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RECOGNITION OF SEXUAL VIOLENCE AND MASS RAPE VICTIMS IN LAWS  
APPLICATION IN ZIMBABWE  
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## **Abstract**

What is the problem with recognition of sexual violence and mass rape victims represented to be in the application of the article 65 and the new Constitution in Zimbabwe? Is going to be the first research question in this paper where it is going to try to be addressed a deeper knowledge about women and legal situation in Zimbabwe. The analysis is going to be performed following Bacchi approach 'What's the problem represented to be?' and complemented by de Greiff and Moghaddam approaches. As a result, it can be appreciated that despite legal advances, there are more factors that influence victims' recognition and laws application in the country, therefore in theory the legal framework, despite some limitations, is more or less comprehensive, nevertheless the reality does not go with the theory and there is room to improve.

**Keywords:** sexual violence, mass rape, article 65, Constitution, Zimbabwe.

*‘We needed to look the beast in the eye, so that the past wouldn’t hold us hostage anymore’*

*(Desmond Tutu, Chairman of the South African Truth and Reconciliation Commission, Buckley-Zistel & Stanley, 2012, p.16)*



*“...the cycle of violence cannot be broken if the system of impunity of those who perpetrate violence remains.”*

*(Sachikonye, 2011, p.90)*

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## **List of abbreviations**

ACLED	Armed Conflict Location & Event Data Project
AfDB	African Development Bank
AIDS/HVI	Acquired Immune Deficiency Syndrome/ Human Immunodeficiency Virus Infection
BBC	British Broadcasting Corporation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CSO	Civil Society Organisation
DHS	Demographic Health Survey
GNU	Government of National Unity
GPA	Global Political Agreement
HRW	Human Rights Watch
ICC	International Criminal Court
MDC	Movement for Democratic Change
MDC-M	Movement for Democratic Change – Mutambara
MDC-T	Movement for Democratic Change – Tsvangirai
NCA	National Constitutional Assembly
NGO	Non-Governmental Organisation
NPRC	National Peace and Reconciliation Commission
NTJWG	National Transitional Justice Working Group
PF	Patriotic Front
RAU	Research Advocacy Unit
RF	Rhodesian Front
TJ	Transitional Justice
UN	United Nations
UNFPA	United Nations Population Fund
US	United States
WB	World Bank
WHO	World Health Organisation
WPR	What’s the Problem Represented to be?
ZANLA	military group of ZANU
ZANU	Zimbabwe African National Union
ZANU-PF	Zimbabwe African National Union – Patriotic Front
ZAPU	Zimbabwe African People’s Union

ZGC	Zimbabwe Gender Commission
ZHR	Zimbabwe Human Rights (NGO)
ZHRC	Zimbabwe Human Rights Commission
ZIPRA	military group of ZAPU

## 1. INTRODUCTION

The current situation in Africa is varied and complicated in many places. Despite it is a huge continent, it is possible to find similarities, mainly due to their colonial past and the present and/or past existence of a kleptocratic and patronage systems and conflicts in the majority of the countries. In this environment, it is possible to appreciate a lack of recognition, as a mechanism of transitional justice, of women as victims of sexual violence and mass rapes in conflicts and in peaceful times; and in general a lack of legal actions to cover the necessities of the victims and trials to punish the perpetrators, who usually remain scot-free.

The case of Zimbabwe is not different. After a colonial past and a civil war (Liberation War, 1964-1979), and despite it was considered a good example of transition from war to peace and economic performance (Meredith, 2011), the country fell in an economic and political crisis which lasts until nowadays. Moreover, in this environment, sexual violence against women has been an ongoing problem because it has been normalised (Coltart, 2014). In spite of sexual violence and mass rape are widespread in Zimbabwe, in conflict and post-conflict times, the problem has not been properly addressed. Cases are not reported to authorities because is not seen well socially, the authorities perpetrate the crime sometimes, victims are mistreated or blamed, police rejects to register politically motivated mass rapes, and so on. In fact, mass rape as a political weapon is common in Zimbabwe, according to diverse documents (Fidan & Bui, 2015; Herskovitz, 2012 March 26; Thomas et al., 2013 or York, 2013 February 25). On the other hand, the current laws about sexual violence, despite some legal pitfalls, are more women oriented, and the new Constitution of 2013 has made a breakthrough to recognise women's rights. However, this is not enough due to the legal system in Zimbabwe presents other problems for women (Chinhamo, 2015 July 30; Coltart, 2014 and Fidan & Bui, 2015).

Drawing on Zimbabwean legal system, especially in the article 65 of the Criminal Law Act and the new Constitution, about sexual violence and mass rape cases, there are several research questions, which are in accordance with the analysis steps. Hence the **research questions are:**

1. What's is the problem with the recognition of sexual violence and mass rape women victims represented to be in the application of the article 65 of the Criminal Law Act and the new Constitution of 2013 in Zimbabwe?
2. What deep-seated presuppositions or assumptions underlie this representation of recognition of sexual violence and mass rape women victims in Zimbabwe and application problems of the law and the Constitution?



3. How has this representation of the application of law and Constitution and victims' recognition in Zimbabwe come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the "problem" be conceptualized differently?
5. What effects are produced by this representation of the "problem"?
6. How and where has this representation of the "problem" been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced?

## **2. METHODOLOGY**

The present project aims to focus on recognition of sexual violence and mass rape women victims in laws and Constitution application in Zimbabwean. This subject will be addressed vis-à-vis the following theories:

- What's the problem represented to be? (WPR) by Carol Lee Bacchi (2016), whereby sexual violence and mass rape victims' recognition and laws application, specifically the article 65 of the Criminal Law Act and the new Constitution, are going to be analysed. This is the main analysis theory that is going to be complemented by:
  - TJ Theory by de Greiff (2012) to assess the importance of victims' recognition.
  - Actualised Democracy by Moghaddam (2016) to analyse the society and history of Zimbabwe.

In this paper, to collect information, has been used a qualitative method due to the information has been obtained by direct observation and readings. Although, part of the information used are statistics and official data; therefore, this paper uses also a quantitative method. Hence, the collective method is a mix of both approaches, also known as triangulation, which is increasingly used in social sciences, as it is mentioned in *Research Methodology* by John Kuada (2012).

The mix method has been chosen due to it contributes to explain the research questions in a more accurate and global way.

In the context of Zimbabwe, triangular method helps to explain the complexities of the research question which relates diverse concepts; due to that, it is necessary a varied information to analyse it. The qualitative data shows the situation in the country though diverse types of texts, violence analysis, violence studies, laws, testimonies, and so on. Meanwhile, the quantitative data is more oriented to provide specific information about the country, mass rapes and population opinions about issues related with this paper such as opinion about judicial system, security forces, government, etc.

Finally, the method chosen is the texts and data analysis, and participant observation leveraging the staying of the author in Zimbabwe recently. The core texts have been the Criminal Law Act (2006), the new Zimbabwean Constitution (2013), Bacchi (2016), de Greiff (2012), Moghaddam (2016), AIDS-Free World (2009) and Sachikonye (2011) texts. The reason is that this material helps to understand and analyse the research questions. Other relevant texts or sources of information have been NTJWG report of 2017, Coltart (2014), Jones (2014), Eriksson and Stern (2014), Matsvayi (2012) or Afrobarometer.

At the beginning, it was considered the idea to involve also the concepts of culture, gender equality and social cohesion through the performing of some interviews to organisations involved in cultural issues in Zimbabwe. However, due to the bureaucracy, difficulties to implicate these organisations in the study, and the lack of time to do it, this idea was rejected.

### **3. THEORETICAL FRAMEWORK**

The aim of this section is to offer an overview and the theories used to analyse the subject of this paper; the recognition of women victims of sexual violence and mass rape campaigns in Zimbabwe and laws application problems. Firstly, it is going to be introduced some definitions and information about Zimbabwe; and afterwards the different theories considered to explain and analyse the research questions.

#### **3.1. Definitions**

##### **3.1.1. Sexual Violence & Mass Rape**

The definition of sexual violence found at WHO webpage is "any sexual act, attempt to obtain a sexual act, or other act directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting. It includes rape, defined as the physically forced or otherwise coerced penetration of the vulva or anus with a penis, other body part or object" (2016). One kind of sexual violence is mass rape, in other words, when there are involved many victims and many offenders through a period of time or focus on a specific area. This kind of sexual violence is a common situation in wartimes; actually there are examples since ancient Greek and in contemporary era during World Wars, Yugoslavia, Rwanda, Sudan, and so on (Reading, 2014). However, these events in Zimbabwe are related with political issues, therefore even now that there is not an open war in the country, mass rape campaigns are not rare, and they are a common practice during election times (Kwenda, 2013 August 7).

Sexual violence is recognised as a serious security problem worldwide. In the past, sexual violence and specifically rapes during war were treated as an unfortunate consequence of being in wartimes, therefore none attention was paid by local or international institutions. However, nowadays it is considered as a war strategy, weapon or tactic which can be prevented and limited (Eriksson & Stern, 2014 and Kwenda, 2013 August 7).

According to Eriksson & Stern (2014), there are five explanations of sexual violence in wartimes:

1. Biology and (hetero) sexual urge. War is a men business and their libido is associated with force, bravery, and other men qualities appropriated to war; therefore, it demands sexual satisfaction, better with women. The theory has its roots in the idea of male necessity of genetic perpetuation, and soldiers do not have 'normal' access to women. The need to leave should be covered, above all to prevent homosexual relations; hence, prostitution is the logical solution.

Other explanation is that during wartimes, social rules are 'diffused or suspended', so it is not strange rape or another criminal acts.

There is not any evidence that soldiers who have regular leaves are less prone to perpetrate sexual violence acts.

2. Cycles of violence and the 'craziness' of war. In wartimes, violence is no longer a taboo and it is started a 'spiral of violence' (who suffer, see or is mistreated by violent act tend to reproduce what s/he has sawn) which is a justification of perpetrators as victims. Other perspective is 'forward panic' understood as a high emotional level that can pop up in high-tension or fear situations (murder, rape, etc.)

Many testimonies from soldiers refer the chaos and violence during the war, besides to report that they did not feel themselves as if they were other people. This can be understood as a justification and release the perpetrators from guilty.

3. Militarised masculinities and femininities. Rape in this case is understood as a product of gendered militarisation and is a tool to achieve humiliation and intimidation. Rape is a strategy. Military is "how men/boys (and women/girls) learn to be 'masculine' and violent in the military through methods specifically designed to create soldiers who are able (and willing) to kill to protect the state/nation" (Eriksson & Stern, 2014, p.589). Militarisation is based on traditional roles, men as fighters/defenders and women as need of protection and peaceful; which contributes the maintenance of rape behaviours during and after conflicts. Rape can be a way to punish, humiliate and torture women and the enemy.
4. Rape as a gendered weapon of war. Rape is a tactic to accomplish military and political targets. "Wartime rape is a 'military tactic, serving as a combat tool to humiliate and demoralize

individuals, to tear apart families, and to devastate communities” (Eriksson & Stern, 2014, p.591). Rape as a war weapon is not only against women but against men and boys as well; and uses in operations against civilians. The benefits are reaffirmation of military masculinity, attack against identities, and masculinized the perpetrator and feminized the victim.

5. Military motivations and structures. Military structures are warned to prevent ideologies and relations with the enemy population; and there are strict norms against sexual violence and sexual relations with the enemy. Actually, armed groups depend on civilian population for survival (food, water, logistics, etc.), so any aggression can be in army detrimental.

Hence, sexual violence and mass rapes in wartime are a result of male domination and patriarchy; besides, they are not only a way to reaffirm the masculinity but also a way to damage the enemy physically (women) and psychologically (women and men). Thus, sexual violence and mass rapes victims are usually women and girls, in both war or peaceful times. It can be directly related with women’s roles, and the explanations above can be applied indistinctly for both periods.

The wording of *Gender, Genocide and Gendercide* by Jones (2014), shows another approach to sexual violence and mass rape through the term genocide, which was created and defined by R. Lemkin, who was worried about cultural and social identity of the groups. The original definition of genocide covered cultural and social issues, which were lost in the UN Convention of 1948 and it has been kept in this way in other international documents such as in the Rome Statute<sup>1</sup>. The term was limited because it was not considering political groups, social classes and gender groups; which were included in following reforms.

Summarising, sexual violence and mass rape are going to be considered as one in this paper due to the information gotten can be applied indistinctly. Besides, some general facts about sexual violence can be apply to mass rape cases, which present an important lack of data.

### **3.1.2. Transitional Justice (TJ)**

TJ is a term with different definitions and approaches; therefore, there is a lot of discussion about it, but at the same time, it is also possible to appreciate some commonalities, such as its use to recover justice after conflicts, or the necessity of TJ in processes of peace-building and peace-keeping.

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<sup>1</sup> Treaty which is the base to the creation of International Criminal Court (ICC), main international responsible to judge crimes against humanity, genocide, war crimes and crimes of aggression.

UN report *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* provides a broad definition of TJ, “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (de Greiff, 2012, p.31). The approach should be holistic “incorporating integrated attention to individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or an appropriate conceived combination thereof” (de Greiff, 2012, p. 31). Overall TJ covers diverse measures, such as criminal prosecution, truth, reparation, or institutional reforms, to deal with human right abuses (de Greiff, 2012).

Another approach to TJ understands it as a process of dealing with the consequences of violent conflicts and systematic human right abuses in order to provide the right conditions to create a peaceful future. Therefore, TJ is projected over the history. As a past-oriented practice, it addresses crimes committed during conflicts; as a present-oriented practice, it looks for the establishment of a new ethical and institutional framework and/or transitional politics for interpreting the past and, through this, it is possible to see the future-oriented practices focus on the prevention of injustices and violence. This approach is based on the idea that the transition to peace after violent conflicts or authoritarian rule requires a clean break from past injustices. In many cases, this goal was linked with promoting societal reconciliation, and one way is through trials, for example ICC. On the other hand, TJ has interconnected two ideas of justice, redistribution and recognition. The first one, *redistribution*, connotes the re-organization of resources that can be material (for instance, post-conflict financial retributions or land claims) and/or symbolic. The second one, *recognition*, includes recognition of culpabilities and injuries; identification and categorization of victims, perpetrators, bystanders, etc.; and of the character of the acts of past violence and injustice. Recognition extends beyond the categorization of past events to include the recognition and statement of current rights. (Buckley-Zistel & Stanley, 2012).

Other definitions of TJ are by Teitel who understood TJ “the view of justice associated with periods of political change, as reflected in the phenomenology of primarily legal responses that deal with the wrong doing of repressive predecessor regimes” (Nagy, 2008, p.277). Or Roht-Arriaza who defines TJ as “that set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and that are aimed directly at confronting and dealing with past violations of

human rights and humanitarian law” (Nagy, 2008, p.277). Both definitions are narrow because they overlook among others, gender issues.

*Gendering* TJ has tried to address this exclusion, or insufficient inclusion, of women within TJ frameworks. In this context, gender has been understood as synonymous of the social category of women, and its primary critique has been about the privileges and universal male perspectives, which demote female perspectives and this has caused the under-representation of women in peace negotiations and peace agreements. The exclusion means that the possible women’s contributions to reconstructive processes remain unutilized, and the suffering of women during the conflict is not recognized. Furthermore, the theme of sexual violence has become more relevant, which has positive and negative consequences. On one side, it is a way to focus the attention on women issues; but on the other side, it can stigmatize women creating an image of women always as a victim of sexual violence and play down violence against women in peace times (Buckley-Zistel & Stanley, 2012).

Regarding what is consider a crime in TJ, in early days TJ was focused on political and civil rights violations against men in the context of repression and civil wars. After some changes in international laws, liberal institutions work and critical feminists, the scope of what is a crime has been expanded to include sexual violence (rape, sexual enslavement and trafficking, impregnation, sterilization, enforced prostitution, etc.); which recently has been incorporated as a critical aspect in TJ investigations. This has pros and cons; on one hand, women have more rights and recognition, but at the same time, it reduces them to be targets and/or perpetual victims. Moreover, the focus of laws on sexual violence leaves other experiences out, for instance exclusion, marginalization, and discrimination; which after conflicts are the main problems facing by women and create erosion of social services and family structures, displacement, poverty, starvation, and so on. Thus, it is possible to affirm that there is not a distinction before and after conflict; actually gender analysis points that the structural violence experienced in times of crisis continues after repression or violent conflict (Buckley-Zistel & Stanley, 2012).

Focusing on sexual violence against women, it is a crime with many different motivations, but with the same result, assure women’s subordination and unequal role in the society; besides it is the kind of crime which remains in silence due to shame and stigmatisation, and therefore, unpunished. TJ mechanisms, oriented to secure justice and assure non-repetition of violence, have had different effects at the time to address sexual violence; and in the majority of times, peace after conflicts does not come along with justice and security for women, instead they face violence in other forms. This is a failure of TJ because it cannot address the unique needs and issues of women in conflicts and

repressive societies, besides it will produce and reproduce existing hierarchies, norms and perceptions regarding victims' recognition. One reason is because after conflict, transitional agreements tend to be focused on economic and social rights, thus other fields such as violence against women are out of scope. Actually, it can be appreciated that women are the group most marginalised and excluded in all times from peace-making, peace-building, and processes for political change. Besides, TJ mechanisms, such as truth commissions, usually attract too much attention, which collides with the fact that around sexual abuses there is a culture of silence due to the stigma for victims. Nevertheless, truth commissions require that public exposure because truth is direct information about what happened during conflicts and can influence the public and institutions to prevent the same events in the future (Buckley-Zistel & Stanley, 2012).

TJ also is criticised because the prevalence of a Euro-American/Western perspective, which determines what TJ is, what should be judged, the possible punishments, and so on. Another critic is the necessity to change and improve laws constantly according to the cases and new events; to this respect, Derrida noted, "Law is not justice" (Buckley-Zistel & Stanley, 2012, p.279). Justice is a utopia that is never reachable due to is never close to the criminal act. Justice at the end is marked by time and is more oriented to respond ethical issues.

Finally, TJ can be also defined as "a set of measures and processes adopted to deal with the consequences of mass human rights violations in the aftermath of regime changes, violent conflicts, wars, and other historical injustices that were derivatives of undemocratic regimes, colonization, occupation, and so on" (David, 2017, p.151). Hence, TJ measures such as truth, confession, forgiveness, reconciliation, healing, and apology, can be ways to solve past actions and avoid the future ones after conflicts. However, the reality is that after conflicts the defeated side normally is the target of executions and diverse punishments (David, 2017).

