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THE NEW REGIME OF HATE SPEECH LAW APPROACH TO THE PROMOTION OF SAME SEX RELATIONSHIP IN THE WEST: ANY DILLEMA FOR THE NIGERIAN STATE?

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SHUAIB ONIYE*

Abstract

In many countries in the West, same Sex relationship is legally allowed and publicly promoted. Contrariwise, the practice is outlawed in the majority of African nations and in Muslim countries. Attempts of the West to decry the criminalization of the practice in those African and Muslim counties as a human rights violation has failed. The concept of marriage has been historically understood and confined as a legal union between a male and a female, becoming husband and wife. Thus, a union of same-sex couples is precluded. Consequently, the West has adopted the Hate Speech legal tool to categorise anti-same sex speeches as Hate Speech such as speech against homosexuality, lesbianism, bisexuality and gay practice. This paper seeks to criticise the western ideology on proclamation of the religions preachers against same sex marriage as hate speech and Nigeria untouchable stand as an independent state against homosexuality, lesbianism, bisexuality and gay practice. In 2014, Nigeria enacted the Same Sex Marriage (Prohibition) Act. By this Act, a marriage between same sex couples and matters connected to it became a crime throughout the federation. The prohibition has received applauses within the country from religious, cultural and moral quarters. However, it has been greeted with condemnation from some international communities as violation of human rights principles subscribed to by Nigeria law. Incidentally, Nigeria has also launched a campaign against Hate Speech. Thus, it remains intriguing whether Nigeria has not found itself in a state of dilemma: outlawing same sex relationship and exploring the theory of Hate Crime/Speech Law to curb the menace of Hate Speech. The paper adopts analytical research method i.e. to analyse the thread of same sex marriage in the western world and Nigeria stand against same. shows that there are serious and continuous spread of homosexuality, lesbianism, bisexuality and gay practice among the west and their condemnation thereon. This paper suggest that the Nigeria security agencies need to be more vigilant even after the enactment of the law against same sex marriage should in case any person involve in any of the practices, impose maximum punishment to serve as deterrent to others and call for continuous and unrelenting efforts among the religions preachers against such practices.

1.0 Introduction

The notion of same-sex marriage in recent times is one of the recurrent controversial issues in the world, more especially with the criminalization of the issue by some countries. The phrase "Same-Sex Marriage" can be defined as a civil union between two same couples

with a view to cohabiting as husband and wife.¹ In Nigeria, the controversy over homosexuality and same-sex marriage has raised an alarm when the Same-Sex Marriage (Prohibition) Bill 2011 was finally passed into law by the Nigerian Authority in January 2014. This has continued to draw the attention of many people within and outside the country as to its legality. Thus, some proponents and activists of same-sex marriage began to condemn the act of the Nigerian Authority. Hence according to them, the passage of the Act has infringed over the rights of so-called minority (Lesbians, Gays, Bisexuals and Transgender LGBT) in the country, and for that reason, the Act is in violation of the International Human Rights law ratified and domesticated in the country's constitution. The activists maintained that the purported act of the Nigerian Government tantamount to deprivation of so many rights; ranging from right to freedom of thought and conscience,² freedom from discrimination,³ right to freedom of private and family life, as well as freedom of association and peaceful assembly as enshrined in the Nigerian constitution 1999 as amended. In the Western World, same Sex relationship is legally allowed and promoted. Contrariwise, the practice is outlawed in the majority of African nations and Muslim countries. Attempts of the West to decry the criminalization of the practice in those African and Muslim counties as a human rights violation has failed. Hence, the West now seeks to eradicate moves against the practice through a new theory Hate speech. Hate speech, by its proposition, should easily sell itself to the world. Thus, is Nigeria not in a state of dilemma if it must outlaw same sex relationship and at the same time abide by the theory of Hate Crime/Speech Law? This presentation provides an answer.

