

Republic of Ecuador v. Chevron Corporation: Obstacles to U.S. Recognition of a Foreign Judgment in a Landmark Environmental Justice Case

Caroline Cress

Introduction

In the summer of 2010, the world watched in disbelief as the largest oil spill in U.S. history unfolded in the Gulf of Mexico. While this environmental disaster captured international attention, a significantly larger disaster continued to go largely unnoticed in the Amazon region of Ecuador. Decades of oil exploration and extraction activities generated oil contamination in the Ecuadorian rainforest 474 times as extensive as that in the Gulf,¹ giving it the nickname of the “Amazon Chernobyl.”²

TexPet, a subsidiary of American-based Texaco, joined a consortium of oil companies owned by Texaco and Gulf Oil in 1964 to do business in the Oriente region of Ecuador.³ The consortium conducted oil exploration and extraction throughout the region for over two decades, with TexPet as its operator until 1990.⁴ These operations led to massive and widespread contamination of soil, surface water, and groundwater, “causing both personal injuries and catastrophic environmental damage.”⁵ Twenty six million gallons of “crude oil and toxic wastewater” were spilled between 1964 and 1990, affecting 2.5 million acres of tropical rainforest in the Oriente region.⁶ Forty nine million cubic feet of natural gas from the drilling sites were burned and released into the atmosphere every day during the consortium’s

¹ Amazon Defense Coalition, *Tragic BP Gulf Spill Casts Light on Chevron Disaster in Ecuador*, UPSIDE DOWN WORLD (June 3, 2010, 11:27), <http://upside-downworld.org/main/news-briefs-archives-68/2522-tragic-bp-gulf-spill-casts-light-on-chevron-disaster-in-ecuador>.

² Christina Weston, *The Enforcement Loophole: Judgment-Recognition Defenses as a Loophole to Corporate Accountability for Conduct Abroad*, 25 EMORY INT’L L. REV. 731, 731 (2011).

³ Jonathon C. Drimmer & Sarah R. Lamoree, *Think Globally, Sue Locally: Trends and Out-of-Court Tactics in Transnational Tort Actions*, 29 BERKELEY J. INT’L L. 456, 499 (2011).

⁴ *Id.*; Amazon Defense Coalition, *supra* note 1.

⁵ *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 388-389 (2d Cir. 2011).

⁶ Lucien J. Dhooge, *Aguinda v. ChevronTexaco: Mandatory Grounds for the Non-Recognition of Foreign Judgments for Environmental Injury in the United States*, 19 J. TRANSNAT’L L. & POL’Y 1, 6 (2009).

operations.⁷ This pollution caused increased rates of disease among indigenous and rural communities throughout the region, with eighty-three percent of the Oriente human population suffering from at least one illness related to hydrocarbon exposure, including many cancers.⁸

In November 1993, seventy-four Ecuadorian plaintiffs filed suit against Texaco in U.S. District Court, representing over 30,000 alleged victims throughout the Oriente.⁹ The claim was filed under the Alien Tort Statute,¹⁰ asserting “negligent or otherwise improper oil piping and waste disposal practices”¹¹ which caused injury by introducing carcinogens and other toxins into regional waterways and drinking sources.¹² The case was dismissed on forum non conveniens grounds, and the plaintiffs re-filed the claim in Ecuadorian court in 2003.

In February 2011, the Superior Court of Justice of Nueva Loja entered judgment against the company, holding it liable for \$8.6 billion in damages.¹³ Chevron, which acquired Texaco in the midst of this ongoing lawsuit, has vowed to contest the allegations and fight any judgment entered against it “until hell freezes over.”¹⁴ In order for the plaintiffs to recover the damages entered against Chevron, the judgment must be granted legal recognition by U.S. courts, since Chevron has no assets in Ecuador.¹⁵ There are many obstacles to obtaining U.S. recognition of foreign judgments, and the outcome in this case is uncertain.

The Uniform Foreign Money Judgment Recognition Act outlines conditions under which judgments of foreign courts may not be legally recognized by U.S. courts. Three of the

⁷ Megan S. Chapman, *Seeking Justice in Lago Agrio and Beyond: An Argument for Joint Responsibility of Host States and Foreign Investors before the Regional Human Rights System*, 18 HUM. RTS. BR. 6, 8 (2010).

