

Chevron/Texaco in Ecuador: Trade Arbitration Tribunal rules in favour of Corporate Crimes

Statement

12 September 2018

The Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity, a network of over 200 social movements, networks, organizations and affected communities resisting the land grabs, extractive mining, exploitative wages and environmental destruction of TNCs in different global regions, is extremely alarmed over the recent arbitration award that re-affirms the impunity of the corporate crimes committed by Chevron in Ecuador.

On the 7th of September 2018 the award in favour of the transnational oil corporation Chevron and the subsidiary Texaco, dictated by an arbitration tribunal under the Permanent Court of Arbitration was made public.

The predecessor of Chevron, (then called Texaco) had drilled oil in Ecuador for over 26 years (from 1964 to 1992). During this time, the company spilled at least 1.500 millions of gallons of crude oil that poisoned the environment and affected the farming communities and indigenous people. In other words, the activities of the transnational corporation has caused one of the worse instances of Human Rights violations in Ecuador. In 1993, following the Constitutional Rights and HRRR, the affected People and communities initiated a lawsuit against Texaco. After 20 years of lawsuits in national and foreign courts, Chevron/Texaco was found guilty by the courts of Ecuador (ratified by the Supreme Court of Justice) for environmental damages and was condemned by the judgement to pay 9.521 million dollars to a trust fund that would be used to repair environmental, social and cultural damages. In 2018 the Constitutional Court of Ecuador validated again the ruling.

In 2009, Chevron sued Ecuador before international tribunals arguing that the government of Ecuador should have stopped the trial of the farming communities and indigenous People, known as "Lago Agrio". It was argued that the transnational corporation had been released from its responsibilities to clean the environment through an agreement signed with the government of Sixto Durán Ballén in 1995. The company retroactively appealed through the Bilateral Investment Treaty (BIT) between the United States and Ecuador, which came into force in 1997, even though the company had left the country in 1992.

Although the final amount that Ecuador has to pay to Chevron is still unknown, the impacts of the Arbitration Court award are very serious:

1. The award dismisses the historical judgment dictated against the oil corporation in 2011 that condemned it for the crimes committed by the activities of Texaco.

2. The award goes against the separation of powers of the State. The tribunal demands that the government of Ecuador avoids the applicability of the ruling in the case Lago Agrio.

3. Three private arbitrators (that compose the Arbitration Court), that respond to commercial interests, negate a fair claim of more than 20 years brought by a broad group of claimants constituted by the people belonging to the affected communities and indigenous people affected by the toxic waste.

4. The arbitrators' judgement has woven a cloak of impunity allowing not only that this transnational oil corporation overturns the previous fails court ruling and denies compensation to the thousands of victims, but also, Chevron/Texaco obtains a lot of money from public funds of Ecuador as compensation.

This case demonstrates once more that the investor-state dispute settlement (ISDS), is a system that prioritizes the investor's protection and private profit over life. This lawsuit is another evidence of judicial impunity that the trade and investment agreements give to transnational corporations, allowing them to: violate Human Rights and destroy the environment without paying any consequences, not recognizing the judicial power of sovereign States, and acting against the public institutions and the public interest. In this respect, it is important to remember that Ecuador made history by including the article 422 of its constitution of 2008, which forbids the transfer of state jurisdiction to international arbitration systems, in contractual agreements or trade disputes, between the State and natural or juridical persons.

Ecuador has actively supported the process towards a Binding Treaty in the United Nations, chairing the Open Ended Inter Governmental Working Group on Transnational Corporations (TNCs) and other business enterprises with respect to Human Rights (OEIGWG). This process follows the Resolution 26/9 of 2014 of the Human Rights Council of United Nations, and it involves the mandate to elaborate a legally judicial binding instrument in international law to regulate the activities of Transnational Companies and other business enterprises in the International Law of Human Rights.

The Global Campaign has been active since the beginning of this process and has always insisted that the Binding Treaty has to include specific measures to avoid situations such as the one that the affected people by Chevron in Ecuador are facing today, this constitutes a major threat and a precedent at international level. In line with the proposal of the Treaty elaborated by the Global Campaign in 2017, States should not accept under any circumstances treaties that can expose them to lawsuits by TNCs and that affect the obligations of the States to respect, defend and enforce Human Rights. In a recent Open Letter to all the States, the Global Campaign demonstrated its concerns over the recently published "Zero Draft" presented by Ecuador and that will be negotiated during the 4th Meeting of the OEIGWG from the 15 to the 19th of October 2018 in Geneva. In this sense, the Campaign calls all the States to engage in the process and achieve a Binding Treaty that allows responding adequately to the expectation of Justice of the affected communities and People by the activities of TNCs.

The Global Campaign calls upon Ecuador to reclaim and reject this new application of the investment state dispute settlement mechanism (ISDS) that places the interest of the transnational corporations before Human Rights. The Global Campaign urges the state of Ecuador to guarantee the respect of Human Rights and the constitutional rights of the 30.000 people affected represented by the Union of Affected by Chevron/Texaco (UDAPT). The Campaign demands that justice is made in favour of the victims of Chevron and the resolution of the lawsuit of the Court of Justice of Ecuador of 2012 is applied against Chevron/Texaco. Finally, this case has generated in the past years an important international mobilization, a huge international solidarity with affected communities. Today more than ever, the Campaign calls to broaden and strengthen the international solidarity with the Union of Affected by Chevron in Ecuador (UDAPT).

Global Campaign Dismantle Corporate Power and Stop Impunity
stopcorporateimpunity.org/