

# THE TOXIC TRUTH

## ABOUT A COMPANY CALLED TRAFIGURA, A SHIP CALLED THE PROBO KOALA, AND THE DUMPING OF TOXIC WASTE IN COTE D'IVOIRE<sup>1</sup>

JOINT REPORT BY AMNESTY INTERNATIONAL AND GREENPEACE NETHERLANDS

### SUMMARY

*"In August 2006, everyone was contaminated, my family, my neighbours. I never want us to have a catastrophe like this one again. ... We had breathing problems. First the smell suffocated us and then we couldn't breathe... I had to stop working on 2 September. I was bed-bound for a whole week, and did not go back to work until 11<sup>th</sup> September. My children had very red eyes, they had a fever, they also had a cold and one of them had diarrhea. They had a fever for at least 2 weeks. My family and I suffered from the toxic waste. I told my wife, who was pregnant, to leave the neighborhood.*

*... the whole neighbourhood fell ill. The most common symptoms were headaches, colds, coughing, chest pains, respiratory problems, itching sensations, pimples, eye problems, vomiting and digestive problems.*

*... At least if you use my testimony, my voice and the voices of the victims I represent will be heard."*

JA, victim from the Abobo-Plaque 1 area

On 20 August 2006, the people of Abidjan, Côte d'Ivoire woke up to find the city engulfed in a smell that witnesses described as thick, suffocating, akin to a mix of rotten eggs, garlic, gas and petroleum. The smell was caused by toxic waste that had been dumped, during the night, in at least 18 different places around the city, close to houses, workplaces, schools and fields of crops.

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<sup>1</sup> Full report available online at <http://www.amnesty.org/en/library/info/AFR31/002/2012/en>

While the overpowering smell caused considerable alarm, the associated physical effects triggered widespread panic. Thousands of people experienced nausea, headaches, vomiting, abdominal pains, and irritation of the skin and eyes. In the days and weeks that followed the dumping, medical centres were flooded with tens of thousands of people suffering from similar symptoms. By October 2006, more than 100,000 people had been registered by health centres as suffering from the impacts of the waste. The Ivorian authorities attributed between 15 and 17 deaths to exposure to the waste.

Although the physical and health effects of the dumping were most clearly recorded in the first few months, some people are reported to have experienced physical effects for a much longer period. Delays and inadequacies in cleaning up the waste and decontaminating sites also led to concerns about the health implications of continued exposure. No health monitoring or epidemiological studies have been undertaken to assess the medium to long-term health impacts of exposure to the waste. Nor has complete information on the exact composition of the waste ever been made public. In the absence of such information, many people remain concerned about the possible impacts on their health.

The waste that was dumped in Abidjan in August 2006 belonged to an oil trading company called Trafigura. It arrived in the country on board a cargo ship, the *Probo Koala*, chartered by Trafigura. The waste originated in Europe and, under international law, should not have been permitted to arrive in Côte d'Ivoire.

Over a three year investigation into what happened in Abidjan – including examination of internal Trafigura emails which came to light through a UK court action – Amnesty International and Greenpeace uncovered a series of decisions made by Trafigura that show that the dumping was an almost inevitable consequence of the company's deliberate decisions. The investigation also reveals failures by multiple governments to act effectively to protect people and the environment; it exposes how national systems for enforcement of international law have failed to keep up with companies that operate trans-nationally, resulting in a situation where companies can evade justice and act with impunity. The investigation has also revealed how governments have failed collectively to provide an effective remedy to the victims.

## THE WASTE: WHERE IT CAME FROM

In late 2005, Trafigura decided to buy large amounts of unrefined petroleum called coker naphtha. The company intended to use the coker naphtha as a cheap blendstock for fuels. A series of internal Trafigura emails, disclosed during a UK court action in 2009, revealed that the company expected to make a large profit from the deal.

The coker naphtha sold by PMI Trading Ltd to Trafigura contained high levels of mercaptan sulphur; one of the reasons PMI were selling it so cheaply was because they did not have the capacity to refine it. In order to use it as gasoline, Trafigura needed to find a way of refining it.