⁸ Dhooze, *supra* note 6, at 7.

⁹ *Id.* at 10.

¹⁰ Drimmer & Lamoree, *supra* note 3, at 457.

¹¹ Weston, *supra* note 2, at 732.

¹² Drimmer & Lamoree, *supra* note 3, at 500.

¹³ *Id.* 391.

¹⁴ Paul M. Barrett, *Amazon Crusader. Chevron Pest. Fraud?*, BLOOMBERG BUSINESS WEEK (Mar. 09, 2011), http://www.businessweek.com/magazine/content/11_12/b4220056636512.htm.

¹⁵ Weston, *supra* note 2, at 736.

conditions are mandatory exceptions to recognition and automatically render a foreign judgment nonrecognizable; the remaining six conditions are optional exceptions, which can be brought forth by the party resisting recognition.¹⁶ All three of the mandatory exception conditions—violation of due process, lack of personal jurisdiction, and lack of subject matter jurisdiction—could be argued to apply to the litigation against Chevron in Ecuador. Additionally, two of the optional exception conditions—conflict with prior agreement and inconsistency with public policy—could also be argued to apply in this case.

This paper outlines these obstacles the Ecuadorian plaintiffs will face in attempting to gain U.S. legal recognition of the judgment against Chevron. If Chevron succeeds in blocking such recognition, the plaintiffs will have no mechanism by which to recover their damages. If the plaintiffs succeed, this case would become a truly landmark environmental justice case. U.S. recognition and enforcement of this historic judgment would likely have far-reaching implications for the field of international environmental law as well as future relations between transnational companies and the communities affected by their operations.

Legal Background

Following the initial filing of the lawsuit in New York federal court in 1993, Texaco filed a Motion to Dismiss on forum non conveniens grounds, which the District Court granted and the Second Circuit Court of Appeals upheld.¹⁷ This was seen as a victory for Texaco at the time, as dismissals based on forum non conveniens typically lead to a settlement or complete abandonment of the complaint.¹⁸ However, the Ecuadorian plaintiffs persevered and prepared to

¹⁶ Dhooge, *supra* note 6; Weston, *supra* note 2.

¹⁷ *Ecuador v. Chevron Corp.*, 638 F.3d 384, 389 (2d Cir. 2011); Dhooge, *supra* note 6, at 10.

¹⁸ Weston, *supra* note 2, at 733.

re-file their claims in Ecuador, which was determined by the court's *forum non conveniens* analysis to be a suitable alternative forum.¹⁹

In 2001, Chevron Corporation acquired Texaco for \$35 billion.²⁰ Since the Alien Tort Statute complaint against Texaco had been dismissed from U.S. District Court several years earlier, Chevron failed to consider the economic consequences of its potential inheritance of liability for the suspended lawsuit in deciding to pursue the acquisition.²¹ In May 2003, the Ecuadorian plaintiffs brought suit against Chevron in Ecuadorian court, filed in the Superior Court of Justice of Nueva Loja in Lago Agrio, located in the Sucumbio Province of the Oriente region.²² The claims were brought under Ecuador's Constitution and the country's Environmental Management Law and sought damages for the primary purpose of eliminating the "contaminating elements that still threaten the environment and health of the inhabitants."²³

In October 2007, Chevron filed a Motion to Dismiss on three grounds: (1) retroactive application of a new law to past damages; (2) violation of a previous liability release agreement; and (3) lack of personal jurisdiction.²⁴ The Superior Court of Justice deferred ruling on the motion and continued with the trial, despite Chevron's objections to improper judicial procedure.²⁵ In April 2008, damages were assessed by the court-appointed surveyor to be \$16.3 billion, which encompassed "claims for wrongful death, environmental remediation . . . and the disgorgement of profits earned by Texaco in the course of its operations in Ecuador."²⁶ This assessment of damages was later increased to \$27.3 billion to reflect additional considerations of

¹⁹ *Id.* at 732; Dhooge, *supra* note 6, at 11.

²⁰ Weston, *supra* note 2, at 732.

²¹ *Id.*

²² Dhooge, *supra* note 6, at 2; Drimmer & Lamoree, *supra* note 3, at 502.

