



General Assembly

Distr.: General
4 June 2015

English, French and Spanish only

Human Rights Council

Twenty-ninth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Europe-Third World Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 May 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.15-11369 (E)



* 1 5 1 1 3 6 9 *

Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



Chevron's activities impair freedom of expression of victims, academics, students and activists

BACKGROUND¹

On 5 February 1964 the military junta governing Ecuador granted a more than 1,4 million-hectare concession to the Texaco Gulf Consortium for oil prospecting and extraction in Sucumbios and Orellana provinces in the Ecuadorian Amazon. In 1973 the concession was redefined and located in a 400,000-hectare area, where the North American transnational Texaco, now known as Chevron,² extracted oil until 1992. At the time the area was inhabited by several indigenous peoples,³ which were affected by the company's activities: so much so that the Cofán people lost 74% of their members⁴ from forced displacement and the Tetete people were entirely exterminated.

In 1993 the communities filed a claim in the United States against the oil company Texaco, for environmental pollution and damage to the health of their members.⁵ Soon after, at the request of the company itself, the case was referred to a court in Ecuador,⁶ which sentenced Chevron (formerly Texaco) to compensate the inhabitants and to take all necessary measures to restore the affected ecosystem.⁷

The Ecuadorian courts found it proven that the company had drilled more than 350 wells and dug around 1,000 pits that it used to store toxic materials used during drilling, production waters and other industrial waste, which was not properly treated and thus ended up in the rivers and lakes of the region.

For its part, Chevron denied liability and has devoted enormous efforts and resources to getting the judgement set aside and persecuting the victims.

INTIMIDATION BY CHEVRON

Chevron started a campaign of deterrence and intimidation against the communities, its lawyers and its support organizations. Its intention was clearly shown on various occasions, for example:

3 May 2009: Chevron's chief lawyer promised that the company would “fight until hell freezes over and then fight it out on the ice”.⁸

20 July 2009: a company spokesman told the *Wall Street Journal*, with regard to the trial, “We are not paying and we are going to fight this for years if not decades into the future”.⁹

4 August 2008: in *Newsweek* magazine a lobbyist from Chevron, when asked about the legal action filed by the Amazonian communities, said, “we cannot allow little countries to mess with big companies like this one”.¹⁰

Chevron has published press releases promising the Ecuadorians a lifetime of litigation if they persisted in the claim.¹¹ The threats did not stop at words. Some years ago Chevron stepped up its action to avoid paying the penalty, hiring around 60 companies and 2,000 lawyers, public relations agencies and lobbyists to work out a strategy using mainly intimidation and scare tactics to silence anyone who tries to speak up in support of the affected communities.

Millions of dollars have been invested to attack activists, journalists, cartoonists, documentary makers, scientists and lawyers, all of whom have been persecuted and accused by Chevron. Seemingly nobody can speak out against the company without suffering some kind of harassment.

Several human rights NGOs have condemned this sort of action,¹² but Chevron's persecution does not stop.

Below we describe some of the actions Chevron has taken to silence the affected people and their allies.

Legal proceedings to scare into silence

Chevron launched lawsuits based on illegal practices such as the “fishing expedition”.¹³ To do this it went to United States courts and asked for information beyond the fair scope of its lawsuit, thereby abusing the law of the land and, in particular, the discovery procedure, in order to obtain personal letters, documents and general information about particular individuals.¹⁴ Chevron filed 25 lawsuits of this kind against lawyers, activists, journalists, documentary makers and NGO assistance, in more than 17 US jurisdictions. They were subpoenaed to provide non-specific information and were subjected to complex questioning during which they were threatened with prison.

Chevron asked Google, Yahoo and Microsoft to provide information on users of over 100 electronic mail accounts, and about where the accounts had been accessed in the past 10 years. It was not successful, but it managed to intimidate many people.

As a result of this hunting spree, Chevron got proceedings opened against the communities associates, used judicial proceedings as a means of intimidating and also as a means of obtaining confidential documents which it handed over illegally to its lawyers.

The organizations which have supported the plaintiffs in the lawsuit have used enormous resources in responding to Chevron's attacks. They have had to hand over information on their operations and private information about people working with them has been exposed.

Press freedom and judicial proceedings against journalists and documentary makers

In 2008 Joe Berlinger¹⁵ brought out his documentary “Crude”, on the legal action taken by the community against Chevron, and it was screened at a dozen international festivals.¹⁶

In 2010 Chevron asked a court in New York to order J. Berlinger to hand over all the outtakes from the film. The trial judge, Lewis Kaplan, accepted Chevron's request and ordered Berlinger to turn over some 600 hours of outtakes to Chevron. Berlinger appealed the order in the Second Circuit Court of Appeals. Leading American media, including the *New York Times*, ABC, NBC, CBS and Associated Press, filed an *amicus curiae* brief with the Court opposing discovery of the material. The Court of Appeal ignored this request, however, and upheld the decision of the lower court, although it reduced the number of outtakes to be handed over. Berlinger was obliged by an unprecedented court order to hand over 500 hours of recording, which was an infringement of press freedom.

CBS's “60 Minutes” also visited the area and made a report on the case,¹⁷ which won the Edward R. Murrow Award.¹⁸ In response Chevron hired a former CNN reporter to do a piece putting the company's arguments and three weeks before the “60 Minutes” report aired, the Chevron piece was broadcast as an independent report. When the “60 Minutes” report was shown, Chevron complained to the *Columbia Journalism Review*, which severely criticized CBS on the basis of the false arguments of Chevron.¹⁹

A similar thing happened to William Langewiesche,²⁰ a *Vanity Fair* journalist who in 2007 wrote an article on the case. Years afterwards Chevron got hold of several emails between Steven Donziger²¹ and William Langewiesche, took them out of context and launched a publicity campaign to discredit the journalist.

Chevron has also hired journalists to spy on the plaintiffs, as evidenced by the testimony of Mary Cudehe,²² who was contacted by Kroll²³ in Bogotá and asked to infiltrate the plaintiffs and make a supposedly independent report. When she reported this she too was attacked by Chevron.

Investors persecuted

Thomas DiNapoli,²⁴ director of the New York State pension fund, has also been the victim of retaliation by Chevron, because the fund owns stock in Chevron and in that capacity asked Chevron to handle the trial in Ecuador better. In 2012 Chevron filed a complaint against DiNapoli to the New York State Joint Commission on Public Ethics.²⁵

Amnesty International USA has held some Chevron stock for decades. In 2012 Simon Billenness, an Amnesty International activist, was subpoenaed to hand over all documents and emails relating to his work with Chevron shareholders. He was required to hand over not only communications with shareholders but also those with government agencies and, in addition, documents and emails related to his work with Amnesty International.

Extortion (RICO) trial

On 1 February 2011 Chevron filed a lawsuit in the Southern District of New York accusing the plaintiffs and their partners of extortion.²⁶ There were serious irregularities in the trial, such as the partiality of the judge, a ban on referencing any evidence related to pollution by the oil company, admission of paid witnesses and denial of a jury trial.

The judgement rendered found that the NGO media campaigns, webpages and blogs, and requests to government officials, could amount to extortion by those organizations. An appeal was filed against this sentence on 2 July 2014 at the United States Court of Appeal for the Second Circuit.²⁷

Several United States NGOs have warned of the threat to their work posed by the court's decision in this case. A group of organisations has even filed an *amicus curiae* brief to the court that is to hear the appeal.²⁸

Intimidation, persecution and gagging of environmental consultants

Stratus Consulting Inc.²⁹ was one of the entities sued in the RICO case brought by Chevron. Stratus scientists had given their scientific opinion on the serious contamination left behind by Chevron in several forums, including the “60 Minutes” programme. Stratus's support for and statements on behalf of the plaintiffs prompted Chevron to launch an aggressive campaign against it, investing large sums in action designed to persecute and discredit Stratus.³⁰ It also lobbied to prevent Stratus being awarded government contracts, even making and airing videos accusing the company of “criminal conspiracy”.

After a four-year legal battle, Stratus went bankrupt and was forced to come to a retraction agreement with Chevron.³¹

CONCLUSION

The 22-year litigation between the Amazonian peoples and Chevron is a benchmark case in the struggle to ensure that transnational corporations are held accountable for the human rights violations they commit. It deserves the full support of all States, so as to guarantee the victims access to justice and to reparation for the harm caused.

