

Pollution in Africa: A new toxic waste colonialism? An assessment of compliance of the Bamako Convention in Cote d'Ivoire.

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30 October 2009.

DECLARATION

I, KONE LASSANA, declare that the work presented in this dissertation is original. It has never been presented to any other university or institution. Where other people's works have been used, references have been provided, and in some cases, quotations made. In this regard, I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirement for the award of the LLM Degree in Human Rights and Democratisation in Africa.

Signed.....

Date

Supervisor: Mr Imerut Tamirat.

Signature.....

Date.....

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DEDICATION

**To my beloved grandmother Dogbrey Veronique...deceased in the course of this
Master Degree program.**

May your soul rest in peace!

LIST OF ABBREVIATIONS

ACCNNR	African Convention on the Conservation of Nature and Natural Resources
ACHPR	African Commission on Human and Peoples' Rights
ACP	African Caribbean and Pacific
AHRLJ	African Human Rights Law Journal
AHRLR	African Human Rights Law Reports
AP	Associated Press
APS	Amsterdam Port Service
AU	African Union
BAN	Basel Action Network
BBC	British Broadcasting Corporation
EHRC	European Human Rights Court
EU	European Union
FAO	Food and Agriculture Organization
HRC	Human Rights Committee
IACHR	Inter American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
IMO	International Maritime Organization
LDC	London Dumping Convention
LDCs	Least Developed Countries
NGO	Non Governmental Organization
NIMBY	Not In My Backyard
NPAE	National Plan of Action for the Environment
OAU	Organization of African Unity
OECD	Organization of Economic Development
POPs	Persistent Organic Pollutants
SERAC	Social and Economic Rights Action Centre
TEIA	Transboundary Environmental Impact Assessment
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNCTAD	United Nations Conference on Trade and Development

UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UNEP	United Nations Environment Program
UNOCI	United Nations Operation in Cote d'Ivoire

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1. Introduction

1-1 Background of the study.

“In recent times, the influence of relentless development on the well being of individuals and the environment in which they live has become a cause for increasing alarm.”¹

The new toxic waste colonialism can be defined as the migration of the dirty industries to the less developed countries.

The need for cash in the developing Countries has led to a new export market - toxic garbage. Industrialized countries are exporting their waste to emerging nations, capitalizing on less expensive disposal cost.²

Africa has today the unfortunate distinction of being the first choice for the dumping of European wastes³.

Recent statistics have revealed that most of the people involved in the evil businesses of trafficking in drugs, human, arms and trading in weaponry, are diverting into the so called new evil business of “Trade in Radioactive waste” because this new evil business financially exceeds the rest of the above listed evil businesses. This is clearly proved by the recent toxic waste disposed in Abidjan Cote D’Ivoire in August 2006.⁴

Indeed the incident in Abidjan is symptomatic of the new toxic waste colonialism.

On 19 August 2006, a Panamanian flagged ship; the “Probo koala” unloaded a toxic waste shipment in Abidjan, the main economic capital of Cote d’Ivoire. Slops from

¹ Viljoen F., (2007) *International Human Rights Law in Africa*, Oxford University Press, pp.290-292.

² Babagana Abubakar, The impact of decommissioning of nuclear facilities on African coastal countries. Source, <http://www.sdewes.fsbhr/dubrovnik> 2007/prijave/data/dubrovnik 2007_abstract_10_doc.[Accessed on 14 May 2009

³ Andreas Bernstorff and Kevin Stairs (2000) “*Pops in Africa, Hazardous waste trade 1980-2000, obsolete pesticide stockpiles*”, a Greenpeace Inventory.” Available at: <http://www.ban.org/library/afropops.pdf>.

⁴ NO 2 above.

the ship were dumped on open ground in eleven (11) unsecured sites throughout the densely populated city of Abidjan.⁵

Nineteen (19) persons died, and ten of thousands have been made ill with diarrhoea, vomiting, breathing problems and nosebleeds from the slops. The Ivorian media was filled with speculation over the scandal described as the "Ivorian Chernobyl".

1-2 Statement of the problem

While exploring the new forms of pollution in Africa, this study also intends to look at the incident in Cote d'Ivoire viewed by commentators as the biggest toxic dumping scandal of the 21st century. The precedent in Abidjan is the type of environmental vandalism that international treaties are supposed to prevent⁶.

The case of the Probo Koala is sadly only part of a growing trend known as toxic waste colonialism, in which underdeveloped states are used as inexpensive disposal sites for waste turned away by developed states.⁷

The resulting harm frequently amounts to serious human rights violations. In the case of the Probo Koala, the right to health and the right to life were seriously threatened.⁸

This study look at this incident from a human rights approach considering the linkages between the human rights suffering and the environment, how can such linkages reflect the need to protect and fulfill the Ivorian population rights to a general satisfactory environment .and also their rights to enjoy the best attainable state of physical and mental health.

As the Government of the Republic of Cote d'Ivoire has ratified the Bamako Convention on the ban of the import into Africa and the control of transboundary movement and management of hazardous wastes within Africa, the study will be an

⁵ UNEP, Cote d'Ivoire: UN Environmental Arm Probes Dumping of Deadly Toxic Wates, 8 September 2006, <http://www.un.org/apps/news/story.asp?NewsID=19764&Cr=ivoire&Cr1=> [Accessed on 14 may 2009.]

⁶ Meirion Jones & Liz Mackean "Dirty tricks and toxic waste in Ivory Coast" BBC Newsnight.

⁷ Nicola M.C.P. Jägers & Marie-José van der Heijden, "Corporate human rights violations: The feasibility of civil recourse in the Netherlands." Brooklyn Journal of International Law, Vol 33:3, available at <http://www.brooklaw.edu/students/journals/bjil/bjiliii-jagers.pdf>. [accessed on 8 July 2009]

⁸ As above.

opportunity to assess the implementation and compliance of the Convention in Cote d'Ivoire.

From this perspective, the study aims at determining the extent to which the obligations of the Ivorian Government haven't been met at the national level and the responsibility of non states actors in the occurrence of this tragedy. It also discusses the international environment linkages of the Bamako, related to the Basel and the London dumping Conventions.

The study also looks at the lawsuits filed against Traffigura at the national and international levels. A specific attention will be given to the complaint filed in London by the British Law firm Leigh Dey & Co. The study then provides various recommendations to the Ivorian Government to implement the Bamako Convention and to fully realise the rights enshrined in articles 16 and 24 of the African Charter.

1-3 Scope of the Study.

This study, discusses the expanding of the new forms of pollution in Africa, concerning the transboundary movement of hazardous waste, described as a new toxic waste colonialism. This will be in light of the special context of the dramatic experience of toxic dumping in 2006, in Abidjan.

It reviews the monitoring mechanism of the Bamako Convention and its implementation in Cote d'Ivoire. It focuses on the right of the Ivorian population to a general and satisfactory environment. It then looks at the national framework, legislation, policy and jurisprudence.

It includes a discussion of specific human rights that implicate the environment.

1-4 Objectives.

The overall objective of the study is to critically analyse the implementation of the Bamako Convention in Cote d'Ivoire and to review the national legislative framework of environment protection. Then, the study will provide possible interpretations that best advance and ensure the full realisation of the right enshrined in Article 24 of the African Charter; *the right to a general and satisfactory environment.*

- 1- Examine the new forms of pollution in Africa, and its impact on the environment.
- 2- Determine the nature and extent of the toxic dumping in Abidjan.
- 3- Determine the Ivorian Government failure to protect the population and the human rights violations arisen from the 2006 environmental scandal.
- 4- Assess the monitoring mechanism of the Bamako Convention and its implementation in Cote d'Ivoire.
- 5- Determine whether there is a national legal framework to fulfil the right to a general and satisfactory environment in Cote d'Ivoire.
- 6- Provide recommendations to the Government as well as non state actors and to the relevant stakeholders, regarding the realisation of this right.

1-5 Research questions.

The study attempts to answer the following research questions:

- To what extent the Bamako Convention impact on the realisation of the right to a satisfactory environment in Cote d'Ivoire? Is the human health of the Ivorian population and the Environment strictly protected under the Convention?
- Does the State and non- state actors discharged their obligations at national and international level?
- What is the human rights dimension of the 2006 toxic dumping in Abidjan?
- Is there in Cote d'Ivoire any legislation for environment protection? Is it fully implementing the Bamako Convention since its ratification by the Government?
- How can the Bamako Convention be effectively and efficiently assessed in Cote d'Ivoire?
- Is the national framework (legislation or policy) adequate to ensure the full realisation of the right to a satisfactory environment? Is it in accordance with other international Instruments?

1-6 Overview of related literature.

There is a dearth on the literature concerning the environmental tragedy in Cote d'Ivoire. Basically some relevant books deal with environment protection and focus on the international and local implementation of respective obligations by states and

non states actors. Books by David Hunter⁹ and Phillip Sands¹⁰ constitute the major sources in the field of human rights and environment. These works look at the problematic of implementation of International Agreements. Non compliance is therefore seen to be important because it limits the effectiveness of legal commitments, undermines the international legal process and can lead to conflict and instability in the international order. Alhaji B. M. Marong,¹¹ also expresses the need to implement the international environmental obligations.

The 2006 toxic dumping in Abidjan has been dealt with by highlighting the human rights aspects. Michael R. Anderson¹² focused on the advantages to using a Human Rights Approach. One advantage is that the procedural dimensions of an environmental right can provide access to justice in a way that bureaucratic regulation or tort cannot. The link between Human Rights and the Environment has also been explored by Cole¹³, Shestack,¹⁴ and Capdevila.¹⁵

1-7 Relevance of the study.

The following study attempts at providing a Human Rights response to the toxic dumping scandal in 2006 in Cote d'Ivoire which has widespread effects to the lives of the population living in the densely populated city of Abidjan. The study tries to bring some thoughts as to the possible solutions in the line of the African Commission on Human and Peoples' Rights (ACHPR) jurisprudence.

The epidemiological evidence demonstrates that toxic waste violates human rights to life, to health and to a healthy environment.¹⁶

⁹ David Hunter, James Salzman, Durwood Zaelke (2002) *"International Environmental Law and Policy"* 2nd Edition, University Casebook Series.

¹⁰ Philippe Sands, *"Principles of International Environmental Law"* 2nd Edition Cambridge.

¹¹ Alhaji B. M. Marong *"From Rio to Johannesburg: Reflections on the role of international legal norms in sustainable development"* Georgetown International Environmental law review, Fall, 2003.

¹² Michael R Anderson, (1996) *"Human Rights Approaches to Environmental Protection: An overview"* in Alan E. Boyle & Michael R Anderson, (eds), Clarendon Press, Oxford. 1-4, 21-23.

¹³ Luke W. Cole & Sheila R Foster, (2001) *"From the ground Up: Environmental racism and the rise of the environmental justice movement"*.

¹⁴ Jerome J. Shestack, (2000) *"The Philosophical foundations of Human Rights"* in Human Rights: Concepts and Standards.(Janusz Symonides, Ed.)

¹⁵ Capdevila, G. (1998), *"Dumping of Toxic Waste Affects Human Rights"*, *Inter Press Service*, April, available at http://www.oneworld.org/ips2/apr98/16_44_044html.

¹⁶ Jan Hancock, *"Environmental Human Rights, Power, Ethics and Law"*, 2003, pp107-113.

1-8 Outline of chapters.

The study is divided into five chapters. **The first** chapter introduces the research questions, objectives, scope, methodology and background to the study. **Chapter two** explores the new forms of pollution in Africa, described as a new toxic waste colonialism. While as **chapter three** analyses and assesses the implementation of the Bamako Convention in Cote d'Ivoire, highlighting the human rights dimension of the toxic waste dumping scandal in Abidjan in 2006. It is an assessment of compliance of the Bamako Convention and its monitoring mechanism in the specific context of the West African francophone country of Cote d'Ivoire. It is therefore a general look at the environmental domestic framework. This chapter will also look at the lawsuits and various complaints filed at the international level and specifically in London. **Chapter four** analyses the Regional and International Linkages of the Bamako Convention. The Convention also has link with other treaties dealing with wastes such as the Basel Convention, the London Dumping Convention (LDC), and also the Lome IV agreement. The purpose of the present chapter is to explore the ban and the control of hazardous waste and persistent chemicals under international law. In **chapter five**, recommendations are made after concluding the study.

1-9 Research Methodology.

The analysis of this topic will be carried out following basically a non empirical method.

This study will involve library and internet research. I intend to review relevant books, articles, surveys, reports, international instruments and legal documents on human rights and specifically focusing on issues concerning the Transboundary movement of toxic/ hazardous waste in Africa. The research will also involve case studies of some countries such as Cote d'Ivoire, Nigeria and Benin.

1-10 Limitations.

Although cognisant of the fact that the study of pollution and particularly the transboundary movement of hazardous waste requires a multidisciplinary approach, this dissertation will focus on the right to a healthy and satisfactory environment from a Human Rights perspective. For the purpose of this study, I will focus on the incident

in Abidjan having a look at the substantive violations of human rights causing by the dumping of toxic waste on open ground in the Cote d'Ivoire economic capital.

Chapter 2: The new forms of pollution in Africa, a new toxic colonialism.

