

HUMAN RIGHTS IMPLICATIONS OF ILLICIT TOXIC WASTE DUMPING FROM DEVELOPING COUNTRIES INCLUDING THE U.S.A., ESPECIALLY TEXAS TO AFRICA, IN PARTICULAR, NIGERIA

CYRIL UCHENNA GWAM*

This article discusses human rights implications of toxic waste dumping in Africa and Nigeria, in particular, from the developed countries including the U.S.A. (and the State of Texas) using only two universally acclaimed international conventions on toxic waste, namely the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal,¹ and the African convention called the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa.² It is a pity that most African countries, including Nigeria are yet to domesticate these conventions particularly elaborated for the protection of their environment.³ This article uses the international human rights law⁴ and soft laws⁵ to buttress the violations of human rights as a result of the dumping.

* Gwam, Ph.D., Member of the National Institute. I wish to thank Professor Emeka Duruigbo for his intellectual support.

1. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 28 I.L.M. 649 [hereinafter Basel Convention] (entered into force May 5, 1992).

2. Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, Jan. 29, 1991, 30 I.L.M. 773 [hereinafter Bamako Convention].

3. Cyril U. Gwam, *Toxic Waste and Environmental Rights Violation: The Case of Nigeria's Maritime Environment* (2011) (individual research project submitted to the National Institute for Policy and Strategic Studies, Kuru, in partial fulfillment for the award of the Member of the National Institute) (on file with author).

4. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (entered into force Jan. 3, 1976).

5. Mainly the resolutions of the Commission of Human Rights (CHR).

I. CONCEPTUAL CLARIFICATION OF TOXIC WASTE

Hazardous, toxic and dangerous waste and products have no generally accepted definition.⁶ During the elaboration and negotiation of the Basel Convention⁷ and the Bamako Convention,⁸ a loose, flexible, consensus and highly compromised definition of “waste” was given. “‘Wastes[,]’ [according to the two Conventions,] are substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law.”⁹ In the Basel Convention, there are eighteen waste streams, which include clinical wastes from medical care in hospitals,¹⁰ while in the Bamako Convention; there are twenty-one waste streams without constituents.¹¹ The extra three in the Bamako Convention are the radionuclide-contaminated wastes collected from households, including sewage, sewage sludge and residue arising from the incineration of household wastes.¹²

However, in order to be classified as hazardous, the two Conventions provide that these categories of wastes need to exhibit one or more hazardous characteristics, such as being explosive, flammable, oxidizing, poisonous, infectious, corrosive, toxic and ecotoxic.¹³ Ecotoxic, which is a new term, is defined in both Conventions as “substances or wastes, which, if released, present or may present immediate or delayed adverse impacts to the environment by means of bioaccumulation and/or toxic effects upon biotic systems.”¹⁴ The ecotoxic waste is capable, by any means, after disposal, of yielding another material, which possesses any of the known hazardous characteristics.¹⁵ An example of such a substance is called leachate, which is mainly from waste electronic and electrical equipment (WEEE).¹⁶ This is one of the most hazardous wastes that is regularly exported from the U.S. to developing countries, particularly Nigeria, as

6. Cyril U. Gwam, *Adverse Effects of Illicit Movement and Dumping of Hazardous, Toxic, and Dangerous Wastes and Products on the Enjoyment of Human Rights*, 14 FLA. J. INT'L L. 427, 431 (2002).

7. Basel Convention, *supra* note 1.

8. Bamako Convention, *supra* note 2.

9. Basel Convention, *supra* note 1 at 659–60; Bamako Convention, *supra* note 2.

10. Basel Convention, *supra* note 1.

11. Bamako Convention, *supra* note 2.

12. *Id.*

13. Basel Convention, *supra* note 1; Bamako Convention, *supra* note 2.

14. Basel Convention, *supra* note 1; Bamako Convention, *supra* note 2.

15. Basel Convention, *supra* note 1.

16. *Id.*

used electrical and electronic equipment (UEEE) popularly known as “used” or “second-hand” equipment.¹⁷

The Bamako Convention, unlike the Basel Convention, includes any hazardous substance that has been banned, cancelled, refused or withdrawn from registration in the manufacturing country for health or environmental reasons.¹⁸ The aims are:

- (i) It avoids a loophole by which products that are banned would not come under any export regulation by the parties to the Basel Convention;
- (ii) It stops foreign producers from nursing the desire of disposing unusable substances outside their country, particularly in Africa; and
- (iii) It allows import restrictions to be placed on substances such as medical drugs and WEEE, which may be exported to Africa when banned in foreign markets.

To further strengthen these aims, the Bamako Convention used the word “substance” instead of “waste” in order to avoid any need to show that the item in question is being disposed of in conformity with the definition of waste.¹⁹ Therefore, hazardous, toxic and dangerous products and wastes will be better defined as: any solids, liquids, or sludge generated from a wide range of industrial, commercial, or agricultural activities that create a potential of high risk to human life and health and threaten short-term and long-term environmental pollution. Hazardous, toxic, and dangerous wastes in the short term adversely affect the public health, while contributing to environmental pollution in the long term.

II. CONCEPTUAL CLARIFICATION OF ILLICIT MOVEMENT AND DUMPING OF WASTE

The *Chamber's Dictionary* defines “illicit” as “not allowable; unlawful; unlicensed.”²⁰ The Basel Convention in Article 9 defines “illegal traffic” as:

17. Gwam, *supra* note 3.

18. Bamako Convention, *supra* note 2.

19. *Id.*

20. CHAMBERS'S TWENTIETH CENTURY DICTIONARY 650 (2000). A similar definition appears in the *Collins English Dictionary*. *Webster's Dictionary* defines “illicit” as “not

[A]ny transboundary movement of hazardous wastes or other wastes:

- (a) without notification pursuant to the provisions of this Convention to all States concerned; or
- (b) without the consent pursuant to the provisions of this Convention of a State concerned; or
- (c) with consent obtained from States concerned through falsification, misrepresentation or fraud; or
- (d) that does not conform in a material way with the documents; or
- (e) that results in deliberate disposal (e.g. dumping) of hazardous wastes or other wastes in contravention of this Convention and of general principles of international law. . . .²¹

The Convention went further to impose obligations on the exporter and/or generator and importer and/or disposer. It states that “[i]n case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the exporter or generator, the State of export shall ensure that the wastes in question are:

- (a) taken back by the exporter or the generator or, if necessary, by itself into the State of export, or,
- (b) are otherwise disposed of in accordance with the provisions of this Convention, within 30 days from the time the State of export has been informed about the illegal traffic or such other period of time as States concerned may agree. To this end the Parties concerned shall not oppose, hinder or prevent the return of those wastes to the State of export.²²

In the case of the importer and/or the disposer, the Convention in Article 9.3 states that:

permitted, unlawful.” MERRIAM WEBSTER’S COLLEGIATE DICTIONARY 618 (11th ed. 2004). *Black’s Law Dictionary* defines “illegal” as “forbidden by law and unlawful” and “illicit” as “illegal or improper.” BLACK’S LAW DICTIONARY 336 (3d ed. 1996).

21. Basel Convention, *supra* note 1.

22. *Id.*

In the case of a transboundary movement of hazardous wastes or other wastes deemed to be illegal traffic as the result of conduct on the part of the importer or disposer, the State of import shall ensure that the wastes in question are disposed of in an environmentally sound manner by the importer or disposer or, if necessary, by itself within 30 days from the time the illegal traffic has come to the attention of the State of import or such other period of time as the States concerned may agree. To this end, the Parties concerned shall co-operate, as necessary, in the disposal of the wastes in an environmentally sound manner.²³

Even when responsibility for illegal traffic cannot be ascertained, the Convention insists that “the Parties concerned or other Parties, as appropriate, shall ensure through co-operation that the wastes in question are disposed of as soon as possible in an environmentally sound manner either in the State of export or the State of import or elsewhere as appropriate.”²⁴ To ensure that this article is vigorously implemented, the Convention called on each Party to introduce “appropriate national/domestic legislation to prevent and punish illegal traffic.”²⁵ It then exhorts the Parties to the Convention to co-operate with a view to achieving the objects of this Article.

From the definitions, the common threads are that “illegal” is the same as: (1) illicit, (2) unlawful, and (3) not permitted by law. Therefore, if one relates the definition of the Convention to those defined above, “illicit” or “illegal” dumping or traffic of hazardous wastes could operationally be defined as any hazardous waste activity prohibited by law. The laws that must be considered in this context are domestic laws directly regulating such products and wastes or regulating other subjects affected by such products and wastes, as well as general principles of international law, including customs, norms, and standards of international law on human rights²⁶ and the environment.

23. *Id.*

24. *Id.*

25. *Id.*

26. Gwam, *supra* note 3.

III. CONCEPTUAL DISCUSSION OF HUMAN RIGHTS

For the purpose of this paper, human rights are operationally defined as:

[T]he fundamental, inherent and inalienable civil and political, as well as economic, social and cultural rights of the human person to personal freedom, life, justice, good health, food, etc., which must be protected and promoted, and should never be infringed, by the government or state; and it is the concern of the international community, in order to live happily as a united family, to ensure that the human person, no matter his/her race, sex, language or religion enjoys and realizes these rights.²⁷

IV. THE ORIGIN OF HUMAN RIGHTS RESOLUTIONS ON TOXIC WASTE

African countries under the former Organization of African Unity, now African Union,²⁸ have been in the forefront of the campaign against illegal transportation and the movement of toxic waste and its human rights implications. The breakthrough came in 1989 when the United Nations Sub

27. See Cyril Uchenna Gwam, *The Need for Nigeria to Seek Advisory Services and Technical Assistance in the Field of Human Rights*, J. HUMANITARIAN ASSISTANCE (2000), available at <https://sites.tufts.edu/jha/archives/148>.

28. Members of the Former Organization of African Unity decided to adopt, at its Sirte Declaration on September 9, 1999, a Constitutive Act that would make significant changes to the operational functions of the Organization including the Organization's transformation to the African Union. See Constitutive Act of the African Union, ORG. OF AFRICAN UNITY, available at http://www.au2002.gov.za/docs/key_oau/au_act.htm. Member States formally adopted the Act during the 36th Ordinary Session of the Assembly of Heads of States and Government held in Lome, Togo, from July 10–12, 2000. All fifty-three-member states have signed the Constitutive Act of the African Union formally establishing the African Union in place of the former Organization of African Unity. The OAU was established in 1963 when most African countries had just gained independence from British and French colonialism. The new body represents a new spirit of unity for the economic, political and social development of the continent. See COUNCIL OF MINISTERS, DECISIONS ADOPTED BY THE SEVENTY-FOURTH ORDINARY SESSION OF THE COUNCIL OF MINISTERS (2001), available at [http://www.africa-union.org/root/au/AUC/Departments/HRST/biosafety/DOC/level0/CM_Dec_623_\(LXXIV\).pdf](http://www.africa-union.org/root/au/AUC/Departments/HRST/biosafety/DOC/level0/CM_Dec_623_(LXXIV).pdf). For more information, see Tiyanjana Maluwa, *The Constitutive Act of the African Union and Institution—Building in Postcolonial Africa*, 16 LEIDEN J. INT'L L. 157, 157–70 (2003); Tiyanjana Maluwa, *Reimagining African Unity: Some Preliminary Reflections on the Constitutive Act of the African Union* in 9 AFRICAN Y.B. OF INT'L L. 16–32 (Martinus Nijhoff Publishers 2001).

Commission on Human Rights²⁹ appointed a Special Rapporteur on Human Rights and Environment to prepare a concise note setting method by which a study could be made of the problem of the environment and its relation to human rights. This was at the height when African countries had declared the dumping of dangerous substances, toxic, and hazardous waste in Africa as crimes against Africa and African people.³⁰

29. In 1999 the Economic and Social Council changed its name from the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Sub-Commission on the Promotion and Protection of Human Rights. The Sub-Commission on the Promotion and Protection of Human Rights was the main subsidiary body of the Commission on Human Rights. It was composed of twenty-six experts whose responsibility was to undertake studies, particularly in light of the Universal Declaration of Human Rights, and make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities. Membership was selected with regard to equitable geographical distribution. The United Nations Human Rights Council assumed responsibility for the Sub-Commission when it replaced the Commission on Human Rights in 2006. In September 2007, the Advisory Committee replaced the Council's Sub-Commission on the Promotion and Protection of Human Rights. Similar to the Sub-Commission, the Advisory Committee is a subsidiary body of the Council and functions as a "think-tank" for Council members. The committee is composed of 18 experts nominated or endorsed by U.N. member states and elected by Council members through a secret ballot. Upon the Council's request, the Committee provides research-based advice that focuses on thematic human rights issues. The Committee meets twice a year for a maximum of 10 days and can schedule meetings on an ad hoc basis with approval from Council members. Since it was established, some have criticized the composition of Committee membership. Specifically, some contend that Committee members are driven by political or ideological agendas. The previous Sub-Commission came under criticism for duplicating the work of the Council and disregarding the Council's guidance and direction. The Sub-Commission consisted of 26 independent experts elected for four-year terms, and held an annual four-week session in Geneva unlike the new Advisory Committee. See Hillel Neuer, *U.N.'s Human Rights Advisory Panel Is Un-fit to Serve*, N.Y. DAILY NEWS, Jan. 21, 2011, <http://www.nydailynews.com/opinion/human-rights-advisory-panel-un-fit-serve-article-1.152760>. Additional information on the Sub-Commission for the Promotion and Protection of Human Rights and its replacement Advisory Committee can be found at <http://www2.ohchr.org/english/bodies/subcom/index.htm>.

30. COUNCIL OF MINISTERS, RESOLUTIONS OF THE 48TH ORDINARY SESSION OF THE COUNCIL OF MINISTERS(1988), available at http://www.au.int/en/sites/default/files/31CoM_1988b.pdf. See also Guillaume Pambou Tchivounda, *L'interdiction De Deverser Des Dechets Toxiques Dans Le Tiers Monde: Le Cas De L'Afrique*, 34 ANNUAIRE FRANCAIS DE DROIT INT'L 709 (1988).

V. HUMAN RIGHTS AND TOXIC WASTE: FIRST, SECOND, AND THIRD GENERATION RIGHTS

The major advantage of discussing human rights from the generation approach is that each generation seems to be distinct and more developed than its predecessor. However, it has been argued that the concept of generation of rights is misleading because it implies the notion of succession and improvement, in which each new generation of rights is more sophisticated and evolved than its predecessor.

