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JUDGMENT SUMMARY

IVORIAN LEAGUE FOR HUMAN RIGHTS (LIDHO) AND OTHERS

V.

REPUBLIC OF CÔTE D'IVOIRE

APPLICATION No. 041/2016

JUDGMENT ON MERITS AND REPARATIONS

5 SEPTEMBER 2023

A DECISION OF THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Arusha, 5 September 2023: The African Court on Human and Peoples' Rights today rendered Judgment in the case of *Ligue Ivoirienne des Droits de l'Homme (LIDHO) and Others v. Republic of Côte d'Ivoire*.

On 18 July 2016, the Ivorian League for Human Rights (LIDHO), the Ivorian Human Rights Movement (MIDH) and the International Federation for Human Rights (FIDH) (hereinafter referred to as “the Applicants”) filed an Application before the African Court on Human and Peoples' Rights (hereinafter referred to as “the Court”) against the Republic of Côte d'Ivoire (hereinafter referred to as “the Respondent State”).

In their Application, the Applicants alleged the violation of the right to an effective remedy and the right to seek compensation for damages suffered, protected by Article 7(1)(a) of the Charter, read together with Article 26 of the African Charter, Article 2(3) of the (ICCPR), Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 4(1) and 4(4)(a) of the Convention on the Ban of the Import of Hazardous Wastes into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa (“Bamako Convention”); the right to

respect for the life and physical and moral integrity of the person, protected by Article 4 of the Charter and Article 6(1) of the ICCPR; the right to enjoy the best attainable state of physical and mental health, protected by Articles 16 of the Charter, 11(1) and 12(1) and (2)(b) and (d) of the ICESCR; the right to a satisfactory and comprehensive environment favorable to their development, protected by Article 24 of the Charter; the right to information, protected by Articles 9(1) of the Charter and 19(2) of the ICCPR; and the rights protected by the 2003 African Convention on the Conservation of Nature and Natural Resources (“Algiers Convention”).

As regards reparations, the Applicants prayed the Court as follows to order the Respondent State to publicly acknowledge its responsibility for the violations alleged in the Application and to issue a public apology, particularly to the victims of the toxic waste dumping and the resultant consequences; expeditiously carry out an independent and impartial investigation to determine responsibility for the waste and prosecute those involved in order to establish their individual criminal liability, regardless of their status, the position they hold within Trafigura or the office they hold in the country; ensure medical assistance for victims, including treatment of new and in the long-term, illnesses caused by exposure to toxic waste; set up adequate health facilities with qualified personnel and appropriate equipment to provide the care necessary to improve the health of toxic waste victims in the long-term; immediately develop an adequate and effective compensation program for toxic waste victims beginning with a national census of the waste dumping victims, taking into account the continued presence of the said toxic waste for almost a decade; ensure that the results of this census are disseminated to the general public and to consult with the victims after the program has been put in place, in order to determine a quantum of compensation that is commensurate with their expectations and needs ; take immediate steps to 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; 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; 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.

The Applicants also prayed the Court to order the Respondent State to amend its criminal code to incorporate general criminal liability for legal persons; ensure that one or more representatives of the Environment Ministry are assigned to all the country's ports and empower the said representatives to monitor waste removal operations from ships, as is done by representatives of the Ministry of Transport ; Organize training courses for the concerned officials with a view to sensitize them to issues of human rights and environmental protection, and to include human rights and the environmental protection courses in school and university curricula; 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; pay one (1) symbolic CFA franc to each Applicant as reparation for the moral prejudice suffered; ensure that the Court's decision is disseminated through the national print and electronic media and published on the Government's official website and that it remains accessible therein for a period of one year.

The Respondent State, for its part, prayed the Court to rule that it lacks jurisdiction and declare the Application inadmissible. On the merits, the Respondent State prayed the Court to declare the Application inadmissible, adjudge and declare that the Respondent State complied with its procedural obligations following the violations alleged in the Application; dismiss the Applicants' claim for compensation.

