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**THE ALBINO VICTIM PROFILE OF RITUAL SEXUAL EXPLOITATION (RSE) IN  
ZIMBABWE: INADEQUACIES, CONTRADICTIONS AND ANTAGONISMS IN  
THE LAW**

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## **Dedication**

*To Mama,*

*You always knew the way. I wish you were still here.*

## Abstract

**This ground breaking research reveals how the unique grounded multi-disciplinary women's law approach is an ideal tool not only to help understand and negotiate the largely unexplored terrain of ritual sexual exploitation (RSE) of women with albinism (WWA), culture and the law but also how to inspire our society to acknowledge and combat this crime and bring long overdue relief and remedies to its misunderstood, rejected and deeply hurting victims. RSE of women with albinism (WWA) is a gendered harmful cultural practice prevalent in the Sub-Saharan African region. It is significant evidence of the layered discrimination that WWA face in comparison with their male albino counterparts. There are two types of RSE against WWA which are rape by deception and violent rape which is consistent with elements of conventional rape. The differences between the two have an impact on accessibility to a legal remedy. While rape is generally hard to convict, things go up a notch where rape by deception is concerned. The difficult challenge of proving that the cunning method by which it is performed actually amounts to rape, or even violence for that matter, has proven itself so great that the United Kingdom of Great Britain has been driven to remove it from its Criminal Code. The combination of a precipitating social context and weak legal systems to deal with RSE is something of a legal novelty in the general debate on how to strengthen laws to facilitate the enjoyment of human rights by persons with albinism, with special emphasis on WWA.**

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## **Acknowledgements**

Thanks to every willing respondent and the direction of my supervisor.

## **List of abbreviations and acronyms**

AA	Albinism Alive
ACRWC	African Charter on the Rights and Welfare of the Child
ATZ	Albino Trust of Zimbabwe
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
Criminal Code	Criminal Law (Codification & Reform) Act [Chapter 9:23]
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRS	Class, Race and Sex
CWA	Child/children with albinism
GWA	Girl/s with albinism
HIV	Human Immuno-deficiency virus
GAMZ	Global AID Missions
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Maputo Protocol	Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa
MWA	Man/men with albinism
MWH	Man/men with HIV
PWA	Person/s with albinism
RSE	Ritual sexual exploitation
SG	Support group
SRH	Sexual reproductive health
SRHS	Sexual reproductive health service/s
W/GWA	Women and Girls with albinism
WWA	Woman/women with albinism
WWD	Woman/women with disability/ies
ZAA	Zimbabwe Albino Association

### **List of international human rights instruments**

African Charter on the Rights and Welfare of the Child (ACRWC)

Convention against Organised Transnational Crime

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW General Recommendation No.28

CEDAW General Recommendation No.25

Convention on the Rights of Persons with Disabilities (CRPD)

Convention on the Rights of the Child (CRC)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Joint General Recommendation No.31 of the Committee on the Elimination of Discrimination against Women/General Comment No.18 of the Committee on the Rights of the Child on harmful practices

Protocol to Prevent, Suppress and Punish Trafficking in Persons

Protocol to the African Charter of Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

PAP.4/PLN/RES/05/MAY.18 Resolution on persons with albinism in Africa

Regional Action Plan on Albinism in Africa (2017–2021)

United Nations Resolution 28/6. Independent Expert on the Enjoyment of Human Rights by Persons with Albinism

United Nations Resolution 70/229. Persons with albinism

Yogyakarta Principles

### **List of legislation**

*Canada*

Criminal Code

*Zimbabwe*

Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (Constitution)

Criminal Law (Codification & Reform) Act [Chapter 9:23] (Criminal Code)

Disabled Person's Act

Domestic Violence Act

**List of cases**

*United States of America*

*DeGraffenreid v. General Motors Assembly Div., etc.*, 413 F. Supp. 142 (E.D. Mo. 1976)

*Jefferies v. Harris County Community Action Association (HCCAA)* (1980)

*Lam v. University of Hawaii*, 40 F.3d 1551 (9th Cir. 1994)

*Mr X v. United Republic of Tanzania* (2014) Communication No. 22/2014

*Payne v. Travenol Laboratories Inc.*, 416 F. Supp. 248 (N.D. Miss. 1976)

*Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971)

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## **Executive summary**

The following extensive and extremely informative quote is that of Mrs Mercy Maunganidze from Zimbabwe Albino Association in response to how ritual sexual exploitation (RSE) of women with albinism (WWA) occurs in Zimbabwe and whether or not men with HIV (MWH) have ever been held accountable for that violation specifically:

‘I would say that the sexuality of women with albinism (WWA) is complicated because of the fetishizing of albino women and the unfair imputing of supernatural powers to the albino body in general. In our country, the myth that unprotected sexual intercourse with a WWA is a cure for HIV is the main myth that generates dubious attention from black men who are HIV positive. This myth has been around for a long time but I would be confident to say that about 15-16 years ago is when we began as Zimbabwe Albino Association to record or notice how the myth was resulting in a sexual exploitation of WWA that doubled with deliberate HIV infection.

‘You have to understand that not all WWA are the same due to differences in background such as level of family support, economic situation and place of origin. We are not all the same. The ones with the weakest families and those that reside either in rural areas or high density areas are the ones who are usually targeted. As you know our women are isolated in the communities they live in and generally have difficult upbringings where there is little or no love and acceptance. These are also women with normal female desires to be involved romantically with the opposite sex or to settle down and have a family. However, when they are approached for intimate relationships, they, out of desperation, do not do their homework to ascertain the true intentions of the men approaching them.

‘Many of them have no self-esteem and self-love to the extent that they do not demand HIV tests prior to consenting to unprotected sexual intercourse. They fall victim to cunning HIV positive men who believe in the myth I have mentioned and agree to unprotected sex, on their part as a show of love and commitment so that they are not left alone. Many of these relationships look very normal in the beginning stages. Some of the perpetrators go as far as to marry and have children with the WWA to secure access to their bodies unreservedly and to cover up or silence scepticism and suspicion regarding their real intentions. The abrupt disappearance of the men with HIV, particularly where there is no marriage, and once he sees he is not being cured is what triggers suspicion on the part of the WWA. Sometimes the man leaves her but stays in that same community and ignores her as though nothing ever happened between them. Other perpetrators are brazen enough to reveal to their victim what the real reason behind securing the relationship with them was.

‘All the women who have reported this crime to us insist that these were their first sexual encounters. The pursuit for justice has been hard. It appears that

this is the perfect crime to commit because none of the men have ever been held accountable for deliberate HIV infection or engaging in witchcraft activities except for a number of child support obligation cases in which the men have been made responsible by the civil court for the children resulting from the RSE.’

In Zimbabwe, according to Mrs Maungaidze, ritual sexual exploitation is the second most common type of sexual violation. The first one is sexual harassment in public settings, the second ritual sexual exploitation/rape by deception and then violent rape. Ritual exploitation, she states, is the most devastating of the three and therefore requires the most urgent attention in terms of redress and justice.

This dissertation is set out in seven chapters. The first chapter serves to define the problem and the goals and objectives of the research among which are exposing weaknesses in the law that facilitate impunity and deny justice and reparations for victims. This is to create a lobbying tool for better laws specifically for RSE. Research questions are used to investigate why WWA are at a higher risk of being ritually exploited than other groups in society. Apart from this social question are the legal questions centring on whether the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (Constitution) is intersectional in approach for the purposes of handling the intersectional high risk profile of WWA. Whether or not the decriminalisation of sections 79 and 80 of the Criminal Law (Codification & Reform) Act [Chapter 9:23] (the Criminal Code) regarding deliberate infection is a step backwards for WWA is the next question. There is also the question of whether or not section 69 of the Criminal Code is too narrow to accommodate the form of deceit employed by MWH in order to vitiate the consent given by WWA.

This research also investigates how international and domestic differences in the definition of albinism may deprive WWA of the forms of protection afforded them against all forms of exploitation in terms of article 16 of the Convention on the Rights of Persons with Disabilities (CRPD). I also pose the question of whether or not the Criminal Code’s sections 70-71 constitute discrimination against the disabled on the basis of ageism and partiality and disenfranchise WWA. The law is also examined to see whether it addresses all forms of exploitation including RSE. Last of all, this research investigates why section 98 of the Criminal Code can be considered ornamental.

Chapter 2 consists of a review of WWA in literature from a social and legal perspective within the context of sexual violations. There is a comprehensive human rights analysis of RSE, particularly the serial violation of specific rights and especially where the disenfranchisement of one right results in the denial of another, thereby creating conditions ripe for RSE. There is a brief reference to the emergence of the need to create albinism specific legislation in different countries in the world.

Chapter 3 is dedicated to the methodological justification which is necessarily an Afro-centric and mainly socio-legal analysis designed to capture the African social context in which albinism exists. The socio-legal approach deals mainly with how the legally governed social entities critique the law as well as the extent to which the law itself contributes to the perpetration of RSE.

Chapter 4 is the first chapter on data analysis dedicated to the victim profile unearthed and how it constitutes a high risk profile in comparison to other groups of people in Zimbabwean society. Emerging issues from the profile are also discussed. Chapter 5 is a continuation of data analysis dedicated to the legal elements of the research.

Chapter 6 tackles the issue of how to reduce the risk for each of the elements of the victim profile excavated. Chapter 7 recommends how to make the Constitution more intersectional; expanding the grounds under which sexual consent is vitiated; identifying which definition to apply regarding the legal benefits associated with RSE; how to deal with ageism and partiality towards the disabled and how to include all forms of exploitation to cover all the elements of RSE. Last of all a recommendation is offered as to how to respond to the token nature of witchcraft laws for dealing with RSE with a suggestion of alternative forms of reparation.

## CHAPTER ONE

### 1.0 INTRODUCTION AND BACKGROUND TO THE STUDY

#### 1.1 Problem statement and background

The intersectional identity of the black Zimbabwean albino RSE survivor/victim produces various intricate overlapping forms of oppression and discrimination. Taken together, the complex and compounded multiplicity of the demographical characteristics of victims and the lack of their appreciation judicially and legislatively; the contradictory definition of albinism in international legislation and the *ex post facto* nature of the violation which produce several hurdles in the pursuit of justice at the legal level of addressing RSE result in unbridled impunity for its perpetrators.

Since legal counsel available to the Zimbabwe Albino Association is adamant that most of the cases that it handles on behalf of victims lack sufficient evidence to support a criminal prosecution against their perpetrators, only civil child support action has been pursued against them. The essential elements of the crime of RSE, such as deliberate HIV infection and the practise of witchcraft related activities, are neglected for lack of hard evidence. By their very nature, the deleterious effects of RSE are so delayed in their manifestation that criminal law is incapable of redressing the crime especially in the realm of proving the criminal intent to deliberately infect with HIV or to engage in witchcraft.

The support groups engaged add that even if sufficient evidence to support a prosecution were available, there are serious doubts whether the victims would engage in the public rigors of a criminal trial. For the most part victims prefer counselling and the suggestion of anything more has been vehemently resisted. This is largely due to the isolated manner in which WWA experience systemic injustice right from their birth and into their adulthood the effect of which makes them suspicious of the criminal justice system since most of the injustices they have suffered have never been dealt with.

Due to the above reasons, our criminal justice system has never tried a criminal case of RSE. Indeed the law has no definition or language that specifically defines this violation, meaning that it is not a crime for which any one can be legally punished. An examination of the victim

profile and the nature of the violation reveal that the criminal justice system has very little to offer victims in the way of justice. As a result, the crime goes unpunished, thereby sending a message to actual and potential perpetrators that they enjoy impunity.

The support groups also bemoan the lack of political will to tackle injustices against WWA. Mrs Maunganidze says the organisations are severely curtailed by the shortage of skilled manpower in terms of psychologists to engage in preventative counselling aimed at increasing victim agency. In addition due to financial reasons, the support groups have also failed to decentralise to provincial, district and community level in order to engage in abolitionist methods of prevention and intervention, hence, RSE remains largely unchallenged.

## **1.2 Location of study**

Although the respondents were found in Harare, a national scope will be employed because some of the support groups engaged have national mandates. One of the groups, Zimbabwe Albino Association with the biggest number of survivors engaged said the survivors they have encountered are from all over the country. Because national law is being examined it was appropriate to employ a national perspective to delimit the boundaries of the research.

## **1.3 Significance of study**

This inquiry is significant and ground-breaking for the following reasons:

- It is the first in the country to question the legal adequacy and preparedness of our legal system to deal with RSE.
- It has the potential to reverse the decriminalisation of our law regarding deliberate HIV infection.

## **1.4 Research objectives**

- To use this study as a tool to lobby legislature to widen laws for the accommodation of RSE.
- This dissertation does not wish to identify WWA as the only group of sufferers regarding RSE, but rather to create synergy with other demographics

of adult RSE survivors such as virgins, WWD and mentally challenged women.

### **1.5 Research assumptions**

- (1) The intersectional nature of the albino woman's victim profile increases the risk of exploitation in comparison with other groups in Zimbabwean society.
- (2) Section 56 of the Constitution lacks the intersectional approach necessary for dispensing judicial justice in instances of ritual sexual exploitation (RSE).
- (3) The process of decriminalising the deliberate HIV infection provisions, namely sections 79 and 80 of the Criminal Law (Codification & Reform) Act [Chapter 9:23] (the Criminal Code), is a step backwards for victims of RSE.
- (4) Section 69 of the Criminal Code does not capture the false pretences used by MWH to elicit consent to secure unprotected sex from their victims.
- (5) The differences in classification of albinism in international law and between international and domestic legislation could deprive WWA of the strong legal protections against RSE contained in Article 16 of the Convention on the Rights of Persons with Disabilities (CRPD).
- (6) Sections 70 and 71 of the Criminal Code are discriminatory against women with albinism in favour of children and mentally challenged persons.
- (7) The law must denounce "all forms of exploitation" in order to combat RSE.
- (8) Section 98 of the Criminal Code on engaging in witchcraft activities is a weak and inadequate provision for tackling the RSE of WWA.

### **1.6 Research questions**

- (1) How does the intersectional nature of the albino woman's victim profile increase the risk of exploitation in comparison with other groups in Zimbabwean society?

