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### Consequences of Seeking Environmental Justice: The Lawyer Who Took on Chevron and Paid the Price

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# Consequences of Seeking Environmental Justice: The Lawyer Who Took on Chevron and Paid the Price

In February 2011, the environmental and human rights lawyer, Steven Donziger, won a landmark judgment against Chevron Corporation, on behalf of 30,000 Indigenous people residing in the Amazon rainforest in Ecuador.[1] Chevron was found liable for causing toxic oil pollution that destroyed Indigenous lands and rivers.[2] The said pollution destroyed rivers and streams used by the Indigenous people of Lago Agrio to drink water.[3] The water contamination by Chevron contained illegal levels of metals that are known to damage the immune and reproductive systems in humans, thereby leaving some of the world's poorest people with generations of birth defects and a cancer epidemic.[4]

This tragedy began in 1964 when Chevron found oil in Ecuador and began violating environmental regulations and human rights of the communities, only to save an estimated \$3 on every barrel of oil produced.[5] After a legal battle of nearly two decades, Donziger and his team won a \$9.5 billion verdict against Chevron, the largest court judgment in history for human rights and environmental violations.[6]

However, this victory was short-lived as the Company refused to comply with the court order and has not paid even a single penny in reparations owed to the Indigenous communities in Ecuador.[7] Not only did Chevron refuse to pay its court-mandated judgment, they also launched a retaliatory campaign against Donziger to punish him for standing up against the oil giant.[8]

The aforementioned legal battle against Chevron was fought in an Ecuadorian court.[9] The plaintiffs initially brought this case in U.S. federal court in the Southern District of New York (S.D.N.Y.).[10] However, Chevron, against plaintiffs' objections, fought to keep the case in Ecuador on the basis of *forum non conveniens*, a common law doctrine that allows courts to dismiss cases within its jurisdiction on grounds that another forum would be better suited to decide the case.[11] Chevron successfully persuaded the Southern District of New York to dismiss the case and let it proceed in the Ecuadorian courts instead.[12] When Chevron lost in a jurisdiction of their choice, they began complaining about how the Ecuadorian courts could be susceptible to "corrupt influences," and therefore, were in fact ill-suited to try a massive environmental class action lawsuit.[13]

Further, Chevron filed a "racketeering" case against Donziger, claiming that "Mr. Donziger and his associates had engaged in a conspiracy and criminal conduct by ghostwriting an environmental report used as a crucial piece of evidence and bribing a judge in Ecuador." [14]

The case was heard by Judge Lewis Kaplan, an S.D.N.Y. judge and former tobacco company lawyer, who ruled in favor of Chevron, relying primarily on a witness's testimony that Donziger's lawyers were not even able to depose.[15] Next, the day before the trial, Chevron dropped its financial claims, which allowed Kaplan to dismiss the jury and decide the case himself.[16] Despite several objections from Donziger's team, he was deprived of his right to a jury trial.[17] Finally, on July 31, 2019, Judge Kaplan charged Donziger with criminal contempt of court based on his refusal to share privileged attorney-client communications with the court.[18] Seeing no merits in the criminal contempt charge, the U.S. attorney for the Southern District of New York declined to prosecute the case. [19] However, in his quest to have Donziger prosecuted, Judge Kaplan, in an extremely rare step, appointed a private law firm, Seward & Kissel, to prosecute Donziger in the name of the U.S. government.[20] Seward & Kissel has a history of representing various oil and gas companies in the past, including Chevron in 2018.[21] This further indicates how Donziger was deprived of his right to a fair trial at every step of the way.

Steven spent two years under house arrest for a misdemeanor charge of criminal contempt before he was sentenced to six months in jail by Judge Loretta Preska of the Southern District of New York on October 1, 2021. [22] Such a severe punishment for a misdemeanor is unprecedented and unheard of, especially because Donziger was repeatedly denied a jury trial, citing procedural loopholes.[23]

The day before Donziger was sentenced, a panel of UN human rights experts issued a determination that Donziger's extended home confinement violated international human rights law.[24] Christina Ochoa, an expert in environmental law at Indiana University, referred to Donziger's severe treatment by the courts as "odd" and added that questions remain over the conflict of interest in his prosecution.[25]

Steven Donziger was deprived of his due process rights at every step during this entire litigation.[26] He was repeatedly denied a jury trial, was subjected to house arrest for over two years before he was even convicted, was disbarred from practicing law by the bar grievance committee in New York without providing him with a hearing to defend himself, he was prosecuted by a private law firm when the public prosecutors declined to prosecute his case, there was a direct conflict of interest in his prosecution since the private law firm assigned to prosecute him had represented Chevron in the past, he was sentenced to six months in jail for a misdemeanor despite having spent over two years in house confinement for the same charge.[27]

