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RETRIEVING SEX WORK FROM THE NIGERIAN COURT

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ABSTRACT: The court of public opinion in the Nigerian state is greatly titled against women in sex work (prostitution). This position of the court of public opinion stemmed from the non recognition of sex work as legitimate work and the laws used in the governance of women. Again the consequence(s) of this position of the court of public opinion on sex work is for the trade to be driven underground thus being prone to human rights abuses. The human rights abuses suffered by women in sex work in Nigeria are in direct contradiction to the principles of the universal human rights declaration of 1948. The crux of matter is whether the Nigerian state and its agents especially when cognizance is given to the universal human declaration have the rights to disparaged women in sex work. Furthermore does the Nigerian "woman" have the right of going into sex work? The attempt to answering to these questions through this paper did inadvertently set the tone and direction for this paper thus the recommendations canvassed herein which includes the women having rights over her body and having the capacity to make rational choices.

KEYWORDS: Human Rights, Universal Human Rights Declarations Sex Worker, Sex Work, Regulations, Abolisionism, and Criminalization.

INTRODUCTION

Only recently a number of certain African states were jolted by the comments credited to the British Prime Minister David Cameron that Britain will further starts reconsidering its relationship with certain African states that had refuse to recognized the rights of gays and lesbians. The Nigerian state was taken aback as the government of Nigeria felt that the British government was over steeping its bound by trying to arm-twist and dictate to African states on how to govern their states. The Nigerian state in spite of the British position went ahead to legislate on the rights of gays in the country (Nation Newspaper: 2004). The same sex marriage (prohibition) Bill of 2013 which the president assented to in 2014 notes...

A marriage contract or civil union entered into between person of the same sex (a) is prohibited in Nigeria and (b) shall not be recognized further as entitled to benefits of a valid marriage...

A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issues by a foreign country is void in Nigeria and any benefit-accruing there from by virtue of the certificate shall not be enforced by any court of law... with the signing of the bill gay couples in Nigeria risk a 14 year jail term, if they do not retrace their steps and renounce such marriages. International Journal of Health and Psychology Research

Vol.4, No.2, pp.59-68, June 2016

Published by European Centre for Research Training and Development UK (www.eajournals.org)

Though the paper is not on the rights of gays in the Nigerian state but it does portend some implications for the rights of women in sex work (prostitution) and the sex worker (prostitute). In a sure and familiar state, the Nigerian state legislated just as she had earlier done by criminalizing and prohibiting sex work, thus raising the question whether at the operational level of society in Nigeria, it collective right is superior to individual/rights or vice versa. Furthermore the criminalization of sex work in Nigeria did rake up the question whether women out of their own volition can go into sex work or do women have the rights to "choice".

Women in sex work (prostitution) in Nigeria had been made to bear the brunt of the state criminalizing their trade, as they are considered inferior, lacking in self respect and dignity. They are seen as perverters therefore non respectable and undeserving of protection. In order words women in sex work in (prostitution) in Nigeria are generally regarded in low esteem and worth great disdain. Be that as it may, it should be noted that social and legal definitions of sex work (prostitution) clarify for each society what constitutes an act of "prostitution", who the legal parties to such an act might be and laws, punishment(s) surrounding such behaviour. In Nigeria, the criminal code (between 22, and 23) spelt but the definition and punishments for an act of prostitution it is in this light that Ann Jordan (2002) proceeded to provide this paper with a definition of sex work (prostitution). She noted inter alia"

The standard definition of prostitution is promiscuous, indiscriminate, non affective sale of sexual services for money or other thing of value. As pointed out by many scholars, this definition could include on right stand and would exclude the exchange of sex for money between a prostitute and a regular trick. Furthermore, "sale" connotes a voluntary, non-coercive transactions between two willing adducts but the term prostitute is often used to include children, trafficking victims and women forced to sexually service invading armies...

From Ann Jordan's (2002) definition, it is noteworthy to emphasize that the term "child prostitute" is essentially a disturbing term, as it wrongly connotes social acceptance of a child's "consent" to being a prostitute and does not reveal the violence and adult coercion under-lying the child consent. Again the term "prostitute" from the stand point of the paper is basically limited to adult women who voluntarily without force, sell sexual services. The term "prostitute" is stigmatizing and misleading, as it cannot convey the complexities of relationship between the women and the "tricks" which varies from country and "trick to tricks". Again the term "prostitute" further collapses all women involved in sex work (prostitution) into one stigmatized, vilified and marginalized category thus encouraging states and their agents to abrogate or violate the rights of women in sex work. In Nigeria there is a tacit complicity of the public that often speak out against other forms of women right abuses to suddenly go silent and quiet when it comes to abuses of the rights of women in sex work. This position of the Nigerian public pitches and reinforces the negative sexual stereotypes which puts the "bad" women inside sex work (prostitution) against the good women outside sex work (prostitution) thus necessitating a pertinent question whether sex work (prostitution) and the sex worker (prostitute) can be reconciled with the Nigerian state.

