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CONTENTS

The Zimbabwe Law Review is no longer a thing of the past!

You may have been starting to think that the Zimbabwe Law Review had become redundant. One unkind person went as far as to suggest that we should rename our journal "The Historical Law Review" !

Unfortunately we had fallen a few years behind in the production of the Review. The last issue to appear previously was Volume 7 / 8 covering the years 1989 and 1990. The Editorial Board of the Review sincerely apologises to all of valued subscribers and buyers of the Review for the inconvenience caused to them. In order to speed up the process of getting up to date we decided to combine Volumes 9 / 10 (1991 and 1992) of the Review into a single number. Those who have subscribed in advance will be receiving their ordered issues within the near future. The next volume, Number 11 (1993), will be ready for distribution within the next few months. The Editorial Board would like to assure you that in the future the Law Review will be produced on a more regular basis.

We hope that you will renew your interest in this publication by renewing your subscriptions if you have allowed them to lapse. Details of current subscription rates are to be found on the cover of the Review. There is a reduced price for those ordering a set of the Zimbabwe Law Review.

We would like to call for the submission of articles, book reviews and casenotes for consideration for inclusion in this publication. These are momentous times for Southern Africa. Democratic rule has finally come to South Africa after so many years of struggle, suffering and oppression. We would like to take this opportunity to extend our heartfelt congratulations to the people of South Africa on the attainment of their liberation from apartheid rule.

In Southern Africa there is an urgent need to analyse and debate topical matters such as issues relating to development and reconstruction, equitable land redistribution, the impact of economic structural adjustment programmes, the protection of human rights, democracy and constitutionalism and the protection of the environment. We call for the submission of articles on these and other important issues.

The Editorial Board would like to extend its sincere gratitude to the Raul Wallenberg Institute of the University of Lund in Sweden for its generous donation of desktop publishing equipment to the Faculty of Law of the University of Zimbabwe. This equipment was donated for use in the production of the Zimbabwe Law Review and other Faculty publications. This current number of the Zimbabwe Law Review was produced using this equipment.

INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS IN SOUTHERN AFRICA: THE PROBLEM OF POLITICAL CULTURE

by

Jonathan N Moyo*

Introduction

An enduring existential dichotomy which has characterized human communities virtually since time immemorial is the polarity of peace and war and its implications for public policy.[1] This dichotomy has particularly been sharply pronounced within and between modern nation-states, many which are products less of peace than war. Indeed, a critical claim of modern nation-states as juridical entities is the right to monopolise and use violence not only during war but also in peacetime[2]. It is against this background that Max Weber defined the modern state as a system of organised domination that claims the monopoly of the legitimate use of physical force within a given territory.[3]

Thus, peace and war, with all their consequences on violence, are the socio-historical pivots upon which the interests of nation-states revolve. Within this historical continuum, consequences of the conduct of nation-states, as juridical entities, and that of sub-national groups in conflict with former, whether in peacetime or in periods of war, have given rise to basic human rights questions and humanitarian concerns. Taking into account that peace and war are two sides of the same coin, this paper critically examines the interrelationship between humanitarian law and human rights in southern Africa by proferring a hypothesis positing factors of political culture as barriers to human rights and the respect of humanitarian law in the sub-region. The barriers, which are identified and discussed below, need careful examination if human rights are to have weight not only in peacetime but also during the more difficult periods of war.

International Humanitarian Law

But, first, some observations about international humanitarian law are in order. It should be pointed out here that this paper is not written within the context of international law as a specialized field of study in the technical sense. However, this

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1 See Carl von Clausewitz, *On War*, London: Penguin Books, 1971, pp 401-408.

2 See Anthony Giddens, *The Nation-State and Violence* (Volume Two of A Contemporary Critique of Historical Materialism), Berkeley and Los Angeles, University of California Press, 1987; see also Samuel P. Huntington's *The Solider and the State: The Theory and Politics of Civil-Military Relations*, (Cambridge, Massachusetts: Harvard University Press, 1957).

