

## THE LEGAL REGIME OF PROSTITUTION IN THE AFRICAN STATES

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### Abstract

*This article surveys the peculiarities of development and regulation of the prostitution phenomenon in the space of Black Africa.*

**Key words:** prostitution, punishment regime, African states, cultural specific.

**JEL Classification:** K42.

In Africa prostitution *"is criminally punished in the great majority of the states"*.<sup>3</sup> "The practice is frequently seen, its development being out of social control and being considered by the medical forums as responsible for the propagation of sexually transmitted diseases, especially of the Acquired Immune Deficiency Syndrome (AIDS) and syphilis"<sup>4</sup>. The increase in number of practicing persons is due to the low level of daily living standards and generalized poverty, to the low level of education and social welfare, *"to the generalized economic and social degradation caused by the frequent civil wars and revolts in Africa, to the fact that some destinations (especially in the western part of the region) are preferred for sexual tourism and so on"*.<sup>5</sup> Prostitution is legally regulated in Côte d'Ivoire and Senegal and permitted in Burkina Faso, Benin, Sierra Leone, South-East Africa, Malawi, Central-African Republic, Malagasy Republic, and Ethiopia.

**South Africa.** Prostitution in South Africa is a criminal offense, and the same holds true for the related deeds. Its practice was forbidden by a special law

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<sup>3</sup> \*\*\***Sex workers, prostitution and AIDS**, pe <http://www.avert.org/prostitution-aids.htm>.

<sup>4</sup> Especially in Tanzania, Uganda, Kenya, and the western and central parts of the continent.

<sup>5</sup> [Http://www.wikipedia.en\\_prostitution by country](http://www.wikipedia.en_prostitution by country).

in 1957, called "Sexual Offences Act (SOA)", which was amended in the year 2007.

*"Section 20 paragraph 1) letter (a) of the SOA provides that any person who engages in sexual intercourse or commits an indecent act with any other person in exchange of a material compensation, is guilty of the criminal offense of prostitution. The South African Act includes in the notion of prostitution the abnormal sexual activities paid for by the customer.*

*The modification of the legal act mentioned above in the year 2007 provided for the punishment by fine of the prostitutes' customers as well (item 11 of the Amendment concerning the Offenses – 2007) ".<sup>6</sup>*

In the South African Republic, the deed is punished in a quite different manner as compared to other legal systems. There is a criminal punishment provided by a special law that is applicable nationwide (SOA), which is completed by a criminal procedure provided by law no. 51 of 1977. At the local level (as the territorial administrative units have a large autonomy in the South African Republic), there are regulating and punishing administrative acts. Subsequently, both the proposals for a harsher punishment, and those for a permissive and controlled regulation of the social phenomenon *"make the object of Project no. 107 of the Law Reform Commission"*.<sup>7</sup> Actually, the activity of the South African Law Reform Commission, although it produced a well-documented report of 275 pages, it did not lead to any modification of the legal regime in the sense of disinclination, even if such proposal was of late part of the agenda of some political parties and NGOs.

**Tanzania.** Although punished by the criminal regulations of the United Republic of Tanzania, the prostitution phenomenon is extremely frequent in society. Similar to other states in the region (Democratic Republic of Congo, Uganda, Kenya, etc.), *"an extremely serious problem is the phenomenon of child and adolescent prostitution."*<sup>8</sup> To drastically fight against the phenomenon, the special Tanzanian criminal law *"Sexual Offence Act – 1998"* provides that *"any*

<sup>6</sup> South African Law Reform Commission, **Project 107, Discussion paper on sexual offences and adult prostitution, Discussion Paper 0001/2009**, 30 June 2009, pe adresa <http://www.pmg.org.za/files/docs/090507salrc-adultprost.pdf>.

<sup>7</sup> See South African Law Reform Commission, **Project 107, Discussion paper on sexual offences and adult prostitution, Discussion Paper 0001/2009**, 30 June 2009, at the address <http://www.pmg.org.za/files/docs/090507salrc-adultprost.pdf>.

<sup>8</sup> [Http://www.wikipedia.en\\_prostitution in Tanzania](http://www.wikipedia.en_prostitution in Tanzania).

