

# Key Questions & Answers on Brazilian Enforcement of the Ecuador Judgment

June 2012

## 1) What is the significance of the environmental case against Chevron in Ecuador?

This \$18 billion judgment against Chevron stands primarily for one principle: that oil companies cannot willfully pollute developing countries by using destructive operational practices they would never think of employing in their own countries. Indigenous and farmer communities in the rainforest in Ecuador filed the lawsuit in 1993 to hold Chevron accountable for what appears to be the largest oil-related catastrophe on the planet – and one that resulted from the use of blatantly discriminatory production methods when Chevron operated in Ecuador (under the Texaco brand) from 1964 to 1992. Chevron admitted to discharging billions of gallons of toxic “water of formation” into Amazon waterways relied on by indigenous groups for their drinking water and sustenance, leading to a public health crisis that continues to this day. The litigation represents the first time indigenous communities have been able to hold a major oil company fully accountable for wanton environmental destruction on a mass scale.

## 2) Why are the Ecuadorian plaintiffs filing an enforcement action?

Enforcement actions are necessary because Chevron refuses to comply with its legal obligations to abide by the trial court judgment in Ecuador. In fact, there is ample evidence that during the Ecuador trial Chevron engaged in numerous illegal acts of sabotage, attempted bribery, and doctoring of scientific evidence as part of a campaign to evade accountability. Despite Chevron’s attempts to undermine the rule of law, an appellate court in Ecuador affirmed the trial court judgment in full. The judgment was rendered enforceable in March when Chevron refused to post a bond. The plaintiffs originally filed their legal claims against Chevron in 1993 and have been waiting for almost two decades for a resolution. Chevron has concluded that it would be cheaper to delay the process by hiring nearly 500 lawyers from at least 40 law firms to fight the communities, rather than fund a comprehensive clean-up of its contamination. Leaders of the affected communities say they intend to enforce the judgment against Chevron until they collect the entire amount to which they are legally entitled.

## 3) Why are you filing an enforcement action in Brazil?

Brazil is a country with a respected judiciary and, along with Ecuador, is a signatory to a Latin American treaty that streamlines the enforcement process for foreign judgments. Further, Chevron has substantial offshore and manufacturing assets in Brazil that would be subject to seizure. These assets include a 51.7% interest in the \$3.6 billion Frade field, estimated to contain 200-300 million barrels of oil; a 37.5% interest in the Papa-Terra project currently in development with an estimated 350 million barrels in reserves; and a 30% interest in the Maromba offshore field. Chevron also owns a large lubricant manufacturing plant in Rio de Janeiro that produces 1 million barrels of lubricating oils each year, and another large plant in Sao Paulo that produces 15,000 tons of industrial greases annually. Brazil is one of Chevron’s fastest growing oil markets in the world, and the company plans to invest at least \$3 billion in additional capital there by 2014.

**4) Why is the enforcement action in Brazil necessary after you already filed a similar action in Canada?**

Chevron's assets in Canada, while significant, are not sufficient to satisfy the entire \$18 billion judgment. The plaintiffs maintain a list of approximately 30 countries where Chevron has assets that are potential sites for enforcement actions. Actions likely will be filed in a small number of these countries as necessary to ensure that the full amount of the judgment can be collected.

**5) How does the enforcement process in Brazil work?**

Almost all countries have judgment enforcement laws to prevent defendants from avoiding their debts by fleeing a jurisdiction. In Ecuador, Chevron simply removed its assets from the country. In Brazil, enforcement of an Ecuador judgment is governed by applicable Brazilian law and the *Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards*. The process is not an opportunity to re-litigate the underlying case, but simply to determine if an appropriate court rendered a final judgment for purposes of execution and collection. Once the judgment is recognized as valid, enforcement can result in judicially ordered asset seizures, freezing of accounts, garnishment of revenue streams, and a range of other tools to make sure Chevron satisfies its obligations. This entire process is expected to take at least 12 to 18 months.

