

COMMUNICATION  
SITUATION IN ECUADOR

**Mrs. Fatou BENSOUDA**  
**Prosecutor**  
**Office of the Prosecutor**  
**ICC**

**Legal Representatives of Victims**

Mr. Pablo **FAJARDO MENDOZA**

Mr. Eduardo Bernabé **TOLEDO**

Address: Portete E12-79 y José Abascal

C.P. 170514 - Quito

**ECUADOR**

Phone: +593(2)2273533

+54 (9) 261 3620295

Emails: [pfajardo@fromboliere.org](mailto:pfajardo@fromboliere.org)

[edubtoledo@gmail.com](mailto:edubtoledo@gmail.com)



INDEX

<u>INTRODUCTION</u>	3
HISTORICAL BACKGROUND	5
<u>I. VICTIMS REPRESENTATION AND PARTICIPATION IN THE PROCEEDINGS</u>	14
<u>II. JURISDICTION OVER THE SITUATION IN ECUADOR</u>	16
<u>III. SITUATION IN ECUADOR</u>	17
A. SPECIFIC ACTS	
B. ALLEGED CRIMINAL LIABILITY	
<u>IV. ALLEGED CRIMES</u>	40
A. CRIMES WITHIN THE JURISDICTION OF THE ICC	
B. ELEMENTS OF CRIMES	
<u>V. EVIDENCE</u>	47
A.- DOCUMENTS	
B.- TESTIMONY	
C.- ADDITIONAL INFORMATION - OTHER SOURCES	
<u>VI. PETITUM</u>	50

ANNEXES



## INTRODUCTION

In order to understand the environmental contamination that remains in the Oriente region of Ecuador to this day and how communities have fought – and been denied – their right to a remedy thus far, one must first consider the relations between Texaco, Chevron Corporation (which merged with Texaco in 2001), and the State of Ecuador. This letter will explain how Texaco undertook oil exploration and extraction in Ecuador from the late 1960s until the 1990s that devastated the land and the local peoples. After the broadly recognized merger of Texaco and Chevron in 2001, the presence of Chevron in the commercial spectrum made it liable for damages and restitution to the thousands of plaintiffs affected by Texaco's operations, relief that Chevron has vowed it will never satisfy. In the context of international criminal law, the decisions made by Chevron's CEO, John Watson, have deliberately maintained – and contributed to – the polluted environment in which the people of the Oriente region live and die every day.

Chevron has been ordered by Ecuadorian courts to remediate the contamination and pollution produced as a consequence of Texaco's exploitation of Ecuador's natural resources after a long and difficult judicial process that started in the United States courts in 1993, continued in Ecuador in 2003, and finally finished with a judgment by the Sucumbíos trial court in 2011, which was later affirmed in material respects by the National Court of the Republic of Ecuador. Since then, Chevron has taken every action it can to ensure that it will never have to pay a cent to the affected peoples.

This letter will establish a timeline of events, starting after July 2002, that demonstrates how Chevron Corporation, and in particular its CEO and other high-ranking officers, has voluntarily maintained and aggravated the situation in the Oriente. We firmly believe that the Company's actions should be identified as



crimes against humanity that fall within the jurisdiction of the International Criminal Court (ICC).

The situation in the Oriente cannot be dismissed or ignored, despite Chevron's desires to do so; rather, it must be investigated and remedied, and the ICC's findings should make clear that companies must respect the local peoples and environment where they conduct their business. The Ecuadorian courts have condemned the company to remediate the deliberate pollution, environmental damage, and devastating health effects produced by oil extraction in the Oriente. We call on the ICC to assert its jurisdiction and investigate the conduct of the Chief Executive Officer (CEO) of Chevron, and any other corporate officer of said company, in attempting to avoid the enforcement of the judgment of the Ecuadorian Courts.





## HISTORICAL BACKGROUND

On February 21, 1964, the Ecuadorian government proposed a concession of over 1 million hectares to Texas Petroleum Company (Texaco).<sup>1</sup> In the same act, Texaco ceded its rights to Texaco Petróleos del Ecuador (Texpet, a wholly-owned subsidiary of Texaco) and Gulf Ecuatoriana de Petróleos. Later, in August 1973, new contracts were signed and a final area of 497,301 hectares was set, an area that has been known as the Napo Concession.<sup>2</sup>

Furthermore, as recognized in the judgment of the tribunals of Ecuador, the representatives of the victims and the company's attorneys agreed that *"it has been proven that Texpet was in charge of the operation of the concession, a fact that has been corroborated by the expert reports in the various judicial inspections, which all agree that Texpet was responsible for executing the operations of the Consortium until June 1990."*<sup>3</sup>

Throughout the 1960s to the 1990s, massive amounts of contamination were produced and deliberately accumulated in the region, with Texaco's sole objective being the reaping of profits for its business. The environmental effects of the company's pollution continue to this day. The health conditions imposed on the indigenous and farmer communities that live in the Oriente constitute a serious and

---

<sup>1</sup> The date denotes that on which the act of concession was reported in the Official Register of Ecuador. Conf. maps "Concesión Texaco 1964" and "Concesiones Texaco 1964, 1973 y Aguarico Pastaza"

<sup>2</sup> Lago Agrio Judgment, February 14, 2011. Case No. 2003-0002. **Aguinda y otros c. Chevron Corporation**; Supreme Court of Ecuador, p. 92. *"In this same way this court pays special attention in the fact that it has been proven, by the Napo Agreement, between Texaco and Gulf in October 22, 1965 in its clauses 6.1; 6.2 and 6.4 [see translation in the body 93, folios 10154-10194] that the concessionaries agreed since the beginning in delegating all the operations to the company TexPet subsidiary in fourth level and absolute property of Texaco Inc."*

<sup>3</sup> Op. cit. 2; p. 93 [quote translated from Spanish to English]. To briefly complete the history of the operation of the concession, Petroecuador was a major participant and, as such, a beneficiary of the concession of 1973. The concession was operated by Texpet until June 30, 1990 and then by Petroecuador until June 6, 1992, when the contract ended.



sustained attack on the population that has lived there peacefully for centuries. The damages, which have been documented and confirmed in countless inspections conducted for the Ecuadorian case,<sup>4</sup> brought various consequences, including water contamination, ground contamination, cancer, forced displacement, extermination of two ethnic groups, and many other disastrous conditions that are described in the annexes of this communication.

After the termination of the Napo Concession there was a purported remediation agreement for 37.5% of the damage caused up to March 4, 1995 (USD 40 million). On September 30, 1998, the government of Ecuador signed the Final Act of Liberation of Claims and Equipment Delivery.<sup>5</sup> That Act was reviewed by the

---

<sup>4</sup> Op. cit. 2; p. 94. "9.2.- EXISTENCE OF ENVIRONMENTAL DAMAGES. Having reviewed the different reports handled for this court by different experts hired by both parties and appointed by the court, and also those designated by the court without an appointment by the parties, the existence of environmental damages that has its origin in the activities of the oil exploitation performed during the operation of the concession, as will be explained later when the results of the lab analysis of the taken samples by the experts are evaluated, has been proven. [W]e must make clear that this court has not considered the conclusions presented by the experts in the report[s] because they are contradictory to one another, even though they refer to the same reality, which is why we have omitted the personal assessments and opinions of each expert and we have taken the technical content of the reports, especially the results above mentioned, [and] thus the judge has been capable of arriving to his/her own criteria according to the rules of healthy criticism."

<sup>5</sup> Op. cit. 2, p. 32-33. "To be completely clear we also believe that what is set out in clause IV of the Final Act signed on the 30th September 1998 by the Government represented by the Ministry of Energy and Mines, Petroecuador and the Texas Petroleum Company in which the former proceed to free, absolve and discharge the Exonerated of any suit or claim "the Government of the Republic of Ecuador, Petroecuador or affiliates might make for concepts related to the obligations taken on by Texpet in said contract" making it clear that the extent of the freedom from responsibility and claims is limited to those acting on behalf of the government, Petroecuador or their affiliates. Additionally I believe that jurisdictional legal authority is determined by the Constitution and that the Government cannot renounce this in an administrative contract as in this case said contract would be contrary to public law, as it is always obliged to administer justice. Certainly, the plaintiffs who do not appear as having signed the alleged settlements in the defendants' defense, have the right to take legal action and make petitions, as guaranteed by the Constitution because this right is inviolate and also because the settlements are clear in their expression of who are the active and passive parties in the absolution, and this kind of legal transaction cannot be extended to third parties and is not applicable to inviolate rights."



