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REGION AMAZONICA - ECUADOR

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Dear International Commission of Jurists & Asociación Ecuatoriana de Juristas,

We write to alert you of the ongoing harassment of lawyers and activist leaders involved in the *Aguinda v. ChevronTexaco* litigation in Ecuador and to request trial observers, which we believe might quell the growing corruption in the trial process. The *Aguinda* lawsuit was filed in May 2003 by 30,000 Ecuadorian plaintiffs against Chevron, seeking the \$6 billion necessary to effectuate a clean-up of the contamination left behind by Texaco (now Chevron) after its twenty-eight years of petroleum exploitation in the Ecuadorian Amazon, from 1964-1992. The case, currently being litigated in the Court of Nueva Loja, is widely regarded as the most important environmental litigation in history. It marks the first time *ever* that a multinational corporation has been called to account for its behavior in the courts of a developing country – this litigation is literally unprecedented in world history. Consequently, it is of the utmost importance that the Ecuadorian judicial system complies with the highest standards of fairness and impartiality and that both parties be given equal access to the court.

## **I. Recent Efforts to Undermine Judicial Process**

Recently there has been growing evidence to suggest that Chevron wields extensive and illicit power over the court and the judicial process, ranging from threats made against plaintiffs' lawyers and leaders to Chevron's extensive and contractual involvement with the Ecuadorian military.

### **A. General Corruption**

In addition to efforts to undermine the judicial process through threats of violence, discussed below, the legitimacy of the *Aguinda* litigation is also threatened by corruption. It has become apparent that Chevron's close relationship with the Ecuadorian military, dubious unto itself, has been used illicitly to manipulate the trial. Moreover, the degree to which the court itself has been co-opted by Chevron and the military is unclear, but the facts below raise serious concerns.

## 1. Contract Between Chevron and the Ecuadorian Military

Since the initiation of this historic litigation, Chevron has had close, contractual ties with the Ecuadorian military, and in particular with a unit known as Special Forces Group “Rayo 24,” located in Nueva Loja, where the case is being litigated. In early December, the Ecuadorian Ministry of Defense made public the Chevron contract,<sup>1</sup> as well as several other contracts between multi-national corporations and the military. Although it had been widely suspected that Chevron lawyers and executives lived in a villa on the “Rayo 24” base, the contract confirmed the exact details of the arrangement. In fact, Chevron built the villa and currently occupies it; in return for manual labor, security, and free utilities, the Chevron-built villa will be “donated” to the military when the litigation is completed. In addition, Chevron commenced payments of \$3000 a month for these services and utilities, beginning in May 2004, when construction of the villa was to be completed. It is believed that there are other, undisclosed contracts between Chevron and the Ecuadorian military. As discussed below, the scope of “security” services now appears to include criminal activity, as several of the threats against plaintiffs’ lawyers and leaders were perpetrated by military officers, some of whom self-identified as “Rayo 24” officers.

## 2. Cancellation of the Guanta Inspection

As part of the ongoing trial, a judicial inspection of the Guanta petroleum separation station was scheduled for October 19, 2005. Guanta was to be the first inspection in Cofan territory and to present indigenous witnesses attesting to the devastation caused by Texaco. However, the inspection was abruptly cancelled on the evening of October 18. The company appears to have arranged for an “intelligence report” from a Major Arturo Velasco, the head of military intelligence at “Rayo 24.” The report, delivered to the court a mere 15 minutes before closing time, was only one-page, contained no specific facts, and asserted that the indigenous Cofanes had plans to attack and disrupt the inspection, even to take Chevron representatives hostage. Minutes later, in a coordinated fashion, Chevron attorneys presented the Court with a formal, signed request that, on the basis of the security conditions in the report, the inspection be cancelled. At 5:59 p.m. the judge issued an order canceling the inspection, and at 6 p.m. the court promptly closed. Attorneys for the plaintiffs were not notified until several hours later.

After a public and well-publicized confrontation between plaintiffs and the military took place on October 19<sup>th</sup> at the “Rayo 24” base, Lt. Col. Francisco Narváez, the head of the base, was ultimately forced to admit that the report had been issued by Velasco, that it had been written and delivered to the court without his knowledge and without proper authorization, and he was forced to “sanction[], arrest[], and suspend[]” Velasco.<sup>2</sup>

Through its aggressive public relations campaign, Chevron effectively silenced the Guanta issue in the public discourse, repeatedly maintaining that “allegations made by the plaintiffs’ attorneys and supporters that Chevron has inferred or in any way manipulated the evidence or reports by the Ecuadorian military with respect to the safety conditions that determined the Court to declare the postponement of the Guanta station judicial inspection are false, irresponsible and defamatory.”<sup>3</sup> However, motivated by plaintiffs’ persistent legal requests, the court eventually forwarded a request to the Ecuadorian Ministry of Defense in Quito asking for an independent

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<sup>1</sup> Convenio de Cooperación Interinstitucional Entre Texaco Petroleum Company y La Cuarta Division de Ejercito “Amazonas”, signed by Dr. Rodrigo Perez Pallares (Texaco) and Ing. Gustavo A. Tapia (La IV-DE “Amazonas”), Mar. 26, 2004 (on file with plaintiff).