Trafigura decided to undertake a process called caustic washing to refine the coker naphtha. Trafigura was well aware that this process would produce toxic waste. In an internal email, dated 28 December 2005, sent to colleagues and Trafigura's chairman, Claude Dauphin, a London-based employee noted that:

*"This operation [caustic washing] is no longer allowed in EU/US and Singapore.*

*“Caustic washes are banned by most countries due to the hazardous nature of the waste (mercaptans, phenols, smell) and suppliers of caustic are unwilling to dispose of the waste since there are not many facilities remaining in the market. There is a company in Rotterdam that burns such waste in a high stack chimney and charges are approx \$200/kg and could have upto [sic] 1000kgs of sludge after a treatment operation. Under EU law you [are] no longer allowed to transport such waste across EU borders.”*

## THE LEGAL FRAMEWORK

The illicit dumping of hazardous waste – often in developing countries – has been recognized in international law as a serious problem both for the environment and for people’s human rights. A number of legal instruments are in place at international, regional and national level, which aim to control how dangerous waste and harmful substances are dealt with.

### ***Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention)***

The Basel Convention is an international treaty for the control and regulation of waste material that requires special attention or may pose a hazard to human health or the environment. The Basel Convention defines any transboundary movement of hazardous or other wastes as illegal traffic if it is done: without notification to the state to which the waste is to be taken, requesting consent of that state; on the basis of consent obtained through falsification, misrepresentation, or fraud; if it does not conform in a material way with the documentation; or if it results in deliberate improper disposal (such as dumping). The Convention also states that illegal traffic in hazardous wastes or other wastes is criminal.

### **European Waste Shipment Regulation**

Section 18 of the European Waste Shipment Regulation makes it a criminal offence to export Basel waste from the EU to the African, Caribbean and Pacific Group of States, which includes Côte d’Ivoire.

### ***International Convention for the Prevention of Pollution from Ships (MARPOL Convention)***

The Basel Convention applies to waste and hazardous waste but does not apply to the “wastes which derive from the normal operations of a ship”. These wastes are covered by the 1973/78 International Convention for the Prevention of Pollution from Ships (MARPOL Convention). The purpose of the MARPOL Convention is to stop pollution of the marine environment by oil and other harmful substances. Such substances must be discharged to a “reception facility”.

### ***Toxic waste and human rights***

Under international human rights law, states have a duty to protect people from exposure to dangerous substances. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health...”. The UN Committee on Economic, Social and Cultural Rights (CESCR) has stated that:

*“To comply with their international obligations in relation to article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law.”*

The recognition by the Committee of states’ responsibility for human rights impacts outside their territory, in certain circumstances, reflects a growing body of legal opinion that such responsibility is vital to the adequate

protection of human rights. At a minimum, respecting the right to health in other countries means States must take account of foreseeable risks to the right to health in another State, and take action if they have the legal and technical capacity to do so.

## CAUSTIC WASHING AT SEA

Trafigura had difficulty finding any location on land willing to undertake caustic washing. Between January and March 2006, two caustic washing operations were carried out at a port in Tunisia. However, gases associated with the waste by-product leaked and the authorities prohibited any further caustic washing as the port did not have the facilities to deal with the waste. Following the Tunisia incident Trafigura decided to continue caustic washing on board a ship at sea. The ship used for the operation was called the *Probo Koala*.

When Trafigura decided to carry out an industrial process at sea, it did so without knowing how it would dispose of the resulting waste – waste it already knew would be hazardous. The first caustic wash at sea was completed by mid-April 2006. By the end of June 2006 Trafigura had “washed” at least three shipments of coker naphtha on board the *Probo Koala*, as the ship was heading north from Gibraltar towards Amsterdam. More than 500m<sup>3</sup> of waste was now stored in the ship’s slop tanks. And Trafigura still had not found a way to dispose of it.

## THE WASTE IN EUROPE

During April 2006 Trafigura approached at least four locations in Europe seeking to offload the waste. None of these locations could accept it and available evidence suggests this was because of the waste required more specialized treatment than they could provide. On 19 June 2006, Trafigura contacted Amsterdam Port Services (APS), a Dutch company that processed ships’ waste, and made an arrangement to deliver the waste to them. APS is an officially appointed port reception facility, which means it has been authorized by the Dutch authorities to handle waste from ships in line with the MARPOL Convention. However, it subsequently transpired that Trafigura had not given APS adequate information about nature of the waste.