Offices of the “*Contraloría*” General and several irregularities were found in its revision. This review process concluded in a criminal complaint in 2001 that alleged the falsification of a public instrument, filed against a group of persons that are or were employees of Texaco/Chevron and the former majority member of the Ecuadorian government at the time.<sup>6</sup> In August 2006, after years of investigation by the authorities – proceedings which provided a foundation for the overly broad and intrusive discovery in the collateral RICO case filed by Chevron in New York to block enforcement of the Ecuadorian judgment – the Former General Prosecutor, Cecilia Armas, asked the Ecuadorian court to terminate the criminal investigation.<sup>7</sup> The Ecuadorian court finally acceded and dismissed the criminal case on the basis of outstanding “*pre-judicial aspects*” in 2011.<sup>8</sup>

### **Chevron’s Bad Faith During the Civil Litigation**

Both prior to and concurrently with the criminal litigation around the Napo concession settlement and release agreement, thousands of victims of the contamination in the Oriente brought a class action in the U.S. in November 1993.<sup>9</sup> Texaco fought for dismissal of the complaint on the basis of, *inter alia*, forum non conveniens. The U.S. district court dismissed the case on that basis in 2001, and

---

<sup>6</sup> Those specifically named were Ricardo Reis Vega, Rodrigo Pérez Pallares, Luis Albán Granizo, Ramiro Gordillo García, Patricio Rivadencira García, Marcos Fernando Trejo Ordóñez, Alex Paquito Suárez Luna, Jorge René Durán y Martha Susana Romero de la Cadena.

<sup>7</sup> In the annexes of this communication. Decision of June 1 2011. Case 150-209WO; Sala Penal de la Corte Nacional de Justicia de Ecuador.

<sup>8</sup> Under Ecuadorian law, a resolution of the facts in the *Aguinda* civil case was needed before the criminal case could proceed. The civil process was completed in November 2013 after the Supreme Court of Ecuador handed down a final sentence (also in the annexes of this communication); however, the statute of limitations to re-file the criminal case has run.

<sup>9</sup> *Aguinda v. Texaco, Inc.*, No. 93 Civ. 7527 (JSR), (S.D.N.Y., November 3, 1993).



the Second Circuit upheld the dismissal in 2002. As a basis for the Second Circuit's upholding the dismissal, Chevron lawyer's were required to adhere to the promises made by Texaco that it would submit to the jurisdiction and judicial process in Ecuador, including abiding an unfavorable outcome, subject only to limited challenges under the local act on enforcement of foreign judgments.<sup>10</sup>

Ten years later, on March 17, 2011, Chevron's promises were reiterated and emphasized by the Second Circuit in a related proceeding:

*“Chevron Corporation claims, without citation to relevant case law, that it is not bound by the promises made by its predecessors in interest Texaco and ChevronTexaco, Inc. However, in seeking affirmance of the district court's forum non conveniens dismissal, lawyers from ChevronTexaco appeared in this Court and reaffirmed the concessions that Texaco had made in order to secure dismissal of Plaintiffs' complaint. In so doing, ChevronTexaco bound itself to those concessions. In 2005, ChevronTexaco dropped the name “Texaco” and reverted to its original name, Chevron Corporation. There is no indication in the record before us that shortening its name had any effect on ChevronTexaco's legal obligations. Chevron Corporation therefore remains accountable for the promises upon which we and the district court relied in dismissing Plaintiffs' action. [...] We therefore conclude that the district court adopted Texaco's promise to satisfy any judgment issued by the Ecuadorian courts, subject to its rights under New York's Recognition of Foreign Country Money Judgments Act, in awarding Texaco the relief it*

---

<sup>10</sup> *Chevron Corp. v. Steven Donziger, et al.*, 1:11-cv-00691-LAK-JCF (hereinafter RICO case), Doc. No. 1875, p. 7-10. In the annexes of this communication.





*sought in its motion to dismiss. As a result, that promise, along with Texaco's more general promises to submit to Ecuadorian jurisdiction, is enforceable against Chevron in this action and any future proceedings between the parties, including enforcement actions, contempt proceedings, and attempts to confirm arbitral awards."*<sup>11</sup>

Yet when the litigation was refiled the Court of Sucumbíos on May 7, 2003, Chevron immediately broke the promises it had made and contested the Ecuadorian court's jurisdiction over the matter.<sup>12</sup> Later in the litigation, after Chevron realized that it was losing the case due to the mounting evidence against it, Chevron started filing collateral judicial cases and initiated an arbitral process against Ecuador in front of The Hague.<sup>13</sup>

This strategy to block enforcement of the Ecuadorian judgment found an ally in Judge Kaplan of the Southern District of New York in the United States. Judge Kaplan delivered the most recent action to hamper plaintiffs' access to a remedy in his March 2014 decision that the Ecuadorian judgment was procured via fraud and could not be enforced in the United States – despite the fact that the massive

---

<sup>11</sup> *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 390 n.3 & n.4 (2d Cir. 2011). The court also notes, "Texaco had been trying to convince the district court that Ecuador would serve as an adequate alternative forum for resolution of its dispute with Plaintiffs. As part of those efforts, Texaco assured the district court that it would recognize the binding nature of any judgment issued in Ecuador. Doing so displayed Texaco's well-founded belief that such a promise would make the district court more likely to grant its motion to dismiss. Had Texaco taken a different approach and agreed to participate in the Ecuadorian litigation, but announced an intention to disregard any judgment the Ecuadorian courts might issue, dismissal would have been (to say the least) less likely."

<sup>12</sup> Undisputed fact: See RICO case, Doc. No. 1850, p. 11. See also *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 390 n.3 & n.4 (2d Cir. 2011).

<sup>13</sup> The Permanent Court of Arbitration located in The Hague, administers cases arising BITs. On February 2013 the PCA found Ecuador in breach of its prior rulings. In those prior ruling the PCA ordered Ecuadorian Government to take all necessary actions to prevent enforcement and recognition of the Lago Agrio judgment, both inside and outside of Ecuador.



record of contamination in the Oriente was uncontested by Chevron. Instead, Chevron employed a controversial and disputed cause of action under civil RICO<sup>14</sup> to turn the decades of advocacy and legal efforts by the Ecuadorian plaintiffs' and their attorneys into a criminal operation. Its ultimate objective has always been to obtain an injunction barring enforcement of the Ecuadorian judgment (hereinafter, the remediation judgment or the judgment) anywhere in the world. Such a global injunction violates the prior pronouncements of the Second Circuit and clear principles of international comity and respect for sovereignties. Although Judge Kaplan denies that his recent decision orders a global injunction, in effect the order does exactly that.

Chevron's countersuit of the plaintiffs and pursuit of the RICO collateral case is an important illustration of and sequel to Chevron's bad faith throughout the original *Aguinda* litigation.<sup>15</sup> The decision in the RICO case ignores the facts proven in the remediation judgment and attempts to spin that judgment, the entire Ecuadorian legal system, and the victims themselves in a wholly negative light based on misconstrued facts and unprecedented discovery of plaintiffs' litigation materials. We believe that it is the duty of the Prosecutor's office to evaluate the relevant information from the documents that we present to you now and to evaluate the dangerous consequences that Chevron's strategy has created, not only for the victims in the Oriente, but also for the rapidly developing body of international law.

Chevron has declared on record that it will fight the Ecuadorian victims and judgment "*until hell freezes over.*"<sup>16</sup> In this light, Chevron's take-no-prisoners

---

<sup>14</sup> The RICO case was ruled under Racketeer Influenced and Corrupt Organization Act. To see a short discussion of Chevron's bad faith during the *Aguinda* litigation, see RICO case, Doc. No. 1850, p. 11-20.

<sup>15</sup> *Op. cit.* at 3.

