

San José, November 8, 2005

Doctor
Santiago Canton
Executive Secretary
Inter-American Commission on Human Rights

Re. Petition for precautionary measures
Alejandro Ponce Villacís and others
Ecuador

Distinguished Doctor Canton:

The Center for Justice and International Law (CEJIL) and Amazon Watch would like to address to you as an intermediary to the distinguished Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission”) the following urgent petition which asks for the adoption of precautionary measures in the name of Alejandro Ponce Villacís, Ermel Chavez, Pablo Fajardo Mendoza and Luis Yanza, such that the personal integrity and lives of these individuals be protected. Our petition uses as support regulations from the American Convention on Human Rights (articles 1.1, 2, 4.1, 5.1 and 33) and article 25 from the regulations of the Inter-American Commission.

I. Background

From 1964 to 1992, the Chevron Corporation developed petroleum exploitation operations in the Amazon rainforest in Ecuador. Chevron’s installations severely damaged the region, and the consequences of their operations are still evident today. There presently exist 627 open pools, filled with toxic waters, which contain various

carcinogenic heavy metals. It is estimated that 30,000 people in the region suffer from the impact of the environmental contamination produced from petroleum exploitation.

Among the health effects seen in the population in the region are high cancer rates, and severe reproductive problems, such as deformities found in newborns¹. The cancer rates of individuals in the region, in particular, are higher than in other parts of the country. Chevron itself has admitted to dumping over 18 billion gallons of toxic formation water into the river beds in the region, a practice used instead of re-injecting such toxic water deep into the ground, as was common practice in the United States during that time period². These substances, which were dumped into the surrounding environment, contain toxic carcinogens such as benzene, cadmium, mercury, lead, and chromium. Despite the nature of the chemicals being placed in the environment, the risks associated with the petroleum exploitation being carried out by Chevron were never disclosed to the public.

According to expert estimates, the environmental damage that exists in the zone constitutes the worst petroleum-related environmental disaster in the world, superseding by 30 times the amount of petroleum spilled in the Exxon Valdez disaster³, with environmental impacts that continue to exist in the present day. The environmental contamination is an ongoing threat to rights and lives of the present and future generations of residents of the effected region.

¹ Cf., Chevron's Misleading Claims. Also, see the technical report from Global Environmental Operations Inc., which explains the measures that must be taken in order to remediate the damage produced by Chevron in the zone in which they operated. Annex 1.

² Id.

³ The Exxon Valdez disaster occurred in March of 1989. The oil tanker had set sail from Alyeska, Alaska with a destination of Long Beach, California. Eight of the tanks ruptured and as a consequence, 10.8 million gallons of crude petroleum were spilled in the Prince William Sound. The environmental damage was tremendous, and four deaths were also associated with the spill.

As a result of this dire situation, since May of 2003, a trial has been occurring against Chevron for the environmental damage it caused during its period of operation. The trial is taking place in the Superior Court of Nueva Loja, in the province of Sucumbios, Ecuador. The case against Chevron was initiated by the Assembly for People Effected by the Operations of Texaco, and is lead by the Front for the Defense of the Amazon (FDA). The FDA, which is a nongovernmental organization that serves as the legal representative for the victims of this contamination, has functioned with the support of both Ecuadorian and foreign lawyers. The FDA headquarters and the majority of the homes of its members are located in the affected region, which is in the provinces of Sucumbios and Orellana, Ecuador.

Since the beginning of the judicial process, Chevron lawyers and executives have received support, protection, and personal security from members of Ecuador's armed forces, particularly the Ecuadorian army. It is a known fact that Chevron lawyers and executives continually house themselves with the confines of military installations of the Special Forces Group "Rayo 24" (Lightning 24) in the city of Nueva Loja in the county of Lago Agrio, the same city where the trial itself is taking place. Special Forces Group "Rayo 24" has allotted particular installations within their base for Chevron representatives.