The *Probo Koala* arrived in Amsterdam on 2 July 2006, and APS began to unload the waste on to a barge. Early the next morning, on 3 July 2006, the Dutch authorities received reports of a troubling odour in the area, and the local fire brigade and the police were called in. A woman working close to the APS facilities explained why she called the authorities on 3 July 2006:

*“It was a very chemical smell. It got me very nauseous in my head and abdomen. I also suffered from a persistent tickle in my throat. I got a terrible headache. At half past nine I was at work and then already I smelled the stench, but at that moment I still felt all right. Around eleven [we] phoned the police. At the time of reporting the smell was very intense, as if a big cloud was passing. ... During the day I didn't have any appetite. When I went home at five o'clock, I still felt nauseous and dizzy and I had headaches.”*

APS took samples of the waste for testing, which revealed that the waste had a significantly higher chemical oxygen demand (COD, an indirect measure of contamination) than APS had anticipated when it had initially agreed a price for the job. On the basis of the test results, and because APS would have to send the waste to another specialist, APS increased its quote from €27 (US\$) per m<sup>3</sup> to €1000 (US\$) per m<sup>3</sup> (approximately 37 times the original price).

Trafigura refused to pay the higher charge and asked APS to pump the waste back onto the *Probo Koala*.

The smell and Trafigura's request to reload the waste on to the *Probo Koala* were sufficiently unusual to raise the concern of regulators. During 3-4 July 2006, numerous discussions are reported to have taken place amongst local authorities on how to deal with the situation. Despite provisions in Dutch environmental law that should have prevented the waste being transferred back to the ship, the regulators gave the green light for the waste to be re-loaded and the *Probo Koala* to leave the Netherlands. After a brief stop in Estonia, the ship – with the waste still on board – left Europe for West Africa.

## THE WASTE IN AFRICA

Email records show that Trafigura tried to dispose of the waste in Nigeria, but efforts were unsuccessful. On leaving Nigeria the *Probo Koala* was directed, by Trafigura, to head for Abidjan in Côte d'Ivoire. As the ship made for the port of Abidjan, Trafigura entered into a contract with a small, newly licensed Ivorian company called Tommy. It told this company that the waste was chemical waste and not MARPOL waste.

The contract – a handwritten note - states that Tommy will “discharge the waste in an area outside of the city” in a place called “Akouédo”. Akouédo is an open dumpsite for domestic waste, located in a residential district of Abidjan. It does not have facilities for storing or processing hazardous waste. As the owner of the waste, Trafigura had a responsibility to undertake appropriate due diligence with regard to the proper treatment and disposal of the waste.

The contract also shows that Tommy planned to charge Trafigura considerably less for disposing of the waste than the company would have had to pay in Europe. According to the contract Tommy's charges were US\$30 per m<sup>3</sup> for MARPOL slops US\$35 per m<sup>3</sup> for Chemical slops. This contrasted sharply with the quote of €1,000 per m<sup>3</sup> quoted by APS to dispose of the waste in the Netherlands.

It is not clear why Tommy quoted for MARPOL waste, given that it had already said the waste was chemical waste; not is it clear on what basis Trafigura was distinguishing between the waste material on the *Probo Koala*.

There is no need to speculate whether Trafigura was aware that the price quote by Tommy was too low to be credible cost for dealing with toxic waste. When Dutch police, seeking to track the waste, called Trafigura and asked to see the invoice, Trafigura asked Tommy to produce a false invoice showing higher charges.

## THE DUMPING

When the waste arrived in Abidjan it was offloaded onto trucks and taken to the Akouédo dumpsite. However, after the first few trucks offloaded the smell of the waste caused alarm and the site was closed. Finding Akouédo closed, and unable to contact Tommy, some of the drivers panicked and simply dumped the contents of their vehicles at random locations around Abidjan, close to houses, workplaces, schools, fields of crops and the city prison.