- (2) Does the Constitution's Section 56(3) lack the intersectional approach necessary for dispensing judicial justice in instances of ritual sexual exploitation (RSE)?
- (3) Is the process of decriminalising the deliberate HIV infection provisions, namely sections 79 and 80 of the Criminal Law (Codification & Reform) Act [Chapter 9:23] (the Criminal Code), a step backwards for victims of RSE?
- (4) Is it the case that section 69 of the Criminal Code does not capture the false pretences used by MWH to elicit consent to secure unprotected sex from their victims?
- (5) How could the differences in classification of albinism in international law and between international and domestic legislation deprive WWA of the strong legal protections against RSE contained in Article 16 of the Convention on the Rights of Persons with Disabilities (CRPD)?
- (6) In what way are section 70 and 71 of the Criminal Code discriminatory against women with albinism in favour of children and mentally challenged persons?
- (7) Why must the law denounce "all forms of exploitation" in order to combat RSE?
- (8) Why is section 98 of the Criminal Code on engaging in witchcraft activities a weak and inadequate provision for tackling the RSE of WWA?

## **CHAPTER TWO**

### **2.0 LITERATURE REVIEW AND HUMAN RIGHTS**

#### **2.1 Literature review**

A victim profile study of a specific gendered sex crime against WWA linked to the legal hurdles created by how such a complex identity impinges on the utility of criminal justice options as remedies is not available in literature. A simple “Google scholar” search for victim profiling shows very few articles, necessarily because victimology in general is a growing discipline. Victims of crime are actually being rediscovered in the criminal justice system according to Karmen (2012). There are no victim profile studies for specific crimes relating to albinism in general and WWA more specifically, meaning that this study is pioneering in nature. This gap in the literature may lead one to erroneously surmise that WWA are one homogenous group with the same level of risk to specific forms of violence.

United Nations Resolution 28/6 called Independent Expert on the Enjoyment of Human Rights by Persons with Albinism requests the Independent Expert to integrate a gender perspective throughout the work of the mandate and to pay specific attention to the challenges and needs of women and girls to address the multiple, intersecting and aggravated forms of discrimination faced by women and girls with albinism. The United Nations Resolution 24/33 on technical cooperation for the prevention of attacks against PWA also reiterates the need for a gender approach to finding solutions against violence against PWA. United Nations Resolution 70/229 that requests an assessment of the social development of PWA also requests a gender approach to the inquiry.

A report by the Office of the UNHCHR (UN, 2013) states that WWA are more vulnerable to violence than their male counterparts. Although there are a few articles on violence against WWA before it, this particular UN study can be considered the foundation of most of the literature on WWA. Up to that point and even now, the UN and academia can be excused for neglecting research in this area because the mandate of the Independent Expert had only just started, little grounded research had been done and no official obligation regarding the research of WWA had yet been created.

Gender and RSE have also been linked by the United Nations (2019) in a global UN research document that refers to cases in which the fetishization of albinism has resulted in sexual

violence against Women and Girls with albinism (W/GWA) in Africa. There is no mention of this crime in relation to men with albinism (MWA). In addition, the rape of women and girls with albinism based on the myth that having sex with a woman with albinism can cure HIV was cited in the report quoted above. In its concluding observations on The Combined Seventh and Eighth periodic reports of the United Republic of Tanzania, the Committee on the Elimination of Discrimination against Women (2016) raised concerns about harmful practices against women with albinism, noting the practice of prescribing sex with girls or women with albinism as a cure for HIV. This is a Sub-Sahara Africa-wide trend from Uganda<sup>1</sup> to Kenya and South Africa<sup>2</sup> to Zimbabwe.<sup>3</sup>

The trend to dissect albinism by gender is recent. Until the early 2000s albinism was not treated in a gendered fashion by literature. This is because of the emphasis on albinism as a biological science or medical issue as evidenced by the articles of the time including, for example, “A health intervention programme for children with albinism at a special school in South Africa” by Lund and Gaigher (1994); “Formulation of a topical sun protection cream for people with albinism” by Moloisane et al. (2004) and “Periodic alternating nystagmus in humans with albinism” by Abadi and Pascal (1994).

Scholars such as Hohl (2018) have advocated for a social rather than a medical approach to albinism in order to move away from the asexual suggestion of the medical approach. The social approach enables the exposure of gender disparities in the pattern of violence between men and women with albinism. Hohl has put together a bibliography of articles in the social science and arts genres to understand the lived realities of persons with albinism in their social context so as to intervene more accurately based on that understanding. Some of the titles he promotes are Baker (2007)’s ‘A constantly shifting identity: The problematic nature of the albino body’ and her 2009 offering entitled ‘A visible difference: Images of black African people with albinism.’ Baker’s work on the albino body is not gendered but maintains that the various forms of victimisation of persons with albinism occur as a result of their visible colour difference and their rarity which invite “thingification” or otherness to the extent of being given superhuman status.

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<sup>1</sup> See Bradbury-Jones.

<sup>2</sup> See Khulisa.

<sup>3</sup> See Bradbury Jones (above).

A United Nations report (2016) rightly categorises the myth that heterosexual intercourse with a WWA cures HIV as a gendered ritual which is a welcome highlight although it does not give the context such as whether or not this unprotected intercourse is violent or consensual. Most articles that deal with RSE categorise it as rape such as Fengu (2019) and Salewi (2011) in the context of Tanzania. This is a marked difference with Zimbabwe because the rape of WWA is almost unheard of. Zimbabwean RSE takes the form of what other jurisdictions call rape by deception.

The literature also treats WWA as passive victims of society, there is no literature available that places them in the context of impulsive or precipitative victimology where they abandon caution or pursue relationships with abusers, thus playing an inadvertent role in their own abuse.

The biggest legal subject related to albinism and the law is that of witchcraft laws because of the pronounced and brutal killings of PWA that are related to ungendered witchcraft rituals. Mavheko (2015) denounced the now abolished Witchcraft Suppression Act of Zimbabwe as culturally oppressive and a denial of the reliance of black Zimbabwe on that aspect of their culture. He states that witchcraft is used to harm people and the law must be used to apprehend those who practise harmful acts of witchcraft. Most literature on witchcraft laws states that criminal law is ineffective as a remedy for witchcraft related violations and discrimination against PWA. In its report, Amnesty International (2018) in an examination of Malawi says if witchcraft laws worked, then attacks against people with albinism would have ended. After studying various sub-Saharan countries with anti-witchcraft laws, the Independent Expert on the Enjoyment of Human Rights by People with Albinism summarised them thus:

‘Witchcraft also poses problems for the rules of evidence and fair trial because of the supernatural aspect of the phenomenon. This has often resulted in the use of “the best available” laws, which provide neither adequate criminal charges nor sentences deemed proportionate to crimes of this nature. When charges are deemed weak, sentences are perceived to be lenient, or affordable in the case of fines, and their deterrent capacity is weakened because the perpetrator is still able to foresee an overall gain or profit from his or her crime.’

There are some gender-neutral studies that combine albinism and law. It must be said that the trend to consider albinism and legality is significantly less apparent in literature than albinism

and gender. Ntinda (2010) studies the Namibian Constitution with regard to how much it protects children with albinism (CWA) in comparison with other Namibian children and whether they require special legal treatment due to the myths that make their lives difficult. A deeper study of a selection of legal issues is done by Mswela (2016). The primary purpose of this study is to highlight some of the pertinent challenges faced by persons living with albinism in South Africa which compromise the full enjoyment of their fundamental rights as enshrined in the South African Constitution. This study explains a denial of rights by a brutal social context, the subject of the deficiencies regarding protections of persons with albinism a large extent. She also tackles how the legal definition of albinism has the effect of causing confusion where certain rights and privileges are concerned. For example, if people with albinism cannot be categorically defined as disabled, they have no access to disability grants. There is no real gender assessment because the legal instruments that demand the gendered outlook of albinism were not yet in place that is United Nations and African Regional resolutions on albinism only came about in 2013. The studies of Ntinda and Mswela and others like theirs should be complemented for exposing the fact that albinism by itself cannot be adequately protected by existing law. Literature is therefore imploring legislature to create more robust laws to protect WWA.

There is only one gendered legal study accessed in this research that cites law as inadequate to handle the social injustices specifically visited upon WWA. Ojilere and Saleh (2019) suggest that because WWA suffer the tragedy of double prejudice and special violations to dignity and life contrary to standard templates of international human rights, they deserve special attention from international treaties and municipal legislation. This is the only study that is closest to what this study is attempting to enunciate: that legal remedies are difficult for WWA to enforce because they are not structured to accommodate the complex social context in which WWA live together with the psycho-social state created by the social hardships. Their study tackles a variety of issues WWA face as well as the violent rapes they suffer as a consequence of RSE.

The degree of nuance attempted in this study implies that Olijere's "double prejudice" is an inadequate term to describe the inter-marginality experienced by WWA since I identify as many as 16 grounds of discrimination covered by section 56(3) of the Zimbabwean Constitution when WWA are, to put it lightly, discriminated against in the context of RSE.

In general acknowledgement of domestic legal inadequacies regarding albinism, some countries such as Brazil, Tanzania and Nigeria have begun to draft albinism Bills. The content for Nigeria is inaccessible because of an expired link.<sup>4</sup> While there is mention of Brazilian<sup>5</sup> and Tanzanian<sup>6</sup> Bills online, their actual content is inaccessible. Furthermore, the comments of the Independent Expert for the Enjoyment of Human Rights by WWA on the Brazilian draft Bill are devoid of material relating to sexual violence against WWA.

This study therefore covers several gaps in the literature, particularly the case on of non-violent ritual exploitation/rape by deception of WWA and the lack of victim profiling/intersectionality in terms of handling legal issues in connexion with WWA.

## **2.2 Human rights and ritual sexual exploitation (RSE)**

The first thing to note about RSE and human rights is that the denial or forfeiture of certain rights catalyses the perpetration of RSE, especially civil, political, social and economic rights. Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the WWA's right to work. Access to this right is frustrated by poor physical image and sight resulting from a lack of the right to health (Article 12) and the right to education (Article 13) which is hard to fulfil for WWA due to poor sight and frustrations arising from bullying by peers and teachers. This means that WWA are not able to enjoy an adequate standard of living according to Article 11 of the ICESCR. Poverty and lack are linked to RSE because when a woman cannot work, her default job is to become a wife and when she does not earn money she is dependant and vulnerable to any form of exploitation. WWA think these are once in a lifetime opportunities given their economic status and settle for relationships or marriages where in which they are ritually exploited. Article 12(1) of ICESCR speaks of the right to the highest possible standard of health recognising the psychological states that WWA exist with because of the varying frustrations, discriminations and hurts associated with albinism. The availability of competent counselling is evidently lacking in their lives, resulting in impulsive victimology.

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<sup>4</sup> The link cannot be copied because it has expired. For reference, Google "Albinism Nigeria Act."

<sup>5</sup> Link for the mention of the Brazilian Draft Bill on the OHCHR <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25271&LangID=E>. The available commentary on the Brazilian Draft Bill has no gender related material. See <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24983>.

<sup>6</sup> Tanzanian mention of Draft Bill on albinism <http://www.eala.org/media/view/new-bill-outlawing-discrimination-against-albinism-in-the-offing>.

RSE is a direct reflection of the lack of the right to self-determination of WWA espoused in Article 1(1) of the International Covenant on Civil and Political Rights (ICCPR) and article 1(1) of the ICESCR because of a social and communal restriction that relies on myths and prejudice to curtail or prevent their making choices relating to sexuality. This is where predators and not WWA decide what direction their sexuality must take.

Article 2(3)(a) – (c) the ICCPR provides that any person who has fallen victim to violation has the right to an effective remedy from a competent judiciary which has the power to enforce the law. Women used to be blamed for falling victim to rape by the courts until the judiciary became more sensitised to gender issues. There is reason to doubt the capability of our courts regarding inter-marginal issues such as RSE, given that intersectionality is a little understood concept in Zimbabwe and the absence of this understanding can lead to impunity and ineffective remedy in the anticipated event that RSE in the given context is presented before the courts.

RSE, although after the fact, is a form of cruel, inhuman or degrading treatment according to Article 7 of the ICCPR. It is cruel because it discounts the WWA's ability to feel and the fallibility of her body. It is inhuman because it treats WWA as objects or things and therefore commodifies and uses them as common property. It is very degrading to discover that they were never wanted and that they fell for a lie. While the relationship subsists the women feel loved, human and esteemed. The mental torture erupts, however, after the revelation of the true motive of the perpetrator after the relationship ends.

Article 20 of the ICCPR states that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Although the Criminal Code speaks against incitement to perform acts related to witchcraft, the prohibition is expressed in a general manner. Because of the growing need to emphasise the specific challenges faced by PWA, and the peculiarity of the challenges faced by Zimbabwean WWA, or at least this form of RSE, there is a need for a specific law condemning the incitement of RSE.

Article 22 of the ICCPR establishes the right to freedom of association. Because of the deceptive nature of RSE, WWA find themselves inadvertently associating with perpetrators because, unlike MWA, they are not the choosers in heterosexual relationships. Black women

generally have more choice in the selection of their companions in the sense that there are fewer instances where relatives will talk a man out of engaging with a specific black woman. Black women's relationships in my observation will usually fall apart because they cannot get along and not because a third party does not like the woman's colour.

Albinism threatens families because it usually causes fathers of CWA to abandon spouses and children. Article 23(1) of the ICCPR states that because the family is the fundamental unit of society, it is entitled to protection by the state and society. Where parental rejection occurs they are denied parental care and protection and access to one or both parents according to Article 19(1) and (2) of the African Charter on the Rights and Welfare of the Child (ACRWC). Article 20(1)(a) shows that when parents abandon CWA they are not promoting the best interest of the child since they are negating their Article 20(b) responsibilities to provide conditions of living necessary for the child within his/her financial capacities.

Article 23(3) of the ICCPR shows that because WWA in the context of RSE have not given what is classified as 'free and full consent', since they are for a time unaware that they are being married to serve as healing fetishes, these are problematic marriages. These marriages are unequal in terms of rights and responsibilities according to article 23(4) of the ICCPR because of the non-disclosure of intent. Arguably they could be called marriages of convenience because it is convenient for the MWH to go as far as to marry the WWA so that in future he cannot be accused of intending to use her for ritual abuse because, had that been the case, he would not have initiated a relationship with her leading to marriage. It may even be construed as a case of true love gone wrong, "just like any other relationship", which serves strongly to enable him to get away scot free.