In conclusion, it can be said that TJ has been changing to overcome limitations and critics and there is no consensus about it. However, there are several generally accepted aspects, such as TJ is accurate in post-conflict societies or that it is formed by diverse mechanisms focused on dealing with the consequences and the actions perpetrated, recognition and restoration; everything to rebuild a society in a cohesive way.

### **3.2. Zimbabwe Background**

Zimbabwe is a complex environment and some information is needed in order to understand this complexity, specifically its history, legal framework, and women situation in the country. All these aspects will be explained from this paper's perspective.

#### **3.2.1. Zimbabwean History. The Rule of Violence.**

While in many countries along Africa the Europeans were losing control due to their weakness and the Communism, which used African nationalist movements to their own interests; in Zimbabwe the white governments were determined to keep the power at any price, so political activists were harassed and sent to jail and the organisations were forbidden. There were several nationalist parties in the 50s and 60s that were banned. Other case was the Zimbabwe African People's Union (ZAPU), which was forbidden in 1962, but they did not disappear, they split in two parts, so in 1963 Zimbabwe African National Union (ZANU) was created. Its leader defends "the equality of human rights and a genuine multiracial society" (Meredith, 2011, p.131); although there was also a radical posture defended by Robert G. Mugabe<sup>2</sup>. Both parties, ZAPU and ZANU started a terror campaign. In this environment was launched a new right-wing party in 1962, the Rhodesian Front (RF), supported by white farmers and white workers, both afraid to lose the land and their privileges. The RF won the elections in December of 1962 with Ian Smith as its leader, and they started their way to get the independence because they considered the links with Britain a threat to white survival in Rhodesia and Africa. On 11<sup>th</sup> November 1965, Smith who had the white population support, a well-equipped defence forces and control over mass-media, signed the independence of Rhodesia (Meredith, 2011).

Due to that well-equipped defence forces, violence was usually perpetrated by the state against political opponents, in other words the nationalist parties ZANU and ZAPU, as a political tool to keep the power; although whites were also targeted by the nationalists. Then, as current political opponents, they were prosecuted and imprisoned, and there were riots that were savagely dispersed. In colonial times, the fight was not only against whites but also between nationalist parties and followers (Sachikonye, 2011).

In Liberation War, there was guerrilla violence by soldiers known as 'freedom fighters' against whites, government or civilians. They started with sabotage practices after some guerrilla groups

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<sup>2</sup> Revolutionary in colonial and war times, Chairperson of ZANU and ZANU-PF since 1975 and President of Zimbabwe since the independence in 1980.



trained in China and were involved in diverse assassinations of white farmers and fierce battles against the regime security forces (whites). Anyhow, the guerrillas had support from locals, above all in rural areas. Since 1972, the war was vicious because there were many killed and injured in all involved parties in the war, besides many civilians lost their properties, relatives and livelihoods. To stop the advance of the guerrillas, Colonial Forces used massive violence against guerrilla members but also against their supporters or collaborators, so civilians. In addition, guerrillas used the same strategy. At the end of the war was calculated that more than 30,000 people lost their lives, about 100,000 injured and more than 750,000 were displaced and similar amount became refugees, mainly in Zambia, Mozambique and Botswana. In that time, torture was the normal way to get information; and abductions, disappearances and extra-judicial executions were also common. Regime Forces performed a campaign to kill guerrilla members in public places to scare and gain the support of the locals, it was a “psychological campaign to intimidate, demoralise as well as traumatise the African population” (Sachikonye, 2011, p. 8). Regime Forces also used poison to diminish and maim guerrillas.

On the other side, guerrillas used ‘pungwe’, meetings to mobilise politically the population and risen the moral of the supporters, although they were also used to intimidate the civilians through public trials and executions of traitors and enemies. The attendances to these meetings, usually at night, were compulsory for the locals, who were also forced to provide food or supplies; all to avoid tortures or even the death (Sachikonye, 2011). This kind of meeting happens too currently, above all during election times (Bratton & Masunungure, 2008).

Civilians during war were in the middle, being the target of violence from all sides (guerrillas and regime forces).

Besides, there was also violence between the guerrillas’ groups or among members of the same party, through resources’ cutting and/or control, corruption, treatment and misappropriation of funds, irregular promotions, send to danger places or to the front, or exploitation of girl cadres as housemaids and concubines. All of them due to suspicion and to control the party that is a practice present nowadays because Mugabe, revolutionary since 1964 and ruling Zimbabwe since 1980, does not change the actions/behaviours to rule the party and the country. Violence was and is integrated in the political culture of ZANU (Bratton & Masunungure, 2008 and Sachikonye, 2011). The infighting actions were also present in ZAPU, but not as much as ZANU (Sachikonye, 2011). Hence, there were inter-party and intra-party violence, both present nowadays; in fact, the last one has been found mainly in ZANU-PF (ruling party) but also in MDC (opposition party), although in none of the cases

was fatal (there are not deaths reported), because the violence is more calculated to harass and intimidate the possible betrayer/s (Sachikonye, 2011).

After the war, despite their union in PF (Patriotic Front) for peace negotiations, ZANU and ZAPU continued their violence campaign against each other. During the first years of independence, there were several incidents, even with fatalities, many injured people and private properties damages (Sachikonye, 2011).

Finally, after fifteen years of conflict, the real independence came at midnight between the 17<sup>th</sup> and the 18<sup>th</sup> of April 1980. At that time, there were many positive ideas and hopes about a prosperous future for the country and its population, which were promoted by the new president Robert Mugabe, still in charge. Actually, at the beginning, Zimbabwe was known as the “breadbasket” of the region and the international community considered the country as a good example of independence process due to its stability, high quality of life and thriving economy. Besides, Mugabe promised and built cordial relations with white community and his adversaries, even with Ian Smith, the former Rhodesian leader. But he was playing a double game, because since the beginning of the independence, the dissidents have been his major threat. Due to the main aim of Mugabe was the establishment of one party rule, he fought the war to achieve control not democracy (Meredith, 2011, and Sachikonye, 2011). Thus, in the 80s ZAPU was the main target of ZANU’s attacks, perpetrated by the ‘Fifth Brigade’ whose excesses are well known in Zimbabwe. They used pungwe to mobilise people and create fear and tension in the communities. The Brigade transformed pungwe into a tool of meeting out punishment to those who were considered traitors or enemies of ZANU, where “The violence in general, and the raping of women, in particular, was humiliating and dehumanising” (Sachikonye, 2011, p.16). It can be said that the rate of violence after independence, above all during 80s, was even higher than during Liberation War, above all in some parts of the country, where Ndebele, second ethnicity in Zimbabwe, and ZAPU were majority. All this violence was ordered and managed by the state (ZANU and Mugabe) (Sachikonye, 2011). Therefore, the cordiality and ‘peaceful’ environment lasted shortly and the country started a political and economic crisis, which has not been overtaken by now (Meredith, 2011).

As the situation became worse, human rights and democracy issues organisations started to work to get free and fair elections. Nevertheless, until the formation of MDC in 1999 thanks to the coalition of labour unions and CSO, there was not any opposition party. At the same time, NCA<sup>3</sup> was created

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<sup>3</sup> Alliance of NGOs, community based organisations, and civic organizations such as labour movements, students and youth groups, women groups, churches, business groups and human rights organizations.

to demand a constitutional change. Civil Society forced the government to be more open which caused a rise of critiques, and the final prove was when ZANU-PF lost in the constitution referendum in 2000.

In 2002 took place presidential elections, and due to the adverse events in the last years of Mugabe's regime (the contested land-redistribution, the economy contraction and the political power-struggle), the actions of violence (mass rape campaigns among others), repression and harassment increased. At the same time, MDC, the main opposition party faced internal fights that caused its split in two in 2005. However, it did not affect the parliamentary elections where ZANU-PF lost support, above all from urban areas, where the effects of the crisis were more remarkable.

In 2008, the coalition of MDC-T and MDC-M, the two parties resulted from the separation of MDC, won the elections, but Mugabe used violence and harassment against people who voted them.

Thereupon, the winners agreed to arrange a pact with Mugabe; the Government of National Unity (GNU) was created and positions were distributed in the Global Political Agreement (GPA).

Although, during the coalition mandate the economic situation and some human rights upgraded for the population, the majority of the reforms agreed in GPA have not been implemented.

Regarding violence in the country, as examples in March 2010 there were two exhibitions about the violent past of Zimbabwe, the police closed them. In the country, there is an impunity environment, mainly fostered by the government that does not want that people remember the general violence, tortures, mass rapes, and so on perpetrated above all during electoral periods (Sachikonye, 2011). Or when in March 2012, Reuters agency in Africa reported about Zimbabwean rights crimes. President Robert Mugabe and top members of the ruler party ZANU-PF were and are subject to international sanctions because suspected human rights abuses, for instance death squads to intimidate voters and tortures to political prisoners. None of these or other crimes against human rights were or are judged due to courts and security apparatus in Zimbabwe are under ZANU-PF control. In past years, South Africa was the destination in 2008 of many refugees from Zimbabwe, who were allowed to enter without documents when Zimbabwe was a chaos due to political violence and hyperinflation. Thousands of these refugees affirmed that they were victims of political violence (Herskovitz, 2012 March 26).

The new Constitution is one of these reforms agreed in GPA. It was democratically passed after a referendum and was signed on 22<sup>nd</sup> May 2013. It gathers the right to personal security, prohibits torture, and guarantees the freedom of assembly and association, the right of freedom of expression and of the media. Nevertheless, the rights are more on paper than in reality. During these years after

the adoption of the new Constitution, ZANU-PF increased its patronage thanks to the control of the production of diamonds and minerals, and the security forces.

As its history shows, politically speaking Zimbabwe is a consequence of four influences:

- Pre-colonial times when the competition for power was considered illegitimate. In those times kings and chiefs ruled the different territories and tribes, and the death was the only way to change the ruler.
- Colonial era was even harder and dictatorial than before due to racial discrimination (whites concentrated the power and blacks did not have any right whatsoever).
- Armed liberation struggle times were characterised by fear, constant fights and coercion, because the struggles were only to get the power but not to give the population rights and freedom. Pluralism was not approved.
- Independence ZANU-PF rule, which due to the past was and is more autocratic than democratic. Nowadays, ZANU-PF is characterized by intolerance, intimidation, violence and suspicion. Patronage is the key word (Chokuda Zhou, 2014, pp.1-3).

Considering the whole history, it is possible to appreciate political similarities, “There is a remarkable continuity in how the colonial and post-colonial states maintained impunity to protect state institutions and party functionaries” (Sachikonye, 2011, p. 42). Regarding present times, Zimbabwe is in a deep crisis, which is a consequence of blocked democratic transition/changes since the beginning of the century. It is a clear sign that the independent and nationalist movements have come to an end (Chokuda Zhou, 2014). Moreover, the economic situation in the country which worsen since 2008, when the Zimbabwean currency (Zimbabwean dollar) was substituted by a multi-currency system with the American dollar as the main one, due to the hyperinflation. Currently, the country is suffering a lack of cash; hence, in December 2016 bones notes of smallest bills, \$1 and \$2 that are the most common and used in the country came into circulation. However, it did not solve the general feeling that the situation of 2008 can return, so it is possible to see long queues at the banks, which has limited the money that people can spend or pick up.

Summarising, the use of violence – sexual violence and mass rapes as examples of it – for political reasons in Zimbabwe has been a continuous. Recently it is more present during elections, when it has been used before to try to alter the electoral results, during to assure it and after as a way of retaliation against who did not vote them, in other words, ZANU-PF and Mugabe. They also use

their control over the mass media (radio, television, publicity and owned newspapers), state infrastructures (schools, council halls, vehicles and fuel) and state institutions (police and other security forces that harass and ignore aggressions and mass rape cases) to control the public opinion and their votes. Besides, the opposition candidates know that he/she have to face harassment and violence in different ways whether or not he/she wins, even economic violence such as properties confiscations, property damages or burning, that undermine their livelihood and of their supporters and relatives; force them in some cases to survive thanks to humanitarian or church aid (Sachikonye, 2011).

Moreover, the state does not want to face or treat with the impunity issue, because it is one of the main actors involved in violent events. In fact, despite improvements in state institutions, for example in legal system, the ruling party does not allow them to perform their duties properly, above all during election times. Therefore, for instance, mass rape campaigns, which are linked with political issues, are never taken into account, investigated by the police or judged by the courts. Actually is not rare that victims report that police rejects the denounces because they said that they do not treat political issues. Besides, some workers of these institutions, police agents mainly, are sometimes part of the groups that perpetrate the crimes or violence actions against opposition members or supporters.

On the other hand, state creates and finances institutions, veterans' groups and young militias, to perform violent campaigns and spread its ideas about the importance of the Liberation War, they as national heroes and political opponents as who want to sell the country to capitalism and Western past colonisers (Sachikonye, 2011). The payment to these groups is important considering the scarcity of opportunities, above all for youths due to the high unemployment rate, the economic crisis, and so on. Hence, for part of them, to be in these militias is not because a political reason but to assure a livelihood. It can be said, "In the architecture of the Zimbabwe state, some institutions are strategically positioned to facilitate violence while others are ill-equipped to deal with it" (Sachikonye, 2011, p. 41).

The prevalence of violence in Zimbabwe can be associated with the compulsion to fight to get power and resources, and to keep them once gotten. "A major driver of violence in Zimbabwe especially since 2000 has been a propensity for acquisitiveness particularly amongst the political and business elites" (Sachikonye, 2011, p. 37). The coercive accumulation is the method used by Mugabe's regime to keep the political hegemony and self-enrichment. Anyone who dares to complain is a target of violence in all its ways, even state institutions such as legal system through the neutralisation or undermining of its processes. For instance, elites use security forces to force land

appropriations, use the legal system or blackmail it to get whatever they want such as lands, don't be charge for any crime such as rape cases, etc. (Sachikonye, 2011).

Lastly, violence has diverse effects on the victims and general population, and these consequences are encouraged by the impunity enjoys by the perpetrators; all contribute to spread learned helplessness<sup>4</sup>. Therefore, Zimbabwe citizens despite the knowledge of their rights and their defence of them by part of the population, in general they have learnt to live with violence and its consequences.

### **3.2.2. Zimbabwean Legal Framework**

Zimbabwe, as other ex-British colonies, has a dual judicial system composed by general law (statutory law) and customary law (traditional law). The customary law is generally unwritten and it refers to the customs and practices of the tribes. With time, legal and social advances, the customs change and should be certain, reasonable and must have the recognition of formal law. Therefore, depending on the case or place of crime, it would be applied one or another; and the difference can be important due to the legal consequences can be very diverse (Madhuku, 2010). Despite its relevance in Zimbabwe legal system, customary law is limited and it cannot judge offences including in criminal law, like rape.

The relation between statutory and customary law related to women is complicated (Madhuku, 2010). The reasons for that are diverse, but normally because one is against the other in some issues, for example property rights or marriages. However, the African Customary Law is still recognized in the new Constitution, as well as the role of traditional leaders who are the responsible to solve disputes in their communities according to customary law. Specifically, customary courts are recognised as judicial authorities (art. 162) and traditional leaders as responsible to apply these laws (art. 280); however, customary law is not fully independent and can be managed by other superior courts (art. 176).

Regarding customary law and women; according to Matsvayi article (2012), the main users of Chief's Courts (customary law) are women, despite the efforts from the government to stop these kinds of courts, or substitute the chiefs by qualified personnel. However, it is not because women face fewer difficulties. Women have suffered troubles at formal justice system because they are not able to overcome the system's challenges such as complexity, expense, inaccessibility and

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<sup>4</sup> Term that was minted by Martin E.P. Seligman. It can be explained as 'passive state/behaviour learned'; in other words, if most of your life experience is that do not mind what you do because you are going to defeat, suffer abuses, loss of control, and so on; you learn that there is no escape, and if an escape is offered, you will not act.

communication problems (communication may be carried out in a foreign language); and they also face difficulties in customary system because it uses 'laws' that oppress and discriminate them. Hence, women access to justice confronts diverse ways of discrimination; class, education, gender or economic status to mention some.

It is important to understand that customary law is dynamic and changes with times, it is not a judicial system stuck in the past. However, at the same time is highly influenced by traditions, thus, patriarchy and gender inequality are always present. Additionally, traditional leaders can be more or less proactive to gender issues and sexual violence, so sentences can benefit women or in many cases, they work in collaboration or have an intermediate role with police and NGOs to cover women necessities that the customary law cannot cover. That means that Chiefs can also be aware of the integration of human rights in the local law. The reality is that Chief's Courts have women's support because they value women ability to encourage social and behavioural changes (Matsvayi, 2012). Most cases treated at these Courts are family law cases, witchcraft, land issues, domestic violence cases and family disputes. Although, women usually choose traditional law, modern law or both depending which one assures that their problems will be solved. Women use Chiefs' Court, which main targets are reconciliation and restoration, also as a place of sanction of behaviours, for instance aggressive acts by husbands.

Regarding the statutory law, in the past the criminal procedure and evidence act (1939) set that any conviction should count with reliable witnesses without exception; hence, rape cases were difficult to evaluate and depended on the judge understanding of the situation; this rule was abolished in 2000, although its influence is still patent (Coltart, 2014). Besides, some rape cases could be judged by customary laws, which did not benefit women so often (Armstrong, 1989).

Nowadays, Zimbabwe has the article 65 of the Criminal Law Act and the new Constitution, which has several articles in relation with the prevention of violence and specifies the creation and competences of several independent commissions related with the subject of this paper, Zimbabwe Human Rights Commission (ZHRC), Zimbabwe Gender Commission (ZGC) and the National Peace and Reconciliation Commission (NPRC). However, sexual violence and mass rape cases against women remain an important problem and the offenders usually remain scot-free. The reasons of this lack of efficacy are diverse, such as women discrimination, complex access to legal system, the lack of training or mistreatment by the police, or other professionals related with these cases; the lack of sensitization for women rights; the social stigma and the possible retaliations.

In the Criminal Law Act of 2006, there are diverse articles related with sexual violence (articles 64, 68, 69, 70, 71, 72, 75, 76 and 80), but this paper is going to be focused on the article 65:

## “Rape

(1) If a male person knowingly has sexual intercourse or anal sexual intercourse with a female person and, at the time of the intercourse –

(a) the female person has not consented to it; and

(b) he knows that she has not consented to it or realises that there is a real risk or possibility that she may not have consented to it; he shall be guilty of rape and liable to imprisonment for life or any shorter period.