2.0 The Theory of Hate Speech

In the Nigerian Matrimonial Causes Act, the term "marriage" has not been defined based on the moral and religious ground.⁴ However, it has been understood from its context to mean a legal union between male and female with a view among other things to giving birth to children. Pursuant to this provision, section 21 Criminal Code Act⁵ provides for offences against morality. While in its section 217 provides as follows: any male person who, whether in public or private, commits any act of gross indecency with another male

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¹ See section 2 (Interpretation section) of the Bill for an Act to make provisions for the prohibition of sexual relationship between persons of the same-sex, celebration of marriage by them and for other matters connected therewith

² Section 38 of the Constitution of the Federal Republic of Nigeria (1999) as amended, the section provides: "Every person is entitled to freedom of thought conscience and religion..."

³ Section 42 of the Constitution of the Federal Republic of Nigeria (1999) as amended, the section provides: "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion, shall not, by reason only that he is such a person: (a) be subjected either expressly by, or in the practical application of, any law enforce in Nigeria or any executive or administrative action of the government, to disabilities or restriction to which citizen of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions are not made subject."

⁴ Matrimonial Causes Act, CAP M7 Laws of Federation of Nigeria 2004

⁵ Criminal Code Act, CAP M38 Laws of Federation of Nigeria 2004

person or procures another male person to commit any act of gross indecency with him, or attempt to procure the commission of any such act by any male person with himself or with another male person whether in public or private is guilty of a felony and is liable to imprisonment for three years. Though the section silent on the practice between female and another one, but it clearly spent out the punishment for indecent morality.

Contrary to this provision is the view of western ideology Theory on hate speech when it was propounds that any form of discrimination against an individual or group of individuals on the ground of his skin, his race, faith, religion or his sexual orientation is an act of inhuman attack and a show of hatred against such person and therefore punishable as a crime. In this way, hate crimes differ from hate speech and discrimination where proving bias is central to determining whether or not an incident comprises a criminal offence. The second element of hate crimes is that some form of specific bias was involved in the selection of the victim. Hate speech can involve mixed motives, including criminal incentives, such as robbery, but incorporate a range of crimes where the victim's actual or perceived identity such as race, nationality or sexual orientation was a factor. The state of Canada has also enacted a Hate Crime/speech Law which inter alia provides that: "Everyone who by communicating statement other than in private conversation, wilfully, promotes hatred against any identifiable group, is guilty of an indictable offence and he is liable to imprisonment for a term not exceeding two years".

Similarly, hate speech has been defined by the Organization for Security and Cooperation in Europe (OSCE) as a criminal act committed with a bias motive.⁶ A hate speech is thus an act which constitutes a criminal offence that is motivated in part or whole by bias or hate. Also, Hate speech is any malicious and violent act of attack on any person because of the colour of his skin, his race, faith, religion or his sexual orientation. Art 20(b) of the ICCPR⁷ requires states parties to prohibit hate speech in the following terms: Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Article 4(a) of CERD⁸, goes further, requiring states parties to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof. The CERD Committee⁹ explained that art 4(a) requires the prohibition of four primary acts: (i) dissemination of

⁶ Organization for Security and Cooperation in Europe, *Hate Crime Laws: A Practical Guide*, Warsaw: Organization for Security and Cooperation in Europe, 2009, P. 16.

⁷ International Covenant on Civil and Political Rights adopted 16 December 1966, entered into force 23 March 1976), 999 UNTS 171.

⁸ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 7 March 1966, entered into force 4 January 1969), 660 UNTS 195

⁹ Committee on the Elimination of Racial Discrimination, General Recommendation XV, Report of the Committee on the Elimination of Racial Discrimination, 2, UN Doc A/48/18 (Mar. 17, 1993)

ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin and (iv) incitement to such acts.

In the same vein, the International Association of Chiefs of Police acknowledges the need for common language when they exhort us to ... develop shared definitions of hate incidents and hate speech. Prejudicial behaviour exists along a continuum including negative speech, discriminatory practices, property damage, physical assault, and murder. Legally, a hate crime is any crime enumerated in a hate crime statute in which a perpetrator is subject to an enhanced penalty if the crime was motivated by bias, as defined by the statute.¹⁰ Hate incidents involve behaviours that, though motivated by bias against a victim's race, religion, ethnic/national origin, gender, age, disability, or sexual orientation, are not criminal acts. Communities and justice agencies should develop a common language for these attitudes and behaviours so that their responses can be consistent, equitable, and effective.¹¹ The practice of same sex relationship attracted condemnation in most African countries and Muslim nations while same is encouraged and promoted in the western world to the extent that there is punishment for whoever preaches against it. It therefore necessary to highlights some cases where preaches against same sex relationship has been punished in the western world.

