

Constellations of responsibility: How Chevron keeps getting away with it

By Shani Laskin, Staff Writer

Among lush Amazonian flora in Oriente, the eastern region of Ecuador, pits of viscous, black oil dot the landscape. Iridescent streams infiltrate the rainforest. Aerial shots of unobstructed canopy cover are starkly contrasted with footage of large oil rigs set up in the forest. A few frames follow before the video shows a baby writhing from a skin rash. Minutes later, a woman cries as she describes the struggles she faces trying to pay for her 18-year-old daughter's cancer treatment.

Sitting over 5,000 kilometres away in a lecture hall at McGill, I watched these scenes unfold before me in the documentary, [Crude: The Real Price of Oil](#). My class was discussing *Aguinda v. Texaco, Inc.*, a court case filed in 1993 in which the plaintiffs—over 30,000 Ecuadorians from the Oriente region—argued that they had been adversely affected by oil extraction in the region at the hands of [Texaco](#), an American oil company and a subsidiary of Chevron Corporation. The Oriente region is home to less than five per cent of Ecuador's population, and a large portion is a part of the region's five Indigenous groups, including the Cofán, Secoya, Siona, Huaorani, and Quichua.

The plaintiffs alleged that Texaco used sub-standard technology and, in the process, spilled over 18 billion gallons of toxic waste in the Ecuadorian Amazon. They claimed that oil entered water sources that locals used for drinking and bathing. Following the pollution, the plaintiffs said their communities saw increases in sickness, cancer, and death, which they believed were due to the contamination from Texaco's operations in the region.

Before digging into the details of this case, I only had a notion of the impact that extractive corporations can have on the communities they operate in. I had read about similar cases, but as I dove into this lawsuit, my sense of the barriers to convicting corporations was heightened. I went down a seemingly endless rabbit hole of legal documents, corporate strategies, and horror stories of what happens to those who try to oppose them.

After nearly 20 years in court, the case was finally decided in 2011. An Ecuadorian court ruled that Chevron had to pay \$18 billion in damages, later reduced to \$9.5 billion after Chevron appealed the decision. Despite the landmark victory, over a decade later, the money still has not been paid. Instead, Chevron retaliated, arguing that the case was fraudulent and illegitimate. As a part of Chevron's strategy to refute the decision, they went after one person in particular: Steven Donziger.

Donziger, one of the lead lawyers for the plaintiffs, was met with charges of extortion and fraud following the judgment. According to a 2009 [internal memo](#), Chevron's "L-T [long-term] strategy [was] to demonize Donziger." The American lawyer has been in a legal battle against Chevron since 2011, which has resulted in a six-month prison sentence, nearly three years under house arrest, the detainment of his

passport, and a disbarment. Most recently, on March 27, the United States Supreme Court [refused](#) to hear Donziger's appeal.

While Donziger's personal legal battle with Chevron is characteristic of corporations' legal tactics, his unjust targeting pales in comparison to the broader fight: Thirty years have now passed since the communities in the Ecuadorian Amazon first filed their lawsuit, but they have yet to receive justice. But the focus, especially that of mainstream media sources, has been shifted to the plight of one individual.

"I want to emphasize that what happens to me is not determinative in terms of what happens to the people of Ecuador," Donziger told me in an interview. "It has very little to do with it, actually. But it is important because what's happening to me is a component of a fossil fuel industry playbook to try to use private corporate prosecutions to silence lawyers and activists who do this important type of accountability work."

The nature of extractive corporations means that community harm is inevitable and, therefore, must be litigated against. Canada supports multiple extractive industries, particularly its massive mining sector. Shin Imai, a professor at the Osgoode Hall Law School of York University, oversaw a 2016 [report](#) on violence associated with Canadian mining companies in Latin America. The report, which the research team described as being only "the tip of the iceberg," documented 44 deaths—some of which were deemed targeted—403 injuries, and 709 cases of criminalization. A total of 28 different Canadian mining companies were involved in these incidents.

