

SAMOA AGREEMENT: ANALYSING THE FEARS AND FALLACIES SURROUNDING HUMAN RIGHTS CLAUSES

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Abstract

Recently, there had been public concerns over the Samoa agreement raised by Nigerians. The most common concern and perhaps misconception about the treaty, is that it automatically includes the rights of LGTBQ to be protected under Nigeria Law. Thus, Nigerian government started taking the backlash to the effect that it is endorsing LGTBQ. These perceptions gave birth to certain fears and fallacies surrounding the signing of the Samoa Agreement. These perceptions have been found by this study to incorrect in law and fact. Using a doctrinal approach, the paper established that the signing of Samoa Agreement is not an invasion of Nigeria's cultural heritage. It was also the finding of this paper that enforcing the terms of Samoa Agreement with respect to the LGTBQ will lead to intra/inter statutory conflicts with other domestic laws and regional obligations imposed by treaties to which Nigeria is a party. This paper however further found that Samoa Agreement is a good legislation that is necessary to address the current social, political and economic realities in Nigeria. Nigeria can enter reservations to the aspects of the treaty that conflicts with her interest and value.

Key words: Samoa Agreement, analysing, fears, fallacies, human rights

1. Introduction

The public perception about Samoa Agreement has brought about a lot of protests and public uproar in Nigeria. It has attracted a lot of negative reactions to the effect that Nigeria is about to introduce LGBTQ using economic diplomacy as a subterfuge. Thus, the treaty was viewed as a *Trojan Horse* that is capable of affecting the cultural rights of Nigerians. But is there any justification for such fears? It is in responses to this posers, this paper seeks to explore the fears and fallacies surrounding the Samoa Agreement. Therefore, this paper is structured into four parts. The first part seeks to explore the origin and evolution of the Samoa Agreement, the status of Samoa Agreement under international law, and the relevance of Samoa Agreement to Nigerians. In the second part, the paper examined the human rights clauses within the Samoa Agreement that are deemed controversial. Equally, the paper examined the response of other jurisdictions with respect to those provisions. In the third part, the paper, discusses the rendition of human rights in other jurisdictions with respect to the phraseology of certain terms relating to the Samoa Agreement. How the courts in other jurisdictions interpret certain terms relating to LGTB and whether such phrases are reflected in the Samoa Agreement. The fourth part examined the position of international and municipal laws is, regarding the application of the Samoa Agreement within the context of Nigeria. After that, the paper shall discuss how some of the fears and fallacies entertained by Nigerians from the prism of law. The fifth part contains the findings, recommendations and conclusion.

1.1. Origin and Evolution of the Samoa Agreement

What came to be known today as Samoa Agreement traces its roots to the Lome Treaty of 1975. The treaty was signed on February 28, 1975, in Lome, Togo¹. The signatories by then were the

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European Community (EC), which was the precursor of modern, European Union and 45 countries from Africa, Caribbean and the Pacific (ACP).² Appreciating the partnership established via the Lome Treaty, the then Chairman of African Caribbean and Pacific, Babacar Ba, said:

[W]e have just set up a new type of relationship between underdeveloped and developed countries. I regard this as very important. In my view, the co-operation we are about to establish with Europe has certain revolutionary character, in the sense that between ourselves and the continent of the Europe, all our relationships will be falling into a new pattern.³

From the above statement, the Chairman of ACP was optimistic that the Lome Treaty would lead Africa to a revolutionary pattern of development. However, as events unfolded, it was evident that the Lome Treaty did not meet the intentions of the African, Caribbean and Pacific (ACP) nations.⁴ The ACP, and European Union, then entered into the Cotonou Agreement of 2000.⁵ The Cotonou Agreement was signed as Partnership document between the European Union and 79 countries from ACP, including Nigeria.⁶ The treaty was signed on June 23, 2000. It became operational on April 1, 2003. Initially, the Cotonou Agreement was meant to end by February 29, 2020, but its expiry date was later extended to June 30, 2023.⁷ It is important to note that, while human right was included in the terms of the Cotonou Agreement, the Cotonou Agreement did not prioritize it.⁸ The main priorities of the partnership under the Cotonou Agreement, 2000, as spelt out in its Preamble, Articles 1, 2 and 3, include eradication of poverty, commitments towards Millennium Development Goal (MDGs), climate change, regional integration, capacity building among member nations, equality of partners, freedom of members to determine, cooperation among state and civil societies, and variation of priorities according to countries' level of development.⁹

The Cotonou Agreement was initially meant to expire by February, 2018 but it was later extended to 2020. Thus, after its expiration in 2020, the Organization of ACP nations entered into the Samoa Agreement on July 20, 2023.¹⁰ There are 48 African countries, 16 Caribbean countries, 15 Pacific States, and the European Union that became signatories to the Cotonou Agreement. The Samoa Agreement is predicated on six (6) common principles viz: democracy and human rights,

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1 Limar Rafael Sakr, "Regionalism as Development:: The Lome Conventions I and II (1975-1985), *Leiden Journal of International Law* (2023), 36,33-39 doi:<https://doi.org/10.1017/s092215652200067x><accessed on July 7, 2024> It is important to note that there are opinion that the Samoa Protocol even predated the existence of Nigeria as nation. This was because the Samoa Agreement first set to have its root as Yaounde Agreement in 1959, one year before Nigeria independence. However, Yaounde Agreement cannot be attributed in the discourse of origin of Samoa Agreement in relations to Nigeria because at the time of the Yaounde Agreement in 1959, Nigeria was not an independent nation capable of entering into international relations.

2 Ibid

3 Ibid

4. A. Alao Abiodun, "What you need to know About Nigeria's \$150 billion Samoa Agreement", *The Nation*, July 5, 2024@thenationonline.net/full-details-what-you-need-to-know-about-nigerias-150-<accessed on July 7, 2024> Abiodun A,

5.EUR-LEX," Cotonou Agreement EUR-Lex"@<https://eur-lex.europa.eu/...?summary/coutonou-agree...><accessed on July 6, 2024>

6.Ibid

7.Ibid

8. S & D., "Good news for multi-lateralism-Au revoir Cotonou Agreement, welcome Samoa Agreement", @www.socialistanddemocrats.eu<accessed on August 5, 2024>

9.EUR-Lex, Loc.Cit.

10.Council of The European Union, "[Samoa Agreement](https://www.consilium.europa.eu)" @www.consilium.europa.eu.accessed on July 7, 2024>

sustainable economic growth and development, climate change, human social development, peace and security, and migration and mobility.¹¹

1.2. Structure of the Samoa Agreement

In order to promote the realisation of its core goals, the Samoa Agreement is structured into six (6) chapters. The first part deals with the general provisions relating to the objectives of the Agreement to include promotion of human rights as well as partnership among members to achieve the aim and objective of the Agreement. Part two deals with strategic priorities to address human rights, democracy and rule of law. It is under this part that gender equality is reflected in Article 10 of the Samoa Agreement.¹² Chapter two deals with strategic priorities relating to human rights, democracy and governance, people-centered and rights-based issues as well as peace and security. This part also provides for human and social development, environmental sustainability, climate change, migration and mobility. Here, demography, youths, gender equality plus women and girls' empowerment are outlined. In this part, the Agreement deals with inclusive, sustainable economic growth and development. Here, investment and job facilitations are given considerations. Industrialization and economic empowerment were highlighted too.¹³ In chapter three, the Samoa Agreement deals with global alliances and international cooperation in promoting developments in sciences and technology. It outlines the imperative of research in science and technology as well as industrialization. It highlighted the obligation of State Parties towards promoting digital economy and ICT. This chapter lays more emphasis on the imperative of actualizing digital economy among member-states.¹⁴ Chapter four states the means of cooperation and implementation of the Agreement among member States. Here, multilateralism is agreed as means of implementing the treaty. Recourse to regional and municipal institutions to implement the provision of this Agreement is outlined as well as debt recovery and sustainability.¹⁵ The penultimate part of the Samoa Agreement is chapter five. It is concerned with the institutional frameworks. Here, the role of Heads of Government as well as other regional bodies in implementing the Agreement is stated. Regional bodies are prescribed with responsibilities in implementing the terms of the treaty. It is a part of the treaty that mandates state parties to be highly instrumental in implementing the terms of the Samoa treaty.¹⁶ Chapter six is the final part of the Samoa Agreement. It deals with final provisions of the treaty. In this chapter, the territorial application of the Agreement includes all States Parties and their domestic countries. It also states to the effect that no convention or any treaty by any member shall impede them from implementing the terms of the Agreement. The termination of the agreement is at the expiration of 20 years, subject to the revision of 5 years as agreed by the relevant authorities.¹⁷ The interpreting body of the Agreement is the joint-body of the EU-OACP States in event of dispute resolution among

