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WHEN POVERTY LAW STRIKES

In 2017, a Constitutional Court, with three judges on the bench, deemed that the Rogue and Vagabond law was not in tandem with the country's supreme law—the Constitution. The law was seen to violate the unalienable rights of people, including sex workers. Today, apparently the police are using the 'Idle and Disorderly' law in the same way with the vagrancy law that was repudiated. *Exclusive Inquiry* takes through some experiences from some of the victims of this law—Sex workers.



SPECIAL ESSAY

KONDWANI KAMIYALA
STAFF WRITER

We are currently in the 16 Days of Activism against Gender-based Violence, when the world reflects on how to end sexual, physical and other forms of abuse based on gender.

Sex workers are some of the marginalised people in our society. Essentially, like other key populations, they are said to be voiceless, because they are deemed immoral. As a matter of fact, to say that they are voiceless is an understatement for their voices are muzzled. When they speak, we scarcely hear their voice.

In 2017, three judges in the Constitutional Court—Justices Isaac Mtambo, Zion Ntamba and Silvester Kalembera—ruled that the ‘Rogue and Vagabond’ law was unconstitutional. Before the venerable judges was a case of a street vendor, Mayeso Gwanda, who was challenging the constitutionality of the law, saying it infringed on several of his rights, including the freedom of association, movement and engagement in economic activity.

In a nutshell, Gwanda was arrested at Chichiri roundabout in the night as he was walking from Chilomoni to Limbe Market to ply his trade—selling plastic papers.

Sex workers were mostly victims of the vagrancy law. Stories abound how some bad apples in the Malawi Police Service (MPS) used the law to sexually and physically abuse sex workers. Mostly, the language on street was when arrested, the sex workers had to free themselves (*Dziombole wekha*).

Two years down the line, it is apparent that sex workers are suffering at the mercy of the police with a law enshrined in Section 180 of the Penal Code—‘Idle and Disorderly’.

Talking to sex workers, it is clear that although a step was made in deeming the ‘Rogue and Vagabond’ law unconstitutional, we are making two steps backwards with police using the ‘Idle and Disorderly’ law.

Much as the law is vague, it is a nostalgic feel of the

Sex workers: Victims of idle law



PHOTOGRAPH: BOBBY KABANGO

Sex workers like these in Blantyre are under threat of idle and disorderly law

poverty laws inherited from colonial masters.

It is a given fact that even people loitering in our towns, cities, trading centres and villages can be arrested using this law that exists in some countries such as Uganda, that inherited them from the British.

In October, Uganda President Yoweri Museveni issued a directive to the attorney general and chief of police to release all people arrested on the charge of idle and disorderly. In his words, Museveni said the law was the result of a colonial ‘fear’ of Africans.

He is quoted by the British publication, *The Guardian*, as having said: “Why should this be a crime? If I am unemployed and I hang about the park, why should somebody accuse me of the crime of hanging around? It is the colonialists that feared that Africans being around that drafted that law. It should be repealed.” ■



PHOTOGRAPH: THE GUARDIAN

Museveni: Why should this be a crime?

KONDWANI KAMIYALA
STAFF WRITER

Friday, November 22 2019.

It was a night like any other for a 22-year-old sex worker based in Makheta, Blantyre. She went to a newly-opened shebeen to drink and get customers.

Yet, as the night deepened, police came with their sweeping exercise. They arrested her and three of her friends. She says the police arrested them for 'being found doing nothing' on the road near the shebeen.

That was only the beginning of her problems.

"When we got to Limbe Police Station, the officer on duty told my three friends to go into a cell. He told me to remain behind, being the youngest. Then, he said we should have sex and he would pay me," she claimed.

Knowing she would have something to feed her three children left by her husband two years ago, she consented. After the sex, she was sent into the cell.

"I was surprised later, in the morning, that the officer was knocking off without paying me. I reported the matter to his superiors and he was arrested," said the sex worker.

National police spokesperson James Kadadzera last week confirmed the arrest of the police officer suspecting him of raping the sex worker.

"It is our duty to protect everyone, whether they are in custody or not. That is why the officer was arrested the same day," said Kadadzera.

But, today, the sex worker says she has withdrawn the case.

