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May 24, 2019

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Re: Joint Communication from Special Procedures, 21 June 2017, Ref: AL OTH 10/2017; End of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Ecuador, 29 November 2018

Dear Special Rapporteur Tauli-Corpuz,

In further response to your above-referenced Joint Communication,<sup>1</sup> we respond to your *End of mission statement*, published at the end of your mission to Ecuador in November 2018, insofar as it addresses (1) environmental conditions and rehabilitation at Lago Agrio, (2) remedies and compensation for the Lago Agrio communities, and (3) the oil pit you visited at Lago Agrio. We write now in view of your stated plan to review the information received “in detail over the coming months for the preparation of my final report to the Human Rights Council to be submitted in September 2019.”<sup>2</sup>

At page five of your *End of mission statement*, you said the following:

I have also received information and was able to see in Lago Agrio, the absence of adequate remedy and compensation to the communities that have suffered for decades due to the impacts of oil exploitation on their lands and territories. No adequate rehabilitation measures have been undertaken, and the persistence of pollution in their rivers, aquifers and soils continues to adversely impact their health as well as food production.

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<sup>1</sup> Our previous replies were dated July 6, 2017; August 4, 2017; and November 21, 2018.

<sup>2</sup> *End of mission statement*, page two.

We appreciate that you did not attribute responsibility for any persistence of pollution or lack of adequate rehabilitation at Lago Agrio to Chevron Corporation (“Chevron”). However, given the persistent and false narrative a group of plaintiffs’ lawyers and their collaborators have circulated and continue to circulate regarding Chevron’s alleged liability in Ecuador, we believe it important to provide the following clarifications and true facts in advance of your final report.

1. **Environmental Conditions and Rehabilitation:**

Any remaining pollution at Lago Agrio could not have been caused by Chevron. Chevron has never operated in Ecuador. Since July of 1990 –for nearly three decades–only one oil company has operated in Lago Agrio –Ecuador’s State oil company, Petroecuador.

Until July of 1990 a subsidiary of Texaco, Texaco Petroleum Company (“TexPet”), operated in Lago Agrio as a minority partner in a joint venture with Petroecuador. In July of 1990 Petroecuador replaced TexPet as operator of the joint venture. In 1992 TexPet’s participation in the joint venture ended. By contract with Petroecuador and the Republic of Ecuador, TexPet during 1995 to 1998 engaged a leading engineering firm to conduct a state-of-the-art environmental remediation of TexPet’s minority share of the pre-1992 environmental conditions. TexPet later became an indirect subsidiary of Chevron.

As noted in our letter to you of November 21, 2018, these facts were confirmed by the unanimous ruling of an international tribunal administered by the Permanent Court of Arbitration in The Hague. On August 30, 2018, the Tribunal issued an Award in favor of Chevron and TexPet against the Republic of Ecuador.<sup>3</sup> The Tribunal found that Ecuador violated its obligations under international treaties, investment agreements and international law in connection with the fraudulent \$9.5 billion Lago Agrio judgment against Chevron in Ecuador.

In regard to pollution and rehabilitation, the Tribunal found that, during 1995 to 1998, “TexPet spent approximately \$40 million on environmental remediation and community development in Ecuador under the 1995 Settlement Agreement.”<sup>4</sup> The remediation was carried out by a “well-known engineering firm specialising in environmental remediation.”<sup>5</sup> The Tribunal found “no cogent evidence” to support Ecuador’s claim that TexPet failed to comply with the remediation plan approved by Ecuador.<sup>6</sup> To the contrary, the Tribunal recited statements by Ecuadorian officials that TexPet’s “technical work and environmental work was done well.”<sup>7</sup>

The Tribunal further found that, following TexPet’s successful completion of the agreed remediation plan, the Republic of Ecuador released TexPet and Chevron from

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<sup>3</sup> A full copy of the Second Partial Award (“Award”) is accessible at <https://www.italaw.com/cases/documents/6825>.

<sup>4</sup> *Id.* ¶ 4.68.

<sup>5</sup> *Id.* ¶ 4.67.

<sup>6</sup> *Id.* ¶ 4.179.

<sup>7</sup> *Id.* ¶¶ 4.64, 4.180, 4.181.

environmental liability, including the same environmental claims on which the fraudulent Ecuadorian judgment against Chevron is exclusively based.<sup>8</sup>

In contrast, the Republic of Ecuador and Petroecuador have not remediated their pollution. The Tribunal's award recited statements from Ecuadorian officials that Petroecuador, "during more than three decades, had done absolutely nothing" to address its own environmental remediation obligations in Lago Agrio,<sup>9</sup> where it was the majority participant in the joint venture until 1992, the operator beginning in 1990, and the only oil company in the area for the last 27 years.<sup>10</sup> The Republic of Ecuador and Petroecuador have failed to fulfill their remedial obligations, even though they received 97.3% of the oil production revenues from the former joint venture with TexPet.<sup>11</sup>

In light of these unanimous findings – joined in by Ecuador's appointee to the international Tribunal – any remaining pollution or lack of rehabilitation at Lago Agrio cannot responsibly be attributed to TexPet or Chevron.

