

Territorial autonomy as a mechanism to prevent ethnic conflict: a case study of Cabinda

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Dedication

To my mother and father, Etna Kapapelo and Celestino Kapapelo

Acknowledgment

I would like to express my gratitude to my supervisor, Prof Magnus Killander, for the intellectual direction and discipline he has given to this study. It has been a privilege working with you.

List of abbreviations

ACHPR – African Charter on Human and Peoples’ Rights

FAA – Forças Armadas Angolanas

FLEC – Frente para a Libertação do Enclave de Cabinda

MPLA – Movimento Popular de Libertação de Angola

NACA – National Cultural Autonomy

Non-Territorial autonomy – NTA

UNITA – União Nacional para a Independência Total de Angola

UN – United Nations

UNC – United Nations Charter

UNSC – United Nations Security Council

Table of Contents

Title	page
i	
Plagiarism	declaration
ii	
Dedication	
iii	
Acknowledgment	
iv	
List of abbreviations	v
Table of contents	vi

Chapter one: Introduction

1.1	Background	to	the	study	1
1.2	Problem			statement	1
1.3	Research			questions	2
1.4	Literature			review	3
1.5	Research			methodology	6
1.6	Limitations		of	study	6
1.7	Overview		of	chapters	6

Chapter two: The relationship between self-determination and autonomy

2.1				Introduction	7	
2.2	The	principle	of	self-determination	7	
2.3	African	Commission	jurisprudence	on	self-determination	8
2.3.1	The	concept	of	peoples	8	

2.3.2	The African Commission decision on Katanga and Gunme	9
2.3.3	African commission jurisprudence on Cabinda	10
2.4	External	self-determination
2.5	Internal	self-determination
2.6		Autonomy
2.7	Forms	of autonomy
2.7.1	Non-territorial	autonomy
2.7.2	Territorial	autonomy
2.8		Conclusion
		14

Chapter three: The tension between self-determination, autonomy and territorial integrity

3.1		Introduction
		16
3.2	Sovereignty	and territorial integrity
		16
3.3	Sovereignty,	autonomy and self-determination
		18
3.4	Minority	rights within divided societies
		19
3.5	Security	within divided societies
		20
3.6		Conclusion
		21

5.10		Conclusion
33		

Chapter six: Conclusion and Recommendations

6.1		Introduction
35		
6.2		Findings
35		
6.3	Recommendations for territorial autonomy in Cabinda	36
6.3.1	Human rights and constitutional democracy	
36		
6.4		Conclusion
37		
7		Bibliography
38		

CHAPTER ONE

Introduction

1.1 Background to the study

The decolonization process was one which was fought by the peoples of Africa with the ultimate aim of self-determination. At independence it was agreed by the African leadership that the old colonial borders would remain as they were.

Such a policy would serve an external and an internal purpose: “externally, it would seek to prevent irredentist tendencies by neighbours from turning into territorial claims and the possible use of force. Internally, it would give clear notice to ethnic minorities that secession or adjustment of borders was not an option” (Ratner 1996:596).

Most countries in the world, including in Africa, are divided along ethnic lines (Solomon & Mathews 2004:1). However, ethnic conflict tremendously increased since the end of the cold war. As Fearon & Laitin argue, “civil wars proliferated rapidly with the end of the Cold War and the root cause of many or most of these has been ethnic and religious antagonisms” (Fearon & Laitin 2003: 75).

Today, within the post-colonial and post-Cold War context, the management of ethnicity is thus a dilemma which states have had to deal with.

Ethnic conflict, which, at times threatens the very peace and security of the international community, has become a destabilising factor in the realm of international relations. In the 1990s the violent breakup of the former Yugoslavia and ethnic cleansing in Rwanda, just to mention a few, were examples that should not be repeated again.

Although the conflicts in Rwanda and in the former Yugoslavia contributed to building a body of knowledge on ethnic conflict, the unfortunate reality is that despite the issue of ethnicity being a factor the world over, each context can only be analysed by taking into consideration the historical circumstances of the particular region and territory.

In the present case, the issue of ethnicity in Angola is not one which has been overly politicised such as in the case of Rwanda, despite the country being composed of many peoples as for example in Rwanda. However, one would argue that the case of Cabinda is certainly unique in its own way.

Its uniqueness is one based on its historical trajectory, and the events which followed after the formal end of colonialism by the Portuguese, some events being, the formal annexation of Cabinda into Angola, the discovery of massive oil reserves and the formation of separatists movements which demanded secession.

1.2 Problem statement

Cabinda has been the site of a “decades-long war of independence between the Angolan government and various separatist factions” (Shantz 2006:24).

Cabinda as a topic of analysis was chosen due to the fact that Angola is a country which is centrally governed. Additionally, the people of Cabinda are ethnically distinct from those of mainland Angola, an argument they use to demand independence from Angola.

Furthermore, what makes the case even more relevant is the notion of economic nationalism: indeed, not only is Cabinda geographically detached from Angola, it also produces more than half of the country’s oil.

To that end the study attempts to gather whether an autonomous territorial arrangement of the enclave would serve as a mechanism for conflict prevention, and how such arrangements are to be brought about.

With the end of the Angolan civil war in 2002 between the *Movimento Popular de Libertação de Angola* (MPLA) and the *União Nacional Para a Independência Total de Angola* (UNITA), attention turned to Cabinda.

In spite of the more than four decades of conflict, separatist movements have made very little headway towards the attainment of any form of autonomy. Over the past “decades, the territory has remained under the tight control of the Angolan government and there was no sign that this would change” (Williams 2013: 150).

This struggle between separatists and the Angolan government is one which has been called “Africa’s forgotten war”. Since the start of the conflict, “approximately 30,000 people have lost their lives in the almost 30 years of struggles for independence” (Shantz 2006: 24).

Despite the humanitarian crisis which has taken place in Cabinda, the enclave is open mainly to those who work within the oil industry. It is “Cabinda’s massive oil wealth which has contributed greatly to the Angolan national economy, ‘as well as made Cabinda a much contested site” (Shantz 2006: 27).

However, there seemed to be a glimmer of hope when in “2003 during a visit to Washington, the Angolan President Jose Eduardo Dos Santos ‘said that he supported a referendum on Cabinda autonomy” (Lyle 2005: 704).

Despite such promises of support by the Angola President, such a referendum has to this day not been held.

1.3 Research questions

The main research question guiding this paper is whether territorial autonomy is a viable method to end conflict in Cabinda.

In addition to the main question the study will pose the following questions:

1. Can territorial autonomy be used as a mechanism to prevent conflict?

2. What is the place of territorial autonomy in international law?
3. How should autonomy in Cabinda be structured?

1.4 Literature review

Ethnic conflict is a feature of the global political system, “from Eastern Europe and the Soviet Republics to Sri Lanka, Eritrea, and India” (Brilmayer 1991:177). It is a form of conflict which not only discriminates, but individuals who are part of such conflict do not at times choose the sides in which they fight.

Conflicts in sub-Saharan Africa have mainly been due to ethnicity, and as such, take place mostly between ethnic groups and not between states. “If not checked, ethnic conflicts are contagious and can spread quickly across borders like cancer cells” (Irobi 2005: 5).

Gurr & Marshall have argued that, “most African conflicts are caused by the combination of poverty, weak states and institutions” (Irobi 2005: 6). One would then also argue that minority groups who live in poverty are more likely to respond violently when the state as a whole does not address their needs.

With the end of colonialism came the rise of nationalism and with it, the people’s claims for self-determination. Self-determination was thus used as a mechanism which the peoples of Africa under colonialism used to attain independence.

With the passage of time self-determination became a concept which could be used beyond the colonial context. Within the post-colonial context, “minorities and secessionists have not found an alternative idiom in which to express their demands” (Nirmal 1999: 237).

Still, it is important to note that the very notion of self-determination and autonomy are concepts which may bring some confusion. Although autonomy is a concept which does affect the territorial integrity of a state, self-determination can be interpreted rather differently.

As Hannum explains, “the self-determination principle holds that any people, simply because it considers itself to be a separate national group, is uniquely and exclusively qualified to determine its own political status, including, should it so desire, the right to its own state. The concept therefore, makes ethnicity the ultimate standard of political legitimacy” (Hannum 2011: 7).

Therefore, one can determine that self-determination possesses both an internal and external variant: internal in the sense of political self-determination (autonomy), whereas the external notion of self-determination is one which equals to secession.

In the modern African context, self-determination became not only a concept of the past to be applied to colonies under western domination but it also became a term to be applied to all ‘oppressed’ peoples as identified in article 20 of the African Charter on Human and Peoples’ Rights (ACHPR).

Under the United Nations Charter (UNC), all states have the obligation to “promote the realization of the right of self-determination and the duty to respect this right in accordance with the provisions of the UN Charter” (McCorquodale 1994: 875).

Autonomy and the study of autonomous arrangements is not a new field of study within international relations and the international human rights regime. Nevertheless, when it comes to the application of autonomous structures the body of knowledge within international law provides very few details as to how they are to be structured.

Autonomy as Wolff & Weller argue was not given a great deal of study due to its “association with self-determination. Outside the context of colonialism, self-determination was looked at with great suspicion” (Wolff & Weller 2005:2).

