AFRICAN UNION		AFRICAN UNION
الاتحاد الأفريقي		UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF

LIGUE IVOIRIENNE DES DROITS DE L'HOMME (LIDHO)
AND OTHERS

V.

REPUBLIC OF CÔTE D'IVOIRE

APPLICATION NO. 041/2016

JUDGMENT

5 SEPTEMBER 2023

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The Court composed of: Imani D. ABOUD, President; Modibo SACKO, Vice-President; Ben KIOKO, Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Chafika BENSAOULA, Blaise TCHIKAYA Stella I. ANUKAM, Dumisa B. NTSEBEZA, Dennis D. ADJEI - Judges; and Robert ENO, Registrar.

In the Matter of :

Ligue ivoirienne des droits de l'homme (LIDHO), *Mouvement ivoirien des droits humains* (MIDH) and *Fédération internationale pour les droits humains* (FIDH)

Represented by:

i. Mr. Drissa TRAORÉ, Advocate at the Bar of Côte d'Ivoire, Honorary President of the *Mouvement Ivoirien des Droits Humains* (MIDH) and Vice-President of the International Federation for Human Rights (FIDH);
ii. Ms Maryamah BODERÉ, Advocate at the Bar of Côte d'Ivoire; and
iii. Mr. Emmanuel DAOUD, Advocate at the Bar of Côte d'Ivoire.

Versus

THE REPUBLIC OF CÔTE D'IVOIRE,

Represented by:

Blessy & Blessy
Advocates at Bar of Abidjan

After deliberation,

renders this Judgment:

I. THE PARTIES

1. Ligue ivoirienne des droits de l'homme (LIDHO), Mouvement ivoirien des droits humains (MIDH) and the International Federation for Human Rights (FIDH) (hereinafter referred to as "the Applicants") are non-governmental organisations (hereinafter referred to as "NGOs"), all of which have observer status before the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission").[1] They allege violation of human rights in connection with the dumping of toxic waste in Abidjan and its suburbs on 19 August 2006.

2. The Application is filed against the Republic of Côte d'Ivoire (hereinafter referred to as "the Respondent State"), which became a party to the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter") on 31 March 1992 and to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") on 22 August 2014. Furthermore, the Respondent State, on 23 July 2013, deposited the Declaration provided for under Article 34(6) of the Protocol (hereinafter referred to as "the Declaration"), by virtue of which it accepted the jurisdiction of the Court to receive applications from individuals and Non-Governmental Organisations having observer status before the Commission. On 29 April 2020, the Respondent State deposited with the Chairperson of the African Union Commission the instrument of withdrawal of its Declaration. The Court has held that this withdrawal has no effect on pending and new cases filed before the entry into force of the said withdrawal one (1) year after its deposit which, in the present case, is on 30 April 2021.[2]

[1] The NGOs concerned were granted observer status as follows: LIDHO (9 October 1991, 10th Ordinary Session, Banjul, Gambia); MIDH (13 October 2001, 30th Ordinary Session, Banjul, the Gambia); and FIDH (12 October 1990, 8th Ordinary Session, Banjul, the Gambia).
[2] *Suy Bi Gohoré and Others v. Republic of Côte d'Ivoire* (merits and reparations) (15 July 2020) 4 AfCLR 396, § 2

II. SUBJECT OF THE APPLICATION

A. Facts of the matter

3. It emerges from the Application that on 19 August 2006, the cargo ship M.V. Probo Koala, which was chartered by the multinational company TRAFIGURA Limited[3], docked at the port of Abidjan, Côte d'Ivoire, with five hundred and twenty-eight cubic meters (528m^3) of highly toxic waste on board. It was discharged from the ship and dumped at several sites in Abidjan, the economic capital of the Respondent State and its suburbs. None of these sites had chemical waste treatment facilities.

4. As a result of the waste dumping, air pollution ensued and a stench spread throughout the district of Abidjan. On the same day, thousands of people trooped to health centres complaining of nausea, headaches, vomiting, rashes and nosebleeds. The Applicants aver that according to the Ivorian authorities, seventeen (17) people died of toxic gas inhalation. Hundreds of thousands of other people were affected and environmental experts reported severe groundwater contamination.

5. A few days after the toxic waste dumping, and following complaints from the public, the Respondent State's public prosecutor and the public prosecutor at the Abidjan-Plateau court opened investigations that led to court proceedings. On 18 September 2006, three executives of TRAFIGURA were arrested and charged with offences provided for and punishable under the Respondent State's laws protecting public health and the environment from the effects of toxic and nuclear industrial waste as well as harmful substances.[4] In the same month, senior officials of the Respondent State, as well as directors of the companies involved in the waste dumping were suspended from their duties. The Respondent State also undertook clean-

[3] Established in 1993, the privately owned TRAFIGURA is the third largest independent trader of oil and oil products in the world. With 81 offices in 54 countries around the world, it manages all aspects of the supply and trading of crude oil, petroleum products, renewable energy, metals, ores, coal and concentrates for industrial sector clients.

[4] Law N° 88-651 OF 7 July 1988 on the protection of public health and environment against the effects of toxic and nuclear industrial waste and harmful substances.

up operations of the contaminated sites.

6. On 13 February 2007, a Memorandum of Understanding (hereinafter referred to as “the MoU”) was signed between the Respondent State and subsidiaries of the multinational company TRAFIGURA (TRAFIGURA Beaver B Corporation, TRAFIGURA Limited, Puma Energy and West African International Service Business (WAISB)). Under the terms of the Memorandum of Understanding, TRAFIGURA undertook to pay the Respondent State the sum of Ninety-Five Billion (95,000,000,000) CFA francs, which breaks down as follows: Seventy-Three Billion CFA francs (73,000,000,000 CFA francs) as reparation for the damage caused to the State of Côte d'Ivoire and to the victims; and Twenty-Two Billion CFA francs (22,000,000,000 CFA francs) for clean-up operations. The MoU also provided for the “definitive waiver” by the Respondent State of any present or future suit, claim, action or proceeding that it might initiate against the other party.

7. On 14 February 2007, the three (3) TRAFIGURA executives who were arrested and remanded in custody in the matter were released in accordance with the MoU under which TRAFIGURA would only transfer the agreed amounts to the Respondent State when the MoU was signed and certain conditions were met. One of the said conditions was the issuance of the “necessary documents” proving that the Respondent State had withdrawn the civil proceedings and authorised the Chief Executive Officer (CEO) and Head of the Africa Division of TRAFIGURA as well as the Deputy Managing Director of Puma Energy to leave the country.[5]

8. On 19 March 2008, twelve (12) people were arraigned before the Abidjan Criminal Court on the charge of poisoning by dumping of toxic waste. The trial commenced on 2 September 2008 and the Association of Victims of Toxic Waste of Abidjan and its Suburbs (hereinafter referred to as “the Association of Victims”) joined the prosecution as a civil party. On 21

[5] Established in February 2004, Puma Energy is a subsidiary of the TRAFIGURA group in Côte d'Ivoire which manages TRAFIGURA’s petroleum storage and distribution investments in Côte d'Ivoire.

October 2008, the Association of Victims filed a motion for a stay of proceedings on the grounds of legitimate suspicion, pursuant to Article 631 of the Code of Criminal Procedure.[6] The Association of Victims denounced the fact that, despite flaws in the investigation and testimonies, as well as government interference in the trial, the Criminal Court insisted on proceeding with the trial.

9. In its judgment of 22 October 2008, the Criminal Court found the CEO of Tommy Company[7] and an employee of (WAISB),[8] who provided information about Tommy to Puma Energy, guilty of poisoning and abetment of poisoning. They were sentenced to twenty (20) years and five (5) years imprisonment respectively. However, the Respondent State's officials were acquitted.

10. The victims subsequently brought several civil actions before different courts in the Respondent State to obtain reparation from the companies responsible for the dumping of the toxic waste and from the Respondent State for the damages suffered. The most important of these proceedings was the action brought before the Court of First Instance of Abidjan-Plateau by the families of eleven (11) victims who died as well as more than sixteen thousand (16,000) people who were affected. On 27 July 2010, by judgment No. 2799/2010, the Court of First Instance of Abidjan-Plateau found TRAFIGURA and Puma Energy liable and ordered them each to pay the sum of One Hundred Million (100,000,000) CFA francs to the families of seven (7) of the eleven (11) victims, as compensation.

11. Dissatisfied with the amount awarded, the families of the seven (7) victims appealed the judgment before the Abidjan Court of Appeal which, by Judgment No. 2010/359 of 24 December 2010, overturned the judgment with regard to the liability of TRAFIGURA and Puma Energy, on the grounds

[6] Article 631 of the CCP provides: "
[7] Tommy Ltd. was established for the sole purpose of disposing of the waste loaded on board the vessel PROBO KOALA on behalf of TRAFIGURA Ltd.
[8] WAISB is a company interfacing with TRAFIGURA Ltd in Abidjan for the purposes of dumping toxic waste.

that the Respondent State was obliged, under the terms of the MoU, to “settle all compensation claims”. With regard to the victims, it further found that only four (4) of the seven (7) victims’ families had provided evidence that the deaths were the result of poisoning due to exposure to toxic waste. The Court of Appeal, therefore, upheld the contested decision with respect to these four (4) victims only.

12. The seven (7) victims then appealed the Court of Appeal's decision to the Supreme Court. On 2 February 2012, the Supreme Court overturned the decision of the Court of Appeal found TRAFIGURA and Puma Energy liable, ordering them to pay damages of Fifty Million (50,000,000) CFA francs to the families of all seven (7) deceased persons who had won their case in the Court of First Instance. Additionally, the Supreme Court dismissed the claims of the beneficiaries of the other four (4) victims.

13. On 23 July 2014, by Decision No. 498/2014, the Joint Chambers of the Supreme Court dismissed a second appeal filed by the families of the other deceased victims on the grounds that they had not provided sufficient evidence to prove the causal link between the deaths and the waste poisoning.

14. In November 2015, the authorities of the Respondent State issued a statement to the effect that the decontamination of the sites had been completed.

15. It also emerges from the Application that although the Respondent State established a compensation programme for victims and families of the deceased, a large number of victims were not taken into account and thus did not receive compensation.

B. Alleged violations

16. The Applicants allege the violation of the s following rights:

    i. The right to an effective remedy and the right to seek redress for harm

suffered, protected by Article 7(1)(a) of the Charter, read in conjunction with Articles 26 of the Charter, 2(3) of the International Covenant on Civil and Political Rights (ICCPR), 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 4(1) and 4(4)(a) of the Convention on the Ban of the Import into Africa of Hazardous Wastes and the Control of Transboundary Movements of Hazardous Wastes within Africa (hereafter referred to as "the Bamako Convention");

ii. The right to respect for life and physical and moral integrity of the person, protected by Articles 4 of the Charter and 6(1) of the ICCPR;

iii. The right to enjoy the best attainable state of physical and mental health, protected under Articles 16 of the Charter 11(1), and 12(1) and (2)(b) and (d) of the ICESCR;

iv. The right of peoples to a general satisfactory environment favourable to their development, protected under Article 24 of the Charter;

v. The right to information, protected by Articles 9(1) of the Charter and 19(2) of the ICCPR;

vi. The rights protected by the 2003 African Convention on the Conservation of Nature and Natural Resources (hereinafter referred to as the "Algiers Convention").

III. SUMMARY OF THE PROCEDURE BEFORE THE COURT

17. The Application was filed at the Registry on 18 July 2016 and served on the Respondent State on 13 October 2016.

18. After several extensions of time, the Respondent State on 22 November 2017 filed its Response, which was notified to the Applicants on 27 November 2017.

