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Conference of the Parties to 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 Bamako Convention: A platform for a Pollution Free Africa”

Second Meeting of the Conference of the Parties to the Bamako Convention
Ministerial Segment Meeting

Abidjan, 30 January - 1 February 2018

Note from the Secretariat

“Twenty Years of the Bamako Convention: A Time for More Effective Implementation”

Executive Summary

This paper presents a review of the rationale that led African countries twenty years ago, to adopt this new convention, just after the adoption of an international treaty on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, referred to as the Basel Convention, 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).

Even though implementation of a convention is subject to the collective but sovereign decisions of its parties, its Secretariat has the responsibility to bring; the latter has the responsibility to bring to the attention of the States Parties any emerging issues relating to the life of the convention. This also includes recommending to the States Parties relevant ways and means to achieve more effective implementation of the convention, pursuant to its spirit and ideals. Many chemical related accidents have highlighted a number of limitations and gaps in existing management tools including international conventions. These accidents call into question the performance and effectiveness of the Bamako Convention and point to the need for a new dynamic approach that is focused on repositioning the convention as a platform for a pollution free-continent.

This paper, while analyzing the challenges faced by the Bamako Convention over the past 20 years, proposes some areas for consideration by States Parties at the second meeting of the Conference of the Parties to the Convention in order to foster its effective implementation.

1. Background

Hazardous waste is waste that poses substantial or potential threats to public health or the environment. In many developed and developing countries, the treatment, storage, and disposal of hazardous waste is regulated by specific policies and laws to prevent and/or mitigate adverse effects to the environment and to human health. Hazardous waste includes a broad range of products from cleaners, stains, varnishes, batteries, automotive fluids, obsoletes pesticides and herbicides, certain paints and many other products found in the construction industry such as asbestos. Characteristic hazardous wastes are those that exhibit any one or more of the following distinctive properties: ignitability, corrosivity, reactivity or toxicity¹.

The global progression in science, technology and industrialization has resulted in the rise in activities hazardous to the human environment. The trepidation over the harmful and sometimes irreparable effects of these activities on human health, marine life and the ecosystem has generated a lot of national and international regulatory regimes on the protection of the human environment². One of the crucial issues that have attracted enormous attention is that of transboundary movement of hazardous wastes from one country to another, and in this particular case, from the industrialized countries in the global north to the developing countries in the global south, specifically Africa.

The challenge of transboundary movement of hazardous waste has attracted a lot of scholarly research in the last part of the 20th century and beginning of the 21st century. This is particularly more pressing as environmental problems are some of the most topical issues in global discourse.

The Bamako Convention was negotiated by twelve nations of the Organization of African Unity at Bamako, Mali in January 1991, and came into force in 1998.

Twenty years after its entry into force, the time is ripe for States parties to review progress made in its implementation, its effectiveness, the challenges it has faced, and its readiness to address emerging and more complex hazardous wastes. This is necessary to ensure that the spirit of the convention is sustained, and that above all, it continues to provide to its parties the necessary tools to enforce the ban on the import of hazardous waste into Africa. The overall aim is to protect human life and the environment and contribute to the sound management of chemicals and wastes in Africa.

2. The long march towards a pollution free planet

The second conference of the parties to the Bamako Convention is held in against a backdrop of established consensus that pollution is the most urgent threat to human health and ecosystems. Many delegates and observers at the recently concluded third United Nations Environment Assembly noted that in focusing on a theme that resonates greatly with the public, as evidenced by more than 2.3 million pledges garnered from individuals across the world in the #BeatPollution campaign, the Assembly has firmly positioned itself as the world's voice on the environment, and pollution in particular. This while strengthening the environmental pillar of the 2030 Agenda for Sustainable Development.

As countries discuss issues relevant to the Bamako Convention under the overall theme: *“The Bamako Convention: A platform for a Pollution Free Africa”*, it will be important to refer to the scientific data that informed the decisions taken at United Nations Environment Assembly to develop a more robust strategy to strengthen implementation of the Bamako Convention. These calls for a new approach, while taking into account the development aspirations and challenges of African countries as well as the commitment that countries in the region have made to preserve human health and environment, in the spirit of ‘The Future We Want’.

¹ <https://www.epa.gov/hw/defining-hazardous-waste-listed-characteristic-and-mixed-radiological-wastes>

² There are close to 1000 legislations today which address issues relating to the international environment. Kummer K., International Management of Hazardous Wastes: The Basel Convention and Related Legal Rules (Oxford: Clarendon Press, 1995).

3. Historical basis and rationale of the Bamako Convention

The worldwide concern about the transboundary movement and disposal of hazardous wastes was heightened in the late 1970s and early 1980s. Expectedly, the major concern was the transboundary shipment of hazardous wastes from industrialized nations for cheap disposal in inadequately prepared sites in developing countries³. This concern ignited a new urgency to develop and implement international controls, culminating in the landmark global convention under the United Nations to control the transboundary movement of hazardous wastes and their disposal, commonly called the Basel Convention⁴. Convinced that their peculiar circumstances were neither taken into account nor protected by the Basel Convention, African countries under the auspices of the Organization of African Unity (OAU) adopted the Bamako Convention in 1991⁵.