(2) For the purpose of determining the sentence to be imposed upon a person convicted of rape, a court shall have regard to the following factors, in addition to any other relevant factors and circumstances –

(a) the age of the person raped;

(b) the degree of force or violence used in the rape;

(c) the extent of physical and psychological injury inflicted upon the person raped;

(d) the number of persons who took part in the rape;

(e) the age of the person who committed the rape;

(f) whether or not any weapon was used in the commission of the rape;

(g) whether the person committing the rape was related to the person raped in any of the degrees mentioned in subsection (2) of section *seventy-five*;

(h) whether the person committing the rape was the parent or guardian of, or in a position of authority over, the person raped;

(i) whether the person committing the rape was infected with a sexually transmitted disease at the time of the rape.”

In relation to the new Constitution, this was the result of the elections of 2008 when after a scandal due to the behaviour of ZANU-PF the international community intervened. Mugabe agreed to share the power with the opposition parties (MDC-M and MDC-T) whom, as condition to accept the agreement, requested a new constitution.

The new Constitution assures for the first time the right of “freedom from all forms of violence from public or private sources” in the article 52(a), which can constitute a potential improvement for women’s rights (Coltart, 2014), also in relation with political motivated rapes (AIDS-Free World, 2009), along with the duties of the independent commissions:

Article 243 “Functions of Zimbabwe Human Rights Commission

(1) The Zimbabwe Human Rights Commission has the following functions—



- (a) to promote awareness of and respect for human rights and freedoms at all levels of society;
  - (b) to promote the protection, development and attainment of human rights and freedoms;
  - (c) to monitor, assess and ensure observance of human rights and freedoms;
  - (d) to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
  - (e) to protect the public against abuse of power and maladministration by State and public institutions and by officers of those institutions;
  - (f) to investigate the conduct of any authority or person, where it is alleged that any of the human rights and freedoms set out in the Declaration of Rights has been violated by that authority or person;
  - (g) to secure appropriate redress, including recommending the prosecution of offenders, where human rights or freedoms have been violated;
  - (h) to direct the Commissioner-General of Police to investigate cases of suspected criminal violations of human rights or freedoms and to report to the Commission on the results of any such investigation;
  - (i) to recommend to Parliament effective measures to promote human rights and freedoms;
  - (j) to conduct research into issues relating to human rights and freedoms and social justice; and
  - (k) to visit and inspect—
    - (i) prisons, places of detention, refugee camps and related facilities; and
    - (ii) places where mentally disordered or intellectually handicapped persons are detained; in order to ascertain the conditions under which persons are kept there, and to make recommendations regarding those conditions to the Minister responsible for administering the law relating to those places.
- (2) The Commissioner-General of Police must comply with any directive given to him or her by the Zimbabwe Human Rights Commission under subsection (1)(h)”.

#### Article 246 “Functions of Zimbabwe Gender Commission

The Zimbabwe Gender Commission has the following functions—

- (a) to monitor issues concerning gender equality to ensure gender equality as provided in this Constitution;
- (b) to investigate possible violations of rights relating to gender;
- (c) to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
- (d) to conduct research into issues relating to gender and social justice, and to recommend changes to laws and practices which lead to discrimination based on gender;

- (e) to advise public and private institutions on steps to be taken to ensure gender equality;
- (f) to recommend affirmative action programmes to achieve gender equality;
- (g) to recommend prosecution for criminal violations of rights relating to gender;
- (h) to secure appropriate redress where rights relating to gender have been violated; and
- (i) to do everything necessary to promote gender equality.”

And article 252 “Functions of National Peace and Reconciliation Commission

The National Peace and Reconciliation Commission has the following functions—

- (a) to ensure post-conflict justice, healing and reconciliation;
- (b) to develop and implement programmes to promote national healing, unity and cohesion in Zimbabwe and the peaceful resolution of disputes;
- (c) to bring about national reconciliation by encouraging people to tell the truth about the past and facilitating the making of amends and the provision of justice;
- (d) to develop procedures and institutions at a national level to facilitate dialogue among political parties, communities, organisations and other groups, in order to prevent conflicts and disputes arising in the future;
- (e) to develop programmes to ensure that persons subjected to persecution, torture and other forms of abuse receive rehabilitative treatment and support;
- (f) to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
- (g) to develop mechanisms for early detection of areas of potential conflicts and disputes, and to take appropriate preventive measures;
- (h) to do anything incidental to the prevention of conflict and the promotion of peace;
- (i) to conciliate and mediate disputes among communities, organisations, groups and individuals; and
- (j) to recommend legislation to ensure that assistance, including documentation, is rendered to persons affected by conflicts, pandemics or other circumstances.”

There are other articles related, such as articles 155 and 156 about electoral violence, among which massive rape is a normal tactic (AIDS-Free World, 2009), and the article 129 (i) about the case when a parliament member loses his/her seat because charges of physical violence. In the first case about electoral violence, it has been reported and investigated for some institutions, such as AIDS-Free World. However, despite the general opinion about officials’ impunity (figure 7) or discontent with democracy in the country (figure 9), in general population trusts Mugabe (figure 12). Thus, it will be

possible that Zimbabwe will keep its 'political stability' with everything that it entails (patronage, kleptocracy, harassments, and violence to maintain privileges and status, and so on). Regarding the article 129(i), as it has been mentioned, impunity is widespread in Zimbabwe, hence the chance that this article will be used is very doubtful.

In general, the independent commissions have been created but they have to face diverse obstacles. For instance, the NPRC, according to NTJWG report (2017), is not working properly because there is not a legislative framework to endorse its work and the current draft bill is weak; besides, the government has tried to alter the independence of this commission. Moreover, the actions of the Government regarding this Commission create suspicion about its real intentions. It seems that it tries to make-up the reality, to feign a good will to change which is not happening.

Hence, it can be said that the application of the constitution is slow due to legal changes are not totally implemented. According to Social Institutions & Gender Index, the new Constitution recognized the equality to men and women in politics, economy, payments, and laws, cultural and social spheres. It is also noted that traditions and/or cultural practices, which do not recognize this equality, would be banned. Besides, the state should ensure gender balance and promote women participation.

Finally, the situation of TJ in Zimbabwe is still in process (Buckley-Zistel & Stanley, 2012). This is generally agreed by diverse scholars and specialist on the subject, such as South African Truth and Reconciliation Commission, who firmly believes that Zimbabwe is in a process of transitional justice since the war, and they are not going to improve on that because the government is not totally involve on the task (Madadigwa, 2016 June 22). This idea is generalised and shared by many different actors and institutions that work in the country; and it was the reason for the creation of the National Transitional Justice Working Group (NTJWG) in 2014 by several non-state Zimbabwean TJ stakeholders to work to foster agreement among them. The objective is the creation of an inclusive space where TJ stakeholders can meet, talk, express concerns, and so on to develop a TJ process focus on victims and participation. The main goal has been the creation of the NPRC, which is focused on exert pressure to the government to foster TJ in the country. Stakeholders have also agreed six thematic areas to achieve a comprehensive and substantial TJ process: promotion of truth, justice and accountability; reparations; memorialization; gender; and institutional reform (Insight on Conflict, 2017). Besides, as Alec Muchadelhama, chairperson of NTJWG, pointed, peace can only be accomplished when Zimbabwe gets the mechanisms to deal with its past of human rights violations which go back to the pre-colonial era (Mushava, 2015 July 23).

However, Zimbabwe has not signed the ratification of the Rome Statute; therefore, the ICC cannot investigate crimes in Zimbabwe unless United Nations Security Council orders that (York, 2013 February 25). Institutional and legal reforms are needed to be more oriented to victims' reparation of human rights violations; due to this is one of the mechanisms to accomplish TJ and it is mandatory because the main perpetrator was and is the State. Tony Reeler, an independent TJ expert and leader of the NJWGTZ thematic group for institutional reform, affirmed that TJ in Zimbabwe will be possible when State institutions change and the government acts as should be and not with kleptocratic and patronage manners. Besides, to have solid laws about torture and restitution, and have real and fair security services (Mushava, 2015 July 24).

In summary, as it has been pointed by international observers, Zimbabwe is a 'ticking time bomb' due to the unresolved tensions from its past (Mushava, 2016 February 10). Moreover, the political situation since independence has caused the erosion of state institutions, among them the legal system. Nevertheless, the proper application of the article 65 and the new Constitution can be tools to restore the proper functioning and reliance on legal system and sexual violence and mass rape victims' recognition (Manyatera & Fombad, 2014).

### **3.2.3. Zimbabwean Women**

The impression and information that anyone can get staying in Zimbabwe is that women and everything related with them (roles, rights, duties, presence and so on) have not changed much since past times, because in Zimbabwe there is still the traditional idea that privileges go to old people, people who are marriage and men (Fidan & Bui, 2015). Although the Liberation War was in a sense a breakpoint for women, who were able to fight as men for a common target, the independence to gain rights and a better life.

The period from 1953 to 1963 was known as 'the golden age of participation'; when black and white women in Zimbabwe cooperated for development and progress. Before this period of cooperation, the repression against African population was the norm. In this decade, white women taught black women about homemaking skills to reproduce the European domestic relations and by doing so, they assured and reproduced white supremacy over nationalisms. These 'Homecraft groups' had social goals focused on the improvement of health care, sanitations and how to get a proper Christian home (monogamous marriage, proper way to dress and behave to women). Black women enrolled in these clubs to improve their standards of living and enrich themselves. Despite these main targets more related to personal interests, the clubs allowed white women to keep their privileges and black

women to think about themselves as active agents with capacity to choose by themselves about their lives. Thanks to this, black women started to have a sense of group, to know how to organise themselves to be active actors in the society, to know that they can be educated and/or have a profession, to be independent and even some of them created small business to assure household incomes. For them the clubs were a way to be part of a wider civil society. The clubs disappeared when the Liberation War started, although women maintained their meetings if they could. Furthermore, in rural areas black member women were protected or some of them enrolled voluntarily into liberation guerrillas thanks to the skills they learnt in the homecraft clubs (backing, resource management, organise groups and logistics, etc.) which were very appreciated (Martin Shaw, 2008).

The role of women during independence conflicts was very valuable but overlooked in peacetimes, besides the lack of 'gender-sensitive' demobilisation and reintegration into a new society. According to the text by Sadomba & Dzinesa (2004), the Liberation War confronted ZANLA and ZIPRA, the military groups of ZANU and ZAPU respectively, against the Rhodesian security forces. The roles of women were diverse, because they work in any task such as education, training, medical care, camps protection, and so on. However, women were not usually involved in direct combats, and this can be one of the reasons of their scarce representation in higher military ranks. Regarding the sexual life during the war, women combats were encouraged to not have babies, but they had them and not always self-will; actually many commanders reported cases in which they demand sexual favours from combats women under their rule. Because that the Osibisa Camp in Mozambique was created. "Osibisa Camp was a creation of ill-disciplined men. There was a rule that it was not allowed to have babies. There was a rule again not to kill babies. Osibisa Camp was created due to the acts of the so-called commanders. Commanders would have several girls. The situation at the camp was unbearable. There were no structures such as barracks. For example, beds were made of grass. There was no constant supply of food. There was no special food for children. Women combatants with babies went through hell at the camp" (Sadomba & Dzinesa, 2004, p.54). However, some relationships were consensual, because as Prudence Uriri mentioned "You know, when times were very hard, sometimes it was not really a forced relationship, but there was a condition which forced you, as an individual, to get into such a relationship because of the material benefit" (Sadomba & Dzinesa, 2004, p.54). Other testimony of a woman ex-fighter show how women use sex in a trade way to get some advantages for themselves, "Having a relationship with a chef meant you had access to food, clothes and other luxuries that were not available to many other girls at the camps. That these arrangements were generally strategic and transient is attested by the fact that some women

combatants who bore children during the war found it difficult to become reintegrated in peacetime, as will become clear” (Sadomba & Dzinesa, 2004, p.54-55).

The Liberation War ended with the Lancaster House Agreement, but it did not supply any legal framework for the integration of implicated parties and even less for women who remain almost unseen in the peace negotiations where male decisions were the key part. This women misrepresentation meant that they were not able to show their concerns, being recognised as victims of sexual violence or plan anything for their reintegration after the war. Besides, the new government was more focus on other issues such as rebuild the economy, the education system and so on. Hence, demobilization and reintegration projects were not a main concern, and they were not properly applied or developed. In the 80s started the ‘Operation Merger’, which was a program to reintegrate all the forces (ZANLA, ZIPRA and Rhodesian army) and women were taking into account because some of them chose to take a military career. Even though, they faced inequalities because the requirements were not realistic for them, the war credentials were helpful in some cases. On the other hand, despite the demobilisation and reintegration plan, with positive measures (further education for who had not finished primary or secondary education; technical training; guidance to ex-combatants seeking self-employment or forming cooperatives; and a monthly demobilisation salary), it was not properly performed due to the lack of professionals. In all this process, a defined ‘physical, mental and spiritual’ rehabilitation policy and any recognition of gender differences were totally out of place. Moreover, some women ex-combats who decided to return to their home villages or towns, faced other problems because their implication in ‘unwomanly’ roles. In a society like Zimbabwean where is noted the importance to be wife and mother; to be a women ex-combat was a problem because they had difficulties to find a husband. Although from the Liberation War Veteran’s Association, women war veterans had the same life than the rest of women in the country, with the same familiar and/or marital problems. Another issue was women ex-combats who return with children; in these cases, their families often rejected them and they did not have any assistance from the government, hence they had to survive in any way and in many cases, they became addicts to drugs or alcohol.

The public recognition of the implication of women in the war was not fair, neither. Close to the capital, Harare, is the Heroes Acre where 58 national heroes are buried, only three are women, and all of them wives of national rulers who fought in the Liberation war (Sadomba & Dzinesa, 2004). All that gender mistreating has caused many limitations for women in Zimbabwe to get participation in the post-independence social, political and economic arenas, besides to fail in the main goal to reintegrate ex-combats to achieve a productive life.

As Enloe (2000) points, war is a gendered enterprise; war needs women (nurses, carers, prostitutes, military wives, women to rape/sexual slaves, and women soldiers). Women in this context can change their role, but the importance resides on the fact that to have a role during the war gives them a sense of importance, to be contributing to the nation target, and not as women who are manipulated. This can be appreciated, above all, among women soldiers in Zimbabwe who fought because they wanted to be active actors in the independence accomplishment and gain rights as normal citizens, which was encouraged by independent forces (ZANU and ZAPU), and specifically by Mugabe (Sadomba & Dzinesa, 2012).

Focusing on sexual violence and mass rape campaigns in current times, the situation has not changed, and women are still targets no matter whether they are involved in opposition parties, critical groups, etc., or not. Even they can be 'punished' because their relatives' behaviours or political sympathies.

Therefore, gender relations in Zimbabwe are influenced by its history, culture and institutions, and despite some improvements after the Liberation War, discriminatory practices persist. Furthermore, the current fight to be recognised as a part of the society is performed by different women organisations, with support from international institutions in most cases. This struggle is not free from problems because, although the main target of mass rape campaigns are women from opposition parties or related with them, women CSOs or groups are also recipients.

### **3.3. Theories**

The theories chosen in this paper are three: What's the problem represented to be? by Bacchi, TJ Theory by De Grief and Actualised Democracy by Moghaddam.

The analysis is going to be performed through WPR theory due to is a critical tool to analyse the main aim, which is to know the weakness, strengths and possible improvements in the laws application in Zimbabwe, specifically through the analysis of sexual violence and mass rapes. The other two theories are useful to help and provide background to Bacchi's theory.

#### **3.3.1. 'What's the problem represented to be?' (WPR) by C. Bacchi**

This approach was developed to analyse policies, understanding that as solutions to problems. At the same time, WPR elaborates a post-structural point of view of politics as strategic relations and practices, and is an analytical tool that questions the role of governments as solvers of problems. On their behalf, WPR focuses on how government practices are a source of problems. Therefore, it is

possible to affirm that the key concept in WPR is ‘problematization’. The majoritarian idea is that states are dedicated to problem-solving, but WPR challenge this approach and raises other view, governments as problem-producers to shape the world. Thus, it is important to ask about this problematization in policies-making, how policies give us a specific understanding and representation of the problem, because it is going to influence the actions and solutions, besides to bear in mind that through these created problems the governs shape the world and the societies (Bacchi and Goodwin, 2016).

Bacchi defines *problem representation* as the form to become a phenomenon in a specific context into a problem. The idea can be applied in many diverse contexts. The concept *policy* is understood as actions of state institutions and as activities of security institutions and professionals.

It should be noted that one WPR limitation is that it is not a linguistic analysis; hence, it does not take into account the modes of language such as rhetoric.

The specific **questions** to perform in **WPR analysis** are:

- **Question 1:** What’s the problem (e.g., of “gender inequality”, “drug use/abuse”, “economic development”, “global warming”, “childhood obesity”, “irregular migration”, etc.) represented to be in a specific policy or policies?

The target is identified the beginning of the analysis, for instance a specific policy or law.

- **Question 2:** What deep-seated presuppositions or assumptions underlie this representation of the “problem” (problem representation)?

It has diverse aims: (a) to consider how the problem was possible by identifying the meanings within the policy, program or technical instrument; (b) to identify how the problem is constructed; and (c) to identify and think about possible patterns in problematizations that can be proper from a specific government or policy.

- **Question 3:** How has this representation of the “problem” come about?

The target is to examine the development of the specific problem.

- **Question 4:** What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualized differently?

The target is to support the performing of a critical thinking to cover hide areas of the problem, for instance attention to silences, what is lose, and so on. At the same time, it can provide new initiatives. Here it is important to consider the answers of questions 2 and 3.

- **Question 5:** What effects (discursive, subjectification, lived) are produced by this representation of the “problem”?



The aim is to consider the different effects/political implications (discursive effects which show how terms of reference delimit thoughts and verbalizations; subjectivization effects which focus on the way how subjects are implicated to problems; and lived effects which through analysis ensure how the other two effects are translate into people's lives) of problem representations. Therefore, the aim is a reflection about the implications of problematizations to foster interventions to reduce or avoid negative consequences for people.

- **Question 6:** How and where has this representation of the “problem” been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced? The goal is to accentuate the existence and possibility of challenge and destabilized the ‘truths’. Moreover, this question offers the chance to think about forms of resistance. Questions 2 and 3 should be considered to answer this question 6.

