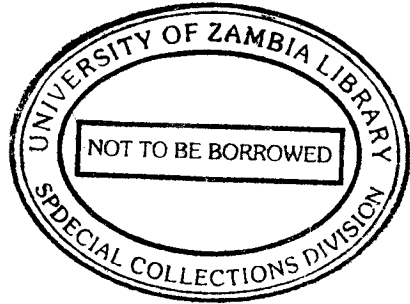


**“THE UNCERTAINTY SURROUNDING THE LEGAL POSITION OF  
PROSTITUTION IN ZAMBIA: A CRITICAL ANALYSIS OF THE CAUSES AND  
THE LAW.”**



**BY  
CLIFFORD MOONGA**

**An Obligatory Essay submitted to the University of Zambia, Law Faculty, in partial  
fulfilment of the requirements for the award of the Degree of Bachelor of Laws  
(LLB)**

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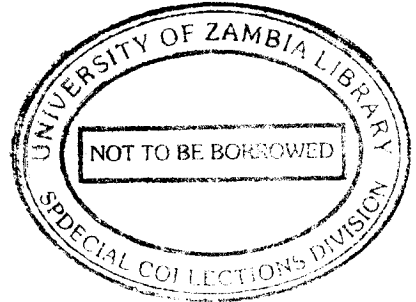
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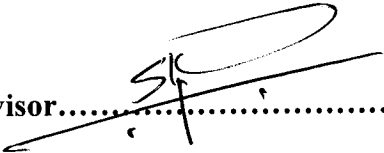
**By**  
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**Mr.S.E.Kulusika.**

**THE UNCERTAINTY SURROUNDING THE LEGAL POSITION OF  
PROSTITUTION IN ZAMBIA: A CRITICAL ANALYSIS OF THE CAUSES AND  
THE LAW.**

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**UNZA- FACULTY OF LAW**

**December 2005**

## DECLARATION

I, Clifford Moonga, Computer No.20002530, do hereby solemnly declare that I am the bona fide writer of this Essay entitled "The Uncertainty Surrounding the Legal Position of Prostitution in Zambia: A Critical Analysis of the Causes and the Law." I herein therefore, declare that this work is a candid representation of my own ideas and is not a reproduction of any other work produced or submitted by any other person to the University of Zambia or to any other institution. In this regard, due acknowledgement has been given where other scholarly work has been cited.

Name of Student..... Moonga Clifford (20002530) .....

Signature.....  .....

Date..... 5<sup>th</sup> December, 2005 .....

## **DEDICATION**

**This work is dedicated to my parents Mr. And Mrs. Moonga Mungalu. It is also dedicated to my Uncle and Auntie Mr. And Mrs. Moonde.**

**To the both of you, I say, thank you very much for your unfailing love, material and spiritual support and encouragement when all hope was lost.**

**To you, I owe what I will never be able to repay. May the fruits of my mind and labour be to the glory of the almighty God, my creator and my entire family and the nation at large.**

**To my brothers, sisters, cousins, nieces, nephews, aunties, uncles, and grandparents, I thank you all for helping me in my dreams and ambitions. Your patience, unfettered love and affection is all I needed to come this far. Please keep on keeping on. With all of you by my side, the sky is the limit.**

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**The production of this work has not been easy and so has been my academic life at UNZA. First and foremost, I express my gratitude to the almighty God for granting me the strength, wisdom and good health, which enabled me complete this work. I also thank Him for providing me with people whose assistance made this work come to fruition.**

**This work is a product of a concerted effort. My profound and special thanks go to my learned supervisor, Mr.S.E.Kulusika, whose unfailing and constructive criticism put me on the right track in this work. I will forever be indebted to him.**

**Equally, my gratitude goes to Chisanga Kasonde for all the spiritual, material and moral support she rendered to me during the production of this work as well as my stay at UNZA. I must hasten to admit that she was always there whenever I needed her assistance without which I do not know how things would have been.**

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**I must admit that my stay at UNZA would have been hazardous and scandalous if the following people were not at my disposal, Chisanga Kasonde, Kenneth Mbewe, Neddy Chilufya, Philemon Tembo, Brigadier Siachitema, Louis Mwaba, Beene MunaFumpa, and those whom I have not mentioned due to limited space. To you all, I say thank you very much for your relentless support and inspiration in my academic pursuit. You are friends indeed as you were friends in need. Thanks for the advice support rendered to me, I love you all and God bless**

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## **CHAPTER ONE**

### **INTRODUCTION**

It is an undeniable fact that prostitution is one of the oldest activities that started a time immemorial. It is clandestine and illegal in most societies thereby making it difficult to gauge the number of the people involved in it. Its prevalence is not strange to Zambia, it is available abundantly in inter-alia, bars, taverns, night clubs, hotels, schools, colleges, universities and the work place. It has in fact been characterized as the “world’s oldest profession.” However, despite its old age, there is so much uncertainty regarding its legal position in the Zambian Jurisprudence.

It will be appreciated that some sectors of society have called for prostitution to be legalized while the other sector argues that this call is unwarranted since it is already legal. This state of affairs with regard to the legal position of prostitution in Zambia is very detrimental in that it may either perpetuate the commission of an offence by not arresting those involved or it may lead to the arrest of people conducting themselves in a manner not prohibited by law.

The subject matter in this essay is prostitution and specifically the focus will be on the uncertainty surrounding the legal position of prostitution in Zambia by way of a critical analysis of the causes and the law. In order to achieve this, the essay will zero in to discuss the various views of the people on the legal position of prostitution in Zambia and why they hold such views.

These views will then be analyzed in relation to the Zambian legislation relating to prostitution and in so doing, discover the reason behind the existence of this uncertainty. Once this has been done, recommendations will be made where necessary so as to ensure that this unfortunate and uncomfortable scenario surrounding the legal position of prostitution in Zambia is minimized, if not at all, completely erased. It is hoped that this study will serve as a practical guide to all those that are concerned about the legal position of prostitution in Zambia.

### **PROSTITUTION DEFINED**

The penal code<sup>1</sup>, which is one of the principal sources of criminal law in Zambia, does not define the terms “prostitute”, “common prostitute” or “prostitution” despite using them in various sections<sup>2</sup>. Prostitution may be defined as the “practice of offering one’s body for promiscuous or indiscriminate sexual intercourse in return for payment<sup>3</sup>.”

It has been defined as “the selling of sex outside marriage as a vacation.”<sup>4</sup> However, an unmarried woman who receives gifts for sexual activity would not be a prostitute as long as this was not her occupational way of life.<sup>5</sup>

It has further been defined as “the performance of sexual acts solely for the purpose of material gain.”<sup>6</sup> It is the “sale of sexual services such as oral sex or sexual intercourse for money.”<sup>7</sup>

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<sup>1</sup> Chapter 87 of the laws of Zambia

<sup>2</sup> Section 140, 146, 147, 148, 149 and 178 respectively.

<sup>3</sup> Colling Wood, **Criminal Law of East & Central Africa**. London: Sweet & Maxwell (1967), p. 130

<sup>4</sup> Bell, social deviance, p.226 (quoted in A. Coffey Et. Al, An introduction to the criminal justice... system & process (Prentice-Hall, inc. Eagle Wood, New Jersey, 1974 p. 168.

