitutionality of laws and norms, the 'direct applicability of the law' can mean that the courts can use the Constitutional Law directly as a way to deem certain laws unconstitutional – meaning that the courts could – directly deem the laws described in section 3.6.2 (i) and (ii) unconstitutional.

Such a statement is further strengthened by Article 174(1) of the Constitution which states that 'the courts shall be sovereign bodies with the power to administer justice in the name of the people'. This means that laws which undermine the fundamental principles of the Constitution can be struck down by the courts.

Article 174(1) state that the courts shall be the sovereign bodies with the power to administer justice in the name of the 'people'. Meaning that despite being public institutions as per Article 28(1) of the Constitution – they are also 'sovereign' bodies.

In this regard, the principle of 'legally binding' nature of public institutions binds the courts in the following way:

1. As per Article 226 (1) of the Constitution which states that 'the validity of the laws and the various acts of the State, the public administration and the local authorities shall depend on their compliance with the Constitution, and Article 226 (2) which states that 'law or acts which violate the principles and norms enshrined in the Constitution shall be unconstitutional'.
2. Article 29 (1) which deals with the access to law and effective judicial protection in its Subsection 1 states that 'everyone shall be ensured access to the allow and the court to defend their legally protected rights and interests, and justice shall not be denied to anyone due to lack of financial means and 29(5) which states that 'for the purpose of safeguarding personal rights, freedoms and guarantees, the law shall ensure citizens judicial proceedings that are characterised by swiftness and given priority, in order to ensure effective and timely judicial protection against threats or violations of thee rights'.
3. Article 26 of the Constitution which deals with the scope of fundamental rights in its Subsection 1 states that 'the fundamental rights established in this Constitution shall not exclude others contained in the laws and applicable rules of international law'. This then further gives importance to the role of the courts in the protection of fundamental rights.

4. Article 180 (1) as it regards the Constitutional Court in its Article 180(1) states that the 'Constitutional Court shall, in general, be responsible for the administration of justice in legal and constitutional matters, under the terms of the Constitution and the law, (2a) 'assessing the constitutionality of any rules and other acts of the State', (2b) providing a prior review of the constitutionality of the laws of Parliament' and (2d) 'assessing appeals against the constitutionality of the decisions of the various courts which have refused to apply particular rules on the grounds that they are unconstitutional'.
5. As per Article 58 which deals with the limitations or suspension of rights, freedoms and guarantees, Article 58(1) reaffirms that 'the exercise of the rights, freedoms and guarantees of citizens may only be limited or suspended in the event of a state of war, siege or emergency, under the terms of the constitutional law'. Article 58(5) further states that 'under no circumstances may the declaration of a state of war, siege or emergency effect: (a) the application of the Constitutional rules concerning the responsibilities and functioning of the bodies that exercise sovereign power, (b) the rights and immunities of the members of the bodies that exercise sovereign power, (c) the right to life, personal integrity and personal identity, (d) civil capacity and citizenship, (e) the non-retroactive nature of criminal law, (f) the right to defense and (g) freedom of conscience and religion.

As per the concept and nature of legally binding as described in Article 28(1) of the Constitution, the courts must then through their judgement and acts ensure that individual rights and fundamental principles as identified in the Constitution are safeguarded. Such safeguards must ensure that all court decisions must have as their ultimate objective the protection of fundamental rights.

Linking the courts to Constitutional norms, and in the Angolan case the importance of the judiciary as an important institution in safeguarding such norms a further reiteration of such importance can be seen through Article 2(2) which states that 'the republic of Angola shall promote and defend the basic human rights and freedoms of individuals and members of organised social groups and shall ensure respect for them and guarantee their implementation through the legislative, executive and judicial powers, their organs and institutions, and on the part of all individuals and corporate bodies'.

In this regard where there is incompatibility between national law and issues of human rights which might arise through the law-making process, Article 26(2) states that 'constitutional and legal precepts relating to the fundamental rights must be interpreted and incorporated in accordance with the Universal Declaration of Human Rights, the African Charter on Human and People' Rights and international treaties on the subject ratified by the Republic of Angola'.

The 2010 Constitution was in many ways a strong move towards establishing some kind of legal democratic order in Angola (in theory). The discussions in section 4.4 highlighted the clear and authoritarian nature of Angola's legal Constitutionalism in 1975, while section 4.5.1 moved on to highlight how it moved away from authoritarianism towards multiparty 'democracy'. However, and although the 2010 Constitution was in many ways a pivotal moment, it failed to be a real catalyst for democratic transformation. One may argue that it created systems for violence.

First, although the 2010 Constitution provides for the separation of powers in its Article 2(1), in reality, such separation is fictional. Araujo and Nunes (2014) noted such fiction is that the separation of power principle in the Angolan case is a 'relative one' while Article 105(3) of the Constitution lists the sovereign organs of the State in which it includes the courts and prescribing that they should respect 'the separation and independence of the functions' given to them by the Constitutional law, the separation of powers in the Angolan case must then be read together with Angola's constitutional principles as discussed in section 4.6.1.

Angola's Constitutional and fundamental principles highlighted by the 2010 Constitution strongly favours an overly centralised State, together with a very strong executive – the organ where power truly resides. This leaves a lot of leeway for interpretation of how the separation of powers actually works in Angola. The 2013 Constitutional Court case which removed Parliament's oversight role as discussed in section 4.7.2 is indicative of such murky and interpretative principle of the separation of powers. Such interpretation is dangerous not only for the health of a Constitutional democracy but also for the protection of the individual.

The discussion in section 5.2.2 is indicative of the failure of the judiciary to be completely separate from executive control. These discussed laws, together with the court cases which were allowed to proceed is indicative of a form of violence of State institutions against its citizens. It further creates the context in which the judiciary becomes the enforcement arm of the executive.

The judiciary can arguably be seen as one of the most visible institutions in Angola – because the judiciary is an organ of State – through the courts which executes all the laws. The discussion in Section 5.2.3 is important in highlighting this because it is the organ which enforces the laws of the land. The unbalanced nature of Angola's current institutional framework has been highlighted through the executive (section 5.2) and the legislature (section 5.3) which creates the political context in which the judiciary through the courts does not enforce a law which was deliberated for and approved by the legislature but rather that it is an extension of 'government', which pushes forth its policies while violating the spirit of the Constitutional Law.

The use of force and extreme brutality used by the police and security services in Angola has been from time to time singled out by civil society in Angola and international organisations such as Amnesty International, Human Rights Watch and others (section 5.2). The violent repression of peaceful protests, arbitrary arrests and extrajudicial killings has discussed in section 5.2.2 has been a feature of the Angolan socio-political landscape for many years. In its 2013 concluding observations, the UN Human Rights Committee expressed its concern with regards to 'arbitrary and extra-judicial killings by security forces'. The Committee also expressed concern at the 'cases of disappearances of protestors which occurred in Luanda between 2011 and 2012 and at the reported impunity of security forces involved in such human rights violations' (2013 Human Rights Committee).

It is important to note that despite such a context, the judicial branch has failed to prosecute crimes committed by members of the security forces, which I would argue has been facilitated by the impunity and repression of the executive branch. As a result, the judiciary has been used to punish citizens who attempt to advance the cause for human rights, such as presented in the discussion in Section 5.2.3. The discussion in section 4.7 demonstrated that political power in Angola is highly concentrated – and such concentration, was argued is one which renders the principle of the separation of powers unlikely within the Angolan context. In such light, the Second Secretary of the MPLA, Jesuino Silva reiterated that as it regarded the judiciary, the separation of powers was a structural principle within any democratic system 'and in Angola it is not different (DW-News 2015a).

In contrary to such affirmations of judicial independence Angolan jurist Luis do Nascimento considered that judicial power in Angola is not 'sovereign'. He continued that 'in terms of the Constitution – it is simply not realised'. He added that such an idea of judicial independence is fiction because effectively 'there is a great amount of concentration of all powers in the hands of one person, the President of the Republic' (DW-News 2015b). On another note, the President of Maos Liveres, Mr Salvadore Freire – which is an NGO in Angola which works towards providing free legal aid to the poor stated that technically 'there is no such thing as judicial independence in Angola'. Freire continued in adding that 'the judges and prosecutors are nominated by the President of the Republic, he has the competency to nominate and at the same time the authority to fire them' - he concluded in stating that because of this the judiciary is not independent.

A prominent political analysist, Filomento Vieira Lopes, added that practically, judicial power is not independent and sovereign. He noted that in fact 'there exist problems with the other structures of the State' – Lopes argued that within the post-civil war context and even after the establishment of the Constitution, 'it was not possible to dismantle the party-state structure which governs us'. He stated

that 'the current Angolan State is governed similarly to the period during the one-party State system. (DW-News 2015b).

In such regard, the judiciary in Angola can be seen as an instrument of the executive which works towards executing its mandate – or in this regard undermining its ability and capacity to be sovereign and a true representative of the people. A particular case of executive judicial interference was seen through the case of the 15+2 that was discussed in section 1.1 and 1.6.1, 3.6.2 (i) and (ii). Former President Dos Santos 'interfered' in the work of the courts as it deliberated the case. In Such regard, Silva (DW-News 2015b) stated that during the MPLA's meeting of its Central Committee, the position of the President (Dos Santos) – speaking out against the activists was in a way a form of securing an 'anticipated sentence'. He continued that in such regard, 'the courts feel incompetent to resolve the case without the dictates of the President'.

Such paralysis of the judiciary leads back to the very nature of 'power' in Angola – and, in particular, the 'organisation' of such power within the Angolan Constitutional Law which allows for this paralysis and fear to cripple the implementation of justice and with it undermine the rule of law in Angola. In addition, rendering the judiciary as a weapon of the executive while at the same time undermining the democratic process in Angola. Such undermining of the democratic process is one which has a direct link to violence in Angola – such structural violence undermines not only individuals abilities to access justice but it further leaves them vulnerable to arbitrary action by the State and its institution.

5.4.3 Obstacles to changing the legal culture and preventing violence

Baum (2003:15) defines judicial independence as a 'condition in which judges are entirely free from negative consequences for their decisions on the bench. The degree of judicial independence is the degree of such freedom'. In many ways, such form of independence is important as it gives the courts large latitudes for action and with it impartiality in the outcome of decisions.

Taking this point further, Giles and Lancaster (1989) have noted that when the judiciary loses their independence they may also lose their effectiveness. The 2013 Angolan Constitutional Court decision, as discussed in section 4.7.2 to undermine the oversight role of the National Assembly highlights how the legitimacy of the institution can be brought into question.

Article 174(1) of the Constitution stipulates that 'the courts shall be sovereign bodies with the power to administer justice in the name of the people'. Despite the end of the civil war and the adoption of the 2010 Constitution with its discourse of democracy and human rights and adherence to

international norms the national scenario as Rafael, Roque and Cravo (2007) noted 'remains one of strong concentration of political power and administrative centralisation, little distinction between, State, party and government structures deep interpenetration between, the judicial and legislative and executive systems'.

The failure of an adequate procedure to promote judicial independence has further perpetuated the command structure of the Angolan State within the post-war system (see 4.7; 4.7.1;4.7.2). Such perpetuation was entrenched by the fact that the Constitution is itself the result of MPLA State-making in the absence of broader societal and political forces (see 4.6). The Angolan judiciary can then arguably be said as an artificial creation designed and maintained to consolidate the short term political maintenance consolidation of an elite.

In addition, McDonald and Kong (2012:846) concurred that judicial independence could be curtailed in 'jurisdictions where there is no tradition of adjudication as a mode of dispute resolution'. In the forty-four years since Angolan independence the idea of an independent judiciary was and remains an unfamiliar topic. Such unfamiliarity can be seen with the modelling of the State immediately after independence into a one-party State with strong authoritarian traits (see 4.4.1; 4.5.2). The civil war also played a role in undermining the judiciary as its function became almost non-existent during the period of the conflict. Such deficiencies continue to play an influential role within the structures of the judiciary and its relationship with other political institutions, mainly the executive branch.

Avino (2003) in setting forth various indicators which demonstrate a lack of tradition of judicial arbitration within particular contexts indicated: (1) the political control over judicial decision making, (2) judges who are not trained in law and are often and precisely appointed because they can be expected to answer directly to political officials and (3) endemic corruption in the judiciary. These indicators are arguably all present within the Angolan socio-political context and have further reinforced the culture of political impunity built through a history of authoritarianism control and violence (see sections 1.1,3.6.2;4.4.1;4.4.2;4.5.2;4.7 and 4.7.2).

McDonald and Kong (2012) established that judicial independence can be undermined in two particular ways through: (1) procedural mechanisms and (2) constitutional mechanisms. In Angola the judiciary has been undermined both procedurally and constitutionally. Constitutionally the discussion discussions in section 4.7 highlight an organisation of power which does not allow for the separation of powers and as a result undermine the role of the judiciary in performing its functions.

In the addition, the political culture is something which also plays a part in undermine the independence of the judiciary. While the discussion in section 2.3.1 speaks of the dangers of

subjective political culture actions by Angolan political actors as discussed in section 4.5.2 are arguably those which essentially built procedural mechanisms which undermined the nature of law in Angola. In addition, such procedural mechanisms were continued in post-war Angola through the creation of law which not only undermined international human rights norms but made the judiciary complicit.

Reichman (2008) noted that in contexts like Angola the undermining of the judiciary has been intentional. Such intent has been described as both 'political insurance' and 'commitment mechanisms'. With political insurance, this has been seen as a way in which undermining the Angolan judiciary concedes more power to the MPLA - party State, especially in light of more demands for democratic reforms and as a way to undermine electoral independence further while 'commitment' using the judiciary as a tool to safeguard certain policy actions.

Today the deficiencies of the Angolan judiciary remain in place. Articles 175 and 179 of the Constitution provides for the independence and impartiality of the courts and guarantees the tenure of judges. Despite this, Masuku, Montgomery, Jerolon and Da-Silva (2015:12) noted that 'the Angolan judiciary remains an institution subservient to political direction, influence, and pressure and one that does not effectively play a critical role in the defence, protection, and enforcement of fundamental rights and freedoms'.

Such deficiency arguably not only leads to perceived or actual perceptions of illegitimacy and the view that the State cannot guarantee rights, but then in turn potentially leads to 'revolution' as seen so often in places like Libya and Egypt and now currently in Lebanon along with countless others where justice has been denied. The importance of independent courts and as it regards to Angola was highlighted in the quote by Aniagolu JSC in the case of Oba Lamidi Adeyemi (Alafin of Oyo) and others v Attorney General, Oyo State and others in the Supreme Court of Nigeria (The-supreme-court-of-Nigeria 189AD) in proclaiming that:

> It cannot be repeated often enough that the jurisdiction of the courts must be jealously guarded if only for the reason that the beginnings of dictatorship in many parts of the world had often commenced with the usurpation of the authority of courts and many dictators were known to become restive under the procedural and structural safeguards employed by the courts for the purpose of enhancing the rule of law and protecting the personal and proprietary rights of individuals. It is in this vein that the courts must insist, wherever possible, on rigid adherence to the Constitution of the land and curb the tendency of those who would like to establish what virtually are Kangaroo courts, under different guises and smoke-screen of judicial regularity.

The Bordeaux Declaration (2009) in its Article 1 established that 'it is in the interest of society that the rule of law is guaranteed by their fair, impartial and effective administration of justice' it continued in stressing that 'public prosecutors and judges shall ensure, at all stages of the proceedings, that individual rights and freedoms are guaranteed, and public order is protected. This involves the total respect of the rights of the defendants and the victims'.

The arguments made above, and in particular in section 3.6.2 (i) and (ii); 4.7; 4.8 and 5.2.3 have provided a context in which the interests of Angolan society are not the guiding principles. Moreover, the arguments have elaborated that what fails to put forth the interests of the Angolan people is very much the way political power is organised and as it links to the judiciary the fact that the impartiality of the judiciary is undermined as its functions are carried forth not with the interests of the advancement of Angolan society, but rather that of a few – and in this regard that of the executive through the President.

Article 2 of the Declaration goes on to stipulate that the 'fair administration of justice requires that there shall be equality of arms between the prosecution and defence, as well as respect the independence of the courts, the principle of separation of powers and the binding force of final court decisions.' In Angola this is not the case.

The separation of powers in this regard is vital because it reinforces the importance of the separation of powers and how the failure to establish it is dangerous towards judicial effectiveness. One can argue that even in situations – and for argument's sake, that the Angolan judiciary was independent, it must also be perceived as independent. Yet, the Angolan judiciary seems to fail both aspects; it fails to be independent in the carrying out of its work while also failing to be perceived as independent.

The Principles and Guidelines on the Right to a Fair Trial in Africa and Legal Assistance in Africa (Principles to a Fair Trial in Africa) in its Point 4(a) states that the 'independence of judiciary bodies and judiciary officers shall be guaranteed by the Constitution and the laws of the country and respected by the government, its agencies and authorities'.