More literally, RSE is the abuse of the rights to bodily integrity due to deliberate HIV infection by MWH (Article 32 of the Yogyakarta Principles). Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) shows that RSE is a form of discrimination

Article 2 of CEDAW shows that RSE is a form of discrimination against WWA because no MWA have ever come forward to the respondent support groups alleging RSE. This is gender based discrimination according to article 2(1) of the Protocol to the African Charter of

Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Article 4(1) of the Protocol forbids RSE when it condemns all forms of exploitation; it does not distinguish between covert and overt exploitation or make stipulations on degrees of violence. Article 4(2)(a) of the Protocol forbids unwanted sex. If the WWA knew at the time of the act that it was for ritual purposes, it can be safely assumed that she would not have agreed to the sex making it unwanted in that sense.

Articles 4(d) and 10(b) of the Maputo Protocol explain that WWA suffer a lack of peace because of ignorance and lack of social communication which dispels myths that affect their peace by promoting verbal, physical, emotional and financial abuse.

The lack of sex education targeted at WWA is resulting in their losing the right to control their fertility as they are exploited as the result of RSE and fall pregnant. The Maputo Protocol firmly enshrines the rights of WWA regarding HIV. Article 14(d) and (e) gives WWA the right to self-protection and the right to be protected against STDs, including HIV/AIDS, the right to be informed of the health status of their partner, particularly if infected by STDs, including HIV, in accordance with internationally recognised best practices. Removal of deliberate infection laws in Zimbabwe is eroding these rights and promoting impunity for those guilty of practising RSE.

To summarise the Maputo Protocol provides WWA better protection than CEDAW against RSE. Although they are both feminist pieces of legislation, the Maputo Protocol covers more succinctly the most salient aspects relating to RSE, such as deliberate HIV infection, and embraces a wider appreciation of "all forms of exploitation" (see Article 4 of the Maputo Protocol), while CEDAW limits itself in article 6 to exploitation of prostitution.

## CHAPTER THREE

### 3.0 METHODOLOGY

#### 3.1 Selection of respondents

Respondents were chosen on the basis of their willingness to participate and my ability to access them geographically and within my budget. Four support groups (SGs) were available and willing to participate. Table 1 gives details of each support group.

**Table 1: Showing statistical information about Albinism Support Groups (SGs) consulted in the research**

NAME OF SUPPORT GROUP (SG)	NUMBER OF SURVIVORS	VICTIM LOCALE	DUTIES OF SG	LOCATION OF SG
Zimbabwe Albino Association (ZAA)	Estimate over 50	Countrywide Distribution in high density suburbs and rural areas	Counselling, economic empowerment projects, educational scholarships, advocacy	Harare town-based with no functional structures outside Harare
Albinism Alive (AA)	1	Harare, Highfield	Advocacy and counselling of PWA, creation and protection of economic safety nets for PWA	Harare Town
Albino Trust of Zimbabwe (ATZ)	3	Harare, high density suburbs	Advocacy for albino prostitutes and albino LGBTQ community, counselling of RSE victims	Harare Town
Global AID Missions (GAMZ)	0	-	Health care, i.e., sunscreens, doctor consultation, facilitate cancer treatment, modest SRH with PSI Zimbabwe	Harare Town with plans to go nationwide

The first three SGs in Table 1, namely, Zimbabwe Albino Association (ZAA), Albinism Alive (AA) and Albino Trust of Zimbabwe (ATZ), have had direct contact counselling WWA who are RSE survivors. Global Aid Missions (GAMZ) was selected because it provides health and Sexual Reproductive Health (SRH) services to PWA specifically, although they do not exclude other people from accessing their services. The first three organisations' respondents have albinism, while the staff of Global Aid Missions are all dark skinned.

### **3.2 Data collection methods**

Face to face interviews were done with Albinism Alive, Global Aid Missions' one nurse and administrative clerk as well as Sekuru Padya of ZINATHA. Whatsapp call interviews were done with ZAA and ATZ. This form of communication was used because it was hard to secure meetings over a period of months since ZAA Harare based staff exercise a national mandate and are always on the move on various assignments and have day to day liaisons with the Zimbabwe Disability Board. Some of the data was gathered during the COVID-19 lockdown so Whatsapp calling was the only way to collect data especially for ATZ and follow up interviews with Zimbabwe Albino Association. All the support groups involved in counselling victims of RSE were very forthcoming, perhaps because they are both PWA as well as founding members of the organisations they represent.

I interviewed the respondents using elements of the victim profiling approach. The first is the demographic breakdown of the victim such as physical attributes, place of birth, marital status and others. The motive aspect of why MWH commit RSE was also questioned such as what the offender was seeking to gain. In order to secure an understanding of motive from an anthropological and psychological perspective, I consulted Dr Javangwe (Forensic Psychologist) particularly regarding how WWA precipitate their own victimology by not taking precautions. I also referred to literature where interpretations were out of the support groups' depth and where Dr Javangwe was not available. The ZINATHA representative I interviewed censored himself and might have been inhibited by my albinism and femininity. Literature throughout the research was used as a means to triangulate data.

Issues of motive and characteristics of the victim have constitutional and criminal law significance. I needed legal counsel so I interviewed Dr Amy Tsanga (feminist law expert and High Court Judge), Professors Julie Stewart (Feminist Law and General Law), Lovemore Madhuku (Constitutional and Interpretative Law) and Geoff Feltoe (Criminal Law) about

whether or not the Constitution is intersectional. The questions about traceable criminal motive, deliberate infection and practising witchcraft activities were tackled by Professor Stewart in face to face interviews and supervisory sessions. The question of whether or not the removal of deliberate HIV infections provisions from the Criminal Code is a step backwards for WWA was tackled by Professor Feltoe. Some of the legal answers were supported by literature where no case law or legal understanding could come from interviews.

### **3.3 Methodological approaches**

I conducted the research using primarily a socio-legal approach so that the analysis of Zimbabwean law is directly linked to the analysis of the social situation to which the law is being applied. Specifically, it was also necessary to put it into the scenario of ritual sexual exploitation of WWA so that, according to Schiff (1976), the part the law plays in the creation, maintenance and/or change of the situation is exposed. Socio-legal theory was also appropriate because it allows for a critique of the law by entities of society (such as support groups and academia) that are governed by it, are familiar with the crime of RSE and in an ideal position to improve it for the purpose of dispensing justice for RSE survivors.

The research also had to have an African theory and methodological umbrella given that it is in an African context. Dr Marongedze (Philosophy and theory expert) advised me to employ an Afro-centric approach to the study so that it is authentic to the context.

In just the same way as the Sankofa bird has two pairs of eyes, one looking forward and the other backward, the 'Sankofa' approach was used to capture women with albinism in history, contemporarily and in their envisaged tomorrow. As King (2019) explains, the Sankofa is a bird looking back, but going forward while situated in the present. This was important to frame RSE survivors in history, in today and tomorrow. To put it another way, the Sankofa approach affords us a means to enquire how growing up in an abusive society affects them across the timeline.

The human rights approach was also employed to critique discrimination based on age and ability under a universal human rights lens. This is to help understand the difficulties law makers have in respect to determining high risk and areas of emphasis in law and how that results in discrimination against WWA.

### 3.4 Methods

Methods were chosen for the creation of replicable scientific inquiry so that if another social scientist attempts to research the same issue they can come up with the same result as stated by “Relationship between theory...” (2020). The first method used was the statistical method where statistics were captured from the interviews with support groups (See Table 1).

The women’s law approach was chosen because it best analyses the law within the lived realities of women in a 3 step process:

- It examines the current law in a feminist way;
- It identifies gaps and inadequacies;
- It prescribes whether or not the law must be expanded or contracted based on the said lived realities as propounded by Dahl (1987).

The women’s law approach was also important because it contributed to the framework for recommendations.

The intersectional approach refers to specific layers of identity of a single individual and their associated discriminations. To extract the specific victim identity layers related to this violation, it was necessary to use an intersectional tool that would unearth the WWA most likely to be targeted using victim profiling because albino women are not a homogenous group and there is the risk to be considered relative to the dominant groups in society.

The “Nommo” method of oration was also employed. As opined by Alkebulun (2005), the Dogon people of West Africa believe that words uttered over a specific subject or naming have creative energy. It is useful in unearthing the kind of existence that the creative power of words has unleashed on WWA. This method involves the use of words to positively influence, show affection and acceptance. The words can be used in the opposite manner, both positive and negative “Nommo” create good or bad destinies. The study aims to show that the abuse of words has negative creative energy that precipitates an exploitative society for WWA.

Afro-centricity is broad and has spawned various tools such as afro-positivity with which, according to Ifkovic et al. (2003), is about improving the perception of African people in the media and to recognise them as persons with agency and significant contributions to mankind. This needs to be applied to WWA because they are part of African genealogy. Afro-negativity via “Nommo”/labelling/name calling victimises WWA, hence, afro-positivity is critical in restoring agency and taking WWA out of victimhood through afro-positive recommendations suggested by this dissertation which are aimed at promoting WWA in a positive light, as having agency, as part of the black Zimbabwean population with a contribution to make.

The biological method which, according to Uchendu (2008), classifies persons with traits that vary from the majority to be sub-human, in other words not as good as normal, therefore not quite like “us” and therefore “other” or “them”. The biological model was useful in explaining the “otherness” of the disability of albinism together with Afro-centricity which provides a framework for asking the question of whether or not WWA are Afro-centric, given their white skin.

Because of the violation of WWA is based on myth, there was a need to use an ethnographic method of data extraction relevant to the African society. African knowledge systems methodology in the form of narrative interviews was employed. To capture more broadly the myths, narratives recorded in literature were used because of the difficulty in meeting a broad section of traditional leaders willing to speak honestly and freely.

The actors, norms and structures analysis was necessary to critically assess how legal pluralism affects women with albinism. While the law prohibits ritual activity and harmful cultural practices, how then does the HIV positive man navigate between the formal legal systems and decide that the African Traditional Religion Route is best and moral for him? The power dynamics between the perpetrator and the instigator (witchdoctor) need to be investigated as well as those between the perpetrator and the victim. As Benzton et al. (1998) state, the women’s law approach is rule oriented hence a more dynamic approach is needed. The actors, norms and structure analysis recognises that the woman’s actions are not explained solely by reference to her own character and beliefs. Looking at the broad based construction of the position of men and women and the gendered relationship between them, women focussed and gender relational perspectives can be combined. This method is critical

to explain why the woman's actions are not sufficient to blame her alone or to explain how she becomes a victim of RSE.

If albinism can be classified as a disability, then it is important to employ the Class / Race / Sex Model to identify whether or not class and race are more important than gender in determining victimhood and discrimination. This is to create inter-linkages between individual identity layers of intersectionality, as opposed to simply naming them.

Since I am also a WWA, the Participant-Observer method was important to share my life experience where it simulates that of the survivor in the profile. There are some experiences among the demographic of WWA that are common denominators to albinism and not simply a section for WWA which can help explain why albinism in itself courts RSE.

### **3.5 Theories**

For perspectives on how to interpret qualitative data or observe patterns, theories were employed. Victim theories were used to explore whether the pattern of victimology mirrors or validates major victim theories.

“Victimology: Four major...” (2016) states that there are different theories of victimology that is Victim Precipitation Theory, Victim Impulsivity Approach, Deviant Place Theory and the Routine Activities Theory. The respective assumptions allowed me see how much RSE victimology resembled what was hypothesised in the victimology theories, for example:

1. WWA are precipitating their own abuse by pursuing relationships with their abusers.
2. WWA are impulsive to the extent of taking more risks than precautions when engaging with their abusers, leading to their victimisation.
3. WWA's places of birth, origin and residence constitute Deviant Places that breed RSE.
4. Routine activities such as dating and romance in a woman's life make WWA targets to motivated offenders.
5. The absence of capable guardians/secure protective environment increases the risk of WWA being victims of RSE.

The degree to which the evidence from the victim profile mirrors what is hypothesised in the different assumptions above helps to determine the degree of risk WWA are under and possible recommendations to enable prevention and reparation.

The Ubuntu approach was necessary because it emphasises respect, especially relating to age, as opined by Gumbo (2014). It gives the framework to interrogate the ageism experienced by WWA in law and society.

Femaleism, a strand of African feminism was used to problematize and advocate against the use of the female albino body for the pleasure and healing of HIV positive men at the behest of witch-doctors or on their own initiative. As Opara (2016) states, the female body is “a site of patriarchal abuse and violence on the African continent and the bearer of ... exploitation”.

Essentialism, according to Tsanga and Stewart (2011), is also critical for proving the senseless martyrdom of women with albinism due to RSE at a greater rate than other groups of women. The Sex, Gender Approach was important for the problematizing the gendered victimization of WWA by culture.

Closely related to the above is the question as to whether or not WWA own their bodies. Radical feminism provides a theoretical framework for this by stating through MacKinnon (1982) that “[s]exuality is to feminism what work is to Marxism: that which is most one's own, yet most taken away.”

African feminists decry the absence of HIV-related reproductive health services for vulnerable women on the continent. This group of theories was combined with precipitative victimology to elucidate how women with albinism fall victim to this violation because of the absence of SRH services adapted to their unique psycho-social state.

### **3.6 Field challenges**

My most promising attempt at meeting an actual ritual sexual exploitation victim showed me how poor service delivery and the economic downturn affect civil society. My scheduled appointment with the facilitators was cancelled because the receptionist was at home fetching water and her boss/my respondent was at the Chinese embassy. Most people in the albinism

civil society are volunteers so the question must be raised, can we have effective volunteerism with no economic incentive?

It was also suggested by a former volunteer that the support group in question had lost focus of the objectives of the organisation and the leader likely no longer was in good standing with the survivor. I had to settle for Zimbabwe Albino Association, Albinism Alive and Albino Trust of Zimbabwe counsellors as secondary respondents to identify and dissect the victim profile as much as they could since they have actual contact with the survivors.

As previously stated, it was difficult to get traditional leaders to talk to me about RSE. I think the challenge is that the subject is of a sexual nature which culturally is not for public discussion. I believe they also would have felt better talking about RSE to a male non-albino. Because some of the people I approached wanted exorbitant incentives that I could not give, I settled for the account of Sekuru Padya, even though it was not ground breaking.

I wanted to employ the ethnographic method through story-telling by the elders through an interview with 80 year old Prof Mararike (Sociology African Religion and Tradition). However on the day the interview was scheduled, he had to cancel because of an emergency at his farm where he is resident. I therefore had to settle for what came from literature and the support groups.

### **3.7 Ethical challenges**

All the support groups that participated in the research could not facilitate access to survivors because of confidentiality related issues and some of the victims were suspicious of the research exercise because they feared being judged and scrutinised. Some had moved on with lives and did not want to visit the chapter again.

