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LIDHO v Côte d'Ivoire: Reflections on aspects of the African Court's judgment and related matters

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Summary: *The judgment of the African Court on Human and Peoples' Rights in the case of* Ligue Ivoirienne des Droits de l'Homme (LIDHO) v Côte d'Ivoire *attracted significant attention. It is after all the first environmental law ruling by the African Court involving important reparations issues based on human rights violations under the African Charter on Human and Peoples' Rights and related regional instruments. The focus of this article is first on the reparations ruling of the Court in respect of the applicants' claims for moral damages and a formal apology by the respondent state for the harm they suffered as a result of the toxic waste dumping incident; second, the treaty obligations of the state parties under the Bamako and Algiers Conventions; and, third, the corporate responsibility issues. In respect of the moral damages claim, the conclusion is that the Court was not bound by the parties' agreement on a symbolic amount of 1 CFA franc as a reparation gesture and was entitled to consider a range of factors for determining what*

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would constitute an adequate remedy in the circumstances. In the case of the application for a formal apology, which the Court rejected on the ground that the adverse judgment is sufficient, the conclusion is that the Court failed to consider existing jurisprudence, thereby allowing it to rule in favour of multiple measures to remedy the harm suffered by the victims. Regarding the treaty obligations applicable in the matter, the contribution argues that the obligations in question are erga omnes partes obligations, and non-compliance with them undermines the preventive and enforcement obligations of state parties, thereby further weakening the broader protective regime against environmental harm. In view of the corporate responsibility issues raised in both the majority and dissenting judgments, the article argues that the issue requires wider consideration by African states in light of current developments at the continental level.

Key words: *human rights; toxic waste dumping; reparations; treaty obligations; moral damages; corporate responsibility*

1 Introduction

The first-ever environmental ruling by the African Court on Human and Peoples' Rights (African Court) in September 2023 in the *LIDHO* proceedings against Côte d'Ivoire[1] has attracted considerable attention in respect of the judgment's implications for reparations involving state and corporate responsibility for human rights violations and environmental harm.[2] Unless relevant for context, this discussion does not revisit the merits aspect of the judgment, but instead, first, critically reflects on the African Court's treatment of the moral damages and apology issues under the reparations claims, and, second, brings into the debate two ancillary issues, namely, the lack of, or weakness in, environmental compliance mechanisms in applicable African multilateral environmental agreements (MEAs), and the corporate responsibility issue.

1 *Ligue Ivoirienne des Droits de l'Homme (LIDHO) v Côte d'Ivoire & Others* Application 41/2016, African Court on Human and Peoples' Rights (5 September 2023) (*LIDHO*).

2 Eg, P Mpunga-Biayi 'The responsibility of states for environmental damage caused by multi-national corporations: The case of Trafigura's toxic waste' (2025) 37 *Journal of Environmental Law* 598; S Dersso & E Boshoff 'Extending human rights accountability for corporate actions in *the LIDHO v Côte d'Ivoire* case of the African Court' *EJIL:Talk!* Blog of the European Journal of International Law (web blog), 21 February 2024, https://www.ejiltalk.org/extending-human-rights-accountability-for-corporate-actors-in-the-lidho-v-cote-divoire-case-of-the-african-court/ (accessed 21 July 2026); LC Lima 'Ligue Ivoirienne des Droits de l'Homme (LIDHO) v Republic of Côte d'Ivoire and Others' (2024) 118 *American Journal of International Law* 710.

The importance of these matters derives from the nature and scope of environmental harm caused by unlawful toxic waste dumping that lies at the heart of the proceedings, and the failure of the respondent state, first, to act preventively, and, second, to adequately provide for post-harm remedies to ensure that the responsible entities and individuals are held accountable and that victims receive the reparations to which they were entitled. Given the facts of the case,[3] summarised below, it is difficult not to deem the respondent state's failures to act with due diligence as tantamount to criminal disregard for the seriousness of the dumping incident and the harm done to the rights and interests of the affected individuals.

More cause for concern is the fact that according to the African Court's 2024 activity report, key information on the implementation by the respondent state of the Court's ruling was still missing at the time, despite several reminders requesting the filing of additional information. The activity report also recorded Côte d'Ivoire's non-compliance in six other judgments.[4] Addressing the non-compliance issue, the African Union (AU) Executive Council (Council), which is responsible for monitoring compliance with the Court's judgments, and apprised of the Court's activity reports, responded with the usual ineffectual neutrality, which allows for habitual expressions of concern without mentioning non-compliant states by name. Thus, the Council merely 'NOTES with concern the low level of compliance with the decisions of the Court; and CALLS on those member states that have not done so, to fully comply with the Court's decisions'.[5]

3 *LIHDO* (n 1) paras 3-15.

4 African Court on Human and Peoples' Rights 'Activity Report of the African Court on Human and Peoples' Rights 1 January-31 December 2024' AU Doc Ex.CL/1574 (XLVI) (2025) Annex II 34. A further indication of Côte d'Ivoire's attitude towards the African Court is its withdrawal in 2020 of its declaration under art 34(6) of the African Court's Protocol, which affords the country's nationals and NGOs direct access to the Court. See Côte d'Ivoire 'Diplomacy: Ivory Coast withdraws declaration of jurisdiction from the African Court of Human and Peoples' Rights' 29 April 2020, https://www.gouv.ci/actualite/diplomatie-la-cote-divoire-retire-la-declaration-de-competence-a-la-cour-africaine-des-droits-de-lhomme-et-des-peuples-2474 (accessed 15 July 2026). For more on the withdrawal, see T Davi & E Amani 'Another one bites the dust: Côte d'Ivoire to end individual and NGO access to the African Court' *EJIL:Talk!* Blog of the European Journal of International Law (web blog), 19 May 2020, https://www.ejiltalk.org/another-one-bites-the-dust-cote-divoire-to-end-individual-and-ngo-access-to-the-african-court/ (accessed 21 July 2026). See also Centre for Human Rights, University of Pretoria 'Press statement: Centre for Human Rights expresses concern about the withdrawal of direct individual access to the African Court by Benin and Côte D'Ivoire' 5 May 2020, https://www.chr.up.ac.za/press-statements/2073-centre-for-human-rights-expresses-concern-about-the-withdrawal-of-direct-individual-access-to-the-african-court-by-benin-and-cote-d-ivoire (accessed 15 July 2026).

5 Executive Council of the AU 'Decision on the Activity Report of the African Court on Human and Peoples' Rights' AU Doc EX.CL/Dec.1285 (XLVI) (13 February 2025) para 8.

As is clear from the Court's 2025 activity report, a year later, Côte d'Ivoire (and other states) remained in default.[6] Addressing the non-compliance issue again at its February 2026 session, the Council escalated its 'concern' to 'deep' and 'serious' concern with the 'persistently low level of compliance' with the Court's decisions,[7] again without naming the non-compliant states.

The result is that the Council and the Assembly, on whose behalf the Council acts,[8] have little, if any, meaningful assistance they can provide to the Court to ensure compliance with its decisions. What remains is self-reliance by the Court on its own monitoring and compliance devices under Rule 81 of the Court's rules. With no enforcement powers of its own, the Court is in a weak position regarding non-compliant states.

2 The Trafigura dumping incident

On 19 August 2006, 528 m3 of highly toxic waste, transported by the cargo ship MV Probo Koala and chartered by Trafigura Ltd, a multinational company, was dumped at several sites in Abidjan, the economic capital of Côte d'Ivoire. Since none of the sites had chemical waste treatment facilities, air pollution and groundwater contamination ensued, and medical facilities were soon filled with people complaining of conditions linked to the dumping incident. According to official statistics, 17 individuals died as a result of toxic gas inhalation, while an additional 100 000 other residents suffered serious physical and mental harm.

A few days after the dumping incident, and in response to public complaints, the respondent state initiated an investigation into the matter, which led to the detention and prosecution of three Trafigura executives for the violations of health and environmental laws. In other non-criminal proceedings, senior government officials and directors of companies involved in the waste dumping were suspended from their duties while the government undertook to commence clean-up operations.

