

ARTICLE

NOT IN MY BACK YARD (NIMBY): EXAMINING GLOBAL ENVIRONMENTAL RACISM THROUGH THE LENS OF THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTE

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Abstract

Hazardous wastes, byproducts of industrialization, are detrimental to human health and the environment. Tightening environmental regulations and the increase of disposal costs in developed countries led those countries – the global North – to begin a regime of dumping or trading the hazardous wastes to the underdeveloped countries – the global South. Many instances of this practice can be referenced, including the Koko disaster of 1988 that took place in present-day Delta State, Nigeria. Since most of the regions victimized by this practice, like Africa, are occupied by non-white minority racial groups, the aim of this article has been to show that the practice of moving hazardous wastes to these regions is indicative of environmental racism and to draw a connection between the North-South route of hazardous wastes and the concept of environmental racism while reviewing the effectiveness of the subsisting regulatory framework. The goal of this work was to proffer solutions which would provide greater protection from the indiscriminate dumping of hazardous wastes in countries comprising the global South. Utilising the doctrinal research methodology, this research analysed the international treaties which have been adopted to regulate hazardous wastes and found that there is a correlation between the location of hazardous waste dump sites and the race of the occupants of those locations. It also established that in Africa particularly, the regulatory framework has proved less effective than expected due to weak implementation. This article culminated in recommendations intended to improve the transboundary movement of hazardous wastes and to promote cleaner and safer disposal practices.

Keywords: Hazardous Wastes, Toxic Wastes, Environmental Racism, Environmental Protection, Global South.

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1. INTRODUCTION

Third-world countries, particularly sub-Saharan African nations, are at the receiving end of hazardous wastes created in the developed world despite being unequipped to properly handle them. Notwithstanding the existence of relevant international instruments to combat the transboundary movement of hazardous waste, the practice continues without regard to human rights, health and environmental costs. This indicates one or both of two things. The first is a deficiency in the provisions and/or the application of the existing legal instruments. The second is that the lives and environment in the global South are seen as dispensable to the global North and can thus be burdened with the hefty price of industrialization, the benefits of which they do not enjoy.

This research aims to show the development and practice of environmental racism by highlighting the connection between the North-South hazardous waste route and the practice of selecting destinations in the global South as the preferred dumping sites. To this end, the effectiveness of the international regulatory framework in curtailing the movement of hazardous waste will be analysed.

This article is divided into eight parts. It commences with an introduction, followed by a section dealing with the international hazardous waste trade. The third section covers environmental racism, and section four addresses Africa and the waste trade. The fifth part analyses the international legal frameworks, and parts six, seven and eight cover the findings, recommendations and conclusion.

2. THE INTERNATIONAL HAZARDOUS WASTE TRADE

Since World War II, there has been an exponential increase in the production of hazardous waste by the global North due to technological and scientific advancements and rapid industrialization. At the end of the war in 1945, the amount of hazardous waste generated

globally was estimated to be at 5 million metric tonnes.¹ By the year 2000, it was at 400 million tonnes.² The global North generates the bulk of hazardous waste in circulation, with an estimated 87% of global hazardous waste produced in developed nations.³ In spite of this, a large quantity of this waste is transported from the global North to the global South, particularly Africa, Latin America, the Caribbean and Southeast Asia.⁴ This was not always the case—most of the trade in hazardous waste occurred between developed nations. For instance, in the early 1980s, 90% of America’s hazardous waste exports were to Canada.⁵ The domino effect that led to the change from the North-North waste trade to the North-South waste trade began in the 1970s.

Between 1950 and 1970, the Love Canal in Niagara Falls, the United States of America, was continually polluted by 21,000 tonnes of hazardous chemical waste buried there in 1942.⁶ Trees and gardens died, and residents suffered health problems, including higher rates of miscarriages, congenital disabilities, and chromosome changes.⁷ By the time President Carter declared a state of emergency at Love Canal in 1978, it had become one of the biggest environmental tragedies in American history and a symbol of the improper storage and management of hazardous waste.⁸

Events like this profoundly affected how hazardous wastes were perceived in the global North, primarily in Europe and America. Common people began to wake up to the nature of these hazardous waste substances and the dangers they posed to their lives, health, and environment. Thus began the manifestation of the Not in My Backyard (NIMBY) syndrome in industrialized nations. People became increasingly unwilling to have dump sites located nearby unless such sites were strictly regulated, and even then, they remained suspicious and sometimes totally

¹ David Hunter, James Salzman and Durwood Zaelke, *International Environmental Law and Policy* (3rd edn, Foundation Press 2007) 947.

² *Ibid.*

³ Shiming Yang, ‘Trade for the Environment: Transboundary Hazardous Waste Movements After the Basel Convention’ (2020) 37 *Review of Policy Research* 713, 719.

⁴ Nicky Gregson and others, ‘Interrogating the Circular Economy: The Moral Economy Recovery in the EU’ (2015) 44 *Economy and Society* 218, 221.

⁵ Christopher Hilz, ‘The International Toxic Waste Trade’ [1992] *Van Nostrand Reinhold* 36.

⁶ Matthew R Fisher, ‘Case Study: The Love Canal Disaster’ (*Environmental Biology*, 2017) <<https://openoregon.pressbooks.pub/envirobiology/chapter/6-4-case-study-the-love-canal-disaster/>> accessed 24 February 2024.

⁷ *Ibid.*

⁸ *Ibid.*

unreceptive.⁹ At that time, after years of industrialization, landfill capacities had begun to decline, and the opposition to new landfills was more vocal than ever before.¹⁰

Both as a consequence of previous disasters and pressure from citizens, regulations on hazardous substances in industrialized nations tightened. The tightening of regulations meant that the cost of hazardous waste disposal skyrocketed.¹¹ For instance, between 1980 and 1988, the cost of landfill waste dumps in the United States became 17 times more expensive, going from \$15 per tonne to \$250 per tonne.¹²

In the global South, not much hazardous waste was being produced. Third-world countries were not troubled at the time with the headache of hazardous waste management but were instead more concerned with the plague of widespread poverty and underdevelopment. The cost of waste disposal was relatively low in the South compared to what was obtainable in developed countries. In some African countries, the cost of the disposal of waste was as low as \$2.50 per tonne.¹³ There was and still is a widespread need for fiscal relief and foreign exchange in the global South. The apparent economic inequality and skewed power dynamics connected to colonialism and contemporary loan and debt arrangements between North and South countries made it possible to cajole governments of Southern nations into accepting financial compensation to allow toxic wastes within their borders.¹⁴ Jennifer Clapp aptly describes the situation:

Rapidly growing levels of international debt over the past two decades have increased the vulnerability of poor countries to global economic trends... This situation, combined with the not unrelated domestic political and institutional weakness in many poor countries, has made developing countries ideal targets for rich countries' unwanted hazards because they came with a promise of much needed foreign exchange. But these countries were not begging for hazards to be transferred. Other aspects of the global

⁹ Jennifer Clapp, *Toxic Exports: The Transfer of Hazardous Wastes from Rich to Poor Countries* (Cornell University Press 2010) 23.