According to the commander of the base, Lieutenant Colonel Francisco Narvaez, these installations, which include a building constructed on the base for Chevron itself, will be "donated" to the armed forces when the trial is over. In addition, the Lt. Col. also stated that there is an economic contract between Chevron and the Armed Forces

for security and accommodations over the course of the trial, although the terms of this contract have never been disclosed to the public.

It is important to note that this Armed Forces intervention in support of the multinational Chevron has become so extreme that active members of the Armed Forces are used in various types of manual labor during judicial procedures, especially during judicial inspections of the wells and stations, which were operated by Chevron during their time in Ecuador. As a result, the Ecuadorian Armed Forces has become a de facto private security agency for Chevron, which in turn must pay significant sums of money to the Ecuadorian Government through the Armed Forces.

It is further worth noting that this is not an isolated case. The Ecuadorian Armed Forces also provided private security services to Texaco (Chevron's predecessor company) during the period of their operations in the country. The terms of this contract are also secret, although the general existence of the contract is known⁴.

It should also be noted that more than 100 field inspections of pools and petroleum stations are planned within the judicial process, with the purpose of evaluating the environmental contamination.

On the 18th of October, lawyers for the Chevron Corporation submitted a written request to the court for the suspension of a judicial inspection in the effected region. On the afternoon of that same day, Major Arturo Velasco, head of Military Intelligence

⁴ Cf., Bolívar Beltrán and Jim Oldham "Se revelan vínculos entre los militares ecuatorianos y las compañías petroleras" ("Links revealed between the Ecuadorian military and petroleum companies") in Ojarasca Magazine, September, 2005. Annex 1.

for Special Forces Group “Rayo 24,” whose headquarters are located on the same military base where Chevron lawyers lodge, submitted a report to the President of the Superior Court of Nueva Loja. The report announced a supposed risk for Chevron operatives who were to carry out a judicial inspection the following day. The inspection was to be the first in the trial carried out in indigenous territory, in this case territory of the COFAN indigenous group. The COFAN community has been gravely impacted by the petroleum contamination, being left with only approximately 400 members from the thousands that were living in the area before Chevron’s arrival. Based on this intelligence report, the judge decided to suspend the inspection without consulting the plaintiffs.

In response to the military intervention, on October 19th, representatives of the COFAN community and their legal counsel went to the military installation of Special Forces Group “Rayo 24,” with the objective of obtaining an explanation for the intelligence report. The complaint was carried out verbally in the presence of various members of the press in front of Lieutenant Colonel Francisco Narvaez. Lt. Col. Narvaez claimed to have no knowledge of the existence of the military intelligence report written by Major Velasco and at first even denied having any relationship to Chevron lawyers, although he later acknowledged that Chevron lawyers use the base for their accommodations⁵.

As this interaction was occurring, a man dressed in civilian clothing filmed the entire incident from inside the base fences. Upon being asked about the identity of the

⁵ Cf., El Comercio, “Juicio a Texaco: un informe de Inteligencia causa polémico” (“Texaco Trial: A Military Intelligence report causes controversy”). Annex 1.

man with the video camera by the plaintiff's lawyers, particularly Alejandro Ponce Vallacis, the Lt. Col. claimed not to know the individual. Nevertheless, the man who was filming was immediately protected by military personnel. Afterwards, Ponce Villacis went on the national television stations Telesistema and Ecuavisa denouncing the possible illegal collaboration between Chevron lawyers and Major Velasco in the preparation of the military intelligence report used by the court to suspend the judicial inspection.

II. FACTS

Over the course of the judicial process, a number of incidents have occurred that have been cause for concern. In particular, there have been various attempts, both before and after the occurrences of October the 19th, to manipulate or delay the judicial investigation, and those who have denounced these irregularities have been persecuted, harassed and threatened.