19. The parties filed their pleadings within the time stipulated by the Court.

20. Pleadings were closed on 15 March 2020 and the parties were duly notified.

IV. PRAYERS OF THE PARTIES

21. The Applicants request the Court to find that the Respondent State violated the rights referred to in paragraph 16 above and to order it to:

i. Publicly acknowledge its responsibility for the violations referred to in the Application and publicly apologise, in particular to the victims of the toxic waste dumping and the consequences thereof;
ii. Open an independent and impartial investigation in order to establish liability for the waste and prosecute persons involved for their criminal liability, regardless of their status or employment within TRAFIGURA or the office they hold in the country;
iii. Ensure the provision of medical assistance to victims, including treatment of new symptoms, and in the long-term, illnesses caused by exposure to toxic waste, establish adequate health facilities and provide qualified personnel and appropriate equipment to provide the necessary care so as to improve the health of the victims of toxic waste;
iv. Immediately roll out an adequate and effective compensation programme for victims of toxic waste, beginning with a national census of victims of waste dumping, taking into account the continuous presence of toxic waste for nearly a decade, and ensure that the result of this census is disseminated to the public, and to consult with the victims after the programme has been put in place, in order to determine a quantum of compensation that is commensurate with their expectations and needs;
v. Immediately take measures to prepare a comprehensive national study on the health and environmental effects of dumping the toxic waste in the short, medium and long term, ensure that the study is widely disseminated and inform the public of measures taken to address the short, medium and long-term negative effects of toxic waste on human health and the environment;
vi. Submit a transparent and publicly accessible report on the use of the lump sum allocated to Côte d'Ivoire under the Memorandum of Understanding signed with TRAFIGURA; and;
vii. Implement structural reforms to enhance waste handling capacity in the port of Abidjan by adopting environmentally friendly methods,

implementing legislative and regulatory reforms prohibiting and punishing the import and dumping of hazardous waste and holding companies responsible for the protection of human rights and the environment.

22. The Applicants further request the Court to order the Respondent State to:

i. Amend its penal code to include general criminal liability for legal persons;
ii. Ensure that one or more representatives of the Ministry of the Environment are assigned to all of its ports, and empower the said representatives to monitor waste removal operations from ships, as is done by representatives of the Ministry of Transport;
iii. Organize training courses for the concerned officials with a view to sensitise them to issues of human rights and environmental protection, and to include human rights and the environmental protection courses in school and university curricula.
iv. Develop, after consultation with victims or victims' associations, a new, rapid, effective and appropriate compensation program for victims of toxic waste, which necessarily includes setting up a genuine compensation fund, and an updated and public national register of victims;
v. Pay a token[9] One (1) franc CFA to each Applicant as reparation for moral damage suffered; and
vi. Ensure that the Court's decision is disseminated through national print and electronic media outlets and that it is published on the official Government website and remains accessible there for a period of one year from the date of its notification.

23. In its Response, the Respondent State prays the Court to:

i. Declare the Application inadmissible;
ii. Find that the Application does not meet the admissibility requirements on the ground that the Applicants lack interest;

[9] See the brief on the merits and reparations of 2 November 2018, page 24, paragraph 5, Sheet No. 001120.

iii. Declare the Application inadmissible for being time-barred;
iv. Declare the Application inadmissible due to other claims related to this Application;
v. Declare the Application inadmissible for lack of material jurisdiction to hear allegations of violation of the Algiers Convention;
vi. Declare the Application inadmissible for lack of temporal jurisdiction over the alleged violations of the right to life and physical integrity as well as the right to physical and mental health;
vii. Declare that the Respondent State complied with its procedural obligations resulting from the violations alleged in the Application;
viii. Declare the Application inadmissible for being brought on behalf of victims whose claims are already under consideration before other judges, that is, other judicial bodies;
ix. Declare that the Application does not meet the admissibility requirements;
x. Declare that no harm was suffered as a result of the alleged violation of rights under the Charter; and
xi. Dismiss the Applicants' claims for damages.

V. JURISDICTION

24. Article 3 of the Protocol provides:

> 1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.
> 2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

25. Under Rule 49(1) of the Rules,[10] the Court "shall ascertain its jurisdiction and the admissibility of an Application in accordance with the Charter, the Protocol and these Rules."

[10] Article 39(1) of the Rules of Court of 2 June 2010.

26. Based on the above-mentioned provisions, the Court, in respect of each application, must conduct a preliminary assessment of its jurisdiction and dispose of objections thereto, if any.

27. The Court notes that the Respondent State raises objections to its material and temporal jurisdiction. The Court will thus consider the said objections before assessing other aspects of its jurisdiction, if necessary.

A. Objections to material jurisdiction

28. The Respondent State raises three objections to the Court's material jurisdiction, first, that this Court is not an appellate court; second, that the Algiers Convention on the Conservation of Nature and Natural Resources (hereinafter referred to as "the Algiers Convention) is not a human rights instrument; and third, that the Applicants have failed to specify the articles of the Algiers Convention based on which they allege that the Respondent State has violated its obligations. The Court will examine each of the objections raised by the Respondent State.

i. Objection on the ground that the Algiers Convention on the Conservation of Nature and Natural Resources is not a human rights instrument

29. The Respondent State contends that the Algiers Convention is not a human rights instrument. To this end, it points out that the concept of human rights refers exclusively to subjective rights, inasmuch as they are privileges that apply only to individuals. According to the Respondent State, the provisions of the Algiers Convention apply only to States, and therefore, do not fall within the Court's material jurisdiction.

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30. In response, the Applicants submit that the Algiers Convention places an obligation on States Parties to protect natural resources, which are closely related to the interests of individuals, as the Convention defines purpose in

Article 2.[11]

31. The Applicants further aver that Article 24 of the Charter provides for the right of peoples to a satisfactory, inclusive and development-friendly environment. It is also the contention of the Applicants that this Court has material jurisdiction to interpret the Algiers Convention insofar as, in accordance with the jurisprudence of regional human rights mechanisms, the preservation of natural resources is an integral part of human rights.

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32. The Court observes that, in determining whether a treaty is a human rights instrument, it is necessary to refer specifically to the its purpose, which is made clear either by the express provision of the personal rights of individuals or groups, or by obligations imposed on State Parties to perform a particular action.[12] The Court recalls its jurisprudence in *APDH v. Republic of Côte d'Ivoire* that a State Party's obligations to perform certain actions aim to implement corresponding subjective rights guaranteed to individuals.[13]

33. The issue to be determined in the present case, therefore, is whether the Algiers Convention is a human rights instrument.

34. The Court confirms that the Respondent State is a party to both the 1968 Algiers Convention and the revised 2003 Convention. With specific regard to the text of the Algiers Convention, the Court notes that its provisions are not framed in terms of specific rights granted to individuals. However, certain provisions of the Algiers Convention impose obligations on State Parties to implement the rights granted to individuals or groups of individuals in various

[11] Article 2 of the Algiers Convention states: "The Contracting States shall undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources in accordance with scientific principles and with due regard to the best interests of the people".
[9] *Actions pour la Protection des Droits de l'Homme (APDH) v. Republic of Côte d'Ivoire* (2016) 1 AfCLR, 668, § 57.
[13] *Ibid*, § 63.

human rights treaties ratified by the Respondent State.

35. The Court notes, in effect, that Article 2 of the Algiers Convention with the heading “fundamental principles” prescribes that State Parties shall:

> […] adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources *in accordance with scientific principles and with due regard to the best interests of the people*.

36. The Court further notes that in the revised Algiers Convention, in particular Article 3 thereof, State Parties undertake to be guided by the following principles:

> 1. the right of all peoples to a satisfactory environment favourable to their development;
> 2. the duty of States, individually and collectively to ensure the enjoyment of the right to development;
> 3. the duty of States to ensure that developmental and environmental needs are met in a sustainable, fair and equitable manner.

37. These provisions reflect a clear commitment by States to act in a manner that prevents harmful effects on the environment, especially those resulting from toxic waste and hazardous waste.

38. In linking such commitment to individual or group rights, the Court recalls that, pursuant to Article 16 of the Charter, “[e]very individual shall have the right to enjoy the best attainable state of physical and mental health. In addition, Article 24 of the Charter also provides that “[a]ll peoples shall have the right to a general satisfactory environment favourable to their development.”

39. A combined reading of these various provisions shows that, through the Algiers Convention, State Parties have signed up to obligations that guarantee the enjoyment of the rights provided for in Articles 16 and 24 of

the Charter, namely, the right to the enjoyment of the best attainable state of physical and mental health and the right to a general satisfactory environment conducive to development.

40. Consequently, the Court confirms that the Algiers Convention is indeed, in its relevant provisions, a human rights instrument within the meaning of Article 3 of the Protocol.

41. in view of the foregoing, the Court dismisses the objection and accordingly holds that it has material jurisdiction to interpret and apply the Algiers Convention.

ii. Objection based on the failure to identify the Articles of the Algiers Convention allegedly violated

42. The Respondent State argues that the Applicants allege the violation of the Algiers Convention without specifying the exact provisions they claim were violated. According to the Respondent State, this is contrary to the spirit of Article 56 of the Charter and, therefore, prevents the Court from exercising its material jurisdiction. The Respondent State further contends that Article 13 of the Algiers Convention does not have paragraph 3 and that Article 1 thereof has nothing to do with the subject of the Application.

43. In their Reply, the Applicants contend that the Respondent State violated Articles 5, 6(3)(c) and 13(1) of the Algiers Convention. They contend that the Court has jurisdiction in the present case insofar as the purpose of the above provisions is to conserve nature and natural resources in Africa.

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44. The Court recalls, in line with its constant jurisprudence, that applicants are not required to indicate specifically and expressly, the articles of which a violation is alleged. It is sufficient that the subject matter of the application relates to the rights guaranteed by the Charter or any other human rights

instrument ratified by the State concerned.[14]

45. In the instant matter, the Applicants allege violations of rights guaranteed in the Charter, the ICCPR, the ICESCR, and the Algiers Convention, all being instruments to which the Respondent State is a party.

46. The Court, therefore, dismisses the Respondent State's objection.

iii. Objection based on the ground that the Court is not an appellate court

47. The Respondent State submits that following the dumping of the toxic waste, investigations were carried out and the persons involved were prosecuted before competent domestic courts. According to the Respondent State, as this Court is not an appellate court, the Applicants are not entitled to bring before it, for review, decisions rendered by the competent courts of a sovereign and independent State.

48. The Applicants did not respond to the Respondent State's submissions on this issue.

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49. The Court recalls, in accordance with its constant jurisprudence, that "it does not have appellate jurisdiction to receive and consider appeals in respect of cases already decided upon by domestic courts (...)".[15] However, "this does not preclude it from examining relevant proceedings in the national courts in order to determine whether they are in accordance with the standards set out in the Charter or any other human rights instruments ratified by the State concerned."[16]

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[14] *Guéhi v. Tanzania*, *supra*, § 33; *Werema Wangoko Werema and Another v. United Republic of Tanzania* (merits) (7 December 2018) 2 AfCLR 520, § 29; Franck *David Omary and Others v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 AfCLR 358, § 74; *Peter Joseph Chacha v. United Republic of Tanzania* (admissibility) (28 March 2014) 1 RJCA 398, § 118; *Alex Thomas v. United Republic of Tanzania* (merits) (20 November 2015) 1 AfCLR 465, § 45; *APDH v. Côte d'Ivoire* (merits), *supra*, §§ 48-65.

[15] *Ernest Francis Mtingwi v. Republic of Malawi* (jurisdiction) (15 March 2013) 1 AfCLR 190, § 14.

[16] *Kenedy Ivan v. United Republic of Tanzania*, (merits and reparations) (28 March 2019), 3 AfCLR § 26; *Armand Guehi v. United Republic of Tanzania* (merits and reparations) (7 December 2018) 2 AfCLR 477 § 33; *Nguza Viking (Babu Seya) and Johnson Nguza (Papi Kocha) v. United Republic of Tanzania*

50. In the present case, the Court notes that the Applicants allege that certain actions of the Respondent State, and its institutions, were not performed in line with the standards provided for in the Charter, the ICCPR, the ICESCR as well as the Algiers Convention. The present Application does not, therefore, request the Court to rule as an appellate court on the decisions rendered by the domestic courts but rather to vet the conformity of the said decisions with international human rights instruments to which the Respondent State is party.