A. *Generation Rights*

First-generation rights, which are libertarian in nature and relate to the sanctity of the individual and his or her rights within a state, are usually regarded as those rights enunciated in the International Covenant on Civil and Political Rights (ICCPR).³¹ These include the right to life, the right to administration of justice, the right of the child, and the right to vote and be voted for.³² The second-generation rights, which are the realizable rights, are those rights incorporated in the International Covenant on Economic, Social and Cultural Rights (ICESCR).³³ These include the right to good health and the right to education.³⁴ The third-generation rights, although not in a treaty form at the UN level, like the first and second-generation rights, encompass "solidarity rights" at the United Nations level or collective rights.³⁵ However, the third-generation rights are documented in the African Charter on Human and Peoples' Rights, which Nigeria ratified. The charter was domesticated in Nigeria in 1997.³⁶

Some scholars have argued that the second and third-generation rights are not justiciable as opposed to first-generation rights and, as such, should not be treated as rights but mere wishes of governments.³⁷ Even in Nigeria,

31. ICCPR, *supra* note 4.

32. *Id.*

33. ICESCR, *supra* note 4.

34. *Id.*

35. Karel Vasak, For the Third Generation of Human Rights: The Right to Solidarity, Lecture to the Tenth Study Session of the International Institute of Human Rights (July 1979).

36. African Charter on Human and Peoples' Rights, *adopted* June 27, 1981, 21 I.L.M. 58 (entered into force Oct. 21, 1986).

37. Cees Flintermann, *Three Generations of Human Rights in 10 HUMAN RIGHTS IN A PLURALIST WORLD: INDIVIDUALS AND COLLECTIVITIES* 75 (Jan Berting ed., 1990).

some of the ICESCR rights are misconstrued as not justiciable. According to Toebes, “Economic, social and cultural rights are often considered nonjusticiable and are regarded as general directives for states rather than rights.”³⁸ This relates to the way human rights have been construed in Western liberal democracies.

With regards to the right to health and the right to clean and sound environment, one may take solace in the fact that some countries, including Nigeria, have been given effect before domestic courts. There are several examples of this. One is the Supreme Court decision in the *Minors Oposa* case, where the Supreme Court of the Philippines recognized the right of individuals to a balanced and healthful ecology and ruled that the state should stop providing logging licenses in order to protect the health of present and future generations.³⁹ The decision was based on the provisions of Article II of the 1987 Constitution of the Philippines, which set forth the right to health and ecology.⁴⁰

In a major landmark case in Nigeria, *Social and Economic Rights Action Centre (SERAC) v. Nigeria (2001)*, the African Commission on Human and Peoples’ Right decided that “[c]ollective rights, environmental rights and economic and social rights are essential elements of human rights in Africa. There is no right in the African Charter that cannot be made effective.”⁴¹ The facts of the case are:

[T]he military government of Nigeria, through its involvement in oil exploration as part of an oil exploration consortium, failed to pay due regard to the health and environment of local communities in Ogoni land by disposing toxic wastes into the environment in violation of international environmental standards. The resulting contamination of

38. Brigit Toebes, *Towards an Improved Understanding of the International Human Rights to Health*, 21 HUM. RTS. Q. 661, 661 (1999).

39. *Minors Oposa v. Sec’y of Dep’t of Env’t & Natural Res.*, G.R. Nos. 171947–48 (S.C., Dec. 18, 2008) (Phil.), available at <http://sc.judiciary.gov.ph/jurisprudence/2008/december2008/171947-48.htm>. The Supreme Court of the Philippines also ruled that the Plaintiffs have standing to represent their, yet unborn, posterity. The Plaintiffs had sought an order that the government discontinue existing and further timber license agreements alleging that deforestation caused environmental damage.

40. *Id.*

41. HENNIE STRYDOM, *SUSTAINABLE DEVELOPMENT ISSUES BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS* (2011), available at <http://www.idlo.int/DOCNews/SDEventJune2011/Hennie%20Strydom%20-%20SD%20Issues%20before%20the%20African%20Commission.pdf>; *Soc. & Econ. Rights Action Ctr. v. Nigeria*, [2001] AHRLR 60 (Nigeria), available at <http://www1.chr.up.ac.za/index.php/browse-by-subject/410-nigeria-social-and-economic-rights-action-centre-serac-and-another-v-nigeria-2001-ahrlr-60-achpr-2001.html>.

water, soil and air in the area had serious short- and long-term health consequences for the members of the community. It was also established that the government failed to monitor the environmental impact of the operations, required no prior impact assessments and withheld information from the affected communities. Perhaps more disturbing was the government's use of security forces to attack and destroy villages and crops in a terror campaign to scare the local communities off their land which exposed the Ogoni people to starvation and malnutrition.⁴²

This decision took full effect in Nigeria because the country ratifies and domesticates the African Charter on Human and Peoples' Rights. This means that this decision has taken precedence over and above the relevant section of the Nigerian constitution.

1. The World Conference on Human Rights

It was at the World Conference on Human Rights, held in Vienna on June 1993, that illicit dumping of toxic wastes was recognized by consensus, for the first time, as a human rights issue.⁴³ The Vienna Declaration and Programme of Action (VDPA), in Part I, Paragraph 11 recognised that illicit dumping of toxic wastes adversely affect human rights to life and health.⁴⁴ Shortly thereafter, in an effort to implement the objectives of the Conference, the position of a Special Rapporteur was established to investigate and monitor the illicit movement of toxic waste.

VI. APPOINTMENT OF A SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND TOXIC WASTES

The appointment of a Special Rapporteur⁴⁵ came in 1995 when the African Group in the CHR, for the very first time, proposed an important

42. STRYDOM, *supra* note 41.

43. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (July 12, 1993).

44. *Id.*

45. "Special Rapporteur . . . [is a title given to an individual] working on behalf of the United Nations within the scope of 'Special Procedures' mechanisms, who bear[s] a specific mandate from the United Nations Human Rights Council, either a country mandate or a thematic mandate. 'Rapporteur' is a French-derived word for an investigator who reports to a deliberative body. The mandate by the United Nations has been to 'examine, monitor,

resolution (1995/81 of March 8, 1995) on illegal dumping of toxic wastes.⁴⁶ The operative provision of the resolution is contained in paragraph 7 of the resolution appointing a Special Rapporteur for a period of three years with the mandate to:

- (a) Investigate and examine the effects of the illicit dumping of toxic and dangerous products and wastes in African and other developing countries on the enjoyment of human rights, in particular on the human rights to life and health of everyone;
- (b) Investigate, monitor, examine and receive communications and gather information on the illicit traffic and dumping of toxic and dangerous products and wastes in African and other developing countries;
- (c) Make recommendations and proposals on adequate measures to control, reduce and eradicate the illicit traffic in, transfer to and dumping of toxic and dangerous products and wastes in African and other developing countries;
- (d) Produce annually a list of the countries and transnational corporations engaged in the illicit dumping of toxic and dangerous products and wastes in African and other developing countries and a census of human persons killed, maimed or otherwise injured in the developing countries through this heinous act[.]⁴⁷

advise and publicly report' on human rights problems through 'activities undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities.' However, the Coordination Committee of Special Procedures *Internal Advisory Procedure to Review Practices and Working Methods* (25 June 2008) manual simply calls these individuals mandate-holders." *United Nations Special Rapporteur*, WIKIPEDIA, http://en.wikipedia.org/wiki/United_Nations_Special_Rapporteur (last modified Mar. 7, 2013). For more details on this subject, see *Special Procedures of the Human Rights Council*, UNITED NATIONS HUMAN RIGHTS, <http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx> (last visited Apr. 3, 2013).

46. Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, C.H.R. Res. 1995/81, U.N. Doc. E/CN.4 (Mar. 8, 1995) [hereinafter C.H.R. 1995/81].

47. *Id.* at ¶ 7.

The Special Rapporteur was also requested to submit his or her findings, "including the list of the countries and multinational corporations engaged in the illicit dumping of toxic and dangerous products and wastes in African and other developing countries."⁴⁸

The resolution, appointing the Special Rapporteur, is important for four main reasons. First, it established, for the first time, the office of a Special Rapporteur to investigate activities of illicit dumping of toxic wastes and their adverse effects.⁴⁹ Secondly, the establishment of this office created a focal point in the Office of the High Commissioner for Human Rights (OHCHR) making provisions for additional assistance to the Rapporteur.⁵⁰ Thirdly, the resolution gave authority to the Rapporteur to produce annually a "list of the countries and transnational corporations engaged in the illicit dumping"⁵¹ and, fourthly, the resolution authorized the Rapporteur to produce a census of human persons killed, maimed and adversely affected by hazardous wastes dumped in identified countries, providing substantial evidence for holding responsible dumpers liable to pay compensation to victims of their activities.⁵² It is because of its significant impact that the resolution was adopted by a roll call vote of members with 31 in favor and 15 against.⁵³ There were six abstentions.⁵⁴

It is equally important to mention the interesting dynamics of the roll call voting pattern of the mandate of the Special Rapporteur by countries since it was established in 1995.⁵⁵ The resolutions adopting the mandate

48. *Id.* at ¶ 8.

49. C.H.R. 1995/81, *supra* note 46.

50. *Id.*

51. *Id.*

52. *Id.* The Protocol on Liability and Compensation for Damage Resulting from Transboundary Movement of Hazardous Wastes and their Disposal opened for signature in 2000. The protocol was adopted by the fifth meeting of the Conference of the parties to the Basel Convention on December 10, 1999. It will provide a comprehensive regime for determining liability and ensuring prompt and adequate compensation in the event of damages resulting from the Transboundary Movements and Disposal of Hazardous Wastes, including illegal dumping of those wastes.

53. C.H.R. 1995/81, *supra* note 46.

54. *Id.*

55. It is important to note at this point that subsequent resolutions on the Special Rapporteur's mandate to investigate the adverse effects of the illicit movement and dumping of toxic and dangerous wastes on the enjoyment of human rights were adopted with an increased number of votes in favor of the mandate. On April 11, 1996, Resolution E/CN.4/RES/1996/14 was adopted by a vote of 32 in favor of the renewal of the mandate, 16 votes were against renewal, and three votes abstained. Resolution E/CN.4/RES/1997/9 was similarly adopted with 32 votes in favor, 12 against, and eight abstentions. Resolution E/CN.4/RES/1998/12 of 1998 was adopted with 33 votes in favor, 14 against, and six

reveal that all countries of West Europe and Other Groups (WEOG), otherwise called the Western Countries and East Europe voted against the resolution unlike in previous years when the Group abstained because of the realization that it would tarnish the image of their governments as well as that of their multinational corporations.⁵⁶ In fact, the U.S. was the only country that had always voted against the resolution in previous years.⁵⁷ But, in 1995, when the position of a Special Rapporteur was established, the U.S. found company in Western and East European Groups.⁵⁸ Much more revealing, as this paper discusses, are the documentations of the Special Rapporteur's finding gathered from various countries with the assistance of governments, on incidents of illicit dumping and their adverse effects on humans.⁵⁹

VII. CHANGE OF THE MANDATE OF THE SPECIAL RAPPORTEUR ON HUMAN RIGHTS AND TOXIC WASTE

In 1995, the then United Nations Commission on Human Rights (now Human Rights Council) noted that the illicit dumping of toxic and dangerous wastes and products has an adverse effect on the enjoyment of several human rights, and decided to appoint, for a period of three years, a Special Rapporteur with a mandate to examine the human rights aspects of this issue.

The scope of the mandate of the Special Rapporteur was reviewed in September 2011, during the 18th session of the Human Rights Council. The Council decided to strengthen the mandate so as to cover not only the

abstentions. The 1999 resolution was adopted by a roll call vote of 36 in favor and 16 against with one abstention. Resolution E/CN.4/RES/2000/72 of April 27, 2000 was adopted by a roll call vote of 37 in favor and 16 against. There were no abstentions. The 2001 Resolution E/CN.4/RES/2001/35 of April 20, 2001 was adopted 38 votes against 15 and no abstentions. All the Western countries (referred to as West Europe and Other Groups (WEOG)) and East European countries have been either voting against the resolution or abstaining from voting [hereinafter Subsequent Resolutions].

56. See Subsequent Resolutions, *supra* note 55.

57. See Reports of the Commission on Human Rights from the 47th session through the 60th session.

58. C.H.R. 1995/81, *supra* note 46.

59. See Reports of the Special Rapporteur, Mrs. Fatma-Zohra Ksentini, E/CN.4/1999/46/Add.1, E/CN.4/2000/50/Add.1 and E/CN.4/2001/55/Add.1 entitled "Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights."

movement and the dumping of hazardous substances and waste, but also the whole life-cycle of hazardous products, from their manufacturing to their final disposal (cradle-to-grave approach). Accordingly, the title of the Special Rapporteur has been changed to the “Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes” (Human Rights Council resolution 18/11).

On the basis of this resolution, the Special Rapporteur now has the task to monitor the adverse effects that the generation, management, handling, distribution and final disposal of hazardous substances and wastes may have on the full enjoyment of human rights, including the right to food, adequate housing, health and water.

Resolution 18/11 requests the Special Rapporteur to include in his report to the Council comprehensive information on:

- (a) Human rights issues relating to transnational corporations and other business enterprises regarding environmentally sound management and disposal of hazardous substances and wastes;
- (b) The question of rehabilitation of and assistance to victims of human rights violations relating to the management and disposal of hazardous substances and wastes;
- (c) The scope of national legislation in relation to the implications for human rights of the management and disposal of hazardous substances and wastes;
- (d) The human rights implications of waste-recycling programmes, the transfer of industries, industrial activities and technologies from one country to another and their new trends, including e-wastes and the dismantling of ships;
- (e) The question of the ambiguities in international instruments that allow the movement and dumping of hazardous substances and wastes, and any gaps in the effectiveness of international regulatory mechanisms.⁶⁰

On September 27, 2012, the Twenty-First (21st) Regular Session of the Human Rights Council (HRC) adopted the following without a vote:

60. *Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes*, UNITED NATIONS HUMAN RIGHTS, <http://www.ohchr.org/EN/Issues/Environment/ToxicWastes/Pages/SRToxicWastesIndex.aspx> (last visited Apr. 3, 2013).

[A] resolution (A/HRC/21/L26) regarding the mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes [In the resolution, the HRC requested that] the new Special Rapporteur provides comprehensive and up-to-date information on the adverse effects that the improper management and disposal of hazardous substances and wastes may have on the enjoyment of human rights [.] [The HRC] urges the Special Rapporteur to continue his consultations concerning a multidisciplinary, in-depth approach to existing problems and to take due account of progress made in other bodies as well as to identify gaps with a view to finding lasting solutions for the management of such substances in order to formulate a progress report and specific recommendations and proposals for submission to the twenty-fourth session on the steps to be taken to control, minimize and eliminate these problems[.] [The HRC] urges the Special Rapporteur to develop a guide to best practices regarding the human rights obligations related to the environmentally sound management and disposal of hazardous substances and wastes, to be submitted together with his report to the Human Rights Council at its twenty-fourth session; and reiterates its appeal to States and other stakeholders to facilitate the work of the Special Rapporteur by providing information and inviting him to undertake country visits.