“Africa has rejected all forms of external domination...we do not want external domination to come in through the back door in the form of ‘garbage imperialism.’”

Former Kenyan President Daniel arap Moi.

2-1 Introduction.

Africa and other developing countries are faced with new hazards, notably old ships and computers dumped on their shores from richer nations. Electronic waste is flooding from north to south and very little is being done to stop it.¹⁷

This phenomenon can be described as one of the realities of global capitalism. Dumping toxic waste on poor black people living in the periphery of the economic system isn't a problem for biggest multinationals around the world.¹⁸

Waste shipments contain poisonous metals, hospital waste, expired chemicals and pesticides, toxic sludge, etc. All destined to be buried, incinerated or recycled.¹⁹

All down the West African coast, ships registered in America and Europe unload containers filled with old computers, slops, and used medical equipment. Scrap merchants, corrupt politicians and underpaid civil servants take charge of this rubbish and, for a few dollars, will dump them off coastlines and on landfill sites.²⁰

The Cote d'Ivoire toxic waste scandal sheds light on a reality where the poison of the west is being dumped indiscriminately on the global poor.²¹

The incident in Cote d'Ivoire does not exist in isolation as developing nations are increasingly being used as a dump sites for western refuse. And these activities are sowing death into the environmental and social fabric of these states.²²

¹⁷ Kahn, Jeremy, (2006) *“How First World Garbage Makes Africans Sick”* 6. Slate Magazine. Available at: <http://www.slate.com/id/2150243>.

¹⁸ As above.

¹⁹ Cobbling, Madeleine, (1992) *Europe's toxic colonialism: exporting Europe's hazardous wastes, Chemistry and Industry*.

²⁰ Associated Press (2006). *“From Rich to Poor: Ivory Coast Tragedy Highlights Hazardous Trade on the Rise”* Basil Action Network. Available at: http://www.ban.org/ban_news/2006/061017_rich_to_poor.html

²¹ As above.

²² As above.

For the purpose of this chapter, I will focus on the new forms and causes of pollution in Africa, and the next Chapter will highlight the human right perspective of the transboundary movement of hazardous wastes in Africa.

2-2 The causes of the new forms of pollution in Africa.

Africa was and still is vulnerable to the uneven economics of waste trade because it includes most of the world's most severely impoverished countries. The United Nations Conference on Trade and Development (UNCTAD) lists the majority of African countries among the “Least Developed Countries” (LDC) of the world. Most of these countries are debtor countries in dire need of foreign exchange.²³

The need for cash in the developing Countries has led to a new export market - toxic garbage. Industrialized countries are exporting their waste to emerging nations, capitalizing on less expensive disposal cost.²⁴

Emerging nations provide an attractive economic incentive to hazardous waste producers. By another way, Many European firms have moved their operations to Africa, where environmental costs remain low.²⁵

Africa has long existed as a sphere from which the west could extrapolate wealth and resources. Now it appears that it increasingly exists to absorb the garbage when those resources have fulfilled their productive purpose.²⁶

A Major factor spurring the transboundary shipment of waste is the disparity in disposal cost between developed and developing nations.²⁷

Due to the rising cost of waste disposal and the introduction of more stringent environmental control standards in the developed world, the developing world (and particularly Africa) remains an attractive destination for waste disposal.²⁸

²³ NO 3 above.

²⁴ As above.

²⁵ Coll, Steven, (1994) *Free Market Intensifies Waste Problem: Rich Nations Dumping on Poorer Ones*, Washington Post, March 23, 1994.

²⁶ Alex Means (2007) “*Toxic Sovereignty: Biopolitics and Cote d'Ivoire*” available at <http://ruang-baca.blogspot.com/2007/10/alex-means-toxic-sovereignty.html> [Accessed on 7 July 2009]

²⁷ NO 9 above.

²⁸ Viljoen, (NO 1 above).

Disposal of hazardous waste may cost as much as \$2,000 per ton in a developed nation, versus \$40 per ton in Africa. The high cost of waste disposal in many developed countries is due in part to compliance costs with strict regulation and in part to effective local opposition to siting landfills (often called NIMBY- Not In My Backyard).²⁹

Another reason for international transfers of hazardous waste is their potential value as secondary raw materials to be recovered, reused, or recycled.³⁰

Indeed, a significant factor leading to increase trade in hazardous waste has been the increased trade in recyclable materials-wastes that contain valuable precious metals or other residues that can be reprocessed to generate raw materials.³¹

Wastes, as by-products of industrial or household activity, exist in solid, liquid, and gaseous forms. Hazardous wastes can range from materials contaminated with dioxins and heavy metals, such as mercury, cadmium, or lead, to organic wastes. The waste may take many forms, from barrels of liquid waste to sludge, old computer parts, used batteries, or incinerator ash.³²

In Italia, the illicit traffic of hazardous waste was in the years 1980, the second most profitable activity of criminal organisation, just after the drug.³³

2-2-1 The Electronic waste (e-waste) in Africa: a new disaster.

Due to ongoing technological advancement, many of electronic products become obsolete within a very short period of time, creating a large surplus of unwanted electronic products, or “e-waste.”³⁴

²⁹ Kitt, Jennifer, “Waste Exports to the Developing World: A Global Response”, 7 Geo. International Environmental Law Review. 485, 491-92 (1995)

³⁰ François Roelants du Vivier, (1988) “*Les vaisseaux du poison – la route des déchets Toxiques.*” (Ed. Sang de la Terre, 1988).

³¹ Philippe Sands (N0 10 above).

³² Jonathan Krueger (2001), ‘*The Basel Convention and the International Trade in Hazardous Wastes*’, in Olav Schram Stokke and Oystein B. Thommessen (eds.), *Yearbook of International Co-operation on Environment and Development 2001/2002* (London: Earthscan Publications), pp. 43–51.

³³ Enrico Porsia, (2003) “*Trafic d’armes et de déchets toxiques. Les déchets de mort à l’ombre du réseau «Gladio Staybehind»*”, available at: www.amnistia.net [accessed on 25 August 2009].

³⁴ California Department of Toxic Substance Control, “Electronic Hazardous Waste” available at <http://www.dtsc.gov/HazardousWaste/EWaste/> [accessed on 13 October 2009].

"Electronic waste" or "e-waste" may be defined as all secondary computers, entertainment device electronics, mobile phones, and other items such as television sets and refrigerators, whether sold, donated, or discarded by their original owners. This definition includes used electronics which are destined for reuse, resale, salvage, recycling, or disposal.³⁵

Despite the international regulations to prevent electronic waste from being dumped in developing countries, mountains of western e-waste are rising higher in Africa. Especially Ghana and Nigeria have emerged as new target countries for our used electronics. The implications of this waste industry are shocking for both environment and human health.³⁶

Africa's increasing demand for information technology, combined with its limited possibilities to manufacture it, has made it a famous destination for second hand electronics. According to Basel Action Network,³⁷(BAN) up to 500 shipping containers loaded with second hand electronic equipments arrives monthly to Nigeria. This amount of containers can be estimated to equal with 100 000 computers or 44 000 TV sets.³⁸

In addition to electronics traders who buy usable and obsolete machines in bulk and send them to Africa, also several aid groups and organisations are encouraging people to donate their old electronics for African schools and hospitals. Although the idea is noble and the donations are usually done in good faith, there is also a negative side effect. According to local sources in Ghana and Nigeria, only around 25 percent of the western imports are actually usable, rest of them are electronic junk that can neither be used nor repaired.³⁹

The unusable e-waste ends up in unofficial dumpsites, where they are picked apart by unprotected workers (many of them children) in search of saleable metals. After all the metal has been removed, the remaining plastic, cables and casings are usually being burnt. These extraction methods are extremely hazardous to health: most of the

³⁵ As above.

³⁶ "Europe's e-waste in Africa" available at <http://ghanabusinessnews.com/2009/05/09europes-e-waste-in-africa/> [accessed on 13 October 2009].

³⁷ A Seattle-based environmental group.

³⁸ NO 36 above.

³⁹ As above.

e-waste contains toxins such as lead, mercury and chlorinated dioxins, not to mention the noxious fumes and chemicals released by the burning waste.⁴⁰

The BAN, which monitors the trade in toxic waste, has recently turned its attention toward what they see as a coming “*tsunami of electronic waste*”.⁴¹

Environmentalists warn that unregulated disposal of e-waste with toxic elements that can persist for hundreds of years is particularly alarming given the expected rise in volumes in the next decade.⁴²

Dumping of e-waste has been illegal since 1992, when the Basel Convention entered into force. According to this international treaty, export of any toxic waste, including e-waste from OECD countries is strictly forbidden.

However, in the European legislation the term “reuse” offers a loophole, allowing old electronics to be taken in countries like Ghana and Nigeria.⁴³

Reduce, reuse, recycle. This familiar environmentalist slogan outlines an approach to minimizing how much trash ends up in landfills, incinerators, and waterways.⁴⁴

Clearly, this loophole has to be closed. The European Union (EU) has to put in place legislation and mechanisms to make sure that only usable electronics that are tested and certified can be sent to developing countries.⁴⁵

Then, in the name of recycling we come in through what the international community has banned with the adoption of the Basel Convention.

⁴⁰ As above.

⁴¹ Kevin Bridgen, Iryna Labunka, David Santillo and Paul Johnston “*Chemical contamination at e-waste recycling and disposal sites in Accra and Korforidua, Ghana*”.

Greenpeace research laboratories technical note, (October 2008) available at <http://www.greenpeace.org/raw/content/usa/press-center/reports4/chemical-contamination.pdf> [accessed on 13 October 2009].

⁴² Business Daily, Tuesday October 13, 2009, “Kenya faces electronic waste time bomb” available at <http://www.businessdailyafrica.com/company%20Industry/-/539550/671042/-/u608> swz/-/. [accessed on 13 October 2009].

⁴³ No 19 above.

⁴⁴ National Geographic News, “*Toxic E-Waste gets cached in Poor Nations*” available at <http://news.nationalgeographic.com/news/2005/11/1108-051108-electronic-waste.html> [accessed on 13 October 2009].

⁴⁵ No 19 above.

2-2-2 Geopolitics of toxic waste trade in Africa, cases studies.

In September 2006, a few days after the incident in Abibjan, the International Non Governmental Organisation (NGO) “*Robin des Bois*”⁴⁶ has released a press statement showing the current trends and recent development in the toxic waste trade in Africa.

The Koko incident⁴⁷ in Nigeria.

The infamous Koko case in 1988 came to represent one of the worst examples of the international hazardous waste trade.⁴⁸

In return for paying \$100 monthly rent to a Nigerian national for use of his farmland, five ships transported 8,000 barrels of Italian hazardous waste to the small river town of Koko, in Nigeria. Some waste leached from the barrels, causing chemical burns and a number of deaths. Italy was eventually forced under the spotlight of international media attention and pressure from Nigeria (after the Nigerian seizure of an unrelated Italian ship), to repackage the waste and send it back to Italy for appropriate disposal.⁴⁹

The Koko incident was one of the incidents that contributed to the rise in international prominence of the problem of hazardous waste trade.⁵⁰

As a result of this and similar scandals, Nigeria and Cameroon banned the importation of hazardous waste and instituted the death penalty for anyone found to be violating the ban.⁵¹

Guinea Bissau.

In October 1987, Intercontract signed in due form an agreement with the Government of Guinea Bissau in which it agree to receive 100.000 tons of toxic waste per year during 10 years. The cost of the deal was \$ 40 per ton. Only chemicals and pharmaceuticals waste were concerned to the exclusion of radioactive waste. The insertion of that clause in the agreement aimed at reassuring the political parties and the public opinion.⁵²

⁴⁶ International French NGO in charge of the Human and Environmental Protection, based in Paris.

⁴⁷ S. F. Liu, “*The Koko incident: Developing international norms for the transboundary movement of hazardous wastes*” (1992) *Journal of Natural Resources and Environmental Law* 121.

⁴⁸ David Hunter, (N0 9 above).

⁴⁹ As above.

⁵⁰ Loreta A Feris, Dire Taldi, “*Environmental Rights*” in “*Socio-Economics Rights in South Africa*” Edited by Danie Brand and Christof Heyns

⁵¹ N0 9 above.

⁵² N0 33 above.

Bénin.

Sesco, a broker based in Gibraltar, has proposed to the Francophone West African state of Benin \$ 2, 5 per ton of imported toxic waste. The maximum volume was supposed to be 1 million of tons every year. Important investments in the tourism and agriculture in Benin are guaranteed by SESCO. Five ministers approved the contract, and two of them signed it, namely the ministry of Finance. But the Ministry of public health expressed his concern. A pit is prepared adequately in order to receive the waste in Abomey's region. But President Kérékou officially gave up of achieving this project under the pressure of the public opinion and the Organisation of African Unity (OAU). The OAU in a motion unanimously adopted the 23rd of May 1988 declared that: *"The dumping of nuclear and industrial wastes in Africa is a crime against Africa and the African people"*.⁵³

It is certainly with reason that developing countries have denounced such practices as "toxic colonialism."⁵⁴

2-3 The issue of Persistent Organic Pollutants (POPs).

