Background Memo on Ecuador Case as Nobel Laureates Announce Support for Steven Donziger

The extraordinary statement by 30 Nobel Laureates in support of the release of U.S. human rights defender Steven Donziger has its origins in what has been called the most important environmental and corporate accountability litigation in recent history: the $9.5 billion judgment against Chevron won by rainforest communities in Ecuador in 2011. This document explains the underlying case and lays out the basic facts that led to the unprecedented retaliation campaign against Mr. Donziger -- including his house arrest under contempt charges -- by a U.S. trial judge (Lewis A. Kaplan) working in conjunction with one of the world’s most powerful oil companies to prevent payment of a legitimate environmental liability to Indigenous peoples in the Amazon. It is important to note at the outset that Mr. Donziger has been detained at the request of a private law firm appointed by Kaplan to stand in the shoes of the U.S. government after the U.S. Attorney refused to prosecute contempt charges that Kaplan filed himself. In what can only be described as a flagrant conflict, that private law firm, Seward & Kissel, has deep ties to the oil and gas industry, and its private client list includes most oil majors including Chevron.

In summary, Ecuador’s courts found based on extensive scientific evidence that Chevron deliberately dumped 16 billion gallons of toxic waste water into the streams and rivers of the Amazon when it operated in Ecuador from 1964 to 1992. The dumping decimated Indigenous groups, poisoned the delicate ecosystem of the Amazon, created a cancer epidemic, and caused a public health catastrophe that continues to this day. The Ecuador judgment against Chevron has been affirmed by multiple appellate courts in Ecuador and Canada, including the highest courts of both countries. In Canada, in a stinging rebuke of Chevron, the Supreme Court ruled unanimously in 2015 that the Ecuadorians had a right to enforce their judgment in that country and to try to seize Chevron’s assets. To try to end-run these legal decisions, Chevron has hired at least 60 law firms and 2,000 lawyers to launch an unprecedented SLAPP-style retaliation campaign against the lawyers and community leaders who led the lawsuit with the primary target being Mr. Donziger. Mr. Donziger has now been under house arrest in his Manhattan apartment for nine months based on “criminal contempt” charges filed by Judge Kaplan.

The attacks from Chevron and Judge Kaplan are based on a number of falsehoods or distorted claims designed to taint the Ecuador judgment and evade paying compensation to the people the company poisoned. They are also designed to destroy the reputation of Mr. Donziger as a way to neutralize his effective leadership of the lawsuit and to intimidate allies from taking on Chevron and corporate polluters generally. This document explains key facts about the case and the truth behind Chevron’s claims.
Key Facts About Ecuador Judgment (1993-2011)

**Chevron operated in Ecuador under the Texaco brand from 1964 to 1992. It is indisputable that the company deliberately dumped billions of gallons of cancer-causing oil waste into the environment and abandoned roughly 1,000 unlined waste pits that still contaminate soils, streams, and rivers.**

**Chevron admits these basic facts but claims its sub-standard operational practices caused no harm.**

**Indigenous peoples and local communities in the affected area filed their initial claims for damages in New York federal court in 1993. Frightened by the prospect of a jury, Chevron fought for years to move the case to Ecuador. It filed 14 sworn affidavits from experts praising Ecuador’s court system.**

**In another maneuver to block the lawsuit, Texaco in 1994 ignored the local communities and signed a “settlement” with Ecuador’s government to remediate the damage. The subsequent Texaco “clean-up” was grossly inadequate. It consisted of covering a handful of the oil waste pits with dirt; Texaco spent $40 million, or less than 1% of the cost of a comprehensive clean-up as determined by experts.**

**Chevron’s maneuver was rejected in court and the lawsuit continued. In 2001, the company agreed to accept jurisdiction in Ecuador and pay any adverse judgment as a condition of moving the case out of the United States.**

**After the claims were re-filed in Ecuador, Chevron immediately went back on its word and challenged the jurisdiction of Ecuador’s courts. Again, courts rejected the maneuver.**

**The long-awaited trial in Ecuador started in 2002. Over an eight-year period, experts from both sides submitted 105 technical evidentiary reports covering dozens of Chevron oil production sites that were inspected in the presence of a judge. The reports showed life-threatening levels of pollution covering a 1,500 sq. mile area of rainforest.**