<sup>5</sup> Ibid p.169

<sup>6</sup> Prostitution Encarta Encyclopedia Standard 1993-2004

<sup>7</sup> [http:// en. Wikipedia. Org/wiki/prostitution](http://en.Wikipedia.Org/wiki/prostitution)

The courts of law both Zambian and English have not been left out in the definition of the term prostitution. In the Zambian case of R.v.Chipatela Ngandelau,<sup>8</sup> prostitution was defined as meaning the “practice of offering the body for promiscuous or indiscriminate sexual intercourse with men.” in the English case of R.v.De Munck<sup>9</sup> prostitution was defined as to mean “not necessarily being confined to a woman who for gain offered her body for natural sexual intercourse, but also to one who offered her body for gain for the gratification of the sexual passions of any man by any unnatural and abnormal act of indecency.” In another English case of R.v.Webb,<sup>10</sup> the term prostitution was extended in definition to mean “the offering by a woman of her body commonly for lewdness in return for payment.”

From the above definitions of prostitution, the following is offered as the working definition of prostitution in this essay. It is the grating of one’s body for promiscuous or indiscriminate sexual acts, solely for the purpose of material gain.

A prostitute is therefore, one who grants sexual favours to others in exchange for money, gifts or other payment and in so doing; use their bodies as commodities. Simply put a prostitute is one who engages oneself in prostitution.

### **CONFINES OF PROSTITUTION ESTABLISHED.**

Having defined prostitution as the act of granting one’s body for promiscuous or indiscriminate sexual acts, solely for the purpose of material gain, it follows therefore that, any sexual act of any nature done for material gain amounts to prostitution.

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<sup>8</sup> I.N.R.L.R. 139

<sup>9</sup> (1918) IK.B.636

<sup>10</sup> (1963) IQ.B 357

For instance in the case of R.v.De Munck<sup>11</sup>, a mother was charged, inter alia, with having attempted to procure her daughter, nearly fifteen (15) years of age, to be a common prostitute. It was, however, proved by medical evidence that she was virgo intacta and the commissioner who tried the case directed the Jury that the term “prostitute” was not necessarily confined to ordinary, natural sexual intercourse. There was evidence that the mother permitted her daughter to take men home to the house where she herself was living and allowed those men to be in private with the girl in circumstances which would have led anyone to suppose but for the medical evidence, that the girl had had connection with them. There was, in the words of Darling J<sup>12</sup> “ample evidence from other sources to satisfy the Jury and they were satisfied that there had been lewd conduct between the girl and the men who were brought to the house that the girl exposed herself to them for the gratification of their sexual passions, and that her mother procured her to do so.

It is clear therefore that although no sexual intercourse took place between the girl and the men, the girl’s body was from the judgment of Darling, used in some lewd way in return for payment thereby amounting to prostitution. It is not only sexual connection which amounts to prostitution, any other lewd conduct does and can amount to prostitution provided it is done in consideration of payment in return. In the case of R.v.Champman,<sup>13</sup> it was held that prostitution could arise where a man and a woman took part in physical acts of indecency even if there is no actual contact between them.

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<sup>11</sup> Op.Cit

<sup>12</sup> Ibid at 635

<sup>13</sup> (1959)1Q.B.100

In R.v.Webb<sup>14</sup> the defendant who ran an institute of massage for men was indicted for inter alia, attempting to procure a woman to become a common prostitute and living on the earnings of prostitution. Three girls below the age of twenty one (21) who were formerly masseuses at the institute understood it to be part of their job to masturbate men who asked them to do so and one even did so. The Judge directed the Jury that inter alia if the girls had done the alleged acts; they had acted as common prostitutes. The defendant was convicted on each count.

The Webb case entails that offering of oneself as a participant in physical acts of indecency for sexual gratification of others such as masturbating them for payment amounts to prostitution. Lord Parker C.J<sup>15</sup> stated that “for the purpose of prostitution, it cannot matter whether she whips the man or the man whips her; it cannot matter whether he masturbates himself on her or she masturbates him.’

Whether one offers his/her body for normal or abnormal sexual performance of whatever nature, be it promiscuous or indiscriminate sexual encounter, or just offers their body for a lewd conduct where they are only a participant in a physical act of indecency without there being any actual contact, provided it is done in consideration of payment in return, one will be regarded as engaging thyself in prostitution and qualifies to be called a prostitute.

In this regard, the case of R.v.Chipatela Ngandelau<sup>16</sup> can be criticised as having been wrongly decided. The accused was charged with living on the earnings of prostitution after having allowed another man to share the services of his wife for a period of twelve months in consideration of a payment of £2 8s.od. The association lasted

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<sup>14</sup> (1963)1.Q.B.357

<sup>15</sup> Ibid at 365

<sup>16</sup> 1.N.R.L.R. 139

throughout the stipulated period, during which from time to time, the witness made small payments to the woman to buy clothes .The cohabitation ceased at the end of the period .It was held that there was no evidence that the woman was a common prostitute or that there was any promiscuity in her relations with men generally. The sharing of a woman equally by two men does not per se establish that woman as a prostitute.

This decision can be criticized because the woman offered her body for the granting of sexual services to the other man in consideration of the payment of money which payment was a determining factor in the association .The woman therefore prostituted herself for material gain .It matters not whether the material gain was for herself or the accused provided it was the deciding factor. The woman therefore engaged herself in prostitution, qualified to be called a prostitute and the accused should have been convicted for living on the earnings of prostitution.

## **METHODOLOGY**

The method used in the research leading to this essay consists of surveys supplemented by personal interviews and the analysis of secondary data such as pieces of legislation, texts by eminent authorities published and unpublished literature, Judicial precedents set by the Zambian courts and relevant or comparable foreign case law.

For practical aspects and further insight into the topic, the writer interviewed a cross section of members of society, which included inter-alia Judges, Lawyers, ordinary



citizens, Police officers and prostitutes. This was so as to get their various views on the legal position of prostitution in Zambia and why they hold such views.

The uncertainty surrounding the legal position of prostitution in Zambia is so profound as evident from the views of the various people interviewed, as the essay will show.

### **ORGANISATION OF THE ESSAY**

Chapter two will basically discuss the causes of prostitution that are in existence and in the same chapter a discussion of the types taken by prostitution will be done.

Chapter three. This chapter deals with the various views that the Zambian people hold with regard to the legal position of prostitution in Zambia and the reasons as to why they hold such views.

Chapter four endeavors to identify the Zambian legislation relating to prostitution. A larger part of the chapter discusses the people's various views raised in chapter three. This will be done by way of an analysis of the Zambian legislation relating to prostitution and in so doing discover the root cause of the uncertainty surrounding the legal position of prostitution in Zambia.

Chapter five makes recommendations aimed at endeavoring to erase the uncertainty surrounding the legal position of prostitution in Zambia. Thereafter, a conclusion will be made on the various issues raised in the essay.

## **CHAPTER TWO**

### **INTRODUCTION**

In the last Chapter, the subject matter of this essay, prostitution, was defined and its confines established. This Chapter will basically discuss the Causes of and the types of prostitution.

### **CAUSES OF PROSTITUTION**

Prostitution is caused by a number of factors, prominent among which are: poverty, unemployment, divorce and psychological factors. The first three factors may be categorised into economical factors, hence, in this essay, only economical and psychological factors will be discussed.

### **ECONOMICAL FACTORS**

Interviews and discussions conducted by the writer with the prostitutes as to what the main cause of their promiscuity was, revealed that the economical factor was the main cause of prostitution in Zambia. A research conducted by the movement of Community Action for the Prevention and Protection of Young People Against Poverty, Destitution, Diseases and Exploitation (Mapode)<sup>17</sup> a Non-Governmental Organisation (NGO) showed that prostitution is necessarily poverty-driven and that in Zambia (like anywhere else) the problem is profoundly economical with poverty as its deep root cause and at its center-stage.

With regard to economic factors as being the major cause of prostitution, the International Labour Organisation states that economic factors contribute to the rapid

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<sup>17</sup> <http://www.mapode.freewebspages.org>

increase of the sex work industry (prostitution). It further points out that women with limited or no education at all are compelled to indulge in prostitution.<sup>18</sup>

As revealed by the Mapode research, economic factors are not only peculiar to Zambia, but elsewhere as well, Glover<sup>19</sup> states that “economic factors are the prime cause of anti-social conduct: for instance, prostitutes are driven to take up their profession by economic hardships.”

