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TOXIC COLONIALISM IN NIGERIA

Masters' Thesis

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INTRODUCTION

As most of the world, Nigeria is conscious about its contributions to the increasing rate of global pollution and the effects of this on her environment and natural ecosystems. The concerns about climate change and global warming brought on by human activity and pollution have spurred many countries into action to carry out active countermeasures to slow or reverse the effects of many years of human degradation of the environment.

Apart from the domestic problems associated with waste management in Nigeria, that is the waste generated within the country, there is another matter at the forefront of combating waste management issues and that is the problem of importation of waste from developed countries. Whether bio waste, non-degradable or chemical waste, there is an ongoing problem of nations carrying out their waste materials to the sea, either to dispose of them in the water body or to transport them to underdeveloped countries to save on costs of proper waste management.

In recent times, coasts and beaches have been filled with tons of refuse and waste materials, ship wrecks, washed up from the vast ocean where they had been deposited.¹ There have also been multiple instances of injuries sustained by individuals and animals from waste materials in the oceans, leading to many anti-plastic movements.² The waterbodies are not the only part of the environment being threatened by the epidemic of waste production and transportation, the land is also undergoing grievous harm that will cause reprehensible havoc in the future. This situation is escalating in Nigeria because the country does not have to just deal with the waste produced within its territory, but also has to carter for the waste being imported through its territorial waters from developed countries.

The Nigerian government became aware of the need to protect its environment from the Koko saga year. The Koko Dumping Incident has been described as one of the most tragic issues in Nigeria. This incident occurred in September 1987 where more than 18,000 barrels of hazardous waste, which include but were not limited to asbestos, ketone, dioxins and PCBs³ were dumped at Koko, Delta State, Nigeria. The incident was carried out by an Italian, Mr. Rapheli Gianfranco, who bribed one of the chiefs of the village to enable him to use the village as a dumping ground for waste products.⁴

¹ A. Wade. Plastic paradise: The shocking extent of ocean waste. *The Engineer*. 19.05.2017. (14.03.2020)

² Killed & Injured by plastic pollution: Individual animal stories, *Surfers Against Sewage*, 2.02.2019 (19.02.2020)

³ Polychlorinated biphenyls.

⁴ T. Akingbade, Nigeria: On the Trail of the Environment, Indiana, Author House 2009. p.10.

The continuous dumping on the seaport of this village led to environmental problems for the indigenes of the community and led to rampant sickness and stillbirths in the community.⁵ This incident is described as the case which informed the Nigerian government of transboundary waste movement to its country and the necessity to act on discharge of waste and pollution in general.

In Nigeria, the coastal regions and the Niger Delta carry the country's largest deposits of crude oil. The Niger Delta region is mainly known for its oil exploration and oil spillage disasters. This, though it has taken a prominent place in the international sphere and awareness considering pollution of the seas and water bodies, is not the only problem faced in this region of the country. Water pollution and dumping of waste material, abandoned ships and contaminants along the Nigerian coast and in her territorial waters have been an ongoing challenge. These acts combined with the regular and unchallenged oil pollution in the Niger Delta waters have led to the extinction of many aquatic and marine life indigenous to the area. The water is greatly unsafe and, in some communities, toxic to all forms of life.

Nigeria in an effort to combat unsafe and unregulated dumping which had led to the loss of human and aquatic lives in the region, has enacted several legislations to regulate the disposal of waste along the country's coastal lines and territorial waters. Nigeria is also party to some environmental conventions such as the Basel Convention which seeks to primarily combat transboundary waste. The main legal question considered in this academic literature is whether the available legislations are enough, in terms of their provisions to tackle the problem of transboundary waste movement into Nigeria.

The objective of the thesis is to examine the existing regulations on the protection of the Nigerian environment against importation of waste from developed countries. To succinctly address this objective, the thesis will examine the legislations made to curb the practice of transboundary movement of waste and then proceed to make recommendations to aid implementation which will bring about an end to the menace tormenting the country.

This thesis contributes to the legal literature on importation and management of waste and strongly advocates for marine preservation and in extension, environmental protection and environmental rights by reviewing and checkmating the present rules. Also, it scrutinises their relevance to solving the environmental impediments the country is facing.

⁵ E. Eguh. Regulation of Transboundary Movement of Hazardous Wastes: Lessons from Koko. (1997) 9 RADIC, 130, p. 141

The hypothesis of the study posits that the available national legal jurisprudence on the protection and preservation of the Nigerian environment against importation of waste from developed countries are not adequate on the legal front to protect and preserve the Nigerian environment.

In conducting this research, a mixture of methodology was employed to ensure that the desired result was achieved. Descriptive and analytical research methodology was employed through a careful evaluation of the legal regime of waste management represented in international instruments and national laws and regulations in Nigeria. This research is essentially library based with reliance placed on relevant primary and secondary source materials such as the Basel Convention, the UNCLOS, African treaties such as the Bamako convention and national legislations such as the Nigerian Maritime Administration and Safety Act, available in the library and other online data bases was analytically examined.

To revitalise our environment and elevate the importance of protecting the environmental rights of its citizens, the first point of call is to provide enabling laws that can be implemented to ensure that the environment is protected and allows for sustainable development. This thesis will shed significant light to the gross inadequacies present in the laws regulating the environment in Nigeria. The significance of this work is to awaken the consciousness of legal and political stakeholders. This thesis provides an insight to the inadequacies of the present legislations and, to be the foundation to build a proficient and effective legal and regulatory framework on waste management in Nigeria.

This thesis is divided in three major chapters. The first chapter introduces the thesis by describing the concept Toxic colonialism, the history, environmental impact and legal framework surrounding this term in the international dimension will be accessed and evaluated. This first chapter is important in that it provides a large spectrum of the problem toxic colonialism and provides the necessary background to the problem faced by developing nations, especially Nigeria as regards the continuous movement of waste to their territory.

Chapter two investigates the issue of e-waste and dumping of shipwrecks at the Nigerian waters and at the coastline. Questions pertaining to the sufficiency of the available legislations and possible agencies and bodies to implement the existing legislations will be looked at. This part of the work looks at the impact or lack thereof that the available laws have had on the protection of the environment as it relates to proper protection of the Nigerian environment against external waste and elimination of dumping of shipwrecks at the Nigerian waters and coastline.

As a continuation, the third chapter looks at defects in the current legal framework, the specific issues that the framework has made possible such as the fraudulent concealment of illegal shipments of waste will be considered. The problem of lax governmental polices and corruption will be accessed. The writer concludes the thesis by providing a rundown of the work done, recommendations on what ought to be done on the legislative front to develop and eradicate the problem of transboundary waste movement into Nigeria was provided and if implemented, will enhance the protection and preservation of the Nigerian environment.

Keywords: Environmental law, Nigeria, Waste transport, E-waste, Dumping of waste.

1. TOXIC COLONIALISM

Sustainable waste management is an important subject matter that countries are concerned about because the present and future realities show that it is one that requires skills and expertise to be effectively managed. The inequality existing between countries reveals that the more economically developed a country is, the better equipped it is to address the problems associated with effecting waste management.

Developed countries who are better skilled at tackling waste management have realised that it is an expensive venture to take on, for example, 11 per cent of US Superfund priority contaminated sites designated for mandated clean-up were caused by recycling operations. Also, existing secondary metals smelters in North America are some of the most notorious and significant point-source polluters of both heavy metals and persistent organic pollutants. It is largely due to the expense and difficulty of operating such facilities cleanly that no new smelters are planned in that continent and the secondary smelting industry is instead migrating to developing countries⁶

Since waste management is expensive, cheaper solutions have been the go-to for developed countries and the obvious cheaper result is to ship this waste to other countries which are underdeveloped for far less the price it would cost to properly dispose of the waste in the country of origin. This idea was also suggested to be a probable solution by Professor Lawrence Summers.⁷

Toxic colonialism is a situation where wastes produced by developed countries are inexpensively disposed in underdeveloped states.⁸ The phrase was formulated in 1992 by Jim Puckett⁹ from Greenpeace.¹⁰ when industrial wastes were dumped on the territories of the third world by the West.¹¹ This term was used in the 1980s when developed nations started to beef up regulations and legislation about health standards and environmental consciousness which later resulted in the sending of such wastes to developing nations. In this process, dirty

⁶ J. Puckett, Recycling: no excuse for global environmental injustice, Basel action Network, September-October 2003.p. 3.

⁷ B. Enwegbara, Toxic colonialism, Lawrence Summers and Let Africans Eat Pollution, -121 The Tech online (MIT) Edition 2016 (121), 6.02.2001.

⁸ M. Nicola & M. Heijden, Corporate human rights violations, The feasibility of civil recourse in The Netherlands, Brooklyn Journal of International Law, 2009 Vol 33:3, p. 834

⁹ Executive Director and Founder of Basel Action Network, He has been an Environmental Health and Justice advocate for 28 years and he served as the Greenpeace International Toxic Director.

¹⁰ Greenpeace is a non-governmental environmental organization with offices in over 55 countries and an international coordinating body in Amsterdam, the Netherlands. Greenpeace was founded in 1971 by Irving Stowe and Dorothy Stowe, Canadian and US ex-pat environmental activists.

¹¹ T. Tam, Thistle Diary: Toxic wastes and other ethical issues, New Scientist 1992, p.50

industries are migrated to less developed countries. Sadly, Africa is regarded as the first resort for developed countries especially European countries when it comes to their toxic waste disposal.¹²

Toxic colonialism occurs mainly because of the less disposal cost on the part of the developed countries and the need for cash in the underdeveloped countries. Furthermore, the recipients of such toxic wastes have no political organization, capital, resources and knowledge to resist such actions. Therefore, human rights, lives and the environment are adversely affected by such a process.¹³

Western countries often hide in the name of recycling to ship these wastes into Africa and Asia especially when its treatment is regarded to be of no profit or rather too polluting in their environment. Sometimes it could also be an agreement which is signed by the underdeveloped state and the developed state at other times it could be accepted by scrap merchants, corrupt politicians or civil servants who are underpaid to take charge of the garbage and dump them off in a given area for a few dollars.

The practice of toxic colonialism stems from developed countries taking advantage of developing countries and their surrounding environment in a negative manner. This act has continued to grow based on the incapability of governments of developing countries to access the situation as a problem. An offspring of toxic colonialism is the dumping of waste and other forms of discharges in seas of developing countries.

These toxic wastes can take varying forms ranging from poisonous metals, wastes from hospitals, toxic sludge, expired chemicals, radioactive wastes, pesticides, etc destined to be incinerated, buried or recycled, unwanted electric products are also part of the wastes disposed of in Africa.

In the coming subchapter, the history, causes and impact of Toxic colonialism will be looked at in more detail.

¹² B. Andreas & K. Stairs, Pops in Africa, Hazardous waste trade 1980-2000, obsolete pesticide stockpiles, a Greenpeace Inventory, Hamburg, Greenpeace International, 2000, p 4

¹³ T. Reed. Toxic Colonialism, Environmental Justice and Native Resistance in Silko's Almanac of the Dead. Washington: Washington University Press 2009, p. 25-42

1.1. History, Causes and Impact of Toxic Colonialism

Numerous advancements gave rise to harmful waste dumping in underdeveloped countries. In the mid-1980s, industrialized countries could not process the excessive mechanical toxic waste it was creating. Accordingly, the cost of management increased dramatically. To keep their environment safe and health-friendly, tough regulations on toxic waste management were enacted.

Several deceitful waste management companies in Europe considered this to be a profitable business. Around then, many Africa nations were experiencing periods of economic downfall. They turned to send their waste to Africa in return for monetary palliatives. These companies tricked some African countries into consenting to contingent aid arrangement with them. It turned into an alibi for dumping hazardous synthetic substances.

The Switzerland-based logistics company, Intercontrat, was at the forefront of negotiating toxic-dump deals with many nations in Africa. Operating from Switzerland meant it was exempt from adhering to the European Community stipulation of informed consent. As a result, some nations like the Benin Republic, for peanuts, signed such deals without fully knowing the grave health implications. Intercontrat and many other companies in the West misleadingly labelled the toxic waste they sent to Africa.¹⁴

With the poor state of economy in African countries, some have admitted that they are sometimes financially induced to accept the shipment of toxic wastes into their territories from the industrialized world.¹⁵ In 1988, European and American waste brokers offered Gumea-Bissau \$600 million to import fifteen million tons of industrial waste over a five year period. The total payment would have represented more than thirty-five times the country's annual export earnings. But as a result of pressure from other members of the Organization of African Unity (OAU), Guinea-Bissau, in June 1989, announced its intent to withdraw from all the toxic waste agreements.¹⁶

Similarly, officials in Benin had signed a contract on January 12, 1988, with SESCO, a British company based in Gibraltar to import between one and five million tons of toxic waste at the price of \$2.50 a ton. In addition, SESCO promised to install a waste treatment plant free of charge in Benin. Benin government officials entered into another contract with a French

¹⁴ A. Omozuwa, Rethinking Koko Saga, Ships and Ports, 27.11.2017.

¹⁵ H. Anderson, op government official in Guinea-Bissau justified his country's acceptance to import toxic wastes by stating, "we need the money." The Global Poison Trade, NEWSWEEK, 7.11 1988, at 66. Cited in V. Okaru, The Basel Convention: Controlling the movement of Hazardous wastes to developing countries. 4 Fordham Environmental Law Review (2) 2011, p. 141.

¹⁶ Ibid, p. 142.

company to dispose of nuclear waste from France. However, during the OAU summit in May 1988, after enormous opposition and strong pressure from African countries, Benin officials canceled their toxic waste contract with both the British and French companies.¹⁷

Demographic and geological factors have prevented some industrialized countries from building adequate disposal facilities and, as a result, their desire to export to developing countries has increased. For example, Denmark, Greece and Luxembourg cannot afford to build complex waste disposal sites due to their small size. The volume of hazardous wastes is so considerable that such complex facilities are economically inefficient.¹⁸ Moreover, the Netherlands bans landfills because of its geological and hydrological conditions, including the high water table.¹⁹

Nigeria's first involvement with toxic colonialism came to light in the Koko saga which occurred in 1988 when 18,000 barrels of Italian hazardous wastes were dumped in a small town called Koko in then Bendel State now Delta State, Nigeria. Mr Gianfranco Raffaelli and Mr Desiderio Perazzi, both Italians, paid Mr Sunday Nana, a Nigerian, 100 dollars a month to rent his underdeveloped plot of land in a residential area. They then imported waste using the Koko port and used the rented land as the dumpsite for the waste. This was brought to light by the Sunday vanguard Newspaper and some students studying in Italy at the time. The waste when it leached from the drums where it was stored, caused deaths as well as some chemical burns. Pressure from the Nigerian government under the spotlight of international media made the waste to be shipped back to Italy for appropriate disposal.²⁰

Before the Koko discovery, Nigeria was at the forefront of dissuading African nations from accepting toxic waste in exchange for aid. The Babaginda administration²¹ nobly harnessed the auspices of the Organization of African Unity (OAU) now African Union (AU), and the Economic Community of West African States (ECOWAS) to educate African leaders about the dangers of toxic terrorism. Hence, the then 16 member states of ECOWAS vowed to enact tough penalties for toxic dumpers, and established surveillance systems and dump watch. Toxic waste dumpers around the world knew about Nigeria's vehement opposition to the new norm, and other forms of predatory neo-colonial enterprises²².

¹⁷ Ibid, p.142.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ 8th head of State of Nigeria between the period of August 1985- August 1993.

²² A. Omozuwa, Rethinking Koko Saga, Ships and Ports, 27.11.2017

One would think that with the level of exposure and awareness that the act of exporting waste has amassed for itself, and laws agreed upon by developed and underdeveloped countries, that there would be a reduction in the amount of waste transported to Africa, or better still, an absolute ban on transboundary waste, the reality seems to be exactly opposite, developed countries found a smarter way to ship waste to Africa, specifically, Nigeria and it has been rebranded to fit the description of a trade relationship.

In August 2006, the oil and cargo transport Probo Koala set sail for the west shore of Africa. Its cargo comprised of, inter alia, a dangerous blend of cleaning synthetic concoctions, gas, and unrefined petroleum slop. Under the front of the night on August 19, 2006, the savage load of the Probo Koala was scattered onto the boulevards of Abidjan, the capital of the Ivory Coast, in fourteen areas around the city—close to vegetable fields, fisheries, and water reservoirs.

This brought about significant environmental destruction and genuine human suffering; it is evaluated that twelve individuals died and more than 9000 fell ill. Before cruising to the Ivory Coast, the Proba Koala had called at ports in Europe, including the port of Amsterdam for the Netherlands. There, Dutch specialists stopped the emptying of the waste and recommended that the waste be discarded at a special property in Rotterdam for around US\$250,000. For officials at Trafigura Beheer B.V. — a global oil exchanging organization domiciled in the Netherlands with yearly deals of US\$28 billion, which had contracted the Probo Koala—the removal cost was too high. They decided to rather send the boat on its route and to dump the waste somewhere else: Africa.²³

In Nigeria, In February 2017, the media was awash with news reports that huge dumps of toxic wastes were found in Koko. Residents of Koko were alarmed to notice the conveyance of waste in barges and trucks. They contacted relevant authorities, the oil waste management company, Ebenco Global Link Ltd²⁴, allegedly dumped the waste. Ebenco Global Link Ltd said the wastes were meant to be recycled. It affirmed that the sludge and slurry were not toxic, however, some tests conducted have shown that the wastes are toxic.²⁵

Due to industrialization and development, toxic substances are produced sometimes as a by-product, in the course of producing commodities for man use, the trend has increased over the years as developed countries seek to achieve capitalistic economic progress, this increasing

²³ P. Bernard, et all. How Abidjan became a dump. The Guardian. 14.04.2020.