6 African Court on Human and Peoples' Rights 'Activity Report of the African Court on Human and Peoples' Rights 1 January-31 December 2025' AU Doc EX.CL/1660 (XLVIII) (2026) Annex II, 19.

7 Executive Council of the AU 'Decision on the Activity Report of the African Court on Human and Peoples' Rights' AU Doc EX.CL/Dec.1328 (XLVIII) (12 February 2026) paras 11, 12.

8 Protocol of the African Court of Justice of the African Union (2003) art 29(2).

In February 2007, the respondent state concluded a memorandum of understanding (MOU) with Trafigura, which undertook to pay the respondent state 95 billion CFA francs as reparation for the damage done to the respondent state and the victims and for clean-up operations. As a *quid pro quo,* the respondent state agreed to waive any present or future claims, actions or proceedings against Trafigura, to release the detained Trafigura executives, to withdraw the pending proceedings against them, and to provide them with the necessary authorisation to leave the country.

Between 2008 and 2014, several criminal and civil proceedings were entertained by the domestic courts, including the Supreme Court. In the criminal proceedings, a chief executive officer and an employee, respectively, of two separate entities involved in the illegal dumping, were found guilty of poisoning and abetment of poisoning and sentenced to 20 and five years' imprisonment, respectively. However, the respondent state's officials were acquitted. In the civil proceedings, victims and the families of deceased persons pursued reparations against responsible companies, including Trafigura, with some ending in partly successful claims, while others failed because the claimants could not establish a causal link between the waste dumping incident and the harm suffered.

In the course of the proceedings, it also became clear that although the respondent state had 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. A further element is the scope of the harm. Apart from the 17 individuals who lost their lives, an estimated 100 000 people were contaminated. Of special significance is the respondent state's duty to prevent harm against foreseeable threats and against the conduct of third parties. The respondent state was aware that the ship, Probo Koala, was transporting chemical waste, but still authorised Trafigura to unload the cargo on condition that it found a company to treat the waste. Although the authorisation in itself constituted a breach of the preventive duty, other breaches also occurred. First, the respondent state further failed to ensure that the company (Tommy), identified for the treatment operation, had the necessary skills and equipment to do so, and, second, to ensure that it was capable of respecting the conditions of the assignment, namely, to guarantee the lives and safety of the residents living around the dumping sites.

In the final analysis, it needs to be noted that certain facts led Tchikaya J to conclude in a dissenting opinion that the majority failed to arrive at a conclusion that attributed sufficient damage to Trafigura, and to question whether the respondent state's liability

was sufficiently established.[9] The facts in question, mentioned above, relate to the ongoing litigation against the responsible companies, including Trafigura and the applicants' claims against the respondent state which had already been met or were in the process of being met by the respondent state. Tchikaya J's second concern, namely, the majority's failure to determine the responsibility of Trafigura under the African Charter on Human and Peoples' Rights (African Charter), is dealt with later in this contribution.

3 The case before the African Court

In their proceedings on the merits before the African Court, the applicants, relying on relevant provisions in the African Charter and other global human rights instruments, the 2003 African Convention on the Conservation of Nature and Natural Resources and the 1991 Bamako Convention on the Ban of Import into Africa of Hazardous Waste (Bamako Convention), alleged violations of the right to an effective remedy and to seek redress; the respect for life and physical and moral integrity of the person; to enjoy the best attainable state of physical and mental health; to a general satisfactory environment; and to information.

With the facts clearly favouring the applicants, it is not surprising that the respondent state elected to make no counter-submissions on the merits of the applicants' claims.[10] Thus, with the facts stacked against the respondent state and with only the applicants' version before it, the African Court's finding in favour of the alleged violations was a foregone conclusion.

Given the above context, nature and scope of the harm caused by the waste dumping incident and the respondent state's lack of due diligence in preventing the harm, certain aspects of the judgment will be reconsidered below. This is done in light of comparative human rights jurisprudence, compliance with environmental treaty obligations, and recent developments as regards corporate responsibility for environmental harm.

In parts 4.1 and 4.2 we took issue with the Court's reparations ruling in respect of moral harm and the need for a public apology from the respondent state. In the case of the moral harm issue, we criticise the Court's acceptance, without explanation, of the parties' proposition of a symbolic 1 CFA franc as moral damages.

9 *LIDHO* (n 1) dissenting opinion, paras 8ff.
10 *LIDHO* (n 1) paras 127, 149, 167, 177 & 189.

The arguments advanced against this outcome are based on the discrepancy between the symbolic amount and the nature and scope of the harm caused to the victims, the discretion the Court has under article 27(1) of its Protocol to determine adequate reparations, the non-binding nature of the *ne ultra petita* principle, and the comparative jurisprudence of the Inter-American Court.

In dismissing the applicants' request for a public apology, the Court held the view that the judgment constituted a sufficient form of reparation. While the Court was entitled to consider this form of satisfaction when deciding the application for a formal apology, the question is whether the judgment, on its own, is an adequate remedy in the circumstances of the case. In our assessment, apart from stating that an adverse judgment may constitute a sufficient form of satisfaction, the Court has neither offered any justification for its ruling, nor has it considered comparative jurisprudence to the effect that circumstances may justify more than one measure to repair a specific damage.

Part 4.3 moves the debate to the collective systemic human rights breaches by parties to the Bamako Convention and the 1968 African Convention on the Conservation of Nature and Natural Resources (Algiers Convention) in failing to comply with their commitments under these instruments. In drawing attention to the consequences of such failures, the part examines the good faith obligation in treaty law, the *erga omnes partes* character of human rights and environmental obligations, and the function of compulsory treaty-based compliance mechanisms.

The subject of part 4 is related to the obiter remarks by the majority in *LIDHO* concerning corporate responsibility, and to the proposition in the dissenting opinion of Tschikaya J that the majority should have used the opportunity to consider Trafigura's responsibility under the African Charter. In essence, this brings the debate into the contemporary approach to hold corporate entities to account through a combination of primary state obligations and complementary corporate responsibilities. In view of the importance of these developments, part 4 also underscores the need, in anticipation of the implementation of the African Free Trade Agreement and its Investment Protocol, for a purposeful engagement with questions about access to justice and effective remedies.

4 The reparations issue: Moral prejudice and public apology

While the African Court's findings on pecuniary reparations for victims in the form of compensation and other forms of financial assistance are sound, the treatment of the moral prejudice and public apology claims requires further consideration.

4.1 Moral prejudice

For moral prejudice, the applicants claimed reparations in the form of a symbolic 1 CFA franc by the respondent state.[11] This request was granted by the Court[12] without much explanation. The Court merely states that the determination of the amount is made based on equity, taking into account the circumstances of the case.[13]

This criterion for determining the amount is in accordance with earlier precedent. In *Zongo*[14] the African Court, following the contextual equitability criterion, as pronounced by the Inter-American Court in *Goiburu*,[15] granted large uncontested lump sums suggested by the applicants as reparations for moral damages based on the nature and scope of the suffering of the victims concerned.[16] The moral damages in *Zongo* resulted from the physical and emotional suffering of the family members caused by the respondent state's failure to apprehend and prosecute those responsible for the assassination of Norbert Zongo, an investigative journalist, his brother and two collaborators.

Similarly, in *Goiburu* the Inter-American Court ordered the payment of large sums owing to the gravity of the facts of the instant case and the situation of impunity, the intensity of the suffering caused to the victims, the alterations in their living conditions, and the other consequences of a non-pecuniary nature.[17]

11 *LIDHO* (n 1) para 216.
12 *LIDHO* (n 1) paras 220 & 221.
13 *LIDHO* (n 1) para 219.
14 *Norbert Zongo & Others v Burkina Faso* (Judgment on Reparations), Application 13/2011, African Court on Human and Peoples' Rights (5 June 2015) (*Zongo*).
15 *Goiburu v Paraguay* (Judgment Merits, Reparations and Costs) IACHR (22 September 2006) Ser C/ 153 para 156 (*Goiburu*).
16 *Zongo* (n 14) paras 61 & 62.
17 *Goiburu* (n 15) para 160.

