



INVESTIGATING THE IMPACT OF CORPORATE COURTS ON THE GROUND – THE TRUTH IS OUT THERE!

CASE NAME:

CHEVRON V ECUADOR

SUMMARY:

US oil firm sued Ecuador after compensation ordered for devastating Amazon oil spill

STATUS:

Chevron won

AT STAKE:

Undisclosed

DETAILS:

Case started 2009 using the US-Ecuador Bilateral Investment Treaty; arbitrators gave their decision September 2018



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Crude oil in an open toxic oil waste pit abandoned by Chevron in the Ecuadorean Amazon Rainforest near Lago Agrio.

WHAT IS THE CASE ABOUT?

Between 1972 and 1993, US oil firm Texaco dumped over 30bn gallons of toxic waste and crude oil into the Amazon rainforest in the north east of Ecuador.

This has since become known as one of the world's greatest ever environmental disasters. Vast swathes of forest were contaminated across a 4400 square kilometre region. Rivers turned black. Local communities' health and livelihoods were severely affected, with a spike in cancer and birth defects among the consequences.

A legal case was launched against Texaco in 1993, brought by 30,000 indigenous and small-scale farmer Amazon inhabitants affected by the oil firm's irresponsibility. In 2001, Chevron purchased Texaco, thereby taking on responsibility for the disaster. An Ecuadorian court subsequently found Chevron guilty of "extensively polluting" the Lago Agrio region in 2011, following an 18-year legal battle. Chevron was ordered to pay \$18.2bn in compensation. The decision was upheld by the Ecuadorian High Court in 2012 (although the compensation was reduced to \$9.5bn) and then the Constitutional Court in 2018.

Yet contaminated oil pits throughout the region continue to seep toxic chemicals. And, to this day, no compensation has been paid.

CORPORATION'S COMPLAINT

Chevron launched an ISDS claim in 2009. Unusually, it was not only suing for money. It also asked the ISDS tribunal to interfere with the national justice system in Ecuador. Initially the company asked to be 'protected' from the 1993 Ecuador court case, and then when this case went ahead and found against Chevron in 2011, for this judgement to be overridden.

Chevron challenged the case being brought in the Ecuadorian courts on two grounds. Firstly, they claimed that the case had already been settled in a 1998 legal agreement with the Ecuadorian government. Second, they claimed that the 2011 verdict was based on fraud and corruption. Both of these arguments are contested.

The Ecuadorian government did indeed sign a settlement agreement with Chevron (then Texaco) in 1998, releasing the firm from any further responsibility for the disaster. However, the agreement stated

that the firm was to be released only from further *government* claims. It was explicitly noted that additional third-party claims – such as the case brought by Amazon inhabitants – were not affected by the settlement. Chevron's counter-argument was that the case was brought on a collective basis affecting the rights of a community rather than the more limited frame of individual property rights, which is what the company expects third-party claims to be.

Irrespective of this argument, since the original settlement, the oil firm's "environmental remediation" efforts in the Amazon have been exposed as a sham. Six different tests have revealed that rather than cleaning up the contamination, Texaco instead attempted to conceal this by piling dirt on top of polluted oil pits.

As for the allegations of fraudulence and corruption, these revolve around claims made by Chevron's key witness Alberto Guerra – claims that have since emerged as lies (see box opposite).

Yet the ISDS tribunal decided in Chevron's favour in September 2018, landing the Ecuadorian government with an as yet undisclosed pay-out to the firm. Exceptionally, the tribunal decided to overrule domestic justice, with the arbitrators ordering Ecuador to prevent the court from enforcing its judgment, so that Chevron is not obliged to comply with the national justice system.

OUR VERDICT

This case is unprecedented, as far as we know, in directly overturning a democratically accountable, national court judgement. Until now, ISDS tribunals have, on occasion, been asked to order legal proceedings to be put on hold until after the outcome of an ISDS case, but no more. The Chevron case sets an incredibly dangerous precedent that could lead to ISDS tribunals trespassing into domestic courts all over the world, rewriting justice in favour of corporate power.

At no point in the ISDS process was there an opportunity for the voices of those affected by Chevron's actions to be heard. Nor was the overwhelming evidence of the oil firm's bogus

Who was bribing who?

Chevron's allegation around corruption was that judge Nicolas Zambrano's verdict in the 2011 judgement was ghost-written by a former judge named Alberto Guerra. Chevron's key witness was Guerra himself, who initially claimed that he and Zambrano both accepted a bribe to ensure the case was settled in favour of the Amazon inhabitants bringing the lawsuit.

Yet Guerra has since admitted that there was in fact no such bribe, saying: "I lied. I admit it. I did not tell the truth." Moreover, no evidence that Guerra ghost-wrote the verdict has ever materialised. An examination of Zambrano's computer's hard drive found that the document on which the verdict was written, which Chevron allege was sent to Zambrano by Guerra in 2011, was in fact created on Zambrano's computer in 2010.

Guerra, meanwhile, has admitted the extensive suite of "favours" he accepted from Chevron in return for his "cooperation" in the case. This included a \$20,000 pay-out, relocation to the US and an immigration lawyer for his son, who was about to be deported from the US.

"remediation" considered. Instead, the corporate court was swayed by a witness who has since admitted lying about key evidence. The tribunal also undermines the concept of collective rights, which Indigenous Peoples have long fought to establish in international law.

It's been almost 50 years since Chevron began its devastating pollution of the Amazon. Yet still, after decades of struggle in the courts, the people whose livelihoods have been destroyed have yet to win justice. ISDS, as a tool for undermining democratically determined legal processes, was at the heart of this toxic subversion of justice.

Investor-State Dispute Settlement (ISDS,) or 'corporate courts', gives corporations far reaching privileges and access to their own legal system to enforce them. This mechanism threatens society, democracy and the planet.
STOP ISDS!

