

BALANCING PROFIT AND ENVIRONMENTAL SUSTAINABILITY IN ECUADOR: LESSONS LEARNED FROM THE CHEVRON CASE

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INTRODUCTION

In 2008, the people of Ecuador ratified the first national constitution in the world to enshrine the Rights of Nature.¹ As one of the most biodiverse countries in the world, this was more than a symbolic gesture; it reflected a national consensus that our whole approach to protecting the environment—including ourselves—must change and adapt if we are going to make this planet a place where all can live freely and safely.²

Ecuador had a vested interested in taking the unprecedented step of providing constitutional rights focused on nature because so much is at stake in our country. The inclusion of these rights of nature in the Constitution is given in four articles (art. 71 to 74) and expresses the deep respect with which we regard our environment. The articles state that “Nature or Pachamama, where life is reproduced and realized, is entitled to its existence, maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes are fully respected. Any person, community, village or nationality may require the public authority to enforce the rights of nature . . . The State will encourage natural and legal persons and groups to protect nature, and promote respect for all the

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1. National Constituent Assembly, Constitution of the Republic of Ecuador (Oct. 20, 2008).

2. Kintto Lucas, *Ecuador: New Constitution Addresses New Demand for “Plurinational” State*, INTER PRESS SERVICE (May 5, 2008), <http://www.ipsnews.net/2008/05/ecuador-new-constitution-addresses-demand-for-lsquo-plurinationalrsquo-state/>; *Ecuadorian Assembly Approves Constitutional Rights for Nature*, CLIMATE & CAPITALISM (July 10, 2008), <http://climateandcapitalism.com/2008/07/10/ecuadorian-assembly-approves-constitutional-rights-for-nature/>; Cyril Mychalejko, *Ecuador’s Constitution Gives Rights to Nature*, OP ED NEWS (Sept. 26, 2008), <http://www.opednews.com/articles/2/Ecuador-s-Constitution-Giv-by-Cyril-Mychalejko-080925-102.html>.

elements that form an ecosystem.”³ It clearly reflects the deep commitment by Ecuador that the country has elevated this issue to a constitutional level. Since the enactment of the Constitution, the National Assembly adopted the Law Amending the Law on Mining, Water Management Act, Environmental Law and Development.⁴

But we did not arrive at this conclusion easily; the path to get to where we are today was long, litigious, and costly on many levels. For decades, transnational corporations took advantage of our country’s institutional weakness as related to the public sector and of lax international standards for business compliance with human rights protections and regulations. Irresponsible extraction of natural resources, inadequate methods of remediation, and lack of financial compensation for victims of corporate irresponsibility harmed not only human life but also the environment.⁵

Arguably the most egregious example is that of Texaco-Chevron’s almost 25-year operation in Ecuador. During its operations in Ecuador, Texaco-Chevron knew they were using technologies that were sub-par compared to the more advanced environmentally friendly technologies used in the United States.⁶ The American Petroleum Institute issued minimum standards for oil exploitation⁷ before Texaco-Chevron commenced its operations in Ecuador, the oil company chose to ignore those guidelines in order to make greater profits. Beginning in the 1960’s, a consortium of oil companies led by Texaco (which agreed to merge with Chevron in 2001 to become ChevronTexaco Corp. then later Chevron Corp.⁸) extracted oil and dumped toxic waste in our Amazon rainforest using methods and technology that were obsolete and non-environmentally friendly, contrary to the technologies used by Chevron in other parts of the

3. Nathalie Cely & Gustavo Dominguez, *The Challenges of Attracting Foreign Direct Investment for Latin America’s Sustainable and Diversified Economy: Lessons Learned From Ecuador*, 46 <http://nathaliecely.files.wordpress.com/2014/03/english-03-14-2014.pdf> (last visited April 6, 2014).

4. *Id.*

5. Christie Smythe, *Ecuador Judge Testifies to Taking Bribes in Chevron Case*, BLOOMBERG NEWS (Oct. 24 2013), <http://www.bloomberg.com/news/2013-10-23/ecuador-judge-testifies-to-taking-bribes-in-chevron-suit.html>; *Ecuador, Chevron and Pollution: Justice or Extortion?*, ECONOMIST (May 21, 2009), <http://www.economist.com/node/13707679>; Yoon Sung-won, ‘Will Texaco people drink this water?’, THE KOREA TIMES (Dec. 23, 2013), http://www.koreatimes.co.kr/www/news/culture/2013/12/316_148470.html; TRUE COST OF CHEVRON, THE TRUE COST OF CHEVRON: AN ALTERNATIVE ANNUAL REPORT 36 (2011), <http://truecostofchevron.com/2011-alternative-annual-report.pdf>.

6. *History of Texaco*. CHEVRON CORP., <http://www.texaco.com/about-timeline.aspx> (last visited Apr. 6, 2014).

7. CENT. COMM. & DIV. OF PROD., AM. PETROLEUM INST., DRILLING AND PRODUCTION PRACTICE: 1963 (1964).

8. CHEVRON CORP., *supra* note 6.

world.⁹

Lack of experience, weak institutions, and the absence of international obligations mandating minimum compliance requirements for business practices that respected human rights in hydrocarbon exploitation made Ecuador deeply dependent on external technological expertise for the design and construction of infrastructure that would facilitate the extraction, transportation, and sale of Ecuadorian oil on the global market.¹⁰ This provided considerable advantages to transnational companies over the State during what was initially referred to as the “oil boom.”¹¹ These legal, technical, operational, and administrative advantages made the country totally dependent on large transnational corporations; Ecuador needed their technical expertise and subsequent transfer of knowledge.

Oil companies ostensibly took advantage of this relationship dynamic—the case of Texaco being a major example. Ecuador’s relationship with Texaco provided many lessons for Ecuador and the world in a number of different fields, particularly on investment treaties, human rights, international relations, business ethics, international law, and international arbitration. For example, it is possible to prove, through documents obtained thanks to the Freedom of Information Act¹², the extent and force of Chevron’s lobbying and public relations efforts to exert pressure on United States government institutions with the purpose of influencing from human rights reports to the commercial relationship between the two countries. These lobbying efforts have been detrimental to the bilateral relationship between the United States and Ecuador.