3 See Max Weber, *Economy and Society Vol. 2* (Edited by Guenther Roth and Claus Wittich), (Berkeley and Los Angeles: University of California Press, 1978), pp 901-926.

is not a weakness because the subject of international humanitarian law is surrounded by issues and problems of political culture which are too important to be left in the hands of experts alone. Students of politics, especially those, such as this author, who place emphasis on processes of democracy, have a special interest in the study of international humanitarian law and human rights. In any case, what is law but an organized system of domination within the parameters of a specific political culture? The essence of this paper therefore is on the study of international humanitarian law and human rights as expressions of political culture.

But what is international humanitarian law? Against the background of various Geneva and Hague conventions,[4] it has become an established convention to view international humanitarian law as human rights in periods of armed conflict.[5] Thus, in this context, law enforcement characteristically entails real potential for the abuse of human rights in peacetime.[6] This potential is even greater and indeed dangerous during periods of war. As a specialized field of concern, international humanitarian law deals with the latter case. It should be pointed out, however, that viewing international humanitarian law as *human rights in periods of armed conflict* should not be understood to mean that all rights are derogable during periods of war. Indeed, there are some categories of human rights which are nonderogable even in times of war, such as those which are in Article 4 of the International Covenant on Civil and Political Rights.

While international humanitarian law does not claim to establish a general guarantee of respect for life, because it does not have enforceable political means and legal instruments for such a guarantee, it however does seek the provision for the respect for the life and the mental and physical well-being of people who do not take part in war, namely, civilians in a war situation or people who are no longer taking part in hostilities such as prisoners of war. This concern of international humanitarian law is based on the principle of humane treatment of individuals and communities in areas of armed conflict.[7] To this extent, the various Geneva conventions and protocol agreements prohibit such abuses as torture, inhumane or degrading treatment and sentence; inhumane detention conditions and the use of medical or scientific experiments on people.

Thus, the various humanitarian law conventions not only provide for the protection of human rights in periods of war but they also establish categories of protected persons. These categories include the detained, the wounded, the sick and prisoners of war as generally defined. Furthermore, and generally, international humanitarian law provide for the regulation of the conduct of war, namely, what is permissible and what is not. In its essence, therefore, humanitarian law concentrates on persons affected by armed conflict.

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4 See for example, *Conduct of Hostilities* (Collection of Hague Conventions and Some Other Treaties), (The Hague, 1984 Edition).

5 See Sylvie Junod, "Human Rights and Protocol II", September — October 1983 No 236 *International Review of the Red Cross*, pp 246-254.

6 See J.S. Pictet, "New Aspects of International Humanitarian Law," October 1977 No 199 *International Review of the Red Cross*, pp 399-412.

7 See F. de. Mulinen, "The Law of War and the Armed Forces," January — February 1978 No 202 *International Review of the Red Cross*, pp 18-43.

Human Rights

The focus on periods of armed conflict and the establishment of categories of protected persons distinguishes humanitarian law from human rights. Unlike the various instruments of standard humanitarian law, the significance of human rights is that, while they are categorized and defined according to different "generations" or classes, they are nevertheless extended to all individuals without conferring a special status upon them. However, and notwithstanding the fact that instruments of human rights hold for all circumstances be they in peacetime or in periods of war, the realistic expectation is that policy objectives of human rights can only be fully realized in peacetime. But, of course, there are various legal instruments used by nation-states to deny their subjects the enjoyment of full human rights even in peacetime. Otherwise, the point to underscore here is that there is a special relationship between human rights and humanitarian law in that the latter is an extension of the former since it not only specifically extends minimum human rights protection to victims of armed conflict but it also limits violence by setting a number of rules which should be observed during the conduct of hostilities.