²³ Dhooge, *supra* note 6, at 14.

²⁴ *Id.* at 15-16.

²⁵ *Id.* at 16.

²⁶ *Id.* at 19.

soil and groundwater remediation projects, financing of healthcare and drinking water infrastructure, and “an unjust enrichment penalty.”²⁷

In 2009, Chevron attempted to initiate third-party arbitration under a Bilateral Investment Treaty (BIT) between Ecuador and the United States.²⁸ The dispute over arbitration was brought in U.S. District Court, where Chevron claimed that the trial in Lago Agrio did not afford the company due process of law and argued that the purpose of the treaty’s arbitration agreement is to ensure non-biased resolution to trade disputes.²⁹ The company also requested from the court “a declaration that Chevron has no liability for environmental damage arising out of TexPet’s drilling operations in Ecuador.”³⁰ Chevron cited a settlement reached with Ecuador in 1995, under which Texaco carried out environmental remediation projects throughout the region in return for “a release from liability.”³¹

The Ecuadorian plaintiffs filed a petition to stay arbitration on the grounds that Chevron was bound by Texaco’s consent to jurisdiction in Ecuador upon dismissal on forum non conveniens grounds in the United States.³² The District Court denied the motion, holding that the purpose of the Bilateral Investment Treaty would be undercut by such a dismissal.³³ The court further ruled that arbitration under the Treaty could run parallel to the appeals phase of litigation in Ecuador “without undermining the district court’s forum non conveniens dismissal.”³⁴

In February 2011, the Ecuadorian court entered judgment against Chevron and ordered the company to pay the plaintiffs \$8.6 billion in damages.³⁵ This ruling constituted “the largest

²⁷ *Id.*

²⁸ *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 388 (2d Cir. 2011).

²⁹ *Id.* at 398.

³⁰ *Id.* at 388.

³¹ *Id.* at 390.

³² *Id.* at 388.

³³ *Republic of Ecuador v. Chevron Corp.*, 2010 U.S. Dist. LEXIS 25487, 5 (S.D.N.Y. Mar. 16, 2010).

³⁴ *Ecuador*, 638 F.3d at 388.

³⁵ *Id.* at 391.

judgment ever issued in an environmental case.”³⁶ Both parties intend to appeal the judgment through the Ecuadorian appeals system.³⁷

Recognition of Foreign Judgments in U.S. Courts

The Ecuadorian plaintiffs are not only faced with the prospect of a lengthy appeals process in Ecuadorian court,³⁸ but also the process of obtaining legal recognition of the judgment against Chevron in the United States. The compensation these plaintiffs will receive as a result of the Ecuadorian judgment “ultimately hinges on whether a court in a country where Chevron has assets . . . will recognize and enforce the judgment, because Chevron has no major assets in Ecuador.”³⁹ The historic judgment of the Ecuadorian Superior Court of Justice is thus rendered meaningless in the absence of U.S. approval and enforcement.⁴⁰

There is no existing federal statute or international treaty governing the conditions upon which U.S. Courts are to evaluate and enforce foreign court judgments.⁴¹ The doctrine of recognition is a “patchwork of case law” and state statutes, which combine to make enforcement of foreign judgments “unpredictable.”⁴² Yet once one state court rules to recognize a foreign judgment, that ruling will be entitled to full faith and credit among all states.⁴³ Given Chevron’s expansive business operations throughout the country, “it should not be difficult for the plaintiffs to locate at least one jurisdiction in which Chevron possesses assets that does not present insurmountable hurdles to recognition.”⁴⁴ However, the plaintiffs must proceed through the

³⁶ Weston, *supra* note 2, at 731.

³⁷ *Ecuador*, 638 F.3d at 391; Simon Romero & Clifford Krauss, *Ecuador Judge Orders Chevron to Pay \$9 Billion*, N.Y. TIMES (Feb. 14, 2011), <http://www.nytimes.com/2011/02/15/world/americas/15ecuador.html>.

³⁸ Dhooge, *supra* note 6, at 58.

³⁹ Weston, *supra* note 2, at 736.

⁴⁰ Dhooge, *supra* note 6, at 2.

⁴¹ *Id.* at 3.