When Texaco left Ecuador, significant profits in hand, it left unprecedented damage to the environment and no compensation to those

9. Compare *id.* (according to Acuerdo Ministerial No. 621, 1992, discharging produced water and mining fluids in open-air pits has been legal in Ecuador since 1992), with NAT’L PETROL. COUNCIL, MANAGEMENT OF PRODUCED WATER FROM OIL AND NATURAL GAS WELLS, 10 –11, 16 (Sept. 15, 2011), http://www.npc.org/Prudent_Development-Topic_Papers/2-17_Management_of_Produced_Water_Paper.pdf (recognizing that, in the United States, operators managed 92% of produced water by deep mine injection, by 1985). See generally Steven Levitsky & Victoria Murillo, *Continuity and Change in a Weak Institutional Environment* (2011) (unpublished manuscript) (on file with Columbia University).

10. See, e.g., Judith Kimerling, *Oil, Contact, and Conservation in the Amazon*, 24 COLO. J. INT’L ENVTL L. & POL’Y 43, 46, (2013) (attributing Ecuador’s dependence on foreign markets and expertise as undermining the country’s institutions).

11. *The Oil Boom and the Military Dictatorship*, QUITO, <http://www.quitoadventure.com/ecuador-info/history/ecuador/oil-boom.html> (last visited April 6, 2014).

12. Ted Folkman, *Chevron, Lobbying, and Lago Agrio*, LETTERS BLOGATORY (Oct. 4, 2013), <http://lettersblogatory.com/2013/10/04/chevron-lobbying-lago-agrio/>.

affected in its wake.¹³ For more than a decade, a group of indigenous plaintiffs from the affected rainforest region were embroiled in a legal battle with Texaco-Chevron.¹⁴ Despite a legal labyrinth that stretched from Ecuador, to New York, to California, back to Ecuador, Canada, Brazil, Argentina and even The Hague, Chevron still refuses to pay any court awarded damages won by the plaintiffs—which currently stand at close to \$9.5 billion.¹⁵ Instead, Chevron has waged a dangerous and unprecedented international campaign to escape responsibility, including filing three arbitration proceedings against the Government of Ecuador and undermining both Ecuador-US bilateral relations and the international Bilateral Investment Treaty framework.

Ecuador has grown and learned much from these experiences. We have set out on an irreversible path towards a stronger and more inclusive democracy with solid institutions that protect all, including vulnerable indigenous populations and the natural environment. Where the international community has lagged, we have stepped up and created our own framework to protect our environment and set standards for responsible and sustainable economic growth and development.

Ecuador further realizes that our country's efforts alone cannot sufficiently address the need to transform investment treaties and arbitration mechanisms for sustainable development and productive transformation. We seek to bring together stakeholders from around the world, including the United Nations, other concerned countries from our region as well as Europe, Africa, Asia, and key civil society voices in order to establish a global set of fair minimum standards and regulations that will hold transnational corporations accountable when they invest and obtain reasonable profits. We aim to place the promotion of social and environmental justice on an equal footing with corporate profits.

I would add, As this paper will show, we know and have proven that,

13. William Langweische, *Jungle Law*, VANITY FAIR (May 2007), <http://www.vanityfair.com/politics/features/2007/05/texaco200705>.

14. Cely & Dominguez, *supra* note 3, at 15; Chris Mondics, *Chevron Fights Case that Led to \$19B Ruling in Ecuador*, PHILADELPHIA INQUIRER (Oct. 29, 2013), http://articles.philly.com/2013-10-29/news/43465461_1_steven-donziger-patricia-hamill-chevron-corp; *Ecuador v. Chevron Corp.*, 638 F.3d 384 (2d Cir. 2011).

15. Paul M. Barrett, *Ecuadorian Court Cuts Chevron's Pollution Bill in Half*, BLOOMBERG BUSINESSWEEK (Nov. 13, 2013), <http://www.businessweek.com/articles/2013-11-13/ecuadorian-court-cuts-chevrons-pollution-bill-in-half>; Paul M. Barrett, *Chevron Inches Closer to Legal Victory Over Ecuador Pollution*, BLOOMBERG BUSINESSWEEK (Sept. 19, 2013). *See* *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581 (S.D.N.Y. 2012) (describing litigation commenced by Chevron against lead plaintiffs' attorney claiming RICO violations); *Chevron v. Donziger Post Rico Trial News Coverage*, AMAZON PRESS (Jan. 13, 2014) (noting that likely court victory for Chevron would "neutralize" prior damages award in *Republic of Ecuador v. Chevron*).

if done right and responsibly, corporations, governments, peoples, and nature can live peacefully and prosper symbiotically.

I. RIGHTS OF NATURE – “BUEN VIVIR”

An inadequate institutional framework and a chain of errors in economic policy decision-making during this critical period—starting from the discovery of oil in the country in 1967 through the new millennium—left Ecuador in a precarious and unsustainable position by the early 2000’s.¹⁶ Poverty was high, infrastructure was old and failing, and the social safety net for citizens was minimal and not inclusive. Ecuador needed drastic structural changes, strong leadership, and deep and sustainable reform to modernize its economy, society, and democracy.¹⁷ With this in mind, in November 2006, the people of Ecuador elected economist Rafael Correa President of the Republic.¹⁸ His message of change and support for health, education, employment, housing initiatives—essentially the creation of a new country—resonated deeply among Ecuadorians.¹⁹

Upon first taking office, President Correa proposed to convene an assembly to write a new constitution, a proposal that was overwhelmingly supported in a national referendum.²⁰ A Constituent Assembly was convened and it approved a draft text for a new constitution; the proposed constitution was then put to popular referendum and won the support of the Ecuadorian people by a large margin.²¹

16. See JOHN D. MARTZ, *POLITICS AND PETROLEUM IN ECUADOR* 230–31 (1987).

17. See Levitsky & Murillo, *supra* note 10, at 9, 24 (noting the institutional instability of Ecuadorian governance since the transition to a multi-party democracy from a military junta in the late 1970s).

18. *Estadísticas Presidenciales (Segunda Vuelta)*, HOY.COM <http://www.hoy.com.ec/votebienec/p20062.html> (last visited April, 6 2014); *Correa "Nuevo Presidente de Ecuador"*, BBC MUNDO (Nov. 29, 2006), http://news.bbc.co.uk/hi/spanish/latin_america/newsid_6194000/6194034.stm.

19. Daniel Schweimler, *Ecuador Elige Romper con el Pasado*, BBC MUNDO (Nov. 27, 2006), http://news.bbc.co.uk/hi/spanish/latin_america/newsid_6187000/6187088.stm; Kintto Lucas, *Elections-Ecuador: Correa Set to Win (But Perhaps not This Sunday)*, INTER PRESS SERVICE (Oct. 6, 2006), available at <http://www.ipsnews.net/2006/10/elections-ecuador-correa-set-to-win-but-perhaps-not-this-sunday/>.