Such principle implies that the State must in every way ensure that judges are independent. This further implies that even the nomination and election of judges to various courts must be done in an impartial way and also in a way in which it involves other institutions of the State such as Parliament. In this regard, one can take a step further in stating that though the President can nominate individuals to serve in various courts – especially superior courts such as the Constitutional Court and the Supreme Court – it must be the role of Parliament to consent to such nomination – the failure of

Parliament in doing so should then stop the process making it so that the President provide new names.

This question of consent also further entrenches the dependence and inter-dependence of the three branches of government. This idea of judicial independence then also directly works towards configuring how power works within a country and, in this regard, within the State itself. The discussion in section 4.7 on how political power is organised in Angola then inherently stands on the way towards truly having a system in which judges and those of the judicial branch can be independent.

Point 4(f) stipulates that there shall be not be any inappropriate or unwanted interference with the judicial process nor shall decisions by the judicial bodies be subject to revision except through judicial review, or the mitigation or communication of sentence by competent authorities, in accordance with the law'. Point 4(g) continues that 'all judicial bodies shall be independent of the executive branch.' In Angola this distinction of independence from the executive branch is blurry, to say the least. The discussions in Sections 4.7; 4.7.1 and 4.7.2 on the organisation of political power and sections 5.2.2; 5.2.2 and 5.2.3 on the nature of Angola's executive creates the context in which such inter-dependence is rendered virtually non-existent.

In a television interview conducted by the Portuguese news network RTP investigating the relationship between Isabel Dos Santos and the Luanda leaks and in particular the freezing of her accounts by the Angolan judiciary. Isabel Dos Santos stated that the Angolan judiciary is not independent of political control and influence. She added that 'judges in Angola are not independent' (Dos Santos 2020:pa12). Though such a comment might have been triggered by the fact that she has been accused by the Angolan government of embezzling funds and the subsequent decision of the government to freeze her assets in the country. Her comments must be interpreted within the context of the organisation of State power (see sections 4.7; 4.7.2). In which she knows full well that similar to the time when her father was in office JLO can influence and direct the judiciary to prosecute her by any means necessary (Harding 2020).

5.5 Challenges identified in the Angolan legal institutional framework

5.5.1 Absolutism

According to Kelsen, (1948:232) political absolutism 'refers to a form of government where the whole power of the State is concentrated in one single individual, namely, the ruler, whose will is law'. Political power in Angola can be identified as being 'absolutist' in nature (see sections 4.5.2;

4.7; 4.7.1 and 4.7.2). This was seen both within the pre-war and post-war period in Angola. The extreme use of force by Angolan security services and the concentration of power is arguably a continuation of such absolutist nature leftover from the one-party State (see sections 1.1; 1.6; 1.6.1 and 4.8.1).

The discussion in section sections 4.4; 4.4.1 and 4.4.2 briefly highlighted the roots of Angolan authoritarianism which have to a large degree been maintained through the Constitution – in particular, the hold that the executive branch has on all political organs of State seen through the auxiliary organs as mentioned in section 5.2.1. Henshall (2014) added that such form of absolutism can be seen in contexts characterised by the 'erosion of rights, the centralisation of decision-making, and the loss of liberty'(see 4.7 and 4.7.2). This loss of liberty has a further hindrance towards democratic consolidation because of the level of power exercised by those in political office.

This chapter has sought to highlight how Angolan institutions are undermined by its 'super-presidential model. It has shown that the Angolan political structure is overly centralised, while at the same time giving immense powers to the President along with having a weak and subservient legislature. It has also highlighted how the judiciary has been further undermined by not only removing its role of oversight of the executive but also by its very nature and due to Presidential powers of appointment as discussed in section 5.2.1 which has rendered its agents merely as executive enforcers.

5.5.2 Arbitrariness

In recent years Angola has seen the rise in brutal tactics by the police force and the military (see sections 1.1; 1.6.1 and 3.6.3). Such brutality has also been coupled by a high degree of arbitrariness in the conduct of State affairs. The discussion in section 4.4.2 highlighted the level of brutality in which the Angolan State has used in quelling dissent (see sections 4.8.1 and 5.2.3).

One can then make a strong argument that the arbitrary nature of Angolan institutions is rooted within State-sanctioned acts as was seen in the past but despite the adoption of the 2010 Constitution. Such arbitrariness is seemingly engrained within Angola's current institutional memory and makeup (1.1; 1.6; 3.6.3; 5.2.2 and 5.2.3).

In briefly citing the case of Cabinda,[26] the failure of the government to adequately address the near forty-year conflict has much to do with its arbitrary nature coupled with the nature of State institutions. The conflict which has for decades now been framed as one of a 'fight for independence' can also be argued to be one against the MPLA government's arbitrary nature, which is further coupled by Angola's State structure.

Speaking on Cabinda, the President of the UNITA parliamentary group Adalberto Costa jr has stated that in Cabinda 'Angolans continue to die, victims of an ill-resolved conflict'. Costa continued that ' in that province, citizens are treated in an arbitrary and authoritarian manner' and concluded in criticising the actions of Angola's defence organs as being 'extremely radical' (Observardor 2019).

5.5.3 Exclusion

In his departure speech from the National Assembly in 2014, former Angolan Prime Minister Lopo do Nascimento said; 'elections in Africa are a process of exclusion' (Nascimento 2014). Although eluding to say that it was the case in Angola specifically – he did, however, signal and brought to light an important feature which makes part of the Angolan political system and that is its propensity to practice a politics of exclusion and arbitrariness nature of the political system. Social and political exclusion, like the arbitrary use of force in Angola is also unfortunately not a new feature within the Angolan social and political landscape (see 4.4; 4.4.1; 4.4.2; 4.5.2; 4.6; 4.7 and 4.7.2). The adoption of the 1975 Constitution as discussed in section 4.4.1 can be used as a barometer to measure the extent to which exclusion was, to a large extent, inherited by Angolan State institutions.

Despite the adoption of the 1992 Constitution which paved the way for multiparty elections and the 2010 Constitution which hoped to stabilise Angola's political environment by providing for greater participation proved to be the opposite. The 2010 Constitution one would argue, in many ways serves to institutionalise exclusion (see 4.7; 4.7.1 and 4.7.2). It further went on to consolidate the power of Dos Santos by reverting to the principles of the 1975 Constitution in which political power was centralised and placed in the hands of one institution (see 4.5.2).

This institutionalisation which was spearheaded by the small elite of the MPLA effectively worked towards limiting the spaces for greater political participation by enabling an environment in which the MPLA would, in effect, have control of the entire State apparatus. Moreover, such exclusion from the political process has also trickled down to the exclusion within economic and social spaces.

[26] The Cabinda War is an ongoing separatist insurgency, waged by the Front for the Liberation of the Enclave of Cabinda (FLEC) against the government of Angola. FLEC aims at the restoration of the self-proclaimed Republic of Cabinda, located within the borders of the Cabinda province of Angola. (Porto 2003). Also see, (Martin 1977).

5.5.4 Political domination

The challenges of institutional reform can be attributed to the nature of political domination. Domination can arguably be said to be rooted in Angola's historical past, a history seen through two periods of domination: (1) colonial domination, and (2) the domination of the one-party State through the MPLA as elaborated in the 1975 Constitution (see sections 1.1; 1.6; 1.6.1; 4.4; 4.4.1; 4.4.2; 4.8.1 and 4.5.2).

This form of domination is evident within the Angolan society in two particular ways: (1) within societal relations where between non-government institutions in which domination over one person and or group is seen as the preferred *modus operandi*. (2) political domination which is an extension of the social - in the sense that political authority which is based on the idea and principle of domination is the status quo under which political action is conducted. Such can be seen by the executive branch's domination over all other organs of State, the control of State resources without any real oversight and the use of the law as a way to quiet dissent (see sections 3.6.2 (i) and (ii) and 3.6.3.)

It is a form of political domination based on exclusion and separateness. In the political context such domination is more visible by the lack of spaces for real political dialogue – and in extreme cases, the creation of environments in which speaking out on certain political issues equals dissent and such dissent results in further exclusion and marginalisation.

5.5.5 Lack of an effective Bill of Rights in the Constitutional Law

In many ways, the Bill of Rights serves to provide a basic framework within the Constitutional Law that safeguards the rights of persons. Paraphrasing Heyns (2006:17) the Bill of Rights in this instance would serve as an 'escape clause' through which concepts of absolutism, political domination and exclusion could be fought. In the Angolan case, the Bill of Rights simply fails to do this.

Scholars would be hard-pressed to deny that human rights by their very basic nature serve to challenge the 'illegitimate use of power and not State institutions' Heyns (2006:16). The importance of a Bill of Rights within the Constitution is the pinnacle that sets forth such rights as the most basic foundation and inalienable rights of human beings. In many ways, this can be set aside from Constitutions themselves; where Constitutions can be seen as the outcome of negotiations and agreed-

upon standards of procedure and political ordering of the State. The Bill of Rights, as a result, serves as the base of such ordering.

One may argue that the Angolan Bill of Rights as per Title II of the Fundamental Rights and Duties in the 2010 Constitution is simply ineffective. Such ineffectiveness is based on the current nature of the organisation of power which in turn undermines the role of independent institutions through the removal of Parliamentary oversight, coupled by a weak and subservient legislature and a dysfunctional judiciary which arguably renders the bill of rights ineffective (see sections 4.7; 4.7.2; 5.3; and 5.4).

The discourse of rights in Angola is then severely challenged by the failure of Angola's Constitutional drafters to draft a Constitution which would be reflective of international human rights legal and normative standards (UDHR and ICCPR) (see sections 3.2; 3.3; 3.4 and 3.5). This failure presents itself as a challenge in ultimately building a social and political system in which the individual is seen as having as their very base certain inalienable rights provided for within the Constitution which would then safeguard them against the illegitimate use of power by those holding political office.

5.6 Angola's State institutions: a third alternative

In a televised lecture presented by Marcolino Moco (Moco 2012a) a former Prime Minister of Angola (1992 to 1996). Moco argued that the Angolan institutional framework is simply too 'rigid' and does not provide the context for which good and participatory governance can be achieved. He added that although other African countries such as 'South Africa', Cape Verde, and Ghana have their problems, they do not have an institutional structure like that of Angola – one that is 'rigid' and with over-centralised political powers in the hands of the President (see sections 4.7; 4.7.2; 5.2; 5.3; and 5.4).. Moco concluded that many of the issues which Angola faces are a result of 'an institutional model which is completely wrong' (see chapter 4 and 5).

In this regard, one can extrapolate that Moco speaks of the dangers of both the centralisation as it regards to the territory of the State and centralisation as it regards political power in addition to the super-presidentialist model which permeates all other organs and aspects of the State which in turn makes it impossible for there to be real participatory governance. As this relates to conflict – the current institutional structures then create the conditions for which State violence is heightened. Moco (2012) continued that 'democracy is a doctrine or a political regime based on the principle of popular sovereignty and the equal distribution of power'. He continued that such a political regime must be characterised by a free and inclusive electoral process, and the 'division of political powers and controls on how such power is used'.

In his book entitled *Angola: A terceira Alternativa* (Angola: the third alternative) Moco (2012b) argued that In light of Angola's current institutional and legal mechanisms (see sections 4.7; 4.7.2;5.2; 5.3; 5.4 and 5.5) Angola would have three potential alternatives for social and political development: (1) the status quo can be maintained. However, it is not a status quo which can be maintained 'indefinitely, (2) citizens may turn to violence so as change the political system (revolution), and (3) change may be achieved through abandoning the part of the Constitution which deals with the distribution of political power.

The discussions above have highlighted that Angolan institutions, the executive, the legislature, and the executive are imbalanced (see sections 5.2; 5.3; 5.4 and 5.5). It is a form of imbalance which limits democratic expression while heightening the risk of violence as the executive holds near absolute power the power in the political system (see sections 4.7; 4.7.2 and 5.2). Angola is also a large country with eighteen provinces, various ethnicities. It is a country made up of great diversity and it is simply inconceivable that one individual would hold so many powers (see sections 4.7; 4.7.2; 4.8.1 and 5.2).

Though Moco does not provide a framework for the restructuring of Angola's State institutions, his third alternative is instructive and serves to supplement the dangers highlighted throughout this thesis (see sections 4.7;4.7.2; 4.8.1; 5.2; 5.3; 5.4 and 5.5). In addition, Moco's third alternative speaks only of altering the section in the Constitution which deals with the organisation of political power. Though one would acknowledge that that is indeed important – this thesis goes even further and proposes that simply altering the organisation of political power is not sufficient (see sections 4.7 and 4.7.2).

The chapter which follows will propose stepson how Angola's State institutions can be reformed.

5.7 Conclusion

The optimism that the 2010 Constitution would provide real democratic change in Angola has faded. This failure of democratic change and consolidation stems from the failure of the Constitution in arranging political power in a way that is responsible and within the realm of real democratic constitutional norms. Three key findings can be drawn from the analysis of this chapter. The first is that the executive branch of government undermines real democratic governance; it creates the conditions to permeate through every facet of Angolan society.

As per the discussion in section 5.2.2, the super-presidential model has been further bolstered through the creation of parallel institutions which gives the President powers which allow him to govern unaffected and without any limits and or control. The result of such seemingly limitless Presidential and executive power creates an extremely heavy executive branch which endangers democratic governance. Second, the chapter through the discussion in section 5.3 found that while the executive branch has far-reaching powers, the Angolan Parliament, by design and through political engineering, has been left toothless with no oversight capability.

Third, the analysis of the judiciary in section 5.5 identified that Angola's judicial branch is not independent and often subservient to executive pressure. The process of putting judges in superior courts such as the Constitutional Court and Supreme Court is flawed – it is a system that creates the conditions which further undermine the institution and with it the administration of justice. section 5.6 looked at some of the obstacles which have been identified in Angola that make institutional change difficult to achieve.

Lastly, the chapter identified that in their current form, Angola's three branches of government are simply unbalanced. Such imbalance is seen through a very 'heavy' executive branch that dominates all other branches. Such dominance is seen through a very weak Parliament and Judiciary. section 5.7 reinforced the argument made throughout this chapter in which Moco identified the importance of a third alternative for Angola, in arguing that without it, violence would be the result.

In conclusion, the chapter identified that institutions in Angola need to be reformed as a means to prevent violent conflict. Chapter six below will provide a detailed proposal on how Angola's State institutions can be structured so as to prevent violent conflict.

CHAPTER SIX: The role of State institutions in preventing violent conflict in Angola

6.1 Introduction

This chapter expands on how the Angolan State can be better structured to prevent violent conflict. The chapter takes into consideration that there is no mechanism at the international level which States can adopt for the prevention of violence (see chapter 3). In addition the chapter will take into consideration the overall nature of the Angolan State and how in its current form serves to promote violence (see sections 4.7; 4.7.2; 5.2; 5.3; 5.4 and 5.6).

The chapter will be broken up into four sections: (1) the first parts will propose how the State can begin its reform. It will propose that the constitution be amended so as to facilitate a decentralisation process (2) part two will provide the context in how the executive branch can be reformed by proposing mechanisms for reform (3) part three will propose how the legislature can be reformed by proposing the establishment of bicameral legislature and (4) part four will analyse the judiciary and propose how it can gain legitimacy in light of the proposals made in the first three sections.

6.2 Identifying the State

The preamble of the Angolan Constitution is indicative of the kind of State which would, in principle, provide a context for the realisation and the protection of human rights. It identifies the 'Angolan people' through its representatives in the legislature as the lawful representatives of the State. The preamble also makes specific reference to the 1992 Constitution in which it stresses the importance of enshrining 'multi-party democracy' while guaranteeing 'the fundamental rights and freedoms of citizens and a market economy, changes extended later by the constitutional revision of 1992'.

The preamble also reaffirms the commitments to the values and fundamental principles of the independence, unity of a democratic State based on the rule of law, pluralism of political expression and organisation, the separation and balance between the powers of bodies that exercise sovereign power and respect and guarantees for the fundamental human rights and freedoms, which constitute the essential pillars supporting and structuring this Constitution.

Yet, although the preamble has sought to identify the above principles as vital, there are stark contradictions on how the Constitutional Law is both written and applied. The Angolan Parliament, as discussed in section 5.3, has been significantly undermined which, in turn negates the principles of 'pluralism of political expression and organisation'. Moreover, such undermining of the legislature directly undermines the 'Angolan people' who are the elected representatives, which is further

aggregated by virtually having no mechanisms for the separation of powers, which in turn undermines the checks and balances inherently necessary within democratic governance.