The Facts of the matter

On 19 August 2006, the vessel M. V. Probo Koala, chartered by the multinational company Trafigura Limited, arrived at the port of Abidjan, Côte d'Ivoire with, on board, five hundred and twenty-eight cubic meters (528 m³) of highly hazardous wastes. The said wastes were offloaded from the ship and dumped on several sites in the district of Abidjan and its suburbs. None of these sites had chemical waste treatment facilities. Due to the

dumping of the waste, the air was polluted, and a stinking stench pervaded the district of Abidjan. On the same day, thousands of people flocked to health centers complaining of nausea, headache, vomiting, rashes and bleeding noses. The Applicants affirm that, according to the Ivorian authorities, seventeen (17) people lost their lives as a result of the inhalation of toxic gases. Hundreds of thousands more were affected, and environmental experts reported severe groundwater contamination.

A few days after the dumping of the toxic waste and following complaints lodged by the population, the Attorney General of the Respondent State and the public prosecutor at the court of Abidjan-Plateau opened investigations which resulted in court proceedings. On 18 September 2006, three executives of Trafigura were arrested and charged with offenses relating to the protection of public health and the environment against the effects of toxic and nuclear industrial waste and harmful substances. In the same month, senior officials of the Respondent State, as well as the directors of the companies involved in the waste dumping were suspended from their posts. The Respondent State also undertook remediation operations at the contaminated sites.

On 13 February 2007, a Memorandum of Understanding (hereinafter referred to as “the Memorandum of Understanding”) was signed between the Respondent State and the subsidiaries of the multinational company Trafigura (Trafigura Beaver B Corporation, Trafigura Limited, Puma Energy and WAISB). Under the said protocol, Trafigura undertook to pay the Respondent State the sum of Ninety-Five Billion (95,000,000,000) CFA francs, distributed as follows: Seventy-Three Billion (73,000,000,000) CFA francs CFA being compensation for the damage caused to the State of Côte d’Ivoire and to the victims; and Twenty-Two Billion (22,000,000,000) CFA francs for depollution operations subject to the “definitive waiver” by the Government of the Respondent State of any lawsuit, claims, actions or proceedings, in the present or in the future, against the “other party”, as evidenced by documents.

On 14 February 2007, the three (3) leaders of Trafigura were released.

On 19 March 2008, twelve (12) people were indicted before the Assize Court of Abidjan for poisoning. The trial began on 2 September 2008, and the Union of Toxic Waste Victims

of Abidjan and Suburbs (hereinafter referred to as the “Victims’ Union”) joined as a civil party.

In its judgment of 22 October 2008, the Assize Court found the CEO of Tommy Ltd. and an employee of the *West Africa International Service Business* (WAISB) guilty; one of poisoning, and the other of abetment of poisoning. The two were sentenced to twenty (20) years’ and five (5) years’ imprisonment, respectively. However, no charges were brought against the Respondent State and its officials.

The victims subsequently brought several civil actions before various courts in the Respondent State to obtain compensation from the companies responsible for the dumping of the toxic waste and from the Respondent State for the damage suffered.

In November 2015, the authorities of the Respondent State issued a press release announcing that the remediation of the sites had been completed.

Lastly, the Respondent State established a compensation program for the victims and the families of the deceased. However, a significant number of victims were not taken into account and did not receive compensation.

Jurisdiction

The Respondent State challenged the material and temporal jurisdiction of the Court.

It raised three objections to the material jurisdiction of the Court based on the fact that, first, the Court is not an appellate court; secondly, the Algiers Convention is not a human rights instrument; and, thirdly, the Applicants did not indicate the articles of the Algiers Convention of which they allege a violation.

Regarding the first objection, the Respondent State argued that the Algiers Convention is not a human rights instrument, pointing out that the notion of human rights refers exclusively to subjective rights, in insofar as they are prerogatives enjoyed by individuals. However, according to the Respondent State, the provisions of the Algiers Convention apply only to States and therefore do not fall within the ambit of the Court’s material jurisdiction.

The Applicants prayed the Court to dismiss the objection, arguing that the Algiers Convention imposes on States Parties the obligation to protect natural resources, which is closely linked to the interests of individuals. The Applicants further contended that the Article 24 of the Charter provides for the right of peoples to a satisfactory and global environment favorable to their development. They thus submitted that this Court has material jurisdiction to interpret the Algiers Convention.