## CHAPTER FOUR

### 4.0 DATA ANALYSIS

#### 4.1 Increased risk of RSE in comparison with other groups

The data from the support group victim profiling process reveals several overlapping identities which indicate varying possible factors that put WWA at greater risk of victimisation as the result of RSE than other groups in Zimbabwean society. The compounding layers of inter-marginality will be assessed individually.

##### 4.1.1 *Gender and sex*

The data from the three support groups identified reveals the unsurprising fact that ritual sexual exploitation (RSE) in the albino community is happening only to cis-gender women in the albinism community and young girls or just the female sex. Mr B Nyoni of ATZ, the only male albino support group respondent, stated that by comparison to WWA, MWA are “choosers” and by virtue of that fact are not subjected to the exploitation that WWA experience due to their womanhood and sexuality. MWA do not wait to be sought, they have significantly more choice in the heterosexual script and therefore can set the terms for those relationships which WWA are unable to do. He maintains his dominance in the heterosexual script.

The country’s dominant masculinity in Zimbabwe is mostly heterosexual and therefore the witchdoctor is going to pick the woman in the grouping of albinism rather than the male because African tradition in Zimbabwe, coupled with Christianity, prefer that where sexual intercourse takes place, it is preferably hetero-sexual. There are accounts in the Bible that show that even if sexual violence against a woman is committed, it is still better than homosexual intercourse. The Bible in Judges 19 from verse 22 says that “the immoral men of the place demanded the old man bring out the man he had been keeping so that they may ‘know him.’” The old man in verse 24 said:

‘Behold here are my virgin daughters and his concubine, let me bring them out now. Ravish them and do with them what seems good to you; but against this man do not do so vile a thing.’

This is a form of masculine solidarity that occurs in connection with ritual sexual exploitation. While the biological condition of albinism is wholly mythologized and

fetishized according to “Report on the...” (2016), where ritual sex is concerned, it is only proper that WWA, not men with albinism, are chosen. This Biblical reference is appropriate because in my observation most people in Zimbabwe are influenced by the Bible as well as their African traditional roots.

The tendency by men to project their frustrations on to the female body is also a huge factor that puts WWA at greater risk in society. This resonates with the strand of African Feminism called Femaleism propounded by Nigerian feminist Opara (2005). Schutte (2013) states that “Much of this violence is centred on the vagina from which all human life is conceived.” The denial and desperation that accompanies an HIV diagnosis on the male, coupled with the witch doctor’s economic woes, cited by “Report on the...” (2016), translate into a chain effect on the female albino body. It is clear that the gendered way in which men handle frustration is a big risk factor that contributes to RSE. Men in general do not take their frustrations out on other men, according to Opara’s femaleist thought process. This might even be a reflection of masochist sexuality which thrives on what is sexually deviant, perverted and pain inflicting on the chosen female subject.

The general imputing of supernatural power on to the albino person<sup>7</sup> coupled with the treatment of the albino female as an aphrodisiac, or what Fengu (2019) calls a “sweet treat”, increases the risk of WWA being sexually exploited. The motivation to prey on the unsuspecting to me is much stronger if it is coupled with the curiosity of the MWH regarding sex with a WWA. In Zimbabwe, sex with a WWA is rumoured among men to be better than with a black woman. I have had experiences where I pass by construction sites and bottle stores and black men bold-facedly call out to one another to ask if they have ever had sex with a WWA. The ones who say they have always talk about how great the sex was. My albino acquaintance, Alice, and all the albino respondents in the research say they have had this experience. Regarding motive of perpetrators, the respondents believe that this component actually deadens the conscience of the MWH because they can kill two birds with one stone by securing the cure and also ‘tasting’ a WWA for himself.

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<sup>7</sup> See Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism: A preliminary survey on the root causes of attacks and discrimination against persons with albinism, paragraph 18.

The data also reveals an issue of disproportionate power dynamic between the MWH and the WWA. While the MWH is not rich, he offers small, welcome gifts. Mrs Maunganidze stated that although a good number of the perpetrators are generally not rich by social standards and indicators, in comparison to the WWA they are considered rich and this creates an unfair power disparity. She stated that some of the perpetrators are soldiers and policeman, those designated to be guardians in society. When civil proceedings related to RSE such as child support are initiated, some of these perpetrators show up at court in motor vehicles. This shows that these men systematically choose their victims because they calculate that the worst case scenario is the payment of child support and they know that their *modus operandi* of great deception ensures that there is no *prima facie* criminal case against them regarding deliberate infection and performing witchcraft related activities. This illustrates that they are more cunning than the victims and know how to use the justice system to protect themselves. This incongruence in power is a clear sign of high risk to RSE because the WWA cannot demand safe sex and may feel intimidated by their powerful partner.

#### **4.1.2 *Virginity, marital status and ageism***

##### **4.1.2.1 Virginity**

The three support groups all reported that the survivors they had counselled had revealed that they were virgins at the time of the RSE. This does not mean that the women were asexual, but it speaks rather to the delay in exercising their sexual rights because of the social hindrance for WWA associated with sexuality. Back to the point, it is difficult to look at this virginity as simple coincidence. The social isolation of WWA is an open secret and fits very well with occult beliefs and conveniences.

An occultic blog chat entitled “What’s so special about virgin’s blood?”<sup>8</sup> helps to comprehend the targeting of albino virgins. Ritual is performed to a god which implies the need for a sacrifice to show honour, worship and obedience to a deity. In occult tradition, a sacrifice must be pure, valuable or rare because deities must receive what is uncommon and costly. An albino virgin is all of the above and although the sacrifice does not imply physical death, it is a sacrifice of potential lost through the giving of self to another, something that essentialist feminists underscore as noted by Tsanga and Stewart (2011) when they describe

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<sup>8</sup> View many occult responses as to why virgin sacrifice is performed  
<https://googleweblight.com/i?u=https://worldbuilding.stackexchange.com/questions/119859/what-s-so-special-about-virgins-blood/119880&hl=en-ZW>

how patriarchy robs women of their potential by subordinating and putting the needs of men and children first.

While black virgins exist, this research reveals that the occult prefers a rare type of virgin to make the ritual more acceptable to the gods by choosing WWA showing a form of discrimination by colour that puts WWA who are virgins with albinism at greater risk to RSE.

#### **4.1.2.2 Marital status**

The layer of virginity in the RSE victim profile also denotes a form of discrimination on the basis of marital status. In Zimbabwean culture, married women are more respected than single women. This is because bride price transfers ownership of the woman from that of her father to her husband as observed by Gray (1960). Generally, in Zimbabwe, outsiders will not violate married women out of a respect for her owner who paid for her.

In *Shona* marriage tradition, part of the bride prize (*rusambo*), according to Sekuru Padya, is symbolic of the ownership by the husband and his lineage of the children to be born out of that union. Many of the victims known to the support groups come from fatherless homes and some have not been paid for in '*rusambo*'. Due to the absence of the paternal and patriarchal shield of father and husband, WWA are open to abuse, as shared by Mrs Maunganidze of ZAA. The rare event of marriage of a WWA greatly fortifies her against this covert form of RSE under discussion because, according to the Routine Activities Theory of Victimology as noted by "Four major theories..." (above), even the most brazen criminal would fear to attack that which is guarded.

#### **4.1.2.3 Ageism**

Mrs Maunganidze of ZAA says that the victims of ritual sexual exploitation they have counselled or encountered are all above 18 years of age except for one girl with albinism. The ageism is shown by the targeting of albino females over 18. While albino women who are over 18 are adults numerically and sexually, a social phenomenon robs them of their adulthood. Ms Mushonga and Miss Uzande of AA concurred with me that when adult women with albinism walk the streets of high density suburbs, they are verbally abused and mocked by children.

This is against *Shona* culture and *Ubuntu* where elders must be respected. The WWA albinism cannot, like other, adults reprimand the children. Any attempt to do so results in people rising up to “protect the children because they do not know any better”. In a society where a WWA has no seniority over children it means that she is disrespected and it is no wonder that her body is seen a play thing.

The choice of an adult by the MWH shows the selecting of the perfect target by the MWA because it is difficult to accuse him of wrong doing if he is dealing with a legal major. This form of RSE motivates the perpetrator to specifically target a woman rather than a girl with albinism in order to hide behind the legal protection of the majority status of his victim since it secures for him the impunity he so desperately requires in order to commit the crime of RSE.

#### **4.1.3 Ethnicity and race**

Ethnicity is the sphere in which society hands down and shares values, beliefs, customs and traditions. These are not all good for the most part when it comes to albinism. The seemingly good ones are unfair because they commodify the perceived good in albinism making them a target for those whose seered conscience makes them shameless enough to exploit it.

WWA/African PWA in Zimbabwe share a common genealogy and consequently an ethnicity with their dark skinned counterparts: their whiteness denies them the African social experience despite having the same aspirations as black women inculcated through socialisation from childhood. There is the perception that Afro-centricity is the celebration of blackness. The whiteness of WWA/African PWA in Zimbabwe therefore denies them participation in their African heritage.

This explains why the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism states in “Discussion/UN Study..” (2019) that albinism is more of a social disability than physically, although it does create physical restrictions as well where one must stay out of the sun, thus excluding him/her from certain activities such as sports and outdoor work.

In context, the misogynistic myths against WWA such as they are barren, that they are witches or that they will give birth to only albino children<sup>9</sup> mean that, on the one hand, they are hated, isolated, shunned and avoided and not to be sexually related with. On the other hand, they are deified or given demi-god status which does not translate into adoration, but an exploitation of their perceived virtue, such as the myth that unprotected sexual intercourse with them can cure HIV for a MWH. The hate aspect produces name calling and labelling. For example, the dictionary equivalent of African languages treat WWA as animals. An example is the Zimbabwean Ndebele word for albino which is “*inkhau*” or monkey. What the *Shona* word really meant before it was imposed on the WWA is not clear although many old people I know say it is not a good word and have never told me what it means. The late Dr Makumbe, an albino Political Science Professor, once told me that it means “something with an evil spirit”. Words like these dehumanise and unnecessarily mystify albinism and give rise to isolating, shunning and bullying children with albinism (CWA) in school. These injustices and violations are inflected from birth and repeat themselves over and over again. Our society is conscious of the helplessness and lack of protection under which WWA live because it is the very same society handing down this myth and creating a difficult and fraught environment for them. This is a clear product of the abuse of prophetic oratory tradition of “*Nommo*”. The manifestations of these myths among community members handed down in story-telling create a frustrating and forbidding environment for WWA.

The most notable impact of such myths is on the family of a WWA as stated by the support groups. Mrs Maunganidze shared that most of the RSE victims come from broken or weak families who are troubled by the effects of these myths. She mentioned family tensions that results in the scape-goating of the child with albinism for the breakdown of the family arising out of spousal abandonment of women who give birth to children with albinism and paternal rejection due to the tendency by men to believe that their wife produced an albino child out of an extra-marital affair with a Caucasian man. The extended family usually stays away from women who keep their albino children. At the social level, these myths socially isolate these children resulting in the difficulties they have in making friends and finding and keeping play mates as stated by Mrs Maunganidze.

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<sup>9</sup> Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism: A preliminary survey on the root causes of attacks and discrimination against persons with albinism.

The three support group respondents add that most of these women as girls with albinism drop out of school or do not receive education because no one believes in them enough to send them to school or because of poverty or all of the above. Poor vision and disbelieved that they tend to suffer from short-sightedness also contributes to their dropping out of school. This results in their only being able to secure work for poor wages working out in the fields or as housemaids or no work at all as observed by all three support groups. This sets them up for the other side of the albinism mythologization script and exposes them to exploitation since the perpetrator registers their dependency, lack of protection, sense of powerlessness and lack of capacity and means to address any injustice done to them. Using the Sankofa approach - of relating the past to the future through the present - it is obvious that the road to RSE starts very early in the childhood of WWA.

The support groups reported that they have never encountered Caucasian, mixed race, Asian or Indian albino people indigenous to Zimbabwe in their dealings. They say it does not mean they do not exist but that they have a different perception of albinism which is biologically informed or that they do not feel the need to be part of black albinism due to different sets of challenges. Professor Stewart states that she has known some white people with albinism who were raised with full health care support including sunscreen lotion and glasses. Since white albino children blend better with their race than African albinos with theirs, they experience less “thingification” and otherness because they look Caucasian.

By comparison, Caucasian/European ethnicities in Zimbabwe hold no such myths concerning albinism. Being albino in the white community would certainly make a WWA more protected against RSE, given the absence of such myths within the Caucasian race and related ethnicities of Zimbabwe. Being African albino among Caucasians in my experience evinces curiosity and reserved civility, but not total acceptance because being white is not the same thing as Caucasian given that African albinos have an African genealogy and socialization, wide noses, lips and hips which are not Caucasian characteristics. The cultural difference however gives some reassurance that there are cultures, races and ethnicities that do not ritually exploit WWA.

However, for this calibre of victim to be preserved under safer culture is near impossible because Caucasian in Zimbabwe is classified as privileged; so to the African albino woman it

is not a choice because they do not have the skills or advantages that facilitate social mobility of that kind. Hence they remain vulnerable among people of their own ethnicity.

#### ***4.1.4 Disability***

From a biological standpoint, albinism is a disability in two areas, which are visually, according to “Is albinism a...” (2011), and the inability to make melanin. According to Dunkle et al. (2018), data from Africa and Asia shows that where being a woman overlaps with disability, intimate partner violence or exploitation is 2-4 times higher than in non-disabled women.

The absence of melanin, without the mitigation of proper sun care causes a permanent redness of skin, blistering, wrinkling and premature ageing. In a “black don’t crack”<sup>10</sup> society, women with albinism exhibiting the above symptoms are not considered attractive by the society. So whatever the nature of their sexual encounter, whether by abuse or exploitation, they should consider themselves “lucky” because they would not have otherwise experienced any sexual encounter at all. Ágústsdóttir (n.d.) records the experience of an unidentified woman in her early 20s with a disability who says, “If I say “no” to some guy at the club, people call me a ungrateful bitch because I’m supposed to be thankful that someone wants me.” In other words, women with albinism cannot be picky or set boundaries. There are accounts from ZAA where the perpetrators know that the WWA have low self-esteem because of the stated disabilities hence they will sell themselves as the woman’s only chance at love or they will pretend that her looks are not an issue.

Since the women have not built any self-esteem of their own they are at a greater risk of being exploited than a dark skinned woman who simply has to be black to be accepted. Acceptance in society is a fundamental element of self-esteem in life according to Dr Javangwe (Forensic Psychologist). He added that where esteem has to be borrowed, the victim is open to exploitation since predators manipulate the low self-esteem to their advantage.

