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ECUADOR: LAWSUIT FILED AGAINST TEXACO

A US legal team filed a billion-dollar lawsuit in an Ecuadoran court on May 7 against US oil giant ChevronTexaco. The plaintiffs, a group of Ecuadoran Indians, accuse the company of destroying large areas of rain forest in Ecuador and contaminating local land and rivers. They say the pollution has increased the incidence of cancer among the local population. ChevronTexaco rejects the allegations and says the company met all its obligations under Ecuadoran law.

The suit was filed in the Corte Superior de Justicia in the Amazonian town of Lago Agrio, 185 km northeast of Quito. Attorneys said the trial could last two years.

Texaco Petroleum Company (TexPet), a Texaco subsidiary, operated in Ecuador from 1964 to 1990 in partnership with PetroEcuador, the Ecuadoran state oil company. PetroEcuador was the majority partner, holding a 62.5% interest. TexPet held the 37.5% minority interest.

The suit, brought by thousands of residents near the company's former oil fields, alleges Texaco, which merged with Chevron in 2001, dumped roughly 18.5 billion gallons of highly toxic oil-laden water and crude oil into unlined pits, estuaries, and rivers during its operations in Ecuador's Oriente between 1971 and 1992. In addition, it says that the company left behind nearly 350 open waste pits, some just a few feet from the homes of residents. As a result, crops were damaged, farm animals killed, and cancer increased among the local population.

"We believe that what ChevronTexaco did in the Ecuador rain forest was not only negligent but might rise to the level of reckless behavior," said Joseph Kohn, another lawyer for the plaintiffs and a partner in Kohn, Swift & Graf in Philadelphia.

Drinking, bathing, and cooking with the contaminated water damaged the health, culture, and livelihood of five indigenous tribes and 30,000 people, the plaintiffs allege. Several tribes were forced to abandon their ancestral lands because of the polluted rivers. They claim that the population of one tribe, the Cofan, shrank to 300 people from 15,000 as a result of the environmental damage.

"We are suffering from diseases like leukemia, and thousands of our people have been killed," said Elias Piguaje, a leader of the Secoya indigenous group. "We are now living in tiny areas in the Amazon, in what was once our rain forest. The land and the big rivers have all been polluted and destroyed. This has caused a lot of damage, and made a lot of people ill."

The lawsuit claims that Texaco used methods "that had long been abandoned or prohibited in other countries, because of their deadly effects to the environment and to human health." Plaintiffs say Texaco should have re-injected oily water into the ground instead of releasing it into the environment. They say the release saved the company US\$4 billion.

"These are not just random spills," said Steven Donziger, one of the plaintiffs' lawyers. "This is the result of a decision made by Texaco to install a type of drilling process that would lead to a

systematic dumping of toxins. Texaco made a decision to dump these toxins into the Amazon to save money and increase its profits."

Company denies wrongdoing

ChevronTexaco officials say that PetroEcuador set policy for the joint venture and that the drilling met the country's environmental requirements. Ecuador's laws allowed oil drillers to dump wastewater, rather than require the more expensive process mandated in the US of re-injecting the oil-contaminated water back into the well.

In addition, company officials said Texaco paid US\$40 million to survey and clean up more than 250 drilling sites.

"The company operated in accordance with all applicable Ecuadoran laws and used practices that were consistent with international practices for the time," ChevronTexaco spokesperson Chris Gidez said. He added that the oil operations took place over about 6,400 acres, or less than 1%, of the Ecuadoran rain forest.

"The Ecuadoran government," Gidez said, "encouraged growth--colonization, building of roads--in that area. To ignore all that activity as having a contributing impact on the environment is like walking around with blinders on."

But Kohn accused the company of trying to hide behind the Ecuadoran authorities. He said the government did not have sufficient knowledge of oil exploration and, precisely for that reason, contracted Texaco--as the supposed experts.

The company, based in San Ramon, California, also disputes the claim of health damages. "Over 10 years of litigation have yet to produce any credible and substantiated scientific information," said Gidez.

The plaintiffs say that a study of an area with 30 oil wells found 10 cases of cancer in the village, a cancer rate more than twice the national average.

Case moved from US courts to Ecuador

US-based multinational corporations often try to get cases tried in developing countries, a tactic that can kill the case because most US plaintiffs' lawyers have neither the money nor the expertise to sue in overseas courts. Later, if the corporations lose, they often argue that the legal process was flawed or that their US headquarters should not be held responsible for the errors of a subsidiary in the developing world. Foreign courts also have had problems making US multinational companies respect their decisions.

This case is now being heard in Ecuador after ten years of US court battles over jurisdiction. It is being closely watched because of a landmark decision by a New York federal court last

August that stipulated that any financial penalty imposed on ChevronTexaco in Ecuador be recognized in the US.