During the month of October 2005, in the city of Nueva Loja, a green car with tinted windows arrived at the house of **Ermel Chavez**, the president of the FDA. A man, apparently from the military, although dressed in civilian clothing, asked to speak with "Mr. Ermel Gabriel Chavez Parra," to which Chavez's spouse responded that Chavez was her husband. The man then identified himself as a member of military intelligence services of Special Forces Group "Rayo 24", the group with whom Chevron executives and lawyers have been provided housing and security protection. According to testimony about the incident from Mrs. Chavez, the first statement made by the military intelligence officer was that he "did not want information regarding Chavez's

bank accounts, only information about Chavez's work." This request was denied by Mrs. Chavez.

The military interrogator was insistent, asking where Chavez had gone and when he would return. Chavez's wife responded that she was not absolutely certain. The military officer then left after stating that he would return the following week.

Following this incident, at 3 P.M. on October 20, 2005, while Ermel Chavez and others were working in the FDA office located on the streets Eloy Alfaro and Avenida Colombia, in Lago Agrio, a green car with tinted windows parked outside the office building. The car, whose license plate number was PXN 826, stayed outside the office for more than an hour. The car's appearance coincided with that described by Mrs. Chavez in her testimony. The driver was of a light complexion and appeared to be in his mid-50s. He stayed inside the vehicle over the duration of his time parked in front of the office building and appeared to be noting and watching the FDA personnel. Ermel Chavez, after seeing that this car had been stationed outside the office for more than an hour, approached the office window to observe the driver, at which point the car started and left.

Following the car's departure from the office, Chavez left to visit the Guanta community, the intended site of the previously mentioned suspended judicial inspection. According to others working in the office, directly after Chavez left, the green car returned, and stayed parked in front of the office until approximately 6 p.m. in the evening. These events occurred the day after the Front for the Defense of the Amazon

and their lawyers protested against a military intelligence report that led to the cancellation of the scheduled judicial inspection in Guanta.

On October 14, 2005 the Human Rights Office in Shushufindi, where **Pablo Fajardo Mendoza**, lawyer for the affected communities in the lawsuit against Chevron, works during weekends, received a threatening phone call. Fajardo Mendoza is the lawyer who litigates the case against Chevron in the Ecuadorian courts. He has worked in this office either full-time or part-time for approximately ten years and is well-known in the region for his human rights work. The caller identified himself as the person who was carrying out “the cleansing in the county” (a clear allusion to a series of violent deaths, some apparently politically-motivated, that had occurred in that area). The caller also indicated that “he knew who works in the office, what type of work they did, where they live, and where they regularly visit.” The call was received by Mayra Chicaiza, secretary for the Human Rights Office in Shushufindi.

Luis Yanza, the coordinator of the legal case against Chevron for the plaintiffs, has been the most public face over the course of the judicial process. Mr. Yanza has appeared in newspapers and television programs to explain the case and denounce Chevron.

Most recently, on October 21, Mr. Yanza denounced the collaboration between Chevron and the Armed Forces in the suspension of the aforementioned judicial inspection. After these declarations by Mr. Yanza, two anonymous sources, claiming to be members of the Lago Agrio police, notified Mr. Yanza that various military intelligence officers are monitoring his actions, meetings organized by the plaintiffs,

and his telephone calls made from his office and home. Furthermore, these same sources advised Mr. Yanza that an ex-employee of the FDA, who worked on press relations, was an infiltrator who worked for military intelligence.

In the early morning hours of October 28, unknown individuals entered the offices of **Alejandro Ponce Villacis** in the city of Quito. Ponce Villacis is one of the lawyers working on the case against Chevron. Although the office was locked, the intruders surprisingly managed to enter without breaking any locks, doors, or windows. The office was even found the next day closed and locked. The intruders removed three computers, a fax machine and a compact disc with the inscription "back-up files." They left more than two hundred dollars in cash, checks, and other valuable articles (including university degrees). In addition, they reviewed several documents that were found in the garbage and on desks.

Evidently, this was not a common robbery, but a break-in with the intention of intimidating Ponce Villacis and recording his professional activities. In this regard, it is important to note that the night before the robbery, Ponce Villacis' assistant received a telephone call in his office, during which the caller, who did not reveal his identity, aggressively questioned as to the whereabouts of Ponce Villacis, when he would return, and what he was doing. In particular, the caller asked if Ponce Villacis was still teaching in the Catholic University in Ecuador. It also important to mention that the law office in which Ponce Villacis works has a long history of litigation in Ecuador. Nevertheless, instances such as those that occurred on the 28th of October had never previously occurred.