As Ms Mushonga and Uzande of AA stated, the WWA they have encountered cannot be over-assertive when a man approaches them. They treat it as a once in a lifetime opportunity

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<sup>10</sup> Urban phrase esteeming the ability of dark skin to retain youth.

and must do whatever it takes to maintain such relationships, otherwise they will be all alone. This means they must be compliant to the extent of not asserting their sexual agency by demanding an HIV test before engaging sexually or demanding protected sex to prevent pregnancy and deliberate HIV infection. This is illustrative of victim impulsivity, fuelled by desperation to conform to the social norm that one must be married or, according to modern morality, must have a sexual partner. Bodily integrity therefore comes second to social acceptance. “Normal”/dark skinned Zimbabwean women have more choice because they are not “othered” on the basis of disability.

#### ***4.1.5 Psycho –social peculiarities***

The above ethnic and racial background is very frustrating to live in. According to Dr Javangwe (Forensic Psychologist), it is highly toxic and destroys the personality of the WWA resulting in low or no self-esteem, lack of assertiveness and self-rejection due to self-isolation or refusal to participate in society. He adds that a situation like this does not mean that there are no men who genuinely want a relationship with the WWA, but that the mythologization of albinism creates the social-psychological phenomenon of group-think where a potential paramour will have to take into account the penalties the social group, family, or society metes out against a man who chooses an atypical relationship such as this.

He adds that the social situation does not kill the desire to be married or accepted sexually but, unfortunately, the MWH/predator will be bolder and quicker to establish his perverse relationship with the WWA who will only need to do little to catch the attention of such an ill-purposed man. Routine/normal activities such as dating actually endanger WWA who exist with what Olijere and Saleh (2019) calls the psychological issues related to albinism because they affect the way they make choices and which put them at greater risk than black women who only have womanhood and not womanhood and albinism to contend with. They have greater impulsivity and are more likely to precipitate their own victimisation by pursuing relationships with abusers.

#### ***4.1.6 Place of birth/Origin***

Ms Mushonga of AA stated that in her experience the survivors of this violence are generally from high density suburbs such as Harare’s Highfield and Chitungwiza. Her organisation’s one victim was from Highfield but she had heard in albino community circles that Chitungwiza is a breeding ground for RSE.

Mrs Maunganidze of ZAA stated that RSE happens in two places, in rural and high density areas. She says this is the trend country-wide in all provinces. The survivors were born and raised in high density suburbs or rural areas. She said that urban migration for economic opportunity can cause WWA to leave the rural areas in which they might be born to seek work in cities and towns so that they gain independence and can fend for themselves. When they migrate from rural areas, they almost always relocate to high density suburbs to live with relatives or to work as maids because they are not educated to perform office jobs. Rural areas in general have lower education standards than cities and they are more conservative areas where Sexual Reproductive Health Services (SRHS) are absent or hard to access without scrutiny. These women migrate to town settlements with no skills in negotiating sex. This is why African feminists demand the provision of SRHS so that African women have more agency in sexual relations and protect themselves from unwanted pregnancies and sexually transmitted diseases. Whether they hail from rural or high-density areas, WWA have some things in common: low self-esteem, rejection and lack of assertiveness.

High density areas and rural areas are therefore deemed to be deviant places or places where RSE is most likely to happen. The Deviant Place Theory is weak because it suggests that in order for a WWA not be ritually exploited she must not live in a rural area or ghetto. In other words, it blames the victim for putting herself in a dangerous location or remaining in it fully aware of its dangers. It is asking the victim to police and look out for herself. A WWA has low social mobility because of her poor skill levels, lack of skin colour and poor education. She therefore cannot choose where to live. Her life is about subsistence and not self-actualisation, although for the promotion of human rights, it is expedient that she moves.

The Deviant Place Theory deceives the WWA with the false promise that if she moved to the upper-class parts of town, she will be safe from exploitation. An archbishop in Malawi called out government actors for albino ritual murders. Sekuru Padya also stressed that harmful myths are not the preserve of the poor; some of the wealthiest people in our society believe in these myths and can commit RSE with greater ease. Deviant Place Theory also blankets all people from rural and high density areas as potential perpetrators and facilitators of RSE but some of the activists against RSE actually live in such locations. An example is Mrs Mainato (who does not have albinism) of the Albino Charity Organisation of Zimbabwe who declined to participate in the research and lives in Chitungwiza.

## 4.2 Emerging issues

The first observation regarding the profile in the context of the Class Race and Sex (CRS) Model of disability is that it seems class and race, but not sex, seem to be more determinant in predisposing a WWA to RSE and not sex/gender. In general albinism/disability means a lower class in the social structure of Zimbabwe because of the otherness created by colour. Coupled with the deviant places of rural and high density areas with high levels of poverty and low educational standards, it seems that WWA from the profile are suffering more because of their class that inhibits social mobility. Race connotes ethnicity and culture and as already observed, WWA in the profile are suffering because of the negative myths and beliefs of their culture. The differences observed between WWA and MWA are specific to a culture within a race and ethnicity hence race is more powerful in determining whether a WWA will be abused than class. Sex alone is too simplistic a factor to attribute to the suffering of the women in the profile. Hence I would say that, using the CRS Model of disability, race, then class and lastly sex in that order determine whether a WWA will be ritually exploited.

The case of the minor which was handled by the ZAA brings up some issues with victim profile that has emerged from the data. First of all the RSE was facilitated by her grandmother who would find MWH to sleep with her grand-daughter for a cure. She would receive payment from these men. This shows that family and friends, not only strangers, can have a hand in the RSE of WWA.

It therefore must be the case that the difference in the manner in which the RSE occurs determines how the victim will react. It is easier to report abuse by a stranger (intimate partner who is not a relative) and not a family member. This victim profile is limited in predicting which albino woman will get ritually exploited. As Mr Nyoni stated, WWA from a more affluent upbringing can also experience RSE but they are not likely to report in order to protect and maintain their social image. He added that friends can pretend to “hook up” a polished albino woman with a rich MWH who is searching for a cure. He can pretend to prefer light skinned women to win her over. This would produce a completely different profile. There are many loopholes because what Nyoni suggests means that there are varying profiles of the same violation although this present one could mean higher risk by comparison with other groups of WWA.

Furthermore, because there is the absence of the voice of the perpetrator, the real reasons for targeting the victim cannot be known. Even if he was available he could lie about his reasons. Victim profiling, as observed by “Victim profiling is...” (2019), is not scientific and a lot of guess work is involved. Dr Tsanga stated that she found the love-hate relationship confusing. She implied that the deifying and imputing of supernatural power should not court exploitation, but rather the misogyny against WWA and hate should singularly court violence. She added that the explanations for RSE are conflicting. If for example, WWA are “sweet treats” then how can they also be victims of misogyny and disrespect? To her, it is illogical because a woman who is aware that she has “assets” can wield girl power. In other words, she cannot be abused.

As observed in this profile there is a lot of conflating speculation about the motives of the perpetrator or the way in which a victim with the specified psycho-social issues will respond. At this point it is regarded as an evolving discipline, more on the artistic or social science side. There are not yet uniform standards of how to conduct a victim profile.

It must be noted that this profile indicates high risk victimology due to multi-layered discrimination for a specific group of WWA but with the disadvantage of few concrete legally admissible pieces of evidence that can secure a strong charge against the perpetrator, especially the aspect of high victim impulsivity created by the psycho-social environment. Some of the legalities related to this profile are discussed in the next chapter.

## CHAPTER FIVE

### 5.0 LEGAL DATA ANALYSIS

#### 5.1 Lack of intersectional thrust in the Constitution

Dr Tsanga observed that the proper understanding, application and consciousness of intersectionality provide an opportunity for justice for WWA. The question must be answered, ‘Do we have intersectionality to use in our Constitution?’ Professor Madhuku (Constitutional and Interpretative Law expert) stated that, as far as he is aware, the question has not yet been asked in Zimbabwe or by our more liberal neighbour, South Africa.

Some practical legal reasoning and examination shall therefore be attempted to establish an intersectional gap in the law that prejudices WWA according to women’s law methodology. The Constitution of Zimbabwe can be interpreted as being non-intersectional on certain grounds. An examination of the wording and categorisation insinuates this. The Constitution shows varying identities, for example, women, persons with disabilities and accused persons in single portrayal. This is orderly and speaks to the peculiar vulnerabilities experienced by that specific category. However, the Constitution’s wording may be mistaken to mean that these individual identities or layers do not intersect.

Professor Feltoe felt that the categorisation was obviously intersectional because of the fact that regarding disability, there are various forms. He considered it just as a practical blanketing of relevant differences. He hastened to say that interpretive law was not his field and recommended Prof Madhuku who is an expert on Constitutional and Interpretative Law.

Section 56(3) of the Zimbabwean Constitution says:

‘Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, *race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status* or whether they were born out of wedlock.’ (emphasis added)

It is important to recognise that most of the intersectional layers I point out (emphasised in the text) can be perceived to be occurring mutually exclusively. This is signified by the use of the word “or”. Judicially, this may work against women with albinism because a judge who

does not understand intersectional components and how they intersect might fail to dispense the required justice because of a failure to perceive the injustice motivated by intersectional discriminations. It is fortunate that there are higher courts of appeal.

Professor Stewart stated that Section 56(3) is form of *eiusdem generis*, an attempt by the law to grasp all possible grounds under which discrimination might occur, not a reflection of mutual exclusivity. Case law shows that interpretation of these grounds as mutually exclusive is not only possible, but has actually occurred in the United States where intersectionality originated. This lack of conclusivity from Zimbabwean national experts is present in American case law, where the concept of intersectionality originated.

Areheart (2006) cites a 1976 US civil court case, *DeGraffenreid v. General Motors Assembly Div., etc.*, 413 F. Supp. 142 (E.D. Mo. 1976) in which the plaintiff alleged that under Title VII of the 1964 Civil Rights Act, General Motors seniority system was discriminatory against black women on the grounds of race and sex. Areheart (2006) observes that the discrimination for which they sought protection lay at the axis of two legally protected categories. The court stated that the plaintiff was attempting “to combine statutory remedies” and ‘create a super-remedy’ that would give them relief beyond what the drafters intended.” The court held that the defendant must be investigated for “race discrimination, sex discrimination, or alternatively either, but not a combination of both.”

Adopting this line of thinking in relation to RSE survivors, they can only present themselves as women; WWA cannot be protected as a class and their intersectional singularities cannot be simultaneously considered. The long and the short of it is, however, that while sexual violence is endemic, its causes are varied across different classes of women. We therefore cannot solve RSE without grasping the simultaneous, compounded discrimination experienced in all facets of society by WWA. Therefore, a judgement like this for WWA would be a denial of justice.

Afable (2015) cites other Title VII cases where the interpretation was different. In *Payne v. Travenol Laboratories Inc.*, 416 F. Supp. 248 (N.D. Miss. 1976) two black women attempted to bring a class action suit against their employer on behalf of all black employees. The defendant requested that the plaintiffs not be allowed to represent black men and the court granted this request. In *DeGraffenreid* (above) black women were not allowed to advocate

solely for black women; in *Payne* (above) they were forced to do so. In this scenario, WWA can represent themselves outside the over-arching bracket of womanhood and present their specific form of sexual exploitation, which would prove advantageous since it distinguishes them from the struggles of other groups of Zimbabwean women.

However, of interest is the contradiction between these cases. According to Crenshaw,<sup>11</sup> it is a “manifestation of the...limitations” of a single-axis, non-intersectional understanding of discrimination.

Afable (2015) observes that progress has been made since *DeGraffenreid* and *Payne* (above). In 1980, the court in *Jefferies v. Harris County Community Action Association* (HCCAA) recognized “combined claims of race and sex discrimination.” Dafro Jefferies, a black woman, alleged that she experienced sex, race, and “interactive discrimination” when applying for a promotion. The court applied a ‘sex-plus’ analysis established by the 1971 Supreme Court case of *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) which established that employers could not discriminate based on “sex plus a ‘neutral factor’”. In *Phillips* (above) the neutral factor was motherhood; Martin Marietta Corp. was found to be wrongfully discriminating against women with children in ways that they did not discriminate against childless women or men with children. In *Jefferies* (above) the neutral factor was race. The court found that “the fact that black males or white females [were] not subject to...discrimination is irrelevant.”

The greatest victory in acknowledging intersectional experience in Title VII is arguably *Lam v. University of Hawaii*, 40 F.3d 1551 (9th Cir. 1994), in which an Asian woman brought suit alleging hiring discrimination on the basis of race, sex, and national origin in 1998. The District Court ruled in favour of the defendant, but their ruling was reversed by an Appeals Court that recognized Lam’s intersectional claim. The Ninth Circuit acknowledged that “Asian women are subjected to ... disadvantages that are not shared by Asian men or white women.” A similar ruling in the RSE context would conclude that WWA are subjected to disadvantages that are not shared by albino men or black women.

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<sup>11</sup> This is a citation of Crenshaw by Afable, the actual article where she stated this was not linked by Afable.

Colker (1995) states that the inconsistency of Title VII case law is harmful because “doctrine appears to shift,” plaintiffs can never be sure what articulation of their discrimination(s) will be accepted by any given court. Even years after *Lam* (above) not all “deserving plaintiffs” are afforded protection. America is one of the world’s most advanced legal systems but if such interpretive inconsistencies can occur, then the same is to be expected in Zimbabwe. While Dr Tsanga stated that the above cited cases are old and that the judiciary can be more liberal nowadays, the first stages of testing this may be hindered by the lack of exposure by our judges to intersectional methodology. Some members of our judiciary in the Magistrates Court system and prosecutors do not have law degrees. It is hoped that in the case of injustice, appeals can be prosecuted all the way to the Constitutional Court whose presiding officers are more learned.

However, one can suggest that the section 56(6) provides some redemption for what section 56(3) lacks. Section 56(6) reads:

‘The state must take reasonable legislative and other measures to promote the achievement of equality, and to protect or advance people or *classes of people* who have been disadvantaged by unfair discrimination ...’ (emphasis added)

“Classes of people” is open to many interpretations. For instance, it could mean “persons with albinism”; it could mean women with albinism or it could mean “women with albinism, who are virgins, over 18, single, from the *Shona* ethnicity, racially ambiguous and from a low social class”. I see a judge with no intersectional sensitivity failing to conceive how this many layers can be arrayed against a single individual. He could even perceive it as an exaggerated effort to make a case or to treat the WWA as unnecessarily special which could prejudice him against the victim. There is hope that an unfavourable judgement can be turned around on appeal, but judicial appeals, especially those involving Constitutional matters, tend to take time so one might end up with a case of justice denied by delay.