51. In light of the foregoing, the Court dismisses the Respondent State's objection.

52. Pursuant to its constant jurisprudence, the Court confirms that it has material jurisprudence insofar as the Applicant alleges the violation of rights guaranteed by the Charter or any other relevant human rights instruments to which the Respondent State is a party. In this regard, the Court notes that the Applicant alleges the violation of the following rights protected by the Charter, the Algiers Convention, the ICCPR and the ICESCR: the right to effective remedy and to seek reparations, the right to respect for life and physical and moral integrity, the right to enjoy the best state of health, the right to a satisfactory and global environment, the right to information and the right to the preservation of nature and natural resources. Accordingly, the Court finds that it has material jurisdiction to hear the Application.

B. Objection to temporal jurisdiction

53. The Respondent State raises two objections to the temporal jurisdiction of the Court, firstly, that the Declaration has no retroactive effect and, secondly, that the violations alleged in the Application are not continuing in nature.

(merits) (21 March 2018) 2 AfCLR 287 § 35.

54. The Respondent State affirms that the Declaration it deposited in 2013 cannot apply to events that occurred in 2006, and, therefore, to all the alleged violations of the right to life and physical integrity, the right to an effective remedy, the right to health, the right to a healthy environment and the right to information.

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55. For their part, the Applicants aver that the Respondent State ratified the Charter on 6 January 1992 and became a party to the Protocol on 7 January 2003, and that having ratified these instruments, it has an obligation to comply with these provisions, even if it only deposited the Declaration in 2013. The Applicants contend that in its judgment in *Peter Joseph Chacha v. Tanzania*, the Court clarified that a State Party's obligation to protect human rights guaranteed by the Charter takes effect immediately upon ratification. Thus, in their view, the State is liable for the violation of the right to life, the right to an effective remedy, the right to health, the right to a healthy environment and the right to information.

56. The Applicants further submit that the Court's jurisdiction in relation to States Parties does not run from the date of deposit of the Declaration insofar as that provision does not relate to the Court's temporal jurisdiction, but merely clarifies the Court's personal jurisdiction. According to the Applicants, the temporal jurisdiction of the Court extends to all violations occurring after the ratification of the Charter.

57. In this regard, the Applicants affirm that in its Ruling on Preliminary Objections *Norbert Zongo and Others v. Burkina Faso*, the Court held that its jurisdiction derives from the ratification of its founding Protocol and not from the Declaration.

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58. The Court notes that its temporal jurisdiction is determined from the date of entry into force of the Protocol which established it and not from the date of deposit of the declaration, the latter date relates only to its personal

jurisdiction.

59. In this regard, the Court notes that the dumping of toxic waste took place on 18 August 2006, after the Respondent State had become a party to the Protocol on 25 January 2004. Given that the facts took place after this date, the notion of continuous violation is not applicable to the original act of dumping of toxic waste, much less to the effects of the said dumping.

60. Accordingly, the Court holds that it has temporal jurisdiction to hear all the violations alleged by the Applicant and dismisses the objection raised by the Respondent State.

C. Other aspects of jurisdiction

61. The Court notes that no objection was raised on its personal and territorial jurisdiction. However, pursuant to Rule 49 (1) of the Rules, it has to ensure that conditions relating to this aspect of its jurisdiction are met before continuing with consideration of the Application.

62. Having found that no information contained in the file indicates that it lacks jurisdiction, the Court finds that it has:

i. Personal jurisdiction, insofar as the Respondent State deposited the Declaration. On 29 April 2020, the Respondent State deposited, with the Chairperson of the African Union Commission, the instrument withdrawing its Declaration. The Court has held that the withdrawal of its Declaration has no bearing on pending cases and on cases filed one (1) year before the entry into force of the instrument relating to it, that is, on 30 April 2021.[17]
ii. Territorial jurisdiction insofar as the violations alleged by the Applicants took place in the territory of the Respondent State which is a party to the Protocol and the Charter.

[17] *Suy Bi Gohoré Émile and Others v. Republic of Côte d'Ivoire,* AfCHPR, Application N° 044/2019, Judgment of 15 July 2020 (merits), § 2.

63. In light of the foregoing, the Court finds that it has jurisdiction to hear the instant Application.

VI. ADMISSIBILITY

64. The Court notes that the Respondent State raises objections to the admissibility of the Application on the basis of grounds which are not provided for in Article 56 of the Charter.

65. The Court will rule on these objections before considering those under Article 56 of the Charter, if necessary.

A. Objections to admissibility not provided for in Article 56 of the Charter

66. The Court notes that the Respondent State raises preliminary objections to the admissibility of the Application on the grounds that: i) the Applicants lack *locus standi*; ii) the Applicants did not provide a power of attorney from the victims to represent them before the Court; iii) the Applicants did not identify the said victims; and iv) certain violations are raised for the first time before this Court.

i. Objection based on lack of *locus standi*

67. The Respondent State affirms that, in the present case, the Applicants do not sufficiently demonstrate their interest and the Application should be declared inadmissible.

68. The Applicants assert that as human rights NGOs they have *locus standi* in the public interest insofar as they bring this case in the name and on behalf of the Association of Victims.

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69. With regard to the objection based on the Applicants' lack of interest or their lack of victim status, the Court recalls its jurisprudence to the effect that "[articles 5(3) and 34(6) of the Protocol] do not require individuals or NGOs to demonstrate a personal interest in an application in order to have access to the Court".[18] The Court observes that this position is based, among other things, on the fact that in principle, given their mandate and the very nature of their activities, NGOs are entitled to take legal action as long as they act in the public interest.[19]

70. In the present case, the Court notes that the Applicants are NGOs working in the field of human rights protection in Africa and, moreover, have observer status before the Commission. As such, there is no need to require them to prove personal interest in order to file an application with the Court.

71. The Court, therefore, dismisses this objection.

ii. Objection based on failure to produce a power of attorney

72. The Respondent State contends that the victims have not given the Applicants any power of attorney or authorization to represent them before any international body.

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73. The Applicants did not submit on this objection.

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74. The Court considers that the capacity of human rights non-governmental organisations applicants authorizes them to bring actions on behalf of victims in public interest cases, and that they are, therefore, not obliged to

[18] *XYZ v. Republic of Benin*, ACtHPR, Application no. 010/2020, Judgment of 27 November 2020 (merits and reparations), §§ 47 and 48.
[19] *Bernard Anbataayela Mornah v. Republic of Benin and Others*, ACtHPR, Application No. 028/2018, Judgment of 22 September 2022, § 120; *XYZ v. Benin*, 54-56; *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (merits) (14 June 2013) 1 AfCLR 34, § 1.

produce a power of attorney on victims' behalf to represent them. Additionally, the jurisprudence of the Court on the issue of NGO standing applies to the present objection.

75. The Court, therefore, dismisses the Respondent State's objection.

iii. Objection based on non-identification of victims

76. The Respondent State alleges that the Applicants filed the Application on behalf of the Association of Victims and all the victims of the toxic waste dumping, whereas the Application was supposed to be filed by the individuals on their own behalf. Furthermore, the Respondent State avers that not all the victims of the toxic waste are members of the Association of Victims.

77. The Respondent State considers that the present Application should have been personalised and individualised.

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78. On their part, the Applicants affirm that they are human rights NGOs with observer status before the Commission. They further argue that they have standing to bring cases before the Court insofar as the Respondent State deposited, on 19 June 2013, the Declaration by virtue of which it accepts the jurisdiction of the Court to receive applications from individuals and NGOs.

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79. The Court notes that the Applicants' allegations fall within the scope of public interest litigation insofar as the contested legal provisions concern all citizens whose interests are directly affected.[20]

[20] *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (Merits) (14 June 2013) 1 AfCLR 34, § 1.

80. The Court, therefore, dismisses the objection in this respect.

iv. Objection on the ground that certain allegations are being raised for the first time

81. The Respondent State maintains that the alleged violations of the right to an effective remedy, the right to reparation for harm suffered, the right to life, the right to the highest attainable standard of physical and mental health, the right to a satisfactory environment and the right to information were never raised in the domestic proceedings. According to the Respondent State, the national judicial system did not have the opportunity to remedy the violations.

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82. In response, the Applicants maintain that the Respondent State's argument is unfounded insofar as the grievances they raise before this Court were also raised in the domestic judicial proceedings.

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83. The Court considers that this objection is linked to the exhaustion of local remedies and it will, therefore, examine it to the extent that it relates to the admissibility requirements provided for by the Charter.

B. Admissibility requirements provided for in Article 56 of the Charter

84. According to Article 6(2) of the Protocol, "the Court shall rule on the admissibility of cases taking into account the provisions of Article 56 of the Charter". In accordance with Rule 50(1) of the Rules, "The Court shall ascertain the admissibility of an Application filed before it in accordance with Article 56 of the Charter, Article 6(2) of the Protocol and these Rules".

85. Rule 50(2) of the Rules,[21] which in substance restates the provisions of Article 56 of the Charter, provides:

> Applications filed before the Court shall comply with all of the following conditions:
>
> a) Indicate their authors even if the latter request anonymity,
> b) Are compatible with the Constitutive Act of the African Union and with the Charter,
> c) Are not written in disparaging or insulting language directed against the State concerned and its institutions or the African Union,
> d) Are not based exclusively on news disseminated through the mass media,
> e) Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
> f) Are submitted within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seised with the matter; and
> g) Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Constitutive Act of African Union or the provisions of the Charter.

86. The Court notes that the Respondent State raises objections to the admissibility of the Application based on failure to exhaust local remedies, failure to file the Application within a reasonable time and on the fact that the matter was previously settled.

87. The Court will, first, consider these objections before examining other admissibility requirements, if necessary.

[21] Rule 40 of the Rules of Court of 2 June 2010.

i. Objection based on non-exhaustion of local remedies

88. The Respondent State avers that the Application is premature insofar as the Applicant still had the option to exhaust the remedies available in the national judicial system. It also submits that States should not be held accountable for the failure of Applicants who seize international courts before seeking redress in their national legal system.

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89. In their Reply, the Applicants submit that the Respondent state has not fully fulfilled its obligations of investigating the dumping of toxic waste. They contend that the immunity granted to TRAFIGURA officials has the effect of reducing the jurisdiction of the national commission of inquiry.

90. The Applicants further contend that in domestic courts, the Association of Victims, which is a civil party to the proceedings, requested that the case be transferred to another criminal court. Despite the suspensive effect of this request, the trial continued until the verdict was delivered on the same day. The Applicants also argue that the executive branch intervened insofar as representatives of the Respondent State repeatedly contacted the President of the Victims Association prior to the withdrawal of his application.

91. The Applicants further submit that they allege gross and massive violations of human rights. In their view, the State's objection should be dismissed, given the large number of victims and the seriousness as well as multiplicity of the violations. They contend that requiring each victim to pursue local remedies would make it almost impossible to seize the Commission or the Court, which in turn would impede these regional mechanisms from fulfilling their mandate to protect Charter rights.

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92. The Court recalls that pursuant to Article 56(5) of the Charter and Rule 50(2)(e) of the Rules, applications must be filed after exhaustion of local remedies, if they are available, unless it is clear that the procedure in respect of such remedies is unduly prolonged.

93. The Court recalls, moreover, that the requirement of exhaustion of local remedies is an internationally recognised and accepted rule.[22]

94. Accordingly, the Court emphasises that the local remedies to be exhausted are those of a judicial nature, which must be available, that is, they can be pursued without impediment by the Applicant,[23] effective and satisfactory in the sense that they are "capable of satisfying the complainant or of remedying the situation in dispute".[24]

95. The Court notes that in support of its objection, the Respondent State contends that local remedies were not exhausted in regard to allegations relating to the right to effective trial, the right to prejudice suffered, the right to life, the right to enjoy the best mental and physical health state possible, the right to a clean environment and the right to information. The Respondent State asserts that these allegations were raised for the first time before this Court.