(Bacchi & Goodwill, 2016, p. 20-24)

Regarding the key concepts, Bacchi and Goodwill in their book *Poststructural Policy Analysis* (2016) define:

- Power is generally understood as ‘power over’; hence, some synonyms could be domination, possession. WPR approach, instead, understands power as a part of the reality, in a more practical and applied way. Power relations are diverse and make things real; hence, policies entail relations of power. In this regard, policies are gendered due to they set what can be done by women and men.
- Practices are the specific way to do ‘subjects’, where ‘gendering’ can be considered as a process.
- Discourses are knowledge socially produce, the focus is on the content of what is saying by people.
- Problematization is the identification of a specific event or person or group of people as a problem.
- Governmentality is defined as the different ways to think about governing. To study it, rationalities and technologies are taking into account, into political institutions, agencies and groups which contributes to societal administration. Rationalities would be understood as ideas to justify the way of rule; meanwhile technologies are mechanism through governing takes place.
- Genealogy and subjugated knowledges. The first one related social criticism with history. Genealogy is based on the idea that everything has a history.

- Subjectivization means the production of subjects, which includes characteristics, behaviours and dispositions that subjects are foster to adopt and the development in relation with these behaviours.

Bacchi, in one of her papers, points the necessity to ask how a new policy or a policy under analysis could be gendering and how it can foster behaviours and characteristics conventional and socially assigned to men and women; in other words, how policies compose who we are (Bacchi, 2017). Gendering is a kind of new concept which is used to fulfil three aims: indicate that an institution needs to be analysed under gender perspectives, describe how an entity becomes ‘gendered’, and describe the categories of men and women and the unequal relationship (Bacchi, 2017). Moreover, gendering is a process, as West and Zimmerman said, “gender is something we ‘do’ rather than something we ‘have’” (Bacchi, 2017, p.24).

This theory and its definitions are based on Foucault, and the idea of gendering policies is based on the Foucauldian conceptualization of policies as discourses. Hence, discourses are understood as knowledge through which we are governed; knowledge is what is accepted as ‘truth’ and set what can be said, been and done (Bacchi, 2017).

### **3.3.2. Transitional Justice by P. de Greiff**

According to de Greiff (2012), TJ has sense because we live in an *imperfect world*. There are countries with stable legal systems but there are also countries characterised by human right violations, where TJ would be applied. Besides, TJ should have a holistic approach to avoid the appreciation of TJ measures as vague, without sense, performed wrongly, isolated one from another, and so on; which can cause that the possible benefits are not seeing or achieving. For instance, prosecutorial initiatives are not fully useful due to the disconnection between international trials and other justice initiatives; reparation without truth knowledge can be understand by victims as a way ‘to buy’ them; criminal prosecutions with no reparation do not bring any benefit to victims, and so on. In this respect, the author has identified four TJ measures which are related among them and with justice, “Transitional justice refers to a set of measures that can be implemented to redress the legacies of massive human rights abuses, where “readdressing the legacies” means, primarily, giving force to human rights norms that were systematically violated. A non-exhaustive list of these measures includes criminal prosecutions, truth-telling, reparations, and institutional reform. Far from being elements of a random list, these measures are a part of transitional justice in virtue of sharing two mediate goals (providing recognition to victims and fostering civic trust) and two final goals

(contributing to reconciliation and to democratization)” (de Greiff, 2012, p.40). Going deeply in the four aims:

- *Recognition* of the victims/survivors. It is one of the main requests, to be considered and recognised as recipients of pain, violence, harassment by others intentionally. This is linked to the right to be considered as equal right citizens because sometimes minorities or marginal groups are who more suffer mistreat.

Truth commissions look for truth-telling which is a way to provide recognition, more in a moral way, meanwhile reparation is the material one. All of these should be accompanied by institutional reform to avoid future similar events.

- *Civic trust*. Trust “is an alternative to vigilance and reliance on the threat of sanctions, [and] trustworthiness...an alternative to constant watching to see what one can and cannot get away with, to recurrent recalculation of costs and benefits” (de Greiff, 2012, p.44), a part, trust implicates a commitment to share norms and values, and civic trust implies reliance on institutions. TJ, through prosecution helps to foster civic trust showing that anyone is over the rule of law; through truth-telling faces the past violent events; and through reparation punishes and reinforces the institutions’ actions.

Civic trust is closely related with recognition because the last one provides new attitudes to institutions, therefore civic trust improves. Both are conditions to achieve justice, besides trust is also a consequence of justice.

- *Reconciliation*. After conflicts, usually remains a sensation or a real division in a society, which damage the reliability among citizens and between them and the institutions. The general idea about a modern state is that the state and institutions should be who assure security of its population. Hence, in cases of authority abuses, torture, etc. the feelings and opinions of population are affected by the situation that drives them to bitterness and distrust. This complicates TJ, which works to restore population confidence on state and its institutions.

- *Democracy*. This TJ’s aim is related with fostering the rule of law, which can evolve in diverse ways: criminal trials, truth-telling actions, reparation programs, and institutional reforms. However, these measures have some limitations and as Joseph Raz said “the rule of law guarantee only the impartial and regular administration of rules, whatever these are, they are compatible with injustice” (de Greiff, 2012, p.54). TJ measures look for a contribution to world’s justice which one key part is political participation. Getting that requires responsibilities to dictator, protection of citizens’ rights, and a new regime that respects the laws and rights. Even though democracy may not be the panacea

to abuses and violence; “democracy is both a condition and a consequence of legally institutionalized efforts to establish justice” (de Greiff, 2012, p.57).

In general, some level of democracy and respect to rights are needed to apply successfully these measures. Recognition, which usually is linked with reparation projects for victims and civic trust, requires the institutionalisation of political participation spaces and tools (de Greiff, 2012, p. 58).

Other scholars, such as Boraine who considers as de Greiff that TJ needs a holistic approach, bases it on 5 pillars: accountability, truth recovery, reconciliation, institutional reform, and reparation (Chiweshe, 2016). Here it is not considering recognition per se, but these five pillars are related with it.

However, for other scholars, TJ interconnects two ideas of justice, redistribution and recognition. The first one, *redistribution*, is the re-organization of resources that can be material and/or symbolic. The second one, *recognition*, includes recognition of culpabilities and injuries; identification and categorization of victims, perpetrators, bystanders, etc.; and of the character of the acts of past violence and injustice. Recognition extends beyond the categorization of past events to include the recognition and statement of current rights. (Buckley-Zistel & Stanley, 2012).

Another relevant point of view to consider is David in his article *What we know About Transitional Justice* (2017), who point that TJ has a dual nature:

- Formal vs Informal, where laws are the formal part, but TJ can be also achieved by informal mechanisms such as apologies or shake hands between parties implicated in the conflict.
- Tangible vs. Intangible. The consequences of the formal/informal measures are not always physical but they have an important symbolic meaning. For instance, in a truth commission only one person or maybe a group is judge (tangible), but it is expected that trials bring peace and reconciliation to the community, region or country (intangible).

TJ measures are more accurate to face the consequences of the conflicts and depend on the context and implementation of these diverse mechanisms. For instance, trials only reach a few persons meanwhile truth commission are broader. The truth commission/truth-sharing may produce positive and negative effects, anyhow trauma narratives can help psychologically the victims or witnesses, better if it is linked with other measures to be really useful. Besides, victims might not be silenced, because that would mean a secondary victimization (David, 2017).

There are other mechanisms, such as criminal trials that can be conducted at international, national and local levels; or victims’ reparation. Regarding the latter, post-conflict justice is seen by victims

as a hope and a way to satisfy their needs. Unfortunately, the satisfaction of these needs, that are very different for each individual, has often become an instrument to advance a political agenda in transitional settings rather than an end in itself. Besides, this satisfaction is also the reason to create truth commission, trials, etc.

The most valuable ways of reparation are financial compensation and the return to the past profession/empowerment. However, for those who experienced severe human rights violations the reparations are not enough due to for them is difficult to overcome the physical and psychological consequences of the suffered violence, tortures, and so on. In reparation it is important to consider social context to evaluate the consequences, and in this task, verbalization of the traumatic event helps dealing with it, at least at the beginning (David, 2017).

Other mechanism is reconciliation, such as apologies or confessions, which is based on changing social roles and identities, mainly the offenders who has to separate their future actions from their past. The way to do that is through a meeting between the victim and the aggressor, where the last one shows remorse and apologies and the victim/survivor forgives. It should be pointed that forgiveness is provided by individual, social, and political empowerment and apologies has also positive effects on the perception of justice. An apology can be priceless in post-conflict societies where the lack of resources and institution constraints hinder to deal with the past (David, 2017).

All measures point the importance of TJ in every stage of transition and because it fosters a sense of justice, although not all of them are equally valued. For example, financial compensation is not well considered and it is related with amnesty; but on the other side international criminal trials, dismissals, punishment, financial compensation, confession, and apologies are positively prized and they are considered vital in divided societies dealing with their pasts. Hence, it can be said that TJ is very complicated due to it is performed in sensitive times and with ethical and methodological constraints, so its application and study usually faces different limitations (David, 2017).

Justice is a term that in post-conflict societies has also social implications. Specifically for victims, the term includes individual, social, and political aspects of justice (David, 2017). Moreover, it should be considered that past experiences can affect the attitudes to TJ; for instance, some research has found that torture or exposure to trauma, affects demands for justice, attitudes to social reconciliation and revenge. Besides, the traumatic past experiences can be transmitted from generation to generation, so it would be needed a longitudinal study to check that properly (David, 2017).

This paper is going to be focused on *recognition* due to it is considered the main and the initial step to accomplish the other areas (civic trust, reconciliation, democracy, restoration and so on). Actually, there are diverse TJ mechanisms, for instance retributive and reconciliation methods that are important after conflicts. However, all these mechanisms/methods need more than the truth from the victims; they need the recognition of the actions by the perpetrators as well (David, 2017 and de Greiff, 2012). If there is not recognition of the existence of victims, perpetrators and reprehensible actions, none other measures can be made.

### **3.3.3. Actualised Democracy Theory by F.M. Moghaddam**

Usually after revolutions to abolish a dictatorship come another authoritarian system, for instance French Revolution, Russian Revolution, Chinese communist Revolution, Iran Revolution, Arab Spring and so on. There are a few exceptions such as US or South Africa, which can be attributed to their leaders at those times, George Washington and Nelson Mandela who decided not to keep the power despite the massive support. It can be said that the power corrupts the majority of revolutionists, but not everyone. In spite of their improvements, neither Washington nor Mandela reached an ‘actualised democracy’ understanding it as when there is a full, informed and equal participation in political, economic and cultural issues, independently of finances or economic aspects. However, democracies never achieve their full potential, even currently; democracies commit ‘suicide’. For instance, US does not allow that everyone can be a presidential candidate, only those who have enough economic resources, therefore the ruling positions in the country are reserved to the elites. But the idea of the ‘American dream’ that anyone can get what he/she desires, has a high influence in the general society, hence the masses continue voting to that elites who undermine their rights and interests.

Actualised democracy needs three types of changes: macro, meso and micro. Revolutions normally reach macro level changes, even within short time; however and despite the use of violence, they fail to achieve meso and micro levels. In other words, revolutions only get political and economic changes, but not changes in social relations and cognitions (meso and micro levels).

Nowadays, none country is a pure democracy or a pure dictatorship. If the movements between these two political systems are seen as a continuous, it is possible to appreciate three kinds of change:

- first order changes, which do not alter formal or informal law that cover the unequal treatment of the members of the group/society. For instance, in slavery era in US there were several changes in the society (fashion, economy, religion, etc.) but none of them changed either formal law or the informal norms about slavery.

- second order changes imply changes in formal law to illegalise unequal treatments of the members of the society, however the informal norms still allow that unequal treatments. For example, diverse forms of racism or other forms of discrimination are present in any society despite laws against them.
- third order changes are the transformation of both, the formal and informal laws, it is a system change.

In revolutions can be appreciated an easy first order change, sometimes the second (macro level), but never the third one (meso and micro levels). In other words, as it has been mentioned before, revolutions get superficial changes. Besides, constitutions after revolutions, at least on paper, are seen as modern and progressive; however, the informal system does not change so the constitutions are rarely applied in a good manner. According to Pareto's elites' theory, the labels that political trends give themselves are not important; the reality is that the elites (part of the informal system) are who use the diverse ideologies to maintain their privileges and power.

Revolutions can switch governments, laws and economic systems (macro) in a blink of an eye; however other kind of changes (micro) which involve social and psychological areas (values, attitudes, motivations, necessities or relationship patterns), take place in a slow way. Just after revolution, this micro level becomes very important because usually in that time there is a period of opportunities, hopes and happiness, a feeling that everything is going to improve for all citizens. This is the 'opportunity bubble', when a full change from one system to another is possible; however, to get that (third level) there are several requisites that should be met:

- (1) There must be a leader who supports the turn to a democratic system. Regarding the personality characteristics, he or she should be someone who fosters the creation of dialogue, common spaces to discuss and compromise. It is also important that he/she has charisma and ability to mobilize the masses, although these kinds of leaders usually are less inclined to share power and get a democracy; actually, in traditional personality researches, they tend to be high on Machiavellianism, authoritarianism, need for power, low on tolerance and openness, and conscientiousness. The history shows that leaders after revolutions do whatever is needed to get and keep the power (tortures, arbitrary arrests, harassment, rape, murders, and so on).
- (2) There must be some political opportunity and consensus to change the institutions and adjust them to democracy. This is complicated because it needs the support of elites and other groups (militaries, clergy, etc.) which have enjoyed by far of diverse benefits, high status and influence, and they want to keep them. The opposition comes also from foreign powers, which obtain or will obtain benefits from the authoritarian system.

(3) The general population has to acquire specific social and psychological skills needed to become *democratic citizens*. This shift is required in both collective and individual level, but they are difficult to achieve due to cognitions/ideas and behaviours/actions change in a slow manner. It is possible to affirm that this point is a huge challenge to build new-democracies after dictatorships; because the ‘opportunity bubble’ last little time and it is when the society has to be ‘teaching’ about how to think and act in order to develop and support democracy.

Another concept related is ‘political plasticity’ or, how a change is plausible in politics in a specific period. One relevant example to move from dictatorship to democracy is leader-follower relations. In dictatorships, the power is only executed by the leader, whatever the dictator says is never disputed, it is like the law. Hence, whoever dares to complain will be punished (rape, imprisonment, or even death). When the dictator is ousted, the population can act in different ways, even they can allow him/her to escape and do not retaliate. However, for that, both leader and followers would need to develop a completely different behaviour they are not used to. On one side it would be needed a critical and open way for citizens to criticize the leader; and on the other side it would be needed that the leader accepts criticism. This requires ‘political plasticity’ that is not present after most major revolutions; thus, revolutions have generally involved return to old authoritarian style that is what is known.

Nevertheless, the keystone is to know what characteristics are needed in a society in order to accomplish democracy and be able to support and participate in it. There are ten psychological characteristics:

1. *Self-Doubt*: It is understood as citizens’ openness to diverse possibilities because they accept that perhaps their beliefs and actions are not the optimal.
2. *Questioning Sacred Beliefs*: Democratic citizens question the social/sacred beliefs, which are extremely difficult to do due to it is a challenge to norms and beliefs seen as natural, but necessary because it opens the path for societal improvement.
3. *Revising Opinions in Light of Evidence*: Democratic citizens develop a critical view, high tolerance for ambiguity and openness to change. They look for information to contrast their beliefs or previous information; hence, they are capable to change their opinions, guided by new information as it arises. This is important because means that their opinions are less likely to be influenced by others or dogmas.
4. *Seeking to Understand Those Who Are Different from Us*: Ethnocentrism is a useful behaviour in dictatorships because they look for the creation of the difference to justify tensions and



aggressions. Therefore, it is no way possible in a democracy, which requires inclusive and comprehensive behaviours.

5. *Learning From Those Who Are Different*: It is more the motivation to learn from those who are different. This characteristic is difficult to acquire because the human tendency is to look for peers.
6. *Seeking Information and Opinions from Different Sources*: It is a keystone in the education to develop democratic citizens. This is not difficult when it is part of the school curricula, although sometimes is against the traditions of the families (politics, religion, etc.). However, when it is carried out correctly, teaching the youths to be critical and search diverse sources of information will also influence families and become them more open-minded.
7. *Openness to New Experiences*: Democratic citizens tolerate diversity and look for it actively, look for new experiences and knowledge out of their groups, not only theoretically but also physically (travel, personal interactions, etc.).
8. *Creating New Experiences for Others*: It implies allow people from out of the group enter in as any other trustful member, which is very difficult but possible if the commonalities prevail over the differences.
9. *Principles of Right and Wrong*: They are the base for democratic citizenship, as freedom and just treatment. It is important to consider them because they guarantee the population adherence to democracy and its principles, which are necessary to have the confidence to be open to new experiences, and acquire all the other characteristics pointed above.
10. *Actively Seeking Experiences of Higher Value*: Democratic citizens, based on basic principles of right and wrong, search for experiences that contribute them, experiences of higher value.

Hence, the lack of political plasticity makes difficult to accomplish third-order changes due to the influence of psychological obstacles (ideas and cognitions) and/or history. Actually with revolutions change who is at the top and who is at the bottom but not the relationship between them. As Pareto's theory said, the elites always rule, but under diverse ideologies to manage the power over the non-elite. Other elite scholars argue that when social mobility decline, so talented people are not able to change their social status, the elite use the masses to overthrow the ruler. However, when the revolution succeeds, the same elite handle the situation to fill the vacancy left by the past rulers/dictator. Therefore, it is not only needed citizens' changes but also elite changes to accomplish democratic change, because as it is said 'power corrupts'. In fact, it is easy to appreciate the connections between political power, corruption and hypocrisy worldwide.

Thus, the corruption by power is one of the psychological barriers that democratisation found. To prevent it, there are some conditions that a society should meet; such as measures to control leaders take care of population wishes and they can be removed by popular will, rule of law, freedom of speech, minority rights, independent legal system, universal suffrage, measures for equality under the law and meritocracy. The meritocracy is a relevant aspect due to in ‘actualised democracies’ individuals are selected for positions based on their personal merits, which is not the reality in the current democracies around the world, besides there are other factors involved. However, the general belief that we live in meritocratic societies assure the stability of political systems, above all in capitalist countries.

In dictatorships, the main mechanism of control is violence exerted on the population who knows that they can be tortured or even kill if they dare to complain. The violence is more powerful than the ideology to assure the subordination of the masses. Citizens who live in a dictatorship are aware of their lack of rights and the corrupt and despotic nature of their states; but the ideology and other mechanisms are used to force citizens’ conformity, obedience and subordination. However, to know the ideology does not mean to believe on it. In fact, ideology is used by the state to link the elites and to have their support to exert any kind of violence to control the masses and silence the opposition voices. Dictators know that it is necessary a cohesive elite to avoid the collapse of the regime, normally based on patronage.