Bastian and Luckham (2003:50) have also firmly stated that the design and structure of democratic institutions only flourish if active and broadly based democratic politics support them. The 'design and structure of democratic institutions also make a difference, by creating spaces for democratic politics and shaping how elected governments deal with substantive issues of participation, socio-economic justice, and conflict'. As per the Universal Declaration on Democracy adopted by the Inter-Parliamentary Council (1997) in its 161st session in its Point 23 clearly expresses that 'democratic institutions and processes must also foster decentralised local and regional government and administration, which is a right and a necessity, and which makes it possible to broaden the base of public participation'.

6.2.1 Towards a decentralised political system in Angola

The AU adopted the African Charter on the Values and Principles of Decentralisation, Local Government and Development (African Charter on Decentralisation) in 2014. The Charter has the objective of promoting decentralisation as a vehicle for improving the livelihood of people in the African continent. Article 2(a) of the Charter states as an objective to 'promote, protect and act as a catalyst for decentralisation in Africa'. Indeed, and though the Charter does not specify that such decentralisation would work towards preventing violent conflict, one can extrapolate that the fact that decentralisation is seen as an important pillar to be achieved by African governments.

The preamble of the Charter notes various forms of decentralisation, including devolution, deconcentration and delegation in the political, administrative and financial spheres. The importance of decentralisation within the African context can also be found in the preamble of the Charter in which it recalls the African Charter on Human and Peoples' Rights, the Convention on Prevention and Combating of Corruption, the African Charter on Democracy, Elections and Governance, the African Charter on the Values and Principles and the Principles of Public Service and Administration, all of which are based within a framework of human rights and good governance.

Indeed, and while the Charter has not been ratified by many States, including Angola, Chigawata and Ziaswa (2018) have noted that such failure to ratify might be due to lack of a clear understanding of the meaning and significance of the decentralisation framework which the Charter provides.

It is important to note that though decentralisation is an objective of the African Union, it is nevertheless still a difficult concept to implement. Authors such as Smoke (2003:37) have argued that

'there is a great deal we do not know about decentralisation. Much of the decentralisation literature focuses on its often problematic performance and positive writings tend to be based on anecdotal instances of success or enthusiastic rhetoric about its benefits'.

Within the African context, decentralisation as a complicated concept is further identified. Scholars such as Linn (1992), Bird and Vaillancourt (1998) have identified that within the literature of decentralisation there is often a lack of clarity as to exactly what it entails and what it would achieve. However, within the context of violence and its prevention, Hartmann (2008:174) has noted that 'decentralisation may mitigate conflict conflicts by facilitating the dispersal of power from a centralised government structure to the peripheral regions of a country'.

Uganda arguably has one of the most advanced decentralised states in the African continent. Francis and James (2003:325) have praised it as 'one of the most far-reaching local government reform programs in the developing world'. Mitchinson (2003:241) has added that it is 'one of the most radical devolution initiatives of any country at this time'. However, Steiner (2008) has noted a number of issues, mainly low levels of accountability, insufficient human and financial resources, corruption, patronage, and central resistance to the decentralisation, constraining the proper implementation of the reform, putting improvements in the participation and efficiency at risk and ultimately jeopardising the process.

In their article entitled 'why decentralisation has failed in South Africa' Koelble and Siddle (2013) have argued that decentralisation as set out in the constitution has failed to live up to its promise. In addition, they argue that, 'the system of decentralisation adopted is highly complex based on a set of underlying assumptions that are simply not applicable in the South African case'. Yet, one can also argue that the difficulty of decentralisation in South Africa should be viewed in the context of the negotiation process which led to the constitution.. Picard and Mogle (2015) have observed that 'the timing of decentralisation, relative to other major governance changes, was based on the 1990s negotiation process'. One can also argue that the nature of the African National Congress' (ANC) political culture of centralised control could arguably be an added factor as to why decentralisation faltered.

Picard and Mogle (2015) have also argued on the limits of decentralisation in South Africa by looking at the levels of limited and the defunct way in which aspects of authority, autonomy, political accountability, fiscal and administrative accountability, questions of capacity have not fully been successful within the decentralised South African system.

. Picard and Mogale (2015) argued that there was a 'genuine feeling that development management is a national project and requires centralised guidance' secondly, there was 'the memory that federalism, decentralisation, and local government were tools of apartheid' and that 'from the beginning of the struggle in 1912, there was a commitment to a unitary government in South Africa' and lastly, there 'are technocratic reasons to retain central control' as there are 'limited professional skills in the country and these skills need to be used most effectively at the national level'.

It is however, important to note that the application of decentralisation must not necessarily be seen as something which would fail just because in other places it has not worked. Moreover, it must also be understood that it is also not a process of simply applying western thinking to African realities, but rather that a decentralised model, if given time can be designed so as to fit a particular socio-economic context.

Despite its potential perceived failures or successes, Makara (2017:23) has noted that 'decentralisation itself is neither good nor bad. It is a means to an end, often imposed by political reality. The issue is whether it is successful or not'. Makara (2017:23) adds that, successful decentralisation improves the efficiency and responsiveness of the public sector while accommodating potentially explosive political forces' and that 'even if decentralisation is not a panacea for the multitude of third world problems, it is worth attempting'. Mawhood (1993) asserts that:

Decentralisation suggests the hope of cracking open the blockage of a central bureaucracy, curing managerial constipation, giving more direct access for the people to government and the government to the people, stimulating the whole nation to participate in national development plans

In addition, Kauzya (2007) observes that, the issue is not only restructuring the State but most important, is peoples 'voices'. Devas (2005:52) also notes that it is clear that the utility and primacy of decentralisation 'lies in its policy content, design and outcomes'. It must also be noted that in Africa, the initial post-independence attempts at decentralisation failed, according to Francis and James (2003:328) 'due to the desire of political leaders to control power'.

It goes without saying that the objectives and implementation of decentralisation have had various processes and outcomes in different parts of the continent. Decentralisation is also a complex endeavour which requires both time and the political will of politicians and policymakers. Despite seemingly failures of decentralisation such as in South Africa, Uganda and Ethiopia, the concept is not one that should be discarded, but rather requires further engagement on how it can be implemented within certain contextual realities – while moulding the concept to fit such realities.

6.3 Setting the platform for institutional reform: decentralisation

Postcolonial African States have had a mostly hate-hate relationship with the idea of decentralisation. This is so because decentralisation is a concept which would inherently undermine the powers of particular individuals within highly centralised States. The discussions in sections 1.1, 2.5.3, 4.7, 3.6.2 (i) and (ii) shed some light on how highly centralised and oppressive States can breed violence. Osabu-Kle (2000) strongly advocated for decentralisation not only as a mechanism which would lead to achieving greater participation within political systems but also as a principle which is in line with the African tradition of 'democracy'. Osabu-kle (2000:72) continued in reflecting that 'African political systems in pre-colonial times were essentially democratic, with the trappings of government with the consent of the governed and a balance between centralised power and decentralised power to prevent the misuse of authority by any one person'.

These decentralised systems were those with checks and balances and accountability, which, in turn, promoted wider participation of citizens, an important factor for democratic development. Osabu-kle (2000:83) added that the structure of the political organisation would ensure that at any level, a 'chief and his council ruled with the consent of those below and above him, and the head of State and his council ruled with the consent of the people as a whole'.

Angola's Constitutional fundamental principles (Articles 1 to 21) clearly establishes a paradigm representing the basic principles of a liberal democratic State. Yet, like a drawback clause, Article 8 is reasonably conservative in stating that the Republic shall be a 'unitary State'. Even though it states that the State 'shall respect the principles of autonomy of local organs of power and administrative devolution and decentralisation, under the terms of the Constitution and the law'. Such restrictive nature is seen in practice as there is currently no form of decentralisation nor autonomy of any kind both at a provincial or local level – all power and is firmly kept and flows down from the executive branch as discussed in section 5.2.

It is important to note that the establishment of measures to ensure local autonomy was a pre-condition for accepting Bicesse and a prime issue of contention in the elaboration of the 1992 Constitution as discussed in section 4.5.3. Moreover, the question of local autonomy and decentralisation is important in understanding how power in Angola is interpreted – and how it fails 'circulate' and in particular how political power as arranged in the Constitution directly effects both power and politics in Angola as discussed in sections 4.9.3 and 4.9.4.

The 1992 Constitution initially created the conditions for which decentralisation would be possible. The '*autarquias*' (local elections) are essentially a form of 'people power' which was intended to give

power back to the people. Though such which provision was initially introduced in the 1992 Constitution and then again in the 2010 Constitution, it's never utilised. Former President Dos Santos had reiterated the importance of the need to decentralise by recognising the 'unquestionable importance of institutionalising the *autarquias* in the current situation'. However, despite such importance – the Dos Santos government cautioned that such move towards the '*autarquias*' must be approached 'gradually' and that the country must be in the right conditions to achieve it, while never setting up a feasible and clear framework on how such decentralisation process would take place.

Orre and Pestana (2014:2) have noted that the Angolan local governance systems are some of the most 'politically and administratively centralised in Africa'. The government, through the executive has controlled every aspect of the political system through the appointments of local and provincial government officials and down to the civil service as discussed in section 5.2.

Chakrabarty and Chand (2012:283) considered decentralisation to be the most 'sought after prescription for ushering in good governance'. Although the concept has no ideological and or traditional leanings, it has been used by those that lean more towards liberal politics and those leaning more towards conservative politics. Cheema and Rondinelli (1983) noted that the 'rightists see decentralisation as a mechanism to decentrate nation States and thereby pave the way for marketisation' while those on the left saw it as an opportunity of social mobilisation'.

The idea of social mobilisation in this regard is important within the Angolan context. While decentralisation would not only mean political decentralisation which would work towards giving the people more voice within the governance architecture of the State, it would also allow for the creation of more open spaces through which they can express their political ideals. Such mobilisation would not only be targeted at one particular institution or group of individuals but also allow for wider debate and self-expression. This self-expression would then work towards mitigating the 'crisis of modernisation' as discussed in section 4.8 while also working towards reducing acts of violence and, in the long run - prevent them.

In looking at such ideas of decentralisation, Friedman (1983) had noted that from a traditional perspective, decentralisation was conceptualised from the 'organisational perspective, where it was deemed as an organisational innovation to ease off the pressure of over bureaucratisation public organisation'. This idea of bureaucratisation is particularly important – within overly centralised States like Angola. Moreover, decentralisation would result not only in removing the pressure of bureaucratisation but also break-up up entrenched networks of corruption while disrupting chains of power that undermine democratic principles.

It is, however, important to note that although constitutional law scholars noted the difficulty in pinning down the idea of decentralisation as a concept, as it is often confused with ideas such as concentration, devolution, delegation and, privatisation'. Cheema and Rondinelli (1983), concurred that at worst such confusion has been the eagerness of some commentators viewing the concepts as the 'different organisational forms of decentralisation'.

Deconcentration, according to Berkhout (2005:316), is the process whereby the central government disperses 'responsibilities for certain services to regional branch offices without any transfer of authority.' Moreover, It has been noted that a number of scholars do not see this as true decentralisation. Delegation, on the other hand, refers to instances in which the central government transfers responsibility for decision-making and administration of public functions to local governments. In this regard, local governments are not fully controlled by central governments but are accountable to them. Devolution is the process in which the central government transfers authority for decision making, such as finance, and administrative management to quasi-autonomous units of local government.

Chakrabarty and Chand (2012) have noted that decentralisation as opposed to the variants described above, is a much broader concept which encapsulates all the above kinds of 'transfer of power.' Moreover, Cheema and Rondinelli (1983) defined decentralisation as the 'transfer of planning, decision making or administrative authority from the central government to its field organisations, local administration units, semi-autonomous and parastatal organisations, local administration unity, semi-autonomous and parastatal organisations, local governments or NGOs'.

Chakrabarty and Chand (2012) concluded that the concept of decentralisation has the following characteristics: (1) it is both a philosophical and institutional mechanism, which seeks to de-centre the power from its traditional centres to far-flung areas with a view to empowering local communities; (2) autonomy forms the heart of decentralisation. It is the yardstick through which the nature of decentralisation can be measured; (3) decentralisation has no fixed ideological sanctuary, it is used by both left and right for justifying their respective positions; (4) the recent spate of enthusiasm for decentralisation can be attributed to globalisation. The advocates of globalisation are actively advocating for localisation through decentralisation for development, as the beleaguered nation States of Asia, Africa, and Latin America have been virtually relegated to being mere economic global markets; (5) decentralisation facilitates people's participation by creating new institutional space beyond the centre and thereby ensures further deepening of democracy; and (6) decentralisation also instils confidence among local communities to govern their affairs.

There have been quite a number of socio-anthropological research projects which offer a variety of perspectives on the forms of governance arrangements that offer a glimpse at African societies and how their decentralised nature has offered a form of stability. Le-Roy and Bertrand (1995) proposed that a decentralised approach to the exercise of power is vital in better governing African societies. Boone (2003) contended that even highly 'centralised post-colonial States' relations between the centre and the provinces were characterised by permanent processes of bargaining' - Meaning that there was a need to have avenues of communication and collaboration between the various structures of governments and provinces.

Such processes of bargaining is vital. Local autonomy, as put forward and established under the Angolan Constitution (though never exercised/implemented) is important. The failure to implement it results in inadequately creating the conditions under which people's civil and political rights can be properly exercised. It maintains a very hierarchical structure of the State in which political power is still in the hands of the executive. Moreover, the Constitution, through its process of autonomy then, also provides for a wide context of decentralisation to establish and safeguard democratic principles.

Moco (2017) observed that there 'is an excessive concentration of power in Luanda, at the territorial Presidential and institutional level'. As a way forward – and having in mind that democracy as an idea must constantly evolve, a way to remedy such 'excessive' concentration together with reforming State institutions is to setup a framework. Such decentralisation, however, needs to include a complete reorganisation of the State and its structures of governance if it is to be effective and requires that it go beyond the local election level and in doing so, decisions of individuals would then be delegated to institutions themselves who as opposed to acting within a top-down structure would function within a different space of autonomy. Extrapolating from Moco (2018) decentralisation is an effective first step towards violence reduction and prevention in Angola – through giving wider spaces of autonomy both through the re-organisation of the State apparatus and through political re-organisation, through breaking the power structure identified in section 4.7.

As discussed in sections 5.2 and 5.2.1 the President appoints provincial governors and Vice-Governors of the eighteen provinces and the roughly 170 municipal administrators. Orre (2014:2) noted that the government appoints even the 'lowest tier, of administrators and in the past ten years the traditional authorities, or local leaders known as 'sobas', have increasingly become tied to the local State administration and its governing party'.

The centralised structure of the governance system is extremely hierarchical. Orre (2014) has gone as far as describing such governance architecture as a form of distorted 'feudalism' in which both local and provincial governments are accountable only to their direct superiors from whom they depend on

for their jobs. It is then not difficult to see the danger that such a system would cause within a democratic process in which individuals should be accountable to the law and the citizenry.

Similarly to the time of Dos Santos the government of JLO has made promises of holding the '*autarquias*' with the government deciding that such elections would take place in 2020. However, and similar to the time of Dos Santos, the MPLA government continues to reiterate that such elections must be approached 'gradually'. The government added that such elections must take place only in 50 of the 170 municipalities. Such continued narrative of gradualism has sent shockwaves through Angolan society as a number of groups have taken to the streets in protest against the MPLA's gradual approach, stating that 'gradualism is a crime' (DW 2019) and demanding that such elections must be implemented without any restriction and within the entirety of the national territory (see sections 3.6.2 (i) and (ii); 5.2.3; 5.2.4; 5.3.2).

Articles 216 – 219 of the Constitution establishes the conditions under which 'local power' (*autarquias*) would be established. Although in the Angolan case there is still a lack of legislation on exactly how it is that such power would be arranged and with the government seemingly announcing that such elections will take place in 2021, the Constitution does however provide an institutional framework under which such local power would be arranged.

The three main institutions are the following:

1. The Assembly: that would ideally be a deliberative body of which its membership would be elected directly through universal suffrage. The assembly can also make laws and decide local regulations.
2. The President of the *autarquais* would be the individual who is at the top of the party list – through the proportional representation system and such individual who received the most votes for the Assembly elections would then fit the role.
3. The local government would be comprised of an executive headed by the President and who then appoints his/her 'secretaries', all of which are then accountable to the Assembly.

Article 215 further states that a part of local government's financing must come from local income and taxes collected at such level. While Article 218 establishes a hierarchical relationship between the provincial governor and the local authority, Article 242, however, regresses and stipulates that 'the effective institutionalisation of the *autarquias* depends on the principals of gradualism' – which in turn sparked a number of protests who countered he governments 'gradual' approach with statements like - 'gradualism for what' (DW 2019:p4).

An argument put forward by Lyon (2015:30), which might provide a rationale for the MPLA's approach to gradualism in the implementation of local elections has been the idea that 'victorious insurgents can consolidate and expand their political power by building upon their pre-existing wartime structures of command and control'. Aalen and Muriaas (2015:58) expanded this hypothesis in arguing that 'the presence of these command and control structures also increase the commitment of post-conflict governments to implement constitutional provisions for sub-national elections, independent of the democratic credentials of these governments'.