There is therefore a convergence zone or an interface between human rights and humanitarian law. The two find a common basis in their affirmation of minimum set of rules for the protection of human beings, rules which are valid in all circumstances and at all times, both in peacetime and during armed conflict. Within the common zone, humanitarian law has an advantage during armed conflict in that its concerns are specific, perhaps but arguably non political, and thus potentially free from ideological problems which typically accompany the debate on and implementation of human rights during peacetime.

Even so, the practice of humanitarian law has met with mixed results on the ground because of resistance by governments throughout the world. Notwithstanding the committed and sometimes controversial work of agencies such as the International Committee of the Red Cross, humanitarian law still has a lot of ground to cover. The conduct of nation-states during armed conflict, let alone during peacetime, still leaves a lot to be desired. For example, the bombing campaign against selected Iraqi cities by the allied forces during the Gulf War in 1991 raised fundamental questions about the observance of humanitarian law as did the conduct of Iraqi forces in Kuwait and later the Kuwait forces against Palestinians suspected of having collaborated with the occupying Iraqi forces. Indeed, the extent of human rights violations by various parties in the Gulf war is yet to be fully accounted. During that war the Americans showed a worrying insensitivity to civilian casualties whom they contemptuously regarded as "collateral damage"; and to this day, it is not known how many Iraqi civilians died due to violations of international humanitarian law and, by extension, violations of human rights.

The experience of the Gulf War clearly showed that, as subjects of international humanitarian law, nation-states still have a problem in narrowing the gap between law and practice. Many nation-states are either signatories to the various Geneva conventions and relevant protocol agreements or have national legislation which purport a commitment to the protection of human rights. Yet, this formalism lacks a corresponding substantive commitment in practice,[8] particularly during periods of

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[8] See Robert C Johansen, The National *Interest and the Human Interest: An Analysis of U.S. Foreign Policy*, (Princeton, New Jersey: Princeton University Press, 1980).

armed conflict when states resort to dangerous forms of expressing their national interests in violation of human rights. This is worsened by the lack of an international juridical power which can enforce humanitarian law.

The bottom line is that the observance of international humanitarian law during periods of armed conflict ultimately depends on the existence and enforcement of requisite national legislation. This is where there have been serious problems, especially in those countries whose legal systems are silent on the protection of human rights for their citizens. In 1969, the then Secretary General of the United Nations submitted to the General Assembly that there was a close link between what he said was a rather disgusting attitude of a government towards its own nationals and the aggression it perpetuates against other nations; and consequently between the observance of human rights and the right which prohibits recourse to force.

In other words, there is a relationship between the political culture of a given country and its possibility of respecting human rights not only in peacetime but especially during armed conflict. This connection between human rights and politics is clearly presupposed by the United Nations General Assembly in 1979. In its preamble, this Code makes the following notable declarations:

(a) that, like all agencies of the criminal system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole;

(b) that the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted humane system of laws;

(c) that every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime, and that the conduct of every functionary within the system has an impact on the entire system;

(d) that every law enforcement agency, in fulfilment of the first premise of profession, should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials should be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, and ombudsman, a citizens' committee or any combination thereof, or any other reviewing agency and,

(e) that standards as such lack practical value unless their content and meaning, through education and training and through monitoring, become part of the creed of every law enforcement agency.[9]

The fundamental import of these points is that they indicate the necessary *policy* connection between the practice of law enforcement, whether in peacetime or during

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[9] See "Human Rights: A Compilation of International Instruments," *The United Nations* (106 Plenary Meeting), New York: 17 December 1979, p 227.

periods of war, and societal values or political culture. The last point, (e), *supra* indicates the professional basis of law enforcement, and that basis is the community. To this effect, Article 1 of the said Code of Conduct says:

> Law enforcement officials shall at all times fulfil the duty imposed upon by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.[10]

The point of emphasis in the above paragraph should be on what is meant and understood by the designation, "their profession". A profession should, by definition, mean professing particular values embodied in the moral aspirations, i.e., in the political cultures of the community in question. To the extent that they are meaningful in policy terms, both substantively and procedurally, these values should be based on the respect and realization of the rights and freedoms of all human beings, i.e., human rights. The United Nations Code of Conduct for Law Enforcement Officials recognizes this in Article 2 which declared that;

