

## **Child Prostitution in Zimbabwe and the Tragedy of the ‘Victim by Choice’ Tag: An Overview**

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### **1. Introduction**

Child prostitution is one of the most sinister and horrific acts that children may endure. It presents serious violations of human and child rights on children who are among the most vulnerable and impressionable in society.<sup>1</sup> According to the Preamble of the African Charter on the Rights and Welfare of Children (hereafter referred to as the ACRWC), the child, due to needs of his/her physical, mental and moral development requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in conditions of freedom, dignity and security.<sup>2</sup> This emphasizes the vulnerability of children and their need for adult protection at the highest level. Sadly, the world over, adults are abusing and violating children’s rights from all angles in the practice of child prostitution and in so doing, according to Hesselink-Louw, Bezuidenhout & Boniface, destroying the lives of thousands of children.<sup>3</sup>

As if the destruction of young lives alone is not enough, the tragedy of child prostitution is that nobody seems to care. Among all the sexual offences that are committed on children, globally child prostitution receives the least attention from policy makers, law and order authorities, NGOs in the child rights sector and even more tragic, the society where the children live. Society generally abhors prostitution as an immoral choice that one makes and in the same light, views child prostitution with the same lens. As soon as society attaches the description “prostitute” to a person, it instinctively blinds itself to the person’s age even if it is a very young girl involved in the practice. All society sees is the immorality and delinquency inherent in the act and therefore instinctively becomes unwilling to be associated. According to Kittling, society instantly forget that these are the same *‘girls who once played with Barbies and held tight to teddy bears, but*

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<sup>1</sup> J Surujlal & M Dhurup ‘Legalising Sex Workers During the 2010 FIFA Soccer World Cup in South Africa’ (2009), *African Journal for Physical, Health Education, Recreation and Dance (Supplement)*, 87.

<sup>2</sup> Entered into force on 29 Nov 1999. Ratified by Zimbabwe on the 19<sup>th</sup> of January 1995.

<sup>3</sup> AM Hesselink-Louw, C Bezuidenhout & R Pretorius ‘Child Sex Work: The Nature of, Factors Contributing to, and Consequences of Child Prostitution’, (2002), Vol 2, *Acta Criminologica* 15, 47.

*now find themselves in cars, performing sexual acts on men old enough to be their fathers*'.<sup>4</sup> As such, instead of seeing the children as victims of sexual abuse and exploitation mainly a result of their poverty, in Zimbabwe and many other countries across the globe, these children are generally seen as "*willing participants*" and therefore '*victims by choice*'. The result is that child prostitutes are left to hang. Laws and programmes to combat the practice and to assist the child prostitutes as victims of sexual abuse and exploitation are very minimal. At the same time, the child prostitutes, being children as they are, continue to see no other alternative than to continue in their trade, thereby creating a vicious cycle of child prostitution.

This article begins by defining child prostitution and explores its causes globally and in Zimbabwe especially. The unfortunate but generally accepted misconception that child prostitutes are '*willing participants*' and therefore '*victims by choice*' is explored next in detail with a view to highlighting the tragedy of such a conception in the protection of children from sexual abuse and exploitation by relevant national institutions, private organizations and society at large. In order to contextualise the destruction of young lives inherent in child prostitution, a brief analysis is conducted of the human and child rights violations present in child prostitution. The international legal framework that deals with child prostitution is explored next, followed by an exploration of Zimbabwe's domestic laws as they relate to protection of children from prostitution. This serves to assess adequacy and effectiveness in implementation of such legal instruments in the protection of such affected or would-be affected children. Finally, suggestions are made on improvements that can be made in protecting children from child prostitution in Zimbabwe.

## **2. Child Prostitution Defined**

By way of definition in legal theory, child prostitution is survival sex by children below the age of 18 years who offer themselves or are offered for sexual satisfaction of normally adults usually in return for food, money, drugs, protection by gangs, shelter and sometimes and strangely love.<sup>5</sup> Kembo & Nhongo define it as the sexual exploitation of a child for remuneration in cash or kind,

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<sup>4</sup> N Kittling 'God Bless the Child: The United States' Response to Domestic Juvenile Prostitution', (2005-2006), Vol 6, *Nevada Law Journal*, 926.

<sup>5</sup> AM Hesselink-Louw, C Bezuidenhout & AE Boniface, 'South African Law and Child Prostitution: An Overview', (2004), Vol 2, *Stellenbosch Law Review*, 354.

frequently but not always organized by an intermediary who maybe a parent, family member, procurer or teacher.<sup>6</sup> Child prostitution may have a number of synonyms such as *children in prostitution or children forced into prostitution or prostituted children* among others, but they all more or less refer to the same phenomenon defined above.

Child prostitution belongs to the broader class of child sexual abuse where children are forced or enticed or groomed into taking part in sexual activities, whether or not they are fully aware of what is happening, primarily for the sexual stimulation and satisfaction of the perpetrator or client in the case of child prostitution.<sup>7</sup> Child sexual abuse in prostitution, which by its nature is a gendered issue affecting girls the most globally and in Zimbabwe in particular, normally involves physical contact during the commission of the sexual act, ranging from genital touching to oral, anal and vaginal penetration with the child for a price.