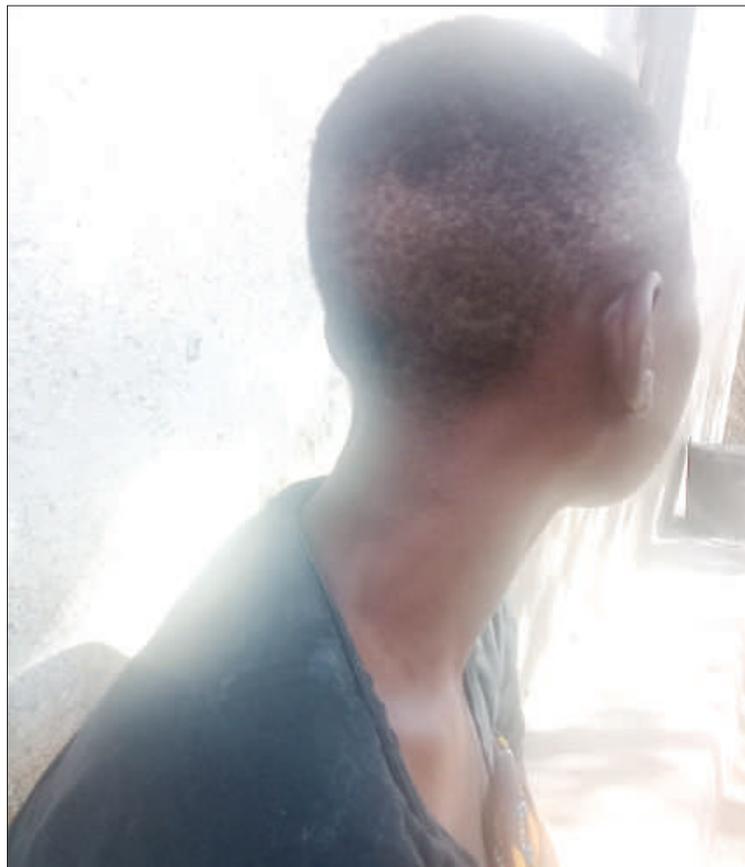
She said: "He paid me K15 000 and I saw no reason to have him in custody. I used part of the money to pay for my K5 000 bail."

Another sex worker, who was also arrested that same night in Makheta, said by the following morning 17 sex workers were taken to Midima court.

"They did not charge us individually. They just told us we had been arrested for the idle and disorderly offence. They said police wanted us out on bail and we were told to pay K5 000 each.

"It is unfair that an officer chose to sleep with her. She is like a younger sister to me and we encouraged her to report

Sex worker drops case against non-paying police officer



At home in Makheta: The sex worker who was raped in police custor



Mhango: We get reports

what she faced," she claimed.

Efforts to get a comment from Kadadzera on whether the case was withdrawn proved futile as the whole of this week he kept on saying he was finding out from Limbe Police.

"We are still investigating the matter," he said.

Centre for Human Rights Education, Advice and Assistance executive director Victor Mhango said his organisation receives, through their 311 toll-free line, many complaints of abuse at the hands of the police from sex workers.

"It is not the first time we are getting such reports. The problem is that mostly the sex workers are afraid to report such abuse. I wish such cases were taken up by the Director of Public Prosecutions for justice to prevail," said Mhango. ■

—Additional reporting by
Martha Chirambo



Police officers are supposed to protect people and property

Kameza and its sex-in-trucks

Kameza Roundabout in Blantyre is known for its fun spots. When night falls, music, dizzying lights, beer and braai take centre stage. As KONDWANI KAMIYALA finds out, the fun may end up in arrests, especially for sex workers who are on duty when others are having fun. He writes:

She is 19. Her experience in sex work spans two years. And, like many sex workers, Trinity has her own stories of abuse.

She plies her trade at one of the famous hotspots at Kameza, near the Chileka Roundabout in Blantyre. One story of abuse sticks to her mind.

"The other day, a customer got me. He told me to go out with him. I got into his car and he drove to a graveyard near the roundabout. He forced me to lie on one of the tombs and he slept with me, but against my wish. Surely, I would sleep with a man anywhere else, but not on a tomb. When he was done, he said his granny could now rest in peace. He paid nothing. I think he used me for some ritual," says Trinity.

From that haunting experience, she says, she would rather sleep with men in one of the stationary trucks near the bottlestores.

Spot checks revealed that



Life outside one of the joints

sex workers, some from as far as Chirimba, Chitawira and Bangwe, service their clients *mumathiraki*.

"We pay K500 for us to service our customers in the stationary trucks. That is far much cheaper than what we could pay at resthouses and motels.

"But that comes with a price, because mostly police pounce on us *kumathiraki* and give us idle and disorderly charges," says Trinity.

She says arrest or no arrest, she will not stop servicing clients *mumathiraki*.

Another sex worker, Joyce has her own story about *kumathiraki*.

"An officer found me with a customer in one of the

stationary trucks. He took my underwear, saying it would be used as evidence in court. He told me to follow him to their car, leaving the man behind. Later, my client paid the officer something and we proceeded to finish our business," says Joyce.

Mango Key Populations executive director Reverend MacDonald Sembereka says Joyce's case shows how patriarchal our society is. He says, for one, the idle and disorderly law is archaic, not in tandem with the democratic dispensation.