> In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.[11]

But, of course, this is better said than done. Indeed, it is common, and sometimes even annoying, that many law enforcement officials are in practice, as a matter of habituation, too quick to associate themselves with these considerations as an automatic reflex rooted in organizational formalism and other bureaucratic imperatives. No law enforcement official is likely to be formally predisposed to taking a position against human rights. Thus, most law enforcement officials say one thing and do quite another without a feeling of fundamental contradictions between their "theories in use" and "espoused theories".[12] The contradiction between theories in use and espoused theories is particularly pronounced in periods of conflict, consideration which partially explains why international humanitarian law faces practical difficulties with near-insurmountable dimensions. This is because, in practice, many law enforcement officials are prone to violating humanitarian law. While the reasons for this disposition vary from country to country, they ultimately are best understood and explained with reference to the dynamics of political culture. To put the matter in the form of a hypothesis, a vibrant and developed political culture propelled by substantive and procedural competition in civil society is likely to encourage not only human rights but also humanitarian law while, on the other hand, a dormant and underdeveloped political culture due to the absence of a vibrant civil society is likely to discourage both human rights and international humanitarian law. In other words, human rights and international humanitarian law are functions of political culture.

As such, in order to promote human rights and international humanitarian law in countries where they are under threat, it is instructive to first identify barriers to a requisite political culture which would not only accommodate human rights but

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10 *Ibid* p 228.

11 *Ibid.*

12 The distinction between "theories in use" and "espoused theories" is well developed by Chris Argyris in his, *The Inner Contradictions of Rigorous Research*, (New York: Academic Press, 1980).

humanitarian law as well. That is to say, the analysis must first examine the political culture of civil society in the country under examination. Because barriers to a vibrant civil society differ from country to country and from region to region, the point will be illustrated here in general terms with reference to Southern Africa.

Problems of Political Culture in Southern Africa

Perhaps it is now an axiomatic consideration that real prospects of human rights and humanitarian law in Southern Africa will ultimately depend on the possibilities and opportunities for putting in place and institutionalising the value of individual freedom as the most basic building block. This, at least, is the emerging impression from the various struggles for democracy which have seen a number of countries in the region rapidly move from one- to multi-party systems. The transactions have, in one way or another, been justified under the name of human rights. From the surface, therefore, there is visible formalism towards possibilities for human rights in southern Africa. But, while encouraging, these nascent possibilities and opportunities are immediately diminished by three stumbling blocks related to deep-seated values which form the dominant political culture in southern African modern political history. These are the persistent norms and beliefs of traditional society, the lingering socio-psychology and culture of the liberation war and the continued existence of the institutional and legislative prejudice of colonialism.[13]

In some southern African countries one or two , and in others all three, of these values permeate the internal political process depending on whether the struggle for national independence was achieved through "conventional" or "militant" means of protest and struggle. In the militant cases, the struggle for national independence involved a significant and sometimes protracted armed campaign to overthrow colonial rule and racism as was waged in Angola, Mozambique, Namibia, Zimbabwe and South Africa. On the other hand, the conventional cases, which include Botswana, Lesotho, Malawi, Swaziland and Zambia, did not embrace armed conflict as an organized campaign to overthrow colonialism. The following discussion briefly examines each of these values which have divided southern Africa between conventional and militant countries with the consequence of diminishing immediate possibilities for the full realization of human rights.