The issue of transboundary movement of hazardous wastes (including nuclear wastes), particularly its import into Africa was the subject of various statements issued by African organizations and conferences⁶, and of a number of resolutions of the Council of Ministers of the Organization of African Unity. In 1988, the Organization of African Unity Council of Ministers passed *Resolution 1153* [hereinafter ‘the Cairo Guidelines’] condemning the import of industrial and nuclear wastes into Africa as ‘a crime against Africa and the African people’⁷.

It also called on States to introduce import bans and to adhere to the Cairo Guidelines⁸. Before the adoption of the Basel Convention, the Organization of African Unity formally recognized that the Basel Convention was not going to provide African nations with the protection they desired⁹. In fact, African nations had wanted a complete ban or prohibition of the transboundary movements of hazardous wastes.

The preamble to the Council of Ministers *Resolution 1199(XLIX)* reflected this position of African states. It expressed concern that the draft Global Convention for the Control of Transboundary Movement of Hazardous Wastes was merely aimed at the regulation or control, rather than the prohibition, of transboundary movement of hazardous wastes, contrary to the spirit of the Organization of African Unity Council of Ministers Council Resolution *CM/Res.1153 (XLVIII)* which determined that dumping of hazardous wastes is a crime against Africa and the African people¹⁰.

The Resolution further identified the inadequacy of the provision on the monitoring mechanism, ‘dumpwatch’, for all transboundary movements of hazardous wastes, especially into Africa, as well as the lack of technical and financial support for the safe and environmentally sound disposal of hazardous wastes in the importing states. It then called upon all African countries to urgently reach an agreement on a common African position for ameliorating the inadequacies contained in the draft Convention, and to ensure that their solidarity is not disrupted until the draft Convention is adopted¹¹.

³ Examples of such cases include the Philadelphia fly ash deposit on Kassa Island (Guinea), the illegal deposit of Italian hazardous wastes in the Port of Koko (Nigeria), the epic voyage of the vessel *Khian Sea*. See Greenpeace 1990, 21.

⁴ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal opened for signature on March 22 1989 and entered into force on May 5, 1992. As at May 22 2006, there were 168 parties to the convention. Afghanistan, Haiti, and United States of America have signed but have not yet ratified the convention. Secretariat of the Basel Convention, online: United Nations Environment Programme <<http://www.basel.int/Countries/StatusofRatifications/tabid/1341/Default.aspx>>

⁵ Bamako Convention on the Ban of the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous wastes within Africa 1991 was adopted in Bamako, Mali, on 30 January 1991 and came into force on 10 March 1999. As at November 26, 2017, there were 29 African states signatories and 25 parties to the Convention. Bamako Convention, online: Basel Action Network <http://web.unep.org/environmentalgovernance/bamako-convention>.

⁶ K. Kummer, *supra*, note 4 at 99. ECOWAS Resolution A/RES.1/6/88 Relating to the Dumping of Nuclear and Industrial waste (June 1988); Report of the Second Meeting of the Committee on Seas of African Ministerial Conference on the Environment (AMCEN), Cairo, 22 December 1988, UN Doc. UNEP/AEC/B4/COMM.4/9, excerpts of report in Kwiatkowska and Soons, *supra*, note 5 at 975; Statements of the African Preparatory Conference for UNCED held under the auspices UN/ECA in Cairo (July 1991) and Abidjan (November 1991) respectively (report in Kwiatkowska and Soons, *supra*, note 5 at 979). See also Greenpeace, (1990).

⁷ OAU Council of Ministers Resolution on Dumping of Nuclear and Industrial Waste in Africa, 23 May 1988, (CM/Res.1153(XLVIII)) reported in 28 ILM 567 (1989); Online: <<http://www.africa-union.org/root/au/documents/decisions/hog/yHoGAssembly1989>>

⁸ *Ibid*

⁹ Resolution on a Global Convention for the control of Transboundary Movement of Hazardous Wastes, OAU Council of Ministers Resolution CM/Res. 1199(XLIX) February 1989, CM/Res. 1225(L), July, 1989; CM/Res. of February 1990. See also Tolba, K. Mostafa and Rummel-

Bulska, Iwona, *Environmental Diplomacy: Negotiating Environmental Agreements for the World, 1973–1992* (1998) 112–113, where the authors observed that, ‘The Basel Convention was successfully negotiated despite the fact that the African delegates’ intransigence hung heavily in the air’.

¹⁰ *Ibid*

¹¹ *Ibid*, Article 2.

Consequent upon this common stance, no Organization of African Unity-member state signed the Basel Convention in 1989 and 1990¹². Instead, as a follow up to *Resolution 1199*, the Organization of African Unity Council of Ministers passed *Resolution 1225* in July 1989 calling on the Pan-African Coordinating Conference scheduled to meet in Mali in January 1991 'to draft a reciprocal commitment of African states among themselves, aimed at the implementation and effective prohibition of the import of hazardous wastes into Africa'¹³. Pursuant to this Resolution, the Organization of African Unity set up a working group of legal and environmental experts to draft a convention. The two main aims of the proposed African convention were determined as, firstly, a common commitment by African states to **prohibit the import of hazardous wastes into the continent**; and secondly, the **establishment of a regime for the management of hazardous wastes generated within Africa**. Upon timely completion of its task, the Working Group presented the draft convention to the delegates to the Pan-African Conference on Environment and Sustainable Development in Africa. The Bamako Convention was adopted at the Conference on 30 January 1991¹⁴.