It does not require a far stretch of imagination to conclude that Donziger is being used to distract us away from the dark realities of the lives of people of Lago Agrio; and silence the important work of other environmental and corporate accountability advocates who dare to engage in legal battles against powerful corporations.[28]

[1] Lawyer Who Won \$9.5 Billion Judgment Against Chevron Reports to Prison, <https://www.nytimes.com/2021/10/27/business/energy-environment/steven-donziger-chevron.html>

[2] Steven Donziger: The Man who Stood Up To An Oil Giant And Paid The Price, <https://www.greenpeace.org/international/story/28741/steven-donziger-chevron-oil-amazon-contamination->

injustice/

[3] The Lawyer Who Took On Chevron - And Now Marks His 600th Day Under House Arrest, <https://www.theguardian.com/us-news/2021/mar/28/chevron-lawyer-steven-donziger-ecuador-house-arrest>  
[4] *Id.*

[5] Steven Donziger, *supra* note 2.

[6] Lawyer Who Won \$9.5 Billion judgment, *supra* note 1.

[7] The Lawyer Who Took On Chevron, *supra* note 3.

[8] Steven Donziger, *supra* note 2.

[9] Litigation Without End: Chevron Battles On In 28-Year-Old Ecuador Lawsuit, <https://www.wsj.com/articles/litigation-without-end-chevron-battles-on-in-28-year-old-ecuador-lawsuit-11619975500>.

[10] Howard M. Erichson, *The Chevron-Ecuador Dispute, Forum Non Conveniens, and the Problem of Ex Ante Inadequacy*, 1 Stan. J. Complex Litig. 417 (2013).

[11] *Supra*, note 2; Who Wanted Ecuador To Try The Biggest Environmental Case In History? That Would Be The Defendant, Chevron, <http://progressivereform.org/cpr-blog/who-wanted-ecuador-to-try-the-biggest-environmental-case-in-history-that-would-be-the-defendant-chevron/>.

[12] *Id.*

[13] *Id.*

[14] Lawyer Who Won \$9.5 Billion judgment, *supra* note 1.

[15] Lawyer Who Won \$9.5 Billion judgment Against Chevron Reports to Prison, <https://www.nytimes.com/2021/10/27/business/energy-environment/steven-donziger-chevron.html>

[16] *Chevron Corp. v. Donziger*, 974 F. Supp. 2d 362 (S.D.N.Y. 2014); *Chevron Corp. v. Donziger*, 833 F.3d 74 (2d Cir. 2016).

[17] *Id.*

[18] How The Environmental Lawyer Who Won a Massive Judgment Against Chevron Lost Everything, <https://theintercept.com/2020/01/29/chevron-ecuador-lawsuit-steven-donziger/>.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *United States v. Donziger*, No. 19-CR-561 (LAP), 2021 U.S. Dist. LEXIS 138923 (S.D.N.Y. July 26, 2021); *see also* Lawyer Who Sued Chevron Sentenced To Six Months In Contempt Case, <https://www.reuters.com/world/us/lawyer-who-sued-chevron-sentenced-six-months-contempt-case-2021-10-01/>.

[23] Steven donziger: The Man who Stood Up To An Oil Giant And Paid The Price, <https://www.greenpeace.org/international/story/28741/steven-donziger-chevron-oil-amazon-contamination-injustice/>.

[24] UN Rules That Steven Donziger's House arrest Violates International Laws, <https://thehill.com/policy/energy-environment/574786-un-rules-that-steven-donziger-house-arrest-violates-international>

[25] This Lawyer Went After Chevron: Now He's 600 Days Into House Arrest, <https://www.motherjones.com/environment/2021/03/lawyer-steven-donziger-went-after-chevron-now-600-days-house-arrest/>.

[26] Steven donziger: The Man who Stood Up To An Oil Giant And Paid The Price, <https://www.greenpeace.org/international/story/28741/steven-donziger-chevron-oil-amazon-contamination-injustice/>.

injustice/.

[27] *Id.*

[28] The Lawyer Who Took On Chevron - And Now Marks His 600th Day Under House Arrest,

<https://www.theguardian.com/us-news/2021/mar/28/chevron-lawyer-stein-donziger-ecuador-house-arrest>.