<sup>16</sup> See, e.g., "Could Hell Be Starting to Freeze Over in Canada" AmazonWatch (Dec. 17, 2013); <http://amazonwatch.org/news/2013/1217-could-hell-be-starting-to-freeze-over-in-canada>.



litigation strategy becomes troublingly clear. It bears reiterating that, after an initial nine years of litigation in the U.S., the U.S. courts determined that the victims' claim to remediation for their suffering should be made in the Ecuadorian courts and that the parties are subject to their jurisdiction.

Then, after ten more years of litigation in the case, a judgment was rendered by the President of the Provincial Court of Sucumbíos, ratified by the Provincial Court of Sucumbíos on appeal, and finally ratified in a decision by the National Court of Ecuador. Chevron was granted the same rights as any other party in any civil trial at every instance of this proceedings, but finally found liable for the environmental damages caused by Texaco's drilling and extracting oil operations in Ecuador. In a change for the worst in their situation, after prevailing in the very same courts Chevron choose, plaintiffs must continue to seek their remedy from the company abroad and continue to be dragged into courts all over the world.

In addition to the length and complexity of the litigation, it is important to note the constant harassment plaintiffs have suffered throughout the litigation process, starting from the initial filing in 1993 to this day. Chevron has run relentless media campaigns that attempt to tarnish the reputations of those individuals who represent the victims, and even the victims themselves. Chevron also exercises control over many of the plaintiffs' daily lives through intimidation by several private investigation companies it has retained to harass representatives of victims over the 20 years of litigation. This harassment constitutes to be a constant threat that Chevron has imposed on the group of plaintiffs; even today, the personal lives and safety of each one of Chevron's victims lie in the hands of those who exclusively respond to the demands and interests of the company. As an example of the gravity of its powerful influence, in 2006, the Inter-American Commission on Human Rights intervened to safeguard the physical integrity of plaintiffs' lawyers and their technical team, Now we know that this intervention was absolutely justified because Chevron has had paid 14 million dollars to Kroll for "litigation



services”, which include surveillance and private security services over the plaintiffs and their lawyers.

Judge Kaplan’s position, as well as that of some legal academics and Chevron’s legal team, is that plaintiffs’ attorneys sought justice and remediation in the *Aguinda* case in a fraudulent manner. From the start, the victims’ lawyers have maintained that these accusations are false. One “scholar”, retained by Chevron, Douglas Cassell, argues: *“Fraudulent litigation against any defendant -- including corporate defendants -- deserves repudiation by the human rights community. First, it offends human rights principles. Perversion of the judicial process violates due process of law, an essential bulwark of the protection of human rights and the rule of law. Second, committing -- or condoning -- fraud in the pursuit of justice for human rights victims risks the credibility of the human rights movement. And third, if we fail to distance ourselves from fraudulent human rights litigation against business corporations, business may be less inclined to take seriously its own human rights responsibilities.”*<sup>17</sup> This analysis is specious and offensive to victims of human rights violations and their attorneys. The Amazonian victims and the plaintiffs’ legal team are not the dangerous criminals Chevron would like to make them out to be. The plaintiffs’ legal team has shown in each proceeding it has faced that it merely pursues justice in Ecuador for the victims of more than 50 years of contamination in the Oriente by multinational corporate powers that refuse to admit liability or take responsibility for their disastrous operations.

In conclusion, this communication will establish a time line of the events starting after July 2002 that demonstrates how Chevron Corporation, and in particular its CEO and other high-ranking officers, has voluntarily maintained the contamination and aggravated the situation in the Area of the Napo Concession. We firmly believe

---

<sup>17</sup> Douglas Cassell, “Resumen del fraude y de las malas conductas por parte de los abogados de los demandantes en el proceso Lago Agrio contra Chevron en el Ecuador”, July 25, 2013; pp. 1.





that Chevron officers' actions should be identified as crimes against humanity and therefore within the jurisdiction of the International Criminal Court.

## I. VICTIMS REPRESENTATION AND PARTICIPATION IN THE PROCEEDINGS

We have prepared this communication pursuant to the power of attorney granted to us by the victims in the Oriente, where Chevron is liable for the contamination and pollution of the land.

In accordance with Rule 85 of the Rules of Procedure and Evidence, we represent that the victims have "suffered harm as a result of the commission of [a] crime within the jurisdiction of the Court."<sup>18</sup> Furthermore, as confirmed in the annexes of the present communication, we represent:

**María Aguinda Salazar, Carlos Grefa Huatatoca, Catalina Antonia Aguinda Zalazar, Lidia Alexandra Aguinda Aguinda, Patricio Alberto Chimbo Yumbo, Clide Ramiro Aguinda Aguinda, Luís Armando Chimbo Yumbo, Beatriz**

---

<sup>18</sup> *Rule 85 of the Rules of Procedure and Evidence*, ICC-ASP/1/3 and Corr.1, part II.A: Definition of victims "(a) 'Victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court; (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes..."; *Representing Victims before the International Criminal Court - A Manual for legal representatives*, Second Edition, Published by the Office of Public Counsel for Victims (OPCV), 2012, International Criminal Court. ("Since the Rome Statute does not define the term "victim", this task was left to the Preparatory Committee in charge of adopting the Rules of Procedure and Evidence. During the debate on the adoption of the said definition, delegates took into account that a definition based on the Victims Declaration will entail logistical constraints. In the course of the debate, objections were raised and clarifications sought on terms such as "collectively", "emotional suffering" and even on the term "family". In the end, the regime sought to limit any logistical anomalies that may arise from the sheer volume of applications for victims' participation, by providing that the modalities for their participation in the Court's proceedings will be decided upon by the judges. Nevertheless, a definition was finally included in rule 85 of the Rules of Procedure and Evidence. Similarly, after extensive debate on whether or not legal entities could also be included in the definition of the term "victim", a compromise was reached in the text of rule 85(b) of the Rules of Procedure and Evidence which establishes that victims 'may' include organizations or institutions.")



Mercedes Grefa Tanguila, Lució Enrique Grefa Tanguila, Patricio Wilson Aguinda Aguinda, Celia Irene Viveros Cusangua, Francisco Matias Alvarado Yumbo, Francisco Alvarado Yumbo, Olga Gloria Grefa Cerda, Lorenzo José Alvarado Yumbo, Narcisa Aida Tanguila Narvaéz, Bertha Antonia Yumbo Tanguila, Gloria Lucrecia Tanguila Grefa, Francisco Victor Tanguila Grefa, Rosa Teresa Chimbo Tanguila, José Gabriel Revelo Llore, María Clelia Reascos Revelo, María Magdalena Rodriguez Barcenes, Hugo Gerardo Camacho Naranjo, José Miguel Ipiales Chicaiza, Heleodoro Pataron Guaraca, Luisa Delia Tanguila Narváez, Lourdes Beatriz Chimbo Tanguila, María Hortencia Viveros Cusangua, Segundo Angel Amanta Milán, Octavio Ismael Córdova Huanca, Elías Roberto Piyahuaje Payahuaje, Javier Piaguaje Payahuaje, Daniel Carlos Lusitande Yaiguaje, Benancio Fredy Chimbo Grefa, Guillermo Vicente Payaguaje Lusitante, Delfín Leonidas Payaguaje Payaguaje, Alfredo Donald Payaguaje Payaguaje, Teodoro Gonzalo Piaguaje Payaguaje, Miguel Mario Payaguaje Payaguaje, Fermin Piaguaje Payaguaje, Reinaldo Lusitande Yaiguaje, Luis Agustín Payaguaje Piaguaje, Emilio Martín Lusitande Yaiguaje, Simon Lusitande Yaiguaje, Armando Wilfrido Piaguaje Payaguaje, y Angel Justino Piaguaje.

Finally, in light of the procedures established by the Statute and Rules of Procedure and Evidence, we will solicit the participation of the victims in the investigation of the situation in the Oriente and the actions of Chevron's corporate representatives during the legal proceedings to redress the pollution. In consequence, we announce the victim's interest to apply for the Status of Victims in the situation of Ecuador<sup>19</sup> and, in addition, in the context of a case of the situation.<sup>20</sup>

---

<sup>19</sup> According to article 68.3 RS.; *Cf.* No. ICC-01/04-01/06-601, Pre-Trial Chamber I, 20 October 2006, p. 8.