20. *Ecuadorian Assembly Approves Constitutional Rights for Nature*, *supra* note 2; *Ecuadorian President Correa Calls March National Referendum*, MERCOPRESS (Jan. 15, 2007), <http://en.mercopress.com/2007/01/15/ecuadorian-president-correa-calls-march-national-referendum>; Rosa Rodriguez, *Ecuador: President "Stabbed in Back" by Church Over Constitution*, INTER PRESS SERVICE (Aug. 25, 2008), available at <http://www.ipsnews.net/2008/08/ecuador-president-stabbed-in-the-back-by-church-over-constitution/>.

21. Haroon Siddique, *Ecuador Referendum Endorses New Constitution*, *GUARDIAN* (26 Sept.,

The new constitution, adopted in 2008, was the first in Ecuador's history to guarantee the right of "buen vivir" which literally translates to "good living".²² "Buen vivir" encapsulates the vision of the Quechua peoples of the Andes who call it "sumac kawsaw" and refers to a way of living that is community-centered and respectful of the environment.²³ It is based on a belief that it is the responsibility of each individual to promote and protect the health of the overall community and that all who live in a community assume their full responsibilities and reap its many benefits.

Importantly, the new constitution was also the first in the world to establish the Rights of Nature, declaring that "Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. . . The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem."²⁴

Ecuador had a vested interest in taking this unprecedented step because so much was at stake in our country. Ecuador is considered one of the most biodiverse countries in the world and is ranked by the Convention on Biological Diversity as one of the 17-mega diverse countries on the planet.²⁵ In terms of conservation, the country is divided into four natural geographic regions containing 3 of the world's 10 most biodiverse areas.²⁶ Ecuador is home to the Galapagos National Park, a UNESCO world heritage site, and the Yasuni National Park, a 982,000 hectare stretch of the Amazon rainforest that has more species of frogs, toads, and trees than all of the continental US and Canada combined.²⁷

While these new constitutional provisions promoting "buen vivir" and the Rights of Nature were the impetus for many other never-before-seen initiatives and reforms, not all of them succeeded. In 2007, Ecuador announced its support for an innovative international proposal in which

2008), <http://www.theguardian.com/global/2008/sep/29/ecuador>.

22. Constitution of the Republic of Ecuador, arts. 71–74 (2008).

23. ACOSTA ET AL., *EL BUEN VIVIR. UNA VÍA PARA EL DESARROLLO 7–18* (2009).

24. Constitution of the Republic of Ecuador, art. 71 (2008).

25. *Ecuador Country Profile*, Convention on Biological Diversity, <http://www.cbd.int/countries/profile/default.shtml?country=ec> (last visited Feb 19, 2014).

26. Margot S. Bass et al., *Global Conservation Significance of Ecuador's Yasuni National Park*, 5 PLOS ONE 4, 7 (2010).

27. *Id.*; *UN/Ecuador Agree on Trust Fund to Protect Bio-diversity from Oil Industry*, MERCOPRESS (Aug. 7, 2010), <http://en.mercopress.com/2010/08/07/un-ecuador-agree-on-trust-fund-to-protect-bio-diversity-from-oil-industry>.

Ecuador would sacrifice billions of dollars in order to avoid the exploitation of oil in a small section of the Yasuni, in exchange for less than half of Ecuador's lost revenue through international contributions.²⁸ Despite gaining the support of the United Nations Secretary General Ban Ki-moon and establishing a partnership with the United Nations Development Programme, in August 2013, after several years of failed attempts to secure sufficient international support, the Government of Ecuador announced the decision to drill for oil in an area of around 0.01% of the Yasuni.²⁹ However, this time, any exploration and extraction will be done in complete compliance with the Rights of Nature as declared by the Ecuadorian National Assembly in its resolution to commence drilling. The resolution states that "faced with the environmental impacts caused by the exploitation of these resources, the State will put in place the most effective mechanisms to achieve the restoration as well as the appropriate measures to eliminate or mitigate adverse environmental consequences."³⁰ From this drilling, Ecuador expects to receive approximately \$19 billion, which will be used to fight poverty, primarily in the Amazon region, which historically has been neglected and excluded from the oil revenues derived from the exploitation of its territory.³¹

The Constitution approved in 2008 has several articles related to the management of the incomes from natural resources: First, it establishes environmental protection as a priority. Second, it also establishes that, from that income, there are set funding assignments to determined sectors such as health, education, research, science and technology innovation, among others.³² To clarify, the 2008 Constitution already has articles that pre-determine where the funds from this income will be used; this assignments of funds to help mitigate poverty does not depend on executive action. Therefore, while these revenues will not be seen until long after the current Administration is no longer in power, they will help ensure a positive and sustainable future for our citizens and indigenous people.

28. *UN/Ecuador Agree on Trust Fund to Protect Bio-diversity from Oil Industry*, *supra* note 27.

29. Resolución que declara de Interés Nacional la explotación de los Bloques 31 y 43, en una extensión no mayor al uno por mil de la superficie actual del Parque Nacional Yasuní [Resolution that declares that the exploitation of Blocks 31 and 43, extending no greater than 0.01% of the current area of the Yasuni National Park, is in the National Interest.] NAT'L ASSEMBLY OF ECUADOR (October 3, 2013) available at <http://www.asambleanacional.gov.ec/acuerdos-y-resoluciones-tabla.html>.

30. *Id.*

31. *A Volcano Erupts: Rafael Correa Lambasts Us and "the Empire of Capital"*, *ECONOMIST* (Oct. 12, 2013), <http://www.economist.com/news/americas/21587825-rafael-correa-lambasts-us-and-empire-capital-volcano-erupts>.

32. Simón Cueva & María Ortiz, BANCO INTERAMERICANO DE DESARROLLO, *Ingresos Fiscales por Explotación de Hidrocarburos en Ecuador*, available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=38065261>.

Despite the failure of the international community to support this proposal, the inclusion of the Rights of Nature in our Constitution has received a tremendous response within Ecuador.³³ Between 2008 and 2013, the National Judicial Council recorded 1,164 cases filed in connection with crimes against nature, of which 550 have been settled and 614 are pending settlement.³⁴ The latest 2013 figures show 570 cases, of which 278 have been resolved.³⁵

The international community took notice of Ecuador's stand to protect the Rights of Nature and the importance of enshrining the commitment to environmental protection in law. Since 2008, Bolivia, Turkey, Nepal, and New Zealand as well as various US municipalities in Pennsylvania³⁶, New Hampshire, and California³⁷ have written protections of nature and the environment into their constitutions and local ordinances.