The practice of granting a lump sum as compensation in instances of moral prejudice in the jurisprudence of the African Court has been confirmed in *Isiaga v Tanzania*[18] and *Alex Thomas v Tanzania*.[19]

Given the established practice of the African Court to grant lump sum non-pecuniary compensation for moral prejudice when justified by the gravity of the facts, the nature and scope of the violations, the conduct of the respondent state and other aggravating circumstances, the failure to pursue this option in the *LIDHO* case deserves attention.

Considering the facts of the case, one can hardly miss the glaring discrepancy between the gravity and scope of the moral prejudice caused by the respondent state's violations and the symbolic 1 CFA franc as non-pecuniary compensation claimed by the applicants and granted by the Court. If the argument is that the Court was restrained by the *ne ultra petita* rule and on that basis accepted the applicants' symbolic 1 CFA franc settlement, the Court's reference to the equity-based determination and consideration of the circumstances of the case in deciding on moral damages was entirely superfluous. Moreover, neither the Court's Protocol nor its Rules of Procedure make specific reference to the *ne ultra petita* rule. In the case of reparations, Rule 40(4) requires the submission of supporting documents and evidence in respect of requests for reparations, and under article 27(1) of the Court's Protocol, the Court is authorised to make appropriate orders to remedy a violation of human rights, including the payment of fair compensation or reparation. Thus, the question is whether the Court was entitled to merely accept the applicants' claim for a symbolic 1 CFA franc for moral damages on the basis of the *ne ultra petita* rule in view of the Court's discretion to decide on an appropriate remedy under article 27(1), especially in view of the nature, scope and gravity of the harm suffered by the victims in *LIDHO*.

The conclusion adopted in response to this question is that the African Court may, in principle, be entitled to take into account the *ne ultra petita* rule, but the Court is not bound by it, especially in view of the discretion the Court has under article 27(1) of the Court's Protocol to decide on an appropriate remedy. Furthermore, in terms of the well-established *jura novit curia* rule, a party to litigation cannot, with binding effect on the court, determine which law should apply

18 *Kijiji Isiaga v Tanzania* (Judgment on Reparations) Application 32/2015, African Court on Human and Peoples' Rights (25 June 2021) para 25.

19 *Alex Thomas v Tanzania* Application 5/2013, African Court on Human and Peoples' Rights (4 July 2019) paras 37, 40 & 42.

or how that law should be interpreted or applied. However, there are further considerations relevant to this issue.

The duty to make *adequate* reparations is a customary international law duty confirmed in the *Chorzów Factory* case, which requires a direct correlation between the violation found and the harm done.[20] Relying on this rule in applying article 63(1) on adequate remedies in the Inter-American Convention on Human Rights, the Inter-American Court of Human Rights followed established jurisprudence to conclude that

> reparations must have a causal connection to the facts of the case, violations declared, proven damages, and to the measures requested for reparation of the corresponding damages. The Court must therefore observe these conditions in order to adjudge and declare adequately and according to law.[21]

In *Rochela v Colombia* the Inter-American Court, in addition to the reparations agreed upon by the parties, and invoking article 63(1) of the Inter-American Convention, established additional reparation measures, 'as it deems them necessary to adequately repair the consequences of the violations'.[22] That this approach is firmly established in the jurisprudence of the Inter-American Court is also clear from the ruling in *Massacre Plan de Sanchéz* which the Court applied to pecuniary as well as non-pecuniary reparations.[23] Thus, while the court considers what the parties agreed to and submitted to the court, it remains entitled to its own assessment of what constitutes adequate reparations in the circumstances. This restrictive approach to the *ne ultra petita* rule was confirmed in a report to the International Criminal Court (ICC) on reparations in the Inter-American human rights system.[24]

An obvious difference between *LIDHO* and some of the other cases referred to is that in the latter instances, the violations affected a

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20 *Chorzów Factory (Germany v Poland)* (Indemnity) PCIJ Reports, Series A 17(1928) 4 at 29. Endorsed in *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia v Serbia)* Judgment, ICJ Reports 2007 43 para 460.

21 '*Las Dos Erres' Massacre v Guatemala* IACtHR, Preliminary Objections, Merits, Reparations and Costs, Judgment of 24 November 2009, paras 223, 227. See also *Ticona Estrada & Others v Bolivia* IACtHR, Merits, Reparations and Costs, 16 November 2008, para 110.

22 *Rochela Massacre v Colombia* IACtHR (Merits, Judgment, Costs) Judgment of 11 May 2007, paras 286-303. The African Court referred to this case in its comparative study on reparations referred to below.

23 *Massacre Plan de Sanchez v Guatemala* (Reparations) IACHR (19 November 2004) Ser C/ 116 (19 November 2004) paras 50ff.

24 C Sandoval 'Consultant's report on reparations in the Inter-American human rights system' Annex to ICC-01/04-01/06-2806-Anx, International Criminal Court (19 March 2012) para 17.

single person and a few family members. Determining a lump sum compensation for each affected individual in such instances obviously is far less complicated than doing so for thousands of victims. The applicants' submission of a symbolic 1 CFA franc as compensation for moral prejudice may have provided the Court in *LIDHO* with an expedient solution to the onus of a lump sum compensation assessment for thousands of victims.

What warrants attention in this regard is the African Court's own 2019 'Comparative study on the law and practice of reparations for human rights violations'.[25] There the Court acknowledged that, internationally, judicial bodies have increasingly resorted to multiple forms of reparations where necessary to undo the harms of a particular violation and that, in the case of compensation as a form of reparation, monetary awards may constitute a remedy for physical or mental harm, moral damage, or to cover costs for medical assistance, among others.[26]

In addition to individual reparations, the Court in its study further endorsed the practice of collective compensation awards to remedy violations committed against specific groups, particularly in the context of large-scale violations, and depending on the needs of the victims. While the Court admitted that determining the quantum of monetary reparations is often difficult and an imperfect exercise in such instances, it confirmed that the practice of regional and international human rights courts is to award monetary compensation for material (pecuniary) as well as moral (non-pecuniary) damages. In the latter instance, the assessment is based on the gravity of the violations and the conduct of the respondent state, as the Court further acknowledged.[27]

Addressing the challenges in assessing the quantum of damages in the context of mass violations and the associated administrative burden, the Court drew inspiration from the practice of the Inter-American Court and the ICC. As the study points out, respectively, these judicial bodies made use of representative victim damages, per capita averages, and submissions by the parties to determine the quantum of those damages for all victims.[28] It then concluded

25 African Court on Human and Peoples' Rights 'Comparative study on the law and practice of reparations for human rights violations' September 2019, https://www.african-court.org/wpafc/wp-content/uploads/2020/11/Comparative-Study-on-the-Law-and-Practice-of-Reparations-for-Human-Rights-Violations.pdf (accessed 21 April 2026).
26 African Court (n 25) 11 & 12.
27 African Court (n 25) 12 & 13.
28 African Court (n 25) 13 & 14.

that both are 'strategies that the African Court could employ in appropriate cases to more quickly evaluate claims of damages in cases with large numbers of victims'.[29]

As far as the Inter-American Court is concerned, an illustrative example is the *Massacre Plan de Sanchez* case.[30] The victims in this matter were several hundred surviving members of a massacre perpetrated by state agents and their collaborators and for which the respondent state admitted responsibility under international law. The Court confirmed the practice of the payment of a sum of money in the discretion of the Court for non-pecuniary damage caused by the suffering and hardship experienced by the victims as a result of the gravity of the violations, the situation of impunity in the respondent state, the intensity of the suffering, and the alteration in the victims' living conditions.[31] In assessing the non-pecuniary damage caused to the victims, the Court relied on individual testimonies that were representative of the harm caused to the rest of the community, and ruled that an amount of US $20 000 should be paid by the respondent state to each of the 300-plus victims.[32]

In siding with the compensation order of the Court, Sergio García-Ramírez J, in a separate opinion, explained that in cases of intense suffering, when

> taking a decision on compensation for the deprivation of juridical rights that are not of a strictly patrimonial nature … the damage caused can and must be compensated or alleviated only by financial compensation. In the absence of a better solution, it has been accepted that a violation entails the obligation to provide compensation … In such cases, a payment in cash or in kind, or both, is decided; this contributes, on the one hand, to expressing reproach for the violation committed and, on the other hand, to mitigating the suffering caused.[33]

The active role played by the Inter-American Court in determining both the individual victims' entitlement to compensation for non-pecuniary harm, and the quantum, mirrors the Court's approach to the claims for pecuniary damage, resulting in a US $5 000 award for each of the victims identified by the Court as entitled to compensation.[34]

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29 African Court (n 25) 14.
30 *Massacre Plan de Sanchez* (n 23).
31 *Massacre Plan de Sanchez* (n 23) paras 80 & 83. On the aggravated responsibility of the state, see also the separate opinion of Conçado-Trindade J, para 24 and further in the merits judgment of the case.
32 *Massacre Plan de Sanchez* (n 23) paras 84 & 88.
33 *Massacre Plan de Sanchez* (n 23) separate opinion of Sergio Garcia-Ramirez J paras 24 & 25.
34 *Massacre Plan de Sanchez* (n 23) para 72ff.