**The trial was delayed repeatedly by Chevron’s obstructionism; the company once filed 50 duplicative motions in 45 minutes to delay the case. On another occasion, Chevron lawyers threatened the trial judge with criminal charges if he did not rule in favor of the company.**

**In 2011, the Ecuador trial court found Chevron liable and ordered it to pay $9.5 billion in damages. The case was affirmed by a first-level appeals court in 2012, by Ecuador’s Supreme Court in 2013, and by Ecuador’s Constitutional Court in 2018.**

**In all, 17 appellate judges in Ecuador have reviewed the facts and affirmed the judgment. Twelve appellate judges in Canada, including the country’s Supreme Court, have ruled the plaintiffs can enforce their judgment against Chevron’s assets in that country.**

**Appellate courts in three countries (Ecuador, Canada, and the United States) have ruled the Ecuadorians can enforce their judgment against Chevron assets.**

Key Facts About Chevron Retaliation Campaign (2010 to present)

**After losing the case, Chevron refused to comply with court orders. It threatened the communities with a “lifetime of litigation” and vowed never to pay the judgment. “We will fight this until hell freezes over, and then fight it on the ice,” said a Chevron spokesperson.**

**In 2010, Chevron hired a new law firm to step up its attacks on the plaintiffs and their lawyers. Courts had previously found that the firm, Gibson Dunn & Crutcher, had used “legal thuggery” to intimidate its
adversaries and had fabricated evidence to try to frame a person with false allegations of criminal misconduct.

**In 2011, just two weeks prior to the issuance of the Ecuador judgment, Chevron tried to pre-empt the bad publicity it was receiving by filing before Judge Kaplan a civil “racketeering” suit in the same New York courthouse where the company previously refused to litigate the case.

**Kaplan had invited Chevron to file the “racketeering” (or RICO) lawsuit. As defendants, the suit named all 47 of the Ecuadorian community leaders and villagers who signed the original lawsuit; several advocates led by U.S. attorney Donziger; and various scientific consultants for the communities.

**A notoriously pro-business judge, Kaplan assigned the lawsuit to himself in violation of local rules requiring random assignment of cases. With no hearing, Kaplan quickly issued an unheard-of global anti-suit injunction purporting to block (from his Manhattan trial court) enforcement of the Ecuador judgment anywhere in the world.

**Kaplan in effect was trying to act as a global appellate court with power over every court system in every sovereign country in the world.

**To many international law scholars, Kaplan became a laughingstock and a symbol of U.S. judicial arrogance and imperialism. The order was clearly illegal and it was reversed on appeal.

**Undeterred by the setback, Kaplan and Chevron pushed on. Borrowing from a corporate playbook perfected by the tobacco industry, Kaplan (a former tobacco industry lawyer) and Chevron focused on a “demonize Donziger” campaign in an effort to knock the human rights lawyer out of the case.

**In the civil “racketeering” case, Kaplan pushed forward and tried to crush Mr. Donziger’s due process rights. He refused to seat a jury, excluded all environmental evidence, and allowed testimony of an admittedly corrupt witness Chevron had supported with $2 million in payments. Kaplan determined he would decide the case alone.

**The paid Chevron witness, Alberto Guerra, claimed Mr. Donziger approved a bribe of the trial judge in Ecuador and that members of his team wrote the judgment. Both claims were debunked later when the witness admitted under oath in a separate arbitration proceeding in 2015 that he had lied in Kaplan’s court. A forensic examination also proved he lied.

**Kaplan relied on Guerra’s false testimony to “find” in 2014 that the Ecuador judgment was obtained by fraud. But findings are based on either false testimony presented by the Gibson Dunn lawyers, a distorted view of facts, or a gross ignorance of Ecuador law and procedure -- or some combination of all three. (The many problems with Kaplan’s findings is documented in extraordinary detail by Deepak Gupta, one of the leading appellate lawyers in the U.S. who represented Mr. Donziger on appeal.)

**After the RICO trial, it emerged that Kaplan had financial ties to Chevron while he presided over the case that he never disclosed – a clear violation of rules which require judges to disclose any ties to a party litigating before them, according to Mr. Donziger’s lawyers. Kaplan was widely criticized for letting the case “degenerate into a Dickensian farce” driven by the judge’s “implacable hostility” toward Mr. Donziger and the Ecuadorian villagers.