The Bamako Convention is a solution and an African response to the perceived legal loopholes and weaknesses of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

4. The Bamako convention: some facts, figures and numbers

The 1980s were marked by a number of accidents and cases of toxic waste spills all over the world, and this ignited a new urgency to develop and implement international controls, culminating in the landmark Basel Convention¹⁵.

a) Health impacts due to exposure to dumpsites

Current epidemiologic literature on health effects in relation to residence near landfill sites reported increased risk to adverse health effects (low birth weight, birth defects, certain types of cancers) near individual landfill sites and in some multisite studies. Although biases and confounding factors cannot be excluded as explanations for these findings, they may indicate real risks associated with residence near such sites, especially those used to dump hazardous wastes¹⁶.

Hazardous wastes are well described to have the greatest potential impact on human health. Most of them are environmentally persistent, bioaccumulate and largely consist of heavy metals such as cadmium, mercury, arsenic, chromium, nickel, dioxins, polychlorinated biphenyl (PCBs), Polycyclic aromatic hydrocarbons(PAHs), PM₁₀ and sulphur dioxide (SO₂)¹⁷. In addition to carrying human health and environmental risks, hazardous wastes are also known to pose a danger to wildlife. Some pollutants such as mercury can accumulate in human and animal tissue, thus compounding their effects. Example around the world shows that lack of sound management of chemicals and waste is a growing concern for decision makers, especially those in the Africa region.

b) Recent hazardous waste incidents

The toxic waste movements which resulted in the accidents and spills witnessed around the world are often deemed to be compliant with certain global regulations on the trade and/or illegal movement of hazardous products. In reality, notwithstanding the existence of these international and regional instruments, this

¹² However, Nigeria was the first African country to ratify the Basel Convention on March 31, 1991. See Online: <<http://www.basel.int>>

¹³ Resolution on Control of Transboundary Movements of Hazardous Wastes and Their Disposal in Africa. OAU Council of Ministers Res. CM/Res. 1225(L) (July 22 1989), reprinted in UN GAOR, 44th Session at 62–63, U.N. Doc. A/44/603 (1989). See also Donald, J. Wylie. *supra*, note 15 at 431.

¹⁴ The conference was attended by 29 African states. A number of Intergovernmental Organizations including UNEP, WMO and FAO attended as observers as well as Greenpeace International. See K. Kummer, *supra*, note 4 at 100.

¹⁵ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal opened for signature on March 22 1989 and entered into force on May 5, 1992. As at May 22 2006, there were 168 parties to the convention. Afghanistan, Haiti, and United States of America has signed but have not yet ratified the convention. Secretariat of the Basel Convention, online: United Nations Environment Programme <<http://www.basel.int/ratif/frsetmain.php>>

¹⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1637771/>

¹⁷ <https://academic.oup.com/bmb/article/68/1/183/421368>

undesirable trade has continued unabated as illustrated below by incidents recorded in Africa and elsewhere in the world.

In most cases, human health is the most affected as shown in the following two reports:

c) In Africa

Africa produces 1.9 million tons of waste each year, which is regarded as very low for the number of people that live there. Some countries (like the UK and Germany) have much smaller populations but produce almost as much waste as the whole of Africa. Many such countries have an issue with where to put their waste and they end up sending it to other areas outside their own borders rather than deal with it themselves. This creates a problem such as what has been witnessed in some areas of West Africa¹⁸. It is reported that up to 90% of the world's electronic waste, worth nearly \$19bn, is illegally traded or dumped each year¹⁹.

(i) In 1988, many drums of toxic wastes were dumped at the backyard of a compound in a village located along the Delta of the River Niger, Nigeria. Several months later, the contents had corroded the drums and spilled to the land, thereby creating very serious environmental pollution problems. Many people lost their lives and the health of several people was adversely affected²⁰;

(ii) In 2006, a dumping of hazardous wastes in Abidjan, Côte d'Ivoire, by Trafigura chartered the Probo Koala, a tanker, for the transportation of oil products, raises some fundamental questions on the effectiveness of these instruments in combating the transboundary movement of hazardous wastes around the world, particularly from the developed countries to the less developed countries²¹. More than 100,000 Abidjan residents sought treatment, 69 were hospitalized and 10 died, though the exact reasons are still under investigation²².

(iii) A scores of villagers in Chongwe district, about 40 kilometers east of the Zambian capital of Lusaka, descended on a concrete slab where the army had buried contaminated beef imported from a former Eastern Block country. The extent of the danger wasn't known until the leading daily newspaper, The Times of Zambia, stumbled on the story and published an exposé on the radioactive beef. The nation was stunned by the revelation²³.

(iv) For over ten years, a concoction of some 100 tons of imported fertilizer and pesticides has been lying outside a Lusaka warehouse, exposed to the hot tropical sun and heavy rain. These toxic substances have caused havoc to the groundwater around the capital, though the extent of groundwater contamination is not yet known.

(vi) According to the State of the Environment Report on Zambia, approximately 200 metric tons of obsolete pesticides are stocked in different parts of the country, with a very high risk of polluting groundwater bodies²⁴.

