

P O L I C Y B R I E F

Considerations for Nigeria's Participation in the Samoa Agreement



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Executive Summary

The European Union (EU) and the Organisation of African, Caribbean and Pacific States (OACPS) recently finalised the Samoa Agreement, a new framework governing their relationship. This agreement takes the place of the Cotonou Agreement, which expired in December 2020. While Nigeria actively participated in the negotiations, it is yet to sign the Samoa Agreement, primarily due to concerns about its potential conflicts with domestic law and social values.

Proponents of the agreement argue that it offers several potential benefits for Nigeria. These include access to capital, expertise, and development aid from the EU, as well as enhanced cooperation in various sectors like education, healthcare, and infrastructure. The agreement could also unlock new trade

opportunities and market access for Nigerian exports, thereby fostering economic growth and diversification.

Furthermore, signing the agreement will strengthen Nigeria's partnerships with the EU and other OACPS countries, and facilitate collaboration on global challenges like climate change and security. Since the EU or any of its member countries will not negotiate with Nigeria individually outside of the agreement, it is imperative to be in the room where it happens, if Nigeria is to retain its regional influence. More so, Nigeria is already signatory to many similar treaties, which would reduce the cost of implementation of the Samoa Agreement.

However, opponents of the agreement worry about its potential violations of

domestic laws and conflicts with deeply held social values. They fear that signing the agreement might necessitate changes to Nigerian laws that currently align with its social values, particularly regarding sensitive social issues like abortion and LGBTQ rights.

In addition, concerns exist regarding potentially unfair trade practices and unequal reciprocity from the EU, which would potentially harm Nigerian industries and businesses. Finally, the agreement's complex implementation mechanisms could lead to increased bureaucratic burdens for the Nigerian government and businesses.

While these concerns are valid and deserve thorough consideration, it is important to note that alternative options like pursuing individual bilateral agreements or focusing solely on domestic reforms are costly and tedious, and may not provide the same level of comprehensive benefits offered by the

Samoa Agreement. And many of the perceived risks associated with signing the pact are possibly manageable and reversible, such as through provisions allowing for withdrawal from the agreement, albeit this could be costly. Therefore, after engaging with relevant stakeholders, it is recommended that Nigeria considers signing the Samoa Agreement, but must first conduct a comprehensive cost-benefit analysis, and strategically negotiate for favourable terms that ensure fair market access and minimise any negative consequences.

Furthermore, developing a national implementation strategy can help Nigeria maximise the benefits of the agreement, while mitigating its potential risks. By taking such steps, Nigeria can leverage the opportunities offered by the Samoa Agreement, whilst safeguarding its national interests and social values.

1.0 Introduction

The European Union (EU) and the Organisation of African, Caribbean and Pacific States (OACPS) recently finalised negotiations on the Samoa Agreement¹, which serves as the legal framework governing relationships between 15 states in the EU and approximately 79 states in Africa, the Caribbean, and the Pacific (ACP).

The Samoa Agreement traces its roots to the Yaoundé Agreements of 1959, with the most recent iteration, the Cotonou Agreement², having expired in December 2020, following its commencement in 2000, and despite a temporary extension till October 2023. The agreement is subject to renegotiation every 20 years.

The Samoa Agreement establishes a framework for partnership between the EU and OACPS countries, with a focus on the strategic priorities of³:

- Human Rights, Democracy, and Governance in People-Centred and Rights Based Societies: To promote good governance and the building of democratic institutions based on rights established in existing international treaties, such as the UN Declaration of Human Rights.
- Peace and Security: To enable cooperation on conflict prevention, peacebuilding, and maritime security.
- Human and Social Development: To facilitate partnership on education, health, gender and human rights.
- Inclusive, Sustainable Economic Growth and Development: To facilitate trade, investment promotion, and access to development assistance.

1. The Samoa Agreement. <https://www.consilium.europa.eu/en/policies/samoa-agreement/>

2. Cotonou Agreement. Available online at <https://www.consilium.europa.eu/en/policies/samoa-agreement/#cotonou>

3. European Parliament Briefing 2023. The Samoa Agreement with African, Caribbean and Pacific States. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/757563/EPRS_BRI\(2023\)757563_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/757563/EPRS_BRI(2023)757563_EN.pdf)

- Environmental Sustainability and Climate Change: To ensure cooperation on climate change, environmental protection, and good governance.
- Migration and Mobility: To address irregular migration, support for improving conditions leading to illegal migration, return and reintegration of illegal migrants, and facilitating legal migration channels.

The agreement, in 103 articles, outlines the roles and responsibilities of the EU and OACPS countries in attaining shared goals. It also seeks, as articulated in its Objective Five, to “facilitate the Parties’ adoption of common positions on the world stage, reinforcing partnerships to promote multilateralism and the rules-based international order, with a view to driving global action forward.”

Nigeria participated in the process, represented by a team led by the Federal Ministry of Foreign Affairs (MFA) and comprising officials from various relevant ministries and agencies. However, the MFA, in a press statement on 16 November 2024, informed Nigerians that the Federal Government of Nigeria was not represented at the signing ceremony held in Samoa on Wednesday, 15 November, 2023, and consequently has not yet signed the agreement⁴.