The rationale for gradualism is then premised on the idea that States delay actual implementation of local autonomy to effectively consolidate power at the local level through general elections. Using the example of Mozambique, which had (in some regards) a similar colonial history to Angola, their approach to 'gradualism' came to mean FRELIMO dominance. RENAMO found that the 'gradual introduction of *autarquais* meant that in the rural areas - where it had gained most votes in the general elections – local elections had been postponed into a distant future. With *autarquias* in urban areas, only FRELIMO could concentrate its electoral in the cities where the general election results had revealed their strongest backing' (Weimer 2012:84).

Manning (2007:253) contended that national governments often avoid introducing 'sub-national' elections after conflict due to threat to the incumbent political party. This was certainly the case in Angolan. Aalen and Muriaas (2015:62) observed that the 'exclusion of UNITA from local governance has also had an impact on its ability to contest national elections. In the 2008 general elections, UNITA saw a dramatic decline in its support, taking only 10 per cent of the votes'. So it is not surprising that the 'gradual' approach toward the realisation of such elections may raise an eyebrow or two of doubt.

The concept of decentralisation is quite clear. The transition from Dos Santos to JLO gave hope that the rhetoric towards realising the *autarquias* as a move towards full decentralisation would be real. However, and although JLO initially seemed to be open to the idea – there is still the discussion of approaching the '*autarquais*' gradually. In addition, and of great importance has been the failure of the JLO in addressing a constitutional amendment which would limit presidential power and with it revise the organisation of power in the Constitution which goes hand in hand with the *autraquais* and decentralisation.

Simply creating the provisions for local autonomy through the '*autarquias*' would not upset the unequal balance of power in Angola. Decentralisation must not be done in a haphazard way but rather should have with it the intent and objective of disrupting the existing power structures while also creating the institutional structures in Angola which would usher in real democratic governance. It

should be fully implemented by giving provinces full autonomy – autonomy by a way that Angolans at the provincial level are able to choose their leaders (governors at the provincial level and mayors at the local level).

Such decentralisation process would significantly work towards cutting up power – it would begin the process of opening up Angola's political system while allowing for greater participation and with it begin the process of breaking down centrality of the State and with it untethering the MPLA from the State. In addition, decentralisation would also to large extent mean the decentralisation of resources and their management. Angola being a country that is highly dependent on one commodity (oil) has created a situation in which its centralised nature has also led to the centralisation of State natural resources without proper oversight.

Such centralisation of commodities in Angola has been linked to grand, political corruption and nepotism involving individuals who oversee such commodities as per the discussion in section 1.6.2 (i) and (ii). The high levels of inequality and its subsequent centralisation have also contributed towards the potential for conflict because such wealth is controlled by a very few and not equally distributed within institutions for the creation of societal infrastructures and economic gains. Cornwall and Coelho (2007:12) observed that within oil States, the political system is centred around an 'unfair and unbalanced distribution of centrally controlled wealth'. This is the case in Angola as the distribution of resources as it relates to the country is unequal and both 'budgetary and investment budgets and human resources are still very much concentrated in the central ministries and the national 'institutes' as well as in provincial governments, and elite controlling it is restricted' (Da Rocha 2010:6).

Furthermore, it has been noted that the use of such funds is mainly used in Luanda and the coastal towns, leaving the rest of Angolans to fend for themselves. Such selectivity can arguably be said to be a war-time prejudice since UNITA during the Civil War controlled mostly the southern and central parts of Angola while the MPLA controlled the North and coastal towns. Connerley, Eaton and Smoke (2010:71) noted that such practice has created and perpetuates 'regional asymmetries in wealth and welfare'. While Da Rocha (2010:36) added to such asymmetries in commenting that 'wages in Luanda are on a verge four times higher than in other regions, and around three-quarters of the State budget is spent in Luanda alone'.

Decentralisation would then significantly assist in breaking the monopoly of both political power and economic power from the centre while also serving as a disrupting force of such 'asymmetries'. However, limiting the decentralisation process to the local level itself as proposed by the MPLA party-State would not achieve this objective.

Just as governments might want to use the 'gradual' approach when implementing local elections, it is also important to note that there are a number of reasons why a central government would want to decentralise. One can argue that it may be due to social stressors and or a political strategy used for the purposes of preventing societal and or violent conflict. Decentralisation essentially affects the territorial politics of a State.

The MPLA in particular has received a lot of backlash for its form of governance. The high levels of corruption, unemployment, repression by State institutions and the MPLA's inability to shy away from dealing with a number of the issues that led to the civil war is perhaps indicative of a greater political calculation in allowing local elections to take place. O'Neill (2003) had argued that decentralisation 'occurs when a governing party sees a stronger electoral future at the sub-national level than at the national level', Garman, Haggaard and Willis (2001:211), on the other hand had seen political decentralisation as linked to 'internal power structures within the executive party'.

In Latin American political systems, however, there is literature that deals with the 'deepening of decentralisation' which goes further and asks questions such as, '*to what extent should mayors at the local level and or governors be directly elected'*. In the same vein, Dickovick (2014:72) provided an answer to the question of '*why governments decide to decentralise – comprising administrative, fiscal and political decentralisation'*, and the answer is: '*they do so because they see an advantage in maintaining the regime in power'*. In Angola one can argue that such might be the case. The period between 2011 and 2019 saw high levels of protest action in Angola – at times such action was feared would lead to similar acts of violence as seen through the Arab Spring.

The answer provided by Dickovick (2014:72), fits the Angolan context because as the demands for reform have intensified, one would argue – so have the fears of the MPLA losing its credibility within the national territory. As a result, and by allowing for a process of local autonomy through the *autarquias* - although gradually, the MPLA government sees itself as buying time and presenting yet again another façade for real democratic change.

Adding to the argument as to why governments would want to decentralise, Aalen and Muriaas (2015:64) noted that such decentralisation in illiberal and or States with authoritarian features is most likely to happen because 'they can extend the party-State to the local level, increase patronage opportunities, and deepen linkages between party and citizens'. This poses a danger towards democracy and the creation of a greater democratic façade'.

In the Angolan political reality however, the manner in which the Civil War ended provided no kind of incentives for the MPLA to give away central power. The MPLA had won a decisive and complete

victory in the battlefield and as a result, could and did shape the political context as it saw fit. If we contrast this to South Africa where between 1994 and 2016, four local elections took place, one can argue that this was due to the fact that the ANC was sure of its gains in the local elections and the fact that the 'new' South Africa was a result of a negotiated process and not one comprised of 'gradualism'.

Full decentralisation within such contexts as that of South Africa is important. Stopping at the local level is equivalent to stopping the democratic process halfway and leaving it to hang before it fully consolidates. Moreover, and within the Angolan context decentralisation at the local level would still maintain the overly centralised State structures because governors are overall still responsible for policies which ultimately administer the local level and such individuals are still appointed by the central government – which in turn equates to the maintenance of the upward hierarchical relationships of power.

Dias and Espinoza (2019) asserted that exclusion from 'access to power' creates the fertile ground for violence. In Angola this exclusion from power would still be present despite the establishment of local elections. However, the establishment of full provincial autonomy would significantly work towards further decentralising the overly centralised Angolan State and be key towards institutional reform.

More importantly, is the impact of decentralisation within the democratisation process. Osabu-Kle (2000) in speaking about indigenous political systems, argued that African political systems should be decentralised and arranged in such a way that is 'inclusive and responsive to different aspirations in society'. The decentralisation provision in the Angolan Constitution should make this possible through the establishment of the following institutions for provincial autonomy:

1. Provincial Assembly: to be of a deliberative nature with a membership elected by the people. The Assembly would be responsible for making laws in accordance with the Constitution. The Assembly would also be responsible for oversight of the provincial government
2. Governor: to be elected from the provincial population and not based on any form of party list and or proportional representation mechanism. The Governor would then appoint members that would make up the executive branch of the provincial government.
3. The Provincial Government: to be headed by the Governor. He/she may appoint executive staff as stipulated in Point 2.

The relationship between the provincial government, the executive, judiciary and legislature will be elaborated in the sections below.

6.4 Reimagining the Angolan executive: a new approach?

In writing the American Constitution Hamilton (1787) said 'the people of the USA had to determine the important question, whether societies of men are really capable or not of establishing good government from reflection or choice, or whether they are forever destined to depend for their political Constitutions on accidents and force'.

Angola has passed through not only periods of war and peace, but mostly, the Angolan people have struggled for the establishment of systems of government which would ideally lead towards the development of and the progress of the people. Chapter 4 gave a brief overview of the Angolan constitution-making processes, as seen through the 1975 Constitution, the 1992 Constitution and the Constitution – these constitution-making processes were all attempts to transition – at least from the 1992 Constitution of transitioning towards more stable and inclusive government – what Hamilton (1787) described as 'reflection'.

However, Chapter 4 highlighted that this 'reflective' process in Angola was unable to adequately provide an inclusive government which would promote the well-being of the Angolan people. Chapter 5 highlighted how Angola's State institutions are currently structured, and how such structures are not only dangerous towards the promotion of inclusive governance, the promotion and protection of human rights - but how it can ultimately lead towards violent conflict.

It must be understood that a reimagining of the executive branch must be looked at holistically. The discussions in Chapter 5 provided the context under which the three branches of government currently function – it looked at the limitations of the three branches of government. The discussions in section 6.3 argued that full decentralisation must be provided in order for State institutions to be structured for the prevention of conflict in Angola. In order to achieve this - the Constitution must be amended so as to allow for a new institutional structure which provides for full territorial autonomy. Such constitutional amendment would then directly impact three fundamental issues (i) the nature of the Angolan executive as discussed in section 5.2, by beginning a process of breaking up the overly centralised State, (ii) undermining the 'super-presidentialist model as discussed in section 5.2.2 which perpetuates violence and rights violations.

It must however, be noted that undermining the 'super-presidentialist model must be followed with an amendment which allows for the direct election of the president as discussed in section 4.5.1. Most importantly, such amendment is one which would significantly alter the structure of the Angolan executive as discussed in section 5.2.1.

The following sections will take into account the nature of the Angolan political system as discussed in Chapter 4 and 5 and will provide the backbone of this thesis by providing steps on how executive power can be limited - not only through constitutional amendments but through direct action. The sections that follow will also provide an alternative framework of how the Angolan legislature can be reformed and through it legitimising the judicial branch so as to better promote and protect human rights in order to prevent what Moco (2012) described in section 5.6 as the second alternative.

6.4.1 Refocusing the attention of the executive towards prevention and protection

(i) Abolishing auxiliary organs

The internal structure and with it the process through which the Angolan executive branch is structured makes it impossible for institutions of the State and in particular its ministries to be accountable for their actions. Section V of the Constitution which is titled '*Auxiliary Bodies Serving The President of The Republic*' and in particular section 5.2 and 5.2.1 on the nature of Angola's executive which specified the role of auxiliary bodies is an example of an overly centralised command structure. The discussion on section 5.2.1 on the nature of the CoM further entrenches such power systems.

The Constitution in this regard creates an extremely vertical relationship with the President at the top and all others at the bottom. Such structure fits best within a medieval court in which the ministers appointed by a king rule with every discretion knowing that they are accountable only to their king making it possible that the challenges identified in section 5.5 are left unchallenged.

(ii) Establishing the Council of the Human Rights Advisor

Executive action has far-reaching consequences that can significantly affect the well-being of citizens in multiple forms. In such regard, the establishment of a council which advises members of the executive in terms of the human rights basis of policies and their implementation would go far towards not only harmonising government action but also create better conditions for governmental action.

The advisor on human rights would be placed in the Presidency and work towards not only advising the Presidency as it regards its human rights policies and activities but would also work in sensitising and making sure that the executive adopts a human rights approach as it regards both its obligations internally and those internationally. The function of this organ would then be one of advice. Like the

CoM this body would be situated within the executive branch – although the President would have the autonomy to appoint the individuals to this body, such body should be composed of 'civilians' that have extensive experience in dealing with human rights issues. The names of such individuals should be provided by recognised national civil society organisations for the approval by the President.

As it relates to the current structure of the Angolan political system, this body is important because it can work within the context of identifying policies such as described in section 3.6.2 (i) and (ii) which clearly undermine human rights and propose to both the executive and Parliament on how to better align them with international standards such as the Syracuse and Johannesburg principles which speak specifically on issues of national security and human rights.

(iii) Establishing a Council on Sustainable Development Goals

The SDGs, as discussed in sections 3.3 and 3.4.2 is a clear framework and expression of some of the most pressing concerns that States should strive towards as they move towards more inclusive rights-based developmental and rights approach. Building on decades of work such as the Millennium Summit to reduce extreme poverty (2000) and the SDGs, are not only a global appeal to all States to work towards developing better governance standards but also pave the way for which future generations can contribute towards 'a shared vision of fairness, transparency and accountability'.

Although all 17 of the goals are vital, what links this research is Goal 16 which encourages States to establish environments of 'peace, justice and strong institutions'. The importance of peace, justice and strong institutions seems to be the framework under which States would achieve all other goals – because without the realisation of goal 16, everything else would be virtually impossible to achieve.

A council that focuses on achieving the SDGs within the executive branch would not only actively work towards streamlining and providing guidance towards the SDGs but play a more significant role in advising on how governments can better structure institutions within unreconciled States like Angola to better deal with State-society relations while working towards better overall conditions for citizens.

6.4.2 Opening the executive to public scrutiny and accountability

The term Open Government (OG) has had an unwelcome and at times dismissive welcome within the international debate on transparency. Chapman and Hunt (1987:92) identified the concept in the early 1970s within the British political context as a way to better keep track of government and its dealings.

A clearer dimension of the concept was identified by Clarke and Francoli (2014) where they highlighted the work of Parks (1957) titled *'The Open Government Principle: Applying The Right To Know Under The Constitution'*. In this work Parks explicitly focused on questions of access to public information and how much the public had a right to know within the process of public accountability.

The OG concept is important within the context of this study specifically due to the lack of oversight and mechanisms that are in place in Angola to adequately keep track of matters which fall within the public interest. Such a concept would allow the citizenry greater access to the processes of government. This approach to further open government links specifically with Point 13 of the Universal Declaration of Democracy which stipulates that 'it is an essential function of the State to ensure the enjoyment of civil, cultural, economic, political and social rights of citizens. Democracy thus goes hand in hand with an effective, honest and transparent government, freely chosen and accountable for its management of public affairs'.

Transparency is one of the benchmarks of the political process, both in actual transparency and perceived transparency. The OG approach is one which is not only linked towards creating the conditions for which government can better create the conditions for transparency but create the conditions for the government to be closer to the people and in many ways work towards creating better state-society relations.

Authors such as Criado and Sandoval-Almazan (2013), Ganapati and Reddick (2012), Lathrop and Ruma (2010) have all argued that the concept of OG works towards better highlighting and in some instances carving mutual collaborative relationships between citizens and the State where civil society has a leading role due to the availability and application of new social technologies. The implications towards building collaborative governance is vital, not only in assisting government to better respond to the needs of society by working directly with civil society but also as it goes towards dealing with grievances which if left to fester create the conditions for violence and societal conflict.

Criado, Ruvalcaba-Gomez and Valenzuela-Mendoza (2018:61) have taken the OG concept further in noting that it 'also implies a deepening of democratic principles and legitimacy of governments – which in turn implies a challenge to restore public administrations as pluralistic institutions operating close to society'.

The OGP is an initiative with close to 100 participating governments, both local and national to which, according to Tuths, Hickle and Bahl (2018:2), 'has to work with civil society to produce an open government action plan with concrete policy reforms'. An important note is that although the

OGP plan of action works towards involving various members of civil society towards adopting more inclusive systems of government – it is not prescriptive.

This idea of OGP partnership is in line with the ideas of collaborative governance as discussed in section 4.10.1 and 4.10.1 (iv) where the thesis discussed modes of greater participation. In the Angolan case, the OGP would work towards establishing priorities which are of vital importance to Angola such as a mechanism for fighting corruption and improving human rights. Moreover, an important aspect of the OGP initiative is that it is premised on the idea that governments come up with initiatives and structures which would make them more open. Such openness would mean that governments must make public not only their actions and decisions but their policy initiatives so citizens may adequately scrutinise their work and implementation.

Section 6.3. suggested methods that would significantly work towards moving the executive branch of government towards better compliance with democratic principles which would then also contribute significantly towards opening up the executive to the public and with it - make it more accountable. The OG concept is one which can further be implemented to adequately highlight the work of such an institution by making sure that citizens have access and knowledge information on how the executive functions on their behalf.

