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Texaco Pollution Case Begins

by Guest

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[The following article by Barbara J. Fraser is reprinted with the permission of Noticias Aliadas in Lima, Peru. It appeared in the November 5, 2003, edition of Latinamerica Press.]

The tiny courtroom in Lago Agrio, a jungle town in northeastern Ecuador, was packed on Oct. 21 for the start of a landmark trial against US oil giant ChevronTexaco for pollution caused by its operations more than a decade ago (see NotiSur, 2003-05-23). But while many of the 70-plus plaintiffs in the case are members of the Secoya, Siona, Cofan, and Huaorani peoples, only a few indigenous people were in the crowd of lawyers, journalists, environmentalists, and spectators.

After nearly a decade of legal wrangling in US courts, the case returned to Ecuador, to the courtroom where Judge Alberto Guerra presided, flanked by a huge painting of Lady Justice in native garb against a backdrop of rivers, hills, and forests, a toucan perched over her scales and a puma at her feet. In the street outside, barred from the courthouse by a row of riot police, several hundred people some in feathers, face paint, and traditional garb chanted slogans against Texaco and listened to the court proceedings over a loudspeaker.

Not all were convinced that justice would be done. "It's been 10 years and we've never been able to talk face to face with the company," said Elias Piaguaje, a Secoya leader who is one of the plaintiffs. "Look what's happened today they're all inside, and we're out here in the street shouting. To me, it's an insult."

Between 1971 and 1992, a consortium involving Texaco and state-owned PetroEcuador pumped 1.5 billion barrels of oil from the area. The plaintiffs argue that the company improperly disposed of 18.5 billion gallons of wastewater, contaminating soil and the streams and rivers on which at least 500,000 people including some 30,000 members of indigenous communities depend for drinking water and irrigation.

For most of the day, the company's lawyers argued that the case should be thrown out because ChevronTexaco was not responsible for the actions of its former subsidiaries and because it had already invested US\$40 million in cleanup operations that were approved by the Ecuadoran government.

The company also challenged the retroactive application of a 1999 hydrocarbons law that holds companies to stricter cleanup standards, but the plaintiffs' lawyer, Alberto Wray, disagreed. "We're talking about damages that are still occurring, because the toxic substances are still present and are still causing contamination," he said. As for the cleanup efforts, lawyer Steven Donziger, who represented the plaintiffs in the US court case and is serving as an adviser in the Ecuador case, likened it to "applying makeup." He estimated that the cost of repairing the damage from the more than 600 waste pits would exceed US\$1 billion.

Other experts have estimated that the cost could be five or six times that amount. "The cleanup that was done was a disaster, because they only covered up [the waste]. Now the damage is even greater, because it's filtering into the water sources. It may be less visible, but it's more intense and more serious," said the Rev. Jose Miguel Goldaraz, a Spanish Capuchin priest who has worked in the area for 30 years.

Although the suit seeks cleanup and does not mention a specific dollar amount, money is one of the points of contention. While Ricardo Veiga, ChevronTexaco's vice president for products in Latin America, pointed out that the company had provided US\$5 million for community-development projects in some of the affected zones, some local residents saw those payments as hush money. After receiving the funds, several local governments and indigenous organizations withdrew from the lawsuit.

"The fact that Texaco has given money to local governments does not affect the plaintiffs' right to live in an environment free of contamination," Wray said. Goldaraz was more blunt, saying, "Oil has corrupted [local] leaders."

During the demonstrations outside the courthouse, people living near the waste pits told of family members falling ill or dying. Goldaraz said that a study carried out by the Capuchin mission found high rates of cancer and stomach and skin problems. The judge, who has lived in Lago Agrio for six years, seemed sympathetic to the plaintiffs' complaints. "I know the situation," he said. "There is pollution. Sometimes even I" he left he sentence hanging, but scratched at the skin of his neck "because of the water."

At the end of the initial hearing, Guerra gave both parties six working days to present documents and witnesses. He and court investigators will then sift through the documents and inspect the affected area. "I know that the parties are going to request the inspection of about 100 wells," he said, adding that he expected to issue a ruling within four to six months. "This is a historic case because it is going to set a precedent not only in the legal sense, but also in the human sense," he said. "To me, nature is like a pregnant woman. No one can put toxic substances and pollutants into the womb of a pregnant woman. We have the responsibility to care for her."

Whatever Guerra's verdict, an appeal is likely. The case could eventually reach the Ecuador's Corte Suprema de Justicia (CSJ). If the plaintiffs lose, Donziger said, they could return to US courts. While Guerra said he did not expect the Texaco case to end up on his desk, he added that he believed the US Second Circuit Court of Appeals made the right decision in ruling that it should be tried first in Ecuador. The US court ruled that the Ecuadoran court's decision would be binding on the company in the United States (see NotiSur, 2001-06-08).

Foreign petroleum companies have left their mark on Ecuador, down to the name of the town where the Texaco case is being heard. The official name of the capital of the department of Sucumbios, which was carved out of the jungle when the oil boom began, is Nueva Loja. Texaco employees began calling it Lago Agrio after Sour Lake, Texas, the site of the company's first gusher. The name stuck.

Nor is Texaco the only company currently in the spotlight. In September, an assembly of Shuar people in the Pastaza region, to the south, repeated its prohibition against petroleum operations by US-owned Burlington Resources (see NotiSur, 2002-09-27). The decision came after President Lucio Gutierrez announced that the area would be opened up for exploration later this year.

For the past six years, the Shuar have waged a successful battle to keep oil companies out of their territory. Meanwhile, not far from Lago Agrio, the Kichwa people in the community of Sarayacu have been trying to stop oil prospecting on their lands.

On Oct. 16, lawyers presented the case before the Inter-American Commission on Human Rights (IACHR). Government officials have threatened to send in the military to enable the Argentine Compañía General de Combustibles (CGC) to go ahead with seismic testing. For the indigenous people of Sucumbios, the issue goes beyond cleaning up toxic waste. Although their territories are legally recognized, the government reserves the right to grant concessions for subsoil resources like oil, gas, and minerals.

Piaguaje says the communities see none of the wealth that those resources represent. "It was the government that negotiated with the company, so the government should pay us and give us the wells that are producing," he said. "The underlying problem is one of ancestral indigenous philosophy against national and foreign laws. The real problem is social cultural and philosophical it's a matter of world view. All I want is to be able to sit down and discuss conditions on equal terms."

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