¹⁰ Laura A Strohm, 'The Environmental Politics of the International Waste Trade' (1993) 2 *The Journal of Environment & Development* 129, 133.

¹¹ Jennifer Clapp, *ibid.*

¹² Laura A Strohm, 'The Environmental Politics of the International Waste Trade' (1993) 2 *The Journal of Environment & Development* 129, 133.

¹³ Mostafa Tolba, 'The Global Agenda and the Hazardous Wastes Challenge' (1990) 14 *Marine Policy* 205, 205–206.

¹⁴ David Naguib Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice* (MIT Press 2007) 8.

economy enabled hazard traders to take advantage of developing countries' vulnerable economic position.¹⁵

Furthermore, many developing nations, being unindustrialized, were unfamiliar with the effects of hazardous waste and even more unfamiliar with the methods required for the safe management of hazardous waste.¹⁶ The consequence of this ignorance was that they often had no comprehensive waste management regulations or very lax regulations, if any.¹⁷ A combination of these factors spurred an influx of hazardous waste from the global North to the global South in the late 1970s and early 1980s.¹⁸ Africa was the first victim of this practice before it spread to Latin America, South Asia, and then Eastern Europe.¹⁹ The waste trade could be through agreements made on behalf of States to dispose of waste or through the illicit smuggling of hazardous substances across borders by waste traffickers.²⁰

The increased fluidity and globalization of the international trading system and globalization of the international trading system created ideal conditions for the waste trade.²¹ Lower transportation and communication costs and more sophisticated networks have made the global waste trade relatively uncomplicated.²² Trade routes are established and easily abandoned, and it is virtually impossible, especially for developing countries, to inspect every incoming container.²³ Measuring the exact amount of hazardous waste crossing international borders year-in-year-out is an arduous task. There are two (2) primary reasons for this. First, there is no consensus on the substances that constitute hazardous waste. The definition varies from country to country.²⁴ Whether or not a particular waste substance is considered hazardous depends on the applicable regulations or legislation.²⁵ These differences are a result of different countries' varying waste management capabilities. Countries may limit the scope of hazardous waste in their legislation if they lack the facilities or the resources to regulate wastes beyond

¹⁵ Clapp, *ibid* at 11.

¹⁶ *Ibid*, at 23.

¹⁷ *Ibid*.

¹⁸ *Ibid*.

¹⁹ David Naguib Pellow, *ibid* at 13.

²⁰ *Ibid*.

²¹ Clapp, *ibid* at 11.

²² *Ibid*.

²³ *Ibid*.

²⁴ Maureen T Walsh, 'The Global Trade in Hazardous Waste: Domestic and International Attempts to Cope with a Growing Crisis in Waste Management' (1992) 42 Catholic University Law Review 103, 108.

²⁵ Mohan A Prabhu, 'Toxic Chemicals and Hazardous Wastes: An Overview of National and International Regulatory Programs' (1988) 11 International Environmental Report 687, 692.

that scope.²⁶ Therefore, waste trade transactions cannot be measured by a uniform standard.²⁷ Second, illegal traffickers tend to carry out their activities by clandestine means. Traffickers use umbrella companies based in tax havens to conduct their business.²⁸ The companies are often dissolved once a particular transaction is completely executed, and new companies are created in their stead to facilitate subsequent trade deals.²⁹ For these reasons, the waste trade is almost impossible to track with specificity. Statistics on the international waste trade are rare and potentially unreliable as a consequence.

3. ENVIRONMENTAL RACISM

The coining of the term ‘environmental racism’ is widely attributed to Chavis, who used it in 1982 during a protest over the siting of Polychlorinated Biphenyl (PCB) at a disposal facility in North Carolina.³⁰ Chavis defined environmental racism as –

...racial discrimination in environmental policy-making and the unequal enforcement of environmental laws and regulations. It is the *deliberate targeting* of people of colour communities for toxic waste facilities and the official sanctioning of a life-threatening presence of poisons and pollutants in people of colour communities. It is also manifested in the history of excluding people of colour from leadership of the environmental movement.³¹

The inclusion of “deliberate targeting” presupposes the need for proof of discriminatory intent to establish environmental racism.³² Commentators often disagree on the proper usage of the term, principally on the question of whether or not actions and policies can be labelled racist for simply having distributive outcomes across racial groups or whether there must be some underpinning racial animus.³³ Bunyan Bryant, influenced by Chavis’ point of view, defined environmental racism as –

²⁶ Maureen T Walsh, *ibid* at 110.

²⁷ David P Hackett, ‘An Assessment of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal’ (1990) 5 *American University International Law Review* 291, 314.

²⁸ Clapp, *ibid* at 31.

²⁹ *ibid*.

³⁰ Kent Jeffreys, ‘Environmental Racism: A Skeptic’s View’ (1994) 9 *St. John’s Journal of Legal Commentary* 677, 678.

³¹ Benjamin F Chavis, ‘Preface’, *Unequal Protection: Environmental Justice and Communities of Color* (Sierra Club Books 1994).

³² Ryan Holifield, ‘Defining Environmental Justice and Environmental Racism’ (2001) 22 *Urban Geography* 78, 83.

³³ Jill E Evans, ‘Challenging the Racism in Environmental Racism: Redefining the Concept of Intent’ (1998) 40 *Arizona Law Review*, 1273–1277.

...those institutional rules, regulations, and policies, or government or corporate decisions that *deliberately* target certain communities for least desirable land uses, resulting in the disproportionate exposures of toxic and hazardous waste on communities based upon certain prescribed biological characters.³⁴

Certain scholars have criticized Chavis' definition and similar postulations like Bryant's above for their reductive stance on environmental racism. Pulido, for instance, condemned definitions of environmental racism that limited the concept to solely intentional discrimination, describing such definitions as regressive.³⁵ Bullard defined environmental racism as "any policy, practice, or directive that differently affects or disadvantages individuals, groups, or communities based on race or colour".³⁶ He tows a different line from Chavis, submitting that even unintentional effects of environmental policies can qualify as environmental racism as long as the adverse effects of said policies are racially disproportional. Bullard's definition is the most appropriate and forms the substantive foundation on which the modern anti-environmental racism movement should be built.³⁷ It is no surprise, therefore, that subsequent definitions of environmental racism bear more of a resemblance to Bullard's definition than that of Chavis.

