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INSIGHT

The Samoa Agreement and Nigerian law: what it does and does not change

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Nigeria’s signature of the Samoa Agreement has raised questions about same-sex marriage and LGBT rights. Under section 12 of the Constitution, a treaty has no force of law in Nigeria until the National Assembly enacts it, and the Same Sex Marriage (Prohibition) Act 2014 remains in force.

Nigeria’s signature of the Samoa Agreement in June 2024 led to public concern that the country had committed itself to recognising same-sex marriage or LGBT rights. This note explains what the agreement is, how treaties take effect in Nigerian law, and why the existing law on same-sex relationships is unchanged.

What the Samoa Agreement is

The Samoa Agreement is the partnership agreement between the European Union and its member states and the members of the Organisation of African, Caribbean and Pacific States. It succeeds the Cotonou Agreement and was signed in Apia, Samoa, in November 2023. It covers a wide range of cooperation, including human rights, democracy and governance, sustainable economic growth, climate change, human and social development, peace and security, and migration.

Some of its provisions use broad language on non-discrimination and human rights. The agreement does not expressly require any party to recognise same-sex marriage, and the Federal Government has stated that Nigeria signed it on the basis that it does not override Nigerian law.

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How a treaty becomes law in Nigeria

Nigeria follows a dualist approach to treaties. Signing a treaty, and then ratifying it, commits Nigeria at the international level, but neither step changes domestic law. Section 12(1) of the 1999 Constitution provides that no treaty between the Federation and any other country has the force of law in Nigeria except to the extent that the National Assembly has enacted it into law.

Where a treaty deals with matters outside the Exclusive Legislative List, section 12(3) also requires the domesticating bill to be ratified by a majority of the State Houses of Assembly. The Supreme Court applied section 12 in *Abacha v. Fawehinmi* (2000), holding that the African Charter on Human and Peoples' Rights had effect in Nigeria because it had been enacted by statute.

The Same Sex Marriage (Prohibition) Act 2014

The Same Sex Marriage (Prohibition) Act 2014 prohibits marriage contracts and civil unions between persons of the same sex, and provides that such unions entered into elsewhere are not recognised in Nigeria. A person who enters into a same-sex marriage contract or civil union is liable to up to 14 years' imprisonment. The Act also prohibits the registration of gay clubs, societies and organisations and public displays of same-sex amorous relationships, with penalties of up to 10 years' imprisonment.

Because the Samoa Agreement has not been enacted into Nigerian law, it cannot amend or override the Act. Even if a domesticating law were proposed, it would have to pass through the National Assembly and would be subject to the Constitution.

Conclusion

Nigeria's signature of the Samoa Agreement does not change Nigerian law on same-sex marriage or relationships. The Same Sex Marriage (Prohibition) Act 2014 remains in force, and no provision of the agreement can have effect in Nigeria unless the National Assembly enacts it in accordance with section 12 of the Constitution.

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