What is of great importance to this study is the literature on autonomy as a multiplying factor of conflict. Baubock argues that, “a universal treatment of territorial autonomy for nations is a recipe for endless war because almost any given territory that could form a viable state can be claimed by many different national communities” (Baubock 2001: 30).

Yet, this dissertation will diverge from such thought and will proceed with the notion that denying autonomy to peoples would serve as a recipe for ethnic conflict and in the process, constitute a violation of human rights. Furthermore, such a step would move such peoples to demand secession and if denied take up arms, an action more costly than autonomy. As Tedd Gurr argues, “those truly looking to reduce ethnic bloodshed should embrace autonomy, not fear it” (Gurr 2000:53).

Cornell describes autonomy within its legal context as “referring to the powers of the social institutions to regulate their own affairs by enacting legal rules” (Cornell 2002:248). As it stands it is solely the responsibility of the state to enter into negotiations with potential separatist groups or groups which desire greater autonomy and arrange such autonomies.

Moreover, international law and its concept of sovereignty is solely on the side of states; this is so because through its conventions and treaties international law firmly reasserts the state’s right to sovereignty and territorial integrity.

The study will also attempt to uncover what would constitute a stable territorial autonomous arrangement and measures which can be taken to achieve such stability.

The literature on territorial autonomy described by Cornell, further goes on to explain why states are reluctant to give in to demands for autonomous arrangements by stating that, “governments fear that granting territorial autonomy to minority groups would merely be the first step towards the eventual secession of the region. Secondly, granting autonomy to one region may be perceived as discrimination against other inhabitants or groups. Thirdly, autonomy increases the risk of intervention by a foreign state affiliated with the specific minority population.”(Cornell 2002:247).

It is thus important to note that autonomous arrangements are structured differently from case to case. There are regions where territorial autonomy would not be in the best interest of a region while in other cases the opposite is true.

Territorial autonomous arrangements around the world have proven to work without endangering and challenging the state's territorial integrity. Such examples can be seen in Finland through the Aland treaty which established the Aland autonomous region. The same can be said with the Mauritian island of Rodrigues which, despite its autonomous status, has not endangered the sovereignty of the Mauritian state.

Furthermore, the identity issue, the geographical factor and the oil factor are essentially those which contributed to the conflict between mainland Angola and Cabinda.

The identity issue can be attributed the Simulambuco treaty, "and the creation of the enclave as a result of European rivalries in the 'scramble' for Africa" (Mabeko-Tali 2003: 2).

Geographically, Cabinda was very much neglected by Portugal during colonial rule. "combined with decades of almost total neglect by the colonial system of what became the 'Portuguese Congo', and the Cabindan tradition of economic migration to both countries undoubtedly created for the people of Cabinda points of identification strongly rooted in the cultures of the Congo" (Mabeko-Tali 2003:4).

Despite such differences, by '1956, Cabinda was administratively linked to Angola but remained geographically, linguistically, and ethnically distinct' (Lyle 2005:703). A decade later in 1966, massive oil reserves were discovered off the coast of Cabinda.

The conflict on Cabinda is one which has raged for nearly 30 years and despite stability being brought back to the region, there are still calls for secession. "Cabinda's relationship with Angola has been a point of great conflict since the time of colonial rule" (Shantz 2006: 26).

It is such conflict which has prevailed since Angola's independence to the present day. In 2002, the Angolan government stated that the main objective of the Angolan armed forces (FAA) was to permanently defeat Cabinda's insurgents, an objective which has been achieved largely through, "a systematic counter-insurgency campaign that swept through Cabinda in 2002" (Porto 2003: 3).

The counter-insurgency in Cabinda resulted in the abuse and indiscriminate displacement of thousands of civilians, "in summary executions, rape and torture, in the destruction of property and on the pillage of villages" (Porto 2003: 2).

The little existing literature on Cabinda is one which strongly focuses on the humanitarian and legal status of the territory. However, this dissertation supplements the existing literature by proposing a structure for an autonomous arrangement.

Such undertaking will be done by advocating a new dimension to the conflict, mainly, discussing Angola's national interests, which in the case of Cabinda are its massive oil reserves. This will be done by stating that Angola is unlikely to allow Cabinda to secede due to such economic incentives. Therefore, a way forward for the sake of peace would be to advocate for a territorial autonomous arrangement.

The study will also look at how such arrangements should come about; this is to be investigated by using international mediation theory.

1.5 Research methodology

The primary sources used for the purpose of this research paper will be the laws and regulations that are in place in Angola, particularly the powers that provinces hold and their relationship to the central government.

Secondary sources will be academic writings, writings on ethnicity and autonomy so as to get a better understanding of the concept, understand whether autonomy within Cabinda is applicable and attempt to identify through the literature how such an autonomous structure could be implemented.

1.6 Limitations of the study

The main limitation the study faced was the inability to directly interact with the people of Cabinda and get their thoughts and views regarding autonomy in Cabinda.

1.7 Overview of chapters

Chapter two will deal with the concepts of autonomy and self-determination along with their variants. The chapter will also discuss relevant cases before the African Commission on Human and Peoples' Rights (African Commission) which relate to self-determination and autonomy.

Following the above mentioned, Chapter three will focus on identifying the relationship between self-determination and autonomy. The chapter will provide an account of the tensions which exist within the two concepts, as well as look at the issue of territorial integrity and its relationship to sovereignty.

Chapter four will attempt to understand the nature of security within divided communities, the risks that such insecurity might carry and what the measures that can be taken so as to bridge the gap between security and conflict.

Chapter five will constitute an analysis of the situation in Cabinda. Through a historical overview, the chapter will look at the development of the conflict along with the costs of the conflict as regards the loss of life. Finally, the chapter will propose how territorial autonomy may be structured in Cabinda, along with the changes that need to be made constitutionally for a territorial autonomous region.

Finally, Chapter six will provide a conclusion and recommendations.

CHAPTER TWO

The relationship between self-determination and autonomy

2.1 Introduction

This chapter will briefly give an overview of the most recent history of the concept of self-determination and its relationship to autonomy. The chapter will then give an overview of some of the most relevant jurisprudence of the African Commission relating to the concepts of self-determination and autonomy.

2.2 The principle of self-determination

The principle of self-determination is one which in theory is easy to understand, however, the applicability of the term in reality is one which is still very much ambiguous and presents much difficulty.

Firstly, the pursuit of self-determination by groups within societies is one which challenges the concept of sovereignty and territorial integrity. Secondly, self-determination challenges the internal dynamics of the state by advocating greater representation of ethnic groups within the political and judicial spheres of governments.

It was only in the 1960s that the concept of self-determination gained legal recognition within international law, through the proclamation that 'all persons have a right to self-determination'. (ICCPR and ICESCR). This was supported by the UN's General Assembly Resolution 1514 which states that "the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights" (Morgan 2013:94). Resolution 1514 thus affirms that all peoples have the right to self-determination, to freely determine their political status and pursue their social, economic and cultural development.

Stating that 'all peoples have the right to self-determination, to freely determine their political status and pursue their social, economic and cultural development', one could thus argue that self-determination is linked to the exclusion of a group of people within a particular state.

Such a democratic interpretation can further be attributed to the Helsinki Declaration of 1975 which discussed the concept of self-determination. Principle 8 of the Declaration titled "equal rights and self-determination" found that:

1. *by virtue of the principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish their internal and external status, without external interference, and to pursue as they wish their political, economic, social and cultural development. (Morgan 2013: 96).*

The Helsinki Declaration consequently went on to substantially add to the content of self-determination by highlighting that the latter possesses both an internal and

external feature. Nevertheless, the manner in which it is applied must be in accordance with international instruments such as the UN Charter.

The African Charter on Human and Peoples' Rights (ACHPR), in its article 20 sets forth the right to self-determination:

1. *All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.*
2. *Colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community.*
3. *All peoples shall have the right to the assistance of the state parties to the present charter in their liberation struggle against foreign domination, be it political, economic or cultural.*

Self-determination must as a result, be exercised in line with the principles not only set forth within the Constitutive Act of the African Union, which in its article 3(b) reads, 'defend the sovereignty, territorial integrity and independence of its member states', but also with that of other international instruments like the ACHPR.

The inter-relation of the right to self-determination under the ACHPR by the African Commission will be discussed further below.

2.3 African Commission jurisprudence on self-determination

2.3.1 The concept of peoples

The concept "people" is important to understand within the African context, due to Africa's history and the continent comprising of various 'peoples', which also goes on to consist of different ethnic groups. For the purposes of this study the terms 'people' and 'ethnicity' will be used interchangeably.

As Viljoen rightly states, "self-determination of African 'peoples' enjoyed a high priority, but again within the context of decolonisation" (Viljoen 2012: 157). To this day this is still an area which international law has yet to fully be clear about: how to fully apply the term of self-determination as regards calls for secessionism.

While the concept of 'peoples' has appeared in various international instruments, "the charter of the United Nations was adopted in the name of 'we the peoples' and is recognised, in article 1(2), the principle of 'self-determination of peoples'" (Kiwauka 1988:81).

Today, self-determination cannot only be given to those who suffered during the time of colonialism, nor to those living within the African continent but must include those who find themselves oppressed and discriminated against within the post-colonial world.