Furthermore, in *Women Working: Prostitution Now*, McCleod (1982) presents the lives of her respondents (prostitutes) as a response to the economic pressures of child-care and the low wages available to women in alternative employment. She stresses that discussions with the prostitutes reveal that these individuals’ problems arise not from individual pathology, but from economic factors.<sup>20</sup>

It can be argued therefore, that it is these very economic factors that forced the accused in the case of *R. v. Chipatela Ngandelau*<sup>21</sup> discussed in Chapter one to allow another man to share the services of his wife for a period of one year in consideration of a payment of E 2 8s.0d.

Another man of Ndola rural abandoned his matrimonial bedroom together with his wife for a period of seven days so as to allow an investor to have the services of his

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<sup>18</sup> As quoted in the Editorial Reflection of the Tasintha Programme Team, an NGO dealing in the reformation of prostitutes through education and skill training activities.

<sup>19</sup> Glover *The Roots of Crime*: Imago Publishing Company Ltd London. P. 259

<sup>20</sup> *Women Working: Prostitution Now* (quoted in M. Easton *Justice for Women?* Family: Court and Social Control (Open University Press Milton Keynes Philadelphia 1986 p.9)

<sup>21</sup> 1 N. R. L. R. 139

wife with the hope that the investor would leave some money for them at end of the seven-day association.<sup>22</sup>

With about eighty percent of the population living in abject poverty in Zambia and the unemployment levels being so high, coupled with the effects of HIV/AIDS and family break-ups, most of the people just spend the whole day sitting idly around, wondering where the next meal will come from. Most of the affected are the young men and women and the older women who are widows as most of them have lost their husbands to HIV/AIDS. These people have to find means and ways of surviving due to the fact that they head households under difficulty conditions. This situation has forced most of them to indulge in anti-social behaviour such as heavy beer drinking and prostitution.

One of the prostitutes interviewed who has been in the profession for eleven years stated that she had no intentions of stopping because she has a family to look after which would starve to death if she did. Three teenage sisters joined prostitution after their mother who was the only bread winner died. They had no food or money for sustenance and had very limited education. Embroiled in the face of hunger, they were introduced to the profession by a friend of theirs who had earlier dropped out of school due to lack of school fees. They would parade along Addis Ababa Drive every evening to earn an income through prostituting themselves.

Most of the prostitutes interviewed stated that they were aware of the dangers of HIV/AIDS but could not stop because they had no option. Given a choice between

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<sup>22</sup> Sunday Times of Zambia, August 14, 2005, p.7

the two, the, stated that they would rather prostitute themselves than die of hunger, which kills within a short period. Mary joined the profession at the age of thirteen after the divorce of their parents. Her aunt assumed the role of a guardian but constantly starved and mistreated her.

Most of the prostitutes attributed their choice of profession to poverty that was either brought about by the death or divorce of their parents or lack of employment. These economic factors are attributed as being the main cause of their promiscuity. Most of them indicated willingness to change the profession if a better means of earning a living was found. It may therefore not be a fallacy to conclude that economical factors play a major contributing role in promoting prostitution. However, though economic necessity often is the driving motivation for many people involved in prostitution, it is not necessarily the only one. Other driving factors are also at play such as psychological.

### **PSYCHOLOGICAL FACTORS**

Glover<sup>23</sup> acknowledges the fact that it is not only economic factors which cause prostitution despite being the prime cause, he cites “emotional” or “Psychological” factors as being among the other factors contributing to the increase of prostitution. He states that “investigations by experienced social workers shows emotional factors as the cause of prostitution.”<sup>24</sup> This is particularly in conditions of upbringing that lower what he terms as the love-security of the child and increase its antagonism to normal security. He also links neurosis to prostitution by stating that the neurotic person tends to suffer from inhibition rather than sexual expression and in this way,

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<sup>23</sup> Glover The Roots of Crime: Imago Publishing Company Ltd. London. P. 259

<sup>24</sup> Ibid at 260

the neurosis unconsciously covers the unconscious sexual fantasies of a perverse order. For instance, many cases of street anxiety mask unconscious fantasies of prostitution and occasional cases of anxiety hysteria complicated by transient episodes of a prostitute type are also in existence.<sup>25</sup>

Glover further states that “phases or types of prostitution are common in some forms of schizophrenia and in schizoid characters, these phases become organised in ‘confirmed’ prostitution.”<sup>26</sup> As regards “psychopath (instability in emotional set, impulse, life and character reactions), it is not surprising to find that many psychopaths are prostitutes and that close observation of many apparently normal prostitutes uncovers the existence of a number of psycho pathetic traits.”<sup>27</sup>

Psychological factors have been found to be a cause of prostitution in Zambia also, although, not a major one. A number of prostitutes interviewed indicated having joined the profession for psychological factors such as peer pressure, curiosity and want for sexual satisfaction. Mitsozi is one such example. She could not pass without attracting the attention of men, a situation she loved so much. She found it to be so easy and comforting as it made her feel the inner peace, beauty, youthful pride and just the thought of it made her long for more hence she joined the profession to get satisfaction which she was unable to get from one person. It was this irresistible psychological desire, which drove her into prostitution.

Little Susan (11) is another example; she joined prostitution to seek a peace of mind. Violence between her parents was so frequent and intense such that she would run

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<sup>25</sup> Ibid at 260

<sup>26</sup> Ibid at 261

<sup>27</sup> Ibid at 261

away and only return afterwards. One evening, as she was running using her usual route, she met and was escorted by a seemingly kind security guard who upon parting company, gave her sweets and promised to escort her again should need arise. Need did indeed arise as on the third occasion the kind man fondled her little breasts as he gave her some more sweets and money and the trend repeated itself until she was no longer the little girl she physically was.

As the violence intensified, she ran away and never returned home, as she had gotten to know not only security guards but also barmen and taxi drivers among others.

It can therefore be summed up that the major causes of prostitution both in Zambia as well as elsewhere are economical and psychological factors; economic factors being the prime cause.

### **TYPES OF PROSTITUTION**

Prostitution today exists in a number of different forms and occurs in different settings. However, two categories of prostitution can be come up with, these are; hard core prostitutes and the poverty stricken. The hard cores are those prostitutes that mainly patronise Kitwe and Lusaka's main hotels, restaurants and night spots and whose earnings are fairly high (ZK 300,000 + per asking), subsisting on a wealthy local and international Clientele, including tourists. They reside in close proximity to their business areas. The poverty stricken prostitutes are those found in high-density areas, which are mainly poor girls and women that are forced into the trade for survival and they are the majority.

From these two categories, a variety of types of prostitution can be generated. For instance, Glover<sup>28</sup> has come up with four types of prostitution. The first consists mostly of street-walkers who in most cases practice prostitution as a life-long profession. They are apathetic and hopeless in attitude and are prone to form association with criminals. They incline also to excessive use of alcohol and most of them attribute their choice of profession to emotional disturbances in adolescence.

With regard to this street-walker type, research found out that this type is well represented in Zambia and most of them practice prostitution up to a certain age usually in their mid thirties due to high competition from the young ones who force them to retire early as they lose their market value, hence cannot practice prostitution as a life-long profession. They are prone to form associations with criminals and incline to excess use of alcohol. They solicit customers while waiting at street corners or walking alongside a street, usually dressed in skimpy suggestive clothing. Often the prostitute appears to mind her own business and waits for the customer to initiate contact though sometimes they may initiate contact themselves in a very careful manner.<sup>29</sup> Most of them attribute their choice of profession not to emotional disturbances in adolescence but to economic hardships.

