

STATEMENT BY STEVEN R. DONZIGER
TO THE TOM LANTOS HUMAN RIGHTS COMMISSION
APRIL 28, 2009

Presented by:

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I.

Introduction

My name is Steven Donziger. I am an attorney based in New York City who serves as legal advisor to about 80 indigenous and farmer communities of the Amazon region of Ecuador. For the past 15 years I have been part of a joint Ecuadorian-American legal team that represents thousands of residents of the area in a class-action lawsuit, known as *Aguinda v. ChevronTexaco*. This case seeks a clean-up of what some experts believe is the worst oil-related contamination on the planet, covering an area of rainforest the size of Rhode Island and created largely by Texaco when it operated an enormous oil field from 1964 to 1990. The environmental degradation of this area, caused intentionally to lower production costs, has today produced a humanitarian crisis of epic proportions. Sadly to me, the perpetrator company – now Chevron, which bought Texaco in 2001 -- is spending untold millions of dollars on lobbyists and public relations consultants to evade accountability and to keep the full details of this story from journalists, the public, the company's own shareholders, and certainly this Congress. I want to thank Congressman McGovern for holding this hearing and inviting the Amazonian communities of Ecuador to have a representative. I also want to thank Cindy Buhl and Hans Hogrefe for their excellent work in helping to call attention to the humanitarian crisis in Ecuador. It is important that the Congress and the American people know about this crisis and its connection to our country.

The basic facts are well-known, and borne out by almost 200,000 pages of trial evidence and 62,000 scientific analyses produced by independent laboratories. It is undisputed that Texaco, as the operator of an oil consortium in Ecuador, deliberately dumped billions of gallons of toxic waste directly into the Amazon to save money. Most

of this waste was “production water” which contains in Ecuador a stew of highly toxic hydrocarbons, including the carcinogen benzene. Texaco also built and then abandoned more than 900 toxic waste pits gouged out of the jungle floor. These sites are spread out over an area the size of Rhode Island. To this day, they continue to leach toxins into the surrounding soils, groundwater, and streams. We estimate that at least 30 times the amount of oil spilled in the Exxon Valdez disaster has been dumped onto the ancestral lands and into the waterways of indigenous groups. In this area of Ecuador, the water, soil and air of the Amazon rainforest on which thousands of people depend for almost every aspect of their daily sustenance is for the most part poisoned.

Six indigenous groups inhabited the land where Texaco operated – the Cofan, Secoya, Huaorani, Siona, Quichua, and Tetete. These groups had prospered for millennia before oil began to be extracted in the rainforest. Today, oil contamination has robbed them of their ancestral lands and devastated their cultures. The Tetete, in the 1960s a small tribe with few members, are gone. I have made over 100 trips to the region, visiting toxic waste sites across the rainforest, and seen firsthand how the human rights of these vulnerable peoples are violated by intentionally reckless operational practices used to extract oil.

Aside from the environmental degradation, there are other layers of rights violations: first, I have seen how the victims of this disaster have received death threats and harassment for exercising their legal rights to hold accountable those responsible; second, I have seen how the due process rights of Amazonian residents have been violated by an abuse of the judicial process, intimidation of court personnel, and maneuvers designed to ensure that the legal process stretches indefinitely; and, finally I

believe my clients are the victims of an insidious form of environmental racism, in violation of various international legal instruments. There is no evidence of which I am aware that what Texaco did in Ecuador to indigenous peoples has happened in the U.S. where friends and neighbors of Texaco's and Chevron's decision makers live.

