



The Export of Banned Pesticides to Africa and Central America

Legal Opinion of the Center for International Environmental Law (CIEL)



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Executive Summary

Decades of research demonstrate that the production, use, and exposure to pesticides can cause negative effects on environmental and human health. As a result, some States have banned or denied the approval of certain active substances used in pesticides in order to protect human health and the environment.

Although a small number of highly hazardous pesticides such as aldrin, dieldrin, and dichloro-diphenyl-trichloroethane (DDT) have been banned or severely restricted under international law, there is currently no binding international agreement regulating pesticide risks more generally. To address this gap, many States and the European Union (EU) have adopted domestic measures to mitigate risks, including by banning or refusing to register pesticides and constituent chemicals of significant concern. However, even where such domestic measures have been taken, countries continue to manufacture and export banned or unapproved pesticides for use in other parts of the world. Operating under a double standard, high-income countries continue to allow the production of their unwanted substances for export and profit. Importing countries often have less stringent protective regulations and technical capacity to handle hazardous substances, resulting in toxic exposure affecting farmers, workers, and communities.

These circumstances are especially relevant in low- and middle-income countries, which have been at the receiving end of hazardous chemicals, pesticides, and e-waste exports from high-income countries for decades, with severe impacts on human health, ecosystems, and the economy. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), which regulates the international trade of hazardous waste, has not sufficiently protected all countries from these impacts. African countries have resolved to change this, developing a dedicated regional convention — 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) — to prohibit the import of hazardous waste. Similarly, Central American countries have adopted a dedicated instrument — the Central American Regional Agreement on the Transboundary Movement of Hazardous Waste (the Central American Agreement) — to ban the import of hazardous waste. Each of these regional instruments considers substances that are banned or unapproved in their country of production as hazardous waste.

This legal analysis examines the legality of exports of banned or unapproved pesticides from Europe (the EU, Switzerland, and the United Kingdom) to Parties to the Bamako Convention in Africa and to the Central American Agreement. It offers the following conclusions:

- 1) **Violations under the Bamako Convention in Africa and the Central American Agreement:** Pesticides that are banned or not approved in Europe constitute hazardous wastes that are banned for import under the Bamako Convention and the Central American Agreement.
- 2) **Violations under the Basel Convention:** Article 1.1.b. of the Basel Convention refers to hazardous wastes as defined by the domestic legislation of the Party of import. Domestic legislation in analyzed countries, including Angola, Benin, Burkina Faso, Cameroon, Costa Rica, Côte d'Ivoire, Egypt, Ethiopia, Guatemala, Mali, Morocco, Nicaragua, Panama, Senegal, Sudan, Tanzania, Tunisia, and Togo considers banned or unapproved pesticides to be hazardous wastes. Therefore, exports of these pesticides to these Basel Parties violate the Basel Convention's general prohibition of exporting hazardous waste (as defined by the domestic legislation of the Party of import).

- 3) **Obligations of exporting States:** European States, as well as any other States that are Parties to the Basel Convention, have a legal obligation to ban the export of banned or unapproved pesticides to countries where the Bamako Convention or the Central American Agreement definition of hazardous wastes is part of the domestic legislation (e.g., in Angola, Benin, Burkina Faso, Cameroon, Costa Rica, Côte d'Ivoire, Egypt, Ethiopia, Guatemala, Mali, Morocco, Nicaragua, Panama, Senegal, Sudan, Tanzania, Tunisia, and Togo).
- 4) **Obligations under international human rights law:** There is ample knowledge that pesticides are detrimental to health and the environment. The failure by European States to ban the export of banned or unapproved pesticides impairs the right to health in the importing States, and it, therefore, constitutes a breach by European States of their international human rights obligations.

By exporting banned and unapproved pesticides, Parties to the Basel Convention are in breach of their international obligations under the Basel Convention, customary law, and human rights law. They have a legal obligation to completely and immediately ban all exports of these hazardous chemicals and end this illegal and dangerous trade.

This analysis also extends to regions and substances beyond banned pesticides from Europe. The Bamako Convention and Central American Agreement ban on hazardous wastes includes all substances banned in the country of manufacture and therefore applies to banned chemicals and other toxic products. And Parties to the Basel Convention, like Canada, China, or Russia, are in breach of their international obligations if they export banned substances to Parties of the Bamako Convention in Africa or to Parties to the Central American Agreement.

Considering these conclusions, it is clear that action must be taken to end the export of banned or unapproved pesticides and protect human rights and human health. The EU has already committed to banning these exports in the Chemicals Strategy for Sustainability, and now it is time to act on this commitment and set a standard for other regions to follow.

Introduction

Despite domestic laws, many States around the world allow the manufacturing of harmful pesticides that they have banned or not approved for use in their own territory due to health and environmental risks. While these substances are deemed harmful in the country of production, domestic legislation does not prohibit their export: These banned or unapprovedⁱ substances are exported to other regions of the world (including many low- and middle-income countries), posing a threat to humans and the environment, violating human rights, and contributing to global chemical risks.

This is a global issue. High-income countries continue to manufacture and export domestically banned or unapproved pesticides for use in parts of the world with weaker regulations, shifting the responsibility to the importing countries. According to Pesticide Action Network (PAN), countries have banned more than 500 pesticide ingredients or groups of active ingredients still in use in the global market. The EU is the most protective regulator in its domestic market,¹ but it is still shipping its banned pesticides abroad.

The impact of exported pesticides has no borders, resulting in risks for importing countries and exporting countries. Locally banned or unapproved pesticides are exported and used in crops abroad. In turn, food containing residue from those banned pesticides is often reimported back to the same countries that allowed the pesticides' production for export,² creating a “poison boomerang.”³

Until a global regulation or ban on the production of these hazardous pesticides is adopted, pesticide companies will continue to take advantage of the weakest local legislation to continue producing, exporting, and profiting from the sale of prohibited pesticides. This is of particular concern for Asian, African, Latin American, and Caribbean countries.⁴

The EU is considered a standard-bearer in global chemicals legislation, and many countries that receive the EU's pesticide exports are Parties to the Bamako Convention or the Central American Agreement, which provide specific mechanisms for countries to protect themselves from unwanted imports in conjunction with the Basel Convention. Because of these unique circumstances, this piece specifically explores the legality of European exports of banned or unapproved pesticides to African and Central American countries that are Parties to the Bamako Convention or the Central American Agreement. This analysis makes the following conclusions:

- 1) Banned or unapproved pesticides are regularly exported to low- and middle-income countries, with unique circumstances in Africa and Central America.
- 2) Under the Bamako Convention and the Central American Agreement, pesticides that are banned or unapproved in the country of production are considered hazardous wastes.
- 3) In the context of exports from Basel Parties to other Basel Parties that are also Parties to the Bamako Convention or the Central American Agreement, banned or unapproved pesticides are considered hazardous wastes.

ⁱ Across this analysis, this phrase will be used to encompass pesticide formulations that have been banned, canceled, non-approved, refused registration, withdrawn from registration, or which are otherwise not legally authorized for use in their country of manufacture.

- 4) States are obligated not to act in a way that makes it more difficult for other Basel Parties to fulfill their international obligations under the treaty. It is, therefore, illegal under international law for countries to export domestically banned or unapproved pesticides to countries that are Parties to the Basel and Bamako Conventions or to countries that are Parties to the Basel Convention and the Central American Agreement.
- 5) Exporting banned or unapproved pesticides constitutes a breach of international human rights obligations.

The present analysis builds on and draws from the Center for International Environmental Law's previous work examining the legality of high sulfur fuel exports from European to African States under the Basel and Bamako Conventions.⁵ The underlying principles that informed the earlier analysis apply with equal force to the export of banned pesticides from Basel to Bamako Convention Parties and the export of banned pesticides from Basel Convention to Central American Agreement Parties.

Banned or Unapproved Pesticides are Regularly Exported to Low- and Middle-Income Countries

Nature of Exports

The pesticide industry has dramatically grown in the last few decades. In 1960, the industry counted around 100 active ingredients available to farmers, amounting to less than USD 10 billion in market value. By 2019 the industry had reached USD 50 billion in value, with an estimated 600 active ingredients available.⁶

Pesticides are inherently designed to destroy “pests.”⁷ The word pesticide encompasses a variety of substances and products (such as herbicides (weed killers), fungicides (to fight mold and fungi), insecticides (to fight insects), termiticides, rodenticides, etc.) that can be highly hazardous. For instance, the class of pesticides called neonicotinoids act similarly to nicotine to affect the nervous system of insects, causing paralysis and eventual death.⁸ However, fatal consequences can go beyond the “target organisms” and affect populations of bees and entire ecosystems.⁹ Decades of research document how the production of, use of, and exposure to pesticides can have negative effects on human health, including severe diseases and death.¹⁰

Because of these characteristics, governments have been banning, severely restricting, or denying approval of certain active substances used in pesticides.¹¹ Such dedicated regulations usually distinguish pesticides from other synthetic chemicals.¹²

An international legally binding agreement to regulate pesticides does not currently exist, meaning the number of hazardous substances banned globally is extremely limited. For instance, the Stockholm Convention on Persistent Organic Pollutants only restricts or prohibits a few pesticides globally.¹³ Other international agreements regulate only certain aspects of pesticides trade. For example, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) requires States to share information on the export and import of certain hazardous

pesticides¹⁴ and the Basel Convention regulates the international trade of hazardous pesticides only after they become waste.¹⁵