"For that matter, how can they only arrest the sex worker, leaving the man? Which law were they using? Like we did with the vagrancy laws,

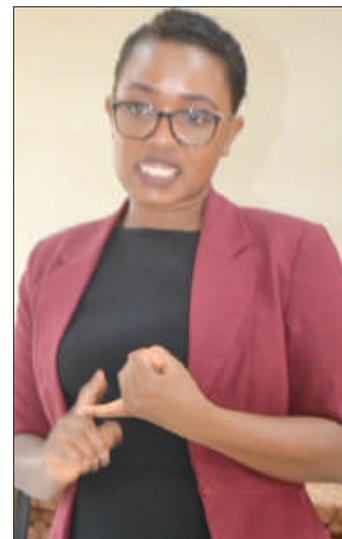
the idle and disorderly law is undemocratic as it infringes on people's freedom of association," says Sembereka.

Female Sex Workers Association executive director Zinenani Majawa agreed with Sembereka, saying "it takes two to tangle".

"Why should they only arrest the girls? It is totally wrong," she said.

According to lawyer Ruth Kaima, having sex in a stationery truck in itself does not constitute being idle and disorderly.

"The law clearly states that the indecent acts must be done in public. So, if the car is not in public, why should arrests be made?" wondered Kaima. ■



PHOTOGRAPH: KONDWANI KAMIYALA

Kaima: Elements are crucial to prove guilt

Don't plead guilty —lawyer

KONDWANI KAMIYALA
STAFF WRITER

Lawyer Ruth Kaima has urged sex workers to plead 'not guilty' when they are brought before the courts on idle and disorderly charges. She further urged them to avoid crime in the course of their duty.

Speaking during a recent training for Blantyre-based sex workers, organised by the Centre for Human Rights Education, Advice and Assistance (Chreaa) with funding from the Aids and Rights Alliance of Southern Africa (Arasa), Kaima said admission of guilt often results in the case falling into liability of the charges to the disadvantage of the sex workers.

She referred to Section 180 (a) of the Penal Code, which stipulates that one shall be guilty of the idle and disorderly offence if they are 'a common prostitute behaving in a disorderly or indecent manner in any public place'.

"It is common that police tells you to plead guilty to avoid imprisonment. Most of the times, the police do not have enough elements to prove a case. Being found in a bar or on the road at night is in itself not an element of being idle and disorderly," said Kaima.

According to her, the law states that common prostitutes are among those

Sex workers urged against crime

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who can be arrested on idle and disorderly charges. She affirms, nonetheless that the law does not define who is a common prostitute.

"In my view, sex workers are not common prostitutes. If a sex worker is found guilty several times of crimes committed when they are in the line of duty, they

become common prostitutes. Which is why it is vital that sex workers avoid stealing from clients, engaging in fights, gambling and other crimes," said Kaima.

She termed the idle and disorderly law archaic and a leftover of the oppressive colonial laws Malawi inherited from the British.

"Among other things, one can be arrested and charged for

just loitering in town. That is totally unfair, since I can drive around town without having anything beneficial to do, but I cannot be arrested for it. These are poverty laws that must go," she said.

The crime, she added, attracts a fine of K1 000 or three months in prison for first offenders or K3 000 for subsequent offences.

Some of the sex workers

during the interface said they pay between K5 000 and K10 000 to get their freedom, while others affirmed they give officers sex to gain liberty.

According to Kondwani Banda, a paralegal officer at Chreaa, the training, themed 'Happy Hour: Creative Spaces', brings together sex workers and other professionals such as police officers, lawyers and medical personnel.

"We have been having meetings with sex workers enlightening them on their rights in the face of the idle and disorderly law. The law is abused by officers and mostly they tell sex workers in police custody that they should just pay some money or else they would be sent to prison. Yet, prison authorities won't allow in prison on remand someone with such a petty case," said Banda. ■

KONDWANI KAMIYALA
STAFF WRITER

If you spent one good part of your night at one drinking joint in Bangwe, Blantyre, and listened to the sex workers tell their ordeals, you would be left with one question: Why the abuse?

Almost all of them talked of abuses at the mercy of customers, family and, sadly, the police.

Agnes, for want of name, recalls April 12 as one of the days to remember.

The sex worker recalls that fateful night.

"I was having my good time, having beers. Then, the police came into the bar. We scampered out of the bar. They wanted to get me, for one. They got me. I feigned... I feigned that stress was on me. I said: 'I am fainting. I am fainting.' They tried to get me to their car. One officer tried to be on my side, but he was overruled," says one sex worker in short hair, plump body, light skin and bright eyes.