In 1993 the Amazon communities filed a class-action lawsuit against Texaco in U.S. federal court in New York, the site of Texaco's global headquarters. The case was eventually transferred to Ecuador in 2002 after Texaco filed 14 expert affidavits praising Ecuador's courts as a fair and adequate venue. A trial in Ecuador started in 2003. The trial is in many respects an old-fashioned land pollution matter, on a larger order of magnitude. The parties and court have conducted 101 field inspections of former Texaco wells and production sites. Based on the extensive evidence generated from these inspections, an independent court expert, working with a team of 14 scientists, found that Chevron is liable for up to \$27 billion in damages. Numerous qualified scientists have reviewed this report and found its conclusions reasonable and the damages assessment consistent with the costs of other large environmental clean-ups. If the court accepts the damages assessment, then the case could produce the largest judgment ever for an environmental lawsuit. Chevron already has told the U.S. government that it expects a "significant adverse decision" in the case. It is our assessment that Chevron has not adequately or accurately disclosed the financial risk to shareholders of this potential liability, and we are happy to submit evidence on that point to this committee.

II. Factual Background

Texaco basically ran an environmental “pump and dump” operation in Ecuador. When oil is extracted from the ground, it has two parts – the marketable crude, and the “formation water” which is toxic waste. These substances come out of the ground mixed together. They were separated in Ecuador at 22 stations that received crude and waste water from 356 Texaco well sites. The worst outrage of this terrible tragedy was committed at these separation stations, where on a non-stop basis – every day, for 24 hours per day – a torrent of this liquid waste gushed through vast pipes into waterways without treatment. The torrent flowed into the same fresh water streams and rivers that the indigenous groups had relied on for centuries for their drinking water and sustenance. At the height of its operation, four million gallons of this waste was dumped per day in this fashion.

At the time Texaco entered Ecuador in 1964, oil companies (including Texaco) had been re-injecting the waste water into underground wells to minimize any environmental impact. The American Petroleum Institute even published an oil field primer in 1962, which I will submit to this committee, outlining how it should be done properly. Texaco itself even owned one of the patents on the technology. Yet the company ignored these practices in Ecuador. Formation water is highly saline – usually many more times saline than sea water -- and often, as in the case in Ecuador, contains dangerous toxins.

Texaco also built 916 unlined, open-air waste pits and filled them with “drilling muds”. This is an industry term used to describe the heavy metals, oil, and formation waters that are the product of the well perforation and maintenance process. These oil byproducts and other liquids which contained heavy metals and synthetic chemicals were systematically drained via a system of pipes into nearby streams and rivers. The

company burned or vented millions of cubic meters of poisonous gas into the atmosphere without controls. Texaco's pipeline ruptures alone dumped 17 million gallons of oil into the environment, or far more oil than was spilled in the *Exxon Valdez* disaster. The company also regularly dumped the oil sludge from the waste pits along the dirt roads of the region. In judicial inspections of 94 former Texaco sites conducted in Ecuador from 2005-2009, soil samples revealed that 100% were extensively contaminated. Sites Texaco claimed to have remediated were as contaminated as those that were never touched. This is significant because the area is highly populated with persons living in and around the contamination.

Texaco's operation was substandard by any measure – it violated industry standards at the time, basic Ecuadorian environmental law, the company's contract with Ecuador's government, basic human decency, and as we learn today, several international human rights instruments.

III. Health Impacts

The best and most recent independent estimate available of the human health impact of this contamination is provided by the expert appointed by the court, Richard Cabrera. This expert, along with a team of 14 technical officials, reviewed all the data in evidence as well as several peer-reviewed health studies. (Texaco has never done a health survey or epidemiological study of the region.) Using conservative measures, the team's final report found at least 1,401 excess cancer deaths in the region due to oil contamination. Significantly, the report concluded that the closer people lived to the sources of the contamination, the more likely it was that they would suffer from cancer. Other peer-reviewed scientific studies have found elevated rates of oil-related health problems such

as spontaneous miscarriages and genetic defects. Anecdotal stories of cancers are frighteningly common, as Representative McGovern pointed out. I am submitting copies of the various health studies of the region that show an increase in oil-related cancers and health problems.

