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February 9, 2012

Dr. Santiago Cantón
Executive Secretary
Inter-American Commission on Human Rights
Organization of American States
1889 F Street NW
Washington, DC 20006

RE: Request for precautionary measures

Dear Dr. Cantón,

Pursuant to Article 25.2 of the Commission's Rules of Procedure, we respectfully request the Commission to call for precautionary measures from the Republic of Ecuador in connection with recent developments in an UNCITRAL arbitration that, in unprecedented fashion, seriously threaten the rights of the more than 30,000 indigenous persons and Amazon region residents ("the Afectados") who have tirelessly prosecuted an historic environmental lawsuit against Chevron Corporation (the *Aguinda* case) for nearly two decades.¹ The threats are serious and urgent, and impact the Afectados in their enjoyment of core rights to life, physical integrity, and health,² as well as their rights to a fair trial,³ to judicial protection (including the determination and enforcement of remedies),⁴ and to equal treatment under the law.⁵

Recently, the UNCITRAL arbitral panel announced that it will hold a closed hearing on February 11-12, 2012, at the Organization of American States in Washington, D.C., which representatives of the Afectados and the public are barred from attending, and at which Chevron will ask the panel to order the Republic of Ecuador to intervene in the *Aguinda* case on Chevron's behalf. Specifically, Chevron wants the Republic to mandate, or otherwise effect through political pressure, that the historic case be shut down or suspended. For the Republic to allow, much less instigate, any delay in the implementation of the lawfully determined and ordered remedy that the Afectados have achieved in Ecuadorian courts would be a flagrant violation of Ecuador's binding commitments under the American Convention and the San Salvador Protocol—and would simply be unconscionable in light of the fact that the Afectados suffer the effects of Chevron's contamination on their lives and health every single day. As the Commission has recognized in its work in Ecuador, the harms of "severe environmental pollution" are real, ongoing, and immediate⁶; indeed, "[w]ater is life" in this region of Ecuador, and the Afectados have already been forced to drink contaminated water for decades in violation of their fundamental rights.⁷

The threat that this closed hearing and the UNCITRAL arbitration generally pose to the Afectados and their fundamental rights is unquestionably serious and urgent sufficient to warrant action under Article 25(2). Accordingly, the Afectados request the Commission to call for precautionary measures from the Republic sufficient to assure the Commission that the Republic will refrain from taking any action that would contravene, undermine, or threaten the human rights of the Afectados as discussed herein, and that to the contrary the Republic will take all appropriate measures to assure the full protection and continued guarantee of those rights.

I. BACKGROUND

The fundamental threat to the Afectados' life, physical integrity, and health (as well as their way of life and other cultural rights) arises from the massive contamination and other environmental harms caused by Chevron Corporation (then Texaco) during its operations in Ecuador. From 1964-1990, Chevron, in a concession area of over 450,000 hectares, drilled more than 350 oil wells, dug more than 800 open-air waste pits (which it never lined or properly engineered), and dumped more than 16 billion gallons of polluted water and toxic sludge from those pits into surrounding rivers and streams used by the Afectados for drinking, bathing, and fishing. The Afectados first demanded an environmental clean-up in the courts of New York, but Chevron insisted the matter be transferred to the courts of Ecuador, promising it would submit to jurisdiction there and abide by any resulting judgment.

From 2003-2011, an Ecuadorian court presided over a rigorous trial that generated a voluminous record of 220,000 pages, containing more than 100 expert reports, over 64,000 lab results taken at dozens of court-supervised inspections, the testimony from dozens of witnesses, numerous independent public health studies, and reams of legal argument. In its final verdict of February 14, 2011, the court concluded that "natural water sources throughout the Concession have been contaminated by the defendant's hydrocarbon activities, and in light of the dangerousness of the discharged substances and all the possible methods of exposure, the contamination puts at risk the health and lives of persons in general and of the ecosystem."⁸ One expert, Dr. Daniel Rourke, formerly of the RAND Corporation, concluded that more than 9,000 Afectados could contract cancer due to exposure to oil contamination.⁹

On January 3, 2012, the verdict of the Ecuadorian trial court was affirmed in its entirety by the court of appeals. Subsequently, Chevron sought further review from the Ecuador's National Court of Justice, but declined to ask for the placement of an appeal bond that would have suspended the finality and enforceability of the judgment pending that appeal, leaving the affirmed verdict final, *res judicata*, and will soon be fully enforceable. Chevron has publicly declared on numerous occasions that it will not pay the judgment ("until hell freezes over").¹⁰ Since Chevron intends to violate the law and flout its obligations, relief for the Afectados may well only come by enforcement of the judgment against Chevron assets in Ecuador or around the world as expeditiously as possible.