Environmental racism has further been stated as "any government, institutional, or industrial action, or *failure to act*, that has a negative environmental impact which disproportionately harms – whether intentionally or unintentionally – individuals, groups, or communities based on race or colour".³⁸ This definition incorporates a "failure to act" into the discussion, thus further widening the scope of environmental racism beyond just actions, to omissions. The takeaway is that where environmental regulations, practices, and policies can have racially disproportionate impacts, wilfully ignoring this fact may be considered racist even if there is no discriminatory intent behind the policies themselves.³⁹ Furthermore, the thrust of the intent-free definition of environmental racism creates a 'presumption of racism'. That is to say, once

³⁴ Bunyan Bryant (ed), *Environmental Justice: Issues, Policies, and Solutions* (Island Press 1995) 4. Emphasis added.

³⁵ Laura Pulido, 'Rethinking Environmental Racism: White Privilege and Urban Development California' (2000) 90 *Annals of the Association of American Geographers* 12, 31.

³⁶ Kent Jeffreys, 'Environmental Racism: A Skeptic's View' (1994) 9 *St. John's Journal of Legal Commentary*, 679.

³⁷ *Ibid.*

³⁸ Deborah M Robinson, 'Environmental Racism: Old Wine in a New Bottle' [2000] *World Council of Churches* 75, 75.

³⁹ Gerald Torres, 'Race, Class, and Environmental Regulation' (1992) 63 *Colorado Law Review*, 840.

any regulation, policy, or practice disproportionately distributes environmental risk based on race, it must be deemed racist, irrespective of the underpinning intent.

4. ENVIRONMENTAL RACISM THROUGH THE LENS OF THE AFRICAN WASTE TRADE/DUMP

It has been argued by Anyinam that Africa has long been considered a “prime hunting ground” for the disposal of hazardous waste from the global North.⁴⁰ By the year 1990, industrialized nations had attempted to site hazardous wastes in more than half the countries on the continent.⁴¹ The factors applicable to the global South also apply to Africa, as most of its States are underdeveloped.⁴² Beyond these factors, however, the choice of Africa as a preferred waste dumping destination has racist undertones.

Amongst the corporations and governments of the global North, Africa is perceived as a wild jungle populated by stupid, unclean, and immoral people and governed by corrupt and unintelligent leaders.⁴³ These perceptions are not dissimilar to the ones that fuelled the exploitation of Africa for natural resources and slave labour over the past half-millennium.⁴⁴ Richard Frey has called attention to the fact that the transboundary movement of hazardous waste from industrialized nations into Africa aligns with the historical pattern of siphoning wealth from Africa, but in this case, involves the export of “anti-wealth” – substances that drain a country’s resources and hampers its ability to create resources in the future.⁴⁵ This new phase of exploitation is called toxic colonialism.⁴⁶

Observers in the global North – economists and business leaders especially – have described this trend as simply “economically efficient”.⁴⁷ Lawrence Summers, then chief economist at the World Bank, defended toxic colonialism in his notorious memo in 1991 –

⁴⁰ Charles A Anyinam, ‘Transboundary Movements of Hazardous Wastes: The Case of Toxic Waste Dumping in Africa’ (1991) 21 *International Journal of Health Services*, 759.

⁴¹ Clapp, *ibid* at 32.

⁴² Jean Chrysostome Kanamugire, ‘African Response to Transboundary Movement of Hazardous Waste’ (2017) 13 *Acta Universitatis Danubius Juridica* 121, 123.

⁴³ Mutombo Mpanya, ‘The Dumping of Toxic Waste in African Countries: A Case of Poverty and Racism’ in Bunyan Bryant and Paul Mohai (eds), *Race and the Incidence of Environmental Hazards* (Westview Press 1992) 275.

⁴⁴ David Naguib Pellow, *Resisting Global Toxics: Transnational Movements for Environmental Justice* (MIT Press 2007), 13.

⁴⁵ Richard Scott Frey, ‘The Hazardous Waste Stream in the World System’ in Richard Scott Frey (ed), *The Environment and Society Reader* (Allyn and Bacon 2001) 90.

⁴⁶ Zada Lipman, ‘Trade in Hazardous Waste’ in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (Cambridge University Press 2015) 258.

⁴⁷ Pellow, *ibid* at 9.

Just between you and me, shouldn't the World Bank be encouraging *more* migration of the dirty industries to the LDCs [less developed countries]? ... The measurement of the costs of health-impairing pollution depends on the forgone earnings from increased morbidity and mortality. From this point of view, a given amount of health-impairing pollution should be done in the countries with the lowest wages. I think the economic logic behind dumping a load of toxic waste in the lowest wage country is impeccable and we should face up to that...I've always thought that underpopulated countries in Africa are vastly *under*-polluted.⁴⁸

From all indications, Summers reached this conclusion using a cost-benefit analysis, assigning value to human life based on the potential of future earnings.⁴⁹ To Summers, the lives that will surely be lost in lower-wage nations as a result of the waste-induced environmental hazards are less valuable than the lives lost to the same hazards in the global North.⁵⁰ Given that the poorest countries are populated by non-white racial minorities, and given the high correlation of poverty with race across the globe,⁵¹ Summers' argument is implicitly racist.⁵² The same amoral economic logic justified slavery.⁵³

The argument could be made that hazardous waste is sometimes imported into developed nations, the same as African nations. However, important distinctions must be made between the scenarios. Where there is an exchange in waste between two developed nations, the receiving country already possesses the technology to treat and manage the waste properly. It can, therefore, negotiate a fair price on the strength of that.⁵⁴ There is informed consent and a mutual understanding between equal partners.⁵⁵ By comparison, waste deals with African nations are unequal transactions. Poorer countries in Africa lack financial resources and are, therefore, unable to properly manage and dispose of hazardous waste in ways that protect the

⁴⁸ The Whirled Bank Group, 'Lawrence Summers: The Bank Memo' (*A World Full of Poverty*, 27 March 2007) <http://www.personal.ceu.hu/corliss/CDST_Course_Site/Readings_old_2012_files/Our%20Words_%20The%20Lawrence%20Summers%20Memo.pdf> accessed 6 February 2024.

⁴⁹ Doug Henwood, 'Toxic Banking: World Bank's Environmental and Global Policies' (1992) 1 *Nation* 250, 257.

⁵⁰ *Ibid.*; Also, Segun Gbadegesin, 'Multinational Corporations, Developed Nations, and Environment Racism: Toxic Waste, Exploration, and Eco-Catastrophe' in Laura Westra, Bill E Lawson and Bill Lawson (eds), *Faces of Environmental Racism: Confronting Issues of Global Justice* (Rowman & Littlefield 2001) 192.

⁵¹ Peter Newell, 'Race, Class and the Global Politics of Environmental Inequality' (2005) 5 *Global Environmental Politics* 70, 80.