International Environment and Sex Work

While attempting to proffer answer(s) to the questions earlier raised in the paper, there is the need for understanding international environment vis-à-vis sex work (prostitution) and the sex worker (prostitute). The current international environment in which the sex worker finds his or herself is fair and better especially when cognizance is given to time past. The improvement found in the international systems is premised on the universal human declaration (1948), the movement of knowledge (giest), African human rights charter and the world charter of prostitution. The tread that runs through the entire document is the clarion call for the respect of the rights of all-whether be they those of women in sex work. Be that as it may, this had not always been the case, as prostitution (sex work) had always been an history framed by attempts to impress and make morally reprehensive the women involved in prostitution, while accepting even venerating the desire and fantasies symbolically associated with the whores the prostitutes and the fallen woman (Maggi O'Nell, 1999). It is in this light that Lynda Birke (1988) did argued that societies in the international system were to undergo "sexual revolution" which in the views of Nanette Davis (1993) culminated to western societies that were once locked in a social pathology model, shifting to a feminist or social problems models. The consequence(s) of this movement or shift is the contextualization of sex work (prostitution) within the frame work of liberties and social model is the movement of western societies to decriminalizing sex work (prostitution) and expanding their horizon on women issues.

Again, the pertinent point to note is that under the feminist or social problem models of contextualizing sex work (prostitution) does situates the sex worker as the victim of inequality societies each model offers different causal agent, for example, male made authority versus economic dislocation. The crux of the matter is that the movement in knowledge concerning sex work (prostitution) in western societies caused these societies to move decriminalizing thus causing the division of the international system into pro sex work and anti sex work countries. The pro sex work (prostitution) countries are predominately in the global north, while the anti sex work (prostitution) countries are found predominately in the global south. As the pro-sex work countries were moving away from criminalizing sex work, countries in the anti sex work camp were still holding tenaciously to the logic of sex work (prostitution) being immoral and the logic that certain theoretical conceptual model such as power differentials or sexual inequality as articulated by western countries are bias against non western societies and may have been virtually unheard of in non-western countries especially when cognizance is given to public decency and morality (Jordan: 2002, Davis: 1993). Arguing along this line of thought of Jordan, Marieke Doornick (2002) noted that the argument(s) on public decency and morality are not tenable in the current international system, as most states had fallen short of guaranteeing survival of their citizenry especially in the face of constant economic dislocation(s) that had come to characterize over current international system. Furthermore, the issues of public decency and morality did raise the issue of "choice" thus prompting Marieke Doornick (2000) to note inter-alia:

> If a woman regards prostitution as the best way to earn a living, she has the same rights as any other worker. Any form of force prostitution, pimping or trafficking remains in the penal code, with a mutineer penalty of six years imprisonment.

While Marieke Doornick (2002) arguments and logic was situated in the Netherlands, but it is noteworthy that Doornicks (2002) logic and argument does portend a lot for this paper and

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the aforegoing discussion, as Doornick (2002) did position of decriminalizing sex work, the first known effort at decriminalizing sex work (prostitution) was in 1993-the 1993 attempt failed but was quickly followed by another attempt in 1999 which was successful. Other countries that had shared similar experiences of the Netherlands, just to mention a few, are Canada, Italy, the United States of America, Sweden, Denmark Australia, United Kingdom, Brazil, and Germany. The inter play of several factors in the international system culminated in these countries sheffina and moving away criminalization and prohibition of sex work. In conclusion, it does follow that these countries are upholding the dictate of protecting the human rights of all in spite of their race, religion, sex and colour which the body of humanity swore to in the declarations of the universal human rights of (1948), Africa's human rights charter and as espoused in and the World charter on prostitution thus the current international system is a mixture of criminalization, prohibition and decriminalization countries (Dan: 1995-Joan: 2002).