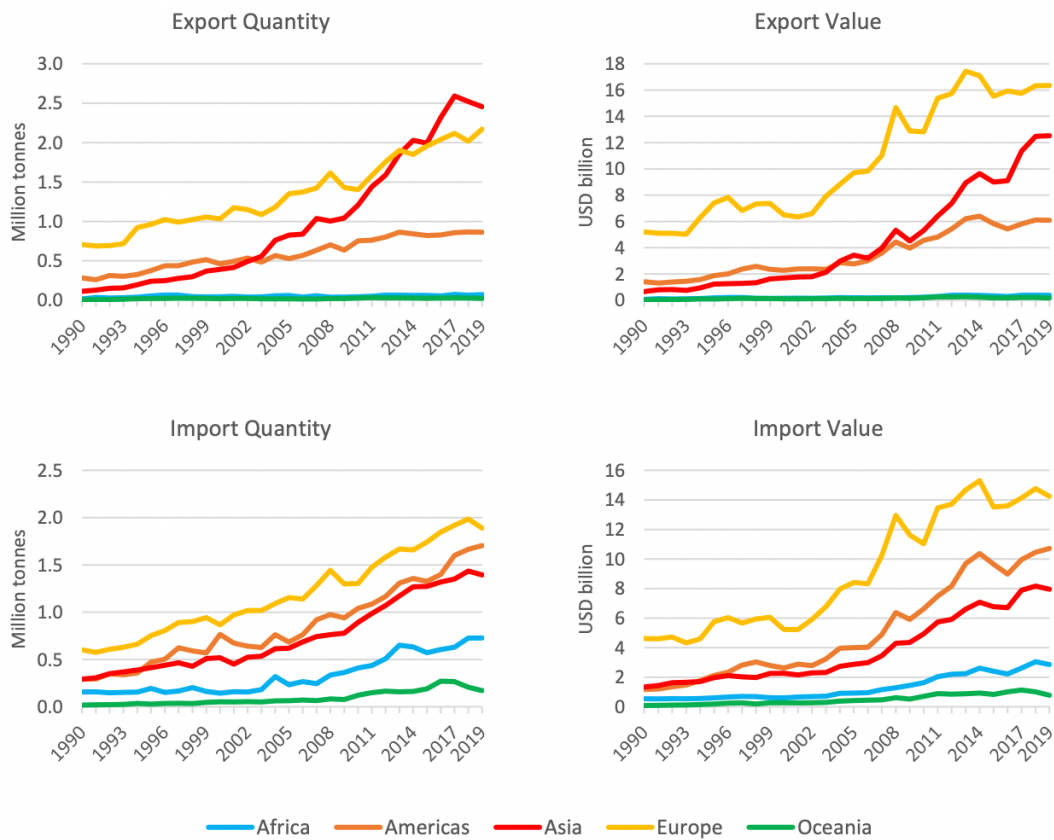
Many States have been taking domestic action on the use or market access of certain pesticides due to the risks to human health or the environment. Regulatory actions include banning these substances, refusing their approval, or severely restricting their use. However, locally banned or unapproved pesticides are still manufactured for export and use in other parts of the world. This practice has been characterized as a “double standard,” as high-income countries continue to allow the production of their unwanted substances for export.¹⁶ Countries receiving pesticides often have less stringent protective regulations and limited technical capacity to handle hazardous substances, resulting in toxic exposure affecting farmers, workers, and communities, including women and children.¹⁷

Scale of Exports

The global trade of pesticides has reached almost 5.6 million tonnes as of 2019, with a value of USD 35.5 billion.¹⁸ Overall use has dramatically increased in the last decades: The total pesticide use increased by more than 50% in the 2010s compared to the 1990s,¹⁹ with total traded quantities seeing a three-fold increase between the 1990s and the 2010s.²⁰

However, in Europe, according to the United Nations Food and Agriculture Organization (FAO), pesticide use “increased by just 3 percent between the 1990s and the 2010s, most likely due to the stringent European Common Agricultural Policy put in place, which monitors and controls the use of pesticides.”²¹ Despite the comparatively lower use in their territories, “European countries exported nearly 1.4 megatons of pesticides per year during the period 1990–2019, representing more than one-third of the global total.”²² Meanwhile, Africa used fewer kilograms of pesticides per hectare than other regions but had “high growth rates for traded pesticides, with approximately a 3.5-fold increase in imports from the 1990s to the 2010s.”²³

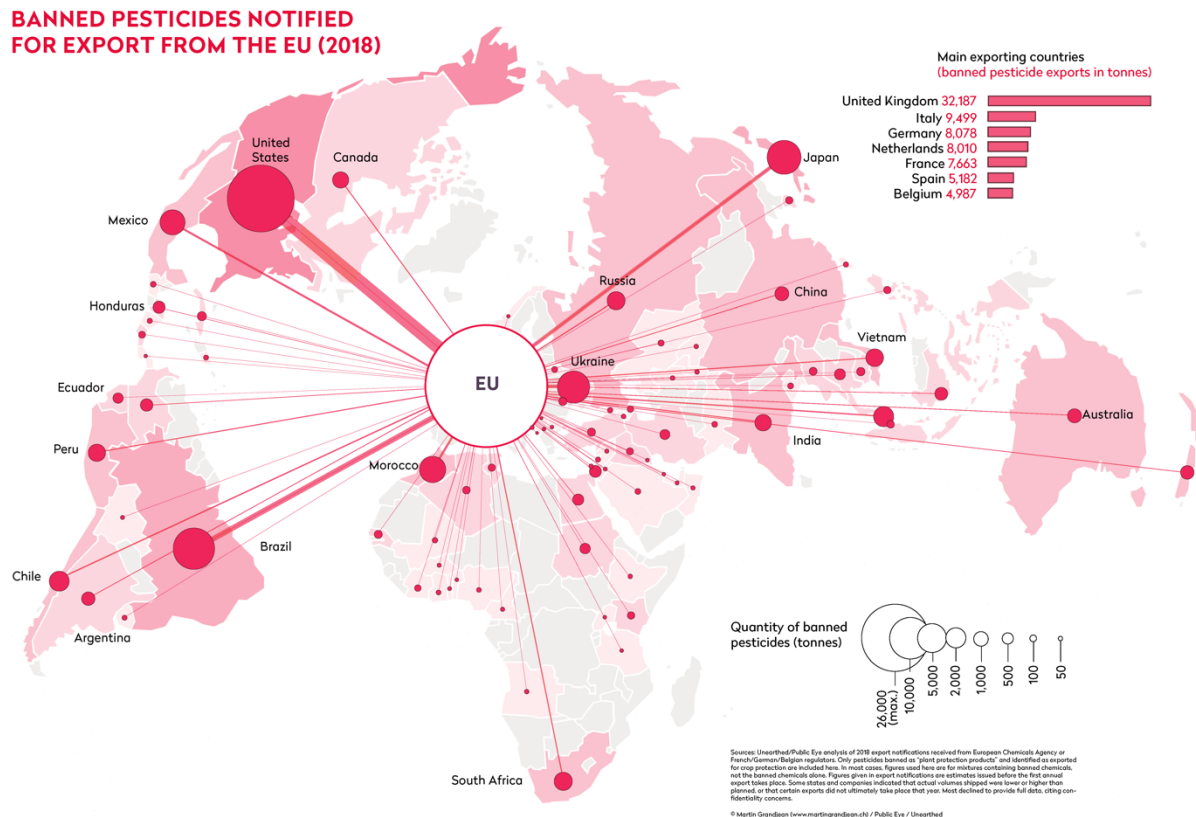
Figure 1: Total pesticides export and import quantities and values by region



Reprinted from: FAO report "Pesticides use, pesticides trade and pesticides indicators: 1990–2019," <https://www.fao.org/3/cb6034en/cb6034en.pdf>

In the EU, according to the requirements of the Prior Informed Consent (PIC) Regulation, exporters of banned or severely restricted substances need to notify their intentions to export to a non-EU country. In some cases, explicit consent is needed from the importing country. Swiss organization Public Eye and Greenpeace UK's journalism outlet, Unearthed, used these export notifications to track the export of banned pesticides from EU Member States and published the data in a 2020 investigation.²⁴ More than 80,000 tonnes of these substances banned in the EU, including the United Kingdom,²⁵ were exported from the EU in 2018. This included forty-one banned pesticides, with associated health risks including "death from inhalation, birth defects, reproductive or hormonal disorders, or cancer."²⁶

Figure 2: Banned Pesticides Notified for Export from the EU



This map was developed before Brexit and indicates the export from both the EU and the UK. It is reprinted with permission from the Public Eye report Banned in Europe: How the EU exports pesticides too dangerous for use in Europe available at https://www.publiceye.ch/fileadmin/doc/Pesticide/202009_EU-export-pesticides_worldmap_EN.pdf