* * *

The Special Rapporteur implements the mandate through different means and activities. As assigned by the different resolutions related to the mandate:

- The Special Rapporteur presents annual reports to the Human Rights Council on the activities and studies undertaken in the view of the implementation of the mandate;
- He/She monitors the adverse effects on human rights of the improper management and disposal of hazardous substances and waste throughout the world. He/she identifies general trends related to such phenomena and undertakes country visits which provide the Special Rapporteur with a first hand account on the situation relevant to his/her mandate in a specific country;
- He/She communicates with States and other concerned parties with regard to alleged cases of the improper management and disposal of hazardous substances and waste and other issues related to his/her mandate;
- He/She promotes a human rights-based approach to hazardous substances and waste management through dialogue with

relevant actors by participating in seminars, conferences, expert meetings.⁶¹

VIII. THE DISTINCTION BETWEEN THE UNITED NATIONS RESOLUTIONS ON “TOXIC WASTE” AND THE RESOLUTION ON “ENVIRONMENT”

There is a distinction between the resolution on “Environment” and the resolution on “Toxic Waste.” The degradation of the environment may not be a deliberate action of human beings. Human beings may have to burn fossils, degrade the biodiversity, and emit Green House Gases (GHG) that adversely affects the environment in their quest for survival. This falls within the realm of human rights and environment.

On the other hand, illicit toxic waste dumping is a deliberate act of human beings. The act of dumping discreetly move wastes from one territory to another territory; the latter territory may not have the technological capabilities and capacities to process and make the waste less

61. *Human Rights Council Adopts 11 Texts On Safety of Journalists, Transitional Justice, Corruption and Terrorist Hostage-Taking*, UNITED NATIONS HUMAN RIGHTS, Sept. 27, 2012, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12596&LangID=E>. Senegal, introducing draft resolution L.26 on behalf of the African Group, said that, since 1995, the mandate holders on that issue had contributed to raise awareness of the international community on the negative effects that some dangerous wastes had on human rights. The new name for the mandate meant that the entire cycle of the management of dangerous wastes was now being covered. The African Group’s aim was to take the nomination of a new Special Rapporteur as an opportunity to call for a better management of the issues covered by the mandate. More specifically, it was expected from this new Special Rapporteur to present during the twenty-seventh session of the Council a guide of good practices on that matter. The African Group invited the Council to adopt the resolution by consensus. Austria, speaking on behalf of the European Union, said that the European Union was aware of the importance of the issue and had, consequently, engaged constructively in the negotiation process. It welcomed the decision of the African Group to include additional language that helped to ensure that the Special Rapporteur focused on the human rights aspects of hazardous waste management and disposal rather than more broadly and outside the scope of the Human Rights Council. United States, in an explanation before the vote, recognized the serious effects that the improper disposal and management of hazardous substances could have on the effective enjoyment of human rights. The United States was committed to the proper management of such substances. However, it would disassociate itself from consensus as some critical issues were already being comprehensively addressed in other bodies of the United Nation. Some language implied an increased scope of mandate, already considered as broad. On budgetary implications, the significant costs merited careful review and scrutiny. The United States requested that the Office of the High Commissioner for Human Rights conduct a review of the costs associated with the mandate at the earliest opportunity.

harmful to the life and health of its citizens. These wastes are, in most cases, intentionally dumped by developed countries and multinational corporations in developing countries who do not have the facilities to monitor the movement or police their borders. Where these wastes are illegally dumped in developing countries, the consequences are that lives are lost and citizens are displaced for health and sanitary reasons. In other words, this intentional act by illicit dumpers of wastes—in areas that do not have the capacities and capabilities to process and make them less harmful to the life and health of their citizens—violates Article 6 of the ICCPR, which provides that “[e]very human being has the inherent right to life No one shall be arbitrarily deprived of his life.”⁶² This is equally a violation of Articles 7(b), 12.1, and 12.2(b) of the ICESCR.⁶³ These articles recognize the rights of everyone to: “safe and healthy working conditions” (Art.7 (b)); the highest “attainable standard of physical and mental health” (Art. 12.1); and “improvement of all aspects of environmental and industrial hygiene” (Art.12.2 (b)).⁶⁴

Toxic waste dumping and its adverse effects on the right to health will have implications on the right to life, liberty, and security of persons, privacy, health, adequate standard of living, food, housing, education and development. This issue cuts across civil, political, economic, social, and cultural rights.⁶⁵ According to David Fidler, the human rights dimension of health and environmental sanitation are expansive because virtually every measure of disease control has a human rights dimension.⁶⁶ For instance, a community or family that is sick from illicit toxic waste dumping will not be healthy to work and farm, which will invariably affect the productivity of the community and family. The decrease in productivity may lead to extreme hunger and poverty, particularly in the fishing and farming subsistence communities in the Nigeria. The communal and family poverty may affect the education of the children. Again, extreme poverty may lead to the sale of organs, child labor, and child pornography and child prostitution in order to generate funds to feed an entire family. This

62. ICCPR, *supra* note 4.

63. ICESCR, *supra* note 4.

64. *Id.*

65. DAVID P. FIDLER, INTERNATIONAL LAW AND INFECTIOUS DISEASES 169 (Clarendon Press 1999).

66. *Id.*

cyclical theory of human rights' violations is what is regarded as "inter-mix of rights."⁶⁷

It is pertinent to place on record that the major actors in toxic waste transboundary movement and dumping are the multinational corporations of the Western countries, including the U.S., some of which are richer and politically more powerful than nation-states.⁶⁸ To show how rich these corporations are, David Weissbrodt states, "[O]f the 100 largest economies in the world, 51 are now global corporations; only 49 are countries. Mitsubishi has sales greater than the gross domestic product of Indonesia; Ford is bigger than South Africa; Royal Dutch Shell is bigger than Norway."⁶⁹

67. Cyril Uchenna Gwam, *Toxic Wastes and Human Rights*, 7 BROWN J. WORLD AFF. 185, 190 (2000), available at <http://www.watsoninstitute.org/bjwa/archive/7.2/Essays/Gwam.pdf>.

68. Trafigura, the multinational company responsible for the 2006 dumping of toxic waste:

. . . in Abidjan, Côte d'Ivoire, resulting in over 100,000 people seeking medical assistance, must be criminally investigated in the UK, Amnesty International and Greenpeace Netherlands conclude in a major new report released today. *The Toxic Truth* is the result of a three-year investigation and provides an in-depth examination of the tragic litany of failures that created a medical, political and environmental disaster. It details how existing laws aimed to prevent such tragedies were flouted, with several governments failing to halt the progress of the Probo Koala and its toxic cargo towards Abidjan. The report further challenges the legality of a settlement in Côte d'Ivoire that allowed Trafigura to evade prosecution for its role in the dumping of the toxic waste. Through interviews with both the victims of the toxic dumping and medical experts who treated them the report sheds new light on the devastating impact it has had.

Report Slams Failure to Prevent Toxic Waste Dumping in West Africa, AMNESTY INT'L (Sept. 25, 2012), <http://www.amnesty.org/en/news/report-slams-failure-prevent-toxic-waste-dumping-west-africa-2012-09-25>; see J. Oloka-Onyango, *Poverty, Human Rights and the Quest for Sustainable Human Development in Structurally Adjusted Uganda*, 18 NETH. Q. HUM. RTS. 23, 28 (2000).

69. David S. Weissbrodt, *A Review of the Fifty-Third Session of the United Nations Sub-Commission on the Promotion and Protection of Human Rights*, 20 NETH. Q. HUM. RTS. 231, 231-61 (2002). For more information on global governance and its effects on trade, see RICHARD A. FALK, *LAW IN AN EMERGING GLOBAL VILLAGE: A POST-WESTPHALIAN PERSPECTIVE* (Brill Academic 1999); Obijio for Aginam, *From the Core to the Peripheries: Multilateral Governance of Malaria in a Multi-Cultural World*, 3 CHI. J. INT'L L. 87, 97 (2002) (it was the mixed positive and negative effects of globalization that made Richard Falk coin the terms "globalization-from-below and globalization-from-above as operational paradigms to explore the dimensions of emergent global governance in a world order marked by the Westphalian model of statehood"). Globalization from below is when market forces, as a result of institutional global pressure, do not negatively affect human rights, environmental protection, public health, social and economic justice as well as disarmament. *Id.* For further reading, see THOMAS M. FRANCK, *FAIRNESS IN INTERNATIONAL LAW AND*

With such economic and political powers, these multinational corporations illicitly or openly trade toxic waste for cash and other inducements.⁷⁰ These multinational corporations dump waste in Nigeria with little resistance from the Nigerian authorities.⁷¹ It is this inducement and intimidation that Oke Ibeanu referred to as the “paradox of development” in his work on the violations of the environmental rights of the people of Niger-Delta by the multinational oil corporations of the Western countries.⁷²

Indeed, according to Francis Adeola, multinational corporations (“MNCs”) capitalize on the following factors to dump toxic waste in the weaker developing countries: “weak or non-existing national environmental policy and standards in many developing countries, ineffective environmental laws and inadequate sanctions against polluters, a lack of adequate environmental law enforcement agents, bribery and corruption, and poverty or desperation to accept pollution for cash in many poor countries.”⁷³

Francis Adeola posited that “because of poverty and subordinate status, peripheral countries are forced or conditioned to accept inferior commodities and hazardous wastes in exchange for their extractive mineral and agricultural products.”⁷⁴ Supporting this position, Ilona Cheyne stated that Guinea Bissau was asked to accept 15 million metric tons of toxic waste in exchange for \$600 million U.S., a large sum in the light of the fact

INSTITUTIONS 23–24 (Clarendon Press 1998) (Franck observed that the “most important question international lawyers should be facing is not whether international law is law but whether international law is fair.”). See Obiora Chinedu Okafor, *The Status and Effect of the Right to Development in Contemporary International Law: Towards a South-North “Entente”*, 7 AFR. J. INT’L & COMP. L. 865 (1995).

70. Amos Adeoye Idowu, *Human Rights, Environmental Degradation and Oil Multinational Companies in Nigeria: The Ogoni Episode*, 17 NETH. Q. HUM. RTS. 162, 162–84 (1999). See also Hilary Nwokeabia, WHY INDUSTRIAL REVOLUTION MISSED AFRICA: A “TRADITIONAL KNOWLEDGE” PERSPECTIVE (Econ. Common for Afr. 2001) (providing additional information on why Africa is not developed and could be susceptible to all forms of inducements).

71. Rory Carroll, *Shell Told to Pay Nigerians \$1.5 Billion Pollution Damages*, THE GUARDIAN, Feb. 25, 2006, www.guardian.co.uk/world/2006/feb/25/oil.business/print.

72. OKE IBEANU, UNDERSTANDING PEACE AND CONFLICT: EXPLANATION OF THE BASIC CONCEPTS (on file with author). This paper was presented at the Senior Executive Course 33(SEC-33) at the National Institute for Policy and Strategic Studies, Kuru on August 8, 2011.

73. Francis O. Adeola, *Environmental Injustice and Human Rights Abuse: The States, MNC and Repression of Minority Groups in the World System*, 8 HUM. ECOLOGY REV. 1, 43 (2001).

74. *Id.*

that it represented twice the size of its foreign debt and 35 times its total export income.⁷⁵ Katherina Kummer, in her extensive research on this subject, asserted that the export of toxic waste takes place along the path of least resistance, mainly the weaker developing, dependent countries.⁷⁶ Kummer noted the following reasons:

Waste generators in many industrialized states are faced with increasing scarcity of disposal facilities, strong public opposition to the construction of waste disposal facilities and landfills based on what is called the NIMBY (Not in My Backyard) syndrome, as well as tightening of environmental rules and standards and the escalating disposal costs as a result of these developments. A typical target country might offer disposal options at prices that are often a mere fraction of the disposal costs in the country of origin. The average disposal costs for one ton of hazardous wastes in Africa were [sic] between \$2.50 and \$50, with equivalent costs in industrialized countries ranging from \$100 to \$2,000. This large difference in cost provides the powerful incentive for toxic waste exports.⁷⁷

IX. CASE STUDIES REVIEW

This section will discuss toxic waste illegally dumped in Africa from the U.S., in particular from Texas. Some evidence indicates that toxic, dangerous, and hazardous waste and products have been moved to the developing countries through the U.S., particularly from Texas. Therefore, I will discuss some cases of such transboundary movements that have caught international attention.

X. TOXIC WASTE STORED IN BROWNSVILLE, TEXAS AND MOVED TO COTE D'IVOIRE IN 2006

By 2002, Mexican state-owned oil company Pemex had accumulated significant quantities of coker gasoline, which contained large amounts of

75. Ilona Cheyne, *Africa and International Trade in Hazardous Waste*, 6 AFR. J. INT'L & COMP. L. 3, 493-503 (1994).

76. KATHERINA KUMMER, TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES AT THE INTERFACE OF ENVIRONMENT AND TRADE (United Nations Env't Programme 1994).

77. *Id.*

sulphur and silica at its Cadereyta Refinery.⁷⁸ Four years later, the company was out of storage capacity and sold the coker gasoline to Trafigura.⁷⁹ To assist Trafigura in illegally exporting the coker gasoline full of dangerous, toxic and hazardous waste to Africa, Pemex moved 84,000 tonnes of coker gasoline to Brownsville, Texas.⁸⁰ Trafigura then loaded it aboard a Panamanian registered tanker, *Probo Koala*, owned by the Greek shipping company, Prime Marine Management, Inc.⁸¹

Brownsville, Texas is rich with potential as its “population is quickly approaching 200,000 and counting.”⁸² In the early 1900s, Brownsville’s population began increasing at a rapid rate.⁸³ During the Civil War, Brownsville was a large port for cotton.⁸⁴ Currently, the Port of Brownsville, located at Texas’s southernmost tip, “facilitate[s] the

78. *2006 Ivory Coast Toxic Waste Dump*, WIKIPEDIA, http://en.wikipedia.org/wiki/2006_Ivory_Coast_toxic_waste_dump (last modified Feb. 12, 2013).

79. *Id.*

Trafigura Beheer BV is a Dutch multinational commodity trading company founded in 1993 trading in base metals and energy, including oil. In 2008, the company had equity of more than \$2 billion and a turnover of \$73 billion that generated \$440 million of profit. By 2011, its revenue had increased to \$121.5 billion and its profits to \$1.11 billion. It operates from 55 offices in 36 countries. It is the world’s third largest private oil and metals trader after Vitol and Glencore. Trafigura was set up by Claude Dauphin and Eric de Turckheim. . . . Trafigura has been named or involved in several scandals since its creation.