Since 1992, Petroecuador has greatly expanded the operations in the area. Petroecuador has more than doubled the number of oil wells in the area and constructed, at last count, two refineries, a gas plant and 21 production stations. In more than a quarter-century exclusively operating the former consortium fields, the state oil company has also presided over a dismal environmental record, spilling more than 125,000 barrels of oil and registering nearly 2,000 spills in the Amazon region from 1995 to 2011 alone—roughly 3 spills a week over that 17-year period.<sup>12</sup>

## 2. **Remedies and Compensation:**

We appreciate that your *End of mission statement* also did not attribute responsibility for the lack of any remedy or compensation for the Lago Agrio communities. For reasons of their own, counsel for the Lago Agrio inhabitants who brought suit in Ecuador chose not to sue Petroecuador or the Republic of Ecuador. They did sue Chevron and TexPet, but in so doing, committed massive fraud in the judicial process that led to a \$9.5 billion judgment against Chevron. Our initial communications to you<sup>13</sup> reported on the judgment of the United States

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<sup>8</sup> *Id.* ¶ 10.8.

<sup>9</sup> *Id.* ¶ 4.181.

<sup>10</sup> *Id.* ¶¶ 4.62, 4.63.

<sup>11</sup> *Id.* ¶¶ 4.64, 4.180, 4.181.

<sup>12</sup> *See, e.g.*, La Hora, "180 Native Strains for Remediation," Feb. 9, 2009 (noting almost 200 oil spills in 2008 alone); El Telégrafo, "Investment on Environmental Remediation Dropped in 2008," Feb. 9, 2009 (noting an average of 177 spills per year from 2000 through 2008); El Universo, "Petroecuador Diagnoses Environmental Damage Caused by Crude Oil," Feb. 28, 2009; El Telégrafo, "Spending on Environmental Remediation Fell in 2008," Feb. 9, 2009. In addition to these press sources, the following video describes the sources and facts surrounding Petroecuador's operations in the region after 1992: Amazon Post Video, "Petroecuador's Post-Consortium Oil Operations and Remediation Efforts: 1992 – Present," Mar. 20, 2012, *available at* <https://www.youtube.com/watch?v=EC9aBKA6kkw>.

<sup>13</sup> July 6, 2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33565>; August 4, 2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=33620>.

federal court, which in 2014 found that lawyers for the plaintiffs obtained the Ecuadorian judgment against Chevron through fraud, bribery, coercion, extortion, wire fraud, witness tampering, falsification of evidence, obstruction of justice, and ghost writing of the Ecuadorian judgment (among other misdeeds).<sup>14</sup> These findings were affirmed on appeal and are now final.

Based on these findings, the former lead counsel for the Lago Agrio plaintiffs, Mr. Steven Donziger of the U.S., has now been indefinitely suspended from the practice of law by the attorney licensing authorities of the State of New York and the District of Columbia – the only two jurisdictions in which he was licensed to practice law.<sup>15</sup>

In addition, as we advised in our letter to you of November 21, 2018, the international Tribunal, similarly to the U.S. courts, concluded unanimously that the Ecuadorian judgment was the product of fraud, corruption, and judicial bribery enabling certain lawyers for the Lago Agrio plaintiffs -- [REDACTED]

Over more than 500 pages, the Tribunal detailed the “overwhelming” evidence of fraud and corruption [REDACTED]. The Tribunal concluded that “[s]hort of a signed confession by the miscreants . . . , the evidence establishing ‘ghostwriting’ in this arbitration ‘must be the most thorough documentary, video, and testimonial proof of fraud ever put before an arbitral tribunal.’”<sup>17</sup> Again, even the arbitrator appointed by Ecuador to the Tribunal joined in all of these findings of fraud and corruption.

The Tribunal concluded that the Ecuadorian judgment “violates international public policy” and “should not be recognised or enforced by the courts of other States.”<sup>18</sup> The Tribunal made clear that, “as a matter of international law, [Chevron] [is] not obliged to comply with the [Ecuadorian] Judgment.”<sup>19</sup>

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<sup>14</sup> *Chevron Corp. v Donziger*, 974 F Supp 2d 362, 386 (S.D.N.Y. 2014), *affirmed on appeal*, 833 F.3d 74, 126 (2d Cir. 2016), *petition for certiorari denied*, 137 S Ct 2268 (2017). Some claimants participated in the trial and were similarly found liable.