⁴² *Id.*

⁴³ *Id.* at 40.

⁴⁴ *Id.*

recognition process with caution and choose the forum wisely, as “a misstep in any recognition proceeding may create an unfavorable precedent for proceedings in other courts” and would seriously decrease their chances of receiving the damages from Chevron’s U.S.-based assets.⁴⁵

As illustrated by many state statutes and court rulings, U.S. courts have historically been inclined to honor judgments made by foreign courts, as part of a “general policy to maintain good relations with foreign countries.”⁴⁶ This trend is based on the principle of comity⁴⁷ and lies at the heart of the Uniform Foreign Money Judgment Recognition Act of 1962, adopted by more than thirty states.⁴⁸ This Act “establish[es] a floor for the recognition of foreign judgments” by establishing a broad standard of finality by which judgments are evaluated.⁴⁹ Updated in 2005, the Act places the burden of proof on the “party resisting recognition.”⁵⁰

The Act outlines three mandatory exceptions to recognition of foreign judgments, based on characteristics of the foreign judicial system and trial proceedings: (1) noncompliance with basic notions of due process; (2) lack of personal jurisdiction over defendant; and (3) lack of subject matter jurisdiction over defendant.⁵¹ If any of these elements are applicable to the case in question, the judgment is automatically rendered “nonrecognizable.”⁵² The Act also provides six “discretionary grounds for non-recognition,” including conflict with prior agreement between the parties and inconsistency with state public policy.⁵³

⁴⁵ *Id.* at 59.

⁴⁶ Weston, *supra* note 2, at 738.

⁴⁷ “Comity” is defined as “the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation.” *Id.*

⁴⁸ THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, *Foreign Money Judgments Recognition Act*, UNIFORM LAW COMMISSION (last visited Oct. 21, 2011),

<http://www.nccusl.org/Act.aspx?title=Foreign%20Money%20Judgments%20Recognition%20Act>.

⁴⁹ Dhooze, *supra* note 6, at 31.

⁵⁰ *Id.* at 28.

⁵¹ *Id.* at 25; Weston, *supra* note 2, at 739.

⁵² Dhooze, *supra* note 6, at 28.

⁵³ Weston, *supra* note 2, at 739.

Obstacles to Recognition of Ecuadorian Judgment in U.S. Court

The states in which the plaintiffs are most likely to file their petition for recognition have all adopted the Uniform Foreign Money Judgment Recognition Act.⁵⁴ The above exceptions to recognition outlined by the Act will thus likely be the primary sources of contention when the plaintiffs seek recognition of the Ecuadorian judgment in U.S. court.

NONCOMPLIANCE WITH BASIC NOTIONS OF DUE PROCESS

Throughout the litigation in Ecuador, Chevron has adamantly objected to the Ecuadorian judicial system's alleged violations of due process. In March 2007, the Ecuadorian plaintiffs obtained a court order "approving a single expert to conduct inspections and report to the court" instead of allowing each side to provide its own experts and evidence.⁵⁵ The court appointed Richard Cabrera to be the official surveyor, over Chevron's objections on procedural grounds.⁵⁶ The company openly criticized Cabrera's methodology and conclusions, accusing him of "fraud on the court."⁵⁷ The most significant controversy over the legitimacy of Cabrera's evidence was driven by his assessment of damages made in April 2008. Chevron contested the assessment, citing Cabrera's limited mandate to evaluate "environmental injury" and labeling his conclusions as "completely fabricated" due to fraudulent methodology.⁵⁸

Chevron's claims regarding violation of due process also rest on the corruption of the Ecuadorian government and its influence on the judiciary. Rafael Correa was elected to the

⁵⁴ The states where plaintiffs are most likely to file the claim are (1) Delaware, where Chevron is incorporated; (2) California, Chevron's principle place of business; and (3) New York, where all previous U.S. hearings of this matter have been held. Weston, *supra* note 2, at 740.

⁵⁵ Dhooge, *supra* note 6, at 17.

⁵⁶ *Id.*

⁵⁷ *Id.* at 18.

⁵⁸ Cabrera failed to identify individual victims of the alleged diseases and did not provide proof of their illnesses; he included evaluations and damage assessments for waste pits he never visited; and he set costs for construction of potable water infrastructure although he never took any drinking water samples. *Id.* at 20.