In 2009, recognizing that the overwhelming scientific evidence was likely to result in a judgment against it, Chevron sought to collaterally attack the Ecuadorian process by filing a demand for arbitration against the Republic under the U.S.-Ecuador Bilateral Investment Treaty (BIT),

seeking an order that the Republic shut down the trial or agree to indemnify Chevron for any amount the plaintiffs might be awarded at trial.¹¹ The Republic has appropriately objected that the BIT in no way reflects Ecuador's consent to arbitrate claims by litigants merely displeased with the results of trials they themselves chose. As two leading civil society organizations (Fundación Pachamama and the International Institute for Sustainable Development) stated in an amicus submission offered to the arbitral tribunal:

While the central role of international investment law has historically been to remove political interference from disputes related to the conduct and operations of foreign investments, [Chevron] here seeks the opposite: for a Tribunal to issue an order for specific performance for a State to make just such an interference for the benefit of one side of a civil case in which no State agency or entity is a litigant.¹²

Shockingly, the arbitral tribunal refused to accept or consider the amicus submission.¹³ Instead, in response to Chevron's emergency petition following the decision of the Ecuadorian appeals court affirming the judgment, the tribunal issued an "interim award" ordering the Republic to "take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of [the Ecuadorian court's final] judgment."¹⁴

At the February 11-12 hearing, which no representatives of the Afectados or members of the public will be allowed to attend, Chevron intends to ask for even stricter and more intrusive injunctive relief. Specifically, an order from the tribunal that would (1) direct Ecuador's government to prevent the court clerk's issuance of the appellate certification; (2) "decree" that the Ecuadorian judgment is not enforceable pending the outcome of the arbitration; (3) "decree" that Chevron is exempt from the bond requirement for filing a cassation appeal; (4) direct Ecuador's government to provide the funds to pay for any bond Chevron might be required to post; and (5) direct Ecuador's government to order or pressure the Afectados representatives not to enforce the judgment.¹⁵

As the Republic has argued, the relief Chevron requests is unprecedented and would radically upset the balance of international authority and state sovereignty, in a sense allowing a panel of private individuals to attempt to override a binding *res judicata* award of a sovereign country and the very functioning of a democracy's public justice system.¹⁶ But the Republic represents itself as a defendant in the proceeding—it cannot, nor should it be expected to, represent the interests of the Afectados, and the Afectados have no ability to predict, much less control, how the Republic will act in the future. For example, the Republic recently forwarded the tribunal's interim award to appellate panel in the *Aguinda* case without any notice to or consultation with the Afectados.¹⁷ As discussed herein, core rights of the Afectados to a fair trial, judicial protection, enforcement of remedies, equal protection under the law, freedom from discrimination, and even their fundamental rights to life, physical integrity, and health, could be severely impacted by the sorts of illegal acts that Chevron is demanding that the Republic engage in.¹⁸ Moreover, the relief Chevron demands would set up a destructive conflict between the international investment law and international human rights law regimes, potentially establishing

an indefensible situation wherein the monetary claims of disgruntled investors were privileged over the fundamental human rights claims of individuals.

II. ARGUMENT

Article 25.2 of the Commission's Rules of Procedure provides that "[i]n serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any pending petition or case." Article 25.3 further provides that such measures "may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members."

The undersigned respectfully submit that the threat to their fundamental rights, indeed their very lives and well-being, is serious and urgent and unquestionably warrants a request by the Commission for precautionary measures and assurances to be provided by the Republic. The requested measures should be sufficient to assure the Commission—and the Afectados, whose rights are at stake—that the Republic, at the February 11-12 hearing and beyond, shall refrain from taking or agreeing to take any action (or omission) that could result in harm to the fundamental rights of the Afectados. Among those fundamental rights, as mentioned above, are:

- *The right to a fair trial*, as guaranteed in Article 8(1) of the American Convention, which includes the right to a fair "determination of [one's] rights and obligations of a civil, labor, fiscal, or any other nature," clearly encompassing the Afectados' environmental and civil claims. Any action by the Republic in line with Chevron's demands would run afoul of Ecuador's commitment to provide "due guarantees" at trial as specified in Article 8(1), and would flatly contravene its commitment to provide those guarantees "within a reasonable time"—a commitment already at its breaking point, given that the Afectados' claims were presented to the Ecuadorian trial court nearly *nine years ago*, after New York courts conditionally dismissed the case originally filed there only after Chevron expressly agreed to submit to the jurisdiction of Ecuador's courts and to satisfy any judgment there.
- *The right to judicial protection*, or "simple and prompt recourse, or any other effective recourse . . . for protection against acts that violate [one's] fundamental rights" as provided in Article 25(1) of the American Convention. The notion that the Afectados' environmental trial has been "simple and prompt" is difficult to maintain after almost nine years and in light of the complexity of the proceedings, but at least up until now it has had the promise of being "effective."¹⁹
- *The specific right to determination and enforcement of remedies*, as provided in Article 25(2) of the American Convention, in which Ecuador undertook the specific commitment "to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state" and that "the competent authorities shall enforce such remedies when granted." (emphasis added.)

Here, the competent authority (that Chevron itself selected over the courts of its own nationality) has determined rights and granted remedies: for the Republic to now step in and attempt to *block* enforcement of those remedies would be a flagrant violation of its international obligations.²⁰

- *The right to equal protection of the law without discrimination*, as clearly provided in Article 24 of the American Convention. Were the Republic to agree to Chevron's demands, it would be agreeing to step into the constitutionally independent legal process in order to favor Chevron's misguided efforts to delay justice and destroy the Afectados' right to equal treatment under the law.
- *The right to life, physical integrity, and health*, as provided in Articles 4 and 5 of the American Convention and Articles I and XI of the American Declaration. As described in the background section above, and as exhaustively detailed in the 188-page Ecuadorian trial court verdict, the appellate court decision, the plaintiffs' trial arguments (cited above), numerous independent health studies (cited above), and the work of countless independent journalists and filmmakers,²¹ the health, integrity, and lives of the Afectados have been under continuous threat and actual violation for almost 50 years. To occasion further delay in any process that would begin to remedy these violations would be a complete violation of Ecuador's human rights commitments, including its commitment under the Protocol of San Salvador, ratified by Ecuador in 1993, which in addition to the right to health specifically guarantees "the right to live in a healthy environment" and commits Ecuador to the protection, preservation, and improvement of the environment.²²
- *The right to access information necessary to defend rights*. The right of access to information under Article 13 of the American Convention, which guarantees not just freedom of expression but the right to "seek" and "receive" information, is now well-established.²³ Especially where, as here, the information being sought is for the purpose of maintaining and defending a person's other fundamental rights, the force behind Article 13 and the access to information principle is at its strongest.²⁴

The idea that an arbitral panel would even contemplate ordering a sovereign state to violate its human rights obligations is repugnant not only to the substance of international human rights law but to the very core of the international legal order.²⁵ It would constitute an effective declaration by the panel that international investment law created to help facilitate the resolution of private business disputes overrides international human rights law created to protect the fundamental right to life and right to seek legal redress—in stark contrast to view of the Inter-American Court that "enforcement [of investment law] should always be compatible with the American Convention."²⁶ The action the arbitral panel is considering taking would dramatically undermine the advances in international human rights protections fought for so diligently by millions of people, States, and institutions in the Americas over the last century, especially this Commission. While the arbitral panel will hopefully choose to recognize the proper limits of its jurisdiction and respect the role and force that Ecuador's human rights obligations play in this context, if it chooses instead to continue to accede to Chevron's demands, then it is incumbent upon Ecuador

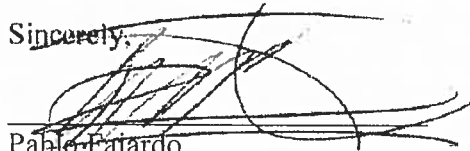
to remain steadfast to its human rights obligations and for the Commission to take all useful steps to ensure that it does so.