²⁴ Ebenco Global Link Ltd is a company that participates in every aspect of oil and gas business, Petroleum Depot (AGO, LPFO) Petroleum \$ Domestic waste management services, Environmental Consultants, Petroleum products marketer, pollution control services, haulage services

²⁵ A. Omozuwa, Rethinking Koko Saga, Ships and Ports, 27.11.2017.

number of toxic wastes contain substances such as electronic wastes, contaminated medical wastes, radioactive materials, old ships, incinerator ash and military equipment.²⁶ It is estimated that the global toxic wastes amount to 400 million metric tons in 2000 as against the 5 million metric tons in 1945.²⁷ This alarming increase of toxic wastes has three-quarter of them from the industrialized developed nations of the world.²⁸ As these wastes increase, there becomes a pertinent need to dispose of them thereby giving rise to toxic colonialism.

Furthermore, it is estimated that at the end of 2020, there will be a sixty per cent increase in the number of toxic wastes produced by amounting to about 194 million tons annually.²⁹ There exists, therefore, a transboundary exchange between the developed and underdeveloped nations primarily based on legal transfers as well as illegal transfers of hazardous wastes. Though the number of illegal transactions cannot be ascertained easily, there is however a concern in legal transactions as regards the rapidly increasing quantity of hazardous wastes across the globe thus toxic waste colonialism, therefore, becomes an attractive option.

The major reason why toxic colonialism thrives is that developed countries want to save cost involved in disposing of their toxic wastes while the underdeveloped and developing countries try to earn money by accepting the wastes.³⁰ There is a disparity in the cost of disposing of waste in developed and developing countries. It can take up to \$2,000 to dispose of a ton of hazardous waste in developed countries while it takes up to \$40 per ton in Africa.³¹ In the developed countries, stringent regulations are guiding the domestic disposal of toxic wastes coupled with the increasing amount of waste involved. Conversely, the underdeveloped or developing countries, there is relatively cheap land and labour for landfill operations as well as weak regulations on toxic waste disposal.³²

Illegal transactions as often seen in toxic colonialism is a quick-fix alternative because of the weak regulations and the money involved. As the underdeveloped countries seek to improve their economy, much emphasis is not placed on strict regulations and as such, they are tricked

²⁶ M. Lisa & H. French, Crimes of (a) Global Nature: Forging Environmental Treaties is Difficult. Enforcing Them is Even Tougher., *World Watch*, Sept.–Oct. 2002, p.12.

²⁷ A. P. Laura A. Decreasing Dirty Dumping, A Reevaluation of Toxic Waste Colonialism and the Global Management of Transboundary Hazardous Waste, 35 *Wm. & Mary Env'tl. L. & Poly Rev.* 581 (2011), 20.02.2020.

²⁸ H. David, J. Salzman & D. Zaelke, 3 *International environmental law and policy*, Foundation Press, 2007, Ch. 14.

²⁹ *Supra*. Ch 14.

³⁰ R. Jennifer. Note, Waste Exports to the Developing World: A Global Response, 7 *GEO. Int'l Env'tl. Rev.* 485 (1995), p. 485.

³¹ *Ibid*.

³² A. Agbor, The Ineffectiveness and Inadequacies of international Instruments in Combatting and ending the Transboundary Movement of Hazardous wastes and Environmental Degradation in Africa, -9 *African Journal of Legal Studies* (4), p. 235-267.

into accepting a higher number of toxic wastes or more types of the toxic waste much more than they can handle. These toxic wastes are most often mislabelled or classified improperly but due to the hard currency which will come out of it, they pay no attention to it.³³ The developing countries also turn a blind eye to the environmental and health dangers associated with such wastes even when told because of the huge amount of money they will get at the expense of the long-term effects.³⁴

The incidence of Love Canal in Niagara fall, N.Y in 1978³⁵ brought the devastating consequence of hazardous waste to light. Toxic wastes are very hazardous to the environment in various aspects. When the atmosphere reacts with the chemical components of the toxic wastes, the health of the people is endangered as well as impaired ecosystem. Toxic wastes which contain flammable solvents can ignite a fire at high temperature emitting toxic smoke as well as the loss of lives and properties.³⁶ Furthermore, aquatic life can be grossly impaired when these toxic wastes leak from its container, seep into the ground and from there head to the rivers and streams thereby leading to the death of marine species as well as humans. The Koko case as an instance rendered the area where the toxic wastes were deposited useless and unfit for human habitation after some deaths and injuries have been recorded.³⁷

In addition to importing hazardous wastes, African countries, particularly Ghana and Nigeria, have unknowingly imported toxic products, including beef contaminated by the Chernobyl nuclear accident in the Soviet Union in 1986. Following the Chernobyl disaster, some European farmers found Africa a convenient place to dump contaminated meat, milk and butter.³⁸

Toxic wastes can lead to adverse climatic situations. These toxic wastes, when emitted to the atmosphere, can combine with water molecules causing acid rains. These acid rains, in turn, destroy crops; animals and even human wellbeing will be compromised greatly. Also, mercury-containing wastes, when discharged into rivers and streams, it can accumulate in the tissue of fishes and as this can also lead to the death of anyone who eats fish from such sources. Expectant mothers can also give birth to deformed children when they are exposed to toxic wastes.

³³ R. Kirby, *The Basel Convention and the need for the United States Implementation*. -24 GA. J. Int'l & Comp. L. 1994, p. 283.

³⁴ *Supra*, p. 283.

³⁵ E. C. Beck; *The Love Canal tragedy*; US Environmental protection Agency Journal, January 1979. Last updated in September 2016. (06.03.2020.)

³⁶ L. Robertson, et al, *Recent Advances in Environmental Toxicology and Health Effects*. Lexington, KY: University Press of Kentucky. 2011 p. 11.

³⁷ *Supra*, p.11.

³⁸ A. Oroh, *The Toxic Bug*, African Guardian, 4.11.1989 at 22 cited in V. Okaru, *The Basel Convention: Controlling the movement of Hazardous wastes to developing countries*. 4 Fordham Environmental Law Review (2) 2011, p. 139.

Polychlorinated Biphenyl (PCB) a hazardous compound is of tremendous effect to the environment. The Koko incident had 20% of the wastes containing PCB³⁹ which had grave implications for the environment.

When PCBs which undergo biomagnification enters the water bodies, they are easily retained by organisms. This makes organisms higher up the food chain to have more concentration of it.⁴⁰ On the land too, plants can accumulate toxins through this biomagnification process from the soil or the leaf of the plant. From the foregoing, it is evident that toxic colonialism endangers the environment greatly and distorts the equilibrium of the ecosystem.

The absolute amount of Waste imported into Nigeria is unknown, it is moreover unlikely that reliable figures in this regard will ever be available. This is to be explained by several reasons: Data generation of this figure will mean that both legally and illegally imported waste would be reported which seems very unlikely to happen. Further, since waste imported are usually branded or falsely labelled as goods and useful items, e.g. fertilisers, used phones etc, there will not be classified as waste even though in reality, that is what is being imported. Lastly, the legal backing required to ensure that this occurs is lacking in varying degrees. It is either that there are no specific provisions on reporting or that there are lacunas present in the provisions provided.

Due to the upward growth of Toxic colonialism, countries have agreed on acceptable practices that should be promoted and have also outlined instances where transboundary transportation of waste can be carried out, this will be investigated in the next sub-chapter.

1.2. International Legislative Framework for Preventing Toxic Colonialism

Starting in the early 1980s, the international community sought to develop international agreements governing the transboundary movement of hazardous waste to protect developing countries from illegal dirty dumping practices.⁴¹ Over the years, countries have come together to agree on applicable terms on the relationship on acceptable behaviours concerning transboundary waste. International laws and treaties that Nigeria is either a signatory to or has ratified that relates to the transboundary movement of wastes will be looked at this subchapter. The purpose of this work is to ascertain the sufficiency of the present legislation on

³⁹ S.H. Safe S. H. Polychlorinated biphenyls (PCBs): environmental impact, biochemical and toxic responses, and implications for risk assessment. *Critical reviews in toxicology*, 1994 24(2), p. 87–149.

⁴⁰ Ibid.

⁴¹ L. Pratt, Decreasing Dirty Dumping? A Revaluation of Toxic Waste Colonialism and the Global Management of Transboundary Waste. -35 *William & Mary Environmental Law and Policy Review* 2011 (2), p.581

transboundary waste movement, to access the situation adequately, a background understanding of the available international conventions is necessary.

1.2.1. Basel Convention

One of the major reasons that the Basel Convention⁴² was passed was to put an end to toxic colonialism, The Basel convention is, in a nutshell, a law banning the dumping of hazardous waste in developing countries from the EU and the OECD countries. It is the primary international agreement which regulates the transboundary movement of toxic waste is the Basel Convention though there had been early international agreement like the 1972 Stockholm declaration.

The Basel convention came up in 1989 but was put to action in 1992. It was designed more like a trade treaty, but it represents a global acknowledgement of the toxic waste problem thereby providing a foundation for future solutions. Africa as a continent has the highest rate of undeveloped countries in the world,⁴³ The continent on its own was at risk of becoming the world's dumping ground, the Basel Convention was negotiated to ensure that this does not happen.

It was adopted on 22 March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland, in response to a public outcry following the discovery, in the 1980s, in Africa and other parts of the developing world of deposits of toxic waste imported from abroad.⁴⁴ It is said to be one of the most comprehensive global environments treaties on hazardous waste and other waste. As indicated by the Basel Convention Country fact sheet, Nigeria became a member of the Convention and confirmed it on March 13, 1991, with the equipped authority being the Federal Ministry of Environment.⁴⁵

Article 1 of the convention provides the scope of the convention to be Hazardous wastes, it went ahead to categorise hazardous waste in its annexes.⁴⁶ It excludes waste that is derived from the normal operations of a ship. The convention defined "transboundary movement" as any movement of hazardous wastes or other wastes from an area under which the national jurisdiction of one state to or through an area under the national jurisdiction of another state at

⁴²Basel Convention on the Control of Transboundary Movements of Hazardous wastes and their Disposal, 1989, 5 May 1992, No.28911.

⁴³ S Samuel, Poorest Countries in Africa Population; these are the 25 poorest countries in the world (2020-02-17). Retrieved 2020-03-06. (06.03.2020, USA TODAY 8 July 2019). (06.03.2020).

⁴⁴ Overview of the Basel Convention; Controlling transboundary movements of hazardous wastes and their disposal. Accessible in English (17.02.2020).

⁴⁵ United Nations (2014) CHAPTER XXVII. Environment: United Nations Treaty Collection. (01.03.2020.)

⁴⁶ The Basel convention has annexes I, II, III, VIII and IX. The purpose of the Annexes was to provide further elaboration as to the wastes regulated by the convention.: Secretariat of the Basel Convention. (06.03.2020.)

least two states are involved in the movement.⁴⁷The objective of the Basel Convention was to reduce the production of hazardous waste and restriction of transboundary movements of hazardous wastes by providing a regulatory system to apply where it is inevitable to move hazardous waste, in essence, it was to regulate the international trade in hazardous substances.

Article 4 of the convention that provides that parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other party of their decision according to article 13.⁴⁸ It also provides the instances where transboundary waste may be allowed to occur: where the state of which the waste emanated from does not have the facility or capacity to dispose of it in the most efficient way possible, where the waste is required as raw material for recycling or recovery industry and subject to the decisions of the sending and receiving parties in line with the provisions of the convention.⁴⁹ The convention also states that there should be the designation of a competent authority and focal point to facilitate the implementation of the convention.⁵⁰

The Annexes provides for the categories of waste to be controlled, categories of waste requiring special consideration, list of hazardous characteristics, information to be provided on notification, information to be provided on the movement document, arbitration, etc. The convention also has a protocol attached, the protocol on liability and compensation for damage resulting from transboundary movements of hazardous wastes and their disposal. The Basel convention will be looked at in more details in the preceding chapters as it relates to the transboundary movement of E-waste.

1.2.2. The United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea (UNCLOS)⁵¹ is the major convention on the regulation of the sea. Nigeria ratified this convention on August 14 of 1986.⁵² Part XII of the 1982 UNCLOS arguably represents the first attempt by the international community to link together two concerns in international policy and law-making that became evident throughout the 1970s.

⁴⁷ Article 2 of the Basel convention 1989.

⁴⁸ Article 13 of the Basel convention provides for transmission of information between the receiving and sending state on available national laws and regulations and the secretariat on yearly reports about hazardous waste transmitted.

⁴⁹ Article 4(9) of the Basel convention 1989.

⁵⁰ Article 5 of the Basel Convention 1989.

⁵¹ The United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

⁵² United Nations Treaty collection. Chapter XXI, Law of the Sea. (05.03.2020).

These were broadly speaking, the growing consensus on the need to introduce the main environmental protection principles to be mapped onto the existing jurisdictional balance between the flag and coastal states, especially within the more recent, extended maritime jurisdiction zones such as the 200 nautical miles exclusive economic zone (EEZ), as well as the jurisdiction of port states. These aims were admirably achieved through negotiations of part XII of the 1982 UNCLOS, which now establishes the main principles for marine environmental protection, as well as the balance of jurisdictional powers to control a catalogue of polluting activities between the flag, coastal and port states.

Part XII of the Convention is an important advance on earlier and other conventions relating to various aspects of marine pollution since it formulates the obligation of environmental protection in terms which are comprehensive of all sources of marine pollution. It applies to pollution from ships, land-based sources, seabed operations, dumping and the atmosphere, and provides the framework for the series of treaties, both global and regional.⁵³

Part XII of the 1982 UNCLOS, while not providing specific rules and standards regarding the activities it aims to regulate, nevertheless lays down the broad legal framework within which all law-making on the marine environment must now take place. Article 192 provides for a general legal obligation upon all states to protect and preserve the marine environment. Indeed, since the obligation laid down in Article 192 is given implicit priority over the more traditional sovereign rights of states to exploit their natural resources provided in Article 193, it is arguable that these provisions represent a stronger statement for the sustainable development of the world's natural resources than the more widely known principles enunciated in the 1972 Stockholm and 1992 Rio declarations.

Thus, these provisions for marine environmental protection represent the culmination and law-making process that affected several fundamental changes in the international law of the sea. Of these perhaps the most important is that pollution in the form of dumping waste or discharges can no longer be regarded as implicit freedom of the sea; rather, the diligent control of all sources to prevent pollution is now a matter of comprehensive legal obligation affecting the marine environment as a whole, and not simply to safeguard the interests of other states in being protected from pollution damage.⁵⁴

⁵³ David M.O. (2010) *The 1982 UN Convention on the Law of the Sea and the Marine Environmental Protection*; Research handbook on International Environmental Law. The USA, Edward Elgar Publishing Limited, p. 569.

⁵⁴ *ibid*

Article 1 of the 1982 UNCLOS provides that “dumping is any deliberate disposal of wastes or other matter from vessels, aircraft, platforms or other manmade structures at sea”⁵⁵ and it went ahead to state that “any deliberate disposal of vessels, aircraft , platforms or other man-made structure at sea is to be regarded as dumping.”⁵⁶ States who have agreed to the provisions of this conventions have a duty to ensure that their marine environment and that belonging to other countries are not deliberately used as dumping ground for shipwrecks as it is a cheaper alternative to proper recycling.

1.2.3. London Convention on Marine Pollution

The London convention or LC-72⁵⁷ “is a treaty which seeks to address the problem of deliberate disposal at sea of wastes or other matter from vessels, aircraft, and platforms. But it does not cover discharges from land-based sources such as pipes and outfalls, wastes generated incidental to the normal operation of vessels, or placement of materials for purposes other than mere disposal, providing such disposal is not contrary to aims of the convention”.⁵⁸ This convention birthed the 1996 Protocol to the convention on the prevention of marine pollution by dumping of wastes and other matter, 1972 (as amended in 2006). Article 23 of the protocol states that “this Protocol will supersede the Convention as between Contracting Parties to this Protocol which is also Parties to the Convention.”⁵⁹

The objective of the London Convention and Protocol is to promote the effective control of all sources of marine pollution. Contracting Parties shall take effective measures to prevent pollution of the marine environment caused by dumping at sea⁶⁰. The convention prohibits the dumping of certain materials such as high-level radioactive wastes and biological warfare agents, ocean disposal of concentrated heavy metals and synthetic materials are also prohibited.⁶¹

The purpose of the London Convention is to control all sources of marine pollution and prevent pollution of the sea through the regulation of dumping into the sea of waste materials. A so-

⁵⁵ Article 1 (5)(a), The United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

⁵⁶ Ibid.

⁵⁷ Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972. Vol.1046,1-5749

⁵⁸ Anonymous. Various conventions on Marine pollution. GK Today, 01.12.2016. <https://www.gktoday.in/gk/various-conventions-on-marine-pollution/> 11.02.2020.

⁵⁹ Ibid.

⁶⁰ See articles I and II of the Convention and article 2 of the 1996 Protocol to the convention on the prevention of marine pollution by dumping of wastes and other matter, 1972(as amended in 2006).