<sup>15</sup> *Matter of Donziger*, 2018 NY Slip Op 05128, July 10, 2018, New York State Supreme Court, Appellate Division, First Department, Per Curiam; <https://legalnewsline.com/stories/511581392-d-c-suspends-lawyer-steven-donziger-after-fraud-ruling-in-multibillion-dollar-fight-against-chevron>, and <https://jnswire.s3.amazonaws.com/jns-media/f4/9f/934826/donziger.pdf>.

<sup>16</sup> *Id.* ¶¶ 8.28–8.34, 8.54–8.56, 4.38.

<sup>17</sup> *Id.* ¶ 8.54.

<sup>18</sup> *Id.* ¶ 9.16.

<sup>19</sup> *Id.* ¶ 9.34.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 3. The Pit You Visited:

[REDACTED] According to a tweet he sent at the time, the oil pit you were shown during your visit to Lago Agrio

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<sup>20</sup> See Direct Testimony of Troy A. Dahlberg, partner in the leading accounting firm of KPMG LLP, Plaintiffs' Exhibit 4900R in *Chevron v. Donziger*, Case No. 11 Civ. 0691, U.S. District Court for the Southern District of New York, filed Oct. 13, 2013, at p. 106, showing [REDACTED]. At that time the Ecuadorian judgment was set at [REDACTED] million. *Id.* Since the judgment was subsequently reduced by half [REDACTED] were to be recovered, would now be "only" \$190 million.

<sup>21</sup> Moreover, lead U.S. counsel for the Lago Agrio plaintiffs, certain other collaborators, and the Lago Agrio plaintiffs are now judicially enjoined against enforcement of their fraudulent judgment in the United States. *Chevron Corp. v Donziger*, 974 F Supp 2d 362, 641-42 (S.D.N.Y. 2014), *affirmed on appeal*, 833 F.3d 74, 126 (2d Cir. 2016), *petition for certiorari denied*, 137 S Ct 2268 (2017).

<sup>22</sup> As summarized in *Chevron and Ecuador*, PCA Case No. 2009-23, Second Partial Award on Track II, Aug. 30, 2018, Part I, Annex 4, p 61, paras. 14-16.

<sup>23</sup> See *id.*, Part I, Annex 4, p 60, paras. 11-13.

<sup>24</sup> See *Yaiguaje v. Chevron*, 2018 ONCA 472 (2018), where the Court of Appeal for Ontario ruled unanimously that the Ecuadorian judgment cannot be enforced against Chevron Canada. Although the Court of Appeal did not adopt the findings of the U.S. courts, since the fraud issues had not yet been litigated in Canada, one factor cited by all three Ontario Justices was that "on the finding of the United States courts, the Ecuadorian judgment against Chevron Corporation was the result of a massive fraud." *Id.* at paras. 79 and note 5 (Justices Hourigan and Huscraft) and 93, 117 (Justice Nordheimer). An application for leave to appeal, filed by lawyers claiming to represent the Lago Agrio plaintiffs, was dismissed by the Supreme Court of Canada, docket no. 38183, on 4 April 2019.

<sup>25</sup> Award, ¶ 4.377.

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was at the site known as Lago Agrio-1. What he may not have told you was that any remaining pollution you saw at that site was the responsibility of Petroecuador, not TexPet.<sup>26</sup>

**Conclusion:**

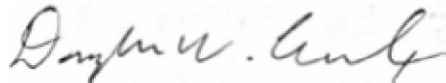
We thank you in advance for your consideration of this information. We would be pleased to provide further information if you have any questions.

Respectfully Submitted,

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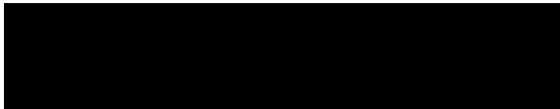
By:



Douglass Cassel  
Attorneys for Chevron Corporation  
Attachment: Memorandum

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<sup>26</sup> Under the 1995 contract among TexPet, Petroecuador and Ecuador, TexPet was responsible to remediate only one pit at Lago Agrio-1. TexPet's remediation of that pit was approved by PetroEcuador and Ecuador, in writing, on 22 November 1996 and in the final release on 30 September 1998. As confirmed by post-1990 production and workover records, PetroEcuador has operated the Lago Agrio-1 well as a production well since then, performing eleven workovers of the well, between 1990 and 2012.