The Constitution’s apparent mutually exclusive sectionalist approach presents some challenges regarding WWA. SALTHO (2020) states that classifying by gender only is minimalizing the complexity of the victim by ignoring the intersectional layers with which the victim negotiates and accesses society, as well as the barriers the victim faces in the

process of empowerment and participation. Crenshaw<sup>12</sup> uses the metaphor of an intersection, hence, it can be said that WWA “must negotiate the traffic that flows through these intersections to avoid injury...” This can be dangerous when the traffic flows simultaneously from many directions. Injuries are sometimes created when the impact from one direction throws victims into the path of on-coming traffic, while on other occasions, injuries occur from simultaneous collisions. This analogy is perfect for interpreting the multiplicity of factors that WWA must negotiate to avoid being ritually exploited.

The lack of intersectionality is also a reflection of a cookie-cutter approach to sexual exploitation that suggests that its causes are similar for every victim. A comprehensive naming of WWA’s identity is therefore is also a huge step forward in identifying the causes of their form of RSE and proffering appropriate social justice methods.

It is also a good question if including intersectionality in our legal system is not antagonistic towards the cause of WWA. Coaston (2019) states:

‘To many conservatives, intersectionality means “because you’re a minority, you get special standards, special treatment in the eyes of some.” It “promotes solipsism at the personal level and division at the social level.” It represents a form of feminism that “puts a label on you. It tells you how oppressed you are. It tells you what you’re allowed to say, what you’re allowed to think.” Intersectionality is thus “really dangerous” or a “conspiracy theory of victimization”.’

From a humanitarian approach, we are all equal so the perceived special treatment of WWA may cause more resentment and isolation at community level as people jostle for justice and equality. WWA from childhood are accused of pretending to be disabled when they voice their short-sightedness. Their high functionality in core abilities also means that some sections of society believe that they have few problems and that there are other groups with bigger challenges.

As for the labelling to which Coaston (2019) alludes, the Nommo approach states that naming and labelling influences the destiny of a human being. If we assert that having the intersectional identity explored above equals sexual exploitation, we release afro-negative energy that treats women from such classes as victims with no agency, sentenced to

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<sup>12</sup>       Secondarily cited from Afable, original article not found.

permanent victimhood. This is because, according to the conservative view, intersectionality trains one to compete in what Adichie (2014) calls “the Olympics of the oppressed”, in which WWA might be found competing against other groups of women to take the prize for the ones with the worst lot in life.

Despite the politics of intersectionality, it is very key as a tool of analysis in identifying those who are furthest away from attaining justice in comparison with other groups in society. Therefore it is essential that intersectionality be applied.

## **5.2 Removal of deliberate infection laws: A step backwards for women with albinism**

The legislature’s move to remove from the Criminal Code and the Domestic Violence Act the HIV deliberate infections provision<sup>13</sup> is a step backwards because it constitutes one of the most salient legal components of RSE. We are losing the part that says most emphatically that this violation is deliberate and particularly egregious because the witchdoctor and the man with HIV do not care about the health of the albino woman. Mrs Maunganidze stated that an HIV positive diagnosis has been their biggest indicator that WWA are being ritually exploited. They deduce that because the women were virgins before the exploitation, they are confident that they are victims of RSE because if that were not the case, then not all the women counselled would test HIV positive. The coincidence of HIV and albinism is therefore extremely suspicious. Although the victims can be trusted, virginity before RSE is difficult to establish

There is the argument that HIV is no longer life threatening due to medical advances. This assumption is incorrect because the supply of the medicines is not consistent in some places and a forced default results in the deterioration of health. Because the regimen is periodically revised with medicines being added or removed, these changes may not bode well for a specific individual’s metabolism.

An illustration of the latter is a work experience I had in 2018 during a monitoring and evaluation exercise for a Community Working Group on Health for their HIV Monitor Programme. It was reported by community monitors that the addition of the Tuberculosis vaccine triggered unusual symptoms such as migraines, sores and rashes around the genitalia.

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<sup>13</sup> Naiyiwa (2020), Zimbabwe Weighs Ending Criminalization of HIV.

There were also deaths recorded that coincided with the commencement of the administration of the drug. These complaints were taken to the health centres and the nurses instructed the HIV patients to continue with the treatment while permission could be sought from the Ministry of Health to discontinue the new vaccine. During this delay, more deaths occurred. Some patients decided to remove themselves from the vaccine in line with their right to bodily integrity. A small number of those who took the vaccine surprisingly had no symptoms.

HIV also has economic consequences because transport fees and a nominal 3 month administrative charge is levied. The hyperinflationary environment coupled with declining income mean that simple things such as transport money to the hospital and food are hard to come by, especially given the poverty in which RSE victims live. HIV clearly is another added layer of intersectionality with which women with albinism find themselves forced to grapple given the stigma attached to HIV within society; so it is no joke for a woman to be deliberately infected with HIV given that she already experiences compounded injustice and now, as a result of deliberate infection, she is expected to get on with her life as though nothing ever happened.

It is critical to note that the taking of an abolitionist approach by the legislature to HIV should mean that there are non-carceral measures for justice, reparation and sexual agency for the victim but there are none. There are no counselling and health information services specifically designed for WWA. This is a big problem in the disability community, that sexual reproductive health services are not available to these groups because of the perception that PWD are asexual. The argument for shared responsibility to prevent deliberate infection cannot be made because there are no services and there are no legal guarantees in the country's health laws for sex education for marginalised and disabled persons as observed by Peta (2019).

While Global Aid Missions does offer occasional, general sex and reproductive health education in conjunction with PSI (Zimbabwe), according to their administrator, an experience I had while interviewing their nurse raised some eyebrows. I asked the nurse if they offered sex education specifically for WWA. She gave an abrupt "no" and proceeded to ask me if I was born again. I discerned from her actions that, based on her Christian beliefs, she would rather be giving sex education to married people. It struck me that the services

offered seem not to encourage pre-marital sex and are offered to women in general, not WWA to specifically cater to their psycho-social issues so as to increase assertiveness and agency. The founders of the organisation are pastors with two albino children and I could see how they tried to structure their services around their religious beliefs, to the detriment of a large number of unmarried WWA who did not share their evangelical beliefs. This illustrates discrimination on the basis of marital status and religion. It speaks to the evangelicalisation of our services which is unprofessional and restrictive to single WWA. The people best placed to give HIV abolitionist services regarding RSE are proving ineffective.

The removal of deliberate infection laws without legal guarantees of sex education translates into a loss of the victim's HIV rights under article 14(1) of the Maputo Protocol. These are specifically:

- ‘(d) the right to self-protection and to be protected against sexually transmitted infections, including HIV/AIDS;
- (e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections, including HIV/AIDS, in accordance with internationally recognised standards and best practices.’

It is also important to realise that decriminalisation of HIV without an abolitionist strategy is equal to impunity for deliberate infection and ultimately RSE, especially where proof of incitement is lacking. The state no longer has penal remedies to punish the MWH. Needless to say, the removal of these provisions is tantamount to legitimising RSE and opening the floodgates of exploitation.

However, Professor Stewart observed that some feminists have argued that deliberate infection laws must be removed because they constitute a form of gender discrimination. She has noted with concern that women are disproportionately affected by this crime in comparison with men because they find it difficult to prove that the women were HIV negative prior to being infected by the men. It often occurs that when women attribute deliberate infection to a specific intimate partner, he accuses her of infecting him instead. This results not simply in a denial of justice for victims but in their re-victimisation.

### 5.3 Narrow views on consent

The support groups state that the man with HIV is deceptive about his motives and intentions; hence the intercourse agreed to by the victim is exploitative because she does not know that she is being used as a common forest herb. Consent is solicited through betrayal of trust and abuse of the power of secrecy. This is a case of uninformed consent which is grounds for vitiating the consent given by the WWA.

However, the law narrows its definition of consent in section 69 of the Criminal Code by finding fault only with purported consent given under specific circumstances, for example, so-called consent given in the following circumstances: by a minor; under violent and coercive circumstances; where the perpetrator pretends that something other than sexual intercourse or an indecent act is going on; where the perpetrator is impersonating a victim's known sexual partner; before one falls asleep and, lastly, prior to intoxication.

Victims of RSE, however, are none of the above. They are legal majors, who give their consent under non-violent circumstances, fully aware that a sexual act is going on with someone whose identity they know; they are of sober state of mind and fully conscious or awake.

The law does not recognise this as a form of uninformed consent. Even though the victim was not informed that she was being used for healing, her ignorance does not vitiate her consent. Radical feminist Masterson (2019) tweeted:

‘Consent rhetoric is letting abusive men off the hook. In a consent model, all a man needs to do is get a “yes” and they're untouchable, ignoring the fact that women have been conditioned all our lives to prioritise men's desires. Consent is not enough.’

The “yes” given by survivors of RSE is interpreted to mean that they exercised the poor judgment of an ordinary person who must, like every other ordinary person, learn to live with their mistakes. However, according to Brogaard (2018), agreeing to sex is not equal to consent. This gendered understanding of consent is what is missing in our law.

Radical feminist Barry (2003) states that even if a woman says “yes,” wherever the female body is being objectified to service another body, that consent is not valid. RSE is structured

to invoke the consent of WWA given its deceptive *modus operandi* used to establish male dominance in the heterosexual script, as observed by Gurevich (2018). Rubinfeld (2012) goes as far as to say that sex in a case where consent can be vitiated on the grounds of deception is rape or rape by deception.

While Barry's (2003) observation is valid, the problem is that it is hard to prove because of the *ex post facto* nature of RSE. The real motive for the establishment of the relationship usually emerges after the abrupt ending of the relationship, unlike in rape where motives and violations are immediately clear through the use of brute force or the immediacy of the absence of real consent.

#### **5.4 Is albinism a disability: Domestic and international differences**

There is some debate as to whether or not albinism is a disability. In 2015,<sup>14</sup> the Swazi Acting Assistant Labour Commissioner, Stukie Motsa who herself has albinism, came down hard on countries that classify persons with albinism under disability because she said persons with albinism are not disabled and that they are normal people and should be treated so. The South Africa Pocket Guide on Disability (2000) states that albinism is not a disability *per se* but that persons with albinism associate themselves with disability because they face the same discrimination.

In response to Motse's opinion, there is a tendency in the albino community to be in denial concerning the problems that persons with albinism face when persons with albinism achieve success and therefore consequently earn the right to have their physical disabilities and differences overlooked. Suffice to say that the issue of being non-descript, that is the state of being both normal and disabled, will cause problems in a legal situation because the law defines and applies protections accordingly.

Zimbabwe has afforded WWA disability status. Mrs Maunganidze says that it was grudgingly done because in their interactions while lobbying the state, they were always told that PWA have use of their core abilities, hence they are not disabled. Albinism was finally granted disability status on the grounds of medical need for sunscreen and the need for duty-free import of sunscreen by albino PVOs and charities.

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<sup>14</sup> Mswela (2011).

Even though Zimbabwe has afforded WWA disability status,<sup>15</sup> it is not that simplistic to assume that WWA will be afforded protections based on being classified as such, especially since the provisions of the CRPD relating to sexual exploitation of disabled persons have not been ratified and incorporated in the Zimbabwean Disability Act. Manatsa (2015) states that the Zimbabwe 2013 Constitution is not compliant with the CRPD. Internationally, there are two methods of classifying albinism, as “albinism” and as a disability in the joint General Comment 31 between CEDAW and Convention on the Rights of the Child (CRC) Committees respectively. The CRPD’s 2014 Mr X communication (*Mr X v. United Republic of Tanzania* (2014) Communication No. 22/2014) classifies albinism as a disability before any maiming or attack that affects its core abilities. The communication states that albinism is a disability on its own because of the social complexities under which it exists in Africa resulting from myths that incite violations against persons with albinism. The CRPD therefore readily gives protection to WWA against “all forms of exploitation.”

This elastic provision is however not provided in the local Disability Act although a judge could use international treaties to which Zimbabwe is signatory where the law is not clear or contradicts international norms according to sections 34, 326(2) and 327(6) of the Constitution. Because of the discrepancy in international law, saying two different things, a local judge might have to resort to his own inclinations and perceptions about what albinism is, although his options are those in the international arena. The tricky issue is that albinism as “albinism” does not clearly classify its legal status the same way that albinism as disability would. Albinism could be an attempt to enunciate the high core abilities which normalise albinism while downplaying the colour differences. Albinism as “albinism” could mean the colour distinction of African PWA that triggers otherness and consequently mythologization. The meaning of albinism therefore needs to be more succinctly interpreted, especially when used in interpretive documents such as Joint General Comment 31.

## **5.5 Ageism and the favour of the mentally challenged by the Criminal Code**

The Criminal Code protects minors and mentally challenged people under various scenarios of sexual exploitation. Our law is therefore emotionally provocative because our society is compassionate towards these two groups for good grounds on the basis of their vulnerability. However, it also makes the assumption that mature and intellectually capable persons, such

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<sup>15</sup> See Department of Social Welfare’s list of disabilities.

as WWA, cannot be sexually exploited because they are legal majors mentally capable of making choices that do not endanger them.

Sexual exploitation can happen to anyone, minor, major, intellectually challenged or not. This shows the absence in our law of the concept of adult sexual exploitation based on vulnerability in other legal jurisdictions such as the United Kingdom. Our grounds for vulnerability to adult exploitation are only limited to adults with mental challenges or adults who have been man-handled or are in trafficking or exploitation of prostitution set-ups. The Sexual Exploitation Guidance (2018) names the social exclusion that WWA experience as a sign of vulnerability to adult sexual exploitation.

Other feminists such as Eaton (2019) contend that:

‘If there is a need to protect a child from a domestic violence perp - there is a need to protect the mum too. Stop leaving women and girls in DV whilst protecting or removing their children. Their lives weigh the same.’

The above tweet, although different in context, is an illustration that it is wrong to leave WWA in situations of injustice because they are adults in favour of children because their violation affects them as mothers presently and futuristically, hence their wellbeing must be considered equally as that of children. This is a universal rights approach that all human beings are equal, regardless of age.

This form of ageism in the Criminal Code needs to be challenged because it is promoting the impunity of private actors that albino women are exploitable without consequence since they are legal majors of sound mind. A great deal of women’s law is dedicated towards legal majors who are of sound mind but find themselves in situations of sexual exploitation, harassment, trafficking and being prostituted. Clearly, sound mind and legal majority do not make WWA exempt from RSE.