**Kaplan remains the only judge in the world to have ruled the case was a fraud. A total of 29 judges in Ecuador and Canada who (unlike Kaplan) reviewed the full evidentiary record have ruled the judgment against Chevron is valid and enforceable.
Kaplan’s False Findings from RICO Case (2014)

It is important to understand that Judge Kaplan – based almost entirely on the false testimony of the Chevron witness -- found Mr. Donziger “guilty” of several criminal offenses in a civil trial with no jury on a lax civil standard of proof (the civil standard of proof is “more probable than not” rather than the criminal standard of “beyond a reasonable doubt” which also requires a jury). Chevron also took its so-called “evidence” to the U.S. Attorney in Manhattan to try to persuade the office to indict Mr. Donziger. Significantly, that office refused the case, which speaks volumes about its lack of merit.

In the meantime, Kaplan made several false or distorted findings regarding Mr. Donziger and others. The primary Kaplan findings are as follows:

**Bribery.** Kaplan ruled that the Ecuador judgment was procured by fraud via a bribe of the Ecuador trial judge. This is false. The finding is based on corrupt testimony from Chevron’s paid witness Guerra who admitted he lied repeatedly in court after being coached by Gibson Dunn lawyers for 53 days. The reality is that Chevron committed fraud and engaged in racketeering by bribing Guerra to frame Donziger and his clients with its fake “fraud” narrative.

**Extortion:** Kaplan claimed the mere act of filing and litigating the lawsuit was designed to “extort” money from Chevron. This is preposterous, given that 29 appellate judges in Ecuador or Canada have affirmed the judgment, and there is no dispute that Chevron caused massive contamination in Ecuador.

**Wire fraud:** Kaplan claimed Mr. Donziger committed “wire fraud” by communicating via email and phone from New York with members of the legal team in Ecuador – again preposterous. Given that the case was affirmed as valid, there is no way this type of communication can constitute fraud.

**Money laundering:** Kaplan also claimed that Mr. Donziger engaged in “money laundering” based on transfers from his law firm accounts in New York to a case fund in Ecuador to pay litigation and advocacy expenses. Again, this is preposterous given that there was no fraud.

**Obstruction:** Kaplan claimed that Mr. Donziger committed “obstruction of justice” by reviewing a truthful affidavit by Ecuadorian lawyer Pablo Fajardo prior to submission to a U.S. court. Kaplan’s theory -- reflecting a colonialist mentality -- was that Mr. Donziger “controlled” Fajardo and should have ordered him to include information in the affidavit favorable to Chevron. This is a theory of obstruction never before seen in a U.S. court and it has no basis in either fact or law, according to Mr. Donziger’s attorneys.

**Kaplan’s Final Act of Dishonesty in RICO Case**

Kaplan seemed to know the basis of the entire case was dishonest, so he committed one more extremely underhanded act after the trial to try to help Chevron. While writing the RICO decision in chambers -- and out of sight of the parties -- Kaplan without any disclosure added a claim under an archaic and defunct legal doctrine based in New York state law that was used a handful of times in the 1800s to “set aside” foreign judgments on the basis of fraud. The doctrine was not just old: it has been effectively repealed and replaced by modern laws governing enforcement of foreign judgments passed by New York and all 50 states. Judge Kaplan even cited a law review article from the 1920s as his supposed “authority” for this claim. Kaplan then used the defunct claim to provide a separate ground (other than the federal RICO statute) for ruling in favor of Chevron. The motivation was clear: by inserting a claim after the trial that was never litigated, Kaplan effectively blocked Mr. Donziger and the other defendants from appealing to the U.S. Supreme Court given that the court almost never takes
cases based on rulings that depend on state law claims. The maneuver appears to have worked, as Chevron relied on this fact to help block review of this extraordinary case by the U.S. Supreme Court.