<sup>20</sup> *Cf.* No. ICC-02/04-101, Pre-Trial Chamber II (Single Judge), 10 August 2007, par. 13.







## II. JURISDICTION OVER THE SITUATION IN ECUADOR

In accordance with Articles 11, 12 and 13 of the Rome Statute (RS)<sup>21</sup>, we affirm that this treaty was signed by the Republic of Ecuador on October 7, 1998 and was ratified on May 5, 2002. Thus, it establishes the International Criminal Court's jurisdiction over all the crimes listed in Article 5 that have been committed or allegedly committed in Ecuadorian territory since July 1, 2002.

Therefore, we urge the Court to exercise its jurisdiction, *ratione temporis* and *ratione loci*, in the situation that we present to your Office. We believe that no challenge to the competency of the Court based in the principles of the Part III of the Rome Statute could be sustained, nor that any other impediment to the exercise of the Court's jurisdiction exists.

---

<sup>21</sup> A/CONF.183/9 Done at Rome on 17 July 1998, in force on 1 July 2002, United Nations, Treaty Series, vol. 2187, No. 38544, Depository: Secretary-General of the United Nations, <http://treaties.un.org>.





### III. SITUATION IN ECUADOR

In the introduction to this communication, many of the facts relevant to this case were described in general. This section expands on those facts and the references to the conditions in Ecuador, focusing on 2002 and onward.

As noted above, the 2001 merger between Texaco Inc. and Chevron gave birth to a new corporate entity<sup>22</sup>, ChevronTexaco, which replaced the foregoing companies in all of their rights and obligations.<sup>23</sup> In addition, after almost a decade of litigation in the United States, on August 16, 2002, the Second Circuit affirmed the dismissal

---

<sup>22</sup> Technically, Texaco Inc. fused with a wholly-owned, first-level shell subsidiary of Chevron Corp's. The trial court in the Ecuadorian *Aguinda* proceedings analyzed this complicated operation. The court first determined that Texpet was wholly owned and controlled by its parent, Texaco, Inc.: "[W]e must analyze this control of the parent on its subsidiary within its context, considering that the board of Texaco Inc. also delivered assignments of money with which Texpet operated, which implies that Texpet lacked not only administrative autonomy but also financial since it was Texaco Inc. that controlled not only decisions but also authorized funds that Texpet needed for the normal development of its operations. Based on the admitted fact that Texpet is a subsidiary at fourth level belonging one hundred percent by a sole owner Texaco Inc. and that Texpet operated with funds coming from Texaco Inc. it has been demonstrated that there is no real separation of assets. We understand that the legal forms necessarily imply different assets, according to the regulations of the legal form, but in this case the confusion of assets is evident, confusing also the legal forms." Sucumbíos Trial Court Judgment, at 22. Then, with respect to Texaco's merger with Chevron, the Ecuadorian judges noted that, "[...] we have to consider that despite the fact that the order was directed to TEXACO INC., and despite that this company maintains a legal life, the operation known publicly [as a] 'merger', has the juridical effect that CHEVRON CORP. substitutes TEXACO INC. in its rights and obligations, so the defendant, CHEVRON CORP., is linked due to the obligation of the company TEXACO INC., so there is no place for the [statute of limitations] adduced since there is an existing pending obligation over the defendant to accept the existence of a civil interruption to the prescription originated in the presentation in November 1993 of a demand of TEXACO INC. in New York, as it was admitted by the defendant throughout its attorney [...]" *Id.* at 29. Thus, the judges concluded that there was a de facto merger between the two oil giants, which gave birth to ChevronTexaco Corp. The "Texaco" portion of the name was later dropped, in a disingenuous effort to separate the new corporation from Texaco's many liabilities.

<sup>23</sup> See *Aguinda v. Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002).



of the victims' action and made the final determination that the victims' claim against ChevronTexaco should be made in Ecuadorian courts.<sup>24</sup>

Thereafter, Chevron Corporation, through its current CEO, **John Watson**, former CEO, **David O'Reilly**, and other high-ranking officers, has deliberately maintained the situation of contamination in the Oriente and the deathly health effects it causes. This course of action could be identified as a crime within the jurisdiction of the International Criminal Court.

Current CEO John Watson has a personal interest in protecting the economic consequences of every trial regarding the contamination in the Republic of Ecuador. The main reason for this interest is that he has made a jump in his career because of the merger between the Chevron and Texaco<sup>25</sup>, and it would be disastrous to find out that he did nothing but buy a big liability. In this way, the deliberate pollution of the soil and water in the Oriente is directly tied to Watson's personal involvement in the case and constitutes a criminal contribution to the situation in Ecuador, even before the jurisdiction of the International Criminal Court was activated.

---

<sup>24</sup> *Supra*, Introduction at 3-4.

<sup>25</sup> According to Chevron's own website: "Watson has had a 29-year career with Chevron and was named vice chairman of the corporation on April 1, 2009. In his current role, he oversees a broad portfolio of responsibilities, including strategic planning; business development; policy, government and public affairs; major capital projects support; procurement; and corporate compliance. [...] Watson joined Chevron in 1980 as a financial analyst. He held financial, analytical and supervisory positions before being elected president of Chevron Canada Ltd. in 1996. In 1998, he was elected a vice president of the corporation with responsibility for strategic planning and mergers and acquisitions. In 2000, he led the company's integration effort following the Chevron-Texaco merger and then became the corporation's chief financial officer. [...] Since O'Reilly became CEO in 2000, the company has increased its production by more than 60 percent; established the best exploration record among its peers in the industry; advanced Chevron's safety record to world-class levels; and been among the best of its peer companies in total shareholder return over this period. He also led two of the industry's most significant and successful transactions - the 2001 merger with Texaco and the acquisition of Unocal in 2005." See <http://www.chevron.com/news/press/release/?id=2009-09-30>



After the merger of Texaco and Chevron, the attorneys for the company made statements that they would accept the ruling of the Ecuadorian judiciary in the case. The commitment made at that stage was very important for the victims, since they relied on ChevronTexaco's promises when pursuing their remedy in Ecuador. As Chevron never honored these promises, we understand this delaying as Chevron's officers' first contribution to maintain the environmental attack to the population in Ecuador, and for this to contribute to the crime against Humanity that started when the oil polluted the zone of the Napo Concession area.<sup>26</sup>

We believe this constitutes a clear attack against the civilian population of the Oriente region of Ecuador. The consistent interpretation of 'attack' in international criminal law includes an "*unlawful act of the kind enumerated in Article 3(a) to (i) of the Statute, like murder, extermination, enslavement, etc. An Attack may also be non-violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner*".<sup>27</sup> This interpretation of attack is reaffirmed by various scholars, such as Dr. Kai Ambos and Rodney Dixon.<sup>28</sup>

At this point, we reserve the right to further expand our arguments in future documents, or in an oral hearing on the positions of the parties and participants during a possible investigation of the present case.

---

<sup>26</sup> Conf. Introduction, pages 3 and 4 of this Communication.

<sup>27</sup> ICTY, *Prosecutor vs. Akayesu*, (Case ICTR-96-4-T), judgment of 2-9-98, ¶ 581 (emphasis added).

<sup>28</sup> **Ambos** and **Wirth**, "*Crímenes de Lesa Humanidad - Un dictamen para el Fiscal del Tribunal Internacional Mixto de la ONU para Timor Oriental*" (accessible in the page: [www.un.org/peace/etimor/untaetR/r-2000.htm](http://www.un.org/peace/etimor/untaetR/r-2000.htm)); **Dixon**, Rodney. "Article 7" in "Commentary on the Rome Statute of the International Criminal Court. Observers' Notes, Article by Article, nm.8". Otto Triffterer ed., 1999.



As noted above, Chevron was condemned by the highest Tribunal of the Republic of Ecuador to repair the environmental damages caused by oil exploration activities in the Oriente region,<sup>29</sup> i.e., the remediation of almost 500,000 hectares of rainforest (equivalent to approx. 1,235,500 acres). But Chevron has instead made a political decision to avoid the responsibility for the remediation, as evidenced by the conduct of its current CEO John Watson, and it has, therefore, contributed to the criminal situation that continues to constitute an Attack against the civilian population in the Oriente region of Ecuador.