On August 16, 2002, the US Second Circuit Court of Appeals upheld a 2000 district court decision to dismiss the lawsuit in the US for being an inconvenient venue (*forum non conveniens*), since the plaintiffs live in Ecuador and Peru and sustained their alleged injuries there, and the court could not easily visit the contaminated sites (see *NotiSur*, 1998-10-16, 2001-06-08).

Legal experts say that, because of the US court ruling regarding possible penalties, the case could create a new way for multinational corporations to be held financially accountable for environmental abuses in foreign countries.

"This case has the potential to establish a new accountability for US oil companies that think they can operate abroad without adhering to responsible environmental practices," said Cristobal Bonifaz, lead attorney for 88 named plaintiffs. "On the face of it, this is a David vs Goliath battle. However, the United States court has leveled the playing field by ruling that a small court in a remote town of Ecuador has the same power over a US\$99 billion multinational corporation as a federal court in Manhattan. This alone is a breakthrough."

Bonifaz, an Ecuadoran-born Massachusetts lawyer who first brought suit against Texaco in 1993, estimated it would cost more than US\$1 billion for ChevronTexaco, the world's second-largest oil company, to compensate residents, clean up the waste pits, install new technology to prevent further dumping, and provide medical care and monitoring.

Chris Jochnick, a lawyer and co-founder of the Centro de Derechos Economicos y Sociales (CDES), a human rights organization with offices in New York and Ecuador, said: "The case has become something of a symbol for the abuses and lack of accountability of US multinationals abroad, and of the efforts of local communities to organize and try to bring pressure to bear on those companies. You have both sides represented."

Environmentalists and corporations are watching the actions of the Ecuadoran court. Oil is crucial to the country's economy and the government of President Lucio Gutierrez is seeking foreign investment. But the plaintiffs' lawyers say the country's large indigenous population has been gaining political weight. Gutierrez's backing from indigenous groups was key to his successful bid for the presidency.

A spokesman for the Ecuadoran Embassy in Washington said the government has not taken a position on the new lawsuit. But, he said, "it is very clear that the people in the region have health problems and have suffered for more than 10 years. More work is needed to repair the area."

ChevronTexaco says, however, that moving the case to Ecuador is a victory for the firm. "We have maintained all along that the Ecuadoran court system was the proper venue for this case," said Gidez. "The plaintiffs fought for years for that not to happen."

With 2.1 billion barrels of proven reserves, Ecuador is an important player in the Latin American oil business. "It's going to be interesting to see how a country that's so dependent on

oil development is going to hold this corporation accountable," said Leila Salazar, ChevronTexaco campaign coordinator for the environmental organization Amazon Watch.

The case comes at a time when US-based energy and mining companies operating in Latin America are under increasing criticism for the environmental and social damage their operations have caused. Projects such as the new oil pipeline in Ecuador (Oleoducto de Crudo Pesado, OCP) and the proposed Camisea gas project in Peru have had to contend with extensive local opposition and frequent protests, making it difficult for the companies to find funding to complete the projects.

On March 4, 2003, the Ecuadoran newspaper Hoy reported that the Environment Ministry had agreed to allow two transnational companies to cancel their oil concession contracts under the provision of force majeure. Force majeure usually applies to unforeseen natural catastrophes such as earthquakes or major upheavals such as wars, which can void the obligations of a legal contract. But the Ecuadoran government was using the term to describe community opposition to oil concessions on indigenous territory in the Amazon rain forest. Specifically, the government referred to the opposition of Kichwa, Shuar, and Achuar people to ongoing activities by Burlington Resources of Texas and Compania General de Combustibles (CGC) of Argentina. The CGC concession is owned partly by ChevronTexaco, according to Platt's Oilgram News.

The decision frees the companies of any obligation to the Ecuadoran government to carry out oil activities in the areas and means the determination of the communities will be respected.

But the Indians say they are concerned. Hoy reported that Rene Ortiz, president of the Asociacion de Empresas de Servicios Petroleros (ASEMSER) in Ecuador, which includes both CGC and Burlington, has accused indigenous leaders of being "outlaws" and said the problems are the result of an absence of state authority in the remote rain forest. The Environment Ministry responded by calling for more police presence in the area.

Human rights advocates in Ecuador are concerned that the force majeure ruling is really the beginning of a campaign by the companies and their allies in government to force the communities to accept oil development against their will.

[Sources: chevrontexaco.com, 08/19/02; EarthRights International, 03/13/03; Dow Jones Newswires, San Francisco Chronicle, 05/02/03; Reuters, 08/21/02, 05/03/03, 05/06/03; Spanish news service EFE, The Washington Post, 05/06/03; Agence France-Presse, BBC News, El Nuevo Herald (Miami), Inter Press Service, La Opinion (Los Angeles), The New York Times, 05/08/03]