3.0 Instances of Hate Speech Approach in the West

Freedom of speech and freedom of religion are closely related. At times, however, conflicts often arise between religion and speech. Such conflicts take two primary forms. On the one hand, religiously motivated speech sometimes offends or causes harm to others. For instance, religious motivated speakers may speak out in condemnation of homosexuals, lesbian, gay or abortion. On the other hand, speakers may also offend or cause harm to religions believers and thereby perhaps to a religion itself. For example, some speakers ridicule all religions belief, while others target particular religions through blasphemous or otherwise offensive speech.

For instance, Pastor Green case in Sweden¹², Ake Green, a protestant Pastor, gave a sermon on 20th day of July, 2003 in Borgholm, Sweden, that quoted some verses of biblical passages that appear to condemn homosexuality. While calling on people to show love for homosexuals, the sermon included the following statements: "legalizing partnership between two men or women will clearly create unparalleled catastrophes, the Bible

¹⁰ A Publication of the International Gays and Lesbians Human Right Commission (IGHLRC). (2006, November). *Voices from Nigeria: Gays, Lesbians, Bisexuals and Transgenders Speaks out*.

¹¹ Onuche, J. Same Sex Marriage in Nigeria: A Philosophical Analysis. *International Journal of Humanities and Social Science*, (2013,).

¹² Pastor Green case in Sweden, in *Hand Book on Law, Religion and Development in Africa: a three day conference and training for lecturers and students on law and religion studies*, University of Ilorin, Ilorin Nigeria. P. 68

discusses and teaches us about these abnormalities, and sexual abnormalities are a serious cancerous growth on the body of a society. The lord knows that sexual perverse people will even force themselves upon animals. Homosexuality is a sickness, i.e., a wholesome and pure thought being replaced by a tainted thought, a wholesome heart being replaced by a sick heart." Pastor Green was later charged for hate speech, the prosecutor argued among other that the statement of pastor is hate speech and that same amount to gross violation of the rights of the affected group. He was convicted by the court on ground of agitation against a national or ethnical group, and his conviction was affirmed by an intermediate court. The Supreme Court however observed that through the section of the sermon as stated above, Ake Green has disseminated statements showing contempt for homosexuals with reference to their homosexual orientation. The intention of the Pastor Ake Green was to spread his belief in a manner that would attract significant attention.¹³ Also the USA Trent: In February, 2013, President Obama called for the amendment of the 1996 Marriage Act that hitherto defined marriage simply as a union between Male and Female to include practices of homosexuality and lesbianism.

The Canada Scenario: A Christian printer who refused to bring business cards and other materials for Canadian Lesbians and Gays contending that he would be aiding and abating sins if he did so was fined and ordered to pay damages to the victims. Similarly, a professor in British Colombia College (also in Canada) was suspended for writing an Article in Newspaper against promotion of homosexuality in public school. Also, Willaims Wallcott, a Medical Doctor, was charged to court under hate speech Law for distributing fliers that listed medical dangers of homosexuality. These clearly shows that the practice of same sex relationship is allow, encouraged and promoted in the west and failure to recognise and respect same attract punishment. Another Experience from Sweden also buttresses that fact that Bible was considered as Hate Speech. Thus, a Pastor was arrested and sentenced to one month imprisonment for preaching against homosexuality. Though the sentence was later set aside on appeal.