Enforcement of the Ecuadorian court ruling against Chevron would be a major victory for human rights, the communities affected, the independence of the justice system and the sovereignty of States. The size, power or wealth of the company should not be an impediment to enforcement.

The fact that the plaintiffs' action against Chevron's operations in Ecuador is deemed criminal is the direct infringement not only of the right to freedom of expression and association but also of the rights to justice and reparation.

The CETIM urges the Human Rights Council and the United Nations High Commissioner for Human Rights to take urgent action and intervene with the United States to put a stop to the attacks by Chevron that violate the basic rights of the Amazonian peoples and their defenders.

1 This declaration has been drafted in collaboration with Unión de Afectados por las Operaciones de la Petrolera Texaco (Chevron) en Ecuador (UDAPT).

2 Chevron joined Texaco in 2001, as a result of this, it inherited its goods, its debts and was responsible of all pending lawsuits.

3 They are the Secoya, Sionas, Waorani, Shuar, Kichwa, Cofán and Tetete indigenous peoples.

- 4 It went from 5,000 inhabitants to under 800, according to Miguel Ángel Cabo de Villa's texts.
- 5 For more details on the damages caused by Texaco in Ecuador, see the written statement presented by the CETIM to the Human Rights Council in June 2014, A/HRC/26/NGO/74, available here: http://www.cetim.ch/en/interventions_details.php?iid=382 "In 26 years of oil drilling in the Amazon region of Ecuador, Texaco has polluted more than 450,000 hectares of one of the planet's richest biodiversity regions, destroying the living and subsistence of its inhabitants, causing the death of hundreds of persons and a brutal increase in the rate of cancer and other serious health problems. More than 60 billion liters of toxic waste water were dumped into the rivers and streams, 880 hydrocarbon waste pits were dug, and 6,65 billion cubic meters of natural gas were burned in the open air."
- 6 On 3 November 1993 just under 30,000 Ecuadorian people, indigenous and colonists, affected by the pollution left over by Texaco in their territories, filed a lawsuit in New York. On the 15th August 2002, the Appeal Court of New York South District order the case to be transferred to the Ecuadorian jurisdiction to which Chevron accepted to submit to. On the 7th May 2003, those affected by Texaco's activities initiated legal action against the oil company in Sucumbios province, in Ecuador.
- 7 On the 13th November 2013, the National Court of Justice of Ecuador ratified the sentence imposed by the Sole Chamber of the Province Court of Justice of Sucumbios dated 3rd of January 2012, which ratified at its turn the first instance sentence by the President of the Province Court of Sucumbios dated 14th February 2011, by which it was ordered to pay for damages the amount of 9,5 billion dollars. The decision is enforceable.
- 8 John Otis, "Chevron vs. Ecuadorean Activists", *The Global Post*, May 3rd, 2009, available at: <http://www.globalpost.com/dispatch/the-americas/090429/chevron-ecuador?page=0,2#>
- 9 Ben Casselman, "Chevron Expects to Fight Ecuador Lawsuit in U.S.", *Wall St. Journal.*, July 20th, 2009, available at: <http://online.wsj.com/article/SB124804873580263085.html>
- 10 "A \$16,000 million problem", by Michael Isikoff in *Newsweek* (August 4th, 2008).
- 11 See Press Release: "Chevron Calls for Dismissal of Ecuador Lawsuit", Oct. 8th, 2007, available at: http://www.chevron.com/chevron/pressreleases/article/10082007_chevroncallsfordismissalofecuadorlawsuit.news.
- 12 In an open letter dated 23 January 2014 signed by dozens of organizations, they alert on several risks and "condemn Chevron's actions in its effort to silence criticisms against it and ignore a \$9,5 billion judgement for environmental damages in Ecuadorian Amazonia. Chevron's actions constitute a dangerous precedent and are a serious and increasing threat to civil society's capacity to keep corporations liable for their misdemeanours around the world". See <http://amazonwatch.org/assets/files/2014-chevrons-threat-to-open-society.pdf>
- 13 Using the courts to find out information beyond the fair scope of the lawsuit. Randomly looking for evidence against plaintiffs, lawyers and associates.
- 14 Lawyers, activists, journalists, documentary makers and assistants of civil society organizations linked with the case, among others.
- 15 American documentary director and producer, winner of two Emmy awards, among others. For further information see: <http://www.crudethemovie.com/filmmakers/>
- 16 Among others, the Sundance Film Festival, the Sydney Film Festival, San Francisco International Film Festival, SILVERDOCS Independent Film Festival of Boston, One World Film Festival.
- 17 See <http://www.cbsnews.com/news/amazon-crude-update/>
- 18 See <http://www.cbsnews.com/news/60-minutes-wins-two-edward-r-murrow-awards/>
- 19 http://www.cjr.org/the_audit/how_60_minutes_missed_on_chevr.php