*sexual intercourse with a person under the age of 18 years is assimilated to rape.*” It does not matter if the under aged person consented to having sexual intercourse. The application of this legal text is restricted to extramarital relations, as the Tanzanian constitutional law allows the marriage of girls starting from the age of 15. We do not think that the constitutional provision is able to facilitate submitting to prostitution of minors, such as it was appreciated in a document of International Labour Organization.<sup>9</sup>

The main causes of prostitution in this African state are generalized poverty, low degree of schooling and education, which generate an extremely low general cultural level, an extremely low economic and social development, a great number of families that were disorganized or dissolved by poverty, social convulsions, the armed conflict at the end of the '70 with Uganda and not only, the high rate of unemployment, the chronic lack jobs and the unattractiveness of the existing ones in point of remuneration, the lack of social and professional perspectives, the low rates practiced by the prostitutes, the ineffective police control, a wide opening to the Indian Ocean, with especially attractive beaches and islands, which determined the apparition of an intense sex tourism, generating a situation similar to Kenya's.

This situation led to 3 negative consequences: *"a high degree of social promiscuity, a widespread occurrence of sexually transmitted diseases";*<sup>10</sup> *"violation in several cases of the children's fundamental rights (especially in the regions of Zanzibar and Pemba)."*<sup>11</sup>

The criminal phenomenon of trafficking women for the purpose of sexual exploitation thereof is most frequent in the Province of Zanzibar. The victims of sexual exploitation come both from the continental regions of Tanganyika, and from other African states, most of them originating from Ethiopia, Kenya, Somalia, Uganda, and Zambia.

**Kenya.** Neither the Kenyan legal system accepts the practice of prostitution, or the other correlated antisocial deeds. Poverty and lack of

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<sup>9</sup> E., Kamala, E., Lusinde, J., Millinga, J., Mwaitula, M. J., Gonza, M. G., Juma, H. A., Khamis, **Tanzania- Children in Prostitution, A Rapid Assessment**, International Labour Organization, International Programme on the Elimination of Child Labour (IPEC), Geneva, November 2001, p.12, la adresa [http:// www. childtrafficking. com/Docs/ilo\\_2001\\_\\_child\\_prostitutio.pdf](http://www.childtrafficking.com/Docs/ilo_2001__child_prostitutio.pdf).

<sup>10</sup> **Country Report, Tanzania**, Sexually transmitted diseases in prostitutes, Int J STD AIDS. 1991 Nov-Dec, PubMed.

<sup>11</sup> [Http://www.wikipedia.en\\_prostitution in Zanzibar](http://www.wikipedia.en_prostitution in Zanzibar).

education lead to the existence of a subsistential prostitution, specific to the social relations in Black Africa. Another trait of prostitution in Kenya, which corresponds to the dramatic situation in this part of the continent, is represented by *"the high rate of underage prostitutes. This is all the more serious, since the minors earn their living exclusively from this activity."*<sup>12</sup>

Almost 15,000 underage young girls practice prostitution in the regions and ports of the Kenyan coast, especially in: Malindi, Mombasa, Kalifi, and Diani. UNICEF appreciates that these represent about 25-30% of the total number of young girls aged between 12 and 18 from those areas. But over 45% of these girls do not come from families living in the coastal areas, but they come from the interior provinces of the country. One may conclude that in Black Africa, the most dominant phenomenon is underage girl prostitution.

Almost 45% of the minor prostitutes in the harbors of Kenya started working at a very early age (12-14 years), and over 10% of them started their sex life before the age of 12. As a rule, customers of minor prostitutes are recruited through local meddlers in hotels, bars, in certain streets and frequently on beaches. The fees vary according to the age, physical look and contents of the sexual services (between 1,000 and 10,000 de KSH), the maximum fee being the one paid for girls of 16-18 years old.

This situation is specific to societies where poverty and lack of education and instruction prevail, and it can be frequently seen in South-East, East, Central, and South Asia, but also in East, Central, South, and West Africa. Dramatic is the excessive number of children involved in child prostitution and pedophilia. Most of those who solicit the sex services of minors are, according to the Kenyan Police, Kenyan and European citizens, who see in these practices punished by the criminal law an exotic for of sex tourism.