96. The Court recalls that of the one hundred thousand (100 000) victims recognised by the Respondent State itself, at least sixteen thousand (16 000) of them were parties to proceedings before domestic courts. The Court notes that family members of four (4) of the seventeen (17) victims who died after obtaining a favourable decision were awarded damages and interests after the enterprises concerned were held liable. It is worthy of note that in the judgment of 23 July 2014, the joint chambers of the Supreme Court of

[22] *Mtikila v. Tanzania*, *supra*, § 82.1; *Norbert Zongo and Others v. Burkina Faso* (merits) (28 March 2014) 1 AfCLR 219, § 68.
[23] *Jebra Kambole v. United Republic of Tanzania,* Application No. 018/2018, Judgment of 15 July 2020 (merits and reparations), § 38; *APDH v. Côte d'Ivoire* (merits), *supra*, § 94.
[24] Mtikila v. Tanzania (merits), supra, § 82.3; *Lohé Issa Konaté v. Burkina Faso* (merits) (Dec. 5, 2014) 1 RJCA 314, § 112.

the Respondent State rejected all the other victims for lack of evidence of any link between the deposit of toxic waste and the prejudice suffered by the victims.

97. Be that as it may, the joint chambers of the Supreme Court, the highest Court in the Respondent State, had rendered a decision on a matter with the same subject matter as the present Application. It is, therefore, not appropriate to require the NGO Applicants to initiate the same proceedings since the outcome is known in advance as the decisions of the said chamber are irrevocable.

98. In the light of the foregoing, the Court considers that local remedies must be considered to have been exhausted in respect of all the victims of the toxic waste dumping.

99. Accordingly, the Court dismisses the Respondent State's objection based on non-exhaustion of local remedies.

ii. Objection based on the failure to file the Application within a reasonable time

100. The Respondent State submits that it deposited the Declaration on 19 June 2013 while the Applicants seized the Court on 14 July 2016. The Respondent State considers that a period of three (3) years and twenty-five (25) days elapsed between the date of filing of the Declaration and the date of filing the present Application.

101. The Respondent State submits that in line with the Court's jurisprudence, the Applicants cannot rely on, nor can the Court accept, the fact that the victims are illiterate, indigent or ignorant to justify the undue delay in bringing the case before the Court.

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102. In their Reply, the Applicants cite the Court's jurisprudence in *Norbert Zongo and Others v. Burkina Faso* and argue that the obligation to lodge an application within reasonable time should be waived where the date of exhaustion of local remedies cannot be ascertained.

103. The Applicants further contend that the existence of serious and massive violations of human rights, as in the present case, constitutes an exception to the requirement that the application be filed within a reasonable time.

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104. The Court reiterates that neither the Charter nor the Rules specify the exact timeline within which Applications must be filed, after exhaustion of local remedies. Article 56(6) of the Charter and Rule 50(2)(f) of the Rules simply provide that Applications must be filed "…within reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter".

105. The Court recalls, in line with its jurisprudence, that "... the reasonableness of the time limit for its referral depends on the particular circumstances of each case ...".[25] As a general principle of law, the Applicant bears the onus to prove reasonableness of the time limit at issue.[26]

106. In line with its jurisprudence, the Court has found that the time-limit for bringing an application before it is manifestly reasonable where the time-limit is relatively short. In such circumstances, the requirement to demonstrate the reasonableness of time does not apply.[27]

[25] *Norbert Zongo and Others v Burkina Faso* (merits) (24 June 2014) 1 AfCLR 219 § 92. See *Thomas v. Tanzania* (merits), § 73.
[38] *Layford Makene v. United Republic of Tanzania*¸ ACtHPR, Application No. 028/2017, Ruling of 2 December 2021 (admissibility), § 48; *Yusuph v. Tanzania*, *supra*, § 65.
[27] *Niyonzima Augustine v. United Republic of Tanzania*, AfCHPR, Application No. 058/2016, Judgment of 13 June 2023 (merits and reparations), § 56; *Sébastien Germain Ajavon v. Republic of Benin*, AfCHPR, Application No. 065/2019, judgment of 29 March 2021 (merits and reparations), §§ 86 and 87.

107. In the present case, the Court notes, as it has earlier established in the present judgment, that local remedies were exhausted by the judgment of 23 July 2014 delivered by the Joint Chambers of the Respondent State's Supreme Court. It follows that, as the present Application was lodged on 18 July 2016, a period of one (1) year, eleven (11) months and twenty-five (25) days elapsed after the exhaustion of domestic remedies. In the circumstances, the Court considers that the time in question is manifestly reasonable.

108. In view of the foregoing, the Court holds that the present Application was filed within reasonable time after exhaustion of local remedies.

iii. Objection to admissibility based on the case having been previously settled

109. The Respondent State submits that a press article of 3 February 2018 reports that on behalf of the same toxic waste victims, *Coordination nationale des victimes des déchets toxiques de Côte d'Ivoire* (the CNVDT), a second victims' association brought various actions before domestic courts of the Netherlands, the United Kingdom and France seeking reparations for victims. It is the Respondent State's contention that these processes render the present Application inadmissible.

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110. In their Reply, the Applicants contend that the case has not been brought before any international tribunal or any other regional or international mechanism.

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111. The Court notes that, in accordance with Article 56(7) of the Charter, which restates the provisions of Rule 50(2)(g) of the Rules, applications shall be considered if they "do not deal with cases which have been settled in accordance with the principles of the Charter of the United Nations (UN

Charter), or the Constitutive Act of the African Union (AU Constitutive Act) or the provisions of the present Charter".

112. In line with the Court's jurisprudence, the above-mentioned provisions require that it be ascertained not only whether the case under consideration has not been settled, but also whether it has not been settled in accordance with the principles laid down in the instruments mentioned.[28]

113. The Court's jurisprudence also holds that settlement, within the meaning of Article 56(7) of the Charter, presupposes that three requirements are met: (i) the identity of the parties; (ii) the identity of the applications or their alternative or supplementary nature or whether the case flows from a request made in the initial case; and (iii) the existence of a decision on the merits.[29]

114. The Court considers that in relation to the requirement of the identity of the Parties, the Respondent State does not prove that the victims represented by the two victims' associations are the same in the various proceedings before the foreign courts concerned. The Court notes, in effect, that the defendants in the various proceedings are not the same. In the aforementioned proceedings, the defendants are the Respondent State and Trafigura, whereas in the present case, the defendant is the Respondent State alone. The requirement of identity of the Parties is, therefore, not met.

115. With regard to the requirement of identity of the applications, the Court recalls, as it has found in this Judgment, that the main issue raised by the Applicants in the present Application is that the victims were not afforded a remedy and reparations. None of the Parties to the present Application contends that the victims were duly and fully compensated. It emerges

[27] *Jean Claude Roger Gombert v. Côte d'Ivoire* (jurisdiction and admissibility) (22 March 2018) 2 AfCLR 270, § 44; *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 55.

[29] *Tike Mwambipile and Equality Now v. United Republic of Tanzania*, ACtHPR, Application No. 042/2020, Judgment of 1 December 2022 (jurisdiction and admissibility), § 48; *Dexter Eddie Johnson v. Republic of Ghana* (jurisdiction and admissibility) (28 March 2019) 3 AfCLR 99, § 48

unequivocally, therefore, that although local remedies were exhausted, it has not been shown that all the issues involved were resolved. The condition of identity of the applications is therefore not met.

116. As far as the condition of existence of a decision on the merits is concerned, this Court notes that although both Parties agree on the existence of decisions in cases before the domestic courts of the Netherlands, the United Kingdom and France, the fact remains that it has not been established that these proceedings were conducted in accordance with the principles of the Charter and other relevant instruments referred to in Article 56(7) of the Charter. As such, this Court finds that the condition of a decision on the merits is not met.

117. In view of the foregoing, the Court finds that the present Application has not been settled within the meaning of Article 56(7) of the Charter and, therefore, dismisses the Respondent State's objection.

C. Other admissibility requirements

118. The Court notes that the requirement laid down in Rule 50(2)(a) of the Rules is met insofar as the Applicants have clearly indicated their identity.

119. It further notes that the Applicants' requests seek to protect their rights enshrined in the Charter. It further notes that one of the objectives of the Constitutive Act of the African Union as stated in Article 3(h) thereof is to promote and protect human and peoples' rights. Furthermore, there is nothing on record to indicate that the Application is incompatible with any provision of the Constitutive Act. The Court, therefore, considers that the Application is compatible with the Constitutive Act of the African Union and the Charter. Accordingly, the Court finds that the Application meets the requirement of Rule 50(2)(b) of the Rules.

120. The Court further notes that the Application does not contain any disparaging or insulting language with regard to the Respondent State or its

institutions, and, therefore, meets the requirements of Rule 50 (2) (c) of the Rules.

121. The Court further considers that the Application meets the requirement contained in Rule 50(2)(d) of the Rules insofar as it is not based exclusively on news disseminated through the mass media.

122. In view of the foregoing, the Court finds that the Application meets all the admissibility requirements set out under Article 56 of the Charter, as restated in Rule 50(2) of the Rules, and accordingly declares it admissible.

VII. MERITS

123. The Applicants allege that the Respondent State violated the right to respect for life and physical and moral integrity (A), the right to an effective remedy and to adequate compensation for damages (B), the right to physical and mental health (C) and the right to a satisfactory general environment (D). They further allege that the Respondent State violated the right to information (E). The Court will now address each of the alleged violations.

A. Alleged violation of the right to life and to physical and moral integrity

124. The Applicants allege that the Respondent State knew or ought to have known that the lives and physical integrity of the inhabitants of Abidjan could be at risk from the dumping of the toxic waste but failed to take measures to mitigate the said risk.

125. The Applicants also argue that, in full knowledge of the risks involved, the Respondent State failed to do everything reasonably possible to prevent the occurrence of certain and imminent risk to the right to life. They further contend that the Ivorian authorities granted a licence to a company that clearly did not have the know-how or the capacity to handle waste such as was transported by the Probo Koala. They also argue that the Respondent

State failed to take adequate measures to enforce domestic legislation and its obligations under the Bamako Convention prohibiting the import and dumping of toxic waste.

126. Finally, the Applicants submit that the lack of appropriate preventive, investigative, punitive and remedial measures constitute a violation of the right to life in the present case.

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127. The Respondent State did not submit on this point.

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128. Article 4 of the Charter stipulates that:

> Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."

129. The Court recalls, in line with its jurisprudence, that the right to life is the bedrock of all other rights and freedoms.[30] It follows that to deprive a person of life is to violate the very basis of these rights and freedoms. It is important to recall in this respect that, unlike other human rights instruments, Article 4 of the Charter establishes a connection between the right to life and the inviolability and integrity of the human person. The Court considers that this framing of the right to life reflects the correlation between these two rights.[31]

130. The Court observes that African States recognize the potential impact of toxic waste importation and dumping on human life. This recognition is expressed, in the most solemn terms in the preamble to the Bamako

[30] *African Commission on Human and Peoples' Rights v. Republic of Kenya* (merits) (26 May 2017) 2 AfCLR, §§ 94-152
[31] *Idem, § 70.* See also, Human Rights Committee: "The right to life, liberty and security of the person". Comment No. 36 § 2.

Convention,[32] where the States declare that they are "mindful of the growing threat to human health […] and the environment caused by transboundary movements of hazardous wastes".[33] As indicated in Annex 2, referred to in Article 2(1)(c) of the Bamako Convention, these hazardous wastes include toxic materials defined as "substances or wastes liable either to cause death or serious injury or to harm human health if swallowed or inhaled or by skin contact".

131. The Court further recalls that international human rights law imposes a fourfold obligation on States, being, to respect, protect, promote and implement the rights guaranteed by the conventions to which they subscribe.[34] While the obligation to respect requires the State party to refrain from committing violations, the obligation to protect requires the State party to protect rights-holders from violation by third parties. The obligations to promote and implement require the State to take the necessary measures to ensure the effective dissemination and enjoyment of the rights concerned.