<sup>2</sup> *Se cuestiona informe de Inteligencia que suspende inspección por daños de Texaco*, EL COMERCIO (Ecuador), Oct. 27, 2005.

<sup>3</sup> Chevron Press Release, *Chevron Responds to Allegations Concerning Its Security Plans and the Postponement of the Judicial Inspection of the Guanta Production Station*, Jan. 25, 2006.

investigation of what had occurred. On February 3, 2006, the Subsecretary of National Defense, Fabián Varela Moncayo, finally responded by providing the court with an official report,<sup>4</sup> prepared by Colonel Miguel Fuertes Ruiz, and including a sworn affidavit by Major Velasco himself. In the affidavit, Velasco describes in detail the steps leading to the production of the report that eventually cancelled the inspections.

Velasco states that at 1 p.m. on the day before the inspection, he was approached by three men: a "Texaco functionary," and two employees of Texaco's local security company, one of whom, Manuel Bravo, was a former Senior Captain in the Ecuadorian military towards whom Velasco still felt a high degree of personal and professional loyalty. The men claimed to have received information (allegedly from Petroecuador engineers; how the engineers claims to have acquired the information was never clarified) about security threats surrounding the inspection. Velasco told them that security for the inspection was a matter for the National Police, and he could not help. The men then stated that they were not interested in extra security -- rather, "that what they wanted was to suspend the judicial inspection," and to accomplish this they needed Velasco to communicate their "information" to the judge in his official capacity as intelligence officer at "Rayo 24." Velasco agreed to do so only "because [Sr. Captain Bravo] is my friend and I know the seriousness and importance of my Captain."

Velasco promptly communicated this unsourced information to Judge Novillo *in person*. The Judge agreed to cancel the inspection, but not without first getting an official institutional document memorializing the information. Velasco initially refused, again stating that the National Police was the proper institution to investigate the situation and produce such a document. In the hours that followed, however, ex-Captain Bravo pressured Velasco with increasing "insistence." He claimed that the National Police were investigating the issue, but that they were acting too slowly, and that if a document didn't get to the court before 6 p.m. there were "going to be problems"; and that this simply "could not happen." Velasco eventually agreed to provide Bravo with a document so that he could take necessary precautions to avoid imminent risks until such time as the National Police could finish their investigation. Velasco claims that he expressly told Bravo that the document did not have the support of the military or the proper authorizations; "moreover, I indicated to him that he could not officially deliver the document for any reason."

It appears that ex-Captain Bravo, Chevron's paid "security" agent, thereupon immediately did deliver the document to the court, resulting in the cancellation of the inspection. Shortly thereafter, Velasco himself visited the National Police office to inquire about the status of their investigation, and was told that they knew nothing about such security threats in the region.

## **B. Harassment and Threats**

Over the course of the litigation there have been numerous attempts to manipulate or delay the judicial investigation and to intimidate and threaten those working on behalf of the plaintiffs. However, since the events of October 19, 2005, detailed above, the threats against Ermel Chavez, Luis Yanza, Pablo Fajardo Mendoza and Alejandro Ponce Villacís have become both more frequent and more serious. In November, as a consequence of these escalating threats and harassment, petitions were filed with the Inter-American Commission on Human Rights and the UN Special Representative for Human Rights Defenders. The Commission recently granted

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<sup>4</sup> Fabián Varela Moncayo, Subsecretario de Defensa Nacional, *Oficio No. MS-7-1-2006-63* (including *Informe Que Presenta el Señor Mayor de I. Arturo Velasco C. Sub Comandante del GFE-IV-DE "Rayo" al Señor TCRN. de Em. Francisco Narvaez, Comandante Del GFE-IV-DE "Rayo", Sobre la Novedad Suscitada Con la Empresa Texaco*), Feb. 3, 2006 (on file with plaintiff).

precautionary measures<sup>5</sup> and the Special Representative, Ms. Hina Jilani, has demanded explanations from the Ecuadorian government.<sup>6</sup>

## **1. Victims**

### **(a) Pablo Fajardo Mendoza**

Pablo Fajardo Mendoza is the plaintiffs' trial attorney: he represents the plaintiffs at every site inspection and makes all court appearances. On October 14, 2005, an individual called the Human Rights Office in Shushufindi, and threatened Pablo Fajardo Mendoza's life. Although, Fajardo Mendoza works from an office in Nueva Loja during the week, he works from the Human Rights Office in Shushufindi on weekends. He has worked there for approximately ten years, and is a well-known human rights activist in the region. The call was received by Mayra Chicaiza, the secretary for the Human Rights Office, who recounted that the caller identified himself as Enrique Cayetano, the person who was carrying out "the cleansing in the county." Cayetano is the General Commander of "La Guerrilla Frente 48," and the "cleansing" was a clear allusion to a series of violent extra-judicial murders, some politically-motivated, that have occurred in the Nueva Loja area. Cayetano also stated that he knew who worked in the office, what type of work they did, where they live, and where they regularly visit.