⁶¹ M.A Zeppetello, National and International Regulation of Ocean Dumping: The mandate to terminate Marine Disposal of contaminated sewage sludge. 12 Ecology Law Quarterly (1985) p. 619-664

called "black- and grey-list" approach is applied for wastes, which can be considered for disposal at sea according to the hazard they present to the environment. For the blacklist items dumping is prohibited. Dumping of the grey-listed materials requires a special permit from a designated national authority under strict control and provided certain conditions are met. All other materials or substances can be dumped after a general permit has been issued.

The purpose of the Protocol is similar to that of the Convention, but the Protocol is more restrictive: application of a "precautionary approach" is included as a general obligation; a "reverse list" approach is adopted, which implies that all dumping is prohibited unless explicitly permitted; incineration of wastes at sea is prohibited; export of wastes for dumping or incineration at sea is prohibited. Extended compliance procedures and technical assistance provisions have been included, while a so-called transitional period allows new contracting Parties to phase in compliance with the Protocol over five years, provided certain conditions are met.⁶²

1.2.4. International Convention for the Prevention of Pollution from Ships (MARPOL)

MARPOL 73/78⁶³ is the international convention for the prevention of pollution from ships, 1973 as modified by the protocol of 1978, which entered into force on October 2, 1983.⁶⁴ It is one of the most important environment conventions on marine pollution and it prevents the pollution from an oil spill, Noxious Liquid substances carried in Bulk, Harmful substances carried in packaged form, Sewage, Garbage and Air pollution. It centres around minimizing the pollution of the seas, including dumping, oil and exhaust pollution.⁶⁵

The International Convention for the Prevention of Pollution from Ships (MARPOL) is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. The Convention includes regulations aimed at preventing and minimizing pollution from ships - both accidental pollution and that from routine operations - and currently includes six technical Annexes. Special Areas with strict controls on operational discharges are included in most Annexes⁶⁶

MARPOL 73/78 among others sets down prerequisites for the development and building of boats, including oily- water isolating and separating gear, segregated ballast tanks (SBT),

⁶² Anonymous, Convention on the prevention of marine pollution by dumping of wastes and other matter. International Maritime Organisation. 2010

⁶³ International conventions for the prevention of Pollution from ships 1973. 1340. 22484.

⁶⁴ International Maritime Organization, MARPOL Conferences. (29.04.2020)

⁶⁵ Anonymous. Various conventions on Marine pollution. GK Today, 01.12.2016. (11.02.2020)

⁶⁶ International Convention for the Prevention of Pollution from Ships (MARPOL) Adoption: 1973 (Convention), 1978 (1978 Protocol), 1997 (Protocol - Annex VI); Entry into force: 2 October 1983 (Annexes I and II

devoted clean ballast tanks (CBT), oil release checking and control frameworks, crude oil washing systems (COW). It additionally set down criteria for the release of oil from stabilizer water and tank washings of oil tankers, and from apparatus room bilges everything being equal.⁶⁷ The implementation of the convention has a significant economic and specialized impact.

Main technical problems in the implementation of Annex I are the absence of reception facilities in many ports globally and lack of consistent and accurate oil content meters. The problem seems to be serious in Special Areas, like the Mediterranean Sea, where the discharge of oily wastes is prohibited except for segregated and clean ballast.⁶⁸

The MARPOL 73/78 Convention is a far-reaching and comprehensive instrument which strengthens the existing requirements in respect of oil and also incorporates new requirements in respect of other harmful substances. The effective implementation of the MARPOL 71/78 would need a resolution of some complex technical problems and this is the main work of the MEPC⁶⁹ of IMO⁷⁰ The MARPOL 73/78 show, in general, is an extensive and exhaustive instrument which fortifies the current necessities regarding oil and joins new necessities in regard of other hurtful substances.⁷¹

1.2.5. African Conventions

Even with the international conventions that had been made, African countries needed to come together to agree on transboundary waste movement, this was due to mainly two reasons: 1. The international conventions provisions were not satisfactory because it does not only provide for the wellbeing of Africa but also for developed countries, for example, the Basel conventions still allowed the exportation of waste to underdeveloped countries once certain conditions have been established, it would not afford to African countries adequate protection from the transboundary movement of hazardous wastes. Africa had advocated for a complete prohibition of transboundary movement of hazardous wastes rather than the development and adoption of

⁶⁷ I Djadjev, *The obligations of the carrier regarding the Cargo*, Springer International Publishing 2017.

⁶⁸ M. Karim, *Environmental pollution from Shipbreaking Industry: International law and national legal response*. -22 *Georget Int Environ Law Review*, p. 185-240. Cited in A. Ofem; *An Examination of the Effectiveness of the Implementation of the Marpol 73/78 Convention in Nigeria*. World Maritime University, Malmo Sweden, 2017. p 11.

⁶⁹ Marine Environment Protection Committee.

⁷⁰ International Maritime Organisation.

⁷¹ A. Ofem; *An Examination of the Effectiveness of the Implementation of the Marpol 73/78 Convention in Nigeria*. World Maritime University, Malmo Sweden, 2017. p 11.

mere regulation or control⁷². 2. Due to the impoverished economic situation of African nations, there was a high probability that they would agree to be dumpsites for developed nations for immediate financial benefits. The Conventions that are essential to consider are the Bamako Convention the Lome IV Agreement and Cotonou Agreement.

The Bamako Convention⁷³ is an offshoot of the Basel convention but was agreed by 53 members of the Organisation of African Unity.⁷⁴ The convention bans all importation of toxic waste generated outside of the OAU for recycling or disposal. It covers both hazardous and radioactive wastes, and the prohibition of waste movement in this convention was irrespective of the reason, recycling included, Recycling was the contention utilized by many developed nations to exploit the monetary neediness in Africa. One of the objectives of the Bamako Convention is to put an end to this, at least in theory.⁷⁵

The Bamako Convention was formed to provide more efforts by the treaty to prevent the transboundary movement of waste to member countries and African countries in particular. The convention was enacted to prevent the consistent acts of toxic colonialism performed by developed countries on developing countries. The Convention also imposed an outright ban on the import of hazardous waste to its member countries. This importation, if any will be declared as a criminal act and the defaulting party can be convicted in a court of competent jurisdiction.

Disputes between member countries are either resolved through the process of arbitration or the parties to the convention must submit to the jurisdiction of the International Court of Justice. Parties are also required under the provisions of this treaty to reduce the discharge of waste in their various countries and also ensure that hazardous wastes are not exported to other countries. The Convention encourages member countries to liaise and co-operate with each other to improve and achieve an environmentally sound management of hazardous waste. Nigeria is party to the Bamako Convention which it signed on the December 22, 2008.⁷⁶ Although Nigeria is a party to this convention, the country has not ratified and domesticated the provisions of this treaty into its national laws.

Bamako Convention permits the transboundary movement of hazardous wastes generated within Africa. This transboundary movement, however, is subject to some stringent regulatory

⁷² A. Agbor, *The Ineffectiveness and Inadequacies of International Instruments in Combating and ending the Transboundary Movement of Hazardous Wastes and Environmental Degradation in Africa*. -9 *African Journal of Legal Studies* 2016(4), p. 235-267

⁷³ *Bamako Convention on the Ban of the Import to Africa and the control of Transboundary Movement and Management of Hazardous Waste Within Africa*. Bamako, 30.01.1991.e.i.f 22.04.1998.

⁷⁴ *Ibid.*

⁷⁵ *Supra*, p. 235-267

⁷⁶ UNEP, *The Second Conference of the Parties to the Bamako Convention*, UNEP (24.03. 2020)

controls. The Convention insists on specific shipment notification notwithstanding the frequency or characteristic similarity of the wastes being carried. This ensures proper monitoring of individual wastes shipment. It also safeguards against the gullibility to abuse that the general notification under the Basel Convention is susceptible to. Also, specific provisions on strict, unlimited, joint and several liability of persons and the punitive measures against persons involved in illegal traffic and generation of wastes act as a deterrent against engaging in such act of criminality.⁷⁷

Lomé IV Agreement⁷⁸ was agreed upon by African, Caribbean and Pacific States,⁷⁹ for economic development, assistance, and cooperation between the EC and the ACP states. In light of the call by the ACP nations to ban toxic waste dumping in their countries by developed countries, included is a provision prohibiting the export of all hazardous and radioactive waste from the EC to any ACP state and banning the import by the ACP countries of such waste from any country. Hazardous wastes subject to the prohibition of Lomé IV agreement include wastes listed in Annex I and II of the Basel Convention, and thus include household wastes and incinerator residue therefrom.⁸⁰

Cotonou Agreement⁸¹ succeeds the previous Lomé IV convention which had expired in February 2000.⁸² It was entered into by the African, Caribbean and Pacific States, they agreed to cooperate on environmental protection as well as utilizing sustainable and managing natural resources with respect to transportation and disposal of toxic wastes. Whereas the Lomé IV convention contained provisions on total transboundary transportation of waste to ACP countries, the Cotonou agreement abandons the approach on the trade ban and rules on the transboundary shipment of hazardous waste were not provided for. The agreement focused on cooperation for environmental protection and suitable utilisation and management of natural resources. The Cotonou agreement weakened the Lomé IV convention as it removes the total ban.

From the review of the international conventions for preventing Toxic colonialism, there are salient observations; 1. The international body is concerned about the continual movement of waste produced in developed countries to underdeveloped countries, the idea of coming together to reach a consensus on the procedure to follow in achieving transboundary waste

⁷⁷ Ibid.

⁷⁸ IV ACP-EEC Convention Lomé, 15.12.1989.

⁷⁹ Organisation of African, the Caribbean and Pacific States, <http://www.acp.int/node/7> (15.04.2020)

⁸⁰ Supra, art.39.

⁸¹ 1.04.2003

⁸² A. Dunlop, What Future for Lomé's Commodity Protocols? Caribbean Council for Europe.

movement stems from a place of concern. 2. Developed countries are concerned, but their interest must be protected, hence, they have to find a balance between protecting their interest and protecting the rights of underdeveloped countries. 3. Alternative means of establishing sustainable waste management are either non-existent or are more expensive compared to the movement of transboundary waste, even though the morality of the latter is wrong, it is the cheaper alternative hence the available becomes desirable. 4. In the light of the above, African nations have to fend for themselves, there have to provide and implement the stringent measures required to bring toxic colonialism to an end, the economic inequality present in Africa has made it rather difficult for all African nations to reach a consensus on rejecting transboundary waste, some countries in Africa can afford to forgo the immediate economic benefits that come with Transboundary waste while some quite frankly cannot and see it as a viable economic source.

It follows therefore that a consensus can be reached on what is desirable, which is a complete ban of transboundary waste in Africa, but not what is achievable based on economic realities, for example, the Lome IV convention provided for a total ban of transboundary waste and once it expired the Cotonou Convention, paid less consciousness to the issue of transboundary waste. Notwithstanding the international perspective on the issue of transboundary waste, countries have to independently come to grips with the issue of effecting a transboundary ban on the movement of waste, in this case, Nigeria as a country, have to ensure that the environmental rights of its citizens are protected.

The subsequent chapters will address the issue of transboundary waste movement with specific novel societal problems, E-waste and Dumping, precisely as it relates to the country Nigeria.

2. LEGAL FRAMEWORK ON THE MANAGEMENT OF TRANSBOUNDARY E-WASTE AND DUMPING

Rather than banning the movement of waste between countries, international waste law guarantees the free movement of waste across jurisdictions, which explains why the drafters of the Basel Convention did not see it fit to set up an international body in charge of waste transfer supervision and compliance. Waste is increasingly seen as a commodity through the lenses of international economic law, instead of a hazard to be reduced under international environmental law.⁸³ One recent example of this kind of forum shopping is the Chinese ban on the import of certain types of solid waste, which was notified to the WTO instead of the Basel Secretariat on 15 November 2017.⁸⁴

While international economic and financial integration is rapidly occurring as a result of increased trade and capital, technology and information flows, the production and sale of consumer goods vis-à-vis up-to-date technology is heavily and disproportionately weighed against developing countries. And even though technological diffusion and advances in communications are occurring quite rapidly, very vast portions of the developing world are left out. This atmosphere leaves the developing world in dire straits due to their incapacity to effectively prohibit the dumping of waste within their respective jurisdictions.⁸⁵

E-waste has been termed as a growing problem in Nigeria by both national and international organisations where they are dumped especially at the ports of Lagos which is more significant in international trade. The fact that e-waste is an arising problem is not only due to the increase of its discharges in the Nigerian environment but the hazardous effects on the population which is plagued by chemicals such as lead, mercury, cadmium, beryllium and other toxic substances.⁸⁶

Although the same management controls apply to all wastes contaminated with toxic materials, the writer emphasizes e-waste for various reasons. First, to contrast to other kinds of wastes, the amount of e-waste imported into the country is on the rise as will be seen below. Second, the fact that most of it is not produced in the country but rather imported makes it probable that e-waste management policy is feasible and implementable. Finally, if the state of things is left

⁸³ O. Barsalou, M. Picard, International law in an Era of Globalised Waste, -17 Chinese Journal of International law, 2018(3), p. 887-906.

⁸⁴ World Trade Organisation, Technical Barrier to Trade Information Management System, reported 15/11/2017(16.04.2020)

⁸⁵ A Shrivastava, Transboundary movement of E-waste, International Policy Digest. 13. 09. 2016. (28.04.2020)

⁸⁶ J. Puckett and T. Smith, Exporting Harm: The High-Tech Trashing of Asia, Basel Action Network (BAN), (21.03. 2020)

as there are as regards to e-waste management, there will be an irreversible negative effect of unmeasurable dimensions on the environment and the citizens of Nigeria.

In an era of global waste management concern, Nigeria must protect its citizens and its territories from external infringements, to do that, laws, institutions and healthy practices are imperative to ensure effective protection. This chapter looks at the problem of e-waste and dumping in Nigeria and how it has been managed.

2.1. Transboundary E-Waste in Nigeria

E-waste stands for electronic waste which is defined as all secondary electronics, mobile phones, computers, entertainment devices and other items like refrigerators, television sets that are either donated, sold or discarded by their original owners⁸⁷. E-waste is also defined as waste electronics and electrical equipment that are non-biodegradable, industrial and synthetic.⁸⁸ In simpler terms, Electronic waste(e-waste) refers to the end of life products including computers, printers, Photocopy machines, television sets, mobile phones, and toys which are made of sophisticated blends of plastics, metals, among other materials.⁸⁹

The 21st century has necessitated the need for technology all over the world. This need for technology warrants the production of devices of all kinds to ensure that human consumption is satisfied. The need to satisfy human interest for more technology means the constant disposal of old devices from homes, offices and other places, this has brought about the need to discharge this electronic and electrical equipment (EEE) through recycling or otherwise. Proper disposal of E-waste is not carried out effectively and is discharged as e-waste in countries without strong environmental laws.

The need for electronic materials has made it possible for transboundary waste to be moved as transboundary goods. If the products have not completed their life span, but are close, it can be argued that they are not yet waste products, so the developed countries that have agreed to not send their waste to underdeveloped countries send their almost finished products. When the life span of this products becomes complete, usually within a short space of time, there become waste products and since they are already in the underdeveloped country, it automatically becomes that country's problem. Developed countries have capitalized on this to ship electronic

⁸⁷ M. Sridhar et al, Waste Management policy and Implementation in Nigeria, -3 National Journal of Advanced Research 2017(3), p. 23-35.

⁸⁸ L. Luther, Managing Electronic Waste: An Analysis of State E-waste Legislation, Report prepared for members and committees of Congress, 2007.

⁸⁹ M Wong, et al, export of toxic chemicals-A review of the case of uncontrolled electronic waste recycling, Environmental pollution, 149(2) Croucher Institute for Environmental Sciences 2007. p.131-140.

wastes hazardous to the environment to developing countries which thereafter leads to environmental and health challenges.⁹⁰

Some of these e-wastes contain toxins such as lead, mercury, chlorinated dioxins, etc. The unrecycled e-wastes from these developed countries find their ways to developing countries like India, Pakistan, Ghana and Nigeria which a fraction of it are repaired on arrival for those desperate for cheap technology while the unrepairable ones are dumped thereby constituting environmental inconvenience and hazards.⁹¹ E-waste has been considered by the World Economic Forum as the fastest growing waste stream in the world.⁹²

Nigeria has had a large involvement with E-waste owing partly to the fact that the country is an importer of electronic devices from more industrialized and developed nations around the world.⁹³ Nigeria as a large market of consumers has accumulated a lot of products that have now reached the end of their life span and no controls have been made for these products to be properly recycled, collected or disposed of correctly. Land fields are already being filled up with a lot of electronic waste, the next available and seemingly easy means of disposal are the available water bodies within the periphery of the country and its international waters.

The major issues which have extensively truncated the importation of transboundary of e-waste in Nigeria are 1. There is no distinction between items for reuse and items for recycling, improper labelling or no labelling of e-products into the country. 2. There is no guarantee of the functionality of the imported devices, 3. Some vital components of the imported devices are often missing, sometimes they may not, for example, have the correct plug fitted, or the right software installed. 4. Most appliances that do work on arrival or only have a short second life, as they were already old, obsolete and or damaged during the transit. 5. It is not easy to distinguish between legal and illegal exports.⁹⁴

⁹⁰T.J Alake and G.I Ighalo. End of life strategies for the effective electronic waste management in Nigeria. *Int'l. J. Sci. Tch. Res.* 2012 1(7), p. 73-76.