In contrast, the African Court's role in *LIDHO* is limited to an order requesting the respondent state to establish a compensation fund,[35] to deposit the funds received under the MOU with Trafigura into the fund, and to supplement the fund, taking into account the updated number of victims and the prejudice suffered by each one of them.[36] The entire victim identification and determination of quantum issues, therefore, are left to the discretion of the respondent state.

4.2 Public apology

The applicants asked the African Court for an order compelling the respondent state to issue a public apology for the waste-dumping incident, particularly to the victims. Without proper explanation, the Court dismissed the application on the basis that the judgment *per se* constituted a sufficient form of reparation for moral damages as well as a sufficient form of satisfaction.[37] This calls for further explanation.

Satisfaction as a remedy for non-material damage is well-established in international law on reparations, and its application and modalities are regulated in terms of the International Law Commission (ILC)'s Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001).[38] Under article 37(2) of the Draft Articles, the modalities of satisfaction are non-exhaustive and may consist in an acknowledgment of the breach, an expression of regret, a formal apology or another appropriate modality, provided that it is not out of proportion to the injury and not in the form of humiliation to the responsible state.[39] It is also common cause that a judgment by a competent court confirming the responsibility of a state for wrongful conduct constitutes one of the most common modalities of satisfaction. Thus, while the African Court was entitled to consider this form of satisfaction in deciding the application for a formal apology, the question remains whether, on its own, it was an adequate remedy in the circumstances. Since the Court provided no explanation or justification for its decision, apart from stating that an adverse judgment may constitute a sufficient form of satisfaction, we are left with a disappointing ruling in respect of the apology issue.

35 *LIDHO* (n 1) para 212.
36 *LIDHO* (n 1) para 215.
37 *LIDHO* (n 1) paras 223 & 228.
38 International Law Commission (ILC) 'Draft Articles on the Responsibility of States for Internationally Wrongful Acts' with commentaries UN Doc A/56/10 (2001), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf (accessed 28 April 2026).
39 ILC (n 38) art 37(3).

Instructive in this regard is the landmark ruling by the Inter-American Court on Human Rights in *Gonzáles*.[40] The facts, which at the time attracted widespread international attention, concerned the disappearance, rape and killing of three young females whose mutilated bodies were discovered in a cotton field in Ciudad Juárez, which ranked fourth among Mexican cities in terms of the number of women murdered. The indifferent attitude of the authorities, the lack of preventive measures, the lack of due diligence, and multiple irregularities in the investigation into the disappearance and killing of the three females were aggravated by the fact that the authorities were well aware of a pattern of gender-related violence that had resulted in the disappearance and presumed killing of hundreds of women and girls in the area.

Having found the respondent state responsible for multiple violations under the Inter-American Convention and other treaty obligations, the Court dealt extensively with the reparations issue. On the general object and purpose of reparations, the Court observed that the effect of reparations is not limited to restitution only, but must also be aimed at rectification, proportionate to the seriousness of the violations, and at repairing pecuniary and non-pecuniary damage. In certain circumstances, it may also be necessary for more than one measure to repair a specific damage without that being considered 'double reparation'.[41] The latter observation was in direct response to Mexico's objection that the reparations applied for constituted double reparation, were excessive and repetitive.[42]

The Court also confirmed the international law position that a judgment declaring a violation of rights constitutes *per se* a form of reparation, but found it pertinent in the circumstances to determine payment of compensation for non-pecuniary damage for the victims' next of kin for the mental and moral harm they suffered and caused by the events surrounding the death of the victims, the investigation irregularities, the situation of impunity, and their harassment by the authorities.[43] This aspect of the *Gonzáles* case also speaks to the issue of moral damages in the *LIDHO* case concerning the symbolic 1 CFA franc settlement. In contrast, the Inter-American Court in *Gonzáles* ordered Mexico to pay moral damages in amounts varying between US $11 000 and US $40 000 for the 25 family members of the victims.[44]

40 *Gonzáles & Others v Mexico* (Preliminary Objections, Merits, Reparations and Costs) IACHR (16 November 2009) Ser C/ 205 (*Gonzáles*).
41 *Gonzáles* (n 40) paras 450 & 451.
42 *Gonzáles* (n 40) para 449.
43 *Gonzáles* (n 40) para 583.
44 *Gonzáles* (n 40) paras 580 & 586.

Moreover, in deciding what would constitute sufficient satisfaction of a non-material kind, the Inter-American Court, among others, granted orders for the publication of the judgment,[45] the erection of a monument to commemorate the victims, at which occasion the government shall publicly acknowledge its international responsibility for the violations (apology) declared in the judgment.[46]

Given the nature and scope of the violations in the *LIDHO* case, the respondent state's failure to adopt preventive measures, the impunity situation, and the number of victims exposed to direct and consequential harm, *Gonzáles*-type non-material satisfaction remedies should have been properly placed before and considered by the African Court. Had this been the case, the victims in *LIDHO* could have been more justly treated and the African jurisprudence on accountability in matters of this kind better advanced.

4.3 The respondent state's treaty obligations

In this part, the failure by state parties to comply with their treaty-based compliance and enforcement obligations under regional treaties relevant to the *LIDHO* proceedings is considered in view of their *erga omnes partes* implications.

To begin with, the fundamental obligation under article 26 of the Vienna Convention on the Law of Treaties (VCLT) needs to be recalled, determining that every treaty in force is binding upon the parties and must be performed by them in good faith. This entitles each party to expect every other party to pursue the realisation of the treaty objectives in good faith.

Second, human rights obligations are *erga omnes* obligations.[47] In its General Comment 31, the Human Rights Committee has explained that although the obligations under the International Covenant on Civil and Political Rights (ICCPR) are owed to individuals, 'every State Party has a legal interest in the performance by every other State Party of its obligations'.[48] The Committee further clarified that this derives from the *erga omnes* character of human rights obligations, and from the contractual dimension of the treaty, which renders any state party 'obligated to every other state party to comply with its undertakings

45 *Gonzáles* (n 40) para 468.
46 *Gonzáles* (n 40) paras 470 & 472.
47 *Barcelona Traction, Light and Power Co Ltd, Belgium v Spain* ICJ (5 February 1970) (1970) ICJ Reports 3 paras 33 & 34.
48 UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) para 2.

under the treaty'.[49] Of specific relevance concerning the parties' *erga omnes* interest in the discharge of each other's obligations is the inclusion by the Committee of the obligation to ensure compliance under the compliance mechanisms established under the treaty.[50] In the Inter-American system, this understanding of institutional compliance with *erga omnes partes* obligations is judicially confirmed under the notion of collective guarantees the parties owe to each other to safeguard the common interests embodied in the Inter-American instruments by utilising the mechanisms provided for.[51]

In view of the above, the focus in this part will be on the collective systemic human rights breaches by the parties to the Bamako and Algiers Conventions. Both these conventions were considered by the African Court in *LIDHO* in assessing the responsibility of the respondent state for the harm caused to the applicants.