132. This fourfold obligation to guarantee the right to life is confirmed by the United Nations Human Rights Committee (hereinafter referred to as "the Committee") which, in its General Comment No. 36, underscores that:

> States parties must establish a legal framework to ensure the full enjoyment of the right to life by all individuals as may be necessary to give effect to the right to life. The duty to protect the right to life by law also includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities.[35]

[32] The Respondent State became a party to the Bamako Convention on 16 September 1994.
[33] The Bamako Convention, Preamble, points 1 to 3.
[34] *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Federal Republic of Nigeria*, ACHPR, Communication 155/96 (2001) AHRC 60 (ACHPR 2001), § 44; *The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic* of Nigeria, Preliminary ruling No. ECW/CCJ/APP/07/10, 10 December 2010, § 10.
[35] Human Rights Committee, General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, concerning the right to life,120th Session (3-22 July 2017), § 18.

133. The recognition of the right to life imposes on States the obligation to go beyond mere commitment to refrain from infringing on life to include the obligation to prevent and deter infringements of this right by third parties.[36] As the Committee confirms, States have a duty "to exercise due diligence to protect human life from harm by persons or entities whose conduct is not attributable to the State".[37] This obligation extends to reasonably foreseeable threats and to life-threatening situations[38] even if they do not actually result in loss of life.[39]

134. In its case law, the European Court of Human Rights (ECHR) has confirmed that positive measures to guarantee the right to life must include the establishment of effective criminal legislation backed by an enforcement mechanism[40] as well as the conduct of judicial enquiries aimed at ensuring the effective application of domestic laws protecting the right to life, including in cases involving the responsibility of State agents or organs.[41]

135. The Court recalls that States parties must take appropriate measures to protect persons against deprivation of life by other States, international organizations and foreign companies operating on their territory[42] or in other areas under their jurisdiction. They must also take legislative or other measures to ensure that any activity taking place in all or part of their territory or in other locations under their jurisdiction must be compatible with Article 4 of the Charter. Such an obligation applies to all acts having direct and reasonably foreseeable impact on the right to life of persons outside their territory, including activities carried out by companies based in their territory or under their jurisdiction.[43]

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[36] *Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum v. Zimbabwe*, ACHPR, Communication No. 295/04, 2 May 2012, § 139; ECHR*, Case of L.G.B. v. the United Kingdom*, 9 June 1998, § 36
[37] HRC, General Comments no. 36, § 7.
[38] *Ibid* § 26.
[39] *Ibid* § 7.
[40] ECHR*, Osman v. the United Kingdom*, 28 October 1998, § 115.
[41] ECHR*, Anguelova v. Bulgaria*, 21 October 2010, § 137.
[42] HRC, General Comments no. 36, § 22.
[43] *Ibid*, § 22.

136. The Court notes that Article 4 of the Bamako Convention prohibits the import and dumping of hazardous wastes. This text also provides that "All Parties shall take appropriate legal, administrative and other measures within the area under their jurisdiction to prohibit the import of all hazardous wastes, for any reason, into Africa from non-Contracting Parties".

137. It emerges from these various provisions of the Bamako Convention that it behoves State parties, prevent the importation into their territory of toxic wastes whose impact on human life they should be aware of. If such toxic wastes are on the territory of a State, it has the obligation to act and limit and repair the harmful consequences on human life.

138. It emerges from the instant Application, and notably from the submissions of the parties, that the Respondent State was aware that the ship, Probo Koala, was transporting industrial chemical waste but that it authorised the company TRAFIGURA to unload its cargo[44] on condition that it finds a company that would treat the waste. The Court considers that such authorization in itself constitutes a breach of the obligation not to infringe the prohibition on the import of hazardous waste laid down in the Bamako Convention. In the instant Application, the Respondent State had an obligation to prevent the dumping of the toxic waste but failed to do so.

139. Furthermore, the Respondent State failed in its duty to ensure that the company Tommy, to which it assigned the specialised task of treating the waste, had the required skills and equipment to do the job. It also failed to ensure that the company had effectively taken every necessary step to respect its contract under conditions which guaranteed the safety of the right to life of persons living around the coastal areas close to where the waste was were dumped. In this regard, the obligation to protect, which laid on the shoulders of the Respondent State, required it to act diligently considering the nature of the substance concerned and the potential risk for the right to

[44] See the response of the Respondent State received at the Registry on 22 November 2017, page 5, §§ 3 to 5 and the Applicants' reply received on 1 August 2018 2018, page 5, § 3.

life.

140. The Court further notes that after the dumping of the toxic waste, the Respondent State failed to take all the necessary measures to mitigate the effects and limit the damage caused to human life. This failure by the Respondent State is a violation of several provisions of the Bamako Convention which provide for specific measures to which States commit themselves[45].

141. On the issue of the scope the law to life in the instant case, the Court recalls that the dumping of the toxic waste led to the death of at least seventeen (17) people with more than one hundred thousand (100 000) contaminated. There is therefore, no argument as to the fact that the dumping of the waste violated the right to life. Furthermore, the Court is of the view that the obligation to prevent the violation of the right to life is applicable not only in in cases of death but also to all victims. Though the toxic waste had different effects on victims, it was a automatically violated the right to life for all persons who exposed to it. The Court finds, therefore, that the obligation of the States to respect and guarantee the right to life stands in the face of threats and situations which put life in danger even though the threats may not result in death.

142. On the basis of this report, the Court notes that even though the responsibility*, inter alia*, to respect the obligations of international law is incumbent primarily on States, it is also true that this responsibility is incumbent on companies, notably, multinational companies. In this regard, the Court refers to the United Nations Guiding Principles on Business and Human Rights to recall that "The responsibility of enterprises in the respect for human rights is independent of the capacity or the determination of states to protect human rights".[46] Such a responsibility require enterprises to commit themselves to public policies in prevention and reparation, due diligence in continuous identification of the consequences of their activities

[45] See Bamako Convention, Article 4.
[46] UN High Commission for Human Rights, Guiding principles on enterprises and human rights, 2011.

and lastly, setting up procedures aimed at solving problems caused by their action.[47]

143. Be that as it may, the Court notes that in the instant case, even though the multinational company, TRAFIGURA Limited, which hired the MV Probo Koala was at the origin of the impugned violations, the main responsibility for human rights violations resulting from the dumping of the toxic waste in Abidjan is, ultimately, borne by the Respondent state.

144. In view of all of the foregoing, the Court finds that the Respondent State violated Article 4 of the Charter.

B. Alleged violation of the right to an effective remedy

145. The Applicants allege that the Respondent State violated the right to an effective remedy and the right to reparation for damages by failing to ensure that TRAFIGURA executives were actually brought to justice, but instead entered into a settlement with them, thereby preventing victims from suing them.[48]

146. The Applicants also argue that the Respondent State did not prosecute its officials implicated in the dumping of toxic waste in Abidjan either. They claim that only two employees were tried and convicted.[49]

147. The Applicants further argue that the Respondent State violated the right to reparation insofar as the victims were not afforded adequate, effective and prompt reparations. They claim that although the Respondent State put in place a compensation programme for victims, the said programme was not accompanied by any additional measures to guarantee non-repetition, satisfaction or rehabilitation. The Applicants submit that the compensation programme was inadequate and did not achieve its objective, as some

[47] *Ibid*.
[48.] Application, §§ 114-120.
[49.] Application, §§ 121-123.

victims did not receive compensation for the damage suffered.

148. Finally, the Applicants allege that the victims of poisoning were not fully and properly identified. Indeed, according to them, while the first list of victims was established by the authorities after the 2006 incident and included in the MoU of 13 February 2007, the sites remain contaminated to this day. Resultantly, not all persons who were poisoned or suffered the consequences of poisoning were granted victim status and included in the list of victims.

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149. The Respondent State did not submit on this point.

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150. The Court notes that although none of the Charter's articles expressly guarantees the right to an effective remedy, Article 1 provides as follows:

> Member States of the Organization of African Unity, parties to the present Charter shall recognize the rights, duties and freedoms set forth in this Charter and shall undertake to adopt legislative or other measures to implement them.

151. The Court recalls Article 7(1) of the Charter which provides that:

> Every individual shall have the right to have his cause heard […]. This comprises (a) the right to an appeal to competent national organs against any act violating his fundamental rights as recognized and guaranteed to him by conventions, laws, regulations and customs in force.

152. The Court considers, in line with its decision in *Munthali v. Malawi*,[50] that the right to a remedy arises from a joint reading of the provisions in Articles 1

[50] *Munthali v. Malawi*, *supra*, §§ 101-102.

and 7(1)(a) of the Charter. These provisions are also in line with the general principle of law according to which the guarantee of any right includes the principle of a remedy in case of violation.

153. The Court recalls that in line with settled international human rights jurisprudence, the right to a remedy includes not only access to institutional remedies, but also restitution, compensation, non-repetition and rehabilitation.[51] The essence of the right to an effective remedy is that individuals must have access to domestic mechanisms that can be used to remedy an alleged human rights violation. To be effective, these national mechanisms must be able to respond fully to allegations of human rights violations.[52] Recalling its jurisprudence, the Court notes that to be effective, a remedy must be, at the very least, available, effective and satisfactory.[53]

154. In the particular context of damage caused by the dumping of hazardous waste, the obligation to provide an effective remedy under the Charter is restated in Article 4(a) of the Bamako Convention, which provides that:

> The Parties undertake to enforce the obligations of this Convention and to prosecute violators in accordance with their national legislation and/or international law.

155. The Court considers that the purpose of this obligation to prosecute is to implement the right of victims to an effective remedy. The right to an effective remedy under human rights law and jurisprudence must lead to the implementation of the right to restitution or, where this is not applicable, the right to compensation for loss suffered and other necessary measures.

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[51] See, for example, *Loayza Tamayo v. Peru*, IACtHPR, Judgment on Reparations, November 27, 1998, Series C No. 42, § 85; *Velásquez Rodríguez v. Honduras*, IACtHPR, Judgment on Reparations, July 21, 1989, Series C No. 7, § 25; *Papamichalopoulos and Others v. Greece*, ECHR, October 31, 1995, Series A No. 330-B, § 36

[52] *Dawda Jawara v. The Gambia* (2000) RADH 98 (ACHPR 2000).

[53] See *Diakité v. Mali (admissibility and jurisdiction) (28 September 2017) 2 AfCLR 118, § 41; Lohé Issa Konaté v. Burkina Faso (merits) (5 December 2014) 1 AfCLR 314, § 41*

156. In the present case, the Court notes that the victims were not prevented from accessing the national courts, as evidenced by the numerous decisions handed down by those courts, including the final judgment of 23 July 2014 handed down by the Joint Chambers of the Supreme Court. It cannot be disputed, therefore, that the right to an effective remedy was guaranteed since domestic remedies were available. Furthermore, the Parties agree that, by signing the MoU, the Respondent State created for TRAFIGURA, and all other persons involved, a regime of impunity through immunity from prosecution. Undoubtedly, the said Memorandum rendered local remedies unavailable, at least to victims other than those who initiated proceedings before national courts.

157. Furthermore, while the Respondent State does not dispute that at least one hundred thousand (100,000) people were victims of the waste dumping, domestic courts awarded compensation to only seven (7), at most, of the more than sixteen thousand (16,000) victims who were party to the domestic proceedings. Actions by other victims were dismissed on the grounds that they could not establish causality between the damage they suffered and the toxic waste dumping. The Court finds that regarding a matter of such magnitude, the domestic courts had the obligation to extend the scope of the investigations in order to take into account the cases of all the victims and award them the reparations as necessary.

158. In any event, the MoU unequivocally proves not only the liability of those involved but also the harm caused to the victims since the State agreed to guarantee immunity and receive funds it had earmarked for the purpose of compensating the victims. The Respondent State, which did not submit on this point, also did not provide evidence that the funds received under the MoU with TRAFIGURA were actually paid to the victims.

159. On the same point, the Court notes that certain aspects of the right to an effective remedy, such as the full identification of victims and the remediation of contaminated sites, were not taken into account during the proceedings before the national courts. On this point, the Court considers

that although the State acknowledges that more than one hundred thousand (100,000) persons were victims, it did not produce a complete list of victims as it did not submit on the merits in relation to the allegations under consideration.