Those who practice these deviating forms of sex are, according to the statistics recorded by the police, Kenyans, Italians, Germans, Swiss, Ugandans, Tanzanians, British, and Saudis. According to the number of case files instrumented by the Kenyan Police, the perpetrators practicing minor prostitution are, in order: *"Kenyans – 38.5%, Italians – 18%, Germans – 14%, Swiss – 12%, other nationalities (Ugandans, Tanzanian, British, Saudis etc.) – 17.5%"*.<sup>13</sup>

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<sup>12</sup> Jones, Sarah, A study conducted by UNICEF and Government of Kenya, **The Extent and Effect of Sex Tourism and Sexual Exploitation of Children on the Kenyan Coast**, p.30-52.

<sup>13</sup> Jones, Sarah, op.cit.pag.48.

A report presented by UNICEF in 2001 reproached to the Kenyan administrative and public order authorities *"the tolerance toward the phenomenon of child prostitution"*.<sup>14</sup> The cause resides in the fact the sex tourism is a de facto part of the Kenyan tourism and economy, its eradication leading to great financial losses.

**Democratic Republic of Congo.** The practice of prostitution is not forbidden in this state, which was confronted with a long period of civil war and numerous social convulsions and internal conflicts. *"If the prostitute is minor, the deed is a criminal offense"*.<sup>15</sup> A phenomenon of great concern the prostitution of young minors. The possibility of criminal prosecution of such cases is made difficult by the frequent armed conflicts and by the involvement in such deeds of some militaries of the governmental troops, but also frequently from the United Nations Peace Corps. *"Between the years 2004 and 2008 there were reported 140 of cases of paid sex with minor girls, engaged by militaries from the United Nations Peace Corps. Most cases were related to militaries from India, from the UN forces, but also from Congo. The situation became tense after there appeared some hints that the Indian militaries, in complicity with members of the Congolese army, not only paid for sexual services of minor girls, but also engages in criminal activities of complex organized pandering, through criminal groups of dozens persons, which involved trafficking human beings and even determining child prostitution"* (including minors under 14 years of age).<sup>16</sup>

The forms of prostitution in Congo reach a typological variety that is rarely seen in the contemporary world, which reminds us of the Near East in the Antiquity. *"Shagues – represents the category of girls and boys with ages between 13 and 16 years, who ran away from home and make a living from street prostitution. Kamuke or Petit Poussins – refer to boys with ages of 10 to 17 years, who accept a passive role in sexual intercourse in exchange for money, goods, or food. Filles Londoniennes – are girls aged between 12 and 15, who offer sex services for money in the urban areas of the country"*.<sup>17</sup>

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<sup>14</sup> **Analysis of the Situation of Sexual Exploitation of Children in the Eastern and Southern Africa Region: The Vicious Cycle of Sexual Exploitation, HIV/AIDS, Vulnerability of Children and Violations of Children's Human Rights**, Nairobi, UNICEF, 2001.

<sup>15</sup> Patt, Martin, **Child Prostitution – Congo DRC**, <http://gvnet.com/childprostitution/Congo.htm>.

<sup>16</sup> [Http://www.ecpatinternational.com/eng/Ecpat\\_inter/IRC/newsdesk\\_articles.asp?SCID=1610](http://www.ecpatinternational.com/eng/Ecpat_inter/IRC/newsdesk_articles.asp?SCID=1610).

<sup>17</sup> [Http://www.globalpolicy.org/component/content/article/168/40951.html](http://www.globalpolicy.org/component/content/article/168/40951.html).