⁵² *Ibid.* Also, Segun Gbadegesin, 'Multinational Corporations, Developed Nations, and Environment Racism: Toxic Waste, Exploration, and Eco-Catastrophe' in Laura Westra, Bill E Lawson and Bill Lawson (eds), *Faces of Environmental Racism: Confronting Issues of Global Justice* (Rowman & Littlefield 2001), 192; Pellow, *Ibid* at 10.

⁵³ Gbadegesin, *ibid.*

⁵⁴ Pellow, *ibid* at 12.

⁵⁵ Gbadegesin, *ibid* at 200.

environment and human health.⁵⁶ Additionally, unlike African countries, developed countries have healthcare systems that can manage and mitigate any consequences of trade.⁵⁷ Hence, potential hazards are likely to cause more damage in Africa than in the global North.

Africa plays little to no part in the generation of hazardous wastes and does not benefit from the activities that lead to their production. Therefore, it is unjust for developed nations to enjoy the dividends of industrialization while Africa is saddled with the responsibility of waste disposal and the resultant environmental hazards.⁵⁸ Whatever pecuniary benefits African countries obtain in exchange pales compared to the human and environmental prices they inevitably pay.⁵⁹

5. INTERNATIONAL LEGAL FRAMEWORK

5.1 *The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (The Basel Convention)*⁶⁰

Before 1989, the international legal framework for the movement and management of hazardous wastes consisted only of non-binding soft laws like the 1987 Cairo Guidelines.⁶¹ However, the global concern regarding the proliferation of the waste trade necessitated a more binding instrument and led to the creation of the Basel Convention in 1989.⁶² The Basel Convention had the difficult task of attempting to reconcile the clashing interests of the global North and the global South.⁶³ While Southern nations clamoured for a total prohibition of the trade in hazardous waste, the North preferred to keep the waste trade open and optional, albeit

⁵⁶ Clapp, *ibid* at 2.

⁵⁷ Gbadegesin, *ibid* at 201.

⁵⁸ *ibid*; Clapp, *ibid* at 31.

⁵⁹ Kenneth I Ajibo, 'Transboundary Hazardous Wastes and Environmental Justice: Implications for Economically Developing Countries' (2016) 18 *Environmental Law Review*, 271; Rachael E Marshall and Khosrow Farahbakhsh, 'System Approaches to Integrated Solid Waste Management in Developing Countries' (2013) 33 *Waste Management*, 988, 994.

⁶⁰ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted 22 March 1989, Effective 5 May 1992, 1673 UNTS 126 <<http://archive.basel.int/text/con-e.pdf>> accessed 15 February 2024. Hereinafter referred to as "Basel Convention"

⁶¹ United Nations Environment Programme Governing Council, *Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes* (United Nations Environment Programme 1987) <<https://books.google.com.ng/books?id=PDEmAQAAMAAJ>> accessed 5 February 2024.

⁶² Sylvia F Liu, 'The Koko Incident: Developing International Norms for the Transboundary Movement of Hazardous Waste' (1992) 8 *Journal of Natural Resources & Environmental Law*, 139.

⁶³ Maurice Sunkin, David M Ong and Robert Wright, *Sourcebook on Environmental Law* (2nd edn, Cavendish Publishing Limited 2002), 346.

regulated.⁶⁴ The Basel Convention ended up towing the path of regulation rather than prohibition.

The objective of the Basel Convention is to protect human beings and the environment from the effects of hazardous waste by eliminating the unsafe movement and disposal of hazardous waste. Under the Basel Convention, Hazardous wastes include substances contained in Annex I of the Convention – which consist of particular waste streams in manufacturing processes or hazardous constituents of materials – as long as they possess some of the characteristics designated in Annex III, like being flammable, explosive, poisonous, spontaneously combustible, among others.⁶⁵ The Convention’s scope extends to include materials classified as waste under the domestic laws of the country of export, import, or transit.⁶⁶ The Convention also covers “other” wastes contained in Annex II, which consist primarily of household or incinerator wastes.⁶⁷ However, it specifically excludes radioactive and ship operations waste from its application.⁶⁸

Article 2 defines transboundary movement of hazardous waste as:

any movement of hazardous waste or other wastes from an area under the national jurisdiction of one state to or through an area under the national jurisdiction of another State or to or through an area under the national jurisdiction of any State, provided at least two States are involved in the movement.

The Basel Convention does not expressly ban the transboundary movement of hazardous waste in general. It only prohibits the export of hazardous wastes to or imports of hazardous wastes from countries that are not Parties to the Convention.⁶⁹ This prohibition attempts to exclude non-ratifying States from any legal waste trade with the Parties to the Convention.⁷⁰ Parties retain the right to prohibit the import of certain hazardous wastes and may notify the other Parties of this prohibition.⁷¹ The exception to the prohibition of trade with non-Party States is found in Article 11(1) of the Convention:

⁶⁴ *Ibid.*

⁶⁵ Basel Convention, art 1(1)(a).

⁶⁶ *Ibid*, art 1(1)(b)

⁶⁷ *Ibid*, art (1)(2).

⁶⁸ *Ibid*, art 1(3) & (4).

⁶⁹ *Ibid*, art 4(5).

⁷⁰ Hugh J Marbury, ‘Hazardous Waste Exportation: The Global Manifestation of Environmental Racism’ (1995) 28 *Vanderbilt Journal of Transnational Law*, 251, 264.

⁷¹ *Ibid*, art 4(1)(a)

Notwithstanding the provisions of Article 4 paragraph 5, Parties may enter into bilateral, multilateral, or regional agreements or arrangements regarding transboundary movement of hazardous wastes or other wastes with Parties or non-Parties provided that such agreements or arrangements do not derogate from the environmentally sound management of hazardous wastes and other wastes as required by this Convention. These agreements or arrangements shall stipulate provisions that are not less environmentally sound than those provided for by this Convention, in particular, considering the interests of developing countries.

This exception significantly weakens the Convention's ability to procure compliance with its standards by all Parties. Where Parties create separate agreements with non-parties, determining the quality of such agreements is difficult.⁷²

While the Convention does not seek to end the waste trade, it does attempt to regulate it using systems of Prior Informed Consent (PIC), strict notification, and tracking requirements.⁷³ The State of export must notify or require the generator or exporter to notify any other States concerned in the transboundary movement of the hazardous wastes in writing.⁷⁴ Complete information stating the effects of the transboundary movement on human health and the environment must also be provided to the concerned States.⁷⁵ When that is done, the State of import can either consent to the movement with or without conditions, deny permission, or request additional information.⁷⁶ The State of transit⁷⁷ must also be notified and can, just like the State of import, choose to consent, deny permission, or request additional information.⁷⁸ If written consent is not obtained from both the State of import and the State of transit, shipment of the hazardous waste cannot commence.⁷⁹ The idea behind these provisions is to promote the exchange of information, allowing all States concerned to make informed decisions on the

⁷² Katharina Kummer, *The International Management of Hazardous Wastes the Basel Convention and Related Legal Issues* (Clarendon Press 1995) 83.