In practice, child prostitution is also often closely linked to human trafficking, with trafficked children normally ending up in prostitution, even though the two concepts are distinct from each other. While child prostitution that is linked to human trafficking is normally associated with crossing borders, Kreston argues that it should be defined widely to also include domestic movement of children from different cities to other places within the same country for sexual exploitation by adults for commercial purposes.<sup>8</sup> Internal trafficking of children within Zimbabwe for prostitution may not be very rampant. However, movement of children from one area to another, particularly to border towns such as Beitbridge, Plumtree or Chirundu Border Posts where long-distance truck drivers normally camp for days while clearing their loads, is very common because of the lucrative sex business with long-distance truck drivers. The same also applies to some major highways such as the Hwange-Victoria Falls highway and some business centres along major highways where long-distance truck drivers take their rest

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<sup>6</sup>J Kembo & K Nhongo, 'The Phenomenom of Child Trafficking in Zimbabwe: A Desk Study Analysis', (2002), *A Report Prepared for Terre Des Hommes Germany as Part of the Zimbabwe Research Project on Child Trafficking*, 5. Accessed 28 April 2016 on [http://www.childtrafficking.com/Docs/tdh\\_germany\\_2002\\_the\\_pheno.pdf](http://www.childtrafficking.com/Docs/tdh_germany_2002_the_pheno.pdf).

<sup>7</sup> CB Draucker *Counseling Survivors of Child Sexual Abuse*, (2000) 4.

<sup>8</sup> SS Kreston 'Trafficking in Children in South Africa: An Analysis of Pending Legislation' (2007), Vol 8 (1), *Child Abuse Research in South Africa*, 36.

overnight such as Ngundu Business Centre along the Harare-Beitbridge highway.<sup>9</sup> Other such areas along the Harare-Masvingo-Beitbridge highway are Mhandamabwe turn-off where truckers sleep, the Runde River Truck-Inn stop, Rutenga Business Centre and Lutumba Business Centre among others.<sup>10</sup> Prostitution along the highways is normally mobile where the young prostitutes move from one business centre to the other with their truckers or in search of new clients.

Statistics on child prostitution are generally agreed to be difficult to compile because of the underground and hidden nature of the practice. However, research suggests that there could be as many as 10 million children involved in child prostitution worldwide.<sup>11</sup> The extent of child prostitution in Zimbabwe is still unknown due to lack of empirical research on the subject. However, an inference can be made from newspapers articles countrywide that indicate a serious presence of the practice in the country with children as young as 12 years or younger reported to be in the trade.<sup>12</sup>

### 3. Causes and Categories of Child Prostitution in Zimbabwe

There are quite a number of reasons why children engage in child prostitution. Of all the reasons and hence the different categories of child prostitutes, the one underlying cause is poverty in Zimbabwe, as is the case globally. Accordingly, Kembo & Nhongo state that there is a strong correlation between poverty and commercial sexual exploitation of children in Zimbabwe.<sup>13</sup> As a result of poverty, there is a desire either by the child prostitute herself or her handlers to get financial returns in exchange for the sex with the child hence the overlaying economic gain for

<sup>9</sup> S Muyengwa, 'Eliminating Harmful Cultural and Social Practices Affecting Children: Our Collective Responsibility', (2014), *A report prepared for the Zimbabwe Youth Council*, 20-21.

<sup>10</sup> V Mabvurira, C Nyomi, R Chigevenga, F Kambarami & R Chavhi, 'The Realities of Children in Prostitution in Zimbabwe: A Case of Beitbridge and Plumtree Border Towns', (2015), *A Report produced for the Child Sensitive Social Policies Programme at the Women's University in Africa in collaboration with UNICEF Zimbabwe*, 45.

<sup>11</sup> 'Child Prostitution in Zimbabwe', Fairplanet 17 September, 2015.

<sup>12</sup> S Muyengwa (n10 above) 8. See also the following newspaper articles on the extent of child prostitution in Zimbabwe: 'Zimbabwe's Vice Capital: As 12 year olds are roped into prostitution in Epworth' Sunday Mail 28 September, 2014; 'Zimbabwean children sell their bodies to put food on the table', The Telegraph 28 November, 2004; 'Child prostitution worst form of child labour', Newsday 11 November, 2013; 'Child prostitution cause for concern', Dailynews 27 April, 2014; 'Children selling their bodies to earn a living', Nehanda Radio.Com 1 April, 2015; 'Women, children sell sex as hunger bites', NewZimbabwe.Com 14 November, 2015; and '[Bulawayo girls aged 13 engage in child prostitution](#)', ZimDiaspora.Com 07 July, 2013, among others.

<sup>13</sup> J Kembo & K Nhongo (n7 above) 10-11. See also Rurevo R & M Bourdillon, 'Girls: The Less Visible Street Children of Zimbabwe' (2003), Vol 13(1) *Children, Youth and Environments*.

child prostitution. There are, however, other reported causes besides economic gain such as unbridled multiple love relationships and sometimes prostitution for fun but these are in the minimal if not non-existent. With poverty and economic benefits as an underlying cause, there are generally three broad categories of child prostitution in Zimbabwe. These are:

- Individual ‘*voluntary*’ child prostitution
- Forced child prostitution by handler
- Street children prostitution

#### **a. Individual ‘*voluntary*’ child prostitution**

This is the most common type of child prostitution in Zimbabwe. It involves a child individually deciding to venture into selling sex for various reasons, chief among them to get monetary returns as a result of poverty. This type of child prostitution is done by both children staying at home and those that have run away from home or have left home for various reasons. The most common are those that have runaway or left home due to domestic violence, dropping out of school, family breakdown, orphanhood, alcohol and drug abuse and/or sexual abuse in the family.<sup>14</sup> According to Hesselink-Louw, Bezuidenhout & Boniface, this group of children chooses prostitution as a career as a result of their unbearable circumstances at home.<sup>15</sup> This is buttressed by Montgomery who notes that “*While prostitution is not a positive choice for many children, it is nevertheless a choice made with knowledge that there are no good options*”.<sup>16</sup>

As the children leave home and reach their new area of destination, some join up with friends or acquaintances that have also left home earlier and are already involved in prostitution and the children are easily initiated into the trade. This is most common for those in Zimbabwe who go to the aforementioned border towns that are popular with long-distance truck drivers who are considered a lucrative clientele for prostitutes. However, many leave home with the hope of getting decent jobs in the cities as housemaids or otherwise but sometimes fail to find the jobs. Without food and shelter and therefore destitute, many become vulnerable and desperate and end

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<sup>14</sup> SS Kreston (n9 above) 38; AM Hesselink-Louw, C Bezuidenhout & R Pretorius (n4 above) 48-50.