In the developing countries and in many Central and Eastern European countries, there are huge stockpiles of pesticides, estimated to be several hundreds of thousands of tonnes.⁵⁵

These are known as unwanted, obsolete pesticide stockpiles, some of which are already banned in many states of the world. This is because of their persistency and for being most hazardous to the environment, human health, animals and plants.⁵⁶

The Food and Agriculture Organization (FAO) of the United Nations has compiled an inventory of obsolete stockpiles for 45 countries in Africa. The total stockpiles estimated to exist in Africa was 20,000 tonnes but as more stockpiles are being declared, including heavily contaminated soil and empty and contaminated pesticide

⁵³ See OAU Council of Ministers' *Resolution on Dumping of Nuclear and Industrial Waste in Africa* (1988), reproduced in C. Heyns "Human Rights Law in Africa (2004) 342.

⁵⁴ NO 9 above.

⁵⁵ Source FAO (Rome, 1999.) *Prevention and Disposal of Obsolete and Unwanted Pesticide Stocks in Africa and the Near East: Inventory of Obsolete, Unwanted and/Or Banned Pesticides.*

⁵⁶ No 3 above.

containers, the current total stands at nearly 50,000 tonnes and is likely to increase much above this total.⁵⁷

Basically these substances are produced and exported by 11 most powerful multinational chemical companies, namely, American Cyanamid, BASF, Bayer, Ciba-Geigy, DowElanco, Dupont, Monsanto, Rhône-Poulenc, Sandoz, Zeneca, AgrEVO dominating over 90% of the world's market.⁵⁸

It is critical to see, how for example some African countries still continue to accumulate new stockpiles today, exacerbating and perpetuating the problem.

2-4 Conclusion.

The transboundary movement of hazardous wastes within Africa may take many forms. The international trade in toxic waste in Africa can range from toxic waste dumping, the issue of Persistents Organic Pollutants (POPs) to the coming of a new phenomenon known as the e-waste dumping.

Industries and Europeans companies, as well as individual brokers and businessmen are the main providers of the dumping of Hazardous waste in Africa.

If the progressive enforcement and implementation of new Europeans norms and standards has lead to an increase of the disposal coasts in Europe, in opposition to cheaper disposal coast in the South, it is also important to consider that the level of corruption in African countries, the lack of laws or their weak enforcement when they exist, and insufficient public enlightenment is also an essential factor.

⁵⁷ As above

⁵⁸ As above.

Chapter 3: The 2006 Cote d'Ivoire toxic dumping scandal and the implementation of the Bamako Convention.

“There is more evidence of illegal toxic waste dumping today than at any time in the past...Ironically today we have the international rules to control or prohibit such global dumping but we are lacking in the diligent enforcement and implementation of these hard won law and unfortunately if it's easy to poison the poor for profit, unscrupulous operators and businesses will do it”

Jim Puckett, BAN.

3-1 Introduction.

The following chapter analyses the implementation of the Bamako Convention in Cote d'Ivoire within the context of the 2006 toxic dumping scandal, with a view to determine to what extent the obligations emanating from this Convention have been discharged at the national level.

The Chapter looks at the incident in Abidjan from a human rights perspective as well as the steps undertaken by the Ivorian Government to ensure the respect, protection and fulfilment of the human right to environment in Cote d'Ivoire.

It will also analyse the role played by private parties or non-state actors in the occurrence of the event.

3-2 The incident.

On August 19, 2006, Abidjan, the economic capital of Cote d'Ivoire, was victim of a very dangerous environmental and sanitary scandal, when a ship called the *Probo Koala* docked in Abidjan's main port.

The ship itself is illustrative of the global network in which the story must be situated⁵⁹.

⁵⁹ Selva Neera, “Toxic Shock: How Western Rubbish is Destroying Africa” September 21, 2006. *Basel Action Network*. Available at http://www.ban.org/ban_news/2006/060921_toxic_shock.html[accessed 07 July 2009].

The Probo Koala is Korean built, it is a Greek-owned tanker registered in Panama, chartered by a Dutch company run by two Frenchmen operating from London and employing a Russian crew.⁶⁰

When it arrived in Abidjan on the evening of the 19th the ship was under contract by a Dutch commodities firm but was taking orders from its British office⁶¹.

Trafigura⁶² had used the ship as an offshore gasoline refinery. After processing a load of fuel, the ship used 500-tons of a caustic chemical mixture, referred to generally as “toxic slops”, to clean out its tanks⁶³.

The waste was generated as the result of an oil deal spanning three continents. Trafigura bought a consignment of cheap and dirty heavy oil with high sulphur content. Instead of putting it through a refinery, Trafigura tried to clean it up, using a do-it-yourself method, so they could sell it on at a massive profit.⁶⁴

Then, they used the *Probo Koala* which they stationed off Gibraltar as a rough and ready refinery. Caustic soda and a catalyst were added to the oil which reacted with the sulphur and settled to the bottom of the tank. Trafigura were then able to sell the oil, but left with a toxic sludge at the bottom of the tank.⁶⁵

The Probo Koala went to Amsterdam where they attempted to unload this sulphurous tar as if it were normal ships' waste, which would have cost a few thousand euros.⁶⁶

However the fumes were so bad, the emergency services were called and the Dutch authorities carried out tests. They discovered the waste was highly toxic and told Trafigura that it would cost half a million euros to dispose of safely.⁶⁷

⁶⁰ As above.

⁶¹ As above.

⁶² A Dutch oil and commodity shipping company, based in London. Trafigura is one of the world's largest commodity trading enterprises in the energy sector. Its operations include every aspect of the sourcing and trading of crude oil, petroleum products, renewable energies, metals, metal ores and concentrates for industrial consumers. Trafigura employs 1,900 staff in 42 countries and had a turnover of 73 billion United States dollars in 2008.

⁶³ Selva Neera (N0 59 above).

⁶⁴ Meirion Jones and Liz MacKean (BBC Newsnight) “*Dirty tricks and toxic waste in Ivory Coast*” available at <http://news.bbc.co.uk/2/hi/programmes/newsnight/8048626.stm> [accessed on 8 July 2009].

⁶⁵ As above.

⁶⁶ As above.

⁶⁷ As above.

The Probo Koala instead pumped the waste back on board and left port, ending up in West Africa.⁶⁸ The Probo Koala had first tried to dispose of it in the Netherlands but the processing fee, around \$300,000, was more than Trafigura was willing to pay.

In early August, while Trafigura shopped for the best deal, the Probo Koala sailed from Amsterdam to Estonia and then to Nigeria. Finally Trafigura cut a deal with an Ivorian company named Tommy⁶⁹ to dispose of the waste for around \$20,000 dollars.⁷⁰

According to Trafigura's public statements, they deny any and all wrong-doing, but conditions suggest that both parties were well aware that Cote d'Ivoire did not possess the facilities to properly dispose of the waste.⁷¹

However, the substance was then spread, allegedly by subcontractors, across the city and surrounding areas, dumped in waste grounds, public dumps, and along roads in populated areas.⁷²

500 tons of chemical muds mixed with caustic soda, oil residues and water have been dumped illegally in various open air places in the city of Abidjan.⁷³

3-2-1 Toxic Mixture and poisonous cocktail.

Trafigura (the British-based oil trading company) insisted for years that its tanker was not to blame for poisoning thousands in Cote d'Ivoire, the francophone West Africa country. Now proof of its lethal cargo has emerged⁷⁴.

On a July day in 2006 workers at the port in Amsterdam began their usual task of removing "slop"⁷⁵ from a ship that had sailed to the Netherlands from Algeciras in

⁶⁸ As above.

⁶⁹ Tommy had no previous experience in waste removal. Details still remain sketchy but it is widely believed that Tommy was a front company set up specifically to handle the waste by members of the Ivorian government.

⁷⁰ NO 64 above.

⁷¹ The Guardian, "*Papers prove Trafigura ship dumped toxic waste in Ivory Coast*". David Leigh and Afua Hirsch. Thursday 14 May 2009, available at <http://www.guardian.co.uk/environment/2009/may/13/trafigura-ivory-coast-documents-toxic-waste>. [accessed on 07 July 2009]

⁷² As above.

⁷³ As above.

⁷⁴ The Guardian, "*The boat that reeked, toxic voyage of the Probo Koala*" available at <http://www.guardian.co.uk/world/2009/may/13/trafigura-ivory-coast-waste>. [accessed on 08 July 2009].

⁷⁵ Oil residues from tanks.

Spain. As they pumped waste from the Probo they were expecting the usual mix of water and oil left over from the tank after it had been washed down with water.⁷⁶

But the workers, employed by Dutch company Amsterdam Port Services (APS), noticed the waste was different from the ordinary material they were used to dealing with.⁷⁷ Pitch black in colour, it gave off such a vile smell that some of the workers became sick, attracting the attention of the environmental authorities.⁷⁸

APS refused to continue disposing of the pungent waste unless its payment was increased. Refusing to pay the extra, Trafigura decided to pump the material back on board the ship.⁷⁹

Armed with its new licenses, "Tommy" agreed to handle the highly toxic material for a sum 20 times less than the amount demanded by APS in Amsterdam.⁸⁰

3-2-2 Stench of rotten eggs.

The substance was claimed by Trafigura to have been "slops", or waste water from the washing of the ships tanks, but a Dutch inquiry, news reports, and the government of Côte d'Ivoire claimed the substance was more than 500 tones of a mixture of fuel, caustic soda, and hydrogen sulphide⁸¹ transported from Europe as toxic waste⁸².

John Hoskins⁸³ describes it as "the most odorous compounds ever produced".

During the early morning hours of August 19th tanker trucks offloaded the Probo Koala's toxic cargo. The trucks proceeded to fan out across Abidjan, eventually dumping the sludge in at least 17 different public places including drains, ditches, and municipal dumps in some of Abidjan's poorest neighbourhoods.⁸⁴

The 6 million residents of Abidjan awoke to a thick, noxious, and choking chemical odor. As the stench of rotten eggs and garlic blanketed the city, sickness and misery quickly spread waking many people to bouts of nausea.⁸⁵

⁷⁶ No 74 above.

⁷⁷ As above.

⁷⁸ As above.

⁷⁹ As above.

⁸⁰ As above.

⁸¹ A killer gas with a characteristic smell of rotten eggs.

⁸² no 64 above

⁸³ John Hoskins is a leading toxicologist, from the Royal Society of Chemistry.

⁸⁴ No 64 above.

⁸⁵ As above.

The waste includes tons of phenols which can cause death by contact, tons of hydrogen sulphide, lethal if inhaled in high concentrations, and vast quantities of corrosive caustic soda and mercaptans,⁸⁶

Similarly, the event has made an already shaky political situation more unstable as feelings of bitterness, outrage, and fear permeate the social fabric.⁸⁷

3-3 Human suffering and violations of substantive Human Rights.

As the human suffering caused by the dumping of petrochemical material in Cote d'Ivoire during 2006 illustrates,⁸⁸ trade in toxic waste remains an important human right issue.⁸⁹

In 1968, the UN General Assembly first recognised the relationship between the quality of the human environment and the enjoyment of basic rights.⁹⁰

On the other hand, the UN General Assembly Resolution on the movement and dumping of toxic and dangerous products and waste, declared in draft terms that *“the movement and dumping of toxic waste and dangerous products endanger basic human rights such as the right to life, the right to live in a sound and healthy environment and consequently the right to health”*.⁹¹

The magnitude and severity of the 2006 toxic dumping in Abidjan is overwhelming and the impact on human rights is alarming. Most of the basic human rights have been affected by the toxic dumping which caused a serious environmental degradation.

The following section considers the linkages between human rights and the environment, how the 2006 toxic dumping seriously and dramatically has impact on the quality of human life, and more specifically on the full enjoyment of human rights, as well as the achievement of sustainable levels of development.

⁸⁶ As above.

⁸⁷ Associated Press. (2006) *“UN Says Dumping of Waste clearly Violated International Agreements”* Basil Action Network. Available at http://www.ban.org/ban_news/2006/060919_violated_agreements.html

⁸⁸ UNEP *“Cote d'Ivoire: UN Environmental Arm Probes Dumping of Deadly Toxic Wastes”*, 8 September 2006, available at <http://www.un.org/apps/news/story.asp?NewsID=19764&Cr=ivoire&Cr1> [accessed on 18 September 2009]

⁸⁹ Viljoen (No 1 above).

⁹⁰ UNGA Res.2398(XXII)(1968).

⁹¹ UNGA Res. 1989/12 (1989).

This section also looks at a number of rights as they appear in the African Charter on Human and Peoples' Rights⁹² (the African Charter) along with different international human rights instruments.

3-3-1 Deaths and illnesses: Violation of the right to life.

The incident has been described as the biggest toxic dumping scandal of the 21st century, the type of environmental vandalism that international treaties are supposed to prevent.⁹³ The waste and toxic gases caused significant health problems to the majority of Ivorian living in the densely populated city of Abidjan.

