

Dr Lanre Fagbohun, associate professor, Faculty of Law, Lagos State University (LASU), Ojo, examines the imperatives for the edy (EIS) to public debate. He concludes by urging the government to comply with due process as provided in the various environmental legislations for the overall interest of Lagosians.

Toxic waste and hazardous products: Unfair legacy for Africa's environment (1)

SERIOUS concerns have been raised about the accumulation of mountains of electronic waste in Africa and other developing countries. Ranging from personal computers to cell phones, radio, television sets etc, tonnes of used electronics that are obsolete and unserviceable are imported into African countries regularly. Take the case of Nigeria, the situation became so bad that the government very recently found itself compelled to set-up a national committee to deal with the problem. What are the concerns and why has it been so difficult to come to terms with the challenges of electronic waste dump?

The worldwide concern about the movement and disposal of toxic and hazardous wastes (of which electronic waste is a part) has heightened since the late 1970's and early 1980s. The major concern was wastes being exported from the industrialized countries for cheap disposal in developing countries. Seaports in Africa and Asia are daily inundated with container loads of hazardous electronic waste, plastic scrap, lead car batteries, metal scrap and other cast-off electronic devices from rich developed countries. Much of what is illegally shipped under the guise of exporting waste for "recycling and recovery purpose", and these dumped in the name of second-hand equipment invariably end up impacting not only on the environment (contaminating air, soil, water and foodstuffs) but severely on humans who come in contact with them. The result is increased rates of cancer, birth defects and other health problems.

The concern led to the development and implementation of international controls to combat the movement of hazardous wastes and their disposal. Among others, efforts have been geared towards curbing the practice of illicit dumping of toxic wastes and products, clean up of the environment, rehabilitation and assistance to victims by way of compensation, guiding national legislation in relation to the transboundary movement and dumping of toxic and dangerous products, how to handle the challenge of the impunity with which perpetrators of these heinous crimes carry out their activities, and how to meet gaps and ambiguities in international instruments aimed at combating illegal movement and dumping of toxic and dangerous products and wastes.

In the context of Africa and international law, the primary instruments that reference can be made to are the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal ("Basel Convention") together with the Basel Ban amendment, and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa ("Bamako Convention").

Background to the Basel Convention

The Basel Convention on hazardous waste trade was initiated in the late 1980s, when the world's richest countries (who generate over 90 percent of all hazardous waste), were exporting their growing waste problems to poorer, developing nations.

The goal of the Convention which entered into force on May 5, 1992 is to protect human health and the environment against the adverse effects which may result from the generation and management of hazardous and other wastes. Its specific objectives are: to reduce transboundary movements of hazardous wastes; to minimize the generation (in terms of quantity and hazardousness) of wastes; and to promote the environmentally sound management of hazardous and other wastes. The Convention provides for the attainment of these objectives through control of the transboundary movements of hazardous wastes, monitoring and prevention of illegal traffic, assistance for the environmentally sound management of hazardous wastes, promotion of cooperation between parties in this field, and development of Technical Guidelines for the management of hazardous wastes.

Basel's approach to regulation

The Convention allow nations that have ratified it to ship hazardous wastes to, from or through only other Parties to the Convention. The exporting country is, however, required to notify the receiving country and

any transit countries of the proposed shipment. The waste shipment may occur only after the transit and receiving countries have given consent for the shipment (prior informed consent).

The Convention permits an exception to the requirement that shipment can only be between parties to the Convention in situations where there exist a separate bilateral agreement covering relations with a given trading partner that is not a party to the Convention or a multilateral or regional agreement allowing the import. By Article 11, parties to the Convention can develop such a bilateral agreement as long as the agreement reflects the environmentally sound management (ESM) of wastes.

Another salient requirement of the Convention is that which mandates that a tracking document, or movement document, accompany the waste shipment from its point of origin until its ultimate disposal.