## **5.6 Is the definition of ‘sexual exploitation’ too narrow?**

Our laws do not specifically use the words “sexual exploitation.” In Canadian law,<sup>16</sup> sexual exploitation of a child is equal to rape, indecent assault or aggravated indecent assault in

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<sup>16</sup> Canadian law: Criminal Code (R.S.C., 1985, c. C-46).

Zimbabwean legislation. These are labelled as criminal violations both in the US and in Zimbabwe.

While we do not specifically use the terminology sexual exploitation, the scenarios that simulate sexual exploitation of any kind give rise to some erroneous assumptions. For example, the Trafficking in Persons Act of Zimbabwe evokes the idea that sexual exploitation can only happen violently and away from the victim's comfort zone. This is a fundamental piece of legislation given that its enactment has direct links with the movement for the enjoyment of human rights by PWA according 'Trafficking in persons...' (2016). It is from a borrowed East African context and so does not fit the more covert Zimbabwean context of violation against WWA.

The UN Glossary on Sexual Exploitation and Abuse (2017) defines sexual exploitation as:

“Any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.”

The use of the phrase “all forms of exploitation” in article 4(1) of the Maputo Protocol is used for all women generally, not intersectionally.

Article 16(1) of the CRPD reads:

“States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.”

While it is complemented for being compatible with Zimbabwe's definition of albinism as a disability, it forces on WWA an identity they might not personally want for themselves just so that they receive justice. It is tantamount to a form of identity tyranny in some ways.

The Trafficking in Persons Act, like CEDAW<sup>17</sup> and the Maputo Protocol, give the impression that exploitation only happens where money alone is the gain and the context of exploitation

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<sup>17</sup> Article 6 says “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”

is either trafficking, exploitation of prostitution or the exploitation and abuse of women in advertising and pornography.<sup>18</sup> RSE of WWA has the perceived benefit of healing by the MWH, witchdoctors and other believers in the myth.

RSE is a clandestine or concealed form of violence. It is what Francione (2013) calls a humane form of violence, although violence remains violence no matter what form it takes. Zimbabwe has human rights obligations towards WWA despite its generally having a “kinder form of violence” against WWA and PWA than that of Malawi and Tanzania, and therefore its legislation must line up accordingly.

### 5.7 Ornamental witchcraft legislation

Witchcraft legislation<sup>19</sup> available in the Criminal Code is important for highlighting an area of Zimbabwean culture that is feared for its predatory qualities when contrasted with Roman-Dutch perceptions of what is good, right or moral. This is a clash of two legal systems or world views that cause problems when establishing criminal intent according to the actors, norms and structures analysis.

The man with HIV is facing a problem for which science has no solution since it provides treatment, but no cure. His African Traditional faith says what science cannot fix, his religion can. In the eyes of African traditional religion, it is not wrong to use a WWA for healing because it is exploiting the good that *Musilkavanhu* (God or the creator of mankind) has provided for the benefit of those in need. His intention can therefore not be classified as criminal. His intention is to get healed and he possibly thinks that because the WWA is a fetish, she cannot be hurt. In his mind, she is the same as a common forest shrub or herb to be used for his good. It is her perceived healing power and not her that is his concern because she is superhuman.

Criminal intent according to “Criminal intent law...”(2020) means “the intent to do something wrong or forbidden by law”. What the man perceives himself as doing is not what is forbidden by law. His intention is to access healing. One can argue against the use of deceptive motives and say that he knew he was doing something wrong, but it could be

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<sup>18</sup> Maputo Protocol, Article 13(m).  
<sup>19</sup> Section 98.

argued that he is aware of the clash of his world view and that of formal law. He can justify his deception because of fear of a more dominating system of belief and penalty, if caught.

The MWH is not keen on exposing the witchdoctor, even if he was keen, witchdoctors are in the habit of disappearing with the help of those who fear or support them. Furthermore, according to the actors, norms and structures analysis, the power dynamics of actors in the gender discourse must be observed. The witchdoctor is a type of dominant masculine who is feared by all, including other men, the man with HIV is a subordinate masculine to the witchdoctor. Masanja (2015) states that witchdoctors are feared because of the belief that they are in communion with the ancestors and can do harm to the treacherous. It is therefore logistically complex and expensive to locate errant witchdoctors.

The WWA is disempowered by the lack of a direct link between herself and the witchdoctor and the fact that some MWH act out of a personal conviction of the myth rather than incitement which means they can deny that they were exploiting their victim; instead they say they were in a consensual relationship and that they are being accused by a bitter woman who is vengeful for having been abandoned. While expert evidence of the fetishizing of WWA exists for the purposes of section 98<sup>20</sup> of the Criminal Code, it may not suffice to convict where no evidence of incitement to commit RSE exists.

Ms Mushonga stated that the RSE survivor she knew found out that she was being exploited when her husband told her that he was just using her to be cured of his HIV. “He said/she said” evidence is not concrete evidence.

Supposing the witchdoctor is exploiting the MWH for money, it is hard to prove and it is not the law’s problem to address people’s gullibility. This possibility also means that there are two victims of harmful culture: the RSE survivor and the MWH who is possibly being economically exploited. This exposes the trouble of employing a victim only approach to dealing with RSE because of the multiplicity of actors and causal factors associated with each piece of the puzzle.

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<sup>20</sup> Section 98(4) of the Criminal Code.

Masanja (2015) concludes that the use of the criminal justice system to fight violence against PWA in East and Central Africa has not been successful because it has driven witchdoctors underground so they cannot be caught. This, however, does not mean they are unreachable by those requiring their services. This is why cases continued to escalate despite strong laws banning the practice of witchcraft. Criminalisation was certainly not deterrent in the East African context. Witchcraft is part of African culture and it cannot be abolished simply because it finds itself at odds with Western law.

It must be said that confronting RSE in Zimbabwe will not necessarily trigger more violence against WWA because the pattern of violations against PWA is not overt.

The above analysis of the various legal provisions exposes a great deal of their inadequacies and contradictions to the extent that one can only conclude that they are at cross purposes with the interests of justice for WWA. Although these exposed legal weaknesses do directly incite RSE, they can be said to be maintaining injustice because they do not make justice accessible to their victims from a socio-legal standpoint. They place such a heavy burden on victims to prove their case that most legal counsel discourage them from pursuing criminal prosecutions against perpetrators.

## CHAPTER SIX

### 6.0 RECOMMENDATIONS RELATING TO RISK REDUCTION

#### 6.1 Approaches to RSE

The Independent Expert for the Enjoyment of Humans Rights by Persons with Albinism, Ikpowonsa Ero, justifies the need to give special emphasis to albinism based on the Agenda 2030 SDG pledge “leaving no one behind”. In “Persons with Albinism...” (2018) she states that this should start with the furthest behind which include people with albinism. She adds that action should enable those who are left behind to progress at a faster rate, a mode of thinking consistent with affirmative action and the intersectionality approach to transformative justice.

An ecological model to the prevention of RSE must be adapted to deal with interrelationships between victims and their environment. This is important for identifying and addressing risk and protective factors. The victim profile outlined above implies that the combination of biological, psychological, cultural and feminist models of the causes of RSE need to be employed. These are applied at the four levels of society: the individual, relationships between individuals, various cultures within which individuals live and society which is the final unit in which they live.

Curtis (n.d.) says that understanding and combating any form of sexual violence requires a holistic approach, one that combines prevention and risk factors that increase the likelihood of RSE occurring. Curtis’s preventative measures are encouraged more than risk reduction behaviours such as telling the victim to “Beware of men, they will infect you with HIV” or “Be asexual to prevent yourself from intimate partner RSE”, for instance, because it may frighten WWA from exercising their social and sexuality rights.

Radical Feminist, Eaton (2018), states that most of the measures employed in combating risk reduction constitute a form of victim blaming in which WWA can fail to live their life to the full through feeling guilty and fearful about intimate relationships. However, Thro, in the same article, states that we are all responsible for taking measures to prevent our individual victimisation. Regarding RSE, risk reduction measures are key to preventing deliberate infection. At the same time, because of the Oscar performances that the perpetrators of this violation employ, coupled with WWA’s desperate need to found and secure intimate

relationships, RSE can still occur. Hence comprehensive preventative measures such as media campaigns must be taken that expose myths, ignorance and misogyny against WWA at interpersonal, community and societal level.

### **6.1.1 Gender and sex**

“Masculinities: the role of ...” (2005) states that both men and women must participate at policy and program level of addressing sexual violence. Phallic women syndrome that causes women to abuse as in the case of the minor mentioned in Chapter Four can be addressed in women’s groupings. Women must confront themselves as the traitor against women sometimes so at church groupings where mental and spiritual health issues are discussed, negative toxic matriarchs can be tackled.

“Masculinities: Male Roles...” (2005) proposes that HIV Aids education is an inroad in having men participate in gender sensitisation. PSI counsellors or other HIV service related institutions must include ritual sexual exploitation of WWA in their curriculum so that the myth is debunked as soon as a man tests positive. The fallibility of the albino body must also be taken into account so that men are educated out of martyring WWA under the guise of finding a cure.

Programs to educate and empower WWA can be introduced at school beginning at adolescence to promote their Maputo Protocol article 14 human rights against deliberate infection, to know their partner’s HIV status, choice of contraception and prevention of unwanted pregnancy. Teachers can have general reproductive health classes but can have private sessions to handle the psycho-social peculiarities that cause impulsive victimology in PWA. There is a real need for schools to employ trained psychologists to handle this gap in our educational set up. This will help to give WWA more power in the heterosexual script so that they are not dominated by the psychological tactics of predators at the expense of their health

“Masculinities: Man’s roles...” (2005) also encourages the incorporation of young boys in gender based violence issues. Men’s groups in the community must also be employed to educate young men to avoid risky sexual behaviour to avoid getting infected with HIV. The point must also be stressed that should they contract HIV, they should seek medical treatment and never resort to RSE because it is harmful to the life women with RSE. They must also be

taught not to commodify WWA because this is an insult to their humanity and is not a reflection of true manhood.

### **6.1.2 Disability**

The disability to create melanin needs to be addressed to preserve the bodily integrity of WWA. When WWA have access to sun creams they have a better self-image and more self-esteem. The medical approach is essential in employment opportunities. Nurturing a healthy rather than a morbid attitude to albinism is extremely important when it comes to opportunities in life. Hence, medicine can play a huge role in assisting WWA to get jobs, feel better about themselves, feel worthy of participating in healthier relationships and becoming more confident and sexually assertive.

### **6.1.3 Ethnicity and race**

Customs and ideas must be allowed to shift using a model that allows the benefit of the maximum possible number of beneficiaries according to Curtis (n.d.). A wide broadcast media campaign is therefore necessary. This is because the problem of RSE persists across almost all ethnicities of black Zimbabwe.

#### **6.1.3.1 Media campaigns**

The media is a powerful tool that can be used creatively and in a targeted fashion in myth busting campaigns for varying audiences concerned with ritual sexual exploitation. The campaign's goals are to:

- break the taboo of silence concerning RSE so that society can begin a conversation.
- prove that RSE is not myth but a reality to legislative and policy makers.
- give accurate health information concerning how RSE and HIV affect the albino body.
- reiterate that HIV has no cure.
- educate the public.
- inform survivors about their options.

Albinism support groups, that is, Zimbabwe Albino Association, Albinism Alive, Albino Trust of Zimbabwe and Global Aid Missions can come together with private and public media houses and address ritual sexual exploitation. It is important to include other groups of victim profiles of ritual sexual exploitation such as virgins, infants and other groups of disabled women and children, such as the deaf, crippled and mentally disabled so as not to isolate the cause of WWA from those groups who also experience RSE.

This latter is critical in handling the criticism raised in Chapter 4 that using intersectionality on women with albinism can cause them to operate in a form of solipsism and isolation from the community as a whole and other groups who experience RSE for the cure of HIV. It is a unifying opportunity that strengthens the voice against RSE.

The media or myth busting campaign should be conducted via the media communication process/model. The first stage is to *choose a language*. Because the profile shows clearly that RSE is happening in high density suburbs and rural areas and that witchdoctors are involved, it is most appropriate to use indigenous vernacular languages such as *Shona, Tonga* and *Kalanga* to ensure shared understanding and to avoid miscommunication or the message being ignored. English is frowned upon in traditional contexts because it is not the language of the ancestors. In high density suburbs, people who speak English are thought to be unadaptive and unnecessarily bourgeois.

The second stage is to *choose the audience*. Our audience will change depending on the stage of the program and the specific goal of the media campaign. For example, at the taboo breaking stage, where the issue is discussed publicly, it is best to use a generic message that speaks to society at large.

The third stage is to *carefully construct the message*. The carefully considered core message to be communicated in the generic myth busting campaign must express the following scientific facts:

- WWA are biologically the same as dark skinned women, except for the colour of their skin, hair and eyes, poor sight caused by nystagmus, photo-sensitivity and an underdeveloped optic nerve.

- The former means that in the same way that the normal body is vulnerable to HIV, WWAs' bodies can also be infected, compromised and killed by the HIV virus without the intervention of ARVs.
- The fallibility of the female albino body when exposed to HIV is proof that unprotected sexual intercourse with a woman with albinism cannot cure HIV.
- The above also means WWA are not “things”, they are not medicine. They are living and breathing human beings with feelings and emotions. They feel hurt, pain and disappointment, just like everyone else.
- It is important to consider their humanity before choosing to exploit them.
- HIV is incurable, but its symptoms can be treated using ARVs, exercise and good nutrition.
- In light of the above, any myth that says unprotected sexual intercourse with a WWA is a lie.
- Anyone who is instructing you or anyone you know to engage in unprotected sexual intercourse with a WWA for healing from HIV, that is a witchdoctor or anyone who believes in the myth is misguided. He or she is a believer in witchcraft practices or one who practices witchcraft contrary to the law and is inciting you to do the same.
- Ignore such advice and report to the police any witch-doctor or individual peddling such advice.
- Encourage men who contract HIV to seek medical treatment for their symptoms and not to engage in the ritual sexual exploitation myth.
- There is help for survivors.

*Choose the medium* is next. The best medium to use would be radio and public television because of their wide reach as well as affordability. Most people have radios and televisions. Where there are none, there are neighbourhood spots where they watch ZTV publicly. Most basic cell phones (nicknamed *mbudzi*) have radio reception and can receive text adverts and alerts. Text messaging can be used to alert people about program scheduling.