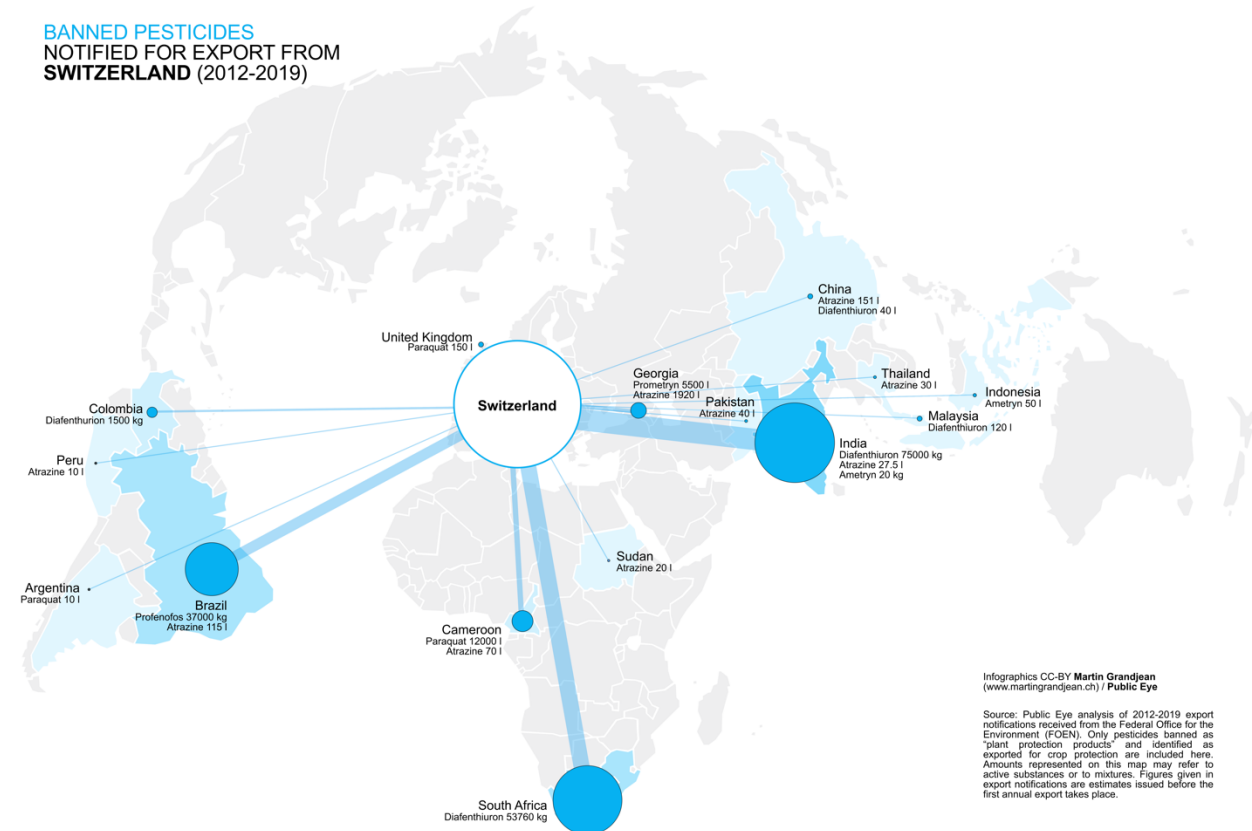
Carbendazim is an example of an ingredient used in an exported pesticide that is banned in the EU. According to a report by Rosa Luxembourg Stiftung, PAN Germany, and INKOTA, the highly hazardous ingredient is a fungicide “characterized by the European Food Safety Authority (EFSA) as being mutagenic and reprotoxic.”²⁷ Findings on the substance included “damage to chromosomes, fertility disorders as well as malformations in foetuses after carbendazim was administered to pregnant rats and rabbits.”²⁸ It took four years for the EU to ban the substance.²⁹ As of 2022, EU Member States are still registering export notifications of this banned substance.³⁰

The Public Eye and Unearthed investigation revealed that three-quarters of the eighty-five countries importing pesticides containing substances banned in European fields were low- or middle-income. The top ten importers of pesticides banned in the EU and the UK included Brazil, Ukraine, Morocco, Mexico, and South Africa.³¹ Seven exporting States — the UK, Italy, the Netherlands, Germany, France, Belgium, and Spain — accounted for more than 90% of these exports.³²

Switzerland has also been exporting domestically banned pesticides: For instance, Public Eye exposed the export of 37 tonnes of the dangerous insecticide profenofos to Brazil in 2018, denouncing the fact that it was one of the substances most frequently detected in Brazil’s drinking water. The substance has been banned in

Switzerland since 2005. Promisingly, Switzerland decided to ban the export of profenofos and four other domestically banned substances (atrazine, diafenthiuron, methidathion, and paraquat) in 2021. For 100 other substances, Switzerland now requires a dedicated export license.³³ This licensing requirement still falls short, as it is not a full ban on the export of domestically banned pesticides.³⁴

Figure 3: Banned Pesticides Notified for Export from Switzerland



Reprinted with permission from Public Eye: https://www.publiceye.ch/fileadmin/doc/Pesticide/202009_CH-export-pesticides_worldmap_EN.pdf

The EU has also committed to banning the export of domestically banned substances, according to its Chemicals Strategy for Sustainability. The promise is slated for implementation in 2023. Because the EU's regulations are considered a benchmark for global chemical regulations, this ban not only has the potential to better protect EU residents but can also substantially shift and bolster chemical regulations worldwide.

Unique Circumstances in Africa and Central America

Africa has been receiving hazardous chemicals, pesticides, and e-waste exports from high-income countries for decades, with significant consequences on ecosystems, human health, and the economy. A UN report exposed the high hidden costs of hazardous pesticide trade and use in Africa.

The total healthcare costs and other economic losses due to the use of hazardous pesticides in sub-Saharan Africa exceeded the overall amount of Official Development Assistance received by countries in the whole African region.³⁵

The continued double standard in toxics trade, combined with the failure to prohibit the trade of hazardous waste to less developed countries under the Basel Convention,³⁶ spurred African countries to develop a dedicated regional convention “to prevent Africa [from becoming] a dumping ground for toxic wastes.”³⁷ The Bamako Convention, which entered into force in 1998, is more restrictive than the Basel Convention, as it prohibits the import of any hazardous and radioactive waste into Africa. Article 4.1 of the Bamako Convention requires all Parties to “take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties. Such import shall be deemed illegal and a criminal act.”

Furthermore, the Bamako Convention explicitly recognizes that “the effective control and minimization of transboundary movements of hazardous wastes will act as an incentive, in Africa and elsewhere, for the reduction of the volume of the generation of such wastes.”³⁸ It expresses concern about the problem of transboundary traffic in hazardous wastes. It also indicates the determination of Member States “to protect, by strict control, the human health of the African population and the environment against the adverse effects which may result from the generation of hazardous wastes.”³⁹

Similarly, countries in Central America were concerned by the illegal waste trade and imports of hazardous wastes into the region. This spurred the decision to develop a regional agreement, the Central American Agreement, which was signed at the Summit of the Presidents of Central America in 1992 by Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama. The Agreement entered into force in 1995.⁴⁰ This instrument explicitly acknowledges the potential of irreversible damage to human health and natural resources caused by hazardous waste,⁴¹ and it is more restrictive than the Basel Convention. Like the Bamako Convention, it prohibits the import or transit of hazardous wastes to Central America from countries that are not Parties to the Agreement.⁴² In fact, Article 1.1 of the Central American Agreement includes in its definition of “hazardous wastes” those hazardous substances that have been banned or whose registration has been canceled or rejected by a governmental regulation or voluntarily withdrawn in the country where they were manufactured for reasons of human health or environmental protection.⁴³

Under the Bamako Convention and the Central American Agreement, Pesticides that are Banned or Unapproved in the Country of Production are Considered Hazardous Wastes

As noted in the previous section, the Bamako Convention and the Central American Agreement oblige Parties to ban the import of hazardous waste.

Article 2.1 of the Bamako Convention defines “hazardous wastes” for purposes of the Convention. Article 2.1 identifies four distinct categories of waste, including, *inter alia*: (a) hazardous waste streams further specified in Annex I of the Convention (e.g., “[w]astes from production, formulation and use of resins latex, plasticizers, glues/adhesives”); (b) wastes “defined as, or are considered to be, hazardous wastes by the domestic legislation of the State of export, import or transit;” (c) wastes possessing hazardous characteristics listed in Annex II of the Convention (such as explosive, poisonous, and ecotoxic). Finally, and most salient to

this analysis, Article 2.1.d includes all “hazardous substances which have been banned, cancelled or refused registration by government regulatory action, or voluntarily withdrawn from registration in the country of manufacture, for human health or environmental reasons.”

Similarly, Article 1.1 of the Central American Agreement defines hazardous waste for the purpose of the Agreement. It defines hazardous waste as substances included in any of the categories of the Agreement’s Annex I, which have the characteristics indicated in Annex II, or that are “considered as such according to the local laws of the Exporting, Importing or Transit State.” Finally, and most salient to this analysis, the last part of Article 1.1 defines hazardous wastes as “hazardous substances that have been banned or whose registration has been cancelled or rejected by governmental regulation, or voluntarily withdrawn in the country where they were manufactured for reasons of human health or environmental protection.”⁴⁴

The determination of whether pesticides banned, canceled, refused, or withdrawn from registration in Europe also constitute hazardous wastes under the Bamako Convention and the Central American Agreement; thus requires analysis of four elements to determine whether such pesticides are: (i) substances; (ii) which have been banned, canceled, refused, or withdrawn from registration; (iii) in the country of manufacture; or (iv) for human health or environmental reasons.

Element (i): Pesticides Qualify as "Substances"

In clear contrast to other elements of Article 2, the definition of hazardous wastes for the purposes of the Bamako Convention in Article 2.1.d refers to “substances” rather than “wastes.” Like the Basel Convention, moreover, Article 1.1 of the Bamako Convention expressly defines “wastes” as a subcategory of “substances or materials,” thus clearly indicating that “substances” is the broader term that includes but is not limited to waste. Reading Article 2.1.d *in pari materia* with the wider Convention text indicates that, had the Parties intended to use the narrower term “waste,” they would have done so. Therefore, a straightforward reading of the text, giving the words therein their natural meaning, indicates that a substance need not be designated waste in its exporting country to fall within the scope of Article 2.1.d. This wider scope was a deliberate extension of the definition of waste by the Parties to the Convention. Indeed, according to a former Executive Secretary of the Basel Convention, the reference to “substances” was intentionally included in Article 2.1.d of the Bamako Convention to cover products (not just waste) banned in the domestic market of the exporter: “Unlike the Basel Convention, however, the Bamako Convention extends the definition of hazardous wastes ... to all hazardous substances (whether or not defined as wastes) that have been banned in the country of manufacture.”⁴⁵

The Central American Agreement takes a slightly different approach with the same legal effect. Article 1.1 of the Central American Agreement defines “wastes” as “substances.” In a 1995 document, the UN Economic Commission for Latin America and the Caribbean (CEPAL) referenced the similar approach to defining waste in the Central American Agreement and the Bamako Convention. It acknowledged that the Central American Agreement took a novel approach in assimilating substances to hazardous waste, a choice made to regulate trade in potentially hazardous substances more efficiently.⁴⁶

Accordingly, a pesticide may be considered a covered waste under Article 2.1.d. of the Bamako Convention and Article 1.1 of the Central American Agreement, even if that pesticide does not fall within the definition of waste in the exporting country.