Moreover, in conceptualising the term ‘peoples’ the two UN international covenants of 1966, along with the UN Charter, all go on to acknowledge the concept of “peoples” although none of these instruments, including the ACHPR, clearly defines the term ‘peoples’.

Therefore, for the purpose of this dissertation, we shall use the definition put forward by the African Commission on Human and Peoples’ Rights when deliberating the case of *Gunme and others v. Cameroon*.

According to the African Commission, there are certain objective features attributed to a collective of individuals which may warrant them to be considered as “peoples”. To that end, as defined by the Commission:

‘The concept of ‘peoples’ concluded that where a group of people manifest some of the following characteristics; a common historical tradition, a racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life, it may be considered to be a ‘people’. Such a group may also identify itself as a people, by virtue of their consciousness that they are a people’.

2.3.2 The African Commission decision on Katanga and Gunme

The African Commission in the case *Katangese People’s Congress v. Zaire* were able to further unpack the concept of self-determination and its two variants.

The Katangese People’s Congress (KPC) submitted a communication to the African Commission in 1992 requesting the latter to recognise the KPC as a liberation movement which was entitled to support in the achievement of independence for Katanga.

The KPC argued that Zaire had violated the people of Katanga’s right to self-determination as set forth in article 20(1) of the ACHPR. While affirming that all peoples have a right to self-determination, the Commission noted that, “there were no other allegations of human rights violations in the communication” (Shelton 2003: 61).

The Commission further went on to uphold its obligations to protect Zaire’s sovereignty and territorial integrity, while acknowledging that Zaire did not violate article 13(1) of the ACHPR which is the right of the Katangese people to participate in political affairs.

By citing article 13(1) and article 20 of the ACHPR, the Commission acknowledged the people of Katanga’s right to both internal and external self-determination. Nonetheless, the Commission in the case held the view that, Katanga “was obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire” (*Gunme and others v. Cameroon*: 199)

In a similar case, that of *Gunme and others v. Cameroon*, the Commission concluded that self-determination may be exercised in any of the following ways:

1. *Independence, self-government, local government, federalism, confederalism, unitarism or any form of relations that accords with the wishes of the people but fully*

cognisant of other recognised principles such as sovereignty and territorial integrity” (Gunme and others v. Cameron: 188).

Despite the Commission deciding against the complainants in the Gunme and Katanga cases on the issue of external self-determination, the Commission noted that external self-determination could only be exercised in the cases where a state gravely violated the rights of a people, along with crimes against humanity.

The African Commission does indeed recognise a people’s right to internal self-determination. Yet, though it also recognises the right of a people to external self-determination, in the Gunme and Katanga case such a criteria is not met.

In the case of Katanga and Gunme, the Commission affirmed that although they had a valid claim for self-determination, they did not however, have a valid case for its external variant.

The Commission went a step further by accepting autonomous arrangements within a sovereign state in the context of self-government, confederacy, or federation, while preserving the territorial integrity of a state.

2.3.3 African Commission jurisprudence on Cabinda

On 29 September 2006, the Secretariat of the African Commission received a communication from FLEC, where the latter stated that the Angolan government had violated articles 14, 19, 20, 21, 22 and 24 of the African Charter.

The Commission then received a further communication by FLEC, dated January 8, 2007, where it was alleged that the Angolan government continued such violations. FLEC stated that the objective of its submission to the African Commission was not for the purposes of external self-determination, but rather, ‘concerns itself strictly with a claim for economic self-determination of the people of Cabinda and in particular with the disposition and exploitation of onshore oil, mineral and natural resources’. (*Front for the Liberation of the state of Cabinda v. Republic of Angola*).

Regarding the alleged violation of article 14 on the right to property by the Angolan state, the complainants argue that, “the natural resources of Cabinda remain the property of the people of Cabinda and must be administered largely for the benefit of the people of Cabinda”(*Front for the Liberation of the state of Cabinda v. Republic of Angola*).

The complaints then further argue that since the people of Cabinda are distinct from that of the rest of Angola, it has had and continues to maintain, “a separate identity, linguistically and otherwise, and the people of Cabinda were neither consulted on the unilateral termination of Portuguese colonial protectorate’ nor did they ratify ‘the Angolan occupation’ of Cabinda” (*Front for the Liberation of the state of Cabinda v. Republic of Angola*).

To that end, it is argued by the complainants that since the people of Cabinda are distinct from the rest of Angola, the Angolan state is not entitled to unilaterally grant

resource extraction licences or concessions in violation of the right to property of the people of Cabinda as contained in Article 14 of the African Charter.

Regarding Article 19, the complainants argue that the revenue from the offshore oil production goes directly to Luanda, and the people of Cabinda do not receive a proportionate amount.

The complainants further go on to argue that the 2006 Cabinda Peace Accords, 'which promised a 50% return of oil revenue to Cabinda 'has not been realised nor audited' and only '10% or less will return to Cabinda'. (*Front for the Liberation of the state of Cabinda v. Republic of Angola*). The complainants also argue that the result of questioning such allocations is one which would lead to summary imprisonment.

Finally, the complainants argue that, despite Cabinda producing such a high output of oil, there are still extremely high levels of unemployment, poverty, disease, which are disproportionate to the rest of the country.

The complainants therefore conclude that the Angolan administration has little concern for 'providing public goods and incentives to facilitate investment in welfare enhancing improvements for the population at large'. Thus, the complainants allege that the Respondent State has violated Article 19 of the African Charter (*Front for the Liberation of the state of Cabinda v. Republic of Angola*).

Concerning Articles 20 and 22 of the ACHPR, the complainants state that the people of Cabinda are unable to exercise their right to social and economic development, 'because organisations which 'espouse a uniquely Cabindan point of view' have been banned by the Government of Angola' (*Front for the Liberation of the state of Cabinda v. Republic of Angola*). It is further argued that individuals who are seen to speak about economic self-determination are either arrested or marked as FLEC sympathisers.

Regarding Article 21, the complainants contend that grants and concessions have been made by 'the Respondent State 'without input from the Cabindans' and that all decisions regarding natural resources are made from Luanda, the Capital of Angola' (*Front for the Liberation of the state of Cabinda v. Republic of Angola*).

The complainants further allege that oil exploration in Angola is overseen without the consent of the people of Cabinda, and under the supervision of the FAA. The complainants therefore dispute the Angolan state's right to explore such oil resources.

Finally, in regards to Article 24, the complainants allege 'that the environment in Cabinda is not conducive for the development of the people of Cabinda' (*Front for the Liberation of the state of Cabinda v. Republic of Angola*). It is further argued that since there is no civil society organisation which can regulate the oil companies, no compensation is paid as a result of environmental degradation.

Despite, and in light of the submissions by FLEC, the African Commission during its 54th Ordinary session on November 5, 2013, found no violation of Articles, 14, 19, 20, 21, 22 and 24 of the ACHPR due to lack of evidence.

2.4 External self-determination

External self-determination is ‘concerned with the international status of a people, it involves the recognition that a people have the right to constitute itself as a nation-state, or integrate into, or federate with, an existing state’ (Ladan 2007:118).

The external nature of self-determination was a concept which was mostly used within the colonial context. As Cassese identifies, third world countries’ approach to self-determination was one which “states self-determination mainly meant three things, the fight against colonialism and racism, the struggle against domination of any alien oppressor illegally occupying a territory” (Cassese 1995: 38).

However, Article 20(1) defines self-determination in broader terms. Since self-determination has been linked with notions of democracy and good governance such a broad term implies that there are conditions which states have to abide by in order for a claim of external self-determination to be binding.

2.5 Internal self-determination

The internal nature of self-determination is one which gives individuals the freedom to structure their own political, cultural and economic institutions. However, in the case where groups are excluded from participation within such processes, they have a right to attempt to redress.

Morgan thus argues that internal self-determination is an on-going process, “involving the right of the governed to select and influence the system of government under which it lives” (Morgan 2013:96).

The African Commissions case both for Katanga and Gunme recognise that a people have a right to internal self-determination, in the sense that they should actively play a part within the structuring, and if need be restructuring of their governments.

In the case of Cabinda, though the Commission found no evidence of the Angolan state violating the ACHPR, it is important that the people of Cabinda are given the right to decide for themselves the political status of the territory.

2.6 Autonomy

The term autonomy is one which does not have a global meaning. Autonomous arrangements can be used in such ways that they may differ from country to country. As Loughlin states:

“Autonomy is a complex term, with different meanings not all compatible. Autonomy must be understood relative to the kind of state in which it operates or in which autonomist demands are made”.

It is the responsibility of parties to a conflict to ponder and advocate for power sharing arrangements which would ultimately lead to the creation of an autonomous arrangement that suits all parties.

Autonomous arrangements thus serve to provide a group with not only a platform in which such groups can practise their culture freely, but also a space for them to gain greater political control of their means of survival, that being through greater controls of and say on their resources within the overall administrative, judicial and legislative processes of the region.

More importantly, autonomy is, as Laughlin asserts “about diverse relationships to other political institutions, and thus varies according to the constitutional position of the autonomous institution and its political competencies” (Loughlin 2000: 12).