It is pertinent at this point to highlight some suspected cases of gay and lesbianism in Nigeria. For instance, in Geshiri town near Abuja, a mob of about 30 men reportedly dragged a number of suspected gay men from their beds in the middle of the night, after smashing down doors to their homes in house-to-house raids. The victims were taken onto the streets and beaten with sticks spiked with nails, wires, whips and broken furniture. Members of the mob were shouting that they were cleansing the community of gays and lesbianism. Some were taken to the police station where officers looked on and insulted them while others joined in slapping and beating them. The mobs also attempted to burn down the houses of the suspected gay men. After the attack the mob wrote homosexuals, pack and leave on the homes of the men they assaulted and warned them 'if you come back, we will kill you'. A senior police officer in the region gave the victims of the mob

¹³ Ibid

attack 48 hours to leave.¹⁴ Again, a lesbian woman reportedly fled Nigeria despite having children because her family and friends criticised and alienated her for her sexual orientation.¹⁵ In Ota, Ogun State of western Nigeria, a young man was beaten by a mob of villagers for allegedly being gay.¹⁶

40 Is Hate Speech a Challenge to the Criminalization of Same Sex Marriage in Nigeria

It is now common knowledge that Same Sex Marriage has become a crime in Nigeria: On 7th January, 2014, the President signed the same sex marriage (prohibition) Bill into Law. In addition to this 12 northern states¹⁷ in Nigeria have adopted shariah law and make it as an offence same sex relationship.¹⁸ Christian and Muslim spokespersons praised the government for defending the country's traditional moral value. Also, a survey conducted earlier by NOI Polls in June 2013, showed that 92% of Nigerians supported the legislation.¹⁹

More so, an overwhelming number of people at the public hearing, especially religious bodies, supported the enactment of the bill.²⁰ for instance, Pastor Ayo Oritsejafor, President of the Christian Association of Nigeria while addressing the press stated that we have call on all those talking about human rights and international conventions to remember that there is always a limit to certain rights and that those who go out of their ways to overstep the limits now know the consequences of their actions. ... Human rights without limit are recipes for the destruction of any society. The culture and morality of a people must be taken into cognizance because it is important to remember that culture and morality are intricately linked with each other. By the beliefs of most Nigerians, same sex

¹⁴ 'Mob attacks suspected gays in Abuja', PM News Nigeria, 16 February 2014, <<http://www.pmnewsnigeria.com/2014/02/16/reports-mob-attacks-suspected-gays-in-abuja/>> accessed on 21 July 2020

¹⁵ Soyingbe, A., 'Lesbian Mother Flees Nigeria Over Anti-gay Law', Daily Independent, 1 June 2019) <<http://dailyindependentnig.com/2015/06/285543/>

¹⁶ 'Nigerian Gay Arrested In Ogun Community', PM News Nigeria, 22 August 2013, <<http://www.pmnewsnigeria.com/2013/08/22/nigerian-gay-arrested-in-ogun-community/>> accessed on 21 July 2020

¹⁷ 12 Northern Nigerian states (Zamfara, Bauchi, Kebbi, Jigawa, Sokoto, Kaduna, Kano, Niger, Borno, Gombe, Katsina, and Yobe) have adopted Islamic Sharia laws criminalising sexual activities between persons of the same sex. These Sharia laws run concurrently to secular state and federal laws.

¹⁸ Sampson, I.T., 'Religion and the Nigerian State: Situating the de facto and de jure Frontiers of State—Religion Relations and its Implications for National Security', Oxford Journal of Law and Religion, 3, 2, 2014, pp. 311-339

¹⁹ <http://www.amnesty.org/en/library/asset/AFR44/007/2009/en/1c317e71-56e6-4399-99360f668fa73057/afr440072009en.pdf> – Accessed 3 June 2020 – Attachment 1)

²⁰ Esebonu, Christiana 'Nigeria: Huriwa Advocates Speedy Passage of Same-Sex Bill', Leadership, 18 March, allAfrica.com website <http://allafrica.com/> 2009

marriage is offensive to us as a people.²¹ The Christian Association of Nigeria (CAN) in its presentation said it strongly supports this bill and wants the members of the National Assembly to ensure that it is passed. Every country has its laws; there is nothing like a universal law and you see weird ways of life affecting our people negatively. Christians and Muslims are strongly against homosexuality.²²