Element (ii): Many Pesticides have been “Banned, Cancelled or Refused Registration,” or “Withdrawn from Registration” in Europe

A substantial number of pesticides currently in active production have been “banned, cancelled or refused registration,” or “withdrawn from registration” in Europe under applicable legislation in the EU, Switzerland, and the UK.

The EU

In the EU, pesticides are regulated under various pieces of legislation.

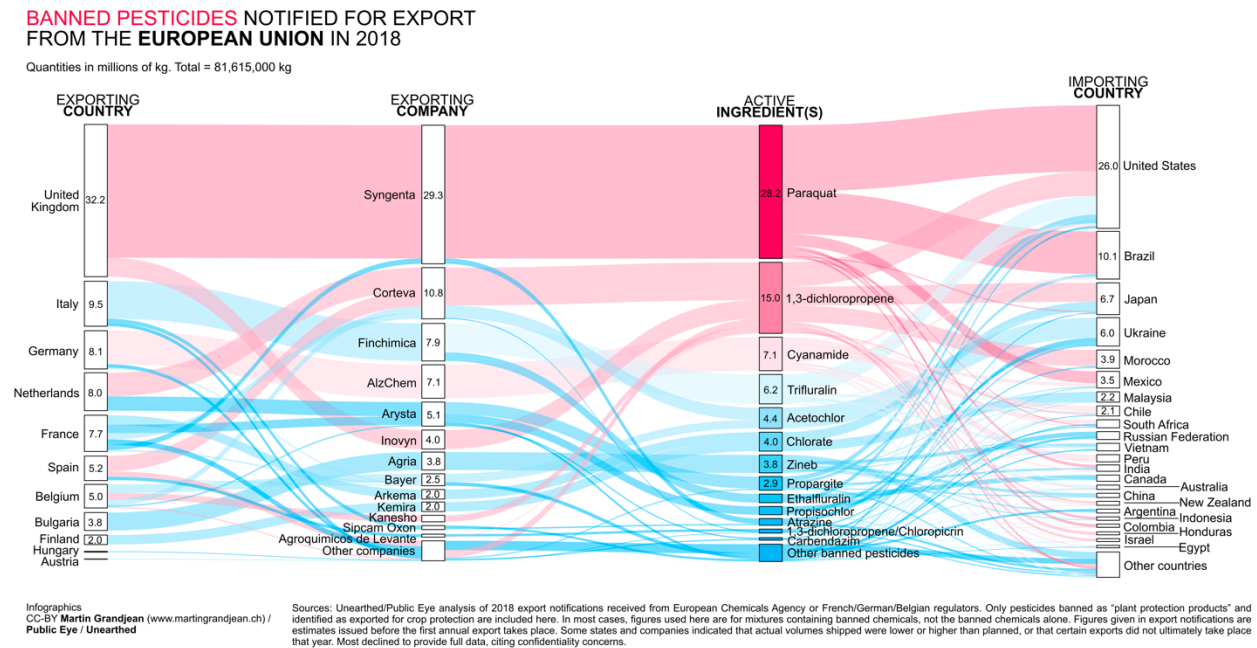
The Plant Protection Product (PPP) Regulation establishes an approval system, stating that “[s]ubstances should only be included in plant protection products where it has been demonstrated that they present a clear benefit for plant production and they are not expected to have any harmful effect on human or animal health or any unacceptable effects on the environment.”⁴⁷ This regulation sets up an approval procedure where active substances for plant protection undergo an evaluation, and products containing approved active substances are further authorized by EU Member States’ authorities further approve products at the national level. Approved active substances are included in a separate implementing regulation⁴⁸ and electronic list,⁴⁹ which tracks approved or not approved substances. The approval system for placement on the market, use, and control within the EU is, therefore, a “registration” system within the meaning of the Bamako Convention.

In the EU, pesticide trade of specific hazardous chemicals is governed by the PIC Regulation,⁵⁰ which implements the Rotterdam Convention. This regulation controls the trade of certain hazardous “chemicals” that are “banned or severely restricted within the Union or a Member State.” The term “chemicals” encompasses both “pesticides, including severely hazardous pesticide formulations” and “industrial chemicals.”⁵¹ For the PIC Regulation, “a ‘banned chemical’ means either of the following: (a) a chemical all uses of which within one or more categories or subcategories have been prohibited by final regulatory action by the Union in order to protect human health or the environment; (b) a chemical that has been refused approval for first-time use or has been withdrawn by industry either from the Union market or from further consideration in a notification, registration or approval process and where there is evidence that the chemical raises concern for human health or the environment.”⁵²

Therefore, the PIC Regulation can act as a paper trail to track the export of banned pesticides, pesticides that were refused registration, or pesticides that were withdrawn from registration.

Examples of German export notifications for banned substances recorded in 2022 include the exports of cyanamide⁵³ to countries like Angola, Costa Rica, and Egypt⁵⁴ and ethylene oxide⁵⁵ to Tunisia.⁵⁶ As of 2008, cyanamide is not authorized in the EU, citing “clear indications that it may be expected that it has harmful effects on human health and in particular on operators.”⁵⁷ Ethylene oxide has been prohibited for marketing or use as a plant protection product in the EU since 1986 due to the potentially harmful human health effects of its residue in food products.⁵⁸ However, according to the EFSA 2020 annual report on pesticide residues in food, ethylene oxide exceeded the legal limit of pesticide residue in food more often than any unapproved pesticide (with forty-nine contaminated samples out of the 230 reported).⁵⁹

Figure 4: Banned Pesticides Notified for Export from the European Union in 2018



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Switzerland

Like the EU, Switzerland has an authorization system for approving pesticides — the Plant Protection Product Ordinance SR 916.161 — and it includes explicit references to the EU PPP Regulation.⁶⁰

Furthermore, Switzerland is a Party to the Rotterdam Convention, and Swiss law includes an ordinance (PIC Ordinance 814.82) that implements the international obligations arising from the Convention.⁶¹

Examples of pesticides banned in Switzerland but exported in recent years include the weed killer atrazine.⁶² This toxic herbicide has been banned in Switzerland since 2012. However, export notifications to countries such as Guatemala and South Africa were still recorded as late as 2020, when Switzerland decided to prohibit its export.⁶³

Furthermore, more than 100 substances that are not allowed in Switzerland can still be produced for export: In 2021, Switzerland recorded export notifications of triasulfuron, a substance that is not allowed for use in the Swiss territory,⁶⁴ to countries like Tunisia and Algeria.⁶⁵ This endocrine-disrupting herbicide was withdrawn from the list of authorized pesticides in 2017.⁶⁶

The UK

Following Brexit,⁶⁷ existing substance approvals in the EU remain valid in the UK, and the existing approvals and authorizations under the EU PPP Regulation remain valid until expiration.⁶⁸ However, while Northern Ireland continues to apply the EU PPP Regulation, Great Britain (England, Scotland, and Wales) established

a separate regime after leaving the EU in 2020. The new regime has been in force since January 1, 2021, and includes a system of approval for active substances and a dedicated pesticides approval register.⁶⁹

Similarly, as of January 1, 2021, Great Britain has established its own PIC legislation,⁷⁰ similar to the EU PIC Regulation,⁷¹ while Northern Ireland continues to apply the EU PIC Regulation.⁷²

Unearthed and Public Eye revealed that in 2020, the UK exported more than 10,000 tonnes of domestically banned pesticides, and four-fifths of the intended destinations were low- or middle-income countries: “The vast bulk of the notified exports were shipments of paraquat by the agrochemical giant Syngenta. The company still manufactures the weed killer at its factory in Huddersfield, West Yorkshire, although its use has been banned in this country since 2007; Paraquat is one of the most acutely toxic herbicides in the world. It has caused tens of thousands of poisoning deaths worldwide. Scientist have also found that it increases the risk of Parkinson’s Disease through low-level chronic exposure.”⁷³ Furthermore, the Rotterdam Convention’s Chemicals Review Committee has recommended paraquat dichloride formulations as a candidate for inclusion as a “severely hazardous pesticides formulation” under the Rotterdam Convention’s PIC procedure since 2011.⁷⁴

Conclusion: Pesticides that are banned or unapproved in EU Member States, Switzerland, and the UK, are also appropriately considered “banned,” “cancelled or refused registration,” or “voluntarily withdrawn from registration” within the meaning of the Bamako Convention.

Element (iii): Pesticides Continue to be Produced and Exported Despite having been Banned or not Approved “in the Country of Manufacture”

As the preceding analysis demonstrates, EU Member States, Switzerland, and the UK continue to report significant exports of pesticides that are banned or unapproved for use in their own territories. Given the documented presence of chemical and pesticide manufacturing facilities within these countries⁷⁵ and the absence of legal domestic markets that would justify their import from third-party countries, we infer that all or substantially all such domestically banned or unapproved pesticides exported from the EU, Switzerland, or the UK were manufactured in the country of export or within Europe. When such production of pesticides occurs within these countries, which we assume to be the case for the banned or unapproved pesticides exported to African and Central American countries examined by this legal opinion,⁷⁶ such pesticides are considered hazardous waste under the Bamako Convention and the Central American Agreement.

Element (iv): Pesticides have been Banned in the Country of Manufacture within Europe for “Health or Environmental Reasons”

In the EU, the PPP Regulation establishes a health and environmental rationale. Article 1 states that the regulation’s purpose is, *inter alia*, to “ensure a high level of protection of both human and animal health and the environment” and that its rules are underpinned by the precautionary principle. Similar wording is also used in Switzerland, according to Article 1 of the Swiss Ordinance 916.161 on phytosanitary products.

The EU PIC Regulation specifically includes in its definition of “banned chemical,” the prohibition of use “to protect human health or the environment,” and the refusal of approval or withdrawal from approval “where there is evidence that the chemical raises concern for human health or the environment.”⁷⁷

In Switzerland, the PPP Ordinance includes health and environmental criteria to approve active substances or withdraw them from approval. Ordinance PIC also applies to substances that are banned because of their effect on the environment or human health (Article 2 of Ordinance PIC 814.82).