5. Comparative analysis of the Basel and Bamako Conventions

Taking into account the organic links between the Bamako and Basel Conventions and in order to further explore potential synergies, a comparative analysis is necessary. It has been established above that the Basel and

¹⁸ <http://www.rightforeducation.org/all-topics/environment/pollution-illegal-dumping/>

¹⁹ <https://www.businessgreen.com/bg/news/2407990/un-usd19bn-tsunami-of-e-waste-must-be-tackled>

²⁰ G. Ekosse, Transboundary Movement of Hazardous Wastes, in O.-U. Rogers W'O et al (eds.), Pollution Control and Waste Management in Developing Countries, Commonwealth Secretariat, (2000), 417 at 425.

²¹ B. Mason, Toxic waste dumping in Ivory Coast, online: <<http://www.wsws.org/articles/2006/oct2006/ivor-o24.shtml>>; and T. Pitman, 'Ivory Coast's toxic tragedy a lesson for others – illegal dumping puts spotlight on how poor nations become targets', online: <<http://www.msnbc.msn.com/id/15319791/>>.

²² The Associated Press, International Herald Tribune (France) 17 October 2006.

²³ <https://www.un-ngls.org/orf/documents/publications.en/voices.africa/number6/vfa6.04.htm>

²⁴ *Ibid*

Bamako Conventions share similar historical antecedents and goals. However, there are areas of divergence in their specific provisions.

a) Similarities

Mindful of the growing threats to human health and the environment posed by increased generation and complexity of hazardous wastes, both conventions suggest reduction in the quantity of wastes generated as well as their hazard potential as the most effective way to afford protection to human health and the environment²⁵. They both place the responsibilities for the disposal of wastes and consequences thereof on the generator, and also recognize the sovereignty of states to ban the import and/or transit of wastes through their territory. They encourage the disposal of waste within the state it is generated in situations where it is environmentally sound to do so. However, where hazardous waste cannot be disposed in an environmentally sound manner, both allow the safe transportation of such wastes. In addition to employing the same definitions of terms, both conventions require that within six months of becoming a party to either convention, states parties should inform their respective secretariats of the wastes other than those listed in Annex I of both conventions, that are considered or defined as hazardous under their national legislation and any requirements concerning transboundary movement procedures applicable to such wastes. Also, each convention permits and regulates the transboundary movement of hazardous wastes amongst its states parties. They provide that any transboundary movement of hazardous waste shall be covered by insurance, bond or other guarantee as may be required by the state of import or transit which is a party to the convention²⁶. Notably, both conventions exclude from their scope, wastes derived from the normal operations of a ship, the discharge of which is covered by another international instrument²⁷. Furthermore, both impose the duty to re-import on the exporting State where a transboundary movement legitimately commenced in compliance with the provisions of either convention, but could not be completed in accordance with the terms of the contract²⁸. They stipulate that the State of export shall ensure that the exporter takes back the wastes in question, if alternative arrangements cannot be made for their disposal in an environmentally sound manner within a maximum of ninety days from the time that the importing State informed the State of export and the Secretariat. To this end, the State of export and any party of transit shall not oppose, hinder or prevent the return of those wastes to the State of export. Both conventions make identical provisions for their Protocol's amendment²⁹, for adoption and amendment of Annexes³⁰, for the settlement of disputes³¹, and as regards reservations and declarations³².

b) Differences

The differences between the Basel and Bamako Conventions reflect the dissatisfaction of Member States of the Organization of African Unity that were at the same time members of the Basel Convention with the latter's treatment of particular subjects of particular interest to the continent. An analysis of the differences sheds light on the concerns of the African States with regard to how the Basel Convention addresses the control of transboundary movement of hazardous wastes that it prescribes.

(i) Wastes covered

Both Bamako and Basel Conventions adopt the system of defining hazardous wastes by a set of Annexes listing categories of hazardous wastes and hazardous characteristics. **In fact, the Bamako annexes very closely mirror those of the Basel Convention.** However, the scope of wastes covered by the Bamako Convention is wider than that of the Basel Convention. While the Basel Convention requires the coincidence of a waste belonging to any of the categories contained in Annex I, and possessing any of the characteristics contained in Annex III to qualify as hazardous waste, the Bamako Convention recognizes a waste as hazardous if it belongs to any of the categories contained in Annex I *or* possesses any of the characteristics

²⁵ Basel Convention *supra*, Preamble, paras. 2 & 3; Bamako Convention *supra*, preamble, paras. 1 & 2

²⁶ *Ibid*

²⁷ Basel Convention, Article 1(4); Bamako Convention, Article 2(3). 'another international instrument' in these articles refers to MARPOL 1973/78.

²⁸ Basel Convention, Article 8; Bamako Convention, Article 8.

²⁹ Basel Convention, Article 17; Bamako Convention, Article 17

³⁰ *Ibid.*, Basel Convention, Article 18; Bamako Convention, Article 18.

³¹ *Ibid.*, Article 20; Article 20.

³² *Ibid.*, Article 26; Article 26.

contained in Annex II³³. It is noteworthy that while radioactive wastes which are subject to international instruments and control systems are excluded from the scope of the Basel Convention, same are within the scope and regulation of the Bamako Convention³⁴.

Also, the Bamako Convention includes in its definition of hazardous wastes any waste or substance that has been banned, cancelled or refused registration by government regulatory action or voluntarily withdrawn from registration in the country of manufacture, for human health or environmental reasons³⁵. The Basel Convention does not include this under its definition of hazardous wastes. Undoubtedly, these differences have considerably broadened the scope of wastes covered by the Bamako Convention in comparison to the Basel Convention.