<sup>15</sup> AM Hesselink-Louw, C Bezuidenhout & AE Boniface (n6 above) 353.

<sup>16</sup> H Montgomery, ‘Defining Child Trafficking & Child Prostitution: The Case of Thailand’, (2010-2011), Vol 9 (2), *Seattle Journal for Social Justice*, 788.

up prostituting themselves ‘voluntarily’ in exchange for money for survival.<sup>17</sup> Montgomery calls these ‘Freelance Child Prostitutes’.<sup>18</sup> In very rare circumstances, this type of child prostitutes may include those who just do it for fun or in order to find love. However, the nature of the interaction in prostitution between the prostitute, in this case a child and the client hardly involves any love nor is it enjoyable, but rather simply transactional.

#### **b. Forced child prostitution by handlers**

This is the most atrocious of all the categories of child prostitution. It involves children being used as sex slaves by handlers commonly known as Pimps. According to Hesselink-Louw, Bezuidenhout & Boniface, pimping refers to recruiting and persuading a woman or a girl to make her body available to men for sexual activities or prostitution.<sup>19</sup> The methods used to ‘persuade’ could include misrepresentation or coercion. This category often involves child trafficking where children are taken from one area, normally with the promise of a job in the city and therefore a better life for the child and her family.<sup>20</sup> When they get to the big cities or any place of perceived greener pastures, the promised better life is nowhere to be found but instead the children are enslaved into child prostitution.

Poverty in neighboring countries also forces children to migrate to other countries in search of work. This is mostly common for children from Mozambique and Zimbabwe going to South Africa. In Musina, a town near the Zimbabwean and South African boarder, Zimbabwean children are seen loitering around and begging for food. This makes them very vulnerable since they have no one to protect them and so they become easy targets for Pimps who traffic them to big cities and exploit them in commercial sex. While pimping may not be very common in Zimbabwe, it has been reported in the aforementioned border and highway areas where older women known as ‘Godmothers’ accommodate child prostitutes, offer them protection and food while at the same time organizing sex clients for the children.<sup>21</sup> The Godmothers would then

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<sup>17</sup> SS Kreston (n9 above) 38.

<sup>18</sup> H Montgomery (n17 above) 788.

<sup>19</sup> AM Hesselink-Louw, C Bezuidenhout & AE Boniface (n6 above) 355.

<sup>20</sup> K Fitzgibbon, ‘Modern-Day Slavery? The Scope of Trafficking in Persons in Africa’ (2003) Vol 12 (1), *African Security Review* 81.

<sup>21</sup> V Mabvurira, C Nyomi, R Chigevenga, F Kambarami & R Chavhi (n11 above) 46.

receive the payments for the sex on behalf of the children or simply share with the children when they bring home their daily takings or sometimes refuse to hand over the payments to the children who would have '*serviced*' the clients, arguing that it is payment for the accommodation and food that they provide them.<sup>22</sup>

For children who are controlled by handlers, violence, death threats and punishment if they dare leave are used as instruments to keep them loyal in the industry. Immigrants are usually threatened with arrest and deportation back to the poverty they ran away from and this keeps them in the practice. This makes it easy for traffickers to recruit more child prostitutes because the negative effects of movement to big cities or to neighboring countries are never known in communities where children are taken from.<sup>23</sup> Drugs and alcohol are also used as strong instruments of perpetuating child prostitution. Children are forced into drugs and become addicted. The Pimps then use withdrawal or supply of drugs as a way of controlling their child prostitutes who can no longer live without the substance because of addiction. That way, they remain loyal and continue making money for their handlers.

### **c. Street children prostitution**

Life on the streets is difficult and sometimes even dangerous especially for the young and more so for girls in particular. It is survival of the fittest and in order to survive, the older boys normally form gangs and have specific areas that they control in terms of scavenging for food, begging from motorists, good places to sleep and sometimes lucrative places for stealing from the public. The younger and vulnerable street kids are therefore forced to belong to a particular gang if they want to have it easy on the streets. The gang leaders offer protection and freedom around their areas of control and in return they get a share of the takings that the other street kids bring which include money begged or stolen and food scavenged. According to Rurevo & Bourdillon, for girls, once they are living on the streets, it is difficult to survive without help from men.<sup>24</sup> As such they instinctively have to belong to a gang or a particular boy for protection

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<sup>22</sup> V Mabvurira, C Nyomi, R Chigevenga, F Kambarami & R Chavhi (n11 above) p46.

<sup>23</sup> K Fitzgibbon (n21 above) 84.