In the context of respect for the right to life and integrity of the human person under article 4 of the African Charter and other human rights obligations,[52] the African Court also invoked article 4 of the 1991 Bamako Convention on Hazardous Waste,[53] to which the respondent state is a party. This provision obligates member states to adopt administrative, legal and other measures to prevent the import into Africa of hazardous waste.

The obligations raised here by the African Court in the context of the waste dumping situation and its consequences in the respondent state should direct our attention to the Bamako Convention's compliance and enforcement measures. To keep the effective implementation of the Convention under constant review and evaluation, the Convention provides for a Conference of the Parties (COP) in article15.[54] Under article 15, the first COP meeting was due in 1999 but was only convened in 2013. At COP 1, a decision was taken to convene COP 2 in March 2015,[55] but it only occurred in 2018. COP 3 took place in 2020 as planned, and deserves some

49 As above.
50 As above.
51 *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations*, Advisory Opinion OC-26/20 IACHR (9 November 2020) Ser A/26 paras 68, 69, 71, 164-167.
52 *LIDHO* (n 1) paras 129-135.
53 *LIDHO* (n 1) para 136.
54 Art 15(4) determines as follows: 'The Conference of the Parties shall keep under continued review and evaluation the effective implementation of this Convention.'
55 InforMEA 'First Conference of Parties to the Bamako Convention' C1-DEC.2, https://www.informea.org/en/decision/attendance-signatories#fulltext (accessed 6 May 2026).

attention for two reasons. First, the meeting drew attention, at least in the Preamble, to the low levels of implementation of the Convention more than 20 years after its entry into force in 1998, and, second, it requested the Secretariat to prepare a regional instrument to guide parties in the incorporation into national law and implementation of the Convention.[56] Since the Secretariat, under article 16 of the Convention, has a reporting duty to the COP on the execution of its functions, COP 4 could have provided insight into the progress made with the regional guide, but an official date for the meeting is yet to be announced. Thus, over a period of 18 years since the entry into force of the Bamako Convention, the state parties convened only three COP meetings.

According to the above state of affairs, at the time when the first COP meeting under the Bamako Convention was held, the Trafigura waste dumping incident was seven years old and domestic proceedings were still underway. COP 2 took place two years after the *LIDHO* application was lodged in the African Court, and the closing of pleadings in March 2020 occurred only a month after COP 3 was held. Thus, during all three COP meetings, the scope and impact of the illegal waste dumping situation were known to the COP, but the records of decisions taken at these meetings show no engagement with the COP's legal obligations under article 15 of the Convention, nor with the lack at the domestic level of domestic-level measures capable of giving effect to the provisions of the Convention.

Another example is the revised 2003 African Convention on the Conservation of Nature and Natural Resources (Algiers Convention) to which the respondent state is also a party. In *LIDHO*, the African Court considered this Convention in the context of the respondent state's objection that the Algiers Convention is not a human rights instrument, in that its obligations apply only to states, and are therefore inapplicable for purposes of the Court's material jurisdiction.[57] The Court dismissed the objection on the basis that the Algiers Convention contains various provisions reflecting a clear commitment by state parties to act in a manner to prevent harmful effects to individuals and groups,[58] which includes harmful effects on the environment, especially those resulting from toxic and hazardous waste.[59]

56 UNEP 'Strengthening implementation and resource mobilisation for the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa' UN Doc UNEP/BC/COP.3/11 (CB.3/3) (20 February 2020).
57 *LIDHO* (n 1) paras 28 & 29.
58 *LIDHO* (n 1) para 35ff.
59 *LIDHO* (n 1) para 37.

With the Algiers Convention's clear state party commitments in mind, the question about its compliance enforcement measures is likewise an element of concern. Article 23 requires state parties to establish a compliance mechanism and procedures through a COP, which shall monitor and promote the effective implementation of the Convention in accordance with article 26. The COP shall convene its first meeting one year after the Convention enters into force. Since the Convention entered into force in 2016, the first COP was due to meet in 2017. This failed to materialise, and so did three subsequent attempts to have a COP organised in 2019 and 2022, causing the first African Biodiversity Summit in November 2025 to re-introduce the issue by way of a concept note on a pre-COP 1 expert segment meeting aimed at preparing a draft agenda, working documents, and draft decisions and recommendations for a first COP.[60] Thus, for nearly a decade after it entered into force, the Convention was without an operationalising mechanism, in clear violation of its provisions.

Why is it important to raise the compliance enforcement failures in respect of the Bamako and Algiers Conventions here? The reason is that state parties assume preventive duties under these instruments, as the African Court in *LIDHO* has pointed out, and these duties are intended to become enforceable under domestic law. As such, they function as due diligence standards for member states' conduct, which domestic law is supposed to incorporate for purposes of legal certainty and domestic enforcement. Consequently, in the case of both these treaties, to be effective, a compliance mechanism would be required to review the domestic laws of member states for compliance with treaty obligations and, where necessary, to assist member states in their compliance efforts. Review and evaluation in this sense are continuous and a primary function of a compliance body. None of this is reflected in any of the official documents of the three COP meetings under the Bamako Convention.

Since it is standard practice in most, if not all, countries that multilateral environmental agreements (MEAs) are, as a matter of course, implemented and enforced through national laws and regulations, the importance of having such primary frameworks in place, and rendered accessible for purposes of their review and evaluation through treaty-based compliance mechanisms, is self-

60 AU 'Concept note: The First Conference of the Parties to the 2003 Maputo African Convention on the Conservation of Nature and Natural Resource' (3-4 November 2025), https://au.int/sites/default/files/newsevents/conceptnotes/45174-CN-Concept_Note_Pre-CoP1_Meeting_Maputo_Convention.pdf (accessed 6 May 2026).

evident. To assist states with their compliance duties, the Basel process has determined that it is a benchmark requirement that national legislation should meet or exceed the requirements of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) as well as comply with a detailed checklist of items.[61] The public availability of applicable national laws is also ensured through a decision taken at COP 10[62] requesting the Secretariat 'to continue to maintain a collection of national legislation and other measures adopted by parties to implement the Convention, including measures for preventing and punishing illegal traffic, and to make such measures available on the Convention website'.[63]

It was further decided that the classification of parties' compliance performance reflecting their annual reporting obligations should become a regular activity of the Committee (assisting the COP with the implementation of the compliance measures)[64] and be undertaken on an annual basis, with individual parties named in the Committee's report.[65]

It is worth considering whether the waste dumping incident in *LIDHO* could have been prevented, or its effects mitigated, if similar compliance measures under the Bamako Convention had been in place and functioning at the time. It is this question that raises the issue of the *erga omnes partes* obligations under both the Bamako and Algiers Conventions. Both these instruments pursue common interest objectives implying 'that the obligations in question are owed by any State party to all the other States parties to the relevant convention; they are obligations *erga omnes partes*, in the sense that each State party has an interest in compliance with them in any given case'.[66]

In the case of the Bamako Convention the common interest, and the collective responsibility of all state parties, is the prevention of

61 UNEP 'Selected documents relevant to the work of the Implementation and Compliance Committee' UN Doc UNEP/CHW.10/INF/11 (5 July 2011) 9.
62 UNEP 'Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal on its tenth meeting' UN Doc UNEP/CHW.10/28 (1 November 2011).
63 UNEP 'National legislation, enforcement of the Convention and efforts to combat illegal traffic' UN Doc UNEP/CHW.10/28 BC-10/13 (1 November 2011) para 13.
64 Established under art 15(5)(e) of the Basel Convention.
65 UNEP 'Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention' UN Doc UNEP/CHW.10/28 BC-10/11 (1 November 2011) sec III A para 23.
66 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, The Gambia v Myanmar* (Preliminary Objections) ICJ (22 July 2022) (2022) ICJ Reports 2022 (II) para 107.

import into Africa of all hazardous wastes. In the case of the Algiers Convention, it is the conservation of Africa's nature and natural resources, which are considered an irreplaceable part of the African heritage. In pursuit of the realisation of these common interests, state parties have committed themselves, individually and severally, to adopt the necessary legislative and other measures domestically. However, under the COP compliance mechanisms, referred to earlier, they have also committed themselves to collectively taking responsibility for keeping under constant review and evaluation the effective implementation of these instruments. They have therefore assumed *erga omnes partes* obligations with regard to both their domestic commitments and their compliance commitments.