The provisional application of the Agreement started on 1 January 2024, but the it only entered into force upon consent by the European Parliament and ratification by the Parties, i.e. all the 27 EU Member States and at least two-thirds (53) of the (79) OACPS Members. As of 9 January, 2024, 46 out of the 79 ACP nations had signed the pact, alongside the 27 EU countries. There are 33 countries, including Nigeria, which are yet to sign the agreement.

Nigeria, like many of its African counterparts, is reticent about signing the agreement. This has been attributed largely to concerns about the “LGBTQ and pro-abortion” provisions in the pact, which ostensibly could contradict Nigeria’s domestic policy. The MFA has said the government is still evaluating the pros and cons of the agreement, despite the sunset of the predecessor Cotonou Agreement.

4. Diplomatic Watch, December 2023. Understanding Nigeria’s Cautious Approach to Samoa Agreement. Available online at <https://diplomaticwatch.com/20446/opinion/understanding-the-ministry-of-foreign-affairs-and-nigerias-issues-with-the-samoa-agreement/>

This policy brief explores some of the key themes for and against the agreement. It discusses the questions of private morality versus the law that underpins the major publicised objection to the agreement. It also explores equally consequential secular themes, such as the potential economic implications of its violations of or conflicts with domestic laws. And, it considers the alternative options for Nigeria to obtain similar benefits without signing the Samoa agreement.

This brief concludes that the costs of holding back outweigh the benefits and that Nigeria should proceed to sign the agreement, while proactively clarifying its own strategic interests to inform its bilateral engagement with the EU and its individual states.



2.0 Potential economic implications of signing and not signing the Samoa Agreement

It is notoriously difficult to exhaustively analyse the economic costs and benefits of a treaty of this nature and this policy brief certainly does not claim to do so. For starters, the Agreement does not offer any financial commitments from the EU nor does it detail the requirements and therefore costs of implementing many of its provisions, making a quantitative analysis impossible. What is attempted here is to point out the economic opportunities and risks posed by the agreement to Nigeria, which may be quantified by a future study.

2.1 Potential Economic Benefits of Signing the Samoa Agreement

2.1.1 Access to Capital:

The agreement emphasises the creation of a more conducive environment for attracting foreign direct investment (FDI), including grants, debt and blended finance for development. Article 44 says that, “the Parties shall cooperate to establish sound financial systems to mobilise investment for sustainable projects. They shall take measures to support investment by increasing access to financing through technical assistance, grants, guarantees and innovative financial instruments to mitigate risk, boost investor confidence and leverage private and public sources of finance. In doing so, they shall also take account of the need to address market failures or sub-optimal investment situations while ensuring additionality of investment that would not have taken place without those support measures.”

This could benefit Nigeria by attracting capital and the expertise needed for infrastructure development, technology transfer, and industrialisation. It offers particular opportunities in the priority sectors and industries of “high value addition and high potential for decent job creation: agriculture and agribusiness, livestock and leather, the blue economy, fisheries, mining and extractive industries, cultural and creative industries, sustainable tourism, sustainable energy, ICT and transport” (Article 44.6).

The agreement could also unlock new and innovative sources of capital for development, including taxes and the repatriation of proceeds of corruption. Article 12, for example, points to, “principles of good governance in the tax area, including the global standards on transparency and exchange of information, fair taxation and the minimum standards against Base Erosion and Profit Shifting (BEPS).”

2.1.2 Enhanced Development and Governance Cooperation

The agreement prioritises human rights, democracy, and sustainable development, which aligns with Nigeria’s national development goals. It offers access to EU funding and technical assistance for various sectors, potentially supporting infrastructure development, security, education, and healthcare initiatives. It furthermore offers support for governance, including elections, statistics for policy decision making, data

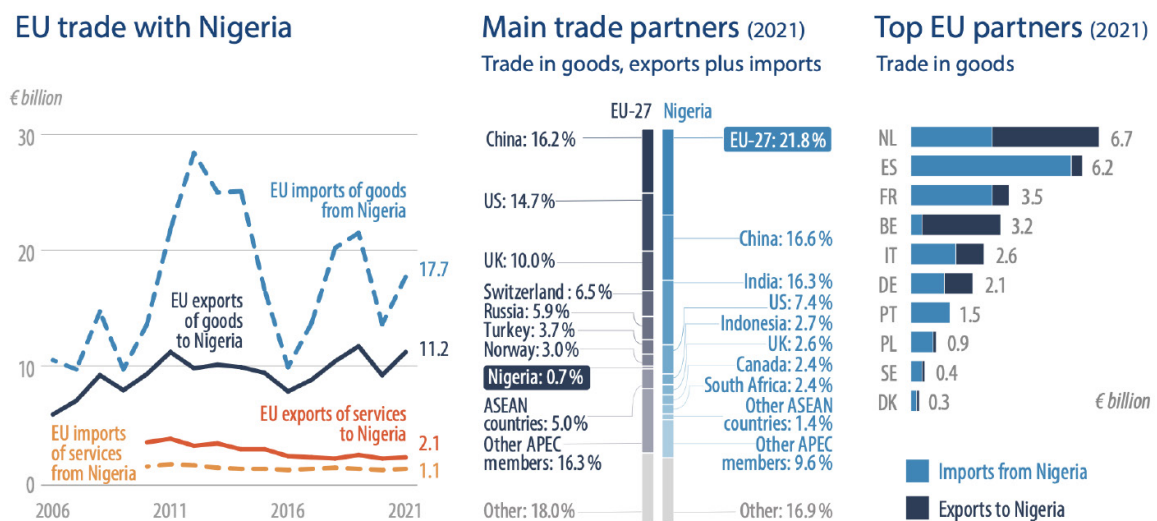
and data protection, and consolidation of the rule of law.