⁷³ Sirleaf, 'Not Your Dumping Ground: Criminalization of Trafficking Hazardous Waste in Africa' (2018) 35 *Wisconsin International Law Journal*, 341.

⁷⁴ Basel Convention, art 6(1)

⁷⁵ *Ibid*, art 4(2)(f)

⁷⁶ *Ibid*, art 6(2)

⁷⁷ The "State of Transit" is "any State, other than the State of Export or Import, through which a Movement of Hazardous Waste or other Wastes is Planned or Takes Place." *ibid*, Article 2(12)

⁷⁸ Basel Convention, art 6(4)

⁷⁹ *Ibid*, arts 3(a) & 4

acceptance or rejection of hazardous wastes.⁸⁰ Also, because written consent is mandatory, a paper trail is created, making it easier to hold involved Parties accountable.⁸¹

However, like many of the provisions of the Basel Convention, this does not provide adequate protection for Southern States. The global South lacks the financial, technical, and administrative resources to monitor the PIC procedure. As Kummer rightly points out, “The successful application of the PIC system in particular depends on a sophisticated national infrastructure”.⁸² Where the State of import is a developing nation, it may lack the technical knowledge to properly assess the risks involved in accepting hazardous wastes.⁸³ If this is the case, the validity of any consent given is questionable as it cannot indeed be considered *informed* consent.⁸⁴ Also, where the consent of a State is induced, not by a rational assessment of the environmental consequences of the wastes but by poverty and desperation for foreign exchange, the validity of that consent must be called into question.⁸⁵ This point is illustrated by the quote of Guinea-Bissau’s minister of trade and tourism who, when asked why his country agreed to the import of more than 15 million tonnes of hazardous waste, simply replied, “We need money”.⁸⁶

The Basel Convention provides that the transboundary movement of hazardous waste will be deemed illegal if it occurs without appropriate notification to all the concerned States, without the consent of the concerned States, or where the consent in question is obtained by falsification, misrepresentation or fraud, or where it results on deliberate disposal of hazardous wastes in a manner that contravenes the Conventions and general principles of international law.⁸⁷ If such illegal trafficking occurs, the Convention requires either the generating State or the exporter to take back the waste or dispose of the waste if taking it back is impracticable.⁸⁸ The illegal traffic of hazardous wastes is proscribed as criminal under the Convention.⁸⁹ Parties

⁸⁰ David J Abrams, ‘Regulating the International Hazardous Waste Trade: A Proposed Global Solution’ (1990) 28 Columbia Journal of Transnational Law 801, 825.

⁸¹ *Ibid.*

⁸² ⁸² Katharina Kummer, *ibid* at 61.

⁸³ Jonathan Krueger, ‘Prior Informed Consent and the Basel Convention: The Hazards of What Isn’t Known’ (1998) 7 The Journal of Environmental & Development 115, 121.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Jim Puckett, ‘Disposing of the Waste Trade: Closing the Recycling Loophole’ (1994) 24 The Ecologist 53, 55.

⁸⁷ Basel Convention, art 9(1)

⁸⁸ *Ibid.*, art 9(2).

⁸⁹ *Ibid.*, art 4(3).

are required to create domestic legislation to reflect this and to prevent and punish illegal traffic.⁹⁰

Despite the above provisions, the Basel Convention lacks effective compliance and enforcement mechanisms. Therefore, Parties are individually responsible for detecting illegal shipments. This requires sophisticated monitoring systems that underdeveloped countries simply do not possess. Furthermore, the only consequence of illegal dumping under the Convention is the duty placed on the Parties or exporters to retrieve and/or dispose of the hazardous wastes. No further liability mechanism provides remedies for the damage that may have already been caused.

Article 10(1) of the Basel Convention binds Parties to cooperate with each other to improve the environmentally sound management of hazardous waste. In pursuit of this ideal, parties are required to share information that will promote the environmentally sound management of hazardous wastes, cooperate in monitoring the environmental effects of hazardous waste management, cooperate in the implementation of new environmentally sound low-waste technologies and the improvement of existing technologies, and cooperate in developing the technical capacity among Parties – especially States that need technical assistance.⁹¹ These obligations aim to provide developing nations with access to technologies for environmentally sound management of hazardous wastes which they might not have been able to acquire or properly and effectively use on their own.⁹²

State Parties have an obligation to prevent the export or import of hazardous wastes if they have reason to believe that the wastes will not be managed in an environmentally sound manner⁹³ and to ensure that the hazardous wastes being exported will be managed in an environmentally sound manner, whether in the State of import or elsewhere.⁹⁴ They must also cooperate in the sharing of information in order to improve environmentally sound management and curb the illegal traffic of hazardous waste.⁹⁵ The Convention defines ‘environmentally sound management of hazardous wastes’ as “taking all practicable steps to ensure that hazardous or other wastes are managed in a manner which will protect human health

⁹⁰ *Ibid*, art 4(4).

⁹¹ *Ibid*, art 10(2)

⁹² Maureen T Walsh, ‘The Global Trade in Hazardous Waste: Domestic and International Attempts to Cope with a Growing Crisis in Waste Management’ (1992) 42 *Catholic University Law Review*, 123–124.

⁹³ Basel Convention, art 4(2)(e) & (g); The phrase “reason to believe” is often criticized for its broadness and ambiguity.

⁹⁴ *Ibid*, art 4(8)

⁹⁵ *Ibid*, art 4(2)(h)

and the environment against the adverse effects which may result from such wastes”.⁹⁶ The wording of this definition is vague at best. It neither clarifies what environmentally sound management entails nor specifies who is responsible for ensuring it.