## A HEALTH AND ENVIRONMENTAL DISASTER

*“Since Saturday 19 August 2006, Côte d'Ivoire is confronted by a humanitarian and environmental tragedy following the dumping of 523m<sup>3</sup> of toxic waste liquids from the Probo Koala.”*

Over the next few days and weeks, medical centres and hospitals were flooded with tens of thousands of people suffering from neurological, digestive, respiratory, ear, nose and throat (ENT), ophthalmological, cutaneous, and other health problems. The dumping sparked demonstrations all over the city as a result of people's anger and fear about what had happened. Exposure to the overpowering smell and the health effects created a great deal of fear and mental distress amongst Abidjan's population. In early September 2006, the World Health Organization noted the "growing anguish of the populations because of the frequency, number and seriousness of the symptoms presented by contaminated individuals".

# WHO IS RESPONSIBLE?

## *CORPORATE CULPABILITY: TRAFIGURA'S RESPONSIBILITY FOR WHAT HAPPENED*

Trafigura has repeatedly denied that the company is responsible for the crisis that unfolded in Abidjan in 2006. Although a Dutch court found the company guilty of illegally exporting waste from Europe, there has, as yet, been no meaningful investigation into the conduct and responsibility of the company in relation to the dumping of the waste in Côte d'Ivoire and the human rights impact.

A review of the evidence demonstrates that Trafigura knew it had created waste that was potentially very harmful to the environment and human health. The company knew, or ought reasonably to have known, that transport of this waste from Europe to Africa was unlawful. They knew the waste required proper disposal but, despite this, and despite the fact that four European facilities they approached were unable to deal with the waste and a fifth clearly stated that the waste required quite specialized treatment, Trafigura contracted a small, newly licensed company in Abidjan to dispose of toxic waste in an open dumpsite in the middle of a poor residential area of the city.

Not only did Trafigura fail to deal appropriately with waste it knew to be dangerous, at several points they misled regulators and other companies about the nature of the waste, increasing the risk that it would not be dealt with properly.

Initially two senior Trafigura executives, Claude Dauphin and Jean-Pierre Valentini, who had come to Côte d'Ivoire following the dumping, were arrested and charged with a range of offences. However, on 13 February 2007 the state of Côte d'Ivoire and Trafigura reached a settlement, under which Trafigura agreed to pay the state the sum of CFA95 billion (approximately US\$200 million). As a term of the Ivorian Settlement, and in exchange for compensation, the government waived "its right to prosecute, claim, or mount any action or proceedings in the present or in the future" against the Trafigura Parties. The two executives were released on bail and the charges were ultimately dropped.

In 2010 a Dutch court convicted Trafigura of illegally exporting waste to Côte d'Ivoire and for "concealing the harmful nature of the waste for life and health" when the company brought the waste to Amsterdam for processing. However, the Public Prosecutor decided not to prosecute the company in relation to events subsequent to the removal of the waste from Dutch jurisdiction.

Civil actions were also attempted. A case in the UK was settled out of court, while victims attempts to access Dutch courts were unsuccessful, in large part because the Dutch criminal action did not include events in Abidjan, thereby limiting civil liability options for victims.

Trafigura was asked to respond to the allegations made in the report. Trafigura answered that: "we believe the report contains significant inaccuracies and misrepresentations. The report oversimplifies difficult legal issues, analyses them based on ill-founded assumptions and draws selective conclusions which do not adequately reflect the complexity of the situation or the legal processes. Courts in five jurisdictions have reviewed different aspects of the incident and decisions and settlements have been made. It is simply wrong to suggest that the issues have not

had the right judicial scrutiny.” Trafigura has failed to specify to Amnesty International and Greenpeace what these inaccuracies, misrepresentations and oversimplifications were.<sup>2</sup>

## LEGAL ACCOUNTABILITY OF TRAFIGURA AND ITS EXECUTIVES

**Côte d’Ivoire:** the company is given immunity from prosecution

**The Netherlands:** the company is prosecuted for export of the waste, found guilty and fined EURO1 million. The guilty verdict is upheld on appeal. The Prosecutor decides not to investigate or prosecute potential crimes committed in Côte d’Ivoire. The public prosecutor also declines a request made by Greenpeace to open an investigation into the allegations that Ivorian truck drivers who had transported the waste in Abidjan had been improperly influenced by Trafigura, and persons working for Trafigura, after the dumping, on the basis of insufficient connection to the Dutch jurisdiction.