II. CHEVRON V. ECUADOR

To fully understand what led Ecuador to become the first country to adopt the Rights of Nature in its Constitution, it is necessary to understand the country's complicated history with oil, which has been both a blessing and a curse. From the beginning, this relationship was shaped and driven by the country's relationship with Texaco (now owned by Chevron). The Ecuador-Texaco relationship began in 1964 when the Government of Ecuador invited the Gulf Oil Corporation and Texaco Inc. to conduct exploration operations in eastern Ecuador.³⁸ These multinational corporations formed a consortium in Ecuador with equal shareholder rights to conduct their operations and Texaco remained the sole operator for the entirety of the partnership.³⁹ The consortium discovered oil in 1967 and

33. Joshua Partlow & Stephen Kuffner, *Voters in Ecuador Approve New Constitution*, WASHINGTON POST (Sept. 29, 2008), <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/28/AR2008092802644.html>.

34. National Judiciary Council of the Republic of Ecuador, Office of the President, *Estadísticas Relacionadas Con Delitos Contra La Naturaleza* (unpublished data sheet, on file with the Duke Environmental Law and Policy Forum).

35. *Id.*

36. *Rights of Nature*, CHAIKUNI INST., <http://chaikuni.org/permaculture-in-the-amazon/rights-of-nature/> (last visited Feb. 24, 2014).

37. *An Ordinance of the City Council of the City of Santa Monica Establishing Sustainability Rights*, SANTA MONICA, CA (Mar. 12, 2013), <http://www.smgov.net/departments/council/agendas/2013/20130312/s2013031207-C-1.htm>.

38. Lucien Dhooge, *Aguinda v. ChevronTexaco: Mandatory Grounds for the Non-Recognition of Foreign Judgments for Environmental Injury in the United States*, 19 J. TRANSNAT'L L. & POL'Y 1, 4 (2009), available at http://www.law.fsu.edu/journals/transnational/vol19_1/dhooge.pdf.

39. *Id.*

began exporting in 1972 after constructing a pipeline to Ecuador's northern Pacific coast.⁴⁰ TexPet, a Texaco subsidiary, became a minority partner in the oil consortium in 1977, yet remained the only oil operator in approximately 500,000 hectares of Ecuador's Amazon rainforest.⁴¹ TexPet operated all three hundred fifty-six wells that were drilled and it is estimated that more than 800 pits were excavated to bury the sludge and contaminated material produced in the drilling process.⁴² Millions of gallons of toxic material (waste water and produced water⁴³) were dumped into the rivers proximate to the oil well operations.⁴⁴

Texaco, for cost and convenience, used a toxic removal system that ravaged the Ecuadorian Amazon and brought considerable damage to human life, flora, fauna, aquatic species, etc.⁴⁵ Texaco did not use this same remediation system in the US because it wished to avoid the consequences of using such a polluting system in a developed country with proper rules and standards for business compliance with human rights, health and environmental protections.⁴⁶ During the period when Texaco was responsible for oil exploration and exploitation, it not only ignored the American Petroleum Institute's extensive guidelines and recommended techniques for remediation issued in 1963,⁴⁷ but it also failed to use the remediation system the company itself had patented and which was considered the latest technology at that time.⁴⁸

Two types of litigation have resulted from Texaco's almost 25 year-presence in Ecuador and the devastating exploitation practices it employed in the country. The first type of litigation began over 20 years ago and involves only private parties, where those directly harmed (citizens of the local ethnic groups and Amazonian settlers) brought legal claims against Texaco and then against Chevron once it purchased Texaco.⁴⁹ The second type of litigation involves arbitration claims filed by Chevron against Ecuador, i.e., as in an investor-state relationship, even though Chevron

40. *Id.*

41. Ministry of Foreign Affairs and Human Mobility of the Republic of Ecuador, *Chevron-Texaco's Footprint on the World* (November 2013), <http://www.serpajchile.cl/web/wp-content/uploads/2013/11/Folleto-explicativo-esp%C3%B1ol-La-Huella-de-Chevron-Texaco-en-el-Mundo.pdf>.

42. *Id.*

43. *Id.*

44. *Id.*

45. Dhooge, *supra* note 38, at 6.

46. Ministry of Foreign Affairs & Human Mobility of the Republic of Ecuador, *supra* note 41.

47. CENT. COMM. & DIV. OF PROD., *supra* note 7.

48. *Id.* at 2.

49. Dhooge, *supra* note 38, at 10, 14.

never invested in Ecuador, and the U.S.-Ecuador Bilateral Investment Treaty (BIT) under which the claim was brought only took effect five years after Texaco left the country.⁵⁰ The Court of International Arbitration declared its jurisdiction retroactively, an unprecedented decision in international investment arbitration.⁵¹

It should also be noted that in a New York court in 2004, Chevron sued the Republic of Ecuador and Petroecuador, Ecuador's state-owned oil company filing the first arbitration against Petroecuador.⁵² Chevron alleged that Petroecuador was subject to the clause under the Joint Operation Agreement, which required that non-operator parties should compensate the operator for any judgment against the operator related to its activities as operator. U.S. courts denied this claim.⁵³ Chevron appealed this ruling and litigation continued through the appellate court system until the U.S. Supreme Court refused to hear the case and affirmed the judgment of the lower courts.⁵⁴ Texaco attempted to hide its responsibility as the sole operator in the region by asserting that technical and operational decisions made at the time were done so solely through the consortium under the JOA.⁵⁵

The first attempt to seek justice by affected private parties began in 1993 in the U.S. District Court for the Second District of New York and is known as the Aguinda case, in which seventy-four Ecuadorians represented more than 30,000 inhabitants in eastern Ecuador.⁵⁶ The plaintiffs sought:

- (i) Compensation for damages.⁵⁷
- (ii) Judicial protection to remedy the pollution and contamination of the environment.⁵⁸
- (iii) Compensation for personal injury and property caused by pollution.⁵⁹

50. Lise Johnson, *Case Note: How Chevron v. Ecuador is Pushing the Boundaries of Arbitral Authority*, INVESTMENT TREATY NEWS (Apr. 13, 2012), http://www.iisd.org/itm/2012/04/13/case-note-how-chevron-v-ecuador-is-pushing-the-boundaries-of-arbitral-authority/#_ftn1.