The toxic waste had widespread effects on the human, social, and economic health of people in the city.⁹⁴

According to official estimates, 15 people died, 69 were hospitalized and there were more than 108,000 medical consultations resulting from the incident.⁹⁵

The sludge was particularly harmful to children who made up the majority of the official deaths. Additionally, it is suspected that many deaths have not been counted in the official toll. But the figures may well be higher, taking into account additional deaths and long-term health consequences that had been reported.⁹⁶

For example, Marie Koko, says her eight-year-old granddaughter who died two weeks ago, was not among those counted. She says, her granddaughter was complaining of an aching head and stomach. She says, her granddaughter started to vomit over and over again. She says, she gave her medicine and took her to the hospital, but the next day she died.⁹⁷

⁹² Adopted 27 June 1981 by the 18th Assembly of Heads of State of the Organization of African Unity at Nairobi, and entered into force on 21 October 1986.

⁹³ NO 64 above.

⁹⁴ Krishna Patel "Update on the Cote d'Ivoire toxic waste crisis" available at <http://www.inece.org/newsletter/15/africa/cote-divoire.html> [accessed on 8 July 2009]

⁹⁵ Report of the International Commission of Inquiry on the discharge of toxic wastes in the district of Abidjan, 19 February 2007.

⁹⁶ Human Rights Council, *Report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights*, Okechukwu Ibeanu, available at [http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnifilename/WOS-7VZR9F-full-report.pdf/\\$File/full-report.pdf](http://www.reliefweb.int/rw/RWFiles2009.nsf/FilesByRWDocUnifilename/WOS-7VZR9F-full-report.pdf/$File/full-report.pdf)

⁹⁷ Wild, Franz, (2006) "Number of Ill climbs in Ivory Coast Toxic Waste Scandal" September 16, 2006 VOA News. Available at: <http://www.voanews.com/english/archive/2006-09/2006-09-15-voa27.cfm?CFID=83004253&CFTOKEN=37098782>

With official figures in dispute and many residents unable to access medical care, it is nearly impossible to gage the true extent of the human destruction.⁹⁸

The right to life is the most important of the human rights guaranteed and protected by contemporary international law.⁹⁹ Because our lives depend upon clean air and clean water, as well as adequate food and shelter, the quality of the environment is directly connected to the enjoyment of the right to life.¹⁰⁰

Thus the right to life requires protection for the human environment under certain circumstances. As Judge Weeremantry states in his separate opinion in the Gabcikovo-Nagymaros Case¹⁰¹:

“The protection of the environment is (...) a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments”.¹⁰²

Furthermore, in interpreting the right to life under the International Covenant on Civil and Political Rights (ICCPR)¹⁰³, the Human Rights Committee (HRC)¹⁰⁴ stressed that the expression ***“inherent right to life”*** could not properly be understood in a restrictive manner, and that the protection of that right requires States to take positive measures.¹⁰⁵

Therefore, the right to life is a jus cogens norm and no derogation is permitted. There is a strict duty upon States as well as upon the international community as a whole to take effective measures to prevent and safeguard against the occurrence of environmental hazards which threatens the lives of human beings.¹⁰⁶

⁹⁸ The government, civil society and Trafigura were disputing the official toll.

⁹⁹ No 9 above.

¹⁰⁰ As above.

¹⁰¹ Case concerning the Gabcikovo-Nagymaros Project(Hungary/Slovakia) 1997 ICJ Report.

¹⁰² No 9 above.

¹⁰³ Adopted by the UN General Assembly in resolution 2200 A (XXI) of 16 December 1966 at New York; opened for signature, ratification and accession on 19 December 1966 and entered into force on 23 March 1976.

¹⁰⁴ Organ established under Article 28 of the ICCPR.

¹⁰⁵ General comment No. 6 on the right to life (1982), para. 5.

¹⁰⁶ R.G. Ramcharan, (The Hague 1983) “The right to life” at 310-11.

The right to life, as an imperative norm, takes priority above economic considerations and should, in all circumstances, be accorded priority.¹⁰⁷

Thus it is obvious that the failure of the Ivorian services or ministries in giving or granting a licence to Tommy to take over the slops from the Probo Koala, under obscures circumstances is indirectly the failure of the Government to take reasonable measures to prevent the violation of the right to life of its population.

Failure by States parties to take appropriate measures to prevent, investigate, punish and redress the loss of life caused by toxic and dangerous products and wastes is a violation of the right to life.¹⁰⁸

Then, loss of life as a result of the movement and dumping of toxic waste constitutes a violation of the right to life.¹⁰⁹

The African Charter like many others international instruments contain the right to life in article 4 which states that “*Human beings are inviolable (...)*”.¹¹⁰

In the light of the African Commission on Human and Peoples’ Rights’ (hereinafter the Commission) Communication in the Social and Economic Rights Action Centre (SERAC) and Another v Nigeria,¹¹¹ States are generally burdened by a number of duties when they commit themselves under human rights instruments,¹¹² namely the duty to respect, protect, promote and fulfil the rights proclaimed by these instruments.¹¹³

The duty to protect means that the State is required to take measures to protect beneficiaries of the protected rights against political, economic and social interferences.¹¹⁴

In addition the Commission found that “the pollution and environmental degradation to a level humanly unacceptable has made living in Ogoniland a nightmare (...) not only for specific individuals, but for the whole of the Ogoni community”.¹¹⁵

¹⁰⁷ As above.

¹⁰⁸ See Report (No 96 above).

¹⁰⁹ As above.

¹¹⁰ See also article 3 of the Universal Declaration of Human Rights (UDHR).

¹¹¹ Communication (2001) AHRLR 60 (ACHPR 2001).

¹¹² See para. 48.

¹¹³ Ibid, para. 44.

¹¹⁴ Ibid, para. 46.

¹¹⁵ Ibid, para. 67.

Then, the occurrence of the event in Abidjan can be interpreted as the failure of the Government to comply with its duty to protect the Ivorian population from the toxic dumping in 2006. In this regard, the Commission has stated that a government has a responsibility to protect all people under its jurisdiction.¹¹⁶

Furthermore, the Inter-American Court of Human Rights (IACHR) has stressed that: *“The State has a legal duty to take reasonable steps to prevent human rights violations (...) this duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts (...)”*¹¹⁷

“Ivorians have you understood? Your lives are worthless to our leaders”.¹¹⁸

The toxic dumping in Cote d'Ivoire illustrates the level of insecurity facing African citizens where death is literally leaking into the very soil under their feet.¹¹⁹

In the wake of the waste dumping, there was a widespread recognition among Ivorians and the international community that profit had been placed before the lives of Ivorian citizens.¹²⁰

Such tragedy calls into question the politics of human life within contemporary understandings of power, both in the national and international contexts.¹²¹

On Wednesday 16 September 2009, the UN published a report suggesting a strong link between the deaths and the toxic waste dumps.¹²²

3-3-2 Violation of the right to a general satisfactory environment.

The right to a healthy environment is contained in both the African and Inter-American human rights systems.¹²³

¹¹⁶ See Communication (2000) AHRLR 66 (ACHPR 1995) Commission, Nationale des Droits de l'Homme et des Libertés v Chad, paragraph 21.

¹¹⁷ Velázquez Rodríguez v. Honduras, Series C No. 4, Judgement of 29 July 1988.

¹¹⁸ “Gbich”, a satiric Ivorian news paper, made the bold statement.

¹¹⁹ Mbembe, Achille (2001). *“On the Postcolony”*. (University of California Press, Berkeley 2001)

¹²⁰ Comaroff, Jean, (2007) *“Beyond the Politics of Bare Life: Aids and the Neoliberal Order.”* Public Culture 19.1 (February 2007).

¹²¹ Viljoen (No 1 above).

¹²² BBC News, “*Trafigura knew of waste danger*” available at <http://news.bbc.co.uk/2/hi/programmes/newsnight/8260004.stm> [accessed on 16 September 2009].

¹²³ Hunter (No 9 above).

Under the African Charter: *“all people shall have the right to a general satisfactory environment favourable to their development”*.¹²⁴

In the Serac case¹²⁵, the Commission first assessed the claimed violations of the rights to health (Article 16) and to a general satisfactory environment (Article 24). It found that the right to a general satisfactory environment *“imposes clear obligations upon a government requiring the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources”*.¹²⁶

The UN special rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Professor Okechukwu Ibeanu, recently spent four days in the country speaking to officials and victims.¹²⁷

“After almost two years, these sites have still not been decontaminated and continue to threaten the lives and health of tens of thousands of residents, across different social spectrums in Abidjan”.¹²⁸

The government claim that it does not have the technical capacity to clean up and decontaminate the dumpsites in a timelier manner.

Polluted water.

In the village of Djibi, just outside Abidjan, the waste that was tipped here got into the water supply, killing the fish that fed the village.¹²⁹

Lack of access to drinking water which is free from toxic or other contaminants, pollution of the atmosphere by heavy metals and radioactive materials, the dumping

¹²⁴ 1981 African Charter, Article 24.

¹²⁵ Decision, supra note 111, para 52.

¹²⁶ Ibid para. 52.

¹²⁷ Report deriving from his visits to Côte d’Ivoire, from 4 to 8 August 2008.

¹²⁸ John James, “Ivory Coast’s forgotten acrid waste”, BBC News, available at <http://news.bbc.co.uk/2/hi/africa/7570269.stm>. [accessed on 20 September 2009]

¹²⁹ No 64 above.

of hazardous and toxic wastes in the vicinity of people's homes can all be viewed and treated as violation of fundamental economic and social rights.¹³⁰

This is now reflected in General comment No 15 (Right to water) of the UN Committee on Economic, Social and Cultural Right affirming that everyone is entitled to safe and acceptable water for personal and domestic use.¹³¹

Furthermore, the African Convention on the Conservation of Nature and Natural Resources¹³² (ACCNNR) calls upon the states parties to *“manage their water resources so as to maintain them at the highest possible quantitative and qualitative levels.”*¹³³

Professor Okechukwu Ibeanu is peremptory: “The right of the Ivorian population to a clean environment has been violated”.¹³⁴

3-3-3 Violation of the right to health and well being.

The accidental chemical pollution in Abidjan had serious effects on human health.

Residents in areas close to the dumping sites were directly exposed to the waste through skin contact and the breathing in of volatile substances. In addition, secondary exposure reportedly occurred through contact with surface water, groundwater and eventually through the consumption of food grown on or extracted from contaminated land and water.¹³⁵

On 20 August 2006, thousands of individuals visited health-care centres complaining of nausea, headaches, vomiting, abdominal pains, skin reactions and a range of eye, ear, nose, throat, pulmonary and gastric problems. In the following days and weeks, thousands of people presented signs of poisoning.¹³⁶

¹³⁰ NO 11 above.

¹³¹ E/C. 12/2002/11, 26 November 2002.

¹³² Adopted by the OAU in September 1968, entered into force in June 1969, and revised on July 2003 in Maputo by the AU.

¹³³ Article 7 of the Convention.

¹³⁴ See Report (NO 96 above).

¹³⁵ As above.

¹³⁶ As above.

The dumping of the waste on more than 17 unsecured sites around the city of Abidjan without any precautionary measures of safety, in the soil and water, and the subsequent pollution has caused sanitary as well as environmental problems.¹³⁷

This event provides evidence that, like international immigration, exportation of industrial waste can result in serious public health hazards.¹³⁸

The UN General Assembly has declared that ***“all individuals are entitled to live in an environment adequate for their health and well-being”***¹³⁹ and the UN Commission on Human Rights (UNCHR) has affirmed the relationship between the preservation of the environment and the promotion of human rights.¹⁴⁰

Asked to comment about the potential toxicity of such a mix, John Hoskins, a fellow of the Royal Society of Chemistry, told BBC2's Newsnight that: ***“If you dropped this in Trafalgar Square, you would have people being sick for several miles around and that would involve millions of people.”***¹⁴¹

3-3-4 The 2006 environmental harm is a breach of the right to private life and the home.

The right to privacy or private life is not implicitly proclaimed in the African human rights system, but can logically be deduced from the European system.

However, the African Charter has enlarged the basis of the African human rights system.¹⁴²

¹³⁷ UNOCI, “7th Report on the Human Rights Situation in Côte d’Ivoire September – October – November - Décembre 2006”. Available at <http://www.onuci.org/pdf/rappdroitdelhomme7.pdf> [accessed on 8 July 2009].

¹³⁸ X. Bohand, C Monpeurt, S. Bohand, A. Cazoulat, “Dechets toxiques deverses a Abidjan et consequences sanitaires”, in *Medecine Tropicale* 2007.

¹³⁹ UNGA Res.45/94 (1990).

¹⁴⁰ See e.g. Res. 1990/41 (1990).

¹⁴¹ NO 64 above.

¹⁴² Articles 60 and 61 of the African Charter provides that the Commission shall draw inspiration from international law on human and people rights, including the Universal Declaration of human rights and other UN instruments, the instruments of specialised agencies, and as subsidiary measures to determine the principles of law, other general or special international conventions, African practises consistent with international norms on human and peoples’ rights, general principles of law, and legal precedents and doctrine. (citing Dinah Shelton, (2005) “*Remedies in International Human Rights Law*”, Oxford University Press (2nd Edition), pp.224.

In *Social and Economic Rights Action Centre v. Nigeria*¹⁴³, the African Commission found some implied socio-economics rights in the African Charter.