160. Furthermore, the information on record indicates that although remediation operations were carried out, they were not enough to decontaminate all the sites. Moreover, remediation in the present case did not guarantee the total and definitive cessation of the consequences of the dumping as victims continued to be affected beyond November 2015, when the Respondent State declared an end to the remediation operations.

161. In the light of the foregoing, the Court finds that the Respondent State failed to guarantee the right to an effective remedy in respect of the aspects relating to the complete identification of victims and the remediation of the sites concerned.

162. With regard to the obligation to prosecute emanating from the right to an effective remedy, the Court notes that only two directors of TRAFIGURA were sentenced to prison terms for poisoning and attempted poisoning. Further, no agent or official of the Respondent State was found guilty in the wake of the domestic judicial proceedings. In any event, under the terms of the MoU of 13 February 2017, the Respondent State undertook to guarantee the entities and individuals involved immunity from prosecution. It is in application of this MoU that TRAFIGURA executives were released and authorised to leave the country. Accordingly, the Court finds that the Respondent State failed to ensure the right to an effective remedy in relation to the prosecution and punishment of those liable for the toxic waste dumping.

163. In view of the foregoing, the Court finds that the Respondent State violated the right to an effective remedy protected by Article 7 (1) read together with Article 1 of the Charter.

C. Alleged violation of the right to the enjoyment of the highest attainable standard of physical and mental health

164. The Applicants contend that by failing to implement national or international legal provisions prohibiting the import of toxic waste, the Respondent State failed to comply with its obligation to eliminate and prevent any impediment to the exercise and enjoyment of the right to physical and mental health.

165. The Applicants underscore that the victims have suffered health issues since the dumping of the toxic waste, including vomiting, flatulence, numbness of the eyes and even blindness, deformities, headaches and respiratory problems. They argue that the effects of these health problems persist over time and continue to occur because the dumping sites were not completely cleaned.

166. The Applicants further claim that the emergency health measures taken by the Respondent State were inadequate, ineffective and inefficient. They aver that no study was conducted on the long-term health effects of waste dumping. They affirm that such a study was all the more important as pollution control measures were delayed.

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167. The Respondent State did not submit on this point.

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168. The Court notes that Article 16 of the Charter provides as follows:

> 1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
> 2. States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

169. The Court further notes that in *Purohit and Moore v Gambia*, the Commission noted the centrality of the right to health to the enjoyment of other rights. The Commission found that "[e]njoyment of the human right to health as it is widely known is vital to all aspects of a person's life and well-being, and is crucial to the realisation of all the other fundamental human rights and freedoms. This right includes the right to health facilities, access to goods and services to be guaranteed to all without discrimination of any kind.[54] The Commission reiterated this principle in its decision in *Egyptian Initiative for Personal Rights and Internight v. Egypt.*[55]

170. Similarly, in the *SERAC v. Nigeria,* a case concerning environmental pollution, the Commission held that "[g]overnments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties". [56]

171. The Court considers that the right to health presupposes the existence of the following essential and interrelated elements: availability, accessibility, acceptability and quality.[57] The State is in breach of its obligations if it fails to take all necessary measures to protect persons within its jurisdiction from infringements of the right to health by third parties.[58]

172. In the present case, the Court notes that following the dumping of toxic waste and its effects on the health of thousands of people, the Respondent State took a number of urgent measures to ensure that the victims received medical treatment. [59] However, these measures were either insufficient or inadequate to meet the needs of all victims and the scale of the

[54] ACHPR, Communication no. 241/01, *Purohit and Moore v. The Gambia*, 29 May 2003, § 80.
[55] ACHPR, Communication No. 233/06, *Egyptian Initiative for Human Rights and INTERIGHTS v. Egypt*, 16 December 2011, § 261.
[56] ACHPR, Communication No. 155/96 - *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, 27 October 2001, § 57.
[57] Committee on Economic, Social and Cultural Rights, General Comment No. 14, The right to the highest attainable standard of health (Article 12 of the International Covenant on Economic, Social and Cultural Rights), 11 August 2000, §12.
[58]Ibid § § 51.
[59] Amnesty International and Greenpeace report, September 2012, p. 65.

consequences of the dumping.[60]

173. The Court also takes note of the 2008 Report of the UN Special Rapporteur stating that “many people, especially those living near the dumping sites, still experience health problems. Adverse effects on childbirth and child health, including miscarriages and stillbirths, have also been reported”.[61]

174. The Court finds, therefore, that the Respondent State violated the right to health protected by Article 16 of the Charter, firstly by failing to prevent the dumping of the toxic waste, and secondly, by failing to take all the necessary measures to ensure that persons affected by the disaster had full access to quality health care.

D. Alleged violation of the right to a general satisfactory environment

175. The Applicants allege that the Respondent State violated it obligation to respect, protect and implement the right to a satisfactory and inclusive environment for thousands of people seriously affected by the dumping of the toxic waste.

176. The Applicants also contend that the Respondent State's failure to implement and enforce its domestic law and international obligations relating to the prevention of the import of toxic waste into its territory constitutes a breach of its obligation to protect the right to a satisfactory general environment enjoyed by persons under its jurisdiction.

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[60] In a joint report, Greenpeace and Amnesty International noted that “To the government’s credit, tens of thousands of people were given free medical treatment at access points all around the city. However, in some cases, the government failed to respond to requests for help for several weeks. For example, it was only in health units were dispatched to Djibi village, even though the head of the village had alerted the authorities soon after the dumping that the village had been badly affected. Similarly, the medical services offices on duty, which were focused to provide care for victims, were not always equipped with the necessary equipment and medicines to treat patients”.

[61] Report of the UN Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (hereinafter referred to as the Special Rapporteur's mission report). Mission to Côte d'Ivoire (4-8 August 2008) and the Netherlands (26-28 November 2008) § 60.

177. The Respondent State did not submit on this point.

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178. Article 24 Charter states that "[a]ll peoples shall have the right to a general satisfactory environment favourable to their development".

179. The Court notes that in *SERAC v. Nigeria*, the Commission observed that:

> The right to a general satisfactory environment under Article 24 of the Charter, (…) imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.[62]

180. Similarly, in its General Comment No. 14, the United Nations Committee on Economic, Social and Cultural Rights (hereinafter referred to as "CESCR"), defines the right to a healthy environment as including, *inter* a*lia*, the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.

181. The Court observes that under Article 2 of the Algiers Convention, to which the Respondent State is a party, it is provided as follows:

> The contracting States shall undertake to adopt the measures necessary to ensure conservation, utilization and development of soil, water, flora and faunal resources in accordance with scientific principles and with due regard to the best interests of the people.

182. In the present Application, there is no dispute that the dumping of the toxic waste caused serious consequences to the environment, including

[62] *Social and Economic Rights Action Centre (SERAC) and another v. Nigeria* (2001) *AHRLR* 60 (ACHPR 2001), §§ 52-53.

degradation of underground water, Furthermore, the Respondent State confirmed that it took measures to remediate the contaminated sites. The Court recalls, as earlier established in this judgment, that a state's obligations under international law include the duty to respect, protect, promote and implement the rights enshrined in instruments to which it is a party.

183. The above obligations apply to the right to a satisfactory environment insofar as the Respondent State had a duty to act not only to prevent the dumping of the waste without putting in place the necessary conditions, but also to ensure full and effective decontamination once the waste had been dumped.

184. The Court notes that in the instant case, the Respondent State authorities failed to take appropriate legal, administrative and other measures to prohibit the importation of dangerous wastes on its territory as prescribed by the Bamako Convention. It further finds that these authorities had the obligation to ensure that the dumping of this cargo on the territory of the Respondent State was conducted with a view to protecting the environment from the harmful effects which could result. As earlier concluded in this judgment, the failure of the entities which were charged with the dumping and treatment of the waste does not exonerate the Respondent State of its responsibility to guarantee and protect the environment.

185. Lastly, the Respondent State does not demonstrate that it effectively and promptly cleaned up the polluted sites. In these circumstances, it cannot be said that the Respondent State complied with its obligation to protect and implement the right to a generally satisfactory environment favourable to development.

186. In light of the foregoing, the Court finds that the Respondent State violated Article 24 of the Charter.

E. Alleged violation of the right to information

187. The Applicants allege that the Respondent State failed to provide communities exposed to the hazardous materials with information about the nature of the waste and its adverse effects on the population. It is also alleged that the victims' compensation programme rolled out by the Respondent State lacked transparency and information flow. As an example, they underscore that many victims were reportedly not informed of their right to compensation nor of the means and timelines for registration, resulting in their inability to benefit from the programme.

188. The Applicants argue that, as at the filing of this Application, a large number of victims had not been informed of processes to claim the compensation of CFA Francs Fifty Million (CFA 50,000,000) allocated to each victim under the MoU.

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189. The Respondent State did not submit on this allegation.

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190. Article 9 of the Charter provides:

> 1. Every individual shall have the right to receive information.
> 2. Every individual shall have the right to express and disseminate his opinions within the law.

191. The Court notes that, in its objective sense, the right to information as prescribed in Article 9 of the Charter presupposes a guarantee that everyone has the right of access to any information in the public domain. Thus, the Court considers that beyond this general prerogative, the right to information presupposes, in its subjective sense, the prerogative of its holder to access any information relating to any matter or procedure concerning him or her.

192. The Court recalls this second meaning in its judgment in *Sébastien Germain Ajavon v. Benin* in which it decided that the Applicant had the right to information concerning the judicial proceedings pending against him, in particular as regards access to, and consultation of, the docket as an essential component of a fair trial.[63] Similarly, in *Mugesera v. Rwanda*, the Court held that, as part of his right to defence, the Applicant was entitled to receive all the information necessary to prepare his defence.[64]

193. The Court further notes that this interpretation of the right to information is supported by existing international standards on the right to information in relation to the dumping of toxic waste and its consequences on people and the environment. Indeed, before, during and after dumping, States have a duty to provide persons affected or likely to be affected with available, accessible and practical information provided on an equal and non-discriminatory basis.[65]

194. The Court further notes that the State must fulfil this obligation by, among others, providing, collecting, evaluating and updating information. Such an obligation implies that the State should investigate the actual and potential human rights implications of hazardous substances and waste throughout their life cycle and to provide the public and stakeholders with data on the said implications.[66]

195. In the same vein, states also have an obligation to make information on public health and other public affairs available to citizens, and to enable everyone to exercise their right to information. In this regard, in *Guerra and Others v. Italy*, the EH R found that the State breached its obligation to "provide basic information that would have enabled the neighbouring community to assess the risks to which individuals and their families may be exposed if they continued to live a town particularly at risk in the event of

[63] *Sébastien Germain Ajavon v. Republic of Benin* (merits) (March 29, 2019) 3 AfCLR 130, §§ 161-163
[64] *Léon Mugesera v. Republic of Rwanda* (merits) (27 November 2020) 4 AfCLR 834, §§ 42-47
[65] Document (HRC/30/40), Report of the Special Rapporteur on the human rights implications of the environmentally sound management and disposal of hazardous substances and wastes, §§ 32-37.
[66]Ibid § § 50.

an accident at the chemical plant".[67]

196. The Court notes that in the instant case, after the dumping of toxic waste, the authorities of the Respondent State took a number of measures aimed at informing the general public about the consequences of the toxic waste disposal, including by providing toll-free telephone numbers, broadcasting messages through the media and creating a website dedicated to the disaster.[68] In terms of remedial action after the dumping, a crisis committee was set up under the leadership of the Ministry of Environment, Water and Forests, and an official announcement was made informing the general public of the exact location of the polluted sites, stressing the need to stay away from such sites and issuing advisories on which healthcare centres were providing medical care.[69]

197. The Court underscores that, notwithstanding these important immediate measures, the Respondent State violated its obligation to inform the public of many crucial elements in the context of a disaster of this magnitude and whose effects on the health and environment continue to be felt in the lives of many people.