Even when this violence is documented, it is rare for companies to pay restitution to the communities they have impacted. Imai told me that one way corporations can wriggle out of accountability is through networks of subsidiaries: Parent companies can spread their assets across many different branches all over the world. A company's subsidiary in a Latin American country, for example, may have almost no assets, making it virtually impossible to sue for any damages made to a community. At the same time, the community would not be able to sue the parent company because it is legally separate from its subsidiary. As of 2019, for instance, Chevron had at least [33 subsidiaries](#) according to the United States Securities and Exchange Commission ([SEC](#)).

"So anywhere you can sue, they can say either, 'we don't have assets,' or 'it's not our fault,'" Imai said. "All the responsibility is spread all over the place. They make tons of money, but you can't get a hold of it."

Jaye Ellis, an associate professor at McGill's Faculty of Law, explained that corporations can often evade conviction because they easily find loopholes in human rights regulations. Promoting corporate social responsibilities, which are non-legally binding guides of how corporations can operate ethically, is one solution proposed by legal scholars. The [United Nations' 2011 Guiding Principles](#), in particular, outline the ways in which companies should operate respectfully in the communities they work in and along their supply chains. Soft obligations such as this cannot enforce immediate changes. But Ellis suggests that over time, in tandem with other domains of law, they may create a significant "constellation" of social pressure for companies.

"These different parts of international policy and domestic law and international law, as well, are beginning to sort of knit together, so that you've got a 'damned if you do, damned if you don't' situation happening for parent corporations," Ellis said. "If they choose to maintain willful ignorance of the

undertakings of their subsidiaries, then they are in violation of this political commitment. If they look into the affairs of their subsidiaries, but they don't do anything about the risks that their subsidiaries are creating, then they owe a duty of care and they could be liable to the people who are harmed."

Other scholars are less optimistic about the viability of social responsibility for corporations. Without any laws forcing corporations to adhere, Imai explained, they simply do not have to. Chevron even cites the UN Guiding Principles on its [website](#), writing that the corporation "commits to respecting human rights" and that they "can play a positive role in the communities where [they] operate." Superficial commitments to sustainability and ethics are common across most extractive corporations.

"You'd think [corporations] were community development organizations, instead of these rapacious, extractive companies," Imai said. "They have all these codes. They say, 'we protect the environment, we don't violate human rights' but that's called corporate social responsibility. [...] So you can have the best codes in the world and if the company gets in trouble, there's no mechanism for investigating them [...] and if the companies don't want to cooperate, then what kind of system do you have?"

So what else could hold corporations to account? Certainly, media has a role to play. By spotlighting injustices, journalists can spark the attention of the general public. Donziger's case has gained massive media traction and has helped place social pressure on Chevron, but it is just one of many other corporate injustices that have, by contrast, not come to light. What about the countless legal battles from which journalists cannot derive a tragic hero?

The violences corporations inflict overseas are often obscured from populations in Canada or the U.S. because of the massive amount of resources they can wield to evade liability, not to mention targeting activists and lawyers such as Donziger. But just because it occurs outside of our vision does not mean that the violence of Western corporations can be ignored. As an incubator of [future Canadian miners](#), McGill's Mining Engineering program and its internship offerings could reflect on the ethical impacts of its curricula.

To Imai, the struggle then is to mobilize against the financial and political power of corporations such as Canadian mining companies.

"I think that the Canadian public is concerned and we just need to somehow make the politicians accountable," Imai said. "And it's very hard because the mining lobby is huge, it's powerful, it can put a lot of pressure on very specific individuals. But it's not just that I see hope. I see that there is a critical mass of Canadians who know about the issue and really want to see something done."

Ultimately, while the power of multinational corporations can appear all-consuming, it seems that there are avenues for change. The network of activists, lawyers, and legal scholars shedding light on the human rights abuses of corporations also spreads wide in reach and influence. But getting Chevron to pay the communities of the Oriente region and setting legal precedents to convict future corporate violences will by no means be easy.

"I think the answer is multi-platform campaigns that include a strong legal component, but also the lobbying, media, and public education components," Donziger said. "Only the people affected, I think, have the capability to vanquish some of these large and powerful fossil fuel companies but [...] no one person can do it alone."

“The skill set, or the team, needs to be multi-dimensional, needs to have good leadership, and a coordinated strategy with these cases, and you can also win them [with] just a tiny fraction of the resources spent by the oil companies to fight.”