The Court dismissed the objection on the grounds that under the Algiers Convention, the States Parties have subscribed to obligations the purpose of which is to guarantee the exercise of the rights provided for in Articles 16 and 24 of the Charter, namely the right to enjoy a satisfactory and comprehensive environment favorable to development. The Court underscored that the Algiers Convention is indeed a human rights instrument within the meaning of Article 3 of the Protocol.

Regarding the second objection, the Respondent State argued that the Applicants alleged violation of the Algiers Convention without however specifying which provisions of the said Convention were allegedly violated.

The Applicants prayed the Court to dismiss this objection pointing out that it is Articles 5, 6(3)(c) and 13(1) of the Algiers Convention that were violated by the Respondent State. They further submitted that the Court has jurisdiction in the case, given that the objective of the above-mentioned provisions is to conserve nature and natural resources in Africa.

The Court rejected this objection on the ground that, in line with its established jurisprudence, it is not required in the Applications brought before it that the Applicants indicate specifically or expressly the Articles of which a violation is alleged. It suffices, in fact, that the subject of the application relates to the rights guaranteed by the Charter, or any other human rights instrument ratified by the State concerned.

Regarding the third objection, the Respondent State submitted that following the dumping of the toxic waste, investigations were carried out and the persons involved prosecuted before the competent national courts. According to the Respondent State, since this Court is not an appellate court, the Applicants are not entitled to bring before it for

reconsideration the decisions rendered by the competent courts of a sovereign and independent State.

The Applicants did not submit observations on this point.

The Court rejected the objection on the grounds that, in line with its established jurisprudence, “it does not have appellate jurisdiction to receive and examine appeals on matters decided by the domestic courts (...)”. However, “this does not preclude it from examining the proceedings before the national courts to determine whether they comply with the Charter, or any other human rights instrument ratified by the State concerned.”

The Respondent State further raised an objection to the Court’s temporal jurisdiction on the grounds that the Declaration deposited under Article 34(6) of the Protocol by virtue of which it accepted the jurisdiction of the Court (the Declaration) does not have retroactive effect, and that the violations alleged in the Application are not continuous in nature.

On the first limb of this objection, the Respondent State argues that to ascertain whether its Declaration has retroactive effect, the Court must ascertain the real intention underlying this act of the Respondent State. According to the Respondent State, a unilateral Declaration, in itself, constitutes a new norm, which has no retroactive effect.

The Applicants point out that the Respondent State ratified the Charter on 6 January 1992 and became a party to the Protocol on 7 January 2003. According to them, the Respondent State has the obligation to comply with these instruments, even if it deposited the Declaration only in 2013. The Applicants further submitted that the Court begins to exercise its jurisdiction in respect of the States Parties begins only with effect from the date the Declaration was filed insofar as this provision does not relate to the Court’s temporal jurisdiction but rather to its personal jurisdiction.

The Court recalled the principle of non-retroactivity and considered that, in the absence of a provision to the contrary in the Protocol, the Declaration does not have retroactive effect.

On the second limb of the objection, the Respondent State argued that the alleged violations are not continuous, adding on this point, that after the toxic waste was dumped,

it undertook several remediation operations, the first of which was carried out in September 2006. The Respondent State also contended that violations of the rights to life and physical and mental health did not occur after 13 June 2013.

The Applicants, for their part, argued that because of the obligation to prevent pollution-related damage, the continuing nature does not derive from the mere effects of a single violation but rather from the fact of the continued pollution, resulting in an escalation of the alleged violations as long as action is not taken to end them. According to the Applicants, violations of the rights to life and health continued for the residents of the areas close to the dumping sites, at least until November 2015.

The Court dismissed this objection on the grounds that its temporal jurisdiction is established from the date of entry into force of the Protocol and not from that of the filing of the Declaration. The Court noted that the dumping of the toxic waste took place on 18 August 2006, after the Respondent State became a party to the Protocol on 25 January 2004, and that consequently, the notion of continuing violation does not apply to the original fact which, in the instant case, occurred before that date.

Admissibility

The Respondent State raised objections to the Application's admissibility on grounds not provided for in Article 56 of the Charter. The objections were based on the fact that i) the Applicants have no standing to bring the case to court; (ii) the Applicants did not tender a Power of Attorney from the victims allowing the former to represent them before the Court; (iii) the Applicants did not identify the said victims; and (iv) the Application raised allegations of violations for the first time before this Court.