In 2002, the United Nations Environment Programme (UNEP) Governing Council adopted a set of guidelines on compliance with MEAs with the objective of assisting governments, international and regional organisations with the strengthening of compliance mechanisms under such agreements and improving their domestic implementation.[67] The guidelines define 'compliance' as 'the fulfilment by the contracting parties of their obligations under a multilateral environmental agreement'; and 'implementation' as referring to 'all relevant laws, regulations, policies, and other measures and initiatives, that contracting parties adopt and/or take to meet their obligations under a multilateral environmental agreement'.[68]

For determining whether there is 'fulfilment by the parties of their obligations' and that domestic measures were adopted that 'meet the parties' obligations', credible depositories of information, decisions, actions and other relevant measures must be available and accessible. Compiling and making available such information is part of a COP's function. In the absence of such information, as is the case with the instruments under discussion, the level of compliance and implementation remains hypothetical, and the state of readiness of a state party to prevent, mitigate or respond to a disaster impossible to determine.

That there should be cause for concern is further illustrated when compared with developments in Latin America, a region that faces economic, social and environmental imbalances similar to those of Africa. In 2018, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin

67 UNEP 'Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements' (UNEP/GCSS.VII/4) 22 February 2002.
68 UNEP Guidelines (n 67) para 9.

America and the Caribbean (Escazú Agreement) was adopted.[69] The Agreement entered into force in 2021, and since then four COP meetings were held, as well as ten meetings by the Committee established under article 18 of the Agreement to assist the COP with the implementation of, and compliance with, the Agreement. Apart from the usual COP compliance mechanism (article 15), the Agreement itself contains explicit substantive provisions on strengthening implementation and compliance at the national level in respect of access to and enforcement of the rights enumerated in the Agreement.[70]

Of special significance is the role of the article 18 Committee. In 2024, the Committee adopted its working modalities in support of the Agreement's implementation and compliance.[71] First to note is that the Committee meets three times per year and its meetings are open to the public, except when closed meetings are required in terms of the rules.[72] As a subsidiary body of the COP, it performs a compliance review function and formulates recommendations on implementation and compliance. Apart from advising the COP on matters of implementation and compliance, the Committee supports the parties in fulfilling their obligations through general comments on aspects of the Agreement and by engaging in periodic consultations and dialogues with each of the parties, who shall participate in consultations and dialogues at least once every four years.[73] As part of its working modalities, the Committee is also empowered to monitor the implementation of its recommendations by the state party involved and to report on it to the COP.

An additional and rather unique mechanism is the introduction of a communications procedure, which may be filed by a party with respect to itself, to another party or to a member of the public. The objective of the communication is to request support for compliance or allege non-compliance with one or more provisions of the Agreement.[74] The procedure is modelled on the individual petition procedures in international human rights treaties and must comply

69 https://www.cepal.org/en/escazuagreement/text-regional-agreement (accessed 17 September 2026).
70 Escazú Agreement (n 69) arts 4(3), 6, 8, 10, 11 & 13.
71 Third Committee to Support Implementation and Compliance of the Escazú Agreement 'Working modalities of the Committee to Support Implementation and Compliance of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)' 22 April 2024, https://www.cepal.org/sites/default/files/events/files/2400521e_cop-ez.3_working_modalities_committee.pdf (accessed 11 May 2026).
72 Working modalities (n 71) sec III.
73 Working modalities (n 71) secs IV & V.
74 Working modalities (n 71) sec VI.

with the usual admissibility criteria. Included in the communications procedure is a rapid response mechanism that allows for the priority processing of cases in which applicants are exposed to risk.

5 Corporate responsibility

In *LIDHO*, corporate responsibility only received cursory mention by the African Court.[75] This could be as a result of the multiple failures attributed to the conduct of the respondent state and its lack of preventive action under the due diligence principle. In contrast, Tchikaya J, in a dissenting opinion, argued that the liability of the respondent state was insufficiently established under the attributability rule and that the majority should have done more to attribute damage to Trafigura by horizontally extending the obligations under the African Charter to Trafigura.[76] Since the latter proposition relates to a growing debate involving the direct accountability of corporate entities under international and regional human rights instruments, it deserves further consideration.

For context, it must be noted that in *LIDHO*, the majority followed the conventional approach by holding corporate entities indirectly accountable through state measures. In the judgment's orders section in respect of non-pecuniary reparations, the Court ordered the respondent state to amend its laws, within one year of the judgment, to ensure the responsibility of corporate entities in respect of acts relating to the environment and the handling of toxic waste.[77] Existing jurisprudence confirms this duty. In *SERAC*, the African Commission on Human and Peoples' Rights (African Commission) has concluded as follows:[78]

> Governments 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 … This duty calls for positive action on the part of governments in fulfilling their obligation under human rights instruments.

A decade later, in *SERAP*[79] the Economic Community of West African States (ECOWAS) Community Court of Justice added further

75 *LIDHO* (n 1) para 135.
76 African Court on Human and Peoples' Rights 'Dissenting Opinion of Judge Blaise Tchikaya' 5 September 2023, https://www.african-court.org/cpmt/storage/app/uploads/public/650/d64/473/650d644739d6f587166974.pdf (accessed 21 May 2026).
77 *LIDHO* (n 1) para xviii.
78 *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 57 (*SERAC*).
79 *Socio-Economic Rights and Accountability Project (SERAP) v Nigeria* Case ECW/CCJ/JUD/18/12 (14 December 2012) (*SERAP*).

substance to this duty. The underlying facts were the same as in *SERAC,* with the slight difference that Nigeria provided evidence of legislative and institutional changes it took since the African Commission's findings in *SERAC* to address the environmental harm caused by the multinational oil exploration companies in the Niger Delta. However, the fact of the matter was that the changes failed to arrest the decades of oil pollution caused by multinational companies, made worse by the fact that Nigeria remained in default as regards its duty to hold the relevant companies to account. According to the ECOWAS Court, even where a state has taken measures, it

> may still fall short of compliance with international obligations in matters of environmental protection if these measures just remain on paper and are not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or ensuring accountability.[80]

The core of the problem in the instant case, the Court explained further, was that there had been a failure on the part of the Federal Republic of Nigeria, despite all the changes it had introduced

> to point out in its pleadings a single action that has been taken in recent years to seriously and diligently hold accountable any of the perpetrators of the many acts of environmental degradation which occurred in the Niger Delta Region … And it is precisely this omission to act, to prevent damage to the environment and to make accountable the offenders … that characterises the violation by the Federal Republic of Nigeria of its international obligations under Articles 1 and 24 of the African Charter on Human and Peoples' Rights.[81]

This approach to state accountability for failing to protect citizens against the harmful conduct of corporate entities also informed the African Commission's state reporting guidelines and principles in respect of article 21 (peoples' rights to freely dispose of their wealth and natural resources) and article 24 (right to a general satisfactory environment) relating to extractive industries, human rights and the environment.[82] According to the Commission:[83]

> Under the African Charter, States Parties to the Charter bear both general obligations and specific duties with respect to the rights set out in the African Charter. As stipulated in Article 1 of the Charter, the general obligation requires States Parties to 'recognise' the rights, duties and freedoms enshrined in the Charter, and 'to adopt legislative

80 *SERAP* (n 79) para 105.
81 *SERAP* (n 79) paras 110 & 111.
82 African Commission on Human and Peoples' Rights 'State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment' 30 October 2021, https://achpr.au.int/en/node/845 (accessed 20 September 2026).
83 African Commission (n 82) sec III para 37.

> or other measures to give effect to them'. These obligations apply to Articles 21 and 24 of the African Charter as well. States are accordingly duty bound to give legal application to these rights. To this end, State Parties should incorporate the rights in these articles into their national law.