2.7 Forms of autonomy

2.7.1 Non-territorial autonomy

Non-territorial autonomy (NTA) can also be described as cultural autonomy or national autonomy. The concept of non-territorial autonomy was first used in the Austro-Hungarian empire “to manage ethno-national conflicts and prevent secession” (Nimni 2004: 2).

NTA is thus a form of autonomy which gives peoples not territorial autonomy but the freedom to choose their own language and practice their own cultural beliefs within the state.

Furthermore, cultural autonomy is one which does not necessarily have to be applied to a particular territory but rather can be applied within the entire geographic area of the state.

However, the potential dangers of NTA are that they might not be a sufficient measure to prevent conflict. NTA does not give a particular region and/or people autonomy in the sense of them creating their own laws i.e., political autonomy but rather it is based on cultural lines.

2.7.2 Territorial autonomy

Rothchild & Hertzell define territorial autonomy as, “an institutional arrangement that delimits a regionally based, self-administering entity or entities within a state as having explicit policy-making responsibilities in one or more political, economic or cultural spheres” (Rothchild & Hertzell 2007:259).

It is therefore such arrangements that, if implemented properly can bring about a measure of security within divided societies, “the relevance of territorial autonomy

institutions where the security fears of groups are concerned arises from their capacity to recognise and empower spatially separated groups within political and administrative authority” (Rothchild & Hartzell 2004: 265).

Therefore territorially autonomous arrangements should not simply be structured and applied by the central government, but rather should be a negotiated process by the parties involved which would explicitly lay down the conditions under which such autonomous arrangements are to be structured.

Going forward, this study will discuss territorial autonomy and use the above definition by Rothchild & Hertzell. I would therefore argue that territorial autonomy is an important way to assure those of the minority that they have control over areas ranging, but not limited to health, economy and the overall administration of a territory.

By understanding the nature of the conflict, its history, the party’s material capacity in the form of weapons of war and will to fight which both parties have, and measuring those variables with the potential for destruction would better assist one to identify if territorial autonomy would suit a particular region.

At the same time, it is also important to understand and acknowledge the minimum threshold for territorial autonomy. As Gagnon argues, within multinational states, “national minorities still do not have an explicit right to autonomy” (Gagnon 2012: 57).

Therefore, for the purpose of this dissertation the minimum threshold for territorial autonomy can be established by the adherence to the following principles:

Firstly, the principle of full recognition of the right to self-determination of peoples, which is usually understood in opposition to the principles of territorial integrity.

The second principle is that of legitimacy of recognition claims instead of adopting the prevailing legal bias that is advanced by international organisations.

The third principle consists in seeking cultural preservation of national minorities and corresponding focus of the capacity for survival and integration.

The fourth principle consists of placing emphasis on concrete/real equality rather than on formal equality. (Gagnon 2012:57.

Although the above principles are normative in nature, they would nevertheless set forth the scene for more support for the establishment of the structures necessary for territorial autonomy.

In most wars of independence, the requests by separatist movements usually always, “begin with the demand for complete independence and end with negotiated or de facto autonomy within the state” (Gurr 2000: 57).

As Ted Gurr argues, “those truly looking to reduce ethnic bloodshed should embrace autonomy, not fear it’. There have certainly been cases in which territorial autonomous arrangements have succeeded in curtailing ethnic conflict, the Basque case in Spain is one such example” (Gurr 2000:47).

2.8 Conclusion

The chapter briefly identified the differences between the concept of self-determination and autonomy, along with identifying the variants of both concepts. This was done together with a presentation and an analysis of the jurisprudence of the African Commission as regards to self-determination.

The chapter has also sought to provide a working definition of the term “peoples” as understood by the African commission. Following such analysis, the chapter looked at the concept of peoples and how the self-determination of peoples’ needs to be looked at within a particular context.

CHAPTER THREE

The tension between self-determination, autonomy and territorial integrity

3.1 Introduction

Osiander argues that, “the government of each country is unequivocally sovereign within its territorial jurisdiction, and countries shall not interfere in each other’s domestic affairs” (Osiander 2003: 261).

At the same time however, if one unpacks the concept of self-determination, its external variant is one which would directly enter into conflict with the states right to territorial integrity.

Sovereignty and territory thus became interlinked concepts within international relations. The political change from the medieval to the modern world involved the construction “of the delimited territorial state with exclusive authority over its domain” (Zacher 2003: 216).

Therefore, Zacher concludes that “the practice of establishing international boundaries emerged in the eighteenth century as “a basic rule of co-existence” (Zacher 2003:216). Though within the African context the establishment of boundaries was based on a model of domination, never the less such boundaries have been retained by African leaders under the principle of *uti possidetis*.

Yet, within the modern African state the question of boundaries is one being significantly challenged by secessionist movements wanting to form independent states.

Within such modern realities, the basic rule of co-existence as identified by Bull is one which is severely being challenged by those who believe that coexistence within the current boundaries is not an option.

This chapter will thus attempt to understand the relationship between sovereignty and territorial integrity and how the two concepts relate to one another. The chapter will also look at the problem of the perceived danger of granting regions territorial autonomy. The chapter will conclude with an analysis of the dangers of ethnic conflict within divided societies.

3.2 Sovereignty, autonomy and self-determination

The concept of sovereignty is one of the oldest principles in international relations. It is also a principle which is at the very foundation of the modern state.

However, today there is quite an ambiguity with regards to the concept of sovereignty and that of self-determination. This ambiguity arises because the concepts, although both holding value within international law are contradictory and their application is one which would potentially cause conflict.

It has been stressed that the right to self-determination and to sovereignty are basic principles of international law, “they are both based on the UN charter, they both are reaffirmed in the Declaration on Principles of International Law and in the Helsinki Final Act” (Petric 1991: 28).

Yet the application of both terms are those which can be problematic, although, one can say that such obscurity comes in the event where the self-determination in question is that of external self-determination, in which case it goes directly against the principle of sovereignty and territorial integrity.

It is important to stress that as noted above, the African Commission has strongly stated that it could not find valid the claim of external self-determination in the cases of the *Katangese people’s congress v. Zaire* and *Gunme and others v. Cameroon*.

To that end, there are still secessionist movements within a variety of African states who believe that their distinctiveness is one which gives them the right to external self-determination.

The conflicts between Ethiopia and Eritrea and that of Sudan and South Sudan were conflicts which both resulted in the break-up of the state. While both cases were of a consensual break-up, they nevertheless saw extremely high levels of violence and violation of rights on both sides.

In certain conflicts such as those of Eritrea and Sudan, secession was certainly attained, however, at the cost of thousands of lives and years of open warfare. Claims of secession have thus at times deteriorated into war which when such warfare begins leaves very little room for consolation.

It is thus such factors which further intensify claims for self-determination, and more importantly how states respond to such claims, especially when secessionist movements use violence with the sole purpose of territorial separation.

With the above said, states are very well within their right to defend themselves against such illegal attempts by liberation movements so as to protect the territorial integrity of the state. And as such the ambiguity caused by international law between territorial integrity and self-determination becomes even more apparent.

The declaration on principles of international law, General Assembly Resolution 2625 which was adopted by the General Assembly as a means of promoting friendly relations and cooperation amongst states clearly stipulates that the territorial integrity of those states is protected which are based on respect of the right to self-determination.

The resolution further goes on to identify that nothing within the resolution shall be constructed as authorizing or encouraging any action which “would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples” (Conetti 1991: 30).

The above thus drives one to conclude that sovereignty as a concept and basic principle under international law comes with conditions and responsibilities, responsibilities in the sense that, if states are not putting forth the ideals of ‘equal rights and self-determination of peoples’ the peoples under which atrocities and rights have been deprived can thus put forth their claim of external self-determination.

Consequently, the “territorial integrity of states which are ‘conducting themselves in compliance’ with the right of self-determination is protected by international law. And on the contrary, the territorial integrity of states, ‘which are conducting themselves in compliance’ with the right to self-determination is not being protected by international law, such states, established on denial of the right to self-determination will have to adapt themselves to the wishes of peoples living within their territory or they will be exposed to their just and legal claims to self-determination, including the claim of secession” (Conetti 1991: 31).

The application of such principles within a realistic framework is, however, one which is increasingly difficult to establish. Despite conditionalities put forth on the sovereignty of states in respect to human rights violations, states still guard their sovereignty very well within international relations.

3.3 The perceived danger to granting autonomy

The study of autonomy is not new in international relations, I would argue that, at times it was due to the fact that there was not much coverage of such regimes which have made it so that they have not garnered much attention.

Additionally, “under international law the concept of autonomy was not given much attention due to the concept of self-determination within the post-colonial era” (Abdullah 2006: 41). Autonomy was thus not used as a point of enquiry. Firstly, because states would see such as a first step towards secession and as such, outside the colonial context self-determination and autonomy were seen as a danger rather than an important concept needing more investigation.

States therefore see the danger of autonomy like that of self-determination as a concept that if states adopt such measures they would open themselves up for greater dangers.

With the end of the cold war, which resulted in the break-up of the Soviet Union there had been a renewed idea on autonomy. With the tense relationship between Armenia and Azerbaijan, “the doctrine of territorial integrity was undermined by intense armed conflict. These conflicts framed the rhetoric of self-determination, and

the prospect of the dissolution of Yugoslavia added to the perceived threat to the principle of territorial integrity” (Wolff & Weller 2005: 1).