In capitalist democracies, the ideology does not shape mass behaviours, because population has rights, such as freedom of speech; so anyone with enough resources (elites usually) can compete for power. Hence, the ideal of meritocracy is not totally applicable because resources holding is more important. On the other hand, it is important to allow the talent to circulate to prevent the collapse of the societies, because the concentration of wealth in a few hands and the impasse of social mobility are risks for capitalist democracies.

Consequently, the XXI century is characterised by the existence of societies with more or less social mobility and openness. Besides, there is the globalization links with radicalisation and reinforcement of anti-democratic ideas. It would be necessary a major accomplish or approach to ‘actualised democracies’ that require more political plasticity, cognitive and behavioural changes. In other words, democratic citizens with specific psychological skills are more needed than government changes or new constitutions. Political plasticity is also limited if it is not supported by education and cultural actions.

Therefore, in practice this means that revolutions are going to achieve first and second order changes, but they are going to fail to accomplish real full changes because the third order changes are not normally gotten.

#### **4. DATA**

In relation with the research questions, there are some statistics, testimonies and data sources, which can be accurate to clarify the situation in Zimbabwe.

##### **4.1. Sexual Violence & Mass Rape**

As mentioned, sexual violence and mass rape are normal, even institutionalised as violence in Zimbabwe, and both poorly reported. Regarding sexual violence, it is calculated that in Zimbabwe one in three women aged 15-49 have suffered physical violence and one in four have experience sexual violence since the age of 15 (UNFPA). Data from DHS (2010) reported that 42% of Zimbabwean women had gone through sexual and/or physical violence in their lives; and 21.6% of women between 15 and 49 years had expressed that their first sexual experience was forced against their wish. The physical and psychological consequences for women victims, along with social limitations (education, labour market, forced marriages, and so on) and the perpetrators' impunity are contributing to waste skills and force of women, who are half of the population in the country and can contribute to foster its economic and social development.

Concerning mass rape is an old tool in political issues in Zimbabwe. It is possible to find testimonies from elder women who suffer it in colonial times and Liberation War (AIDS-Free World, 2009; Benson & Chadya, 2005; Pankhurst, 2003 and Ranger, 2005). Or some more current examples such as "Two MDC youths were abducted and gang-raped at ZANU-PF bases at Mbizo in Kwekwe; A Bulawayo woman was gang-raped for voting MDC by National Youth Service youth in uniform; A woman was gang-raped by MDC youth in Graniteside, Harare; Eight farm settlers at Kimcote farm in Mash West were axed and four of them raped. Some had their eyes plucked out and sockets stuffed with mealie meal. Victims had been warned that they would be dealt as 'mushrooms'" (Sachikonye, 2011, p.78). However, the lack of official data or reported cases is the normality, because, although the laws are currently better for rape victims, the weight of culture and tradition is very heavy.

Despite that lack of information, it is possible to find some, such as the report of AIDS-Free World (2009) which provides the most direct and accurate data and testimonies about political motivated mass rape cases during the elections of 2008.

In spite of the large number of known cases perpetrated during the elections of 2008, the report only shows the data about 70 women victims' testimonies, as it is displayed at the figure 1. It also shows that the number of perpetrators were 241, three times more that the number of victims; and the total acts of rape 380, which is not very accurate because after a certain point, victims usually felt unconscious.

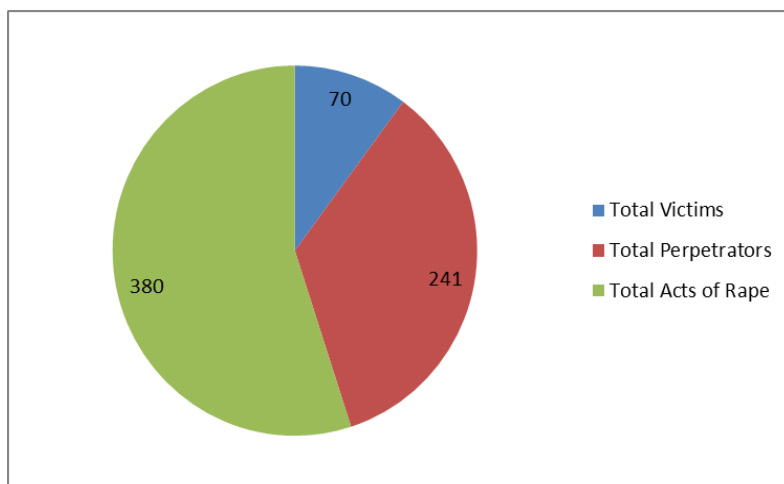


Figure 1. Scale of the rapes reported. Retrieved from AIDS-Free World Report (2009, p.11)

Some mass rape victims' testimonies showed in AIDS-Free World report:

*"I had been at the base for about two days when a group of three men instructed me to enter a room. The room was large, with many other women MDC members and ZANU-PF men inside. Then they said that we were going to sleep together. They forced me to lie on the ground and stripped off all of my clothes . . . All three of them were rough when they raped me. Around the room there were other men raping other girls. All the men in that room were either raping or waiting to rape women. They said they wanted to show MDC supporters that we had no power against them" (p.21).*

*"The ringleaders then directed the ZANU-PF to rape whichever woman they had been assigned to while her husband laid face down underneath her serving as a "pillow." The ringleaders instructed the women to take off all of their clothes. The six men assigned to me forced me to lie down where we stood. I did everything they said because I was very scared. I lay against my husband's back and all six of the men who had been assigned to me took off their pants. One man pushed his penis into my vagina, another put his penis in my mouth, another in my ear, and the rest on other parts of my body.*

*I began to cry in pain. As they raped me, they said I must join the ZANU-PF and defect from the MDC party. As this was happening, I could see and hear other women being raped around me simultaneously” (p.21).*

*“The other six men were just standing in the same room. They said, “You and your husband are used to singing songs and having MDC meetings. We are ZANU and we don’t want to see you MDC people.” The men made me “dance” for them in bed and move my body while they were raping me. I had to do it because they said, “If you don’t do it, we are going to kill you.” They were all there as each one was raping me—I could hear them. I had the cloth on my face the whole time. All seven of them raped me. They said, “If you report this, we will come back and kill you.” After they left, I thought that I was dying” (p.22).*

*“When the tenth man finished raping me they said they were going to rape my daughter. I cried out but I could not even stand up at this time. After they finished with me, they raped my daughter when I was there and I couldn’t do anything to stop them. My daughter was five years old. They instructed [my son] to take off his little sister’s clothes. When he refused they beat him and he eventually had to take off her clothes. During the rape my daughter was crying and trying to resist but they kept pushing her down. I was confused and in shock and I had no strength to say or do anything or even move” (p.22).*

*“In Masvingo, another woman was forced to witness the rape of her eleven-year-old child: “[My] daughter was just standing there as the men raped me. When they finished with me, they took my daughter and four of the men raped her.” Two other women found out later that ZANU-PF men had raped their daughters separately while they were trying to defend themselves” (p.22).*

Or testimonies about sexual slavery, also related with political issues:

*“There was a man who looked like he was in charge of the base. I don’t know what his name was, but the others called him “chairman.” I was told he was my “husband”—I was supposed to cook for him and sleep with him whenever he wanted. The other girls at the base had been given “husbands” too . . . I was hopeless, because I knew there was nothing I could do... The chairman raped me every evening before he went to bed and also several times during the middle of the night . . . As the chairman’s “wife,” I had to prepare his sadza [maize meal], kneel in front of him and give it to him. I also had to warm his water for bathing” (p.23)*

*“When [the men] returned, [one] announced that all MDC women whose husbands had failed to provide cattle to show their adoption of the ZANU-PF party would be assigned six new ZANU-PF ‘husbands.’ Following [his] instructions, the ringleaders divided up the men into groups and assigned each MDC woman at least six ZANU-PF men as husbands who were going to rape her. I was assigned six husbands” (p.23).*

*“When they finished raping me they took off my blindfold and told me to stand up and cook meals for them using my own food. I couldn’t even stand but they forced me to. They made me cook all the chickens they had taken from my house to feed them. After I cooked, they made me taste the food in case I was trying to poison them” (p.24).*

Mass rape victims suffer different consequences after the event, however AIDS-Free World report (2009) only shows some information about physical consequences (figure 2 and testimonies p.46), even though there are many psychological effects, and organisations such as Musasa Project<sup>5</sup> are working on it. Regarding physical consequences, in Zimbabwe, due to the high prevalence of HIV, to be raped can be a death penalty, not only due to the risk of contracting the disease and the difficulties or impossibility to access to a proper treatment (US, 2013), but also due to the social effects for victims (divorce, rejection, family division, unemployment, and so on).

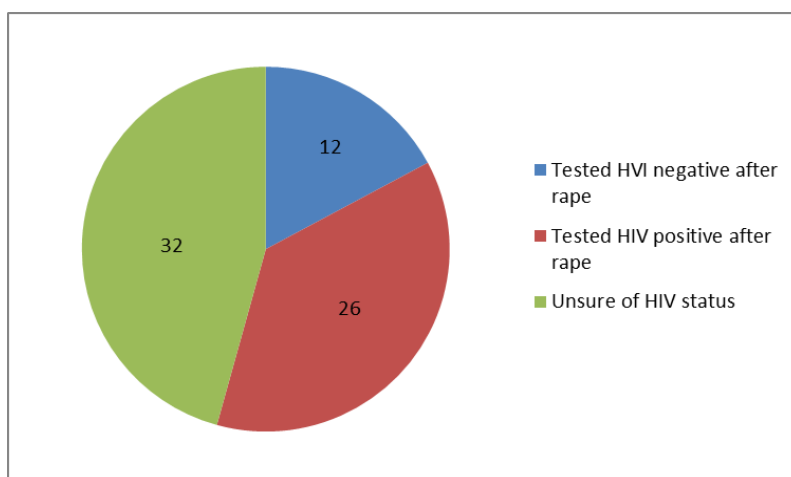


Figure 2. HIV status after rape event. Retrieved from AIDS-Free World Report (2009, p.28)

<sup>5</sup> Local NGO which provides relief and counselling to sexual violence victims in Zimbabwe.

Some testimonies about the physical consequences show the brutality and violence that Zimbabwean women have to face, such as:

*“One twenty-four-year-old woman was raped so violently that her uterus is permanently damaged and she will not be able to bear children; others had to have surgery to repair their vaginas. Another woman was anally raped so violently that her anus protruded outside her body. Ten women were already pregnant when they were raped and two of these women miscarried as a result of their attacks. Ten women reported that they became pregnant as a result of the rapes. Twenty-three women continue to suffer debilitating physical symptoms including back and body pain, severe headaches, wounds on their buttocks and the bottoms of their feet that will not heal, and difficulty walking. One was choked so severely by her rapist that she could not eat for a week afterwards; now she cannot speak above a whisper” (p.21).*

The main target of mass rape campaigns were and are women supporters of opposition parties or women relative of men political activists; as it is showed in the figure 3, which it is only a small sample in a bigger reality. Hence, rape and sexual abuse against women is retaliation for their or their relatives' participation in politics or political sympathies. For instance, 56% of a sample of NCA women members stated that they had been abused because a member of their family was involved in politics. Women can be victims by their own decisions or the decisions of others; this last case oriented to victimised women and put pressure on their families, because a rape woman is still more a shame, a problem and a damage to her family (Sachikonye, 2011). Moreover, in the cases when wives are raped, it is not odd that they (women) must face not only the consequences of the aggression (physical and psychological) but their husbands divorce them due to the rape. This decision is usually motivated by cultural and traditional ideas and actions which blame women of rape attacks (Kwenda, 2013 August 7).

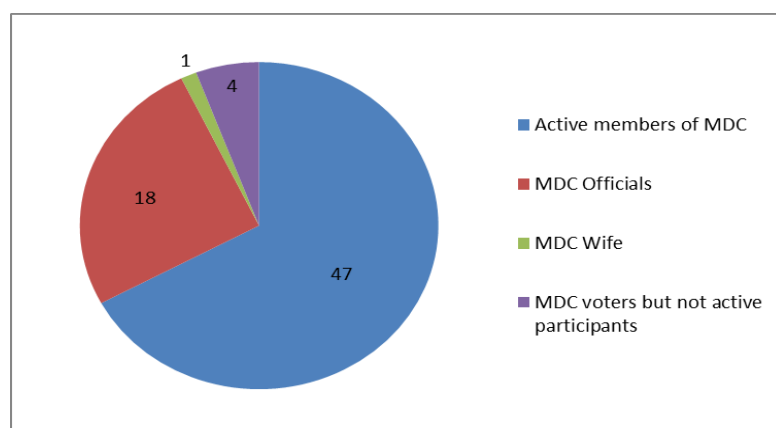


Figure 3. Victims' relation with MDC. Retrieved from AIDS-Free World Report (2009, p.18)

The perpetrators of mass rape campaigns were from ZANU-PF according to victims' testimonies. They identified them because perpetrators showed their affiliation or support to the ruling party in some way, as it showed in the figure 4.

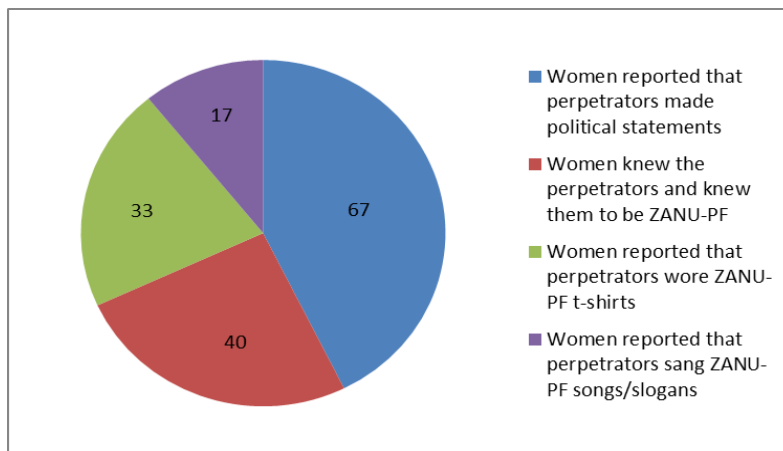


Figure 4. Evidence of ZANU-PF affiliation as noted by victims. Retrieved from *AIDS-Free World Report* (2009, p.19)

According to ACLED<sup>6</sup>, since 2013, the violence connected with elections or political reasons is mostly contained within parties. Therefore, it could be possible to affirm that more mass rape cases against women are happening, but there is not data about it, as it is mentioned in the report of US (2013). Even though, 2013 elections were more peaceful in comparison with 2008 ones (BBC, 2013 July 31), but there were also some violence cases, above all in rural areas (Smith, 2013 July 31).

Another report (RAU, 2010) about the 2008 elections shows that women in Zimbabwe believe that they should be more implicated and represented in politic issues, however they reported insecurity and violent events during elections. Actually, 52% declared had been victims of violence and 14% affirmed had been physically mutilated. In particular, the number of rape cases was significant, as it is displayed in figure 5.

<sup>6</sup> Armed Conflict Location & Event Data Project. Organisation dedicated to collect data about political violence in Africa and Asia.



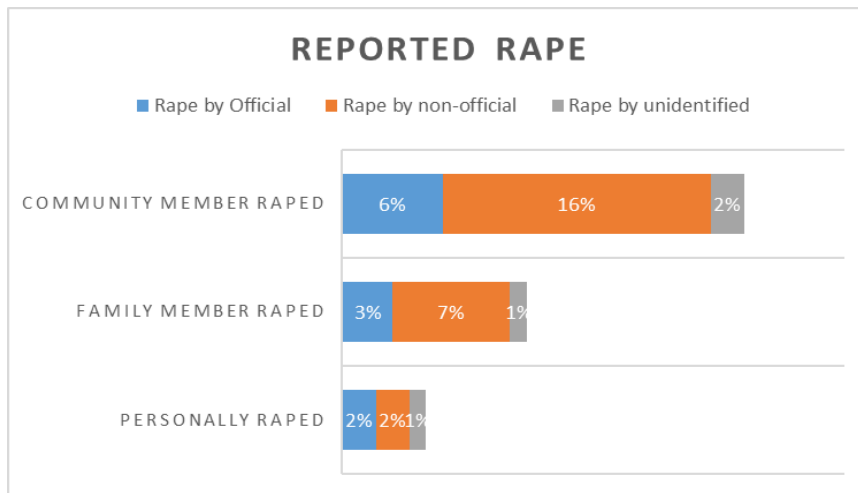


Figure 5. Reported rape, retrieved from RAU 2010.

The perpetrators usually were non-state agents (ZANU-PF supporters, war veteran or youth militias), but there were also violent actions such as torture, threats, assaults and arbitrary arrests committed by state agents.

In summary, a part of some related data like the one shown here, it is disturbing the little accurate and real knowledge about the prevalence of politically-related rape and sexual abuse against women. Besides, there is not systematic documentation. The reasons for that are the same that to do not report rape cases to authorities: fear, shame, stigmatisation, etc. (Sachikonye, 2011).

#### 4.2. Zimbabweans' institutions

Some general data to know more about Zimbabwe comes mainly from Afrobarometer<sup>7</sup>. In general, the data about government and legal system shows that population does not trust much on institutions or politicians, with the exception of the President Mugabe. Besides, public impression about perpetrators' impunity is generalised, which fits with other information reported by international and local organisations, or with NTJWG (2017), where it is showed that Zimbabwean Government does not make much effort to change key laws or agreements to improve the legality in the country. There is neither confidence among citizens. Everything can be a consequence of State violence, which has created social division because in this way it is easier to control the population and keep the power and privileges (Sachikonye, 2011).

<sup>7</sup> Created in 1999, it is a 'pan-African, non-partisan research network that conducts public attitude surveys on democracy, governance, economic conditions, and related issues in more than 35 countries in Africa' (<http://www.afrobarometer.org/about>).

In relation with recognition, one part is about institutional reforms. In Zimbabwe, despite the new Constitution and some legal changes, the general opinion is that not much has changed or improved. In fact, it is recognised a multiparty system, however the party in power with Mugabe at the frontline, is ruling the country since its independence in 1980, and it has been accused to keep the power with not democratic and legal practice in many occasions. Despite that, population has a clear idea about what is democracy but they do not agree with the way the country is working. Furthermore, that opinion about the lack of improvements is supported by the regular fights between political parties, which are transmitted to the population who mobilised at streets in protests or riots and ended in violent conflicts and/or police abuses.

The questions and results from Afrobarometer, which sample was formed by 2400 Zimbabweans of both sexes and from urban and rural areas are:

1. *"In your opinion, how often, in this country: Are people treated unequally under the law?"*

The majority of the population has a clear impression that there is discrimination in the country, although the kind of discrimination is not specified.