Specific duties entail that member states establish effective and adequately resourced mechanisms and institutions to supervise and enforce environmental, labour and human rights protection standards and provide for judicial and other mechanisms for seeking remedies in cases of violation.[84] This includes institutional measures for monitoring and enforcing observance by third parties and business entities of fiscal, environmental and human rights standards and to provide for administrative, civil and criminal liabilities for non-observance of such standards.[85]

The Commission's level of concern about member states' compliance with their Charter obligations is reflected in the Guidelines' comprehensive and detailed treatment of state compliance under articles 21 and 24 of the African Charter. Even so, the Guidelines impose unambiguously a legal duty on corporate entities to respect the obligations they owe to rights holders.[86] The reciprocal nature of human rights obligations should, in principle, suffice as an explanation for such a duty. However, the Commission invoked article 27(2) of the African Charter as a legal basis, which determines that the exercise by an individual of their rights and freedoms shall take due regard of the rights and freedoms of others. This the Commission applies to corporate entities in view of the extent of the power they exercise compared to individuals. On this basis, corporate entities have a duty to ensure that their actions and operations do not cause harm to others and are fully compliant with international human rights guarantees and environmental standards. In the case of violations, reparations will be due in the form of compensation for all material and non-material damages and for cleaning and rehabilitation of the environment.[87]

The African Commission's approach to hold corporate entities to account through a combination of primary state obligations and complementary corporate responsibilities under African treaty-based human rights and environmental standards is aligned with international developments. The United Nations Guidelines

84 African Commission (n 82) para 38.
85 African Commission (n 82) para 47.
86 African Commission (n 82) paras 56 & 57.
87 African Commission (n 82) para 59.

on Business and Human Rights[88] are illustrative in this regard. However, they also explain that while the combination of primary and complementary obligations are conceived as a 'coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights', they should not be read 'as creating new international law obligations, or as limiting or undermining any legal obligations a state may have undertaken or be subject to under international law with regard to human rights'.[89]

In contrast to the African Commission's comprehensive and compelling work on the articles 21 and 24 obligations and corporate responsibility issue, the 2008 ECOWAS Supplementary Act on Investments[90] has little to offer in respect of corporate responsibility from a human rights perspective. It stipulates that investors and investments are subject to the laws of the host state,[91] and that investors shall uphold human rights in the workplace and in the community in which they are located. To this is added the obligation not to manage or operate investments in a manner that *circumvents* human rights obligations, labour standards or regional environmental obligations to which the host and/or home state is a party.[92] Perhaps *violates* would have been a better operative word here.

In case of damage, injuries or loss of life caused by investor decisions or actions, investor liability will be determined by civil actions for liability in the law of the host state.[93] When a host state, private person or organisation wants to institute action for damages resulting from the breach by an investor of the obligations under the Act, the action will likewise proceed in accordance with the domestic law of the home or host state, whichever is applicable.[94] The status and future of the ECOWAS Supplementary Act is uncertain. Although Côte d'Ivoire is a signatory to the Act, it could not be established whether the Act was given effect to in the domestic law of Côte d'Ivoire as required by article 42. Furthermore, ECOWAS has

88 United Nations Office of the High Commissioner for Human Rights (UNOHCHR) 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (HR/PUB/11/04) 2011, https://digitallibrary.un.org/record/720245?ln=en&v=pdf (accessed 20 September 2026).
89 UN Guiding Principles (n 88) 1.
90 ECOWAS 'Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their Implementation with ECOWAS' 2008, https://edit.wti.org/document/show/9030e714-3be3-48f2-93a1-69b5ec76d8bb (accessed 20 September 2026).
91 ECOWAS Supplementary Act (n 90) art 11(1).
92 ECOWAS Supplementary Act (n 90) art 14(2).
93 ECOWAS Supplementary Act (n 90) art 17.
94 ECOWAS Supplementary Act (n 90) art 18(6). See also art 29.

already set in motion a process for the implementation of the Africa Continental Free Trade Agreement[95] which, in time, may cause existing investment frameworks to be replaced with the norms and standards of the Agreement.

At this point it is necessary to return to the dissenting view of Tchikaya J in *LIDHO* concerning his proposition regarding the direct applicability of the African Charter to the question of Trafigura's responsibility. Taking into account the obiter remarks by the majority in *LIDHO* on the corporate responsibility issue, the dissenting opinion in *LIDHO*, the regional and international developments on holding corporate entities responsible for human rights and environmental law violations, and the scholarly support for such a liability regime, there seems to be merit in the argument for courts to develop the law on responsibility in the direction suggested by Tchikaya J. However, as a litigation strategy, it is not without pitfalls and must be pursued with the clear objective to establish accountability, which cannot be achieved otherwise, but even if responsibility has been determined, pursuing a reparation order against a multinational or foreign company is usually highly litigated and notoriously difficult to enforce. Hence, it could be even more challenging and costly than pursuing compliance by a respondent state with the African Court's orders under the current enforcement difficulties.

It is clear from these and a number of other developments that the corporate responsibility issue may, in the future, need to be thoroughly considered by African states. In 2025, the African Court was apprised of a request from the Pan-African Lawyers' Union for an Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis, which remains pending.[96] Among the questions the Court is asked to address is the question about the responsibility of African states in relation to third parties, such as multinational corporations, to ensure that international and regional treaties and laws on climate change are respected, protected, promoted and implemented.[97] The importance of this development is underscored by the recent advisory opinions of the International

95 ECOWAS 'ECOWAS deepens coordination for effective implementation of the AfCFTA IN West Africa' 3 December 2025, https://www.ecowas.int/ecowas-deepens-coordination-for-effective-implementation-of-the-afcfta-in-west-africa/ (accessed 20 September 2026).

96 *Request for Advisory Opinion No 001/2025: In the Matter of a Request by the Pan African Lawyers Union (PALU) for an Advisory Opinion on the Obligations of States with Respect to the Climate Change Crisis* African Court on Human and Peoples' Rights (2 May 2025), https://www.african-court.org/cpmt/storage/app/uploads/public/68a/6ca/fb0/68a6cafb0e6f6880543145.pdf (accessed 21 May 2025).

97 *Request for Advisory Opinion No 001/2025* (n 96) para 94(f).

Court of Justice[98] and the Inter-American Court of Human Rights[99] on the same subject matter, which the African Court will most likely consider.

Furthermore, the AU Investment Protocol, adopted in 2023 under the 2018 African Free Trade Agreement (in force since 2019), imposes obligations on state parties in article 31 to, among others, *promote and enforce* laws and policies to protect investment-related human rights and their environment, and to ensure that investors and their investments comply with their domestic laws and international law. By virtue of article 34, investors and their investments shall, in carrying out their business activities, respect and protect the environment, the right to a clean, healthy and sustainable environment in accordance with article 24 of the African Charter, and comply with the principles of prevention and precaution, among others. With reference to the comparative position under the Inter-American system, the obligations of member states in this regard should also entail the adoption of 'the necessary administrative, regulatory and legislative measures to ensure that business enterprises establish and implement effective due diligence processes with regard to environmental and human rights matters'.[100]

Since the Investment Protocol is not a self-executing treaty, the implementation of the Protocol will require domestic enactments to that effect by the member states once the Protocol enters into force. As the Inter-American Court's advisory opinion, referred to above, pointed out, domestic laws giving effect to treaty obligations must be objectively capable of ensuring the object and purpose of the treaty.[101] The same criterion, one would expect, should apply to the Investment Committee when performing its mandate under article 41 of the Investment Protocol to 'facilitate the implementation of th(e) Protocol and further its objectives'.

Perhaps the time has come to reflect more seriously on the state of domestic corporate liability regimes and their enforcement in Africa. For current purposes, it would suffice to refer to some recent developments under European Union (EU) law which may provide comparative insights. In 2024, the EU adopted a Directive on the

98 *Obligations of States in Respect of Climate Change* ICJ Advisory Opinion 187 (23 July 2025).
99 *Advisory Opinion AO-32/25 on Climate Emergency and Human Rights* IACHR (29 May 2025) Ser A 32.
100 *Advisory Opinion AO-32/25* (n 99) para 348. See also paras 294 & 345-347.
101 *Advisory Opinion AO-32/25* (n 99) paras 244-246.