⁹¹ M. Amachree, M. Update on e-waste management in Nigeria. National Environmental Standards and Regulations Enforcement Agency (NESREA), Nigeria presentation at the 3rd Annual Meeting of the Global E-Waste Management Network San Francisco, USA 2013.

⁹² World Economic Forum (2019) A New Circular Vision for Electronics, (18.03.2020)

⁹³ A. Peluola, Investigation of the implementation and effectiveness of electronic waste management in Nigeria. - 2. *Model. Earth Sys. Environ.* 2016(100). (01.03.2020)

⁹⁴ O. Ogungbuyi, et al, E-Waste Country assessment in Nigeria. 2012 (18.04.2020)

2.1.1. Incidents of Importation of E-Waste into Nigeria

As used electrical equipment continues to flow into the country, they remain a challenge to determine the official figures of e-waste internally or externally generated from new or domestically assembled ones. Since most of this waste is imported illegally and some as goods, it is impossible to come up with exact data on the importation of E-waste into the country. They have however been reports carried out by established institutions, some of this will be accessed below.

The Basel Action Network (BAN) in conjunction with the Basel Convention Coordinating Center, Nigeria (BCCC- Nigeria) in 2005 concluded, after a study, that 500,000 used computers are imported annually through the Lagos port alone. The study further stated that about 25 per cent of the imports are functional used electronics while the remaining 75 percent are either unserviceable or junk, causing them to be eventually burnt or dumped carelessly.⁹⁵

“In January 2013, a ship (MV Marivia) with two (2) containers of e-waste were apprehended, it was made to pay a bail bond before repatriation of the containers to the country of origin.”⁹⁶

“In January 2013, Premium Times, a United Kingdom-based newspaper, alleged that Messrs Moronuk David and Bonik Investment were shipping electronic waste from the UK to Nigeria through Tin Can Island Port in Lagos. However, Nigeria reacted promptly and ordered for the return of that ship to the UK in line with the Harmful Waste (Special Criminal Provisions) Act of 1988.”⁹⁷ That was not the first time such consignment would seek to unload its waste in Nigeria. In 1988, Italy was able to unload its 3,500 tonnes of toxic waste at Koko Seaport in the present Delta State.⁹⁸

The major dumpsite for e-waste in Nigeria is the Ikeja computer village in Lagos state where thousands of vendors sell and repair used electronics.⁹⁹ These e-wastes are further relocated to another complementary site like the Kontaangogowa in Iyaje, LGA. Alaba, Lawanson, and West Minister markets are also hubs for deposition of second hand and used electrical and electronic equipment.¹⁰⁰ Sadly, there isn't enough recycling facility for computers in Lagos.

⁹⁵ M. Amachree, E-Waste Management in Nigeria. National Environmental Standards and Regulations Enforcement Agency.2013. (01.03.2020).

⁹⁶ A. Isa, Update on E-waste Management in Nigeria, a presentation made at the 4th annual meeting of the International E-waste Management Network (IEMN) Hanoi, Vietnam.14-17th July 2014(25.03.2020)

⁹⁷ A. Akpan, I. Bassey, Economic Diplomacy, Global Waste trade: The African Perspective Since the 20th Century. -2 African Journal of History and Archaeology, 2017.

⁹⁸ A. Omozuwa, Rethinking Koko Saga, Ships and Ports, 27.11.2017.

⁹⁹C.W. Schmidt, C. W. Unfair trade e-waste in Africa. Environmental Health Perspective, 2006 114(4): A232 – A235.

¹⁰⁰. A. Manhart, et al. Informal e-waste management in Lagos, Nigeria: Socioeconomic impacts and feasibility of international recycling co-operations. Final report of component 3 of the UNEP SBC E-waste African Project, Lagos, Nigeria 2011.

This, therefore, makes e-waste dumpsites to be spread around the city.¹⁰¹ There is however difficulty in data collection in the size and economic importance of e-waste related activities in Lagos.

In September 1989, an American Ship MV Pro – American loaded with toxic waste set sail for Nigeria. Nigeria got wind of it through the Nigerian Embassy in Teheran, Iran; the ship was refused entry into the Nigerian territorial water. The ship later sailed to the Gulf of Guinea into which it emptied its 2,000 tons of cargo of waste. In October 1989, a shipment of 546 tons of toxic Irish beef from Rotterdam, Netherlands found its way to Nigeria through Tin Can Island Port in Lagos. But the Nigerian navy was alerted and did not allow the ship to berth or offload. In November 1989, an Argentine firm, “Mariance” was said to have hatched a master plan to export 2,320 metric tons of poisonous chicken to Nigeria and other hunger-stricken countries in Africa. The plan would have materialized but for a tip from the Nigerian Embassy in Brazil.¹⁰²

Limited functionality testing revealed that, of the UEEE sent to Nigeria every year from other countries in 2015 and 2016 — assessed at around 60,000 metric tonnes in both years— at least 15,400 tonnes didn’t work. This annual volume of imported e-waste, prohibited under both the Basel Convention and the EU’s Waste Shipment Directive, is enough to fill a 10-kilometre line of full-loaded 36-tonne 18-wheel trucks. The study also revealed that almost 70% — 41,500 tonnes — of the UEEE reaching Lagos each year arrived inside vehicles destined for Nigeria’s second-hand auto market, an import route never before thoroughly assessed. Another 18,300 tonnes arrived in shipping containers.¹⁰³

Roughly 45 per cent of Nigeria's e-waste imports are shipped from the U.S. and another 45 per cent comes from the EU.¹⁰⁴ At least one-third of the contents of each shipping container is broken beyond use and transferred to dumps. One warehouse complex in Lagos handles up to 40 container loads each month. Studies by the Nigerian Ministry of Environment suggest that basic components such as lead are being recovered and then smelted in people's backyards, which poses a huge risk of lead poisoning.¹⁰⁵

¹⁰¹ C. Terada, C. Recycling electronic waste in Nigeria: Putting environmental and human rights at risk. *NW. J. Int'l Human Rights* 2012 10(3), p. 154.

¹⁰² A. Akpan, I. Bassey, Economic Diplomacy, *Global Waste trade: The African Perspective Since the 20th Century*. -2 *African Journal of History and Archaeology*, 2017.

¹⁰³ European Union Network for the Implementation and Enforcement of Environmental Law. 19.04.2018 (18.04.2020)

¹⁰⁴ C. Milmo, *Dumped in Africa: Britain’s Toxic Waste*, *The Independent*. 18.02.2009 (18.04.2020)

¹⁰⁵ L.Carney, *Nigeria fears e-waste Toxic legacy*. *BBC News*, 19.11.2006. (18.04.2020)

From the above, it is evident that the problem of E-waste transboundary movement is occurring on a continual and growing rate, even after international agreements have been made to curb the issue of movement of waste. There is a very thin line between when international movements of hazardous substances are termed international trade and when they are in fact a means of achieving toxic colonialism. The developed countries have only become smarter in their approach towards achieving the end results of the waste movement. The evident lacuna embedded in the Basel Convention has made this possible.

2.1.2. Basel Convention and E-Waste

The Basel Convention imposes certain general obligations on States Parties. These general obligations include ensuring that the generation of hazardous wastes within the State is reduced to a minimum, taking into account social, technological, and economic aspects.¹⁰⁶ The Basel Convention works more like a trade regime – in that it seeks to control the movement of hazardous waste through a system of prior informed consent, strict notification, and tracking requirements.¹⁰⁷

Under this system, the movement of hazardous waste is only permitted where the exporting country cannot dispose of the material in an environmentally sound and efficient manner, or the waste is required in the importing country as a raw material for recycling or recovery¹⁰⁸ The Basel Convention also requires certain notification between State Parties when hazardous wastes will be moved between or among them. To start, the State of export must notify the State of import of any proposed transport of hazardous wastes.¹⁰⁹ The State of import must then respond in writing, expressing its consent to the movement, denying permission for the movement, or requesting additional information.¹¹⁰

In the event of illegal trafficking in hazardous waste, the Basel Convention provides depending on the fault that the exporter or generating state take back the waste if practicable or otherwise dispose of it.¹¹¹ Where the importer or the disposing state is found to be at fault, then that state is responsible for disposal in an environmentally safe manner; and where it is unclear who is at

¹⁰⁶ Article 4(2) of the Basel Convention.

¹⁰⁷ Article 6 of the Basel Convention

¹⁰⁸ Article 4(9) of the Basel Convention

¹⁰⁹ Article 6(1) of the Basel Convention

¹¹⁰ Ibid, Article 6(2).

¹¹¹ Ibid.

fault amongst the parties, then the Convention provides that the parties are to cooperate to make sure that the waste is disposed of in an environmentally sound manner.¹¹²

Rather than seeking enforcement through an international or regional court, the Basel Convention provides that each party shall introduce appropriate national/domestic legislation to prevent and punish illegal trafficking.¹¹³ The parties to the Basel Convention envisioned that enforcement would take place through a tort-law regime.¹¹⁴ They subsequently enacted a Protocol setting out appropriate rules and procedures for liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes.¹¹⁵

It is evident that the Basel Convention provides an acceptable manner for the movement of waste and leaves the onus of enforcement of bridge of its provisions to be tackled by the parties to the convention. According to the Basel Convention, the import of a working computer is permitted (the computers need to be tested, certified and labelled), but if they are broken, they are considered as a waste and therefore fall into the jurisdiction of the Basel Convention.¹¹⁶ From the above, it shows that all that is needed at the point of packaging is that the computer products are working, its life span or for how long it should remain in a workable state before importation is not provided for in the Basel convention.

The Basel Ban Amendment,¹¹⁷ provides for the prohibition by each Party included in Annex VII of the Basel Convention¹¹⁸ of all transboundary movements of waste to States not included in Annex VII of hazardous wastes covered by the Convention that are intended for final disposal. Also, all transboundary movements to States not included in Annex VII of hazardous wastes covered by paragraph 1 (a) of Article 1 of the Convention that is destined for reuse, recycling or recovery operations are prohibited.¹¹⁹ The Ban Amendment includes most

¹¹² Ibid.

¹¹³ M. Sirleaf, *Prosecuting Dirty Dumping in Africa*, The African Court of Justice and Human and People's Rights in context (Development and Challenges), California, Cambridge University Press, 2019, p. 553-589.

¹¹⁴ Ibid Article 12.

¹¹⁵ Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Waste and their Disposal, 10.12. 1999, e.i.f. 27.05.2014.

¹¹⁶ Basel Convention, Partnership for Action on Computing Equipment (PACE), Approved by the PACE Working Group, 3.15.2011p. 18. (09.03.2020)

¹¹⁷ Amendment to the Basel Convention on the Control of Transboundary waste and their Disposal, 22.9.1995, e.i.f. 5.12.2019.

¹¹⁸ Parties and other States which are members of the OECD, EC, Liechtenstein

¹¹⁹ O. Ogungbuyi, et al, *E-Waste Country assessment in Nigeria*. 2012 (18.04.2020)

Persistent Organic Pollutants (POPs), most electronic wastes, most obsolete ships, most flammable liquids, and most toxic heavy metals¹²⁰

Generally, with the force of international law, exports of hazardous wastes from rich industrialized powers to poorer countries should be perceived as a criminal or irresponsible act as will other forms of exploitive externalization of real costs and harm to poorer countries.¹²¹ The Basel Ban should immediately stop the problem of importation of waste to Nigeria, but as seen from the chapter on incidents of importation of waste, most of the waste imported into Nigeria are from countries that have ratified the Basel Convention and the Ban. The objective of this Ban has not been fulfilled as the problem of exportation and importation of waste still subsist in both the developed and underdeveloped countries.

It is apparent that the provisions of the Basel Convention and the Basel Ban as it relates to E-waste is not enough, the convention is strong on waste movements and weak on disposal, unfortunately, the mere existence of a ban will not solve the problem. Enforcement is extremely difficult even in the most highly developed countries, add to this the reality of corruption in many countries and a blanket ban will merely force the dirty business into illegality.¹²²

To conclude our section on the Basel regime, subjective and discretionary sovereign interpretation of what constitutes “hazardous waste” allows the transformation of capitalism’s negative externalities into positive recyclable products. Because of its weak procedural and substantive legal framework, the Basel regime is less of an obstacle than a facilitator of the rising global waste trade.

Initially conceived as a response to a growing environmental concern, the Basel Convention has progressively internalized an economic rationale as the underlying functional logic of the global waste management system. The legal response to the environmental crisis only seems to function according to an economic *modus operandi*, by reinjecting a positive market value into a discarded object. No type of disposable waste illustrates this global recycling market more than electronic discards¹²³

¹²⁰ Basel Ban Network, The Entry into force of the Basel Ban Amendment; A guide to implications and the Next steps, January 2020, p. 5 (19.04.2020)

¹²¹ Ibid, p. 9

¹²² The Basel Ban Amendment, Myths & Facts, Seri Education and Trainings. 20.11.2014. (19.04.2020)

¹²³ M Wong, et al, export of toxic chemicals-A review of the case of uncontrolled electronic waste recycling, Environmental pollution, 149(2) Croucher Institute for Environmental Sciences 2007. p.131-140.

2.1.3. National Legislative Efforts at Combating E-Waste in Nigeria

Nigeria has an extensive array of laws to regulate the environment, the Harmful Waste (special criminal provisions etc.) Act, the Environmental Impact Assessment and National Environmental (Electrical/Electronic Sector) Regulations all have provisions that directly apply to transboundary e-waste or have blanket provisions that can be interpreted to restrict or prohibit the importation of e-waste. It is instructive to examine this legal framework in detail.

Harmful Waste (Special Criminal Provisions) Act defines Harmful Waste as "...any injurious, poisonous, toxic or noxious substance and, in particular, include nuclear waste emitting from any radioactive substance if the waste is in such quantity, whether with any other consignment of the same or of a different substance, as to subject any person to the risk of death, fatal injury or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful waste."¹²⁴ This definition has made it feasible for the provisions of the Act to cover not only known pollutants such as nuclear wastes and other hazardous wastes emanating from industrial activities but also emerging pollutants such as e-waste.

The Harmful Waste (Special Criminal Provisions, etc.) The act is not meant to operate in isolation but as part of the body of Environmental Laws in Nigeria, some of which will be considered in this thesis, it leaves the responsibility of enforcing of its provisions and the method to do so to the Minister of Environment and merely prescribes offences and penalties.

Also relevant to note is that persons who are generally afforded immunity based on their diplomatic status, cannot avail themselves of such privileges under the Harmful Waste Act, and may be prosecuted in Nigerian courts. The penalties for committing an offence under this legislation range from life imprisonment, in the instance of an individual, or a fine and life imprisonment of its complacent directors, for a corporate body.¹²⁵

In practice, the Harmful Waste Act has been one of the few regulations to cover the issue of dumping waste classified as Electronic Waste (E-waste) at sea. Its definition of hazardous waste refers to radioactive and toxic waste, not particularly addressed in other legislation. There are several benefits to the provisions of the Act, taking into account that the Act is more of criminal legislation, proffering sanctions, not necessarily guidelines. The Act provides a proper avenue for addressing offences such as illegal disposal of waste. The Federal High Court of Nigeria is imbued with the exclusive jurisdiction to try all matters and offences prescribed under the law.

¹²⁴ Section 15, the Harmful Waste Act (Special Criminal Provisions), CAP H1 Laws of the Federation of Nigeria 2004.

¹²⁵ Ibid, Section 6 and 7.

A principal criticism of the Act is that apart from the seizure and repatriation of containers laden with e-waste, there has not been much enforcement of the Act's provisions, including prosecution, which would serve as deterrence to would-be importers of e-waste. Perhaps this lacuna is because the Act was not *ab initio* adopted for the regulation of e-waste. Consequently, the enforcement of its deterrence measures, such as life imprisonment and forfeiture of any carrier used in the transportation or importation of e-waste into Nigeria, might be considered too harsh for anyone violating its provisions.

Indeed, e-waste has its socio-economic advantages in terms of providing employment. It is thus not likely to be viewed in the same light as nuclear wastes, incinerator wastes or other wastes similar to that associated with the Koko toxic waste incident, which the HWA primarily seeks to regulate. Another criticism of the Act is that the current practice of seizing and repatriating e-waste to the country of origin appears to be effective only against container-laden imports, and not against imports using used cars and trucks. The latter has now been identified as the main source of transboundary movement of e-waste into Nigeria.¹²⁶

There was uproar when there was a massive shipment of e-waste in Nigeria, in 2010. This gave rise to the adoption of the National environmental (electrical/electronic sector) regulation in 2011.¹²⁷ The objective of these Regulations is to prevent and minimise pollution from all primary and ancillary operations of the Electrical/Electronic sector of the Nigerian environment,¹²⁸ and enforce the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989. These regulations cover both new and used Electrical/Electronic equipment.

The Regulations, however, allow for the export of Electronic waste, the purchase of used Electrical/Electronic Equipment,¹²⁹ under a permit given by the Ministry of Environment to do so, application for these permits are processed upon receipt of necessary information and payment of application fees.¹³⁰ Offences are provided to the effect that any person who violates the provisions of these Regulations commits an offence and shall on conviction be liable to a fine not exceeding ₦ 500,000 (\$1,375.52) or to imprisonment for a term not exceeding two years or both. Where the offence under the provisions of the Regulations is committed by a

¹²⁶ E. Amechi, B. Oni, Import of Electronic Waste into Nigeria: The Imperative of Regulatory Shift, -3 Chinese Journal of Environmental law, (2) 2019, p. 151-166.