Trafigura, WIKIPEDIA, <http://en.wikipedia.org/wiki/Trafigura> (last modified Mar. 16, 2013); see David Leigh, *Inside Trafigura: Accusations, Sour Deals and Friends in High Places*, THE GUARDIAN, Sept. 16, 2009, <http://www.guardian.co.uk/world/2009/sep/16/inside-trafigura-pollution-conservatives>.

80. *2006 Ivory Coast Toxic Waste Dump*, *supra* note 78.

81. *Id.*; see Adam Duckett, *Trafigura’s Pemex Cadereyta Refinery Coker Gasoline Waste Story Breaks*, THE CHEMICAL ENGINEER, Oct. 13, 2009, available at <http://www.petroleumworld.com/story09101419.htm>.

Trafigura desired to strip the sulfurous products out of the coker gasoline to produce naphtha, which could then be sold. Instead of paying a refinery to do this work, Trafigura used an obsolete process on board the ship called ‘caustic washing,’ in which the coker was treated with soda. The process worked, and the resulting naphtha was resold for a reported profit of \$19 million. The waste resulting from the caustic washing would typically include highly dangerous substances such as sodium hydroxide, sodium sulphide and phenols.

2006 Ivory Coast Toxic Waste Dump, *supra* note 78.

82. *Mission Statement*, CITY OF BROWNSVILLE TEXAS: ON THE BORDER BY THE SEA, <http://www.cob.us> (last visited Apr. 4, 2013).

83. *History and Heritage*, CITY OF BROWNSVILLE TEXAS: ON THE BORDER BY THE SEA, <http://brownsville.org/visitors/history-heritage#.UTkIT9H5nV0> (last visited Mar. 27, 2013).

84. *Id.*

international movement of goods between Mexico and the United States.”⁸⁵ The North American Free Trade Agreement played a large part in progressing Brownsville’s economy because the economy thrives on international trade.⁸⁶ Additionally, Brownsville’s “semi-tropical climate, palm trees, ever-blooming bougainvilleas, and exotic birds” make Brownsville one of the best pro-business and least expensive places to live in the United States.⁸⁷

How were Trafigura and Pemex able to move this highly toxic coker gasoline waste, already banned by international law⁸⁸ for transboundary movement, into the city of Brownsville, Texas? How was eighty-four thousand tonnes of killer coker gasoline smuggled into the U.S. without detection, bearing in mind that “an official Dutch analysis of samples of the waste carried by the *Probo Koala* indicate that it contained approximately 2 tonnes of hydrogen sulphide, a killer gas with a characteristic smell of rotten eggs?”⁸⁹ How was the lethal toxic waste moved out of the Brownsville port to Africa without detection? If it was detected, what would have been the action and legal obligation of the United State’s authorities, particularly that of Texas? How would Texas state law and U.S. federal law handle such an illegal trans-shipment of toxic waste to Cote d’Ivoire, a country that is not a member of the Basel Convention? Is the U.S. liable as a trans-shipment country and a non-party member under the Basel Convention? These questions will be answered in the body of this work. But first, a look at the shipment, dumping, and consequent actions that took place as a result of this illegal act.

85. *About the Port*, PORT OF BROWNSVILLE: WORLD CLASS, http://www.portofbrownsville.com/index.php?option=com_content&task=view&id=12&Itemid=27 (last visited Mar. 27, 2013).

86. *About Brownsville*, CITY OF BROWNSVILLE TEXAS: ON THE BORDER BY THE SEA, http://www1.cob.us/about_brownsville.asp (last visited Mar. 27, 2013).

87. *About Brownsville*, CITY OF BROWNSVILLE TEXAS: ON THE BORDER BY THE SEA, <http://brownsville.org/visitors/about-brownsville#.UTklK9H5nV0> (last visited Mar. 27, 2013); see Vanessa Wong, *Texas Town Is the Cheapest Place to Live in US*, BLOOMBERG BUSINESS WEEK, June 27, 2011, http://www.nbcnews.com/id/43540398/ns/business-us_business/t/texas-town-cheapest-place-live-us/.

88. Basel Convention, *supra* note 1. Although the U.S. was yet to ratify the Convention as of 2006, the responsibility for the protection of public health, particularly the life and health of U.S. citizens, squarely lies on the Government.

89. David Leigh & Afua Hirsch, *Papers Prove Trafigura Ship Dumped Toxic Waste in Ivory Coast*, THE GUARDIAN, May 13, 2009, <http://www.guardian.co.uk/environment/2009/may/13/trafigura-ivory-coast-documents-toxic-waste>.

A. *Dumping of the Waste in Abidjan, Cote d'Ivoire*

On 19 August 2006, after balking at a €1,000 per cubic meter disposal charge in Amsterdam, and being turned away by several countries, the *Probo Koala* offloaded more than 500 tons of toxic waste at the Port of Abidjan, Côte d'Ivoire. This material was then spread, allegedly by subcontractors, across the city and surrounding areas, dumped in waste grounds, public dumps, and along roads in populated areas. The substance gave off toxic gas and resulted in burns to lungs and skin, as well as severe headaches and vomiting. Seventeen people were confirmed to have died, and at least 30,000 were injured. The company has claimed that the waste was dirty water ("slops") used for cleaning the ship's gasoline tanks, but a Dutch government report, as well as an Ivorian investigation, dispute this, finding that it was toxic waste. During an ongoing civil lawsuit by over 30,000 Ivorian citizens against Trafigura, a Dutch government report concluded that in fact the liquid dumped contained two 'British tonnes' of hydrogen sulfide. During an ongoing civil lawsuit by over 30,000 Ivorian citizens against Trafigura, a Dutch government report concluded that in fact the liquid dumped contained two 'British tonnes' of hydrogen sulfide. Trafigura, following an investigative report by the BBC's *Newsnight* program, announced on 16 May 2009 that they will sue the BBC for libel.

* * *

The scope of the dumping and the related illnesses were slow to emerge. While the first cargo was offloaded in August 2006, the dumping continued for almost three weeks before the population knew what was happening. But as early as 19 August, residents near the landfill at Akouedo were aware that trucks were dumping toxic liquid into the landfill and blocked the entrance of one of the trucks to the dump, which had been freshly painted with the logo of a newly created company. Residents near several landfills in the suburbs of Abidjan began complaining publicly of foul smelling gas in the first week of September, and several people were reported to have died. Protests broke out in several areas against both the companies dumping liquid waste and the government. On 4 September, the government called for protesters to allow free circulation of traffic so the area's hospitals, which were complaining of a flood of the injured, could operate. In the aftermath of the crisis, many top government figures resigned.

* * *

[Despite this, Trafigura continued to deny its culpability, claiming] that the people of Abidjan, especially those living near dumps, suffered from

a lifetime of exposure to toxic substances, not from Trafigura's actions.⁹⁰

1. Violation of the Right to Life, Good Health and Clean and Sound Environment

In the weeks following the incident the BBC reported that 17 people died, 23 were hospitalized, and a further 40,000 sought medical treatment (due to headaches, nosebleeds, and stomach pains). These numbers were revised upward over time, with the numbers reported by the Ivorian government in 2008 reaching 17 dead, dozens severely ill, 30,000 receiving medical treatment for ailments connected to the chemical exposure, of almost 100,000 seeking medical treatment at the time.⁹¹

It was expected that over \$500 million would be needed to clean up the environment to enable the inhabitants to enjoy their rights to good health and clean and sound environment.⁹²

90. 2006 *Ivory Coast Toxic Waste Dump*, *supra* note 78. See Philippe Bernard, Jacques Follorou & Jean-Pierre Stroobants, *How Abidjan Became a Dump*, THE GUARDIAN, Oct. 10, 2006, <http://www.guardian.co.uk/world/2006/oct/20/outlook.development>; David Leigh, *Newsnight Sued Over Toxic Waste Claims*, THE GUARDIAN, May 15, 2009, <http://www.guardian.co.uk/environment/2009/may/16/bbc-newsnight-trafigura-lawyers-libel>; David Leigh & Afua Hirsch, *Papers Prove Trafigura Ship Dumped Toxic Waste in Ivory Coast*, THE GUARDIAN, May 13, 2009, <http://www.guardian.co.uk/environment/2009/may/13/trafigura-ivory-coast-documents-toxic-waste>; *Ivory Coast Dump Dwellers Revolt Amid Toxic Waste Scandal*, VOICE OF AMERICA, Oct. 31, 2009, <http://www.voanews.com/content/a-13-2006-09-14-voa47/315996.html>; Joe Bavier, *Protesters Block Streets in Ivory Coast Over Toxic Waste Scandal*, VOICE OF AMERICA, Oct. 31, 2009, <http://www.voanews.com/content/a-13-2006-09-06-voa48/328215.html>; *Ivorian Cabinet Quits Over Waste*, BBC NEWS, Sept. 7, 2006, <http://news.bbc.co.uk/2/hi/africa/5321272.stm>; *Trafigura Statement*, BBC NEWSNIGHT, May 13, 2009, <http://news.bbc.co.uk/2/hi/programmes/newsnight/8049024.stm>.

91. 2006 *Ivory Coast Toxic Waste Dump*, *supra* note 78; see *Two Jailed Over Ivorian Pollution*, BBC NEWS, Oct. 23, 2008, <http://news.bbc.co.uk/2/hi/africa/7685561.stm>.

92. Baudelaire Mieu, *Total to Spend \$500 Million on Ivory Coast Oil Exploration Plan*, BUSINESSWEEK, Jan. 30, 2012, <http://www.businessweek.com/news/2012-01-30/total-to-spend-500-million-on-ivory-coast-oil-exploration-plan.html>.

2. *Fall of Government*

On September 7, 2006, Voice of America announced that the 9-month old government of Prime Minister Konan Banny resigned for his inability to manage the toxic waste scandal.⁹³

3. *Legal Suit*

On 11 November 2006, a £100 million lawsuit was filed in the High Court in London by the UK firm Leigh Day & Co. alleging that “Trafigura were [sic] negligent and that this, and the nuisance resulting from their actions, caused the injuries to the local citizens.” [In response, Trafigura in its usual bravado style of attempting to muscle-up opposition to this heinous crime] announced on Monday 13 November 2006 that it had started libel proceedings against British lawyer, Martyn Day, of Leigh Day & Co.⁹⁴

4. *Arrests and Detention*

Shortly after it became apparent that the toxic slops from the *Probo Koala* had led to the outbreak of sickness, two Trafigura executives, Claude Dauphin and Jean-Pierre Valentini, traveled to Abidjan. They were arrested on 18 September, four days after their arrival, and were held in Abidjan’s Maca prison, charged with breaking Côte d’Ivoire’s laws against poisoning. There were several reported attacks of the two executives during their imprisonment. Trafigura called for their immediate release, but this did not occur until a settlement for the cleanup was paid to the Ivorian government.

* * *

Seven Ivorians were eventually brought to trial in Abidjan for their part in the dumping. The head of the Ivorian contractor who dumped more than 500 tonnes of toxic liquid was sentenced to 20 years in prison in November 2008.⁹⁵

93. Joe Bavier, *Ivory Coast Government Disbanded Over Toxic Waste Scandal*, VOICE OF AMERICA, Oct. 31, 2009, <http://www.voanews.com/content/a-13-2006-09-07-voa29/325912.html>.

94. *2006 Ivory Coast Toxic Waste Dump*, *supra* note 78.

95. *Id.*

5. *Ivorian Government Finding*

A November 2006 Ivorian government report into the incident said that Trafigura was to blame for the dumping of waste, and was aided by Ivorians. A government committee concluded that Trafigura knew that the nation had no facilities to store such waste and knowingly transported the waste from Europe to Abidjan.

The report further claimed that the “Compagnie Tommy” which actually dumped the substance “shows all the signs of being front company set up specifically to handle the Trafigura waste,” and was “established in a period between Trafigura’s decision not to pay for expensive waste disposal in Amsterdam and its ship’s arrival in Abidjan.”⁹⁶

6. *Company Payment*

On 13 February 2007, Trafigura agreed to pay the Ivorian government £100 million (US \$198m) for the clean-up of the waste; however, the group denied any liability for the dumping, and as a part of the deal the government would not pursue further action against the group. The Trafigura employees Claude Dauphin, Jean-Pierre Valentini and NziKablan held by the Côte d’Ivoire authorities after the incident, were then released and charges were dropped against them. Further prosecutions against Ivorian citizens not employed by Trafigura continued.⁹⁷

7. *Compensation*

On 20 September 2009, Trafigura announced it would pay more than \$46 million to claimants, noting that 20 independent experts had examined the case but were “unable to identify a link.”

The package would be divided into groups of \$1,546 which would then be paid to 31,000 people. The deal came soon after a report by the UN claimed there was “strong prima facie evidence” that the waste was responsible for injuries. The company responded by saying they were “appalled at the basic lack of balance and analytical rigor reflected in the

96. *Id.*; see *Ivory Coast Government Panel Releases Toxic Waste Findings*, VOICE OF AMERICA, Oct. 31, 2009, <http://www.voanews.com/content/a-13-2006-11-23-voa22/319097.html>.

97. *2006 Ivory Coast Toxic Waste Dump*, *supra* note 78; see Peter Murphy, *Trafigura to Pay \$198 million Settlement to Ivory Coast*, REUTERS, Feb. 13, 2007, <http://www.reuters.com/article/2007/02/13/us-ivorycoast-toxic-settlement-idUSL1333815220070213>.

report.” The Ivorian National Federation of Victims of Toxic Waste said Trafigura was trying to avoid a legal case. Trafigura claimed that at least 75% of the receivers of money agreed with the deal.

In January 2010, *The Guardian* reported that solicitor Leigh Day, working for the victims of toxic poisoning, had been ordered by a Côte d’Ivoire court to transfer victim’s compensation to a “shadowy local organization,” using the account of Claude Gouhourou, a “community representative.” Martyn Day, a partner in the firm, feared that the cash will not reach the victims.⁹⁸

8. *Legal and Moral Obligation of the State of Texas as a Transitory State*

It is reported that the toxic ladened coker gasoline product remained in a Brownsville, Texas warehouse for days before being shipped abroad in *Probo Koala*.⁹⁹ This, according to the Basel Convention and Bamako Convention indicates that the U.S., although a non-party to the two international instruments, was liable to a transboundary movement of illegal waste as a transitory State.¹⁰⁰ Article 7 of the Basel Convention concerning transboundary movement from a party through States, which are not Parties states that “[p]aragraph 1 of Article 6 of the Convention shall apply mutatis mutandis to transboundary movement of hazardous wastes or other wastes from a Party through a State or States which are not Parties.”¹⁰¹

98. 2006 *Ivory Coast Toxic Waste Dump*, *supra* note 78; see *Firm Agrees Ivorian Waste Payouts*, BBC NEWS, Sept. 20, 2009, <http://news.bbc.co.uk/2/hi/africa/8265193.stm> (Trafigura paid \$46 million in compensation to victims, which was in addition to \$200 million paid to the Ivorian government in 2007); see *Oil Firm ‘Settles’ Toxic Waste Case*, AL JAZEERA, Sept. 21, 2009, <http://www.aljazeera.com/news/africa/2009/09/2009920132129567154.html>; see Xan Rice, *Fears Over £30m Payment to Toxic Waste Victims in Trafigura Case*, THE GUARDIAN, Jan. 22, 2010, <http://www.guardian.co.uk/world/2010/jan/22/trafigura-compensation-gouhourou>.