11. Ibid

12 UNCTAD Investment Policy Investment Policy Hub, 19 July 2023 @ // investmentpolicyunctad.org [PDF] <accessed on April 21, 2026>

13 See OACP, "Samoa Agreement: The EU's New Partnership with the Countries of Organisation of African Caribbean and Pacific States (OACPS)", @www.oacps.org[PDF]<accessed on April 21, 2026>

14 Ibid

15 European Parliament Briefing, "The Samoa Agreement with African Caribbean and Pacific States", December 2023 @ www.europa.eu[PDF]<accessed on April 21, 2026>

16 Center for Journalism Innovation and Development, "Considerations for Nigeria's Participation in the Samoa", Policy Brief, April, 2024, P.13 @//thecijd.org[PDF]<accessed on April 21, 2026>

17 Ibid.

member States.¹⁸ From the above analysis, it is clear that the Samoa Agreement has been a legal instrument that was consistently ratified by the Nigerian government since 1963, when Nigeria became a Republic. Thus, the fallacy and the fear that the Samoa Agreement was introduced by President Bola Tinubu are not correct. Samoa Agreement has predated his tenure. The Samoa Agreement is an ancient Chameleon that has assumed another complexion under President Bola Tinubu. Having examined its evolution, the pertinent question to ask is what is the nature of Samoa Agreement? Under what category can one classify the Samoa Agreement in international law? These questions will be answered in the next section.

1.3. Classification of Samoa Treaty Under International Law

The international law that governs treaty making is the Vienna Convention on Laws of Treaty (VCLT), 1969. Under international law, treaty could be classified into bilateral treaty, multilateral treaty, law-making treaty and treaty contracts,¹⁹ and executive treaties.²⁰ A bilateral treaty is a treaty made by two parties. The parties could either be States or international organizations.²¹ It could also be between transnational organizations. Bilateral Treaty is characterized by absence of reservation clauses,²² and they sometimes assume the nature of Standard Form Contract.²³ A current example of bilateral treaty is the treaty between Nigeria and China entered in 2018, known as the China-EXIM Bank Agreement.²⁴ The agreement borders on a loan obtained by Nigerian government from Chinese Export-Import Bank.²⁵ Again, a treaty is classified as multilateral if it involves more than three or more signatories as parties to it. Here, many parties are signatories. Multilateral treaties could take the form of Agreement between States. It could also take the form of agreements among international organizations and States or vice versa. A common example of multilateral treaty is the Paris Climate Change Agreement.²⁶ A law-making treaty is the type of treaty that creates a new area of international or regional law to be observed by the parties. This treaty obliges the parties to be committed in observing and enforcing the new law established by it. A popular example of such law include the United Nation Convention on the Rights of Refugees, 1951, the Geneva Conventions of 1949, United Nation Charter of 1948, African Charter on People and Human Rights, European Convention on Human Rights, among others. These treaties create certain obligations among the States that are signatories to it. Such obligations are to be observed with utmost good faith.

Treaty-Contract is the type of contract that creates responsibility between parties to ensure that they abide by it. It is usually deployed in matters relating to boundaries, demarcation and terms of surrender and indemnity during armed conflicts as well as peace treaty. Examples of peace treaty include the terms of surrender between Biafra soldiers and Nigeria Army, the Versailles treaty of 1919 between Allied Powers and Germany, ceding Alsace-Lorraine to Germany. Executive Treaty

18. Article 101 of the Samoa Agreement enjoins State parties to collectively determine the manner of the interpretation of the treaty.

19. Myers Louis, "Researching Treaties and International Agreements", Library of Congress, February 24, 2022 @guides.loc.gov<accessed on August 2, 2024>

20. Kapoor S.D., "International Law & Human Right", (Central Law Agency, 2017) P.471

21. Ibid

22. Malcolm Shaw N., "International Law", 5th Edn. (2008), P.810.

23. Godfree M., "Legal Requirements For Granting and Acquiring Foreign Loan in Nigeria: Where Nigeria Missed Before Signing The Loan Agreement With Chinese EXIM Bank", [TheNigerianLawyers@://www.thenigerianlawyer.com](http://www.thenigerianlawyer.com)<accessed on August 2, 2024>

24. Ibid

25. Ibid

26. UNCC, "[The Paris Agreement](https://unfccc.int)"@unfccc.int<accessed on August, 2024>

is a treaty signed by the chief executives of the State parties expressing their commitment to be bound by it.²⁷ One peculiar feature of executive treaty is that it does not need the ratification of the domestic legislators, even if the state involved adopts the dualist jurisprudence.²⁸ This type of treaty is usually characterized by the signing of the military pact between leaders of the respective States. An example of executive treaty is the recent security agreement entered between Chancellor of Germany, Olaf Scholz and Ukraine's President Volodymyr Zelensky.²⁹ Under this treaty, the parties will support each other for 10 years.³⁰ Furthermore, whatever type or form a treaty takes, the most pertinent thing is that it is made by parties in form of agreement and it is binding on them based on article 2 of the Vienna Convention. Thus, whatever appellation or nomenclature given to an international agreement, once it involves two States or two or more states and international institutions; it amounts to treaty under international law.³¹ From the above classifications of treaty, it is the position of this writer that the Samoa Agreement could be classified as multilateral treaty because of the number of the countries that are signatories to it. There are over 140 countries who are signatories to the treaty.³² The Samoa Agreement could also be classified as law-making treaty because it is concerned with promotion and protection of certain areas of interest such as human rights, democracy, demography and development in international law.

Apart from analysis of the conceptual clarification of Samoa Agreement one will be keen to know of what contemporary relevance is the treaty to Nigeria as a nation? What are the foreign policy objectives as well as the diplomatic relevance of Samoa Agreement to Nigeria as a country? Efforts at responding to these questions are addressed at the next part of this paper.

1.4. Relevance of Samoa Agreement

The Samoa Agreement will be of immense benefits to Nigeria in many ways. Some of these benefits include economic empowerment, transparent and accountable democratic practices, foreign relations, infrastructural development and combating security challenges. Economic empowerment is one of the reasons Nigeria envisaged when it signed the Samoa Agreement. This is seen in the facts that the Agreement has the prospects of attracting investors who will stimulate the ailing economy. It could be seen as an economically induced treaty seeking to bolster Nigeria's economy. This will in turn address job insecurity, unemployment and poverty bedeviling Nigeria. By the capital grants and foreign aid Nigeria will be able to improve its economy via the instrumentality of the Agreement.³³ The economic importance of the Samoa Agreement is reflected in the remarks of Alhaji Atiku Bagudu, the Minister of Budget and Planning that:

Nigeria is partnering with EU and has signed the Agreement aimed at bolstering food security, promoting inclusive economic development, and advancing cultural, educational, water and sanitation, private sector development, and human rights initiatives, among other anticipated benefits.