¹²⁷ M. Amachree, Update on e-waste management in Nigeria. National Environmental Standards and Regulations Enforcement Agency (NESREA), Nigeria presentation at the 3rd Annual Meeting of the Global E-Waste Management Network San Francisco, USA 2013.

¹²⁸ Regulation 2 (1) National Environmental (Electrical/Electronic Sector) Regulations, S.I. No. 23 of 2011

¹²⁹ Also known as UEEE

¹³⁰ Ibid Regulation 46

corporate body, it shall on conviction be liable to a fine not exceeding ₦100,000 (\$275.10) and an additional fine of ₦ 50,000 (\$137.55) for every day the offence subsists. ¹³¹

This Regulation bans the importation of e-waste into the country, but, it does not outrightly Ban the importation of used electronic products into the country, it merely provides a regulatory means of doing so, once the permit has been sought for and obtained, used electronic products which most of the time are e-waste can be imported into the country, in this regard, it seems to be that the style of the Basel Convention was followed in establishing this regulation.

NESREA also provided the Guide for Importers of Used Electrical and Electronic Equipment into Nigeria. Under the major provisions of this guide, every importer of Used Electrical and Electronic Equipment (UEEE) is under an obligation to register their corporations with the National Environmental Standards and Safety Regulation Agency. This guide also bans the importation of Waste Electrical and Electronic Equipment (WEEE). It also sets aside a list of requirements for the importation of UEEE into Nigeria.¹³² The requirements are a. A Cargo Movement Requirement (CMR) Document. b. Proof of evaluation/testing and certificate containing testing information on each item. c. Declaration of the liability by the importer (Letter of indemnity). d. Copy of permit to import

The Environmental Impact Assessment Act¹³³ provides a framework for assessing the impact any activity may have on the environment before such activity is authorized or carried out. Section 2 of the Act prohibits the conduct of any project, whether, in the public or private sector, that is likely to affect the environment, without first conducting an Environmental Impact Assessment to ascertain the environmental issues that may result from such project. Under the Act, the institution, agency or person intending to embark on the project must, before commencing the project, apply to the National Environmental Protection Agency, which has been replaced by the National Environmental Standards and Regulation Enforcement Agency, that Environmental Impact Assessment be carried out in respect of the project, to identify any issues likely to have a serious environmental effect on the Nigerian environment and aid in the planning and execution of the project.

For the purpose of identifying the environmental effect of any project and receiving approval from the Agency, the Act states that the environmental impact assessment report must clearly show a description of the proposed activities; a description of the potential affected

¹³¹ Ibid Regulations 61 and 67

¹³² Guide for the Importers of used Electrical and Electrical Equipment into Nigeria. NESREA.

¹³³ CAP E12 Laws of the Federation of Nigeria 2004.

environment, including specific information necessary to identify and assess the environmental effect of the proposed activities; a description of the practical activities where appropriate; an assessment of the likely or potential environmental impacts of the proposed activity and the alternatives, including the direct or indirect, short-term and long-term effects; an identification and description of measures available to mitigate adverse environmental impacts of proposed activity and assessment of those measures; an indication of gaps in knowledge and uncertainty where applicable; an indication of whether the environment of any other State or Local government area or areas outside Nigeria is likely to be affected by the proposed activity or its alternatives; and a brief and non-technical summary of the all the information gathered in the course of carrying out the survey/assessment.¹³⁴

Section 12 of the Act restricts the power of any government authority or agency to grant or otherwise exercise any power or perform any duty or functions that would permit waste treatment and disposal projects to be carried out in whole or in part until the Agency has taken a cause of action conducive to its power under the Act establishing it, or has taken a decision or issued an order that the project could be carried out with or without conditions.

Thus, waste management and disposal projects or activities require approval from the agency, after an environmental impact assessment has been carried out for such purpose and a decision reached by the Agency. This is very important, and though tasking and tedious, a worthy effort to control the activity of states, agencies, corporate organisations and individuals and perhaps, reduce the incidences of indiscriminate dumping of harmful waste in Nigeria waters and on land.

The procedure for approvals by the Agency is also provided in the Act and includes a review of the application and the potential risks raised and the alternatives and potentials for mitigation where necessary, a mandatory study in certain instances, a screening and public notice. Where there are objections to the project by the public, the matter will be recommended for further deliberation, and where reservation on the matter still holds, the agency may recommend the matter for mediation. Upon the result of such mitigation, and recommendation of experts where they are required, the Agency will either give its approval with a strategy to mitigate the effects of the activity (where necessary); or withhold its approval where the activity is likely to severely affect the environment and the agency cannot mitigate its effects.

NESREA has certified credible importers of UEEEs and has over the years sanctioned illegal and uncertified importers. To reverse this trend and also address the problems of rising e-waste

¹³⁴ Ibid, Section 4

generation and the lack of formal recycling infrastructure in the country, Nigeria banned the importation of e-waste outright, however, the effectiveness of the ban of e-waste in Nigeria is doubtful, as the importation of e-waste into Nigeria is still thriving, as such equipment is usually shipped in containers hidden behind working goods, concealed inside a car, or falsely described as personal items.

The failure of the Ban in curbing the transboundary movement of e-waste into Nigeria necessitates that policymakers must come up with new and innovative means to address this issue.¹³⁵ Nigerian regulations on the importation of e-waste have left something to be desired in terms of their reflection of current environmental problems around the world, particularly in the area of e-waste management. Regulations and legislation on radioactive waste disposal, do not provide or reflect the current values of radioactive emission that are used to assess radioactive content to be prohibited.

2.2. International Dumping in Nigerian Waters

Nigeria is so rich in water resources that many of its 36 states are named after rivers. In addition to surface water found in nearly every part of the country, there is also plenty stored in the ground. The country has 215 cubic kilometres a year of available surface water. This is a lot higher than many African countries, particularly those in the southern and northern regions of the continent. South Africa, for example, has about 49 cubic kilometre a year.¹³⁶ She has a coastline of about 830 km between the western and eastern borders of the country with the Republic of Benin in the West and Cameroon to the East respectively. It has a maritime area of 46,300 km sq. between 0-200m depth with the Exclusive Economic Zone of 210,900 km sq. which lies between 4 10' and 6 20' North latitude and 2 45' and 8 32' East longitude to the Gulf of Guinea.¹³⁷

The Major means that transboundary waste is moved between developed and developing countries are through the water bodies. In the course of this movement of not just transboundary waste but also of goods, ship wreckage and sinking occurs, which is usually accidental, also, just as other mechanical appliances, ships also reach the end of their lifespan, when this occurs, there should be properly dismembered and recycled accordingly, the cost of carrying out this task is usually high, a possible solution to this is deliberately sinking the ships or abandoning them on the shores of unexpected countries which do not have relevant regulations to cover

¹³⁵ E, Amechi, B. Oni, Import of Electronic Waste into Nigeria: The Imperative of Regulatory Shift, -3 Chinese Journal of Environmental law, (2) 2019, p. 151-166.

¹³⁶ P. Keaveny, How Nigeria is wasting its rich water resources. 05.09.3017. (18.02.2020)

¹³⁷ G. French, et al, Sea-level Rise and Nigeria: Potential Impacts and Consequences, -1 Journal of Coastal Research, (14) 1995, p. 224-242.

such situations. In this chapter, incidents of shipwreck dumping will be looked at, available laws and agencies that regulate such matters will also be ascertained and the implementation or lack thereof of these regulations will be observed.

2.2.1. Nigeria as the Shipwreck Nation: Assertions and Incidents of Dumping in Nigerian Waters

Nigeria's 830-Kilometre Coastline is littered with a very large number of disused ships and all sorts of seagoing vessels floating or partially submerged. The phenomenon is most prevalent along the Lagos Coastline, particularly a reflection of the High Volume of shipping in the area. Many of them at the end of their useful lives are simply abandoned by their owners to constitute untold environmental nightmares.¹³⁸ The waters have become a dumping ground for shipwrecks and unserviceable vessels abandoned by local and international shipping companies, posing a safety hazard and threatening the livelihoods of local fishermen. Abandoned cargo ships and fishing boats also float freely or lay submerged on parts of the coastline. Environmental groups say their numbers run into the thousands in Nigeria's territorial waters.¹³⁹

Nigeria had become a dumping ground for wrecked ships because it is convenient to sink ships on the coasts from other parts of the world on Nigerian Coastal waters to avoid bearing the cost. Insurance for the ships are paid from the registered country and nothing is spent on decomposing the ships.¹⁴⁰ they avoid such expenses, make money from insurance and they dump the vessels in the Nigerian coastline where nobody cares, now there is an increasing number of sunken and abandoned ships obstructing traffic in the region.¹⁴¹

According to the NIWA¹⁴² Acting MD, "The number of abandoned and submerged vessels on the waterways is alarming. The problem is that anytime we remove one wreck today, by the time we go to the same spot the next week; we will see two or three wrecks around the same location, it is that worrisome. Particular winds on the Atlantic Ocean pushes abandoned ships to the Bight of Benin which is the area on the Atlantic coast that Nigerian shorelines fall within. That is why when a wreck is removed, another or even two resurfaces."¹⁴³ There is a growing concern in Nigeria that the multi-billion-dollar oil industry is impacting the environment, as its

¹³⁸ Our Endangered Coastline, vanguard, 27.07.2012. (19.04.2020)

¹³⁹ Abandoned ships in Nigeria cause suffering in Coastal communities, Sea News Turkey. 06.09.2018. (19.04.2020)

¹⁴⁰ Expert urges FG to stop shipwreck dumping on Nigeria's Coastline, Vanguard, 31.07.2018. (19.04.2020)

¹⁴¹ A. Idris, Nigeria Shipwrecks: The Gulf of Guinea remains High Risk, Al Jazeera, 23.10.2019. (19.04.2020)

¹⁴² National Inland Waterways Authority.

¹⁴³ Increasing Abandoned Wrecks Threatening Navigation on Nigeria's Waterways. Nigerian Tribune. 29.09.2018(19.04.2020)

ships end up abandoned along the coast, the coastlines are being eroded at a terrifying rate by abandoned ships.¹⁴⁴

No less than 100 shipwrecks and vessels have been abandoned on Lagos waters by unidentified shipping firms and individuals, It was discovered that the back of Tin-Can Island port in Lagos has become a dumping ground for shipwrecks and abandoned vessels while the people living in Ogogoro Village at the back of the port and along the coastline say the vessels abandoned by local and international shipping firms are making their lives miserable. The two Lagos ports are responsible for the highest concentration of shipping traffic to the country.¹⁴⁵

It is evident from the above reports that Dumping of ships by international owners is an environmental problem for the country, once a ship has reached its end of life, the cheaper mode of disposal is to abandon it at the shores of Nigeria. Nigeria is handicapped from properly dealing with this problem due to the regulations and legal bureaucracy sometimes prevents authorities from clearing the wrecks.¹⁴⁶ The following chapter will look at the available legislations that cover dumping in Nigerian waters.

2.2.2. National Regulations against International Dumping in Nigerian Waters

The National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, is a national legislation enacted to establish the National Environmental Standards and Regulations Enforcement Agency,¹⁴⁷ to protect and develop strategies and regulations in respect to the environment in Nigeria, promote biodiversity conservation and sustainable development of Nigeria's natural resources in general and environmental technology, including coordination on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.¹⁴⁸

In the course of its duties, the Agency may also assist in the removal of any pollutant, excluding oil and gas-related ones, discharged into the Nigerian environment and shall enforce the application of best clean-up technology currently available and implementation of best management practices as appropriate. The Minister for Environment in implementing the provisions of the Act, may by regulations, prescribe any specific removal method, financial

I. ¹⁴⁴ Wrecks litter Nigeria's coastline, BBC News, 16.10.2017(19.04.2020)

¹⁴⁵ Hazards of Shipwrecks on Lagos Waterways, The Nation, 03.03.2020. (19.04.2020)

¹⁴⁶ S. Olukoya, Shipping Companies Abandon Vessels Without restraint in Nigeria, DW Made for Minds, 24.08.2018. (19.04.2020)

¹⁴⁷ Section 1, National Environmental Standards and Regulations Enforcement Agency Act, No. 25, Laws of the Federation, 2007.

¹⁴⁸ Ibid, Section 2.

responsibility level for owners or operators of vessels, or onshore or offshore facilities notice and reporting requirements.

The National Environmental Standards and Regulations Enforcement Agency has powers to enforce the Harmful Waste (Special Criminal Provisions, Etc.) Act,¹⁴⁹ the Act requires persons to seek permission from NESREA if there is a possibility of carrying out any activity that may produce Hazardous waste. Means of securing this waste after procuring this permission will be borne by the applicant, acceptable methods set by NESREA would be followed to treat hazardous waste generated, it also provides that Nigeria's territory will not be used to ship waste to another country without prior permission from NESREA and five-year imprisonment or a fine of ₦ 5 million or both is the penalty for any offender.

In accordance with fighting the effects of dumping on Nigerian ports. The NESREA Agency has the sole duty of ensuring that all agencies comply with the environmental laws in Nigeria. It is also tasked with the responsibility of prosecuting all cases against individuals and organisations that breach environmental laws.

To combat the problems of pollution tourism especially by developed nations in Africa, the National Environmental (Sanitation and Waste Control) Regulations¹⁵⁰ forbid without prior informed consent issued by the agency, the transit of any toxic waste destined for another country through the territory of Nigeria. ¹⁵¹This provision also helps to prevent accidental illegal dumping in Nigerian waters by vessels transporting waste to another country.

It can be drawn from the provision of the Act displayed above, that dumping and deposition of waste materials in the ocean and Nigerian territorial waters are not prohibited as long as the party wishing to do same has received a lawful authorisation. It is however not indicated in the law what parameters will be used by such authorising body to grant approvals. It is the impression that in such cases the Environmental Impact Assessment Act¹⁵² and other Environmental Regulations¹⁵³ will be considered before such approvals or authorisations are given, although the same is not stated in the Act.

The Nigerian Maritime Administration and Safety Agency Act¹⁵⁴ also called the NIMASA Act, is Nigerian legislation enacted in the reflection of Nigeria's subscription to the International

¹⁴⁹ CAP H1 Laws of the Federation of Nigeria 2004.

¹⁵⁰ National Environmental (Sanitation and Wastes Control) Regulations, S.I. No. 28 of 2009

¹⁵¹ Ibid, Regulation 51.

¹⁵² CAP E12 Laws of the Federation of Nigeria 2004.

¹⁵³ National Environmental Standards and Regulation Enforcement Agency (Establishment) Act, 2007 and its Regulations.

¹⁵⁴ Nigerian Maritime Administration and Safety Agency Act No.17, 2007.

Convention for the Safety of Life at Sea 1974.¹⁵⁵ The Act, amongst other things, establishes the Nigerian Maritime Administration and Safety Agency which is charged with promoting trade and ensuring safety on the Nigerian territorial waters in compliance with the provisions of the International Maritime Organisation and the International Maritime Labour Organisation.¹⁵⁶ The Act is focused on activities on Nigerian inland waterways, territorial waters (i.e. Contiguous Zone and the Exclusive Economic Zone), and coastal (i.e. shore related) matters.

The Agency is empowered to deal with the safety of workers and ships at sea (within Nigerian territorial waters), docking and safety regulations, casualties affecting ships, rescue services, licensing and registration of ships and issues of pollution at sea. The act also grants the Agency the authority to board inspect and arrest any vessel within the Nigerian Territorial waters that have committed an offence within the context of the Act. This power is however limited to vessels that are considered prejudicial to the safety and security of the Nigerian Maritime Zone.

Actions classified as prejudicial to the safety and security of the Nigerian Maritime zone are a threat or any act which in any matter is a violation of the provisions of this Act and any other legislation applicable to the agency; any act of pollution; any unauthorized fishing activities; the carrying out of unauthorized research or survey activities. any act aimed at interfering with any systems of communication or any other facilities of installations of the agency; any act in contravention of the coastal and Inland Shipping (Cabotage) Act, 2003; and any other activity not having a direct bearing on passage.¹⁵⁷

The National Maritime Administration and Safety Agency are charged with creating regulations in regards to marine pollution, specifically, dumping of ship and shore generated waste and the removal of wreckage that constitutes navigational risk and threatens marine life.¹⁵⁸ The Agency also has the power, as provided under the Act to enforce other national and international convention and legislation in force in the country; this includes the provisions of the Harmful Wastes (Special Criminal Provisions, etc.) Act¹⁵⁹ mentioned above.

The National Maritime Administration and Safety Agency Act also provides for offences and penalties for these offences, which include fines not exceeding ₦1,000,000.00 (\$2,751.03) or a prison term not exceeding 12 months (or both) for a single offence of failing to comply with the directive of the Agency and ₦200,000.00 (\$550.21) per day for a continuing offence. The

A. ¹⁵⁵ International Convention for the Safety of Life at Sea 1974 1.11.1974; e.i.f: 25 May 1980.

¹⁵⁶ Ibid Section 22(1) q.

¹⁵⁷ Ibid Section 23(9)a-g

¹⁵⁸ Ibid Section 44

¹⁵⁹ CAP H1 Laws of the Federation of Nigeria 2004.