In this respect, Nigeria could influence ECOWAS towards a tailored approach to the Samoa Agreement, thereby reinforcing its leadership in the region. This is critical in the current context of coups and democratic regression in the region.

2.1.3 Trade Opportunities

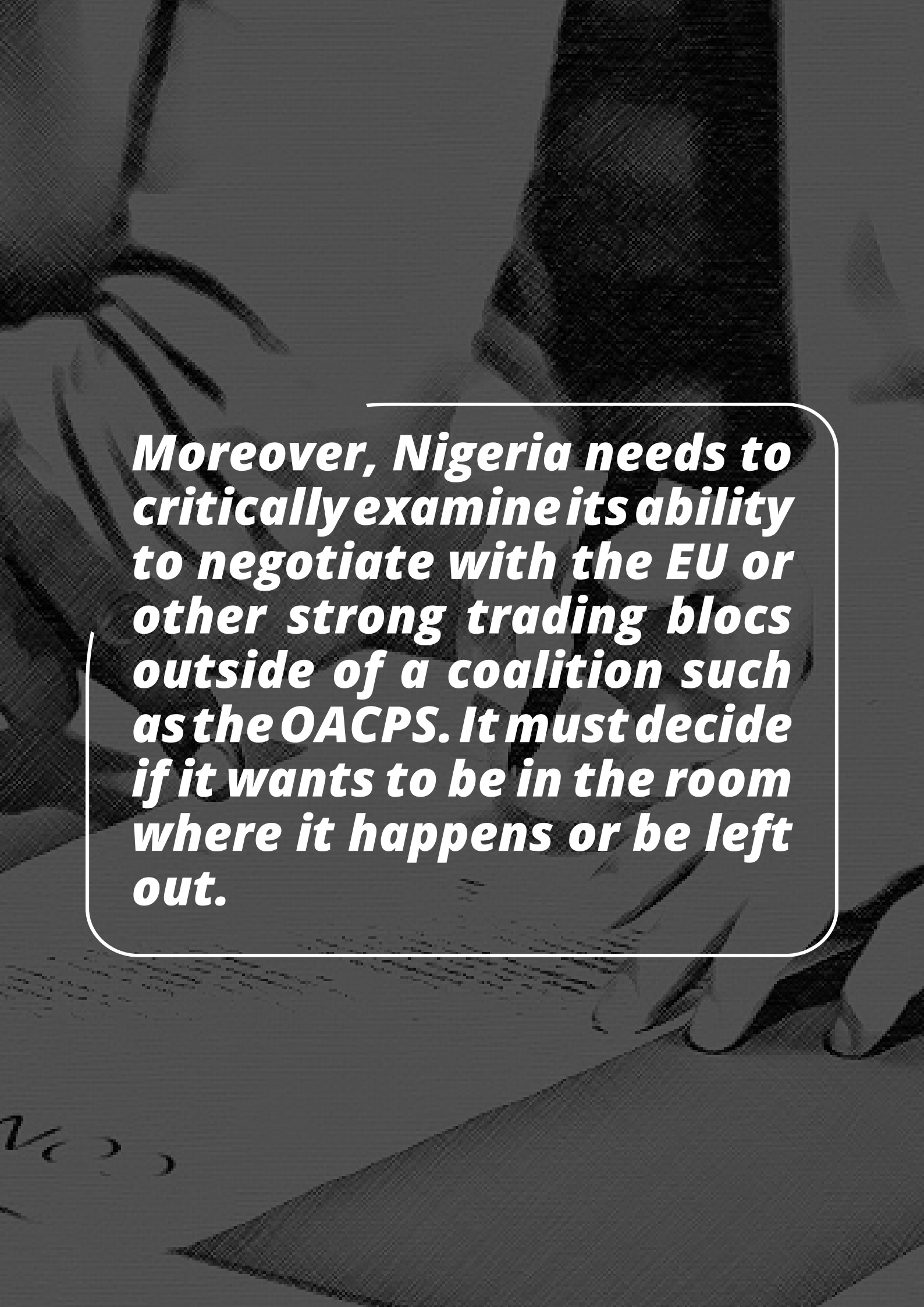
The agreement aims to deepen trade relations between the EU and OACPS countries, potentially facilitating increased market access for Nigerian exports. While the agreement doesn't guarantee immediate trade benefits, it establishes a framework for future negotiations and potential trade liberalisation measures.