The major criticism of the Basel Convention from the global South is that it opted to control the transboundary movement of hazardous waste instead of banning it outright. Akinnusi reports that the Organization of African United (OAU) was “still gravely concerned about the lack of a total ban on the export and import of hazardous waste”.⁹⁷ While the developed countries who opposed a ban saw the Basel Convention as a regulation of the waste trade, to the global South, it was simply the legalization of waste colonialism affording little protection to poorer countries.⁹⁸ The weakness of the Convention is exemplified in its ambiguous definition of hazardous wastes, making it difficult to know what exact wastes fall under the Convention and the exclusion of radioactive wastes from its application.⁹⁹ The Basel Convention also fails to consider the global South's legal, political, administrative and technical deficiencies. Fagbohun puts it best:

...it presumes that participating nations have an effective legal system, a functioning administrative structure and regulatory scheme, and a reasonably open political system based on the rule of law. These are elements that are absent in most developing countries. Many of them do not have functioning administrative structures capable of sound policymaking or sophisticated regulation of serious problems such as hazardous waste disposal.¹⁰⁰

Article 4(9) of the Convention, which allows for the transboundary movement of hazardous waste if “the wastes in question are required as raw material for recycling or recovery industries in the State of import”,¹⁰¹ created a gaping loophole in the Convention. Countries from the global South were worried that it would lead to sham recycling.¹⁰² They were right. Industries

⁹⁶ *Ibid*, art 2(8)

⁹⁷ Ayo O Akinnusi, ‘The Bamako and Basel Conventions on the Transboundary Movement of Hazardous Waste: A Comparative and Critical Analysis’ (2001) 12 Stellenbosch Law Review 306, 308.

⁹⁸ Zada Lipman, ‘Trade in Hazardous Waste’ in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (Cambridge University Press 2015), 264.

⁹⁹ *Ibid*.

¹⁰⁰ Olanrewaju A Fagbohun, ‘The Regulation of Transboundary Shipments of Hazardous Waste: A Case Study of the Dumping of Toxic Waste in Abidjan, Cote D’Ivoire’ (2007) 37 Hong Kong Law Journal, 841.

¹⁰¹ Basel Convention, Article 4(9)(b).

¹⁰² Sham recycling is the listing of a waste as being destined for recycling when in fact it is simply dumped unsafely under the pretext of recycling. Jonathan Krueger, ‘The Basel Convention and the International Trade in Hazardous Wastes’ in Olav Schram Stokke and Øystein B. Thommessen (eds), *Yearbook of International Co-operation on Environment and Development* (Earthscan Publications 2001) 45.

began exporting hazardous waste to recycling operations in the global South.¹⁰³ Recycling has been used as a pretext for exporting thousands of tonnes of hazardous waste such as lead scrap, contaminated scrap metal, plastic waste, and computer waste.¹⁰⁴ Before the Basel Convention, only 36% of hazardous waste exports were destined for recycling operations.¹⁰⁵ However, by 1992, this number had risen to 88%.¹⁰⁶ In 2001, waste exports for recycling constituted 95% of all waste exports.¹⁰⁷ In instances where recycling did take place, it was done unsafely and proved just as harmful to humans and the environment as the practice of disposal.¹⁰⁸

5.1.1 *The Ban Amendment to the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Ban Amendment)*¹⁰⁹

Because of the ineffectiveness of the Basel Convention in curbing the North-South hazardous waste trade and loopholes therein used to circumvent its provisions, the global South and environmental non-governmental organizations (NGOs) continued to call for an absolute ban on the transboundary movement of hazardous wastes to the South.¹¹⁰ Eventually, at the third Conference of Parties to the Convention in 1995, the Ban Amendment was adopted pursuant to Article 17 of the Basel Convention.¹¹¹ The Ban Amendment prohibits the export from countries in Annex VII to other countries of all hazardous waste intended for final disposal, reuse, recycling, and recovery.¹¹² The countries in Annex VII are members of the Organization for Economic Co-operation and Development (OECD), members of the European Commission, and Liechtenstein.¹¹³ The purpose of the Amendment was to protect the global South from the effects of hazardous wastes and to plug the recycling loophole. The Ban

¹⁰³ Clapp, *ibid* at 3.

¹⁰⁴ Andrew Webster-Main, 'Keeping Africa Out of the Global Backyard: A Comparative Study of the Basel and Bamako Conventions' 26 *Environ Environmental Law and Policy Journal* 65, 84.

¹⁰⁵ Zada Lipman, 'A Dirty Dilemma: The Hazardous Waste Trade' (2002) 23 *Harvard International Review* 67, 69.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Clapp, *ibid* at 3; Basel Action Network, 'Turning Back the Toxic Tide' (*BAN_2011AnnualReport*, 2011) 1–2 <https://static1.squarespace.com/static/558f1c27e4b0927589e0edad/t/5a0b24e0085229359df319d4/1510679780789/BAN_2011AnnualReport_Final.pdf> accessed 9 February 2024.

¹⁰⁹ Ban Amendment to the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22 March 1989, 1673 UNTS 126, hereinafter referred to as "Ban Amendment"

¹¹⁰ Clapp, *ibid*; Lipman, *ibid* at 266.

¹¹¹ Article 17 of the Basel Convention provides for the procedure for amendment of the Convention.

¹¹² Ban Amendment, Decision III/1

¹¹³ Basel Convention, Annex VII

Amendment only reached the prerequisite number of ratifications and came into force on the 5th of December 2019 after ratification by Croatia.¹¹⁴

5.1.2 *Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their disposal (Basel Protocol on Liability and Compensation)*¹¹⁵

Attention has previously been called to the Basel Convention's lack of liability mechanisms. After extensive negotiations at the fifth COP in 1999, the Basel Protocol on Liability and Compensation was adopted to address this deficiency. The Protocol establishes civil liability for damages resulting from the transboundary movement of hazardous wastes, including incidents that occurred due to illegal traffic.¹¹⁶ Article 1 of the Protocol provides for its objective, which is "to provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes". Damage, under the protocol, consists of loss of life or personal injury, loss of or damage to property, loss of income, the cost of reinstating the impaired environment, and the cost of preventive measures.¹¹⁷

The Protocol provides for both strict liability and fault-based liability. The State of import, generator, or exporter that gives notification of the proposed shipment of the hazardous waste incurs strict liability for any damage caused.¹¹⁸ They are required to carry insurance, bonds, or other financial guarantees to cover their liabilities.¹¹⁹ Fault-based liability attaches where damage is caused by failure to comply with the provisions of the Basel Convention or by wrongful intentional, reckless, or negligent acts or omissions.¹²⁰ There are no financial limits

¹¹⁴ UNEP, 'Entry into Force of Amendment to UN Treaty Boosts Efforts to Prevent Waste Dumping' (*BRSMeas*, 13 September 2019). <<http://www.basel.int/Implementation/PublicAwareness/PressReleases/BanAmendmententryintoforce/tabid/8120/Default.aspx>> accessed 10/02/2024.

¹¹⁵ Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 10 December 1999, UN Doc. UNEP/CHW.1/WG.1/9/2, hereinafter referred to as "Basel Protocol."

¹¹⁶ Damilola S Olawuyi, *The Principles of Nigerian Environmental Law* (Revised Edition, Afe Babalola University Press, 2013), 160.