6.5 Reimagining the Angolan legislative branch: a new approach?

Today, more and more democracies are characterised by the levels in which it gives its citizens the right to fully participate in the democratic process. Macridis (1986:48) has taken note that the many functions performed by legislatures may be grouped into two categories: (1) 'those that are legislative, such as the making of the laws, and (2) those that are political, and deal with power relations and fundamental policy issues that do not always require legislation'.

Article 141(1) of the Constitution stipulates that 'the National Assembly shall be the Parliament of the Republic of Angola', (2) 'the National Assembly shall be a single house representing all Angolans, which shall express the sovereign will of the people and exercise the legislative power of the State'. Article 143(2) stipulates the system under which individuals are elected as that 'members shall be elected according to the system of proportional representation for a five-year term of office, under the terms of the law'.

Like the Angolan executive branch, the National Assembly in its current form only serves to perpetuate the current trends of power and as a result does not allow for the true representation of citizens (see sections 4.7; 4.7.2 and 5.2). Point 11 of the Universal Declaration of Democracy

reaffirms that 'democracy is founded on the right of everyone to take part in the management of public affairs, it therefore requires the existence of representative institutions at all levels and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action'. Decentralisation would serve the basis of reforming State institutions and with it prevent violent conflict (see section 6.3). In this regard, there is a need to break up Angola's National Assembly into two houses and in doing so introduce a bicameral system. This system is one which is attuned to the Presidential system in which an institutional balance is provided that provides safeguards in the form of dual legitimacy and accountability.

6.5.1 The bicameral legislative system

Uhr (2015:334) refers to bicameralism as a legislative institution with two chambers sharing legislative powers. In bicameral assemblies 'both first and second chambers play a role in the consenting to proposed laws, although not necessarily equally'. Within Parliamentary systems, the first and or upper chambers of such legislature usually have greater or primary responsibility.

An essential feature of bicameralism is that although they differ in time and space, they nevertheless provide the context for greater representation of society and as a result tends to bring the work of government closer to the people. Lijphart (1999:217) took further the argument for support of bicameralism where he reflected in that in essence -bicameralism is a system about 'power-sharing relationships within political assemblies and the various balances of political representation in Parliamentary and Presidential regimes'.

Despite such importance, especially in overly centralised States, Smith (2003:275) argued that in the political science literature, bicameralism had been significantly 'under-researched and under-theorised'. The Angolan reality is one which could do with a greater variety of representation and participation. Furthermore, the majoritarianism nature of the Angolan political system – represented by the MPLA-party State and nature of politics which in no small extent has aided in blurring the lines between State and party would benefit from the introduction of a two-chamber system.

This idea of sharing power in Angola is important because it would serve the purpose of dismantling the unequal and dangerous power structures which are permeate throughout the Angolan political system (see sections 4.7, 4.7.2 and 5.2). However, it is important reiterate that in the Angolan context a bicameral system would need to be implemented together within a decentralised political system as discussed in. Such bicameral system would also serve to provide an equalising effect in the country, while the balance it would create would serve to bring those who have been socially and politically

marginalised closer to centres of power and in doing so work towards undermining elite control of the political system.

Norton (2004) noted two tendencies of bicameralism: (1) it plays a negative role by restraining the 'vices of majoritarianism' also known as the 'tyranny of the majority' while at the same time retaining political activists seen through 'factions' which at times might threaten the interests of vulnerable and or minority groups, (2) it tends to promote robust 'democratic public deliberation through political participation by interested groups in civil society'. Overall it is a system which works towards breaking old power networks while more directly bringing representatives much closer to the people to adequately deal with social issues. In a way, it is a system that breaks down the high politics of the State and brings it closer to the citizen.

In this regard bicameralism would significantly aid in undermining the organisation of political power (see section 4.7). It is not farfetched to argue that Angola would benefit from wider representation and in doing so breaking up corrupt networks both in the Angolan economic and political spaces, or at the very least undermine them. In addition, decentralisation and within the context of bicameralism should not only be adopted at the local level – by way of allowing cities to choose their leaders such as mayors – but also at the provincial level which would allow for a kind of provincial autonomy. Such level of decentralisation is one which would work towards achieving greater social stability (see section 6.3).

This form of decentralisation is vital towards the application of bicameralism Angola. Within such a context, Angolan provinces would serve as the second chamber of the National Assembly, while the first house would serve to represent the overall population in the National Assembly – at the local level. The importance of this arrangement is two-fold: (1) the first chamber is given the primary legislative priority, making national laws, assenting to statues and would have full legislative authority, while (2) the second house would be composed of representatives from the various provinces who are directly elected by the people within such provinces. The important distinction within this context is that the second house (the Senate) would in many ways serve as an extension of the executive branch by way of approving presidential appointments such as ambassadors to international organisations, heads of national State-owned companies, approving foreign treaties, approving the heads of para-statal institutions to curb situations as discussed in section 1.6.2 (i) and (ii) and or conventions. This is important because such an Angolan senate would serve as an institution which in some ways would 'govern' with the executive while ensuring that it does not make unilateral decisions as is the current case under the current constitutional framework. The purpose of senators elected at the provincial level would serve as a further check on potential executive over-reach.

However, despite its potential to serve as a system of greater representation with very clear checks and balances, bicameralism has not been accepted universally as the go-to system of governance and representation. Vatter (2005:196) noted that bicameralism is seen in some places as an obstacle to 'social democracy and a significant brake on government intervention and the expansion of the welfare State'. Countries which have replaced such a system in preference of a unicameral system have been: New Zeeland in 1950, Denmark in 1953 and others.

However, this does not mean that bicameral systems do not work but, rather that contextual variables would be more amenable to the application of such a system depending on which variable needed addressing such as the nature of the society that it is applied to. Another important note is the idea that bicameralism is associated mainly with federal States. Uhr (2015:347) noted that half of the 'unitary democratic States have bicameral legislatures, and further, many sub-national democratic legislatures are bicameral'. Though bicameral systems have been made famous by federal States such as the USA, they would nevertheless play a significant role in addressing social and political issues within unitary States like Angola. The Angolan population is still very small (Censo de 2014) (25 million as per the last census conducted in 2014 and as a result, might better adapt to such a bicameral system.

In addition, Patterson and Mughan (1999:10) have made the point that only about a 'third of bicameral assemblies are located in federal systems'. Patterson and Mughan (1999:89) continued that bicameralism 'can be justified as a protection against electoral excesses'. One can take this further and expand such protective measures not only in the realm of human rights and civil liberties but within the overall protection of State laws and mechanisms which would prevent its erosion such as corruption, the arbitrary use of political power and the unequal power of the executive. Bicameralism, as a result, can then also serve as a protective measure against aspects such as absolutism, arbitrariness, exclusion and political domination (see section 5.5).

The importance of bicameralism for a country like Angola is the wider scope of participation which it allows. It would allow for and significantly aid towards a form of 'national reconstruction' – a form of building the ideals for which Angola as a State should be based on. It can only be done with more inclusion, not only of a few but of a much wider margin of society as possible who are actively working and contributing towards such 'idea' of what Angola should stand for and the democratic ideals to achieve over the generations.

In addition, an essential feature of bicameralism is the question of diversity. If we look at the African with its diversity in history, culture and language, a difficulty has been on how to manage such diversity. Bicameralism, as proposed in this thesis does not seek to solve Africa's problems, it would however, for Angola potentially work towards addressing issues of violence, repression and exclusion

while also bridging the old divides of party politics which has in the past led to conflict (Civil War); this can be done by creating a system that allows for independent individuals to contest elections (as will be discussed below).

In addition, such diversity may be seen through a higher degree of equality that exists within the second chamber. Uhr (2015:494) argued that the foundation of modern studies of bicameralism is the claim that 'bicameralism implies that the two legislative bodies embody diversity rather than duplication of political representation'. This is because it serves to represent a form of provincial equality making sure that elected provincial representatives in the second chamber share equal powers and carry equal weight within the decision making process at the national level.

This equality in Angola would work towards deconcentrating power from the centre and giving voices to other provinces - many of which have been ignored since the end of the Civil War. This matter of redress is important because of the power structures which inevitably arose during the Civil War. Such disparities and unequal levels of development can be seen in Angola, in particular how most of the developmental projects are focused in and around Luanda as opposed to other provinces such as Benguela and Cabinda, two provinces which by far serve as strategic value to the national territory (Cabinda being the oil producer and Benguela serving as an important cultural and resource-rich region).

The bicameral system despite its effects on enhancing greater representation, improving accountability and minimising executive power, is a system which by its very nature has built into it redundancy measures which further highlights a sharp division of power while at the same time putting systems in place which would limit the encroachment of the other branches of government within the work of the legislature (of course, within limits).

Patterson and Mughan (1999:52) noted that an approach towards bicameralism has been to look at it through the lens of 'redundancy theory'. This approach of 'redundancy' is important in the sense that it acts as a 'plan B' and or a measure of last resort. In looking at the institutional design of bicameralism, such redundancy can be used as a reinforcement mechanism or as Uhr (2015:420) described as a 'safeguard, in the event the system fails'. Such safeguards are essential not only in identifying the relationship between Angolan State institutions themselves – but would further work towards repairing state society relations as by building safeguards which would protect individual freedoms, rights and liberties against institutional excesses.

The crisis which has engulfed Venezuela is a combination of factors. Factors ranging from high levels of corruption, human rights violations, high levels of unemployment and unanswered demands from

the population. Arguably, what holds all this together is Venezuela's repressive State institutions. As in the Angolan context, both the legislature and the judiciary are weak organs. In addition, they offer no real challenge against the Angolan executive as they have the authority to do so through law (see sections 4.7.2; 5.2; 5.3 and 5.4). In addition, the Angolan context – and in particular weak nature of the Angolan legislature can arguably be seen to resemble that of Venezuela seen through the 29 March decision of the Venezuelan Supreme Court which backed President Maduro in taking over the National Assembly, where the opposition held the majority. This process led to a domino effect scenario which began with massive protest action by large segments of the population which in turn garnered a brutal response by Venezuela's security services. HRW (2019) reported that the actions of 29 March were the beginning of a process in Venezuela that undermined the rule of law and led to conflict. HRW (2019:649) added that actions such as 'trying civilians in military courts are an example of a system which is broken' and of how institutions can be highly dangerous if not designed in ways which can promote human rights.

The crisis in Zimbabwe is also another one to take note from, and serves to highlight how State institutions can either promote human rights while preventing violent conflict or serve as a catalyst for instability and violence. The 12 January 2019 response to persistent fuel shortages compounded by the mismanagement of State resources through its institutions led President Emmerson Mnangagwa to announce a fuel price hike of over '200 per cent to $3.31 per litre – making the country's petrol price the highest in the world' (Pigou 2019:7). The subsequent protest action led to mass looting and pillaging by protesters of which the government responded with violence, which in turn led to hundreds of protesters being shot by security services. Moreover, the government escalated an already deteriorating situation by blocking access to national internet providers which resulted in even more confusion.

It is important to note that although bicameralism alone does not guarantee that the two examples above (Venezuela and Zimbabwe) would not happen under any circumstance; the institution itself, however, can serve as a stop-gap measure towards preventing violence. The design of the bicameral system must be in such a way that it takes into consideration and adopt regulatory governance mechanisms, increased participation, approaches towards integrated policy initiatives and collaborative governance mechanisms (see section 4.10.1 (i) to (iv)). In addition, such mechanisms and initiatives are those which would go towards serving as a form of redundancy mechanism of parliament and a basis for which parliament can enhance its control and oversight function.

Such redundancy mechanisms, especially those built within the bicameralism system itself are vital towards ensuring that instances like those of the encroachment of a National Assembly led by an executive do not happen as seen in the extreme case of Venezuela or in cases like that of Angola that

the courts do not unilaterally remove constitutional checks and balances on executive authority (see section 4.7.2). The term 'redundancy' is then quite self-explanatory as its importance is only truly felt once the system fails.

Uhr (2015:496) took into consideration the importance of 'redundancy' in that 'what might, at first sight, appear as over-engineering can then appear to be a prudent design because of the security it provides against malfunction in one of two or more parallel systems'. Uhr (2015:468) continued noting that, in instances where there are two or more levels of government 'either duplicate services or, more likely, duplicate demands for services and thereby strengthen the political accountability facing those responsible for providing public services'. Even though there are limits to which one can build redundancy within a system, it nevertheless helps to have contingency mechanisms which work towards safeguarding the most basic of rights.

Another significant contribution towards building redundancy within institutions has been made by rational choice theorists such as Brennan and Hamlin (2003:64) who contributed towards understanding how the bicameral 'diversity of political representation' differs from situations with 'duplicated representation'. Meaning that bicameral diversity with its build-in redundancy mechanisms can to a certain extent overcome 'policy instability', and as Uhr (2015:472) argued, such forms of instability which can be 'associated with the cycling of alternative preferences often found in systems of majority rule, with no stable core of majority preferences' or in this case within party systems like Angola which have over time become indistinguishable from the State itself.

In this sense, Tsebelis (1995:375) noted that a primary consequence of bicameralism is the relative 'stability in legislative decision making, with final decisions hard to arrive at, but also very hard to overturn'. There is a strong focus on deliberation, compromise and negotiation which goes on within the legislative process. The discussion in section 5.3.1 is something which a bicameral system can overcome – which in turn brings more stability to the political system.

Moreover, bicameral systems also play a significant role within undermining elitist control of State architecture. Levmore (1992:153) provided a context for such elitist control in noting that bicameralism can serve as a 'stopping mechanism' which works towards undermining and diminishing 'external costs imposed by well-organised factions'. This breaking of elitist control can go much further towards dismantling, or at the very least disturb kleptocratic networks and structures as discussed in section 2.6.2 (ii). Furthermore, the fact that within this proposed bicameral system, there are different levels of legitimacy; it further adds to the engineered nature of 'redundancy' which is built into the system. As Tsebelis (1995:310) argued 'in general, the different chambers represent

different ‘principles’ or ‘legitimacies’, that is, ‘different parts of the electorate or ways to represent the electorate’.

6.5.2 The National Assembly (Parliament)

The National Assembly (Parliament) would be the primary legislative branch. In the current National Assembly of Angola, its individuals are indirectly represented and elected through the proportional representation system similar to that of South Africa. This process is inefficient; it limits the role of the people in participating within the political system while also promoting a political system which is highly designated within party lines and in doing so leaving people out of the political process.

This bicameral system would create a second house (senate) of representation, while parliament (the first chamber) would be one which the majority of the population directly elects its members. The number of delegates elected to the first chamber would be based on the population of each of the provinces – meaning that each representative for a particular province should not represent more than 400 000 thousand people. However, before implementing such approach, it is important to note that due to wartime migration, a census would have to be taken to assess the number of persons per province which would then dictate how such breakdown is to take place.

In addition, such breakdown is similar to that of the US House of Representatives as highlighted in Article 1 section 2(3) of the US Constitution (USA-Constitution 1789). This breakdown means that it is within this chamber that ‘all’ individuals at the national level and irrespective of political party and or affiliation could vie for a seat. Within the U.S system, their rationale for this is directly linked to the process of greater representation of the people while bringing the political process not only closer to the ground but also to give power ‘back’ to the people. The current proportional representation system in Angola undermines the true democratic expression of the Angolan people while limiting the diversity of the political system.

The removal of the proportional representation system and in particular, with the election of members of the new parliament would work towards creating greater distinction and separation between party and State while also working towards breaking the old wartime patterns of voting. It is no surprise that the party system in Angola, and like many other places in the world serves as the catalyst for political activity. However, the danger and or failure of party systems can be rooted in ‘majoritarianism’ and how individuals continue to vote for particular parties due to colonial legacies and or because of their status as liberation movements.

The discussion in section 2.5.3 can play a role in providing some context of the nature of party systems in postcolonial African States, in particular the MPLA party in Angola. The discussion in section 2.5.3 argued that a number of African States are living in a kind of Hobbesian *state of nature* which is underpinned by the domination of the political party. In the case of Angola one can argue that the MPLA dominates society both through its carefully structured political system and its refusal to allow for a fully decentralised system which would in turn work towards undermining its power (4.7; 4.7.1 and 4.7.2).

Breaking the patterns of domination in Angola requires a complete overhaul of the political system. Such an overhaul would necessitate decoupling the hold that the political party has on society – and the only way to do so is by break the cycle of domination which the MPLA has in Angolan society through removing the power that they have over the political system and spreading such power up within various organs and branches of government (see section 2.2.2 and 6.3).

This idea of decoupling can be done via the design of the State itself. In this particular case through the legislature as a point of intervention. Bicameralism can be used as a way to break such power and allowing it to circulate (see sections 2.2.2 and 6.3). One may argue that the direct election of members (through a constituency system) of parliament would work towards creating a political system that is highlighted by policy substance as opposed to individuals riding on the coattails of the political party - which is the case in Angola. Moreover, this directly impacts the role of the political party. This does not mean that they would be rendered irrelevant, but rather that it is a process in which they will no longer be seen as the only ones who have a right to rule, while also empowering the average individual to take up the charge for change. Even though individuals might still want to vote in party lines it does nevertheless open up the political process towards greater deliberation – it creates more options and challenges for such politicians who can more easily be held to account by the electorate.

