

**INPUT TO THE REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE
AGAINST WOMEN AND GIRLS TO THE HUMAN RIGHTS COUNCIL ON
PROSTITUTION AND VIOLENCE AGAINST WOMEN AND GIRLS
(NIGERIA AND SENEGAL)**

CONTEXT

In West African countries, while there are laws protecting citizens, especially women and girls from sex trafficking and violence, the laws are implemented in silos with no analysis or consideration of how they interact with other existing laws that violate human rights, reinforcing hidden forms of sex trafficking and SGBV that goes unreported, with no mechanisms for legal recourse for victims and survivors. This report will provide insight into how the Same-Sex Marriage (Prohibition) Act 2013 in Nigeria, commonly known as the anti-LGBT law, reinforces the trafficking and non-consensual adult prostitution of LBQT+ women and persons while analyzing how existing criminalization of prostitution in different contexts in Nigeria and Senegal, reinforce sex trafficking by enabling an environment where incidences go unreported by victims, due to fear of retribution, stigmatization and fear of double victimization.

At CHEVS, an organization working on the rights of sex workers and LGBTIQ+ persons in West Africa, we always maintain that prostitution and violence against women and girls cannot be discussed without contextualizing how the landscape ties into LBTIQ+ and sex workers rights and the nuances existing within this landscape, including the nexus of criminalization and consensual adult sex work. From a human rights angle, we have seen lived experiences evidencing that attitude towards sex work affects regulations and consequently impacts sexual exploitation and trafficking.

NIGERIA

The legal status of sex work in Nigeria is complex and varies across different states. Prostitution itself is not explicitly illegal under federal law, but various activities related to sex work, such as solicitation, brothel-keeping, and living off the earnings of prostitution, are



criminalized. Some states have specific laws prohibiting prostitution, while others do not. The laws relating to sex work vary across the country's different states, as criminal law falls within the jurisdiction of individual states. The Penal Code and Criminal Code, which are applicable in different parts of the country, criminalize activities related to sex work. There are several national mechanisms existing to curb sex trafficking in the country, including the National Action Plan on Human Trafficking in Nigeria (2022-2026), Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPPEA), 2003 (as amended) and a signatory to the 2000 United Nations Convention on Transnational Organised Crime (UNTOC) and its Protocol to Suppress, Prevent and Punish Trafficking in Persons, especially Women and Children, which led to the establishment of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP).

As at 874,000 people were estimated to be sex workers in ten states of the federation. Penalties for engaging in or facilitating prostitution can include fines and imprisonment. Law enforcement agencies sometimes conduct raids on brothels and arrest individuals involved in sex work. Additionally, Mgbako (2016) opined that cultural and religious influences might influence attitudes and enforcement practices. Enforcement of laws related to sex work can be inconsistent, and there have been reports of human rights abuses against sex workers, including police harassment and violence, including further sexual harassment, solicitation, and rape. Efforts to address the issue often involve a mix of legal, social, and health interventions.

The Same Sex Marriage (Prohibition) Act passed into law in 2013, also shapes the lives and experiences of LBQT+ women and persons. For a community experiencing systemic and social violence, there have been many cases of sexual assault, sex trafficking, and involuntary prostitution due to economic disenfranchisement, especially for trans persons. As a result of the anti-LGBT law, there is no record of the hidden ways LBTIQ+ women and gender-nonconforming persons experience sexual violence in relation to prostitution and what these forms of violence look like. As an organization, we have internal incidence response records of queer women who have been raped and trafficked for sex by their families, because of their sexual orientations. Corrective rape is a normalized culture across some communities, especially impacting lesbian women and persons. We also have incidences of sex trafficking of LBQIT+ women, girls, and gender-nonconforming persons



who have been ostracized from their homes and communities, and consequently taken advantage of by sex traffickers. Lived realities like these go unreported with no channels for legal recourse beyond the support from LGBTIQ+ organizations in some cases. Victims are forced to keep experiencing these forms of violence, while those bold enough to seek help avoid any government-related recourse for justice.

Historically, LGBTIQ+ organizations have the most record of working to achieve the decriminalization of sex work in the country and this sets a disconnect between successful advocacy for sex workers rights and advocacy against sex trafficking. There is no record of mainstream effort to distinguish between voluntary and consensual adult sex work and sex trafficking, and this drives the stigma associated with sex work, limiting the process of sex workers' rights and the progress of actions to end sex trafficking.