These estimates of the health impact are necessarily incomplete: there is not a single piece of oncology equipment in the region and the residents have little or no access to health care. As such, it is near impossible to know how many residents are actually suffering from cancer and other health problems. It is widely known that many die in silence and anonymity, without even the courtesy of being counted in mortality data. (Chevron's one recent study of cancer rates focused on mortality data, which severely undercounts the incidence of cancer in a region where most deaths are not tabulated in official statistics.)

While it is difficult to measure the human health impact of the contamination, it is impossible to measure the human psychological impact that the pollution has caused. Though epidemiologists can estimate the health impacts that constant exposure to oil byproducts will have, they cannot measure the loss of dignity that comes with a parent being forced to watch a child get sick with stomach cancer because they are forced to drink contaminated water and eat food grown in polluted soils. Without the economic means to move away from their ancestral homelands, this is the reality that thousands of families are forced to deal with daily.

III. Violations Over Accountability

It is one thing to document a human rights abuse. It is quite another to try to hold the perpetrator to account through the legal process, as is happening with significant success

against great odds in Ecuador. This effort is testament to the extraordinary power and resilience of the rainforest communities. The team of lawyers and advocates fighting Chevron in Ecuador's courts over clean-up responsibility have suffered harm in retaliation for exercising their legal rights, as documented in a letter sent to the International Commission of Jurists that we can make available to this committee. Examples of this retaliation are as follows:

- The lead lawyer for the rainforest communities, Pablo Fajardo, has been subjected to death threats. A brother of Mr. Fajardo was murdered in 2004, about a year after the trial began, under mysterious circumstances that some think was a case of mistaken identity.
- The law offices of the plaintiffs and the court-appointed independent expert, Richard Cabrera, have been robbed of case-related materials. Other materials of value in these offices were left untouched. It is unclear if the police are even investigating the robberies. No charges have been brought, and the perpetrators have not been identified.
- An atmosphere of fear has pervaded the trial, partly because of the threats but also because of Chevron's relationship to Ecuador's military. Chevron's lawyers on the litigation for a significant time were living on a local military base in the Amazon region, receiving "protection" from the army. They frequently used armed Ecuadorian soldiers to carry their equipment during the site inspections. During one inspection, when several indigenous leaders had announced their intention to participate, Chevron's lawyers arrived escorted by a heavily armored

vehicle that looked like a tank. This was interpreted by the local indigenous groups as intimidation.

- Chevron has consistently tried to delay and obstruct the legal process and thereby deny the rights of the rainforest peoples to a speedy resolution of their claims. The legal battle has lasted 15 years and Chevron continues to try to delay the outcome by filing redundant motions, asking for yet more expert reports, insisting on more field inspections, and filing motions for the trial judge to recuse himself when he refuses to go along with the company's strategy. A Chevron lawyer recently promised the indigenous groups a "lifetime of litigation" if they persist in pursuing their claims.
- Not content with its preferred court in Ecuador, Chevron began to attack the trial process when the evidence started to point to its culpability. It has hired lobbyists in Washington, some of them former high government officials like Mickey Kantor and Mack McLarty, to try to use our nation's foreign policy to "punish" Ecuador for having the audacity to let its citizens sue an American company in their own courts – a lawsuit that Chevron wanted to take place in Ecuador, over the objections of the plaintiffs.

V. Conclusion

It is beyond dispute that any serious concern for human rights must address environmental issues at a fundamental level. The law of nations imposes clear duties requiring protection of the environment as a basic element of the protection of human rights generally. Indeed, recognition of the customary law of human rights and environmental protection has now reached the point where states agree that certain

violations of environmental norms are not only considered international wrongs giving rise to civil liability, but are international crimes subject to punishment. It is clear now that these human rights norms are intended to apply to both government actors and private actors alike. Environmental degradation in Ecuador's Amazon, due to intentional practices carried out by Texaco and defended by Chevron, provide an excellent illustration of how these important principles need to be put into effect to save lives and achieve justice and accountability.