In the next section, we describe the particular acts of Mr. Watson that constitute crimes against humanity under Article 7 of the Statute of Rome. These acts will also be listed in Section IV of this Communication.

#### **A. SPECIFIC ACTS**

We might start by quoting nearly every press conference where Mr. Watson has shown his personal interest in denying and avoiding the situation in the Oriente, thus assuring the situation in the Oriente where the victims live remains unresolved and unremediated. We consider this itself to be a clear attack on the civilian population, as defined by the Statute of Rome and interpreted in light of international criminal jurisprudence. As we will show, after the merger of Texaco and Chevron, Mr. Watson has increased his power inside the organization, that we could characterize as the *organized power apparatus* (OPA) for the accepted

---

<sup>29</sup> *Op. cit.* at 3.





doctrine by the ICC,<sup>30</sup> to the point that he currently serves in the roles of Chair of the Board and CEO in the pyramid of Power. We will show this affirmation all over this communication, not only about his responsibility on the situation of Ecuador but also about his position inside the OPA. All the elements of this theoretical construction are present in this company, but the most important is that Watson has guided the apparatus until today, he has chosen the employees to protect the interest of the organization all over the world, changed them and, as a consequence, he created a version of the facts to the members of Chevron that are far from the real situation, the attack to the population of Ecuador.

Most recently, in May 2012, the failure of Chevron's management to make proper disclosures was the subject of a shareholders' motion and vote to separate the CEO & Chairman of the Board roles, based on the following arguments:

*Chevron's CEO, John Watson, also serves as chair of its board of directors. Intel former chair Andrew Grove stated: 'The separation of the two jobs goes to the heart of the conception of a corporation. Is a company a sandbox for the CEO, or is the CEO an employee? If he's an employee, he needs a boss, and that boss is the board. The chairman runs the board. How can the CEO be his own boss?'*

*An independent board chair provides a better balance of power between the CEO and the board and supports*

---

<sup>30</sup> Among others: **Le Procureur c. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta et Mohammed Hussein Ali**, Chambre préliminaire II, Décision relative à la requête du Procureur aux fins de délivrance de citations à comparaître à Francis Kirimi Muthaura, Uhuru Muigai Kenyatta et Mohammed Hussein Ali, 8 mars 2011, ICC-01/09-02/11-1-tFRA, par. 36 ; **Mandats d'arrêt délivrés dans l'affaire Qadhafi et autres**, par. 69 ; **Le Procureur c. Simone Gbagbo**, Chambre préliminaire III, Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Simone Gbagbo, 2 mars 2012, ICC-02/11-01/12-2-Red, par. 28.



*strong, independent board leadership and functioning. The primary duty of a board of directors is to oversee the management of a company on behalf of its shareholders. But if a CEO also serves as chair, we believe this presents a conflict of interest that can result in excessive management influence on the board and weaken the board's management oversight.*

*In March 2009, the Chairmen's Forum, a group of more than 50 current and former board chairs, directors, chief executives, investors and governance experts hosted by Yale's Millstein Center, endorsed the voluntary adoption of independent, non-executive chairs of boards, finding that '[t]he independent chair curbs conflicts of interest, promotes oversight of risk, manages the relationship between the board and CEO, serves as a conduit for regular communication with shareowners, and is a logical next step in the development of an independent board.'* (Chairing the Board: The Case for Independent Leadership in Corporate North America, Yale Millstein Center, 2009).

*Globally companies now typically separate the jobs of chair and CEO: in 2009 less than 12 percent of incoming CEOs were also made chairs, compared with 48 percent in 2002 (CEO Succession 2000- 2009: A Decade of Convergence and Compression, Booz & Co., Summer 2010). **We believe that independent board leadership is key at Chevron, given the questions raised about the oversight by the board of the CEO's management and disclosure to shareholders of the financial and***



*operational risks to the company from the \$18 billion judgment in the Ecuadorian courts in 2011.*<sup>31</sup>

Understanding the internal situation of Chevron, lead by CEO and Chairman of the Board John Watson, helps flesh out how the company is an organized power apparatus that has maintained the conditions of pollution in the Oriente. Since the merger with Texaco all the efforts have been made to avoid the responsibility in the situation since the 1960s, and to prevent the shareholders from finding out the real conditions of the Ecuadorian victims.

As another example, take Mr. Watson's own account of his stance on this case during a conference call with Wall Street analysts on January 27, 2012. In prepared remarks on the situation in Ecuador, Mr. Watson stated:

*"Now, when it comes to Ecuador, that has been in the news as well. I won't go through the case in great detail because I think most of you know the history. If you're on the phone and you don't, I encourage you to look at our website because we have quite a bit of information. **And I think it's generally acknowledged that this case is a product of fraud. Most of us know that. This is a collaboration between corrupt plaintiff's lawyers in the U.S. and a corrupt judiciary in Ecuador.***

*Nonetheless, we are moving it through the judicial system. There have been events in really three courts recently -- one in Ecuador, one in New York, and one in the Hague. So I'll quickly tell you what has happened in each one.*

*On January 3, a panel of three temporary judges overseeing our appeal of the Lago Agrio verdict in*

---

<sup>31</sup> Motion from Annual Shareholder Meeting, May 2012.



Ecuador upheld that original ruling. So on January 20, Chevron filed an appeal seeking a review by Ecuador's National Court of Justice. Basically we're pursuing all available procedural steps in Ecuador, as you would expect. **Remember, we have no assets in Ecuador.**

So the second area where there's been court activity has been in The Hague. On January 25 the BIT Tribunal, that is the Bilateral Investment Treaty Tribunal in The Hague, converted its previous interim measures order to an interim award. And that makes it have more standing in the international community. And basically, the award is targeted at the Republic of Ecuador and says that Ecuador is obligated to prevent enforcement worldwide pending a full review of formal trial and merits of the case. **This award is helpful to us in preventing enforcement outside of Ecuador.**

I would also point out that in previous rulings that the Tribunal has made, they've had already indicated that Ecuador will be financially responsible for all the damage caused by this fraud if Chevron prevails. So we've had some strong wording out of that court and are encouraged by that. And there's another hearing scheduled.

And then finally, on January 26 in New York, the U.S. Court of Appeals issued an opinion reversing and vacating the Southern District Court's injunction. We had sought to stop enforcement in U.S. courts -- stop the plaintiffs from enforcing any judgment that might be achieved in Ecuador in courts outside the United States. And in a fairly narrow





*procedural ruling, the courts held that that statute cannot be implied for purposes of such enforcement. **But it was a fairly narrow procedural ruling and it doesn't change -- in fact, it made no comments about the merits of the case.** And in fact it made no comment about the RICO case and so you can expect that that will continue on its way.*

*I know this can be confusing. We said at the onset with this case when you have a collusion and a fraud outside of the United States you have to work many avenues to protect yourself. We still have many defenses, both in Ecuador, in The Hague, and elsewhere where we've put together defense teams should enforcement be sought elsewhere.*

*It's certainly unfortunate that we're at this point but when you have an elaborate fraud that is being perpetrated against you, that's what you have to do. So I hope that wasn't too long an update on those three matters.”<sup>32</sup>*

As this call demonstrates, Watson is leading the campaign against the victims and the lawyers of the Ecuadorian case. Watson it's been in charge of investing many resources in media and legal attacks to avoid the enforcement of the Ecuadorian judgment. As described in the Annex, there is much evidence that shows Watson's intent to avoid and deny the company's responsibility for remediation in the Oriente and to end the crime against humanity against the Ecuadorian victims.