Ecuadorian presidency in 2007 on a platform of change and social justice.⁵⁹ President Correa has openly expressed his position on the Chevron litigation, declaring “the plaintiffs ‘comrades’ and heroes, and has announced solidarity with their cause.”⁶⁰ The government’s bias has not only impacted public perception of the case but has led to controversy over its corruption of the judiciary. In August 2009, Chevron released secretly-recorded videos depicting meetings in which government officials offered bribes to then-presiding Judge Juan Evangelista Nu ez Sanabria to enter judgment against Chevron.⁶¹ The company released the tapes on their website and demanded an investigation into the alleged bribery and corruption.⁶² Judge Nu ez Sanabria stepped down in response to the allegations and was replaced by Judge Nicolas Zambrano.⁶³

Under the Uniform Foreign Money Judgment Recognition Act, the party attempting to prevent recognition has the burden of proof to establish that the judgment was a result of “a system that does not provide due process.”⁶⁴ A foreign tribunal does not have to possess legal procedures identical to those of the U.S. court system in order to qualify as providing due process.⁶⁵ Instead, the standard is that of “international due process” which requires that “the foreign procedures are ‘fundamentally fair’ and do not offend basic fairness.”⁶⁶ To prove noncompliance with this standard, the defendant must demonstrate an “outrageous departure from our own [notion] of civilized jurisprudence.”⁶⁷

⁵⁹ BUREAU OF WESTERN HEMISPHERE AFFAIRS, *Background Note: Ecuador*, U.S. DEPARTMENT OF STATE (June 8, 2011), <http://www.state.gov/r/pa/ei/bgn/35761.htm>.

⁶⁰ Drimmer & Lamoree, *supra* note 3, at 508.

⁶¹ Dhooge, *supra* note 6, at 22; Drimmer & Lamoree, *supra* note 3, at 509; Weston, *supra* note 2, at 735.

⁶² Dhooge, *supra* note 6, at 22.

⁶³ *Id.*

⁶⁴ *Id.* at 40.

⁶⁵ *Id.* at 42.

⁶⁶ Weston, *supra* note 2, at 744.

⁶⁷ U.S. court findings of such drastic departures from the standard of international due process have been generally limited to countries such as Iran, Liberia, Cuba, North Korea, and the Democratic Republic of the Congo. Dhooge, *supra* note 6, at 42.

It is not clear whether a U.S. court would consider the alleged corruption of the legal proceedings in Lago Agrio to be in violation of due process. A recent State Department report casts an unfavorable light on the Ecuadorian government and judiciary, citing “continued problems with corruption and the denial of due process.”⁶⁸ Given President Correa’s overt bias and the extent of evidence against Richard Cabrera and Judge Nu ez Sanabria, Chevron certainly has valid arguments it can leverage in preventing recognition on the grounds of due process.

However, the majority of U.S. court evaluations of Ecuador’s judiciary “have found it to be adequate” as an alternate forum in the context of forum non conveniens dismissal analyses.⁶⁹ During the U.S. district and appellate courts’ analyses during this case’s original dismissal, the courts “recognized the danger of corruption in the judiciary of Ecuador,” yet still ruled that it was an acceptable forum in light of all elements considered.⁷⁰ Texaco itself submitted fourteen affidavits during this evaluation asserting its belief in the adequacy of the Ecuadorian legal system.⁷¹ To declare Ecuador’s judicial system “so fundamentally flawed as to deny Chevron due process” would require overwhelming evidence and constitute a “significant departure from precedent.”⁷²

LACK OF PERSONAL JURISDICTION OVER DEFENDANT

There is some dispute as to whether the Ecuadorian legal system has the right to exercise personal jurisdiction over Chevron. Although it is a transnational corporation, Chevron’s primary contacts are located in the United States. It is incorporated in Delaware and has its primary place of business in California.⁷³ It has no legal domicile, owns no property, and conducts no business

⁶⁸ *Id.* at 45.

⁶⁹ *Id.* at 42.

⁷⁰ Weston, *supra* note 2, at 733.

⁷¹ Karen Hinton, *Plaintiffs, Chevron Respond to “Overexposed,”* THE AMERICAN LAWYER (June 01, 2011), <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202497054581&slreturn=1>.