Act also allows for Directors of companies found to be liable to be charged for the offence alongside the corporate body.¹⁶⁰

The National Maritime Administration and Safety Agency Act goes further to establish a Maritime Casualty Investigation Committee which is responsible for investigating instances of casualty at sea in the event of the loss of the seaworthiness of a ship or small ship or a shipwreck, the cause of damage to one's ship or other towed floating vessel, environmental pollution by a ship or small ship or floating platforms, or any other marine incident.¹⁶¹ The Committee's responsibilities include identifying the cause of the marine casualty, parties liable in such instance, and developing methods of dealing with and preventing further casualties on the sea.

In the exercise of its powers under Section 44 of its enabling Act¹⁶², the Nigerian Maritime Administration and Safety Agency made several regulations that touch on Dumping within Nigerian territorial waters, of particular importance is the Merchant Shipping Act which makes provision for the removal of abandoned ships in Nigerian Territorial waters.

The Merchant Shipping Act¹⁶³ is Nigerian legislation made to regulate commercial shipping transactions involving Nigerian ships and other ships docked at any of the Nigerian Ports or within its territorial waters. By Section 336, the Act provides for the application of several International Conventions on marine environmental protection.

The Act also imbues in the Minister for Transport, the responsibility of preventing pollution of the marine environment by ships and the power to make regulations to facilitate the enforcement of the relevant International Conventions including the United Nations Convention on the Law of the Sea 1982. Furthermore, the Merchant Shipping Act in Section 2, gives authority to the National Maritime Administration and Safety Agency to implement the provisions of the act and any other directions from the Minister in carrying out his responsibilities under this Act.

As it relates to dumping and removal of wreckage, the Act provides that subject to the provisions of any other enactment or law relating to ports, where any vessel is sunk stranded or abandoned in any port, navigable river or tidal water within Nigeria or in near any approach to any port, navigable river or tidal water, in a manner as in the opinion of the Receiver of Wreck, to be or to be likely to become an obstruction or danger to navigation, the Receiver of wreck (a) May take possession of and raise, remove or destroy, the whole or any part of the vessel;(b) May light or buoy any such vessel or part of the vessel, until the raising removal or destruction

¹⁶⁰ Section 58 Nigerian Maritime Administration and Safety Agency Act, 2007.

¹⁶¹ Ibid Section 49 (1)

¹⁶² The Nigerian Maritime Administrative and Safety Agency Act. No.17, 2007.

¹⁶³ CAP M1 No.27 Laws of the Federation of Nigeria 2007

of the Vessel.¹⁶⁴The Act has made it the duty of the Receiver of Wreck to remove or destroy the whole or any part of the vessel when abandoned¹⁶⁵

Nigerian legislations first put the responsibility on the owner of the ship to ensure its removal from the shores and to bear the cost for proper disposal of the Ship. This is achievable where the owners are known and they have the intention of dealing with the shipwreck, where the owners have no intention or means of achieving this removal, it becomes the responsibility of the Receiver of Wrecks in Nigeria.

For some stakeholders, wrecks have persisted on Nigerian waterways due to inadequate legislative provision in the country. In the words of the Executive Director of Eco Restoration Foundation, a non-governmental organization, "We have to save our coastline by the implementation of policies, legislation and by providing the Nigerian Navy with enough coastal awareness to enforce Nigeria's territorial integrity, even from the standpoint of environmental hazards like shipwrecks."¹⁶⁶

2.2.3. The Implementation of Legislation on Dumping in the Nigerian Waters

Since the *locus classicus* case of the Koko dumping incident in 1988, a plethora of laws and regulations have been enacted to combat the illegal acts of dumping in Nigeria some of which have been extensively accessed above.

One of the modes of implementation by the government of Nigeria was the establishment of the National Environmental Sanitation Policy in 2005 which was aimed at eradicating environmental issues and removing all forms of pollution. Although this was seen as a laudable project, it was not out rightly followed by all states of the federation and was declared unsuccessful to a considerable extent.

One of the successful examples of implementation to prevent the act of dumping is stated in the case of Probo Koala, which was hired by an oil company, Trafigura, to discharge toxic waste in about 15 different countries. The ship tried with an unsuccessful attempt to discharge waste at the ports of the Netherlands and then proceeded to the Nigerian ports which were under full alert from government regulations and helped prevent another similar Koko Accident from

¹⁶⁴ Section 381(1) of the Merchant Shipping Act 2007.

¹⁶⁵ Ibid. Section 382.

¹⁶⁶ Increasing Abandoned Wrecks Threatening Navigation on Nigeria's Waterways. Nigerian Tribune. 29.09. 2018 (19.04.2020)

happening. The ship later made its way to the ports of Ivory Coast causing a great deal of marine pollution and affecting the lives of the citizens in the community¹⁶⁷

Another step by the present government of Nigeria to inhibit the effects of dumping in Nigeria is the initiative by the Nigerian Maritime Administration and Safety Agency (NIMASA) to deploy Marine Litter Marshals to aid in the cleaning and the oceans. The duties of the marshals are not only limited to the cleaning of the ocean life, inclusive of the duties of the Marine Litter Marshals is the increase in public awareness on the sustainable use of ocean resources, the enlightenment of various communities on the adverse effects of dumping and the necessity to inform officers of Marine Litter Marshals on cases of dumping on the seas within their communities¹⁶⁸.

To comply with the provisions of MARPOL concerning the use of port reception facilities, the Nigerian government in conjunction with the Ministry of Transportation formulated a list of guidelines and policies and a task force to ensure that port reception facilities were installed in the major ports at Nigerian seas. The taskforce was also imposed with the duty of ensuring that regular assessments were carried out to ensure that these ports still followed the provisions of MARPOL and regulated the dumping at its seas. As part of the efforts of the Nigerian government to prevent dumping in Nigerian seas, Nigeria has organized and coordinated a task force in conjunction with other Ministries, Departments and Agencies to conduct investigations into oil refineries, oil vessels which have been tagged as liable for acts of dumping and marine pollution.¹⁶⁹

In a similar structure, the Ministry of Science and Technology in collaboration with the Ministry of Environment in 2010 developed and presented laid down procedures for the detection of pollutants in the seas, and processes for combating these pollutants in the Nigerian seas. This collaboration has stated that by the year 2025, the Nigerian seas will be clean of any form of waste. Although this may be described as an adequate effort, it is my position that this effort is not enough to mitigate or entirely remove the effects of Marine pollution in the Nigerian seas.

The successes recorded above on implementation of the regulations set out has not brought the much-needed revamp to end the dumping of international vessels at the shores of Nigeria. Prosecutions for abandoned vessels never occur and responsibility for removing the wrecks usually falls to the government. The Nigerian Maritime Administration and Safety Agency have

¹⁶⁷ C. Ardesa, -Salzman, CEDAT Universität Rivera Virgili. The Trafigura Case, 45EJOLT Factsheet, (2012), p.8

¹⁶⁸ Safety 4 Sea- Nigeria starts initiative to stop waste dumping. 06.11.2018. (17-03. 2020)

¹⁶⁹ INTERPOL-Marine Pollution: Thousands of Serious Offences Exposed in Global Operation, 16. 12. 2019 (18. 03. 2020)

warned the local and international shipping community of sanctions in the event of an abandoned vessel in Nigeria's territory. ¹⁷⁰When they abandoned their ships, this sanction is never imposed and as such, there is no deterrence to ensure that this menace is eradicated.

There are no established recycling agencies to enable the recovery of steel from these ships or other beneficial materials that may be useful. To make ship recycling economically viable, the government would need to support the development of identified shipyards in the country to be equipped to be able to carry out ship breaking. Steel companies can also be encouraged to engage scrap owners and shipbreaking yards for the acquisition, breaking and supply of the scrap to them on agreed terms. These shipwrecks can provide steel metal which can be processed to produce Ingots and Bullets which act as feedstock to other steel plants such as Osborne Rolling Mills for the production of the profile, rods, mild steel and high tensile ribbed bars from billets and also to Ajaokuta steel company for the production of steel plates and other profiles, principally used in the shipbuilding, construction, mining and engineering industries. ¹⁷¹

On the Judiciary front, although they have not been any judgments on environmental law as it relates to the importation of transboundary waste they have been judgments against oil spillage that has affected the livelihood of Nigerian citizens, in the case of the Social And Economic Rights Action Centre And The Centre For Economic And Social Rights V. Nigeria¹⁷² which was instituted at the African Commission on Human and Peoples Rights by the plaintiffs on behalf of the people of Ogoni land, Rivers State, Nigeria.

The claim of the plaintiff was a violation of the rights of the people of Ogoni land in accordance with articles 2, 4, 14, 16, 18, 21 and 24 of the African Charter of Human and Peoples Rights. The infringement of their rights stems from the continuous dumping of oil and other toxic waste during oil exploration activities by international corporations. These activities led to destruction in the environment (both the land and sea) and health problems of members of the community.

This illegal form of dumping was declared by the plaintiffs as contrary to various national laws and international treaties and conventions. The plaintiffs that the Nigerian government was liable for the continuous disposal of waste into the environment by granting international

¹⁷⁰ Abandoned Ships in Nigeria cause suffering in Coastal communities, Turkey Sea News, 06.11.2018. (19.04.2020)

¹⁷¹ A. Seun, Ship Scrapping: Nigeria loses 657M to Non-Functional Yards, Nigeria Maritime Business News 15.10.2018(19.04.2020)

¹⁷²The Social and Economic Rights Action Centre and The Centre for Economic and Social Rights V. Nigeria. African Commission on Human and people's Rights. 05.27.202 155/96

corporations with legal and military powers to enable them to continue their operations. The plaintiffs also stated that there was no form of monitoring on the activities of these oil companies which led to continuous environmental degradation.

The ruling of the Commission held that the Federal Republic of Nigeria violated the provisions of the African Charter of Human and Peoples Rights as stated in the claims of the plaintiffs. The Commission also held that inquiries should be held into the activities of international oil corporations and adequate compensations should be granted to those affected by the illegal activities of these companies.

Another important environmental law case that relates to dumping is *Umudje V. Shell B.P Petroleum Development Company of Nigeria*.¹⁷³ This case was instituted by the plaintiff to enforce his right to life following the Constitution of the Federal Republic of Nigeria and the Oil in Navigable Waters Act. The plaintiff's claim was the diversion of the natural and territorial waters of Nigeria for its oil exploration activities and the dumping of toxic waste into the Nigerian seas thereby affecting his source of living (fishing). The plaintiff sued for damages and a declaration that the acts of the oil corporation were illegal and a nuisance on the environment. On appeal to the Supreme Court, the apex court held that the respondent/company was liable for acts of illegal discharge.

Conclusively, this chapter has extensively accessed the problem of e-waste management and International dumping in Nigerian waters. Emphasis was placed on the abandonment of ships at Nigerian territorial waters and coast as Dumping of waste in Nigerian waters had been examined under the umbrella of movement of transboundary waste in Nigeria. Regulations have been made to ensure the eradication of dumping of waste in Nigeria, yet the problem still subsists. In the following chapter, the importance of re-evaluation of Nigerian policies as it relates to protecting its territory from the international movement of waste will be observed.

NESREA has provided for an Extended Producer Responsibility system in Nigeria, The EPR system was introduced and developed by the National Environmental Safety and Regulations Agency. The system is aimed at ensuring producers are responsible for any acts and discharges of e-waste by their companies.¹⁷⁴ Although this is a novel provision by the Agency, it does not specify penalties or fines for the enforcement of this system. In order to ensure strict compliance by producers, recyclers and collectors, the Agency should engage in measures to define penalties for producers, recyclers and collectors that go contrary to the provision of this system.

¹⁷³ *Umudje V. Shell B.P Petroleum Development Company of Nigeria*. SC. 254/1973.

¹⁷⁴ Extended Producer Responsibility (EPR) Programme, NESREA (27.04.2020)

3. RE-EVALUATION OF NIGERIAN LEGISLATIVE POLICY ON TRANSBOUNDARY WASTE

The 1981 African Charter on Human and Peoples' Rights¹⁷⁵, a regional human rights treaty, is perhaps one of the very few human rights' treaties that declare environmental rights in largely qualitative terms. The African Charter expressly guarantees the rights of peoples to the 'best attainable standard of health' and their rights to the 'general satisfactory environment favourable to their development.' In this regard, the African Commission has held that the right to a healthy environment, as guaranteed under Article 24 of the African Charter foists clear obligations upon a state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources.

The African Charter also requires each state party to make a report regarding the environment to ascertain that the environment is protected and to ensure the creation of an operative waste monitoring system to prevent pollution. Countries are further enjoined to make a report on associated matters such as the disposal of natural resources, suitable standards of living and the right to physical and mental health.¹⁷⁶

Nigeria has domesticated the above provision, it was incorporated into Nigerian Law as the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act,¹⁷⁷ it shows that the government bears the responsibility to uphold and protect the environmental right if its people, the following sub-chapters will shed more light on whether the environmental rights of the Nigerian people are being protected by the Nigerian government by providing and implementing legislation to enhance the quality of the environmental rights of its people.

3.1. The Legal Defects in the Current System

From the international front, Nigeria has acceded to several treaties that have been discussed in the preceding chapters, while some of these conventions have been domesticated and immediately applied in the Nigerian system, the delay envisioned in ensuring the domestication of legislation is a problem that has negatively impacted the issue of protection of the Nigerian

¹⁷⁵ African Charter on Human and Peoples' Rights, 07.01.1981. e.i.f. 10.21.1986.

¹⁷⁶ See also, Article 62 of the African Charter.

¹⁷⁷ African Charter on Human and Peoples' Right (Ratification and Enforcement) Act, LFN 1990, No.2 of 1983.

environment. It causes unnecessary delay in carrying out enforcement of provisions necessary for the protection of the Nigerian environment.

In *Abacha v Fawehinmi*,¹⁷⁸ *Ogundare JSC* held that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law, it has no such force of law as to make its provisions justiciable before the Nigerian Courts. Half a decade later in the Court of Appeal held that the provisions of an International Labour Convention cannot be invoked and applied by a Nigerian Court until same has been re-enacted by an Act of the National Assembly. It follows therefore that the international instruments are of limited or no applicability in the country until there have been accepted into the Nigerian legal system by virtue of the transferable rights accorded to the National assembly. No treaty is enforceable in Nigeria unless the same is domesticated through a legislative instrument.

The Bamako convention which has stringent provisions on transboundary movement of waste, it outs a complete ban on the importation of waste from developed countries and stresses the responsibility of states to reduce its waste production and enable proper management of waste within its territory. Nigeria is a party to this convention, but it has not been ratified and domesticated into Nigeria, the Bamako Convention is of no effect in Nigeria even if Nigeria is a party to said convention.

Another example of Nigeria's reluctance to domesticate necessary convention can be seen on the issue of removal of ships, the coast of Nigeria is flooded by damaged and abandoned ships and the agency(receiver of wrecks) in charge of clearing out this shipwrecks cannot do so until they have been declared to be abandoned by the owners when declared to be abandoned, the existing legislations do not provide who would bear the cost of the removal of the ships. The Nairobi convention¹⁷⁹ which Nigeria has ratified, provides extensively as to the provisions to be followed to ensure that the shipwrecked is not just removed but that the owners of the ship bear the cost for the removal. But this Convention is not enforceable until it has been domesticated in Nigeria.

Another example that seems to suggest that Nigeria's resolve for the elimination of Transboundary movement if the waste has been weakened can be seen on its agreeing to the softer terms provided for in the Cotonou convention after the expiration of the Lome convention, the Lome convention had provided for an absolute ban on the importation of

¹⁷⁸ [2000] 6 NWLR (pt. 660) p 228 at 228.

¹⁷⁹ The Nairobi Convention 1985, e.i.f. 1996.

Transboundary movement of the waste but the Cotonou convention had conveniently lost this provision.

It is the view of the writer of this thesis that perhaps, Nigeria had lost its resolve in tackling the problem of transboundary movement of waste on the international front and has succumbed to economic pressure for immediate gratification, forgetting that the environmental rights of its citizens are paramount to ensure a good and quality life.

On the National front, it can be seen that the agencies in charge of the transboundary movement of waste lack a proper defining policy. (i.e. the National Environmental Standards and Regulation Enforcement Agency and the Nigerian Maritime Administration and Safety Agency). These agencies operating under various enactments, carry out similar duties and uphold the same regulations, leading to overlapping jurisdiction and conflict of interest in the performance of their duties.

For example, From the combined reading of Sections 361-386 of the MSA 2007¹⁸⁰, Section 401 of the MSA¹⁸¹ and Section 44 (1) of the NIMASA Act,¹⁸² it appears that NIMASA and the Ministry for Transportation are saddled with the onerous task of ensuring that the coastal waters surrounding Nigeria are free from abandoned wrecks. It can also be deduced that the NPA pursuant to Section 7 of Nigerian Port Authority¹⁸³ is further required to play a major role in ensuring wreck free coastal water. The NPA in the exercise of its functions of cleaning, deepening, improving waterways and prevention of obstruction may remove wrecks and derelicts in the Nation's seaports and their approaches. Similarly, the National Inland Waterways Authority is empowered by Section 9 of the National Inland Waterways Authority Act¹⁸⁴ to remove wrecks found in the inland waters, the Receiver of wrecks is also empowered to remove wrecks from the Nigerian waters, and yet the coast and internal waters of Nigeria are filled with abandoned ships.¹⁸⁵

The lack of a proper defining policy is the failure of the draftsman of the laws enacting these agencies to effectively set out a particular function or role for these agencies; most of these agencies are aligned to a particular role and their functions are not effectively spelt out. To reduce the challenge of implementation of regulations, there needs to be an amendment of all

¹⁸⁰ Section 361(1) Maritime Shipping Act (MSA), Cap. M11 Laws of the Federation of Nigeria, 2004.