Colonial Values

The value assumptions of colonial rule did not receive critical attention as part of the struggle for national independence throughout southern Africa. Despite the radical rhetoric of first nationalism and later socialism, the struggle for independence throughout southern Africa degenerated into a fight to remove whites and replace them with blacks. As a result, the only visible political change at and after

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[13] These values have been identified by various authors for examples see Masipula Sithole, "Zimbabwe: In Search of a Stable Democracy," in *Democracy in Developing Countries, Volume Two: Africa* (Edited by Larry Diamond, Juan J Linz and Seymour Martin Lipset), (Boulder, Colorado: Lynne Reinner Publishers, 1988), pp 217-257; for a more systematic analysis see Jonathan N Moyo, "Prospects of Democracy in Southern Africa: three stumbling blocks," *Journal of African and Asian Affairs* (forthcoming, 1992).

independence in most, if not all, the countries in the region was in the racial composition of the political elite and their immediate reproduction of the colonial political culture. Consequently, and seemingly without qualms about it, the first ruling African nationalists at independence readily adopted the political institutions, legal rules and the bureaucracy of colonialism as if no struggle for independence had taken place. The black nationalists used their newly found political power to maintain, and even to expand, the oppressive legislation used by the colonial regimes to suppress the political activities of black Africans, in effect, to subdue the development of civil society.[14]

There was a failure on the part of the nationalists, whether by design or by default, to realize that the logic of colonialism was specifically contrived to limit and ultimately to eliminate the full realization of human rights of the black majority. During colonialism, public institutions were notoriously not accountable to the general public, there was no due process, law was against the people and public order could not be maintained because colonial institutions lost legitimacy and plunged the colonial state into a chronic crisis of legitimacy. With the advent of independence, the continued existence of institutions of colonialism and rules of conduct cast a shadow of doubt over the institutional meaning of independence and, once again, resurrected what otherwise should have been the dead problems of the legitimacy and credibility of the post colonial political system. This resurrection has, with time following independence, resulted in the shutting of the door on the possibility and opportunity for southern African countries to institutionalise a new political order based on a new political culture socially constructed on the values of freedom in its individual and collective strands. Human rights have thus remained a far cry.

African Traditional Values

The relation between traditional African political values and the policy conduct of the modern state remains an issue of intense debate among African scholars and others interested in the subject. For example, in the area of humanitarian law, there are some researchers who have argued that many principles expressed in the Geneva conventions are found in the law of war in pre-colonial Africa and that it was only after the introduction of slavery and the inroads of colonialism that traditional societies began to disintegrate along with the code of the honour of African humanitarian law.[15] The thesis of a positive link between African traditional law and humanitarian law has been persistent. It is not easy to fault this thesis without delving into the annals of the social anthropology of African communities. In any case, whether African traditional society had a close link with humanitarian law as it is known today is besides the point. What is clear is that African nation-states, if

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14 This problem is well examined by Ronald Weitzer in his *Transforming Settler States: communal conflict and internal security in Northern Ireland and Zimbabwe* (Berkeley and Los Angeles: University of California Press, 1990), pp 134-189; see also an instructive report by Africa Watch, *Zimbabwe: a break with the past?; human rights & political unity* (London and New York: The Africa Watch Committee, 1989).

15 See, for example, Yolande Diallo, "African Traditions and Humanitarian Law," *International Review of the Red cross*, No.185, August 1976, p 400. See also her earlier work, "Humanitarian Law and Traditional African Law," February 1976 No 179 *International Review of the Red Cross*, , pp 57-63.

that is what they are, have had an unsatisfactory record on the score of human rights and humanitarian law. Furthermore, it has now become part of the political record of modern African politicians to seek to justify what they are doing on traditional grounds.

Indeed, in southern Africa, nationalist claims about the need to uphold African traditional values have played a pivotal and identifiable role in the shaping of politics in Africa today.[16] The claims have not been true of conventional countries like Lesotho and Swaziland where traditional monarchs have at one time or another resisted popular based governance, but they have also been persistent throughout southern Africa including in formerly militant countries like Mozambique and Zimbabwe. On the surface, there is no problem in upholding African traditional values as part of promoting African identities and political culture. The problem, however, emerges when presumed African values are used,as they have been, to restrict the political space of the individual by giving cultural legitimacy to monopoly politics and state violence. One belief, however mistaken, that runs deep in the political blood of African nationalists is that African traditional values demand an African system of governance which has one chief and one clan bound together by consensual politics. In this scenario, there is no room for political differences. Dissenters are punished. The former President of Tanzania, whose thinking on this matter has been followed by many African leaders, once argued that "despite all the variations and some exceptions where the institutions of domestic slavery existed, African family life was everywhere based on certain practices and attitudes which together mean basic equality, freedom and unity".[17]