III. REQUEST FOR PRECAUTIONARY MEASURES

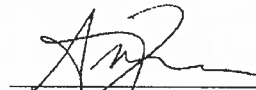
For the all foregoing reasons, and in light of the unquestionably serious and urgent nature of the situation, we respectfully request the Commission to relevant information about this situation from the Republic of Ecuador pursuant to Article 25(5) of the Rules of Procedure and further, as necessary, request precautionary measures sufficient to assure the Commission that:

1. the Republic of Ecuador will refrain from taking any action that would contravene, undermine, or threaten the human rights of the Afectados to life, physical integrity, and health, or their rights to a fair trial in all respects, to judicial protection, to the determination of remedies for their claims and the enforcement of any remedies so determined, and to equal protection of the law without discrimination, as guaranteed by the American Convention and as described above;
2. the Republic of Ecuador take all appropriate measures to affirmatively protect the Afectados' rights to life, physical integrity, health, a fair trial, judicial protection, the determination and enforcement of remedies for claims, and equal protection of the law without discrimination, as guaranteed by the American Convention and as described above.

Sincerely,



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cc: Dr. Diego García Carrión
Procurador General del Estado, Republic of Ecuador

Catalina Botero
OAS Special Rapporteur for Freedom of Expression

Dr. Santiago Cantón, Executive Secretary
Inter-American Commission on Human Rights
February 9, 2012
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Frank La Rue

UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of
Opinion and Expression

Dra. Nathaly Cely Suárez

Ambassador, Embassy of Republic of Ecuador in the United States

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- ¹ *Chevron Corp. v. Republic of Ecuador*, PCA Case No. 2009-23 (UNCITRAL arbitration); *Aguinda v. Chevron Corp.*, Case No. 2003-02, Provincial Court of Sucumbios (Ecuador environmental litigation; trial judgment was rendered Feb. 14, 2011, affirmed on appeal on Jan. 3, 2012, clarified by decision dated Jan. 13, 2012). Five Amazonian indigenous nationalities—the Cofán, the Secoya, the Siona, the Kichwa, and the Huaorani—are part of the environmental lawsuit and have in fact fully controlled the strategic decision-making with respect to the lawsuit through an executive committee in which official representatives of those nationalities participate.
- ² American Convention on Human Rights, 1144 U.N.T.S. 123, O.A.S. Treaty Ser. No. 36 (1969), art. 4 (right to life); art. 5(1) (right to physical, mental, and moral integrity); *see also* American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX (1948), art. 1 (right to life and security of the person); art. XI (right to health).
- ³ *Id.*, art. 8 (all persons have the “right to a fair trial” including “the determination of [one’s] rights and obligations of a civil, labor, fiscal, or any other nature”).
- ⁴ *Id.*, art. 25 (all persons have the right to “simple and prompt recourse, or any other effective recourse . . . for protection against acts that violate [one’s] fundamental rights”; that such recourse “shall [be] determined”; and that “the competent authorities shall enforce such remedies when granted”).
- ⁵ *Id.*, art. 24 (all persons “are entitled, without discrimination, to equal protection of the law”).
- ⁶ Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/ V.II.96 (1997), at <http://www.cidh.oas.org/countryrep/ecuador-eng/index%20-%20ecuador.htm> (“Conditions of severe environmental pollution, which may cause serious physical illness, impairment and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being.”)
- ⁷ Press Communique re Inter-American Commission on Human Rights visit to Ecuador, Communique No. 24/94, at <http://www.cidh.org/Comunicados/English/1994/Press21-28.htm>.
- ⁸ Final Judgment of Feb. 14, 2011, *Aguinda v. Chevron Corp.*, at p. 147. For a copy of the judgment in both Spanish and English, as well as an English summary of the judgment’s findings, *see* <http://chevrontoxico.com/news-and-multimedia/2011/0406-key-documents-and-court-filings-from-aguinda-legal-team.html>. For a summary of the underlying evidence is available at <http://chevrontoxico.com/assets/docs/2012-01-evidence-summary.pdf> and the plaintiffs’ final legal argument (“alegato”) is available at <http://chevrontoxico.com/news-and-multimedia/2011/0406-key-documents-and-court-filings-from-aguinda-legal-team.html>.
- ⁹ See Dr. Daniel Rourke, *Estimate of the Number and Costs of Excess Cancer Deaths Associated with Residence in the Oil-Producing Areas of the Sucumbios and Orellana Provinces in Ecuador*, Sept. 12, 2010, in the Ecuadorian trial record at 1967:206,576-206,597; Dr. Daniel Rourke, Addendum Report, Sept. 15, 2010. *See also, inter alia*, A.K. Hurtig and M. San Sebastian, *Incidence of Childhood Leukemia and Oil Exploitation in the Amazon Basin of Ecuador*, Int’l J. of Occupational and Env’l Health (July/Sept 2004); M. San Sebastián, B. Armstrong, J.A. Córdoba and C. Stephens, *Exposures and cancer incidence near oil fields in the Amazon basin of Ecuador*, *Occup. Environ. Med* 58:517-522 (2001); A.K. Hurtig and M. San Sebastian, *Geographical differences in cancer incidence in the Amazon basin of Ecuador in relation to residence near oil fields*, Int’l J. of Epidemiology (2002); A.K. Hurtig and M. San Sebastian, *Gynecological and breast malignancies in the Amazon basin of Ecuador, 1985-1998*, Int’l J. of Gynecology & Obstetrics (2002).
- ¹⁰ See John Otis, *Chevron vs. Ecuadorean Activists*, *Global Post*, May 3, 2009, at http://www.globalpost.com/dispatch/the-americas/090429/chevron-ecuador?page=0_2 (Chevron spokesman: “We’re going to fight this until hell freezes over . . . and then we’ll fight it out on the ice.”); “The Amazon’s Toxic Mess,” Sunday Night program, Australia Channel 7, Oct. 9, 2011, at <http://au.news.yahoo.com/sunday-night/video/watch/26872380/> (same).
- ¹¹ The arbitration is part of a larger Chevron strategy of collateral attacks on the *Aguinda* case, including the filing of dozens of harassing lawsuits against persons and organizations who dared to publicly support the Afectados