However, besides such realisations and new perceptions on the concept of autonomy, international law is still rather vague in its application. As Hannum and Lillith observe, “autonomy is not a term of art or concept that has a generally accepted definition in international law” (Hannum & Lilith 1980:858).

Besides its vagueness within the international law literature, autonomous arrangements have been identified as mechanisms to address conflict in multi-ethnic societies, such autonomous arrangements have been “extended to the Basque country and Catalonia, and to the 34 atolls composing the Marshall Islands”(Hannum & Lilith 1980:858).

One can thus go on to state that minorities’ claims for autonomy are thus not a matter of international law to decide, but rather an internal domestic issue that governments need to adhere to. In general, “such claims for autonomy generally mean that the region or person making the claim want greater authority to make final decisions on a wider variety of topics without interference or veto power of the central government” (Epps 2008:23).

It must however, be made clear that the territorial autonomy and cultural autonomy are two very different concepts; our focus on the discussion of autonomy is thus that of territorial autonomy.

The African Commission in its case *Gunme and others v. Cameroon* clearly stated that it does not support any mechanism which would threaten and or dismember the territorial integrity of a state. However, the Commission does indeed affirm that it would support variants of autonomy.

3.4 Minority rights within divided societies

A majority of states possess a wide range of diversities, such diversities range from the language they speak to cultural differences. Diversity is thus an attribute that exists everywhere and one which has caused much conflict.

Discrimination and segregation are not features only visible within the third. Racial segregation in the United States and Apartheid in South Africa led to the civil liberties movements which today have shaped the two countries’ social and political environment.

Ethnic diversity is thus an issue which causes much division within multi-ethnic states, of course if such groups have a history of competition and violence. It is such historical events which may, if not addressed adequately, lead to the request for secession and ultimately violence.

Therefore, diversity in the form of ethnicity is a factor which has created much political and social instability. As Jatali & Lipset assert, “political instability prevailing

in many parts of the Third World can also be traced in large part to inter-ethnic conflict” (Jatali & Lipset 1993:587).

The Rwandan genocide demonstrated to the world how ethnicity could potentially be the source of great conflict if not addressed properly. It also demonstrated that the management of ethnic claims and grievances are those which must be addressed before the onset of violence.

Ethnic conflict particularly after the fall of the Soviet Union began to garner more attention both from international organisations such as the UN and the international media.

The reigning assumption that ethnic conflict was a vestige of the primitive past was revised and eventually abandoned, particularly in view of the spread of ethnic conflict to less developed regions. This led to increased “media coverage and public awareness of ethnic issues, more importantly, academic research on ethnic conflict and its resolution mushroomed” (Cornell 2002:5).

States have thus been forced to approach the reality of ethnic conflict in different ways, bearing in mind that ethnic tensions differ from country to country and have historical foundations and at times influenced by historical conditions.

In many cases ethnic tensions are thus further exacerbated by the dominance of the other and the minority wanting to gain a degree of freedom, or in this case, autonomy.

Within states which are divided along ethnic lines, territorial arrangements are some strategies which could be used as a mechanism to settle internal conflicts. In cases where a territory seeks secession, territorial autonomous arrangements strategies are those which could prove useful in mitigating internal conflict.

With the evolution of international law, in particular international human rights law, individuals have fallen under the protection of such law, something which before the twenty-first century was unimaginable.

With the concept of sovereignty also comes the idea and newly-termed concepts of conditional sovereignty and the responsibility to protect. With such new ideals which are being recognised internationally, the question is then whether states will adhere to such norms and defend human rights violations internationally.

In Africa the question is also: will states respect the rights of particular ethnic groups or peoples, particularly when a dominant group has conflictual and/or competitive historical ties with other members?

Tensions between such different groups have thus led to the exclusion of a minority from attaining real political and/or economic power, making it that such peoples call forth for autonomy or in worst cases secession.

3.5 Security within divided societies

Like revolutions, ethnic conflict is often the result of systematic exclusion and/or systematic discrimination by one group of people towards another within the boundaries of the state (Enloe 1973:210). Like a revolution, such individuals who perceive to be the targets of such wrongdoing use illegitimate methods (in the form of violence) to address such discrimination.

As Enloe describes, “a society reaches a point that makes revolution likely usually because pressures for necessary reform have been bottled up that normal legitimate modes of accommodation have lost their credibility and efficacy” (Enloe 1973:216). It is thus such illegitimate methods employed by a group that exacerbates ethnic tensions into ethnic conflict.

As Hartzell & Rothchild identify, “in many settings, differentiated societies, communities have lived side by side in relative amity, feeling secure about their future and holding pragmatic perceptions about each other’s intentions”

Within the post-colonial African context, security within multi-ethnic societies can at times be conditional on the interests of the leaders within the varying ethnic groups. Ethnic mobilisation is a reality which must be considered when dealing with ethnic conflicts.

In Rwanda we have seen how ethnic mobilisation led to genocide, “the Tutsi and Hutu peoples long lived side by side in peace, until mobilised along ethnic lines by leaders who played on their latent grievances and fears of the future” (Rothchild & Hartzell 2004: 267).

Ethnic conflicts have thus not only been a source of genocide and ethnic cleansing as in Rwanda and Kosovo but also of intense civil wars, “the splitting of large ethnic groups into many different states or placing groups with a history of mutual hostilities together in a single country (as in Chad or Sudan) has contributed to the spectre of irredentism and civil wars that have wasted scarce resources “(Khapoya 1994:188).

Therefore, such forms of conflict not only affect those who have taken up arms but also threaten the very security of the state and the millions of its inhabitants. Ethnic conflict thus leads to a form of insecurity which is randomised, sporadic and without purpose.

3.6 Conclusion

This chapter attempted to look at the inherent dangers which exist between the concepts of self-determination, territorial integrity and autonomy. The chapter has shown that despite the concepts being valid within international law, their application in reality can prove to be troublesome.

The chapter then moved on to discuss the dangers that ethnic conflict may cause if not managed properly. Further, the chapter highlighted that ethnicity is not merely a visage of the past but rather an issue that countries the world over face.

Ethnic conflict is not only a problem which exists within African states, and autonomous mechanisms have been used both in Europe and Africa to attempt to redress the inequalities that exist.

CHAPTER FOUR

Cabinda: security in a divided society

4.1 Introduction

The purpose of this chapter will be an attempt to highlight and unpack the legal status of Cabinda during the period of Portuguese occupation, and the legal treaties which were in place and which underpinned such status.

The chapter will also highlight the diversity of peoples which were within the enclave of Cabinda, and how such peoples believed that by being a protectorate of Portugal their social and cultural rights would be protected. After an analysis of the legal status has been done, the chapter will move on to the current situation in Cabinda.

The human cost to the conflict in Cabinda will also be analysed and through such analysis, the chapter will attempt to highlight that Cabinda is a territory of great strategic importance to Angola, not only as a source of economic wealth but also symbolically to its territorial integrity.

The chapter will attempt to analyse the potential for autonomy in Cabinda, and how such autonomy would potentially be organised. Moreover, the chapter will attempt to show that if autonomy is in actual fact a way towards ending the conflict, then autonomous arrangements must be agreed through a mediated process between the Angolan Government, the legitimate representatives of the people of Cabinda and an impartial third party agreed upon by the two parties in conflict.

Furthermore, the theory of conflict ripeness and the nature of issues will be discussed as strategies to be used in the process of negotiation, such theories will not only attempt to pre-empt issues within the negotiation process but will also attempt to look at potential avenues to take within such negotiations.

The chapter will finally look at the security problems that must first be addressed before negotiating such autonomous arrangements. The conflict in Cabinda has been one which has raged for nearly four decades and as a result negotiating parties need to come together and declare a ceasefire, along with setting up security structures which would permit negotiations to be undertaken without the fear of violence.

4.2 The seeds of conflict in Cabinda

The enclave of Cabinda is situated in central Africa between Congo and the Democratic Republic of Congo. Cabinda has an area of 7,270 square kilometres and consists of a population of approximately 300 000 people, compared to mainland Angola which consists of a total area of 1 246 700 square kilometres.

In November 1975, Angolan troops aided by Cuban and Soviet forces occupied Cabinda and declared it a province of Angola. Such a declaration by Angola was one which was met with “resistance by Cabindan separatist guerrillas” (Lyle 2005: 701).

Cabinda as a territory was part of the Kongo kingdom when it was discovered by the Portuguese explorer Diego Cao. “It was Cao’s relationship with the king of Kongo which allowed for a relationship to be established” (Lyle 2005: 708).

Historically, Cabinda is the creation of three kingdoms: before the arrival of the Portuguese in the fifteenth century Cabinda consisted of the Ngoio, Kacongo and the Loanga people. Therefore, within the territory of Cabinda, there pre-existed three kingdoms which ruled the territory.

It was thus the dispute and rivalries which were in place between the Portuguese and other European powers which enabled Cabinda to survive. “It was not until the end of the nineteenth century that the Portuguese were able to sign three treaties: Chinfuna in 1883, Chicamba in 1884 and Simulambuco in 1885, by which the three kingdoms recognised Portuguese sovereignty in exchange for protection of their cultural traditions, their authority and integrity of their territory” (Dos Santos 1983: 102).

Therefore, during the “colonial period Cabinda was ruled as part of Angola. It was in the Alvor Agreement of January 1975, and again in the Nakuru Declaration of June 1975, the three nationalist parties of Angola, (MPLA), (FNLA) and (UNITA) declared that Cabinda was an integral part of Angola, and on 11 November 1975, the enclave became independent with the rest of Angola” (Martin 1977:47).

The Alvor Agreement of 1975, which states that Cabinda is an integral part of Angola, has been widely denied by the people of Cabinda, mainly because in the session which established the Alvor agreement, representatives of Cabinda including those of FLEC were not present.

However, it is also important to note that, “after the conclusion of the Alvor agreements, the FNLA, MPLA were organisations already recognised by the OAU and the UN, with UNITA being recognised in 1975. At the same time, FLEC was not recognised by any international organisation” (Maia & Kolb 2013:51).

The fact that FLEC was not recognised by any other international organisation at the time was a contributing factor which made it so that they were not included in the processes which established the Alvor accords of 1975. “With the Alvor agreement, Portugal explicitly recognised the FNLA, MPLA and UNITA, not only as national

liberation movements, but also as the only legitimate representatives of the Angolan people” (Maia & Kolb 2013:51).

It was therefore, Article 3 of the Alvor accords which “legitimised the annexation of Cabinda as a province of Angola” (Lyle 2005: 704). Nevertheless, with the signing of the Alvor accords, Cabindans rejected the latter and declared their independence from Angola.

One can thus argue that the Portuguese were dealing directly with the representatives of the Angolan people. Today the main issue of contention is thus the call for independence from Angola by FLEC; it is this issue which has caused much conflict between the Angolan central government and Cabinda.

The situation in Cabinda has thus been one which has yet to be resolved, “FLEC has created a virtual republic of Cabinda. In its website it claims to be committed to building a Cabinda republic in which freedom, opportunity, prosperity and civil society flourish” (Porto 2003: 4).

The current conflict has made it so that a mutual breakaway between Cabinda and Angola is not possible, and it is such conflict which contributes to Cabinda’s humanitarian crisis.

4.3 The Counter-insurgency period in Cabinda

Between the 1980s throughout 2002 “the way in which the counter-insurgency operations in Cabinda were pursued was inspired by the successful tactics of the 1988-2002 war against UNITA. And the consequences for Cabinda’s civilian population have been almost identical to those suffered by the general civilian population” (Porto 2003: 7).

Although the Angolan government has insisted that the conflict in Cabinda has stabilised, “in 2007 and 2008, armed groups specifically targeted and attacked expatriates in Cabinda. These armed attacks resulted in the rape, robbery and murder of several expatriates working in Cabinda” (global security 2013:1).

Such attacks, while sporadic, certainly show that there is still instability within the enclave, which in turn puts in danger the civilian population. They further reiterate the need for a lasting solution between FLEC and the Angolan central government.

The insurgency in Cabinda is one which I would argue is a zero-sum game, wherein neither side would benefit from a potential conflict. With both the Angolan central government and FLEC having used violence as a means to get their political message across. While such moves may be seen by both sides as imperative to their overall objectives, they nevertheless have human rights implications.

Over the years FLEC has used techniques such as kidnappings and armed attacks on Angolan security forces as a means to force the central government into changing its policy towards Cabinda. However, despite such acts the Angolan government has yet to fully commit to come to the table and discuss terms.

One of FLEC's most deadly attacks which garnered much international attention was the attack on the Togolese national football team during the African Cup of Nations in 2010. While the bus carrying the Togolese team was making its way through Cabinda, armed FLEC members set up an ambush which resulted in the deaths of 10 people.

The 2010 attack I would argue is both not beneficial for the FLEC movement, or for the Angolan government. Such attacks would only give the idea that the Angolan government does not have a way to control the violence committed by FLEC within its territory, and at the same time, such tactic used by FLEC would further give the Angolan government a reason to use as much military force as it wishes to quell the insurrection.

And it is such acts on both sides which, if not properly handled and agreements on compromises, will keep both sides at arm's length and maintain an air of mistrust between them, making it impossible for a negotiated settlement to the conflict.

Cabinda due to its historical colonial trajectory has found itself in a position where it is distinctively different from the rest of the population of Angola, and as such has been socially and politically isolated.

4.4 Cabinda as an economically strategic zone

Cabinda is a region which is abundant in natural resources, ranging from diamonds, phosphates, sugar and textiles, and possesses good lands for agriculture. Yet, in spite of all the above, I would argue that its most valuable commodity is its vast oil deposits.

The Angolan civil war escalated very quickly in 1975, and due to the brutality and destruction of the war, "the Cabinda oil industry remained the only major Angolan industry to continue production" (Martin 1977:53). This was so mainly because the war in Angola did not spread to Cabinda, since the enclave is physically separated from the rest of the country.

Today, the Cabindan oil industry continues to serve as a major contributor to the Angolan economy. As Lyle identifies, "Cabinda's wells supply over sixty percent of the oil revenues that account for forty two percent of Angola's gross national product and ninety percent of the state budget" (Lyle 2005: 705).

Angola's economy is one which is not highly diversified due to its overall reliance on its oil production, most of it coming from Cabinda.

One can thus certainly understand that, economically, Cabinda is of great strategic importance to the Angolan central government as Cabinda's wells supply "over sixty percent of the oil revenues that account for forty two percent of Angola's gross national product and ninety percent of the state budget" (Lyle 2005:705). With such financial considerations it is very unlikely that the government would agree to any talks of secession.

As Suso argues, “territories, which may hold natural resources and/or economic resources, may serve as strategic security buffers, or may play a very symbolic role for the state” (Suso 2010:10).

Besides Cabinda being economically important, I would further put forward the argument made by Suso that, “governments consistently refuse to negotiate with contenders, not because territory is perpetually valuable, but because they constantly fear that a concession to one separatist group will encourage other parties to seek their own share of a limited pie” (Suso 2010:10).

Though Suso’s argument is credible, I would add a further point, the situation in Cabinda, indeed as Suso explains, governments fear setting a precedent by giving in to the FLEC movement. In the case of Cabinda, I would also add that, the Angolan government fears losing both its economic strategic position in Cabinda along with the fear of setting a precedent for other potential secessionist movements in Angola.

There is therefore, a great disparity between the outputs of Cabinda in the form of oil and inputs which the Angolan government put back for the development of the enclave in the form of education infrastructure and overall social development.

4.5 Arguments for secession and maintaining territorial integrity

In 2004 the Forum Cabindes para o Dialogo (FCD) was formed. This group was composed of individuals from various church groups and civil society in Cabinda. Two years later in 2006, “Antonio Bento, President of the FCD signed a memorandum of understanding which, at least on paper, brought an end to Cabinda’s separatist ambitions” (Humanitarian news and analysis 2010).

Yet, the signing of the memorandum of understanding was met with resentment by the FLEC leadership which “dismissed Bento Bembes memorandum of understanding and offers of peace by a group of senior FLEC office-holders, as a ‘coup d’état organised by Angola”” (Humanitarian news and analysis 2010).

The infighting seen within the FLEC movement is one which would severely compromise any potential peace talks that are to be held. Without a true and legitimate representative of the people of Cabinda no agreement would be seen as legitimate and trusted.

Furthermore, there has also been a splinter group within the FLEC movement which has unilaterally opted to end the conflict with Angola. “FLEC’s Chief of staff, Stanislas Boma, Vice-President Alexandre Tati, Security chief Carlos Luembe, and foreign affairs minister Luis Veras visited Luanda without the authority of the movement’s president, and subsequently declared the armed struggle of more than 35 years at an end, he said the four senior officials were no longer regarded as office-holders of FLEC” (Humanitarian news and analysis 2010).

There are therefore, great divisions within the FLEC movement itself; however, although Cabinda has been identified as a legal territory which belongs to Angola, it is important to acknowledge its claim of self-determination. It is very unlikely that the government of Angola will allow Cabinda to secede.

Though there have been promises by the Angolan government to hold a referendum on the question of Cabinda, such referendum is yet to be realised to. The Angolan government's refusal to allow Cabinda through FLEC to secede is matched by Cabinda's desire through FLEC to secede under any circumstance.

However, at the same time FLEC responded that it would not allow any form of autonomy "except for referendum which would grant full independence to Cabinda such as in the case of East-Timor" (Lyle 2005:705).

By those two views, it seems that both sides have been very clear on what they are willing to sacrifice. However, when it comes to the question of FLEC's legitimacy as representatives of the people of Cabinda, there is still vagueness because no data is out there which puts FLEC as being the legitimate representatives of the people of Cabinda.

4.6 Conclusion

The situation in Cabinda has yet to improve; the lack of cohesiveness within the FLEC movement makes it difficult to identify the legitimate representative of the people of Cabinda.

It must also be understood that the Angolan government is unlikely to allow Cabinda to secede from the rest of Angola, mainly due to Cabinda's wealth and the fear of setting a precedent for other movements seeking self-determination in the form of secession.

However, at the same time, it seems that the situation in Cabinda has reached a plateau where both sides do not see a way out, and the escalation of the conflict is not prudent for either one of them. Though such a status quo does not seem to in any way impact the current Angolan government, it does however, have human rights implications, such as the continued marginalisation of the people of Cabinda and their right of political self-determination not being recognised (autonomy).