Figure 2: EU Trade with Nigeria



Source: Global Stat

As Nigeria seeks to diversify from crude oil exports to the trade in goods and services, it is imperative for it to leverage global partnerships for preferential market access available to developing countries. Nigeria's experience with the African Continental Free Trade Area (AfCFTA) is instructive in this respect. Much like with Samoa, Nigeria hedged on signing the AfCFTA but is now learning from Ghana and Rwanda, who enjoy pole position by virtue of their early adoption, on how to align its national systems with obligations under the continental treaty.



Moreover, Nigeria needs to critically examine its ability to negotiate with the EU or other strong trading blocs outside of a coalition such as the OACPS. It must decide if it wants to be in the room where it happens or be left out.

2.1.4 Strengthened Partnerships for Global Goals

Participation in the agreement fosters closer political and economic ties with the EU and other OACPS countries, opening avenues for collaboration on various issues like climate change, security, and migration. This could enhance Nigeria's influence on the global stage and facilitate knowledge sharing.

On peace and security, for example, Article 17 says, "the Parties shall apply an integrated approach to conflict and crises, including prevention, mediation, resolution and reconciliation efforts as well as crisis management, peacekeeping and peace support. They shall support transitional justice through context-specific measures promoting truth, justice, reparation and guarantees of non-recurrence." This opens the door for conversations on transitional justice and reparations for past injustices at the heart of instability, especially in the extractive sector, including those perpetrated by EU Member states.

The agreement also provides a platform for OACP countries to collaborate with the EU to improve multilateral governance in the interest of fairness and representation. Article 78 says, "the Parties shall endeavour to strengthen global governance and to support necessary reforms and the modernisation of multilateral institutions to make them more representative, responsive, effective, efficient, inclusive, transparent, democratic and accountable."

More so, the agreement aligns with several existing international treaties to which Nigeria is also a party to, such as the UN Sustainable Development Goals and the Paris Agreement.

2.2 Economic Risks of Signing the Samoa Agreement to Nigeria

2.2.1 Bureaucratic Burden

Even though many of the provisions of the agreement are already contained in existing treaties that Nigeria has signed, aligning local laws and regulations to new provisions could lead to increased bureaucratic burdens for Nigerian businesses and government agencies, potentially hindering effective participation and the maximisation of benefits.

5. Market Access for Developing Countries' Exports. IMF, April 2001, available online at <https://www.imf.org/external/np/madc/eng/042701.pdf>

Two examples illustrate this point:

Under the return and readmission of illegal migrants, Article 74.3 says “the Member States of the European Union and the OACPS Members shall respond swiftly to readmission requests of each other. They shall carry out verification processes using the most appropriate and most efficient identification procedures with a view to ascertaining the nationality of the person concerned and to issue appropriate travel documents for return purposes, as set out in Annex I.”

A second example is in Article 72, where it says, “The Parties shall promote sound public financial management, including effective and transparent domestic revenue mobilisation, budget management and the use of public revenues in line with the principles of the Addis Tax Initiative.” Since Nigeria is not currently a signatory to the Addis Initiative, this imposes a new administrative requirement to understand and comply with the transparency standards in the initiative.

2.2.2 Market Access Concerns

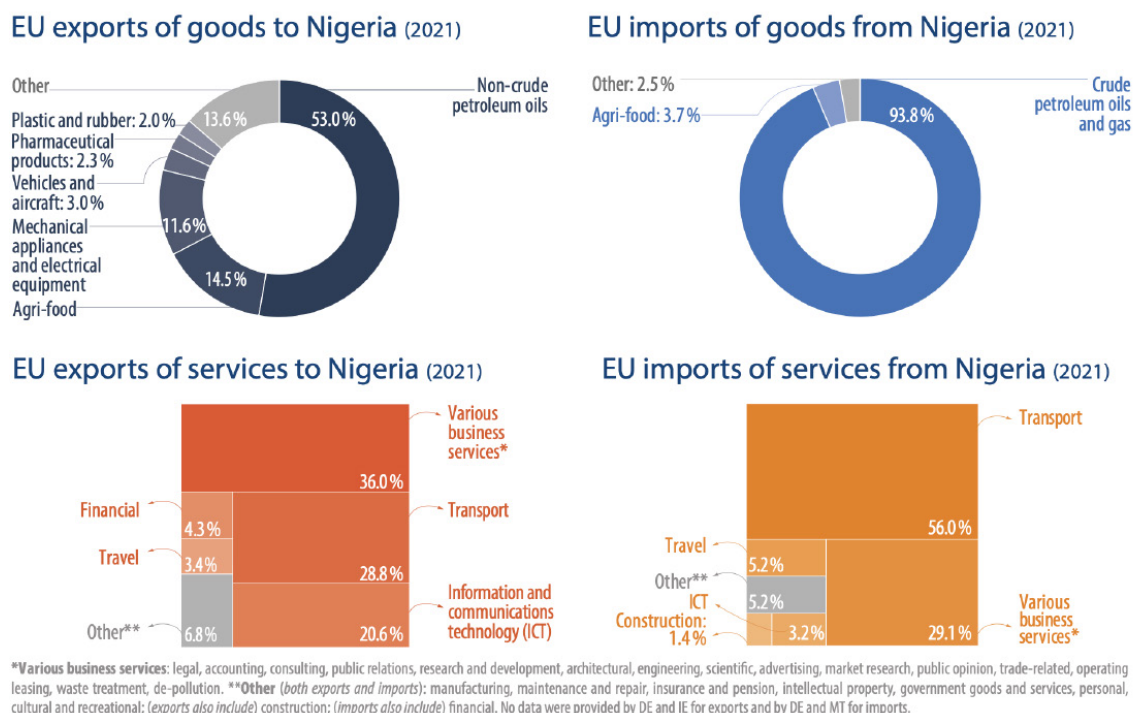
The pact seeks to continue Economic Partnership Agreements⁶ recognised in the Cotonou Agreement (Article 50.6) and to pay attention “to improving access to the European Union and other markets for goods and services originating in the OACPS Members” under the WTO (Article 50.8).