In early 2011, Chevron's lawyers based their request for a worldwide injunction from a United States court on the potential losses that would result from an

---

<sup>32</sup> Transcript, Chevron 4Q 2011 Earnings Conference Call, p. 7-8.



application of a treaty between Ecuador and other countries. The importance of that argument was reflected in the U.S. District Court's decision granting a preliminary injunction barring the Ecuadorean plaintiffs from enforcing the Ecuadorian judgment anywhere in the world:

*Chevron has established also that the threatened harm is sufficiently imminent in light of the interplay of Ecuadorian, United States and other pertinent law. ... **Ecuador is a party to treaties pursuant to which the LAPs are able to seek, and perhaps to obtain, preventive measures orders in other Latin American countries, including Colombia, that would freeze or attach Chevron assets.***<sup>33</sup>

In our construction of the OPA, Watson has decided the strategy and guided the lawyers in to this actions. However, because the reasoning was so tenuous and the injunction unprecedented, it was appealed to the U.S. Second Circuit Court of Appeals. During the appeal, Chevron's chief litigation counsel, Randy Mastro, made the following declarations before the Second Circuit, on September 16, 2011:

*MR. MASTRO: [Plaintiff lawyers] have most definitely not [decided against prompt enforcement], your Honor. And it is [enforceable], under treaty with Latin American countries like Colombia, Argentina, and Venezuela, right now something that these plaintiffs could take to those countries and seize Chevron's substantial assets in those countries. There is a real and immediate danger right now, and they never stipulated.*

---

<sup>33</sup> March 7, 2011 Opinion re Preliminary Injunction (Rico case), at 69-70.



HON. LYNCH: This is under Venezuelan law?

MR. MASTRO: **No, under international Latin American treaty which is undisputed**, it's in the Coronel affidavit. I'll be happy to give your Honors the exact cite. The exact cite to that, your Honors, is on pages 6167 through 6170 of part twenty-two of the appendix. Coronel, noted Ecuadorian law expert, undisputed by them, and Judge Kaplan credited **there's a Latin American treaty to give them the right to ex parte freeze assets right now in those countries. It's a real and immediate danger right now.**<sup>34</sup>

On May 25, 2012, Chevron's lawyers submitted the following clear reference to *ex parte* attachment actions in its brief to the United States Supreme Court:

*[Chevron] also faces impending actions against the assets of its affiliated companies in foreign nations. Chevron's § 1782 actions unearthed internal memoranda written by the LAPs' U.S. counsel setting forth a plan to "pursue an aggressive world-wide enforcement strategy" in which they would attempt to seize assets held by Chevron affiliates "simultaneously in multiple jurisdictions." ... They intend to use "[p]re-judgment attachment" in foreign nations to "compound the [settlement] pressure already placed on Chevron vis à vis an international enforcement campaign.*<sup>35</sup>

---

<sup>34</sup> Transcript, Oral Hearing before U.S. Court of Appeals for the Second Circuit, September 16, 2011 (emphasis added).

<sup>35</sup> Chevron's Petition for Writ of Certiorari to the U.S. Supreme Court, at 5 (emphasis added).



It is notable that instead of addressing requests to increase oversight over environmental litigation risks in its shareholder meeting, Chevron's board has made it clear that it approves of management's handling of these risks. For example, in justifying to shareholders the Compensation Committee's recommendation of a proposal under which Vice President and General Counsel R. Hewitt Pate would receive almost four times the amount of stock awards (compared to the previous year), the Committee applauded Mr. Pate's "*outstanding management of Ecuador and other major litigation matters*". There was no reference in the Committee's recommendation to any risk of enforcement actions against Chevron's assets, much less the attachment actions under the Bilateral Treaty. We also found no mention of these risks in any of the Committee's compensation recommendations or in any other resolutions of Chevron's board of directors.

To finish this point, we present the words of Watson in the RICO process, the most recent proceeding where one can find a clear reference to the situation in Ecuador and Watson's vision of the whole case. He does not hide his intention to avoid Chevron's responsibility for its contribution to the devastating crime committed in the Oriente. We quote from the transcript of Watson's deposition:

"BY MR. GOMEZ:

Q. Do you have any personal knowledge regarding the allegation that Texaco utilized an analytical test during the remediation of the orient region of the Napo concession which was the least likely to detect petroleum contamination?

MR. MASTRO: Objection to form. Assumes facts not evidence.





SPECIAL MASTER: Do you have any personal knowledge about the Texaco remediation efforts in Ecuador whatsoever other than what you learned through counsel?

THE WITNESS: I do not. [...]

Q. [...] Generally speaking, who has the authority to decide on behalf of the company to file a lawsuit?

MR. MASTRO: Objection to form. Relevance.

MR. GOMEZ: Just some preliminary.

SPECIAL MASTER: So you mean a lawsuit on behalf of Chevron relating to any subject?

MR. GOMEZ: Correct.

SPECIAL MASTER: Is there a person with ultimate authority for that?

THE WITNESS: We have a system of delegated authorities and it varies depending upon the case.

BY MR. GOMEZ:

Q. All right. Who on behalf of the company approved the filing of the RICO action?

MR. MASTRO: Objection.

SPECIAL MASTER: Are you asking was there one individual?



MR. GOMEZ: I'm asking who. I don't know if it was one, or a committee, or a board. I'm just trying to know who approved the filing.

MR. MASTRO: Your Honor, this is clearly privileged.

MR. GOMEZ: Who made the decision or approved the filing of a lawsuit --

MR. MASTRO: You lacked foundation to the questions. Whatever he would know on that subject is likely to be through attorneys. It seems to me it's clearly privileged. It was involved in authorizing the lawsuit.

SPECIAL MASTER: Look, Mr. Gomez, whoever it was, it had to have been authorized by the client, which is Chevron. I don't know what any particular person's role is, is of any relevance, honestly.

BY MR. GOMEZ:

Q. Sir, the RICO action makes a claim for general damages. How much in general damages, what amount is Chevron seeking from the defendants in this case?

MR. MASTRO: Objection. Same issues.

SPECIAL MASTER: Haven't those damages been set forth in the expert reports?

MR. MASTRO: There are expert reports, your Honor, and anything -- again, foundationally, does he have any



information about that, who would it be from -- and then my objection would be sustained. [...].”<sup>36</sup>

It is clear that John Watson and his attorney, abetted by the Special Master, evaded these important questions. At any rate, it is also clear that the RICO case was initiated to avoid the remediation judgment and that the CEO must have agreed upon this strategy, as accepted by the Board. Watson clearly has information related to Chevron's internal system of decision-making and lines of authority.

Furthermore, one can find other references to the question of the remediation and the knowledge Watson had in relation of the situation in Ecuador, as we can see in the following lines of the transcript, when he is questioned by Mr. Donzinger:

Q. Do you see in paragraph 10 of the affidavit it reads:

“Defendants’ campaign to seek seizures anywhere around the world and generate the maximum publicity for such acts would cause significant irreparable damage to Chevron.”

Do you see that?

A. I see that and the statements that follow.

Q. And the statements that follow, it says:

“Unless it is stopped, defendants’ announced plan to cause disruption to Chevron’s supply chain is likely to cause irreparable injury to Chevron’s business reputation

---

<sup>36</sup> Transcription of the Deposition of John Watson, June 27, 2013 before the Special Master Ted Katz in the RICO case, at 192-195. *Cf.* the Annexes of this Communication.



an business relationships that would not be remediable by money damages.”

Do you see that?

A. I see that.

Q. Okay. So directing your attention just to paragraph 10, as you sit here today, do you still believe that to be true?

MR. MASTRO: Objection. Calls for legal conclusion.

SPECIAL MASTER: The witness didn't --

MR. DONZIGER: I'm asking his opinion as CEO whether he believes it's true as he sits here today. That's fair.

MR. MASTRO: And your Honor, that was not the question and that was not the form of the question, but your Honor, it calls for a legal conclusion on irreparable harm and the conclusions that he would have reached on this subject are undoubtedly the result of conversations with counsel.

So it's not an appropriate are at all. And his personal opinion on this subject is just not relevant.

MR. DONZIGER: No, I think it's highly relevant. It's not a legal conclusion. It's not a legal conclusion. It's a factual issue. It's a business issue. It's right in his wheelhouse. I want his opinion.

This was presented on behalf of Chevron to Judge Kaplan, which led to an injunction against the lawyers and clients in Ecuador. I want to know if this gentleman still





believes these facts as they are presented back then are still true.

SPECIAL MASTER: That's the problem with your question. You keep saying "still believes" the facts. He didn't make the statements.

MR. DONZIGER: Well, let me try again.

BY MR. DONZIGER:

Q. The assertion by Mr. Mitchell in paragraph 10, do you agree with it?

MR. MASTRO: Objection. Relevance. I don't have any doubt what he believes, but that's not the point. It's not relevant what he individually believes. And my other objections as well, your Honor, the conclusion, attorney-client, et cetera.