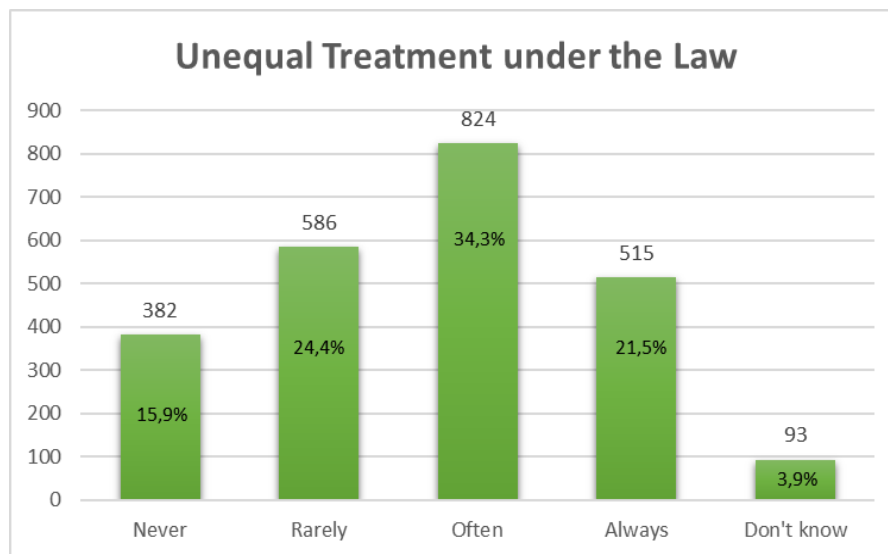


Figure 6. Opinion about law treatment, retrieved from <http://afrobarometer.org/online-data-analysis/analyse-online>

2. *"In your opinion, how often, in this country: Do officials who commit crimes go unpunished?"*

As before the majority of Zimbabweans believe that security forces are not totally reliable due to they enjoy a impunity often or always.

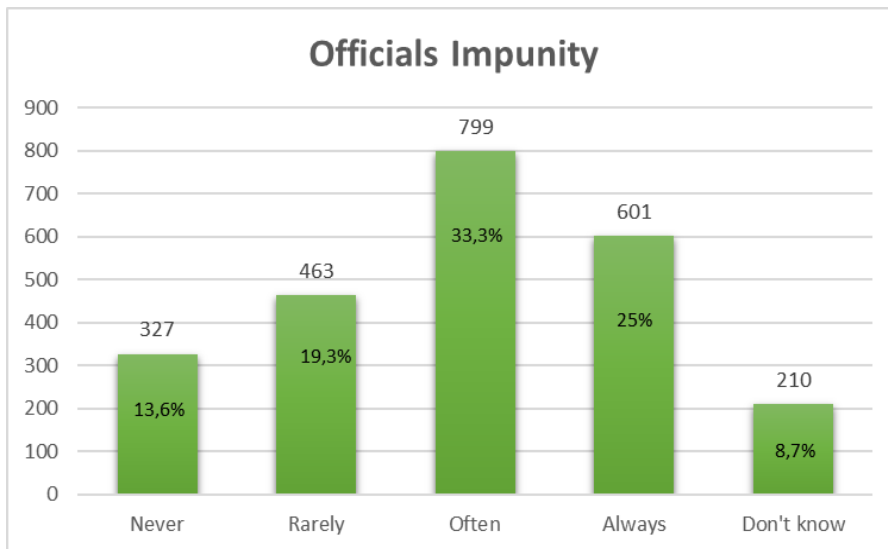


Figure 7. Opinion about officials impunity, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

3. "In your opinion, how often, in this country: Do ordinary people who break the law go unpunished?"

In consonance with the information showed, as officials usually go unpunished, the actual people are never or rarely free from charges or punishment.

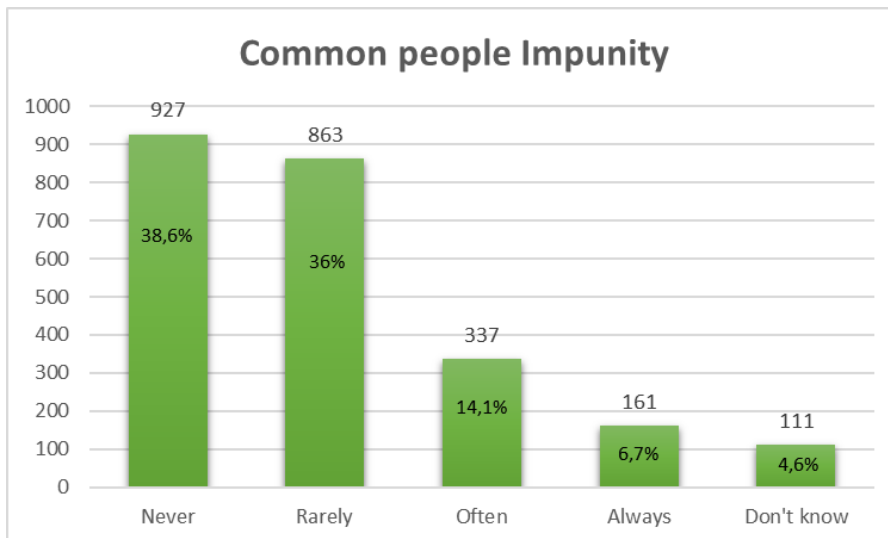


Figure 8. Opinion about common people impunity, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

4. *"Overall, how satisfied are you with the way democracy works in Zimbabwe? Are you:"*

Zimbabwe is in theory a 'democracy', but de facto is more a dictatorship due to the questionable electoral processes performed until nowadays, among other facts. This can be the reason why the majority of respondents are not satisfied with how democracy works in the country. One salient data is the number of respondents (almost 18%) who answered 'Don't know', which can be related with the environment in the country (abuses from security forces, lack of freedom of expression, etc.) Besides, in RAU report (2010), it is showed that even though Zimbabweans had a very accurate idea about what is democracy, they did not believe that it would be possible or is real in their country, and the expectations gone from bad to worst since 1999.

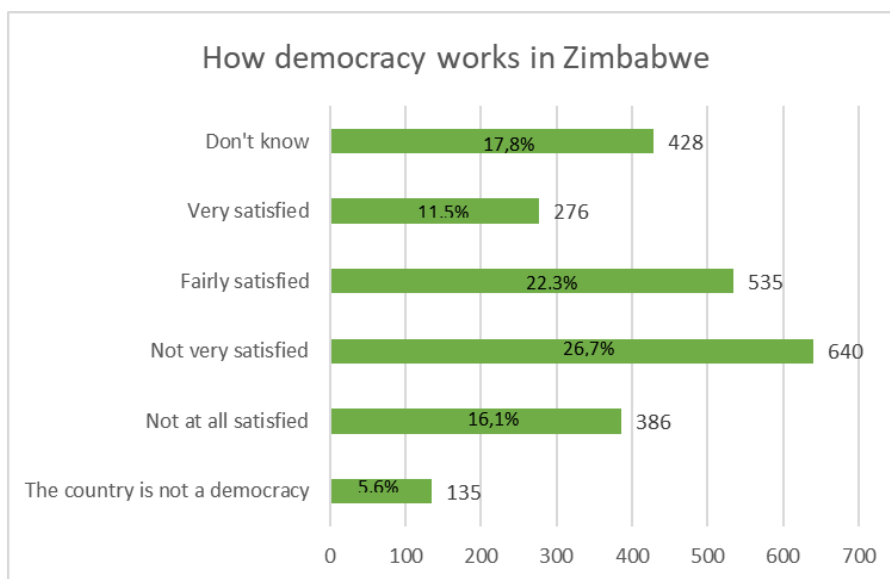


Figure 9. Opinion about how democracy works, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

5. *"In your opinion, how often, in this country: Does competition between political parties lead to violent conflict?"*

Most of the interviewees perceive that a high number of violent conflicts in the country are a result of parties' debates and competitions. Among these conflicts, it is rape as political tool to harass the opponents and the population.

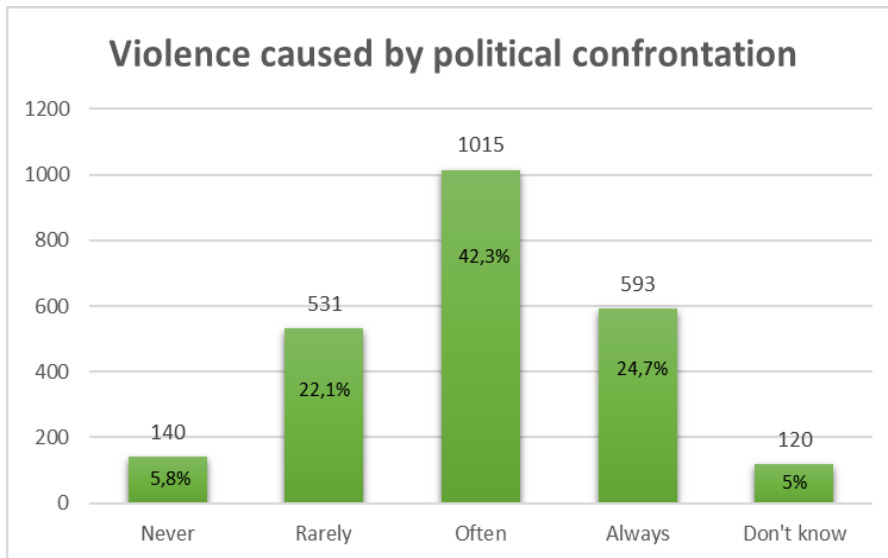


Figure 10. Opinion about violence caused by political confrontation, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

6. "In your opinion, how often, in this country: Are opposition parties or their supporters silenced by the government?"

In this question, the opinions are divided, but a slight majority believe that the government often tries to stop the opposition, which is align with the news about violent actions against protesters, independent newspapers journalists, and so on.

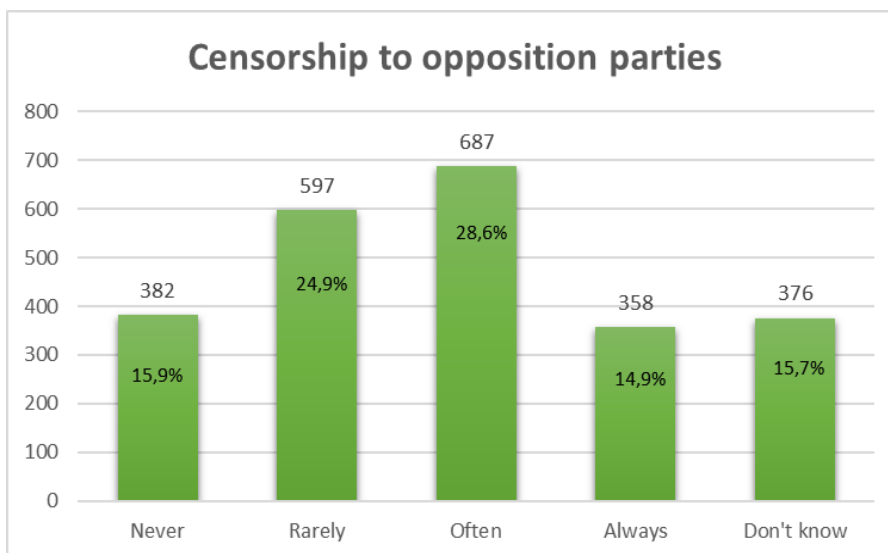


Figure 11. Opinion about censorship to opposition parties, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

7. "How much do you trust each of the following, or haven't you heard enough about them to say? *The President*"

Robert Mugabe, who has ordered massacres, mass and systematic rapes, force land expropriations, state-induced famine, etc., who has been accused of massive corruption and crimes against his population, who has international sanctions; is still considered as someone trustworthy by Zimbabwe's inhabitants. One reason of that can be his past as combatant in the Liberation War and as hard defender of Zimbabwean independence due to he was many years in prison before the war. Actually, in Africa he is respected for these reasons and for being one of the fathers of independence in the continent (Meredith, 2011).

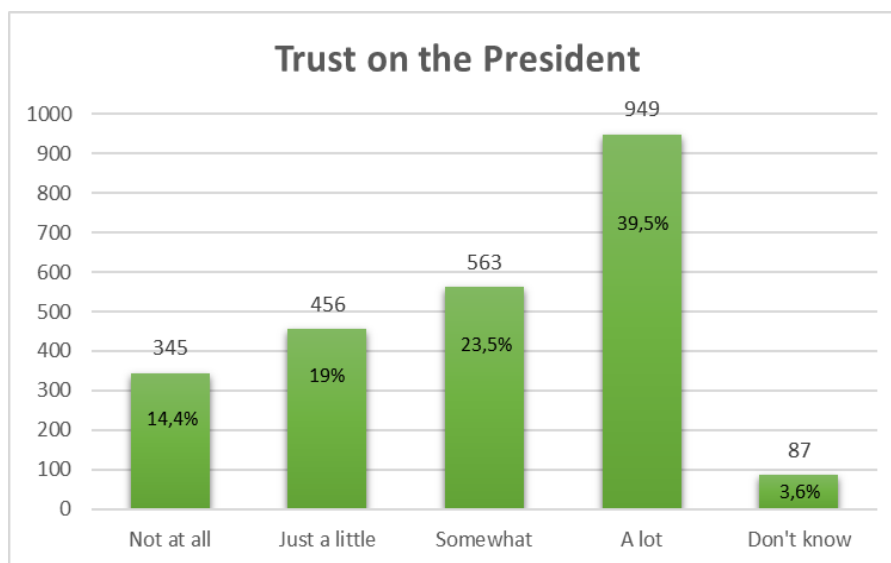


Figure 12. Trust on the President, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

8. "How much do you trust each of the following, or haven't you heard enough about them to say? *Traditional leaders*"

It can be appreciated that, as in previous questions, the population is divided, but they trust more on traditional leaders than other bigger institutions or political parties.

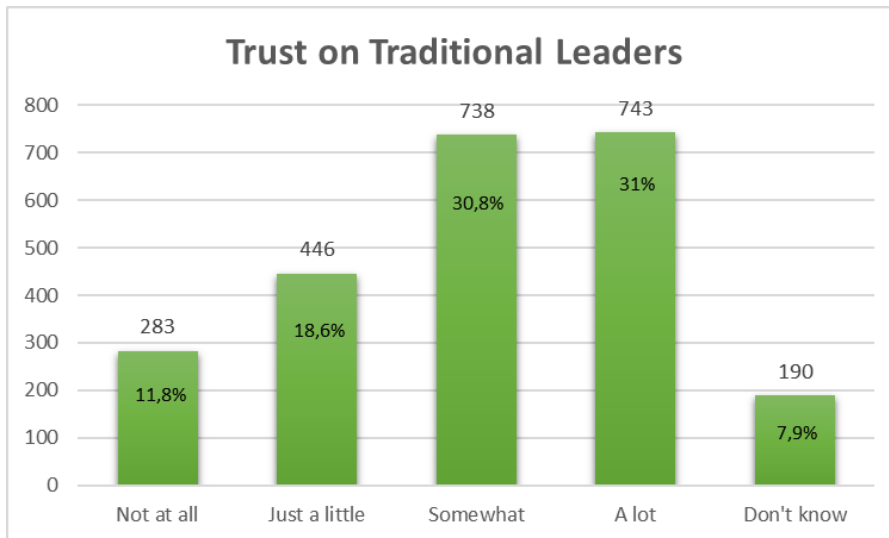


Figure 13. Trust on Traditional Leaders, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

9. "How much do you trust each of the following, or haven't you heard enough about them to say?  
The Police"

The majority of the Zimbabweans do not have any trust or only some on the police, which is related with the data about security forces impunity, and the reported lack of denounces about sexual violence or other crimes.

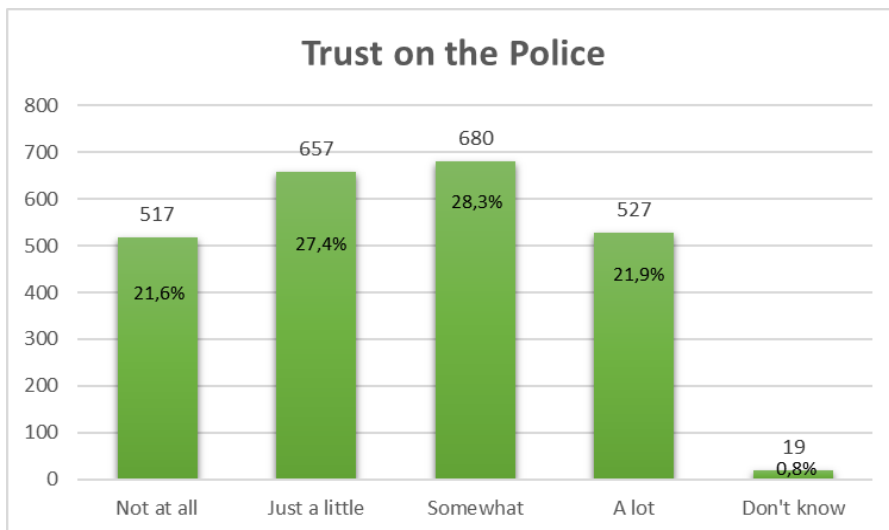


Figure 14. Trust on the Police, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

As a direct example, this testimony gotten from AIDS-Free World report (2009), *"I went with eight other camp survivors to the police to report that ZANU-PF youth had raped and beaten us at their base camp. When we told them about what had happened to us, the police laughed in our faces. They*

said that they had heard that we had been beaten and raped by the ZANU-PF youth, but that they were scared of the people in power and could not be expected to do anything at that moment. They did not draft a report” (p.27).

10. "How much do you trust each of the following, or haven't you heard enough about them to say?  
Courts of law"

The data is similar to the previous question about police, the majority of the population trusts Courts of Law, but only in some way, not totally.