**6) Why won't Chevron respect the court judgment in Ecuador?**

Chevron claims it was the victim of fraud in Ecuador, but its so-called evidence was repeatedly considered by the Ecuador trial and appellate courts and rejected. Further, the plaintiffs maintain it was Chevron that engaged in a series of illegal and fraudulent acts in Ecuador to undermine a trial that it knew it would lose based on the evidence. Chevron has a long history of undermining the rule of law in Ecuador. After the environmental lawsuit was filed in the U.S. in 1993, Chevron fought for nine years to have it moved to Ecuador. Chevron lawyers filed 14 sworn affidavits praising the fairness of Ecuador's courts and promised to abide by any judgment in Ecuador. Once the trial started in Ecuador and the scientific evidence pointed to Chevron's guilt, the company began to attack Ecuador's courts as biased. In what can only be described as an act of rank hypocrisy, Chevron also tried to bring the case back to the same U.S. courts that it had fought for years to avoid. Chevron's real goal is to achieve impunity for human rights crimes. Chevron lawyer Sylvia Garrigo stated Chevron's position perfectly in an interview in 2009: "We didn't want to get sued, period. We don't want to be in any court."

**7) Why have you not yet filed in the U.S., Chevron's home country?**

Chevron had ample chance to litigate the case in U.S. courts and rejected the opportunity at great cost to the rainforest communities in terms of delay and financial burden. The Ecuadorians are open to enforcement in the U.S. at some point, assuming the full amount of the judgment is not first collected elsewhere. It is worth noting that the U.S. federal appellate court in New York recently issued a ruling flatly rejecting Chevron's attempts to block enforcement. The ruling also explicitly authorized the Ecuadorians to file collection actions against Chevron in any country in the world.

**8) How extensive is the evidence of contamination in Ecuador?**

Chevron (operating under the Texaco brand) admits that it discharged more than 16 billion gallons of highly toxic "formation waters" directly into Amazon waterways relied on by

indigenous groups and farmers for their drinking water. The company also gouged at least 900 unlined waste pits out of the jungle floor that continue to migrate toxins into streams, soils, and groundwater. Chevron also discharged massive amounts of poisonous gas into the air at its well sites. Unlike the Exxon Valdez and BP spills, which were accidents, the Ecuador disaster resulted from a designed plan to lower production costs. One academic authority, using peer-reviewed health data in the region, estimated at least 9,000 people will contract cancer in the coming years even assuming an adequate remediation in the near term. Other independent health evaluations have found dramatically high cancer rates in the region.

**9) Where will funds that are collected be deposited, and how will the money be spent?**

The monies will be held and distributed in accordance with Ecuadorian law and judicial orders, including through a court-ordered trust. The trust requires the funds to be spent on remediation. This includes cleaning the soil and water where the victims live, the implementation of a potable water system, the creation of new public health infrastructure to treat persons with cancer and other oil-related diseases, and for the general restoration of the rainforest ecosystem so that indigenous groups can reclaim their traditions. The best technical experts from around the world would be hired to implement a state of the art remediation plan for the affected region, focusing on the categories of damages authorized by the court.

**10) Isn't Chevron already facing significant fines in Brazil for a recent oil spill?**

Last November, the Chevron-operated offshore Frade oil field sprung a leak that spilled over 2,400 barrels of oil into the Atlantic Ocean. Chevron initially did not report the leak and then tried to downplay it with a series of misleading public statements. Following an investigation by Brazilian authorities, a \$20 billion reais (\$11 billion USD) lawsuit was filed against Chevron by the public prosecutor for not having the necessary expertise and equipment ready to deal with the spill (a violation of its drilling agreement) and for withholding information from government officials, including destroying drilling logs. Chevron also is accused of inaccurately editing a video it provided to Brazilian authorities that minimized the gravity of the situation. In March of this year, a second leak emerged from the Frade field. This led to another \$11 billion in claims by the federal prosecutor in Rio who has also demanded prison sentences for some Chevron employees. In any event, the Frade case is unrelated to the Ecuador enforcement action.

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