¹⁸¹ Ibid.

¹⁸² Nigerian Maritime Administration and Safety Agency Act, Cap. N161 Laws of the Federation of Nigeria 2004.

¹⁸³ Nigerian Ports Authority Act, Cap. N47, Laws of the Federation of Nigeria, 2004.

¹⁸⁴ National Inland Waterways Authority Act, Cap N47 Laws of the Federation of Nigeria, 2004.

¹⁸⁵ D. Osinuga, C. Ikegwu, Abandoned ships and Wreck Removal- A case for the Domestication of the Nairobi International Conventions on the Removal of Wrecks, The Maritime Forum Journal, University of Lagos, 2009.

the laws creating the agencies and their roles should be properly outlined and stated in a bid to ensure proper implementation of the laws preventing the dumping on Nigerian seas.

To be compliant with the provisions of the MARPOL 73/78, it is advised that the Flag state examine onboard arrangements, provide advice to ships flying its flag, investigate infringements and prosecute offenders, this is also in line with the UNCLOS 1982.¹⁸⁶ Nigeria does have a Ship registration service¹⁸⁷ which is provided for under section 28-32 NIMASA Act 2007, investigation and prosecution of offenders who do not follow the provisions of the MAPOL convention and in this case exhibit dumping at sea are not usually carried out.

The flag state is in a remarkable position to provide a regular source of adequate information, which correctly lists the inadequacies of ports visited by its vessels to port state. In a case where flag states neglect to give an exact record of the inadequacies, IMO and port states may not be able to settle matters of suspected inadequacy as fast as possible.¹⁸⁸ The Nations flag administration is not provided for and is therefore not enforceable.

Furthermore, the discharge of waste at sea can be curtailed with the provision of functional and available waste management centres at ports and jetties in Nigeria. Although NIMASA by its regulations, requires ships and vessels to hand over ship-generated waste and other garbage to waste management facilities at the ports, there are no facilities or inadequate facilities at Nigerian ports to handle these demands, and thus, these requirements cannot be met. A recommendation for the reduction of dumping on Nigerian seas is the installation of Port Reception Facilities at Nigerian seaports.

The essence or importance of Port Reception Facilities is the containment of damage which have the probability or risk of contaminating the sea. These port reception facilities are of high importance and even to the extent that they have been stated in the MARPOL convention of which Nigeria has ratified and is identified under its laws. Although Nigeria has ratified the provisions of MARPOL, there are no installations of well-resourced port reception facilities in the major seaports of the country, the available port reception facility in the Lagos port is not properly equipped to ensure that the Nigerian coast and territorial waters will be kept safe from dumping.

¹⁸⁶ Article 91 of UNCLOS 1982.

¹⁸⁷ Nigerian Maritime Administrative and Safety Agency, Ship Registration. <https://nimasa.gov.ng/services/ship-registration/> (25.04.2020)

¹⁸⁸ I. Akpama, An examination of the effectiveness of Implementation of the Marpol 73/78 Convention in Nigeria, The Maritime Commons: Digital Repository of the World Maritime University, World Maritime University Dissertations, 2017, p. 22.

The National Environmental (Electrical/ Electronic sector) Regulation provides for an absolute ban on importation of electronic waste, it follows the model laid down in the Basel ban, but the procedure to follow to ensure that the electronic products imported into Nigeria are not e-waste was not laid down in the regulation.

The Basel convention provided that illegal traffic of transboundary waste is punishable according to national laws. However, where reimportation by the state of export is impracticable, the Basel Convention allows disposal, provided that the importing country can dispose of such waste in an environmentally sound manner.¹⁸⁹ With few underdeveloped nations possessing such disposal sites, this provision has an empty ring, for once the hazardous waste has been transported to an underdeveloped nation, most likely, developed nations will always assert that the waste is "impracticable" to reimport. Thus, potentially the waste could remain in the underdeveloped nation, despite its lack of appropriate waste facilities.¹⁹⁰ National Legislations laid out has not been able to lay out the procedure to follow where e-waste has been illegally imported into the country.

Nigeria is tormented with the problem of deliberate abandonment of ships at the Nigerian coast and territorial waters, presently available legislation provides that the government has to first, allow the owner of the ship to remove the wreck and where this does not happen, the government removes the wrecks of ships from its waters, usually at a very high cost, the government bears the grunt of this cost and this is not economically conducive, this has added to the problem of shop litters in the Nigerian coast, this policy is not providing the required results and should be amended to ensure that the polluter pays and they should be available laid down procedure to ensure that sanctions are imposed on persons who dump their ships at the ports and where the government ventures to clear the port of this wrecks, the procedure should be laid out to ensure that the cost is borne by the owner and hefty penalties imposed to serve as a deterrence to other would-be defaulters.

Presently, there are no proper ship recycling centres in Nigeria to enable the proper dismantling of ships that have reached its end of life, if this should be provided, the number of abandoned ships at ports would reduce as recycling will be more accessible to ship owners.

¹⁸⁹ Article 9, Basel Convention

¹⁹⁰ B. Ovink, *Transboundary Shipments of Toxic Waste: The Basel and Bamako Conventions: Do Third world Countries have a Choice?* 13 Penn State International law Review, (13) 1995, p. 281.

3.2. Fraudulent Concealment of Illegal Shipments

Nigeria's first exposure to the reality of transboundary waste movement was an illegal shipment from Italy to Nigeria, ever since then, the problem of illegal concealment of waste from developed countries to Nigeria has been the order of the day.

There is no single right strategy to accomplish appropriate waste administration. By and by there are basic needs that must be tended to by all countries that desire to deal with their waste better. These necessities will include sufficient information on the sorts of waste to be discarded, how much there is, the place it emerges, who produces it, and what befalls it.¹⁹¹ While the targets of waste administration approach contrast little from nation to nation, the strategies used to accomplish them must be adjusted to the predominant conditions in each. These elements incorporate the accessibility of specialized, financial, and the challenge that exists for them from different requests of national strategy, particularly in developing nations.¹⁹²

In Nigeria, it is difficult to ascertain the growth, challenges and future of waste management because of lack of adequate tracking and reporting in the country. We cannot in statistical facts and figures determine where we were at waste production, where we are at now, what we did in the past to curb or better the situation and what we should do presently to make the environment safe and better for its citizens. This is a serious problem that has made growth almost impossible to achieve.

In the course of creating this work, the biggest issue has been to access the necessary information required to comprehensively understand the dumping situation prevalent in Nigeria, most information available are from international bodies, independent newspapers and individuals interested in research, as a government or country, which should deliver the most comprehensive reports about the situation on the ground, no success has been achieved concerning this and this constitutes a problem in the management of waste and environmental protection as a whole because if we do not know where we are coming from, how then can we ascertain where we are going.

The outright ban on the importation of E-waste into the country has made illegal shipping of this waste more paramount, the writer of this thesis posits that the blanket ban imposed on the importation of e-waste is of no beneficial use to the country. So far, no implementation of this rule has not been carried out even though it is quite evident that there is continual importation of e-waste from developed countries. E-waste has been incessantly imported into the country,

¹⁹¹ Ibid.

¹⁹² P. Rushbrook, & E. Finnecey, Planning for Future Waste Management Operations in Developing Countries. Waste Management & Research, 6 SAGE Journals (1)1988, p. 1–21.

in containers hidden behind working goods, concealed inside a car or falsely described as personal items. They have been reports on ships that have been returned to its place of origin because the shipment was mainly a transboundary movement of waste, for example, the MN Nahsville with container no. UESUA 463595-0 from Austria was returned on April 14, 2010.¹⁹³ The failure of the Ban in curbing the transboundary movement of e-waste into Nigeria shows that the policymakers have to come up with innovative ways to address the issue of e-waste importation.

Although Nigeria as a country seems to engage in attempts to mitigate the act of dumping in Nigeria. These efforts and attempts have been declared as failures which have led to little or no change, it is recommended that if the policies and regulations on the ground do not work efficiently, they should be revamped to fit the realities of the situation.

The current practice of importing e-waste into Nigeria is through used vehicles. This new route lacks thorough assessment and has not been a subject of much inspection and control by the regulatory agencies such as the NESREA and the Nigerian customs service. This is unlike the used EEE import route through containers, which is subject to Environmental Import Clearance as a prerequisite to be the issuance of form M by the NCS. Arguably, the charge imposed by NESREA for the environmental import clearance for used EEE, may have inadvertently encouraged importers to resort to the used vehicle route or false declaration of their containers as merely used items.¹⁹⁴

To ensure that illegal shipment of waste is eliminated, the absolute ban should be amended to fit unrecyclable materials that evidently would cause more harm to the Nigerian society. The government should invest in recycling plants, and the necessary techniques needed to enable the responsible agencies should be provided to ensure that regulations are obeyed to the latter.

Recycling has been confirmed as a billion-dollar industry which ensures the generation of revenue by countries.¹⁹⁵ According to a study by Hewlett-Packard (HP), the Global Solidarity Fund (DSF), and the Swiss Federal Laboratories for Materials Testing and Research (Empa), most countries in Africa lack legislative mechanisms to tackle the problem of e-waste and have not yet recognized it as a hazardous waste stream. However, several pilot projects have been initiated in Africa to show that recycling can provide both employment opportunities for local

¹⁹³ M. Amachree, Update on e-waste Management in Nigeria, A presentation made at the 3rd Annual Meeting of the Global E-waste management Network (GEM3) (25.04.2020)

¹⁹⁴ J. Ovink, Transboundary Shipments of Toxic Waste: The Basel and Bamako Conventions: Do third World Countries have a choice? 13 Penn State International law Review (2) 1995, p. 292.

¹⁹⁵ K. Linnenkoper, Recycling in America: a 110-billion-dollar industry, Recycling International, 23 09. 2019 (25.03. 2020)

communities and act as a step towards a sustainable solution for tackling e-waste.¹⁹⁶ The government of Nigeria has to develop a specific department or agency for the recycling of e-waste.

This will not only serve as a tool for limiting the adverse effects of e-waste in Nigeria but will also ensure that an increased generation of revenue and creation of job opportunities for the government of Nigeria. A system of recycling agencies should be focused on especially at the Lagos port which has been tagged as the major port for the importation of e-waste into Nigeria.

3.3. Enforcement of Policies on Transboundary Waste Movement

They have been some valiant efforts by the Nigerian Transboundary waste legal regime to implement the provisions laid out to bring an end to transboundary movement of waste into its territory.

To implement these regulations, the Nigerian government created two agencies NIMASA and NESREA that enforce environmental safety on Nigerian territorial waters. This task, however, has not been easily accomplished due to differences in part, to inadequate or unavailable infrastructure and regulatory defects. However, all is not lost, as the Nigerian government and its agencies continue to develop new guidelines and strategies to counter illegal dumping in Nigerian waters. Such strategies as the guidelines for Importers of Electric/Electronic Equipment published by NESREA are an indication of growth and improvement in the Nigerian approach to marine pollution and Dumping of waste at sea.

In compliance with the provisions of the Guide for Importers of EEE into Nigeria, the government of Nigeria has continued to ensure strict compliance with the provisions of the law regarding the importation of EEE into Nigeria. According to a study by the Basel Action Network in 2005, before the implementation of the Guide for Importers of EEE into Nigeria, Nigerians imported about 500, 000 used computers in the country through Lagos ports alone; but due to the implementation of this guide and the measures imposed to reduce e-waste, this number has reduced drastically.¹⁹⁷

As part of the effort to curtail the discharge of e-waste into the Nigerian environment, the National Environmental Standards and Regulations Enforcement Agency has conjoined consistent efforts with INTERPOL and the Environmental Agency in England to receive

¹⁹⁶ R. Wanjiku, HP and Partners tackle Africa e-waste problem, Computer World Kenya (25.03. 2020)

¹⁹⁷ The Digital Dump, The Basel Action Network <http://www.ban.org.banreports.10-24-05/documents/SummaryofFindings.doc/> (24·03 2020)

training on the early detection and containment of e-waste in Nigeria. This effort is aimed at training agents of the agency on the preventive measures to reduce the discharge of e-waste in Nigeria.

To ensure implementation of the laws and regulations relating to e-waste in Nigeria, a strategic collaboration has been organised between the National Environmental and Safety Regulations Agency, the Nigerian Ports Authority and the Nigerian Customs Service to monitor and ensure the limited importation of e-waste and EEE into Nigeria through its borders. This effort is aimed at early detection and prevention of influx of e-waste into Nigeria.

The Nigeria Communications Commission to further enhance efforts to curtail the discharge of e-waste in Nigeria enacted the Nigeria Communications Industry E-Waste Regulations,¹⁹⁸ which makes provisions for the responsibility of the manufacturer, the importer and the bulk consumer of EEE in Nigeria. It also places fines and penalties on defaulting parties who go against the provisions of the regulations.

An admirable effort by a private organisation (Hinckley Recycling) is the development of a recycling organisation to reduce the adverse effects of e-waste in the environment and the population.¹⁹⁹ The operations of the corporation have begun and amongst other activities consist of recycling e-waste in Nigeria. This can be described as a commendable effort which other organisations can follow and the government of Nigeria can advance towards to reduce the effects of e-waste in Nigeria.

Continuous efforts have been made by the government of Nigeria to ensure the reduction in discharge of waste in Nigeria. On June 19, 2019, in conjunction with the United Nations, the government of Nigeria announced a \$15, 000,000 plan to combat and prevent the discharge of e-waste in Nigeria. This plan is aimed at ensuring Nigeria prevents the discharge of e-waste into its environment, taps into the recycling industry and enables a zero economy to prevent health hazards.²⁰⁰

It can be argued that the continuing transboundary movement of e-waste into Nigeria is not due to lack of a national regulatory framework, but rather due to inadequate enforcement of the laws prohibiting the importation of such waste into Nigeria. This has created a state of affairs that is being exploited particularly by foreign waste brokers/traders including those from the EU

¹⁹⁸ Nigerian Communications Industry E-waste Regulations, 2018, made pursuant to the Nigerian Communications Act, 2003.

¹⁹⁹ O. Chidinma Nigeria gets first E-waste Recycling facility, Daily Trust, 14. 02. 2018 (24.03. 2020)

²⁰⁰ Joe McCarthy, Nigeria Unveils \$15 Million Plan to fight E-Waste, Global Citizen, June 24, 2019 (25.03. 2020)

which, as earlier noted, specifically prohibited such export to developing countries such as Nigeria.

Nigeria does not lack for regulations and regulatory bodies to deal with the issue of waste management and dumping. This is in addition to its subscription to several international conventions on environmental protection, maritime administration and safety, however, the issue of illegal dumping in Nigerian waters continue to make headlines in international and local news²⁰¹. It does seem that despite her valiant efforts, Nigeria is still plagued by her inability to fully implement her laws and regulations.

A major problem is the failure to implement government policies or regulations due to operational handicaps. Although the agencies carry out some of their duties with the aid and cooperation of the Nigerian Navy, the agencies are still greatly handicapped by the poor reporting methods of incidents at sea. In some cases, incidents of dumping are reported late or not reported at all to the agencies, therefore many incidents of illegal dumping are not dealt with timeously or effectively.

It also appears that the regulatory agencies are overwhelmed by the sheer volume of e-waste coming into the country, the volume of the act of dumping of waste and abandoned ship in Nigerian waters.²⁰² the Lagos State Coordinator of NESREA had admitted that ‘because of the volume of imports into Nigeria, his agency only does e-waste inspections on imported vessels when it is tipped off by international organisations like Interpol. Significantly other containers about which the agency is not tipped off are not searched.’²⁰³

The bulk of instances of illegal dumping at sea in Nigeria are perpetrated by foreign vessels operating in Nigerian waters; and despite a plethora of regulation prohibiting dumping of waste in Nigerian waters enforceable by both agencies, there is little to no instruction or means of enforcing these regulations on foreign vessels. Nigerian regulations on dumping at sea refer and apply to Nigerian vessels, vessels registered in Nigeria or foreign vessels docked in Nigerian ports, these do not envision "Pollution Tourists" which are foreign vessels not registered in Nigeria but just passing through Nigerian waters mainly to make illegal dumps at sea, in territories not part of the international conventions on marine safety and waste management at sea. There are little to no consequences for many foreign vessels coming into Nigerian waters

²⁰¹ A. Ngwomoya, Lubowa residents cry foul over illegal waste disposal, Daily Monitor, 7.11.2019, (8.03.2020)

²⁰² E. Amaechi, Import of Electronic Waste into Nigeria: The Imperative of a Regulatory policy shift, 3 Chinese Journal of Environmental Law, (2) 2019, p. 141-166

²⁰³ Ibid.

make illegal discharges; or in such proximity as to make such illegal discharge transferable to Nigerian waters.

The effect of ineffective enforcement strategies and implementation, as well as the slow pace of domestication of National laws in Nigeria, is that the provisions of the conventions are unenforceable in court. For instance, the search power of the officers of National Environmental Standards and Regulations Enforcement Agency (NESREA) is deficient in making provisions for an order of the court before a search can be conducted on any vessel or premises. This causes the arbitrary exercise of powers by the officers. Failure to state clearly the punishment and penalties for violating these guidelines and regulations creates the impression that compliance is optional. This has rendered the implementation process ineffective. The enforcement agencies; the court, the police, the local and the state government lack effective enforcement strategies for the implementation of the laws.²⁰⁴

The Federal high court has jurisdiction over matters relating to the Internal waters and the Importation of substances from other countries.²⁰⁵ Cases adjudicated so far before the courts as it pertains to illegal shipment of waste into the country has been nought, ships abandoned at the Nigerian port and dumping at the Nigerian waters has been nought.