¹¹⁷ Basel Protocol, art 2(2)(c)

¹¹⁸ *Ibid*, art 4

¹¹⁹ *Ibid*, art 14(1)

¹²⁰ *Ibid*, art 5

for fault-based liability.¹²¹ However, financial limits are set for strict liability in Annex B of the Protocol.¹²²

There is a fundamental problem with the Basel Protocol on Liability and Compensation. Its scope of application only covers damage that occurs *during* transboundary movement of hazardous wastes.¹²³ It does not cover damage that occurs after the shipment or initial deposit of the waste. This cripples the Protocol to some extent, seeing as most of the damage that emanates from hazardous waste disposal results from leaking containers or, in the case of recycling operations, from the ineffectual management of residues and emissions.¹²⁴ The consequences of these failures almost always manifest *after* the disposal has occurred.

5.2 The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes Within Africa (Bamako Convention)¹²⁵

African nations made no secret of their disillusionment with the inadequacy of the Basel Convention. They were particularly dissatisfied with the lack of a complete ban on the transboundary movement of hazardous waste.¹²⁶ The Basel Convention was seen as being to the benefit of industrialized nations. Cusack claims the Basel Convention “legitimized the international toxic waste game and proclaimed the industrial nations the winners”.¹²⁷ Accordingly, almost all OAU member nations initially boycotted the Basel Convention and refused to ratify it.¹²⁸ In the wake of further waste dumping incidents after the Basel Convention, it became apparent that Africa would have to take its fate into its own hands. The

¹²¹ *Ibid*, art 12(2)

¹²² *Ibid*, art 12(1)

¹²³ *Ibid*, art 3

¹²⁴ Lipman, *ibid* at 269.

¹²⁵ The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement of Hazardous Wastes Within Africa, 30 January 1991, <https://au.int/sites/default/files/treaties/7774-treaty-0015_-_bamako_convention_on_hazardous_wastes_e.pdf> accessed 10 February 2024. Hereinafter referred to as “Bamako Convention”

¹²⁶ Russell H Shearer, ‘Comparative Analysis of the Basel and Bamako Conventions on Hazardous Waste’ (1993) 23 *Environmental Law* 141, 151.

¹²⁷ Marguerite M Cusack, ‘International Law and the Transboundary Shipment of Hazardous Waste to the Third World: Will the Basel Convention Make a Difference?’ (1989) 5 *American University Journal of International Law and Policy* 393, 420.

¹²⁸ Hao-Nhien Q Vu, ‘The Law of Treaties and the Export of Hazardous Waste’ (1994) 12 *UCLA Journal of Environmental Law and Policy* 389, 410.

OAU convened and adopted the Bamako Convention in 1991.¹²⁹ It was signed by all 53 member States and came into force on April 22, 1998.¹³⁰

The Bamako Convention was created to rectify the perceived inadequacies of the Basel Convention and protect Africa from the waste trade. Unlike the Basel Convention, the Bamako Convention places an obligation on Parties to ban the import, *for any reason*, of all hazardous waste into Africa from non-parties to the Convention and to proscribe any such import as illegal and criminal.¹³¹ The use of the phrase “for any reason” in the import ban suggests that the Bamako Convention has no intention of creating a distinction between recyclable and non-recyclable wastes.¹³² The Convention allows Parties to make bilateral and multilateral waste trade agreements with non-parties, but only concerning waste produced within Africa.¹³³ The effect of this is that African nations cannot be importers of hazardous wastes but should have room to export hazardous wastes to non-African countries.

The Bamako Convention takes a very similar approach to that of the Basel Convention in defining hazardous waste. However, it expands its scope to include wastes prohibited in the State of export and radioactive wastes.¹³⁴ The definition of illegal traffic is identical under both the Bamako and the Basel Conventions, but the Bamako Convention does go a step further by requiring Parties to “introduce national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports”.¹³⁵ The penalties shall be high enough to both punish and deter such conduct.

Intra-African waste trade – that is, the import or export of hazardous wastes from/to other African States – is not prohibited by the Bamako Convention. It is regulated in the same way the Basel Convention regulates the global waste trade. Firstly, Parties cannot export hazardous waste to States that have prohibited such wastes or if they have reason to believe that the wastes will not be managed in an environmentally sound manner.¹³⁶ Parties are also restricted from exporting hazardous waste to countries that do not have the facilities for environmentally sound

¹²⁹ Sirleaf, *ibid* at 344.

¹³⁰ Laura A Pratt, ‘Decreasing Dirty Dumping? A Reevaluation of Toxic Waste Colonialism and the Global Management of Transboundary Hazardous Waste’ (2011) 35 *William & Mary Environmental Law and Policy Review*, 603.

¹³¹ Bamako Convention, art 4(1)

¹³² Katharina Kummer, *ibid* at 101.

¹³³ Bamako Convention, art 11(1)

¹³⁴ *Ibid*, art 2(1)(d) & 2(2).

¹³⁵ *Ibid*, art 9(2).

¹³⁶ *Ibid*, art 4(3)(i).

management.¹³⁷ Article 6 of the Convention provides a notification system very similar to what is found in the Basel Convention. The State of export, the generator, or the exporter shall give written notification to the State of export and/or the State of transit. The States of import or transit may then, in a written response, consent with or without conditions, deny permission, or request additional information. Without written consent and written confirmation of the contract specifying that the wastes in question will be managed in an environmentally sound manner, the transboundary movement cannot commence.

With the exception of accidents during transboundary shipments, the Bamako Convention imposes unlimited liability on hazardous waste generators and holds them jointly and severally liable for any damage caused.¹³⁸ This provision would theoretically make it possible for countries that had suffered some damage to recover compensation and clean-up costs.

While the Bamako Convention is recognized as a symbolic demonstration of Africa's ability to band together against a common threat,¹³⁹ there is little indication it is presently anything more than a "paper instrument".¹⁴⁰ The 2006 dump of hazardous waste in Abidjan led many to rightly question the effectiveness of the Bamako Convention.¹⁴¹ Issues such as the fraudulent concealment and illegal shipments of hazardous wastes are of such a nature as cannot be addressed simply by the stringency of international instruments and regulations. No matter how broad the scope of definitions is or how severe the punishment and liability imposed are, the Convention can have no effect if the signatories do not give it effect. Therefore, the primary defect of the Bamako Convention is not its provisions per se but its implementation. Pratt notes, "Despite these strong provisions and political support, Bamako countries simply lacked the capacity to effectively implement the provisions and domestically prevent toxic waste colonialism within their borders; as a result, the application of Bamako became quite limited."¹⁴² The lack of an effective monitoring and enforcement operation, an underdeveloped funding mechanism and the lack of solid commitment among the African States have made the

¹³⁷ *Ibid*, art 4(3)(j).

¹³⁸ *Ibid*, art 4(3)(b).

¹³⁹ Andrew Webster-Main, 'Keeping Africa Out of the Global Backyard: A Comparative Study of the Basel and Bamako Conventions' 26 *Environs Environmental Law and Policy Journal*, 67.