51. *Id.*

52. Wailin Wong, *US Court Stops Chevron Arbitration Vs State-owned Petroecuador*, CHEVRON TOXICO (Jun. 20, 2007), <http://chevrontoxico.com/news-and-multimedia/2007/0620-us-court-stops-chevron-arbitration-vs-state-owned-petroecuador>.

53. *Id.*

54. *Aguinda v. Texaco Inc*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001).

55. *Id.*

56. Complaint at 19, *Aguinda v. Texaco Inc*, 142 F. Supp. 2d 534 (S.D.N.Y. 2001).

57. *Id.* at 4.

58. *Id.*

59. *Id.*

For nearly 10 years, these civil plaintiffs battled unsuccessfully in the New York court.⁶⁰ Chevron argued that the proper venue to decide the claims was the Ecuadorian court system, and presented numerous affidavits from Ecuadorian lawyers attesting to the capability of Ecuador's courts.⁶¹ The District court found that under the principle of *forum non conveniens*, the case should be returned to be heard in Ecuador but not without first assuring that Chevron would agree to submit to the Ecuadorian courts with an implicit recognition of the country's judicial system's capacity to resolve complaints filed against the company.⁶² This ruling was affirmed by the Court of Appeals for the Second Circuit in New York.⁶³

After Chevron won its motion to move the case to Ecuador, the civil plaintiffs decided to file a suit in Lago Agrio, Ecuador, where they sought the same environmental remediation raised in the Aguinda case in New York.⁶⁴ In general, the plaintiffs' petition⁶⁵ called for the elimination or removal of pollutants that continue to threaten the environment and the health of residents including:

- (i) The removal, proper treatment, and disposal of contaminated material and waste that are kept in crude oil wells.⁶⁶
- (ii) The cleaning of rivers, estuaries, lakes, wetlands, and natural and artificial streams.⁶⁷
- (iii) The cleaning of land, fields, crops, roads, and buildings that may still be contaminated by waste from Texaco's operations.⁶⁸
- (iv) Design and implementation of a medical monitoring plan.⁶⁹

60. Dhooge, *supra* note 38, at 56.

61. *Id.*

62. *Id.* at 44.

63. *Id.* at 10 n. 58.

64. *Id.* at 56.

65. *Ecuador Legal Complaint*, CHEVRON TOXICO (2003), <http://chevrontoxico.com/assets/docs/2003-ecuador-legal-complaint.pdf>.

66. *Id.* at 23.

67. *Id.*

68. *Id.*

69. *Aguinda v. Texaco, Inc.*, 303 F.3d 470, 478-480 (2d Cir. 2002); *Aguinda v. Texaco, Inc.*, no. 93 Civ. 7527, 1994 United States. Dist. LÉXIS 4718, in *2 (S.D.N.Y. April 11, 1994); *Aguinda v. Texaco, Inc.*, 945 F. Supp. 625, 627 (Southern District of New York 1996) (citing *Sequihua v. Texaco, Inc.*, 847 F. Supp. 61 (S.D. Tex. 1994)); *Jota v. Texaco, Inc.*, 157 F.3d 153, 155 (2d Cir. 1998); *Aguinda v. Texaco, Inc.*, 142 F. Supp. 2d 534, 539-554 (S.D.N.Y. 2001).

On February 7, 2011, after a seven-year trial, Ecuadorian Judge Nicolas Zambrano found Texaco-Chevron liable for pollution caused in the area in question and determined the payment by Chevron as follows:

- (i) \$600 million for groundwater remediation.
- (ii) \$5.396 billion for soil remediation.
- (iii) \$200 million to restore the flora, fauna, and native aquatic life.
- (iv) \$150 million to implement a system of drinking water in the affected areas.
- (v) \$1.4 billion to establish a health care system for the population of the affected areas.
- (vi) \$800 million for a health plan that includes potential cancer treatment.
- (vii) \$100 million to rebuild ethnic communities and indigenous cultures.⁷⁰

The Judge also ordered the defendant to issue a public apology or pay double the amount of the compensation award.⁷¹ Chevron refused to issue an apology and the award was consequently increased to almost \$19 billion.⁷²

The Zambrano decision was ratified by an appeals court, and later by the National Court of Justice, which affirmed the decision, but reversed punitive damages, and on November 12, 2013, ordered Chevron to pay US\$9.5 billion.⁷³

On December 23, 2013, Chevron's lawyers submitted an extraordinary action of protection before the Constitutional Court of Ecuador, through which the oil company seeks to annul the National Court of Justice's latest ruling. The oil company must now prove to the court that due process or other recognized rights were violated, by act or omission

70. *David v. Goliath: An Update on the \$19 Billion Judgment in Ecuador Against Chevron*, CHEVRON TOXICO (2013), <http://chevrontoxico.com/assets/docs/2013-david-v-goliath.pdf>; see also *Aguinda v. ChevronTexaco*, Case No. 2003-0002 1, 179-183 (2011), available at <http://chevrontoxico.com/assets/docs/2011-02-14-Aguinda-v-ChevronTexaco-judgement-English.pdf>.

71. *Aguinda v. ChevronTexaco*, Case No. 2003-0002 1, 186 (2011), available at <http://chevrontoxico.com/assets/docs/2011-02-14-Aguinda-v-ChevronTexaco-judgement-English.pdf>.

72. *David v. Goliath*, *supra* note 70, at 2.

73. *Ecuador's Highest Court vs. a Foreign Tribunal: Who Will Have the Final Say on Whether Chevron Must Pay a \$9.5 Billion Judgment for Amazon Devastation?*, CHEVRON TOXICO (Dec. 2, 2013), <http://chevrontoxico.com/assets/docs/2013-12-11-public-citizen-bit-analysis.pdf>.

under the Ecuadorian Constitution.⁷⁴

III. THE SECOND INTERNATIONAL ARBITRATION (2006–2011)

In December 2006, Chevron entered a notice of arbitration against the Government of Ecuador based on the Ecuador-United States Bilateral Investment Treaty, arguing that the Ecuadorian courts violated the treaty signed by Ecuador by not resolving seven commercial cases that Texaco had argued against the Republic in early 1990's, related to the consortium's operations.⁷⁵ The International Arbitration Court assumed jurisdiction on December 1, 2008 and a partial ruling was issued on March 30, 2010 whereby the court determined that Ecuador had breached Article II (7) of the Investment Treaty and was responsible for the damage to Chevron.⁷⁶