On its part, the Church of Nigeria (Anglican Communion) said same sex marriage is out to foist on the world a false sense of the family which will bring disastrous consequences to mankind.²³ It added that same sex marriage apart from being ungodly, it is unscriptural, unnatural, unprofitable, unhealthy, un-cultural, un-African and un-Nigerian. It is a perversion, a deviation and an aberration that is capable of engendering moral and social holocaust in this country. Outlawing it is to ensure the continued existence of this nation.²⁴ Fellowship of Christian Patriots (FCP) for its part said God in his infinite wisdom, made sex enjoyable in order to encourage indulgence in it, for the purpose of procreation and not merely for hedonistic pleasure.²⁵

Ustaz Abdulkadir Apaokagi,²⁶ he opined that whoever involved himself in the act of homosexuality is like one who commit murder. Thus, he said, gays and lesbians deserve a grievous capital punishment such as death penalty.²⁷ The Islamic scholar further affirms that gay people were mentally unstable and could bring severe instability to the society in which they lived. Citing the provision of the Noble Quran, the scholar hailed the Senate for passing the law, saying that Allah decreed marriages only between members of the opposite sex. He further affirmed that: "Any society that tolerates gay marriage would come to destruction the way God destroyed Sodom and Gomorrah for sodomy.

According to Ustaz Hudu Muhammad on the other hand has chided members of the House of Representatives Joint Committee on Human Rights, Women Affairs and Justice for giving an opportunity to the openly gay people to justify their gory act of seeking for a law

²¹ Stewart, C., 'Outside protests flop; Nigerians embrace anti-gay law', Erasing 76 Crimes, 16 January 2014, <<http://76crimes.com/2014/01/16/outside-protests-flop-nigerians-embrace-anti-gay-law/>> accessed on 19 July 2019

²² Idris, Hamza 'Cleric Chides House Committee for Listening to Homosexuals', Daily Trust, 15 March, allAfrica.com website <http://allafrica.com/> – Accessed 2 June 2009.

²³ <http://houseofrainbowmcc.blogspot.com/2009/03/house-of-rainbowmetropolitan-community.html> – Accessed 9 June 2016

²⁴ Coward, Colin, 'Group leaders from Changing Attitude Nigeria present statement on Same Gender Marriage (Prohibition) Bill 2008 at public hearing in Abuja', Changing Attitude website, 11 March <http://www.changingattitude.org.uk/news/newsitem.asp?id=412> – Accessed 3 June 2009.

²⁵ *ibid*

²⁶ The Deputy Chief Imam at the Abuja branch of Nasrul-lahi-L-Fatih Society of Nigeria (NASFAT),

²⁷ Clerics Advocates Death Penalty for same-sex Marriage, available at <http://www.vanguardngr.com/2011/12/cleric-advocates-death-penalty-for-same-sex-marriage/#sthash.aDNIVg6W.dpuf>, viewed on 17/06/2014

that would allow same-sex marriage.²⁸ Imam Muhammad, who was visibly angry while delivering his Friday sermon, said rather than giving room to the gay group to play with the sensibilities of Nigerians through a voice at the National Assembly, the legislators should have discussed issues that would bring about peace and economic development.²⁹ He said further that, It is a shame on the members of the committee and the House in general to give room to such nonsense because no religion or culture in Nigeria permits same-sex marriage... It is crime against humanity and God. There is no basis for any debate on the desirability or otherwise of the bill because same-sex marriage is wrong.³⁰ Imam Hudu said if members of the House of Representative had nothing to discuss, "they should go back to their home-towns and the give opportunity to serious-minded people to go to Abuja," stressing that "freedom of speech does not mean immorality"³¹

5.0 The Challenges to Nigeria

Clergy men have freely and dutifully continued to preach against the practice. Thus, are Nigeria and those men of God not committing the Hate Crime/speech? The answer seems to be "No" for the following reasons. Sovereignty of the Nigeria State: Nigeria as a country is free to proscribe any act as an offence. Right to freedom of Religion of Clergy Men and the Anti-Same Sex Persons to propagate the teachings of their religions against same sex relationship is guaranteed under the Nigeria 1999 constitution as amended. African Cultural Value & African Sexual Orientation goes against the practice. The right to freedom of religion as one of the fundamental rights in the Constitution is provided for in section 38 of the 1999 Constitution (as amended) provides:

Every person shall be entitled to freedom of thought, conscience, and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

It is not only the Nigerian Constitution that understands religion as an inherent attribute of the human person. Many international legal instruments do. They include the Universal