In the UK, there are two distinct regimes: one in Northern Ireland and one in Great Britain. The former applies the EU PPP Regulation and the EU PIC Regulation, while the latter has had its own regime since January 2021. However, the existing active substance approvals and plant protection products’ authorizations remain valid in Great Britain until expiration. New approvals follow the same format and date requirement; similarly, the Great Britain PIC Regulation mirrors the EU system, with the main difference being the notification procedures.⁷⁸

Conclusion: A pesticide that is banned or unapproved in the EU, Switzerland, and the UK satisfies all the constituent elements of Article 2.1.d of the Bamako Convention defining hazardous waste, as well as the final element of Article 1.1 of the Central American Agreement defining hazardous waste, and it is, therefore, to be considered “hazardous waste” within the meaning of both the Bamako Convention and the Central American Agreement. Because these pesticides are hazardous waste under the Bamako Convention and the Central American Agreement, their import is banned in the territory of the Bamako and Central American Agreement Parties.

In the Context of Exports from Basel Parties to Other Basel Parties that are also Parties to the Bamako Convention or the Central American Agreement, Banned or Unapproved Pesticides are Considered Hazardous Waste

Article 1.1 of the Basel Convention defines hazardous wastes as:

“(a) Wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III; and

“(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.”

“Wastes” are defined as “substances or objects which are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law,”⁷⁹ and “disposal” is “any operation specified in Annex IV to this Convention.”⁸⁰

The Annexes thus effectively create a baseline list of types of waste subject to the Convention, which can be expanded by Parties, particularly through domestic legislation, pursuant to Article 1.1.b.

Pesticides that were banned or unapproved in the EU, the UK, and Switzerland do not meet the criteria of Article 1(1)(a) of the Basel Convention because they are not “wastes” destined for disposal by an Annex IV operation.

However, Article 1.1.b of the Basel Convention explicitly refers to the definition of hazardous waste in domestic legislation. It is, therefore, necessary to assess the legal status of EU, UK, and Swiss banned or unapproved pesticides in the domestic legislation of importing countries.

As noted above, the Central American Agreement and the Bamako Convention's definition of hazardous waste includes banned or non-approved pesticides in the country of manufacture. There are at least two pathways for incorporating the definition from these instruments into the domestic legislation of their Parties. First, States may adopt internal laws implementing the international treaty. Second, the constitutional legal order may directly incorporate international treaties into the domestic legal order. The latter pathway is referred to as a monist constitutional system rather than a dualist system. In monist States, international law does not need to be translated into national law. The act of ratifying an international treaty immediately incorporates it into national law.

Conversely, dualist systems emphasize the difference between national and international law and require the transposition of the latter into the former. Without this transposition, international law does not exist as domestic law. In the case of countries under a dualist system, it is important to distinguish between the obligations of the State, which arise solely from the ratification process, and the opposabilityⁱⁱ of these obligations in the domestic order, which require an act of transposition. In other words, the degree to which an international treaty is “*directly applied*” or “*self-executing*” in a national legal system (i.e., the international treaty is part of the domestic legal system) depends largely on whether a country operates under a monist or dualist system.

Based on a review of relevant sources, including the database of national waste definitions maintained by the Secretariat of the Basel Conventions,⁸¹ it appears that no African country has adopted laws explicitly incorporating Article 2.1.d of the Bamako Convention, and only two Central American countries substantially incorporate Article 1.1 of the Central American Agreement into their national legislation.⁸²

Thus, it is necessary to explore whether African and Central American countries importing pesticides banned in the country of manufacture operate under a monist or dualist system.

ⁱⁱ “In relation to international legal obligations, the quality of obligations binding upon, and that can therefore be asserted against, a state or other subject of international law.” John H. Currie, “‘Opposable’ - Online Legal Dictionary,” *Public International Law*, 2/e (blog), May 27, 2008, <https://irwinlaw.com/cold/opposable/>. See also: Eirik Bjorge, “Opposability and Non-Opposability in International Law,” *British Yearbook of International Law*, October 14, 2021, brab006, <https://doi.org/10.1093/bybil/brab006>.

Constitutional Systems of African and Central American Countries Importing Banned or Unapproved Pesticides

The monist or dualist nature of a State depends on its internal constitutional order. For this analysis, we focus on countries in Africa and Central America that appear to receive significant quantities of domestically banned pesticides from Europe. According to an investigation by Public Eye and Uearthed, Morocco and South Africa are among the top ten African importers of pesticides banned in Europe. Other importing countries include, in alphabetical order: Algeria, Angola, Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Egypt, Ethiopia, Ghana, Kenya, Mali, Nigeria, Senegal, Sudan, Tanzania, Togo, Tunisia, and Uganda. In Central America, Honduras and Guatemala are among the countries importing the highest quantities of banned pesticides from Europe. Other countries include Costa Rica, Nicaragua, and Panama.

Of the foregoing countries, all but six – Algeria, Ghana, Honduras, Kenya, Nigeria, and South Africa – are Parties to either the Bamako Convention or the Central American Agreement.

According to our analysis of national constitutions (see Annex I), all the examined countries except one have constitutional provisions establishing a monist system or have substantially translated the Convention or Agreement into laws applicable within their national legal system.

Therefore, the Bamako Convention's provisions, in particular Article 2.1.d., are considered an integral part of the domestic legislation of the examined monist countries in Africa. Similarly, the Central American Agreement's provisions, particularly Article 1.1, are considered an integral part of the domestic legislation of the examined monist countries in Central America. A similar conclusion would be reached for the few dualist countries that substantially translated these regional agreements into their national laws.

This means domestic law considers banned or unapproved pesticides hazardous wastes in Angola, Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Costa Rica, Egypt, Ethiopia, Guatemala, Mali, Morocco, Nicaragua, Panama, Senegal, Sudan, Tanzania, Tunisia, and Togo. Therefore, in the context of exports from European countries to these Basel Parties (which are also Parties to the Bamako Convention or the Central American Agreement), banned or unapproved pesticides fall under the definition of hazardous waste in Article 1.1.b. of the Basel Convention. For countries with dualist systems (such as Uganda), governments have an international obligation to adopt national legislation transposing the provisions of the Bamako Convention or the Central American Agreement, which would mean the above conclusions apply.

Figure 5: The Status of Banned Pesticide Exports in African Nations

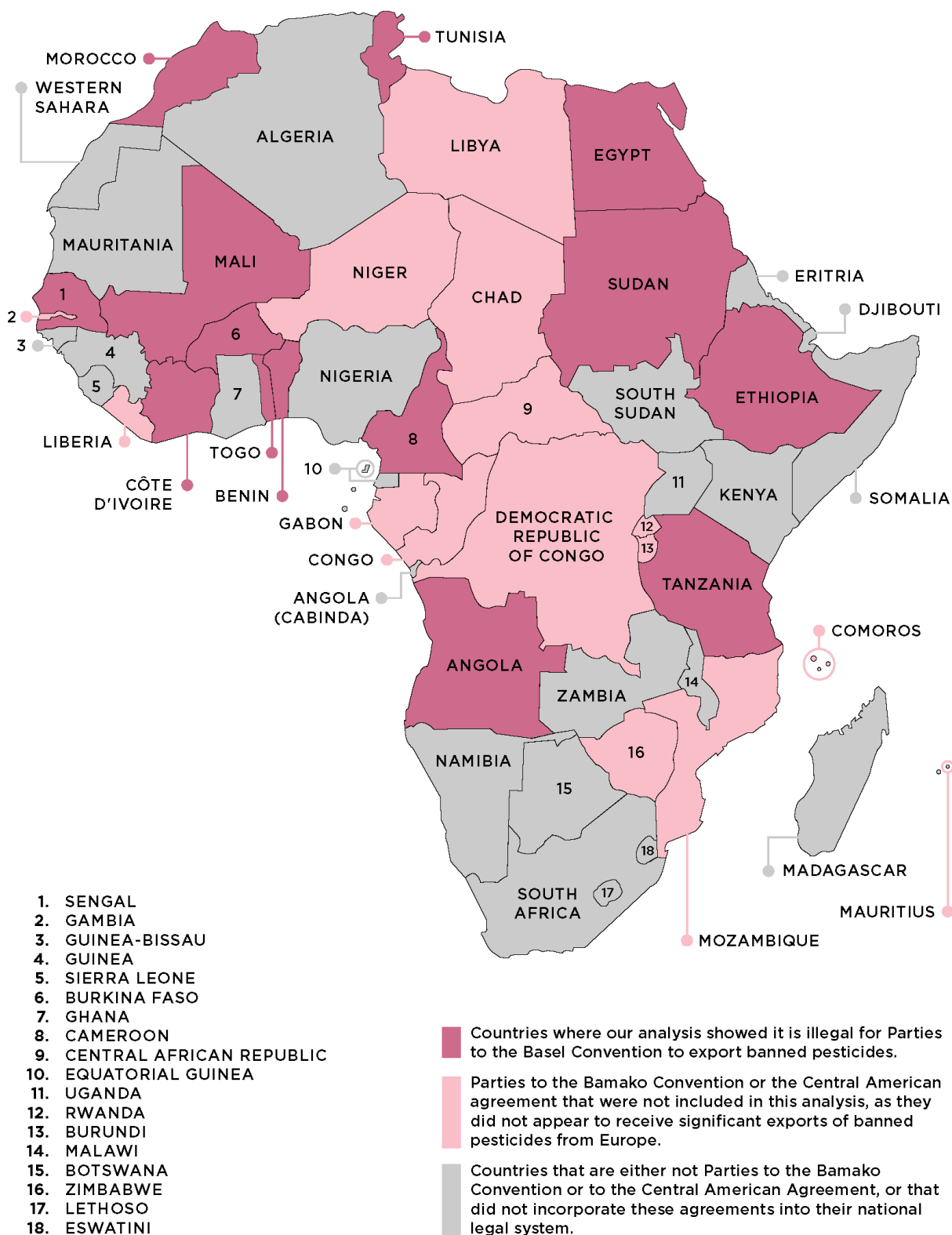
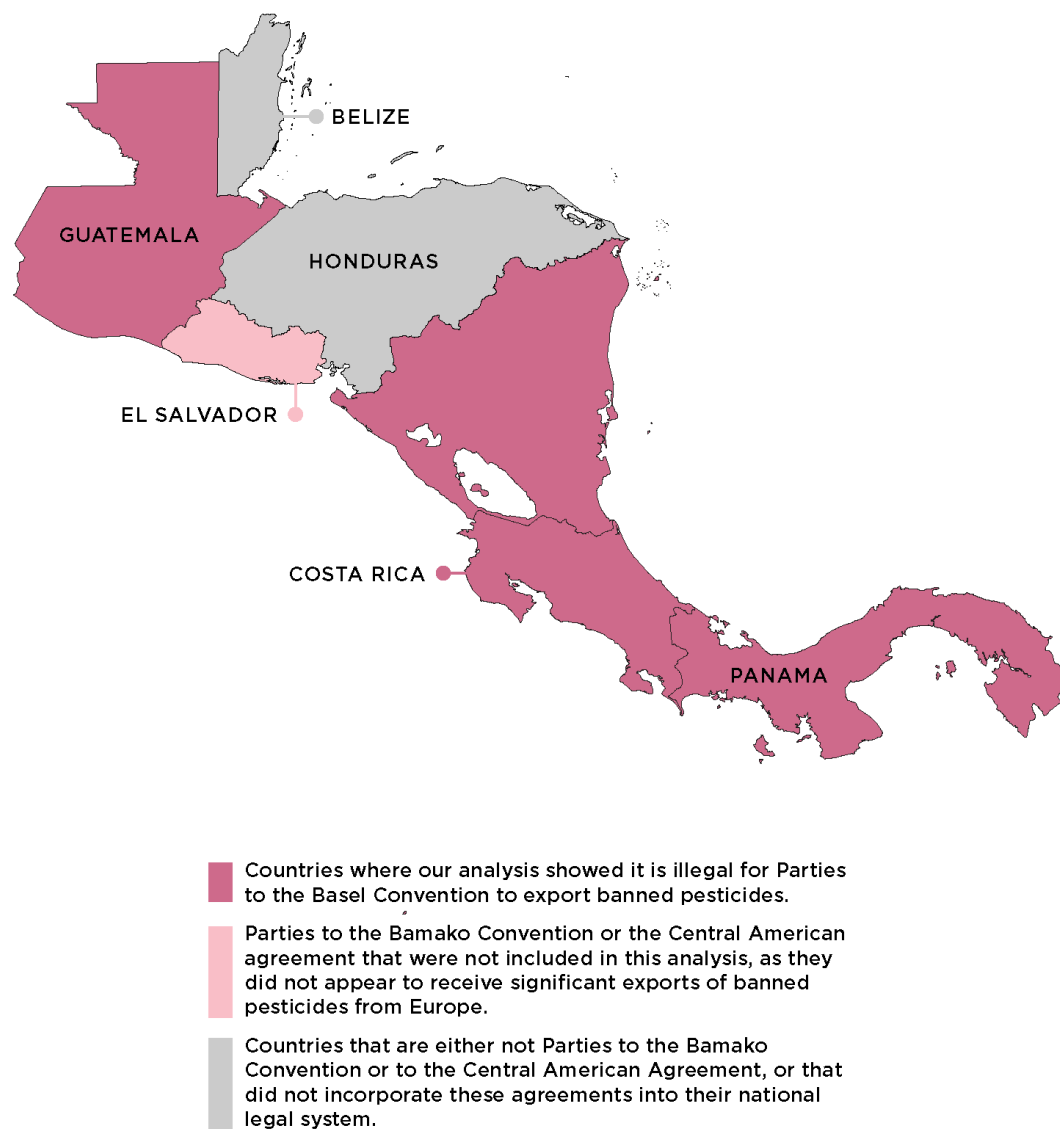