Glover's second type is the 'young' prostitute or the unstable adolescent who is of borderline intelligence, irresponsible, rebellious and defiant or on occasion indolent and indifferent. This type is easily influenced by older and more sophisticated 'professionals', lives from hand to mouth carelessly without forethought or even apparent anxiety as to the future.

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<sup>28</sup> Glover *The Roots of Crime*: Imago Publishing Company Ltd. London. P. 254

<sup>29</sup> <http://en.wikipedia.org/wiki/prostitution>



This type in Zambia is usually found in bars and night clubs alongside the more sophisticated and older professionals who are their guardians, hence tend to be indifferent, living from hand to mouth without any forethought as to the future. They avoid the streets and only do so in the company of their guardians. They do this for lack of experience, fear of violence from the professionals and also to avoid being picked up by the police for loitering.

The third type according to Glover is the 'flourishing' professional who although known to the police is, by virtue of her business talents, better able to avoid police interference. They are of flimsy and unstable personality but intelligent enough to look after her own interest. However, behind her apparent success, one is restless, dissatisfied and given to excess of various kinds.

This type of prostitution can be said to compose of those who skilfully avoid police interference. They are difficult to identify because of their business talents, calculated to arouse little or no suspicion about their identity to those around them. They dress modestly and mainly conduct their business near hotel premises.

Glover's fourth type is the 'discreet' prostitute who after a comparatively short period of flamboyance, settles down as a short-term mistress and often ends as an apparently respectable spinster with conservative domestic interests.

The meaning of 'short-term' is imprecise, hence in this essay; it will be taken to mean a period ranging from a few months to less than three (3) years. The prostitutes in this

group settle down afterwards as soon as they find a way out. For instance little Susan and Mitsozi discussed in Chapter one have since quite the profession and have settled down. However, rarely do these prostitutes get married eventually after retiring despite becoming respectable members of society. It could be that the stigma of being a former prostitute is the most restraining factor; hence they end up as respectable spinsters.

## **CONCLUSION**

It is therefore, possible to classify prostitution in a great number of ways depending on the age, social structure, success, temperament, variety of sexual activity favoured, the extent to which the prostitutes practice the types of delinquent conduct and significant of all, the nature of their after history, that is, whether they continue as perpetual prostitutes or abandon the career after a varying period.

Having in this Chapter discussed the causes and types of prostitution, it will be discussed in the next Chapter, the people's views with regard to the legal position of prostitution in Zambia and why they hold such views.

## **CHAPTER THREE**

### **INTRODUCTION**

The previous chapter focussed on the causes of and types of prostitution. This chapter will deal with the various views that the people of Zambia hold with regard to the legal position of prostitution in Zambia and why they hold such views.

### **PEOPLE'S VIEWS ON THE LEGAL POSITION OF PROSTITUTION IN ZAMBIA**

Interviews and discussions conducted by the writer with various people on the legal position of prostitution in Zambia revealed that these people were on divergent views. The majority of them were of the view that it is illegal in Zambia while the minority were of the opposite view. Another category of those interviewed expressed lack of knowledge on the legal position of prostitution in Zambia.

### **ILLEGALITY OF PROSTITUTION IN ZAMBIA**

Those who are of the view that prostitution was illegal in Zambia advanced the following reasons: exploitation and sexual abuse of women, immorality, lack of legal regulation and arrest by the police.

Most of the people interviewed considered prostitution to be illegal because it amounted to sexual abuse of women in which the women (prostitute) became the victims of their client who needed the protection of the law. They stated further more that prostitution was a violation of people's rights as women were being used as sexual objects, hence, in essence being treated like commodities.

Others considered prostitution to be illegal because women were being exploited and treated in a degrading way, which was an unacceptable social behaviour. Morality

was another reason advanced; it was argued that Zambia was a Christian nation, which promoted Christian ethics hence prostitution was unacceptable in a Christian nation.

Prostitution is illegal, it was stated, because it is not regulated by any law like other professions. It is considered to be an underground activity, which did not allow for normal checks and balances of society and the existing laws to apply.

Arrest of the prostitutes by the police was one other of the reasons advanced for the proposition that prostitution was illegal in Zambia. It was highlighted that the act of arresting prostitutes was an indication of its illegality hence the more reason why it was done in secrecy.

The prostitutes themselves regard prostitution as being illegal because they are arrested on many occasions by the police when found on the streets. They also stated that on numerous occasions, they are beaten up when they refuse the demands of the police, which include inter-alia sex and money. In addition they are arrested. Immediately they give in to these demands, freedom is granted to them and it was from these factors that they considered prostitution to be illegal.

Most of the police officers interviewed stated that prostitution was illegal and classified it as a crime of consent, which was an arrestable offence. However, they stated that these prostitutes are charged usually not for prostitution but for soliciting and idle standing. The reason advanced for this trend was that prostitution was difficult to prove.

These are some of the views expressed by those who are of the opinion that prostitution is illegal in Zambia. It can however be deduced from these views that although the people agree on the view of the illegality of prostitution, they do not accordingly advance uniform reasons for such a view.

Conversely, there are those people on the other hand who are of the view that prostitution is legal in Zambia.

### **LEGALITY OF PROSTITUTION IN ZAMBIA**

This category of people holding the view that prostitution is legal in Zambia attributed this to the following factors; it was a act of consent, was harmless, was a human right issue and lack of prosecution.

One sector of society feels that the practice of prostitution should not arouse any public concern since it involves one's private life. This sector treats sexual freedom as a human right and in this regard considers prostitution to be legal. Their assertion is that prostitution is an act of sexual self-determination, which despite being stigmatised, is not criminal. This sector of society is of the view that prostitutes are mature adults who choose what they wished to do with their bodies. They further contend that it is an act, which comes about as a result of two adults voluntarily consenting to engage in the act just like in a business transaction without any criminality being involved.

Prostitution being an act of consent and a human right issue, no harm is done to society; hence the law makers saw no need to protect society by criminalizing prostitution. There is no victim in the act of prostitution; both parties are beneficiaries, hence there is nothing criminal about that.

Another reason attributed to the contention that prostitution is legal in Zambia is that prostitutes are not arrested as they are seen on the streets everyday and even if they are arrested, they are released a day after on a charge of loitering or idle standing and never on prostitution. In addition, no one has ever been prosecuted for prostitution. Prostitution is legal and is simply an unavoidable evil.

The argument that prostitution is done underground because it is illegal does not stand because it is done in the open such as on the streets, in bars, taverns, hotels, night clubs and so on where the people are found.

The other reason advanced for the view that prostitution is legal was one based on the interpretation of the Penal Code <sup>30</sup>It was contended that prostitution was not proscribed, as an offence under the Penal Code and therefore, any act not so proscribed as an offence is not criminal. The contention was extended further, by stating that prostitution to be illegal had to be qualified in that only when a third part was involved either as a beneficiary or as a promoter only then did it become illegal or when the prostitutes resorted to soliciting in the streets. Otherwise prostitution is not *per se* illegal in Zambia.

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<sup>30</sup> Chapter 87 of the laws of Zambia

The fact that prostitution may be immoral does not in itself make it illegal and moreover, who is supposed to be the custodian of morality. Those contending that prostitution is illegal because it is 'immoral' must bear in mind that society is dynamic, for what is immoral today may not be tomorrow or vice-versa. Morality is simply an individual's perception of things.

It can also be deduced from this that though they all agree on the legal position in Zambia, they do not necessarily, all advance the same reasons. There is another sector of society, which does not take sides on the legal position of prostitution in Zambia.