Protection of the Environment Through Criminal Law,[102] pursuant to the EU's undertaking in the 1992 Treaty on the European Union (TEU) as well as the 2007 Treaty on the Functioning of the European Union (TFEU) to ensure a high level of protection and improvement of the environment in all its aspects in EU member states.[103] The Directive covers the liability of legal entities[104] and, despite the focus on criminal liability in the title, it also provides for the civil liability of offenders.[105] The assessment of member state compliance with the prescriptions of the Directive is the responsibility of the EU Commission, which shall report its findings to the EU Parliament and Council.[106] This enforcement measure must be read with the role assigned to the Commission under the TFEU in case of non-compliance by a member state with an obligation under any of the above treaties of the EU. In such cases, and following an investigation, the Commission will deliver a reasoned opinion on the non-compliance incident to which the state must respond within a prescribed time frame. Failure to comply with this instruction will entitle the Commission to refer the matter to the European Court of Justice which, in the case of non-compliance with the instructions of the Court, may impose a lump sum or penalty payment on the non-compliant state.[107] A similar procedure applies in the case of non-compliance by a member state with an EU directive.[108]

These enforcement mechanisms underscore the potential importance of the African Court of Justice,[109] whose operationalisation has failed to materialise for nearly two decades. Recently, at its thirty-eighth ordinary session in 2025, the AU Assembly recognised the 'paramount importance' of the Court's operationalisation and decided that the AU Commission and the Permanent Representatives Committee (PRC) must provide the required legal, structural and financial means to bring this about.[110] In 2026, the Assembly

102 European Union 'Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC' *Official Journal of the European Union* L Series 2024/1203 (30 April 2024).

103 Consolidated version of the Treaty on the European Union' *Official Journal of the European Union* C 326 (26 October 2012) 13-390 art 3(3); Consolidated version of the Treaty on the Functioning of the European Union, *Official Journal of the European Union* C 326 (26 October 2012) 47-390 art 191.

104 EU Directive (n 102) arts 6 & 33.

105 EU Directive (n 102) art 43.

106 EU Directive (n 102) art 25.

107 TFEU (n 103) arts 258, 260(1) & (2).

108 TFEU (n 103) para 260(3).

109 Constitutive Act of the African Union (2000) arts 5(1)(d) & 18; Protocol of the African Court of Justice of the African Union (2003); Protocol on the Statute of the African Court of Justice and Human Rights (2008).

110 Assembly of the AU 'Decision on the Report on the Institutional Reform of the African Union by HE William Ruto, President of the Republic of Kenya' AU Doc Assembly/AU/Dec.920(XXXVIII) (16 February 2025) 4.

requested the urgent implementation of this decision.[111] The fact that the African Free Trade Agreement has entered into force adds to the urgency of the Court's operationalisation as a judicial body with specialised jurisdiction over general continental legal and institutional matters, and is foundational for securing the full realisation of the African Free Trade Agreement, as the AU Executive Council has emphasised during its February 2026 meeting.[112]

The report on the Assembly's operationalisation decision is due to serve at the June 2026 meeting of the Executive Council. Assuming the report will be ready for inclusion in the Council's agenda for deliberation, it remains to be seen whether it will adequately inform the strategy and arrangements for the Court's operationalisation. In any event, this operationalisation initiative prompts the following questions: First, what does it mean for the hitherto failed attempt to merge the African Court of Justice with the African Court on Human Rights;[113] and, second, for the expansion of the merged Court's jurisdiction allowing it to function as a regional criminal court with jurisdiction in respect of trafficking in hazardous waste and the illicit exploitation of natural resources, among others?[114] Lacking the force of law, there is no need to entertain the Malabo amendments any further for purposes of this contribution.

6 Conclusion

At the second Tripartite Judicial Dialogue in 2024 between the African Court on Human and Peoples' Rights, the ECOWAS Community Court and the East African Court of Justice agreement was reached on the following: that since the protection of human rights and environmental rights is interlinked, it necessitates a harmonious reading of the different elements in article 24 of the African Charter; that there is a need for ensuring effective access to justice in environmental affairs; that the courts need to reflect on the most appropriate reparations for environmental protection in light of the

111 Assembly of the AU 'Decision on the Progress Report on the Institutional Reform of the African Union by HE William S Ruto, PhD, President of the Republic of Kenya' AU Doc Assembly/AU/Dec.967(XXXIX) (16 February 2025) para 44.

112 Executive Council of the AU 'Decision on the Reports of the Sub-Committees of the Permanent Representatives' Committee (PRC)' AU Doc EX.CL/Dec.1323 (XLVIII) (13 February 2026) paras 122 & 123.

113 Protocol on the Statute of the African Court of Justice and Human Rights (2008). The Protocol has attracted only 8 ratifications since its adoption; 15 are needed for it to enter into force.

114 Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014), Annex art 28A (known as the Malabo Protocol); it has attracted only one ratification since its adoption; 15 are needed for it to enter into force.

triple planetary crisis of climate change, pollution and biodiversity loss; and that emerging trends in environmental litigation must be taken note of.[115]

The above awareness of the importance of environmental justice in the contemporary world speaks directly to the subject matter of *LIDHO* and is further emphasised in a recent report by the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management of Hazardous Waste.[116] Of specific relevance are the report's guidelines on access to justice and effective remedies in respect of harm caused by toxic substances. Suffice to draw attention to only a few observations and comments in the report. The Special Rapporteur points out that a lack of accountability aggravates the increasing toxification of our planet and the resulting infringements of human rights, and that 'impunity is the norm, rather than the exception, for polluters and for governments that enable toxic pollution'.[117]

In explaining what standards regarding access to justice and effective remedies should apply, the Special Rapporteur maintained that what is required in cases involving harm from hazardous substances are judicial and other mechanisms 'capable of enforcing rights, providing remedies for damage suffered and preventing future violations'.[118] Thus, while the right of access to justice 'relates to the recourse available to challenge violations of rights and seek legal protection before courts … or other competent bodies', the right to an effective remedy 'relates to the meaningful and enforceable outcomes' of the recourse.[119] Both rights, according to the Special Rapporteur, 'are mutually reinforcing and essential to upholding human rights and preventing impunity'.[120] However, even where victims secure favourable judgments under these rights, the weak or non-enforcement of judicial decisions, for example, of the kind we have seen in *LIDHO*, undermines the integrity of redress mechanisms and may leave a victim of harm without an effective remedy.[121]

115 African Court on Human and Peoples' Rights, ECOWAS Court of Justice & East African Court of Justice 'Joint Communiqué on the Second Tripartite Judicial Dialogue' 20 September 2024 sec II, https://www.african-court.org/afchpr/wp-content/uploads/2025/04/EN_-2nd-Tri-Partite-Judicial-Dialogue-Communique_FINAL-1.pdf (accessed 15 July 2026).

116 Human Rights Council 'Guidelines on access to justice and effective remedies in the context of toxics: Report of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes, Marcos Orellana' UN Doc A/HRC/60/34 (10 July 2025).

117 Human Rights Council (n 116) para 1.

118 Human Rights Council (n 116) para 4.

119 Human Rights Council (n 116) para 5.

120 As above.

121 Human Rights Council (n 116) para 72.

In considering effective remedies, the Special Rapporteur also drew attention to states' *erga omnes* obligations under international human rights treaties, which are not only for the benefit of the contracting parties but for all individuals under their jurisdiction. Thus, while the remedies protect victims, they also 'serve to deter violations and uphold the legal order that the treaties create'.[122] This understanding warrants the further conclusion that state parties to environmental treaties (and potentially others) have an equally compelling obligation to operationalise and maintain capable compliance and enforcement mechanisms provided for in such treaties. Such mechanisms are essential tools in ensuring not only the continuous integrity of the legal order created by such treaties, but also for monitoring whether member states have in place adequate measures for ensuring access to justice and effective remedies

122 Human Rights Council (n 116) para 7.