It found Nigeria to have violated the right to housing implied in the duty to protect the family, enshrined in Article 18(1) of the African Charter.¹⁴⁴

The right to privacy and family life are also contained in Article 12 of the Universal Declaration of Human Rights¹⁴⁵, Article 17 of the American Convention on Human Rights¹⁴⁶, and Article 6 of the American Declaration on the Rights and Duties of the Man.¹⁴⁷

On the other hand the European Human Rights Court (EHRC) discussed the right to privacy in the *Lopez Ostra v. Spain* case¹⁴⁸, involving a waste treatment facility operating without compliance with environmental standards.¹⁴⁹

The EHRC noted that severe environmental pollution may affect individuals' well being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without however, seriously endangering their health.¹⁵⁰

Lopez-Ostra was a turning point for environmental consideration in the European system. In addition to being the first time the Court found a breach of the Convention as a consequence of environmental harm, Spain was found to have breached an affirmative duty to ensure the respect of a derivative right not explicitly set forth under the Convention.¹⁵¹

Some days after the dumping of the toxic waste around the highly populated city of Abidjan, some residents were allegedly forced to flee their homes and many

¹⁴³ Decision supra, note 110.

¹⁴⁴ Dinah Shelton, (2005) "*Remedies in International Human Rights Law*", Oxford University Press (2nd Edition), pp.222-224.

¹⁴⁵ Adopted and proclaimed by the UN General Assembly in resolution 217 A (III) of 10 December 1948 at Paris.

¹⁴⁶ Adopted by the Inter-American Specialised Conference on Human Rights on 22 of November 1969 at San José, entered into force on 18 July 1978.

¹⁴⁷ Adopted by the Ninth International Conference of American States, on 2 May 1948 in Bogotá, Colombia.

¹⁴⁸ *Lopez- Ostra v. Spain*, ECHR (1994), series A, number 303 C.

¹⁴⁹ No 9 above.

¹⁵⁰ Dinah Shelton, "*The Environmental Jurisprudence of International Human Rights tribunals*" in Romina Picolotti and Jorge Taillant (editors) "*Linking Human Rights and the Environment*". (See also para 60 of the Decision, supra note 110.)

¹⁵¹ Hunter (NO 9 above).

businesses forewent commercial earnings for a significant period of time following the contamination.¹⁵²

Sometimes these “*internally displaced persons*” have to travel into others cities, in order to escape from the effects caused by the environmental degradation.

The terrible smell from the waste caused the majority of the population of the city to temporarily leave their home.

In this regard, the population was the victim of a violation of the right to respect for its home that made its private and family life impossible.¹⁵³

3-3-5 Violation of the right to development.

The UN General Assembly endorsed the right to development and defined it as “*a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom (...)*”¹⁵⁴

Therefore, it stresses that the right to development is an inalienable human right and that the human person is the central subject of development and should be the active participant and beneficiary of the right to development.¹⁵⁵

The original motivation behind the concept of the right to development was the need to enhance the implementation of existing human rights standards and to stress the interdependence of civil and political rights, on the one hand, and the economic and social rights on the other hand.¹⁵⁶

The political and moral imperative behind the value now described as the right to development are twofold. The first is that the individual State should be able to control its own economy and thus to develop in its own way. The second is the idea that economic development as such is inadequate and the performance of an economic

¹⁵² See Report (N0 96 above).

¹⁵³ Sands (N0 10 above).

¹⁵⁴ UNGA, Res.41/128, Annex (December 4, 1986).

¹⁵⁵ See for example articles 1 and 2 of the Declaration on the right to development.

¹⁵⁶ Ian Brownlie,(1989) “*The Human Right to development*”1-2 pp 22-23

system should be related to qualitative criteria based upon human rights standards: excellence is not to be calculated exclusively in accordance with economic criteria.

The 2006 environmental scandal in Abidjan is a violation of the right to development, as the government failed to improve the well being of the entire population. The administrative authorities involved in the scandal neither took into consideration the qualitative criteria and human rights standards of the population, nor do they consider their aspiration to live in a sound environment.

The scandal revealed the readiness of the government to look after money rather than the basic living conditions of the population, when Trafigura made a settlement to pay € 152 millions to clean the dumpsites and compensate the victims.

3-3-6 Violation of the right to food.

In 1999, 28 percent of Ivorians lived below the poverty level and now the figure is 44 percent, according to U.N. statistics, and is increasing. More and more Ivorians are having trouble finding enough food. This extreme poverty, in a country which was one of the best-off countries in West Africa in the 1970s and 1980s, has forced many people to live near or on garbage dumps in Abidjan because they are forced to survive by picking through trash for salable items.¹⁵⁷

It is within this context that on 19 August 2006 the incident related earlier happened. In an effort to prevent the contamination of the food chain large numbers of livestock (among them 450 pigs) affected by the spill have been culled.¹⁵⁸

It is also the case for a number of farms and fields around the sites where the slops were unloaded. The government make clearly through an official communiqué that the crops from these farms will be burned, in order to ensure the security of the population.

Whatever the motives of the Government were, this amounts to a serious restriction of the right of the population to freely access food.

¹⁵⁷ Dunkel, G. "Poverty and Struggle in the Ivory Coast" October 28, 2006. Workers World. Available online at: <http://www.workers.org/2006/world/ivory-coast-1102/>
Foucault, Michel. Society Must Be Defended: Lectures at the College De France 1975-1976 (Picador, 1997)

¹⁵⁸ Toxic' pigs cull in Ivory Coast" available at <http://newsbbc.co.uk/2/hi/africa/6134998.stm> [accessed on 07 July 2009]

At the international level, the Universal Declaration proclaims a right of everyone to *“a standard of living adequate for the health and well-being of himself and his family, including food (...)”*.

At regional level, the right to food is, as a rule, not explicitly protected.¹⁵⁹

However, the right to food has been read into the African Charter.

In the case of SERAC and Another v Nigeria,¹⁶⁰ the African Commission interpreted the right to life,¹⁶¹ to health¹⁶² and development in the African Charter to require state parties not to interfere with access to food and to protect access to food from interference by powerful third parties.¹⁶³

3-3-7 Violation of the right to information.

The right to information is a human right as well as an environmental one.¹⁶⁴

Human rights are implicated because knowledge of environmental risks and information on how to minimize or avoid those risks can directly affect the quality of a person's life.¹⁶⁵

Principle 10 of the Rio Declaration¹⁶⁶ can be considered as a worldwide recognition of such formulation of the right to environment.¹⁶⁷

It provides that individuals shall have appropriate access to information concerning the environment that is held by the public authorities, including information on hazardous materials and activities that have or are likely to have a significant impact on the environment.¹⁶⁸

¹⁵⁹ Danie Brand (2005), *“The right to food”* in *“Socio-economics rights in South Africa”* Danie Brand and Christof Heyns (editors)

¹⁶⁰ See Decision no 110 above, paras 64-66.

¹⁶¹ Article 4 of the African Charter.

¹⁶² Article 16 of the African Charter.

¹⁶³ No158 above.

¹⁶⁴ No 9 above.

¹⁶⁵ As above.

¹⁶⁶ Declaration on Environment and Development adopted by the 1992 Conference of Rio de Janeiro.

¹⁶⁷ Alexandre Kiss (2003), *“The right to the conservation of the environment”* in *“Linking human rights and the environment”* Romina Picolotti and Jorge Daniel Taillant(editors).

¹⁶⁸ As above.

Moreover, the African Convention on the Conservation of Nature and Natural Resources¹⁶⁹ provides that: *“The states parties shall adopt legislative and regulatory measures to ensure timely and appropriate (...) access of the public to information.”*

In *Guerra & Others v. Italy*,¹⁷⁰ the ECHR held that Italy failed to respect the applicant’s right to privacy and family life in breach of the European Convention, by not providing essential information that would have enabled the applicants to assess the environmental risks of living in proximity to a chemical factory.¹⁷¹

The right to information includes the right to be informed, even without a specific request, of any matter having a negative or potentially negative impact on the environment, and thus imposes a duty on governments to collect and disseminate information and to provide due notice of significant environmental hazards.¹⁷²

In the Ivorian case, the Government failed to provide relevant information to the public. What is worst is that a few days before the dumping of the waste there was a kind of propaganda made by the District of Abidjan (city council) advertising for an operation of *“demoustication”* or a campaign against mosquitoes.

The advertising clearly stated that this will involve some bad smell in the air but it won’t be dangerous for the population. It rather advise the peaceful and quiet population to completely open their doors so that to allow the product to enter and then facilitate the campaign.

3-3-8 Violation of the right to an effective remedy or equitable reparation.

Universal and regional human rights instruments expressly guarantee the right to a remedy when a right is violated.¹⁷³

¹⁶⁹ Adopted by the OAU in September 1968, and entered into force in June 1969. On 11 July 2003 in Maputo, Mozambique, the AU adopted an amended version of the Convention.

¹⁷⁰ ECHR, App. No. 14967/89, 26 Eur. H.R. Rep.357,383 (1998).

¹⁷¹ No 9 above.

¹⁷² As above.

¹⁷³ See, for example, UDHR, Article 8; ICCPR, Article 2(3); American Declaration on the Right and duties of Man, Article 27; African Charter, Article 7; (“Every individual shall have the right to have his cause heard, including the right o an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force”); Article 21(2) (“the right to adequate compensation in regard to the spoliation of resources of a dispossessed people”) and Article 26 (“guaranteeing the independence of the courts and the

The right to judicial recourse and remedy are also key procedural rights that are applicable to environmental circumstances.¹⁷⁴

Principle 10 of Rio Declaration provides that *“effective access to justice and administrative proceedings including redress and remedy shall be provided”*.¹⁷⁵

While not an environmental case, the Inter-American Court’s decision in Velasquez Rodriguez¹⁷⁶ illustrates the States’ obligation to provide a remedy.¹⁷⁷

In its decision, the IACHR held that: *“(…) where act of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane”*.¹⁷⁸

Unfair reparation.

One year after, the scandal revealed an Ivorian Government more likely to receive the compensation paid by Trafigura for the victims than to provide effective remedies for the human rights violation. In 2007, Trafigura paid an out-of-court settlement relating to civil claims. In exchange for the government’s giving up the right to further claims against Trafigura, Trafigura paid US\$198 million for the release of three of its executives, who had been arrested and held without charge in Côte d’Ivoire since September 2006.¹⁷⁹ Trafigura also agreed to finance the cleaning of the remaining waste sites. In February the cost of clean up was an estimated \$120 million over five years and \$680 million over ten years since contaminants have reached groundwater supplies.¹⁸⁰

Jim Puckett, of the Basel Action Network (BAN)¹⁸¹, criticizes Trafigura's response to the incident. *“The response to this incident has really been quite shameful,”* he noted. *“There's been a settlement paid, the country of Cote d'Ivoire was quite*

establishment and improvement of appropriate national institutions entrusted with the promotion and protection of rights and freedom guaranteed by the Charter) (citing Dinah Shelton, no 138 above.)

¹⁷⁴ NO 9 above.

¹⁷⁵ NO 165 above.

¹⁷⁶ Velasquez Rodriguez case, Judgement of 29 July 1988, IACHR.(Ser. C) No. 4 (1988).

¹⁷⁷ NO 10 above.

¹⁷⁸ See Decision no 175 supra, paragraph 177.

¹⁷⁹ No 64 above.

¹⁸⁰ As above.

¹⁸¹ A Seattle-based nongovernmental organization fighting against toxic waste shipment.

*desperate to get any money at that point in time. They took the settlement from Trafigura Company of about \$200 million, but that's not enough to pay the costs, liabilities and remediation that have to take place."*¹⁸²

Gervais Coulibaly,¹⁸³ sympathizes with the victims but says there will never be enough money to treat everyone. He says the government plans instead to use most of Trafigura's money to create health centres and pollution prevention measures to ensure similar catastrophes will not happen again.¹⁸⁴

Toxic waste verdict disappoints.

People in Ivory Coast have expressed disappointment following the trial over the dumping of hundreds of tonnes of toxic waste in Abidjan in 2006.

"We don't have justice here in Cote d'Ivoire," said one man after the verdict.¹⁸⁵

The people in Abidjan said Trafigura, the Dutch company that shipped the waste, should have faced more scrutiny.¹⁸⁶

Two people were sentenced to 20 years and five years in jail over the waste, which was blamed for 17 deaths and widespread health complaints.¹⁸⁷

Commentators were full in speculation over the trial described as a masquerade without any interest as the main witness namely Trafigura was not represented.

3-4 Access to justice denied: the feasibility of civil recourse in London, Amsterdam and Paris.

Trafigura never admitted liability, saying the \$200m (£108m) payment was made out of sympathy for the Ivorian people.¹⁸⁸

In March 2008, the Ivorian Court of Appeal ruled that there was insufficient evidence to pursue criminal charges against the company.¹⁸⁹

¹⁸² No 74 above.

¹⁸³ Spokesman for Ivorian President Laurent Gbagbo.

¹⁸⁴ No 74 above.

¹⁸⁵ BBC Newsnight, "*Toxic waste verdict disappoints*" available at <http://news.bbc.co.uk/2/hi/africa/7687612.stm>

¹⁸⁶ As above.