The International Arbitration Court ruled on August 31, 2011 in favor of granting Chevron approximately \$96 million plus interest.⁷⁷ The court agreed that the 15-year delay in resolving commercial cases constituted a breach of the treaty. It also concluded that the Ecuadorian judicial system was neither corrupt, unfair, nor had acted with bias against Chevron.⁷⁸

IV. THE THIRD INTERNATIONAL ARBITRATION (2009 – PRESENT)

On September 23, 2009, 17 months before the Ecuadorian courts reached any final judgment in the plaintiffs' trial in Lago Agrio, Ecuador was notified of a third arbitration proceeding before the Permanent Court of Arbitration at The Hague requested by Chevron, according to the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL), and as per the terms of the BIT.⁷⁹ Overall, Chevron alleged denial of justice, unfair and inequitable treatment, and

74. Alexandra Valencia, *Chevron Appeals to Top Ecuador Court in Pollution Case*, REUTERS (Dec. 23, 2013 6:02 PM), <http://www.reuters.com/article/2013/12/23/us-chevron-ecuador-idUSBRE9BM0V020131223>.

75. Interim Award in *Chevron-Texaco Corp. v. Republic of Ecuador*, UNCITRAL 53 (Inv. Treaty Arb. 2008), <http://italaw.com/documents/Chevron-TexacovEcuadorInterimAward.pdf>.

76. *Id.*; Partial Award on the Merits in *Chevron Corp. v. Republic of Ecuador*, 128 (Inv. Treaty Arb. 2010), <http://italaw.com/sites/default/files/case-documents/ita0151.pdf>.

77. CHEVRON, *Chevron Awarded \$96 Million in Arbitration Claim against the Government of Ecuador*, Chevron Press Release (Aug. 31, 2011), available at http://www.chevron.com/chevron/pressreleases/article/08312011_chevronawarded96millionin arbitrationclaimagainstthegovernmentofecuador.news.

78. Claimant's Notice of Arbitration in *Chevron Corp. v. Republic of Ecuador*, 152 (Perm. Ct. Arb. 2009), http://italaw.com/sites/default/files/case-documents/ita0155_0.pdf.

79. *Id.*

discrimination related to the lawsuit filed by the Lago Agrio indigenous plaintiffs against the company in May 2003.⁸⁰

In May 2010, after assembling the panel of arbitrators, the court began deliberations and analysis of the jurisdiction of the court on the issues raised by Chevron; on February 27, 2012, the court concluded that it had jurisdiction over the matter.⁸¹

Since then, a number of initial hearings have taken place on the matter, however the most recent—scheduled for January 2014—was postponed following the presentation of the rejoinder of Ecuador to The Hague Court and Chevron’s December 2013 filing to the Constitutional Court of Ecuador in order to allow due process in Ecuador to be resolved.⁸²

Throughout this process, Chevron has sought to intimidate parties to the lawsuit as well as third parties inside and outside of the courtroom; the company has attempted to complicate a rather simple question of taking responsibility for unprecedented environmental damage. The oil company has attacked the plaintiffs and their lawyers, and has gone as far as filing a claim under the “Racketeer Influenced and Corrupt Organizations Act” (RICO).⁸³

Chevron has also lobbied the US government to end key trade programs with Ecuador such as the Andean Trade Promotion and Drug Eradication Act (ATPDEA)⁸⁴ and Ecuador’s status under the Generalized System of Preferences (GSP).⁸⁵ These programs are wholly unrelated to Chevron’s lawsuit; in fact, they have received strong bipartisan support in the US for more than two decades because they provide licit economic opportunities both to poor families in Ecuador who would otherwise have no economic alternative to the drug trade, and to small business in the United States.⁸⁶ Yet, Chevron, directly and through business associations it

80. *Id.* at 8, 14.

81. Third Interim Award on Jur. & Admissibility in *Chevron Corp. v Republic of Ecuador*, Case No. 2009-23, , at IV – 6 (Perm. Ct. Arb. 2012), <http://italaw.com/sites/default/files/case-documents/ita0175.pdf>.

82. Mercedes Alvaro, *Tribunal Pushes Back Ecuador, Chevron Hearing*, WALL ST. J. (Jan. 3, 2014, 6:07 PM), <http://online.wsj.com/news/articles/SB10001424052702303870704579298942874951448>.

83. Daniel Fisher, *Chevron Uses ‘Thermonuclear Device’ of RICO Against Donziger*, FORBES (Nov. 22, 2013, 9:01 AM), <http://www.forbes.com/sites/danielfisher/2013/11/22/chevron-uses-thermonuclear-device-of-rico-against-donziger/>.

84. M. Angeles Villarreal, CONG. RESEARCH SERV., RS22548, *ATPA Renewal: Background and Issues* 10 (2011).

85. Embajada Del Ecuador, ESTADOS UNIDOS, *The Embassy of Ecuador in the United States Rejects Chevron’s Campaign to Threaten Jobs and Trade with Ecuador Through the GSP* (Oct. 23, 2013), <http://www.ecuador.org/blog/?p=2260>.

86. *Id.*

supports financially, has waged a massive campaign with the goal of coercing the Government of Ecuador to suspend due process and interfere in the civil lawsuit between Chevron and the indigenous plaintiffs, which they lost.

Chevron's legal strategy is merely a tool of intimidation to avoid complying with the judgment that ordered it to pay several billion dollars to the plaintiffs. At the time of this writing, Chevron continues to dispute the findings of the Ecuadorian court—the venue they fought so hard to hear and decide this case—and continues international arbitration proceedings against the Government of Ecuador at The Hague.⁸⁷ In December 2013, an Ontario appeals court ruled that the Lago Agrio plaintiffs could seek enforcement of the \$9.5 billion judgment in Canada where Chevron has significant assets.⁸⁸ As of April 4, 2014, the Supreme Court of Canada agreed to hear an appeal by Chevron of a lower court decision that said Ecuadorian villagers could pursue in Ontario their \$9.5 billion award for pollution in the Amazon Jungle.⁸⁹

V. LESSONS LEARNED

Today's main Ecuadorian challenge resides in the transformation of its production matrix in order to make it greener and knowledge-intensive based. By investing in this new paradigm, the extraction of natural resources will be done in the appropriate way and create a new standard for attracting FDI. The challenges are not minor, and therefore the lessons learned from the Chevron case need to be known and understood by the international community, so it too can join Ecuador's efforts to find solutions to the current investor-state arbitrator system as well as to renew the commitment to find binding human and environmental codes of conducts for multinationals.