- 20 William Langewiesche has had a long career in journalism and won several awards for his work. See <http://www.vanityfair.com/contributor/william-langewiesche>
- 21 Community lawyer, United States
- 22 See <http://www.theatlantic.com/international/archive/2010/08/a-spy-in-the-jungle/60770/>
- 23 Company that presents itself as a global leader in corporate risk mitigation and response. See <http://kroll.com/>
- 24 New York State Controller, who manages the State employees' pension fund.
- 25 See <http://www.theamazonpost.com/wp-content/uploads/Ethical%20Complaint%20against%20DiNapoli%20to%20Joint%20Commission.pdf>
- 26 This claim was made under the Racketeer Influenced and Corrupt Organizations (RICO) Act, a statute originally enacted to allow US government agencies to combat organized crime. See http://en.wikipedia.org/wiki/Racketeer_Influenced_and_Corrupt_Organizations_Act
- 27 See http://www.csrwire.com/press_releases/37240-Donziger-Appeal-Judge-Kaplan-Allowed-Corrupt-Witness-Testimony-Violated-International-Law-and-Stretched-RICO-Past-Breaking-Point-
- 28 In the document submitted to the court the organizations state: "In essence, this case is an effort by Chevron to retaliate against Ecuadorian villagers, their lawyers, and their supporters for suing, bringing public pressure, and petitioning government agencies to hold Chevron accountable for violations of human rights. The district court's decision below, if allowed to stand, poses a severe threat to the rights to expression, association, political participation, and access to courts guaranteed by the First Amendment. If the vaguely defined scope and heavy penalties of RICO – enacted to support law enforcement efforts against organized crime syndicates – may be wielded by private parties against public interest groups and activists who engage in First Amendment-protected activities to seek to hold those private parties accountable, democracy itself is threatened." *Amicus Curiae* on Behalf of Amazon Watch, Amnesty International, et al. *Chevron Corporation v. Hugo Camacho et al.* Case 14-826. New York Court of Appeal. See http://d2zyt4oqqla0dw.cloudfront.net/sites/default/files/donziger-amicus_2014awbrief.pdf
- 29 Group of scientists operating in Colorado, USA, who for many years have conducted environmental studies. Stratus was hired by the plaintiffs in this case to assess the contamination left behind by Chevron.
- 30 Extract from document submitted to the Court by Stratus: "[Chevron has] embarked on an extrajudicial campaign of malicious defamation and deliberate interference with Stratus' business to tortiously destroy Stratus (and the livelihood of its employees) and to prevent Status from being able to successfully defend itself at trial. Chevron's scheme ... consists ... of widely and publicly disseminating lurid allegations against Stratus concocted from lies and inappropriate manipulation ... (of) evidence; publishing defamatory written statements directly to Stratus' clients and others, falsely and maliciously telling clients that (courts) have entered conclusive findings confirming Chevron's allegations ...; in direct and indirect communications explicitly and repeatedly requesting that Stratus' clients fire Stratus or not engage Stratus as a technical consultant ..." Memorandum of Law on behalf of defendant Stratus Consulting, Inc., in support of its motion to amend its answer to assert counterclaims. Case No. : 11 CV 0691 (LAK). December 21, 2012. See <http://chevrontoxico.com/assets/docs/2012-12-21-stratus-counterclaims.pdf>
- 31 See <http://thechevronpit.blogspot.com/2013/04/the-truth-behind-stratus-affidavits.html>
-