### **LEGAL POSITION OF PROSTITUTION UNKNOWN IN ZAMBIA**

This sector of society does not take a stance as to the legal position of prostitution in Zambia not because of ignorance but because of the many questions it has in stock with regard to the legal position of prostitution.

It asks the following questions, for instance, if prostitution was illegal in Zambia, why is it that the prostitutes are not being arrested as they are seen everyday on the streets, going about their business in the open. On the other hand, the police do at times arrest these people making us wonder as to whether prostitution is legal or not.

Additionally, when the police do arrest these prostitutes, they release them a day after on a charge different from prostitution, why are they not charged for prostitution. If prostitution was illegal, there has never been a situation where the prostitutes have been prosecuted, why is that so. If however, we were to argue that prostitution is legal, why is there no law regulating this profession.

The questions presented by this sector of society are the main reasons, which hinder them from taking a stance on the legal position of prostitution. Resultantly, this sector simply states that it does not know the legal position of prostitution in Zambia.

## **CONCLUSION**

This chapter has highlighted the views that the people of Zambia hold with regard to the legal position of prostitution, and the reasons as to why they hold them. It is evident from the various views raised that there is so much uncertainty surrounding the legal position of prostitution in Zambia. Although certain sectors of society are able to take a view, they cannot all state with uniformity as to why they take that view. Three views have been expressed as to the legal position of prostitution in Zambia. This therefore, calls for an investigation in to the Zambian legislation on prostitution so as to find out what the root cause of this is.

The following chapter will endeavour to identify the Zambian legislation relating to prostitution. A larger part of the chapter will discuss the people's views raised in chapter three. This will be done by way of an analysis of the Zambian legislation relating to prostitution and in so doing discover the root cause of the uncertainty surrounding the legal position of prostitution in Zambia.



## **CHAPTER FOUR**

### **INTRODUCTION**

The previous Chapter highlighted the various views that the people of Zambia hold with regard to the legal position of prostitution in Zambia and why they hold such views. The Chapter showed that a divergence of views is held regarding the legal position of prostitution in Zambia. This Chapter will endeavor to identify the Zambian legislation relating to prostitution. A Larger part of the chapter will discuss the people's views raised in Chapter three. This will be done by way of an analysis of the Zambian legislation relating to prostitution and in so doing discover the root cause of the uncertainty surrounding the legal position of prostitution in Zambia.

### **ZAMBIAN LEGISLATION RELATING TO PROSTITUTION**

#### **Brief Background**

The Zambian Legislation relating to prostitution, as it exists today is a product of its history. Almost every feature of it can either be traced back to an historical origin a generation or more ago.

Zambia is a former British colony and like nearly all the former English colonies had one form or another of a basic reception law duly codified into legislation.<sup>31</sup> As a general rule, most or all of the then existing laws of the colonies were carried over beyond independence.<sup>32</sup> As a result, the old reception statutes are still on the books in many independent African Countries and Zambia is no exception.

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<sup>31</sup> Allot Essays in Africa (quoted by M. Ndulo (e.d) in Law in Zambia, Nairobi: East African Publishing House Ltd 1984 p.17)

<sup>32</sup> For example, section 4 of the Zambia Independence Order, 1964 provides that "the existing laws ... shall continue in force."

The Penal Code<sup>33</sup>, which is one of the principal sources of criminal law in Zambia, is one such statute, which traces its history to the colonial administration of the country by Britain. For instance, the settlement of the territory (Northern Rhodesia) by the British South Africa Company in 1894 brought with it, for the first time, English law and courts including the English penal sanction of the time. With regard to criminal law, the settlement brought about a profound change in emphasis for the English idea of punishment for a crime was by no means the approach found under customary laws.<sup>34</sup>

In traditional African societies, there was no clear division between criminal and civil law. The punishment of the offender and the compensation of the victim were intimately connected.<sup>35</sup> However, a division did exist between private and public injuries, for instance, if the communality was threatened by, for example, a case involving witchcraft, death or exile was the normal punishment. The underlying purpose for this was to compensate the victim of the act or his family, to repair any loss suffered and to restore good relations between the parties. This implies that, even cases of murder could be redressed by compensation if the community as a whole was not considered to be in any danger.<sup>36</sup>

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<sup>33</sup> Chapter 87 of the Laws of Zambia

<sup>34</sup> M. Ndulo (ed) Law in Zambia Nairobi: East African Publishing House Ltd, 1984. p.17

<sup>35</sup> Collingwood Criminal Law of East and Central Africa, London: Sweet and Maxwell, 1967. p.2

<sup>36</sup> Op. Cit. p.163

The coming of English ideas has brought about a totally different concept of law on how to deal with offenders and this concept has remained the basis of criminal law in Zambia. Today, the law is to be found primarily in “the Penal Code”<sup>37</sup>

The Penal Code is also the principal source of legislation relating to prostitution in Zambia. However, before endeavouring to identify this legislation as it obtains today in Zambia, an outline of how the law on prostitution in England obtains today and what influenced it will be given, since it is from there that Zambia got its Penal Code.

### **CURRENT ENGLISH LAW ON PROSTITUTION**

The law relating to prostitution in England is contained in the Sexual Offences Act 1956 and the Street Offences Act 1959.

By section 1 of the Street Offences Act 1959, it is an offence punishable on summary conviction for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution. A constable may arrest without a warrant anyone he finds in a street or public place and suspects, with reasonable cause, to be committing an offence under this section.<sup>38</sup> “Street” is defined widely to include any bridge, road, footway, alley and so on, which is for the time being open to the public, the doorways and entrances abutting on a street and any ground adjoining and open to a street.<sup>39</sup>

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<sup>37</sup> Ibid p.163

<sup>38</sup> Street Offences Act 1959, section 1(3)

<sup>39</sup> Ibid s.1

By section 22 of the Sexual Offences Act 1956, it is an offence for a person to procure or attempt to procure any woman to become a common prostitute in any part of the world, or to leave the United Kingdom with intent that she may become an inmate of or frequent a brothel elsewhere, or to leave her usual place of abode in the United Kingdom with intent that she may become an inmate of or frequent brothel in any part of the world.

By section 30 of the sexual offences Act 1956<sup>40</sup> it is an offence punishable an indictment or summarily for a man knowingly to live wholly or in part on the earnings of prostitution. A man who lives with or is habitually in the company of a prostitute, or who exercises control, direction or influence over a prostitute's movements in a way which shows he is aiding, abetting or compelling her prostitution with others, is presumed to be knowingly living on the earnings of prostitution unless he proves to the contrary.<sup>41</sup>

The circumstances in which a man can be said to be living on the earnings of prostitution can be divided into three categories. First, where the man is maintained by her. Secondly, if he is paid by prostitutes for goods or services supplied by him to them for the purpose of their prostitution, which he would not supply, but for the fact that they were prostitutes. Thirdly, a person who provides premises or goods, for prostitutes which are normally provided for other people will be guilty of this offence, if, and only if, he charges an exorbitant price.

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<sup>40</sup> And Sched. 2, as amended by the Street Offences Act 1959, s.4

<sup>41</sup> s.30(1)

By section 31 of the Sexual Offences Act 1956<sup>42</sup> it is an offence punishable on indictment or summarily for a woman for purposes of gain to exercise control, direction or influence over a prostitute's movements in a way which shows she is aiding, abetting or compelling her prostitution.

By section 32<sup>43</sup> of the Sexual Offences Act 1956, it is an offence punishable on indictment or on summary conviction for a man persistently to solicit or importune in a public place for immoral purposes.

The above is an outline of how the law relating to prostitution is currently obtaining in England. Having outlined the law on prostitution as it is obtaining in England currently, factor(s) that influenced the current position of this law will now be considered.