99. 2006 *Ivory Coast Toxic Waste Dump*, *supra* note 78.

100. Basel Convention, *supra* note 1; Bamako Convention, *supra* note 2. “The Ban Amendment provides for the prohibition by each Party included in the proposed new Annex VII to the Convention (Parties and other States which are members of the OECD, EC, Liechtenstein) of all transboundary movements to States not included in Annex VII of hazardous wastes covered by the Convention that are intended for final disposal, and all transboundary movements to States not included in Annex VII of (sic) hazardous wastes covered by paragraph 1 (a) of Article 1 of the Convention that are destined for reuse, recycling or recovery operations.” *Additional Annexes and Amendment*, BASEL CONVENTION, <http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx> (last visited Apr. 4, 2013).

101. Basel Convention, *supra* note 1, at 15. “The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any

It is pertinent to stress that the United States of America, the transitory state of export, signed the Convention on March 22, 1990 but has not ratified the instrument and therefore was not a party to the Basel Convention.¹⁰² On the other hand, Mexico, the main State of export signed and ratified the Convention on March 22, 1989 and February 22, 1991, respectively.¹⁰³ Therefore, the U.S., a transitory State and a signatory, but not a member of the Convention, is as guilty as Mexico, the exporter and a full member of the convention. A legal suit in the U.S. based on the Basel Convention would have been entertained in the State of Texas.

Trafigura has been involved in many scandals including the notorious United Nations Oil for Food scandal in Iraq.¹⁰⁴ It is noteworthy to state that in 1995 a United Nations Commission on Human Rights Resolution on Toxic Waste (Resolution 1995/81 of March 8) appointed a Special Rapportuer to “[p]roduce annually a list of the countries and transnational corporations engaged in the illicit dumping of toxic and dangerous products and wastes in Africa and other developing countries and a census of human persons killed, maimed or otherwise injured in the developing countries through this heinous act [.]”¹⁰⁵

The reason the resolution asked for the list of transnational corporations involved in the heinous act of toxic waste dumping in developing countries such as Africa is to provide “substantial evidence for making dumpers liable to pay compensation to the victims of such activities”¹⁰⁶ and to be sued. Another reason was to ensure that ships and client companies blacklisted in the list of the special rapportuer on the basis of transboundary movement of toxic waste would always be scrutinized off- and on-shore by States and Non-Governmental Organizations to avert illicit

proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declarations and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.” *Id.* at 13.

102. The list of parties and signatories to the Basel Convention is available at <http://www.basel.int/Countries/StatusofRatifications/PartiesSignatories/tabid/1290/Default.aspx>.

103. *Id.*

104. Thomas G. Clark, *The Trafigura Toxic Waste Scandal*, ANOTHER ANGRY VOICE BLOG (Mar. 13, 2012, 10:40 AM), <http://anotherangryvoice.blogspot.co.uk/2012/03/the-trafigura-toxic-waste-scandal.html>.

105. C.H.R. 1995/81, *supra* note 46.

106. CYRIL UCHENNA GWAM, TOXIC WASTE AND HUMAN RIGHTS 139 (Author House 2010).

dumping.¹⁰⁷ One wonders why Trafigura, with such a notorious reputation, was allowed to freely use the port of Brownsville, Texas to export the coker gasoline without adequate scrutiny and supervision.¹⁰⁸ One also wonders why the relevant authorities of Brownsville, Texas and the U.S. were not implicated all through the 2006 legal wrangling in the United Kingdom and Cote d'Ivoire.

B. Khian Sea Waste Disposal Philadelphia, Pennsylvania

On February 4, 1988, the *Bark*, a merchant vessel owned by Bulkhanding of Norway sailed off the shores of the U.S. with a load of 15,000 tons of toxic incinerator ash from Philadelphia. The ship headed for Haiti, one of the world's poorest states. Due to a stormy protest by angry Haitians at Port-au-Prince, the ship's crew steered the vessel off the original course while awaiting new orders on an alternative dump site. Subsequently, Bulkhanding's managers changed the ship's manifest to Guinea, the West African country of 5.7 million people and a land area of 245,857 square kilometers. According to the Guinean government statement, the importation of the toxic waste was arranged by a local Guinean firm, *Societe Internationale Aluko Guinea (SIAG)*, an investment firm jointly owned by Guinean businessmen and Norwegian expatriates. The toxic waste was imported as "raw material for bricks."

In late February and early March, the toxic waste was unloaded from *Bark* and hurriedly buried at Kasa, one of Guinea's tourists centers, located less than 10 kilometers from Conakry, the state capital. The [toxic] waste, which was said to have contained high levels of dioxin and furia was not regulated by the U.S. Environmental Protection Agency because it does not fall under the agency's category of toxic wastes banned for exportation. But, soon after the toxic waste was buried, the devastating effect became evident – plants and trees died instantly and Kasa ceased to be the tourist attraction that it had been.

In April, the Guinean government ordered Bulkhanding to remove the ash. Bulkhanding officials refused, claiming that it no longer owned the waste. In retaliation, the Norwegian Consul General and Sigmund Stromme, an official of Bulkhanding, were arrested in June 1988, and put under house arrest. Also arrested were 10 officials of the Guinean Ministry of Commerce. On July 2, 1988, *Banja*, Bulkhanding's vessel, picked up the ash on the Island and sailed for the U.S. *Banja* returned

107. *Id.*

108. See Duckett, *supra* note 81, for more information on scandal-ridden Trafigura.

the cargo to Philadelphia on July 22, 1988. Four Guinean officials involved in the scheme were found guilty and sentenced to 4 years imprisonment while Sigmund Stromme was found guilty of complicity and was fined \$600, a mere slap on the wrist.

In May, 1988, Guinea Bissau postponed an agreement with a several European and U.S. firms to import 15 million tons of toxic waste from U.S. and European pharmaceutical companies and tanneries. Under the agreement, the brokers would have exported 15,000,000 metric tons of industrial waste to Guinea Bissau over a five-year period. The proposed payment was \$40 per each metric ton of waste representing a potential earning of \$600 million, which is four times the country's GNP and more than twice its foreign debt. As a result, most of the developing countries that were either victims of illegal dumping of toxic waste or had agreed to serve as dump sites are strapped for foreign exchange.¹⁰⁹

According to Usman, Intercontrast SA, a major exporter of wastes to Africa, proposed to dump the 3.5 million tons of waste in Guinea Bissau in a landfill close to the border with Senegal.¹¹⁰

C. *E-waste dumping in Nigeria from Europe and U.S.*

There has been increasing concern over cases of sub-standard quality counterfeiting and the dumping of near-end-of-life and end-of-life electrical and electronic appliances in Nigeria, mainly at the Alaba International Market in Lagos. Used Electrical Electronic Equipment (UEEE) from developed countries have become highly sought-after commodities in Nigeria in recent years in an attempt to bridge the so called "digital divide" and make information communication technology (ICT) equipment easily available at affordable prices. However, this has led to a massive flow of obsolete Waste Electrical and Electronic Equipment (WEEE), electronic waste, e-waste or end-of-life electrical/electronics to the country. Most times imported UEEE is mixed with end-of-life (e-waste) or near-end-of-life electrical and electronic equipment. Some of this equipment contains hazardous substances (heavy metals, like lead, mercury, cadmium, and organics, such as polychlorinated biphenyls and brominated flame

109. Agber Dimah, *Transboundary Shipment of Hazardous Wastes To Sub-Saharan Africa: A Challenge for the Nigerian Foreign Policy*, 3 J. OF SUSTAINABLE DEV. IN AFR. 57, 68-69 (2001) (Nigeria).

110. BUKAR USMAN, VOICES IN A CHOIR, ISSUES IN DEMOCRATIZATION AND NATIONAL STABILITY IN NIGERIA 248 (Klamidas Communications Ltd. 1999) (Nigeria).

retardants) that can have adverse consequences on the environment and human health, especially when they end up as waste and/or are improperly managed using crude methods such as dumping on refuse sites or open burning to recover copper metals.

Following a three-year undercover investigation by Greenpeace Movement, it was discovered that electronic waste, like old television sets, computers and mobile phones were not properly and responsibly recycled in the United States of America and Europe.¹¹¹ Instead, e-waste is being disguised as second-hand goods and shipped off to Nigeria, where it is sold, scrapped or illegally dumped.¹¹² E-waste is one of the fastest growing types of hazardous waste with up to 80 percent of e-waste from Europe failing to be disposed of safely.¹¹³ The undercover operation, carried out on February 18, 2009 with the help of Sky Television, United Kingdom, was further evidence of the growing trade in hazardous waste from Europe to the developing world due to electronic companies' failure to take responsibility for recycling their products. Acting on a tip-off, some environmental activists launched an operation to see where some electronic waste was ending up.¹¹⁴ They "took an unfixable TV, fitted it with a tracking device and brought it to the UK's Hampshire County Council for recycling."¹¹⁵ "Instead of being safely dismantled in the UK or Europe, like it should have been, the Council's 'recycling' company, BJ Electronics, passed it on as 'second-hand goods' and it was shipped off to Nigeria to be sold or scrapped and dumped."¹¹⁶

According to Basel Action Network,

the poorest people, in many cases children, are put to work breaking apart [second hand] TVs, mobile phones, game consoles and other electronic items that arrive in their [towns].¹¹⁷ With no safety measures, [the children] are exposed to highly toxic chemicals, including mercury,

111. *Undercover Operation Exposes Illegal Dumping of E-waste in Nigeria*, GREENPEACE, <http://www.greenpeace.org/international/en/news/features/e-waste-nigeria180209/> (last visited Apr. 24, 2012).

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

which damages the brain; lead, which can damage reproductive systems; and cadmium, which causes kidney damage.¹¹⁸

XI. THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY DECREE NO. 58 OF DECEMBER 30, 1988

Nigeria's promulgation of the Harmful Waste Decree 42 of 1988 facilitated the establishment of the Federal Environmental Protection Agency (FEPA) through Decree 58 of 1988 and 59 (amended) of 1992. FEPA was charged with the overall responsibility for environmental management and protection.¹¹⁹ It also established national guidelines, codes, criteria and standards for: water quality, effluent limitation, air quality, atmosphere protection, protection of ozone layer, noise control, and control of hazardous substance and prescription of their removal methods.¹²⁰ The agency's enforcement power permits it to enter, inspect and search without warrant any land, building, vehicle or structure, and seize any item and arrest any person who is suspected to have violated the provisions of the Decree.¹²¹ As stated earlier, this 1988 decree seems to be at variance with the relevant chapters of the 1999 constitution dealing with the fundamental human rights. The penalties range from a fine not exceeding N20,000 or two years imprisonment for any person or a fine of N500,000 for a corporate body.¹²² This fine seemed not to be commensurate with the crime and needed to be increased. A later enactment, the NESREA Act, discussed below significantly increased the fine.

XII. NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (NESREA)

In the wisdom of the Government of Nigeria, FEPA and other relevant Departments in other Ministries were merged to form the Federal Ministry

118. *Id.*

119. *Frequently Asked Questions*, NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY, <http://www.nesrea.org/faq.php> (last visited Apr. 24, 2012).

120. Federal Environmental Protection Agency Act No. (58) (1988) (Nigeria).

121. *Id.*

122. *Id.*

of Environment in 1999 without an appropriate enabling law on enforcement issues. In addressing the need for an enforcement agency, the Federal Government in line with section 20 of the 1999 Constitution of the Federal Republic of Nigeria, established NESREA as a parasitical of the Federal Ministry of Environment, Housing and Urban Development. By the NESREA Act, the Federal Environmental Protection Agency Act Cap F 10 LFN 2004 was repealed.

NESREA, currently an Agency of the Federal Ministry of Environment, is:

charged with the responsibility of enforcing environmental Laws, regulations and standards in deterring people, industries and organizations from polluting and degrading the environment. The NESREA Act was signed into law by [late] President Umaru Musa Yar'Adua, GCFR, and published in the Federal Republic of Nigeria Official Gazette No. 92, Vol. 94 31st July, 2007. It also has the responsibility for the protection and development of the environment, biodiversity, conservation and sustainable development of Nigeria's natural resources in general and environmental technology including coordination, and liaison with, relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.¹²³

Its main focus at the moment, according to its website is to protect the environment; to enforce laws and regulations on the environment; to maintain environmental standards; to create environmental awareness; and to engage in partnership in the protection of the environment.¹²⁴

NESREA, like FEPA, has the powers to: prohibit processes and use of equipment or technology that undermine environmental quality; conduct field follow-up of compliance with set standards; and take procedures prescribed by law against any violator.¹²⁵ "Subject to the provision of the 1999 Constitution of the Federal Republic of Nigeria, and in collaboration with relevant judicial authorities, [NESREA can] establish mobile courts to expeditiously dispense cases of violation of environmental regulation."¹²⁶ Presently, NESREA uses environmental consultants, such as Emerson Nigeria Ltd. to monitor the implementation of international and domestic

123. *Frequently Asked Questions*, *supra* note 119.

124. *Id.*

125. *Id.*

126. *Id.*

environmental laws in Nigeria.¹²⁷ Twenty environmental consultants were registered in 2010 by NESREA to monitor the implementation of environmental laws in Nigeria. At the registration exercise, the Director General of NESREA, Dr. Ngeri Benebo warned that the agency will not fail to publish the names of consultants whose activities violated NESREA's regulations.¹²⁸ The fear here is that the consultants will use the certificate of NESREA to abuse the process and procedure.