According to the objection based on lack of standing to initiate the proceedings, the Respondent State argued that the Applicants did not sufficiently demonstrate their interest in bringing proceedings.

The Applicants asserted that they have standing since they filed the Application in the name and on behalf of the Union of Victims of Toxic Waste of Abidjan and Suburbs

(UVDTAB), in their capacity as human rights NGOs. According to them, contesting their *locus standi* in the case boils down to reproaching them for the very reason of their existence.

The Court rejected the Respondent State's objection on this point, on the grounds that the Applicants are NGOs operating in the field of human rights protection in Africa and that, besides, they have observer status with the Commission. Consequently, there is no need to require them to prove a personal interest to bring an Application before the Court.

On the objection based on the non-production of a power of attorney, the Respondent State argued that the victims did not give the Applicants any power of attorney or authorization to represent them before any international body. The Applicants did not make an observation on this point.

The Court held that the human rights advocacy NGO status of the complainant organizations empowers them to bring actions on behalf of the victims in cases affecting the public interest, and that they are therefore not obliged to tender a power of attorney from the victims in order to represent them. The Court consequently dismissed the objection.

With respect to the objection based on the non-identification of the victims, the Respondent State alleged that FIDH, MIDIH and LIDHO filed the Application on behalf of UVDTAB and all victims of the 19 August 2006 waste dumping, whereas the Application was supposed to be filed by the individuals on their own behalf.

The Applicants, for their part, averred that they are human rights advocacy NGOs with observer status before the Commission, arguing further that they have standing to seize the Court since the Respondent State filed the Declaration on 19 June 2013.

The court dismissed the Respondent State's objection on the ground that the Applicants' allegations fall under the ambit of public interest litigation insofar as the impugned legal provisions concern all citizens whose interests are directly affected.

Regarding the objection based on the fact that certain allegations were being raised for the first time before this Court, the Respondent State argued that the national courts did not have the opportunity to remedy the alleged violations.

The Applicants argued that they entitled to invoke grounds of equal or similar effect under domestic law.

The Court considered that this objection is linked to the condition of exhaustion of local remedies and therefore decides to examine it together with the objection based on the non-exhaustion of local remedies.

On the admissibility requirements provided for in Article 56 of the Charter, the Respondent State raised objections to admissibility of the Application based on the non-exhaustion of local remedies, the failure to file the Application within a reasonable time and a previous settlement of the case.

As regards the objection based on the failure to exhaust the local remedies, the Respondent State argued that the filing of the Application was premature insofar as its authors still had the possibility of exhausting the remedies available in the domestic judicial system.

The Applicants asserted that by guaranteeing Trafigura officials and employees legal immunity Trafigura under the Memorandum of Understanding signed with the company, the Respondent State failed in its obligation to investigate and prosecute those responsible for dumping the toxic waste. The Applicants further argued that the UVDTAB, a civil party in the proceedings, requested that the case be transferred to another criminal jurisdiction. Despite the suspensive effect of the said request, the trial continued with the verdict delivered the same day.

The Court rejected the Respondent State's objection based on non-exhaustion of domestic remedies. It held that Applicants before an international body may allege violations or raise complaints equivalent or similar to those invoked before national courts. The Court observed that not only do the said rights have equivalent provisions in domestic law, but also that the allegations made in this Application are closely linked to the remedies available before national courts.

The Court ruled that local remedies were exhausted, at least, with respect to more than sixteen thousand (16,000) victims who participated directly in the national proceedings, given that the case was examined by the highest judicial body in the Respondent State (the Supreme Court) the decision of which has become a *res judicata*. The Court noted that the Memorandum of Understanding signed between the Respondent State and the companies involved necessarily rendered local remedies unavailable and ineffective. The Court ruled that local remedies were exhausted with respect to all victims of toxic waste dumping.

On the objection based on the failure to file the Application within a unreasonable time, the Respondent State submitted that it deposited the Declaration on 19 June 2013, and that the Applicants seized the Court on 14 July 2016, thus contending that a period of three (3) years and twenty-five (25) days elapsed between the date of the filing of the Declaration and that of this Application. It submitted that there was no reason to justify the late referral of the case to the Court.

The Applicants argued that the condition of referral within a reasonable time is inapplicable in the event of a serious and massive violation of human rights, as is the case in the instant case.

The Court considered that local remedies were exhausted by immediately the judgment delivered by the United Benches of the Supreme Court of the Respondent State on 23 July 2014. It follows that, since the Application was filed on 18 July 2016, a period of one (1) year, eleven (11) months and twenty-five (25) days elapsed after the exhaustion of the local remedies. Filing this Application required a minimum of preparation time, particularly in view of the number of victims involved and the serious nature of the alleged violations. The Court therefore dismissed the objection.

On the objection to admissibility based on a previous settlement of the matter, the Respondent State argued that a press article of 3 February 2018 reported that, on behalf of the same victims of toxic waste, the National Coordination of Victims of Toxic Waste of Côte d'Ivoire (CNVDT), a second association representing the victims brought various actions before courts in The Netherlands, the United Kingdom and France seeking compensation in the same case.

The Applicants argued that no similar Application was brought before an international tribunal or any other regional or international mechanism.

The Court dismissed the objection, emphasizing that the proceedings leading to the decisions rendered by the afore-mentioned domestic courts were not initiated in line with the Charter of the United Nations, the Constitutive Act of the African Union or the Charter. The Court considered that, in any event, the Respondent State did not prove that the victims represented by the two victims' associations are the same in the various proceedings initiated before foreign jurisdictions. The Court held that, although local remedies to seek redress were exhausted, it failed to demonstrate that the relevant issues invoked were fully resolved.

Consequently, the Court dismissed the objections.

On the merits

The Applicants alleged five (5) human rights violations, namely, the right to respect for life and to physical and moral integrity; the right to an effective remedy and to adequate compensation for damages; the right to physical and mental health and the right to a satisfactory and comprehensive environment; as well as the right to information.

On the violation of the right to life and to physical and moral integrity, the Applicants argued that the Respondent State knew or should have known that the life and physical integrity of the inhabitants of Abidjan could be threatened by the dumping of the toxic waste but that it did not take the measures to possibly attenuate this risk. They also submitted that in full knowledge of the risks involved, the Respondent State failed to do everything reasonably possible to prevent the occurrence of a certain and immediate risk to the right to life. They further averred that the Ivorian authorities granted approval to a company which did not have the skills or the capacity to treat such waste as that transported by the Probo Koala vessel. They maintained, finally, that the lack of appropriate measures of prevention, investigation, sanction and reparation constitutes, in this case, a violation of the right to life.

The Respondent State did not make a submission on this point.

The Court held that it was incumbent on the Respondent State, by virtue of its responsibility under international commitments, to prevent and combat the import into its territory of toxic waste of which the impact on human life could or should have been known to it. It also pointed out that the dumping of toxic waste in the city of Abidjan and its suburbs was authorized by the Respondent State, which granted Tommy authorization to dump the waste on board the Probo koala in full awareness of its toxic nature and therefore its impact on human life. The Court found that such an authorization constitutes, *per se*, a violation of the obligation to respect the right to life. It also noted that the Parties agreed on the fact that the waste dumping led to the death of at least seventeen (17) people and the poisoning of over one hundred thousand (100,000) others. As far as the Court is concerned, this causal link showed that the Respondent State did not discharge its obligation to protect the right to life by taking the necessary measures to that effect before the dumping of the waste, and thus prevent the loss of human life. The Court considered that the obligation to prevent the violation of the right to life applies to all victims and not only to the cases of death that actually occurred. It found that, even if the responsibility, among other things, to comply with the obligations of international law rests primarily with the States, the fact remains that the same responsibility rests also on companies, in this case the multinationals. The Court found that the Respondent State violated Article 4 of the Charter.

On the violation of the right to an effective remedy, the Applicants contended that the Respondent State did not ensure that executives of Trafigura were effectively brought to justice, but rather preferred to enter into an agreement with them, thus preventing the victims from suing them. The Applicants further argued that the victims were not paid adequate, effective and prompt reparations, asserting that although the Respondent State put in place a program of compensation for the victims, the said program was not accompanied by additional measures guaranteeing non-repetition, satisfaction or rehabilitation. They alleged, lastly, that the victims of poisoning were not fully and properly identified.