<sup>24</sup> R Rurevo & M Bourdillon (n14 above).

and they make their payment in kind, that is through having sex with the older boys. According to Montgomery, this is called street '*survival sex*'<sup>25</sup>

There are, however, few female street kids as compared to boys. As such, the demand for sex is normally high among the many boys while the supply in the form of the young girls is low. This presents an opportunity for the few young girls to fancy making some money out of this by providing their sexual services for a price to those that can afford to pay, thereby developing themselves into child prostitutes on the streets. The older gang leaders sometimes also become handlers for the girls, thus becoming Pimps as discussed above. Street child prostitutes are, however, not limited to other street boys as clients. More often than not, they also get clients who do not stay on the streets who simply want to take advantage of the young girls' vulnerability and desperation for money and food on the street.

In all the above categories of child prostitution, it is common to have some of the children being put out for prostitution by their own parents in order to bring some income for the family to survive or to sustain the parents' alcohol and drug addictions problems.<sup>26</sup>

#### **4. The '*Willing Participant*' Therefore '*Victim by Choice*' Tag**

Child prostitution worldwide has not been satisfactorily tackled for various reasons among them the difficulties in prosecuting perpetrators due to the underground nature of the practice and the difficulties in getting evidence and willing complainants and witnesses to testify.<sup>27</sup> However, there also seems to be reluctance or unwillingness by authorities to act on child prostitution as they generally see the children not as victims of sexual abuse but rather as delinquent children who enter into prostitution on their own volition and are enjoying it, therefore are not victims of any crime. According to Hesselink-Louw, Bezuidenhout & Boniface, an early argument was that children contributed to their own sexual victimization.<sup>28</sup> This statement opines that because the

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<sup>25</sup> H Montgomery (n17 above) 785.

<sup>26</sup> 'Parents Face Child Sex Abuse Charges', The Star 16 April, 2010; AM Hesselink-Louw, C Bezuidenhout & R Pretorius (n4 above) 48.

<sup>27</sup> K Fitzgibbon (n21 above) 84.

<sup>28</sup> AM Hesselink-Louw, C Bezuidenhout & AE Boniface (n6 above) 353. See also [CL Linedecker](#), *Children in Chains* 27 where he said, "*Often the children are willing victims and trade themselves for what they consider to be affection*".

majority of children in prostitution have not necessarily been forced into it by anyone but rather are doing so voluntarily as a means of survival, it therefore follows that they are not strictly victims of any sexual abuse by anyone. If there is any abuse, they are abusing themselves which cannot be accused on anyone other than the children themselves. This unfortunate misconception was confirmed by Alan Billings, the Police and Crime Commissioner for South Yorkshire in England who when asked about the problem of child prostitutes, said *“I think we saw these girls not as victims but as troublesome young people out of control and willing participants”*<sup>29</sup>

While this view of child prostitution is very unfortunate, it is generally accepted worldwide and Zimbabwe is no exception. As a result, the law itself is not very clear as regards the sexual abuse inherent in child prostitution. There is lack of clarity as to how the Police for instance should handle cases of child prostitutes, whether as victims of a crime against the child or as criminals themselves. Similarly, there appears to be very few intervention programmes at national level and from NGOs that seek to deal with the problem of child prostitution in Zimbabwe. The same unwillingness to be associated with child prostitutes is also found in society at large which views this as delinquent, immoral and devoid of Christian values that many Zimbabweans subscribe to. In addition, society generally fears that these child prostitutes may have a negative influence on other ‘normal’ children in society or that they may end up wrecking marriages.

It is, however, submitted that the ‘*victim by choice*’ tag that society ascribes to child prostitutes is very unfortunate and indeed very far from the truth. Children do not become prostitutes by choice, meaning it is never truly voluntary. Those who sell their bodies for sex are typically coerced by difficult circumstances such as poverty, drug addiction, or the threat of violence. Hesselink-Louw, Bezuidenhout & Boniface calls such children ‘*victims of their circumstances, forced into prostitution in order to survive*’.<sup>30</sup>

In Zimbabwe, the same applies as already discussed. In fact, the negative circumstances that children find themselves in are compounded by the high numbers of orphans mainly as a result of HIV/AIDS. This pandemic at its peak in the 90s, was recorded to be infecting about 30% of

<sup>29</sup> ‘*Police saw Rotherham child sex abuse victims as prostitutes, says PCC*’, The Guardian 05 May, 2015.

<sup>30</sup> AM Hesselink-Louw, C Bezuidenhout & AE Boniface (n6 Above) 354.

the population.<sup>31</sup> While the number has halved to 14.3%, UNICEF estimates that almost a million children in Zimbabwe have lost one or both parents to HIV.<sup>32</sup> The deaths from the pandemic led to proliferation of child-headed households whose burden of care for siblings normally rests on the girl child in the family in a depressed economy such as that of Zimbabwe currently. Such desperate times of providing food for the family often increase the vulnerability of girl children to prostitution.

Furthermore, at law children are generally unable to consent to certain sexual acts due to their diminished capacity as a result of age, thus again further rendering the '*victim by choice*' argument defective. Inability to consent basically means that by virtue of someone's age or mental capacity, they are not able to discern between right and wrong or to determine their best interests, either in terms of the law or morally. Section 64 of the Criminal Law (Codification and Reform) Act ( "the Criminal Law Code") defines Presumptions relating to capacity to consent to sexual acts.<sup>33</sup> These presumptions are not meant to remove the sexual offence altogether but rather to simply distinguish between different types of sexual offences that involve presence or lack of consent. Section 64(1) state that both girls and boys under 12 years are irrebuttably presumed to be incapable of consenting to sexual intercourse or act of any type. Section 65 defines this as rape. This means that sexual intercourse with a child prostitute who is below the age of 12, whether she is consenting to the act or not, is rape and should be treated as such. Such a child cannot consent to the act and therefore, at law, she cannot be a '*victim by choice*' or a '*willing participant*'. This is so despite the fact that the accused may have found the child already a prostitute selling sex in a beerhall or nightclub or on the streets. It is simply rape and should be punished as such.