### **FACTORS THAT INFLUENCED THE LAW ON PROSTITUTION IN ENGLAND**

The factor that greatly influenced the current position of the law relating to prostitution in England was the report of the Committee on Homosexual offences and prostitution.<sup>44</sup> This assertion that it was the committee's report that strongly influenced the law relating to prostitution in England is also expressed by Professor A. Hart<sup>45</sup> when he states that "much dissatisfaction has for long been felt in England with the Criminal law relating to both prostitution and homosexuality, and in 1954 the Committee well known as the Wolfenden Committee was appointed to consider the

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<sup>42</sup> And Sched. 2, as amended by the Street Offences Act 1959, s.4

<sup>43</sup> And Sched. 2

<sup>44</sup> Great Britain, Home Office, Report of the Committee on Homosexual offence and prostitution (1957)

<sup>45</sup> A. Hart Law, Liberty and Morality. London. Oxford University Press, p.13

state of the law. This Committee reported in September 1957 and recommended certain changes in the law on both topics and the government eventually introduced legislation to give effect to the Committee's recommendations concerning prostitution but not to that concerning homosexuality."

### **THE WOLFENDEN COMMITTEE**

This Committee, also called the Wolfenden Committee, was charged with the task of examining the extent to which homosexual behaviour and female prostitution was to come under the condemnation of the criminal law. The Committee's conception of the positive functions of the criminal law was its main ground for its recommendation concerning the portion of the law relating to prostitution in England and this conception reads:<sup>46</sup>

*"The function of the criminal law, as we see it, is to preserve public order and decency, to protect the citizen from what is offensive or injurious and to provide sufficient safeguards against exploitation or corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind or inexperienced...."*

It was deemed, conversely, not to be a function of the law to intervene in the private lives of citizens, or to seek to enforce any particular pattern of behaviour except so far as is necessary to carry out the positive purpose of criminal law. Presumably, the Committee was guided in this regard by community standards in general in determining what was offensive or injurious to the public good. Hence the

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<sup>46</sup> Section 13 of the Committee's Report

Committee decided that homosexual behaviour between consenting male adults in private ought not to be criminal, "we do not think that it is proper for the law to concern itself with what one does in private unless it can be shown to be so contrary to the public good that the law ought to intervene in its function as the guardian of that public good."<sup>47</sup>

Furthermore, the Committee argued that "the importance which society and the law ought to give to individual freedom of choice and action in matters of private morality is paramount, unless a deliberate attempt is made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality which is, in brief and crude terms, not the law's business."<sup>48</sup>

The Committee reached the same conclusion with regard to prostitution holding that prostitution as such ought not to be criminal, but that public solicitation for immoral purposes should be.

The position of the law in England relating to prostitution can therefore be summed up as one, which does not concern itself with prostitution but the manner in which it is conducted. Thus, the Wolfenden report noted:<sup>49</sup> "we are concerned not with prostitution itself but with the manner in which the activities of prostitutes and those associated with them offend against public order and decency, expose the ordinary citizen to what is offensive or injurious, or involve exploitation of others."

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<sup>47</sup> Quoted in R. Seidman, A Casebook of the Criminal Law in Africa. Sweet and Maxwell, London, 1966, p.71.

<sup>48</sup> Ibid p.71

<sup>49</sup> R. LAFAVE Arrest, *The Decision to Trace a Suspect into Custody*, Little, Brown and Company 1965 p.450

The Committee legalised prostitution in England when it unanimously recommended that, though prostitution itself should not be made illegal, legislation should be passed to drive it off the streets on the ground that public soliciting was an offensive nuisance to ordinary citizens. It stated:

*“... we are not attempting to abolish prostitution or to make prostitution in itself illegal. We do not think that the law ought to try to do so; nor do we think that if it tried it could by itself succeed. What the law can and should do is to ensure that the streets .... Should be freed from what is offensive or injurious and made tolerable for the ordinary citizen who lives in them or passes through them.”*<sup>50</sup>

The Wolfenden Committee was therefore, the major factor that greatly influenced the current position of the law relating to prostitution as it obtains in England today as its recommendations culminated into the passage of legislation tilted towards the suppression of offensive public manifestations of prostitution while at the same time not illegalising it in itself.

A consideration of the Zambian legislation relating to prostitution will now be undertaken.

### **ZAMBIAN LEGISLATION RELATING TO PROSTITUTION**

As enunciated earlier, the Zambian legislation relating to prostitution is to be found primarily in the Penal Code. By 1933, it was Chapter 14 of the laws of Northern

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<sup>50</sup> Ibid p.450



Rhodesia (Zambia). The 1957 Edition of the laws of Zambia have it as the sixth Chapter, in the previous laws, it was Chapter 146. In the current laws of Zambia, it is Chapter 87. The relevant provisions dealing with prostitution which have wholly been derived from the English law relating to prostitution discussed earlier are as follows:

*Section 140 of the Penal Code, Chapter 87 of the Laws of Zambia, makes it an offence (misdemeanour) for any person who procures or attempts to procure any woman or girl to become, either in Zambia or elsewhere, a common prostitute: or procures or attempts to procure any woman or girl to leave Zambia, with intent that she may become an inmate of or frequent a brothel elsewhere: or procures or attempt to procure any woman or girl to leave her usual place of abode in Zambia with intent that she may, for the purposes of prostitution, become an inmate of or frequent a brothel either in Zambia or elsewhere.*

*Section 146 of the Penal Code provides that every male person who knowingly lives wholly or in part on the earnings of prostitution; or in any public place persistently solicits or importunes for immoral purposes is guilty of a misdemeanour.*

In determining who it is that knowingly lives on the earnings of prostitution, the test applied is: "where a male person is proved to live with or to be habitually in the company of a prostitute or is proved to have exercised control, direction or influence over the movements of a prostitute in such a

## **DISCUSSION OF THE PEOPLE'S VIEWS BY WAY OF AN ANALYSIS OF THE ZAMBIAN LEGISLATION RELATING TO PROSTITUTION**

The preceding Chapter of this essay highlighted the people's views with regard to the legal position of prostitution in Zambia and it is evident from those views that there is so much uncertainty surrounding the legal position of prostitution. A number of factors may be cited as being the root cause of the uncertainty. These include inter-alia; lack of awareness of the law on prostitution and inadequacy of the law.

### **LACK OF AWARENESS OF THE LAW ON PROSTITUTION**

Interviews and discussions conducted by the writer with the Zambian people on the legal position of prostitution revealed that the majority of the people do not know that there is in existence legislation in Zambia pertaining to prostitution. Only a small number of those interviewed were aware and able to base their views on the law. These are the people who argued that prostitution is legal in Zambia because it is not proscribed to be an offence under the Penal Code.

A number of factors can be attributed to this among which include, the fact that the law in this regard was simply imposed on the Zambian people and does not therefore reflect the ethos of the Zambians hence people are not aware of its existence as it is not people oriented like for instance, the law pertaining to the election of the President in Zambia.

The incidence of lack of awareness of the law on prostitution is hence one of the contributing factors to this uncertainty which surrounds the legal position of prostitution in Zambia.

Not only is there a lack of awareness of the law on prostitution among the Zambian people, but also this very law is inadequate to deal with prostitution.