**The United Kingdom:** a civil case is taken by some 30,000 victims of the dumping; the company settles out of court; no criminal prosecution is undertaken

**France:** the Paris Prosecutor decided not to investigate a complaint against the two French Trafigura executives, Claude Dauphin and Jean-Pierre Valentini.

**Norway:** despite bringing similar waste to Norway, Trafigura evades prosecution because the waste was made on board a ship and not exported from another state

### STATE FAILURE: CÔTE D’IVOIRE

Although Côte d’Ivoire responded quickly to the dumping of the waste, and offered free medical treatment, the then government gave Trafigura sweeping legal immunity from prosecution. Investigations conducted by a National Commission of Enquiry set up in the aftermath of the dumping also revealed serious regulatory failures by the Ivorian authorities which allowed the waste to enter the country in the first place. In particular Tommy’s license to operate at the Port of Abidjan was flawed, and had been allocated without any proper scrutiny. Operations at the port were criticized as lax, as was the regulation and oversight of Akouédo. Laws that should have protected the people of Abidjan were not enforced. By not enforcing laws to prevent the import of hazardous waste into the country, the government of Côte d’Ivoire failed to take all necessary measures to safeguard persons within their jurisdiction from infringements of their rights by Trafigura and Compagnie Tommy. In so doing the government of Côte d’Ivoire breached its obligations under the International Covenant on Economic, Social and Cultural Rights to protect the right to health and the Basel and Bamako conventions to prevent illegal traffic, import and disposal of hazardous waste by persons who were not authorized to perform such operations.

### STATE FAILURE: THE NETHERLANDS

The Netherlands was the country that had the greatest knowledge of the waste, and therefore was in the best position to act to prevent the illegal export and dumping of the waste. The government has tried to argue that it was misled by Trafigura about the waste because Trafigura had described it as MARPOL waste. However, this claim does not stand up to scrutiny.

The information provided by Trafigura was not the only information that the authorities had when they made the decision to let the ship leave Amsterdam with the waste on board. The Dutch decision-makers – at the point of letting the *Probo Koala* go – also knew that the waste had generated concern because of the smell and that people had experienced health

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<sup>2</sup> Full response available online at:

<http://www.amnesty.org/en/library/info/AFR31/009/2012/en>

impacts: specifically, nausea, headaches and dizziness. They also knew that APS, an appointed port reception facility with substantial experience could not handle the waste.

The Dutch authorities had more than enough information before them to reasonably conclude there were foreseeable risks to human health.

The Dutch authorities also had evidence to suspect that proper, safe disposal of the hazardous material was not guaranteed. The company was leaving Amsterdam with the waste because it was not willing to pay the costs involved in proper disposal in the Netherlands. Additionally, on 3 July 2006, they had received an anonymous fax which alleged that waste would be dumped at sea – a fax they clearly took seriously, since they asked the Estonian port authorities to measure the waste to ensure it was all still on board when it arrived there.

The information that the authorities in Amsterdam had over the period of 2-4 July 2006 was sufficient to provide a basis and rationale for action, at minimum to investigate the waste further before allowing it to leave the Netherlands. In addition to having the information necessary to act, the Dutch had the legal capacity to act. Several laws applicable in the Netherlands gave the authorities the right to inspect the ship; the authority to prevent it from leaving Amsterdam and the authority to require disposal of the waste in the Netherlands. Moreover, not only did the Netherlands have the legal right to act to prevent the waste leaving Amsterdam, under European and international law, it was required to do so.