Trade in domestic industries, particularly in agriculture and manufacturing, is currently marginal, and as such may present a potential upside for Nigerian industries, while concerns about increased access of subsidised European products that would damage local industry, may not be applicable in this context. In this respect, for affected industries seeking to export to the EU, it would be important to examine the terms of standards and certifications to be applied by the signatories, if any, as that would be the real market access barrier.

Currently, Nigeria’s main export to Europe is crude oil, representing 94 per cent of all exports, whilst it imports refined products, making 53 per cent of EU’s exports to Nigeria. With the commissioning of Dangote Refinery and other domestic refineries, one can expect Nigeria’s importation of refined products to decline, and also its exports to the EU, except Nigeria develops its gas potential and expands its LNG export capacity.

6. For a detailed status of ECAS, see United Nations Human Rights Commission’ Right to Development book, Chapter 19: The Cotonou Agreement and economic partnership agreements. Available online at <https://www.ohchr.org/sites/default/files/Documents/Issues/Development/RTDBook/PartIIIChapter19.pdf>

Figure 1: Nigeria's exports and imports with the European Union



Source: Global Stat⁷

2.2.3 Reciprocity and Preparedness

The agreement continues the existing preferential market access granted to Nigerian exports to the EU, however a lack of preparedness on the domestic front may limit the ability of Nigerian goods to compete in European Markets. This raises concerns about the potential exploitation of Nigerian resources and markets without commensurate benefits for Nigerian businesses and consumers.

Nigeria being a signatory to the WTO Trade Facilitation Agreement, which is referenced in the Samoa Agreement, would mean that it can leverage the agreement's stated mandate for "compliance with the obligations assumed by the Parties within the World Trade Organization (WTO) framework, including provisions for special and differential treatment" (Article 50.2) to prepare its industry to ensure reciprocity, with support from the EU.

7. The GlobalStat database is a project of the European University Institute's Global Governance Programme (Italy). [https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/739345/EPRS_ATA\(2023\)739345_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/739345/EPRS_ATA(2023)739345_EN.pdf)

3.0 Law and Private Morality: Challenges for Policymaking in a New World Seeking to Pare Down Conservative Values

The law serves as a society's foundation, establishing order, resolving disputes, protecting rights, and shaping values. In today's multicultural societies, this usually means balancing the often-conflicting moral values of several disparate groups in the interest of preventing harm.

The preponderant basis of opposition to the Samoa Agreement has been the argument that it promotes "LGBTQ and abortion rights that conflict with the moral and legal positions of African countries." This objection is based on the following articles in the treaty:

Article 9.2⁸: "The Parties shall commit to the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all, without discrimination based on any ground including sex, ethnic or social origin, religion or belief, political or any other opinion, disability, age, or other status."

Article 36.2: "The Parties commit to the full and effective implementation of the Beijing Declaration and Platform for Action⁹ and the Programme of Action of the International Conference on Population and Development¹⁰ and the outcomes of their review conferences and commit to sexual and reproductive health and rights, in that context."

While Article 9 does not explicitly mention LGBTQ rights, it however mentions that parties shall commit to universal respect for fundamental freedoms and not discriminate on the basis of sex or other status. Purveyors of this argument, often buoyed by right wing Western NGOs and think-tanks, like the Human Life International (see article¹¹), argue that this phrasing, while innocuous, could form the basis of Western pressure to force African countries to drop anti-LGBTQ legislation in the future, in exchange for aid or basic trade cooperation.