### **INADEQUACY OF THE LAW**

The law pertaining to prostitution in Zambia, which is based on the Wolfenden report of 1957 of England, may be criticized as being inadequate in a number of ways to deal with prostitution. For instance, the terms “prostitute”, “common prostitute” or “prostitution” are not defined anywhere in the penal code despite being used in various sections.<sup>54</sup>

Additionally, it may be reasonably argued that the law appears not to necessarily concern itself with prostitution per se. This is because for instance, “*section 140 of the penal code makes it an offence for anyone to procure or attempt to procure a woman or girl for purposes of prostitution either in Zambia or elsewhere, while section 146 prohibits living on the earnings of prostitution or persistent social by a male and section 147 extends this prohibition to women. The keeping of premises for purposes of prostitution is prohibited under section 149.*”

It is therefore clear from these provisions that the law is mostly concerned with the manner and not prostitution itself, in which it is conducted and it is this conduct,

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<sup>54</sup> sections 140, 146, 147, 148, 149 and 178 respectively

which is surrounded by criminal prohibitions. In this regard, the law apparently casts a blind eye on the prostitute herself and her clients. This can be interpreted as entailing recognition of the existence of prostitution by the law but without providing for adequate regulation so as to repress its attendant evils as far as possible.

An analysis of the views of the Zambian people raised in chapter three concerning the legal position of prostitution in Zambia reveals that they are concerned not only with the circumstances that surround the conduct of prostitution but prostitution itself. Another issues that comes out clearly from those views is the concern of the injustice that may be caused by any attempt to criminalize prostitution as it was argued that would amount to curtailing individual freedom. A human right entrenched in the Zambian constitution.

It is the writer's opinion that a carefully drafted piece of legislation would address all these concerns raised by the people. The law on prostitution as it stands today in Zambia does not adequately regulate prostitution, the police have not been given any power to participate in the regulation of prostitution and where they have, it is very limited and insufficiently.

Suffice to say that the situation that prevailed in 1957 is different from the one prevailing today, hence the law of that time may not be adequate to deal with a society of today which is dynamic and has needs peculiar to it different from those of 1959 such as the need to assist in the fight against HIV/AIDS.

The views raised by the people of Zambia in chapter three are indicative of what issues they want the law to address with regard to prostitution which are not adequately addressed by the current law. A law abiding citizen who would want to find out his/her standing law where prostitution is concerned would have a mammoth task of having to search the penal code to find provisions that relate to prostitutes as they are isolated for instance, they fall under part iii of the penal code and specifically under chapters xv and xvii.

Having conducted a thorough search of the penal code, this law-abiding citizen is likely to have a disappointing end result. This is because the law on prostitution is vague and leaves one with a lot of uncertainty as to what the legal portion of prostitution is in Zambia. Consulting a lawyer may be the next best resort, however, in a country like Zambia where the majority of the people live in abject poverty, such is very unlikely.

It is in the writer's opinion that all this uncertainty that surrounds the legal position of prostitution in Zambia can only be minimised or adequately addressed by enacting a piece of legislation that would specifically address the nature and problems of prostitution as the Penal Code is not adequate in this regard.

Lack of awareness of the law on prostitution and the inadequacy of it are in the writer's opinion, the root cause of the uncertainty that surrounds the legal position of prostitution in Zambia. However, this does not imply that other factors may not be at play.

## **CONCLUSION**

My task in the next chapter will be to make recommendations aimed at minimising the uncertainty that surrounds the legal position of prostitution in Zambia and then, a conclusion will be given on the various issues raised in this paper.

## **CHAPTER FIVE**

### **INTRODUCTION**

This chapter will before drawing a conclusion, make some recommendations, and suggestions aimed at endeavouring to minimise and possibly erase the uncertainty that surrounds the legal position of prostitution in Zambia. Thereafter, a conclusion will be made on the various issues raised in this paper.

### **SUGGESTIONS AND RECOMMENDATIONS**

There is need to come up with a piece of legislation that will adequately and comprehensively deal with prostitution because as already enunciated in the previous chapter, the Penal Code has a number of shortcomings in this regard. It is the writer's opinion that a carefully drafted piece of legislation aimed at regulating prostitution would not only minimise if at all not completely erasing the uncertainty surrounding the legal position of prostitution in Zambia, it would also address most of the concerns raised by the people of Zambia in chapter three. It may furthermore, lead to the repression of attendant evils of prostitution as far as possible.

Prostitution being one of the 'world's oldest professions', it had been with mankind since time immemorial and it is presumably always going to be with humanity. Any attempts to completely erase it from the Zambian soils are bound to practically fail for a number of reasons.

### **ELIMINATION OF PROSTITUTION IMPOSSIBLE**

One of the reasons as to why eliminating prostitution would be practically impossible is that as stated in chapter two, one of its major causes in Zambia is the economic

factor. The economic factor has compelled most of the young men and women to indulge in prostitution for survival.

The other reason is that some people engage in prostitution not because of economic hardships but because they are able to make more money with less effort as compared to other professions. For this reason, young school girls have been known to abandon school in order to engage in prostitution.

Furthermore, some people engage in prostitution for psychological factors. Therefore to eliminate prostitution, its causes must be eliminated. For a country like Zambia where the majority of the people live in abject poverty due to economic hardships, eliminating these economic factors is far fetched. It is the writer's opinion that even if the economic hardships were eliminated, prostitution would still exist, this is because it still exists in countries such as Switzerland, Germany, United States of America and other developed countries where there are no economic hardships. It is simply a necessary evil.

The other reason why it would be practically impossible to eliminate prostitution is that it is conducted in such a manner that proving it becomes insurmountable. For instance, a prostitute may commit several different kinds of offences while prostituting herself such as "public indecency, loitering, disorderly behaviour or publicly soliciting for immoral purposes."<sup>55</sup> These offenses may be easily proved to have been committed but not prostitution itself.

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<sup>55</sup> Section 178 (a) and (g) of the Penal Code



Prostitution may not be proved because there is no victim in the usual sense of the word who may be willing to testify against the prostitute. In addition, the prostitute takes care to operate in such a way that those people who might make a report to the police will not observe the conduct, which constitutes the prostitution offense.

The method used by the prostitute to obtain customers will normally dictate the nature of the caution to be exercised: a street walker may solicit in an ambiguous manner without mentioning the specific act or price thereby making it difficult to prove that he/she was soliciting for immoral purposes.

Additionally, the prostitute may if operating out of a hotel remain in seclusion and utilise taxi drivers or young boys as agents or she/he may simply appear to mind his/her own business and wait for the customer to initiate contact. The "prostitutes may also limit their activity to geographic areas and times of night that are apt to produce customers. Furthermore, the actual solicitation is difficult to detect because it is often an innocent-looking, in obtrusive, quiet conversation."<sup>56</sup>

In view of the above reasons, which make elimination of prostitution practically impossible, it's the writer's opinion that the only reasonable alternative would be to regulate it since it is not illegal per se in Zambia, but street solicitation and operating a brothel are.

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<sup>56</sup> Lawrence, P (1967), Detection of Crime, Little, Brown and Company, Boston, P215

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R.V. De Munck<sup>58</sup>, prostitution was defined as to mean “not necessarily being confined to one who for gain offered her body for natural sexual intercourse, but also to one who offered her body for gain for the gratification of the sexual passions of any person by any unnatural and abnormal act of indecently.”

The Zambian act can therefore adopt either one of the above given definitions, however, the writer recommends that the definition given in the De Munck case be the one to be adopted because it is simple and unambiguous.

The term “prostitute” must be defined in a way that it will apply to both male and female due to the fact that either sex can engage in prostitution and hence avoid discrimination based on sex. For instance, it can be defined to mean “a person who offers his/her body for gain for the gratification of the sexual passions of another person by way of a natural or unnatural and abnormal promiscuous or indiscriminate sexual act.

It can also be defined as to mean “a male or female person who, for a fee, engages in sexual intercourse, oral-genital contact, anal-genital contact or sado-masochistic abuse or any touching of the sexual organs or female breasts of a person who is not that person’s legal spouse, for the purpose of arousing or gratifying the sexual desire of either person.”<sup>59</sup>

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<sup>58</sup> (1918) I.K.B 635

<sup>59</sup> <http://en.wikipedia.org/wiki/prostitution>

## **AGE CLAUSE**

The Act should have an age clause under which the minimum age can be stated for one to engage in prostitution. For instance, the minimum age can be 21 years and above because a 21 year old person is considered to be an adult who can make an informed decision. Such an age is desirable because it would avoid the having of children engaging in prostitution. This would also prevent a conflict between the provisions under the Penal Code, which criminalizes defilement of children below a certain age.