(ii) The Import Ban

The most significant difference between the Basel and Bamako Conventions is the total ban imposed by the Bamako Convention upon all imports of hazardous and nuclear wastes into Africa. It enjoins all Parties thereto to take appropriate legal, administrative and other measures within their jurisdictions to prohibit the import of all hazardous wastes, for any reason, into Africa from non-contracting parties, and that all such imports shall be deemed illegal and criminal acts. The Convention is, however, silent on the issue of export of hazardous wastes from Parties to non-party States. This lacuna has been construed as implying that the convention does not cover export of hazardous wastes from Parties to non-party States³⁶.

Parties to the Bamako Convention are further required, in the exercise of jurisdiction within their internal waters, waterways, territorial seas, exclusive economic zones and continental shelf, to adopt legal, administrative and other appropriate measures to control all carriers from non-parties³⁷. They are also to prohibit the dumping at sea of hazardous wastes, including their incineration at sea and their disposal in the seabed and sub-seabed both by Parties and non-parties. The Basel Convention, on the other hand, does not prohibit, but only regulates the transboundary movement of hazardous wastes from one state to another. It is silent and does not specifically prohibit dumping or incineration in internal waters, waterways or on the high seas.

In respect of wastes generated within Africa, the Bamako Convention makes provisions virtually similar to those of the Basel Convention. This relates to the Prior Informed Consent (PIC) procedure specified in articles 6 and 7 of both conventions. None-the-lesses, the Bamako Convention contains more stringent rules than the parallel provisions of the Basel Convention. First, the Basel Convention enjoins a State of export to allow the generator or exporter to commence transboundary movement upon receipt of a *written confirmation* that the notifier has received the written consent of the state of import, and of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question. The Bamako Convention on the other hand insists on the state of export receiving the *written consent* of the State of import, (not just a confirmation thereof) before allowing the transboundary movement of hazardous wastes to the State. Second, article 6(4) of both conventions stipulates the requirement of prior written consent of the State of transit before the commencement of transboundary movement of wastes. But, unlike under the Bamako Convention, a transit State may dispense with the requirement of Prior Informed Consent under the Basel Convention. Again, unlike Bamako, the Basel Convention permits the State of export to proceed with export through the State of transit where no response is received by the state of export within sixty days of the receipt of the notification by the State of transit³⁸.

Another control prescribed by the Bamako Convention over its members which is tighter than that imposed the Basel Convention is the requirement that states of export shall use a *shipment specific notification*. This is even where hazardous wastes having the same physical and chemical characteristics are shipped regularly

³³ Basel Convention, Article 1; Bamako Convention, Article 2.

³⁴ GATT draft Decision, 2 July 1991, (Doc.L/6872); amended London Guidelines, 25 May 1989, (UNEP Governing Council Decision 15/30) [both reported in Kwiatkowska and Soons, 1993]

³⁵ Shearer C.H. Russell, 'Comparative Analysis of the Basel and Bamako Conventions on Hazardous Wastes (Africa)', 23(1) *Environmental Law* (1993) 141 at 155.

³⁶ International Journal of Law ISSN: 2455-2194, RJIF 5.12 ; www.lawjournals.org Volume 3; Issue 2; March 2017; Page No. 07-18

³⁷ *Ibid*

³⁸ Basel Convention *supra*, Article 6(4); Bamako Convention *supra*, Article 6(4). While the Basel Convention made the provision as a proviso to the subsection, the Bamako Convention omitted the said proviso in its parallel subsection.

to the same disposer via the same customs office of entry of the State of import, and in the case of transit, via the same customs office of entry and exit of the State(s) of transit. Conversely, under similar circumstances, the Basel Convention permits the use of one *general notification* to cover a number of waste shipments. The Bamako Convention obligates Parties thereto to limit their points or ports of entry and notify the Secretariat to this effect for distribution to all contracting parties. Such points and ports shall be the only ones permitted for the transboundary movement of hazardous wastes. Aside from the stricter regime of the Prior Informed Consent, the Bamako Convention imposes more far reaching obligations regarding waste management, and enshrines the precautionary principle. Thus, under article 4(3)(f), State Parties are required, *inter alia*, to cooperate with each other to promote clean production methods, and to prevent the release into the environment of substances which may cause harm to humans or the environment without waiting for scientific proof regarding such harm. Significantly, besides criminalizing the import of hazardous wastes into Africa as well as the dumping of hazardous wastes at sea, the Bamako Convention enjoins parties to impose strict, unlimited liability as well as joint and several liabilities on hazardous wastes generators within Africa. The Basel Convention postponed the issue of liability³⁹.

c) Illegal traffic

Illegal traffic under both conventions means any transboundary movement of hazardous wastes without the prior notification or consent of the States concerned; or if consent is obtained from states concerned through falsification, misrepresentation or fraud; or does not conform in a material way with the documents; or if it results in deliberate disposal of hazardous wastes in contravention of the relevant convention and of general principles of international law⁴⁰. Although each convention requires its parties to adopt appropriate national/domestic legislation to punish and prevent illegal traffic⁴¹, the Bamako Convention went a step further to impose criminal penalties on all persons who have planned, committed, or assisted in such illegal imports.