¹⁴⁰ Michael Kidd, 'Environmental Law in Africa' in Shawkat Alam and others (eds), *Routledge Handbook of International Environmental Law* (Routledge 2013) 805.

¹⁴¹ Chukwuka N Eze, 'The Bamako Convention on the Ban of the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Wastes Within Africa: A Milestone in Environmental Protection?' (2007) 15 *African Journal of International and Comparative Law* 208, 201.

¹⁴² Pratt, *ibid* at 603.

effective implementation of the Convention impossible.¹⁴³ To date, the Bamako Secretariat and the Conference of Parties are largely inactive.¹⁴⁴ Additionally, almost half of the Parties to the Bamako Convention, including Nigeria, have failed to ratify it.¹⁴⁵ The United Nations Environment Program (UNEP) warns:

Without any significant enforcement efforts dedicated to the mapping, investigation and possible prosecution of criminals involved in illegal waste collection, illegal dumping and transport activities are likely to grow, as will the associated threats to human health and environmental security.¹⁴⁶

6. DISCUSSION OF FINDINGS

The increase in the production of hazardous wastes over the past eight (8) decades is a direct consequence of the uptick in industrialization since the 2nd World War. However, not all countries have had this level of exponential industrialized growth. The countries that did are the countries that have come to be known as industrialized/developed and are of the global North. There is a correlation between where environmental hazards are sited and the economic class of the people populating those areas. There is a similar correlation between the dumping of hazardous wastes in impoverished African countries, especially sub-Saharan African countries populated by black people.

Economic arguments have been deployed to defend the hazardous waste trade to the global South in a bid to dismiss claims of racism. However, similar economic arguments have been used to defend exploitative practices like colonialism and racism in the past. These practices might have been economically viable for the nations and corporations that benefitted, but they were also demonstrably racist. The suggestion by some economists, like Lawrence

¹⁴³ Tony George Puthucherril, 'Two Decades of the Basel Convention' in Shawkat Alam and others (eds), *Routledge Handbook of International Environmental Law* (Routledge 2013) 304.

¹⁴⁴ Michael Kidd, 'Environmental Law in Africa' in Shawkat Alam and others (eds), *Routledge Handbook of International Environmental Law* (Routledge 2013), 805.

¹⁴⁵ Kingsley Adegboye, 'Ratify, Implement Bamako Convention Now- SRADev Boss' (*Vanguard News*, 12 January 2018) <<https://www.vanguardngr.com/2018/01/ratify-implement-bamako-convention-now-sradev-boss/>> accessed 11/02/2024. Also, African Union, 'Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa' <https://au.int/sites/default/files/treaties/7774-sl-BAMAKO_CONVENTION_ON_THE_BAN_OF_THE_IMPORT_INTO_AFRICA_AND_THE_CONTROL_OF_TRANSBOUNDARY_MOVEMENT_AND_MANAGEMENT_OF_HAZARDOUS_WASTES_WITHIN_AFRICA.pdf> accessed 10/04/2024.

¹⁴⁶ Ieva Rucevska (ed), *Waste Crime - Waste Risks: Gaps in Meeting the Global Waste Challenge - A Rapid Response Assessment* (United Nations Environment Programme 2015) 8 <<https://wedocs.unep.org/xmlui/handle/20.500.11822/9648>> accessed 15/02/2024.

Summers,¹⁴⁷ that the waste trade can be mutually beneficial to both the global South and the global North holds no water when one considers the disproportionate environmental risks undertaken by Southern Nations.

Most African nations lack the technical and infrastructural capacity for environmentally sound management and disposal of hazardous waste. The true scale of the waste trade is impossible to determine, given the surreptitious *modus operandi* of illegal traffickers. Though some notorious cases have been brought to the international limelight, the number of inconspicuous and unreported waste dumping incidents is anyone's guess.

The conflicting interests of Northern and Southern States make the formulation of mutually acceptable international instruments difficult. For the North, the trade in waste is advantageous. For the South, it is detrimental. As the Bamako Convention has shown, the inability to properly implement provisions of international instruments will inevitably frustrate the effectiveness of those instruments, no matter how beneficial the provisions appear on paper.

7. RECOMMENDATIONS

There is a need for the standardization of the definition of hazardous waste. The definition of hazardous wastes under both the Basel and Bamako Conventions includes wastes regarded as hazardous under the domestic legislations of the States of import, export and transit. There should be an international treaty containing a definition of hazardous wastes common to all Parties to that instrument. Substances may be added to the list using a procedure similar or identical to the one used in the Rotterdam Convention.

Governments around the world must strengthen their commitment to the development of clean production methods both within and outside their borders. These methods do not produce any or produce a significantly lower amount of hazardous waste.

Environmental education programs should be instituted in the global South to enlighten the general public on the nature of hazardous wastes and their short-term and long-term effects on human beings' health, aquatic life, biodiversity and their impact on the environment.

African States must improve their capacity to detect hazardous wastes disguised as non-toxic materials. To achieve this, they can invest in state-of-the-art detection technology and capacity building in personnel, especially in the seaports. African States can develop partnerships with

¹⁴⁷ The Whirled Bank Group, 'Lawrence Summers: The Bank Memo', *ibid.*

developed countries and international organizations to facilitate this capacity-building and improve hazardous waste detection capabilities.

Stiff penal provisions should be instituted and rigorously applied for any party that deliberately transports hazardous waste to countries in the global South, particularly if there is no full and frank prior disclosure and also when they know they are exporting such wastes to a country which is clear and does not have the technical capacity to safely dispose of such waste.

The Basel Protocol on Liability and Compensation should be updated in conformity with the current economic and legal reality to impose cradle-to-grave liability on hazardous waste generators. This would mean that generators of hazardous wastes would be liable for damages caused by those wastes from the moment of generation to the end of time.

Nigeria should ratify and domesticate the Bamako Convention. Other signatories that have not yet ratified the Convention¹⁴⁸ should also do so.

8. CONCLUSION

This work has shown that a deliberate *modus operandi* has been adopted in the transportation and disposal of hazardous wastes in the global South by the global North. Economic advantages appear to be of paramount concern instead of the health, well-being and the environment of the global South, and this stance has been proved to be racist. If the tide is going to turn, countries in the global South have to take the lead and take a hard stance against the transportation of hazardous wastes into their territory. It is imperative that regional treaties like the Bamako Convention are ratified and domesticated by all African countries to better protect them from being targeted as the easy and preferred destination for hazardous wastes. If all loopholes are stringently plugged, it will serve as effective deterrence for opportunists who capitalise on the poverty of the continent as an easy way to dispose of their hazardous and toxic wastes.

¹⁴⁸ African Union, 'Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa', *ibid*.