Figure 6: The Status of Banned Pesticide Exports in Central American Nations



States are Obligated not to Act in a Way That Makes It More Difficult for Other Basel Parties to Fulfill Their International Obligations Under the Treaty, and Therefore States Must Not Export Domestically Banned or Unapproved Pesticides to Countries That are Parties to the Basel and Bamako Conventions or the Central American Agreement

With respect to the export of banned or unapproved pesticides from their territories, EU Member States, Switzerland, and the UK are bound by international obligations arising out of the Basel Convention, international customary law, and international human rights law.

Basel Convention

Basel Parties have officially been notified of the relevance of the Bamako Convention and the Central American Agreement⁸³ to the implementation of the Basel Convention in general and the definition of hazardous wastes in particular:

Article 4(1)(a) of the Basel Convention provides that “Parties exercising their right to prohibit the import of hazardous wastes or other wastes for disposal shall inform the other Parties of their decision pursuant to Article 13.”

Article 4(1)(b) of the Basel Convention specifies that Parties “shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.”

Parties to the Basel Convention thus have a clear obligation to prohibit the export of this waste to the Parties that have provided notification, pursuant to Article 4(1)(b).⁸⁴

According to the Basel Convention Secretariat, the prohibition of importation “can be a unilateral act by a Party, which must be notified to all Parties through the Secretariat, or it can be embedded in an international agreement, for instance the 1991 Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa which prohibits the import of hazardous wastes into Africa from non-contracting Parties.”⁸⁵

The Basel and Bamako Conventions share the same Secretariat. The Basel Secretariat has formally identified the Bamako Convention and the Central American Agreement as regional agreements related to the Basel Convention.⁸⁶

Furthermore, a Party to the Basel and Bamako Conventions has specifically reported to the Basel Convention Secretariat that under Article 1(1)(b), hazardous wastes include hazardous wastes as defined by the Bamako Convention.⁸⁷

EU Member States, Switzerland, and the UK have a legal obligation to ban the export of banned or unapproved pesticides to countries where the Bamako and Central American definitions of hazardous wastes are part of the domestic legislation (e.g., in Angola, Benin, Burkina Faso, Cameroon, Costa Rica, Côte d'Ivoire, Egypt, Ethiopia, Guatemala, Mali, Morocco, Nicaragua, Panama, Senegal, Sudan, Tanzania, Tunisia, and Togo). The export from EU Member States, Switzerland, and the UK of banned or unapproved pesticides to these States violates the Basel Convention.

Conclusion:

Since domestically banned or unapproved pesticides fall under the definition of hazardous waste under the Basel Convention, the export of these pesticides from EU Member States, Switzerland, and the UK to Bamako and Central American Parties that have incorporated the Bamako or Central American definition of hazardous waste into their domestic legislation is a violation of the Basel Convention.

Customary Law: The Duty not to Frustrate the Object and Purpose of the Basel Convention

According to well-established international customary law, Parties to the Basel Convention should not act in a way that makes it more difficult for other Parties to the Convention to fulfill their international obligations under the treaty. The Basel Convention prohibits the export of hazardous waste and other waste to the Parties that have prohibited the import of such waste. Parties to the Basel Convention are officially on notice that the Bamako Convention and the Central American Agreement prohibit the import of hazardous wastes to the territories of its Parties.⁸⁸ Consequently, Parties to the Basel Convention are required to prohibit the export of domestically banned or unapproved pesticides to all Parties to the Bamako Convention and the Central American Agreement.

Conclusion

Concerning international customary law, Parties to the Basel Convention should not act in a way that makes it more difficult for other Parties (including those that are also Parties to the Bamako Convention or the Central American Agreement) to fulfill their international obligations under the treaty. The export of domestically banned or unapproved pesticides that harm health and the environment frustrates the object and purpose of the Basel Convention. It is thus in breach of customary law.

The Export of Banned or Unapproved Pesticides Constitutes a Breach of International Human Rights Obligations

Obligations under International Human Rights Law

EU Member States, Switzerland, and the UK have banned or refused to approve hazardous pesticides under the scope of this analysis to protect the environment and human health within their own territories. European States are nevertheless authorizing the export of banned or unapproved pesticides to a number of developing and middle-income States across Africa, Central America, and Asia, despite the knowledge that these banned or unapproved substances harm human health and the environment in the importing States.⁸⁹

Under international human rights law, States have a legal obligation not to impair the right to health of residents of third States through policies having discriminatory impacts.⁹⁰ Consequently, European States must ensure that their policies do not result in the infringement of the right to health of the residents of African States by exporting banned or unapproved pesticides from European countries on the grounds of their toxic nature.

All EU Member States, Switzerland, and the UK are Parties to the International Covenant on Economic, Social, and Cultural Rights (ICESCR). This international treaty recognizes and protects the right to health, establishes international obligations that contain no jurisdictional or territorial limitation, and calls upon Parties to cooperate in the progressive realization of human rights.

The extraterritorial reach of human rights obligations has been distilled and restated in the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social, and Cultural Rights (the Maastricht Principles).⁹¹ The Maastricht Principles explain that all States have obligations to respect, protect, and fulfill human rights, including civil, cultural, economic, political, and social rights, both within their territories and extraterritorially.⁹² These extraterritorial obligations find concrete expression in the duty to take action through international cooperation to fulfill the right to health.⁹³ Under principles of human rights law, EU Member States, Switzerland, and the UK, therefore, have a duty to cooperate with all other States, including Parties to the Bamako Convention, to advance the realization of the right to health.

Furthermore, on July 28, 2022, the United Nations General Assembly adopted a resolution recognizing the human right to a clean, healthy, and sustainable environment.⁹⁴ This resolution reaffirmed the recognition of this right by the United Nations Human Rights Council on October 8, 2021.⁹⁵ The recognition is an acknowledgment that this right must be universally protected, which means States have an obligation to ensure and businesses have the responsibility to respect the right to live in a non-toxic environment. The UN Special Rapporteur on Human Rights and the Environment synthesized the legal obligations related to the right to live in a non-toxic environment in his 2022 report to the Human Rights Council. The report points out the following: “to fulfill their obligations related to ensuring a non-toxic environment, States should [...] [p]rohibit the export of toxic substances that are banned domestically.”⁹⁶

The Maastricht Principles also articulate the obligation to avoid causing harm as follows:

“States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct.”⁹⁷

It is well understood that highly hazardous pesticides carry grave impacts on health and the environment.⁹⁸ EU, Swiss, and UK regulators have banned or unapproved the use of certain pesticides in these territories because of these impacts. Accordingly, EU Member States, Switzerland, and the UK have actual knowledge of the serious harm to health and the environment resulting from the use of hazardous pesticides. It is therefore foreseeable that the failure to ban the export of domestically banned or unapproved pesticides to other States will impair the realization of the right to health.