## **DESIGNATION OF CERTAIN AREAS FOR PURPOSES OF PROSTITUTION**

It is recommended that the Act should have a provision for the designation of certain areas in each town or city where prostitution can be lawfully conducted. Alternatively, the local authorities such as city and municipal councils can be empowered to make the designations. It should be provided in the Act that brothels can only be established in these designated areas and any operation of them outside will attract a penalty.

An example of how this can be phrased can be taken from the United States of America where in the laws of the state of Iowa, it is provided that “if any person, for the purpose of prostitution or lewdness, resorts to, uses, occupies or inhabits any house of ill-fame or place kept, for such purpose, or if any person be found at any hotel, boarding house, cigar store, or other place shall be imprisoned in the penitentiary for not more than five years.”<sup>60</sup>

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<sup>60</sup> Fastein. S. (1960), **Sexual Pollution**, David and Charles inc. Vermont

Any conduct of prostitution outside the boundaries of the designated areas should attract the condemnation of the law. For instance, a provision to that effect can be stated as follows “any person who shall accost, solicit or invite another in any place, or in or from any building, or vehicle, by word, gesture or any other means to commit prostitution or to do any other lewd or immoral act shall be guilty of a misdemeanour.”<sup>61</sup>

Opposition to such legislation will be in the writer’s view baseless because it is a notorious fact that there are certain areas which are famous for prostitution such as Kabwata, Emmasdale and Chawama in Lusaka, Kakembwa in Mufulira, Lulamba in Chingola, Dambwa North in Livingstone, Shikoswe in Kafue and the trend is the same in most towns. In these very areas, brothels are well established and operating.

The whole purpose of designating areas would simply be to regulate what is already there and bring some sanity to this profession, so that it can be regulated by normal checks and balances of the law. This is the trend in most countries such as Switzerland, Democratic Republic of Congo, Australia, Germany and the United States of America (Nevada) to mention but a few.

The advantage of designating certain areas for purposes of prostitution is that it would be one way of fighting organised crime associated with prostitution, as prostitutes will be confined drastically to designated areas. It would also be a way of reducing the nuisance aspect associated with solicitation in certain areas not designated for prostitution.

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<sup>61</sup> Michigan law (quoted by Lawrence, P (1967) Detection of Crime, Littler Brown and Company, Boston, p215

## **SPECIAL POLICE UNIT**

It is also recommended that a special unit be created in the police service to specifically deal with prostitution. This unit can be called the 'morals squad' and should be charged with the responsibility of ensuring that prostitution is not practised in areas not designated for prostitution. It should also ensure that no brothels are created in those areas.

These police officers can take advantage of the provisions suggested above which prohibit the practice of prostitution outside the designated areas. The Criminal Procedure Code<sup>62</sup> under section 27 (b) authorises any officer in charge of a police to arrest "*any person within the limits of such station, who has no ostensible means of subsistence or who cannot give a satisfactory account of himself.*" Police officers can pursuant to these powers patrol areas not designated for prostitution and apprehend persons deemed to be roaming about for unlawful purposes (prostitution).

In addition, the Criminal Procedure Code provides that "*every police officer may interpose for the purpose of preventing...the commission any cognizable offence.*"<sup>63</sup> This provision may be interpreted in this context, to include the prevention of prostitutes from pre-disposing themselves to procurers in the streets.

Several other justifications can be found for the interposition of the police in the practice of prostitution outside the designated areas, but all in all, it has been observed that they are the greatest foes of the street prostitutes.

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<sup>62</sup> Chapter 88 of the laws of Zambia

<sup>63</sup> Section 61

## **ADMINISTRATIVE AGENCY**

The Act should have a provision creating an administrative agency that would deal with prostitution in the designated areas. This agency should act, as a mother body of all prostitutes countrywide more like a trade union. These prostitutes must affiliate and pay an affiliation fee to this agency, which would in turn provide certain services to them and to potential clients.

The agency can for instance maintain a database of all the prostitutes affiliated to it and the different types of sex they offer such as protected or unprotected. An interested client can contact the agency by telephone and offer a description of the kind of prostitute he/she is looking for and the type of sex wanted. The agency can then suggest one of its affiliates who fits the client's needs and charge accordingly. It can even encourage the client to use one of its affiliated brothels at an extra charge; it can then get a certain commission from both the prostitute and the brothel owner. For instance, " 'Topps' a prostitute agency based in Washington D.C. charges \$150 an hour for its prostitutes and takes \$50 per hour from them."<sup>64</sup>

The agency should have the legal capacity to sue and be sued for and on behalf of its affiliated members. It can also pay tax in turn to government. Creation of an agency can lead to creation of employment and raise the much needed revenue and in turn reduce the economic hardships facing the country which is one of the major causes of prostitution thereby indirectly help reduce the practice of prostitution.

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<sup>64</sup> <http://en.wikipedia.org/wiki/prostitution>

The agency can also run a clinic to cater for prostitutes and a fast track court to handle all cases relating to prostitution. The argument raised by some of the people in chapter three that prostitution leads to the promotion of HIV/AIDS is not valid because the client has a choice. He/she can choose either to have protected or unprotected sex with the prostitute. In this way, the need to screen prostitutes to establish their status which would be an infringement upon their right to privacy will not arise as it will be up to the client to make a choice.

It is the writer's opinion that coming up with a piece of legislation that would specifically deal with prostitution and take into consideration the above recommendations and suggestions would considerably minimise, if not at all, completely erasing the uncertainty that surrounds the legal position of prostitution in Zambia. This is because people would know that it is prohibited in certain areas and not in others.

As the law stands today, in relation to the legal position of prostitution, it would not be fallacious to state that an innocent person can be arrested for indulging in a conduct (prostitution) which is legal or that an offender may be allowed to go scot-free due to the uncertainty that surrounds the legal position of prostitution. To ensure that this status quo is changed, the above recommendations and suggestions must be considered.

### **SUMMARY OF THE ESSAY**

The essay has sought to provide an insight into the uncertainty that surrounds the legal position of prostitution in Zambia by way of a critical analysis of the causes and the



law. The central focus of the essay has been an analysis of the divergent views expressed by the people of Zambia on the legal position of prostitution so as to discover what the root cause of this uncertainty is.

Findings have indicated that the major root cause of this uncertainty that surrounds the legal position of prostitution in Zambia is the inadequacy of the law. It has been established that the Penal Code, which is the principal source of the law relating to prostitution in Zambia does not adequately and comprehensively deal with the subject matter as it has a lot of shortcomings as discussed in chapter four.

Recommendations and suggestions have been made in view of the inadequacy of the law aimed at ensuring that the uncertainty that surrounds the legal position of prostitution is minimised if at all not completely erased. The danger with the law on prostitution as it currently obtains is that it may lead to either the perpetuation of a commission of an offence as those involved in the trade may not be arrested or a situation where innocent people are arrested for indulging in a lawful conduct.

However, a more palatable situation can obtain in which prostitutes can freely conduct their profession in designated areas without being inconvenienced by any law enforcement agent. The attainment of this freedom, however, hinges upon the wealth of understanding in this area of the law that all stake holders should possess.

It is the writer's view that such an understanding can only be if the above suggestions and recommendations are taken into consideration by the powers that be and should

this be the case, then, the result would be a creation of an enabling environment for both the law enforcement agencies and the people of Zambia.

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