XIII. STRATEGIC RESPONSE BY THE FEDERAL GOVERNMENT OF NIGERIA

In an effort to address the problems associated with the e-waste dumping, some of which have been discussed in the preceding pages, three Government Agencies namely the National Environmental Standards and Regulations Enforcement Agencies (NESREA), the Consumer Protection Council (CPC) and the Standard Organization of Nigeria (SON), have signed a Memorandum of Understanding (MoU) with Alaba International Market Amalgamated Traders Association (AIMATA) to check these vices. This historic event took place at the Secretariat of the Electronic Section, Alaba International Market, Lagos on Thursday, July 30, 2009.¹²⁹ This MoU was signed a week after participants at the NESREA organized an International Conference on E-waste Control. The conference decried the increasing volume of e-waste in the country from the industrialized nations and the associated environmental and health problems. Under the MoU, all parties are to work together to discourage the unethical practice of the sale of fake and sub-standard electrical and electronic products and to dispose of unserviceable electrical and electronic products in an environmentally sustainable way.

127. *Accredited Consultants*, NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY, available at http://www.nesrea.org/forms/List_Environmental_Consultants.pdf (last visited Apr. 24, 2012).

128. *See NESREA Vows To Implement Environmental Laws*, NEWS AGENCY OF NIGERIA, (May 5, 2012, 2:04 PM), <http://www.nannewsngr.com/section/4/nesrea-vows-to-implement-environmental-laws>.

129. Alaba Market is a prominent electronic and electrical equipment market situated in the South of Lagos in South West Nigeria. Alaba is a coastal area that lies approximately twenty miles within the coast of Nigeria and thus falls within Nigeria's maritime environment.

A 35-member Joint Task Force was set up to implement the MoU. The traders' association, AIMATA, is to contribute twenty (20) members while the three Government Agencies are to contribute the remaining fifteen (15) members. The Task Force is empowered to conduct inspection and surveillance of the market; carry out investigation to unravel the presence of fake and sub-standard electrical and electronic products in the market and their channels of entry into the market; and recommend to the parties hereto appropriate sanctions for offenders.¹³⁰

The MOU empowers members of the Joint Implementation Task Force, in the course of their duties at any reasonable time, to:

- (a) Enter (by force, if needed) any premises in the market for the purpose of conducting an investigation;
- (b) Examine or take samples or specimen of any goods or products in the market;
- (c) Open and examine while on the premises, any container or package which it reasonably believes may help in the investigation;
- (d) Examine any book, document or other records found on the premises which it reasonably believes may contain any information relevant to the enforcement of this MoU and make copies thereof or extracts from;
- (e) Seize and detain for such time as may be necessary for the purposes of this MoU, any article or goods by means of, or in relation to which it reasonably believes any provision of this MoU has been contravened.¹³¹

The MoU tenure "is for an initial period of two years and is renewable thereafter."¹³²

The Director General of the Consumer Protection Council (CPC), Mrs. Ify Umenyi, signed the MoU on behalf of her Council; Dr. (Mrs.) Ngeri S. Benebo, the Director General/CEO of NESREA was represented by the Director, Environmental Quality Control, Mallam M.M. Omar [who signed on behalf of NESREA]; while the Director General of the Standard Organization of Nigeria [(SON) signed on behalf of

130. *Public Participation*, NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY (NESREA), <http://www.nesrea.org/publicparticipation.php> (last visited Apr. 24, 2012).

131. *Id.*

132. *Id.*

SON].¹³³ The President of the Electronic Section of AIMATA, Chief Emeka Dike, signed on behalf of the traders.¹³⁴

The MoU was described as a “manifestation of the desire of NESREA to promote voluntary compliance and forge strategic partnership with various stakeholders.”¹³⁵ It is expected that the Consumer Protection Council (CPC), under the agreement will intensify surveillance and enforcement operations in the market place in order to stem the tide of counterfeiting in the country. Likewise, AIMATA is expected by the MoU to nip in the bud, the problem of counterfeiting by ensuring that Alaba traders are stopped from turning the country into a dumping ground of fake and counterfeit goods. The successes of the MoU are yet to be seen.

Furthermore, the Government regulated the shipments of WEEE and UEEE by producing guidance documents and mandating the National Environmental Standards and Regulations Enforcement Agency (NESREA) to enforce it. Therefore all shipments of second-hand electronic goods may be classified as “Waste” and could be treated as an illegal waste shipment by NESREA.¹³⁶ Only functional UEEE that meets the requirements of NESREA Regulations can be legally imported into Nigeria.¹³⁷ “This guidance document highlights some of the dos and don’ts off shipment of UEEE into Nigeria. It is intended to help importers including private persons, companies, organizations and shipping companies to differentiate between UEEE and WEEE.”¹³⁸

It is recommended that all the staff of NESREA, SON, CPC, Nigeria Customs Services and importers of electronic equipment through AIMATA should be well abreast of the guiding principles and the requirements for importation of WEEE and UEEE into Nigeria. It is further recommended that every World Environment Day, June 5th, should be used by NESREA to sensitize Nigerians on UEEE and WEEE and also stress the need for compliance with domestic and international environmental laws. The World Environment Day should also be used by NESREA, in conjunction with

133. *Id.*

134. *Id.*

135. *Id.*

136. *Guide for Importers of Used Electrical and Electronic Equipment into Nigeria*, NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY, available at <http://www.env.go.jp/recycle/yugai/pdf/GuideforImportersofUsedElectricalandElectronicEquipmentreserved.pdf> (last visited Apr. 24, 2012).

137. *Id.*

138. *Id.* at 2.

National Orientation Agency (NOA) to stimulate national awareness of environmental issues and encourage political action.

XIV. STRATEGIC RESPONSE: INTERNATIONAL LAW

The legal regulation of toxic waste is governed internationally by the Bamako Convention of 1991 and the Basel Convention on the Control of the Transboundary Movements of Hazardous Waste and Their Disposal, which was adopted in 1989.¹³⁹ Basel Convention came into force in 1992 and was ratified by Nigeria on March 13, 1991.¹⁴⁰ These two international instruments were created as a result of the international pressure mounted by Nigeria and the Organization of African Unity. Article 9 of the Basel Convention addresses the problem of illegal traffic in hazardous waste.¹⁴¹ It defines illegal traffic in hazardous waste and makes it the duty of the export-generating country to re-import such waste.¹⁴² Illegal traffic, according to Article 9, is traffic in contravention of national legislation and relevant international legal instruments, as well as traffic not carried out in compliance with internationally accepted guidelines and principles.¹⁴³ The Bamako Convention set up amongst others the African Dump Watch to act as an African Alert system against traffic in toxic waste.¹⁴⁴ The Bamako Convention in Article 4 bans illegal traffic in toxic waste within or into African countries.¹⁴⁵

It is recommended that Nigeria should continue to play a very active international role to ensure that all countries, particularly parties to the two instruments, comply fully with the tenets of the conventions. Nigeria may seek the advisory services and technical assistance of the Basel Convention Secretariat (BCS) based in Geneva, Switzerland to ensure that the convention is domesticated in Nigeria and implemented fully in its favor.¹⁴⁶ Nigeria is one of the few developing countries that have never sought the assistance of the Basel Convention Secretariat in this regard.¹⁴⁷ There is the

139. Basel Convention, *supra* note 1; Bamako Convention, *supra* note 2.

140. Basel Convention, *supra* note 1.

141. *Id.* at art. 9.

142. *Id.* at 30.

143. *Id.*

144. Bamako Convention, *supra* note 2, art. 5.

145. *Id.* at art. 4(2).

146. *Id.* at art. 16.

147. *See* Gwam, *supra* note 2.

need to domesticate the convention in Nigeria so that the international environmental law should be implemented fully in the country. To do this, the environmental law capacity of the legal practitioners, particularly judges, has to be developed to enable them to effectively apply the law.

XV. TRIAL IN THE USA OF THE HUMAN RIGHTS VIOLATIONS IN AFRICA UNDER THE ALIEN TORT STATUTE (ATS)

It has been argued by scholars in the U.S. that crimes committed outside could be litigated in the U.S. under the 1789 Alien Tort Statute (ATS) once local remedies have been exhausted. Duruigbo, in his scholarly work, argued that exhaustion of local remedies in ATS would develop the international human rights law.¹⁴⁸ The local remedies rule, a well-known rule in international customary law states, “[B]efore a claim can be espoused at an international judicial forum, the claimant or the representative government must have exhausted all domestic remedies in the country where the claim arose.”¹⁴⁹

The international rule of exhaustion of local remedies before taking to international remedies is one of the basic rules in international law.¹⁵⁰ The object of the rule is to give the responding State the first opportunity to correct the harm and to make redress.¹⁵¹ The application of the rule of domestic remedies to the protection of human rights depends on conventional provisions.¹⁵² A person whose rights have been violated should make use of domestic remedies to right a wrong, rather than first address the issue to an international committee, court or other tribunals. Access to an international organ should be available, but only as a last resort, after the domestic remedies have been exhausted. A person should seek redress from domestic remedies because these are normally quicker, cheaper, and more effective than the international ones. If no domestic remedies are available or there is unreasonable delay on the part of national courts in granting a remedy, a person should have recourse to international

148. See Emeka Duruigbo, *Exhaustion of Local Remedies in Alien Tort Litigation: Implications for International Human Rights Protection*, 29 *FORDHAM INT’L L.J.* 1245 (2006).

149. *Id.* at 1248 n.13.

150. *Id.* at 1282.

151. *Id.* at 1259.

152. *Id.* at 1265–66.

remedies. The rule of local remedies should not constitute an unjustified impediment to access the international remedies

All legal remedies should include the remedies of judicial and administrative or legislative in nature.¹⁵³ It has also been argued that toxic waste dumping in Nigeria violates the civil and political rights as well as economic and social rights of Nigerians, particularly their rights to live in a healthy, clean, and sound environment.¹⁵⁴ This is enunciated in Article 6 of International Covenant on Civil and Political Rights, which deals with right to life.¹⁵⁵ Articles 7(b), 12(1), and 12(2)(b) of the International Covenant on Economic, Social and Cultural Rights also deal with right to life.¹⁵⁶ These articles address the need to improve environmental and industrial hygiene as well as safe and healthy working conditions. The right to life constitutes the most fundamental of rights to the extent that it is the precursor to all other human rights guarantees. Article 6 of the ICCPR states that the ". . . inherent right to life . . . shall be protected by law . . . " and no one can be arbitrarily deprived of his life.¹⁵⁷ Violation of this right either through torture, extra-judicial killing by agents of state, or by illicit toxic waste dumping can be litigated upon in the U.S. through the ATS once local remedies have been exhausted. It has been equally argued that seeking justice on environmental issues in developing countries might be difficult.¹⁵⁸ Additionally, such exhaustion of the local remedies rule might be an impediment to access international remedies.¹⁵⁹

As mentioned above, all major international human rights instruments, particularly the International Covenant on Civil and Political Rights¹⁶⁰ and International Covenant of Economic, Social and Cultural Rights recognize the doctrine of local remedies.¹⁶¹ Indeed Article 3 of the Optional Protocol

153. *Id.* at 1259.

154. For more reading, see Cyril Uchenna Gwam, *Toxic Waste Dumping and the Enjoyment of Economic, Social and Cultural Rights in Africa*, 15 ANNUAIRE AFRICAIN DE DROIT INTERNATIONALE (2007).

155. ICCPR, *supra* note 4, at art. 6.6.

156. ICESCR, *supra* note 4, at arts. 7(b), 12(1), 12(2) (b).

157. ICCPR, *supra* note 4 at art. 6.

158. See Idowu, *supra* note 70 (where he argued that oil companies in Nigeria, particularly Shell "have the economic muscles to get justice in their favor"). See also Weissbrodt, *supra* note 69 (where he argued that multinational corporations are bigger than states, particularly those in Africa and, as such, has the political and economic muscles to incessantly violate the rights of the citizens with impunity).

159. *Id.*

160. ICCPR, *supra* note 4, at art. 41(1)(c).

161. ICESCR *supra* note 4. The United States signed the Covenant in 1979 under the Carter administration but is not fully bound by it until it is ratified. For political reasons it is

to the ICESCR states, "The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged."¹⁶²

It further stated in Article 3(2) (a), "The Committee shall declare a communication inadmissible when it is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit."¹⁶³

In light of the above, it is evident that the systematic violations of the economic, social, and cultural rights, as well as civil and political rights of toxic waste victims in Africa, can be handled in the U.S. and Texas courts under the ATS. Since ATS is not the crux of this paper, I will only list some human rights abuses in Africa that have been mentioned or adjudicated upon in the USA courts. These are:

- *Enahoro v. Abubakar*¹⁶⁴

reported that the Carter administration did not push for the necessary review of the Covenant by the Senate, which must give its "advice and consent" before the US can ratify a treaty. The Reagan and George H.W. Bush administrations took the view that economic, social, and cultural rights were not really rights but merely desirable social goals and therefore should not be the object of binding treaties. The Clinton Administration did not deny the nature of these rights but did not find it politically expedient to engage in a battle with Congress over the Covenant. The George W. Bush administration followed in line with the view of the previous Bush administration. *Economic, Social and Cultural Rights: Questions and Answers*, AMNESTY INTERNATIONAL 6, available at http://www.amnestyusa.org/escr/files/escr_qa.pdf (last visited Feb. 2, 2013); *International Covenant on Economic, Social, and Cultural Rights*, WIKIPEDIA, http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights (last visited Apr. 24, 2012). The Obama Administration stated, "[T]he Administration does not seek action at this time" on the Covenant. *At last? Ratification of the Economic Covenant as Promoting Library Advocacy*, ACCESS MY LIBRARY, <http://www.accessmylibrary.com/article-1G1-258545357/last-ratification-economic-covenant.html> (last visited Feb. 5, 2013). The Heritage Foundation, a critical conservative think tank, argues that signing it would obligate the introduction of policies that it opposes such as universal health care. Andrew J. Cowin, *Human Rights Treaty Poses Dangers For America* Heritage Foundation, THE HERITAGE FOUNDATION, <http://www.heritage.org/Research/PoliticalPhilosophy/EM361.cfm?renderforprint=1> (last visited Feb. 2, 2013).

162. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. A/RES/63/117 2 (Mar. 5, 2009), available at <http://www.unhcr.org/refworld/docid/49c226dd0.html>; *id.* at art. 3.

163. *Id.* at 3.

164. 408 F.3d 877 (7th Cir. 2005).

- *Abiola v. Abubakar*¹⁶⁵
- *Collet v. Socialist Peoples' Libyan Arab Jamahiriya*¹⁶⁶
- *Doe v. Savaria*¹⁶⁷
- *Wiwa v. Royal Dutch Shell*¹⁶⁸
- *Cabiri v. Assasie-Gyimah*¹⁶⁹
- *Mushikiwabo v. Barayagwiza*¹⁷⁰
- *Chiminya Tachiona v. Mugabi*¹⁷¹

XVI. DATA COLLECTION AND ANALYSIS

In researching on the reasons for toxic waste dumping in Nigeria, the problems associated with waste dumping in Nigeria, as well as evidence to support environmental and ecologically related human rights abuse in Nigeria, I collected data from both secondary and primary sources. Thereafter, the data collected and analyzed has been presented in descriptive and analytical forms using tables and charts for illustrations.