But even where the child is above the age of 12 but below 16 years and has apparently consented, section 70(1) of the Criminal Law Code still makes it an offence to have sexual intercourse with such a child. This is known as Statutory Rape. Section 70(2) expressly states that "*It shall be no defence to a charge of sexual intercourse or performing an indecent act with*

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<sup>31</sup> Situational Analysis of Children and Women in Zimbabwe, UNICEF, 2010.

<sup>32</sup> '*Zimbabwe AIDS orphans struggle to get back to school*', UNICEF Zimbabwe 8 July, 2004.

<sup>33</sup> Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. See also Section 23(1) of the Sexual Offences Act [*Chapter 9:21*].

*a young person to prove that he or she consented to such sexual intercourse or indecent act*". Hesselink-Louw, Bezuidenhout & Boniface even add that instead of relying on absence or presence of consent to the sexual act, penetrative sexual acts must be deemed unlawful if coercive or fraudulent circumstances are present or if the 'victim' was incapable in law to appreciate the nature of the act.<sup>34</sup>

All this serves to show that the misconception of *'willing participant'* therefore *'victim by choice'* is defective both in fact and at law. The challenge, however, is that in as much as the Police may want to arrest perpetrators and prosecute them on child prostitution, the act normally does not have a complainant or a witness. The children who enter into the trade as a way to survive see the male clients as invaluable since they are providing for their survival. As such, under no circumstances will they freely solicit for sexual clients, be duly paid for the services only to turn around and report the same clients to the Police, alleging sexual abuse. The same applies with nightclub or beerhall owners who are out to make business and as such cannot be seen discouraging or reporting child prostitution as it may affect their business. Child prostitution therefore becomes an invisible trade that no one wants to admit association with or knowledge of, yet it is hidden in plain sight.

## **5. Human and Child Rights Violations in Child Prostitution**

This horrendous practice of child prostitution is laden with gross violations of human and child rights. It flies in the face of children's rights to:

- i. Education as provided for in sections 27, 75 and 81(1)(f) of the Constitution of Zimbabwe<sup>35</sup>, Article 11 of the ACRWC and Article 28 of the Convention on the Rights of the Child (hereafter referred to as the CRC)<sup>36</sup>.
- ii. Health and Health Services as provided for in sections 29, 76 and 81(1)(f) of the Constitution of Zimbabwe, Article 14 of the ACRWC and Article 24 of the CRC.

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<sup>34</sup> AM Hesselink-Louw, C Bezuidenhout & AE Boniface (n6 above) 366.

<sup>35</sup> Constitution of Zimbabwe (Amendment No 20) Act of 2013.

<sup>36</sup> Adopted and Opened for Signature, Ratification and Accession by General Assembly Resolution 44/25 of 20 Nov 1989. Ratified by Zimbabwe on the 11<sup>th</sup> of September 1990.

- iii. Protection against Torture, Cruel, Inhuman and Degrading Treatment as provided for in sections 53 and 81(1)(e) of the Constitution of Zimbabwe, Article 16 of the ACRWC and Article 37 of the CRC.

While the above are the major child rights violated in child prostitution, many others are also infringed upon. These include but not limited to right to life,<sup>37</sup> freedom of association,<sup>38</sup> right to privacy<sup>39</sup>, right to protection against slavery, servitude and forced labor<sup>40</sup>, right to leisure and recreational activities<sup>41</sup> and freedom of trade, occupation and profession<sup>42</sup>, among others.

## 6. International Legislation on Child Prostitution

Child prostitution is well provided for at international level both as a child rights violation in itself and as a form of sexual exploitation of children, among others. Article 27(1) of the ACRWC clearly states that:

*“States Parties to the present Charter shall undertake to protect the child from all forms of sexual exploitation and sexual abuse and shall in particular take measures to prevent:*

- (a) The inducement, coercion or encouragement of a child to engage in any sexual activity;*
- (b) The use of children in prostitution or other sexual practices; ...”*

On the other hand, Article 34 of the CRC provides an almost similar but different provision by stating that:

*“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:*

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;*
- (b) The exploitative use of children in prostitution or other unlawful sexual practices; ...”*

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<sup>37</sup> Section 48 of the Constitution of Zimbabwe, Article 5 of the ACRWC and Article 6 of the CRC

<sup>38</sup> Section 58 of the Constitution of Zimbabwe, Article 8 of the ACRWC and Article 15 of the CRC.

<sup>39</sup> Section 14 of the Constitution, Article 10 of the ACRWC and Article 16 of the CRC.

<sup>40</sup> Section 13 of the Constitution, Article 15 of the ACRWC and Article 32 of the CRC.

<sup>41</sup> Article 12 of the ACRWC and 31 of the CRC.

<sup>42</sup> Section 22 of the Constitution.

While these two provisions may look similar, there are slight differences that in the end make one of them more desirable than the other in certain circumstances. The CRC qualifies its prohibition of child prostitution or exploitative sex with children with the words '*unlawful sexual activity*'. Without an interpretation guideline thus far from the UN Committee on the Rights of the Child regarding Article 34, this may be interpreted to mean that the CRC envisages situations of inducement or coercion of a child to engage in '*lawful sexual activity*' which should be acceptable. This presents challenges of defining which sexual activity with a child through undue inducement or coercion will be deemed lawful. Such an interpretation may therefore leave room for abuse to the disadvantage of children. On the contrary, the ACRWC flatly prohibits inducement or coercion of a child in '*any sexual activity*'. Indeed this is a more plausible clause as it implies that whenever there is coercion or undue inducement, under no circumstances will such '*any sexual activity*' be lawful. This closes any gaps that may allow for adverse interpretation that may end up prejudicing the children that the provisions seek to protect.