One of the main lessons that Ecuador learned from the Chevron case is that the country suffered from a weak regulatory government system that did not address in a timely matter the use of oil extraction technologies harmful to the environment.⁹⁰ There was also a lack of a conceptual

87. See, e.g., Alvaro, *supra* note 82.

88. Katia Dmitrieva & Liezel Hill, *Canadian Court Says Ecuadoreans Can Pursue Chevron Assets*, BLOOMBERG NEWS (Dec. 17, 2013, 4:17 PM) <http://www.bloomberg.com/news/2013-12-17/canadian-court-says-ecuadoreans-can-pursue-chevron-assets.html>.

89. Randall Palmer, *Canada high court to hear Chevron in \$9.1 billion Ecuador lawsuit*, REUTERS (Aug. 3, 2014, 2:40 PM) <http://www.reuters.com/article/2014/04/03/us-chevron-ecuador-canada-idUSBREA321SB20140403>.

90. Cely, *supra* note 3, at 35.

framework for evaluating investments in the natural resources sectors of the country.⁹¹ Our current political, economic, and judicial reform initiatives, led by President Correa, are aimed at correcting these weaknesses.

At the present time, Ecuador is confronted with the need to bring to conclusion two fundamental processes to make sure that our comprehensive development policies can be implemented successfully. The first is to improve the State's regulatory system to build pathways that allow further technological development, investing in human talent and strengthening the research capacity needed to change our production and energy matrixes.⁹² Ecuador has undertaken a thorough reform of higher education and educational restructuring in order to promote the formation of advanced human talent and the development of research, innovation, and technology transfer.⁹³ These efforts are spearheaded by three specialized agencies: the Council on Higher Education, the Board of Assessment, Accreditation and Quality Assurance of Higher Education, and the Ministry of Education, Science, and Technology.⁹⁴

The second process, just as important as the first, is that we must accelerate and consolidate the transformation of the Ecuadorian judicial system, redoubling efforts to achieve reforms approved in a popular referendum in May 2011, which consisted in dissolving the standing oversight body and replacing it with a temporary body to oversee the restructuring of the national court system.⁹⁵ As a mandatory result of this referendum, the Government of Ecuador has undertaken the process of transformation and reorganization of the Ecuadorian judicial system, which strategic plan⁹⁶ centers around the modernization of justice, includes:

(i) Ensuring transparency and quality in the provision of justice

91. *Id.* at 42.

92. Wouter Van Damme et al., *A Story of Change: How Ecuador Seeks to Sustain Its Development Agenda Through Large Scale Education Reform*, UKFIET INT'L CONFERENCE ON EDUC. & DEV., 4 (Sept. 10-12, 2013), http://www.vvob.be/vvob/files/20130830_paper-a_story_of_change-how_ecuador_seeks_to_sustain_its_development_agenda_through_large_scale_education_reform.pdf.

93. *Id.* at 14.

94. See CONSEJO DE EDUCACIÓN SUPERIOR, REPÚBLICA DE ECUADOR, <http://www.ces.gob.ec/> (last visited April 6, 2014).

95. *Education is Essential in the Transformation of Ecuadorian Justice, Says the President of the Judiciary*, ANDES (Sept. 9, 2013, 9:36 PM), <http://www.andes.info.ec/en/actualidad/education-essential-transformation-ecuadorian-justice-says-president-judiciary.html>.

96. *Press Release: President of Ecuador's Judiciary Defends Independence of Justice in the Chevron Case*, CSR WIRE (Nov. 19, 2013), available at http://www.csrwire.com/press_releases/36433-President-of-Ecuador-s-Judiciary-Defends-Independence-of-Justice-in-the-Chevron-Case.

- by developing and strengthening the oral proceedings, improving systems and alternatives to detention, and the creation of monitoring units for hearings;
- (ii) Providing optimal access to justice and fostering continuous improvement and modernization of services through the development and strengthening of a national mediation system, the decentralization of justice services and the efficiency and effectiveness of judicial proceedings;
 - (iii) Institutionalizing a meritocracy system in the judiciary through establishing higher professional ethics standards.

Since 2012 when the reorganization of the judiciary began, Ecuador has become the country in the region with the highest percentage of investment in the judiciary in relation to the general state budget.⁹⁷ Although the results of the administrative reorganization of the judicial system obtained so far are encouraging, true systemic changes will take time and much remains to be done. Through this process, Ecuador hopes to have a professional and technical judiciary.

By implementing these reforms, Ecuador seeks to provide an attractive environment for international investment that respects all of our principles as well as fair economic aspirations. However, Ecuador cannot and should not pave the way to fuller promotion of sustainability and corporate responsibility alone. This obligation falls to the entire international community because the air we breathe, the water we drink, and the nature that gives us life knows no borders.

On the international level, there is growing recognition that responsible and sustainable development is a human right. The United Nations High Commissioner for Human Rights (UNHCR) asserts that:

The process of globalization and other global developments over the past decades have seen non-state actors such as transnational corporations and other businesses play an increasingly important role internationally, but also at the national and local levels. The growing reach and impact of business enterprises have given rise to a debate about the roles and responsibilities of such actors with regard to human rights. International human rights standards have traditionally been the responsibility of governments, aimed at regulating relations between the State and individuals and groups. But with the increased role of corporate actors, nationally and internationally, the issue of business'

97. *Id.*

impact on the enjoyment of human rights has been placed on the agenda of the United Nations. Over the past decade, the United Nations human rights machinery has been considering the scope of business' human rights responsibilities and exploring ways for corporate actors to be accountable for the impact of their activities on human rights.⁹⁸

In its Guiding Principles on Business and Human Rights,⁹⁹ the UNHCR also recognizes the role of corporations in the protection of human rights, including consideration of potential adverse affects that their practices could have on communities where they operate. This principle most assuredly applies to oil companies whose exploration and exploitation of hydrocarbons pose huge risks for pollution and environmental damage. As in the case of Texaco's 25-year operation in Ecuador, this is especially relevant, and Ecuador, in partnership with the international community, must see that these obligations are finally fulfilled.

Through this process, Ecuador has also learned that Bilateral Investment Treaties, and the arbitration framework around them, must be reformed. BITs have received much criticism and have caused controversy in international investment disputes because nations increasingly find themselves facing million-dollar lawsuits under an arbitration system that is excessively costly, minimally transparent in its decisions, and over-reaching in its interpretations of these agreements' provisions.¹⁰⁰

There are many recommendations for reforming and strengthening the arbitration system. A few key recommendations are outlined below¹⁰¹:

- (i) Selecting arbitrators through a transparent process that guarantees that they can only serve as jurors and not also act as legal representatives for companies who have cases before the arbitration system;
- (ii) Establishing an institutional mechanism within the arbitration system that allows parties to effectively appeal awards; and

98. *Business and Human Rights: Overview*, OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS, http://www.ohchr.org/EN/Issues/Business/Pages/Business_Index.aspx (last visited Feb. 23, 2014).