This deep-seated belief is, somewhat surprisingly, also embraced by the supposedly revolutionary minded and militant politicians like Robert Mugabe who unsuccessfully sought to defend the notion of a one party state in Zimbabwe as a democratic political arrangement true to African tradition. Earlier, during widespread criticism of Mugabe's leadership by students at the University of Zimbabwe and other civil society groups, a loyal cabinet minister defended Mugabe by asserting that,

> ... in African custom the father was the head of a house. If anything went wrong a child would not complain to the father, but would seek other ways of doing so ... You will never get a child telling his father to step down because he has failed to run the affairs of the house, but there are always ways of dealing with their problems. Even in a marriage there is no family without its problems but there are ways to solve them.[18]

The impact of this conduct has been to sacrifice the respect of the high value of freedom of the individual in the political sphere with the consequence of foreclosing the possibility of fully realising human rights not only in Zimbabwe but especially in countries like Malawi where gerontocracy has been the basis of political governance.

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16 See VG Simiyu, "The Democratic Myth in African Traditional Societies," in *Democratic Theory and Practice in Africa*, edited by Walter O Oyugi et al, (London: James Currey, 1988), pp 49-70.

17 Quoted in *Ibid* p 49.

18 Mrs Joyce Mujuru quoted in *The Sunday Mail* (Harare) May, 27, 1989.

Values of the Liberation War

There can hardly be any doubt that the armed struggle in southern Africa was a pivotal means to the goal of defeating oppressive and intransigent elements of colonialism and racism, particularly in "settler societies" like Angola, Mozambique, Zimbabwe and South Africa. However, as it often is the case with protracted social processes of a conflict with two sides, the armed struggle in southern Africa had a deep socio-psychological impact on its targets as well as on its perpetrators. Although some work on this impact is beginning to emerge, more rigorous research on the socio-psychological impact of the liberation war on its perpetrators in southern Africa, some of whom are now in power, is yet to be systematically carried out. On the surface, it appears that the armed struggle produced a violent culture of intimidation and fear within the ranks of the liberation movements and their social base of peasant supporters.

Life in the military camps and during operations on the war front was obviously most difficult and sometimes just unbearable. Inside the military training camps, the rules of discipline for security reasons, real and imagined, were arbitrarily and autocratically enforced by nationalist politicians-cum-military commanders with little or no professional values rooted in the military, let alone in humanitarian law. There was a lot of petty and major internal conflict bordering on ethnicity and the desire for political power. Ideological education was crudely based on hatred largely because death had to be demystified as a way of motivating the guerrillas to kill with no qualms about death. The torture of dissidents in makeshift detention camps in the bush was a common feature of the liberation war. Young men and women, many still unaccounted for, lost their lives in the guerrilla camps under the most unacceptable of war circumstances.[19]

For the most part, the armed struggle in southern Africa lacked a guiding moral ethic beyond the savagery of war and was thus amenable to manipulation by the violence of unscrupulous nationalist politicians and military commanders who personalized the liberation war for their own selfish ends. This created an environment of death, terror and fear in the camps and beyond into the war zones and later into the "liberated areas"[20] which were run by the guerrillas to the utter misery and suffering of the peasants who also had to contend with the equally brutal colonial forces. This resulted in a culture of fear driven by values of violence perpetrated in the name of nationalism and socialism ostensibly marching towards independence.