27.Knoll Alfred P., "International Executive Agreements: their Constitutionality , Scope and Effect", Cape Western Reserve Journal of International Law, (2) (2) 70,P.107@scholarlycommons.law.case.edu[PDF]@scholarlycommons.law.case.edu[PDF]<accessed on August 5, 2024>

28.Reuters, "[Germany-Ukraine security agreement seals support against Russia for ten years](https://www.reuters.com/world/europe/germany-ukraine..)"@<https://www.reuters.com/world/europe/germany-ukraine..><accessed on July 7, 2024>

29.Ibid

30.Ibid

31 European Parliament Briefing

32. Pp.5-14 of the Samoa Agreement.

33.Elijah S, "Samoa Agreement Signed In Interest of Nigeria, Says Federal Gov't", Leadership, July 2024,@leadership.ng<accessed on August 5, 2024>

From the above remark by the Minister, it is evident that the relevance of Samoa Agreement exceeds economic advantage. It includes promotion of food security and hygiene as well as advancement of human rights. From this angle one may pre-empt that the Samoa Agreement has a promising prospects of actualizing some of the socio-economic rights contemplated in Chapter two of the Constitution of the Federal Republic of Nigeria, 1999, (2010 as amended). Also, the Agreement will promote responsible and transparent democracy in Nigeria. Copious provisions of the Agreement prioritized good governance and democracy. It is hope that by the contents of the Agreement members will be checking at each other's' democratic compliance level to see whether or not it is living up to standard.³⁴ This will provide a sort of democratic peer-reviewed appraisal among member states to the Samoa Agreement. The Agreement has the prospects of promoting healthy foreign relations among member States. This will help to promote good migration policies, reduce racists and xenophobic tendencies among member States. In the name of mutual cooperation and understanding, members can prevent trans-border crimes and transnational crimes. Diaspora diplomacy will also be enriched here because citizens of member states living in states of one another will not be insecure- it's an endorsement of global citizenship.³⁵

Parliamentary diplomacy is another positive benefit of the Agreement. The agreement provides for the organ of inter-parliamentary Unions among the member states where each state will send a parliament to represent it in the Inter-Parliamentary organ. These will further help in sharing of diverse views with the aim of promoting the objective of the treaty. By doing so it is further strengthening diplomatic relations through parliamentary intercourse among member states³⁶.

Samoa Agreement can help Nigeria to benefit in the areas of social infrastructure. This will be actualized via the facilitation of infrastructures such as Information Communication Technology (ICT), digital economy, health facilities and advanced technology in manufacturing and military sector. These will help in bolstering the status of social amenities in Nigeria.³⁷ Military benefits are another gain of the Samoa Treaty.³⁸ The military advantage of Samoa Agreement is seen in the fact that it will help in combating insecurity bedevilling Nigeria. This can be achieved through partnership with other Member States to this treaty. Equally, through exchange of military experts and intelligence sharing, Nigeria will benefit in combating internal crises bedevilling it. Through military alliances, nations will be able to join hands with Nigeria either militarily or through aids, to combat terrorism and banditry. Thus, considering the current rate of insecurity in Nigeria,³⁹ embracing Samoa Agreement could be deemed as *Deus ex machina*. Political diplomacy is another advantage that could be ascribed to the Samoa Agreement. It affords the Member States to have an inter-parliamentary union where representatives of member States will be represented. This will

34.Umuteme B., and Samson B., "Economic Benefits of Samoa Agreement huge-Report" Blueprint August 5, 2024@blueprint.ng<accessed on August 5, 2024>

35 Center for Innovation and Journalism Development, Op.Cit.Pp 14-16

36 Mary Bello Kehinde, " Samoa Agreement: The Benefits As Compared to Other Similar Agreements with The Global South", Daily Trust, July 13, 2024.@dailytrust.com<accessed on April 21, 2026>

37 Ibid.

38 Article 17 of the Samoa Agreements provide for conflict prevention and peace building within the territory of member states. Thus, by promoting peace and security among Members State, the Samoa Agreement contemplates exchange of technical experts. This may include exchange of military expertise among Member States . See Cole Praise, " What Samoa Agreements Means and Why Nigeria is Stalling on Signature", Dubawa , June 7, 2024 @//dubawa.org<accessed on April 21, 2026>

39.CJID,'Considerations for Nigeria's Participation in the Samoa Agreement',@thecjid.org[PDF]<accessed on August 5, 2024>

further strengthen inter-parliamentary diplomacy across the continents of the member state which will in turn lead to cross-fertilisation of ideas.

2. Appraisal of the Human Rights Provisions within the ambit of the Samoa Agreement

There are principally four (4) main provisions that deal with human concerns under the Samoa Agreement. These are Articles 8,9,10 and 11. The provisions relating to human rights under these Articles are examined under the subsequent paragraphs. Article 8 principally deals with issues connected with human rights, democracy and governance in people-centered and rights-based. From the above provision, State parties to this Agreement are obliged to promote and protect the rights of the citizens of their respective countries. In doing so, the State Parties to the Agreement are expected to do so in tandem with the tenets of United Nation Charter, the Universal Declaration of Human Rights and other related international instruments. State parties are enjoined to ensure that in the implementation of the rights accrued to citizens under their domestic and other national instruments, they must include people-centred and right-based issues. The above definitions, Article 8 obliged State Parties to deploy adequate measures via transparent democratic practices of rule of law and good governance. Doing so will ensure that human rights focused on people based rights are an integral part of sustainable development. It is for this reason that state parties to the Agreement are mandated to accord priorities to human rights contemplated under Article 8 of the Agreement.

Again, in order to ensure sustainable development via the instrumentality, Article 9 of the Agreement further amplified on the imperative of human rights, democracy and rule of law in promoting people-centred and rights-based issues. For this reason, Article 9 of the Agreement enjoins parties to recognise the universality of human rights, uphold international human rights treaties at their municipal jurisdiction and to strengthen partnerships that will promote the realisation of human rights. Exploring the above provisions of the Agreement is very essential in understanding the purport of Samoa Treaty. In the first place, the above provision has shown that State parties are fully aware of the universal and indivisible nature of human rights and are willing to safeguard and promote it. Thus, all efforts towards promoting all facets of human rights are the primary objectives of the State Parties to the Agreement. For this reason, anti-human policies like discrimination, racism, xenophobia, intolerance and hate advocacy are to be discouraged by State Parties to the Agreement. Rather, measures that seek to integrate collective human rights are encouraged by State Parties. A peculiar feature associated with above provision⁴⁰, is the commitment of the State parties to recognise the indigenous rights of global citizens. By doing so the Agreement is recognizing the rights of State parties to pursue their rights to cultural heritage devoid of any interference. It is also the dictates of this provisions that State parties are to help each other in mutual advancement of their cultural heritage. Another human rights concern contemplated by the Agreement is the attempt to negotiate death penalties under the jurisdiction of State Parties. There is an approach for dialoguing at bilateral level between State parties on death penalties. This may envisage a situation where a national of a member State may be convicted for a crime amounting to death penalty and the State of the citizen concerned may seek

40. See the last sentence of paragraph 1 of Article 9 of the Samoa Agreement

to lobby for reprieve or lenience for the acts of its citizens.⁴¹ It could be likened to opening a vista of plea bargaining or negotiation of judgement in death penalty among member state.⁴²

The provision of Article 9 of the Agreement further concludes that State parties should recognise and enforce laws relating to fundamental rights of global citizens. They should ensure that their domestic laws afford good governance, transparent and accountable democracy, and equality before the law and rule of law as the basis. Thus, parties to the Agreement should strive to ensure that the core objectives of this Agreement are to show how human rights and democracy, strengthen their municipal laws and foreign policies objectives.