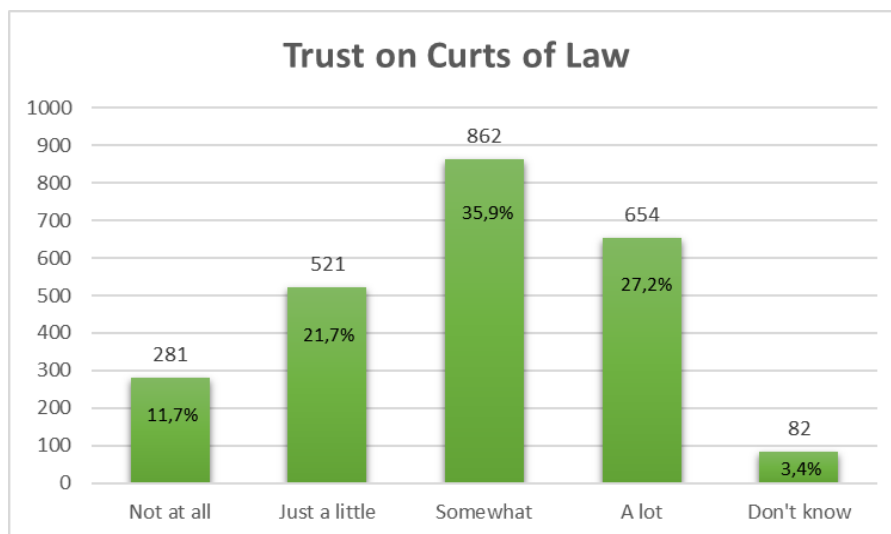


Figure 15. Trust on Courts of Law, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

11. "How much do you trust each of the following, or haven't you heard enough about them to say?  
The Ruling Party"

In consonance with the data about trust on the president, the majority of the population trust as well the ruling party (ZANU-PF). This is not related with other info about institutions reliability, violence abuse, etc.



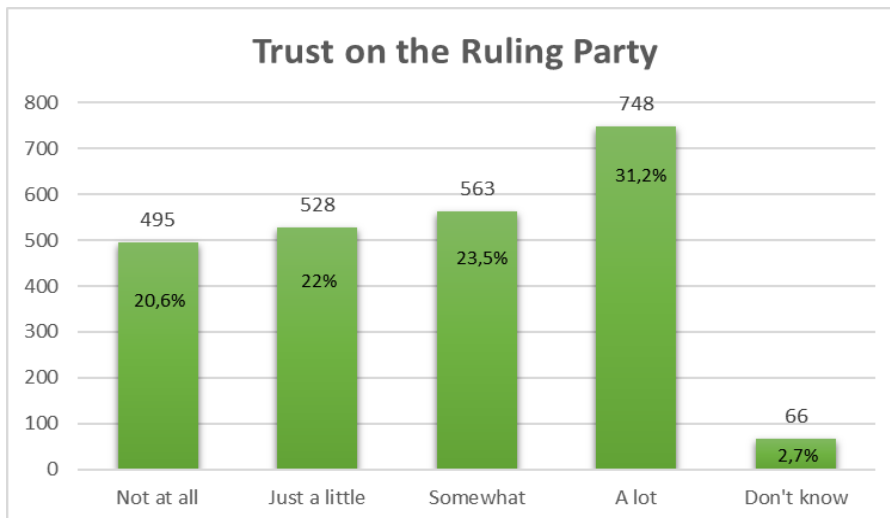


Figure 16. Trust on the Ruling Party, retrieved from <http://www.afrobarometer.org/online-data-analysis/analyse-online>

## 5. ANALYSIS

The analysis in this paper is going to be performed through Bacchi's theory (2016), 'What's the problem represented to be?' even though other theories (TJ Theory and Actualised Democracy Theory) are going to be considered to complement it. Through this main theory, it has been analysed several aspects of the Zimbabwean context and legal system, all of them related with the problem of sexual violence and mass rape in the country, such as the Zimbabwean rape law, article 65 of the Criminal Law Act (2006), the new Constitution (2013) and the TJ mechanism of recognition. These theories have been chosen due to they provide a critical perspective of the general and legal situation in the country, focused on women. Besides, they allow us to analyse the problem in a wider way if they are taken together because TJ theory and Actualised Democracy theory help to answer points in Bacchi's theory.

### What's the problem represented to be? (WPR)

- **Question 1:** What's the problem with the recognition of sexual violence and mass rape women victims represented to be in the application of the article 65 of the Criminal Law Act and the new Constitution of 2013 in Zimbabwe?

In Zimbabwe, there is a dual legal system (statutory and customary laws). Currently, at least on paper, sexual violence and specifically rape, in all its forms, is judged under statutory law with the article 65 of the Criminal Law Act of 2006; although the new Constitution of 2013 is also related. However, as it is showed at Matsvayi (2012) article, in Chiefs Courts – customary law –, rapes continue being judged. This legal system, present above all in rural and isolated areas, is

based on compensations to restore and reconcile the community. Hence, the punishments usually are livestock (the main good in rural areas) or the marriage between the offender and the victim in case of single women (because the victim 'lose' value due to she is not virgin any more), unless the crime is against chief's wife, then the penalty is the death (Armstrong, 1990 and Matsvayi, 2012).

It should be noted that rape in Zimbabwe, as in other African countries, is a way of sexual violence that has been used as a punishment. To 'teach women their place'; to punish men who are not able to protect their mothers, wives, daughters, and friends; and to punish women for being member to particular parties or ethnicities, the last one related with mass rape campaigns which have been common through Zimbabwean history and above all during election periods. This is added to the high impunity for perpetrators of sexual violence acts and low rates of conviction, which foster the idea of violence as part of the system, even though violence is highly rejected in the country (Sachikonye, 2011 and Thomas et al., 2013).

The article 65 clashes with traditions, long entrenched ideas and institutions in some points, above all due to the term 'consent', which is the essence of rape crimes and sometimes misunderstanding by the general population (Armstrong, 1990). Besides, in African custom, a woman is not supposed to express a desire for sex. Therefore, even a married man does not receive an express or clear indication of consent to sexual intercourse; even in Shona culture – the main ethnic in Zimbabwe – sexual relations involve a sense of battle, men as the active part and women as passive or surrenders, which is also present in the language. Thus, it is expected that women refuse sexual propositions, for fear of being thought a prostitute or to be a loose woman (Armstrong, 1990). The age of consent is also an issue. In Zimbabwe, it rose until 18 recently but due to the tradition, it is not totally considered.

In the new Constitution (2013), the article 326(1) said, "Customary international law is part of the law of Zimbabwe, unless it is inconsistent with this Constitution or an Act of Parliament". Hence, to keep customary law should not be a problem at the time to apply the article 65 of the statutory law, at least in theory, because in practice there are other limitations that affect victims' recognition.

Aiming at mass rape in Zimbabwe, it is carried out for political reasons mainly, and it has been present since colonial times. Recently, mass rape cases has been more reported, although not to security forces that usually ignore, blame or charge the victims (Thomas et al., 2013 and AIDS-Free World, 2009). Though, mass rape cases sentences are covered thanks to the article 65.2, sections b, c, d, f, h, and i; the reality is that Zimbabwe, 'officially' a democracy, in fact is a

dictatorship where Robert Mugabe is the undisputed leader, as he said in 2008 “I will never, never, never, never surrender. Zimbabwe is mine” (AIDS-Free World, 2009, p.8), therefore the security forces and legal system are not independent, and even sometimes they are active or necessary part of the mass rape campaigns.

In conclusion, it can be said that the writing law and Constitution are fairly comprehensive with cases of sexual violence and mass rapes, but they should face diverse limitations that affect victims’ recognition and laws’ application, which are going to be explained in the next question.

- **Question 2:** What deep-seated presuppositions or assumptions underlie this representation of recognition of sexual violence and mass rape women victims in Zimbabwe and application problems of the law and the Constitution?

The roots of the problem of laws’ application in Zimbabwe are several, and they are going to be showed hereafter.

Firstly, the article 65 has diverse limitations. The first one is that the law does not only consider rape as sexual violence but also as a crime against the ‘morality’, actually is under the title ‘Sexual Crimes and Crimes against Morality’. Therefore, there is still a sense of shame and honour damage, surely more understood against the male relatives; that can relate with a sense of social stigmatisation for women.

Aside, it is only considered the aggression from men to women. This fact likewise point that the definition of rape is gendered, which has its root in patriarchal ideas; actually rape was a crime against men’s property (women), so the idea that only women can be raped maintain the patriarchal idea of women victim (Coltart, 2014).

Another problem appreciated in the article 65 is that only deem as rape the vaginal or anal penetration by a penis, which leaves out other types of force penetrations, such as oral penetration or penetrations by objects. Although these cases are contemplated as aggravated indecent assault in the article 66 and have the same penalty than rape, however it implicates a lack of recognition of the real crime and the victim (Coltart, 2014).

Furthermore, when a rape is judged, the sentence cannot be very appropriate because as it is mentioned in the article 65, there are several facts to consider; therefore, very similar cases can have different consequences, depending so much on the court and judges (Armstrong, 1990). Due to this, in February 2014 a motion was presented in the Parliament calling for an obligatory minimum sentence of 30 years for those convicted for rape. The main reasons to request that

were to send a message to the population that rape is a very serious crime, and to be a dissuasive measure to potential rape perpetrators. Both good reasons considering the prevalence of sexual violent crimes, among them mass rape campaigns in Zimbabwe, where they have been normalised (Coltart, 2014).

Regarding the Constitution, it is very complete and clear about the rejection of violence and power abuses, gender equality, etc. However, its application is not being smooth or quick, mainly because the government is slowing down the process; one example is the NPRC (NTJWG, 2017).

Secondly, the access to the legal system, which is complicated for everyone in Zimbabwe (Armstrong, 1990), but especially for women who have to face many different ways of discrimination (class, education, economic status, etc.) and the main one, the discrimination for being women. This can be appreciated through the treatment that women usually receive from the security forces when they try to report rape cases. The normal reaction from police is to blame the victims or to deny the denunciation, the later more related with mass rapes due to their motivation is political, hence police does not take any measure or even in some cases they are the offenders (AIDS-Free World, 2009). Other reason to do not report rape or mass rape cases is because the social stigma for the victims. It is not rare that the husbands of raped women get divorced after the event (Kwenda, 2013 August 7), or if the raped victim is virgin, because her ‘value’ – lobola or brideprice paid to the family, who under customary law are the main damaged by rape (Armstrong, 1990) – is lower. The idea is that the virgin girl who had been raped lost her chance of a good marriage; therefore, as an unmarried woman she will not have status or means of economic support. Under customary law, rape victims usually marry with their aggressor due to socially and economically is their only chance to survive (Armstrong, 1990). It should be noted that Zimbabwe is a country with many different cultural groups each one with their language, history, traditions, etc., but the majority of them driven by patriarchal order which dominates all social levels and was encouraged in colonial times (Fidan & Bui, 2015). All these issues are more easily seen in rural and isolated areas, where most of the Zimbabwean population lives.

Other limitations in the access to the legal system are about its complexity, language used, expenses and commute. Some of them are treated in the item of news ‘Access to justice costly for the poor’ (Chinhamo, 2015 July 30). Zimbabwean population faces different handicaps when they try to access to justice system, citizens fear the system, rich are benefitted or justice is

financially unattainable. Due to these reasons, there are many crimes, abuses and basic rights violations unjudged, therefore impunity is widespread. In mass rape cases, there is another added obstacle, the rejection of the denunciation by the police. Actually, if it would not be thanks to organisations, such as Legal Resources Foundation, Zimbabwe Lawyers for Human Rights, Zimbabwe Human Rights Association, Zimbabwe Women Lawyers' Association, Musasa Project, etc., who facilitate and provide free legal advice, the majority of population does not have idea how to treat with legal system complexity. Besides, the language used is English and not all the population is able to defend themselves in other than their local language (Shona, Ndebele, Chichewa, and so on). Regarding the expenses, the legal system is not affordable for the majority of population, who suffers the economic crisis in a severe way (unemployment, cash shortage, etc.). The last big limitation is the transport. Even though it is guaranteed by law the freedom of movement, due to the high prevalence of violence, above all against women, even by authorities (politically motivated rapes), this right is not fully enjoyed. Moreover, the modes of transport and infrastructures in the country are also a trouble. They are deficient and are not maintained; hence, the access to some parts of the country becomes almost impossible, above all if it is combined with the fact that the majority of the population does not have access to a vehicle due to poverty. The difficulty to get reliable data about rape problem and the difficulties to access to statutory judicial system and other resources (health, education, and so on) in rural and isolated areas are also directly related with this mobility issue.

Thus, this commute issue fosters the use of customary law even to rape cases, which in theory is not allowed. The application of customary law could not be negative, because as Matsvayi (2012) mentioned in her article, and the figure 13 shows, population in general and women in particular rely more or less on chiefs and they can be proactive with women issues and therefore be the middleman or the counsellor for women and girls in their communities. Hence, instead of control the traditions maybe work along with them would be more grateful and useful.

Finally, the last reasons are the government and state institutions. As it has been mentioned, in Zimbabwe there are cases of violence against the opposition (see figure 10), and among them massive and systematic rapes for political reasons, mainly against women politicians and women supporters of opposition parties (see figure 3 and pp. 43-45). Obviously, due to mass rapes are ordered by government, neither police nor national law are useful, which is linked with the lack of independence of the judicial power in the country (AIDS-Free World, 2009 and Phillips,

2004). This absence of action against mass rape cases also affects other cases of sexual violence such as not politically motivated rape cases.

In general, it can be appreciated a violent behavioural pattern through the time because Zimbabwean history and because since 1980 the country has been ruled by the same political party, ZANU-PF, and the same president, Robert Mugabe. Therefore, offenders in Zimbabwe enjoy impunity so easily (see figures 7 and 8) and they are not local or internationally charged nor judged because Zimbabwe refuses to ratify some international agreements such as the Rome Statute (NTJWG, 2017).

This lack of victims' and perpetrators' recognition has to do with the mistrust on state security and legal institutions (see figures 14 and 15). Although it seems that population still relies on Mugabe and the ruling party (see figures 12 and 16) in spite of all the actions against them, violations of human rights and mass rape campaigns (see figures 1, 2, 3, 4, and 5; pp. 43-46; Veileborg & Nielsson, 2014).

Regarding recognition as a mechanism of TJ (de Greiff, 2012 and Buckley-Zistel & Stanley, 2012), can be performed through diverse measures such as laws upgrade, trials, truth commissions, reparation or institutional reforms, which are actions also related with other mechanisms of TJ such as civic trust, restoration and democracy. None of them has happened in Zimbabwe since the end of the Liberation War and beginning of the independency, except some institutional reforms, mainly thanks to the new Constitution (2013). In addition, this is a problem according to de Greiff (2012) because both, civic trust and recognition are conditions to accomplish justice, and trust is indeed a consequence of justice.

These reforms have benefited women's rights, at least on theory and it fosters the creation of several commissions related with this paper: ZHRC, ZGC and NPRC, the last one in charge to achieve TJ in Zimbabwe. Although is generally agreed that the country is still in process of TJ and victims desires about perpetrators convictions are not properly addressed (AIDS-Free World, 2009 and Coltart, 2014). The commissions have diverse tasks, but recognition is not one of them, although they contemplate others that can be related such as truth-telling, justice and promote conflict preventive mechanisms. It should be noted that this omission could have consequences because, without recognition of the victims, redistribution, retribution or compensations are not possible. Moreover, victims' recognition is as important as offenders' recognition (de Greiff, 2012 and Buckley-Zistel & Stanley, 2012), in this way it is possible to create an actual new reconcile society, among citizens and with their past. However, Zimbabwe seems having chosen the amnesty path, more for personal interest because the majority of

violent acts in the country can be attributed to groups close to ZANU-PF (see figure 4 and 5, pp. 43-45). Therefore, the government is interested in fostering the amnesty and hence the mentioned immunity of the perpetrators and themselves because, in this way, there will not have the chance to be judged or prosecuted (AIDS-Free World, 2009).

The Constitution and some legal improvements can be considered as tools for recognition, because they recognise the same rights for men and women, both as equal citizens. For instance, the article 65, because is gendered, and the Constitution and the international documents considered to write it (CEDAW and Resolution 1325 among others) recognise women as victims of the act perpetrated for others intentionally, which is one request of recognition according to de Greiff (2012). Despite that, the reality is that women suffer discrimination for the fact of being, and gendered laws apart of the positive part, also have a negative side because create an association women-victim which only constrains women and their roles in the society.

In international arena, a part of the rejection of the Rome Statue, Zimbabwe is still pending the ratification of the Convention Against Torture. The NTJWG report (2017), which analyse TJ process in Zimbabwe since 2014, one year after the adoption of the new Constitution and the establishment of the NPRC. In its periodic reviews (2011 and 2016), through the accepted or rejected recommendations, can be appreciated the real position of the government in relation to TJ. In the first revision, the rejected recommendations were:

“Undertake impartial, independent and comprehensive investigations into the 2008 election-related violence, including cases of rape, with guarantees of protection for witnesses, survivors and their families, and prosecute the alleged perpetrators (Canada).

Establish an independent civilian authority charged with receiving complaints and investigating allegations of crimes committed by members of the Zimbabwe Republic Police, military and armed forces (Austria).

Expedite the investigation of all human rights allegations with a view towards bringing the perpetrators to justice (Thailand).

Strengthen its efforts in the fight against impunity (Slovenia).

Take the necessary measures so that all allegations of human rights violations are duly investigated and that the perpetrators are brought to justice (Switzerland).

Embark on a reform of the judiciary to ensure its independence and impartiality (Spain)” (NTJWG, 2017, p.6).

All of them related with the recognition of victims and widespread impunity.

In the second revision in 2016, some recommendation in relation with the subject of this document were accepted, such as “adopt measures to prevent and eliminate all abuses of sexual violence against girls and women, ensuring that perpetrators are effectively held to account, including with the full coordination of the ZGC. (Turkey) and ensure victims of sexual and gender-based violence have access to social and legal support, and that perpetrators are brought to justice. (Canada)” (NTJWG, 2017, p.6).

The impression is that the Zimbabwean Government is covering up its traces, and it does not want to face the possible consequences of a history and a present plagued of human rights violations and crimes against the humanity.

Therefore, it is possible to affirm that, despite the importance of justice and recognition are acknowledged, Zimbabwe faces diverse difficulties to apply properly the law. These obstacles are related with diverse limitations such as the access to the legal system, the allowed impunity, the mistreated and discrimination by security forces, and so on; which is causing mistrust and hence none form of recognition is performed by any actor in the state to the victims of sexual violence and mass rape campaigns.

- **Question 3:** How has this representation of the application of law and Constitution and victims’ recognition in Zimbabwe come about?

Apart from the cultural issues, the problem with victims’ recognition and proper application of laws and the new Constitution in Zimbabwe, has its roots in its history and above all on institutionalised violence (Sachikonye, 2011).

In pre-colonial times, there was not information about sexual violence against women; however, thanks to the customary law, it is possible to guess that women did not have many rights although that depended of the chief and if he was more or less proactive and sensitive with women situation in his community, which is what happen nowadays (Matsvayi, 2012). During colonialism, women situation got worse because colonisers had a negative perception of Zimbabwean women as no collaborative as men, so colonisers fostered Zimbabwean men to take control over women (Fidan & Bui, 2015). In addition, white women did not want black women servants because they considered them a danger for their marriages, so usually they preferred black male as servants (Martin Shaw, 2008). From 1980, there have been diverse legislative attempts to foster women’s welfare and status in Zimbabwe, but gender discrimination is still strong (Fidan & Bui, 2015).