**Key Facts About Mr. Donziger’s Unprecedented House Arrest**

The Chevron/Kaplan campaign against Mr. Donziger took an even uglier turn recently with Mr. Donziger being put under house arrest based on a request from a Chevron-affiliated corporate law firm appointed by Kaplan to “prosecute” him on contempt charges in the name of the U.S. government. Here are the basic facts:

**Kaplan’s contempt charges against Mr. Donziger filed in July 2019 are extraordinarily unusual, if not unprecedented. They were filed when Mr. Donziger was in Canada helping attorneys enforce the judgment against Chevron where Kaplan’s own use of the Guerra testimony was at issue. The filing of the charges was Kaplan’s attempt “to eviscerate” the human rights lawyer, said prominent civil rights attorney Martin Garbus.**

**The contempt charges are not justified by the facts and are part of Kaplan’s vendetta against Mr. Donziger, Andy Frisch, Mr. Donziger’s lawyer, has argued.**

**Three of the charges concern an order from Kaplan that Mr. Donziger turn over his interest in the final judgment (his legal fee) to Chevron. Mr. Donziger complied with this order three times; Kaplan claims Mr. Donziger should have complied faster. In any event, our research reveals no other case where a party complied with orders but later was charged with criminal contempt for not complying fast enough.**

**The other Kaplan contempt charges concern orders that raise serious constitutional issues and were on appeal at the time the charges were filed (the appeal is still pending). This includes an order that Mr. Donziger turn over a computer and phone for review by Chevron; that the court confiscate his passport and thereby deny him his right to travel; and that Mr. Donziger not be paid for his work. Again, our extensive research reveals no other case where a party has been charged with criminal contempt while the issues in dispute were under an ethically-grounded appeal that had yet to be decided.**

**Kaplan used the criminal contempt case to appoint a private prosecutor from a law firm with deep ties to the oil industry to “prosecute” Mr. Donziger in the name of the U.S. government. As with the RICO case itself, the U.S. Attorney refused to prosecute the case.**

**Lawyers from Seward & Kissel, led by Rita Glavin, hid the fact Chevron was actually a private client and that it was in communication with Chevron’s lawyers at the notorious Gibson Dunn firm about how best to prosecute Mr. Donziger. (Glavin has been criticized for engaging in similar misconduct when she supervised the prosecution of former Alaska Senator Ted Stevens for the Department of Justice.)**

**The Seward law firm requested – with absolutely no basis – that Mr. Donziger should be put under house arrest while awaiting trial because he was a “risk of flight” even though he lived with his wife and son and had never missed a court appearance. Mr. Donziger appears to be the only lawyer in U.S. history to be put under house arrest prior to trial on a contempt charge.**

**The amount of time Mr. Donziger has spent in house arrest – now eight months – is more than three times longer than the longest sentence ever imposed on a lawyer in New York found guilty of criminal contempt. That sentence is 90 days of home confinement.**
Conclusion

It is clear that the Chevron “racketeering” case was part of the company’s fraud to cover its tracks for losing a major litigation to Indigenous groups and local communities in Ecuador. Given that Chevron lost on the merits in Ecuador, the company and Judge Kaplan have used the false or distorted RICO findings and the later criminal contempt charges to try to block enforcement of the Ecuador judgment in other countries and to attack and detain Mr. Donziger. Chevron and all company executives and lawyers responsible for this outrageous conduct might themselves at some point appropriately be subjected to criminal prosecution. In the meantime, Chevron and Kaplan must cease all attacks on lawyers and advocates, consistent with international law (as enshrined in the United Nations Declaration on Human Rights Defenders and other treaties) and the U.S. Constitution. As the Nobel Laureates have urged, Mr. Donziger must be released immediately, his passport should be returned with his right to travel restored, and he must be allowed to continue advocating for the affected peoples in Ecuador who suffer from a humanitarian crisis owing to years of Chevron’s neglect.

More documentation:

Article in The Nation: https://www.thenation.com/article/activism/steven-donziger-chevron/

Article in Greenpeace on the history of Chevron targeting Steven Donziger: https://www.greenpeace.org/international/story/28741/steven-donziger-chevron-oil-amazon-contamination-injustice/


Judge Lewis A. Kaplan’s appointment of a private Chevron-linked law firm to “prosecute” Mr. Donziger: https://static1.squarespace.com/static/5ac2615b8f5130fda4340fcb/t/5e91e3671a3f534278fca5d5/1586619239535/2020-04-10-frisch-reply.pdf


Summary of evidence against Chevron in Ecuador trial: https://chevroninecuador.org/assets/docs/2012-01-evidence-summary.pdf


Petitions documenting parts of Judge Kaplan’s bias during RICO case:
