
HUMAN RIGHTS COUNCIL
Twelfth session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Response of Trafigura Beheer B.V. to the Addendum to the Report of the
Special Rapporteur on the adverse effects on the movement and dumping
of toxic and dangerous products and waste on the enjoyment of human
rights (A/HRC/12/26/Add.2) ***

Summary

This document details contact between Trafigura Beheer B.V. and the Special Rapporteur during the course of his Mission to Côte d'Ivoire and the Netherlands (04-08 August and 26-28 November 2008), the company's concerns as to the accuracy of the addendum and the risk of unsubstantiated conclusions and allegations in this addendum prejudicing ongoing criminal and civil legal action in the Netherlands and the United Kingdom.

* Late submission.

Response of Trafigura Beheer B.V. to the Addendum to the Report of the Special Rapporteur on the adverse effects on the movement and dumping of toxic and dangerous products and waste on the enjoyment of human rights (A/HRC/12/26/Add.2)

1. Trafigura Beheer B.V. (hereinafter Trafigura) has cooperated in good faith with the Special Rapporteur in the course of his mission to Côte d'Ivoire and the Netherlands (04-08 August and 26-28 November 2008). Trafigura representatives met with the Special Rapporteur in Geneva and Amsterdam. Trafigura provided access to all the information sought by the Special Rapporteur and offered additional information we believed would inform his report and recommendations.
2. The Special Rapporteur declined our offer of additional information. The Special Rapporteur issued a number of statements to the media, which Trafigura believed to be inaccurate, unfair and potentially prejudicial to ongoing criminal and civil legal proceedings in the Netherlands and the UK. The company advised the Special Rapporteur of our concerns and requested a subsequent meeting to present information contesting what appeared to be the Special Rapporteur's assumptions as to the 2006 Abidjan dumping incident. The Special Rapporteur declined this request for a meeting.
3. On 17 July, Trafigura received a draft copy of the Special Rapporteur's addendum on his mission to Côte d'Ivoire and the Netherlands and a request for comment. This draft addendum contained numerous factual inaccuracies and omissions regarding the actions of Trafigura, the 2006 Abidjan dumping incident and its aftermath. The draft addendum made a number of unsubstantiated allegations against Trafigura and put forth conclusions on the 2006 dumping incident that were not substantiated by any evidence cited. Trafigura responded to the Special Rapporteur documenting these inaccuracies and unsubstantiated allegations. We advised the Special Rapporteur of the ongoing criminal and civil legal proceedings in the Netherlands and the UK and our very serious concerns that the Special Rapporteur's addendum would risk prejudicing these proceedings. This in turn would affect adversely the rights of Trafigura and other unrelated institutions, companies and individuals, some of whom face imprisonment if convicted. We urged the Special Rapporteur to correct the inaccuracies in his addendum, amend the addendum to safeguard against the risk of prejudicing proceedings and consider delaying the presentation of the addendum pending the conclusion of these proceedings next year.
4. Regrettably, the Special Rapporteur chose to ignore Trafigura's detailed comments and suggestions. The "advanced unedited version" of the addendum uploaded on 07 September on the website of the UN Human Rights Council contains almost all of the inaccuracies and unsubstantiated allegations previously cited by Trafigura.

5. In particular, Trafigura is very disappointed that the Special Rapporteur has - inappropriately and without any proper evidential basis - put forward conclusions on detailed questions of liability and causation, which should properly be considered by the Dutch and English courts. Far from amending his addendum to remove or minimise the risk of causing prejudice to these proceedings, the Special Rapporteur has chosen instead to compound the position by now stating that “*there seems to be strong prima facie evidence that the reported deaths and adverse health consequences are related to the dumping of the waste from the Probo Koala*” (emphasis added).
6. This is an extraordinary conclusion for the Special Rapporteur to reach given that he has commissioned no scientific research to substantiate this conclusion and rejected the opportunity to review independent scientific evidence on this matter. This also demonstrates an alarming disregard for due process and the proper administration of justice by the courts seized of these matters.
7. Trafigura believes that when presenting the addendum to the Human Rights Council the Special Rapporteur should explain why he has included this unsubstantiated allegation in the addendum and why he has chosen to present the addendum at this time given the risk of prejudice to ongoing criminal and civil legal proceedings.
8. Despite his mandate and repeated requests by Trafigura, the Special Rapporteur has persisted in omitting any reference to the fact that the human rights of three Trafigura personnel were clearly violated when they were arrested and imprisoned without trial for five months by the Ivorian authorities when they participated in a humanitarian trip to Abidjan.
9. Trafigura believes that when presenting the addendum to the Human Rights Council the Special Rapporteur should explain why he has omitted any reference to violations of the human rights of our colleagues in Côte d’Ivoire.
10. Trafigura has made clear on a number of occasions that having thoroughly investigated the matter, we are confident that there are *no* long term serious health and environmental effects associated with the 2006 Abidjan dumping incident. WSP Environment and Energy, a leading UK-based environmental consultancy, has recently undertaken independent environmental investigations in and around Abidjan. The results of these investigations did not identify any compounds specifically related to the slops offloaded from the *Probo Koala* at the sites tested. Accordingly, WSP concluded there was no related risk to human health at these sites caused by these slops.
11. These findings, together with those reached by Burgeap, the UN Disaster Assessment and Coordination (UNDAC) mission and other independent parties clearly disprove any suggestion that the slops from the *Probo Koala* continue to pose a threat to the health of the location

population in and around Abidjan. However, the Special Rapporteur continues to make reference to supposed long-term human health and environmental effects of the incident.

12. Trafigura believes that when presenting the addendum to the Human Rights Council the Special Rapporteur should explain why he declined the offer to review independent and verifiable analysis disproving his conclusions.
13. The addendum includes other unfounded allegations and references to events portrayed as involving Trafigura but in fact wholly unconnected to the company. Throughout the addendum, the Special Rapporteur presents conjecture as fact, forms conclusions on the basis of accusation and bases much of his synopsis of events surrounding the voyage of the *Probo Koala* and the 2006 Abidjan dumping incident on inaccurate media reporting. Trafigura does not believe that this is how any report for the Human Rights Council or any other UN body should be prepared.
14. Trafigura recognises that the illicit trafficking of waste can have disastrous effects on the enjoyment of human rights. We fully support the Human Rights Council's efforts to protect human rights in this area. We are a long-term investor in Côte d'Ivoire and we believe in acting ethically and responsibly anywhere we operate worldwide.

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