### **(b) Ermel Chavez**

Ermel Chavez is the president of the Front for the Defense of the Amazon (FDA), a nongovernmental organization that serves as the legal representative for the victims of Texaco's contamination. During the month of October 2005, an officer of Special Forces Group "Rayo 24" appeared at Ermel Chavez's house, looking for Chavez himself, and asking about his "work." The man, dressed in civilian clothing, identified himself as a member of the military intelligence services of Special Forces Group "Rayo 24," and arrived in a green car with tinted windows. Chavez was not at home, but his wife talked with the officer.

According to testimony from Chavez's wife, 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." She refused to give him any information. The officer was insistent, asking where Chavez had gone and when he would return. Chavez's wife responded that she did not know. Finally, the officer left after stating that he would return the following week.

At 3 p.m. on October 20, 2005, the day after the failed inspection in Cofán territory and the confrontation at the military base, the same green car with tinted windows (license plate PXN 826) arrived at the FDA office in Lago Agrio. Chavez and others were working in the FDA office and noted that the car remained parked outside the office building for more than an hour. The driver, who had a light complexion and appeared to be in his mid-50s, never exited his vehicle and appeared to be watching the FDA personnel. Chavez approached the office window to observe the driver, at which point the car drove off. Chavez himself then left the FDA office to visit the Guanta community. However, according to other FDA personnel in the office, immediately after Chavez left, the green car returned, and surveilled the office until 6 p.m. in the evening.

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<sup>5</sup> Letter to Alejandro Ponce Villacís and others, from Santiago A. Canton (Executive Secretary of the Inter-American Commission on Human Rights), Dec. 22, 2005 (on file with plaintiff).

<sup>6</sup> Letter to the Minister of Foreign Relations, from Jina Hilani (Special Representative for Human Rights Defenders), Nov. 17, 2005, available at <http://chevrontoxico.com/downloads/UN%20letter%20pdf.pdf>.

**(c) Luis Yanza**

Luis Yanza was a former president of the FDA and now serves as the legal coordinator of the plaintiffs' case against Chevron. A few days after Luis Yanza's October 21 public denunciation of the collaboration between Chevron and the Ecuadorian military, Yanza was contacted by two individuals who identified themselves as members of the police force in Nueva Loja. They informed him that military intelligence officers were monitoring his activities and his telephone calls, placed from both his home and his office. They further informed him that military intelligence was spying on meetings organized by the plaintiffs and that one of his former employees at the FDA had actually been an infiltrator who worked for military intelligence.

The threats against Yanza severely escalated on November 15, 2005. At 8:00 p.m. on the night of the 15<sup>th</sup>, an unidentified male and a thirty-seven year old woman, Teresa Yolanda Barres Alban, broke into Yanza's house, located in Nueva Loja, and attempted to kidnap his nine-year-old daughter, Shuyana Natalia Yanza Allauca. The girl's screams alerted neighbors, who came to her rescue, and the kidnapping was avoided. The unidentified male escaped and Barres Alban was taken into custody by the police for further questioning. Thus far, the police investigation has not produced any new information.

**(d) Alejandro Ponce Villacís**

Alejandro Ponce Villacís is a lawyer for the plaintiffs and a well-known law professor and human rights advocate. On the night of October 27, 2005, Alejandro Ponce Villacís' assistant received a telephone call at Ponce Villacís' law offices in Quito, in which an unidentified caller aggressively questioned her about Ponce Villacís. The caller demanded to know the current whereabouts of Ponce Villacís, when he would return, and what he was doing. In particular, the caller asked if Ponce Villacís was still teaching at the Catholic University in Ecuador.

Following this incident, in the early morning hours of October 28, unknown individuals broke into the same law offices. The intruders took three computers, a fax machine and a compact disc with the inscription "back-up files." They took only the computers belonging to employees involved with the Chevron litigation, leaving several others. The intruders left more than two hundred dollars in cash and checks, as well as other items of apparent value. In addition, they appear to have reviewed several documents that were found in the garbage and on desks.

Evidently, this was not a common burglary, but a break-in with the intention of intimidating Ponce Villacís and recording his professional activities. Although the office was locked on the night of October 27, the intruders managed to enter without damaging any locks, doors, or windows. The intruders re-closed and locked the office before leaving.