Another noticeable difference between the Basel and Bamako Conventions relates to how to take care of an 'illegal traffic' waste. If the illegality is from the importer or disposer, the Basel Convention enjoins the state of import to ensure that the wastes are disposed of in an environmentally sound manner by the importer or disposer or if necessary, by itself within 30 days from the time the illegal traffic came to its attention or such other period as the states concerned may agree⁴². Under similar circumstances, the Bamako Convention obligates the state of import to ensure that the wastes are returned to the exporter by the importer and that appropriate legal proceedings be taken against the contravenor(s). On the other hand, if the illegality is from the exporter or generator, both conventions enjoin the state of export to ensure that the wastes are taken back by the exporter or the generator or if necessary, by itself⁴³. However, only the Basel Convention went further to provide that where none of these measures is practicable, the state of export shall ensure that the wastes are disposed in accordance with the provisions of the convention within thirty days from the time the illegal traffic came to its attention or such other period as the states concerned may agree.

d) Dissemination of Information

Although both conventions underscore the importance of information dissemination in the regulation of transboundary movement of hazardous wastes, a number of differences exist in their respective provisions. On the obligation to inform states vulnerable to risk to human health and environment in case of an accident during the transboundary movement or disposal of hazardous wastes, the Bamako Convention imposes an outright duty to inform states in such circumstances, while the Basel Convention premised its obligation with the phrase, 'whenever it comes to their knowledge'. This additional phrase in the Basel Convention whittles down the potency of the obligation, since a state can easily hide under the cover of unawareness of the accident or its potential danger to the human health and environment of other states. As a necessary requirement of the Prior Informed Consent mechanism, states are obliged under the Bamako Convention to send to the Secretariat copies of each notification concerning any given transboundary movement of hazardous wastes, and their response

³⁹ Basel Convention *supra*, Article 12. In order to establish a liability regime, the Fifth Conference of Parties to the Basel Convention adopted the Basel Protocol on Liability and Compensation on 10 December 1999. It is yet to come into force.

⁴⁰ Basel Convention *supra*, Article 9(1); Bamako Convention *supra*, Article 9

⁴¹ Basel Convention *supra*, Article 9(5); Bamako Convention *supra*, Article 9(2).

⁴² Basel Convention *supra*, Article 9(3).

⁴³ Basel Convention *supra*, Article 9(2); Bamako Convention *supra*, Article 9(3).

thereto. But under the Basel Convention, the notification will only be sent to the secretariat ‘when a party which considers that its environment may be affected by the transboundary movement has requested that it be done.’ Another measure found in the Bamako Convention that is more strict than its equivalent in the Basel Convention is the obligation to forward all information relating to illegal hazardous waste import activity to the Secretariat which shall distribute the same to all contracting parties, and for parties to co-operate to ensure that there is no import of hazardous wastes from a non-party to the convention.

The Basel Convention only enjoins parties to cooperate directly or through the Secretariat in order to improve the environmentally sound management of wastes and to achieve the prevention of illegal traffic. As regards the disclosure of basic information about hazardous waste movement, the Basel Convention requires states to disclose information about ‘the effects on human health and the environment’ of a proposed transboundary movement of hazardous wastes to the states concerned. The Bamako Convention adds a gloss to this obligation by requiring states to state the *potential effects* of the proposed movement on human health and environment. Unlike the expansive Bamako provision, the implication of the Basel provision is that it deals with the specific movement at hand while the long term risks of the wastes themselves are not addressed. Furthermore, article 19 of both conventions enjoins parties to inform their Secretariats and the party concerned upon knowledge of that party’s breach of the treaty. However, while this obligation is mandatory under the Bamako Convention, it is discretionary under the Basel Convention⁴⁴. Again, while the Bamako Secretariat is obligated to verify the substance of such allegation and submit a report to all the parties to the convention, no such obligation is imposed on the Basel Secretariat.

e) The Secretariats

Although article 16 of both conventions prescribes similar roles for their Secretariats, a few differences are identifiable. Besides requiring both Secretariats to communicate with focal points, competent authorities and appropriate inter-governmental and non-governmental organizations, the Bamako Convention further requires its Secretariat to communicate with *the Dumpwatch* in the implementation of the convention⁴⁵. Again, while the Bamako Convention obligates its Secretariat, with or without request, to provide parties with information on consultants or consulting firms having the necessary technical competence in the field, which can assist with examining a notification for a transboundary movement, the Basel Convention obliges its Secretariat to provide such information only upon request⁴⁶.

Another striking difference is that the Bamako Convention enjoins parties thereto to ensure that hazardous waste generators submit to the Secretariat reports regarding the wastes that they generate in order to enable the Secretariat to produce a complete hazardous waste audit⁴⁷. The audit does not only provide basic information such as types and volumes of wastes, but also seems to be a source of policy-making information, as generators are required to include statistics on the ‘effects on human health and the environment of the generation, transportation, and disposal of hazardous wastes. The Basel Convention makes no mention of hazardous wastes audit. More so, unlike the Basel Secretariat, the Bamako Secretariat is obliged to keep the issue of the transfer into Africa of polluting technologies under systematic review and to make regular reports to the Conference of the Parties.