(harassment which has led to court-imposed sanctions on numerous occasions). For example, the U.S. District Court in for the District of Oregon recently sanctioned Chevron in the amount of \$32,945.20 for the harassment and undue burden and expense suffered by one such support, a non-profit network of environmental lawyers (ELAW) that filed an amicus brief in the *Aguinda* litigation and was then subject to a Chevron discovery lawsuit demanding responses to dozens of hugely broad documents requests and its executive director was made to sit for an eight-hour deposition that, the court concluded, was “meant to harass.” Order, *Chevron Corp. v. Salazar, et al.*, No. 11-0691-LAK (D. Or. Nov. 30, 2011). See also *In re Application of Chevron Corp.*, No. 3:10-cv-00686, Order at 2-3 (M.D. Tenn. Sept. 21, 2010) (district judge in another discovery lawsuit rejecting Chevron’s attempt to inject its fraud allegations into the proceeding, which it described as “quickly spiraling out of control”).

¹² Amicus Submission of Fundación Pachamama and the International Institute for Sustainable Development (IISD), *Chevron Corp. v. Republic of Ecuador*, PCA Case No. 2009-23, Nov. 5, 2010, available at http://italaw.com/documents/Chevron_v_Ecuador_SubmissionOfAmici_5Nov2010.pdf.

¹³ “*Chevron v. Ecuador* tribunal rejects indigenous group Fundación Pachamama and IISD’s petition to submit an amicus brief in the jurisdictional phase,” IISD, at http://www.iisd.org/investment/dispute/chevron_vs_ecuador_2011.aspx.

¹⁴ First Interim Award on Interim Measures, *Chevron Corp. v. Republic of Ecuador*, PCA Case No. 2009-23 (Jan. 25, 2012), available at http://italaw.com/documents/Chevron_and_Texaco_v_Ecuador_InterimAward25Jan2012.pdf.

¹⁵ Letter to the Tribunal from Chevron Corp. dated Jan. 4, 2012, at 2 n.3, available at http://italaw.com/documents/ChevronLetter_4Jan2012.pdf; Letter to the Tribunal from the Republic of Ecuador dated Jan. 9, 2012, available at http://italaw.com/documents/EcuadorLetter_9Jan2012.pdf.

¹⁶ Letter to the Tribunal from the Republic of Ecuador dated Jan. 9, 2012, *supra*.

¹⁷ Letter to the Sala Única of the Provincial Court of Sucumbios from Dr. Diego García, Procurador General del Estado dated Jan. 26, 2012, Oficio No. 6118.

¹⁸ See Letter to Procurador Diego García Carrión from Pablo Fajardo M. dated Jan. 24, 2012, available at <http://chevrontoxico.com/assets/docs/2012-01-24-garcia-carrion-letter-english.pdf>.