The Respondent State did not make a submission on this point.

The Court noted that there was no obstacle to victims' access to national courts, as evidenced by the numerous decisions rendered by the said courts. According to the Court, it can therefore not be disputed that the right to an effective remedy was guaranteed since local remedies were available. However, the Parties agree on the fact that, through the Memorandum of Understanding it signed for this purpose, the Respondent State organized, for the benefit of the company Trafigura and all the other persons involved, a regime of impunity through immunity from prosecution. There is no doubt that the said Memorandum made local remedies unavailable, at least, for victims other than those who initiated proceedings before the national courts. The Court noted that the Memorandum of Understanding proved, unequivocally, not only the responsibility of those involved but also the harm caused to the victims since the Respondent State agreed to guarantee immunity and receive funds which it evaluated for the purpose of compensating the victims. The Court found in conclusion that the Respondent State did not guarantee the right to an effective remedy on aspects relating to the exhaustive identification of the victims and the decontamination of the sites concerned. It further found that local remedies, while available to some victims, were neither effective nor satisfactory, given that thousands of other victims were unable to exercise them and that others did not obtain satisfaction, even though the damage caused by the waste dumping is indisputable. The Court finally held that the Respondent State violated the victims' right to an effective remedy protected by Article 7(1) read in conjunction with Article 1 of the Charter.

On the violation of the right to enjoy the best attainable state of physical and mental health, the Applicants argued that, by not having implemented the national or international legal provisions prohibiting the import of toxic waste, the Respondent State failed to comply with its obligation to remove and prevent any impediment to the exercise and enjoyment of the right to physical and mental health. The Applicants pointed out that the victims have been suffering from health problems since the dumping of the toxic waste, further claiming that the emergency health measures taken by the Respondent State were inadequate, ineffective and unsatisfactory. They argued that no studies were conducted on the long-term health impact of the waste dumping.

The Respondent State did not make a submission on this point.

The Court holds that the right to health presupposes the existence of the following essential and interdependent elements: availability, accessibility, acceptability and quality. It noted that following the dumping of the toxic waste and its effects on the health of thousands of people, the Respondent State took urgent measures to ensure that the victims received medical treatment. However, the measures were either insufficient or inappropriate for the needs of all the victims and the magnitude of the consequences of the waste dumping. The Court held that the Respondent State violated the right to health, protected by Article 16 of the Charter, firstly, by failing to prevent the dumping of toxic waste and, secondly, by failing to take all the necessary measures to ensure that people affected by this disaster have full access to quality health care.

On the violation of the right to a satisfactory and comprehensive environment, the Applicants argued that the Respondent State's failure to apply and enforce its domestic law provisions and its international obligations regarding the prevention of the import of toxic waste into its territory constitutes a violation of its obligation to protect the right to a satisfactory environment enjoyed by persons under its jurisdiction.

The Respondent State did not make submission on this point.

The Court found that the Respondent State failed to take adequate administrative measures to prevent the dumping of the toxic waste cargo on its territory. Indeed, once the vessel Probo Koala announced that it had unloaded the cargo, the Respondent State's authorities did not verify whether the waste could be treated effectively with the necessary caution from the standpoint of environmental management. The Respondent State's authorities had an obligation to ensure that the mission was conducted in a way that protects human health and the environment from the adverse effects that could result from the toxic waste. Moreover, the Respondent State's authorities failed to ascertain, as required by the Bamako Convention, the information on the proposals to transfer and import into Africa, hazardous and other wastes, in order to be able to assess the consequences of such a process on human health and the environment. The Court also found that the Respondent State did not prove that it effectively and expeditiously

remediated the polluted sites. Accordingly, the Court ruled that the Respondent State violated Article 24 of the Charter.

On the violation of the right to information, the Applicants submitted that the Respondent State did not notify the communities exposed to the hazardous substances of the nature of the waste and its harmful effects on the population. They also argued that the victim compensation program put in place by the Respondent State lacked transparency and information flow.

The Respondent State did not make submission on this point.

