



Trafigura: The dumping of toxic waste in Côte d'Ivoire

After oil trader Trafigura disposed of toxic waste in Côte d'Ivoire and caused a public health crisis, weaknesses in the legal system meant many victims were denied both justice and remedy.

Problem Analysis

This case illustrates that even when a company is fully aware of the social, environmental and economic consequences of its operations, if it deliberately refuses to act upon them, justice and compensation for victims and effective prosecution remain rare. While there have been legal proceedings in Côte d'Ivoire and the Netherlands, and some compensation has been paid, the role played by Trafigura in relation to the dumping of toxic waste in Abidjan has never been subject to a full court proceeding.¹

The case shows the limited effectiveness of criminal law in prosecuting corporate crimes. A fine was issued by the Dutch courts, but the series of criminal actions were ultimately settled with Trafigura. It shows the weak position of the victims vis-à-vis the company and the authorities. The courts of Côte d'Ivoire concluded that a settlement paid by Trafigura to the authorities was sufficient to oust the rights of victims, denying them the opportunity to seek private redress in local courts.² In addition, home state responsibility is lacking, as many questions arose around the Netherlands' enforcement mechanisms. In several cases prosecutions were halted and/or persons were released from detention following the payment of 'settlements'. Greenpeace Netherlands pressured Dutch prosecutors and agencies, with some success.

Company

Company: : Trafigura Group Pte. Ltd.

Head office: Singapore³

Subsidiary: The immediate and ultimate holding companies are Trafigura Beheer B.V. and Farringford N.V., respectively. Trafigura Beheer B.V. is incorporated in The Netherlands and Farringford N.V. is incorporated in Curacao.⁴

Company background

Privately owned

Shareholders: Trafigura is exclusively owned by its management and about 600 of its senior employees⁵

CEO: Jeremy Weir⁶

Annual profit: \$2.3 billion (2016)⁷

Annual turnover: \$98.1 billion (2016)⁸

Presence: Global.⁹

Number of employees: 4,107 (2016)¹⁰

Company activity

Trafigura is one of the world's largest physical commodities trading and logistics groups, with operations worldwide. Almost three-quarters of its profits are derived from its oil trade.

Country and location in which the violation occurred

Côte d'Ivoire, Trafigura Beheer B.V. chartered the vessel Probo Koala, on which toxic waste was created that ended up being dumped in the Côte d'Ivoire, followed by environmental damage and severe health problems for the people of Abidjan.¹¹

Summary of the case

Multinational oil trading company Trafigura produced toxic waste, the residue of an industrial process called caustic washing, on board the Panama-registered vessel Probo Koala. Originally, the waste was brought to the Netherlands; but Trafigura turned down the option to have it properly treated there because it considered the quoted price too high. Instead, on 19 August 2006, the Probo Koala delivered the toxic waste to Abidjan, capital of Côte d'Ivoire.^{12,13}

To dispose of the waste in Côte d'Ivoire, the vessel contracted a small, local company, Compagnie Tommy, described by Trafigura as "a recently licensed local operator" to take the waste to a municipal dump in Akouédo, a poor residential area of Abidjan.^{14,15} The waste was dumped there and in other places around the

city. In the wake of the event, more than 100,000 people reportedly fell ill and had to seek medical help.¹⁶ The Ivorian authorities reported between 15 and 17 deaths, which they attributed to exposure to the toxic waste.¹⁷ One doctor told Amnesty International it was “the biggest health catastrophe that Côte d’Ivoire has ever known”.¹⁸

Several court cases have taken place since then:

- Two senior Trafigura executives, Claude Dauphin and Jean-Pierre Valentini, were arrested in Côte d’Ivoire straight after the dumping and charged with multiple offences. However, in February 2007, and without consultation with victims’ associations, Côte d’Ivoire and Trafigura reached a settlement in which Trafigura agreed to pay the State approximately US \$195 million.¹⁹ In exchange for compensation, the government agreed that it “waives once and for all its right to prosecute, claim, or mount any action or proceedings in the present or in the future” against Trafigura parties; and the two executives were released.²⁰ As Greenpeace and Amnesty wrote: “A large portion of the settlement amount paid to the state of Côte d’Ivoire was supposed to be allocated as compensation to the victims and for clean-up. As of July 2012, clean-up was reported to be complete, but questions remain about the adequacy of the process in some of the affected areas. The status of the compensation fund is unclear, but thousands of people whose health was affected could not access the government compensation scheme.”²¹
- The UK law firm Leigh Day and Co., acting on behalf of around 30,000 victims, brought a UK civil suit claiming more than £100 million in 2006. However, it was not on behalf of all victims and it again failed to establish liability.²²
- In 2008, a Dutch criminal prosecution was opened, amongst others, against the captain of the Probo Koala, Trafigura Beheer BV, a London-based Trafigura executive, and the company’s Chairman Claude Dauphin.^{23,24} While the court dismissed the case against Trafigura’s Chairman, it was overturned by the Supreme Court after the Prosecution Service appealed.²⁵ On 23 July 2010, the Court of Appeal ruled that Trafigura would be fined €1 million for breaching rules on the transport of hazardous waste, contrary to the European Waste Shipment Regulation (259/93/EC), the EU Port Reception Facilities Directive (2000/59/EC) and the MARPOL Convention (73/78) of 1983.^{26,27 28} On 16

November 2012, a settlement was reached, with the company agreeing to pay the existing €1 million fine, plus a further €367,000.²⁹ Following the fine and settlement agreement, the criminal prosecution of the manager was withdrawn by the Dutch Public Prosecutor’s Office.³⁰

- In the Netherlands, there is still an outstanding civil court claim.³¹

More than ten years later many victims are still seeking justice. In 2016, a group of UN Special Rapporteurs stated that “many victims also report that they have still not received compensation. It is estimated that only 63% of registered victims received compensation under a February 2007 settlement agreement between Trafigura and the Ivorian Government. Victims’ associations appear not to have been consulted before the agreement was signed”.³²

The company maintains that it “did nothing wrong and its staff acted in an appropriate manner throughout”.³³ The company denies responsibility for allowing the waste to be dumped, and describes the dumping of waste by Compagnie Tommy as “in flagrant breach” of both the operator’s licence and Compagnie Tommy’s contractual undertaking to Trafigura.³⁴ However, evidence suggests that Trafigura knowingly used a sub-contractor in Côte d’Ivoire that was not equipped to handle hazardous waste, and that Trafigura was, or at least should have been, aware that the waste would be disposed of at a public domestic waste site.³⁵ Trafigura has consistently denied that the waste could have caused anything other than mild health effects.³⁶ In addition, Trafigura’s reputational management in the course of these events sparked widespread concern about the use of legal methods to restrict reporting in the public interest.³⁷

Both Trafigura and the Dutch state had legal obligations relating to the illegal waste dump. The export of hazardous waste from the EU to African, Caribbean and Pacific states is prohibited under EU law, yet the Dutch authorities allowed the Probo Koala to leave Amsterdam with the destination of the waste unknown, and Trafigura decided to discharge the waste at Abidjan, Côte d’Ivoire.

Endnotes

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