The Nigerian State and Sex Work (Prostitution)

African states are responsible members of the international system hence their membership of the United Nations and their signing up to the charters and declarations of the United Nations. But when it comes to the issue(s) of sex work (prostitution), almost, if not all of the African states behave in a manner that is contradictory to all the charters and declarations of the United Nations. The pertinent question is whether African states are correct in behaving in a manner that is contradictory to the declarations of the United Nations and those of the African charter on human rights". Akinyemi (2002) did note and argued, while proffering answer(s) to the question

The interaction between the nation state and international organization is multi directional and mutually re-enforcing in the field of human rights. As a matter of general principle, it is probably the case that the standards set by international institutions is ahead of the domestic standards observed by nations. Why nation-states would note for, sign or ratify international human rights documents which are positive variance with their domestic standards is not easy to explain. The majority rather than the unanimous voting procedure of international organization is one contributing factors which can lead to the adoption of international conventions laying down standards which may be a positive variance with domestic standards. The second factor is the desire of states to have a positive international image

The second factor raised by Akinyemi (2002) which boarders on positive international image did capture the posture of African states in relation to the declarations and charters of the United Nations.

The Nigerian state, while pretending to the world that all is well within its confines, in same vein, Nigeria had decided at the domestic front to come down hard on sex work (prostitution) and the sex worker (prostitutes) as sex work was criminalized and prohibited. Section 22 and 23 of the criminal code of the Nigerian state does buttress or substantiate the position of the Nigerian state. Hard and soft regulations (enforcements) became regular features in the criminalization and prohibition of sex work in Nigeria. The question here is why has the

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Nigerian state refuses to decriminalize or recognize sex work. In trying to proffer answer(s) to the question it does become imperative to examine how the Nigerian state sees and define the "woman". The "woman" in Nigeria is considered and seen as being beneath the man, hence should remain in the care of the man. In order words, at the operational level of society in Nigeria, nature, in its infinite wisdom had placed the woman beneath the man, hence "the woman" should be taken care of by the man. This viewpoint of nature endorsing this arrangement had reconfigured to "the woman" being seen as an object of acquisition and object to enhance the status of "the man". Furthermore, existing religious teaching had further reinforced this logic and thinking. For example the Christian religion is both patriarchal and misogynist. It is especially suspicious of sex and fearful of women's sexuality. It generally treats recreational or pleasurable sex as a sin and limits sex to "procreational acts" between a wife and husband. It categorizes women either as Madonna who must remain virgins until marriage, must be sexually faithful in marriage, or become sexually promiscuous and dammed to condemnation in hell. But it treats men promiscuously with levity, as men lustful desires are aroused by women (Eve) hence men cannot be blamed for their fallen state (having eaten from the forbidden apple). Men are considered passive victims, not instigators, while the prostitute women/girls that provide an outlet for male sexual lust are condemned by Christianity as "Outcast or Asawo", "Akunakuna" in the local parlance. What this logic and argument portends for this paper is that these religious dogmas had reconfigured at the level of society in Nigeria into laws used in governing women hence policies that permit men to treat women as chattel and to treat female sexuality as a commodity for the pleasure of men. Laws used in governing women more often than not limits women ability to control their own person and rarely permit women to control their own sexuality (inside marriage or outside).

Has Islam fared any better when it comes to laws used in governing women? Obviously not, Islam permits men to have more than one wife, which in most cases denied bachelors of potential wives and facilitates the acceptance of men purchasing commercial sex. Again, Islam in its teaching permits a form of "quasi marriage" which is tantamount to buying sex. In this quasi marriage the woman and man enters into a temporary marriage for any length of time, even for an hour. The purpose of this type of union is not entirely for the purpose of marriage; it is solely to satisfy the man's sexual pleasure. The commercial nature of the transaction is evident as the man is required to pay the woman for the marriage. In summation religious norms, secular laws and religious practices forces the woman in Nigeria to turn to sex work; as these laws greatly disadvantaged the woman. Furthermore, it is the aggregate of these religious teachings that had reconfigured and translated into social laws which had hitherto reduced women into sexual roles in the Nigerian society. The behaviour of the Nigerian state as it concern sex work (prostitution) is therefore not farfetched as those from social policies that is laden with religious teachings had negatively impacted on all Nigerian societies.

Further examination of the arguments used in the condemnation of sex work which albinitio had culminated in Nigeria's position on sex work boarders on the following.

- i. Sex work being demeaning to all women
- ii. It is violence against women
- iii. It is against public decency and morality

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- iv. Sex should not be abused
- v. Sex cannot and should not be "commodified"
- vi. Disease
- vii. Emotional and psychological abuses
- viii. Laziness.

All of these arguments and logic for the non-decriminalization of sex work in Nigeria did raise another question whether these arguments) are tenable in the current Nigerian state.

The current Nigerian state is pathologically sick politically, socially and economically and the reasons for this sickness in the views of Okowa (2005) is premised on the following

- i. Relay of bad leadership
- ii. Corruption
- iii. Lack of respect for the rule of law
- iv. Nepotism
- v. Maladministration
- vi. Ethnicity
- vii. Failure of governance.