CASE SCENARIOS

The ECOWAS Court of Justice is the first human rights body to find a violation of the African region's women's rights treaty, the African Women's Protocol. Nearly 15 years after the adoption of this Protocol, the ECOWAS Court determined in *Dorothy Njemanze & 3 Others v Nigeria* that the Nigerian state violated the rights of women because state agents assumed they were sex workers and, therefore, discriminated against them and treated them violently. Significantly, the Court determined that the state violated the women's rights to dignity, as well as their right not to be arbitrarily detained and arrested. However, a feminist analysis of this case reveals that the ECOWAS Court's judgement protected women who are not sex workers at the expense of sex workers' rights. This is where the call to decriminalize consensual adult sex work can make a difference, as sex trafficking will be contextualized from a feminist, human rights framework, enabling the success of mechanisms to put an end to it, without infringing on the human rights of sex workers.



An article by the Centre for Reproductive Rights (2017), critically examines how the ECOWAS Court developed its jurisdiction in this case, with a particular focus on how the Court's strategic avoidance of the topic of sex work resulted in a judgment that is harmful to sex workers. The article reconceptualized the Court's reasoning to provide alternative approaches for interpreting women's rights, especially sex workers' rights. By giving the ECOWAS Court judgement with an alternative approach, which includes a breakdown of the right to work and the right to dignity through the application of the African Women's Protocol and other human rights instruments, the article provided a feminist and inclusive perspective on how women's rights could be approached in future judgments and litigation efforts. This legislation imposed strict penalties for human trafficking offenses (Davis, 2017).

SENEGAL

Senegal has a more tolerant approach to sex work and LGBTIQ+ rights, compared to Nigeria. There are no specific laws criminalizing LGBTIQ+ persons. Prostitution is legal and regulated by a health policy but to solicit clients in public places, female sex workers need to register with a health facility and attend monthly routine health checks aimed at testing and treating sexually transmitted infections and distributing free condoms. However, activities related to prostitution, such as running a brothel, are prohibited under the Penal Code. Senegal has also implemented harm reduction programs that aim to address the health and social issues associated with sex work. These programs focus on providing education, healthcare, and support services to sex workers rather than criminalizing them.

Boubacar Fofana of the charity World Vision noted that the police are stretched too thinly to tackle crime effectively and, with prostitution legal, it was hard to identify trafficking victims



as opposed to women willingly choosing to sell sex (Ngwena, 2018). This spoke more to the capacity of the police but also gave insight into the recognition of a distinction between consensual adult sex work and sex trafficking. This sentiment is echoed across several other research on sex work and sex trafficking in Senegal.

However, it is important to note that despite the legalization of commercial sex and no criminalization of LGBTIQ+ rights, sex work is still morally condemned by society, proving the impact of socialization and culture on social acceptance, despite legal support.

While the LGBTIQ+ community is not so vocal and visible in Senegal, the legal climate has set the tone for LGBTIQ+ victims of sex trafficking and sexual and gender-based violence to have more confidence in reporting and seeking justice, with no fear of legal victimization due to their sexual orientation, gender identity, gender expression or sex characteristics. The legalization of sex work also provides a safer environment for female sex workers to report sexual and gender-based violence experienced in the course of their work, including extortion, rape, and sex trafficking, without fear of legal backlash due to their choice of work. This ultimately aids efforts to curb non consensual prostitution and violence.

CONCLUSION

Critically examining the context in both countries proves that decriminalizing sex work and LGBTIQ+ existence in Nigeria will provide more avenues for the identification of the hidden forms of sex trafficking and violence against women, girls, and gender-nonconforming persons who are sex workers. Legal protection of their rights to work and their human rights



to exist as queer women and gender-nonconforming persons will remove the barrier of fear and shame, ensuring that trafficking, sexual exploitation, and other forms of related violence will be reported and consequently curbed. Legalizing adult consensual sex work will also regulate it as a form of business, providing systems for safety, fair wage and protection against violence and exploitation in the course of work. As an organization working for and with LGBTIQ+ persons and sex workers, our impact and influence in providing safe houses, justice linkages and first response services for LBQT+ victims of sex trafficking and non-consensual prostitution is limited, due to this existing legal and social context in both countries. This is why a lot of our work focuses on advocacy for policy reforms to bring about systemic change.

ABOUT CHEVS

CHEVS is a hub for queer youth activism in West Africa. We mobilise, support, and amplify the voices and agency of young LGBTIQ+ persons, sex workers and organisations in the region, working collaboratively and intersectionally to build solidarity across the movement, closing the gap in youth leadership towards the realization of the rights and liberation of the communities in West Africa.

References/Additional Resource;

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