Furthermore, reference to gender equality was another eminent feature of the Agreement. By the provision of Article 10 (2), state parties are mandated to ensure gender equality in their domestic legislations. They are also enjoined to promote the realisation of such gender equality in the areas of equality in accesses to social services and benefits. The provision of this Agreement is inspired by the facts that women and children are becoming victims of vulnerable society in modern democracies.⁴³ For this reason, State Parties are enjoined to ensure that women and girls enjoy equal rights with men and boys, and no justification for derogation from such principle shall be allowed.⁴⁴ Equally violators of gender based violence are to be prosecuted in accordance with due process of the law.⁴⁵ Therefore, State Parties are obliged to take necessary measures at their respective jurisdiction to ensure that women and girls are provided with the opportunities of accessing human rights. In addition, biases and harmful practices predicated on gender inequality are prohibited. Thus, State Parties are to ensure that violators of gender based rights are prosecuted and sanction accordingly.

Inclusivity and pluralism is another area of strategic priority contemplated by the provision. Article 11(1) mandate parties to ensure that equal opportunities are afforded to all its citizens without any discrimination. In this regard, member States are enjoined protect and promote freedom of expression and that of the press which promotes inclusivity and pluralism.⁴⁶ Similarly, Member States are obliged to promote activities that foster inclusivity and pluralism. Thus, they are to promote pluralism in the political participation, electoral processes and democratic engagement. For this reason, they are to ensure active engagement of stakeholders and citizens at all levels. Political parties in the countries of the member states are to play a major role of promoting inclusivity and pluralism to ensure that women, youth and vulnerable have a say in politics and policy formulations. Deploying digital platforms for actualising pluralism and inclusivity is also contemplated by the Samoa Agreement.⁴⁷

These provisions further consolidate on the mandates of Articles 8, 9 and 10 of the Agreement to ensure that fundamental rights of global citizens are duly protected and safeguarded. As such State

41. Here, diplomacy could be useful strategy among member-states. For instance in Nigeria, diplomacy could be used to truncate any case engaging LGBTQ. This could possibly be achieved via the exercise of the power of *nollei prosequi* by the Attorneys- General of the States and Federation, respectively.

42. In diplomacy, political exercise of pardon could be used to absolved persons slated to die by capital punishment for offences relating to the LGBTQ. See Ibekwe N., "Jonathan Pardons Homosexual Rapist, triggering fresh controversy", Premium Times, March 18, 2013 @ www.thepremiumtimes.ng.com <accessed on August 5, 2024>

43. Friedrach Naumann Foundation, "Mercosur: Resilient or Vulnerable Democracies?", Friedrach Naumann Foundation, August 3, 2024 @ www.freiheit.org <accessed on August 5, 2024>

44. Ana R.G., "Derogation Clauses of International Human Rights Instruments: Protecting rights at the maximum possible extent in times of crisis", *Catolica Law Review*, 2021, Pp.14-16

45 Article 10(3) of Samoa Agreement.

46 Article 11(2) of eth Samoa Agreement.

47 Article 11(3)-(5) of the Samoa Agreement

Parties are enjoined to ensure that equality of law, respect for rule of law and realisation of fundamental rights are pillars of accountable and transparent modern democracies. Doing so will provide a healthy atmosphere for inclusive democracy where people of different opinions, gender, religion and cultural beliefs will thrive.

3. Addressing The Key Questions Relating to Human Rights Provisions vis-à-vis the Rights of the LGBTQ Under the Samoa Treaty

Having explored key provisions of the Agreement, the following questions are pertinent in examining some of the concern raised; (a) Are there places where the issues related to LGBTQ are specifically mentioned? (b) Are there places where these provisions mandated Nigeria to enforce LGBTQ rights? (c) Again, when interpreted in the context of other State Parties, are there likely possibilities of interpreting these provisions of the Agreement to actualize the rights of LGBTQ? Are the regional courts of the State parties likely to interpret these provisions ascribing rights of the LGTBQ? Can LGTBQ who are not protected by their domestic laws resort to the Agreement in realisation of their fundamental Rights?⁴⁸Is there any likelihood that in the course of interpreting this Agreement inference could be made to the LGBTQ? Responding to these questions will take us to further exposition on the contents of this work in the next part of this paper.

3.1 Are there places in the Samoa Agreement where the issues related to LGBTQ are specifically mentioned?

While it is crystal clear that LGBTQ related words are not mentioned in the Agreement, it is true that words that could be used to ascribe the rights of LGBTQ could be deduced from the provisions of the Agreements. The provision uses words such as 'people-centred right', to imply recognition of rights that is applicable to the human race as people. The phrase 'people –centred right' in the modern day lexicon could be attributed to China.⁴⁹In its 2019 White Paper, titled, "Seeking Happiness for People: 70 years of Progress on Human Rights in China", China refers to "forming a system of human rights with people centred approach". Consequently, the phrase started finding its place in the diction of human rights literatures at the international level. It is a class of right that is concerned with people as its beneficiary. It seeks to bestow the enjoyment of fundamental rights to people because they are human beings. People-centred rights also seek to ensure that all other ancillary rights are centred on the rights of people. Thus, man is at the centred of rights such as right to personal liberty, right to fair hearing. Right to presumption of innocence, right to own property, belong to association, privacy, and religion.⁵⁰

The concept of people-centred right has given birth to the rise for people -centred justice. The concept of people centred justice is a current approach that seeks to advocate for the right of the people that are marginalised in a particular community. It seeks to address the plights of the vulnerable and ensure they not only have access to justice, but that 'justice gap' is filled.⁵¹ It is

48.This question is imperative considering the fact that the Fundamental Rights (Enforcement Procedure) Rules, 2009, empowers State Parties to resort to any international treaty. See paragraph 3 (b) of the Preamble to the Fundamental Rights (Enforcement) Procedure Rules, 2009.

49.Amnesty International, " 10 People-Centred Approach to Human Rights",@whatchinasays.org<accessed on August, 2024>

50 Godfree Matthew, " Exploring the Complementary role of Artificial Intelligence on Right to Life: Human Right Perspective", International Journal of Law and Social Justice, 2025 1(1) P.53-54.

51.Ibid

for this reason that the United Nations Development Programme (UNDP) describes “People-centred justice” as a situation where:

All people have equal access to justice that meets their needs, provided by systems that are inclusive, responsive, effective, and consistent with human rights norms and standards; in which states understand common and informal justice (CIJ) systems as playing a central role in people-centred justice and rule of law⁵²

From the above exposition, it is clear that the phrase people –centred rights is applicable to all persons including the LGBTQ. The concepts of people-centred rights and the people-centred justice afford the all citizens (including LGTBQ) the opportunity to have access to justice in terms of fair hearing and fair –trial.⁵³