The interplay of all these factors is what culminated in the high incidence(s) of poverty and unemployment in the Nigerian state thus Okowa (2005) declarations...

So on what basis can one define a Nigerian nation? We do not have common religion, our common history in less than hundred years and it is clearly too short to provide comfortable basis for the definition of a sustainable nationhood...or is it the case that the wealth of the minorities of the Niger Delta has provided a looting basis for the contemporary manifestation and definition of the business called "Nigeria". The continuous looting and plundering of the nation's treasury regime after regime, civil and military clearly evidences the fact that our leaders do not believe in Nigeria as a nation. One is not saying that there do not believe in Nigeria as business... from the foregoing, it is logical to argue that the fundamental plank that serves as fro the basis for the common interest of all to loot and plunder the oil and gas resources of the people of Niger Delta.

The foundation of Okowa's declaration is further premised on the crude and violent politics. Politics is for the crooks and the price is power, which guarantees access to the "limitless state fund". The consequence(s) of crude and violent politics is that government policies becomes anti-people, anti-human rights, anti-women and anti-development. Again it should be noted that the crude and violent politics "legitimized corruption over social justice and the

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rule of law" in Nigeria, hence the declaration from the federal office of statistics that the 70% of Nigerians that live below the poverty line, 70% are women. In a subtle manner, what the figures from the federal office of statistics does reveals is the fact that conditions that necessitate sex work (prostitution) are prevalent in Nigeria; as survival in the current Nigerian state is "nasty, short and brutish". What this portends for the paper is that more women will be driven into sex work (prostitution) in Nigeria as a result of the wooful economic performances of the Nigerian state overtime. Sex work (prostitution) is expanding in Nigeria and is gradually assuming the status of an industry. Sex work (prostitution) in Nigeria has multiple entry point; as the ages of the sex worker(s) ranges from 14-60 years.

An estimated 1-3 million sex workers are believed to exist in Nigeria with some operating from brothels and others from their residence.

From the given position that the current Nigerian state is a "legitimization of corruption over social justice and the respect for the rule of law" had reconfigured to the high index or incidences of poverty thus the increase in the number of women in sex work (prostitution) in Nigeria. Be that as it may a "tiny tread" of the arguments used in the condemnation and criminalization of sex work in Nigeria focus on issues of sexual economics, stressing the relationships between sex, public decency an relationship between sex, public decency and morality. These relationships had further provided the needed platform for the questioning of the dominant arguments in the Nigeria state used in condemnation of sex look in Nigeria conditions that gives impetus to women to take to sex work does exist in Nigeria. The existing arguments believed that women are more vulnerable to fall in sex work (prostitution) by men. What is worrisome is the fact that the viewpoint acknowledged above sees sex work (prostitution) because of the demand for sex without love or responsibilities by men. What is worry some is the fact that the viewpoint acknowledged above sees sex work (prostitution) as both exploitating and demeaning for women in sex work (prostitution) which inadvertently leads to the wrongness of sex worker(s) is always for the benefit of and exploitation by men in "patriarchal" societies. The Penn state report further opposes human rights arguments for freedom of "choice" and "action" by comparing the sale of sexual services to slavery, which is totally discredited on clinical grounds. International law was not spared either as the part of the logic used in criminalizing sex work in Nigeria argues or posit that international law failed in identifying sex work (prostitution) as violence against women. In other words, sex work (prostitution) is inherently violent to the physical and the psychological self.

In the current system, there is the need for the social inclusiveness of all thus the universal human rights declarations of 1948 which in turn gave impetus and energy to opinion and political leaders in the Africa continent to frame the African charter on human rights. In Nigeria, there is a deliberate policy to deny the sex worker (prostitute) any inclusiveness. Reason(s) for this stance by the Nigerian state had been identified in the foregoing but the crux of the matter is that the logic and arguments used in criminalizing and prohibition of sex work is rather churlish. Part of the logic posits that nature has places the woman beneath the man but Lynda Birke (1956) was provoked by this assertion or claim hence her declaration and further questioning as to what is meant by nature, nature or naturalness.

She noted inter alia:

But what is meant by the concept of naturalness... natural and nature can have a variety of meanings, so which meaning is intended by such a statement. In the first place, assertion of the

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naturalness of gender differences are usually intended to mean the tract is biologically preordained by nature. The idea that women naturally want first and foremost to be mothers is for example part of the order notice that there resides in every woman the maternal instinct...