Therefore, the way forward is territorial autonomy, although before such arrangements can bear any fruit, the security situation in the enclave needs to be resolved.

A proper security infrastructure in the form of a comprehensive ceasefire needs to be arranged between the Angolan government and the people of Cabinda, either through the FLEC movement or a legitimate group which is the true representative of the people of Cabinda.

CHAPTER FIVE

Cabinda as an autonomous region

5.1 Introduction

This chapter will discuss how territorial autonomy in Cabinda can be structured. Through that analysis the paper will look at how the separation of powers should be implemented within Cabinda.

Furthermore, the chapter will analyse how the Angolan government should approach constitutionalism within the new autonomous region so as to make sure that there are no conflicting areas of jurisdiction between Cabinda and the central government.

5.2 The current state of the Angolan Constitution Adopted in January 21, 2010, the Angolan constitution is one which sought to express the will of the people of Angola. Under the 2010 constitution, Angola is a unitary state with a parliamentary system of governance. Under the new constitution the direct election of the president was abolished, “stipulating instead that the leader of the largest party in the parliament would become president” (Freedom house 2013).

Additionally, Article 2 of the constitutions states that, “Angola shall be a democratic state based on the rule of law and the sovereignty of its people, primacy of the constitution, the law and the separation of powers” (Angolan constitution 2010).

Yet, the principles enshrined within the constitution and the way in which the state carries forth its duties signifies a lack of application of such constitutional principles. As per the new constitution, it mandates that as of 2012, “the president may serve a maximum of two five-year terms, and directly appoints the vice president, cabinet,

and provincial governors. The last direct presidential election was held in 1992” (Freedom House 2013).

Furthermore, despite constitutional guarantees of the freedom of expression, association and assembly is heavily restricted, “journalists are driven to self-censorship by the threat of dismissal, detention, and prosecution” (Freedom house 2013).

In spite of the Angolan constitution serving as the basis through which the people of Angola express their views and aspirations, the new constitution I would argue, is one which is not representative of the people of Cabinda and the people of Angola.

As Luacuti observes, “the Angolan constitution was passed by an absolute majority, represented by deputies, amongst them consisting of, two from Frente Nacional de Libertacao de Angola (FNLA), which abstained from the voting process, and UNITA which was absent from the voting process”(Luacuti 2013: 146).

The fact that UNITA, the official opposition of the MPLA was absent from the voting process, one would argue, demonstrates the lack of legitimacy of the 2010 Constitution. Furthermore, the fact that the Constitution was passed by a sweeping majority, in the sense that only the MPLA voted brings to question, how representative it really is.

However, in the context of the situation of Cabinda, any autonomous arrangement would only function with the restructuring and amendment of the Angolan Constitution. The institutions which would serve as a basis for restructuring such Constitution will be discussed below.

5.3 The consociational approach to constitutionalism

As identified in earlier chapters, diversity is an inherent feature the world over; ethnic conflict not only leads to severe bloodshed and the violation of human rights, but also at times to the violent break-up of states as seen in the former Yugoslavia and Sudan.

Yet, the question then becomes, what happens when intra-state conflict precipitated by ethnic tensions turns into civil war and the state’s central government refuses to allow for a legal breakup of the state?

Adopting features of consociationalism thus serves as a first step to allow ethnic territories who are distinct from the rest of the state to govern themselves through the establishment of territorial autonomy.

Consociationalism thus, I would argue focuses on establishing liberal principles within the state but also goes on further to providing security for minorities.

As Ghai argues in advocating consociationalism, ethnic groups “should have representation in both the legislature and the executive, with appropriate vetoes to safeguard their key interests and given territorial, and necessary, non-territorial forms of autonomy” (Ghai 2000:15).

Territorial autonomous arrangements must for that reason, be inscribed within a constitution so that the autonomy is not merely given but properly defined under law. The constitution must therefore, properly stipulate the powers of the autonomous region in regards to its executive, legislative, judicial powers and the relationship between such institutions and those of the central government.

The section below will deal with how a potentially autonomous Cabinda ought to look like, it will discuss how the principle of the separation of powers would function by looking at the functions of the executive, legislature and judiciary.

5.4 The separation of powers

Aristotle describes human beings as being ‘political animals’, one can thus argue that as human beings politics is part of everyday life. However, bearing in mind that politics encompasses every facet of human existence, what is important is thus to understand exactly what politics is within the modern state.

Heywood identifies politics as “the activity through which people preserve, and amend the general rules under which we live in” (Heywood 2007: 200). To that end, politics thus entails the constant revision and enactment of the rules and laws which govern human societies.

Today, within the modern state, the separation of powers between the three branches of government (the executive, the legislative and the judiciary) can arguably be said to be the process of preserving and amending the institutions which govern such societies.

Amending the Angolan constitution is vital if an autonomous arrangement is to be viable, currently, the Angolan constitution of 2010 does not discuss in any detail the current role of provinces.

Therefore, under such an amended constitution, a unitary government characterised by highly decentralised provinces is imperative for an autonomous arrangement. Therefore, by adopting the principle of devolution greater decision-making powers is achieved.

Such position can be seen within the United Kingdom wherein, “the centre grants decision making autonomy” (Hague & Harrop 2007:293). Yet it is important to note that despite adopting the devolved model the UK is still a unitary state.

However, such arrangements are those which should be based within the consociational approach to constitutionalism.

It would then be through the establishment of a consociational constitution, one which passes the threshold of popular representation which would set up the framework of state institutions, the establishment of such a Constitution would in turn set forth mechanisms which would allow for politics to take place within a diverse society.

Still, it is also important to understand that, despite having constitutions which provide for equal rights for all, it is not enough for the establishment of peace, but rather, it is important for there to be independent state institutions which carry out their work without the fear of coercion.

If such institutions do not adapt and adhere to the calls of peoples for such independent institutions which are guided by the rule of law, they run the risk of collapsing. As Fukuyama argues, “political decay occurs when political systems fail to adjust to changing circumstances” (Fukuyama 2012: 7).

It is important to note that constitutionalism and its development, I would argue must be at the heart of any state, it regulates and establishes institutions. However, it is also important to note that the presence and establishment of a healthy and vibrant political culture with the respect of the rule of law is imperative for the sustainability of constitutionalism.

Within multi-ethnic states, constitutionalism is even more important because its focus is not only towards building a framework for the state but also to protect certain groups within a society which see themselves as distinct from the rest.

5.5 Towards an autonomous institutional design

The basic concept underlying a territorial autonomous arrangement is that autonomy must be defined within territorial terms. Yet, it is also important to note that territorial autonomy can be implemented in various ways.

Such degrees of autonomy can thus be identified as administrative autonomy and full self-government. As Wolff & Weller observe, “administrative autonomy describes an arrangement of executive independence within the framework of executive legislation, thus the autonomous territory does not have its own legislature or judicial system” (Wolff & Weller 2005: 13).

As identified by Wolff & Weller, the second strand of such autonomy is that of full self-government. Such a state is where “the right for the population of the designated autonomous territory to elect its own legislature, it endows them with the authority to take charge of all executive and administrative functions usually provided by central state institutions except in the areas of foreign and defence policy and in relation to the broad framework of economic and monetary policy, and also grants significant judicial powers to the autonomous entity” (Wolff & Weller 2005: 13).

For the purposes of establishing Cabinda as an autonomous entity, the latter form of territorial autonomy (self-full government), shall be proposed.

5.6 The Legislature

As identified by Wolff & Weller, a full self-governing territorial autonomous arrangement is one in which the population of such territory has the right to elect its own legislature, endowed with the authority to take charge of all executive and administrative functions.

Due to the level of tension in Cabinda, any viable autonomous arrangement must be able to be in a position to enact a limited amount of its own laws, (i.e. regional planning and development, health services, etc.) within the region it governs in conformity with the national Constitution. In order for Cabinda to be truly autonomous, it is important that the Constitution of Angola provides that Cabinda has its own parliament.

A parliament which is constituted of representatives from Cabinda, along with a prime minister of Cabinda which is both represented within the said parliament and at the national parliament which has real voting, and decision-making power on issues which influence Cabinda is imperative.

However, like the parliament at national level, a potential Cabindan parliament would exist, “to make laws for the province of Cabinda, other functions include holding the executive accountable” (Taljaard & Venter 2007:19).

However, it is important to note that the parliament of Cabinda would not adopt laws and/or policies which go against the spirit and principles of the national Constitution. By constituting a parliament of Cabinda, it will allow the region to administer its own laws, regulate, and at the same time allow a space for both political and cultural autonomy.

For such a legislative hurdle, one can thus contrast the case of Northern Ireland as an example wherein, an “assembly exercises full legislative and executive authority over all devolved powers previously held by the six Northern Ireland government departments, namely economic development, education, health and social services, agriculture, environment, and finance” (Wolff 2003: 8).

Though such an approach is slightly different from the proposed Cabinda approach mainly in regards to the assembly holding executive and legislative powers, it never the less serves the same principle

The true measure of autonomy in this regard will be measured by the amount of decision-making powers that the parliament possesses and its relationship to the National Assembly. To that end the legislative authority of Cabinda is thus vested within parliament.