## ARGUING IT WAS MAPROL

Trafigura has, on several occasions, sought to argue that the waste that it created on the *Probo Koala* was not subject to the Basel Convention and associated European waste Shipment Regulation, and that it was MARPOL waste (deriving from the “normal operations of a ship”)

Trafigura’s assertion that the waste was MARPOL waste is not credible. Caustic washing of gasoline cannot be regarded as the “normal” operation of a ship – on the contrary, it was a highly unusual process and there is no record of such an industrial process ever having been carried out on a ship before Trafigura’s operations. A review by the Centre for International Environmental Law (CIEL) shows that the only waste generation envisaged by MARPOL was waste generated by the ship as a vehicle.

Moreover, a review of Trafigura’s own statements on the waste shows that they knew, or ought reasonably to have known, that it was not MARPOL waste.

Finally, the company clearly accepted that the waste was not MARPOL waste prior to the dumping in Abidjan, since its communication to Puma on 17 August 2006 stated that “Due to the COD being larger than 2000 mg/l **these are not to be considered as MARPOL slops but as chemical slops...**”. (Emphasis added.)

## THE UNITED KINGDOM

Trafigura Ltd, one of the Trafigura group of companies, is a company based in the United Kingdom. Internal emails show that this company directed the operations on board the *Probo Koala* at several critical points. Despite this, the company has never been subject to investigation or prosecution by the UK authorities.

## ACCOUNTABILITY

The events in this report were truly transnational in nature. The generation, transport and dumping of the toxic waste spanned the world and the waste was transported by Trafigura

from the Mediterranean to the Netherlands, to Estonia, to Nigeria and to Côte d'Ivoire. The effects of this illegal transport of the waste by Trafigura and the dumping of the toxic waste by Tommy, the agents of Trafigura, were borne by the people of Abidjan whose rights to health, including a healthy environment, and work were abused as a result.

The Basel Convention was created to prevent exactly this kind of conduct and effects. The Convention is meant to create a regime of international standards and cooperation between states that can prevent the transboundary movement of hazardous waste. This case highlights how a multinational company was able to circumvent this regime by exploiting loopholes in enforcement and laws in different countries. The report describes the failure of various states to implement their obligations both to prevent the transboundary movement and dumping of toxic waste and to protect the rights to health of people who were ultimately impacted by the dumping of the waste.

The states involved, notably the Netherlands and Côte d'Ivoire, but also others, failed not just in preventing the transboundary movement and dumping of toxic waste, they also failed collectively to provide an effective remedy to the victims whose human rights were abused by Trafigura. The abuses were transnational but the remedies were not.

One might expect that, given the numerous opportunities to secure justice in more than one jurisdiction, the chances of the victims uncovering the truth and obtaining an effective remedy would have been greater. Yet the reality has been very different: although numerous efforts were made, there has been a collective failure by all the states involved to ensure the right to an effective remedy for the victims.

Under international law, when an individual has suffered human rights violations at the hands of several states, he or she is entitled to a full remedy for all of the violations. So long as the right to an effective remedy remains unfulfilled in relation to an act for which a particular state is responsible, that state remains under the obligation to provide meaningful access to a procedure capable of providing an effective remedy.

Despite legal actions commencing in a number of jurisdictions, there was a total lack of co-ordination and international co-operation to prosecute those responsible for the criminal acts in Côte d'Ivoire. To some degree, these actions even appear to have played off against each other in discouraging prosecutions into the criminal acts that resulted in the human rights abuses committed in Côte d'Ivoire. Criminal charges were only ever brought against employees of the Trafigura Group in Côte d'Ivoire, but not against the corporate group. Gaps in Ivorian law meant that there was no option to prosecute the company itself. Options to prosecute officials who were in a decision-making capacity were also not properly exercised because of the terms of the settlement reached between the government and Trafigura and the departure of the concerned individuals from the country. No other state has pursued prosecutions against any of the corporate entities involved in the dumping of the toxic waste in Côte d'Ivoire and the impacts that this had on people and the environment. This means that, up to now, the Trafigura Group, including the foreign-based Trafigura Beheer BV and Trafigura Ltd, are yet to be prosecuted for their involvement in the illegal acts that unfolded in Côte d'Ivoire.