While Lynda Birke (1986) was speaking generally on issues of biology and feminism, the paper deemed it fit to use her answers to reply the pro-abolition school of thought in Nigeria and Africa at large. Lynda Birke (1986) came to the conclusion that the foundation of this school of thought is reductionist, which had resulted in the over valuing of males. Laws used in the governance of women and women in sex work in Nigeria are fashioned and explain along the lines of "laws of property". Women are forbidden to sell" themselves, their bodies that rightly belong to men. More often than not, laws generally used in the governance of women in sex work (prostitution) are premised on the abolition and prohibitionist approach. Abolition criminalizes everything associated with sex work (prostitution) except for the act of purchasing and selling sexual services in private. Abolitionism is based upon the belief that women do not go into sex work (prostitution) voluntarily; therefore the arrest of everybody except the "trick" (man). Abolitionist laws theoretically results in sex workers (prostitutes) spending little time in prison as they can be arrested for soliciting or loitering. Abolitionist laws leave the sex workers (prostitutes) free to work without fear of police harassment as long as they are not on the streets.

"Prohibitionism" criminalized the sale and purchase of sexual services and al related activities. Supporters of this model cite the need to remove immoral activities from their communities and reform the "woman" (seldom the man) that engages in such behaviour(s). They are unwilling to tolerate the existence of the sex workers (prostitutes) even those working voluntarily as they prefer harsh sanctions in their belief, that treat of prison will deter the woman from becoming sex worker(s) (prostitutes) and persons from supporting or facilitating sex work (prostitution). Prohibition gives the state the greatest power to deny and abuse the rights of sex workers (prostitutes). Thousands of women are imprisoned or in detention because "society" considers selling of sex to be an immoral occupation. Prohibition punishes women for engage in voluntary private act that is done every day and by others, the only difference is that others do it for love, lust, procreation and non monetary rewards. Law enforcement simply becomes a revolving door through which thousands of women are thrown into detention and prison only to re enter into sex work (prostitution) upon release.

The issues and logic bordering on dignity, abuse to emotional and psychological self laziness and violence did inadvertently raised the issue of marriage(s) and sex not being sold in a market style like fashion thus necessitating whether there is any sphere(s) of endeavour that the loom an work is truly appreciated or considered on equas the question. The crux of the matter is that in a consumerist world like the current international system where everything is sold including love, can the Nigerian state be insulated from the general happenings and trends in the global system? The combination of economic, social, and political realities and continually force the Nigerian "women" into sexualized role and servicing (domestic/sexual) of men in order to sustain herself thus Emma Goldman (1980) declarations who noted inter alia;

> Where is a woman treated according to merit of her work, but rather is sex object, it is merely a question of degree whether she sells herself to one man or out of marriage or to many.

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The analogies of both Goldman and Davis do capture effectively the plight of women in Nigeria. In Nigeria, the place of the woman is in the kitchen" thus ruling out the question or issue of equality in any relationship between the "Man" and "Woman". In any unequal relationship, one party tends to be treated unfairly and in the above scenario, it is the woman that is treated unfairly in Nigeria. In Nigeria, the power ratio between the "man" the "woman" favours the man. Consequently in marriages, the woman becomes the property of the man. Again, the unfair power ratio between the woman and the man in the Nigerian society is responsible for the high degree of violence against women. This is equally a pointer to the fact violence, abuse to indignity, disease, abuse to emotional and psychological self is not the prerogative of sex work (prostitution).

CONCLUSION

The retrieval attempt of sex work (prostitution) from the Nigerian court in this paper does reconfigured to rethinking (prostitution) sex work, especially in the current world where human rights is a mantra and cornerstone of all well meaning democratic practices. The retrieval attempt would commence from the Nigerian state guaranteeing and protecting human rights of all its citizens including those of the sex workers. Part of the "problematique" is the non respect of the state and its agent of the rights of the sex worker (prostitutes) in Nigeria to choice and the non legitimization of their trade. In joining the debate globally especially as it concerns "choice" Troug (1975) like Sassen- Koob (1984) Morokvasic (1983) Linda Meaker (2002) Joan Philips (2002) all argued that there is no basis for the condemnation sex work (prostitution) they posits that "choice" or "rational choice" is the key to understanding sex work (prostitution) in the current international system. The continued criminalization of sex work by the Nigerian state through the series of legal regimes violates several if not all of the following human rights found in, among others, the women's convention, the ICCPR, the international covenant on economics social and cultural rights (ICESCR) and the convention against other cruel, inhuman or degrading treatments or punishment, the right to equality, the right to liberty and security of persons, the right to equal protecting under the law, the right to freedom of association, the right to free from all forms of discrimination.

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