In addition, shipments of waste must be packaged, labeled, and transported in accordance with international rules. In the event that an accident occurs during the shipment of the waste, Basel requires that the responsible parties inform the potentially affected countries of the accident. The parties to the Convention are also required to submit an annual report to the Basel Secretariat summarizing the amounts and types of hazardous waste exported and the destination and disposal methods.

There are other obligations on parties to the Convention, namely: each party can prohibit the import of hazardous wastes and other wastes, and where it does so, it should inform other parties to the Convention; each party shall prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner; each party shall ensure that persons involved in the management of hazardous wastes or other wastes shall prevent pollution and minimize potential impact s on human health and the environment; each party shall prohibit all persons under its national jurisdiction from transporting or disposing of hazardous wastes or other wastes unless such persons are authorized to do so; each party shall ensure that any export of hazardous or other wastes is covered by insurance, bond or other guarantee as required by the importer or transit country; each party shall take appropriate legal, administrative and other measures to implement and enforce the provisions of the Convention, including measures to prevent and punish conduct in contravention of the Convention.

Finally, parties shall take appropriate measures to ensure that the transboundary movement of hazardous wastes and other wastes is allowed only if one of 3 conditions are met: (a) the state of export does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites in order to dispose of the wastes in question in an environmentally sound and efficient manner; or (b) the wastes in question are required as a raw material for recycling or recovery industries in the state of import; or (c) the transboundary movement in question is in accordance with other criteria to be decided by the parties, provided those criteria do not differ from the objectives of the Convention.

Basel's supportive measures for parties

UNEP administers two trusts funds for the Basel Convention. There is a fund for the implementation of the Convention where funds are based on the UN scale of assessment. There is also a technical cooperation fund to assist developing countries and other countries in need of assistance to implement the Convention. Parties decide on the level of contribution for this fund. Other financial resources come from bilateral assistance programmes among parties.

In the area of capacity building, which has been a sore point for critics, Basel has no specific financial mechanism to promote capacity building and to facilitate technology transfer. Capacity building is carried out by the Basel Convention Regional Centres (BCRCs), Parties and the Secretariat. With the adoption of the Basel Declaration on Environmentally Sound Management in 1999, efforts in-



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creased to assist Parties to minimize generation of hazardous and other wastes and to manage these wastes in an environmentally sound manner. Parties agreed to provide \$300,000 per year over a three year period (2000-2002).

The Conference of Parties (COP) at its sixth meeting in December, 2002, adopted a Strategic Plan for the implementation of the Basel Convention to 2010, building on and using the framework of the 1999 Ministerial Basel Declaration on Environmentally Sound Management. Activities for the implementation of the Strategic Plan have, however, been stalled due to lack of funds.

At the sixth COP, parties considered and approved a draft decision on enlarging the scope of the Technical Cooperation Trust Fund, including interim guidelines on emergency assistance, compensation, and accident and damage prevention in an annex. The guidelines focus on emergency assistance, compensation for damages to the environment, capacity building, technology transfer, and developing measures to prevent accidents and damages to the environment caused by the transboundary movement of wastes and their disposal. The COP invited developing countries and countries with economies in transition to submit to the Secretariat project proposals for development of capacity building and transfer of technology while encouraging parties and the Secretariat to continue working on the improvement of the existing mechanism, or on establishment of a new mechanism, if necessary.

Non-compliance mechanism under Basel

At the sixth COP, the parties adopted a decision on the compliance mechanism which sets out a mechanism for promoting implementation and compliance. The mechanism is a non-confrontation, flexible and non-binding tool that aims at preventing problems. The compliance mechanism is to be administered by a Committee composed of 15 members reflecting an equitable geographic representation of the five UN regional groups. Submissions to the Committee may be made by a party regarding itself; one party regarding another party; or by the Secretariat.

Submissions regarding compliance are forwarded to the party in question, who may respond or provide comments. The Committee may provide advice to the party to facilitate compliance, such as advice on regulatory regimes, assistance including financial and technical support; elaboration of voluntary compliance action plans; and/or follow-up arrangements. The Committee may also review general issues of compliance and implementation of the Convention, and may recommend that the COP take additional measures regarding specific cases.