Conclusion:

Regarding the extraterritorial human rights obligations incumbent upon EU Member States, Switzerland, and the UK, there is ample knowledge that highly hazardous pesticides are detrimental to health and the environment. The failure by EU Member States, Switzerland, and the UK to ban the export of banned or unapproved pesticides to African or Central American States and the rest of the world impairs the right to health in those States. It, therefore, constitutes a breach by EU Member States, Switzerland, and the UK of their international human rights obligations.

Beyond Africa and Central America: Banned Substances Exported by Basel Parties

This legal analysis applies to many more situations of countries exporting toxic substances to Africa or Central America. Pesticides such as atrazine, paraquat, and DDT and chemicals such as the carcinogen asbestos are domestically banned by many governments for health and environmental reasons, yet, they are still exported. This legal analysis would therefore apply to all 189 Parties to the Basel Convention,⁹⁹ including Canada, Russia, and China, exporting their domestically banned substances to the African States that are Parties to the Bamako Convention and have a monist system or which have incorporated Article 2.1.d of the Bamako Convention into their national legal frameworks, as well as to the Central American States that are Parties to the Central American Agreement and have a monist system or have incorporated Article 1.1 of the Regional Agreement into their national legal framework. The overwhelming majority of African and Central American States reviewed in this analysis satisfy one or both criteria.

Conclusion and Recommendations

While EU Member States, Switzerland, and the UK have banned or unapproved certain pesticides in their territories because of harmful effects on health and the environment, they nevertheless allow exports of these hazardous pesticides to Asian, African, Latin American, and the Caribbean States. All exporting countries and importing countries covered by this analysis are Parties to the Basel Convention; many States importing domestically banned or unapproved pesticides in Africa are Parties to the Bamako Convention, and many States importing banned, or unapproved pesticides in Central America are Parties to the Central American Agreement.

Accordingly, the present analysis demonstrates:

- 1) Under the Bamako Convention and the Central American Agreement, pesticides banned or unapproved in the country of production are considered hazardous wastes.
- 2) In the context of exports from Basel Parties to other Basel Parties that are also Parties to the Bamako Convention or the Central American Agreement, banned or unapproved pesticides are considered hazardous wastes.
- 3) States are obligated not to act in a way that makes it more difficult for other Basel Parties to fulfill their international obligations under the treaty. The export of banned or unapproved pesticides from Basel Parties to Parties to the Bamako Convention or the Central American Agreement represents a violation of their international legal obligations.
- 4) Exporting banned or unapproved pesticides constitutes a breach of international human rights obligations.

Domestically banned or unapproved pesticides satisfy all the constituent elements of the definition of hazardous waste of the Bamako Convention and the Central American Agreement, and they are, therefore, “hazardous wastes” within the meaning of the Bamako Convention and the Central American Agreement.

Because domestically banned or unapproved pesticides are considered hazardous waste under the Bamako Convention, their import is banned in the territories of the Parties to the Bamako Convention. Similarly, because domestically banned or unapproved pesticides are considered hazardous waste under the Central American Agreement, their import is banned in the territories of Parties to the Central American Agreement.

Domestically banned or unapproved pesticides further satisfy the definition of hazardous waste under the Basel Convention, where the Bamako Convention’s definition of hazardous waste is part of the domestic legislation of the importing States, such as Angola, Benin, Burkina Faso, Cameroon, Côte d’Ivoire, Costa Rica, Egypt, Ethiopia, Guatemala, Mali, Morocco, Nicaragua, Panama, Senegal, Sudan, Tanzania, Tunisia, and Togo.

The Basel Convention prohibits the export of hazardous waste and other waste to Parties of the Basel Convention that have prohibited the import of such waste. The export of domestically banned or unapproved pesticides from EU Member States, Switzerland, and the UK, as well as from any other Parties to the Basel Convention, to the abovementioned African and Central American States, is thus in violation of the Basel Convention.

Furthermore, according to well-established international customary law, Parties to the Basel Convention should not act in a way that undermines the ability of other Parties to fulfill their international obligations under the treaty. Consequently, exporting domestically banned or unapproved pesticides from EU Member States, Switzerland, and the UK to any Party of the Bamako Convention or Central American Agreement violates international treaties and customary law.

Moreover, given the ample knowledge that exists regarding the detrimental effects of domestically banned or unapproved pesticides to health and the environment, the European, Swiss, and British failure to ban the

export of these pesticides to other countries, including those not party to the Bamako Convention or the Central American Agreement, is a breach of their international human rights obligations.

In conclusion, the export of domestically banned or unapproved pesticides from EU Member States, Switzerland, and the UK, as well as from any other Parties to the Basel Convention, constitutes a violation of these countries' international obligations under the Basel Convention, international customary law, and international human rights law.

Based on these findings, States should promptly take the following measures:

- prohibit the export of pesticides not permitted for use in domestic markets;
- effectively promote similar legally binding measures at the global level; and
- strengthen international regulations on pesticides, such as through a global ban on highly hazardous pesticides.¹⁰⁰

Some States have already taken the first steps toward addressing this: Since 2021, Switzerland has prohibited the export of five banned pesticides. However, it still allows the export of more than 100 other unapproved substances.¹⁰¹ In its Chemicals Strategy for Sustainability, the EU committed to prohibiting the exports of domestically banned substances.¹⁰² To turn this promise into action, it should swiftly translate the commitment into binding regulations and ban the export of pesticides and all hazardous substances that are prohibited, not allowed for use, or severely restricted at the EU level.

The pesticides considered in this analysis pose significant risks to human health and the environment. They are a key component of the larger agro-industrial system sustained by the overuse and poor regulation of toxic agrochemicals that perpetuate the fossil economy. Exporting these domestically banned chemicals from countries with more protective legislation to countries with less protective legislation continues a legacy of waste and toxic colonialism, in which wealthy nations transfer the risk of hazardous substances and waste to low- and middle-income nations. That transfer is not simply unjust and unethical. It is a violation of international law. The world must urgently forge a new path to protect human rights, human life, and environmental health, heeding the planetary boundaries within which humanity and future generations can safely exist.

Annex 1

To assess the legal status of domestically banned or unapproved pesticides in the domestic legislation of importing African and Central American countries that are examined in this analysis, we explore whether they operate under a monist system or dualist system and whether they are translated these Conventions into laws that are applicable within their national legal system.

Monist States

Angola

Article 13 of the Angolan Constitution provides that: “1. General or common international law received under the terms of this Constitution shall form an integral part of the Angolan legal system. 2. Duly approved or ratified international treaties and agreements shall come into force in the Angolan legal system after they have been officially published and have entered into force in the international legal system, for as long as they are internationally binding upon the Angolan state.”¹⁰³

Angola ratified the Bamako Convention and deposited the instrument of ratification to the African Union on October 11, 2016.¹⁰⁴ The Convention’s provisions, particularly Article 2.1.d., are therefore considered integral to Angolan domestic legislation.

Benin

Article 147 of the Benin Constitution provides that “[t]reaties or agreements lawfully ratified shall have, upon their publication, an authority superior to that of laws, without prejudice for each agreement or treaty in its application by the other Party.”¹⁰⁵ This constitutional provision establishes a monist system.

Benin ratified the Bamako Convention and deposited the instrument of ratification to the African Union on January 21, 1998.¹⁰⁶ The Convention’s provisions, particularly Article 2.1.d., are therefore considered an integral part of Benin's domestic legislation.

Burkina Faso

Under Article 151 of the Burkina Faso Constitution: “The treaties and agreements regularly ratified or approved have, on their publication, an authority superior to that of the laws, under reserve, for each agreement or treaty, of its application by the other party.”¹⁰⁷ This constitutional provision establishes a monist system.

Burkina Faso ratified the Bamako Convention and deposited the instrument of ratification to the African Union on August 13, 2009.¹⁰⁸ The Convention’s provisions, particularly Article 2.1.d., are therefore considered integral to Burkina Faso’s domestic legislation.

Cameroon

Article 45 of the Cameroon Constitution provides that “[d]uly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other Party implements the said treaty or agreement.”¹⁰⁹ This constitutional provision establishes a monist system.

Cameroon ratified the Bamako Convention and deposited the instrument of ratification to the African Union on December 21, 1995.¹¹⁰ The Convention's provisions, particularly Article 2.1.d., are therefore considered an integral part of Cameroon's domestic legislation.

Costa Rica

Article 7 of the Costa Rican Constitution provides that “[t]he public treaties, the international agreements and the concordats, duly approved by the Legislative Assembly, will have from their promulgation or from the day designated by them, authority superior to that of the laws.”¹¹¹ This constitutional provision establishes a monist system.

Costa Rica ratified the Central American Agreement and deposited the instrument of ratification on November 9, 1995.¹¹² Furthermore, its national law on waste management explicitly mentions that the export, transit, and import of waste will be done following international law. Its Article 39.2 on the prohibition of importation and transit of hazardous wastes includes “products and parts thereof that are expired, damaged and obsolete, according to the health authorities of their country of origin, regardless of their presentation, as well as those whose registration has been cancelled in their country of origin or have reached the end of their useful life, will also be considered within this prohibition.”¹¹³ The Central American Agreement's provisions, particularly Article 1.1, are therefore considered an integral part of Costa Rican domestic legislation.