The Court noted that, despite the significant measures taken by the Respondent State, it failed to inform the public about many crucial elements in the circumstances of a disaster of this magnitude, the effects on health and environment of which have continued to impact the lives of many people. More particularly, the Court noted that the Respondent State failed to provide the public with useful information on the long-term consequences of the toxic waste dumping, the circumstances of the dump, the exact composition of the waste, the possible impact on other areas or on the number of people affected. It noted that the Respondent State did not provide information on the health risks to which the populations were exposed, especially those near the contaminated sites between 19 August 2006 and 15 November 2016 in particular. The Court noted that no official information or updated data on the number of people who died or were contaminated because of the toxic waste dumping were available. The same applies to information on the compensation provided under the terms of the Memorandum of Understanding. The Court thus held that the Respondent State violated the right to information, protected by Article 9(1) of the Charter.

On reparations

On pecuniary reparations, the Court ordered the Respondent State to repair the damage caused to the victims by rolling out, within one (1) year of notification of this judgment, a compensation fund a compensation fund for their benefit. With regard to the sums to be paid into the compensation fund, the Court recalled that it was on the strength of the Memorandum of Understanding concluded between Trafigura and the Respondent State

that the latter violated the Applicant's right to an effective remedy. It also pointed out that the victims could not be held accountable under the MoU, as they did not participate in the negotiations leading up to its signature. The Court also recalled that, under the terms of this MoU, Trafigura had undertaken to pay the Respondent State the sum of Seventy-Three Billion (73,000,000,000) CFA francs for the damage caused, including compensation for the victims, and the sum of Twenty-Two Billion (22,000,000,000) CFA francs for remediation operations, amounting to Ninety-Five Billion (95,000,000,000) CFA francs in all. The Court pointed out that there was nothing to prevent these sums from being paid into the compensation fund. It is the view of the Courts that such a measure, which is just and appropriate, is predicated on the fact that the Respondent State cannot, in all fairness, continue to enjoy the benefits of an agreement by which it violated the Applicants' right to an effective remedy. The Court further held that, should the need arise, the fund could be topped up sufficient additional resources, taking into account the census previously carried out.

As regards moral prejudice, the Court awarded each Applicant a token Francs.

On non-pecuniary reparations, the Court rejected the Applicants' prayer to order the Respondent State to render a public apology. It ordered the Respondent State to the following measures within periods varying between six (6) months and one (1) year from the notification of the judgment: open an independent and impartial investigation into the alleged facts to establish the criminal and individual responsibility of the perpetrators, initiate proceedings against them; present a transparent public report on the use of the funds allocated to it under the terms of the Memorandum of Understanding signed with Trafigura; carry out a general and updated national census of the victims; ensure that the victims are afforded medical and psychological assistance; undertake legislative and regulatory reforms aimed at implementing the ban on the import and dumping of hazardous waste in its territory in accordance with the applicable international conventions to which it is a party; amend its criminal law to provide for sanctions against legal entities involved in the dumping of toxic waste; organize training for the officials concerned to raise their awareness of human rights and environmental protection, and incorporate the trainings in school and university curricula so as to promote respect for

human rights and the environment; guarantee the presence of one or more representatives of the Ministry of the Environment in all its ports and afford them the power and the means to control the removal of waste from ships; publish the official summary in French, once in the Official Journal and once in a national press organ with wide circulation; publish the judgment, together with the official summary on the official website of the Government and ensure that it remains accessible therein for a minimum period of one (1) year. The Court ordered the Respondent State to submit to it, within six (6) months from the date of service of this Judgment, a report on the implementation of the measures ordered therein and, thereafter, every six (6) months until the Court deems the measures fully executed.

The Court, lastly, decided that each party should bear its own costs.

Judge Blaise TCHIKAYA issued a dissenting opinion appended to the judgment in accordance with Articles 28(7) of the Protocol and 70(1) of the Rules.

Further information:

Further information on this case, including the full text of the judgment of the African Court, is available on the website: <https://www.african-court.org/cpmt/details-case/0412016>

For all other enquiries, please contact the Registry by email at registrar@african-court.org.

The African Court on Human and Peoples' Rights is a continental court created by African countries to ensure the protection of human and peoples' rights in Africa. The Court has jurisdiction over all cases and disputes brought before it concerning the interpretation and application of the African Charter on Human and Peoples' Rights and any other relevant human rights instrument ratified by the States concerned. For more information, please visit our website: www.africancourt.org.