This culture of fear opposed basic tenets of tolerance of individual and communal values. After independence, this culture reproduced itself in countries like Angola, Mozambique, Namibia and Zimbabwe, and it is likely to reproduce itself in a post-

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19 Evidence for this is only now beginning to emerge from reports of ex-detainees in the military camps of the ANC (South Africa), MPLA and UNITA in Angola and SWAPO in Namibia. These reports have been gathered by the International Committee for the Red Cross which has been working on the cases. There have also been a number of press reports on the matter, see for example "Two SWAPO "Spies" to be Released," *The Namibian* (Windhoek, Namibia: June 2, 1992).

20 Recent research on "peasant vioces" in the Zimbabwean war of liberation bear this and New York: Cambridge University Press, 1992) especially pp 116-169; see also Irene Staunton's compilation of *Mothers of the Revolution: the war experiences of thirty Zimbabwean women* (London: James Currey, 1990).

apartheid South Africa, with the consequence of diminishing the prospects of human rights. In these countries peasants, particularly during peacetime activities like elections, are conspicuously afraid of former liberation movements transformed into ruling parties. Even the campaign tactics of these parties are based on intimidation and the threat of death reminiscent of the liberation war. For example, during the campaign for the 1990 General and Presidential Elections in Zimbabwe, Zanu (PF) ran radio and television commercials which equated voting for the opposition with contracting the killer disease, AIDS. The commercial essentially told voters: "Vote for ZANU (PF) and Live or Vote for the Zimbabwe Unity Movement (ZUM) and Die". Human rights cannot exist in such an environment where values of violence and the fear that comes with them dominate the political process.

Law enforcement officials produced by political systems with such values of political culture cannot be expected to respect human rights in peacetime. Their conduct in periods of war is even more problematic for obvious reasons. Zimbabwe's experiences during the so-called dissident conflict between 1982 and 1987 speaks volumes on this issue.[21] The Zanu (PF) government terrorized peasants in Matabeleland using tactics of brutality common during the liberation war and, even worse, some of the tactics employed the colonial strategy of dealing with insurgent groups such as starving civilian populations believed to be supporting the groups. There have been similar violations of human rights and humanitarian law by Frelimo and Renamo in Mozambique and the MPLA and Unita in Angola. Just before and shortly after Namibian independence, Swapo had to deal with embarrassing revelations of the ill-treatment of its detainees. Nelson Mandela's ANC in South Africa has already been caught in the same dilemma of the torture and murder of its detainees in camps in Angola and Zambia. Commenting on this problem in June 1992, Chris Hani, the head of the South African Communist Party and former leader of the ANC's armed wing, Mkonto we Sizwe, admitted that the ANC's notorious security department 'had targeted both innocent and guilty in the organisation's camps'[22]. Hani said the lesson to draw from the bad experiences in the ANC camps was "that unchecked power should never be given to security structures, not even in an ANC-dominated new South Africa".[23]

Conclusion

While the recent trend towards the democratization process in southern Africa is encouraging, the region's prospects of institutionalising a democratic order based on the respect of human rights in peacetime and humanitarian law in periods of war are not encouraging. There are a number of fundamental issues yet to be resolved. The major outstanding issues concern the absence of a requisite political culture capable of sustaining democratic values in substantive as well as in procedural terms. While the development of a political culture is not a matter of social engineering, a case exists for deliberate policy action to be taken toward cultivating an enabling environment to nurture a democratic ethos in southern African countries.

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21 See Africa Watch's *Zimbabwe: a break with the past?*, op cit.

22 See *The Weekly Maily* (Johannesburg, 4 June 1992), p 8.

23 *Ibid.*

At the very minimum, the possibility of such an enabling environment will significantly depend on policy identification of barriers to a democratic political culture propelled by values of civil society which promote freedom at the individual and communal levels. This paper has identified three barriers:-

(a) lingering values and institutional imperatives of colonialism;

(b) the contradictory status and role of African traditional values in shaping the conduct of the modern state and;

(c) the social-psychological impact of the liberation war on the ruling nationalist elite.

There is a need, not only to develop relevant theoretical models but also, to empirically research these three barriers, on a case study basis, with a view to identifying policy strategies for the elimination of the three barriers.