In the current period of the 21st century which is engulfed by technological and industrial advancements, a very important way to reduce dumping and its negative effects on the environment is through the process of the 3R concept. This concept embodies the principles of Reduce, Recycle and Re-use. This process should be adopted in Nigeria to prevent continuous dumping; laws should be implemented to ensure that dumping is reduced to the barest minimum and also accompanying these laws should be agencies of both private and public sectors to ensure that the wastes that have already been dumped on the Nigerian seas are recycled using the necessary techniques and processes for the formation of other materials.

Nigeria as a country has not increased its efforts to tap into the recycling industry which is a billion-dollar industry. The residues from the process of recycling waste materials from the process of dumping can be used for the formation of other materials. This is an aspect that is worth considering and should be extensively researched by the Nigerian government.

The Economic Community of West African States Community Court of Justice (ECOWAS Community Court of Justice) The ECOWAS Court of Justice was established in 1991 pursuant

²⁰⁴ J. Ovink, *Transboundary Shipments of Toxic Waste: The Basel and Bamako Conventions: Do Third World Countries have a choice?* 13 Penn State International law Review (2) 1995, p. 292.

²⁰⁵ Section 251(g) of the Constitution of the Federal Republic of Nigeria, 1991.

to Articles 6 and 15 of the 1993 Revised Treaty of the ECOWAS. One of the significant environmental right cases instituted before the court regarding the need to protect the environment of the oil-producing communities of the Niger Delta area of Nigeria is the case of *SERAP v. Federal Republic of Nigeria & others*.²⁰⁶

In the case, *SERAP*, a non-governmental organization registered in Nigeria maintained inter alia that while the Nigerian government regulations require prompt and effective clean-up of oil spills, this is never performed expeditiously or effectively. It was further contended that the lack of effective clean-up greatly aggravates the human rights and environmental impacts of such spills.²⁰⁷ Consequently, the court ordered the Nigerian government to adopt all essential mechanisms to stop the occurrence of future damage to the environment, hold perpetrators accountable, and restore the environment of the host communities.²⁰⁸

It is commendable that the court rightly noted the failure of the Nigerian government to hold any of the ‘perpetrators of the many acts of environmental degradation’ accountable. In this regard, the court observed thus: ‘From what emerges from the evidence produced before this Court, the core of the problem in tackling the environmental degradation in the Region of Niger Delta resides in lack of enforcement of the legislation and regulation in force, by the Regulatory Authorities of the Federal Republic of Nigeria in charge of supervision of the oil industry’.²⁰⁹

The court stressed further that: ‘the adoption of legislation, no matter how advanced it might be, or the creation of agencies inspired by the world’s best models...may still fall short of compliance with international obligations in matters of environmental protection if these measures just remain on paper and are not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or ensuring accountability, with the effective reparation of the environmental damage suffered’.²¹⁰

With this landmark decision, the ECOWAS court has demonstrated that it would certainly hold a member state party accountable for her responsibility to her citizens in respect of the rights protected under the African Charter, including the enforcement of existing legislation, which

²⁰⁶ *Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria*. General List No. ECW/CCJ/APP/08/09; Judgment No. ECW/CCJ/JUD/18/12, decided on 14, 11. 2012 at ECOWAS Court of Justice, sitting at Ibadan, Nigeria.

²⁰⁷ *Ibid.*

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

some member states, like Nigeria, are hesitant to enforce against foreign oil companies operating within their domain.²¹¹

3.4. Corruption and Lax Governmental Policies

There is, without any doubt, systematic neglect and ultimate failure in waste management in Nigeria. The gloomy consequences are a source of anxiety to Nigeria public health, aesthetics, self-worth and human well-being. It appears that government and regulators in Nigeria see issues of waste generation and safe disposal of wastes as intractable and unnecessary.

Yet what is obvious is that refusal to adopt appropriate measures to address the root cause of the solid waste problem will incur severe penalty at a later time. This may be in the form of resources unnecessarily lost and overwhelming adverse impact on the environment and Nigeria public health and safety. Nigerian government should know that the penalty for poor waste management cannot be avoided or lessened with a promise to do something at a later time.²¹²

Beyond signing, acceding to, or ratifying an international agreement, states are expected to take steps, especially legislative, to ensure that the substantive content of these agreements is incorporated into national laws. The Basel Convention requires state parties to 'take appropriate legal, administrative and other measures to implement and enforce the provisions' contained therein.²¹³ Legislative and administrative measures imply the enactment of laws, adoption of policies, standards and guidelines that deal with environmental protection.²¹⁴

One of the major acts that ensure the continuous acts of dumping is the removal of governmental constraints. These constraints range from inconsistent policies created by the government in power to corruption which serves as a major plague to the Nigerian government. Corruption is adamant and can be visible since the period of 1988 when the Koko incident happened. Corruption occurs from the lowest individual at the border control who collects bribes to allow the influx of e-waste into the Nigerian environment to the top officials who collect higher amounts of money to ensure that the e-waste is discharged in certain sites without the disturbance of any authority.

According to a report by Transparency International in 2004, Nigeria has consistently ranked as either the most corrupt or the second most corrupt country on its Transparency International

²¹¹ Ibid.

²¹² S. Afun, Government Regulations and Legislations Will Ensure Sustainable Waste Management in Nigeria, Solid waste management Services Ltd. Port Harcourt. (21.04.2020)

²¹³ Article 4(4), Basel Convention.

²¹⁴ A. Agbor, The Ineffectiveness and Inadequacies of International Instruments in Combatting and ending the Transboundary Movement of Hazardous Wastes and Environmental Degradation in Africa. 9 African Journal of Legal Studies (4) 2016, p. 235-267.

Corruption Perception Index.²¹⁵ This indication by the organisation shows that the country is not yet sufficiently ready to fix the problem of e-waste. This is because the officials supposedly in charge of enforcing the environmental laws of the country are the parties who go against the provisions of the law. To reduce dumping a clear and transparent government with unbiased officials are needed to ensure that issues of corruption do not arise.

An example of the challenge faced by the government preventing the implementation of the regulation is the lack of infrastructural development. This lack of infrastructure is the inability of sufficient devices such as surveillance devices, technology for immediate detection of marine pollution. The non-availability of this technology leads to lack of proper implementation of these regulations put in place by the government. To effectively prevent dumping, laws are not only required to restrict individuals and corporations from engaging in this illegal act, but the availability of infrastructure will ensure a more effective and responsive system to help in preventing dumping on Nigerian seas. The availability of infrastructure encourages productive efforts in the steps to reduce dumping in Nigerian seas.

To be relevant the regulators (administrators) should be better supported and, for effective compliance monitoring and enforcement, stiffer sanctions and penalties should be prescribed and strictly adhered to. This way environmental requirements will be met and maintained. Compliance should be tied to the renewal of licenses and consents and proponents should ensure that staff are highly motivated with adequate equipment and capacity building programs vigorously pursued not only by the administrators but also by the proponents.²¹⁶

The administrators should invest more in capacity building, staff motivation and provision of conducive work environments together with the necessary facilities. The government in this regard should make funds available to the secretariat. Otherwise, they become exposed to monetary inducements leaving compliance in the hands of the proponent. This is unhealthy. With basic knowledge of their responsibilities, they could become more efficient, effective and assertive in carrying out their responsibilities in ensuring the safety of the Nigerian environment.²¹⁷

The Nigerian government in conjunction with the Ministry of Budget and National Planning and the Ministry of Finance stipulate the monetary allocation to the ministries for the fiscal

²¹⁵ L. Ekeanyanqu *et al*, Transparency International Country Study Report: Nigeria, Transparency International (25.03. 2020)

²¹⁶ N. Echefu, E. Akofure, Environmental Impact Assessment in Nigeria; Regulatory Background and Procedural Framework, UNEP EIA Training Resource Manual, p. 71.

²¹⁷ Ibid.

year. From the provisions of the 2020 appropriation bill for the budget of the Nigerian government for the period of January 1, 2020, to December 31, 2020, the writer can note that the budget for the Ministry of Environment, the main agency tasked with the implementation of laws regulating dumping is a meagre sum of 9 billion naira's.²¹⁸

In the view of the writer, this allocation is not sufficient enough to prevent dumping on Nigerian ports and its seas. This lack of adequate funding for the ministry of the environment is one of the issues which serves as a challenge in preventing dumping in the Nigerian seas. Adequate funding is necessary to fight any problem; without funding the necessary agencies whose duty is the task of preventing dumping in Nigerian seas, the issue of dumping cannot be addressed.

There is so much that the international body can do to eradicate toxic colonialism, the international body has promulgated conventions to ensure that civility occurs in dealings related to transboundary movement of waste, the onus is on the country, Nigeria to protect its environment from unnecessary infringement by other countries.

There is a need for the government to increase efforts to ensure the security of its territorial waters. Nigeria should engage in stringent efforts to protect Nigerian shorelines. These efforts should range from the imposition of fines to prevent dumping on Nigerian seas to adjudication by the Nigerian courts to prevent the destruction of Nigerian shorelines.

To move forward, Nigeria has to first, admit to the fact that there is an existing problem with the general waste management mindset, an understanding of the fact that this could lead to a major epidemic in the future should be instigated and agreed upon by all stakeholders, starting from the elites in power down to the ordinary man walking on the streets. Second, the issues raised in this work can be turned around using the recommendations laid out, this can bring about a needed environmental change in the country.

²¹⁸ Budget Office of the Federation, Federal Republic of Nigeria, 2020 Appropriation Act. (25.04.2020)

CONCLUSION

The purpose of this work was to consider whether the national laws are adequate to tackle environmental concerns as it relates to the transboundary movement of waste to Nigeria from developed countries. The need for this study was expressed in the work and it was made clear that the degradation of the Nigerian environment both by the continual importation of waste into the country and the dumping of dead ships on the Nigerian waters and coast are negatively affecting the quality of life experienced by Nigerians in their territory and the protection and preservation of their environment are grossly affected.

To effectively understand the problem of transboundary movement of waste, the author emphasized on e-waste which is purely an imported phenomenon as Nigeria does not manufacture electronic and electric materials. Dumping at sea and abandonment of vessels at the Nigerian Territorial waters and coast was also emphasized upon as this are the practical ways that transboundary movement of waste can be effectively investigated.

Transboundary movement of waste has been an ongoing concern for the Nigerian government and its people, Nigeria has acceded to International conventions- the Basel convention, the UNCLOS 1982, London convention on marine pollution has been dissected in the text. Because of the trade like nature and fear that the international conventions did not necessarily provide for the needs of the African communities, the African states made conventions to protect their interest of which Nigeria is a party to, for example, the Cotonou convention, the Bamako Convention. Nigeria as an indigenous country has made laws such as the NESREA Act, the NIMASA Act and Harmful waste (special criminal provisions) to protect its environment against the importation of waste from developed countries.

E-waste which was of paramount concern as being the most imported waste into the country has no federal provisions. So far there has been a regulation by the NESREA Act as to what is expected from dealers who import second-hand products and it provides that no importation of electronic waste is to be allowed into the country. This regulation did not go-ahead to provide how e-waste importation is to be avoided. Provisions pertaining to proper labelling of products imported or proper search by personnel with the technical know-how to ascertain the status of the products imported was not provided in the National Environmental (Electrical and Electronic Sector) Regulation, 2011. No other regulation has been made to supplement this regulation. Existing legislation, for example, the Harmful waste (special criminal provisions) Act cannot fill the void lacking in the NESREA Act because the Act was not enacted to tackle the problem of e-waste importation. This lack of procedural rules has made enforcement of the

regulation difficult and elimination of transboundary movement of waste almost impossible to attain.

The NESREA Act posits for a total ban on the importation of e-waste into the country. Yet, the amount of e-waste imported into the country increases yearly, this provision has become redundant as there is proof of flagrant disregard for it by the importers of this waste and the instituted agencies. There is a need for the revamp of this provision and an approach based on practicability and possible enforcement should be followed. The present economic situation of the country and the obvious need for electrical equipment make it probable that the best course of action should be a ban on unrecyclable products. This will reduce the rate of illegal shipments into the country and enable the country to amass the much-needed data needed to eradicate the problem of transboundary movement of waste.

Nigeria has the NIMASA Act which gives its agency the powers to protect the Nigerian Maritime area and to institute necessary regulations, one of which is the Merchant Shipping Act. The Act lacks the necessary provisions which has inhibited the agencies' powers to successfully protect the Nigerian ports and territorial waters, for example, there are no provisions on ships that have been purposely left as waste in Nigeria's territory, in situations where the owners of the ship have decided to take the cheap way out by abandoning the ships instead of properly recycling, there are no punishments prescribed or procedure set out for the agencies to follow in such situations.

This was not thought of by the legislators and this is the issue that the Nigerian environment is presently afflicted with. Nigerian regulations on illegal dumping of waste at sea have left something to be desired in terms of their reflection of current recommendations, particularly in the area of transboundary movement of waste and ships abandoned in the Nigerian waters.

From the foregoing, Nigeria does not lack for legislation that pertains to the prohibition of transboundary movement of waste. Yet, the problem persists, and it can be concluded that it is not realistic to provide a law devoid of omissions, as the society of which laws are made for is an ever evolving one. However, it is practicable to provide legislations to tackle problems as they arise, such as dumping in Nigerian waters and importation of waste and also to have foresight in the course of establishing these acts. This is missing in the Nigerian legislation and it is obvious that the existing laws are inadequate to tackle the problem of toxic colonialism.

It has been observed that although the Nigerian legislators do intend to eradicate the problem of transboundary movement of waste, their intention seems to be lost in the wordings of the provisions made to do so. A reoccurring example of the less effective laws in the country

relating to dumping and pollution is the case of oil pollution in the oil-rich Niger Delta region. The constant pollution of the sea region in the Niger Delta has led to the loss of lives, both human and animal alike in large numbers, the loss of sources of living to individuals who engage in farming and fishing activities. These consistent acts of dumping are not controlled by the government which has led to the continued environmental agony for the people in the Niger Delta region from illegal acts of the oil companies.

The hypothesis of the study posited that the available legal jurisprudence on the protection and preservation of the Nigerian environment against the importation of waste from developed countries are not adequate on the legal front to protect and preserve the Nigerian environment. The author of this thesis concludes that the hypothesis is answered in the affirmative.

To move forward, Nigeria will be expected to make some changes in its enforcement of marine regulations. With duplicity of responsibilities, there is always bound to be confusion and chaos, it is therefore important, that the Country's legislature and other regulatory bodies be given distinct and separate duties and responsibilities to avoid the clog of overlapping jurisdiction on certain matters or create a single and distinct system to address the issues of transboundary movement of waste under the supervision of the Ministry of Environment to inherit the responsibilities of both agencies on the movement of waste and protection of the Nigerian territorial waters against dumping of decommissioned vessels.

The absence of necessary tools, apparatus and technical know-how which has been made possible by lax governmental agencies and corruption in the system is an added challenge to curbing the problem of transboundary movement of waste to Nigeria. It is more difficult to effectively protect the Nigerian environment from foreign threats when there are no incentives, provision of knowledge and laid down means of enforcement.

Another observation made is that the relevant agencies have not instituted any proceedings in the courts as it relates to importation of waste and dumping of vessels in Nigeria. The judiciary has the power to give meaning and life to provisions made by the legislators, so far, matters present in courts as it relates to arrest or enforcement of the present legislations against dumping in the domestic and international waters surrounding Nigeria and the incessant importation of waste into the country has been none.

With the high amount of abandoned ships in the Nigerian waters and its coast and the incessant importation of waste in massive tons, proceedings should be instituted to enable the Judiciary make decisions on this matters, this would serve as a deterrent to others and assist the agencies in ensuring compliance of the regulations by present and future would be defaulters. The writer

of this work concludes that much is also expected in the field of judicial enforcement of the existing legislation.

The consciousness of stakeholders should be awakened by the production of this work, this should bring about a restructuring of the National provisions on waste management to be adequate taking into cognisance the need to protect and conserve the environment and overall improve on the rights or persons to live in a healthy and safe environment. Hopefully, by considering the loopholes in the national system and the recommendations provided for consideration, this area of national environmental law can be more effectively addressed.

ABBREVIATIONS

ACP	African, Caribbean and Pacific.
AU	African Unity
BAN	Basel Action Network
EC	European Commission
ECOWAS	Economic community of West African States.
EEE	Electronic and Electrical Equipment
EPR	Extended Producer Responsibility
EU	European Union
HWA	Harmful Waste Act.
IMO	International Maritime organization.
INTERPOL	The International Criminal Police Organisation
MARPOL	International convention for the prevention of Pollution from ships
MEPC	Marine Environment Protection Committee
NESREA Agency	National Environmental Standards and Regulations Enforcement Agency
NIMASA	Nigerian maritime Administrative and Safety Agency
NIWA	National Inland Waterways Authority
NPA	National Port Authority
OAU	organization of African Unity
OECD	Organization of economic cooperation and development.
PCBs	Polychlorinated biphenyls
UEEE	Used Electrical Electronic equipment
UNCLOS	United nations Convention on the law of the Sea

WTO

World Trade organization

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