6. The Bamako Convention: Need for a strategic repositioning

The life of a convention is not linear and the implementation may not reflect the achievement of the objectives expected by its member states. The development of the Bamako Convention, like other predecessor or sister conventions adopted in the continent, was partly motivated by African states to balance the region’s international political equation. The Bamako Convention occupies a prominent place amongst all other hazardous waste control conventions in terms of its provisions regarding the environmentally sound management and disposal of wastes. Knowing that most African countries lack the scientific capacity to ascertain the hazardous potentials of wastes, it side-tracks the requirement for scientific proof and simply requests that states should prevent the release into the environment of a substance *upon suspicion* that it may cause harm to humans or the environment.

⁴⁴ Basel Convention *supra*, Article 19; Bamako Convention *supra*, Article 19.

⁴⁵ Basel, Article 16(1)(e); Bamako, Article 16 (1) (e).

⁴⁶ *Ibid*

⁴⁷ Bamako, Article 4(3)(a).

Furthermore, the obligation placed by the Bamako Convention on its parties to promote clean production methods applicable to the entire product life cycle is a step in the right direction. It is another precautionary measure which may have the effect of forestalling the production of hazardous wastes. This provision is strengthened by the prohibition of the transfer of polluting technologies into Africa.

By adopting progressive environmental concepts like the precautionary principle and strict liability, it underscores its determination to protect the African environment from damage caused by hazardous wastes. In light of the fact that the option to refuse transboundary movement of hazardous wastes under the Basel Convention can easily be compromised in the face of hunger and debt, the Bamako Convention represents the resolve of African countries to protect its people and environment irrespective of whatever political, social or economic circumstances may be prevailing on the ground. Overall, the Convention not only prescribes environmental protection oriented provisions, it also sends a message to the world that African nations are not dumping grounds for hazardous wastes generated in other countries. As well, it has provided the impetus for similar regional instruments and similar regional instruments including the Basel Convention. In this way, the Bamako Convention has made a significant contribution to the development of the substantive and procedural regulatory regime on this subject of global concern.

The Bamako Convention was convened in reaction to the Africa's dissatisfaction with the influence of the Basel Convention to effectively protect the region's environment from being used as a dumping ground for hazardous wastes. It is obvious from the preceding analysis that the Bamako Convention has raised the bar in categorically making it clear to the international community that Africa will no longer be a ground for the dumping of hazardous and radioactive wastes generated from sources elsewhere in the world. However, a great deal needs to be reached to turn these efforts into practical realities. African leaders and its people need to muster the necessary will to support the ideals under this convention. Going forward, failure to achieve practical and efficient implementation will significantly undermine its potential as a key contributor to sound environmental protection on the continent.

Over the years, the definition of risk has evolved to cover emerging risks as well. The various treaties regulating international trade have had their mandates altered to meet the needs of the Convention and to face new challenges and to respond to the evolution that process satisfaction has produced.

Many treaties have had their basic text amended. This is the example of the Treaty of Montreal and certainly conventions on chemical products with the addition of annexes to the convention. The Bamako Convention does not only need to be explained to the Member States, but also to be operationalized by the states that have ratified it. The domestication of this convention is therefore an essential step in making it a tool for the rational management of chemicals to ban the import into Africa of hazardous waste. This domestication can serve as levers and catalyzers to mobilize national stakeholders involved in sound chemicals management around other issues of global concern such as the mercury waste, some obsolete pesticides and stockpiles such as PCB. It will also address other more diffused problems such as emissions of dioxins, furans and asbestos.

The third session of the United Nations Environment Assembly (UNEA-3), held in December 2017 in Nairobi, Kenya, with the theme "Towards a Pollution-Free Planet" culminated in the adoption of eleven resolutions submitted by Member States. Delegates also adopted, by consensus, a negotiated Ministerial Declaration, through which they agreed to address the pollution of air, land and soil, freshwater, and oceans. The outcome of the Environment Assembly provides the 193 states that gathered in Nairobi, Kenya, with scientific tools and a framework for developing national policy and legislative instruments to deal with the various forms of pollution that threaten the planet. More importantly, the unprecedented Ministerial Declaration provides a political scope through which countries can develop original and inclusive approaches to protect the planet from pollution, and to prevent or avoid activities that generate pollution⁴⁸.

It is now well accepted that the Bamako Convention goes further than other similar initiatives such as the Basel Convention and also well documented, and forecasts show that the continent's potential for using renewable energy is immeasurable. Africa has exceptional potential in terms of solar, wind resources. Africa could

⁴⁸ <http://web.unep.org/environmentassembly/report-executive-director-towards-pollution-free-planet>

therefore achieve high levels of energy services with very low carbon emissions. However, the issue of waste the management of waste from the use of batteries is already a problem in some countries. The Bamako Convention could create this framework from which the management of waste from renewable energies could be addressed.

Since entry into force of the Bamako Convention, other chemicals-related conventions such as the Stockholm, Basel and Rotterdam conventions have evolved into operational convergence through the synergy process. Although the Basel Convention has organic links to the Bamako Convention, it is quite obvious that a synergy process between the two should use the approach of '*Transcriptive Synergy*'. This presents an opportunity to redefine the way the convention is positioned in order to foster its implementation. In light of this, it is possible to leverage the Convention as a platform for a pollution free-Africa, in line with the objectives of the African Union Agenda 2063, the Sustainable Development Goals (SDGs) as well as the resolutions adopted at the third United Nations Environment Assembly.