She claims she was whipped with a sjambok. Her back sore and bleeding, she was taken into a police cell. Like others taken, she was asked to sleep with an officer to get her freedom. Several contented.

"I was bleeding. I still have the scars. I said no. And, I only got out when my fine was paid. But I saw several girls being released when they succumbed *atadziombola okha*," she says.

She was not alone.

One sex worker confessed she was beaten with a butt of a police officer's rifle. Another one, on that material night, says an officer took K6 900 from her. "It was in my bra," she says.

The police did not spare the woman at the counter. "I told them I was doing my job. They had none of it. I was forced to leave my child in the bar and go along their patrol that night. It only took my boss to get them back to their senses and set me free," she affirms,

Idle and disorderly tales from Bangwe



Bangwe is one of the hotspots for sex workers

clad in a red T-shirt, white torn jeans and short dreadlocks.

Another light-skinned sex worker, baby in hand quips: "They get us. They got me. We pay up to K10 000 to get freedom. The understanding, for me, is that the rogue and vagabond case is gone. Why should we suffer this way?"

One sex worker felt all the abuse has subdued with the presidential elections case.

"I feel it has gone down because of the case. With the rogue and vagabond case gone, we thought we would conduct business in peace," claimed the

sex worker.

The sex workers opened up during a nightly street outreach in the township.

Female Sex Workers Association executive director Zinenani Majawa says after the rogue and vagabond law was repudiated, it is unfortunate there remains obscure laws targeting sex workers.

"Not long ago, 25 girls were arrested in Lilongwe's Area 3. On arrest and release, mostly, the girls have no receipts. As an organisation, we are looking into how we can get to the bottom of these small laws," she said. ■



Majawa: It is unfortunate

PHOTOGRAPHS: BOBBY KABANGO

PHOTOGRAPHS: KONDWANI KAMIYALA

In the face of the Rogue and Vagabond law being deemed unconstitutional, it is apparent law enforcers are using another section in the Penal Code, to victimise sex workers.

KONDWANI KAMIYALA talks to MPHATSO IPHANI, public relations officer for the Women Lawyers Association on some of the elements in the Idle and Disorderly sections of the Penal Code. Excerpts:

Section 180 (a) of the Penal Code includes a common prostitute as one of those liable to be idle and disorderly persons. Who is a common prostitute, in your view? What behaviours constitute disorderly and indecent, as per that section?

There is no statutory definition of a common prostitute. As such this gives the law enforcers a lot of discretion at the point of arrest. It is subject to what the arresting officer thinks at the time. The same applies to indecent and disorderly behaviour.

Subsection (g) talks of people with hair going below the imaginary horizontal line around their mouth. I take dreadlocked people to be among those in this category. Is that perception wrong? What is the right interpretation for that provision?

Section 180 does not include people with dreadlocks. That must have been under the Decency in Dressing Act, which was repealed when Malawi began to democratise. Subsection (g) was inserted into the Penal Code by Act 11 of 1973 and stemmed from the dress code introduced by Dr Hastings [Kamuzu] Banda.

Are there any circumstances where the police bail for a

Unpacking idle and disorderly law



Lawyer Ruth Kaima (C) unbundles idle and disorderly law for sex workers

crime can be higher than the fine for the crime committed? I ask because some sex workers I have talked to say they pay K5 000 or more to be released. Yet, the fine, as stipulated by the law, if found guilty, is K1 000 for first offenders or K3 000 for subsequent offences. There are prison terms in default.

Police bail is free and no one is supposed to pay any money at the police. That is corruption and must be reported.

How would you compare the Idle and Disorderly Law to the vagrancy law that was deemed unconstitutional in 2017? These are laws some believe were used by colonialists to oppress Africans, what would you say?

Idle and Disorderly offences are part of vagrancy offences that were formulated to regulate the migration of the commoners (the natives or black people in the colonies) into cities by forcing them to stay and work in white people's estates or farms for less pay. The offence that was declared unconstitutional was rogue and vagabond under section 184 (1)

(c) of the Penal Code.

Talking to one sex worker who was having sex with a client in a broken-down truck in Chirimba, Blantyre, police only arrested her and left the man. Was this the right approach?

That was a wrong approach. In the case of Pempho Banda and 18 others vs The State, the court held that it is discriminatory to just arrest a woman in such circumstances. The law should not be selective and only target women when the alleged offence is committed by both parties.

How relevant is the Idle and Disorderly Law in the Malawi scenario today?

These are still part of the law in Malawi. However, they are archaic, too vague and their implementation result in violation of human rights and marginalisation of members of society, especially the poor and vulnerable groups. The unrestricted discretion that these law provisions give to law enforcers is susceptible to abuse. ■



Iphani: The law is archaic