Gender equality as one of the terms that frequented the Agreement is also worth engaging in this work. Gender equality is defined as a situation where the law recognises the equality of men and women and boys and girls. It is a situation where the society rule by law value the similarities and differences between different sexes and yet ensure they enjoy equal protection of the law. Gender equality is core aspect of human right which is sine qua non for people-centred development.⁵⁴ Gender equity is more advanced stage of consolidating on the principles of gender equality. It advances and expands the frontiers of gender equality. Gender equity is defined as the process that advocates for fairness to men and women as well as boys and girls. It is an approach that is aimed at correcting historical and cultural injustices against gender-justice. It is a differential treatment that is fair and positively addresses a bias or disadvantage due to gender roles, norms or differences between the sexes.⁵⁵ Another term contemplated by the Agreement is gender based-violence. Gender -based violence is defined as: An umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially ascribe (i.e. gender) differences between male and female.⁵⁶ It is sort of violence that is meted on individuals based on their sexes. It is a sex-based violence carried out by opposite sex. The phrase advocacy of hatred could be implied to be another name for hate speech.⁵⁷ The Cambridge Dictionary defines hate speech as “Public speech that expresses hate or encourages violence towards a person or group based on something such as race, religion, sex, or sexual orientation”⁵⁸ Social media and online platforms also regulate hate speech to curtail advocacy of hatred. Facebook, on its Community Standard, in identifying what constitutes hate speech for the purpose of removing defaulters, defined hate speech as “ content that directly attacks people based on their race, ethnicity; national origin; religious affiliation; sexual orientation, sex, gender, or gender identity; or serious disabilities or diseases”.⁵⁹ This same principles is adopted by X and YouTube which is incorporated in the Community Guidelines and the Terms of Agreement between the Users and the X and YouTube.⁶⁰ The clause “*partnership dialogue at bilateral level on the death penalty*”, is imperative in the light of current global

52.Azu John C., “ Is people-centred Justice Nigeria’s New Reform Focus?”, Daily Trust, April 23,2024 [@dailytrust.com](https://dailytrust.com)<accessed on July 19, 2024>

53.Ibid.

54 .UNICEF,” Gender equality: Glossary of Terms and Concepts PDF”@www.unicef.org<accessed on July 19, 2024>

55 Ibid.

56 Inter-Agency Network for Education in Emergencies (INEE), “ Gender-based Violence”, <https://inee.org><accessed on April 21, 2026>

57.Ibid

58.“Hate Speech”@ Dictionary.cambridge.org.<accessed on July 10, 2024>

59.Sellars Andrew F., “Defining Hate Speech” (Berkman Klein Center for Internet & Society at Harvard University , 2016) P.21

60.Ibid.

campaign against death penalty.⁶¹ Thus state parties to the Agreement should be able to negotiate suspension of bilateral treaty among member states. This is apposite considering the facts that some States are signatories to the Agreement. Thus, where a citizen of Netherlands, where LGBTQ is legalized, commits an offence in Uganda, which attracts capital punishment. By the dint of that provision the Netherlands can enter into bilateral relations with Uganda to prevent the execution of that capital punishment. Through bilateral dialoguing the state parties may be able to secure pardon for the convict.⁶²

3.2 Are there provisions in the Samoa Agreement Mandating Nigeria to Enforce LGBTQ Rights?

From the above expositions of the provisions on human rights in the Samoa Agreement, there is no where it is stated that Nigeria or any other party must enforce the rights of LGBTQ. Rather, the treaty recognises the jurisdictional sovereignty of member states to abide by their municipal laws in interpreting the Agreement. It is for this reason that Article 2 provides that parties be committed in promoting amity where respect for political sovereignty should be respected. In this regard, each member is to refrain from unlawful use of force as contemplated by international law. Samoa Agreement thus respects the sovereignty of member states. This has settled the fear and fallacy that it is the Samoa Agreement does not accord recognition to the sovereignty of Nigeria.

Again, it is important to note that, even though the Samoa Agreement contains provision for enforcing LGBTQ'S Right; Nigeria can still exercise its right to make reservation under the Treaty. The rights of States to make reservations during treaty-making, stems from the fact that, where a party to a treaty is not comfortable with certain aspects of a treaty, it can elect not to be bound by certain parts of that treaty.⁶³ This is known as reservation under the laws of treaty. Article 19 of Vienna Convention of the Law of Treaties provides the rights of State parties to treaties to make reservations. Based on this, even if there is a place where, LGBTQ is included, Nigeria can make reservation relating to the enforcement of LGBTQ. The exceptions are where LGBTQ is the main purpose for the Samoa Agreement, which is not.⁶⁴ The other exceptions could have been where Samoa Agreement could have prohibited reservations, or the LGBTQ is not among the list of the items for reservations. In a similar vein, Nigeria can still exercise right to reservation under the Samoa Agreement, since the treaty silent about reservation.

Furthermore, there are two major jurisprudential reasons why the Samoa Agreement is not automatic endorsement of enforcement of the rights of the LGBTQ in Nigeria. The first reason is that Nigerian operates a dualist system under international law when it comes to treaty implementation. As such the Samoa Agreement must be approved by parliaments. Secondly, Nigeria prohibits and proscribes homosexuality in its domestic laws. Endorsing the Samoa Agreement will conflicts with its municipal laws.⁶⁵ The third reason is the fact that the Samoa

61. Amnesty International has been at the forefront , leading campaign against death penalty. See Shetty Salil, " Fight to end death penalty: Sub-Saharan Africa a beacon of hope" , Aljazeera, April 12, @www.aljazeera.com<accessed on August 5, 2024>

62 See Ibekwe N., Loc Cit.

63 63 Malcolm Shaw, *International Law*, (Cambridge university Press, 2008) P.913

64. The writer refers the reader to the six core principles of the Samoa Agreement, especially the provisions of Articles 8, 9, 10 and 11. there is nowhere' LGBTQ is include as the object of the Samoa Agreement.

65. For example, the municipal laws of Nigeria such as the Criminal Code Act, CAP C 28, prohibits homosexuality. it is termed as offence against natural order. Also, The Same Sex Marriage (Prohibition) Act, 2013 prohibits homosexuality in sections 1, 2, and 3 of the Act.

Agreement approves the 'Margin of Appreciation Doctrine' to be exercised by State Parties.⁶⁶ As such Nigeria courts have the jurisdiction to interpret Samoa Agreement in terms with its municipal jurisprudence.

3.3 Are There Instances that Interpreting the Provisions to the Agreement Will Lead to Actualization of the rights of LGBTQ?

Interpreting provisions for the Agreement has the prospects of legalising the rights of the LGBTQ in jurisdictions where they are legally recognised. Thus, once a state party to the Agreement legalises the activities of the LGBTQ in its domestic law, it is bound to enforce the terms of this agreement to the fullest. Equally, the members of the LGBTQ can resort to the provisions of these laws to enforce their rights when violated by the State parties.⁶⁷

3.4 Are the Regional Court Systems of the State Parties likely to Interpret the Provisions Ascribing Rights of the LGBTQ?

Yes, the LGBTQ can resort to their regional courts to enforce their rights where the domestic jurisdictions deprived them of such rights. The European Courts of Human Rights has given judicial recognition to the rights of LGBTQs in series of cases.⁶⁸ Also, African regional courts and laws may be exploited and interrogated in the future on whether the rights of LGBTQ can be enforced by resorting to the regional courts. There are three indices of determining this. Does the Samoa Agreement provide for the rights of the LGBTQ to be accommodated in their municipal jurisdictions? Do regional treaties afford the LGBTQ as parties, the personal jurisdiction to approach their regional courts for the enforcement of their rights? And, do the laws establishing the Courts permit so? The above question will be highly justifiable in states that municipally legalises the activities of the LGBTQ. Thus, where a nation that legalises LGBTQ is a signatory to the Samoa Treaty, the phrases of 'gender-equality' and 'people-centred rights' could be interpreted to favour the rights of the LGBTQ. With respect to regional courts, it is the position of this writer that the Samoa Agreement will find it easy to sail before the European Court of Human Rights than in African Court of Human Rights. The European Court of Human Rights has given judicial recognition to the rights of the LGBTQ freedom from discrimination based on gender and sexual orientation in series of cases.⁶⁹ However, the African Court of Human Rights has not done that.⁷⁰ This spurred from the facts that African nations are averse to LGBTQ on the ground of

66. Article 2 recognises the rights of the parties to resort to regional, domestic and multi-country level to address any issue affecting the realisation of the aim and objectives of the Samoa Agreement. This accords with the Margin of Appreciation Doctrine has its origin from the European Court of Human Right. It states to the effect that State parties to treaties will be allowed to deploy their domestic laws to interpret the Convention involving multilateral parties. It is aimed at giving Regional Courts the flexibility of balancing the Sovereignty of member States with their obligations under their international laws. See Open Society Justice Initiative, "[Margin of Appreciation](http://www.justiceinitiative.org)"@www.justiceinitiative.org<accessed on August 5, 2024>. The principle was first given recognition in the case of *Handyside V United Kingdom* (1976). In this case, the Court had to consider whether a conviction for possessing obscene article could be justified under Article 10(2) as a limitation upon freedom of expression that was necessary for the protection of morals.