¹⁹ Note that Ecuador’s obligations with respect to a fair trial, judicial protection, and remedies are even more profound with respect to indigenous persons and communities, such as the Cofán, Secoya, Siona, Kichwa, and Huaorani among the Ecuadorian plaintiffs. Ecuador has ratified the 1989 Convention Concerning Indigenous and Tribal Peoples, which requires it to ensure that indigenous peoples are “safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through representative bodies, for the effective protection of these rights.” ILO Conv. No. 169, 72 ILO Official Bull. 59, art. 12. Under that Convention, Ecuador has further committed to adopting “[s]pecial measures for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.” *Id.*, art 4(1). Customary international law increasingly provides for similar obligation on Ecuador and other states, as exemplified in the 2007 UN General Assembly Declaration on the Rights of Indigenous Peoples, which provides that “indigenous peoples have the right of access to and to prompt decision through just and fair procedures for the resolution of conflicts and disputes . . . as well as to effective remedies for all infringements of their individual and collective rights” and that States shall “provide effective mechanisms for prevention of, and redress for . . . [a]ny action which has the aim or effect of dispossessing them of their lands, territories or resources.” G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), arts. 40, 8.

²⁰ Note that Ecuador’s obligations with respect to judicial protection and remedies without question include the obligation to provide protection and remedies to an equal extent with respect to non-State action and specifically corporate human rights abuses. See, e.g., Basic Principles & Guidelines on the Right to a Remedy & Reparations for Victims of Gross Violations of Int’l Human Rights Law & Serious Violations of Int’l Humanitarian Law, A/RES/60/147 Annex, Principles 3(c) & 15 (noting that States must provide “access to

justice” for victims of serious abuses, specifically contemplating liability for “reparation” from “a legal person, or other entity”); UN Human Rights Comm., Gen. Cmt. No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 ¶ 8 (Mar. 29, 2004) (stating that States must “provide effective remedies” and “redress the harm caused . . . by private persons or entities”).

- ²¹ See, e.g., “The Amazon’s Toxic Mess,” *Sunday Night*, Australia Channel 7, Oct. 9, 2011, at <http://au.news.yahoo.com/sunday-night/video/watch/268872380/>; “Amazon Crude,” *60 Minutes*, CBS News, May 8, 2009, at http://www.cbsnews.com/stories/2009/05/01/60minutes/main4983549_page3.shtml; Patrick Radden Keefe, *Reversal of Fortune*, *The New Yorker*, Jan. 9, 2012, at http://www.newyorker.com/reporting/2012/01/09/120109fa_fact_keefe; Paul M. Barrett, *Amazon Crusader*, *Bloomberg Business Week*, Mar. 9, 2011, at http://www.businessweek.com/magazine/content/11_12/b4220056636512.htm.
- ²² Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, O.A.S. Treaty Series No. 69 (1988), entered into force Nov. 16, 1999.
- ²³ *Claude Reyes and Others v. Chile*, Judgment of Sept. 19, 2006, Inter-Am. Ct. H.R. (Ser. C) No. 151 (2006); Inter-American Declaration of Principles On Freedom Of Expression, at <http://www.iachr.org/declaration.htm>; Access to Information in the Americas, Report of the Inter-American Dialogue (Dec. 2008), at <http://www.thedialogue.org/PublicationFiles/Access%20Report.%202008.pdf>.
- ²⁴ See Marcos A. Orellana, *The Right of Access to Information and Investment Arbitration*, 26:2 ICSID Review—Foreign Investment Law Journal 59 (Fall 2011).
- ²⁵ Moreover, given the rapid and controversial explosion in international arbitral jurisdiction that has transpired in recent years—an expansion driven in large part by multinational corporations like Chevron—it might not be long before this type of dangerous precedent would be used by other large companies to abrogate the fundamental right to seek legal redress in national courts held by other aggrieved individuals and indigenous communities. See generally S. Donziger, L. Garr, A. Page, *Rainforest Chernobyl Revisited: The Clash of Human Rights and BIT Investor Claims*, 17:2 Human Rights Brief (2010), available at <http://www.wcl.american.edu/hrbrief/17/172.pdf?rd=1> (citing, *inter alia*, Gus Van Harten, *Investment Treaty Arbitration and Public Law* (2007); M. Waibel et al., *The Backlash Against Investment Arbitration: Perceptions and Reality* (2010); Barnali Choudhury, *Recapturing Public Power: Is Investment Arbitration’s Engagement of the Public Interest Contributing to the Democratic Deficit?*, 41 *Vanderbilt Journal of Transnational Law* 775 (2008)).
- ²⁶ *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, Judgment of March 29, 2006, Inter-Am. Ct. H.R. (Ser. C) No. 146 (2006) at ¶ 140.