Furthermore, Article 34 of the CRC uses the phrase '*exploitative use of children in prostitution*'. This again leaves room for an adverse interpretation that there could be use of children in prostitution that is not exploitative, which interpretation is clearly not intended and undesirable for full protection of children from sexual exploitation by adults. This is aptly noted by Greijer and Doek<sup>43</sup> when they stated that "*A potentially negative aspect of the term used in the CRC, 'exploitative use of children in prostitution', is that it might be understood as there also being a non-exploitative use of children in prostitution*". On the contrary, Article 27 of the ACRWC just prohibits '*the use of children in prostitution*'. This implies that any use of a child in prostitution is inherently exploitative and therefore unlawful under whatever circumstances. This clause gives complete protection that does not leave any room for deviant interpretations and therefore is more desirable.

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<sup>43</sup> S Greijer and J Doek, 'Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse', Adopted by the Interagency Working Group on Sexual Exploitation of Children in Luxembourg, 28 January 2016, 30.

The above stated provisions of the CRC should be read to together with Articles 3, 4 and 19 of the CRC.<sup>44</sup> The same applies to the ACRWC whose provisions must be read together with Articles 4, 5(2), 16, 27 and 29 of the same instrument for completeness. In addition, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children also provides for child trafficking and prostitution as sexual exploitation that is inherently unlawful.<sup>45</sup> Despite a few shortcomings of the above provisions highlighted, the international instruments discussed are important because they expressly affirm children's right to protection against sexual exploitation in the form of child prostitution. They provide a foundation for the right to protection against child prostitution in member states and it is left upon individual countries such as Zimbabwe to build upon the international provisions and develop clear legislation and guidelines for protection of children against child prostitution. Zimbabwe is a signatory to all the above international instruments thus making it peremptory that it adheres to the guiding principles, protection and prevention measures expressed therein on child prostitution.

## **7. Review of Domestic Legislation on Child Prostitution**

Crimes against or related to child prostitution are relatively well provided for in Zimbabwean law. Various Acts ranging from the Criminal Law (Codification and Reform) Act (hereafter referred to as the Criminal Law Code),<sup>46</sup> the Children's Act,<sup>47</sup> the Domestic Violence Act,<sup>48</sup> the Trafficking in Persons Act<sup>49</sup> among others, more or less comprehensively deal with the problem of child prostitution or its associated activities.

### **a. Constitution of Zimbabwe Amendment (No 20) Act of 2013**

Zimbabwe adopted a new and indeed progressive Constitution in 2013. Section 2 of the new Constitution aptly declares the Constitution as the supreme law of Zimbabwe, thus making any

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<sup>44</sup> AM Hesselink-Louw, C Bezuidenhout & AE Boniface (n6 above) 357.

<sup>45</sup> Also known as the Palermo Protocol. Adopted and opened for signature, ratification and accession by General Assembly Resolution 55/25 of 15 November 2000. Acceded to by Zimbabwe on the 13<sup>th</sup> of December 2013.

<sup>46</sup> Chapter 9:23.

<sup>47</sup> Chapter 5:06.

<sup>48</sup> Chapter 5:16.

<sup>49</sup> Chapter 9:25.

law, practice, custom or conduct inconsistent with it invalid to the extent of the inconsistency.<sup>50</sup> Consistent with the requirements of the CRC<sup>51</sup> and the ACRWC<sup>52</sup>, the Constitution of Zimbabwe provides for a number of children's rights in section 81.<sup>53</sup> As far as child prostitution is concerned, the Constitution, as expected, does not make specific reference to it. It, however, broadly provides for protection of children *"from economic and sexual exploitation, from child labour, and from maltreatment, neglect or any form of abuse"*.<sup>54</sup> Since child prostitution is a form of economic activity using sex, which activity is both exploitative and abusive to children, and also having elements of maltreatment and neglect of a child, it can safely be argued that the Constitution in its broad pronouncement adequately prohibits the prostitution of children either by themselves or by others. It further states in section 2 that *"A child's best interests are paramount in every matter concerning the child"*.<sup>55</sup> This means that anything that happens involving a child should always consider the best interest of the child as central. Indeed child prostitution with its exploitative and abusive nature coupled with its long term destructive consequences on the physical, mental, psychological and educational development of a child, is among the biggest violators of this paramount principle.

While the Constitution makes broad pronouncements on the sexual exploitation and abuse of children, under which child prostitution falls, it is left for the relevant domestic legislation to expand upon this and make specific and detailed prohibition and protection legislative provisions against child prostitution. Some of these domestic laws are discussed below.

#### **b. Criminal Law (Codification and Reform) Act [Chapter 9:23]**

According to Feltoe, the Criminal Law Code brings together in one piece of legislation all of the major aspects of the Criminal Law of Zimbabwe, whilst at the same time effecting a whole series

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<sup>50</sup> Constitution of Zimbabwe Amendment (No 20) Act, 2013.

<sup>51</sup> Article 4.

<sup>52</sup> Article 1(1).

<sup>53</sup> Also known as the Bill of Child Rights. See also section 19 for the corresponding State's Obligations for the implementation of the said children's rights.

<sup>54</sup> Section 81(1)(e). See also section 19(3)(a-b).