67. Article 2.4 of the Samoa Agreement allows State parties to resort to their domestic institutions to enforce the rights spelt out in the treaty.

68. Some of these cases are refer to at the footnotes 67.

69. See footnotes 67 and 68.

70. Chimaraoke I., Seun B., Meroji S., Ushie B. Weksah F and Njagi J., "Regional Legal and Policy Instruments for Addressing LGBTQ Exclusion in Africa", PubMed Central, 2020, @www.ncbi.nlm.nih.gov<accessed on August 5, 2024>

cultural and religious beliefs.⁷¹ Another reason why the Regional courts may not grant them such relief is because even within the Samoa Treaty, the 'Key Areas of Cooperation' among the member Parties does not include gender equality and the LGBTQ matters.⁷²

3.5 Can LGTBQ who are not Protected by Their Domestic Laws Resort to the Samoa Agreement in Realisation of their Fundamental Rights in Nigeria?⁷³

The answer to the question is imperative in Nigeria because under the Fundamental Rights (Enforcement Procedure) Rules, 2009, the preamble gives priority to the enforcement of international treaties and other related international laws that are connected and concerned with human rights.⁷⁴ This means that the existence of any international treaty, conventions, bills, and agreements can be deployed in cases of fundamental rights.⁷⁵ This position is succinctly captured in Paragraph 3(b) of the Preamble to the Fundamental Rights (Enforcement) Procedure, Rules, 2009. The clause whether these bills constitute instruments in themselves or form parts of the larger document' could be interpreted to include Samoa Agreement. Thus, the likely question that Nigerian courts may face in the future is "whether Samoa Agreement qualifies as regional or international bills or other instruments/documents contemplated by paragraph 3(b) of the Fundamental Rights (Enforcement Procedure) Rules, 2009? The future is the best judge to resolve this conundrum.

3.6 Is there any likelihood that in the course of interpreting this Agreement references to LGBTQ could be included?

In responding to the above question one has to put into context the following factors; the duration of the Agreement and the dynamism of international law. The term for the duration of the Agreement is estimated to expire for 20 years, and to be renewed for another 5 years.⁷⁶ Article 99 aptly captured this in these words. Juxtaposing the duration of the Agreement and the fast changing nature of international law, will there be necessary global changes or revolution that will legitimize LGBTQ rights as part of new or emerging *jus cogens*? Recently, there has been political and judicial activism seeking to make LGBTQ rights as part of *jus cogens*.⁷⁷ Thus, if that succeeds

71. The African Commission of Human Rights, being an independent body within the African Union, held that 'sexual orientation' was not an expressly recognised rights in the African Charter on Human and Peoples' Rights. thus, protecting sexual and gender minority rights was 'contrary to the virtues of African values'. See Viljoen F., "LGBTQ+ rights: African Union watchdog goes back on its own word", *The Conversation*, March 20, 2023@theconversation.com<accessed on August 5, 2024>

72. Part II of the Treaty provides for inclusive sustainable growth and development, science and technology, human and social development and inequality and social cohesion. .

73. This question is imperative considering the fact that the Fundamental Rights (Enforcement Procedure) Rules, 2009 empowered State parties to resort to any international treaty. See Paragraph 3 of Order III of the Fundamental Rights (Enforcement Procedure) Rules, 2009.

74. It is important to note that, this view could be given a different rendition flowing from the facts that Preamble's Directive to "respect international law" is only persuasive rather than binding especially since Nigeria practices dualism as evince in the provision of section 12 of the 1999 Constitution. However, this argument can also be neutralised from the facts that matters brought under Fundamental Rights Enforcement Procedure are *Sui Generis*. See tObiaeri N.O., "Fundamental Rights (Enforcement Procedure) Rules, 2009: A Case for An Overdue Reforms, *AJHR*, 9(2) p.9.

75. Godfree M., "A Legal Exposition of the Exceptions to the Doctrine of Dualism Under Section 12 of the 1999 Constitution of the Federal Republic of Nigeria," *J. Public Law & Constitutional Practice Vol. 13* (July 2023) Pp168-169,

76. Article 99 of the Samoa Agreement.

77. Madder J.C., "Batson in Transition: Prohibiting Peremptory Norms"@www.columbialawreview.org<accessed on July 26, 2024>

within the 20-25 years lifespan of the Samoa Agreement, any member state that fails to recognise the rights of LGBTQ under the Agreement may be considered a defaulting state. This argument flows from the principle that *a jus cogens* is one of the vitiating factor that invalidates a contract. Article 64 of the Vienna Convention on Laws of Treaties, 1969, deals with emergence of new peremptory norm as a ground for voiding or terminating a treaty. Article 64 of the Vienna Convention on Laws of Treaties states that, “*If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.*” The question that is outstanding from the provision is that does the right of LGBTQ constitute emerging peremptory norms? There are two approaches to this question. The first is to examine the imports of the phrase emerging peremptory norm or *jus cogens* under the VCLT, 1969. The second is to examine the realist exposition on the phrase *jus cogens* in contemporary international law on subject matter related to the rights of the LGBTQ. It is agreed by scholars that the phrase *jus cogens* is one of the most controversial concept incorporated into the provision of the Vienna Convention on Laws of Treaties, 1969.⁷⁸ It is controversial as to the content of what qualifies *jus cogens* and the manner in which it was created.⁷⁹ Today certain developments in international law have already created an impression that the right of the LGBTQ is becoming an emerging norm or *jus cogens* under international law. This is buttressed by the emergence of the Yogyakarta Principles in 2007. A set of Principles that uphold and promote the rights of the LGBTQ;⁸⁰ the United Nations Human Rights Council Resolutions in 2011, 2014 and 2016 recognising the rights of the LGBTQ and urging nations to eschew discrimination against them;⁸¹ the United Nation Human Rights Committee’s interpretation of the contents of International Covenant on Civil and Political Rights 1966, to include the rights of the LGBTQ;⁸² the recognitions of the rights of LGBTQ by Regional Courts in Europe and America;⁸³ and the fact that many nations are legalizing the rights of the LGBTQ.⁸⁴ From the above factual indices, it is clear that, it is just a matter of time for States to start engaging in the legal polemics of whether or not the rights of LGBTQ should be

78.Ibid

79.Ibid

80.Ettelbrick Paulla L., and Trabucco Alia Z.,” The impacts of the Yogyakarta Principles on International Human Rights Law Development” , 2009, Pp:8-10@yogyakartaprinciples.org.<accessed on July 24, 2024>

81 Human Right Watch, UN: Landmark Resolution on Anti-Gay Bias”, September 24, [2014@hrw.org<accessed on July 26, 2024>](#)