On November 11, 2005, at 5:45 a.m., Ponce Villacís received a second phone call, this time at his home. An unidentified man spoke to Ponce Villacís' wife, asking, "Is your alarm system switched on now?"

**2. Perpetrators**

Although not all the perpetrators of these threats and attacks are known, it is clear that all the perpetrators had motives related to the Chevron litigation. For example, while the individuals who made the intimidating phone calls received by Ponce Villacís and the subsequent break-in at his law offices have not been identified, the break-in was unquestionably not the work of common thieves, as evidenced by the items stolen and, in particular, by the valuable items *not* taken. Similarly in Fajardo Mendoza's case, the death threat against him was clearly made by an

individual with knowledge of his human rights work and his involvement in the Chevron litigation.

In the other cases, the perpetrators are known to be military officers: for example, the surveillance of Chavez was perpetrated by a self-identified member of the Ecuadorian military. In fact, the officer who appeared at Chavez's house and later at the FDA office to conduct surveillance identified himself to Chavez's wife as a military intelligence officer with Special Forces "Rayo 24," the military unit with strong ties to Chevron executives and lawyers and the unit responsible for authoring the report which caused the cancellation of the first judicial inspection in indigenous territory. In the case of Yanza's surveillance, the perpetrators were identified by local police as military intelligence members, and the affiliations of the perpetrators of the attempted kidnapping still remain unknown.

### **3. Lack of Response by Ecuadorian Authorities**

Fajardo Mendoza reported the death threat he received to the prosecuting attorney of Sucumbios on November 10, 2005. However, he received no response to his complaint and no action has been taken. Similarly, Chavez reported the surveillance at his home and at the FDA office to the prosecuting attorney of Sucumbios on November 10, 2005 and he, too, has never received a response.

The November 15<sup>th</sup> kidnapping attempt of Yanza's daughter was reported to the police. One of the assailants was initially taken into custody, but the investigation appears not to have progressed further and Yanza has been unable to obtain any further information from the police. The police have also apparently chosen not to further investigate the fact that Yanza's phones were bugged and that he was being followed. Yanza has not officially reported the matter, given that it was the police themselves who informed him that he was a military surveillance target.

The burglary at Ponce Villacís' office was reported to the national police on October 28. Two police agents arrived that same day, but they limited their investigation to taking testimony from Ponce Villacís and one of his employees, and they expressly refused to take any fingerprints. Since that time, Ponce Villacís has heard nothing further from the police, nor from the District Attorney's office, which would be responsible for processing any legal complaint. Faced with this lack of official investigation, he has filed a complaint in the office of the prosecuting attorney of Pichincha, but again has received no response.

## **II. Need for Trial Observers**

It is in this environment of military involvement, threats, and corruption that the site inspection process will recommence. The milestone inspection of the town of San Carlos is currently scheduled for March 8, 2006, and is to be the first inspection of the new year. The town of San Carlos has suffered some of the most extreme and visible health effects of Texaco's contamination, believed to be the result of the thirty oil wells which have been operated in and around the town. For example, men in San Carlos are nearly four times as likely to die of cancer than the average Ecuadorian and, in a population of only 1,000, at least six varieties of cancer have been observed.<sup>7</sup> For these reasons, the San Carlos inspection is as threatening to Chevron as was the Guanta inspection, and is arguably as vulnerable to Chevron's corrupt manipulations.

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<sup>7</sup> Miguel San Sebastian et al. *Exposures and cancer incidence near oil fields in the Amazon basin of Ecuador*. OCCUPATIONAL ENVIRONMENTAL MEDICINE 58 (2001), at 517.

In our efforts to protect plaintiffs' representatives and to keep corruption from the judicial process, we request that the International Commission of Jurists provide trial observers to participate in the site inspection process as independent third-party observers. Although site inspections are held outdoors and are used to collect water and soil samples, they are, in fact, the trial – the very crux of the case. Therefore, it is of the utmost importance that the San Carlos inspection and all future inspections proceed as scheduled and are held to the highest standards of fairness and impartiality.

Without your help, the *Aguinda* litigation is in jeopardy and 30,000 people may be denied their fair day in court. Please feel free to contact us for more information or further documentation of the events described in this letter. We look forward to your potential monitoring of the case: the visible presence of impartial observers will send a message to the Ecuadorian government and to the parties that they are under scrutiny and that nothing less than a fair and impartial process, governed by the rule of law and not the sway of money or political power, will be tolerated by the local or international communities.

Sincerely,

Luis Yanza  
Legal Coordinator, *Aguinda v. ChevronTexaco*

Pablo Fajardo Mendoza  
Lawyer for the Plaintiffs, *Aguinda v. ChevronTexaco*

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