Although political parties have been seen as being at the very foundation of politics and the avenue through which politics is conducted, the idea of removing the proportional representation system in Angola would aid towards creating greater democratic governance while at the same time putting the role of the people at the centre of the political process. Downs (1957:140) noted that political parties – particularly those within long legacies and organised bases of support 'have provided a form of informational heuristic about policy platforms'. In the decision-making process and the legislature, Aldrich (1999:17) had noted that 'parties resolve collective action and social choice problems in legislative decision-making'.

However, in the Angolan political party landscape, political parties have not created this particular platform for policy choice. It is a system in which there seems to be a form of governance with no

articulation – a governance by confusion based on trial and error as opposed to concrete and actionable policy based on rigorous study and context analysis. Political parties in Angola – and I argue both the MPLA and UNITA as opposed to serving as avenues for political development have contributed towards greater separation and in many regards have directly created the conditions for social and political instability.

In particular, the ruling MPLA party in Angola has dominated every 'election' since the end of the war. Yet, the fascinating aspect of such a political process is the lack of policy choice that it has provided. Although there is a rhetoric of 'creating' better conditions for the people of Angola, or about 'never' again returning to a state of war both the MPLA and UNITA have failed to create any condition for which policy dictates actions. In addition, the fact that political officials are appointed to office by the party itself gives rise to the question of whether there is even a particular mandate of policy frameworks that they work to achieve.

In such a system of directly electing members of parliament, and even though such individuals are inherently part of a particular party - their direct election by the electorate would provide a context in which they are given the opportunity to differentiate themselves from the party, while also seeing what as 'individuals' they can provide as opposed riding the wave that the political party offers with the objective of holding loyalty both towards the party and the electorate which elected them into office. This is also important towards building the image of the State because it would aid in breaking away from the party created image of the State which to a large extent is based on the historical roots of conflict – and at times did not see beyond liberation – nor based on safeguarding the rights of persons but that of domination and control – a control based on a governance structure with no accountability (see section 2.5.4).

The direct election of members of the parliament by way of individual candidacy would also linked towards creating better accountability mechanisms while at the same time recreating the political party in Angola as 'intermediaries' as opposed to its current state as a *de facto* 'State'. An important aspect of the idea of direct election of members of parliament is the argument set forth by Wamala (2004:436) in which he argued that the party system 'destroys consensus by de-emphasising the role of the individual in political action'.

Indeed, in the Angolan context, this is not farfetched. The political party in Angola as seen through both the MPLA and UNITA have not been vehicles through which the people could find political freedom; but rather, one would argue, have been architects of violence and underdevelopment while causing social and political society. Wamala (2004:437) further noted that in such a system – and in particular those based on 'proportional representation, and or those in which it is the political party

which presents the candidates, such candidates no longer appear as individual men and women. What you have is party members resplendent with party cards'.

Angola though opened its political system towards multiparty elections in 1992, never truly internalised the idea of the political party as being an 'intermediary' for the people and as a vehicle to better achieve the objectives of the people. The command structure – in its most literal form adopted by political parties, contributes towards institutional violence and societal discord.

Unpacking the notion of the political party as an 'intermediary', Caillaud and Tirole (2002:1462) noted that political parties as 'intermediaries' have the purpose and function of 'mediating the relationship between voters and government institutions. By influencing the electoral success of the parties, citizens can shape the policy outcomes of legislative bodies'. The important thing coming out of this conversation is the ability of 'citizens' to shape, at the very least policy outcomes.

This first chamber, with members duly elected by the people and not put forward by any political party (meaning that any individual within society can, irrespective of which party he/she belongs to, stand for election), would be closely connected to the people. This idea of direct election of the people into institutions can arguably be said to have been the foundation of the Ndongo people who were the first settlers in the area of what is today known as modern Angola.

The Ndongo kingdom existed from the 1700s and was decentralised in nature. Within African political systems, and one can argue within Angola as well, one can put forward that such a process of governance was a basic characteristic of political institutions. Martin (2017:58) argued that the 'democratic nature of African political institutions was based on the idea of the basic political unit – the village assembly'. In this Assembly major decisions were taken concerning the society. Such decisions were adopted by 'ordinary people' who were able to 'express their opinions, have their voices heard, and actively participate in a political decision-making process based on majority rule'. Such ideas are not incompatible with modern African political systems – because it takes a value system of political negotiation into how people live and conduct the affairs of the State. In the case of Angola, this would mean that the provinces would have their own voices by way of provincial governments sending their representatives to represent their interests at the national level.

Although this constitutes and implies a form of direct democracy within modern political systems, it is nevertheless one in which individuals choose their representatives at the local level, which in turn works towards bypassing political party rigidity. The proposed framework for Angola is one in which independent candidates irrespective of political parties can stand for election: in other words, put their names in a ballot without the support of a political party. In the Angolan context, this is complete

break from the current institutional design. The author does not refute that the political party still serves as an important vehicle through which political expression can be given, but rather that it should not be the only way in which citizens can participate within the political system and workings of governance.

The role of women in society is then particularly important. Article 21(1) of the UDHR states that 'everyone has the right to take part in the government of his country, directly or through freely chosen representatives'. In the case of Angola, one can argue that there has been a systematic undermining of women as it relates to their participation within public life. The African Development Bank (2008) had noted that such a process of undermining the role of women was first seen through Portuguese colonial practices which relegated the role of women to the household and providing for basic. Such practice was continued by missionaries in Angola who, while 'educating' men to be 'leaders' women's education was focused on 'home economics, nursing and teaching'.

Women played a significant and active role as combatants during the civil war both within the MPLA and UNITA camps, UNITA and MPLA trained both older women and young girls who carried forth the fight. Yet despite such contributions, women have been significantly marginalised, they were marginalised through contributing within the peace processes. It is then vital that the spaces are created for which women would legally and constitutionally be included within the political process. In this case, in particular, it is important that spaces for women are safeguarded, meaning that as per the number of persons/delegates per province which would be sent to the first chamber, at least half must be women.

The function of parliament as one which is close to the people and its members elected by the people can serve as a conflict prevention mechanism and if adopted in such a manner prevent violent conflict. It goes without saying that in African societies, like any other society – the rise of disputes is inevitable, this can be disputes between various societal groups and or between State organs and the people.

There have been great examples of the preference for violence prevention by indigenous African societies such as the Arusha people of Tanzania who believed that disputes should be settled 'peacefully by persuasion and by resort to the established procedures for settlement' Madina (1977:77). Likewise, the Tallensi people of Ghana were against disputes and especially disputes which would be resolved violently to the extent that feuding clans were prohibited from fighting. A resolution was then attempted through the promotion of a festival of foods which would promote 'harmony, fecundity, and common interests of the people as a whole' (Ayittey 2005).

In assemblies like these, a chamber which is designed specifically for the various voices of society to be heard would play a greater role in preventing violent conflict. This is even more so within societies which have experienced violent conflict before. Ayittey (2005:412) noted that in most African societies, the maintenance of peace was based on four legal principles. Settlement of disputes by (1) 'deliberation, (2) discussion rather than by force, (3) correction of wrongdoing by compensation (except in serious offences such as murder), and (4) assessment and adjudication by elders considered to be impartial and fair'.

Within the institutional paradigm of the State, which this thesis attempts to promote the four principles above are important. The establishment of an independent Assembly (parliament) of the people elected freely and directly is vital towards promoting greater societal approaches to preventing violence and conflict as parliament would create the necessary spaces for individuals to freely discuss and find ways to address the challenges which might lead to conflict.

Moreover, such parliament would have the authority to find mechanisms to deal with past grievances. This is particularly important within the Angolan socio-political landscape as the country has not adequately dealt with its violent past. One can argue that the reasoning for this, at least in part, is due to the dominant nature of the MPLA party State in Angola which still uses the old context of war as a political and strategic tool.

6.5.3 The National Assembly (Senate)

The second chamber of the legislature (Senate) would serve as another point of control in which the National Assembly would serve as a check on executive power. Busia (1967:24) argued that the African political systems are best described as functional when different regions have the authority to make their own decisions, the difficulty however, is how to keep a balance between the various regions and the centre. He further argued that 'the decentralisation of political authority within African indigenous systems was vital. It was such decentralisation which allowed each lineage or village to manage its affairs and gave ordinary people a say in local governance'.

Decentralisation has been adopted in various political systems for the particular purpose of (1) stopping the reoccurrence or occurrence of conflict and (2) for the prevention of conflict. In the case of Rwanda, the adoption of a bicameral system was helpful towards its road to democratic consolidation, while in South Africa decentralising (in its own way) through the adoption of a form of a bicameral system was vital towards preventing conflict. Such a process in South Africa has worked towards creating a process of greater inclusion which was specifically designed to address issues of repression and the potential outbreak of civil war under the apartheid regime.

In referring to how the Asante people put such a decentralisation process in practice, Busia (1964) illustrated such a situation:

> The Ashanti (Asante) were careful to prevent their chief from becoming too tyrannical, and they developed a delicate balance between the central authority and regional autonomy. In matters of administration, each lineage or village managed its affairs, each chiefdom was run on a policy of decentralisation, and there was a careful balance between the central authority of the chief on the one hand and local autonomy of the component units of the chiefdom on the other. If the chief abused his power, his subordinate chiefs, the members of his council, could destool him. On the other hand, if a subordinate chief or councillor tried to become too powerful, the chief could destool him. In Ashanti system, the fact that each lineage, village or part of a chiefdom managed as much of its own affairs as was consistent with the unity of the whole chiefdom enabled many to share in decision-making in local affairs, for the head of each unit, was like the chief at the centre, obliged to act only on the concurrence and with the advice of his local council.

An important takeaway of this system is that it creates the conditions for greater accountability. The Senate would enhance and serve as a mechanism to check the power of the executive by serving as the chamber in which the executive rules not by decree and near unlimited constitutional powers but by the consent of the people. Unlike parliament, which is composed of individuals who are directly elected by the entire population. The Senate would be composed of individuals who would directly represent the provinces and in doing so serving as another lever of deliberation and check and balance on executive power. An essential role of this chamber would be for 'advice and consent'.

In his analysis of the checks and balances inherent within indigenous African political systems and institutions, Martin (2017:38) noted that in the process of 'discharging his duties as the ultimate political, legal, and religious authority – essentially the maintenance of law and order and the management of public affairs for the good of the community – the leader had to take the advice and counsel of two key bodies: the Inner Privy Council and the Council of Elders'.

The importance of 'advice and consent' is vital. In particular, as it involves the already extensive powers of the President. Advice and consent would create a check within the executive and presidential power to appoint individuals to other organs of State such as judges, members of the

cabinet, heads of national organisations and the armed forces while significantly limiting the negative effects of the super-presidentialist model (see 5.2.1 and5.2.2).

The reasoning for this process would be to not only allow the people a say on the individuals who are to be placed in positions of authority or in various State-owned and or State institutions but also work towards limiting executive power, while giving a say to the various provinces who have their own interests. This function of consent is also a process of breaking up points of power. Made famous by the US Senate - is its role of 'advice and consent' wherein the Senate serves not only as a consultative body for the executive but also a body which the executive must attain its 'consent' if it wishes to make major policy choices.

The US Constitution states that although the President has the power to make treaties, appoint Ambassadors, Judges of the Supreme Court, Members of Cabinet/Ministers and all other officers of the USA, he can only do so (1) on the advice of the Senate and (2) with the consent of the Senate. This is important because it gives the Senate the power to either accept and or reject a Presidential nomination to a particular office. In the case of Angola such function would work towards addressing serious issues of political domination and the exclusion of persons from the political system (see 5.5).

6.5.4 Permanent committees

Oversight creates the stopgap measures which make it possible that the abuse of power which often turns to tyranny is kept in check and further creates the mechanisms which punish acts that are inconsistent with agreed-upon norms, ethical standards and principles.

Ostrogorski (1902:94) observed as early as 1902 that 'the mainspring of representative government is not machinery, however, perfected, it is the light it sheds on the acts of the rulers, it is the publicity, which attaches to all their sayings and doings'. The establishment of a permanent oversight committee made up of the various members of the National Assembly is vital towards safeguarding and holding to account of elected officials. Furthermore, and perhaps an essential aspect of such committees would be its role as independent and 'investigatory' bodies which hold decision making powers under the Constitution.

The importance of oversight within the Angolan context is even more critical. As corruption and impunity are ripe and have to a large extent become imbedded within the social and political system (see sections 1.6.2 (i) and (ii) and 3.6.3). In addition, such committees are also vital to address a number of the democratic deficit seen through the unregulated, unrestrained and disrespectful use of

political power in Angola which serves to undermine individual rights and freedoms (see sections 5.2.2 and 5.2.3).

One can argue that it is the human desire for freedom, liberty and equality which led the various liberation movements across Africa and other parts of the world to demand their inherent rights. However, in Angola the promise of freedom and liberty by the MPLA has been replaced with a system of domination where people are forced to live in fear. State repression in Angola is very real. The use of force against citizens, the limited and at times denial for the right of assembly and to protest has been for too long a persistent feature of the social and political context (see sections 2.5.3; 3.6.2 (i) and (ii); 4.4.2; 4.5.2; 4.7 and 4.7.2).

A committee on the promotion and protection of civil liberties is thus vital. Such committee would work towards managing and setting forth the right standards for government in its relationship between State and citizens in the areas of civil rights and liberties, along with State institutions equal protection, voting rights, rights of the media, right of assembly amongst others. Moreover, such committee would also work towards better safeguarding human rights as a whole while aligning State institutions towards achieving better protection of such rights while creating the basic founding principles of the State's preventative mechanisms for violent conflict through the protection of fundamental rights.

Equally important is how funds are spent within the State, both as it relates to expenditure in areas of defence, foreign service and others. In December 2011 a report by the International Monetary Fund revealed (IMF 2011) that Angola lacks proper appropriation mechanisms to account for State funds adequately.

A HRW (2011) report revealed that that between 1997 and 2002 more than four billion dollars in oil revenue had gone missing. While the IMF report of 2011 had brought to light that in 2010 thirty-two billion dollars had also gone missing that year, urging the Angolan government to promptly provide a full public accounting of where the funds had gone. It never happened (IMF 2011).

6.6 Legitimising judicial power

Montesquieu (1748) argued that within political systems in which the principle of the separation of powers is not fully institutionalised would essentially undermine liberty. As per the case of Angola as discussed in section 4.6, 4.7 and again in section 5.4, it is necessary that the judicial organs take a more active role in promoting and protecting the law. Sachs (2009) in his book, *The Strange Alchemy of Life and Law* makes use of the term 'activist judge' as being an essential trait of judges as they

would create conditions for the judiciary as a whole to have a higher degree of independence from the executive branch of government.

The Senate as an 'advice and consent' body within such a framework inherently removes full authority of the President to unilaterally appoint judges to the Supreme and Constitutional Court, the fact that there is a vetting process that creates the extra level of autonomy for judges is important (see section 6.5.3). However, the question of judicial autonomy in Angola is one which was intentionally undermined within the Constitution drafting process.

Ríos-Figueroa (2015:197) noted that the institutional design of the justice system involves 'combining in a specific way the institutional actors – judges – and prosecutors – and their institutional features – independence and powers'. Creating greater independence from the executive, along with increasing the powers of judges is then essential. Due to the current structure of political power and the weaknesses of the judiciary, together with the challenges identified in the Angolan political system the Angolan judiciary is neither independent nor does it have any real legitimacy to carry out its functions as per the Constitution thereby failing to defend a democratic system based on the rule of law (see section 4.7; 5.4 and 5.5).

The Senate judicial confirmation of now US Supreme Court Justice of Brett Kavanaugh – although overly theatrical created the conditions for highlighting the extent that the public can influence such a process. Moreover, it also served to highlight how a President is not above the law and their power all - encompassing - which in turn further opens up the selection of judges to the highest courts open to public debate scrutiny and evaluation.

Judicial review is another way in which the courts can actively serve as a mechanism for preventing violent conflict. It is important because through the judicial review process – the courts can actively examine decisions made by not only the government but also public institutions, and the laws made by the legislature. In Angola creating a framework for which the judiciary – and in particular the courts have the power to review legislation would be vital in ensuring that Angola not only aligns its domestic policies with international standards, but also work towards ensuring that the Angola complies with its international human rights obligations. Currently Angola does not comply with its international human rights obligations (see section 3.6.2 (i) and (ii).

6.7 Conclusion

This chapter provided a concrete way in which Angolan institutions can be reformed. The nature of the concentration of power as seen in Chapter 4 through the Constitution creates the possibility for

violence to continue. As a result, this chapter has found that due to the nature of political power in Angola as elaborated in the Constitution (title iv, Articles 105 to 140) there is a need to look at other alternatives of how to reconfigure and limit such power (see section 6.3).