*"Encadreurs Filles – designates young, sometimes underage girls, who are offered to visiting dignitaries by the hosts, as a sign of appreciation. This practice is somewhat rarer at present, as the relative social stability of the years '70-'80 no longer exists."*<sup>18</sup> In Congo, starting from the capital city Kinshasa, there is no age limitation for prostitution, which is practiced even from earlier than the age of 10. The main cause, apart from poverty, civil wars, lack of involvement of the public authorities, is *"the great number of street children (approximately 40,000 in Kinshasa)."*<sup>19</sup>

**Ethiopia.** In this African state prostitution is no longer forbidden at present, after several years in which it was prohibited, but on the other hand there is no legal regulation that provides the way this activity should be carried out. *"Pandering, meddling, organization of brothels and trafficking persons for sexual exploitation are punished by imprisonment, in accordance with art. 634 of the criminal Code of the Democratic Republic of Ethiopia, this text of law having been revised in May 2005"*.<sup>20</sup> *"According to a study made in Addis Abeba, child prostitution is on the rise. The report revealed that, mostly due to poverty, an ever greater number of underage girls from the countryside come to this city to become sex workers."*<sup>21</sup>

Disincrimination of prostitution, made by the democratic regime in the year 2005, is criticized by the national and international medical authorities, since *"the permissive regime, in the absence of a strict regulation of the practice, led to an increase of the number of cases of AIDS infections"*.<sup>22</sup> Thus, a great number of mature prostitutes are infected with HIV. *"Poverty may determine children to become prostitutes, but (...) there is also an increased demand of children, because of HIV-AIDS. Some customers suppose that a 13-14 years old girl cannot be infected with HIV and they prefer to have sex with her instead of a mature woman."*<sup>23</sup>

**Senegal.** In this predominantly Muslim country from West Africa, prostitution is legally permitted following the law modifications of 1969 and

<sup>18</sup>Patt, Martin, **Child Prostitution – Congo DRC**, <http://gvnet.com/childprostitution/Congo.htm>.

<sup>19</sup> C., Maloney, **Suffer the Children, The street children of Kinshasa**.

<sup>20</sup> **2008 Human Rights Reports: Ethiopia - Section 5 Discrimination, Societal Abuses, and Trafficking in Persons**," United States Department of State.

<sup>21</sup> Damian, Zane, **Ethiopian Girls Driven To Prostitution**, BBC News, 27 May 2003, at the address <http://news.bbc.co.uk/2/hi/africa/3084226.stm>.

<sup>22</sup> Kathleen Griffin, **Ethiopia - HIV/AIDS**," Canadian Community Newspapers Association, mai 2009.

<sup>23</sup> Amara, Dejene, quoted in Damian, Zane, **Ethiopian Girls Driven To Prostitution**, BBC News, 27 mai, 2003.

"regulated from the perspective of the conditions that the practicing person should meet."<sup>24</sup> Prostitution can be practiced legally, subject to the individual authorization of the prostitutes by the local authority, while setting up or holding a brothel, or carrying out pandering activities and trafficking women for sexual exploitation are prohibited and punished by the criminal law with imprisonment. To be able to legally practice this occupation, the practicing persons must meet the following conditions:

- *"be at least 21 years of age;*

- *be enrolled with the fiscal authority and local police department;*

- *to hold a valid health card;*

- *to use protection means that prevents the transmission of pathogens of sexually transmitted diseases.* This chapter was a success of the Senegalese regulation policy, as just *"2% (in 2002) of the women in this country are HIV infected"*<sup>25</sup> as compared to the much higher percentage recorded in the Black African states (for example: *Botswana – 55.6% (2000), Swaziland – 42% (2005), Uganda – 30% (1992), etc.*<sup>26</sup>

- *to undergo monthly medical checkups, including tests for finding infections with pathogens of sexually transmitted diseases"*<sup>27</sup> (within territorial clinics subordinated to the Ministry of Health).

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<sup>25</sup> Nicholas, Thompson, **The Network Effect, Why Senegal's bold anti-AIDS program is working,**

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<sup>26</sup> [Http://ro.wikipedia.org/wiki/SIDA](http://ro.wikipedia.org/wiki/SIDA).

<sup>27</sup> **Trafficking in Persons Report,"** Bureau of Democracy, Human Rights and Labor, 2009, at the adress [http:// www. state.gov/documents/organization/123365.pdf](http://www.state.gov/documents/organization/123365.pdf).

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\*\*\*Sex workers, prostitution and AIDS, at the address <http://www.avert.org/prostitution-aids.htm>