Côte d'Ivoire

According to Article 123 of the new Ivorian Constitution, “[u]pon their publication, treaties or agreements duly ratified have an authority superior to that of domestic laws, subject, with respect to each treaty or accord, to the exercise thereof by the other contracting party.”¹¹⁴

Article 87 of the former 2000 Constitution used the same words and had the same scope as Article 123 of the new Constitution.¹¹⁵ These constitutional provisions establish a monist system.

Côte d'Ivoire ratified the Bamako Convention and deposited the instrument of ratification to the African Union on September 16, 1994.¹¹⁶ The Convention's provisions, particularly Article 2.1.d., are therefore considered integral to Ivorian domestic legislation.

Egypt

Under Article 93 of the Egyptian Constitution: “The state shall be bound by international human rights agreements, covenants, and conventions ratified by Egypt, and which shall have the force of law after publication in accordance with the prescribed conditions.”¹¹⁷ This constitutional provision establishes a monist system.

Egypt ratified the Bamako Convention and deposited the instrument of ratification to the African Union on June 23, 2004.¹¹⁸ The Convention's provisions, particularly Article 2.1.d., are therefore considered an integral part of Egyptian domestic legislation.

Ethiopia

Under Article 9, paragraph 4 of the Ethiopian Constitution: “All international agreements ratified by Ethiopia are an integral part of the law of the land.”¹¹⁹ This constitutional provision establishes a monist system.

Ethiopia ratified the Bamako Convention and deposited the instrument of ratification to the African Union on August 28, 2003.¹²⁰ The Convention's provisions, particularly Article 2.1.d., are therefore considered an integral part of Ethiopian domestic legislation.

Guatemala

Article 46 of the Guatemalan Constitution, "Preeminence of [the] International Law," provides "[t]he general principle that within matters of human rights, the treaties and agreements approved and ratified by Guatemala, have preeminence over the internal law[,] is established."¹²¹

Guatemala ratified the Central American Agreement and deposited the instrument of ratification on August 10, 1995.¹²² The Agreement's provisions, particularly Article 1.1, are therefore considered an integral part of Guatemalan domestic legislation.

Mali

Under Article 116 of the Constitution of Mali: "Treaties or agreements regularly approved or ratified shall have, from their publication, an authority superior to that of laws, under the reservation for each treaty or agreement of application by the other party."¹²³ This constitutional provision establishes a monist system.

Mali ratified the Bamako Convention and deposited the instrument of ratification to the African Union on February 21, 1996.¹²⁴ The Convention's provisions, particularly Article 2.1.d., are therefore considered an integral part of Malian domestic legislation.

Morocco

Under the Preamble of the Constitution of Morocco, which forms an integral part of the Constitution, the Kingdom of Morocco commits itself: "To comply with the international conventions duly ratified by it, within the framework of the provisions of the Constitution and of the laws of the Kingdom, within respect for its immutable national identity, and on the publication of these conventions, [their] primacy over the internal law of the country, and to harmonize in consequence the pertinent provisions of national legislation. This Preamble is made [an] integral part of this Constitution."¹²⁵ This constitutional provision establishes a monist system.

Morocco ratified the Bamako Convention¹²⁶ and deposited the instrument of ratification to the African Union on April 18, 2022.¹²⁷ The Convention's provisions, particularly Article 2.1.d., are considered integral to Moroccan domestic legislation.

Nicaragua

Article 138.12 of Nicaragua's Constitution lists the approval and rejection of international instruments among the functions of the National Assembly: "The legislative approval shall give legal effect to them, inside and outside Nicaragua, once they have entered into force internationally through the deposit or exchange of ratification or the compliance with the conditions and deadlines provided for in the text of the international treaty or instrument."¹²⁸

Nicaragua ratified the Central American Agreement and deposited the instrument of ratification on August 26, 1996.¹²⁹ Furthermore, its national law prohibiting the trafficking of hazardous waste and other toxic substances considers all movement of hazardous wastes and toxic substances carried out in contravention of the provisions of the Central American Agreement as illegal traffic.¹³⁰ The Agreement's provisions, particularly Article 1.1, are therefore considered integral to Nicaraguan domestic legislation.

Panama

Article 4 of Panama's Constitution provides that "[t]he Republic of Panama abides by the rules of International Law."¹³¹ This constitutional provision could arguably be considered to establish a monist system.

Panama ratified the Central American Agreement and deposited the instrument of ratification on June 22, 1995.¹³² In any case, Panama's national laws reflect the Central American Agreement, so the constitutional system is not a determining factor in whether or not the provisions are considered part of domestic legislation. National law 276 regulating waste management includes Article 63 that the export, import, and transit of waste will conform to international treaties ratified by Panama. Article 64 prohibits the import and transit through the national territory of hazardous, radioactive, and/or bioinfectious waste and "[t]he importation of products and their parts that are expired, damaged and obsolete, according to the sanitary authorities of their country of origin, regardless of their presentation, as well as those whose registration has been cancelled in their country of origin or have reached the end of their useful life, will be considered within this prohibition."¹³³

The Agreement's provisions, particularly Article 1.1, are therefore considered integral to Panama's domestic legislation.

Senegal

Article 98 of the Senegalese Constitution stipulates that "[t]he treaties or agreements regularly ratified or approved have, on their publication, an authority superior to that of the laws, under reserve, for each treaty or agreement, of its application by the other Party."¹³⁴ This constitutional provision establishes a monist system.

Senegal ratified the Bamako Convention and deposited the instrument of ratification to the African Union on March 29, 1994.¹³⁵ The Convention's provisions, particularly Article 2.1.d., are therefore considered integral to the Senegalese domestic legislation.

Sudan

Under Article 42.2 of the Sudanese Constitution, "[a]ll rights and freedoms contained in international and regional human rights agreements, pacts, and charters ratified by the Republic of Sudan shall be considered an integral part of this Charter."¹³⁶ This constitutional provision establishes a monist system.

Sudan ratified the Bamako Convention and deposited the instrument of ratification to the African Union on November 11, 1993.¹³⁷ The Convention's provisions, particularly Article 2.1.d., are therefore considered integral to Sudanese domestic legislation.

Togo

Article 140 of the Togolese Constitution provides that “[t]he treaties or agreements regularly ratified or approved have, on their publication, an authority superior to the laws, under reserve, for each agreement or treaty, of its application by the other party.”¹³⁸ This constitutional provision establishes a monist system.

Togo ratified the Bamako Convention and deposited the instrument of ratification to the African Union on August 23, 1996.¹³⁹ The Convention’s provisions, particularly Article 2.1.d., are therefore considered integral to the Togolese domestic legislation.

Tunisia

Under Article 20 of the Constitution of Tunisia: “International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution.”¹⁴⁰

Tunisia ratified the Bamako Convention and deposited the instrument of ratification to the African Union on May 14, 1998.¹⁴¹ The Convention’s provisions, particularly Article 2.1.d., are therefore considered integral to Tunisian domestic legislation.

Dualist States

Tanzania

Under Article 63.-(3) of the Tanzanian Constitution: “For the purposes of performing its functions, the National Assembly may [...] (e) deliberate upon and ratify all treaties and agreements to which the United Republic is a party and the provisions of which require ratification.”¹⁴² The Constitution does not refer to international instruments as part of the internal legal order. This indicates that Tanzania has a dualist system, requiring that international treaties and agreements be translated into orders, rules, or regulations to become applicable within the national legal system.

Tanzania ratified the Bamako Convention and deposited the instrument of ratification to the African Union on April 5, 1993.¹⁴³ It initially translated the obligations of the Convention into national law with Environmental Management (Hazardous Waste Control and Management) Regulations, 2009, which were repealed with an updated 2019 Regulation, and finally revoked by the Environmental Management (Hazardous Waste Control and Management) Regulations, 2021.¹⁴⁴ Article 42.1 of the Regulations states that “42.-(1) Subject to Bamako Convention, 1991, no person shall import hazardous waste into the United Republic.” The Convention’s provisions, particularly Article 2.1.d., are therefore considered integral to Tanzania’s domestic legislation.

Uganda

Under Article 123 of the Ugandan Constitution: “(1) The President or a person authorized by the President may make treaties, conventions, agreements or other arrangements between Uganda and any other country or between Uganda and any international organisation or body, in respect of any matter. (2) Parliament shall make laws to govern ratification of treaties, conventions, agreements or other arrangements made under clause (1) of this article.”¹⁴⁵ The Constitution does not refer to international instruments as part of the

internal legal order. This indicates that Uganda has a dualist system, requiring that international treaties and agreements be translated into orders, rules, or regulations to become applicable within the national legal system.

Uganda's National Environment Act provides a general prohibition on importing and exporting waste for treatment or disposal, "except as may be prescribed by regulations."¹⁴⁶ Although Uganda does not appear to have fully incorporated explicit reference to Article 2.1.d of the Bamako Convention in its national waste management regulations,¹⁴⁷ Uganda remains Party to the Bamako Convention. Uganda accessed the Bamako Convention and deposited the instrument of accession to the African Union on May 27, 1999.¹⁴⁸ As such, it is under an international obligation to ban the import of hazardous waste as defined by the Convention.

Conclusion: As indicated above, banned or unapproved pesticides are considered hazardous wastes by domestic law in Angola, Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Costa Rica, Egypt, Ethiopia, Guatemala, Mali, Morocco, Nicaragua, Panama, Senegal, Sudan, Tanzania, Tunisia, and Togo. Therefore, in the context of exports from European countries to these Basel Parties (which are also Parties to the Bamako Convention or the Central American Agreement), banned or unapproved pesticides fall under the definition of hazardous waste in Article 1.1.b. of the Basel Convention. For countries with dualist systems (such as Uganda), a similar conclusion would be reached when governments respect their international obligation and adopt national legislation transposing the provisions of the Bamako Convention or the Central American Agreement.

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⁹⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 2, paragraph 2, and article 3 UN Committee on Economic and Social and Cultural Rights (42nd sess : 2009 : Geneva), “General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (Article 2, Paragraph. 2, of the International Covenant on Economic, Social and Cultural Rights),” July 2, 2009, <https://digitallibrary.un.org/record/659980>.

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