82.Ibid

83.Such cases include *Romer V Evans*, 517 US 620 (1996),*Brinkman V Miami University*, 2007, Ohio 4372 (Ohio Ct.Of App.2007); See Keck Thomas M., “ Beyond Bcklash: Assessing the Impact of Judicial decisions on LGBT Rights”,Pp.8-11,2009@faculty.uml.edu<accessed on July 26, 2024> the decisions in *Romer V evans* might have inspired the subsequent decision of the Inter-American Court of Human Rights in the Case of *Atala Riffo V Daughters of Chile* , IACHR, Series C. No. 239.(2012). In this case , a divorce was a lesbian, she was deprived of having the custody of her children on the ground that she will corrupts them with her sexual orientation. The court held that doing so will amount to discrimination based on sexual orientation and it will amount to gender inequality. consequently, the inter-American Court of Human Rights overturned the Decision of the Chilean Supreme Court and held that Atala has the right to access her children despite her sexual orientation. The verdict of he Inter-American Court of Human Rights on this case further helped in the judicial promotion of the rights of gay in its subsequent judgments. See Cambridge University Press, “ [Gender Stereotyping in the Case Law of the Inter-American Court of Human Rights](#)”@[www.cambridge.org<accessed on July 23, 2024>](#) Also the European Court of Human Rights have recently(2023) , in the case of *Buhuceanu and Others V Romania* (2023) the European Court of Human Rights, held that the same-sex couples enjoy legal protection under the European law. the state of Romania was condemned for failure to provide adequate legal protection of the Applicants. See also [www.socialeurope.eu<accessed on July 26, 2024>](#) Also, there is another decision by the European Court on Human Rights: Decision on Gay Marriage in Italy that is the case *Oliari and Others V Italy App.* NOs. 18766/11 (July 21,2015) HUDOC)

84 Ettelbrick Paulla L., and Trabucco Alia Z. Loc.Cit.

a universally accepted state practices. As such, where the rights of LGBTQ is successfully recognised as *jus cogens*, Samoa Agreement will not be interpreted to eschew State parties from promoting and enforcing gender equality of the LGBTQ.⁸⁵

4. Appraising the Fears and Fallacies Surrounding Human Rights Provisions in the Samoa Agreement

The fears and fallacies that followed the signing of Samoa Agreement were occasioned by the fact that there is a knowledge gap in the level of public awareness in Nigeria on the workings of international treaties. Some of these fears and fallacies to be engaged in this paper include the legitimization of gays and lesbian's rights against Nigerian Laws, overriding Nigeria's municipal law, the fact that it cannot be subjected to municipal courts of state parties, the fact that it is not subject to national laws of the State parties; the fact that it is the final authority in areas of interpretation, the fact that the agreement was not signed and thus, it will not be binding on Nigerians; and the fact that the National Assembly was not aware.

The fear that the treaty has legitimized the rights of gays and lesbians was so pronounced that the civil society had to call Nigerian government to explain the terms of the Agreement to the Public. Nigeria is one of the countries that kicked against the rights of LGBTQ principally because of religious and cultural reasons. Previous administrations from 2013 to present (2024) have been confronted with the challenges of legitimizing the rights of the LGBTQ. Apart from cultural and religious reasons, Nigerian government adduced constitutionalism as one of the reason of adopting anti-gay policies.⁸⁶ Consequently, Nigerian government legislated on specific law prohibiting the rights of the gays in Nigeria.⁸⁷ Based on the above by the time the Agreement was signed many Nigerians expressed their opinion to the effects that it is meant to legitimize the rights of the gays and lesbians and thus, interferes with Nigeria laws. This position creates fears and fallacies among Nigerians that he Agreement is overreaching Nigeria's law. However, contrary to the above fears and fallacies, the Agreement never contemplated legitimising the rights of gay and lesbians in Nigeria. The first reason in support of this position is that that throughout the province of Articles 8,9,10 and 11, there is no place where it was mentioned that the LGBTQ were to be protected under the Agreement Nigerian law These provisions of the Agreement constantly mentioned 'men', 'women' and 'girl' and 'boys' to refer to the beneficiaries of the gender equality referred to in Articles 8, 9, 10 and 11. In qualifying gender, the Agreement never use the words such as "sex" or "sexual orientation" as yardstick for discouraging discrimination.

Again, by rule of interpretation of Treaties, it is the position of this paper that a community reading of Articles 8, 9, 10 and 11 of the Agreement, will reveal that there is nothing endorsing the rights of the of LGBTQ on State parties to the Agreement. By the provision of Article 31 of the Vienna Convention on the Laws of Treaties, treaties are to be interpreted in good faith based on the ordinary meanings of the words in the treaty as well as the purpose of the treaty. The question then is, does the any provision in the Agreement endorse LGBTQ on the State parties? The answer is no. Secondly, is the purpose of the Samoa Agreement to endorse the Rights of the LGBTQ on the State Parties? The answer is no. One of the purposes of the Samoa Agreement is to respect the

85.This is because under the Vienna Convention on Law of Treaties, 1969, recognised the fact that customary international law should continue to govern the interpretation and application of treaties in international relations. Equally, under Article 64, if a *jus cogens* emerge during the subsistence of a treaty, such treaty could be voided or terminated.

86. Human Rights Watch, "Nigeria: Anti-LGBT Law Threatens Basic Rights" January 14, 2014, @www.hrw.org<accessed on August 5, 2024>

87.Ibid.

political sovereignty of all nations.⁸⁸ For this reasons parties are obliged under Article 18 to observe the principle of *pacta sunt servanda* and ensure that they perform their treaty in good faith. From the above State Parties to the Samoa Agreement are mandated to refrain from any acts that would defeat the object of the treaty. Therefore, this position impeaches the fear and fallacies that the treaty is legalizing the rights of LGBTQ on state parties including Nigeria. Again, by the nature of the Samoa Agreement, for it to be enforceable in Nigeria, the approval of the parliament is necessary under section 12 of the Nigerian Constitution.⁸⁹ This provision of the constitution was given judicial recognition in the case of *Abacha v Fawehinmi*⁹⁰, where the court held that for an international treaty to be implemented in Nigeria, it must be domesticated in Nigeria. However, it is important to note that there are certain exceptions that to this rule. This include treaties that predate Nigerian independence and matters relating to fundamental rights.⁹¹

Another fallacy was that the Agreement is not subject to the jurisdictions of the State parties.⁹² This stems from the misrepresentation of Article 97 of the Samoa Agreement which states that:

No treaty, convention, agreement or arrangement of any kind between one or more Member States of the European Union and one or more OACPS Members shall impede the implementation of this Agreement.

Some civil societies in Nigeria hinged on those provisions to state that the Agreement has ousted the jurisdictions of municipal parties to entertain case bothering on the Agreement. However, this is not correct. A cursory study of Article 97 shows that it is referring to the implementation compliance among the parties. It contemplates a situation where a state will rely on its municipal law to evade obligations under international law. Thus, this position reinstates in Article 27 of the Vienna Convention on Law of Treaties 1969, which states that, “*a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.*” By this provision of the law, no state is allowed to rely on its national law to eschew international responsibility in any legal instrument except where the treaty manifestly violates its internal law. The question then is does the Samoa Agreement violates the internal law of Nigeria? The answer is in the negative. For if it is so Nigerian government would not have signed same. Another popular fallacy was that the Samoa Agreement was not signed as such it will not be applicable to Nigeria. This view was popularized on social media comments where it was alleged that it will not be valid because the treaty was not signed.⁹³ This position is far from the reality in international law. In international law, a treaty does not need to be signed by parties before it could be binding on them. The exchange of those treaties among them will suffice. This position is captured under Article 13 of the VCLT, 1969 which states that:

...the consent to be bound by a treaty constituted by instrument s exchanged between them may be expressed by that exchange when the instruments declare that their exchange shall

88. Article 2 (2) of the Samoa Agreement.

89. (1999, Constitution of The Federal Republic of Nigeria)

90. *Gani V Abacha* (2000) 6 NWLR PT.1660

91 See also Enabulele A.O, and Osadolor , F.O , “ the Status in Nigeria of Treaties Predating the 1979 Constitution: Reflections of *JFS V Brawal line Ltd* “, *African journal of legal Studies* , 12 (3-4), Pp.335-335-336; Okoli P. “ Ensuring the Effectiveness of Treaties in Africa -Case Studies of South Africa and Nigeria “, *Cornell int’l LJ*, P.487; and Godfree Matthew , “ A legal Exposition of exceptions of the Doctrine of Dualism Under Section 12 of the 1999 Constitution of the Federal republic of Nigeria” , *J Publ L aw and Constitutional Practice* Vol.13 , July, 2023 , P.130.