MR. DONZIGER: Judge, it's a simple question. I think he's prepared to answer it. It's our deposition. Can we just get a quick answer, please? It's not Mr. Mastro's deposition.

MR. MASTRO: It's an objectionable question on many levels.

SPECIAL MASTER: First of all, you're asking him to speculate about something.

MR. DONZIGER: What's speculative about it?

SPECIAL MASTER: If the plaintiff did -- if the defendants did certain thing, does he believe such and such would happen.



MR. DONZIGER: Well, that's what Mr. Mitchell already concluded based on certain assumptions. So I'm asking him based on the same assumptions if he agrees with that today. It's not a legal conclusion.

MR. MASTRO: Absolutely it is a legal conclusion.

SPECIAL MASTER: Do you have any reason to disagree with the statement that if the defendants successfully, were successful in seizing Chevron assets around the world, that it would cause harm to the company?

[...]

THE WITNESS: I don't have any reason to doubt this statement.

[...]

Q. Sir, you've spoken to the press about the Ecuadorian litigation, haven't you?

A. I have.

Q. And when have you spoken to the press, a reporter, independent reporter, since becoming CEO, about the Ecuadorian litigation?

MR. MASTRO: Objection to form. Vagueness. Relevance.

SPECIAL MASTER: Have you been involved in discussions with representatives of media about the Ecuador litigation more than one time since you've been CEO?



THE WITNESS: Numerous times.

[...]

Q. Have you told any of -- well, when you say "numerous times", about how many different interviews have you given about the Ecuadorian litigation begins becoming CEO up to the February 2011 time period?

MR. MASTRO: Objection to form. Relevance.

MR. DONZIGER: Your Honor, every time I ask a question, these questions are pretty simple. We can get through this pretty quickly.

SPECIAL MASTER: You phrased it numerous times. So why don't you go from there.

[...]"<sup>37</sup>

One can note the continuous intention to avoid the direct answers to the questions about the politics of the Company. This is only one example of Chevron's overarching strategy to litigate the Aguinda civil case not only in Ecuador, but in every single court it can until it receives a decision favorable to it. This kind of take-no-prisoners strategy, from a company with almost unlimited resources, has been prevented the Ecuadorian victims from enforcing the remediation judgment and addressing the problems still facing the communities forty years later. As noted before, we have fought against the continuous harassment suffered by the lawyers that represent the victims, the malicious intent to convince the public opinion that the victims are criminals, the bad faith in several the jurisdictions all over the world, and so on.

---

<sup>37</sup> *Op. cit.* 35. at 243-250.



This evidence presented from the RICO trial in United States constitutes a contributing cause of the maintenance of a crime against humanity in Ecuador within the jurisdiction of the ICC.

We also reserve the possibility of extending our arguments in further documents or in a hearing on the positions of the parties and participants during a possible investigation of the present situation.

In conclusion, we believe the above facts demonstrate the potential liability of CEO John Watson, on the basis of his intent to contribute to the maintenance of the polluted environmental conditions, which constitute an attack against on the population in the Oriente region in Ecuador and could be characterized as a crime under Article 5 of the Rome Statute. In addition, this situation cannot be dismissed, but must be made known to the world and investigated to ensure that companies respect the environment and the human rights of people all over the world.

#### **B. ALLEGED CRIMINAL LIABILITY**

This Communication is addressed to this Court so that the Prosecutor might open an investigation into the situation of oil contamination in Ecuador, conditions that constitute an attack against the civil population that lives in the region of the Napo Consesion. We believe that the acts of Chevron Corp., which has been condemned to remediate the pollution, and its CEO John Watson could punishable under the Article 25 of the Rome Statute.

Taking into account that the standard to fulfill at this stage of the proceedings is “a *reasonable basis to proceed*”, we will provide the names of the persons whom decide the politics of the company about their liability for the contamination in the Lago Agrio Case in Ecuador. The ‘reasonable basis’ standard of proof has been interpreted by the Court to require “*a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court ‘has been or is being*





*committed*”<sup>38</sup> Even though we know that the ICC has no jurisdiction over any company<sup>39</sup>, instead we believe that it's possible to conclude that it is the CEO, Mr. Watson, the person who has ordered, solicited, or induced the commission of crimes in Ecuador falling within the jurisdiction of the Court.

At this instance, we have shown that the most important decisions at this case at Chevron are held by CEO and Chairman of the Board **John Watson**, and Vice-President and General Counsel **Hewitt Pate**; but we must also make mention of Ricardo Reis Vega's actions, as former vice-president of Texaco and current Vice-President of the Board of Chevron. Mr. Vega was involved in every single action taken by Texaco in relation to the Lago Agrio trial, not only by providing legal advice, but by managing security matters directly with the Ecuadorian military and running a number of fake companies to provide alleged independent services to Chevron. He was also in charge of the negotiations and the field work related to the release of liability agreement signed by the Ecuadorian government in 1998. All of these high-ranked persons could be individually responsible for the contributions made to the situation of contamination in the area of the Napo Concession in Ecuador.

For this reason, we firmly believe that the corporate officers of Chevron are liable as described by Article 25.3.b of the Rome Statute. Thus, international doctrine states, “[... the] ICC Statute reflects customary international law and can be summed up by saying that anyone in position of authority who makes use of that authority ordering the commission of international crime is criminally liable”.<sup>40</sup> Also, in regard to soliciting and inducing, both concepts denote actions of urging,

---

<sup>38</sup> Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19-Corr, 31 March 2010, para. 35.

<sup>39</sup> Contrario sensu, article 25.1 of the RS.

<sup>40</sup> Dimov, Dimcho, “Article 25” in “International Criminal Law” coordinated by Bantekas, Ilias (Hart Publishing, Oxford and Portland, Oregon, 2010), at 149.



encouragement or advising and therefore are synonymous to 'instigating'. In other words, in order to avoid too a restrictive definition that might hinder the full comprehension of this mode of liability, it can be essentially described as an act of prompting another, by action or omission, to commit a crime against international law.<sup>41</sup>

Finally, whether the influencing of physical perpetrators should be 'direct and immediate', the prevalent view is that there is no such restriction and the criminal result might be achieved through a chain of inducements. [...] In light of the standards set in Article 30 Rome Statute, it can be surmised that the relevant subjective element should be that the perpetrator has acted with the intention to influence or induce the commission of a crime or that he is aware of the substantial likelihood that the execution of the crime would result from his conduct.<sup>42</sup>

Besides, to conclude, it would be difficult to assert the right form of liability for the persons up-right the hierarchical organization that Chevron Company is, i.e. all across this communication we can find the element of organized apparatus of power in the terms that has been established by Claus Roxin.<sup>43</sup> Anyhow, in this instance we try to demonstrate that in the situation of Ecuador exists reasonable basis to proceed to open an investigation in virtue of the attack, widespread and/or systematic, directed against the civilian population of the Oriente region, with knowledge required by the Rome Statute.

---

<sup>41</sup> *Op. Cit.* 39. At 150.

<sup>42</sup> *Idem* 41.

<sup>43</sup> As it has been interpreted by the jurisprudence of the ICC, we can define the basic elements as four converging features: 1) an organized power apparatus with a rigid hierarchical structure; 2) verification that the immediate author could effectively be replaced by another, which implies that the organization has a consistent and durable structure; 3) the interchangeability of the person who actually commits the act implies automatic control by his superior in the structure, the "man behind the scene"; and 4) the power apparatus has deviated from the law and opted for criminal behavior. Articles 15, 16, 17, 18 and 19 of the Rome Statute. See VI.A of this Communication.



We reserve the possibility of extending our arguments in further documents, or in a hearing; for the moment we can only advance that the most interested persons, especially CEO John **Watson**, Vice-President Hewitt **Pate**, and Vice-President Ricardo **Reis Vega** continue to avoid their responsibility and contribute at every opportunity they can to keep the pollution in the Oriente region from being remediated, and that such acts are punishable under Article 25 of the Rome Statute.



## **V. ALLEGED CRIMES**

As has already been described in this Communication, we believe that the acts of the CEO and other high-ranked officers of Chevron Corp., which has been condemned to remediate the pollution in the Oriente, are punishable under Article 25 of the Rome Statute. We firmly believe that, in accordance with Articles 13(c) and 15.1 RS, there is reasonable basis for authorization of the Pre-Trial Chamber of ICC to investigate the possible crimes against humanity committed in Ecuador by Chevron since the Court's jurisdiction was activated in the country.