On abortion rights, they argue that the Agreement gives power to the Beijing Declaration that it hitherto did not possess to force parties to provide sexual education to teenagers

8. Article 1, Section 3(a) states "promote, protect and fulfil human rights, democratic principles, the rule of law and good governance, paying particular attention to gender equality"
9. Beijing Declaration and Platform for Action, 2015. UN Women. Available online at <https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration>
10. UNFPA, 2014. International Conference on Population and Development Programme of Action.
11. <https://www.unfpa.org/publications/international-conference-population-and-development-programme-action>

and legalise abortion – both of which are argued as being against African moral norms.

The instinct to enforce a uniform moral order in the interest of social cohesion and harmony, is common in several human traditions, including African traditional societies. Belief in “divine accountability”, the idea that God would punish a society for allowing immoral acts like homosexuality go unchecked, occurs in many cultures and traditions. This fact, however, does not make it right.

Traditional religious beliefs in Nigeria placed a strong emphasis on maintaining communal and ancestral harmony. Therefore, the “law,” often not codified in the Western sense, was seen as an extension of religious principles. It was enforced through community elders, religious leaders, and social pressure, thereby ensuring adherence to moral codes and maintaining balance within the community. High priests made sacrifices to avert droughts, disease and other afflictions ostensibly brought upon the community by individual acts of immorality. It is no wonder therefore in this modern era, that many still argue that the law must be brought to bear in enforcing private morality to prevent divine public retribution.

However, since indigenous African faiths were not revealed religions¹², there was no way by which the people would have access to “the will of God” that contained elaborate moral principles upon which a coherent moral system could be erected. Therefore, what was morally good or right was not that which was commanded by God, rather it was constituted by the deeds, habits, and behaviour patterns considered by the society as worthwhile, because of their consequences for human welfare. African morality is therefore founded on humanism; the doctrine that considers human interests and welfare as basic to the thought and action of the people¹³. This led to more tolerance for different faiths, a tolerance that Islam and Christianity would benefit from on their arrival.¹⁴

Moral principles are incommensurate and often come into direct conflict with one another. One example of this conflict can be in the debate around abortion: pro-life and pro-choice (among others) are conflicting positions, but they both come from a recognisable moral framework. Just as not many Christians would consent to a law that

12. Human Life International. December 2023. Available online at <https://www.hli.org/2023/12/neo-colonialism-and-the-samoa-agreement/>
13. OK Steve Nwosu, 2006. Morality in African Traditional Society. Available online at <https://www.tandfonline.com/doi/pdf/10.1080/0739314042000217061>
14. Emmanuel Abah, 2013. Tolerance in Traditional African Religion. Available online at <https://digitalcommons.andrews.edu/cgi/viewcontent.cgi?article=1242&context=jams>

mandates all women to wear hijabs or Muslims consent to a law that enforces Friday as a full work day, so must we all consider what the threshold ought to be for conscripting individual liberties by law in the interest of a conception of moral harmony.

Policy making for social cohesion therefore faces a challenge in a new world at the interface of high contrastive values. To resolve these, we commend that policy makers apply the seven questions, developed by UC Hasting Law's Todd Pettys, in the considerations of what private moral principles merit being elevated to public law.¹⁵

1. Does the conduct at issue pose a risk of harm to others? If so, is the harm minimal or substantial?
2. Can the harm posed to others be described in nonreligious terms?
3. Does the conduct at issue significantly detract from one's ability to remain an integrated member of a political community? Conversely, would proscribing the conduct at issue significantly detract from the ability of others to remain integrated members of this political community?
4. Can the premises of my moral disapproval withstand scrutiny? Is there any sense in which I ought to feel morally implicated in future occurrences of this conduct?
5. By demanding the government's intervention, am I unjustifiably dishonouring any higher principles to which I purport to subscribe?
6. Do I have good reason to believe that, in this instance, government coercion – rather than an alternative form of moral encouragement – is essential?

On considering the foregoing questions, the aforementioned objections to the pact, while consistent with the private morality of many, do not merit elevation to public law and therefore ought not to be the basis for Nigeria not signing the Samoa Agreement.

Furthermore, if undue demands, which contradict local culture but are not clearly expressed in this agreement, arise, "Parties reaffirm that culture is a key element of sustainable development and an integral component of its social, economic and environmental dimensions. They commit to the integration of a cultural perspective in their development policies and strategies, by taking into consideration cultural specificities, and local and indigenous knowledge systems."

15. Todd Pettys, 2010. Sodom's Shadow: The Uncertain Line between Public and Private Morality. Hastings Law Journal. Available online at https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=3783&context=hastings_law_journal

4.0 Law and Private Morality: Challenges for Policymaking in a New World Seeking to Pare Down Conservative Values

Domestic and international laws can intersect and potentially conflict in several key areas. Here, we discuss some points of conflict and intersection relevant to the Samoa Agreement.

4.1 Treaty Implementation and Interpretation

When a country signs and ratifies an international treaty, it usually has an obligation to domesticate its provisions into local laws. Mismatches can occur between the obligations under the treaty and pre-existing domestic laws. In addition, differences in how a country's legal system interprets the treaty, in comparison to international tribunals, create the potential for conflict.