⁷² Dhooze, *supra* note 6, at 47.

⁷³ Weston, *supra* note 2, at 740.

operations in Ecuador.⁷⁴ Additionally, the particular events and actions giving rise to the complaints brought in this case occurred before Chevron acquired Texaco in 2001.⁷⁵

The courts ruled that the connections between Texaco and its Ecuadorian subsidiaries operating under the consortium were not sufficient to hold Texaco liable for the conduct of its subsidiaries.⁷⁶ As Chevron is yet another link removed from these subsidiaries as the new parent company of Texaco, the Ecuadorian court cannot assert personal jurisdiction over Chevron on the basis of connections to the consortium's individual companies.⁷⁷

Texaco's express and written consent to litigation in Ecuador during the forum non conveniens analysis is the primary basis upon which Ecuadorian courts have claimed personal jurisdiction.⁷⁸ The determining factor in any objection Chevron may bring against personal jurisdiction will be "whether Texaco's actions are binding on Chevron," since Chevron did not acquire Texaco until 2001 and was not a party to the U.S. court decision dismissing the case on forum non conveniens grounds.⁷⁹ However, Chevron's own actions may serve to bind the company to jurisdiction in Ecuador. Its vigorous participation throughout the Ecuadorian litigation, defending its position based on the merits of the case, "may constitute a waiver of its objection to personal jurisdiction."⁸⁰

LACK OF SUBJECT MATTER JURISDICTION OVER DEFENDANT

Chevron may be able to invoke an exception to recognition in the United States based on the laws under which the Ecuadorian plaintiffs filed their claims. Ecuador's Constitution

⁷⁴ Dhooge, *supra* note 6, at 49.

⁷⁵ *Id.* at 50.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 49

⁷⁹ *Id.*

⁸⁰ *Id.* at 51.

expressly “place[s] responsibility for environmental protection on the government.”⁸¹ Under the Constitution, public lands and natural resources are established to be exclusive property of the state, and private parties cannot seek compensation for damage done to such resources.⁸² However, the Ecuadorian government recently changed its position on this Constitutional provision in response to the case against Chevron, publicly declaring “that the plaintiffs possessed private rights of action.”⁸³

Questions also arise regarding the legitimacy of claims brought under the Environmental Management Law. This statute was enacted in 1999, years after Texaco ceased operations in Ecuador, and it cannot be applied retroactively.⁸⁴ It will be up to the discretion of a U.S. court to decide whether or not this discrepancy violates Ecuador’s right to exercise subject matter jurisdiction over Chevron in this case.

CONFLICT WITH PRIOR AGREEMENT BETWEEN THE PARTIES

In May 1995, Ecuador entered into an agreement⁸⁵ with Texaco and Petroecuador which “released Texaco and all related companies from claims arising from environmental degradation associated with the Consortium’s activities.”⁸⁶ This release from liability was offered in return for Texaco’s commitment to conduct “partial cleanup of contaminated sites.”⁸⁷ Texaco completed its remediation commitment in 1998, having spent \$40 million to conduct the cleanup

⁸¹ *Id.* at 52.

⁸² *Id.* at 53.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ The agreement is entitled “Contract for Implementing of Environmental Remedial Work and Release from Obligations, Liabilities and Claims.” *Id.* at 8.

⁸⁶ *Id.*

⁸⁷ Weston, *supra* note 2, at 734.

projects.⁸⁸ Texaco also paid local governments for additional guarantees of “release from all current and future liability.”⁸⁹

In September 1998, Ecuador signed the “Final Act”⁹⁰ to recognize Texaco’s fulfillment of its remediation promises and to officially release the company from all liability arising from its prior operations in the Oriente.⁹¹ While the agreement was between Ecuador, Petroecuador, and Texaco, Chevron will likely use this agreement to argue that any judgment holding Chevron liable for the consortium’s contamination is contradictory to this agreement’s release from liability clause. A decision on this issue will likely hinge on whether an agreement releasing Texaco from liability can be extended to include Chevron’s liability for Texaco’s operations. The U.S. Court of Appeals suggested that the plaintiffs may be able to invoke the doctrine of judicial estoppel by using Texaco’s prior consent to suit in Ecuador “to argue that Chevron is estopped from refusing to pay that judgment based solely on the force of its release claim.”⁹²