198. In particular, the Respondent State failed to provide the general public with meaningful information on the long-term consequences of the toxic waste dump, the circumstances of the dumping, the exact composition of the waste, whether it had an impact on other areas or the number of people affected. The Respondent State also failed to provide information on the health risks to which the population was exposed, particularly those who were in the vicinity of the contaminated sites between 19 August 2006 and 15 November 2016.

[67] ECHR, (116/1996/735/932), *Guerra and Others v. Italy*, 19 February 1998, § 59.
[68] Amnesty International and Greenpeace report, September 2012, p. 65.
[69] Report of the Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.

199. Similarly, no official information or updated data on the number of people who had died or were contaminated as a result of the toxic waste dumping was available. While official sources reported seventeen (17) deaths, this figure only refers to those that occurred immediately after the disaster, and therefore does not take into account those who died weeks, months or even years later as a result of the waste dumping. The same applies to information on payment of compensation under the MoU between the Respondent State and TRAFIGURA.

200. In view of the foregoing, the Court holds that the Respondent State violated the right to information protected under Article 9(1) of the Charter.

VIII. REPARATIONS

201. Article 27(1) of the Protocol provides that:

> If the Court finds that there has been violation of a human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

202. As the Court has consistently held, to examine and assess Applications for reparation of prejudice resulting from human rights violations, it takes into account the principle that the State found liable for an internationally wrongful act is required to make full reparation for the damage caused to the victim.[70]

203. The Court further reaffirms that reparation "[…] must, as far as possible, erase all the consequences of the wrongful act and restore the state which would presumably have existed if that act had not been committed."[71]

[70] *Sadick Marwa Kisase v. United Republic of Tanzania*, ACtHPR, Application No. 005/2016, Judgment of 2 December 2021, § 88; *Wilfred Onyango Nganyi and 9 others v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 308, § 13; *Ingabire Victoire Umuhoza v. Republic of Rwanda* (reparations) (7 December 2018) 2 AfCLR 202, § 19; *Munthali v. Republic of Malawi*, supra, § 108.
[71] *Mohamed Abubakari v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 334, § 20; *Alex Thomas v. United Republic of Tanzania* (reparations) (4 July 2019) 3 AfCLR 287, § 12;

204. Furthermore, measures that a State must take to remedy a violation of human rights include, notably, restitution, compensation and rehabilitation of the victim, satisfaction measures and measures to ensure non-repetition of the violations, taking into account the circumstances of each case.[72]

205. In examining requests for reparation, the Court also takes into account the existence of a causal link between the violation and the harm caused, it being specified that the burden of proof is on the.[73] However, when there is a presumption of moral prejudice to the Applicant, the burden of proof may shift to the Respondent State to provide evidence to the contrary.

206. In the present judgment, the Court has established that the Respondent State violated the right to life, protected by Article 4 of the Charter, the right to an effective remedy under Article 1, read in conjunction with Article 7(1)(a) of the Charter, the right to the highest attainable standard of physical and mental health, the right to a satisfactory and comprehensive environment conducive to their development, and the right to information, provided for in Articles 16, 24 and 9(1) of the Charter respectively.

207. The Court notes that the Applicants request the Court to grant them both pecuniary and non-pecuniary reparations.

A. Pecuniary Reparations

208. The Court notes that the Applicants seek compensation for all the victims and the award of a symbolic sum as reparations for the material and moral prejudice suffered.

Wilfred Onyango Nganyi and Others v. United Republic of Tanzania (Reparations) (4 July 2019) 3 AfCLR 308, § 16; *Umuhoza v Rwanda* (reparations), *supra*, § 20; *Rashidi v Tanzania,* supra, § 118; *Munthali v Malawi*, *supra*, § 109.

[72] *Abubakari v. Tanzania* (reparations), *ibid*, § 21; *Thomas v. Tanzania*, *ibid*, § 21; *Thomas v. Tanzania*, ibid, § 13. *Umuhoza v. Rwanda*, *ibid*, § 20; *Munthali v. Malawi*, *ibid*, § 110.

[73] *Reverend Christopher R. Mtikila v. United Republic of Tanzania* (reparations) (13 June 2014) 1 AfCLR 72, § 40; *Lohé Issa Konaté v. Burkina Faso* (reparations) (3 June 2016), 1 AfCLR 346, § 15; *Abubakari v. Tanzania, Ibid,* § 22; *Thomas v. Tanzania*, § 14; *Zongo and Others v. Burkina Faso* (reparations) *supra*, § 24; *Munthali v. Republic of Malawi,* supra, § 111.

i. Material Prejudice

209. The Applicants pray the Court to order the Respondent State to establish a compensation fund and to conduct a complete census of all the victims for their compensation taking into account the gravity of the prejudice suffered.

210. The Court notes that in the instant judgment, it has established violations by the Respondent State, which authorised the dumping of the toxic waste with the involvement of its authorities, and which also failed in its obligation of due diligence in checking the extent of toxic nature of the waste. The Respondent State also failed to properly manage discharge operations and the cleaning up of the toxic waste. Furthermore, the Court notes that according to the figures admitted by the Respondent State, the number of victims affected by the incident[74] is about one hundred thousand (100 000) persons and that the MoU was signed on the basis of these figures

211. It should, however, be noted that regardless the form of compensation, it cannot be assessed without taking into account the various categories of victims, that is, the families of deceased persons, persons directly affected by the waste dumping who suffered immediate impact, and finally, the remote victims, who were less affected than the others. It also emerges, from the record, that seventeen (17) people died as a result of the waste dumping, while there is no indication of the number of victims in respect of the other two categories.

212. The Court finds, considering its decision on the admissibility of this Application, that apart from the victims who were party to proceedings before domestic courts, damages must be awarded, based on the prejudice suffered, to all victims without exception. In the circumstances, the Court holds that it is appropriate for the Respondent State, acting in consultation with the victims, to set up a compensation fund for them.

[74] As indicated earlier in this judgment, the Sixteen thousand (16 000) victims mentioned are those who participated in proceedings domestic courts or those who formed associations of victims. However, in all, the Respondent State's government identified about One Hundred Thousand (100 000) victims.

213. With regard to the sums to be paid into the compensation fund, the Court recalls, as stated in paragraph 162 of this judgment, that it is through the MoU that the Respondent State has violated the victims' right to an effective remedy. Further, the MoU is of no effect as against the victims insofar as there is no evidence that they took part, either directly or indirectly, in the negotiations leading to its conclusion. The Court notes in this regard that in terms of the said MoU, TRAFIGURA agreed to pay the Respondent State the sum of Ninety-Five Billion (95 000 000 000) CFA francs as follows: Seventy-Three Billion (73 000 000 000) CFA francs as compensation for prejudice caused to the State of Cote d'Ivoire and for compensation to the victims and Twenty-Two Billion (22 000 000 000) CFA Francs as cost of operations and remediation.

214. The Court notes that despite the fact that the MoU is, in principle, unenforceable against the victims, there is nothing to prevent the sums received by the State, and therefore already in its coffers, from being paid into the compensation fund. Such a measure is fair and appropriate, based on the fact that the Respondent State cannot, in equity, retain the benefits of an agreement by which it has violated the victims' right to an effective remedy. In the circumstances, apart from the funds received under the MoU, the compensation fund, as necessary, should be supplemented by resources from the Respondent State, taking into account the updated number of victims and the extent of the damage suffered by each of them.

215. Consequently, in view of the above assessment, the Court orders the Respondent State to set up a compensation fund for the victims in consultation with the latter, and to deposit the funds received from TRAFIGURA in this and in case the money received from TRAFIGURA is insufficient, to complement the fund with its own contribution, taking into account the updated number of victims, the magnitude of the prejudice suffered by each victim.

ii. Moral prejudice

216. The Applicants pray the Court to order the Respondent State to pay a token one (1) CFA franc as reparation for the moral prejudice suffered by the Applicants.

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217. The Respondent State did not submit on this point.

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218. The Court recalls its constant jurisprudence that presumes the occurrence of moral damage in case of a violation of human rights.[75] In fact, moral damage can be considered an inevitable consequence of the violation, without the need to prove it by any other means.[76]

219. The Court also notes that the determination of the amount to be awarded for moral damage is made on the basis of equity, taking into account the circumstances of each case.[77]

220. The Court finds that having established the violations, there is no reason why it should not grant the symbolic one CFA franc requested by the Applicants as reparation for moral prejudice.

221. Accordingly, the Court grants the Applicants' request to be paid a symbolic franc as reparation for the moral prejudice suffered and orders the Respondent State to pay to each Applicant a token one CFA franc.

b. Non-pecuniary reparations

222. The Applicants make several submissions on reparations to the Court,

[75] *Guéhi, supra*, § 55 ; *Konaté* (reparations), *supra*, § 58.
[76] *Zongo* (reparations), *supra*, § 55; *Konaté* (reparations), *supra*, § 58.
[77] *Zongo*, *ibid*, § 55; *Konaté*, *ibid*, § 58; *Guéhi*, *ibid*, § 55.

including requests for measures of satisfaction, rehabilitation, guarantees of non-repetition and administrative measures.

i. Measures of satisfaction

223. The Applicants pray the Court to order the Respondent State to apologize, particularly to victims of the toxic waste dumping.

224. The Applicants also pray for an independent and impartial investigation into the alleged incidents in order to determine the liability of individuals involved and prosecute them, regardless of their status or position within TRAFIGURA or within the Respondent State.

225. The Applicants further request that the Respondent State be ordered to publicly account for the use of the funds allocated to it under the MoU.

226. Finally, the Applicants pray the Court to order the Respondent State, after consultation with victims or the victims' associations, to roll out a new, prompt, effective and appropriate compensation programme for victims of waste dumping, which necessarily requires a real compensation fund and the compilation of an updated and comprehensive register of victims.

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227. The Respondent State did not make any submissions on this point.

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228. As regards an order compelling the Respondent State to accept responsibility and issue a public apology, the Court, recalling its jurisprudence, reiterates its position that "a judgment, *per se*, can constitute a sufficient form of reparation for moral damages as well as a sufficient

measure of satisfaction".[78] In the present case, the Court considers that the present Judgment constitutes a sufficient form of satisfaction, and that there is, therefore, no need for the Respondent State to make a public apology.

229. With regard to the request for an independent and impartial investigation into the alleged facts in order to establish individual criminal liability and prosecution of the perpetrators, the Court observes that the national and international commissions of inquiry established in the aftermath of the 2006 events helped uncover the truth and prosecute a group of State officials as well as officials of TRAFIGURA and other companies. However, the MoU signed between the Respondent State and TRAFIGURA, on 13 February 2007, prevented the prosecution some of these individuals.

230. The Court notes that any "reparation programme must also operate in coordination with other judicial measures. When a reparation programme is established in the absence of other judicial measures, the services it provides can be considered as a price through which an attempt is made to buy the silence and acceptance of the victims and their families. It is, therefore, very important to ensure that reparation efforts are coordinated with other judicial initiatives including criminal prosecutions to punish the perpetrators, truth-telling and institutional reform.[79]

231. The Court recalls, as established above, that the individuals and entities involved in the waste dumping enjoyed impunity as a result of the MoU. The said impunity was enshrined in immunity from prosecution granted to all individuals and entities involved, of whom only two TRAFIGURA officials were sentenced to prison terms before being released and allowed to leave the territory of the Respondent State. It follows, therefore, that other

[78] *Mtikila v. Tanzania* (reparations), *supra*, § 45; *Guéhi v. Tanzania*, *supra*, § 194 and *Thobias Mang'ara Mango and another v. United Republic of Tanzania*, ACtHPR, Application No. 005/2015, Judgment of 2 December 2021 (merits and reparations), § 106.
[79] Economic and Social Council, *Protection and promotion of human rights - Impunity* - Report of the Independent Expert to update the Set of Principles for the protection and promotion of human rights through action to combat impunity, Diane Orentlicher, 18 February 2005.

persons who may be liable have never been prosecuted for their actions, under the Respondent State's international obligations, including the right to an effective remedy and non-repetition.

232. The Court, therefore, orders the Respondent State to reopen an independent and impartial investigation into the alleged violations in order to establish the criminal and individual liability of all persons and entities involved with a view to prosecuting and punishing them. In this respect, it should be recalled that the last national proceedings date back to the judgment of the joint chamber of the Supreme Court of 23 July 2014.