<sup>55</sup> See also section 19(1) of the Constitution of Zimbabwe.

of reforms and improvements to the pre-existing Criminal Law.<sup>56</sup> Likewise, it also attempts to codify all sexual offences relating to children as scattered in various pieces of legislation. Sections 61-87 of the Criminal Law Code describe various forms of sexual offences against other people in Zimbabwe and among them are offences against children, some of which directly relates to child prostitution or other related acts.<sup>57</sup> By way of definitions that are important to the subject of child prostitution, section 61(1) states the following:

*“extra-marital sexual intercourse” means sexual intercourse otherwise than between spouses;*  
*“prostitute” means a male or female person who for money or reward—*  
*(a) allows other persons to have anal or extra-marital sexual intercourse or engage in other sexual conduct with him or her; or*  
*(b) solicits other persons to have anal or extra-marital sexual intercourse or engage in other sexual conduct with him or her;*  
*and the word “prostitution” shall be construed accordingly.*<sup>58</sup>

The above definitions are important in that they give legal meaning to the act of prostitution that the children under discussion engage in with adults, which acts are criminal offences and indeed detrimental to the physical, mental, psychological and educational development of children.

Section 70 of the Criminal Law Code directly criminalizes sexual intercourse with a child, at least below the age of 16 years. It states that:

*(1) Subject to subsection (2), any person who—*  
*(a) has extra-marital sexual intercourse with a young person; or*  
*(b) commits upon a young person any act involving physical contact that would be regarded by a reasonable person to be an indecent act; or*  
*(c) solicits or entices a young person to have extra-marital sexual intercourse with him or her or to commit any act with him or her involving physical contact that would be regarded by a reasonable person to be an indecent act;*

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<sup>56</sup> G Feltoe, ‘*Commentary on the Criminal Law (Codification and Reform) Act [Chapter 9:23]*’ (2012), Published on [http://ir.uz.ac.zw/xmlui/bitstream/handle/10646/664/commentary\\_on\\_criminal\\_law\\_code\\_jan\\_2012.pdf;jsessionid=75E49E21224176D9DAE800531B731CB4?sequence=1](http://ir.uz.ac.zw/xmlui/bitstream/handle/10646/664/commentary_on_criminal_law_code_jan_2012.pdf;jsessionid=75E49E21224176D9DAE800531B731CB4?sequence=1), i.

<sup>57</sup> Many of these provisions are a re-enactment of sections 3-14 of the repealed Sexual Offences Act [Chapter 9:12].

*shall be guilty of sexual intercourse or performing an indecent act with a young person, as the case may be, and liable to a fine not exceeding level twelve or imprisonment for a period not exceeding ten years or both.*

*(2) It shall be no defence to a charge of sexual intercourse or performing an indecent act with a young person to prove that he or she consented to such sexual intercourse or indecent act.*

*(3) It shall be a defence to a charge under subsection (1) for the accused person to satisfy the court that he or she had reasonable cause to believe that the young person concerned was of or over the age of sixteen years at the time of the alleged crime:*

*Provided that the apparent physical maturity of the young person concerned shall not, on its own, constitute reasonable cause for the purposes of this subsection.*

This provision is the clearest prohibition there is on sex with children, which includes in child prostitution, even though this may not have been mentioned by name. The provision attaches criminal responsibility on the actual person who has had sex with the child. While not explicitly mentioning commercial sex with a child, the implicit interpretation of the clause is that even if the child is a prostitute who offers herself for sex in exchange for money, the provision expressly renders such voluntariness irrelevant as it does not accept the presence of consent from the child as a defense.<sup>59</sup>

Using the above provision, it therefore becomes possible for law enforcement officers to investigate those alleged clients of child prostitutes and arraign them before the courts for commission of a crime. It may, however, be a challenge to successfully prosecute such cases as they rely heavily on the complaint (police report) and indeed the testimony of the victim, just as is the case with other criminal matters. It thus goes without saying that such complainants in the form of the child prostitutes do not see themselves as victims of any crime or of having been wronged in any way by anyone. In-fact, they often see themselves as having voluntarily entered into the sex trade as a way of income generation. Their clients are therefore invaluable to them and as such, they do not want to be seen to be scaring them away by reporting to the police. The child prostitutes will thus most probably be unwilling to make any report to the police, let alone

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<sup>59</sup> See also discussion on 'willing participant' therefore 'victim by choice' on Part 4 above.

to then go on to endure the ‘shame’ of giving such explicit testimony in court on a subject matter that is generally viewed as taboo in society and indeed on prostitution which is generally abhorred in society. The long and short of it therefore is that crimes involving child prostitution are very difficult to unearth, thus making any prosecution practically impossible.

Sections 82-86 of the Criminal Law Code further criminalise various other acts that are related to prostitution and indeed to child prostitution. These offences include Living off or facilitating prostitution; Procuring of other persons for the purposes of prostitution; Coercing or inducing persons for purposes of engaging in unlawful sexual conduct; and Permitting a young person to resort to places for purposes of engaging in unlawful sexual conduct. While these provisions criminalizes pimping of persons including of children for sex as well as allowing young persons in places of drinking alcohol such as night clubs for prostitution, the same challenges highlighted above of lack of evidence due to unwilling complainants and witnesses also befall this category of crimes. Indeed where the prostitution by the child is not purely forced as happens in trafficking but rather a ‘voluntary’ means of income generation; such children have unwavering loyalty to their handlers such that they cannot be seen to be selling them out to the Police lest they lose their income. The same applies to the bar-owners that allow children to use their bars for prostitution. Instead of seeing the owners as criminals that are promoting their sexual exploitation, the children are actually grateful and indeed indebted to the bar-owners for allowing them access to a lucrative source of income.