The robbery was reported to the National Police on October 28, and two police agents arrived at the office on that day. The agents limited their investigation to taking testimony from Alejandro Ponce Villacis and one of his employees. Ponce Villacis has yet to receive any notification regarding an inquiry into the robbery. In addition, Ponce Villacis was not informed of an intervention by the District Attorney's office which processes legal complaints. As a result of the lack of official investigation, Ponce Villacis decided to file a report in the office of the District Attorney of Pichincha⁶.

The occurrences explained in the current petition occurred on different dates and toward different individuals. Each of these individuals, who were threatened and persecuted, have in common the fact that they have participated in the judicial process against the North American company Chevron and that they have made public denouncements in relation to the collaboration between state forces (the police and Armed Forces) and Chevron. Specifically, these individuals form part of the legal team that introduced and continue to impel the case in Ecuadorian courts.

III. MOTIVATION FOR THE PETITION

In light of the mentioned facts, we the petitioners ask that the distinguished Inter-American Commission, request that the Ecuadorian State adopt precautionary measures for Alejandro Ponce Villacis, Ermel Chavez, Pablo Fajardo Mendoza and Luis Yanza.

The State of Ecuador has pledged through the ratification of the American

⁶ Cf., report filed by Alejandro Ponce Villacis on November 7th, 2005. Annex 2.

Convention on Human Rights to respect and guarantee the rights which were consecrated in that Convention⁷. They have further adopted the resolutions of the American Convention on Human Rights regarding internal law with the objective of enforcing and protecting those rights delineated by the Convention. The Inter-American Commission has the power to require that participating States fulfill the international obligations delineated in the treaty⁸.

Specifically, the Inter-American Commission regulations ask that precautionary measures be taken “in serious and urgent cases and when according to necessity based on available information” with the purpose of “avoiding irreparable damages to persons”⁹.

The facts and events described previously in this petition demonstrate that the people in whose name the adoption of precautionary protective measures are being requested are in a serious and urgent situation. In addition, due to their denunciations and defense of the population effected by Chevron ‘s actions, these individuals have been the object of a series of acts of intimidation aimed at preventing them from continuing with the fulfillment of their work.

With the prospect that the aforementioned occurrences may repeat themselves and that such harassment may intensify, in addition to intending to avoid irreparable damage to the lives and personal integrity of the individuals cited, we ask that the distinguished Inter-American Commission urge the State of Ecuador to adopt

⁷ Cf. Articles 1.1 and 2 from the American Convention on Human Rights

⁸ Cf., article 33.a from the American Convention on Human Rights

⁹ Cf. Article 25, Regulations of the Inter-American Commission on Human Rights

precautionary measures to protect the right to life and the personal integrity of Alejandro Ponce Villacis, Ermel Chavez, Pablo Fajardo Mendoza and Luis Yanza.

We specifically ask the Inter-American Commission press the State of Ecuador to arrange for the protection of the aforementioned individuals through permanent protection of a private security firm.

IV. PETITION

In light of the issues discussed in this petition, we ask that the distinguished Inter-American Commission request that the State of Ecuador:

Adopt permanent protective measures through the use of a private security agency in order to protect the lives and personal integrity of Alejandro Ponce Villacis, Ermel Chavez, Pablo Fajardo Mendoza and Luis Yanza.

Keep the Inter-American Commission and the beneficiaries of these measures permanently informed of the advancement of the measures taken.

Investigate the facts and occurrences listed as the cause for this petition for precautionary measures.

With the hope of a prompt response,

Tatiana Rincón
CEJIL

Sara Aird
AmazonWatch

Ana Aliverti
CEJIL

Annexes:

1. Press Releases
2. Report to the District Attorney of Pichincha