Nigeria is a dualist state that requires the transformation of treaties, under Section 12 of the 1999 Nigerian Constitution, before a treaty can have effect in our courts. For Dualists, international law and municipal law are two distinct legal systems; so distinct that conflicts between them are impossible.

International law can only apply within the sphere of municipal law after domestication. Furthermore, if ever there is a conflict between international law and municipal law, the courts are to apply the latter¹⁶. While there is a duty to implement treaties in International law rooted in the principle of "pacta sunt servanda," the form and procedure for implementing them is governed by municipal law.¹⁷

In addition, it is trite law enshrined in Section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria, which has received judicial blessing by the Supreme Court per Oguntade JSC in *Oluruntoba-Oju v Dopamu* {2008 All FWLR [Pt 411] 810} that any provision of an existing law which is in conflict with the provisions of the 1999 Constitution must be pronounced void to the extent of its inconsistency. It is equally pertinent to note that it is the statute enacted in the implementation of the treaty that serves as the source of law, not the treaty per se.¹⁸

16. Higgins, Problems and Process, International Law and How We Use It, Oxford University Press (1994), p.205 in C Nwagi African Journal of International and Comparative Law, March 2011, Vol 19, No 1, pp.38-65, at p.44
17. A B Oyeboode, Treaty Making and Treaty Implementation in Nigeria: An Appraisal (A Dissertation submitted to the Faculty of Graduate Studies York University in partial fulfilment for the Degree of Doctor of Jurisprudence, 1988 p.286)
18. *Murmansk State Steamship Line v The Kano Oil Millers Ltd* (1974) 252 SC 1 at 2

4.2 Human Rights

Countries are generally responsible for upholding human rights within their territories. However, sometimes domestic law or state action violates internationally recognised human rights. International bodies like the UN Human Rights Council or the International Criminal Court (ICC) provide mechanisms for monitoring and seeking accountability for human rights violations, but these mechanisms respect the principle of state sovereignty except in extenuating circumstances like genocide or war crimes.

The Samoa Agreement emphasises cooperation on human and gender rights in many sections, underscoring its importance to its authors. It also emphasises the role of local civil society in promoting key human rights principles.

Local civil society organisations may differ however on the conception of what constitutes human rights especially as it relates to abortion or LGBTQ freedoms. The resolution of this quandary needs to be underpinned by Todd Petty's principles for what merits elevation to public law, especially when it infringes international standards for human rights.

4.3 Sovereignty vs. Universal Jurisdiction

A fundamental principle of international law is the sovereignty of states over their affairs. However, extenuating circumstances like war crimes, genocide, and crimes against humanity, are so heinous that universal sovereignty can assert jurisdiction, regardless of where the crime took place or the nationality of the perpetrator. This creates tension, as countries might see the exercise of universal jurisdiction as a violation of their sovereignty.

In its declared principles, the Samoa Agreement seeks to respect and strengthen individual state sovereignty. Article 2 says, "the Parties reaffirm their commitment to developing friendly relations among nations, based on respect for the principle of sovereign equality among all states, and to refraining from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Charter of the United Nations (the "UN Charter")."

4.4 Economic and Trade Regulations

Countries sometimes implement laws designed to protect domestic industries or interests that run counter to free trade agreements they have signed. International institutions like the World Trade Organization (WTO) provide mechanisms for resolving such conflicts, potentially limiting the domestic policy choices of countries.

Article 50 of the Samoa Agreement acknowledges the need for “flexibility in WTO rules to take account of the different levels of development of the ACP countries and regions as well as the difficulties faced in meeting their obligations. They therefore further agree to cooperate to develop the necessary and appropriate capacity to effectively implement their WTO commitments. The Parties also recognise the innovative approach to special and differential treatment inherent in the WTO Trade Facilitation Agreement (TFA) that enables LDCs and developing countries to fully implement their commitments contingent on the delivery of the requisite trade support in conformity with their implementation notifications under the TFA.”

Provisions on trade and sustainable development, while seemingly innocuous, could however impose new costs on Nigerian businesses, especially in the agricultural sector, that may not be immediately apparent.

Article 49.4 says, “Parties shall promote trade in products obtained through the sustainable management, conservation and efficient use of natural resources. The Parties shall also cooperate to promote trade and investment in goods and services of particular relevance for climate change mitigation, including in low-carbon manufactured and remanufactured products, renewable energy, and energy-efficient products and services, in accordance with their international commitments.”

Although seemingly trivial in phrasing, EU companies may start to evoke these requirements in relation to their African trading partners, thereby increasing the carbon cost of doing business for the African trading partners and reducing their competitiveness. Negotiations must ensure that in line with the recognition for varying levels of development, such demands are made contingent upon the provision of relevant support to fund necessary



adjustments. This is also consistent with Article 82, which states that, “Due attention shall also be paid to the specific challenges faced by middle-income countries, particularly in relation to inequality, social exclusion and their access to resources.”

The relationship between domestic and international law is complex and constantly evolving. It’s crucial to recognise the points of conflict, in order to understand the challenges and potential solutions when working on legal issues with international dimensions.

