

Aguinda v. ChevronTexaco
Canadian Enforcement Action/Background Summary
December 2014

After Two Decades of Delay, Villagers Come to Canada

**Indigenous and farmer communities are seeking to seize Chevron assets in Canada to satisfy a \$9.5 billion final court judgment issued in Ecuador in 2011 against the company for environmental damage. Chevron has refused to pay the judgment and has vowed a “lifetime of litigation” if the villagers persist in pursuing their claims.

**The Ecuador court ordered Chevron to clean up extensive contamination and to fund clean water and medical relief for a class of 30,000 persons, including the members of five indigenous groups (the Cofan, Secoya, Siona, Huaranoi, and Quichua). Eight appellate judges on two different appellate courts in Ecuador have affirmed the trial court ruling.

**Locals call the damage the “Amazon Chernobyl” and experts believe it might be the worst oil-related catastrophe on the planet. Chevron (operating in Ecuador as Texaco from 1964 to 1990) dumped an estimated 16 billion gallons of toxic waste into rivers and streams and abandoned an estimated 1,000 toxic pits gouged out of the jungle floor. It also poisoned the air by flaring natural gas.

**As scientific evidence against it mounted in Ecuador, Chevron stripped all of its assets from the country in 2007. That move, combined with Chevron’s refusal to pay the judgment, necessitated the filing of enforcement actions in Canada, Brazil, and Argentina.

**Enforcing foreign judgments against those who refuse to pay is considered routine in the global economy. All countries, including Canada, have domestic laws governing this practice. That said, Chevron has mocked Canadian courts for taking up the case of the Ecuadorians, calling the matter a “crook” and a “waste of time and money” in a recent twitter post.

**Chevron’s substantial assets in Canada – which have an estimated value of \$15 billion and produce between \$2 billion and \$4 billion in annual profits for the company -- include oil production in the Beaufort Sea and the Hibernia Field (offshore Newfoundland and Labrador); the Athabasca Oil Sands project in Alberta; and a refinery in British Columbia.

Chevron’s “Lifetime of Litigation” Model In Action

**The Ecuadorian villagers have been trying for more than two decades to obtain a resolution of their pollution claims. They originally filed their lawsuit in 1993 in U.S. federal court in New York. Chevron fought for almost ten years to shift the case to Ecuador and promised to accept jurisdiction there. As a result, a long-sought trial against Chevron began in Ecuador in 2003. Largely because of Chevron’s delaying tactics, the trial lasted eight years before a verdict was handed down.

**In keeping with its “lifetime of litigation” threat, Chevron since 2010 has filed dozens of retaliatory legal actions against the villagers and their supporters. Chevron has retained at least 60 law firms, 2,000 legal personnel, and six public relations firms to carry out what appears to be one of the most well-funded corporate retaliation campaigns ever.

**Consistent with its strategy, Chevron is now seeking to delay and obstruct the Canadian proceedings. More than two years after the villagers filed their enforcement action in Toronto, Chevron has thus far tied up the courts in technical arguments about jurisdiction and subsidiary liability. The company is now asking the Supreme Court of Canada to construct a new jurisdictional hurdle that if adopted likely would block the Ecuadorians from having their claims heard.

Chevron Trying to Shut the Courthouse Door

**Chevron is seeking to close the courthouse door in Canada even though the country’s courts have long been considered, in appropriate circumstances, a welcoming forum for human rights victims.

**The stakes of the appeal are highly significant not only to the Ecuadorian villagers, but also to human rights victims throughout Canada and the world.

Legal Issues Before the Supreme Court of Canada

**Chevron is challenging a decision (December 2013) of the Court of Appeal of Ontario that the villagers can seek to enforce their judgment in Canada. The villagers filed their Canada enforcement action in May 2012.

**Should the Supreme Court of Canada affirm the Ontario appellate decision in favor of the villagers, Chevron will be forced to defend itself in a trial that likely will take place in Toronto in 2015.

**Although enforcing foreign judgments is considered routine in a commercial context, in this case Chevron is asking the Supreme Court of Canada to establish a new rule that would make significantly harder for enforcement to happen for indigenous groups in a human rights legal context.

**The new rule would require the indigenous groups to establish jurisdiction over Chevron in Canada rather than rely on the jurisdiction already established over the company in Ecuador, where the company agreed to litigate. This would be a higher bar than is currently required to enforce foreign awards in any other country, including the U.S. and (at least for now) Canada.

**Separately, the villagers have asked the Supreme Court to determine whether the assets of Chevron’s wholly owned subsidiaries can be used to satisfy a judgment against the parent corporation. Chevron has claimed such assets should be immunized from seizure even if the villagers win their enforcement action.

**Several Canadian non-governmental organizations, including the International Human Rights Program at the University of Toronto Faculty of Law, have filed “friend of the court” briefs in support of the right of the villagers to pursue Chevron’s assets via its subsidiaries in Canada.

**Chevron did not submit any “friend of the court” briefs. A “friend of the court” brief prepared by one of Chevron’s Canadian law firms on behalf of the Canadian Bar Association was withdrawn after many of the organization’s members opposed it.

Significance for Human Rights Victims

**Chevron’s “lifetime of litigation” model threatens all human rights victims. If successful, it would help at least some human rights abusers – particularly private corporations -- obtain effective impunity by preventing meritorious claims from being heard.

**Consider Chevron’s Canada appeal in the context of the company’s litigation strategy:

**For almost ten years (1993 to 2002), Chevron blocked the villagers from a trial in their preferred forum in U.S. federal court in New York.

**After promising a U.S. court that it preferred to litigate in Ecuador and would accept jurisdiction there, Chevron said openly in Ecuador that the company “does not want to be in any court” and that it would never pay any judgment issued.