¹⁸⁷ As above.

¹⁸⁸ As above.

¹⁸⁹ As above.

While the wait continues, the victims have an additional option by which to seek compensation for their injuries. As a result, Trafigura has been the subject of numerous investigations.¹⁹⁰

The British law firm Leigh Day & Co. is currently pursuing a class action lawsuit in the British High Court in London against Trafigura.¹⁹¹

The company is facing charges before the High Court in London, where Trafigura's operational centre is located, on the basis that the company was negligent and that this and the nuisance resulting from its actions caused the deaths and injuries of people in Abidjan.¹⁹² In February, the case was given class action status, where all those from Abidjan who want to bring a claim and who meet certain criteria will be allowed to do so.¹⁹³

Trafigura is also facing a £ 100 million claim for compensation over allegations that it arranged to dump 500 tons of toxic waste in Abidjan. Dutch authorities are also investigating the scandal.¹⁹⁴ In February 2008, Dutch prosecutors served notice that they intend to file criminal charges against Trafigura, among others, for its alleged part in the disposal of waste in Côte d'Ivoire. In June 2008 an Amsterdam court began hearing evidence in this case.¹⁹⁵

In July 2008, three French victims of the Probo Koala incident filed a complaint against Trafigura before an examining magistrate in Paris alleging corruption, involuntary homicide and physical harm leading to death.¹⁹⁶

¹⁹⁰ The Dutch public prosecutor planned in February 2008 to file criminal charges against Trafigura and the Amsterdam City Council for their conduct in connection with the Probo Koala. Foo Yun Chee & Charles Dick, "Dutch Plan to Charge Trafigura Over Toxic Ship", REUTERS, Feb. 19, 2008, <http://www.reuters.com/article/latestCrisis/idUSL19884993>.

¹⁹¹ No 64 above.

¹⁹² Nicola M.C.P. Jägers & Marie-José van der Heijden, "Corporate human rights violations: The feasibility of civil recourse in the Netherlands." Brooklyn Journal of International Law, Vol 33:3, available at <http://www.brooklaw.edu/students/journals/bjil/bjiliii-jagers.pdf> [accessed on 8 July 2009]

¹⁹³ As above.

¹⁹⁴ The public eye awards: "Trafigura Beheer BV" available at <http://www.eub.ch/cmidata/Trafigura-e.pdf>.

¹⁹⁵ Business and Human Rights Resource Centre "Trafigura lawsuits (re Côte d'Ivoire)" available at <http://www.business-humanrights.org/Categories/lawlawsuits/lawsuitsregulatoryaction/lawsuitsselectedcases/TrafiguralawsuitsrectedIvoire>.

¹⁹⁶ As above.

3-5 Accounting Trafigura's liability for the tragedy.

Up until now Trafigura has always denied and continues to deny any liability for events that occurred in Ivory Coast. It had persistently denied that the waste was harmful and has refused to settle.

But now, evidence reveal that Trafigura knew that waste dumped in Ivory Coast in 2006 was hazardous.¹⁹⁷

Yet three years on, after a series of legal developments, lawyers for the victims say they are now able to paint a completely different picture of what really happened, one that would not be out of place in a John Grisham thriller.¹⁹⁸

Trafigura has offered to pay damages to settle a class action brought on behalf of 31,000 who said they were injured.¹⁹⁹

The news of the settlement came as a UN report on claims that people had fallen sick or died as a result of the dump was published.²⁰⁰

The report says there is *"strong prima facie evidence that the reported deaths and adverse health consequences are related to the dumping of the waste from the cargo ship"*.²⁰¹

3-6 The implementation of the Bamako Convention²⁰² in Cote d'Ivoire: the state's response to the control of transboundary movement of hazardous waste.

States implement their international environmental obligations in three distinct phases. First by adopting national implementing measures; secondly, by ensuring that national measures are complied with by those subject to their jurisdiction and control; and thirdly by fulfilling obligations to the relevant international obligations, such as reporting the measures taken to give effect to international obligations.²⁰³

¹⁹⁷ No 122 above.

¹⁹⁸ No 74 above.

¹⁹⁹ As above.

²⁰⁰ See Report N0 96 above.

²⁰¹ As above.

²⁰² Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted by the OAU on 30 January 1991 in Bamako, Mali.

²⁰³ D. Victor, K. Raustalia and E. Skolnikoff (eds), " *The Implementation and Effectiveness of International Environmental Commitments* " (1998)

National legislation is crucial to the implementation of the Bamako Convention, as it translates the aims and principles of international standards into national law.

3-6-1 The national legal framework.

The Constitution of Cote d'Ivoire.

As is normally the case in civil law countries, the Ivorian Constitution contains a provision automatically incorporating international treaties into the national legal system.

Therefore, article 87 of the Ivorian Constitution²⁰⁴ reads as follow: *“Treaties or agreements lawfully ratified shall have, upon their publication, an authority superior to that of laws, without prejudice for each agreement or treaty in its application by the other party”*.

The Constitution provide for the right of people to a clean and satisfactory environment. It recognizes that *“every person has the right to a healthy, satisfying and lasting environment”*²⁰⁵. Further, article 28 precise that the protection of the environment and quality of life is a duty for the community and every individual, as well as the State, guarantor of the general interest.

It is certainly interesting to notice that the right to a general satisfactory environment as defined in the African Charter as well as any other international instruments had been adequately expressed in the Constitution.

Other Regulations.

Cote d'Ivoire, as many other developing countries has retained the legislative environmental framework inherited from the colonisation. But a few texts have been adopted after the independence in 1960, namely the Acts of 7 July 1988²⁰⁶ and the Act of 3rd October 1996²⁰⁷.

²⁰⁴ Adopted on first (1st) August 2000.

²⁰⁵ Article 19.

²⁰⁶ Act n°88-651 of 7 July 1988 on the protection of the public health and the environment against the effects of toxic and nuclear wastes and harmful substances.

²⁰⁷ Act no 96-766 of 3rd October 1996 on the protection of the Environment(the Code of the Environment)

These texts expressly banned the illicit traffic and the import of toxic and hazardous wastes within the Ivorian territory. Any activities of that kind amount to a violation of the penal Code.²⁰⁸

Then according to this regulation, are prohibited/banned any kind of activities related to the purchase, the sale ,the import, the transit, the transport, the deposit and the stocking of industrials, and nuclear toxic wastes.²⁰⁹ The Code of the Environment²¹⁰ also prescribed for the same prohibition.²¹¹

On the other hand, the Code of environment states that: “everyone has the fundamental right to live in a healthy and satisfactory environment”.²¹²

3-6-2 The national policy framework.

In 1994, the Government decided to institute a National Plan of Action for the Environment (NPAE) which specificity resides in the regional approach of environmental concerns. On the other hand, in January 1998, the Government has established a national plan of emergency, in order to prevent or fight against any kind of pollution which can lead to marine pollution and subsequently affected the coastal zones.²¹³

If the national legislative and policy framework of the right to environment is quite satisfying in Cote d’Ivoire, however there is still a problem of implementation of the laws and international instruments recognising the right to environment that have been incorporated into the Ivorian legal system. Then it raises the problem of effectiveness. Therefore the effectiveness of the environmental law depends upon its effective implementation. But in Cote d’Ivoire like in many other developing countries, the application of the law is sometimes problematic and quite often difficult.

²⁰⁸ See for e.g. Articles 2 to 5 of the Law of 1988 and articles 99 and 101 of the Law of 1996.

²⁰⁹ The Act no 88-651 of 7 July 1988.

²¹⁰ No 207 above.

²¹¹ See Articles 81 and 82.

²¹² Article 33 of the Code of the Environment.

²¹³ Act no 98-42 of 28 January 1998.

It is not sufficient simply to develop new law. The Law must be translated into action and it must lead to real improvements in environmental quality; it must be effective.²¹⁴

3-6-3 National implementation of the Bamako Convention.

According to the black letter of the Bamako Convention ratified by the state of Cote d'Ivoire on 13th July 1994 and entered into force in 22 April 1998, *“All Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties. Such import shall be deemed illegal and a criminal act”*.²¹⁵

As stated above, the Ivorian Code of environment has made of this requirement a normative rule. However, notwithstanding the clarity of these provisions, the government did not take the appropriate administrative measures to ensure that hazardous wastes are not dumped or unloaded on the Ivorian soil.

Indeed, once the Probo Koala announced that he has unloaded his cargo of “slops” in the Port of Abidjan, the Ivorian authorities failed to verify whether the import of these waste were compatible with a sound, efficient and ecologically rational management of the wastes, nor whether it has been dumped in a manner to prevent and protect the human health and the environment against the harmful effects that such an activity can create.²¹⁶

In compliance with article 3 of the Bamako Convention, the Ivorian Code of Environment provides a national definition to hazardous wastes.²¹⁷

The Bamako Conventions require that importing countries and countries in transit need to receive prior information and documentation about the characteristics of future imports of hazardous waste from exporting countries.²¹⁸

²¹⁴ Harold Hongju Koh, (1997) *“Why Do Nations Obey International Law?”* 106 Yale Law Journal. 2599, 2608-11 .

²¹⁵ Article 4 para. 1.

²¹⁶ See Report (No 95 above).

²¹⁷ See Article 1 of the Code of Environment.

²¹⁸ Article 6 on the Notification Procedures.

3-7 Conclusion.

The 2006 Cote d'Ivoire incident, described by environmentalists as the biggest toxic dumping scandal of the 21st Century, has resulted in serious harms and substantive violations of human rights. The right to life, the right to a clean and satisfactory environment, the right to health and well being are among the issues at stake.

Both laws and institutional mechanisms for addressing the problem of environmental degradation have been in existence in Cote d'Ivoire since the independence.

The National legislation is crucial as it has translated the aims and principles of environmental protection into laws.

But, the incident revealed that the major problem with the national legal framework is its effective implementation.

With regard to the Bamako Convention, the event in Abidjan resulted in a total failure of the administrative chain. The different authorities involved in the scandal acted with little or no concern for the notification procedures and other rules and prescriptions enshrined in the Convention.

Chapter 4: The International Trade in Hazardous waste Under International Law.

4-1 Introduction.

The following Chapter outlines the relationship of the Bamako Convention with other international instruments related to the transfrontier movements of hazardous wastes in Africa, with a view to illustrates efforts made to find an international response to this crucial issue. It will help to understand the necessary steps taken by the African leadership at the regional level to adopt a new Convention.

The objective of this chapter is to set out the international standards and norms (at international and regional level) involving the control or the total ban of the trade in toxic waste.

4-2 Instruments at the international level.

4-2-1 The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal²¹⁹ (Basel Convention).

Earlier, the issue of transboundary movements of hazardous waste in Africa attracted international concern when dumping of toxic waste in many parts of the world, and particularly in Africa, was revealed.²²⁰

In response the UN adopted the Basel Convention on 22 March 1989.²²¹

The Convention was initiated in response to numerous international scandals regarding hazardous waste trafficking that began to occur in the late 1980s.²²²

It is an international treaty that was designed to reduce the movements of hazardous waste between nations, and specifically to prevent transfer of hazardous waste from developed to less developed countries (LDCs). It does not, however, address the movement of radioactive waste.²²³

²¹⁹ Adopted by the Conference of plenipotentiaries on 22 March 1989, and entered into force on 5 May 1992.

²²⁰ Viljoen (N0 1 above).

²²¹ As above.

²²² BAN, "What is the Basel Convention?" available at http://www.ban.org/main/about_basel_conv.html [accessed on 16 October 2009].

²²³ As above.

The Basel Convention establishes a global notification and consent system for the transboundary shipments of hazardous and other wastes among Parties.²²⁴

4-2-1-1 Definition of hazardous wastes.

The Basel Convention governs all movements of “hazardous wastes” and other wastes between Parties.²²⁵

A waste will fall under the scope of the Convention if it is within the category of wastes listed in Annex I of the Convention and it does exhibit one of the hazardous characteristics contained in Annex III.²²⁶

In Article 2, the Convention defines “wastes” as “*substances or objects which are disposed of or are required to be disposed of by the provisions of national law.*”²²⁷

4-2-1-2 Basic Obligations for the Parties.

The Convention places a general prohibition on the exportation or importation of wastes between Parties and non-Parties.²²⁸

Parties are prohibited from exporting or importing hazardous or other wastes if the exporting or importing country has reason to believe that the wastes would not be managed in an “environmentally sound manner”.²²⁹

4-2-1-3 Criminalising the toxic waste trade.

Some writers consider that environment crime should cover activities which may be lawful or licensed but which cause significant environmental harm.²³⁰

An environmental crime is an act committed with the intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage.²³¹

The Convention states that illegal traffic in hazardous wastes or other wastes is a criminal offence.²³²

²²⁴ Hunter (N0 9 above).

²²⁵ See Article 1.

²²⁶ Article 1(1).

²²⁷ Hunter (N0 9 above).

²²⁸ As above.

²²⁹ Article 4(2).

²³⁰ Stuart Bell and Donald Mc Gillivray, (2006) “*Environmental Law*” 6th Edition, Oxford.(citing M Halsey,1997.)

²³¹ M. Clifford, (1998) “*Environmental Crime: Enforcement, Policy and Social Responsibility*”, p 26.