## **DISCLOSURE OF INFORMATION**

None of the states involved have so far required Trafigura to disclose the information that it holds, on the content of the waste and effects of the exposure, to the victims. The lack of information about the content of the waste and its effects handicapped the medical response in Côte d'Ivoire. Lack of information, particularly about potential long-term effects, has also been highlighted by the victims as one of their primary concerns. Trafigura was not asked to

disclose all the information that it holds, on the content of the waste and its own research into potential effects, to victims by the Ivorian government during the settlement process or after. Despite the fact that Trafigura noted in the civil case in the UK that it held information on the composition of the waste and its potential impacts and that it had undertaken scientific and expert studies about exposure to the waste, the UK authorities have never asked for this information to be made available to the victims or to the Ivorian authorities. Instead of treating this as a key issue impacting people's right to health, it has been treated as purely a private matter between parties in a civil dispute and the failure to compel the company to reveal the information it holds is also linked to the UK's broader failure to open any investigations itself into the company's conduct.

The Ivorian government has also failed to conduct any long-term monitoring of impacts of exposure to the waste, particularly in terms of environmental and health related effects. However, none of the other governments involved have engaged in international co-operation with the Ivorian government to support such a monitoring process, including through offering technical assistance.

# RECOMMENDATIONS

The government of **Côte d'Ivoire** should:

- Establish a process to ensure all of the remaining registered individuals whose health was impacted are able to access compensation from the state
- Establish a medical study to monitor and evaluate the health of the affected population over time, in order to identify any long-term impacts.
- Pursue investigations and prosecutions against all of those involved in the misappropriation of compensation funds agreed in the UK out-of-court settlement
- Publically report on the changes made in law, regulation and practice in Côte d'Ivoire to prevent the illicit import and/or disposal of hazardous waste
- Amend the criminal code of Côte d'Ivoire to allow for companies to be held legally accountable for criminal conduct that can usually be attributed to a legal person.
- Assess the legality of the Protocol d'accord, including the immunity from prosecution given to Trafigura.

The government of the **Netherlands** should:

- Ensure that companies that are incorporated in the Netherlands for tax purposes, regardless of the level of activity in the Netherlands, can be held to account for criminal activity resulting in environmental and human rights harm, including for crimes committed abroad or which have consequences abroad.
- Engage with and support the government of Côte d'Ivoire to carry out a medical study to monitor and evaluate the health of the affected population over time, in order to identify any long-term impacts.

The government of the **United Kingdom (UK)** should investigate options for initiating a criminal prosecution against Trafigura.

The government of **Norway** should undertake a review of the regulatory framework in Norway in relation to the adequacy of measures to investigate and prosecute companies for crimes committed abroad or which have consequences abroad.

The **European Union and its member states** should:

- Adopt a normative framework that requires companies to respect human rights and the environment and to carry out adequate human rights due diligence throughout their operations.
- Make it mandatory for companies to disclose the actual and potential impacts of their global operations on human rights and environment, and to disclose social and environmental impact assessments and their lobbying activities and positions in relation to national or international regulatory frameworks.

All **African Union** member states that have not already done so should ratify the Bamako Convention, the Basel Convention and the Basel Ban Amendment at the earliest opportunity and transpose these requirements into their national legislation.

**All states** should:

- Ensure that their legal framework allows for companies (legal persons) to be held

criminally liable.

- Undertake a review of their regulatory framework in relation to the adequacy of measures in place to (a) ensure companies are required to respect human rights and the environment throughout their operations and (b) ensure the state can investigate and prosecute companies for crimes committed abroad or which have consequences abroad. This legal review should be made public.
- Ensure effective implementation of the IMO prohibition on blending bulk liquid cargoes during sea voyages and carrying out production processes onboard ships. In any case where blending or production processes are carried out on board a ship, the resulting wastes should be covered by the Basel Convention.
- Ratify the Basel Convention together with the Basel Ban Amendment prohibiting the export of hazardous wastes from developed to developing countries, if they have not done so already.

**States parties to the Basel Convention** should ensure that Coker Naphtha is defined as a hazardous waste under the Basel Convention.

**Trafigura** should disclose full information on the waste, including scientific and other studies carried out in relation to the waste and its potential impacts.