99. *Guiding Principles on Business and Human Rights: Implementing the UN "Protect, Respect and Remedy" Framework* 13, OFFICE OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciples_BusinessHR_EN.pdf.

100. *World Investment Report 2012: Towards A New Generation of Inv. Policies* 86, UNITED NATIONS CONFERENCE ON TRADE & DEV. (2012), <http://www.unctad-docs.org/files/UNCTAD-WIR2012-Full-en.pdf>.

101. Cely, *supra* note 3, at 40.

- (iii) Requiring that all local remedies be exhausted before entering the arbitration system.

These reforms are not only necessary to strengthen our investment environment, but are required as part of Ecuador's commitment to strengthen democracy and the protection of human rights. In fact, as a result of the reforms instituted in the new constitution, Ecuador is obligated to renegotiate or terminate if necessary its bilateral investment treaties.¹⁰² Ecuador believes that balancing its principles and treaty obligations is ultimately possible and demonstrated this commitment in late 2013 when it presented the Joint Declaration on Transnational Corporations and Human Rights before the 24th Ordinary Session of the Human Rights Council of the United Nations.¹⁰³ The Declaration, signed by 85 countries, seeks to create binding international law to ensure that the powers of transnational companies are subject to the scrutiny of monitoring and promoting human rights in the countries where they do business.¹⁰⁴ This first step represents significant progress to establish minimal standards of corporate ethics for transnational investors and respect for human rights, which signatory states are obligated to protect.

The Government of Ecuador fully supports the principle that all investment risk should be properly rewarded. But, under the current BIT system, conditions indiscriminately favor corporate and commercial interests over human rights, rights of nature, and countries' sovereignty. Countries like Ecuador must balance these commercial interests with public policy objectives that seek to protect all the principles that must be upheld—for investors as well as for citizens who should benefit from this economic investment.

On a global level, criticism of the state-investor dispute system is rapidly increasing. This criticism is largely due to investors who often abuse these arbitration systems, either asserting that governments violated the BITs because public policies have threatened their revenues, or by claiming that they were unfairly and inequitably treated when due process

102. *Ecuador Establishes Commission to Audit Its Bilateral Inv. Treaties*, ALLEN & OVERY (Nov. 13, 2013), <http://www.allenoverly.com/publications/en-gb/Pages/Ecuador-establishes-Commission-to-audit-its-Bilateral-Investment-Treaties.aspx>.

103. *Ecuador Leads Declaration About the Needs of an Int'l Judicial Instrument About Transnational Businesses & Human Rights*, MINISTRY OF FOREIGN AFFAIRS & HUMAN MOBILITY OF THE REPUBLIC OF ECUADOR (Sept. 16, 2013, 8:00 AM), <http://cancilleria.gob.ec/ecuador-leads-declaration-about-the-needs-of-an-international-judicial-instrument-about-transnational-businesses-and-human-rights/?lang=en>.

104. Brid Brennan, *Insights into the Power of Corporations*, TRANSNATIONAL INSTITUTE (Jan. 23, 2014), <http://www.tni.org/article/state-corporate-power>.

did not find in their favor. More and more, the international community, including the United States, realizes that this broken arbitration system weakens the sovereign right of countries to conceive and implement public policies aimed at improving health, the environment, and other social protections for their citizens. As Lise Johnson, Senior Legal Researcher at the Vale Columbia Center on Sustainable International Investment, noted regarding the United States' own recent reevaluation of its BITs, "The rather few changes that have been made [to the US BIT model text] appear to reflect efforts to address concerns triggered by relatively recent developments such as the growth of investment into and from China and the global financial crisis, as well as more persistent issues regarding whether and how to reconcile investment treaties with national and international policies on environmental and labor standards."¹⁰⁵

In order to reform these arbitration systems, key capital-exporting countries in the global economy, such as the US, China, and EU member states, must demonstrate the necessary political will to establish a multilateral framework through organizations such as the UN, where debate can take place to create minimum standards and protection necessary (due to the asymmetry of power) for small countries to benefit from an effective renegotiation of bilateral investment treaties. It is only through this multilateral dialogue that the central problems of lack of transparency and conflicts of interest can be debated and clear parameters can be established in order to prevent the unrealistic and unfounded interpretations made by these arbitration tribunals.

Without an agreement on these minimum standards and protections, it is unlikely that there will be significant progress in achieving a balance between protecting the rights of investors and the regulatory capacity of States.

CONCLUSION

Ecuador has charted a difficult course, but one that is necessary and mindful of the complexity of our goals—building our country, economy, and investment environment and elevating the lives of our citizens—all while holding as equally important our duty to be the best stewards we can of the earth and the space we have been given. We intend to prove through our example that profitable and responsible are not mutually exclusive and

105. Lise Johnson, *The 2012 US Model BIT and What the Changes (or Lack Thereof) Suggest about Future Investment Treaties*, Pol. Risk Ins. News Letter (Volume III, Issue 2, November 2012), available at http://www.vcc.columbia.edu/files/vale/content/Political_Risk_Insurance_Newsletter_-_The_2012_US_Model_BIT_-_Nov_2012.pdf.

the first fruits of these efforts are beginning to show.

It is regrettable that extraneous and unnecessary actions taken by Chevron, from using every judicial maneuver imaginable to waging a PR and lobbying campaign against the plaintiffs, Ecuador, and all who seek justice, have overshadowed the only real issue that matters: Chevron's irresponsible drilling practices caused devastating damage to one of our planet's most biodiverse areas. It is far past time for the oil company to rectify the harm that it has caused.

Furthermore, the hard lessons we learned in Ecuador must not be forgotten; they are instructive to countries in every region of the world. As globalization shortens the distance between countries and corporations and as we come to the realization that 20th century progress has taken a toll on our planet, it is time we all evaluate what worked and what did not. We must move forward with a commitment and with a regulatory and legal framework suited for 21st century progress. The international community, members large and small, must change the way that corporate social responsibility is measured. It must include provisions that value human rights and environmental protections equally with profits or that measure will remain flawed. Those who do not learn from history will be doomed to repeat it and we, Ecuador working with the international community, cannot let this come to pass.