Furthermore, the most current advances in the subject about sexual violence against women have been possible because of CSOs, international organisations and opposition parties, whom are promoting/forcing the use of international treaties, such as CEDAW or Resolution 1325, but their representation by now is only on paper, in fact in the new Constitution.

Therefore, it can be assured that in Zimbabwe there is a culture of violence mostly established during colonial times, when it was a political tool used against anyone who dared to complain, like currently. Moreover, the violent behaviours have been institutionalised to keep the power and build an authoritarian state, first by the colonisers and after by ZANU-PF and Mugabe as its visible leader.

The maintenance of violence as a way to keep control over the population is therefore a heritage from colonial times, which could change after Liberation War, but it was not. The use of violence during colonial period is understandable because the ruling system was the authoritarianism, but why did it not change after the Liberation War, which motivation was to achieve a more egalitarian and democratic state, at least for the majority of nationalists, is more difficult. One explanation can come from the *Actualised Democracy Theory* (Moghaddam, 2016), which affirms that usually after revolutions to abolish dictatorship come another similar authoritarian system, as it happened in Zimbabwe. With the Liberation War were achieved governmental and economic changes (macro level), but because the continued use of violence, the changes on social relations and cognitions (meso and micro levels) have not been addressed yet. Hence, the new rulers, with Mugabe as a visible leader, have kept the colonial practices and are causing the collapse of the state due to patronage and kleptocracy.

Focusing on legal system and laws about sexual violence and mass rape, it has been accomplished second order changes; in other words, formal law and the new Constitution are covering them. However, the informal norms (common ideas in a society, culture, etc.) along with the government, still allow the unequal treatment of women through blocking the proper implementation and application of the reforms, so women do not have a proper access to judicial system. In fact, just after revolutions, in this case the Liberation War, there is an 'opportunity bubble' when a real and full political change can be gotten, but it needs some requisites. Firstly, a leader who support the turn to a democratic system, which it did not happen in Zimbabwe where Mugabe showed clearly his intentions since the beginning; he wanted control, not democracy (Meredith, 2011), so he and his colleges have done whatever needed to keep the power; for instance, tortures, arbitrary arrests, harassment, rape, murders, and so on. Secondly, some political opportunity and consensus to change the institutions into a democratic system,

something complicated because it needs the support from elites, other groups or even from foreign powers which have enjoyed diverse benefits thanks to the authoritarian system. Finally, the population has to acquire specific social and psychological skills needed to become *democratic citizens*, difficult due to cognitions/ideas and behaviours/actions change in a slow manner, actually nowadays women still face similar handicaps and discriminations than in previous periods, or rape which is used not only to damage the woman victim but also her family and environment.

To accomplish a real change, a society also needs to address some characteristics such as the openness to different ideas and experiences, ability to understand them, the capacity to question customs and traditional ideas/beliefs, critical ability, active learning or lookout for information in diverse sources. In Zimbabwe, these characteristics are more present through cities' citizens but are odd in rural or isolated areas where the majority of the population is.

The last idea is related with the well-known sentence 'the power corrupts'. It is not possible to assure that power corrupted all the liberation fighters who have ruled the country since the end of the war, but it is possible to affirm without doubt that corruption is widespread in Zimbabwe, and is an important barrier to get a real democracy.

As in other dictatorships, in Zimbabwe the main mechanism of control is violence that is more powerful than the ideology, which in Zimbabwe is still based on liberation from the whites (AIDS-Free World, 2009 and Bratton & Masunungure, 2008). Besides, ideology is more useful to link the elites and justify the use of any kind of violence to control the masses and silence the opposition. Aside from ideology, patronage is another important fact to get cohesive elite that is the keystone to avoid the collapse of the authoritarian state.

Therefore, it can be said that in Zimbabwe have been achieved some improvements but mainly on paper, not in practice. Actually, the past abuses are still present, the government is not doing much about victims' recognition and the legal system reliability is not good (see figures 6, 7, 8, 15 and p.54). Besides, due to the government has rejected in several occasions to ratify the Rome Statute (base of ICC), none international trial can be performed (NTJWG, 2017 and York, 2013 February 25).

This environment has mental, emotional and psychological effects over each citizen, temporary and/or permanent. Curiously, the violent behaviours/practices (ways to torture, harassment, massive rape, burning properties, and so on) are the same through the time, and it is present also in other groups and institutions in the country such as CSOs, opposition parties, student unions, and so on (AIDS-Free World, 2009; Sachikonye, 2011 and ZHR NGO Forum, 2013). It seems

that violence is part of every Zimbabwean; these behaviours are their way to get what they want; it is like a behavioural disorder; they do not act in other way because they do not know how to do it.

This circumstance joints with the fact, that the government is the main source of violence and fosters the lack of an appropriate judicial frame in the country. If who must apply the law is the same that commit the crime, it should not be expected behavioural changes about the use of that violence.

In this context of violence used to keep the power and patriarchal rule, it is easier to understand why victims' recognition and laws' application about sexual violence and mass rape were not problems, and they are not problems for rulers yet. On the other hand, despite the Constitution covers the formation of diverse independent commissions, none of them has managed to work at full capacity due to political limitations, which drive that lack of recognition and legal improvements.

- **Question 4:** What is left unproblematic in this problem representation? Where are the silences? Can the “problem” be conceptualized differently?

As it has been showed before, the problem of victims' recognition and rape law and Constitution application in Zimbabwe has diverse sources; besides, there is not much data about them; and specifically about mass rape campaigns (US, 2013 and Win, 2004).

The main reason for that is the government, which as the main perpetrator prefers to deny or avoid the problem, and one way to get it is through information control. For instance, the freedom of expression is recognised and the presence of different newspapers, some of them very critics with the government, is allowed. However, at the same time, it is not rare detentions or charges against the journalist of these critics' newspapers (HRW, 2013 and US, 2013) or against the opposition's members (see figure 11). Besides, there are news omissions, for instance some pieces of news only appear in independent national newspaper or thanks to international news agencies in the country, basically Reuters and BBC, censorship, etc. In addition, thanks to CSOs, international and local organisations, Zimbabweans in diaspora and internet<sup>8</sup>, it is possible to know some cases than in other way would be hided, such as aleatory and illegal arrests or some cases of mass rape. Moreover, the government is also hindered the possible improvements and the proper application of laws and Constitution controlling the security and

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<sup>8</sup> Internet and social media are spreading quickly in the country and by now, the government does not control them.

legal systems (Howard-Hassmann, 2010; Phillips, 2004 and Sachikonye, 2011) through patronage and violence. Everything to keep power and impunity; and at the same time it fosters the mistrust on institutions by the general population (see figures 6, 7, 8, 14 and 15). This is positive for the government because the mistrust on institutions and the victims' improper treatment provoke that people do not report many cases, such as rapes or mass rapes; it can be said that the government is implementing or keeping learned helplessness because for them is useful.

Aside from the lack of information, the institutionalised violence is also a huge handicap, and both of them exercised by the government, which should be the responsible of its population security and welfare.

If the theoretical responsible does not do anything, someone should. In Zimbabwe's case, the approach to the problem is more down-up, which means that CSOs, community/local groups, NGOs above all local or small ones and so on, are the main change agents in the country. This is linked with customary law. Although it must not judge rape cases, the diverse limitations for women to access to the statutory law, makes it the only way to get recognition and restitution/compensation. As it has been mentioned, the application of customary law highly depends on the community chief; hence, some local NGOs are working together with them to sensitise Chiefs and communities about women situation. In addition, because the customary law is continuing changing, it can be more easily adjusted to treat properly rape cases, even in a more accurate way than the statutory law (Masvayi, 2012). Which drive us to other kind of changes required, in other words, cultural shifts to promote social and public awareness about rape and mass rape campaigns that are more complicated to accomplish as actualised democracy theory points (Moghaddam, 2016).

Moreover, in Zimbabwe, despite it is an authoritarian state, there are many critical voices and many people involved in organisations or opposition parties, who claim and fight for real improvements and legal rule in the country. The new Constitution could be a tool to foster the improvement of laws related with rape cases and recognition (Coltart, 2014), but the reality is that after four years there have not been many changes (NTJWG, 2017). In fact, the information available shows that the government, mainly through young militias and veterans group, continue perpetrating massive rapes, tortures, illegal detentions, damages to properties, and so on (AIDS-Free World, 2009; Sachikonye, 2011 and Win, 2004); everything to avoid critical information against them and to keep their privileges. Besides, as it is mentioned in AIDS-Free World report (2009) these groups (young militias and veterans) are paid by the State. This is

important due to the economic situation in the country, perhaps for many young people the enrolment in these groups is the only option to earn money and help his/her families. Thus, the state is creating social division and fear within communities and families; only because it is something that they can use to their own interests. Henceforth, as it is mentioned in the NTJWG report (2017), the advances shown by Zimbabwe government, such as the new Constitution or the acceptance of some international recommendations regarding TJ, are seen as a way to create a good impression inside and outside its borders, but the reality is very different.

Summarising, it can be said that there are room to improve about victims' recognition and laws' and Constitution application related with mass rape cases in Zimbabwe; above all in practice. Because as in other matters, for instance the payments to the WB and the AfDB, the government is acting according to what they must do and at the same time they maintain violent behaviours and actions against the population that does not support them. As it is pointed by Bacchi, the government is trying to shape the reality for personal gain, it is a problem-maker, or in the case of Zimbabwe, at least a problem-keeper.

➤ **Question 5:** What effects are produced by this representation of the “problem”?

The current legal situation in Zimbabwe can be resumed as they have more or less fair laws and Constitution regarding sexual violence and mass rape issues in theory but not in practice. The main example is the difficulty in the access to judicial system. For example, the NTJWG (2017) points that the Government, in the last recommendations for TJ, accepted these two recommendations: “Adopt measures to prevent and eliminate all abuses of sexual violence against girls and women, ensuring that perpetrators are effectively held to account, including with the full coordination of the Zimbabwean Gender Commission”, and “Ensure victims of sexual and gendered-based violence have access to social and legal support, and that perpetrators are brought to justice” (p.6). On the other side, the fact that society want to shed light on the problem is something that the government is not willing to allow, and it is another example of rights constraints in the country.

The consequences for mass rape or sexual violence victims are not properly addressed. The law and the Constitution provide recognition and restitution, but these in a society as Zimbabwean increase the chance of stigmatisation and victimisation, and future inconveniences for the victims such as discrimination in the access to resources or difficulty to find a husband, which is linked with lack of social status. Additionally, the situation for victims can be worse if as a

consequence of the rape the woman has a baby or catch a sexual disease, in the worst case AIDS/HVI, which has a high prevalence in the country and in cases of mass rape is more probable.

Zimbabwe population is part of the problem but also part of the solution. They are part of the problem because, due to diverse reason, some groups help to keep the violent behaviours. For instance, young militias and veterans groups who carry out diverse violent events and mass rapes ordered by the government; police when hinder the proper treatment of the victims; or the elites when deny or ignore the problem to receive benefits from the state. Moreover, the cultural ideas about rape women do not help to solve the problem or at least avoid some negative consequences.

On the other hand, population is also part of the solution because there are opposition parties, critical people involved in organisations or projects to improve or solve the issues of women in the country (local NGOs, small community groups, etc.) and a critical mass-media. All of them work to accomplish real changes; despite they know that this makes them and their personal environment targets of political motivated violence, such as mass rape.

The tense environment and known consequences cause both physical and psychological damages on people, mainly due to fear and the anxiety.

All of these contribute to have a divided society and settle learned helplessness. Besides, the lack of actual information, above all about mass rape cases, makes difficult to assert the real situation in the country; but based on previous information and direct experience, it can be affirmed that violence is still present and the attempts to improve conditions are usually slowed down by the government. Hence, the possible positive effects of legal improvements or the new Constitution to the general population are not taking place, and maybe it is not going to happen soon.

So, change institutions, traditional ideas and improve the application of laws are requirements to afford sexual violence problem in the country, above all the cases of mass rape, and victims' recognition.

- **Question 6:** How and where has this representation of the “problem” been produced, disseminated and defended? How has it been and/or how can it be disrupted and replaced? The application of the law to address sexual violence, specifically mass rape cases, has been published by CSOs, international institutions, etc. but not by the government that use mass rapes

as a political weapon against their opponents. Actually, many times the government denies problems and this is one of them, and because they control the 'truth', sexual violence and mass rapes are not a problem in the country. In fact, Zimbabwe history and institutionalised violence have contributed to produce, disseminate and perpetuate the problem. It can be also explained through actualised democracy and TJ theories. After the Liberation War, although the new government performed second order changes (formal legal improvements), they did not cover a proper recognition of the victims and perpetrators. This was intentional to keep its immunity because the government is one of the main sources of violence in the country, above all mass rape campaigns.

All this is related with Zimbabwe culture that has been an important obstacle at time to address the problem and try to change the situation.

Even though the idea about raped women is changed, it is still based on traditional thinking and usually blamed the victim, so it also maintains perpetrators' immunity. Hence, culture and traditional ideas foster that lack of victims' recognition and block deeper changes such as third order ones (Moghaddam, 2016). As it is pointed in *Actualised Democracy Theory* (2016), a democratic society has to fulfil some requirements, and one of them is the capacity to 'questioning sacred beliefs', in other words, the capacity to challenge traditional ideas and/or prejudices.

The tension in the country can be appreciated on the streets, most of the population, above all in the cities, knows that they have rights, especially thanks to the new Constitution, but at the same time people have to continue with their lives in an environment many times negative for them. For instance, the limitations to access to money, huge unemployment rates, the shortage of rains that damage the crops, and so on are critical needs more important to get that the defence of rights, even though it is not odd the riots and manifestations against the government or to claim improvements, legal changes, the stop of violence, etc.

Despite the limitations and the government obstacles, there is room to improvement because people are more conscious about the situation. Currently, there are critical groups (opposition parties, independent mass-media, CSOs, international institutions working in the country and citizen in diaspora) and population is in a critical situation, which drives them to act in some way. Even when they know that to take any action against the ruling party makes them and their personal environment targets of political motivated violence and women become targets of mass rape campaigns.

Besides, Mugabe is nowadays 93 years old, so the general population does not think that the current situation will last much longer. However, it is not possible to assure that the situation is going to improve, because there is not any idea of who is going to be Mugabe's successor, although the issue is already a public matter (BBC, 2017 July 27).

## 6. CONCLUSION

This paper has tried to address which is the situation of recognition of women victims of sexual violence and mass rape in Zimbabwe; and how the legal framework – article 65 from Criminal Law Act (2006) and the Constitution (2013) –, specifically its application is the problem to accomplish that recognition.

Drawing on the information gotten and following the research questions, it is possible to see that Zimbabwe, as other African countries, have a dual legal system. On one hand, the statutory law which in theory benefits women, above all since the adoption of the new Constitution in 2013. Aside from this, the rape law (article 65 of the Criminal Law Act), which according to AIDS-Free World report (2009), presents some limitations that made it a not adequate tool to address sexual crimes committed during election periods due to it is more focused on acts of sexual violence committed by individual perpetrators but not the mass rape campaigns. However, despite those limitations, the article 65 seems to be a suitable tool because, for mass rape cases, the main challenge is not the law but the access to the legal system. The reason is because mass rape has political motivations, therefore the security and legal forces that are not independent deny or ignore it. Relating with this lack of independence, there is the problem with laws application and victims' recognition along with other obstacles such as the referred access to the legal system, victims' stigmatisation, treatment by security forces, perpetrators impunity or institutionalised violence.

On the other hand, customary law, despite also poses limitations for women, it is more accessible. In addition, because it depends a lot on each local chief and his concerns about women in his community, customary laws application can be the solution to accomplish victims' recognition of sexual violence and mass rape (Chiweshe, 2016 and Matsvayi, 2012), at least if the perpetrators are from the same community or area.

Additionally to the legal system and the diverse limitations that women have to face, Zimbabwe history has influenced also the problem. The country passed from one autocratic system to another and women perspectives and experiences – violent or not – were not considered. Notwithstanding some cosmetic changes the real ones needed (social and cultural), among them women victims' recognition, have not happen yet. It can be said that, neither the new state nor the population have the



requirements to achieve a fairer state for all its citizens (Moghaddam, 2016). In this context, where violence is institutionalised and the perpetrators' impunity assured (AIDS-Free World, 2009; Sachikonye, 2011 and Win, 2004), sexual violence and mass rape are part of it as the political use of security forces, legal system, and public facilities, to commit it. Elites through patronage have supported this autocratic system also. In this manner, the government has controlled the country to keep not only the power but also the impunity for the crimes committed through the time, among them mass rapes that are still happening. Hence, according to Bacchi's theory (2016) it is possible to say that the government is a problem-maker, or at least a problem-keeper in Zimbabwe case. Nevertheless, there have been some legal improvements, which foster and enhance women's rights, recognition and restitution. However, due to cultural issues (3<sup>rd</sup> order changes), for instance the Constitution is not going to be implemented properly (Moghaddam, 2016) that is also influenced by government's interests. Besides, because limitations such as victims' stigmatisation, women's situation remains very insecure and aggressive. This environment where cultural issues and government actions foster social inequality, social division and learned helplessness do not help to improve recognition and/or proper laws application. The consequences for the population in general and the victims in particular, are both physical and psychological.

Moreover, victims' recognition is linked with other TJ processes such as reconciliation, truth commissions, restoration, equality, dialogue, apologies and so on. Thus, recognition is the keystone to achieve a proper laws application, because the legal system, to start working, needs a report or recognition of the existence of a problem, victim/s and perpetrator/s. Otherwise, sexual violence and mass rape problems will be perpetuated. However, to get recognition or for the legal system starts working it is necessary the access to the legal system, which as it has been showed is a serious issue in Zimbabwe.

Hence, it is possible to conclude that the problem is not so much recognition of victims in laws application as the lack of victims' access to the legal system and its corruption, because the sexual violence and mass rapes are institutionalised in Zimbabwe, culturally and politically. The first one to control women in general, which is linked with cultural and traditional ideas; and the second one because they are a political weapon that is still used and ignored by the state because it is convenient for them.

Therefore, there are diverse challenges to overcome the different limitations that women should face to have access to the legal system; but there are positive changes among Zimbabwe population, which are more and more aware and concerned about political abuses, corruption, human rights and so on.

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