**After forcing the villagers to re-file their case in Ecuador after a ten-year delay, Chevron then began to attack Ecuador’s courts as unfair and unworthy of international respect.

**Chevron also claimed that it should not be liable for any clean-up costs because it was *Texaco* (which Chevron bought in 2001) that operated in Ecuador.

**With the evidence mounting against it Ecuador, Chevron returned to the same U.S. court where the villagers wanted the trial held originally to try to secure a highly questionable civil judgment against them for “fraud” just for bringing the case in the very country (Ecuador) where Chevron had insisted the trial be held.

**Chevron recently obtained a ruling from a U.S. judge that effectively closes off the entire United States to the Ecuadorian villagers for enforcement purposes. (That decision is under appeal.)

**With its current appeal, Chevron is now seeking to close off the entire country of Canada to enforcement by the villagers even though the country contains some of Chevron’s most extensive holdings in the world.

**If the villagers win before the Supreme Court and are allowed to proceed in Canada, Chevron will still claim they cannot collect any funds because the company’s assets are held by wholly owned subsidiaries.

**Finally, Chevron hopes to leave the affected communities defenseless by suing their own lawyers personally in an attempt to drive them off the case. Several lawyers and law firms have abandoned the villagers rather than bear the huge cost of defending themselves against Chevron's army of lawyers.

Procedural Background on Case

**Chevron convinced a U.S. judge to send the original case to Ecuador in 2001 after promising it would abide by any judgment that might issue there, subject only to narrow enforcement defenses. To obtain dismissal, the company filed 14 sworn affidavits praising the fairness of Ecuador's judicial system.

**The Ecuador trial involved extensive witness testimony, the submission of more than 100 technical evidentiary reports, and 46 court-supervised field inspections of former Chevron oil wells and production facilities.

**Because Chevron bought Texaco in 2001, courts in Ecuador and the U.S. have ruled that Chevron is responsible for Texaco's liability in the case.

Ecuador Trial Court Judgment

**Ecuador's trial court found that Chevron's contamination helped to decimate indigenous groups and has been linked to an outbreak of childhood leukemia and other cancers affecting thousands of people.

**The Ecuador trial court determined that Chevron used three substandard operational practices in the Amazon:

****Waste pits:** Chevron abandoned roughly 1,000 unlined pits gouged out of the jungle floor that are filled with toxic drilling waste. Many continue to leech waste into soils, streams, and groundwater.

****Formation water:** Chevron discharged billions of gallons of chemical-laced "water of formation" into surface waters relied on by local inhabitants for their drinking water, bathing, and fishing.

****Gas flaring:** Chevron flared poisonous natural gas into the atmosphere, creating a black rain phenomenon and causing extensive air pollution.

**The Ecuador court also found that a remediation performed by Texaco in the mid-1990s was either wholly inadequate or an outright fraud.

Ecuador Appellate Court Judgments

**In January 2012, three judges from an intermediate Ecuador appellate court affirmed the judgment after a *de novo* review of the record. (*A de novo* review in effect means a re-trial of the entire case that produces a substitute judgment.)

**In November 2013, Ecuador's highest court affirmed the judgment of the intermediate appellate court in a 5-0 decision.

**Both appellate courts in Ecuador heard and rejected all of Chevron's claims of "fraud" and due process violations.

**Chevron still has a collateral attack pending before Ecuador's Constitutional Court that seeks to reverse the judgment. The villagers believe Chevron's claims in that appeal are frivolous.

Specifics On Chevron's Strategy of Endless Litigation

**The goal of Chevron's retaliatory actions is to "demonize" lawyers for the villagers, taint Ecuador's courts, and delay paying the judgment.

**Some of Chevron's retaliatory actions include:

**In the U.S., Chevron has filed lawsuits seeking documents, email metadata, and other "discovery" from more than 100 different supporters of the Ecuadorians. Those targeted include lawyers, consultants, activists, and independent analysts and journalists.

**Also in the U.S., Chevron sued all 47 named Ecuadorian plaintiffs and their two lead lawyers alleging the entire case was a fraud. We believe a judge's decision in favor of Chevron was the result of a deeply flawed proceeding and is likely to be vacated on appeal.

**Chevron also sued the lead U.S. scientific consultants for the villagers, threatening them with bankruptcy and forcing them to leave the case.

**In Holland, Chevron has sued Ecuador's government in a closed-door private arbitration where the villagers are not allowed to appear. Chevron's goal is to shift the pollution liability to Ecuadorian taxpayers.

**In Gibraltar, Chevron has sued two of the financial supporters of the villagers in an effort to deter them from continuing to fund the litigation.

Chevron's "Racketeering" Action in the U.S.

**Chevron's racketeering decision in the U.S. has little relevance to enforcement proceedings. The basic problems with the decision are outlined in detail in legal briefs and are summarized here as follows:

**The U.S. judge, Lewis A. Kaplan, refused to hear any of the overwhelming evidence of Chevron's contamination.

**The U.S. judge had no jurisdiction over the Ecuadorian villagers.

**More than thirty international law scholars filed a brief arguing the decision violates international law. No trial judge anywhere in the world is allowed to overturn a final decision of a foreign nation's Supreme Court, as Judge Kaplan attempted to do.

**Judge Kaplan was also biased and had undisclosed holdings in mutual funds that had investments in Chevron. The judge repeatedly disparaged the villagers and their lawyers with insults during the trial.

Counsel

**The Ecuadorian villagers are represented by Alan Lenczner of Lenczner Slaght in Toronto.

**Chevron and Chevron Canada (Chevron's wholly owned subsidiary that manages all of the company's Canadian operations) are each represented by separate counsel.

**The Lago Agrio legal team
December 8, 2014**