92. Serachlight, “ Samoa Agreement and Sensational Speculations” , Nov., 2023, @www.searchlight.vc <accessed on August 4, 2024>

93. Writer conducted random sampling on various social media platforms and most opinions suggest that signatory is *sine qua non* to the efficacy of the validity of nay treaty.

have that effect or it is otherwise established that those states had agreed that the exchange of instruments should have that effect.

Based on the above provision signing is not the only way of authenticating and validating a treaty. An exchange of same among the Parties to the agreement will be binding. Thus, where parties to the treaty exchange the instruments among themselves it could qualify as consent in international law.⁹⁴ There was also a fallacy that the agreement did not provide a reservation. This means that parties to it don't have room to alter or modify certain terms to fit into their domestic contexts. This argument is not tenable for two reasons. The first reason is that, under international law, where a Treaty is silent on the provision of reservation, it is deemed that parties have rights to make reservation provided it is not incompatible with the aim and objectives of the treaty.⁹⁵ The second reason is that, the treaty could be subjected to the doctrine of Margin of Appreciation since European Union is a party. The last fear and fallacy to be appraised here was the fact that National Assembly was not aware.⁹⁶ This position tends to rationalize other fallacies and propagate misconception and public distrust against the Agreement. It was popularized so as to justify the allegation that Nigerian President Ahmed Tinubu collected money to legalize LGBTQ's rights. Thus, giving an impression that the Agreement did not follow due procedure.⁹⁷ However, facts reveal that Nigerian Law-makers were aware of the agreement and lobbied to be made members of the Inter-Parliamentary Union contemplated by the Samoa Agreement.⁹⁸ This position was made by the Nigerian minister of Budget and Planning, who said the national Assembly has written a letter lobbying for the federal government to sign the Samoa Agreement.⁹⁹

From the previous discourse on the fears and fallacies surrounding the Samoa Agreement, it is obvious that there are a lot of misconception and conspiracy theories. Some of these misconceptions were borne out of lack of awareness. Nevertheless, behind every smoke a fire could not be lacking. Thus, despite the fact that many fallacies and fears, there are certain areas that Nigeria needs to tread carefully in the course of implementing the Agreement. Some of those notable areas are examined in the subsequent paragraphs.

4.1 Sensitive Areas Nigeria Should Watch

The first area that Nigeria needs to be sensitive is the dynamism of Sustainable Development Goals. The Agreement is a product of many items birthed under Millennium Development Goals (MDGs). From there it evolved into the Sustainable Development Goals (SDGs). Each of these long-term plans introduced certain new concepts of developments that may likely be at criss-cross with African norms and values. As such, Nigeria should be on alert to dictate which of these items will fit into its national ethos and socio-cultural context. This point becomes more concerning considering the fact that the Agreement is expected to expire in 20 years term.¹⁰⁰ Again one of the objects of the Agreement needs to be given diligent intelligence. It needs careful attention because it's capable of been interpreted to gender to include the legalisation of LGBTQ in countries that

94. Malcolm Shaw N., "International Law", 5th Edn. (Cambridge University Press, Ltd , 2005) Pp.818-819. See also Kapoor S.D.,

95. Convention on the Prevention and Punishment of the Crime of Genocide (Advisory Opinion) (1951) ICJ Rep. 15

96. Mohammed Y., "Fact-Check: Are there LGBT Clauses in Samoa Agreement in Nigeria Signed? ", Premium Time, July 5, 2024@www.premiumtimesng.org<accessed on August 5, 2024>

97. Ibid

98. Ibid

99. Bakare M., "Exclusive: National Assembly Pressured Nigerian Govt to sign Samoa Agreement ", Premiums Times, July 15, 2024@www.premiumtimesng.org<accessed on July,2024>

100. Wampler J., " Jus cogens and the Lack of Universal Gender Equality Norm", Oxford Rights Hub, June 15, 2023@orhh.law.ox.ac.uk<accessed on August 5, 2024>

are not promoters of such specie of human rights. That part of the Agreement is Article 2 (5) which enjoins state parties to systematically promote a gender perspective and ensure that gender equality is mainstreamed across all policies.

Also, there is a need to be cautious of evolving nature of *jus cogens*. The international law is in constant state of fluid. The social dynamics are rapidly altering traditional norms towards modernization. In treaty spanning over 20 years, certain norms and values that Nigeria may hold dear to, could be gradually becoming an emerging norm or *jus cogens* under international law. For example, there is a projection that LGBTQ is rapidly becoming an emerging norm.¹⁰¹ Then what is the effect of an emerging norm or *jus cogens* on a treaty like this? Article 64 of the Vienna Convention on Laws of Treaties, 1969, answers this when it states that, "If a new *peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates*. By the above provision, today's deviant acts could be saintly act tomorrow, or what is an abomination today may become sacred tomorrow. Thus, evolving nature of *jus cogens* is capable of altering or terminating an Agreement of this nature. Another major area of concern to Nigeria is that can the Samoa Agreement be enforced under fundamental rights Enforcement Procedure Rules of Nigeria, 2009? This question spurs from the fact that some rights in the Samoa Agreement such as freedom from discrimination and gender equality are reflected under Chapter 4 of the 1999 Constitution. And incidentally, The FREP, 2009, allow court to exercise jurisdictions on any international instruments, even though not domesticated, as far as it is promoting human rights. The question that may likely arise in the future could be whether LGBTQ community can invoke the provision of Samoa Agreement to seek for the enforcement of their fundamental Rights?

5. Findings, Recommendations and Conclusion

This work examined the basic concepts associated with the subject-matter of this discourse. The main provisions relating to the Samoa Agreement that borders on human rights were also examined. The work impeaches some of the fears and fallacies associated with the Samoa Agreement via constructive engagements and expositions on the provisions of international law. The beauty of a good scholarly work is not in the niceties that are displayed during the discussions in the main body of the work. Neither is exposition on the challenges relating to a subject-matter, the only yardstick for determining a good academic work. Thus, the beauty of a scholarly work is based on its contribution to knowledge and the findings that was established. In light of this, the findings of this paper are that the Samoa Agreement did not legalise LGBTQ in Nigeria; that the Samoa Agreement is of immense importance to Nigeria; that the fallacies and fears expressed by public opinions are not well-founded; and that the Samoa Agreement may have problem of application and interpretation within Nigeria's municipal jurisdiction in the course of time. Therefore, this paper recommends the need for the Nigerian government to ensure constant appraisal and re-appraisal of the implementation of the Samoa Agreement as time goes on. The paper also recommends public enlightenment and public engagements of stakeholders in the course of treaty-adoption and ratification by Nigeria.

101. Article 99(1) of the Samoa Agreement, 2023