INCONSISTENCY WITH STATE PUBLIC POLICY

The actual value and nature of the damages assessed and awarded by the Ecuadorian court may come into controversy during the process of gaining U.S. recognition. The Uniform Foreign Money Judgment Recognition Act provides an exception in granting legal recognition to foreign judgments if the damages consist of “a fine or other penalty.”⁹³ Since the original damages assessment in the Ecuadorian litigation included “undetermined costs”⁹⁴ and components such as disgorgement of profits and enrichment penalties, the judgment could

⁸⁸ Drimmer & Lamoree, *supra* note 3, at 500; Dhooge. *supra* note 6, at 9.

⁸⁹ *Id.*

⁹⁰ Full title of Final Act: “Act of Final Liberation of Claims and Equipment Delivery.” *Id.*

⁹¹ *Id.*; Drimmer & Lamoree, *supra* note 3, at 500.

⁹² Republic of Ecuador v. Chevron Corp., 638 F.3d 384, 9 (2d Cir. 2011).

⁹³ Dhooge, *supra* note 6, at 25.

⁹⁴ *Id.* at 31.

potentially be ruled by a U.S. court as nonrecognizable on the basis of punitive monetary damages in violation of due process.⁹⁵

The issue of punitive damages brings into question whether the Ecuadorian judgment is of a public or private nature. A public criminal case tends to serve judgment in the form of “a fine or penalty,” whereas a civil case brought by private citizens “compensates them for individual harm [and] is remedial in nature.”⁹⁶ Under Ecuador’s Constitution, environmental protection and access to natural resources is defined as a public “societal right.”⁹⁷ Therefore it could be argued that although the Ecuadorian plaintiffs are themselves private citizens, they “are seeking to vindicate rights possessed by the public at large,” rendering it a public case seeking punitive fines or damages.⁹⁸

Conclusion

All of the legal issues discussed above will likely come into play when the plaintiffs attempt to gain legal recognition of the Ecuadorian judgment in U.S. courts. The outcome is uncertain, as there are strong arguments on both sides for many of these issues, but it will have far-reaching implications regardless. In many ways, Chevron’s legal strategy has been “representative of corporate litigation strategy in general, to avoid large judgment payouts for tort actions abroad.”⁹⁹ Chevron’s ultimate success or failure in this case may set a new standard for future relations between transnational corporations involved in extractive industry and the communities affected by their operations worldwide.

⁹⁵ *Id.* at 38.

⁹⁶ *Id.* at 33.

⁹⁷ *Id.* at 34.

⁹⁸ *Id.* at 35.

⁹⁹ Weston, *supra* note 2, at 736.

The scope and sympathetic nature of this case have drawn international attention to its outcome. Grassroots organizing has evolved in an effort to defend the rights of the affected Ecuadorian people.¹⁰⁰ Due to the publicity of the campaign, Chevron must now manage “the incalculable loss of business reputation and goodwill” in addition to whatever damages it may eventually have to pay the plaintiffs.¹⁰¹ Regardless of whether or not the judgment is recognized in the United States, transnational industry will need to begin to recognize that irresponsible operations abroad “can lead to a high-profile lawsuit . . . and with it an accompanying set of aggressive tactics that can hurt the company’s image and reputation.”¹⁰²

Given the opportunities for appeals in both Ecuador and the United States, there will likely be no concrete settlement of this case for many years. While the world awaits a decision, the contamination in the Ecuadorian Amazon will “continue to take a toll on the Oriente and its residents,” and meaningful relief via remediation and compensation remains a distant prospect for the affected communities.¹⁰³

¹⁰⁰ Amazon Watch Campaign, *Importance of Grassroots Efforts*, CHEVRONTOXICO (last visited Oct. 18, 2011), <http://chevrontoxico.com/about/amazon-watch-campaign/importance-of-grassroots-efforts.html>.

¹⁰¹ Dhooge, *supra* note 6, at 57.

¹⁰² Drimmer & Lamoree, *supra* note 3, at 522-523.

¹⁰³ Dhooge, *supra* note 6, at 58.