Primary sources of data have been obtained through multi-stage sampling method. Multi-stage sampling method was used in getting the number and type of respondents. This involves (a) purposive sampling method by deliberately selecting the categories of those to be sampled, mainly the relevant stakeholders, academics, public servants, security agents, legal and medical practitioners; and (b) convenience sampling method by selecting within a profession and stake holding the persons and numbers to be given the questionnaire. The secondary data has been sourced from published and unpublished materials such as books, journals, newspapers, internet, magazines, seminar papers, United Nations documents and official publications. In the process of the research, I discovered a co-relationship between the secondary and primary sources of data.

165. 435 F. Supp. 2d 830 (N.D. Ill. 2006).

166. 362 F. Supp. 2d 230 (D.D.C. 2005).

167. 348 F. Supp. 2d 1112 (E.D. Cal. 2004).

168. No. 96 CIV. 8386 (KMW), 2002 WL 319887 (S.D.N.Y. Feb. 28, 2002).

169. 921 F. Supp. 1189 (S.D.N.Y. 1996).

170. No. 94 CIV. 3627 (JSM), 1996 WL 164496 (S.D.N.Y. Apr. 9, 1996).

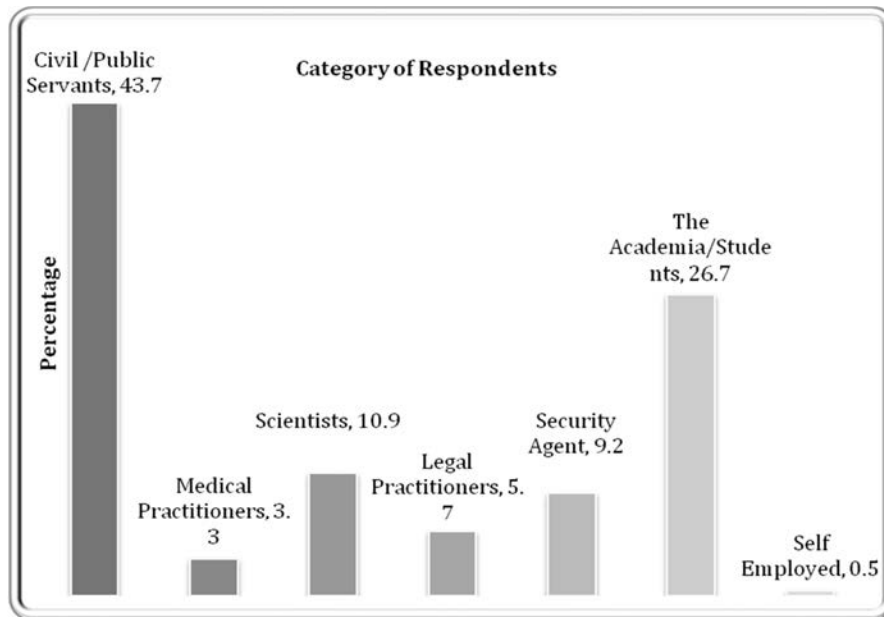
171. 216 F. Supp. 2d 262 (S.D.N.Y. 2002).

XVII. CHARACTERISTICS OF RESPONDENTS

A. *Category of Respondents*Table 1: Category of Respondents¹⁷²

Category		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Civil /Public Servants	185	43.7	43.7	43.7
	Medical Practitioners	14	3.3	3.3	47.0
	Scientists	46	10.9	10.9	57.9
	Legal Practitioners	24	5.7	5.7	63.6
	Security Agents	39	9.2	9.2	72.8
	The Academia/Students	113	26.7	26.7	99.5
	Self Employed	2	.5	.5	100.0
	Total	423	100.0	100.0	

172. Gwam, *supra* note 3.

Chart 1: Category of Respondents¹⁷³

The professions of the respondents are analyzed in Table 1 and Chart 1. It shows that 43.7% were from the public sector, the main stakeholders; 3.3% were medical practitioners; 10.9% were scientists; 5.7% were legal practitioners; 9.2% were security agents; 26.7% were the academia and students; and 0.5% was self-employed. The public/civil servants, security agents, etc. were stakeholders. The above categories of respondents were considered relevant for the study. All the officers working in the Nigerian Maritime Environment (NME), naval officers are grouped under civil/public servants. This explains why we have more (43.7%) civil/public servants.

173. *Id.*

B. Educational level of Respondents

Table 2: Educational Level¹⁷⁴

Educational Level		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Secondary	19	4.5	4.5	4.5
	Tertiary	404	95.5	95.5	100.0
	Total	423	100.0	100.0	

Chart 2: Educational Level¹⁷⁵

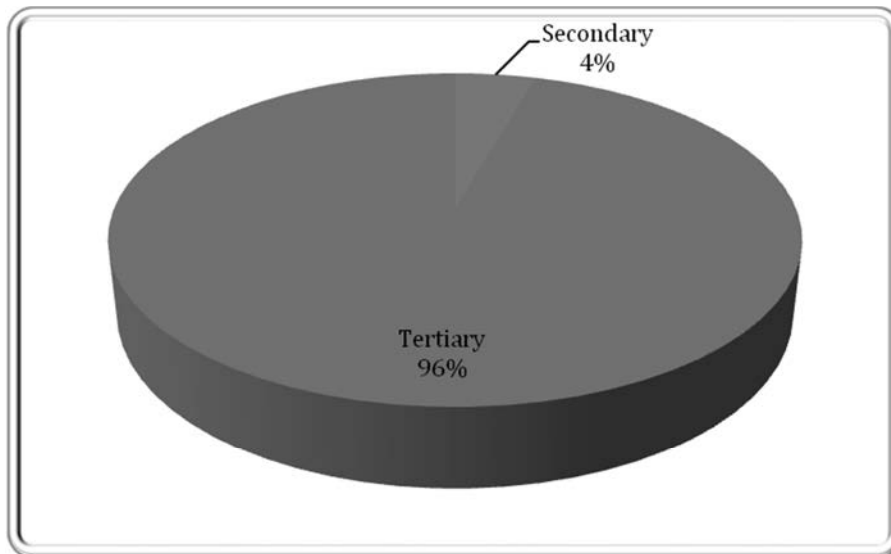


Table 2 and Chart 2 were the respondents' educational qualification: 4.5% had secondary school qualifications, while 95.6% had tertiary qualifications. From the above distribution, it is shown that the sampled

174. *Id.*

175. *Id.*

respondents were relatively knowledgeable and aware of the questions posed to them.

C. Years of Service of Respondents

Table 3: Years of Service¹⁷⁶

Years of Service		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Less than 5 Yrs	266	62.9	62.9	62.9
	6-10 Yrs	61	14.4	14.4	77.3
	11-15 Yrs	25	5.9	5.9	83.2
	16-20 Yrs	23	5.4	5.4	88.7
	21 Yrs and Above	48	11.3	11.3	100.0
	Total	423	100.0	100.0	

176. *Id.*

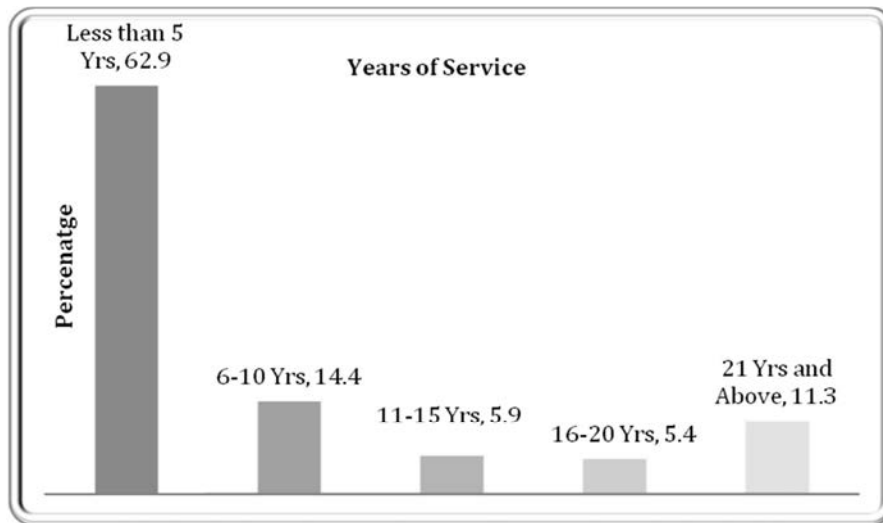
Chart 3: Years of Experience¹⁷⁷

Table 3 and Chart 3 as shown above indicate the distribution of respondents' years of experience in their various services. From the above, 62.9% (266) had less than 5 years of working experience, 14.4% (61) had 6 – 10 years of working experience, 5.9% (25) had 11 – 15 years of working experience, 5.4% (23) had 16 – 20 years of working experience, and 11.3% (48) had 21 years of working experience. This indicates that the respondents are experienced enough to understand and, to a large extent, analyze/evaluate government strategic and legal responses.

177. *Id.*

XVIII. ANALYSIS OF FIELD QUESTIONS

A. Awareness of Respondents of the Term Toxic Waste Dumping

Table 4: Awareness of Respondents of the Term Toxic Waste Dumping¹⁷⁸

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	416	98.3	98.3	98.3
	No	7	1.7	1.7	100.0
	Total	423	100.0	100.0	

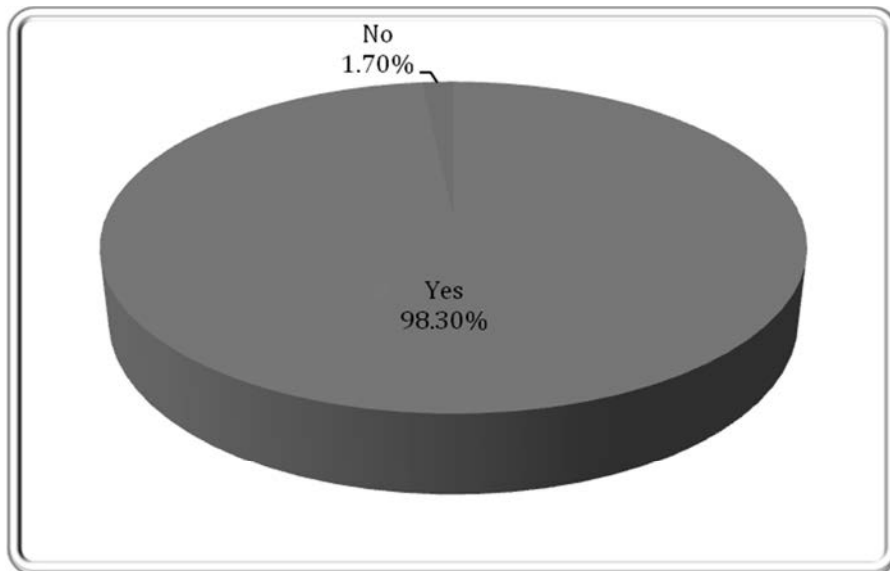
Chart 4: Awareness of Respondents on the Term Waste Dumping¹⁷⁹

Table 4 and Chart 4 sampled the respondents' knowledge of the term "Toxic Waste Dumping." From the above distribution, it is shown that 98.3% (416) answered "Yes" while 1.7% (7) answered "No." It can then be

178. *Id.*

179. *Id.*

deduced from the above distribution that a large number of respondents sampled had knowledge of the term “Toxic Waste Dumping” and understand its adverse effects on life, health and the environment. This adds to the validity of data retrieved from respondents.

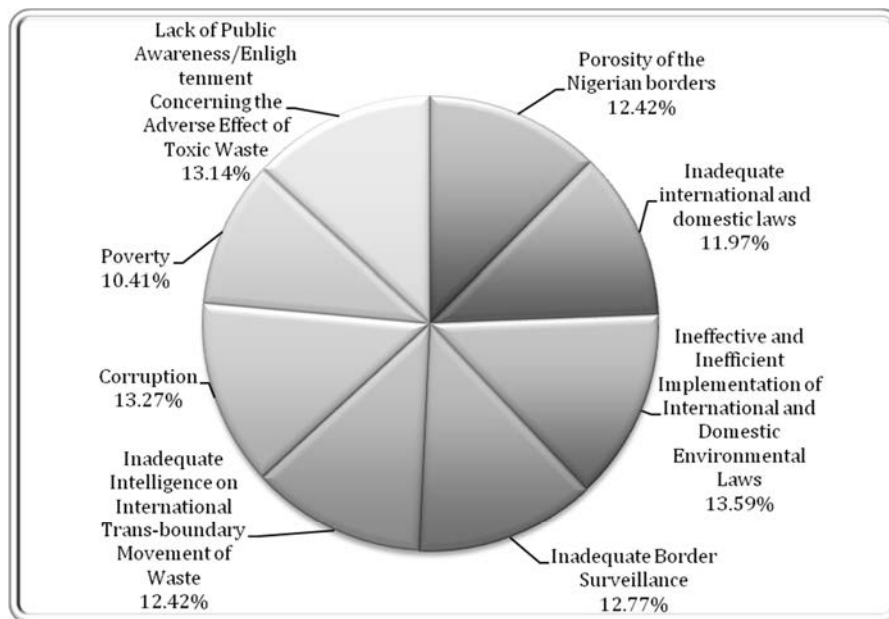
B. Reasons for Toxic Waste Dumping in Nigeria

Table 5: Reasons for Toxic Waste Dumping¹⁸⁰

Responses	Yes		No		I Don't Know	
	Frequency	Percentage (%)	Frequency	Percentage (%)	Frequency	Percentage (%)
Porosity of the Nigerian borders	363	85.8	27	6.4	33	7.8
Inadequate international and domestic laws	350	82.7	53	12.5	20	4.7
Ineffective and Inefficient Implementation of International and Domestic Environmental Laws	397	93.9	12	2.8	14	3.3
Inadequate Border Surveillance	373	88.2	26	6.1	24	5.7
Inadequate Intelligence on International	363	85.8	30	7.1	30	7.1

180. *Id.*

l Trans-boundary Movement of Waste						
Corruption	388	91.7	19	4.5	16	3.8
Poverty	304	71.9	82	19.4	37	8.7
Lack of Public Awareness/ Enlightenment Concerning the Adverse Effect of Toxic Waste	384	90.8	36	8.5	3	7

Chart 5: Reasons for Toxic Waste Dumping in Nigeria¹⁸¹

The reasons for Toxic Waste Dumping in Nigeria are numerous, as shown in Table 5 and Chart 5 above. Out of 423 respondents, 85.8% (363) thought that the reason is the porosity of the Nigerian borders. Approximately 82.7% thought the reason is the inadequacy of international and domestic laws while 93.9% (397) believed that the reason is ineffective and inefficient implementation of international and domestic environmental laws. According to the findings, 88.2% (373) believed that the major reasons are the inadequate border surveillance; 85.8% (363) said it is inadequate intelligence on international trans-boundary movement of waste; 91.7% (388) thought it was corruption; 71.9% (304) said poverty; and 90.8% (384) believed it is as a result of lack of public awareness/enlightenment concerning the adverse effect of toxic waste.