233. As to the Applicants' request for an order compelling the Respondent State to submit a transparent and public report on the disbursement of the funds allocated to it under the MoU, the Court notes that the victim compensation programme not only lacked transparency and was not comprehensive. It was also found to be ineffective by hundreds of victims. The programme was prepared without prior consultation with the victims or their representatives. As a result, there were numerous irregularities in the procedures for counting victims entitled to claim compensation.[80]

234. That said, the Court recalls that it has already ordered the establishment of a compensation fund in consultation with victims or the victims' associations and the deposit of the amount received from TRAFIGURA, complemented by funds provided by the Respondent State and/or any other sources and the establishment of a complete list of all the victims. The Court holds that the implementation of measures ordered on this issue will undoubtedly include a status of victims, a list of all the victims and a transparent public report on the use of the allocated funds based on the MoU.

235. As regards the setting up of a new compensation scheme, the Court finds that based on the foregoing, it is not necessary to order the roll-out of another compensation programme.

[80] Contents of the UN Special Rapporteur's report and the reports of non-governmental organisations.

ii. Rehabilitation measures

236. The Applicants request the Court to order, as reparation, the provision of medical assistance to the victims, in particular, for the treatment of new symptoms and chronic diseases caused by toxic waste. They also pray for the establishment of adequate health facilities, with qualified staff and appropriate equipment, so that health care can be provided with a view to improving the health of toxic waste victims.

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237. The Respondent State did not submit on this point.

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238. The Court notes that in the present case, the victims are in urgent need of medical assistance in the form of health and psychological care to be provided by the Respondent State. This measure, which would have been of greater use immediately after the waste dumping, is no less important at the time of the present judgment, given that the consequences of the violations have continued over time.

239. The Court, therefore, orders the Respondent State to ensure that the victims receive adequate and appropriate medical and psychological assistance.

iii. Guarantees of Non-Repetition

240. The Applicants pray the Court to order the Respondent State to implement legislative and regulatory reforms outlawing the import and dumping of hazardous waste. They also request the Court to order the Respondent State to hold companies accountable for the protection of human rights and the environment.

241. The Applicants further pray the Court to order the Respondent State to amend its criminal law to introduce general criminal liability for legal persons.

242. The Applicants pray the Court to order the Respondent State to organise training programmes for relevant civil servants in order to raise their awareness of human rights and environmental protection issues. Finally, they pray that the Respondent State include awareness of respect for human rights and the environment in school and university curricula.

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243. The Respondent State did not submit on this point.

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244. The Court recalls that guarantees of non-repetition aim to ensure that no further violations occur. As a form of reparation, they serve to prevent future violations, stop ongoing violations and reassure victims of past violations that the harm they suffered will not reoccur. The objective of guarantees of non-repetition is to eliminate the structural causes of violence in society, which are often conducive to an environment in which dehumanising practices such as torture and other ill-treatment take place and are not publicly condemned or adequately punished.[81]

245. In the present case, the Court orders the Respondent State to implement legislative and regulatory reforms prohibiting the import and dumping of hazardous waste in its territory in line with its obligations under the Bamako Convention and other applicable instruments.

[81] African Commission on Human and Peoples' Rights - General Comment No. 4 on the African Charter on Human and Peoples' Rights: The Right to Reparation for Victims of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 5), § 45.

246. The Court recalls that it has found in this Judgment that after the dumping of the toxic waste, the authorities of the Respondent State did not take all adequate measures to avoid such a situation. There is also no evidence that the Respondent State has implemented measures to ensure that such a disaster does not reoccur, in particular, institutional and legal reforms entitling victims to hold legal persons, such as TRAFIGURA, civilly or criminally liable before the courts of the Respondent State. The MoU concluded with TRAFIGURA, proves that guarantees of non-repetition are not established.

247. The Court, therefore, orders the Respondent State to amend its laws in order to provide for the responsibility of corporate entities, including multinationals, for acts in relation to environment and the handling of toxic waste.

248. With regard to training programmes, the Court considers that the Respondent State has not taken any action to enable law enforcement officials undergo training on the protection of economic, social and cultural rights and, in particular, on the responsibility of institutions with regard to the protection of human rights and the environment.

249. The Court, therefore, orders the Respondent State to organise training courses for relevant civil servants with a view to raising their awareness of human rights and environmental protection issues, and to include these courses in school and university curricula.

iv. Administrative measures

250. The Applicants request the Court to order the Respondent State to implement structural reforms that would improve waste treatment capacity at the Port of Abidjan in an environmentally friendly manner.

251. The Applicants also request the Court to order the Respondent State to ensure the presence of one or more representative of the Ministry of the

Environment at all its ports, and to confer on them the power to inspect waste on board ships, as is done by representatives of the Ministry of Transport.

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252. The Respondent State did not submit on this point.

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253. The Court notes that in addition to the prayers on reparations considered earlier, the administrative measures sought by the Applicants under this section fall squarely within the government's competence and it is therefore appropriate to examine them separately.

254. The Court considers that the Applicants' action before it will help to enhance the Respondent State's capacity to deal with such violations more effectively in the future. The Court, therefore, orders the Respondent State to implement structural reforms with a view to boost waste treatment capacity at the port of Abidjan.

255. The Court also orders the Respondent State to ensure the presence of one or more representatives of the Ministry of Environment at all its ports, with power to monitor waste removal from ships.

v. Publication

256. The Applicants pray the Court to order the Respondent State to ensure that the Court's decision is published in the national print and electronic media outlets and on an official government website where it will remain accessible for a period of one year from the date of service of this Judgment.

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257. The Respondent State did not submit on this point.

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258. The Court considers that in line with its constant jurisprudence, however, applicable to the circumstances of the present case, publication of this judgment is warranted. Additionally, there is no evidence that steps are being taken to align the Respondent State's laws with its international human rights obligations. As the guarantees provided for in the Charter remain uncertain for litigants, the Court deems it fit to order the publication of this Judgment.

259. The Court, therefore, orders the Respondent State to publish the official French language summary of this Judgment together with the Judgment, within sis (6) months from the date of notification of this Judgment. For purposes of implementing this measure, the judgment must also be notified to the State together with the judgment. The summary must be published once in the Official Journal of the Respondent State and once in a mass circulation national media outlet. The Respondent State is also required, within the above-mentioned six (6) month period, to publish the Judgment, together with the summary on the official Government website and to ensure that it remains accessible there for a minimum period of one (1) year.

vi. Implementation and reporting

260. The Parties did not submit on the implementation of the Judgment and the submission of reports.

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261. As regards reporting, the Court considers that this is required as a matter of applicable law before it and its judicial practice. In the present case, the Court considers it appropriate to grant the Respondent State a time-limit that starts running simultaneously as that stipulated for the implementation of specific measures previously ordered. The six (6)-month period is thus appropriate in the circumstances.

IX. COSTS

262. None of the Parties submitted on costs.

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263. The Court notes that Rule 32(2) of the Rules of Court provides that: “unless otherwise decided by the Court, each party shall bear its own costs, if any”.[82]

264. In the present case, the Court has no reason to depart from the principle laid down under this provision and therefore orders that each Party shall bear its own costs.

X. OPERATIVE PART

265. For these reasons,

THE COURT,

By a majority of ten (10) for, and one (1) against, Justice Blaise TCHIKAYA dissenting,

Jurisdiction

i. *Dismisses* the objections to its jurisdiction;
ii. *Declares* that it has jurisdiction.

[82] Rule 30 of the Rules of 2 June 2010.

Admissibility

iii. *Dismisses* the objections to the admissibility of the Application;
iv. *Declares* the Application admissible;

Merits

v. *Finds* that the Respondent State violated the right to life protected under Article 4 of the Charter;
vi. *Finds* that the Respondent State violated the right to an effective remedy, protected by Article 7(1)(a) of the Charter, read together with Article 1 of the Charter;
vii. *Finds* that the Respondent State violated the Applicants' right to enjoy the best attainable state of physical and mental health, protected by Article 16 of the Charter;
viii. *Finds* that the Respondent State violated the Applicants' right to a general satisfactory environment conducive to development, protected under Article 24 of the Charter;
ix. *Finds* that the Respondent State violated the right to receive information, protected by Article 9(1) of the Charter;

Reparations

Pecuniary Reparations

x. *Orders* the Respondent State to establish, within one (1) year of the notification of this Judgment, in consultation with the victims, a compensation fund to be financed with the amounts received from TRAFIGURA, and additional resources provided by the Respondent State, as necessary, taking into account the census of victims to be conducted as ordered in the present Judgment;
xi. *Orders* the Respondent State to pay each of the Applicants one (1) symbolic CFA Franc for moral prejudice.

Non-Pecuniary Reparations

xii. *Dismisses* the Applicants' request for an order compelling the Respondent State to issue a public apology;

xiii. *Orders* the Respondent State to initiate, within one (1) year of the notification of this Judgment, an independent and impartial investigation into the alleged facts in order to establish the criminal and individual liability of the perpetrators and to prosecute them;

xiv. *Orders* the Respondent State to submit, within six (6) months of the notification of this Judgment, a transparent public report on the use of the funds allocated to it under the MoU signed with TRAFIGURA;

xv. *Orders* the Respondent State to conduct, within six (6) months of the notification of this Judgment, a general and updated national census of the victims;

xvi. *Orders* the Respondent State to ensure, within six (6) months of the notification of this Judgment, that victims receive medical and psychological assistance;

xvii. *Orders* the Respondent State to implement, within one (1) year of the notification of this Judgment, legislative and regulatory reforms to enforce the prohibition of the import and dumping of hazardous wastes within its territory in compliance with applicable international conventions to which it is a party;

xviii. *Orders* the Respondent State to amend its laws, within one (1) year of the notification of this Judgment, in order to ensure the responsibility of corporate entities in respect of acts relating to environment and the handling of toxic waste;

xix. *Orders* the Respondent State to organise training programs for relevant public officials with a view to raise their awareness of the protection of human rights and the environment, and to integrate such training into school and university curricula with a view to promote respect for human rights and the environment; these measures shall be implemented within one (1) year of the notification of this Judgment;

xx. *Orders* the Respondent State to ensure, within one (1) year of the notification of this Judgment, the presence of one or more representatives of the Ministry of the Environment at all its ports, with the power and means to monitor the waste removal from ships;

xxi. *Orders* the Respondent State to publish, within six (6) months from the date of notification of this Judgment, the official French language summary of this Judgment prepared by the Registry of the Court together with the Judgment. This summary should be published once in the Official Journal and once in a mass circulation national media outlet. The Respondent State is also required, within the same time-limit, to publish the Judgment, together with the summaries provided by the Registry, on the official government website and to ensure that it remains accessible there for a minimum period of one (1) year;

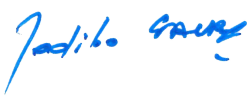
xxii. *Orders* the Respondent State to submit to it, within six (6) months from the date of notification of this judgment, a report on the status of implementation of the decision set forth herein and, thereafter, every six (6) months until the Court considers that there has been full implementation thereof.

On costs,

xxiii. *Decides* that each party shall bear its own costs.

Signed:

Imani D. ABOUD, President; 

Modibo Sacko, Vice-President; 

Ben KIOKO, Judge; 

Rafaâ BEN ACHOUR, Judge;

Suzanne MENGUE, Judge;

Tujilane R. CHIZUMILA, Judge;

Chafika BENSAOULA, Judge;

Blaise TCHIKAYA, Judge;

Stella I. ANUKAM Judge;

Dumisa B. Ntsebeza, Judge;

Dennis D. ADJEI, Judge;

And Robert ENO, Registrar.

In accordance with Article 28(7) of the Protocol and Rule 70(1) of the Rules, the Dissenting Opinion of Justice Blaise TCHIKAYA is appended to this Judgment.

Done at Arusha, this Fifth Day of September in the year Two Thousand and Twenty-Three, in English and French, the French text being authoritative.