As a starting point, the chapter argued that in order to begin a reform process in Angola the constitution must be amended so as to allow for full decentralisation which would also work towards undermining the organization of political power (see section 6.3). The Chapter demonstrated that Angola has to reform its institutions to realise not only the vision as advanced in Agenda 2063 and the SDG's but also to create better systems of governance which would allow for human rights to be promoted and protected (see sections 3.4.1 and 3.4.2).

The chapter proposed how the executive can be 'reimagined' and with it establish executive bodies which would work towards safeguarding human rights while removing the uncontrolled power of the 'auxiliary' organs (see 6.4). This section was particularly influenced by the violent and oppressive nature of the Angolan political system and its institutions (see sections 1.1; 1.6; 1.6.1; 1.6.2; 3.6.2; 4.7; 4.8.1; 5.2; 5.3 and 5.4).

The chapter identified that the Angolan political system would greatly benefit by adopting a bicameral assembly. The two house nature of such bicameralism would provide both a greater context for political participation and representation. In addition, the chapter also proposed that – the direct manner in which parliamentary members are to be elected would significantly work towards countering the democratic deficit. The chapter also found that the bicameral system is one which would work towards giving power back to the people and serve as a counter-weight to executive power (see section 6.5).

The chapter concluded that in order for the Angolan judiciary serve its real function as per the Constitution there needs to be balance within the Angolan political system. Such balance is one which requires the dismantling of the executive's power structures. In addition, the chapter noted that the Angolan judiciary must adopt a judicial review process which would aid not only aligning domestic laws with human rights standards but also ensure that Angola complies with its international legal obligations (see section 6.6).

CHAPTER SEVEN: Conclusion

7.1 Introduction

The main question this study sought to answer as presented in Chapter 1 was: Which features of the Angolan State institutions make them more prone to exercise violence and fail to prevent violent conflict? In answering this question, the thesis referred to the role of State institutions such as the executive, the legislative and judicial branch. As a way to determine the role of State institutions in preventing violent conflict, the study also looked at issues of power and violence (see sections 2.2; 2.3; 2.4;2.5 and 2.6).

This study identified that the authoritative nature of the Angolan State was highly influenced by its fist flirtation with constitutionalism – seen through the Constitution of 1975 which centralised power in the executive and presidency. This authoritative nature was continued and carried over when elaborating the 2010 Constitution (see sections 4.5.2; 4.6 and 4.7; 4.7.2).

This concluding chapter now looks towards synthesising the main findings of the various chapters, along with providing responses to the research questions.

In concluding, the research will provide: (1) the main research findings and (2) the thesis will provide concluding remarks.

7.2 Main research findings

This thesis consists of seven chapters - each chapter worked towards answering a sub-question which contributed towards answering the main question. Furthermore, each chapter had findings which led to the development of the following chapter. This Chapter merges all those findings with the objective of concisely presenting the answers to the research questions.

7.2.1 How well do Angolan institutions protect human rights?

Angolan State institutions in their current form do not and cannot protect human rights. Rather, in their current form they are more attuned towards creating the ripe conditions for violence to break-out. In addition, the thesis found that though Angola was supposedly meant to be a State built on democratic governance – the Angolan social and political reality is one based on domination and the denial of rights and that the MPLA through political engineering has deliberately created a system in

which international recognised human rights cannot be protected (see sections 1.1; 1.6; 2.5.3; 3.3 and 3.6.2).

Moreover, the thesis found that though Angola finds an importance in being a member of the international community of States, while signing internationally human instruments, Angola nevertheless fails to follow through with its human rights obligations. In addition, the thesis has found Angola continues to undermine its obligations by maintaining a state structure which has the outwards of a democratic State but in reality the organisation of power as per its constitution – together with Angola's undermining of democratic principles has made it so that it does not comply with its international obligations (see sections 3.2; 3.3; 3.6.2 (i) and (ii); 4.7 and 4.7.2).

As a result of such deliberate undermining of State institutions, a conversation about vertical and horizontal accountability in Angola cannot be had – simply because it does not exist. The thesis noted that while a conversation on horizontal and vertical mechanisms would be an important analysis, such conversation cannot be had in Angola because such mechanisms do not exist (see sections 4.7.2). In light of no real mechanisms of accountability, together with the levels of violence and impunity by both political actors and security services Angolan institutions do not protect human rights (see sections 1.1; 1.6; 3.6.2; 4.8.1).

As an institution which would go a long way towards promoting and protecting human rights Angola does not have an independent human rights commission. Such failure adds to the already dysfunctional Angola State.

The thesis found that Angolan institutions cannot and are not able to protect human rights.

7.2.2 The theoretical discourses on violence and the use of State institutions in preventing violent conflict

Chapter two discusses the various theories of violence and conflict. Such theories looked at how violence arises in a particular contexts. A lot of the theory on violence found that violence usually arises in the absence of consensus. The failure of governments and their institutions in establishing an understanding with the electorate can at times lead to violence (see sections 2.2 and 2.2.2). As illustrated throughout this thesis when institutions use violence against citizens there is a danger of the citizenry using violence to counter the violent nature of the State (see sections 2.2.3).

Similarly, while elites to a large extent are present in any society, they can influence a political culture towards undermining civic democratic principles. The chapter identified that the State can be

understood using various theoretical approaches, such approaches however, cannot simply be expropriated to analysing the African reality as a number of such approaches such as the liberal approach fail to look at the peculiarities of the African reality (see sections 2.3 and 2.5).

As a way to bridge the gap between the western approach to understanding the State, it is important to build a framework which is to be used as a basis for understanding the African State. In this regard, the chapter used Hobbes theory of the state of nature to establish a framework from which the African state can be analysed. In this regard, the chapter proposed that the state of nature of the African post-colonial state is one based on the domination of liberation movements (see sections 2.5.3).

Such domination should then be the starting point to analyse the role of State institutions in preventing violent conflict. The power configuration approach and political settlement approach sheds some light in understanding on how political settlements shape the nature of peace between warring parties (2.2.4). though this is an important approach it is important to note that the political settlement approach can also be applied towards understand the settlements which were in place immediately after independence, and as such, they are important in highlighting the relationship between liberation movements and citizens.

The theoretical approaches used in understanding conflict aided in analysing how violence might be motivated. The discussion of the economic school was particularly important, while the theory argues that intra-state conflict is caused by rebels wanting loot the State using its institutions and natural resources as their personal wells of wealth. It does not paint an entire picture of how economics at a more micro individual level might influence violence. The theory is limited in the sense that it fails to look at the economic difficulties faced by those who are subject to violence from rebels group. (see section 2.4.2).

In addition, the theories of the economic dimension also looks at the greed vs. grievance report as a base for explaining why conflict might arise. However, though this theory looks at how rebels use the pretext of inequality to gain control of the State – the theory looks at inequality from a single perspective, as it looks at rebel groups and their claims to the State while failing to look at the effects of inequality on the citizenry as a whole (see section 2.4.2).

Moreover, the grievance vs. greed debate is particularly important as it links with the proposed theory of the State of nature within post-colonial Africa States and how people within such State of nature can rise up and challenge the domination of the political party in light of not only the domination of the political party through its institutions but also in light of the high levels of inequality which exists between those in the political system and those outside the system (see section 2.4.2).

On the other hand, the analysis of the political school which argues that the absence of democracy and good governance mechanisms makes it so that violence arises is accurate, but only in part. The political school argues that 'weak and failing' institutions are a reasons why violence arises – and as a result the majority of the literature has been in studying such weak and failing institutions (see section 2.4.2). It is important to note however, that though weak institutions contribute to violence, strong institutions also and equally contribute to violence – possible even more so than weak institutions.

The thesis has identified that Angolan institutions are neither weak nor failing. In actual fact, Angolan institutions are those which are strong, there is a strong command structure, strong security service which can use extreme violence to instil order and its political and governance system is one which has been arranged for the very purpose of maintaining high level of control over society.

The combined reading of the different theories played an important role in answering the main question of this research. This research sought to analyse the role of State institutions in preventing violent conflict in Angola. The theoretical frameworks that were analysed established that State institutions play an important role in preventing violent conflict.

7.2.3 The international legal and institutional frameworks

This Chapter provided an analysis of the international legal and institutional frameworks in place for the prevention of violent conflict. This chapter was divided into five parts: (the obligations that Angola has under international law to prevent violent conflict (2) what international law says about violent conflict and is prevention (3) the African Unions efforts to prevent internal violent conflict and the obligations that Angola has as a member of the AU towards preventing violence (4) the obligations that Angola has as a member of the SADC to prevent violent conflict and (5) whether Angola has complied with its international human rights obligations.

The evidence provided in this chapter served highlight the international legal obligations that Angola has in preventing violent conflict together with establishing whether Angola complies with its international legal obligations to protect human rights. The first part found that Angola has an obligation to prevent violent conflict and that as a member of the African Union and the SADC Angola is obliged to ensure that it establish the environment and the institutions to prevent violence and with it promote and protect human rights.

The chapter found however, that despite Angola being a member of the AU and SADC, and a party to various AU and SADC conventions and treaties Angola still fails to comply with the obligations

which arise from being a state party to such conventions. In addition, Angola fails to volunteer itself to monitoring mechanisms which would allow for its institutional deficiencies to be brought to light.

Regarding the question of compliance with international human rights law, the evidence found that though Angola finds great value in being a member of the international community, it fails to adopt the international communities normative norms of human rights. This has been seen through Angola's failure to repeal laws which undermine core international human rights law – seen through its laws on state security. In addition, the fact that Angola is a member of international bodies such as the human rights council – while not complying with its international human rights obligations further creates a context in which Angola sees great value in maintaining an international reputation of compliance with the law while domestically not complying with international obligations.

The chapter concluded that Angola does not comply with its international legal obligations to prevent human rights violations.

7.2.4 State building and constitutional change in Angola

Chapter four continued to use the framework of analysis developed in chapter two to analyse and trace the different Angolan constitutions over time and in a particular how such constitutionalism has effected power and politics in Angola. The chapter traced three constitutional periods in Angola: (1) the 1975 constitution which established the one party state (2) the 1992 Constitution which dismantled the one party state and opened up Angola to multiparty elections and (3) the 2010 Constitution which was elaborated after the civil war.

The found that the three Constitutions in Angola have significantly influenced Angola's legal and political culture. The chapter found that the 1975 constitution was instrumental in establishing Angola's authoritarian traditions and with it creating a political culture which would remain in Angola for generations to come. In addition, the chapter found that the nature of authoritarianism as is seen in Angola was very much influenced by the MPLA party state and how it built a political system based on domination.

The analysis of the 2010 Constitution found that, despite Angola having entered a new constitutional dispensation, Angola through the MPLA and through the establishment of the Constitution retained its authoritarianism. This was seen through how political power was organised in the constitution, together with how the MPLA party State systematically worked towards undermining the political system.

This chapter is linked to chapter three in identifying that in order to be accepted by the international community Angola had to create the appearance of building a democratic State through establishing a bill of rights within the Constitution which seemingly protects individual rights, while the centralisation of power in the same Constitution makes the protection of fundamental rights near impossible.

The chapter found that the 2010 constitution making process was not necessarily a continuation of the constitution making of 1992 but rather that of 1975. In addition, the chapter found that the elaboration of the constitution was an intentional process of undermining democratic principles for the purpose of maintaining an elite in power. This elite stranglehold on power was seen through the exclusionary nature in which the constitution was elaborated and eventually passed (see section 4.6).

In addition, political interference is present within judicial process by way of undermining the national assembly. The removal of the oversight function from the national assembly added towards increasing the features of Angolan institutions which make them more prone to violence against its citizens and in doing so further removing safeguards which are in place to protect individual and fundamental rights. Such a process highlights a process in which the MPLA was continuing the State building process which started in 1975 and ended in 1992 with the constitution of 1992 – it is a State building process which normalises political action outside the norms of international human rights norms (see section 4.4.2; 4.5.2 and 4.6).

The chapter also reinforced the findings in chapter three. Chapter three found that though Angola wishes to be seen as a respectful member of the international community which respects the rights of individuals – its internal human rights record says highlights a certain level of disdain for internationally protected human rights norms (see sections 3.6 and 3.6.2). As a result, chapter four also found that though Angola has established a Constitution which speaks widely of fundamental rights the scope of rights within the constitution cannot be realised due to the political engineering which limits the role of organs like the judiciary and legislature in serving as independent bodies and with it protect human rights (see sections 4.7; 4.7.1 and 4.7.2).

The chapter identified that the MPLA's engineering of the political system has created a context for violence (see section 4.8.1). Such violence has been seen in places like Cabinda and the Lunda provinces where cries for autonomy has intensified violence. In general there have also been calls from politicians and citizens alike demanding that state institutions be reformed so as they are more representative. In addition, the restrictive nature of institutions has also influenced internal mobilisation in the country – such mobilisation has been seen through protest action against the centralised nature of the Angolan state, the repressive laws which stifle freedom of speech and

assembly and the impunity through which Angolan security forces enforce such restrictive and oppressive laws (see sections 4.8; 4.8.1 and 4.8.2).

The chapter concluded that Angolan constitutionalism has created a context in which political power is used as an instrument which negatively effects people's lives. Angola's constitutional trajectory has also significantly influenced politics to the extent that the political leadership can act without any real form of restraints.

7.2.5 The Angolan State apparatus and violence

Chapter five carried continued from the analysis made in chapter five. The chapter looked at particularly five aspects: (1) the nature of the Angolan executive (2) the nature of the legislative branch (3) the nature of the judicial branch and (5) the challenges found in the Angolan legal system. The analysis of the executive branch found that the Angolan executive is one which is extremely centralised In addition, such centralisation is dangerous because all the organisation of the state are subordinate to the president.

The chapter also looked at the judiciary, in particularly how the judiciary is subordinate to the executive. The discussion in chapter four is important because it highlighted that parliament has no oversight authority over the executive making parliament both weak and unable to control executive action. The evidence also identified that the judiciary through the courts are extremely weak.

Such weakness of the courts is seen through how the executive easily passes laws unilaterally and at times through parliament, laws which undermine human rights while the judiciary serves the purpose of punishing those that the government see as challenging their authority. In this regard, the national laws are geared directly towards silencing and punishing dissent and the judiciary together with the security services are the instruments through which the executive quells such dissent.

This chapter found that the fact the Angolan executive is overly centralised creates the conditions for which violence becomes the norm. The super-presidentialist model, though creates for an extremely strong and heavy executive branch it serves as a major weakness of the entire Angolan political system. Such weakness is one which allows the head of executive power to wield an enormous amount of power without any limits or oversight, which in turns makes Angola's claim to be a constitutional democracy a façade.

The auxiliary bodies of the executive as per the Constitution also serves as a feature of the executive which again, and though strengthens the executive branch, further undermines the process of rights

protection in Angola. The chapter identified that auxiliary bodies have the authority to both legislate and present laws through decree without parliamentary oversight and essentially serve as a mini-parliament acting on behalf of the president (see section 5.2.1).

The security services are also another feature of the Angolan executive which though make it extremely strong –undermines the Angolan rights regime and endangers the protection of human rights. The use of police, intelligence and armed forces under the direction of the president and without oversight in how they are used further serves as a danger towards the stability of the State. As identified throughout the thesis, Angola's security services have been used internally and against citizens to quell dissent (see sections 5.2.2 and 5.2.3).

The legislative branch which is meant to serve as a counter-balance for executive over-reach has been undermined by political engineering to the extent that it is not able to fulfil both its role of oversight and represent the Angolan people. In addition, and in relation to the executive branch, parliament is unable to `veto potentially unconstitutional laws because of the authority of the president to legislate through decree (see sections 5.2.1; 5.2.2 and 5.2.3). In its current form, it is not farfetched to state that the Angolan parliament in its current form, together with the imbalance that exists between the executive and parliament – parliament essentially only serves the purpose to rubber stamping executive laws (see sections 5.3.2 and 5.3.3).

The analysis of the executive highlighted that in light of the command structure seen in the Angolan political system, an extremely heavy executive and weak legislature creates an imbalance within the political system which makes it impossible for the protection of human rights. Like the legislature, the Angolan judiciary serves as a weapon of the executive, while the Angolan security services like tare the material instruments the judiciary is used to prosecute those that the regime find to be unwanting (see sections 5.4 and 5.4.1).

The chapter identified that the judiciary is neither independence nor working towards achieving the ends of justice. The nature of the executive and in particular the powers of the president to appoint individuals to every organ of state including the judiciary brings to question not only the nature of the lack of judicial independence but also its inability to take independent action outside the scope political orders (see sections 3.6.2(i) and (ii); 4.8.1;5.4; 5.4.2 and 5.4.3).