5.0 Alternative Options for Nigeria To Obtain Similar Benefits Without Signing the Samoa Agreement

- 1. Pursue bilateral agreements:** Nigeria could negotiate individual agreements with various countries, excluding the EU, replicating therein the advantages it seeks from the Samoa Agreement. This approach allows for more tailored arrangements, addressing specific needs and concerns with each partner nation.

The Samoa Agreement, in Article 97, 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.” This is the supremacy clause, which means that Nigeria cannot have bilateral agreements with individual EU countries, as these are trumped by the Samoa Agreement. It however does not mean that the Samoa Agreement supersedes existing agreements between ACP countries like ECOWAS and AU, like some of its opponents have argued.

More importantly, negotiating bilateral agreements is costly and tedious. From managing the costs of logistics and expertise to balancing the interests of both sides. Also, as many countries are part of trade blocs, the terms of bilateral agreements may yet be identical to the provisions of the existing Samoa Agreement. The experience of the UK, post-Brexit, would prove instructive in this respect.

- 2. Utilise existing international frameworks:** Exploring existing international frameworks like the various pacts of the World Trade Organization (WTO), such as the Trade Facilitation Agreement, could offer avenues for achieving trade-related

benefits, without committing to the specific terms of the Samoa Agreement.

- 3. Focus on domestic reforms:** Implementing domestic reforms to streamline customs procedures, improve infrastructure, and enhance business regulations can lead to increased trade efficiency and attract foreign investment, potentially achieving some of the desired outcomes, without relying on an international agreement.
- 4. Invest in trade capacity building:** Investing in programmes that enhance Nigeria's capacity to participate effectively in international trade, such as training on trade policies and regulations, could lead to improved trade outcomes, regardless of specific agreements.

6.0 Recommendations and Conclusions

The clock is ticking. Article 98 gives Nigeria 12 months, from when the agreement goes into force, to it being signed by Parties. It would, after that point, be bound by actions taken to implement the agreement. Even though the provisional application of the agreement started on 1 January 2024, since two-thirds (53) of ACP members had not signed at that point, the agreement is yet to go into force. Hence, countries that have not signed may in fact, have till second quarter of 2025 to do so.

Opponents of the agreement point to the irreversibility of the agreement. However, its Article 100 is clear that any member can terminate its participation in the pact through a six-month written notice. Parties may also seek to amend provisions of the Agreement by invoking its Article 99. However, such a reversal is certain to come with the attendant costs of reversing the implementation steps taken both for the country and for businesses.

Equally, the agreement includes the possibilities for signatories to make interpretative declarations or reservations. In response to a question on sensitive family, life and sexuality issues and the requirement "to adopt common positions in international forums"¹⁹, the High Representative on behalf of the European Council clarified that as a matter of international law, under Article 19 of the Vienna Convention on the Law of Treaties (VCLT), parties can formulate reservations when signing or ratifying pacts, provided that such reservations do not defeat the objects and purposes of the treaties involved.

19. https://www.europarl.europa.eu/doceo/document/P-9-2022-000583_EN.html

Just as the Hungarian President, in his negotiations, made clear that the Agreement has no impact on national competencies in the areas of migration and sexual education²⁰, Nigeria could come up with its terms, clearly spelt out as a prerequisite to its signing of the agreement, instead of jettisoning the entire pact with the beneficial terms, which would be tantamount to throwing away the baby with the bath water.

In addition, opponents to signing the agreement argue that it forces African countries to vote with the EU in multilateral institutions like the UN, thus giving the EU coalition a 40 per cent majority advantage, and hence making it the largest voting bloc in these institutions. While there is indeed a political economic advantage to the EU building such a voting coalition, having whittled down its influence on the international stage by voting as one entity on many issues, it is hardly a mandate on members to vote alongside the EU, but a best endeavour objective, which is not binding.

In conclusion, we recommend that Nigeria carries out necessary due diligence, including but not limited to:

- 1. Conducting a comprehensive cost-benefit analysis:** Especially in line with Nigeria's economic plan and trade imperatives.
- 2. Engaging stakeholders in consultations:** Including government agencies, businesses, civil society organisations, and academia, to gather diverse perspectives and ensure informed decision-making.
- 3. Negotiating for favourable terms:** To secure the best possible deal within the agreement, focusing on ensuring fair market access, minimising conditionalities, and streamlining implementation mechanisms. This can perhaps be led by the National Office for Trade Negotiations.
- 4. Developing a comprehensive national implementation strategy:** To maximise benefits and mitigate potential risks. This should outline clear objectives, identify responsible institutions, and establish monitoring and evaluation mechanisms.

Notwithstanding, the risks of Nigeria's signing the agreement seem manageable and reversible, albeit costly. Therefore, in the interest of maintaining its leadership standing and leveraging with the EU as a regional leader and important trading power, it appears that Nigeria might stand to benefit from signing the agreement.

20. <https://twitter.com/zoltanspox/status/1648663384458510337>



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