7. Proposed solutions

- a. **Establish national platforms involving all relevant stakeholders to develop Bamako Convention National Action Plans.** To enshrine the principles of good governance, participatory and transparent approaches in the implementation of a national Bamako Convention strategy. In addition, to integrate, as far as possible and as appropriate, hazardous waste issues into relevant sectoral or cross-sectoral plans, programmes and policies to serve as an effective framework for the implementation of the provisions of the Convention;
- b. **Develop technical expertise as a means to strengthen implementation.** African countries face particularly acute capacity constraints in implementing hazardous wastes related obligations at the national and regional level. Most African countries have spiraling levels of poverty, massive development needs and limited technical capacity to deal with hazardous waste problems. Regulating and managing hazardous wastes under such circumstances is clearly remains a substantial challenge;
- c. **Share best practices and lessons learned within and between African countries.** This is intended to support the implementation of the Bamako Convention, by highlighting the experiences of a number of activities on the continent, the breakthroughs achieved through research, and any other agreements that deal with the prevention, safe use and disposal of hazardous wastes;
- d. **Build adequate capacity to act.** This will result in improved financial, human, scientific, technical, and technological capacity to implement the Bamako Convention and allow for adequate implementation of the priority actions included in the national strategies and action plans;
- e. **Highlight the economic, social and environmental impacts.** Conducting an inventory of the extent of hazardous wastes will help to determine the roles and responsibilities of various stakeholders in the management of such wastes, for example, the related roles of policy makers, municipalities, etc.;
- f. **Identify and set up operational national competent authorities and focal points.** Designate focal points that receive notifications in case of a state of transit and also a national body to act as a *Dumpwatch* that can co-ordinate with the concerned governmental and non-governmental bodies;
- g. **Develop Public-Private partnership.** Interdisciplinary initiatives that combine research, training and technology transfer model in the areas of focus of the Bamako Convention should enable the engagement of all stakeholders including marginal/affected groups.

8. Recommendations for possible Actions:

The following actions are recommended for adoption by the Conference of the Parties in order for the Bamako Convention to play the role for which it was established:

For the Parties:

1. To domesticate the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa;

2. To develop national hazardous wastes policies/strategies, frameworks and action plans (designed to implement the Bamako Convention). These plans and strategies should provide not only a national legal and political context for the development and implementation of hazardous waste policies but also raise awareness about key issues and build local capacity and community-based processes that will facilitate future debates about hazardous waste issues;
3. To increase the awareness of policy-makers of the critical impact of hazardous wastes to economic, social and environmental development in order to increase investments in the management of hazardous wastes;
4. To strengthen training, research programmes, and technological transfer that are directly related to prevention and mitigation of hazardous wastes through enhanced investments by both the public and private sectors;
5. To build awareness on the environmental and health benefits on compliance with the provisions of the Bamako Convention and the practical opportunities that could be created in all African countries and disseminate appropriate relevant information to national stakeholders through the organization of restitution workshops, exchanges visits, platforms, etc...

For the Secretariat:

1. To seek, subject to the availability of resources, comments from Parties and others on areas in which legal clarity could be improved as a means to enhance implementation of the Bamako Convention and, based on those comments, to prepare a report, including recommendations, for consideration and possible adoption by the Conference of the Parties at its next meeting;
2. To provide Parties, upon request and within available resources, with legal and technical advice on matters pertaining to the implementation and enforcement of the provisions of the Bamako conventions, including on the development and updating of national legislation or other measures;
3. To develop examples of the integration of the provisions of the Bamako Convention into national legal frameworks and to organize training activities, subject to the availability of resources and in collaboration with partners, to assist Parties, in the development of national legislation and other measures to implement and enforce the provisions of the convention.

Urges the African Ministerial Conference on the Environment (AMCEN):

While also pursuing the implementation of the AMCEN *Decision 16/2 paragraphs 18 and 19; the Arusha Declaration of the 14th session of AMCEN held in 2012 - paragraphs 19 and 31 of the Declaration and The Cairo Declaration of the 15th session of AMCEN held in 2015 - paragraph 53 of the Declaration:*

1. To endorse the following decision aiming at positioning the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, as a mean to strengthen its effective implementation and a tool *contributing to make Africa a platform for a Pollution Free Africa;*
2. To encourage African countries who have not ratified yet to do so and call upon those who ratified to domesticate the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa;
3. To call upon all African countries to develop national hazardous wastes policies/strategies, frameworks and action plans (designed to implement the Bamako Convention). These plans and strategies should provide not only a national legal and political context for the development and implementation of hazardous waste policies but also raise awareness about key issues and build local capacity and community-based processes that will facilitate future debates about hazardous waste issues;
4. To call upon all African countries should increase the awareness of policy-makers of the critical impact of hazardous wastes to economic, social and environmental development in order to increase investments in the management of hazardous wastes;

5. To call upon all African countries to strengthen training, research programmes, technological transfer that are directly related to prevention and mitigation of hazardous wastes through enhanced investments by both the public and private sectors;
6. To encourage all African countries who have ratified the Basel convention to also ratify the Bamako convention as both are complementary and to encourage establishment of programmatic and strategic synergy between both conventions.