5.7 The executive

Like with national executive, the main functions of the executive within Cabinda would be for the administration of the provincial territory. As Venter & Mtimkulu observe, “the cabinet is the link between the public, the public service and parliament” (Venter & Mtimkulu 2007: 40).

However, the executive within Cabinda is one which must be seen as legitimate by the people of Cabinda. To that, it would mean that the executive must be elected by the people of Cabinda through the holding of special elections.

Furthermore, like members of parliament within the Angolan National Assembly who are elected by the people to serve as their representatives in parliament, the same is to be done within the parliament of Cabinda, where executive powers are vested in the Prime Minister of Cabinda who is thus also a member of the national parliament.

Since executive authority is vested in the Prime Minister of Cabinda, an approach can be taken from the Constitution of South Africa where the Prime Minister of Cabinda exercises executive authority together with members of the provincial cabinet by implementing provincial legislation except in areas of defence, international trade, foreign policy and where the Constitution provides otherwise.

5.8 Judicial powers

The legislative body of Cabinda is one which would serve the purpose of enacting laws. However, as discussed above, such laws are those which would need to be in line with the national Constitution.

To that end, it is important that the notion of an independent judiciary is one which “applies the law impartially and without fear, favour or prejudice is generally accepted” (Malherbe 2007: 61).

To that end the judiciary, even within Cabinda, is one which makes up the three branches of government, and since it is theoretically an impartial organ, it would not be necessary for Cabinda to have its own independent judiciary.

Since at the national level and provincial level, in the case of Cabinda both parliaments must adopt laws which are in line with the constitution, a single judiciary would serve as arbiter in the case of conflict, both within national parliament legislation and provincial legislation.

As Malherbe observes, the function of the judiciary is to resolve disputes by determining “what the law is and how it should be applied to every dispute. So the courts must determine which rule of law applies to the dispute, interpret it and apply it to resolve the dispute” (Malherbe 2007: 62).

As a result, since the Constitutional Court is the highest court in the land, disputes arising between the provincial and the national governments, pertaining to the constitutionality of law, are ones which should be referred to the Constitutional Court.

5.9 Management of natural resources

As argued in previous chapters, Cabinda holds large quantities of oil reserves. Although the conflict has been framed as one of self-determination and identity, a

further variable, and I will argue amongst the most important, is the question of the economic potential that the oil reserves represent.

An autonomous arrangement would thus be inadequate if it did not address the question of managing the region's natural resources. To that end, it is important that structures be set up which would allow for there to be an equal balance on how such resources are used.

To that it is important that the revenue from the oil of the region is dispersed proportionally in regards to the population of mainland Angola and Cabinda. Furthermore, the ability for Cabinda to tax its inhabitants is of vital importance, along with keeping such revenues.

Like the autonomous regions of Spain, the Basque, the central government of Spain is still responsible for collecting taxes within the region, however, such taxes are those which are then redistributed the region.

5.10 Conclusion

In spite of talks for the enactment of an autonomous arrangement in Cabinda between the government of Angola and the people of Cabinda, such arrangements have yet to further be discussed.

Although the conflict has moved from an armed conflict to one of more stability, there is still the desire for independence by the people of Cabinda.

It is important to note that the government of Angola is not likely to willingly allow for Cabinda to secede, and likewise, an armed conflict between Cabinda and the Angolan armed forces is one which would result in a zero-sum game.

To that end, the recommendations made above are those which would require Angola to significantly amend its Constitution, develop a culture of strong democratic institutions and governance. The restructuring of such institutions must in turn be woven together with human rights principles.

Furthermore, the recommendations made do not require a heavy financial burden but rather the political will by both sides to compromise for the betterment of the lives of the people of Angola.

The chapter above sought to set forth the division of power between a potential autonomous Cabinda. Such structures, although similar to those within a federal system, are nevertheless for the purposes of a territorial autonomous region.

CHAPTER SIX

Conclusion and Recommendations

6.1 Introduction

This dissertation has sought to investigate the potential of territorial autonomy as a mechanism to prevent ethnic conflict in Cabinda. The dissertation has identified that although the concept of autonomy is one which may be applied in the prevention of such forms of conflicts, it does not always work.

Each conflict is different and as such may require a different approach. The case of Cabinda though despite its unique features is one which through negotiated territorial autonomous arrangements may put an end to the conflict.

6.2 Findings

This section will summarise the findings of the study in relation to the research questions.

The conflict in Cabinda between the Angolan government and FLEC is one which over its four decades' lifespan has entered into various levels of intensity. Chapter Two has highlighted the at-times confusing relationship between the concepts of self-determination and autonomy and how states apply them.

Chapter Two also briefly discusses the jurisprudence of the African Commission in relation to self-determination and autonomy. The Commission identifies that although it reiterates the importance of different groups, such groups are not entitled to a form of self-determination which is incompatible to existing international law. However, the Commission further notes that in the cases of grave violations of human rights, such as genocide, a particular territory can exercise its right to external self-determination.

Although there have been calls for a referendum for autonomy in Cabinda, such calls have yet to be answered. There is certainly much to be done in Cabinda, the issue of autonomy is one which would change the socio-economic and political standing of Cabinda and one which would constitutionally change the Angolan state as well.

Chapter Three has followed through with a discussion on the relationship between sovereignty and autonomy, and how ethnicity might fuel conflict within divided and unequal societies.

The relationship between sovereignty and territorial autonomy is one which can prove to be conflicting if not applied properly. Under international law all states are equally sovereign, however, that cannot be said to be the same for autonomous arrangements.

To that end autonomous arrangements are those which must be structured according to the internal realities of a particular state. Unlike sovereignty, territorial autonomy is not a concept recognised under international law and as such it is the responsibility of such states to arrange autonomous arrangements according to the particularities of the region in question.

Chapter Four sets out a discussion of the Cabinda case and how the conflict began, evolved and the variables in place which make it so that such conflict is sustained. It is however, important to note that although there is a heavy presence of Angolan armed forces in the enclave and there seems to be a call for autonomy, and at times independence, there seems to be a question of who exactly is representative of the people of Cabinda.

As stated above, there is no reliable data available, which clarifies whether FLEC is the true representative of the people of Cabinda.

Furthermore, there does not seem to be any information pertaining to any election, both after the fight for independence and today, which highlights that FLEC was voted to serve as a legitimate representative of the people of Cabinda.

Yet, FLEC on behalf of the people of Cabinda submitted to the African Commission that the violations put forth by FLEC are violations committed by the Angolan government. Although the issue of the legitimacy of FLEC is still in question, there is certainly a need to address the Cabinda question.

Chapter Five went on to describe how a potential autonomous arrangement would look like and the necessary measures that the Angolan government would have to take to change it. It is important to note that the suggested arrangements are theoretical in nature; whether the Angolan state implements them would require a great undertaking by political elites to make it a reality.

6.3 Recommendations for territorial autonomy in Cabinda

The previous chapter discussed how a territorial autonomous structure could take shape. The purpose of this section is thus to analyse whether such arrangements could be applied to Cabinda, or at least if certain features could be adopted. The recommendations for Cabinda, despite the already proposed structure of autonomy shall be based on strengthening human rights and constitutional democracy.

6.3.1 Human rights and constitutional democracy

The human rights discourse in Angola I would argue is one which is still in its infancy; the lack of transparent and impartial institutions is a debilitating factor which is at the heart of Angolan democracy. However, in the process of building such institutions human rights guided by the principles of human dignity are those which must guide Angola's new democracy, if its leaders choose to embrace it.

Within the post-Cold War era, states are no longer in isolation; the interconnectedness of the global system is one which makes it easier for human rights movements to access closed societies. The development of international law has 'subjected individuals, governments and non-governmental organizations to new systems of legal regulation' (Held 2006:300).

It is such regulation which Angola needs to apply to its institutions, especially in regards of the rule of law. It is thus through democratic autonomy which would make it possible for the people of Cabinda to live within a system of laws of their own choosing.

Human rights I would argue should be at the heart of every democratic society. The idea of establishing Cabinda as a potentially territorial autonomous region would not be possible without the amendment of the current Angolan Constitution, one built with the principles of human rights and human dignity as its pillars.

As Currie & De Waal argue, 'human dignity is not only a justiciable and enforceable right that must be respected and protected, it is also a value that informs the interpretation of possibly all other fundamental rights' (Currie & De Waal: 275).

Human rights and human dignity are thus important principles which should address Angola's potential constitutional birth.

6.4 Conclusion

In spite of promises by Angolan President Jose Eduardo Dos Santos to hold a referendum for territorial autonomy in 2003, such promises have yet to be realised. The current status quo though might seem to be irrelevant to the current Angolan government it is one which in the long run can simply not be maintained, the level of development in Cabinda is one which is not proportionate to that of the rest of the

country. Furthermore, Cabinda's legal foundation for independence has been eroding over the years: Cabinda's continued isolation is one which has led to less interest in the situation by the international community. Despite such, the level of human suffering in Cabinda is one which increases more and more and as such autonomy might be the best alternative to end such suffering.

Finally, Due to such skewed levels of development and continued calls for autonomy by the people of Cabinda through FLEC as per the case brought before the African commission, the proposed autonomous structures serve as an avenue in which to attempt to address the question of Cabinda.

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