²³² Article 4(2).

Article 9 contains an extensive definition of illegal waste trade, including a violation of informed consent provisions, consent obtained through falsification, misrepresentation or fraud, or deliberate disposal in violation of the term of the Convention.²³³

An important goal of Basel's restriction on trade in hazardous wastes is to force countries to keep their wastes at home.²³⁴

4-2-2 The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade²³⁵ (the Rotterdam Convention).

While the FAO Code²³⁶ and London Guidelines²³⁷ provide detailed requirement for prior informed consent procedures, they are entirely voluntary. Responding to calls for a binding legal instrument, in September, 1998, the Rotterdam Convention was adopted.²³⁸

Generally speaking the Rotterdam Convention bans the export of any chemicals listed on Annex III, unless the importing country has given its prior consent.²³⁹

In principle it provides additional safeguards to protect human health and the environment.²⁴⁰

The Rotterdam Convention aims to help participating countries make informed decisions about the potentially hazardous chemicals that might be shipped to them, and to facilitate communication of these decisions to other countries. The Convention requires exporting Parties to honour the decisions of importing Parties.²⁴¹

²³³Hunter (N0 9 above).

²³⁴ As above.

²³⁵ Adopted and opened for signature at a Conference of Plenipotentiaries in Rotterdam on 10 September 1998 and entered into force on 24 February 2004.

²³⁶ FAO launched its International Code of Conduct on the Distribution and Use of Pesticides in 1985.

²³⁷ London Guidelines for the Exchange of Information on Chemicals in International Trade, U.N. Doc. UNEP/GC, 14/17, Annex IV (1987).

²³⁸ Sands (N0 10 above).

²³⁹ As above.

²⁴⁰ Rotterdam Convention on Prior Informed Consent (PIC), available at <http://www.gcpc.org/issue.aspx? Issue=a113aaf2-a545-402-a4>.

²⁴¹ As above.

4-2-3 The Stockholm Convention on Certain Persistent Organic Pollutants²⁴² (the Stockholm Convention).

The Stockholm Convention is an international environmental treaty that aims to eliminate or restrict the production and use of persistent organic pollutants (POPs).

POPs, can be defined as a group of synthetic organic chemicals that persist in the environment, and pose a risk of causing adverse effects to human health and the environment".²⁴³ POPs include a wide range of chemicals, pesticides, pharmaceuticals, plastics, industrial chemicals, and the by-products of industrial processes.²⁴⁴

POPs has been directed at twelve specific chemicals, known euphemistically as the "dirty dozen".²⁴⁵

The treaty addresses POPs in three categories: pesticides, industrial chemicals and unintended by-products (or wastes).The treaty calls for an immediate ban on eight of the dirty dozen chemicals; aldrin, chlordane, dieldrin, endrin, heptachlor, mirex, hexachlorobenzane, and toxaphene.²⁴⁶

The treaty reflects a precautionary approach to POPs, expressing its objective as: *"Mindful of the precautionary approach as set forth in Principle 15 of Rio Declaration on Environment and Development, the objective of this Convention is to protect human health and the environment from persistent organic pollutants"*.²⁴⁷

The Convention also calls for the use of environmental sound management techniques in the disposal and management of POPs through the use of best available POPs replacement techniques and prevention mechanisms for the production of new POPs.²⁴⁸

Cote d'Ivoire is party to the Convention since 20 January 2004.

²⁴² Adopted and opened for signature on 23 May 2001 in Stockholm, and entered into force on 17 May 2004.

²⁴³ Hunter (NO 9 above).

²⁴⁴ As above.

²⁴⁵ As above.

²⁴⁶ As above.

²⁴⁷ Article 1.

²⁴⁸ Hunter (NO 9 above).

4-2-4 The Convention on the Prevention of Marine Pollution by Dumping Wastes and other Matter,²⁴⁹ (the London Dumping Convention).

The London Dumping Convention (LDC) is a major global instrument that seeks to control pollution of the sea by dumping of wastes which could create hazards to human health or to harm living resources and marine life, to damage amenities, and to interfere with other legitimate uses of the sea.²⁵⁰

It contains three Annexes: dumping of matter listed in Annex I is prohibited; dumping of matter listed in Annex II is allowable only by special permit; dumping of matter listed in annex III is allowable only by general permit.²⁵¹

Its objective is to promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter.²⁵²

It calls on Parties *"to promote measures to prevent pollution by hydrocarbons, other matter transported other than for dumping, wastes generated during operation of ships etc., radioactive pollutants and matter originating from exploration of the sea bed."*²⁵³

The term "dumping" is defined in Article III as the deliberate disposal of wastes and other matter at sea by ships, aircraft, and man-made structures at sea.²⁵⁴

The Convention's coverage is vast, including sewage sludge, dredged materials, construction and demolition debris, explosives, chemicals munitions, radioactive wastes and other materials loaded on a vessel for the purpose of dumping.²⁵⁵

The London Dumping Convention is widely regarded as one of the most successful treaties addressing marine pollution.²⁵⁶

In 1996, the "London Protocol" was agreed to further modernize the Convention and, eventually, replace it. Under the Protocol all dumping is prohibited, except for

²⁴⁹ Adopted on 29 December 1972 in London, Mexico City, Moscow and Washington, D.C., and entered into force on 30 August 1975.

²⁵⁰ UNEP, "London Dumping Convention" available at <http://www.unep.ch/regionalseas/main/legal/london.html> [accessed on 16 October 2009]

²⁵¹ As above.

²⁵² International Maritime Organization (IMO), "London Convention 1972", see http://www.imo.org/home.asp?Topic_id=1488 [accessed on 21 October 2009].

²⁵³ As above.

²⁵⁴ Hunter (N0 9 above).

²⁵⁵ As above.

²⁵⁶ As above.

possibly acceptable wastes on the so-called "reverse list". The Protocol entered into force on 24 March 2006 and there are currently 37 Parties to the Protocol.²⁵⁷

4-2-5 The 1999 Protocol on Liability and Compensation for Damage Resulting from the Transboundary Movement of Hazardous Wastes and their Disposal.²⁵⁸

Article 12 of the Basel Convention directed parties to prepare a protocol establishing appropriate liability rules and procedures for damage resulting from the hazardous waste trade.²⁵⁹

The Protocol applies to transboundary shipments of hazardous wastes, including illegal traffic, from the point the wastes are loaded for transport in the country of export to the point they are accepted by the disposal agent.²⁶⁰

The objective of the Protocol is to provide for a comprehensive regime for liability as well as adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes, including incidents occurring because of illegal traffic in those wastes.²⁶¹

The Protocol addresses who is financially responsible in the event of an incident: The generator of the wastes or the exporter. Each phase of a transboundary movement, from the generation of wastes to their export, international transit, import, and final disposal, is considered.²⁶²

Annex B to the Protocol establishes a liability floor for responsible parties, though the level of the floor depends on whether the party is a notifier or disposer and on the quantity of hazardous waste in the shipment.²⁶³

²⁵⁷ NO 250 above.

²⁵⁸ Adopted by the Conference of the Parties to the Basel Convention.

²⁵⁹ Article 12 reads as follow: The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.

²⁶⁰ Hunter (NO 9 above).

²⁶¹ UNEP "Compensation and liability Protocol, Adopted by Basel Convention on Hazardous Wastes", available at <http://www.grida.no/news/press/2028.aspx>. [accessed on 21 October 2009].

²⁶² As above.

²⁶³ Sejal Choksi, (2001) "The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: 1999 Protocol on Liability and Compensation, 28 Ecology L.Q.509.

For any single incident, a notifying party will be liable for not less than 1 million Special Drawing Rights (SDR, equal to \$1.38 million), and a disposing party for not less than 2 million SDR.²⁶⁴

However, the Protocol has been roundly criticised by environmental groups for its omission. They have charged that because liability attaches only to the notifying party for damage resulting from transport, the generator of the hazardous waste can avoid liability by hiring exporters to act as notifying and controlling entities.²⁶⁵

4-2-6 The International Convention for the Prevention of Pollution from Ships²⁶⁶ (MARPOL).

The direct response of the international community to the problem of oil spills and other vessels pollution is the International Convention for the Prevention of Pollution from Ships, negotiated in London in 1973.²⁶⁷

Following a series of tanker spills in 1977, a separate Protocol was negotiated in 1978.²⁶⁸ The Protocol provided that it and the 1973 Convention would be read as single document, known as MARPOL 73/78.²⁶⁹

Therefore, The MARPOL Convention is a combination of two treaties adopted in 1973 and 1978 respectively, updated by amendments through the years and covering prevention of pollution of the marine environment by ships from operational or accidental causes.²⁷⁰

The overarching goal of MARPOL is to create a verifiable, enforceable regime to prevent pollution discharges from ships. MARPOL consists of six annexes, each with regulation controlling specific types of pollution. Regulations covering specific types

²⁶⁴ As above.

²⁶⁵ Choksi, *op.cit.*, at 524.

²⁶⁶ The International Convention for the Prevention of Pollution from Ships (MARPOL) was adopted on 2 November 1973 at IMO and covered pollution by oil, chemicals, harmful substances in packaged form, sewage and garbage.

²⁶⁷ Hunter (N0 9 above).

²⁶⁸ The Protocol of 1978 relating to the 1973 International Convention for the Prevention of Pollution from Ships (1978 MARPOL Protocol) was adopted at a Conference on Tanker Safety and Pollution Prevention in February 1978 held in response to a spate of tanker accidents in 1976-1977.

²⁶⁹ Hunter (N0 9 above).

²⁷⁰ IMO, “*International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL)*” available at http://www.imo.org/conventions/contents.asp?doc_id=678&topic_id=258 [accessed on 21 October 2009]

of pollution (Annex I) and noxious liquid substances in bulk (Annex II) are mandatory for all parties.²⁷¹

MARPOL relies on three very different approaches to prevent pollution: *mandatory discharge standards* that ships must observe when discharging oily water and other wastes, *construction, design, equipment, and manning* (CDEM) *specifications* that eliminate or reduce specific types of pollution, and *navigation standards* that limit ships activities in ecologically sensitive areas.²⁷²

4-3 Instruments at the Regional level.

The Basel Convention has been harshly criticised by some developing countries, charging that Basel does not prohibit international trade in hazardous waste but, instead, merely provides a detailed tracking mechanism.²⁷³

The legacy of toxic colonialism, of developing countries' exploitation as cheap disposal sites, was the dominant concern leading up to the Basel Convention. While 39 African States had attended the negotiating sessions leading up to the Basel Convention, they initially refused to sign, complaining it was not stringent enough.²⁷⁴

The dissatisfaction of African states with the Basel Convention's major premise (that hazardous waste may be exported from industrialised to developing countries, but that its movement needs to be regulated and controlled) spurred the drafting of a multilateral African treaty.²⁷⁵

4-3-1 The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa²⁷⁶ (Bamako Convention).

Adopted after the African Charter had already signalled a human rights-based approach to the environment, the Bamako Convention does not expressly embraces

²⁷¹ As above.

²⁷² As above.

²⁷³ M. Cusack (1990), "International Law and the Transboundary Shipment of Hazardous Waste in the Third World: Will the Basel Convention Make a Difference?" *Am. U.J.Int'l & Pol'y*, 393, 420-422.

²⁷⁴ John Ovink(1995), "Transboundary Movement of Hazardous Waste, the Basel and Bamako Conventions: Do Third World Countries Have a Choice?" 13 *Dick. J.Int'L*.281, 285

²⁷⁵ Viljoen (N0 1 above).

²⁷⁶ Adopted on 30 January 1991 by a conference of Ministers of the Environment from 51 OAU states, and entered into force on 22 April 1998.

the terminology, but does position itself as an “*effective way*” of protecting “*the human health of the African population*”.²⁷⁷

The regional treaty borrows extensively from its international predecessor.²⁷⁸

However, the Bamako Convention can hardly be described as a “supplement” to the Basel Convention.²⁷⁹

As its title suggests, the Bamako Convention places a total ban on the import of waste into the continent, and regulates the movement of waste generated in Africa itself. The Basel in contrast contains no ban, but is regulatory in that it permits and controls transboundary movement of hazardous waste.²⁸⁰

There are further differences between the two instruments: The scope of the Bamako document is more extensive, as it broadens the definition of “*hazardous waste*”²⁸¹ for example by including artificially created radioactive waste in the list of controlled waste streams.²⁸²

In a very significant development, essentially adopting the position in the Bamako Convention, the Conference of State Parties to the Basel Convention in 1994 adopted a decision placing a ban on the exportation of hazardous waste from Organization of Economic Development (OECD) countries to non-OECD countries.²⁸³

This development shows that, despite initial misgivings, the innovative and principled approach of the Bamako Convention was later followed by the international community.²⁸⁴

Bamako’s enforcement provisions provide that: (1) each party must create its own national body to act as a watchdog or “Dumpwatch” as it is labelled by the Convention; and (2) violators of the ban on extra-continental imports of waste are subject to criminal penalties, as are their accomplices including any person who plans, carries, out or assists illegal imports.²⁸⁵

²⁷⁷ Viljoen F, (N0 1 above). (see Bamako Convention Preamble)

²⁷⁸ As above.