The chapter concluded that the three branches of government are unsuitably unbalanced and in their current form creates the conditions for violence, while failing to prevent violent conflict.

7.2.6 The role of State institutions in preventing violent conflict in Angola

Chapter six proposed how state can be restructured so as to prevent violent conflict. The chapter was divided in four parts: (1) proposing a constitutional amendment (2) removing the features of the of the executive which make the Angolan political system prone to violence and unable to prevent violent conflict (3) proposed how the legislature can be restructured and (4) the role of the judiciary within an new Angolan political system.

The first part of the chapter carried on from the analysis made in chapters four and five, and in light of such analysis proposed that the first step to be taken in reforming Angola institutions would be to amend the Constitution. Such amendments would work towards undermining the organisation of political power while at the same time proposing a level of decentralisation which would provide for territorial autonomy. Such autonomy through decentralisation is one which would go beyond the government's proposal of the autarquais – which regulates to allowing for local elections, but rather it would go further and allow for territorial autonomy by giving provinces autonomy which would in turn allow each province to elect their own leader (see section 6.3).

The proposal for decentralisation is one which would not only work towards decentralising the political organisation of the State but also work towards undermining the kleptocratic networks that have exited within Angolan society since independence while at the same time decoupling the MPLA from the State. The second part continued from the analysis made in chapter five and looked at how to remove some of the features of the Angolan executive which make it prone to violence.

In such an attempt, the chapter proposed that it is vital that the organisation of power be amended within the constitutional law. The section also proposed the adoption of other bodies within the executive branch which would work towards creating forms of 'self-imposed checks' while also focusing more inwards towards social development (see section 6.4.1).

The chapter proposed that as a way to better manage issues of corruption and impartiality the Angolan government should adapt an OG approach. Such approach would not only serve as a benchmark to curbing corruption but also work towards addressing the challenges identified in section 5.5. In addition, an OG approach would ensure that citizens are more engaged with the political process, increasing political participation which in turn works towards building an inclusive political culture as per the discussion in Section 2.3. The importance of the OG approach is also directly linked to the discussion in section 4.10 (i) which works towards establishing regulatory mechanisms within the legal and political system.

Part three of the chapter proposed that the National Assembly be transformed from a unicameral legislature to a bicameral legislature. In this proposed National Assembly, Parliament would serve as the first and primary chamber and would be representative of individuals from the entire country, while the Senate would be the secondary chamber and would represent the provinces at the national level. The chapter also proposed that permanent committees are to be established within this newly constituted National Assembly as they would serve towards curbing some of the issues which were identified throughout this thesis (see sections 1.6 (i) and (ii); 3.6.2 (i) and (ii); 5.2.1; 5.2.2 and 6.5.4).

Part four of the chapter proposed that within this newly propped institutional structures the judiciary would be in a better position to be a legitimate chamber as it would be both free from political control while being given the authority to review laws which and in doing so strike down laws which go both against human rights and those that go against the integrity of the constitution. In addition, this new judiciary would also have the power to initiative a review of the constitutionality of the state and whether laws, and organs of the state and the power which they wiled are in line with the principle of democratic governance.

The chapter does not mean to state that the institutions as proposed herein are a silver bullet that will stop all forms of societal issues. But rather that reforming Angolan institutions as proposed in chapter 6 would work towards preventing violent conflict in Angola together with establishing the institutional and legal framework which would allow for the better protection of human rights in Angola.

7.3 Concluding Remarks

Today, Angola can arguably be described as an unfinished democracy - one where the democratisation process was intentionally undermined for the benefit of elite interest. This thesis' concluding remarks will deal with four main issues: (1) what has been done in Angola in terms of institutional and constitutional reform, (2) the main weaknesses identified today in Angola which inhibit the establishment and consolidation of real democracy, (3) what the Angolan case can tell us about achieving democratisation in post-conflict States, and (4) some of the main points to take away from this thesis.

7.3.1 What has been done in Angola in terms of institutional and constitutional reform

One can argue that the Angolan experience since the end of colonialism and since the establishment of the 1975 Constitution (section section 4.3.1) the establishment of the 1992 Constitution (see section 4.5.3) and the establishment of the 2010 Constitution (see section 4.6) have all been attempts at

creating institutional and legal mechanisms which would have as an objective of creating a political system which is both rigid and unresponsive to wide political participation. (section 5.5.1).

The MPLA has dominated the political space since independence and though it has created the outwards appearance of a democratic State its actions and way of functioning show a more disturbing picture of repression and exclusion. With the exception of the 1992 Constitution which was a negotiated effort all other attempts at constitution-making in Angola have been based on the needs of the ruling elite to consolidate their power while undermining the rule of law and good governance

As a result, institutional and constitutional reforms to date have not addressed the real needs of the Angolan people. The 2010 Constitution, which was meant to serve as the basis for real and credible State reform failed to achieve its objective because of the very nature of elite control in Angola. One can argue that the transition from the 1992 Constitution to that of the Constitution was a regression as the Constitution created a system of political power control which would undermine the credentials of any real democratic State.

Furthermore, Angolan reforms have focused heavily on creating a power structure which places such power and authority in one institution. And as a result there is the added failure of the democratic principles of openness, accountability and the rule of law to truly be enshrined as part of a national culture. This in turn, and at least for Angola makes it so that the principles enshrined at the international level through organisations such as the UN, AU and SADC cannot be adhered to because they are incompatible with the national reality.

7.3.2 What are the main weaknesses in Angola?

Angola has a number of weaknesses. (1) there are high levels of social and political tension (see 1.1 to 1.6.2; 3.6.2. and 3.6.2. Such tensions can be seen with the high levels of corruption present in the country, the level of brutality of the Angolan security services, (2) Angola faces very low levels of development – such low levels can arguably be attributed to the high levels of corruption in Angola together with the undiversified economic base of oil – which at its boom was the main avenue from which the Angolan State survived (section 1.6.2) (3) weak repressive institutions (see sections 5.2; 5.3 and 5.4) and (4) non-existent separation of powers between the branches of government (see sections 4.7; 4.7.1 and 4.7.2).

Such failure of the separation of powers in Angola undermines the democratic nature of the State and especially the rule of law. An inordinate amount of power is vested in the executive - to the extent that Angola has been found to have a ‘super-presidentialist’ model which makes the Angolan State

effectively a kleptocracy, where corruption and repression are endemic while the vast natural resources that the State has is not able to generate the economic development that Angola requires (see sections 5.2 to 5.2.4).

It must be understood that the factors identified above all have as their cause the ill design of the State through its Constitution and failure to provide adequate conditions for democratic principles.

7.3.3 Violence and governance

This thesis has identified that repression to a large degree might contribute to violence in Angola. This repression is seen through laws which undermine individual rights and freedoms (see section 3.6) and the legal and institutional structures which to a large degree undermine the participation of individuals within the political system while privileging only the few.

In addition, the thesis has also identified a correlation between governance and violence. Sections 5.2 and 5,5 gives an example how government structures can influence the levels of violence in Angola. In this way, Angola's governmental structures, as rigid as they are, and the way in which they undermine the rights of individuals seems to create the conditions for which individuals rights and freedoms are undermined and as a result such actions are those which have the potential to lead to violence – an action which to a large degree is due to the very rigid governance structures currently in place (see section 4.6.4, 4.7 and 4.8)

In Angola violence can be attributed to four failures of governance:

a. The unconstrained power of institutions and individuals

The question of power has been a huge issue in Angolan political history. Although power and its pursuit is a major theme within any political society – each such society hastheir own contextual reality. Angola is no exception. The establishment of the 1975 Constitution (see section 4.4) was, arguably one of power. The author argues that it was the first, and successful attempt at creating a governance system where institutions and certain individuals had little to no limits on power.

In addition, the 2010 Constitution though it establishes in its principles the importance of human rights, and the rule of law, the governance structures within the Constitution is arguably one that is less to be desired. In theory, one can argue that the establishment of good governance structures are

vital for the functioning of the State, one can further argue – as this thesis attempted to, that the establishment of good governance methods would work towards preventing violence.

In addition, and as it deals with the institutions of the State, when the State is given too much power, such as given to the Angolan State by the Angolan Constitution (see sections 4.6 and 5.2), and although the State should by its nature have a monopoly of power as a condition of governance, and in particular to maintain social order, it is not enough to keep people safe or maintain their security. Thethesis has aimed to show violent conflict can come from the State, through its security services such as the police and the military forces (see sections 1.6, 3.6, 4.8 and 5.2).

Governance institutions ideally create the incentives and motivations for which individuals would either work with such institutions to achieve what Aristotle said to be 'the good life' if and when they are in line the ideals of protecting fundamental rights, or work against them when such institutions are designed in such a way that they undermine such fundamental rights. This author argues that in the case of the former, when governance and institutional systems create the necessary incentives to promote human rights and protect fundamental freedoms outburst of violence can be better controlled and mitigated within State institutions themselves.

Governance systems then directly affect societal norms which by its definition then work towards impacting levels of violence, just like violence effects governance systems. In the case of Angola the thesis has identified that the structuring of political power as per the constitution and as per a mechanism of both institutional and governance engineering has the potential of creating a clear and present dangers as it relates to violence (see sections 4.7 and 5.2).

Such power dynamics and with it structures make it easier that human rights violations continue. In addition, the fact that the governance system through the courts further created mechanisms to provide oversight adds to the dangers of violence becoming a possibly (see section 4.6.4).

This author contends that good governance, or the establishment of better forms of governance can have an immense effect on preventing conflicts from turning violent. Simple actions such as establishing new ways in which individuals can participate within the overall system creates may play towards creating the conditions in which individuals feel they have a say in how their lives are managed (see sections 4.10.1).

b. The distribution of resources

The question of distribution of resources in Angola links with the unconstrained use of power by individuals and institutions in the country (see section 5.2). This author argues that the failure of the Angolan State to adequately provide for its population, not only by way of establishing the conditions for the promotion and protection of fundamental rights as per the constitution (see section 4.6.1 and 4.6.2) but by way of creating the conditions in which their economic survival allows them to flourish is dangerous. Such dangers are even more so when blatant acts of corruption directly undermine the resources that could've been used to provide for individual well-beings (see section 1.6.2).

This thesis has argued that conflict in Angola has been an active phenomena, both through the distribution of resources, actual and perceived and the distribution of political power, again, actual and perceived. Such phenomena can be seen through the three phases of Angola's constitution building process, the establishment of the 1975 Constitution (see sections 4.4 and 4.5.2), the establishment of the 1992 Constitution (see 4.5.3) and the establishment of the 2010 Constitution (see sections 4.6). In addition, it is not farfetched to argue that poverty, unevenness and inequality leads can lead to tensions in society and such tensions can then lead to conflict (see sections 1.6.2 and 4.8.1). Yet, at the same time it is also important to note that, conflict and violence are not the same thing – the important thing is to ensure that such conflict does not lead to violence.

In Angola, one can argue that protests and the continued denouncements of government actions and the institutions of the State can arguably be said to be examples of non-violent forms of action (see sections 1.6.1, 4.8.1, 5.2.3, 5.3.3 and 5.4.2). However, the issue is that such non-violent protests can very quickly escalate to violent conflict – such is more likely when there are high levels of government repression (see sections 1.1, 1.6.1, 2.6.2, 4.8 and 5.2).

In addition, one can argue that in the case of Angola it is the question of distribution. This thesis has found that it is not only a question of economic inequality, social inequality, but also political inequality. Translated in other words it is a systemic failure of the current Angolan governance, and by extension political and institutional system which fails to adequately redistribute resources to the Angolan people which creates a clear and present danger for violence.

This thesis has argued that institutions can be structured to prevent violent conflict (see sections 6.2, 6.3, 6.4, 6.5 and 6.6).

7.3.4 What does the Angolan case tell us?

The Angolan case is perhaps best described as a how-to guide on how to structure an autocratic Constitution in the age of human rights. However, It also tells us how African States can deal with the democratic deficit. Through the elaboration of the Constitution we see that Angolan Constitutionalism is the result of a forty-year process which was prolonged by both violence and the intentional undermining of democratic values and good governance (see sections 4.5.2 and 4.7.1 and 4.7.2). A huge takeaway from this study is that despite States engineering structures which seemingly have the outwards look of real democracy – they can nevertheless be restructured in a particular way so that new structures are more in line with real democratic principles.

7.3.5 Lessons learned from this thesis

This thesis has contributed to two fundamental areas of knowledge: (1) the literature of discourse which works towards better understanding post-independence political parties and systems, (2) comparative politics, in particular, how the unchallenged power of post-independence States had contributed towards social instability and conflict. The thesis demonstrated that Angola's Constitution is simply too rigid for real democratic governance to be achieved.

Regarding its contribution to the literature of African political parties the thesis has also shed some light onto how post-independence political parties have undermined the State and centralised power – and how Angola is a perfect example of how the overly-centralised nature of the State in the hands of the MPLA has undermined the achievement of real democracy. Such undermining of democracy has been through the creation of a political culture and institutions which seemingly tends to advocate that only the political parties which were victorious and took control of the machinery of State after independence have the 'legitimacy' to rule.

Regarding comparative politics, the thesis has opened a discussion about the nature of the unchallenged power of political parties. Such has been seen through the proposal made in section 2.5.4 on how political parties in many ways have contributed towards a form of *state of nature* in Africa similar to that of Hobbes. Such a proposal is one which also adds towards the theorising of African political parties and their impact on democratisation in Africa.

Such ideas of democratisation are important because they open up debate about trying to understand democratic consolidation of States, while linking such consolidation directly to the nature of post-independence political parties and the fact that many such political parties have undermined political

culture in their own States by sowing ideas that they alone can rule – which further contributes to their unchallenged nature.

As argued throughout this thesis, the end of the Angolan civil war did not bring with it positive peace - rather the MPLA built the State and its institutions on the rubble of negative peace. This thesis has contributed to how such States can move from negative peace to positive peace. It has suggested concrete steps that States can take towards consolidating democracy.

The State-building process in Angola has shown that a State which is overly-centralised can lead to violence, such violence is even more prominent when the constitution-making process is conducted under a cloud of suspicion and as the thesis argued, illegitimacy. Such illegitimacy has been seen in Angola by the blatant incompatibility that exists between the organisation of power as seen through Angola's 2010 Constitution and the international legal standards that must be in place for the establishing and safeguarding of democratic governance.

The field of conflict resolution and how States craft their institutions is of vital importance. This thesis has contributed to an understanding of how within such peace processes, the crafting of peace accords and the legal measures which would create the conditions for the State, are important. The thesis has also made it clear that unresolved and latent conflicts are a hindrance towards development in Africa. The Angolan case highlighted that the failure of an inclusive process first seen through the adoption of the 1975 Constitution, and then the 2002 Peace Accords which were essentially a victor's peace worked towards creating the social conditions that Angolan faces today.

The contribution to comparative politics that this thesis has made focuses specifically on the nature of politics that African political systems have adopted. In the case of Angola, the argument was made that the MPLA has ruled Angola since its independence. Similar cases have been seen across Africa, such as in South Africa, Zimbabwe and Mozambique. Such power as seen in Angola has aided in creating the blurred lines between the party and the State while entrenching parallel institutions as was seen in Angola, which in turn further solidifies their hold on power.

Such a state of affairs has severe consequences towards the consolidation of democracy. Moreover, the nature of the State in such circumstances undermines civilians' rights and their role in the political process. The proposals made in this thesis (See section 6.3; 6.4 and 6.5) would work towards creating credible approaches on how the unchallenged power of post-independence political States can be challenged in a constructive open and democratic system which is characterised by open governance and more choice for the individual (See section 6.4.2).

This thesis has sought to provide a context in which Angola's authoritarian, single party political system was established in the 1970s and continued to a lesser extent after the establishment of the multiparty political system (see section 4.4.1). The post-civil war period could be undermined by introducing a system which would be more suitable for democratic transformation and consolidation seemed to have created a glitter of hope of a transition from authoritarianism to real democracy (see sections 4.5.3 to 4.6.3). However, the structuring of political power does not allow for such a transition to be possible (see section 4.6).

The failure of Angola's transition to a real democracy perpetuates the nature and ideals of a political system based on tyranny and subjugation. Its institutions do not represent the people, but rather the whims of the few – similarly as it did during Angola's long and brutal colonialism. As Barack Obama (2009:1446) pointed out, 'for just as no nation should be forced to accept the tyranny of another nation, no individual should be forced to accept the tyranny of their own people'. In their current state, Angolan State institutions will continue to be used as conduits through which individuals are forced to endure the 'tyranny' of others.

The ACSS (2020) has stressed that while there has been a transition from the Presidency of Dos Santos to JLO, 'Angola's authoritarian political system remains largely unchanged'. This thesis then serves as a first of its kind which analysis Angola's State institutions and how they can be designed so as to have a real chance at a democratic transition and consolidation of democracy.

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