The situation in the Oriente cannot be dismissed or ignored, despite Chevron's desires to do so. We call on the ICC to assert its jurisdiction and investigate the persons that have the control of Chevron and the company's politics in their attempts to avoid the enforcement of the judgment of the Ecuadorian tribunals, which obliges the company to remediate the pollution, environmental damage, and devastating health effects produced by oil extraction in the Oriente.

The following list is not exhaustive and is only meant to illustrate the crimes committed in the territory of Ecuador after 2002 and that continue even today in the Oriente region. We also attach evidence as to each element of the crime that could meet the first description made in the articles of the Statute of Rome.

### **A. Crimes within the jurisdiction of the ICC**

#### **Article 7 Crimes against humanity**

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

**(a) Murder;**





- (b) Extermination;
- (d) Deportation or forcible transfer of population;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;



(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.

## **B.- Elements of Crimes**

### **Article 7 Crimes against humanity**

#### **Introduction**

1. Since article 7 pertains to international criminal law, its provisions, consistent with article 22, must be strictly construed, taking into account that crimes against humanity as defined in article 7 are among the most serious crimes of concern to the international community as a whole, warrant and entail individual criminal responsibility, and require conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world.

2. The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.



3. "Attack directed against a civilian population" in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that "policy to commit such attack" requires that the State or organization actively promote or encourage such an attack against a civilian population.

#### **Article 7 (1) (a) Crime against humanity of murder**

##### **Elements**

1. The perpetrator killed one or more persons.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

#### **Article 7 (1) (b) Crime against humanity of extermination**

##### **Elements**

1. The perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.
2. The conduct constituted, or took place as part of, a mass killing of members of a civilian population.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.



4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

#### **Article 7 (1) (d) Crime against humanity of deportation or forcible transfer of population**

##### **Elements**

1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.

2. Such person or persons were lawfully present in the area from which they were so deported or transferred.

3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.

4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

#### **Article 7 (1) (h) Crime against humanity of persecution**

##### **Elements**

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.





2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

#### **Article 7 (1) (k) Crime against humanity of other inhumane acts**

##### **Elements**

1. 2. 3. 4. 5.

The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.

Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.

The perpetrator was aware of the factual circumstances that established the character of the act.

The conduct was committed as part of a widespread or systematic attack directed against a civilian population.



The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.



## V. EVIDENCE

According to article 15.1 and 15.2 of the Rome Statute, we present all the evidence in our possession to demonstrate the facts described in the present communication. We also solicit the production of some additional sources of information in the base of Part 9 of the RS.

### A.- Documents

#### a. Ecuador

- Judgment of the Lago Agrio of February 14 2011 - Case No. 2003-0002 - Aguinda y otros c. Chevron Corporation - Provincial Court of Justice of Sucumbíos (translated to English)
- Appeal decision of January 3 2012 - Case No. 2011-0106 - Sole Chamber - Provincial Court of Justice of Sucumbíos
- Cassation decision of November 12 2013 - Case No. 174-2012 - Civil and Commercial Division - National Court of Justice of Ecuador
- Decision of June 1 2011 - Case 150-209WO - National Court of Ecuador (spanish version)

#### b. U.S. proceedings

- Opinion, US District Court for the Southern District of New York Opinion, March 7, 2011.
- Transcript, Oral Hearing before US Court of Appeals For the Second Circuit, September 16, 2011.
- *Aguinda v. Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002).



- Chevron's Petition for Writ of Certiorari to US Supreme Court.
- Trial documents in *Chevron Corp. v. Steven Donziger, et al.*, 1:11-cv-00691-LAK-JCF (S.D.N.Y. 2013) (RICO Case), Nos.:

1850

1875

1874 (Trial Opinion)

1874-1 Appendix

- Transcription of the Deposition of John Watson, June 27, 2013 before Special Master Ted Katz in *Chevron Corp. v. Steven Donziger, et al.*, 1:11-cv-00691-LAK-JCF (S.D.N.Y. 2013) (RICO Case), .

### **c. Corporative**

- Annual Shareholder Meeting - May 2012.
- Annual Shareholder Meeting - May 2013.
- Transcript, Chevron 4Q 2011 Earnings Conference Call.

### **B.- TESTIMONY**

According to article 15.2 RS, we will offer a list of persons that could testify in the present investigation at the due moment of the procedure. For the moment, we anticipate the intention to give to the victims the opportunity to bring its opinions to the International Criminal Court.





For that is important to define this point regarding the cooperation of the organizations and States. In this sense, is important to the victims to receive the information to enlighten the investigation and to end impunity in the present case.

### **C.- ADDITIONAL INFORMATION - OTHER SOURCES**

- Power of Attorney - Poder General para Juicios (Original Spanish)
- Chevron CEO says ruling in Ecuador case a 'resounding victory' from the 4/03/2014 HOUSTON; Reuters.
- Map of the "Concesión Texaco 1964"
- Map of the "Concesiones Texaco 1964, 1973 y Aguarico Pastaza"
- Press release of Chevron Company in website - <http://www.chevron.com/news/press/release/?id=2009-09-30>

As part of this communication, we would like to trigger the system described in the Part 9 of the Rome Statute, in particular articles 86 and 87, it's our intention to obtain by the authorization of the Court the cooperation of the State of Ecuador. For this, we think that the following information is fundamental for this investigation to understand the timeline of the different concessions in the area of the Oriente:

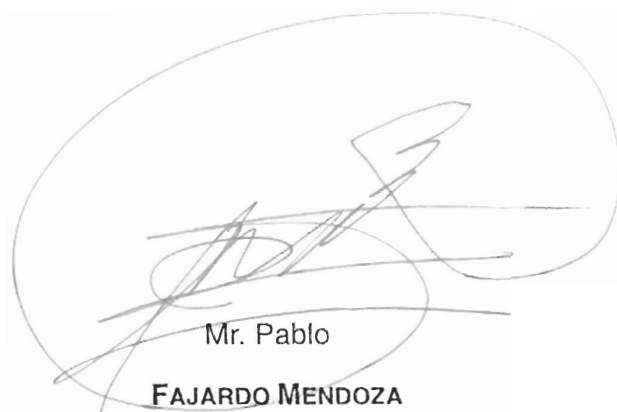
- Official Register of Ecuador
- Superintendent Amazonian District



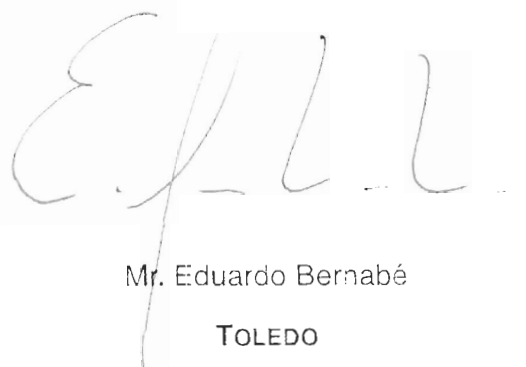
## VI. PETITUM

Regarding the present Communication, we solicit:

- A. receipt by the Prosecutor of the present Communication in accordance with Articles 15.2 and 53.1 of the Statute of Rome and Rules 48 and 104 of the Rules of Procedure and Evidence; and the solicitation of an audience, considered appropriate under Articles 15, 17, 18 and 19, in order to amplify the facts laid out in the present communication and to clarify any points that might be unclear;
- B. the opening of a Preliminary Examination, in exercise of the prerogatives of Article 15, on the facts that we have described regarding the alleged crimes committed by CEO John Watson;
- C. in the case that a reasonable basis to proceed is found, submission of the situation in Ecuador to the Pre-Trial Chamber to obtain authorization to continue with the investigation;
- D. finally, notification of the Legal Representatives of the Victims of the decision that is made with respect to the investigation of the situation in Ecuador, in accordance with Article 15.3 and Rules 89 to 92.



Mr. Pablo  
**FAJARDO MENDOZA**



Mr. Eduardo Bernabé  
**TOLEDO**