²⁷⁹ A.O.Akinnusi (2001), “*The Bamako and Basel Convention on the Transboundary Movement and Disposal of Hazardous Waste: A comparative and Critical Analysis*” Stellenbosch Law Review 306, 309-13 discusses differences between the two treaties.

²⁸⁰ I. Cheyne, “*Africa and the International Trade in Hazardous Waste*” (1994) 6 *RADIC* 493, 499.

²⁸¹ F. Ouguergouz, “*The Bamako Convention on Hazardous Waste: A New Step in the Development of the African Environmental Law*” (1993)1 *AYBIL* 195,196.

²⁸² See Viljoen (no 1 above) 291.

²⁸³ As above.

²⁸⁴ Akinnusi (no 275 above) 315.

²⁸⁵ See Bamako Article 9(2).

4-3-2 The Lome IV Convention.

The Lome IV Convention (Lome IV) signed in 1990 is a trade agreement that prohibits the exports of hazardous waste from the European Community to the African, Caribbean and Pacific (ACP) states.²⁸⁶

Sharing the concerns of African nations over the Basel Convention's failure to ban the hazardous waste trade, many developing nations sought the protection of an additional multilateral treaty prohibiting the import of waste within their territories.²⁸⁷

Lome IV, therefore, banned the direct and indirect export of any hazardous or radioactive waste from the European Community states to ACP states.²⁸⁸

In return, the ACP states agreed not to accept waste imports from any other states outside the European Community.²⁸⁹

4-4 Conclusion.

As mentioned above, there are several environmental instruments and standards at the regional and international level which ban and prohibit the hazardous waste trade.

Both Basel and Bamako Conventions regulate, control and ban the transboundary movement of toxic and radioactive waste.

Therefore, the right of the African people to "*a general and satisfactory environment*"²⁹⁰ recognised in the African Charter forms part of the core content of the various international environmental instruments.

These international environmental instruments impose on Cote d'Ivoire the obligations to respect, protect and fulfil the right in question by abstaining itself from importing hazardous wastes within its territory.

However, the adoption of Bamako is a sad reminder that Basel has failed to protect the people of African countries. By another way, one failing that Bamako, Basel and

²⁸⁶ David J. Abrams, "Regulating the International Hazardous Waste Trade: A Proposed Global Solution," 28, COLUM. J. TRANSNAT'L L. 801,840 (1990).

²⁸⁷ Hugh J. Marbury, "Hazardous Waste Exportations: The Global Manifestation of Environmental Racism", 28 VAND. J. TRANSNAT'L L.251 (1995).

²⁸⁸ See Article 39.

²⁸⁹ Ovink (N0 274 above).

²⁹⁰ See Article 24 of the African Charter.

Lome IV share is the lack of a definition for what management or disposal of hazardous waste in “an environmentally sound manner” means.²⁹¹

An important difference between Basel and Lome IV, on the one hand, and Bamako, on the other, is Bamako’s blanket prohibition of hazardous waste imports. Both Basel and Lome IV, subject to prior informed consent, provide for trade in certain materials intended for recycling. Concerned that much of this recycling trade is simply a sham, however, Bamako bans the importation of waste into Africa for any reason.²⁹²

²⁹¹ NO 9 above.

²⁹² Ovink (NO 274 above).

Chapter 5. Conclusions and recommendations.

5-1 Conclusions.

5-1-1 Pollution in Africa, obstacles in achieving the total ban of hazardous waste trade in Africa.

The generation of hazardous waste around the globe has increased more than sixty-fold since World War II. Until recently, the disposal of some of this waste in developing countries to avoid the high fees of local disposal was common practice.²⁹³

Despite the potential dangers, developing nations have strong and immediate economic incentives to accept hazardous waste from other nations.²⁹⁴

The economic instability of most of the African countries is one of the major factors of the persistent increasing in the hazardous waste trade around the world.

Then, we are welcoming the comings of a new evil known as toxic colonialism in Africa, with various forms, from toxic waste dumping to e-waste disposal, and the accumulation of persistent chemicals.

At the end of a complex run between Europe and Africa, the Probo Koala chartered by Traffigura has unloaded his deadly cargo on open ground in 11 unsecured sites in the Ivorian soil. The incident resulted in the biggest toxic dumping of the 21st Century. There is more evidence that the Dutch Company relies on internal complicities in Cote d'Ivoire. It also shows the government failure to take reasonable steps to prevent the event nor didn't it show interest for an adequate reparation and compensation for victims. Therefore one the main challenges in realising the right to a satisfactory environment under the international Human Rights Instruments remains in the enforcement and implementation of this right enshrined in the Constitution and recognised in various environmental instruments that the state of Cote d'Ivoire has ratified and/or incorporated into its national legal order.

The national legal framework concerning the environment in Cote d'Ivoire is quite satisfactory with the environment code providing for relevant and basic principles of

²⁹³ Maureen Walsh, "*The Global Trade in Hazardous Wastes: Domestic and International Attempts to Cope With a Growing Crisis in Waste Management*", 42 Cath. U. L. Rev.103, 111(1992).

²⁹⁴ Biggs, "*Latin America and the Basel Convention on Hazardous Wastes*", 5 Colo. J. INT'L. and POL'Y 333, 337 (1994).

environment protection. But the lack of enforcement of these provisions is a real challenge in achieving compliance.

5-1-2 Implementation of the Bamako Convention in Cote d'Ivoire.

The state of Cote d'Ivoire has ratified the Bamako Convention since 13 July 1994 and set up a progressive environment Code to enforce and enhance implementation of the ban of hazardous waste within its territory.

But the reality is that no countries comply fully with all its international legal obligations.²⁹⁵

Despite the constitutional, legislative and policy framework, the administrative authorities involved in the toxic dumping scandal in Abidjan did not take the appropriate measures to avoid the tragedy. As stated above, the incident resulted in a total failure of the administrative chain and is symptomatic of the fact that Traffigura relies on internal complicities.

In the present case, Non-compliance includes a failure of the Ivorian government to give effects to substantives norms and to fulfil procedural requirements.²⁹⁶

Analysing the issue of implementation, effectiveness and compliance, we have to understand the current political and institutional situation of the Francophone West African country.

Ten years ago few people would have considered Cote d'Ivoire a candidate for fragile state status. The country appeared to have institutions and political structures capable of accommodating the interests of different groups and regions. Today, after several bouts of violent conflict, Cote d'Ivoire's political stability remains uncertain. What went wrong?²⁹⁷

The steady economic and social decline has coincided with the erosion of political stability in Cote d'Ivoire.²⁹⁸

²⁹⁵ Edith Brown Weiss, "*Understanding Compliance with International Environmental Agreements: The Baker's dozen Myths*", 32 Richmond Law Review. 1555, 1560 (1999).

²⁹⁶ S. Vinogradov, "*International Environmental Security: The concept and its Implementation*", in A. Carter and G. Danilenko (eds), *Perestroika and International Law* (1990), 196.

²⁹⁷ UNDP Human Development Report, "*Cote d'Ivoire, Horizontal inequalities unravel the African miracle*" (2005), available at www.undp.org. [accessed on 17 May 2009].

²⁹⁸ As above.

In October of 2000, Laurent Gbagbo was elected president in a highly contested election. Controversy over the results sparked an internal conflict that has divided the country along political and ethnic lines, with a rebel army occupying the rural North, while the Gbagbo administration controls the densely populated south.²⁹⁹

The country has had a tenuous cease fire and power-sharing agreement that has set up territorial integrity for both sides as well as creating limited political representation in the government for the northern rebels.³⁰⁰

It is within this context that a major environmental, political, and sanitary crisis has been unfolding in Cote d'Ivoire over the last several months.

Nevertheless, the political instability cannot objectively be invoked by the state as an irremediable factor to the lack of enforcement of its international obligations, particularly under the Bamako Convention.

5-2 Recommendations.

5-2-1 Recommendations for the Government.

The inclusion of the right to a satisfactory environment in the Ivorian Constitution is certainly a progress in the way to implement its justiciability. But there is more to do since the ratification of the Convention by the state of Cote d'Ivoire.

The 2006 Cote d'Ivoire toxic dumping scandal has resulted in serious breach of international environmental instruments and lead to graves violations of substantive Human Rights. Then the government is under the duty to take legislatives as well as administrative reforms to tackle the problem of hazardous waste.

Administrative measures

The Government has an obligation under its international commitments to provide effective judicial remedies to all the victims of the catastrophe.

As the news of a new settlement is revealed, in which Trafigura agreed to pay for an additional amount of money in order to ensure compensation for the victims of the

²⁹⁹ Bureau of Democracy, "*Human Rights, and Labor, Annual Report 2005*". Available at: <http://www.nationbynation.com/Ivory%20Coast/Human.html>

³⁰⁰ As above.

human rights violation, it is important to call upon the government to take appropriate measures to ensure fair and equitable reparation for all the victims of the pollution. A special committee should be put in place in order to avoid the failure of the precedent commission in charge of the repartition of the € 152 millions. It can be interesting to suggest that this Committee should be a tripartite board involving the government, the victims joined under a group and the civil society.

There is a need for the government to also implement the Transboundary Environmental Impact Assessment (TEIA).

The TEIA is an environmental policy that is considered a necessary tool in order to give the environment its proper place in the decision-making process by improving the quality of information to decision makers, so that environmentally sensitive decisions can be made paying careful attention to minimising impacts, improving the planning of activities and protecting the environment.³⁰¹

Legislative measures.

As stated above, the legislative framework in Cote d'Ivoire is quite satisfactory, with the inclusion of relevant provision of the African Charter referring to a healthy environment.

In addition, national legislation should be adopted imposing on the government the obligation to make every effort to ensure and enhance the full implementation of Bamako Convention. As a matter of priority, the notification procedure³⁰² should be enacted in the form of a guidelines or rules of procedure to ensure full compliance by administrative authorities.

New legislation regulating compensation for damages resulting in environmental harm should also be adopted, merging the various norms and standards that touch upon the issue such as the international protocol on liability.³⁰³

³⁰¹ J. Woodliffe, "Environmental Damage and Environmental Impact Assessment", in M. Bowman and A. Boyle (eds), *Environmental Damage in International and Comparative Law: Problems of Definition and valuation* (Oxford: Oxford University Press, 2002) 133-147, at 134.

³⁰² See Article 6 of Bamako Convention.

³⁰³ NO 297 above.

5-2-2 Recommendations to non-state actors.

Recommendations to the international community.

Implementation of Decision VIII/1 on Côte d'Ivoire.

The Conference of the Parties to the Basel Convention, in December 2006, called upon Parties, countries and other stakeholders to the Basel Convention to offer technical and financial assistance to Côte d'Ivoire to support the implementation of the emergency plan that the Government of Côte d'Ivoire had developed.³⁰⁴

Therefore, there is an urgent need to appeal to donors and partners to contribute financially and technically to the implementation of the emergency plan.

Building infrastructure capacity for the monitoring and control of transboundary movements of hazardous waste and chemicals in Cote d'Ivoire with port facilities.

The international organisations³⁰⁵ and the donor community, in consultation with the Ministry of Environment in Cote d'Ivoire should take positive steps to develop a hazardous waste management plan for the district of Abidjan to manage hazardous and other wastes in an environmentally sound manner, and to assist in developing the capacity of the port of Abidjan to control and manage hazardous wastes generated at sea.³⁰⁶

The international community should also ensure a more effective implementation of international instruments in several countries in Africa concerning the monitoring and control of transboundary movements of hazardous waste and chemicals through a coordinated approach in enforcing the related provisions of the Basel Convention, the Bamako Convention, MARPOL 73/78, the Rotterdam Convention and the Stockholm Convention.³⁰⁷

³⁰⁴ UNEP, "*Implementation of Decision VIII/1 on Côte d'Ivoire*", available at <http://www.basel.int/pub/leaflets/270508.pdf> [accessed on 13 July 2009].

³⁰⁵ The UNEP Post Conflict and Disaster Management Branch, and the Secretariat of the Basel Convention.

³⁰⁶ NO 304 above.

³⁰⁷ As above.

5-2-3 Recommendations to the civil society.

Despite having a government that has violently suppressed civil protest in the past, Ivorian citizens did not stand mute in the wake of the disaster. In the days following the catastrophe, thousands of Abidjan's residents took to the streets to protest.³⁰⁸

Their action was directed toward the Ivorian leadership for their complicity in corporate greed and exploitation as well their indifference to the lives of their citizenry.³⁰⁹

It is a matter of great satisfaction to see how the citizens can raised their voice to denounce blatant violations of their rights.

In addition, civil society should take the opportunity to engage in public interest litigation, so that suits are filed in the public interest.

In the quest for effective environmental stewardship, public interest environmental litigation has proved a major tool in the hands of concerned individuals and groups the world over.³¹⁰

Word count: 14 090.

³⁰⁸ Alex Means (N0 26 above).

³⁰⁹ As above.

³¹⁰ Gleason, Jennifer M. and Johnson, Bern A., "*Environmental Law Across Borders*", Journal of Environmental Law Litigation, Vol. 10, 1995, pp. 67-83.

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