On the part of the dumpers, secondary sources revealed that the reasons for toxic waste dumping in Nigeria are: high cost of disposal of toxic waste in their home countries;¹⁸² the rigid toxic waste control laws and

181. *Id.*

182. MUSTAFA K. TOLBA & IWONA RUMMEL-BULSKA, GLOBAL ENVIRONMENTAL AGREEMENT FOR THE WORLD 1973-1992 100 (Massachusetts Institute of Technology, 1998).

system in the developed countries;¹⁸³ and the choice of the path of least resistance in less-developed (weak) economies, with low maritime domain awareness.¹⁸⁴ Other reasons are the increasing scarcity of disposal facilities in the industrialized countries,¹⁸⁵ and strong public opposition to the construction of waste disposal facilities and landfills based on what is called the NIMBY (Not in My Backyard) syndrome.¹⁸⁶

C. Problems associated with Toxic Waste Dumping in Nigeria

In the same sample survey, it was discovered that there are many problems associated with toxic waste dumping in Nigeria. These include environmental pollution, water pollution and death. Details are shown in Table 6 and Chart 6 below.

Table 6: Problems Associated with Toxic Waste Dumping in Nigeria's Maritime Environment¹⁸⁷

Responses	Yes		No		I Don't Know	
	Frequency	Percentage (%)	Frequency	Percentage (%)	Frequency	Percentage (%)
Environmental problems /pollution	419	99.1	1	.2	3	.7
Death	372	87.9	30	7.1	21	5.0
Health problems	419	99.1	3	.7	1	.2
Drinking water	393	92.9	23	5.4	7	1.7
Security Problems	273	64.5	97	22.9	53	12.5

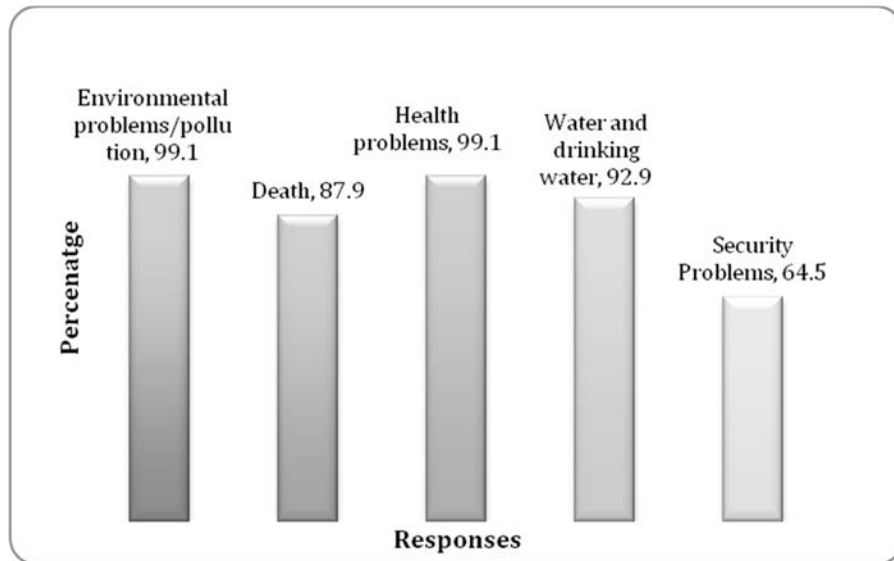
183. KUMMER, *supra* note 76, at 7.

184. Adeola, *supra* note 73, at 53.

185. *Id.*

186. KUMMER, *supra* note 76.

187. Gwam, *supra* note 3.

Chart 6: Problems Associated with Toxic Waste Dumping in Nigeria¹⁸⁸

Respondents were sampled on the problems associated with toxic waste dumping in Nigeria as shown in Table 6 and Chart 6. From the table, it is evident that environmental problems/pollution was identified by 99.1% (419) of respondents; death identified by 87.9% (372); health problems identified by 99.1% (419); drinking water by 92.9% (393); and security problems by 65.5% (273). All of these problems have been associated with toxic waste dumping in Nigeria's maritime environment. From secondary sources, it was further ascertained that the dumping of toxic waste in Nigeria is a violation of the right to good health and life as attested to by the sickness and subsequent death of Chief Nana of Koko and members of his household following the toxic waste dumped in his compound in 1988.¹⁸⁹

188. *Id.*

189. Odimegwu Onumere, *Toxic Waste Dumping: Africa at the Mercy of God*, NIGERIANS IN AMERICA [HTTP://WWW.NIGERIANSINAMERICA.COM/ARTICLES/1522/1/TOXIC-WASTE-DUMPING-AFRICA-AT-THE-MERCY-OF-GOD/PAGE1.HTML](http://www.nigeriansinamerica.com/articles/1522/1/Toxic-Waste-Dumping-Africa-At-The-Mercy-Of-God/Page1.html) (last visited June 10, 2012). For details see BUKAR USMAN, VOICES IN A CHOIR, ISSUES IN DEMOCRATIZATION AND NATIONAL STABILITY IN NIGERIA (Klamidas Communications Ltd., Kaduna, Nigeria, 1999). According to Usman, Gianfranco Rafaelli, who first arrived in Nigeria in 1967, approached a 67-year-old Chief Sunday Nana of Koko and acquired for \$100 USD a "piece of land in 1987 to dump what he claimed was raw materials for his industry." It was later discovered that Rafaelli was havening, at Koko, in Delta State of Nigeria 8,000 drums of

Secondary sources have also determined that since the toxic waste causes both health and environmental hazards, it should also be considered a threat to national security.¹⁹⁰

D. Evidence of Toxic Waste Dumping to Support the Claim for Environmental Injustice and Ecologically Related Human Rights Abuse in Nigeria (Environmental Rights Violation)

Through the sample survey, it was discovered that there is enough evidence of toxic waste dumping to support the claim of environmental injustice and ecological human-rights abuse in Nigeria. The details are shown in Table 7 and Chart 7 below.

polychlorinated biphenyl sulphate (PCBS), methyl melamine and dimethyl ethyl-acetate formaldehyde, which were the world's most hazardous wastes. Many Nigerians in Koko, including Chief Nana, confessed that they have been drinking water from the drums of the toxic wastes, oblivious of what it contained and took ill. He said that Nana was ill two years later and died of suspected toxic waste ingestion. In his contribution, Adeola argues that the toxic waste dumped in Koko in 1988 is a case of environmental injustice. He argues that the case illustrates that poverty and ignorance are the critical factors enticing people into accepting hazardous waste for cash. For details see Adeola, *supra* note 73, at 39–50. Adeola informed that two Italian multinational corporations – Ecomar and Jelly Wax enticed a poor and ignorant Nigerian businessman, Sunday Nana, into signing an agreement to use his residential property located in Koko Nigeria for the storage of 18,000 drums of hazardous waste disguised as building materials and allied chemicals for about \$100 USD a month. See *id.* In the words of Ihonvbere, the ease in the Koko port dumping was because of the dependency and trade imbalance between periphery (Nigeria) and the core (Europe). See J.O Ihonvbere, *The State and Environmental Degradation in Nigeria: A Study of 1988 Toxic Waste Dump in Koko*, 23 J. OF ENVTL. STUD. 3, 207–27 (1995). In May 2009, ninety-four sick victims of the infamous toxic waste dump received N39.7 million compensation from the Nigerian Ports Authority (NPA), Warri, for the pain, frustration and death suffered during the evacuation of the toxic dump. Presenting the cheques to the beneficiaries who were staff of the Warri Ports through their counsel, the General Manager, NPA Eastern Zone, Mr. S. Inyeinegi-Etomi said though the compensation can never be enough, it represents the "Port's demonstration of its corporate social responsibility to those who risked their lives through evacuating the infamous toxic waste in Koko Port," in Warri North Council Area of Delta State (Arubi, 2008). It is interesting to note that the two Italian multinational corporations (owners of the waste—Ecomar and Jelly Wax) and the ship owner never paid any compensation and were not taken to court by the Nigerian Government. See Emma Arubi, *N39 Million Relief for Koko Toxic Waste Victims 21 Years After*, ALL AFRICA, Apr. 4, 2008 <http://allafrica.com/stories/200804041094.html>.

190. Gwam, *supra* note 3.

Table 7: Evidence of Toxic Waste Dumping to Support the Claim of Environmental Injustice and Ecologically Related Human Rights Abuse in Nigeria (Environmental Rights Violation)¹⁹¹

Responses		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	332	78.5	78.5	78.5
	No	22	5.2	5.2	83.7
	I don't know	69	16.3	16.3	100.0
	Total	423	100.0	100.0	

Chart 7: Evidence of Toxic Waste Dumping to Support the Claim for Environmental Injustice and Ecologically Related Human Rights Abuse in Nigeria (Environmental Rights Violation)¹⁹²

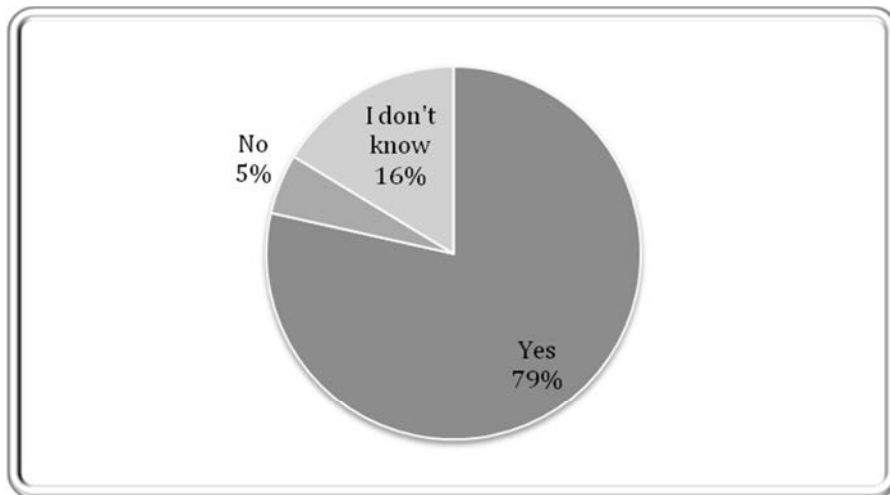


Table 7 and Chart 7 assess the opinion of respondents on whether there is evidence of toxic waste dumping to support the claim for environmental injustice and ecologically related human rights abuse in Nigeria, otherwise

191. *Id.*

192. *Id.*

known as violation of environmental rights. Seventy-eight and one-half percent (332 people) answered “Yes” that there is evidence of environmental rights violations, 5.2% (22) answered “No” there is no evidence, while 16.3% (69) have no idea. It can be said from the above table that the respondents surveyed are of the opinion that there is evidence of toxic waste dumping to support the claim of environmental rights violation. In view of the relative knowledge and awareness of the respondents, it is convenient to state that they are in a position to have or know whether there is evidence of environmental violations by toxic waste dumping in Nigeria.

From secondary sources, it was shown that toxic waste dumping in Nigeria violates the right to clean and sound environment as attested to by the judgment of *Social and Economic Rights Action Centre (SERAC) v. Nigeria*, discussed above.¹⁹³

XIX. CONCLUSION

In the light of the above, it is pertinent to reiterate that the aim and objectives of the two only well-known international conventions on transboundary movement of toxic waste are to ban the export to, and dumping of waste from, the developed countries to the developing countries, particularly in Africa. Regrettably, this aim has not been achieved for the reasons discussed in the body of this paper, but it has minimized transboundary movement of wastes.

The study contends that the challenges encountered by the government in addressing the problems of toxic waste dumping in Nigeria include inadequate intelligence and poor policing of its territorial waters' borders by border security agencies, including the Nigerian Navy. It establishes that the reasons for the high success rate of toxic waste dumping, particularly the e-waste in Nigeria include lack of public awareness of the adverse effects of Waste Electrical and Electronic Equipment (WEEE) on life and health of persons. In this regard, the research contends that Nigerian Government has not done well in law and strategy to control the dumping of toxic waste, particularly the e-waste in Nigeria.

It also infers that the problems associated with toxic waste dumping in Nigeria include environmental pollution, health issues and death. All these

193. STRYDOM, *supra* note 41.

are violations of the right to health, clean and sound environment and, therefore, are a threat to national security. The cyclical effect of the violation of one generation of rights is far-reaching. For example, toxic waste dumping in Nigeria and its adverse effects have repercussions on the rights to life, liberty and security of persons, privacy, national security, health, and adequate standard of living, food, housing, education, development, and other rights.¹⁹⁴ This issue cuts across civil, political, economic, social, and cultural rights. The human rights dimension is very expansive because virtually every measure of disease control is influenced by some human rights.¹⁹⁵ The national security dimension is also very expansive. For example, a community or family in the Nigeria that suffers from adverse effects of illicit toxic waste dumping will not be healthy to work, fish and farm, like the case of the Ogoni people in *SERAC v. Nigeria*. This will invariably affect their productivity and welfare as a community.

The decrease in productivity may lead to extreme hunger and poverty, another human rights violation. The poverty may affect the education of the children, a violation of the right of the child. Extreme poverty may also lead to the sale of human internal organs, child labour, child prostitution and trafficking in persons in order to generate funds to maintain the entire family. This could be referred to as the theory of inter-mix of rights, which shows that all sets of right are positively co-related. Acute and systematic violation of rights is a threat to national security. The negligence of second and third-generation rights like right to health or right to clean and sound environment may lead to acute and systematic violations of first generation rights, like sale of human internal organs, child labour and child prostitution.¹⁹⁶ This is why Nigerian Governments at all levels should, in the first place, endeavour to prevent toxic waste dumping in the Nigeria.

This study also contends that acute and systematic violations of human rights from illicit toxic waste dumping in Africa leading to death and sicknesses, such as the ones in Cote d'Ivoire, Nigeria and Guinea, can be adjudicated upon in the U.S. under the 1789 Alien Tort Statute once all local remedies have been exhausted. It is noted, however, that it might be difficult in developing countries to meet the "exhaustion of local remedies" rule in light of the political and economic muscles of the multinational corporations swaying legal judgments in their favor.

194. Gwam, *supra* note 67.

195. FIDLER, *supra* note 65.

196. Gwam, *supra* note 67.