²⁸ Amnesty International Nigeria: 'Same Gender Marriage (Prohibition) Bill 2008' violates Constitution – A memorandum to be included in the House of Representatives public hearing on 11 March 2009', 6 March, AFR 44/007/2009 <http://www.amnesty.org/en/library/asset/AFR44/007/2009/en/1c317e71-56e6-4399-99360f668fa73057/af440072009en.pdf>

²⁹ <http://www.hrw.org/en/news/2009/03/11/human-rights-organizations-respond-nigeria-samegender-bill-national-assembly-hearin> – Accessed 3 June 2009

³⁰ 'Human Rights Organizations Response to Nigeria 'Same Gender' Bill at National Assembly Hearing' 2009, Human Rights Watch website, 11 March <http://www.hrw.org/en/news/2009/03/11/human-rights-organizations-respond-nigeriasame-gender-bill-national-assembly-hearin>

³¹ Idris, Hamza, 'Cleric Chides House Committee for Listening to Homosexuals', Daily Trust, 15 March, allAfrica.com website <http://allafrica.com/> – Accessed 2 June 2016

Declaration of Human Rights (UDHR),³² the International Covenant on Civil and Political Rights (ICCPR), the African (Banjul) Charter on Human and Peoples' Rights,³³ among others also guarantees freedom of religion and its preaches. In *Medical and Dental Practitioners Disciplinary tribunal v. Okonkwo*,³⁴ Ayoola JSC stated: The right to freedom of thought, conscience and religion implies a right not to be prevented, without lawful justification, from choosing the course of one's life, fashioned on what one believes in, and a right not be coerced into acting contrary to one's religious belief. The limits of these freedoms, as in all cases, are when they impinge on the rights of others or where they put the welfare of society or public health in jeopardy. Also in *Registered Trustees of the Rosicrucian Order, AMORC (Nigeria) v Awoniyi*,³⁵ where Iguh JSC declared as follows: It cannot be seriously suggested that there was anything secret in the teachings of Jesus Christ which in my view is entirely public and properly documented in the scriptures. Clearly to assert, as the plaintiff unequivocally did, that Jesus Christ was a member of secret societies and that he was an advocate of occult teaching is speaking for myself satanic, blasphemous and entirely unacceptable.

The right to freedom of religion is granted to every person in Nigeria means that it is not only for Nigerian citizens but all human beings in the country including non-citizens.³⁶ The only justification for this is that religion is an attribute of a human person in his nature as such. It is not created by the state, so religion preachers are free to disseminate the messages as prescribed by the divine books without being charge for hate speech in Nigeria.

6.0 Conclusion

This paper took off from the background of same-sex marriage and its growing trend in the west which apart from its legal implication also has alarming impact on the Nigerians culture, religions and norms native & and custom. The practice was archaic and barbaric to Nigerian people, African custom and Muslim world until recent time when it becomes a recurrent issue. Administrative bodies, such as the Advisory Council for Religious Affairs, must be effectively engaged to preach against the practice of same sex relationship. The role of the judiciary in the balancing of interests in section 38 cannot be overestimated, criminal code and penal code need to be amended to give adequate provision and penalty thereof for whoever engage himself in the indecent behaviour which our law frowned against it.

³² The Universal Declaration of Human Rights 1948, art. 18.

³³ The African (Banjul) Charter on Human and Peoples' Rights 1981 (Entry into force in 1986), art. 8.

³⁴ (2001) 10 WRN 1 SC at 41.

³⁵ (1994) 7 NWLR (Pt 353) 154.

³⁶ Abikan, A. I. (2002, June). The application of Islamic Law in Civil Causes in Nigerian Courts. *Journal of International and Comparative Law*

Nigeria has every legal and moral justification to maintain its firm position against Same Sex Relationship. The hate speech theory is not founded on sound legal reasoning in that its specific emphasis on the homosexuals and lesbians itself a Hate Crime provocation against the persons who are anti-same sex relationship. Hate speech is a Western ideology that is too weak to put Nigeria in a state of dilemma on its campaign against same sex marriage. The country and African continent should therefore not be discouraged.