*Feedback and assessment of feedback* are the last part of the campaign. There needs to be media platforms for receiving feedback to assess the impact of the media campaign such as radio station WhatsApp or Facebook platforms or voice call phone-ins to receive anonymous

contacts from survivors of RSE, most likely from different parts of the country. It is important to be able to make referrals for the services that survivors require from feedback.

The media campaign must also be sectional to isolate key stakeholders by having specific radio or television episodes targeting specific stakeholders representative of masculinity and patriarchy. In the case of traditional leaders, it is imperative that advantage is taken of the divide between those who are certified and those who are not so that they can speak authoritatively against those in the traditional healing/witchdoctor community who incite RSE.

#### ***6.1.4 Place of birth and origin***

Gaigher et al. (2002) state that it is the social context as much as, and sometimes more than, the physical condition that largely structures and limits the lives of people with albinism within communities. There is a need for community outreaches in deviant places because these are the physical location of the social context. These are recommended for the following reasons:

- They are necessary for building relationships and partnerships that serve interventions from government, support groups of persons with albinism or private individuals regarding RSE.
- They are also ideal to create, increase, improve and maintain visibility of state and civil society in regard to RSE and WWA so that momentum is not gathered one minute and lost the next.
- They help in forming an association or amalgamation of bodies that represent WWA and those that can support and implement behavioural change and the process of cultural transformation such as men's groups like Padare, local government councillors, and district administration representatives, women's rights groups, disability groups, legal aid groups, HIV and health specialists as well as law enforcement.

Primary prevention using the community outreach requires the following to be successful:

- **Strategy:** This implies being deliberate, using data, provider knowledge, community knowledge and theory to guide, design and implement RSE programs.
- **Population based:** Primary prevention initiatives should focus on the good of the whole rather than on the good of an individual. This means that strategies are designed to maximize impact for the largest portion of the population, rather than attempting to make changes individual by individual.
- **Comprehensive and long term:** Interventions must be detailed and cross-sectional. Time must be invested for lasting results.
- **Based in community mobilisation:** RSE is everyone's issue; everyone is impacted by it in some way. Community mobilization focuses on giving ownership of the issue and its solutions to the community. RSE prevention then becomes the responsibility of the entire community and not just of support groups of PWA. Mobilizing communities to respond to RSE and its risk factors ensures that initiatives are appropriate for a community. Community members are seen as resources in this process and as having their own skills and knowledge to contribute to ending sexual violence.

The community is critical in addressing RSE because it allows community buy-in, sustainability and resource sharing and because it is necessary.

#### **6.1.4.1 How to start community outreaches for RSE**

It is critical to identify a diverse mix of persons who represent an identified high density suburb or village because RSE affects the whole community. This could include resident witchdoctors both certified and uncertified, pastors and priests, community nurses and health information officers, HIV support group leaders, WWA (survivors and those who are at risk), law enforcement representatives, counsellors and ordinary members of the community who care about RSE prevention. This mixture of participants prevents the isolation of the cause and brings together relevant skills in a community.

Different activities around deviant communities can be done for RSE It is important for the medical fraternity to have targeted meetings with specific sections of the community. For example, community nurses together with HIV clinicians can have HIV information seminars

with witchdoctors as a whole to ensure that they are given accurate scientific information. After these, witchdoctors can be given the platform to denounce RSE as a harmful cultural practise. They must not be given the platform to sanitise our culture by saying RSE is not a part of our culture since this could affect the visibility of the problem.

Academia must also come up with better vernacular equivalents for the word albino. The vernacular equivalent in Ndebele translates to monkey. This form of afro-negative abuse of Nommo must be done away with because it reduces WWA to animals and it is no wonder that they are ritually exploited. The African Languages Department of the University of Zimbabwe is now tasked with coming up with more humane equivalents which must translate into an explanation of what albinism is. The root word for albinism in English is the word “white”. There is need for a word that says people of black genealogy but born white. A word constructed this way is literally educational so that children and society understand what albinism really is.

Article 23(1) of the ICCPR states that because the family is the fundamental unit of society it is entitled to protection by the state and society. The protection of the albino family is a key community activity that must be activated at state level through the Department of Social Services in conjunction with maternity homes so that social workers periodically visit the family to assess the family environment for the best interests of the child with albinism.

Support groups of PWA can hold family days where the albino families come out and interact in a fun-day set up. Albino Parents can interact in Parent Connection social media groups on issues such as how to deal with family prejudice where members of the extended family resent the child. There needs to be marriage counselling for parents raising albino children so that they share responsibility for the genetic outcome of the child. They must be taught as much as possible in forms of genetic counselling about the science of the condition in a language they understand.

Where a parent abandons the family, the remaining parent must be supported and encouraged as much as possible not to scape-goat the child for the breakdown of the marriage. This is to prevent victim blaming of the child since she is also a victim who has lost the support of a parent.

Young girls with albinism must be helped as much as possible to stay in school through reasonable visual accommodation and dedicated counselling. The Ministry of Education must employ trained counsellors to encourage and motivate the children and to help them navigate the challenges of education peculiar to albinism such as bullying and isolation/rejection by peers and teachers. There is a need for scholarships for girls with albinism to finish school. At present scholarships such as the University of Zimbabwe's Vice Chancellor's scholarship are commended for providing WWA a chance at a career by availing tertiary education but they do not address the challenges these women face at the bottom of the educational chain causing high dropout rates among GWA. This should be addressed according to article 10(f) of CEDAW.

There also needs to be a form of vocational work for W/GWA who have no real educational potential. They can be taught the buying and selling of various commodities and receive start up-capital. They can also be attached to farms and learn farming activities that do not expose them to the sun such as milking cows and goats, raising chickens or making cheese and butter. Markets for their products must be guaranteed through giving them a share in quotas of different industries using affirmative action. Workplace discrimination against WWA must be tackled according to article 11 of CEDAW so that their education reaps economic benefits.

Educational and vocational training will develop focus, personal goals, self-esteem and most importantly helps to eradicate the dependency resulting from poverty that leads so many WWA into exploitative relationships as observed by the support groups. Also of importance is the fulfilment of education and work as human rights.

#### ***6.1.5 Psycho-social peculiarities***

Article 12(1) of ICESCR speaks of the right to the highest possible standard of health recognising the psychological states that WWA achieve because of the varying forms of frustration, discrimination and hurt associated with albinism. The availability of competent counselling is evidently lacking in their lives, resulting in impulsive victimology.

WWA should receive counselling to deal with low self-esteem and rejection to promote agency and assertiveness in the heterosexual script by insisting on HIV testing and protected sex. This counselling should be done one on one in a place where they feel safe such as at a ZAA office, a community member's home or community centre. Role models of WWA who

have been assertive and used their right to choose by not accepting the first man that approached them must be used. This helps WWA to know that they have the right to choose in all aspects of their lives, especially their intimate partners, and they should not be rushed or harassed into sex. They should also be taught about shared responsibility in preventing HIV infection as well as informed consent. They should be encouraged and trained as far as possible to employ the utmost perspicacity and due diligence to establish the truth of the true intentions of any suitor. This must be balanced by teaching them also not to be fearful of men or their intentions but to live life with a positive, hopeful outlook.

The aftermath of RSE requires a strong victim support system in which the victim has a counsellor to listen to them to help deal with the psychological aftermath of the revelation of having been ritually exploited, possibly impregnated and abandoned all of which are consequences that MWH simply treat as collateral damage in their war on HIV.

## **6.2 Recommendations for handling emerging issues from victim profile**

Since evidence of violent crime against PWA is sometimes engineered by families as in the story of the minor (referred to in Chapter Four), there is a need to consider that victims who are abused by family would behave differently. This requires different actors to be involved in detecting ritual sexual exploitation. Society as whole is encouraged to be on the lookout for signs of abuse. For example, teachers can pay attention to body language, concentration for GWA because where the child is available to a predator in the family, there is no need to wait for the child to turn 18 to take action.

The science of victim profiling still needs to be perfected, Academics must research into how to make it less contradictory and more consistent like other scientific methods of inquiry as enunciated by Turvey and Freeman (2013).

## CHAPTER SEVEN

### 7.0 LEGAL RECOMMENDATIONS

#### 7.1 Recommendations on how to increase Constitutional intersectionality

To prevent the non-intersectional interpretation of the Constitution, an addition of the phrase “any combination thereof” to section 56(3) in the following manner as suggested by Wei (1995) would remove all doubt about the drafter’s original intent:

‘Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock, **or any combination thereof.**’

This will be useful in eliminating the thinking that grounds of discrimination are mutually exclusive and that they cannot exceed a certain number. The cases cited in Chapter Four show a maximum of three intersecting grounds. Albinism in this dissertation has at least 16 identities out of section 56(3) and law and policy makers, the judiciary and the government’s Ministry of Health must take them into consideration so as to adequately address RSE in different programs, projects and campaigns.

However, a referendum for the amendment of the section must be conducted before such a change can be implemented. Meanwhile, we have to change thinking or become more conscious of intersectionality through education and awareness campaigns. Judges must be educated on how to apply intersectionality and to increase their understanding of the concept so that their judgements are in line with CEDAW General Recommendations No.19, 28 and 35 that encourage the use of intersectional policies and programs in the pursuit of justice.

#### 7.2 Recommendations regarding removal of deliberate infection laws

The conversation to remove deliberate infection laws in our domestic laws must start at the African regional level because the Maputo Protocol is the only one that specifically mentions HIV related rights of women. CEDAW does not hence a regional position must be obtained first before signatories remove those rights from domestic legislation. This is therefore an African, not a Zimbabwean, question. It is proposed that the African Court be approached to decide on whether these Article rights ought to be removed.

At domestic level, strong lobbying can be done using the human rights approach citing the fact that the state has removed regional rights but does not have non-carceral methods in place that help WWA together with other groups that are targeted for RSE gain more traction. Storytelling and testimonials can be used to explain why HIV is a real issue for these victims. It must also be stated that the restoration must be done as a symbol which does not condone this behaviour, so that the nation does not encourage perpetrators to commit the perfect crime.

The non-penal methods to article 14 rights must be enforced by having legislation that commits to sex education at constitutional, health and education legislative level. This will ensure that the state has clear obligations for which it can be held accountable.

A sex education curriculum must then be crafted and made accessible countrywide, especially in rural and high density suburbs which this research has shown to be the deviant places of the country. The implementation can also bring in Population Services International and Katswe Sisterhood who have experience in sex education and disability for school going children with disabilities.

There is a need to tackle health sector evangelism. Health workers must be stopped from imposing their religious beliefs at the expense of their professional duty to provide sex education. While Global Aid Missions has Christian roots, it must balance those with the inability of some women from abstaining for premarital sex as in the experience I had with their nurse who cut me off when I asked her about reproductive health and proceeded to ask me if I was born again.

### **7.3 Recommendations for a case for widening consent**

According to Brogaard (2017), the concept of deceiving another person in order to have sex with them is morally wrong when it prevents the other person from giving full informed consent to the act. The reason for this is that informed consent cannot be given when you do not really know what you are agreeing to when consenting to have sex.

The RSE victim is deceived on two grounds, first, that the MWH is HIV free and about his intentions to use her body as a cure. Section 69 must have its grounds of deception expanded

to add the concept of rape by deception to cover the grounds on which the consent of the RSE victim is being vitiated. Section 69(b) can be expanded as follows:

‘...a person shall be deemed not to have consented to sexual intercourse or any other act that forms the subject of a charge of ... [rape by deception],

1. by means of a fraudulent misrepresentation which induces the other person to believe that he or she is HIV negative; or
2. by withholding his true motive that may lie outside mutual gratification for both parties such as using his/her body as an HIV cure.’

#### **7.4 Recommendations on rectifying contradictions in the definition of albinism**

Sections 34, 326 and 327 of the Zimbabwean Constitution stipulate that all international treaties must be fully ratified before they can be applied domestically. However since the definition of albinism in general recommendations and communications (which are rules of interpreting and applying international legislation) differ from one convention to another, there is a need for the international community to ensure that there is no confusion as to the definition of what albinism is so that our Judiciary is able to apply justice without confusion resulting from contradictions on this important issue.

Since Zimbabwe has officially defined albinism as a disability (a position that is consistent with the CRPD’s definition of albinism) a clause can be added in the current Disability Bill to adopt the international position that is consistent with its definition in order to avoid confusion until the international community settles on one position.

#### **7.5 Recommendations on dealing with legal ageism and partiality to the disabled**

Adult exploitation as a concept can also be introduced in the Criminal Code to prevent the effect that Article 16 of the CRPD has of forcing disability on WWA to receive protection from “all forms of exploitation”.

While adult exploitation as a concept is key in law it is important according to Professor Stewart to walk the fine line between protection and over protection which may rob WWA of their freedom.

Regarding disability, an approach of dealing with “each case on its own merits” must be taken. Each disability must be seen with its own challenges so that commensurate justice can be done. Disabilities cannot be successfully compared. For example, it does not make much sense to ask whether it is better to be blind or to be lame or to be albino because they all have their specific challenges. A specified intersectional approach is needed for albinism in order for the state to be equitable in delivering justice for WWA.

## **7.6 Recommendations for all forms of exploitation**

The law must include covert forms of exploitation as well as non-monetary gains by using the following definition of sexual exploitation:<sup>21</sup>

‘Any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual purposes, *including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.*’

## **7.7 Recommendations on ornamental witchcraft legislation**

An abolitionist approach would be more effective in dealing with witchcraft according to evidence already given in this research. The chasm or divide between certified and uncertified witchdoctors can be exploited. Certified witchdoctors can use their acceptance and authority to speak out against harmful traditional practices. Those certified to treat HIV can also use their expertise and tell the nation that there is no cure for HIV, only herbs to treat the symptoms.

Chains do not educate against prejudice hence non-carceral solutions must be employed. Witchdoctors must have symposiums and workshops that allow and encourage discussion about harmful cultural practices. Community leaders can invite local witchdoctors, certified or not, so that all can be exposed to education against harmful cultural practices such as RSE. The teachings and talks must employ cultural transformation for the purposes of fighting cultural rigidity by showing that our Zimbabwean society has in the past recognised and rejected as bad those aspects of its culture such as the killing of twins and the killing of young men/eunuchs for the burial of the king or chief.

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<sup>21</sup> United Nations Glossary on Sexual Exploitation and Abuse Thematic Glossary of current terminology related to Sexual Exploitation and Abuse (SEA) in the context of the United Nations, Second Edition.

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