Section 87 of the Criminal Law Code is particularly interesting and indeed commendable as far as the subject of child prostitution is concerned. It states that:

*“Any parent or guardian who causes or allows his or her child under the age of eighteen years to associate with prostitutes or to be employed by any prostitute as a prostitute or to reside in a brothel shall be guilty of allowing a child to become a prostitute and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding ten years or both”.*

While the clause is unfortunately only directed at parents and guardians,<sup>60</sup> two important observations emerge from it. Firstly, it expressly refers to child prostitution as a concept. This is unlike the other provisions discussed above that only refer to unlawful sexual conduct or extra-marital sexual intercourse with a young person. The clear acknowledgement of the existence of the phenomenon here is important in developing jurisprudence around it in Zimbabwe as well as in improving legislation to properly identify the problem as child prostitution without any ambiguities. It is hoped that as the country continues to improve its laws, such direct reference to child prostitution will be used for clarity of issues. Secondly, the clause refers to a '*child under the age of eighteen years*'. Again this is critical in defining and delimiting the age at which the crime is committed. Unlike in provisions discussed above which talk about a young person under the age of sixteen, section 87 pegs the crime at 18 years. This is indeed commendable as it aligns with the international definition of a child,<sup>61</sup> as well as the Constitutional definition of a child in Zimbabwe,<sup>62</sup> both of which refer to 18 years. While consent to sex may be allowed at 16 in Zimbabwe, it is submitted that as long the sexual conduct in question involves prostitution, the age limit of 18 years as used in section 87 of the Criminal Law Code is more desirable and indeed recommended as a way of effectively combating the sexual exploitation and abuse of children inherent in the act.

Besides the Criminal Law Code referred to above, there are other pieces of legislations in Zimbabwe that can also be used to criminalise child prostitution and indeed to prosecute it. Of note is the Children's Act which apart from section 8 already referred to above, also has sections 7, 12, 13 and 78 that refer to associate acts to child prostitution. Section 14 importantly proffers a remedial action for child prostitutes in the form of removal of such children to a place of safety. Apart from challenges of actually identifying these children highlighted above, whether or not removing them from the streets to places of safety actually works is a discussion for another day. The Domestic Violence Act can also be used in as far as it relates to sexual abuse of a person.

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<sup>60</sup> While section 87 of the Code refers to parents and guardians only, its equivalent enactment in section 8 of the Children's Act refers to any person. Under a befitting heading of 'Corruption of children and young persons', it states that: (1) "*Any person who allows a child or young person to reside in or to frequent a brothel shall be guilty of an offence*".

<sup>61</sup> Article 1 of the CRC and Article 2 of the ACRWC.

<sup>62</sup> Section 81(1).

Similarly, the Trafficking in Persons Act can also be used for prosecution of child prostitution where the two are interlinked, which is normally the case particularly where cross border trafficking is involved. Section 3 of the Act describes the crime of trafficking in persons and specifically states that where the trafficking includes children, the offence is aggravated.<sup>63</sup>

The law as discussed above is certainly lacking for not explicitly providing for child prostitution as a crime. The idea of having to derive the crime from indirect statements presents law enforcement agencies with confusion and at times fear of doing the wrong thing. It is imperative that child prostitution be a crime on its own just as rape is. With that it can clearly clarify sanctions for those that have sex with the child prostitutes, those that peddle them, those that allow their places to be used for such among others. As a way of encouraging reporting, the law must clearly state that the child prostitute herself has not committed any crime. A clause on vulnerable witnesses should also be included for protection such that other children, relatives or anyone else can be a whistleblower or a complainant on child prostitution and not fear stigmatization or victimization even when it comes to giving evidence in court. In addition, it should also be an offence for anyone to have intimate knowledge of acts of child prostitution and fail to report it within a reasonable time to the police.<sup>64</sup> As at the present moment, there sadly seems to be no recorded or reported case on child prostitution that has been successfully prosecuted in Zimbabwe, which points to the lack of seriousness given to this crime or ignorance about it by the law and order authorities as well as the judiciary.

## 8. Conclusion

While Zimbabwean legislation may not have explicitly provided for child prostitution as a crime, the offence is relatively adequately provided for in various pieces of law which can be used to combat this horrific practice on children for now. What really lacks is the effective enforcement of these laws on the ground through proactive identification of such cases in communities, effective investigation by police and indeed effective prosecution by the state. While there are many reasons for this apparent lack of enforcement including the hidden nature of the practice and lack of willing complainants as discussed above, political will to tackle the problem must

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<sup>63</sup> Section 3(3)(a) and 3(4) of the Trafficking in Persons Act.

<sup>64</sup> AM Hesselink-Louw, C Bezuidenhout & AE Boniface (n6 above) 366.

still be seen in various initiatives. Public awareness, for one, is critical to dispel the misconception that child prostitutes are ‘*willing participants*’ therefore ‘*victims by choice*’. It is high time that society is educated to begin to see this phenomenon as nothing lesser than the actual rape of a child and should be equally despised. Such awareness should be accompanied by information on how to identify child traffickers and child prostitutes and where to report. This increased activism on child prostitution should ideally be accompanied by victim-specific reform-oriented interventions such as rehabilitation, family reunification, back-to-school programmes or special skills training among others that provide viable alternatives to such children thereby giving them an opportunity in life.

In addition, there is need for specialized training of law enforcement agents to sniff out perpetrators, to conduct effective and successful prosecution and the imposition of deterrent sentences as a warning to would be offenders. As with other sexual offences, children in schools also need to be educated on child prostitution and its negative consequences as a preventive measure. With such collective efforts, child prostitution can at least be reduced in the meantime with a view to completely eradicating it the long term.

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